

ADDRESSING THE LEGAL CHALLENGES OF UNREGULATED SURROGACY IN GHANA

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Abstract

This article examines the legal and ethical issues posed by unregulated surrogacy in Ghana. Surrogacy is an arrangement where a woman (the surrogate) carries and delivers a child for an intended parent or parents. The egg and sperm used may originate from the intended parent(s), or may be obtained by donation or purchase. The article highlights the potential legal and ethical complications arising from the absence of comprehensive legislation governing such arrangements. The core problem is the lack of legal frameworks to address parentage, rights, and responsibilities in scenarios involving donated gametes and surrogate motherhood. This deficiency leaves children, intended parents, and surrogates vulnerable to disputes, exploitation, and legal ambiguity.

The article explores the complexities of surrogacy, including instances where intended parents utilize donated eggs or sperm, or where same-sex couples seek parenthood. It emphasizes the risk of parental repudiation due to a lack of biological connection, a scenario with severe consequences for the child's wellbeing. By comparing surrogacy regulations in other jurisdictions, the study underscores the urgent need for Ghana to enact specific laws. Key findings reveal that Ghana's current legal framework only addresses birth certificate modifications through High Court orders, leaving broader surrogacy issues unaddressed. The article concludes that the absence of dedicated legislation creates a legal vacuum, necessitating the immediate development and implementation of comprehensive surrogacy laws to protect all parties involved.

Keywords: surrogacy regulation; assisted reproductive technology; Ghana; reproductive tourism; the Casablanca Declaration; commodification of children; Ghanaian law.

[A] INTRODUCTION

Medically, surrogacy involves an arrangement where a fertility institution provides assisted reproductive technology (ART) to enable a woman to carry a pregnancy. In the more popular sense, surrogacy refers to an arrangement where a woman agrees to carry an embryo created through *in vitro* fertilization (IVF) and give birth to a child for intended parents, who may be infertile couples, single individuals, same-sex couples, or those with medical conditions preventing pregnancy.

[B] DIFFERENT ATTITUDES TO SURROGACY

Internationally, surrogacy regulation presents a patchwork of approaches with some countries enacting comprehensive regulatory frameworks while others lack any specific legislation (Trimming & Beaumont 2013). This regulatory disparity enables “reproductive tourism”, where individuals seek surrogacy arrangements in jurisdictions with minimal regulation and lower cost (Trimming & Beaumont 2013: 439,441-442). States have advanced compelling arguments, grounded in religious beliefs and human rights principles, for the prohibition of all forms of surrogacy. Conversely, equally compelling arguments support surrogacy as enabling naturally infertile individuals to have children through scientific assistance, with proponents wholly rejecting religious objections.

These divergent views are reflected in a spectrum of national legislative approaches with varying degrees of permissibility. At one end, the Catholic Church, guided by its theological doctrines, prohibits all forms of surrogacy. Several states, including China, France, Germany, and Italy, have also enacted prohibitions. Notably, Italy has taken the additional step of criminalizing surrogacy by prescribing penalties for all parties involved. Other jurisdictions adopt partial prohibitions. Hong Kong has criminalized commercial surrogacy, but the laws on altruistic surrogacy are not clear. Canada allows surrogacy but with restrictions on commercial surrogacy. Australia, Brazil and the Netherlands allow altruistic surrogacy but explicitly prohibit commercial surrogacy. India allows altruistic surrogacy for Indian citizens but forbids commercial surrogacy for foreign intended parents.

Ghana is one of the countries where surrogacy remains largely unregulated. The sole regulatory intervention concerns parentage registration: a surrogate mother may apply to the High Court for an order directing the Birth and Death Registry to register the intended mother as the child’s mother at birth. If the application is not made timely, and

the surrogate is registered as the mother, then the intended mother must apply to the High Court within six months of birth for an order substituting her as mother (Births and Deaths Registration Act 2020 (Act 1027), section 22). Despite the absence of specific legislation regulating contracts between the parties, surrogacy has been practised in Ghana for over two decades, resulting in the birth of many children through the process. This article discusses the different types of surrogacies and the serious consequences likely to affect children born through these unregulated arrangements.

To understand the risks posed by Ghana's regulatory gap, it is necessary to examine the grounds upon which other states have formulated their surrogacy policies. Typically, a state's attitude towards surrogacy is informed by which types of surrogacy arrangements it finds acceptable, taking into consideration human rights compliance. First, some states perceive surrogacy as an unacceptable means of having children based on religious objections. Second, some countries prohibit their nationals, both within their territories and abroad, from participating in surrogacy, viewing it as inhumane because it treats human beings as commodities. This objection centres on the commodification inherent in financial transactions for surrogate births. Third, a well-established human rights objection is that surrogacy violates women's dignity by commercializing their reproductive capacity, effectively renting their wombs. Fourth, surrogacy has become a potential vehicle for organized crime and money laundering, with agents and medical facilities potentially extracting large sums of monies from desperate intended parents (Karavas 2019; GBC Ghana Online 2021; Eurojust 2024). Fifth, in unregulated jurisdictions such as Ghana, surrogate babies born with severe disabilities face particular risk (United Nations 2018: 9). If intended parents refuse to accept the child, the child becomes an unintended burden to the surrogate, increasing the likelihood of abandonment. Sixth, surrogacy arrangements can have significant psychological effects upon the women involved, particularly those who serve as surrogates (Lamba & Ors 2018; Velez & Ors 2025).

