LEGAL REGULATION OF SURROGATE MOTHERHOOD IN GHANA: A COMPARATIVE STUDY

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ORIGINALITY DECLARATION

I, Millicent Yengkangyi (Student Number: 13923102) declare that: "Legal Regulation of Surrogate Motherhood in Ghana: A Comparative Study" is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

I further declare that I submitted the thesis to originality checking software and that it falls within the accepted requirements for originality.

I further declare that I have not previously submitted this work, or part of it, for examination at Unisa for another qualification or at any other higher education institution.



21 August 2026

SIGNATURE **DATE**

M YENGKANGYI

DEDICATION

This thesis is dedicated to the memory of my parents, Mr and Mrs Solomon Yengkangyi, whose example of perseverance and lifelong learning continues to inspire me.

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ABREVIATIONS AND ACRONYMS

ACCOG	Association of Childless Couples of Ghana
ACHPR	African Commission on Human and Peoples' Rights
AID	Artificial Insemination Donor
AI	Amnesty International
ART	Assisted Reproductive Technologies
ASRM	American Society for Reproductive Medicine
CA	Court of Appeal
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CHRAJ	Court of Human Rights and Administrative Justice
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
ECF	Exploitation and Commodification Feminists
FIGO	International Federation of Gynecology and Obstetrics
FS	Fawcett Society
FSH	Follicle Stimulating Hormone
GFG	Global Feminist Groups
GFW	Global Fund for Women
GHS	Ghana Health Service

GI	Global Inequalities
GIFT	Gamete Intra Fallopian Transfer
GIPF	Global and Intersectional Perspectives Feminists
GLR	Ghana Law Reports
GMDC	Ghana Medical and Dental Council
GPF	Gender and Patriarchy Feminists
GSS	Ghana Statistical Service
HC	High Court
HCCH	Hague Conference on Private International Law
HFEA	Human Fertilisation and Embryology Authority
HPCSA	Health Professions Council of South Africa
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ICF	Impact on Children Feminists
ICMART	International Committee Monitoring Assisted Reproductive Technologies
ICSI	Intracytoplasmic Sperm Injection
IJGO	International Journal of Gynaecology and Obstetrics
IVF	In Vitro Fertilisation
IUI	Intrauterine Insemination

LECF	Legal and Ethical Concerns Feminists
MCLF	Motherhood and Care Labour Feminists
NHIS	National Health Insurance Scheme
NOW	National Organisation for Women
NRCD	National Redemption Council Decree
PC	Planned Parenthood
PGT	Pre-implantation Genetic Testing
POST	Peritoneal Oocyte and Sperm Transfer
PP	Planned Parenthood
RJFF	Reproductive Justice Framework Feminists
RLAF	Reproductive Labour and Autonomy Feminists
SALRC	South African Law Reform Commission
SASREG	South African Society for Reproductive Medicine and Gynaecological Endoscopy
SC	Supreme Court
STDs	Sexually Transmitted Diseases
UDHR	Universal Declaration of Human Rights
UHC	Universal Health Coverage
UNICEF	United Nations International Children's Education Fund
VISPER	Vaginal Intro Peritoneal Sperm Transfer
WEP	Women's Equality Party

WHO	World Health Organisation
WILPF	Women's International League for Peace and Freedom
WRO	Women's Rights Organisations

KEY TERMS

Surrogacy; Traditional Surrogacy; Gestational Surrogacy; Commercial Surrogacy; Altruistic Surrogacy; Assisted Reproductive Technology (ART); Intended Parents: Legal Parenthood; Best Interests of the Child; Reproductive Autonomy; Human Dignity; Commodification; Regulatory Vacuum; Bioethics; Informed Consent; Regulatory Framework; Surrogate Agreements.

SUMMARY OF THE THESIS

The thesis investigates the regulation of surrogate motherhood in Ghana, highlighting the legal vacuum that currently surrounds the practice. It begins by situating surrogacy within the broader cultural, social, and religious context of Ghana, where childbearing is highly valued, infertility often leads to stigma and divorce, and adoption is viewed as a last resort. Against this background, many childless couples are turning to surrogacy, even though it remains inadequately regulated and largely practiced covertly. The research underscores several problems arising from the lack of regulation, such as the exploitation of vulnerable women from low-income backgrounds, the unequal bargaining power between intended parents and surrogates, and the occurrence of contractual breaches due to weak or non-existent legal safeguards. It also highlights challenges like custody disputes and the abandonment of surrogate children, along with the exorbitant costs imposed by private clinics, which effectively exclude poorer couples from accessing surrogacy services. The study also emphasises the human-rights implications, particularly regarding reproductive rights, bodily autonomy, dignity, and the best interests of children born through surrogacy. It draws on international instruments such as the UDHR, ICCPR, ICESCR, CEDAW, CRC, CRPD, and the African Charter on Human and Peoples' Rights, as well as Ghana's 1992 Constitution and Children's Act. To address this legal uncertainty, the thesis undertakes a comparative legal analysis with South Africa, which has one of the most progressive constitutional democracies in Africa. South Africa's Children's Act allows only altruistic surrogacy and provides judicial oversight, medical guidelines, and human rights protection for all parties. The thesis argues that this model offers a valuable framework for Ghana to adapt, given the similarities in culture and human rights commitments between the two countries. The expected contribution of the thesis is to propose a clear, workable, culturally appropriate and just legal framework for regulating surrogate motherhood in Ghana, thereby ensuring legal certainty, protecting surrogate mothers, intended parents and children, providing guidance for healthcare professionals, lawyers and courts, and serving as a potential policy reference for other Sub-Saharan African countries.

SUMMARY IN ISISOTHO

Patlisiso ena e hlahloba taolo ya bo-mme ba surrogacy naheng ea Ghana, e totobatsa lekhalo le leholo la molao le teng hajoale mabapi le mokgwa ona. E qala ka ho beha surrogacy ka hara setso, sechaba le tumelo ya Ghana, moo ho beheleha ho nkoang e le karolo ya bohlokoa bophelong ba sechaba. Ho hloka bana ho atisa ho baka kgethollo, letheba sechabeng, le tlhalo ya manyalo, ha ho amohela bana ho nkoa e le khetho ya ho qetela. Ka lebaka lena, banyalani ba bangata ba se nang bana ba kgetha surrogacy, leha e sa laolwe ka molao mme e etswa ka sephiri. Patlisiso e bontsha mathata a hlahang ka lebaka la ho hloka taolo ya molao. Mathata ana a kenyeletsa ho tlatlapuoa ha basadi ba futsanehileng, haholoholo ba tswang malapeng a futsanehileng, le ho se lekane ha matla pakeng tsa batsoali ba rerileng le bo-mme ba surrogacy. Ho hloka tshireletso ya molao ho baka ho tlola konteraka, dikganano tsa tlhokomelo ya bana, le maemo moo bana ba surrogacy ba tlohelwang ba sa hlokomelehe. Patlisiso e boetse e bontsha ditjeho tse phahameng tse behwang ke dikliniki tsa poraefete, tse thibelang banyalani ba futsanehileng ho fumana ditshebeletso tsa surrogacy. Patlisiso ena e totobatsa hape ditlamorao tsa ditokelo tsa botho tse amanang le surrogacy, haholoholo ditokelo tsa ho ikgethela ho ba le bana, tokoloho ya mmele, seriti sa botho, le thahasello e ntle ka ho fetisisa ya bana ba tswetsweng ka mokgwa ona. Sena se ipapisitse le ditumellano tsa boditjhaba tse kang UDHR, ICCPR, ICESCR, CEDAW, CRC, CRPD, le African Charter on Human and Peoples' Rights, hammoho le Molaotheo wa Ghana wa 1992 le Children's Act. Ho rarolla boemo bona ba ho hloka molao, patlisiso e etsa papiso le Afrika Boroa, e leng naha e nang le demokrasi ya molaotheo e tsoetseng pele Afrika. Molao wa Bana wa Afrika Boroa o dumella feela surrogacy ya boithatelo mme o fana ka tlhokomelo ya lekhotla, ditaelo tsa bongaka, le tshireletso ya ditokelo tsa botho bakeng sa bohle ba amehang. Patlisiso e pheha khang ya hore mohlala ona o ka thusa Ghana ho ikamahanya le ona, ka lebaka la ho tshwana ha setso le boitlamo ba ditokelo tsa botho. Qetellong, thesisi e ikemiseditse ho hlahisa moralo o hlakileng, o sebetsang le o lokileng wa ho laola surrogacy Ghana, ho sireletsa ba futsanehileng, le ho netefatsa ho tshwana le maemo a ditokelo tsa botho, ka ho sebelisa mohlala wa Afrika Boroa e le motheo o loketseng.