These diverse grounds for opposition manifest in varied regulatory approaches across jurisdictions. There are countries, including Ghana, where there has not been any discussion on surrogacy, and those involved in such transactions do so with impunity.

Meanwhile, some countries permit all types of surrogacies without implementing meaningful regulation, despite the serious consequences for surrogate mothers, children, intended parents and society. Ukraine

exemplifies this approach, having developed into a hub for international or cross-border surrogacy practised on an industrial scale, with significant adverse effects on surrogates, children and the country itself. Prior to the war with Russia, Ukraine attracted intended parents from around the world seeking surrogacy arrangements. The conflict has since stranded surrogate babies whose intended parents cannot travel to Ukraine to collect them (König 2023). This has forced the Ukrainian Government to provide temporary care for the newborns in makeshift facilities, including basements converted into air raid shelters. These newborns also face potential statelessness. Ukraine's lack of surrogacy regulation means children born to non-Ukrainian intended parents cannot automatically acquire Ukrainian citizenship, as birth within the country's territory does not confer citizenship by right (Al Jazeera 2022; BBC News 2022; *New York Times* 2022; Reuters 2022).

[C] DIFFERENT TYPES OF SURROGACY

Surrogacy arrangements can be categorized into four main types: traditional surrogacy; gestational surrogacy; altruistic surrogacy; and commercial surrogacy.

In traditional surrogacy, the surrogate's own egg is used with sperm from a partner or donor, whether known or unknown, making her the biological mother of the child. The surrogate mother, who is the biological mother of the child, carries the pregnancy and has a genetic connection to the child. A man may agree to accept as his own a child born through traditional surrogacy using donor sperm. However, such voluntary acceptance lacks specific legal regulation. The man may decide to decline paternity whenever the relationship between the man and the surrogate mother becomes sour, as he did not provide the sperm and does not have any genetic relationship with the child. When the sperm comes from the intended father, paternity is not in doubt: DNA testing can confirm his biological relationship, establishing his legal responsibility.

Traditional surrogacy raises particular legal questions when it occurs within marriage. Ghana's Evidence Act 1975 establishes presumptions about paternity that become relevant in such scenarios. A serious legal complication arises when a married woman uses donor sperm without her husband's consent. Under Ghanaian law, the husband is presumed to be the father because the child was born during the marriage. Section 32 of the Evidence Act provides as follows:

- (1) A child born during the mother's marriage is presumed to be the child of the person who is the mother's husband at the time of birth.
- (2) A child of a woman who has been married, born within three hundred days after the end of the marriage, is presumed to be a child of that marriage.
- (3) This section applies both to monogamous and polygamous marriages.

This presumption creates significant legal implications for traditional surrogacy arrangements involving married women. A man may dispute the paternity of a child born during the subsistence of the marriage or 300 days at the end of a marriage. While the presumption is rebuttable—a man can present evidence, such as DNA testing, to establish that he is not the biological father—the burden of proof falls on him. Once a man proves he is not the biological father, any prior recognition of paternity ceases. Even if the sperm donor's identity is known to the woman, he may refuse to accept paternity, potentially leaving the child without a legally recognized father.

In Ghana, most official forms—whether completed by a child or on their behalf—require identification of both parents, traditionally designated as mother and father. For example, school enrolment forms require both maternal and paternal names. This requirement applies to numerous documents: school admissions (from preschool through tertiary education); medical forms; employment applications (including public service and military positions); passport applications; and even forms for holding political office. This raises difficult questions: whose name should such a child list as “father”? Does this align with Ghanaian moral and traditional values? These questions are left for readers to consider.

In gestational surrogacy, the surrogate carries an embryo created through IVF using the sperm and egg of the intended parents or from donors or a combination of both. Unlike traditional surrogacy, the surrogate is not the biological mother of the child and has no genetic connection to the child. The surrogate mother rents her womb or agrees to use her womb to carry the pregnancy to term.

Altruistic surrogacy involves a surrogate carrying a pregnancy for the intended parents without financial compensation beyond necessary expenses such as food, clothing, and medical care. The surrogate mother makes her womb available to carry the embryo or gamete for the intended parents. While some arrangements may be motivated by genuine altruism, others may involve coercive relationships where surrogates feel compelled

to carry pregnancies for employers or family members. In extreme cases, human-trafficking networks may exploit women as forced surrogates for commercial gain.

Commercial surrogacy involves financial compensation to the surrogate beyond reimbursement of expenses. The parties typically enter into an agreement that spells out the fee to be paid by the intended parents to the surrogate for carrying the pregnancy. These contractual agreements often outline the parties' roles and responsibilities, with breach potentially leading to litigation. In many such agreements the surrogate mother agrees to live in a particular area and attend a particular health clinic or fertility facility at regular intervals.

In jurisdictions that regulate surrogacy, legislation typically distinguishes between permissible and prohibited forms of surrogacy, with enforcement mechanisms for compliance.