SUMMARY IN ISIZULU

Lolu cwaningo luhlola ukulawulwa kokubelethwa ngokusizwa ngomama wesivumelwano (surrogate motherhood) eGhana, lugqamisa igebe elikhulu lomthetho elikhona njengamanje mayelana nalo mkhuba. Luqala ngokubeka isurrogacy esimweni somongo wamasiko, wenhlalo nowenkolo waseGhana, lapho ukuzala kubhekwa njengento ebaluleke kakhulu empilweni yomphakathi. Ukungabi nabantwana kuvame ukuholela ekucwasweni, ekuhlazweniemphakathini, ngisho nasekuhlukaneni kwemishado, kuyilapho ukwamukelwa kwengane (adoption) kuvame ukubhekwa njengenketho yokugcina. Kulesi simo, imibhangqwana eminingi engenabantwana iphendukela kwisurrogacy, nakuba lo mkhuba ungenawo umthetho ocacile futhi wenziwa kakhulu ngasese. Ucwaningo luveza izinkinga ezinkulu ezidalwa ukungabikho kohlelo lomthetho oluqondile. Lezi zinkinga zifaka phakathi ukuxhashazwa kwabantu besifazane abasengozini, ikakhulukazi labo abavela ezizindeni ezihlwempu, kanye nokungalingani kwamandla ezingxoxweni phakathi kwabazali abahlosiwe (intended parents) nakomama ababelethela abanye. Ukuntuleka kwezivikelo zomthetho kuholela ekwephulweni kwezivumelwano, izingxabano zokunakekelwa nokuba ngumzali wengane, kanye nezimo lapho izingane ezizalwe ngesurrogacy zishiywa zinganakekelwa. Ucwaningo luphinde luveze izindleko eziphezulu ezikhokhiswa izikhungo zezempilo ezizimele, ezivimbela imibhangqwana empofu ekutholeni izinsiza zesurrogacy. Lolu cwaningo lugcizelela futhi imithelela yamalungelo abantu ehambisana nesurrogacy, ikakhulukazi amalungelo okuzala, inkululeko yomzimba, isithunzi sobuntu, kanye nentshisekelo engcono kakhulu yezingane ezizalwa ngalolu hlelo. Lokhu kuhlaziywa kusekelwa izivumelwano zamazwe omhlaba ezifana ne-Universal Declaration of Human Rights (UDHR), i-International Covenant on Civil and Political Rights (ICCPR), i-International Covenant on Economic, Social and Cultural Rights (ICESCR), i-Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), i-Convention on the Rights of the Child (CRC), i-Convention on the Rights of Persons with Disabilities (CRPD), kanye ne-African Charter on Human and Peoples' Rights. Ucwaningo luphinde lubhekisele kuMthethosisekelo waseGhana ka-1992 kanye ne-Children's Act njengengxenye yohlaka lomthetho lwasekhaya. Ukuze kubhekwane nalokhu kungaqiniseki komthetho, ucwaningo lusebenzisa ukuhlaziywa komthetho okuqhathanisayo, lugxile eNingizimu Afrika, okuyelinye lamazwe anentando yeningi esekelwe kuMthethosisekelo athuthuke kakhulu e-Afrika. Umthetho Wezingane waseNingizimu Afrika uvumela kuphela isurrogacy engekho ngenhloso yokwenza inzuzo (altruistic surrogacy) futhi

uhlinzeka ngokuqondiswa yizinkantolo, imihlahlandlela yezokwelapha, kanye nezivikelo zamalungelo zabo bonke ababambe iqhaza. Lolu cwaningo luphikisa ngokuthi le modeli inikeza isisekelo esibalulekile eGhana engasilungisa futhi isivumelanise nezimo zayo, ikakhulukazi ngenxa yokufana kwamasiko kanye nokuzibophezela kwamazwe womabili ekuvikelweni kwamalungelo abantu. Ekugcineni, ithesisi ihlose ukufaka isandla esibalulekile ngokuphakamisa uhlaka lomthetho olucacile, olusebenzayo nolunobulungiswa lokulawula kwesurrogacy eGhana. Lolu hlaka luhloselwe ukuqinisa ukuqiniseka komthetho, ukuvikela omama besurrogacy, abazali abahlosiwe kanye nezingane, ukunikeza umhlahlandlela kochwepheshe bezempilo, abameli kanye nezinkantolo, kanye nokusebenza njengesikhombo senqubomgomo kwamanye amazwe aseSub-Saharan Africa. Ngamafuphi, ucwaningo luphikisa ngokuthi iGhana idinga ngokuphuthumayo uhlaka lomthetho lokulawula isurrogacy, ukuvikela ababuthakathaka, nokuqinisekisa ukuhambisana namazinga amalungelo abantu, ngokusebenzisa isibonelo saseNingizimu Afrika njengesisekelo esifanele.