[D] DIFFERENT TYPES OF SURROGATE AGREEMENTS

Surrogacy arrangements typically involve three main types of agreements: independent surrogacy; agency-facilitated surrogacy; and clinic-facilitated surrogacy.

Independent surrogacy involves a direct agreement between the intended parents and the surrogate without third-party intermediaries. The contract specifies that the surrogate mother's role is limited to carrying the pregnancy and that she will have no parental rights or responsibilities after delivery. This approach is less expensive due to the absence of intermediary fees. However, the medical facility performing the embryo implantation typically does not have any contractual relationship with the surrogate mother. The risk involved in independent surrogacy is that the surrogate mother may develop a relationship with the intended parents and potentially form an emotional attachment to the child, complicating the intended separation after birth.

Agency-facilitated surrogacy is facilitated by an agency which matches the surrogate with intended parents. In most cases, the surrogate will not know the intended parents throughout the subsistence of the agreement. This approach is more expensive due to agency fees, but it offers the advantage of maintaining anonymity between the parties, reducing the likelihood of post-delivery contact or emotional complications.

Clinic-facilitated surrogacy is where a medical facility or fertility clinic agrees with the intended parents to represent them in a deal with a surrogate. Typically, both parties remain anonymous to each other, and the contractual relationship concludes upon the baby's delivery. While costly, clinic-facilitated surrogacy is often considered the most reliable option, as the medical facility assumes responsibility for monitoring the pregnancy and ensuring contractual compliance.

Across all three types of surrogacy arrangements, there are some common problems that can arise: when the surrogate has an abortion or miscarriage; where the surrogate child is born with profound disabilities and the intended parents refuse to accept them; and when intended parents predecease the birth. No laws regulate such situations in Ghana.

[E] CLASSIFICATION OF SURROGACY BASED ON THE INTENDED PARENTS

Surrogacy can also be classified according to the intended parents. Based on this criterion, there are three main categories: surrogacy for heterosexual couples, same-sex couples, and single individuals.

Heterosexual surrogacy involves intended parents of opposite sexes, who may be married, cohabiting, or in no formal relationship but have agreed to parent the child.

Same-sex surrogacy involves intended parents of the same sex, whether in a relationship or not, who agree to become parents through surrogacy. For male same-sex couples, options include using sperm from one partner with a donor egg, or using donor gametes for both. Female same-sex couples may use an egg from one partner with donor sperm, or use donor gametes for both, particularly to avoid disputes over biological motherhood.

The third category of surrogacy is single-parent surrogacy, where an individual person, whether male or female, may provide their own gametes or use donor gametes to become a parent through surrogacy.

[F] UNREGULATED SURROGACY, PARTICULARLY GHANA

As noted, national attitudes toward surrogacy vary significantly. In many developing countries, including Ghana, surrogacy is not regulated. As a result, fertility clinics and medical facilities are able to operate without regulatory constraints and prioritize income generation over the welfare

of surrogates, children, and intended parents. Many African countries—including Uganda, Nigeria, and Ghana—lack surrogacy legislation. This regulatory gap threatens the rights of surrogate children, whose best interests are often compromised in favour of commercial transactions. In addition, the absence of specific surrogacy legislation, coupled with a wider lack of regulation in the transplantation sector, creates a regulatory environment vulnerable to exploitation, including concerns about illicit trade in human biomaterials and organ trafficking (Banyubala 2014).

This regulatory vacuum creates fertile ground for stakeholders to operate without regard for children's best interests or the rights of surrogate mothers, who may be exploited by other industry players. In unregulated jurisdictions, single men may purchase gametes (either sperm, eggs or both) and engage commercial surrogates with fees negotiated directly or through medical facilities. Similarly, single women may purchase gametes and either serve as surrogates themselves (if medically feasible) or hire surrogates through commercial agreements.

Unregulated surrogacy poses numerous problems, including the engagement of economically vulnerable women as surrogates for single parents, couples, or same-sex couples.

The only aspect of surrogacy that is addressed in Ghana is the official registration of the surrogate child's mother. Section 22 of the Registration of Births and Deaths Registration Act 2020 (Act 1027) is the only law that permits surrogacy in the following language:

- (1) An intended parent may engage the services of a person to give the intended parent a child through surrogacy.
- (2) The intended parent may, within twelve weeks after introducing an embryo or gamete into the surrogate mother, apply to the High Court for a pre-birth parental order to allow
 - (a) either the intended parent or surrogate mother or
 - (b) both parents of a child, to be named as the parent of a child born through surrogacy or any other assisted reproductive birth if the birth occurs within twenty-eight weeks of the order of the High Court.
- (3) Where the High Court is convinced of the evidence of parentage and the existence of surrogacy, the High Court shall issue a pre-birth parental order naming the legal parent of the unborn child and a copy of the order shall be issued to
 - (a) the District Registrar of the district in which the child will be born;
 - (b) the intended parent;