TABLE OF CONTENTS

ORIGINALITY DECLARATION i

DEDICATION ii

ACKNOWLEDGEMENTS iii

ABREVIATIONS AND ACRONYMS iv

SUMMARY OF THE THESIS ix

SUMMARY IN ISISOTHO x

SUMMARY IN ISIZULU xi

CHAPTER 1 1

INTRODUCTION TO THE STUDY, PROBLEM STATEMENT, RESEARCH QUESTION AND METHODOLOGY 1

1 INTRODUCTION 1

2 BACKGROUND TO THE STUDY 3

2.1 Infertility 4

2.2 Voluntary childlessness vis-a-vis infertility 6

2.3 Surrogacy arrangements 10

2.4 Fundamental human rights considerations 13

2.5 The legal position of the parties involved in a surrogate motherhood arrangement 16

2.6 Factors necessitating regulation 18

3 PROBLEM STATEMENT AND RESEARCH QUESTION 20

4 RESEARCH APPROACH AND METHODOLOGY 22

5 LIMITATIONS 23

6 CHAPTER FRAMEWORK 23

7 EXPECTED CONTRIBUTIONS AND OUTCOMES OF STUDY 23

8 CONCLUSION 24

CHAPTER 2 25

A BRIEF HISTORICAL OVERVIEW OF SURROGATE DEVELOPMENT 25

1 INTRODUCTION 25

2 BIBLICAL REFERENCES TO SURROGATE MOTHERHOOD 26

3 SURROGATE MOTHERHOOD IN OTHER ANCIENT SOCIETIES 28

4 SURROGATE MOTHERHOOD AND THE RISE OF MODERN MEDICINE 31

4.1 Early attempts at artificial insemination 32

4.2 Development of in vitro fertilisation 34

4.3 Egg donation 39
4.4 Intracytoplasmic Sperm Injection (ICSI) 40
4.5 Assisted hatching 40
4.6 Freezing of sperm, eggs, and embryos 41
4.7 Single embryo transfers 42
4.8 Current trends 44
5 SURROGACIES IN GHANA AND SOUTH AFRICA 45
5.1 Past practices and current status in Ghana 45
5.2 The origin and development of surrogate motherhood in Ghana 46
5.3 The origin and development of surrogate motherhood in South Africa 48
6 KEY TERMS ASSOCIATED WITH SURROGACY 51
6.1 Artificial Insemination-Husband (AIH) 51
6.2 Artificial Insemination-Donor (AID) 52
6.3 Gamete Intra-fallopian Transfer (GIFT) 52
6.4 Peritoneal Oocyte and Sperm Transfer (POST) 52
6.5 Vaginal Intro-peritoneal Sperm Transfer (VISPER) 53
6.6 Oocyte or Ovum 53
6.7 Sperm 53
6.8 Gamete 53
6.9 Gamete Donor 54
6.10 Embryo Transfer 54
6.11 Assisted Reproductive Technology (ART) 54
6.12 Intrauterine Insemination (IUI) 55
6.13 In Vitro Fertilisation (IVF) 55
6.14 Third-party Assisted Reproduction 55
6.15 Intracytoplasmic Sperm Injection (ICSI) 56
6.16 Preimplantation Genetic Screening (PGS) 56
6.17 Preimplantation Genetic Diagnosis (PGD) 57
6.18 The Embryo Scope 58
7 SURROGACY TYPES 58
7.1 Altruistic surrogacy 58
7.2 Commercial surrogacy 59
7.3 International surrogacy 59
7.4 Formal surrogacy 59

7.5 Informal surrogacy 60
7.6 Full surrogacy 60
7.7 Partial surrogacy 60
7.8 Surrogate mother 61
7.9 Biological parents 61
7.10 Gestational parents 61
7.11 Surrogate child 62
7.12 Surrogacy arrangement or surrogate motherhood agreement 62
8 CONCLUSION 62
CHAPTER THREE 64
CULTURAL, RELIGIOUS AND SOCIAL VIEWS IN GHANA REGARDING SURROGATE MOTHERHOOD 64
1 INTRODUCTION 64
2 FACTORS SHAPING BELIEF SYSTEMS AND PERCEPTIONS 64
3 RELIGIOUS VIEWS ON SURROGACY IN GHANA 68
3.1 Role of belief systems 68
3.2 Christianity 69
3.3 Islam and Surrogacy 79
4 FEMINIST PERSPECTIVES 85
4.1 Feminist movements focusing on surrogate motherhood regulation 86
4.2 Online Feminist and Social Media Feminist Movements 91
4.3 Mainstream Feminist Organisations 92
4.4 Naturalist perspectives 94
4.5 Benefits and objections 94
5 VIEWS OF OPINION LEADERS AND ACTIVISTS' VIEWS ON SURROGACY 96
5.1 Influence on Public Opinion 96
5.2 Policy Development 97
5.3 Ethical and Moral Direction 97
5.4 Support and Advocacy 98
5.5 Opinion Leaders 98
6 CONCLUSION 99
CHAPTER FOUR 100
CURRENT LEGAL FRAMEWORK GOVERNING SURROGACY IN GHANA 100
1 INTRODUCTION 100