- (c) the surrogate mother and
 - (d) the hospital where the child is born, if the birth occurs at a hospital facility.
- (4) A woman who gives birth to a child shall, in the absence of an order of the High Court naming another person as the mother, be registered as the mother of the child.
- (5) Subject to subsection (2), a woman who gives birth to a child shall
- (a) have the right to register the child and
 - (b) inform the Registration Officer in the District in which the child is born of
 - (i) the name of the child;
 - (ii) the name of the father of the child; and
 - (iii) any other information required for the purposes of the registration.
- (6) The Registration Officer shall, on receipt of the information required under paragraph (b) of subsection (5), proceed to register the birth of the child in accordance with the information provided.
- (7) The District Registrar and, where appropriate, the hospital where the child is born, shall
- (a) register or cause to be registered in the district office of the Registry, the birth arising from the surrogacy or other assisted reproductive birth in accordance with the pre-birth parental order, and
 - (b) enter or cause to be entered in the register of births, the name of the child provided by either the intended parent or surrogate mother, or both in accordance with subsection (2).
- (8) Where a child is already born, an intended parent or surrogate mother may apply to the High Court for a post-birth parental order or substitute parentage order.
- (9) Where the High Court approves an application made under subsection (8), the High Court shall issue a post-birth parental order or substitute parentage order naming the intended parent or surrogate mother as the legal parent of the child, and a copy of the order shall be immediately served on the District Registrar.
- (10) A post-birth parental order or substitute parentage order issued under subsection (9) shall, in substance, be in the form of an adoption proceeding and shall be lodged at the High Court at least twenty-eight days after the birth of the child but not later than six months after the birth of the child.
- (11) The District Registrar shall on receipt of a sealed substitute parentage order from the High Court, strike out or cause to be

struck out the original birth record, and open or caused to be opened a new birth record with the intended parent or surrogate mother named as the parent of the child in accordance with the order of the High Court.

- (12) The District Registrar shall keep the original birth record struck out under subsection (11) in a confidential place, and that birth record shall be made accessible to the child whose birth entry was made only when that child attains the age of twenty-one years.
- (13) A new birth record opened under this section shall supersede any other birthday record made earlier.

The Act, by necessary implication, allows all forms of surrogacy in Ghana. Section 22(1) of the Births and Deaths Registration Act 2020 (Act 1027) provides that any person who seeks to become an intended parent of a child may engage the services of a surrogate to carry the embryo for that person. The Act establishes no minimum age for intended parents or a surrogates. This omission suggests that, technically, even a minor could become an intended parent or surrogate, limited only by the common law principle that a child can only enter into a contract of necessity. Under common law, contracts entered between adults and minors are not automatically void but are voidable at the minor's option unless for necessities. Thus, a surrogacy agreement involving a minor as either intended parent or surrogate would be voidable. Nonetheless, by extension, a minor could theoretically contract to become a surrogate (*Edwards v Carter* 1893). If a minor serves as a surrogate, the contract remains voidable. However, once the child is born, the contract effectively terminates, and any subsequent legal action by the former minor cannot affect the child's status. This was affirmed by the House of Lords in *Edwards v Carter*.

Section 48's definitions further demonstrate the Act's openness. By defining "intended parent" broadly as "a person who desires to be a parent through surrogacy", the Act imposes no restrictions on who may assume these roles. Section 48 of the Act defines the following terminologies, "assisted reproductive birth" and "intended parent", as follows:

"Assisted reproductive birth" means the use of modern technological advancement, including fertility medication, artificial insemination and in-vitro fertilization, to cause reproduction and childbirth other than by orthodox means;

"intended parent" means a person who desires to be a parent through surrogacy or any other assisted reproductive birth arrangement.

These broad definitions technically permit anyone to become an intended parent or surrogate, creating potential for abuse and hardship for children who may not be adequately supported. This underscores the urgent need for specific legislation.

The Act also fails to establish minimum or maximum ages for intended parents, disregarding the best interests of the child to be born. This omission contravenes the fundamental children's rights principle that all decisions affecting children must prioritize the paramount or best interests of the child. A minor who serves as a surrogate may lack capacity to support a child, creating hardship for both. Similarly, an intended parent of advanced age may not be in the child's best interest, particularly considering that average life expectancy in Africa is 64 years (World Health Organization nd).

While the Act permits all categories of surrogacy arrangements, it fails to protect surrogates by omitting time limits for registering the child's birth with the Births and Deaths Registry. Without timely registration, the surrogate automatically becomes the legal mother, regardless of her intentions regarding parenthood.

This definition—"a person who desires to be a parent through surrogacy or any other assisted reproductive birth arrangement"—effectively permits any of the three forms of intended parents (heterosexual couples, same-sex couples, or single individuals) to pursue parenthood through surrogacy. Although Ghana has passed a bill criminalizing same-sex marriage, the legal status of same-sex surrogacy remains ambiguous. This lack of clarity has significant consequences. For example, without explicit legal provisions, same-sex couples seeking surrogacy face potential legal challenges regarding parental rights, child custody, and birth registration. In the absence of regulation, it is unclear if a child born through surrogacy to a same-sex couple would be legally recognized as their child, potentially leaving the child in legal limbo. Furthermore, if a dispute were to arise between the intended parents and the surrogate, there is no established legal framework to resolve the matter.

Unfortunately, detailed, publicly available reports of specific surrogacy cases in Ghana are limited due to the sensitive nature of the topic and the absence of formal legal structures. However, evidence suggests that informal surrogacy arrangements do occur, often within closed networks (Akangah & Ors 2025; Amarteifio & Ors 2025). This lack of transparency and regulation creates a situation ripe for exploitation, particularly of vulnerable women who may agree to be surrogates. Without legal oversight, there is no guarantee of fair compensation, medical care, or

psychological support for surrogates. Additionally, intended parents may face uncertainty regarding their legal rights and responsibilities. The absence of clear legal guidelines also raises concerns about potential child trafficking or exploitation, as there is no formal process to ensure the ethical and legal integrity of surrogacy arrangements. The lack of legal clarity also creates a space where religious and cultural norms may be used to judge and potentially criminalize those involved in same-sex surrogacy arrangements. This can lead to discrimination and stigmatization, further complicating the already sensitive issue (Amarteifio & Ors 2025).

With the present position of the law, any person who intends to become a parent and can meet the cost involved is at liberty to become a parent through surrogacy. Heterosexual couples—whether married or unmarried—may become parents through surrogacy. Same-sex couples may pursue parenthood using donor gametes (eggs or sperm) as needed. Single individuals may also pursue parenthood through surrogacy. A single man may provide his sperm and use a donor egg, while a single woman may provide her egg and use donor sperm. Alternatively, single individuals may use both donor eggs and sperm.

[G] ETHICAL, SOCIETAL, AND LEGAL OBJECTIONS TO SURROGACY

The practice of surrogacy raises profound ethical, societal, and legal concerns, leading to its prohibition or strict regulation in various jurisdictions and condemnation by certain religious institutions.

Religious prohibitions

The Catholic Church maintains a firm stance against surrogacy, articulated in various encyclicals and pronouncements. Key objections include: (1) surrogacy violates the “natural orientation” of the family (Pontifical Council for the Family 1987, “Donum Vitae”: section 87). (2) It exploits women, treating their bodies as instruments (“Dignitas Personae”: section 18). (3) It commodifies children, undermining their inherent dignity. “Amoris Laetitia” states: “Children are not commodities; they are persons who have the same dignity as every human being” (Francis 2016: paragraph 181). (4) It treats the human body as an object rather than a person. “Veritatis Splendor” (1993), section 80 states: “The human body is not a mere instrument or a ‘thing’ to be used, but a person, and therefore, should never be treated as an object” (Francis 2016: paragraph 181).

Pope Francis has described surrogacy as a grave threat to human dignity and a potential source of human trafficking. Overall, the Church's position emphasizes the sanctity of human life and the traditional concept of family, declaring: "Surrogacy is a form of exploitation, and it represents a grave threat to human dignity" (Francis 2019). Predominantly, Catholic states have incorporated these religious objections into their legal frameworks, resulting in prohibitions or stringent restrictions on surrogacy.

Ethical objections

Germany and France base their prohibitions on ethical concerns, emphasizing the commodification of women and children and the potential exploitation of vulnerable women, particularly in cross-border arrangements. Their focus is on protecting human dignity and preventing the treatment of individuals as mere means to an end.

Human rights focus

International declarations, such as the Casablanca Declaration 2023, emphasize the human rights implications of surrogacy. These declarations raise concerns about the potential for the exploitation and trafficking of women, the child's right to know their origins, and potential discriminatory practices. Overall, these human rights-based objections focus on protecting the most vulnerable individuals involved in the surrogacy process.

Interrelation of objections

It is crucial to recognize the interconnectedness of these objections. Religious beliefs often inform ethical principles, and both contribute to legal frameworks. The shared thread running through these diverse perspectives is a concern for human dignity and the potential for exploitation inherent in surrogacy arrangements. By grouping the information in this way, the reasoning behind the legal and ethical objections becomes clearer.

The Declaration of Casablanca

Civil society organizations help in the formulation of policies and can pressure states to undertake legal reform. They also lobby parliamentary bodies to introduce Bills for legislative consideration. In 2023, senior legal and medical experts, high-ranking psychologists, philosophers, and human rights practitioners, met in Casablanca, Morocco, alongside non-governmental organizations from 75 states. Their objective was to discuss

and issue a declaration calling for the abolition of all forms of surrogacy, which they deemed an affront to human dignity.

The resulting Declaration of Casablanca for the Universal Abolition of Surrogacy, issued on 3 March 2023, asserts that surrogacy in any form violates human rights and contributes to the commodification of women and children. Signed by 100 experts from diverse backgrounds from 75 nationalities, it condemns all forms of surrogacy, whether commercial or altruistic, as a violation of human dignity. It calls for international cooperation to pressure governments to prohibit surrogacy, protect human dignity and establish a global convention to prohibit surrogacy worldwide. The Declaration recommends that states and governments should prohibit surrogacy within their jurisdictions, deny legal validity to surrogacy contracts, and prosecute individuals who become parents through surrogacy, whether domestically or abroad (Casablanca Declaration 2023).

International conference in Rome

A follow-up conference was held in Rome from 5 April to 6 April 2024, organized by supporters of the Casablanca Declaration. It demanded the abolition of surrogacy through international treaty agreement and emphasized ethical concerns and commodification (Rome Conference Report 2024).

[H] THE ORGANIZATION OF SURROGACY REGULATION IN OTHER COUNTRIES AND ITS RELEVANCE TO GHANA.

This discussion examines the multifaceted issues surrounding surrogacy, drawing upon the legal frameworks of Italy, France, and Germany, and connects these to the urgent need for regulation in Ghana. The analysis is structured thematically to provide a clearer understanding of the key considerations for potential legislation. These countries or states were selected for specific discussions due to their extensive and often restrictive laws.

Protecting the best interests and rights of the child

A central concern in surrogacy is ensuring the best interests of the child. Unregulated practices often fail to address the child's right to know their biological origins and can lead to abandonment in cases of disability or

parental rejection. The lack of age limits and medical requirements for intended parents can also jeopardize the child's long-term wellbeing.

Italy's Law 40/2004 was enacted with the view of protecting the best interests of surrogate children. While the text notes the Constitutional Court's concern about children born through surrogacy being denied knowledge of their biological parents (leading to a ban on surrogacy itself within Italy, though the initial aim of the law focused on regulating artificial reproduction technologies more broadly), the underlying principle is the child's welfare. The law also imposes age limits and medical conditions on intended parents.

Ghana must prioritize the rights and wellbeing of children born through surrogacy. Drawing inspiration from Italy's initial aim to protect children through regulations like age and medical requirements for intended parents is crucial. Even if Ghana does not adopt a complete ban, establishing legal mechanisms to ensure the child's right to identity (where possible and ethical) and safeguards against abandonment and neglect due to the intended parents' circumstances is paramount.

The Italian Law on Assisted Reproductive Technologies 40/2004 was enacted following a heated parliamentary debate to establish a comprehensive framework for reproductive medicine. Among its core provisions were regulations on the age and medical conditions of couples seeking treatment, alongside strict guidelines for fertility clinics. The law implemented a complete prohibition on surrogacy arrangements, a ban that remains firmly in place.

The Act also initially banned heterologous procreation altogether, preventing couples from receiving donations of eggs or sperm that were not their own. However, this specific ban was successfully challenged. In a landmark 2014 ruling (No 162), the Constitutional Court of Italy declared the prohibition on gamete donation unconstitutional, thereby overturning it. This decision was grounded in the rights of infertile couples to access available treatments to found a family. It is important to distinguish this from the separate and enduring ban on surrogacy, which is justified on the grounds of preventing the commodification of human beings and protecting the dignity of all parties involved, particularly the child (*Surrogacy and the Right to Know One's Biological Parents* 2017).

The ethical and human rights imperative for regulation

Unregulated surrogacy raises significant ethical and human rights concerns. There is a risk of exploitation of surrogate mothers, who may be underpaid and suffer psychological distress without adequate support. Furthermore, the commodification of children, treating them as objects in a transaction, not only undermines their inherent dignity but fosters conditions that can be likened to modern slavery, enabling severe forms of exploitation such as human trafficking and organ harvesting.

France considers surrogacy contrary to its public policy and cultural values, prohibiting it outright through its foundational 1994 bioethics law, the *Loi relative au respect du corps humain* (Loi n° 94-653). The grounds for the prohibition include the exploitation of vulnerable women, the commodification of children, the violation of human dignity and the principle of equality, and the fact that it challenges traditional family structures and political rights. Additionally, Article 310-1 of the French Civil Code prohibits surrogate motherhood, and Article 311-19 nullifies any surrogacy agreements. The prohibition is grounded in preventing the exploitation of vulnerable women, the commodification of children, and the violation of human dignity and equality, and was upheld by the French Constitutional Court (*ARDHIS v France* 2015).

Germany's Embryo Protection Act 1990 prohibits both commercial and altruistic surrogacy, emphasizing the protection of human embryos and preventing the misuse of reproductive medicine. The German Civil Code further defines legal motherhood based on childbirth, inherently excluding surrogacy arrangements and reinforcing the legal ties to the birth mother. The German Penal Code also criminalizes human trafficking for reproductive purposes. The ethical and human rights problems associated with unregulated surrogacy, as highlighted in the Ghanaian context (exploitation of surrogate mothers, potential for trafficking), strongly underscore the need for legal intervention. By considering these models within its own framework, Ghana can develop comprehensive legislation that prioritizes human dignity, protects vulnerable individuals and prevents exploitation.

Regulating ARTs and fertility clinics

The lack of regulation in the ART sector can lead to exorbitant costs and is potentially linked to money laundering and other illicit activities like human trafficking and the organ trade. Clear guidelines are

needed for fertility clinics to ensure ethical practices and prevent the exploitation of vulnerable individuals seeking ART services. Italy's Law 40/2004 established guidelines for medical facilities and fertility clinics providing ART services to ensure strict compliance. This demonstrates the importance of oversight and regulation of the service providers in the ART industry. Ghana, facing concerns about financial exploitation by fertility centres and their potential involvement in illegal activities, urgently needs to establish guidelines and regulatory bodies for ART clinics, learning from Italy's approach to ensure ethical practices.

Addressing the rights and wellbeing of surrogate mothers

Unregulated commercial surrogacy can lead to the exploitation of surrogate mothers, including underpayment and a lack of support for the psychological and physical challenges they face during and after pregnancy. The psychological impact, including attachment to the child and postpartum emotional issues, needs to be addressed. France's prohibition of surrogacy is partly motivated by the desire to prevent the exploitation of vulnerable women who might be compelled to rent their wombs. Given the reported exploitation of surrogate mothers in Ghana, any potential legislation must prioritize their rights and wellbeing. This includes ensuring fair compensation, access to comprehensive healthcare (physical and psychological), informed consent, and legal protection throughout the surrogacy process. The strong stance of France against the exploitation of women offers a compelling argument for stringent regulations or even prohibition.

Societal and ethical values

Surrogacy raises fundamental societal and ethical questions related to traditional family structures, religious beliefs about the creation of life, and the potential erosion of human dignity and equality. Some argue that it challenges natural birth and could lead to the marginalization of children born through ART. France's opposition to surrogacy is partly rooted in its values concerning traditional family structures and political rights. Many countries oppose surrogacy based on human rights, economic, religious, ethical, and traditional values. Concerns include the child's right to know their biological mother, the prevention of exploitation, and the avoidance of commodification. Religious viewpoints in some countries consider human creation outside natural procreation as an affront to divine authority and a potential source of inequality.

Ghana needs to consider its own cultural, religious, and traditional values when formulating surrogacy legislation. The potential impact on family structures and societal norms should be carefully evaluated. The arguments raised by countries opposing surrogacy based on ethical and religious grounds warrant serious consideration in the Ghanaian context.

In Germany, the Embryo Protection Act (*Gesetz Zum Schutz von Embryonen*) was enacted on 13 December 1990 and entered into force on 1 January 1991. The purpose of the Act is defined in section 1 as, *inter alia*, protecting human embryos and preventing the misuse of reproductive medicine. Section 2 prohibited commercial surrogacy agreements, section 3 prohibited altruistic surrogacy agreements, section 6 regulated egg donation by prohibiting it in most cases, and section 8 prescribed penalties for violations of the Act.

The German Civil Code and the German Penal Code also provide some restrictions on surrogacy. Section 1591 of the German Civil Code defines a legal mother as a person who gives birth to a child. Section 1592 regulates parental rights and responsibilities to hold parents accountable to the children they give birth to. Section 217 of the German Penal Code prohibits human trafficking for reproductive purposes, while section 218(a) regulates abortion and reproductive medicine.

The experiences of Italy, France, and Germany, alongside the identified problems within Ghana's unregulated surrogacy landscape, provide a strong impetus for legislative action. Ghana can learn from the prohibitory stance of France, driven by human rights and ethical concerns, and the regulatory approaches of Italy and Germany, which emphasize child welfare and the ethical use of ART. By carefully considering these international models within its own cultural and ethical framework, Ghana can develop comprehensive legislation that protects vulnerable individuals, safeguards the rights and wellbeing of children, and establishes a responsible and ethical approach to ARTs. The urgency to address exploitation, potential trafficking, and the lack of clarity regarding parental rights necessitates swift and decisive action.

[I] PROBLEMS WITH UNREGULATED SURROGACY

As discussed above, surrogacy is not regulated or only partially regulated in several countries. In some cases, however, surrogacy agreements are partially regulated by contract or family laws. Nonetheless, in such instances the rights and responsibilities of parents under surrogacy

remain unaddressed and there is a failure to address the best interests of surrogate babies.

In Ghana, surrogacy is not regulated, and the laws on contract are not enough to regulate the interests of children who may be used as surrogate mothers and the children to be born. Commercial surrogacy, which is in ascendancy, may exploit surrogate mothers whose wombs are rented by the intended parents to carry their embryos for them. Surrogate mothers can be underpaid after delivery, and the baby nonetheless taken away; they can face unaddressed psychological problems post-delivery, which they may continue to live with throughout their lives. Two 2025 studies of stakeholders in Ghana documented these exact concerns, reporting financial exploitation and significant post-delivery psychological distress among surrogates (Akangah & Ors 2025; Amarteifio & Ors 2025). Surrogacy can, therefore, resemble a modern form of human slavery.

Furthermore, there are no age limits for intended parents, and persons of pensionable ages may get involved without the means to maintain the child until the child becomes an adult and can manage their own affairs. The medical conditions of intended parents are also unregulated, risking scenarios where they become incapacitated shortly after the child's birth. There is, therefore, an urgent need for age and medical restrictions to promote and protect the wellbeing of children born out of surrogacy.

Finally, unregulated surrogacy can be a source of money laundering. Without oversight, fertility centres can not only charge exorbitant fees but also enable traffickers, who pay vast sums to produce children for the illicit trade.

[J] ADOPTION AND SURROGACY

In Ghana, adoption is regulated to prevent child abuse, while surrogacy lacks protection. Adoption is a legal process for a child to be declared adoptable by the Central Adoption Authority, as a person in need of care and protection, and under a care order, and only after other options of care for the child have been exhausted (Children's (Amendment) Act 2016, section 79).

Ghana's two main types of adoption are in-country and inter-country adoption, with stringent rules for the latter to prevent trafficking. Notably, a person in a same-sex relationship or a single person who is not a Ghanaian is prohibited from pursuing inter-country adoption. Inter-country adoption is only considered if the child cannot be placed with a foster or adoptive family in Ghana, and where inter-country adoption is

deemed in the child's best interest (Children's (Amendment) Act 2016, sections 86I, 86J, 86K).

Age restrictions are essential to the adoption process, ensuring prospective parents are capable of promoting the child's welfare. For in-country adoption, the applicant or, in the case of a joint application, one of the applicants, must be between 25 and 55 years old and at least 20 years older than the child. For inter-country adoption the applicant must be between 25 and 50 years old and at least 21 years older than the child. For adoption by a relative the relative must be between 21 and 65 years old (Children's (Amendment) Act 2016, section 80).

Exclusive jurisdiction over adoption orders rests with the High Court in the area where the child resides on the date of the application. This centralized authority was established by the Children's (Amendment) Act 2016, which came into force on 23 November 2016. It revoked the jurisdiction previously held by Family Tribunals and Circuit Courts—a change implemented to curb abuses of the process (Children's (Amendment) Act 2016, section 85).

Ghana's inter-country adoption laws are shaped by its accession to the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption. Ghana acceded to the Convention on 16 September 2017 and it entered into force on 1 January 2017. The Convention framework introduced critical safeguards, including strict eligibility criteria for adopters and adoptability assessments for children; restrictions on adoption by single parents and the non-adoptability of children who had previously been adopted. It also reinforced the exclusive jurisdiction of the High Court and empowered it to revoke adoption orders obtained by fraud or misrepresentation, and enabled the establishment of the Central Adoption Authority.

The High Court can only grant an adoption application after it is satisfied that the applicant and the child meet the basic eligibility requirements for adoption, as determined by the Central Adoption Authority, based on reports from the Department of Social Welfare, that is, the Child Study Report and the prospective parent's Home Study Report (Children's (Amendment) Act 2016, sections 86D, 86E).

After an adoption order has been made by the High Court, the Central Adoption Authority ensures strict post-adoption compliance to protect the child's best interests. Requirements include the deposit of a certified copy of the adoption order and a new birth certificate with the Authority; monitoring the adoption every six months for the first two years and then

annually for the next three years; provision of appropriate measures to promote counselling and post-adoption services; and ensuring the child is not taken out of the jurisdiction without at least 30 days' written notice to the Department of Social Welfare (Children's (Amendment) Act 2016, section 86H).

The adoption order severs all legal ties with the biological parents and guardians. Full parental responsibility is transferred to the adopter(s), with joint parental control exercised in the case of a couple (Children's (Amendment) Act 2016, section 82).

[K] SURROGACY AND FOSTER CARE

Foster care in Ghana is a temporary system designed to provide support for a child until that child is united with the biological parents or until a permanent living arrangement is secured. Throughout the process, the biological parents remain the parents of the child, while the foster parent provides daily care and support for the child under the supervision of the Department of Social Welfare. Sections 63–78 of the Children's (Amendment) Act 2016 (Act 937) regulate foster care in Ghana. An agency may be accredited by the Department of Social Welfare to provide foster-care services, and the accreditation may be revoked by the Department of Social Welfare where the conditions for the grant are breached.

To become a foster parent, a person must be of high moral character and proven integrity, and be at least 21 years old. They must apply to the Department of Social Welfare. An exception exists for relatives: a relative who is 18 years old may serve as the child's foster parent (Children's (Amendment) Act 2016, sections 63, 64).

The Act establishes a Foster-Care Placement Committee consisting of the Regional Director of Social Welfare (as chairperson), one queen mother nominated by the Regional House of Chiefs, a trained counsellor or psychologist with at least three years' experience, a social worker, and a person from a CSO with an interest in the welfare of children nominated by CSOs. The Committee is tasked with, *inter alia*, recommending the suitability of an eligible foster parent to a foster child, determining a child's eligibility for foster care, terminating foster-care placements, and addressing related matters (Children's (Amendment) Act 2016: section 67).

[L] CONCLUSION

In conclusion, this article argues that the current absence of comprehensive legal and policy frameworks for surrogacy in Ghana poses significant risks to surrogate mothers, surrogate children, and intended parents, as evidenced by the limited provisions in the Births and Deaths Registration Act. Apart from section 22 of the Births and Deaths Registration Act 2020 (Act 1027) on the registration of assisted reproductive rights, there is no law on surrogacy despite its profound effect on the country, the surrogate babies, surrogate mothers, and intended parents. There is an urgent need to regulate surrogacy in Ghana to address the eligibility of persons to become intended parents, persons competent to enter into surrogate contracts, the types of surrogates which are permissible, and to eliminate human rights violations in surrogates and prevent the commodification of human beings and protect human dignity. The analysis reveals that this regulatory vacuum fosters potential exploitation, endangers children's rights and welfare (particularly concerning parentage, health, and abandonment), and could transform Ghana into a hub for unethical practices like human trafficking and organ harvesting, mirroring the negative experiences of unregulated surrogacy in countries like Ukraine. To mitigate these dangers and align with international human rights standards and ethical considerations, Ghana must urgently enact specific legislation that outlines the eligibility criteria for all parties involved, defines permissible types of surrogacy, ensures the protection and wellbeing of surrogate mothers and children, and establishes robust oversight mechanisms for fertility clinics and agencies involved in surrogacy arrangements, drawing lessons from regulated adoption and foster care systems within Ghana and the prohibitory stances of nations prioritizing human dignity.

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