2 LEGAL STATUS OF SURROGACY PRIOR TO THE ENACTMENT OF ACT 1027 100
2.1 Constitutional Overview 101
2.2 Laws influencing Surrogacy indirectly 101
2.3 Fragmentary legislative arrangements 102
3 MEDICAL PRACTICE AND SURROGACY IN GHANA 103
3.1 Medical Practices 104
3.2 Private Medical Practice 105
3.3 Health Risks and Ethico-Legal Concerns 106
3.4 National Health Insurance Scheme (NHIS) in Ghana 107
4 REGISTRATIONS OF BIRTHS AND DEATHS ACT 1965 (ACT 301) 109
4.1 Strengths of Act 301 111
4.2 Weaknesses of Act 301 111
5 RIGHTS OF PARTIES INVOLVED IN SURROGACY 112
5.1 Rights of the Intended Parents 113
5.2 Rights of the Surrogate Mother 114
5.3 Rights of the Child Born Through Surrogacy 115
5.4 Selection of pertinent foreign and Ghanaian surrogacy judgments 116
5.5 Paucity of Judgements on Surrogacy in Ghana 120
5.6 Legal influence of the views of former Chief Justice Ollennu 121
5.7 Best Interests of the Child in Surrogacy Arrangements 123
5.8 Best Interests of the Child in Ghana 125
6 LEGAL CHALLENGES 126
6.1 Contractual Bargaining in Surrogacy Agreements 126
6.2 Enforceability of Surrogacy Agreement in the Ghanaian Courts 128
6.3 Challenges concerning the Surrogate Child 128
6.4 Cultural and Ethical Concerns 130
6.5 Exploitation and Vulnerability 132
6.6 Social Justice and Equity 133
7 RECENT LEGAL DEVELOPMENTS 134
7.1 Births and Deaths Registration Act 1027 134
8 CONCLUSION 141
CHAPTER FIVE 143
LEGAL REGULATION OF SURROGATE MOTHERHOOD IN SOUTH AFRICA 143

1 INTRODUCTION 143

2 EARLY LEGISLATIVE ARRANGEMENTS REGARDING SURROGAC ARRANGEMENTS 143

2.1 Children's Status Act 82 of 1987 146

2.2 Human Tissue Act 65 of 1983 148

2.3 Child Care Act 74 of 1983 149

3 STRENGTHS AND WEAKNESSES OF THE STATUTES PRECEDING THE CHILDREN'S ACT 152

3.1 Strengths of the Children's Status Act 152

3.2 Weaknesses of the Children's Status Act 153

3.3 Strengths of the Human Tissue Act 153

3.4 Weaknesses of the Human Tissue Act 154

3.5 Strengths of the Child Care Act 154

3.6 Weaknesses of the Child Care Act 154

4 THE SOUTH AFRICAN LAW COMMISSION'S REPORT ON SURROGATE MOTHERHOOD (PROJECT 65) AND RESPONSES 155

5 CURRENT LEGAL FRAMEWORK REGULATING SURROGATE MOTHERHOOD IN SOUTH AFRICA 157

5.1 Requirements for a Valid Surrogate Agreement (Section 292) 158

5.2 Consent of the Commissioning Mother and the Surrogate Mother's Spouse or Partner (Section 293) 159

5.3 Genetic Link Requirement by the Commissioning Parent(s) (Section 294) 161

5.4 Rights of the Surrogate Mother (Section 295) 163

5.5 Artificial Fertilisation of the Surrogate Mother (Section 296) 165

5.6 Consequences of a Surrogate Motherhood Agreement on the Status of the Child (Section 297) 167

5.7 Termination of the Surrogate Motherhood Agreement (Section 298) 167

5.8 Effect of Termination of the Surrogate Motherhood Agreement (Section 299) 169

5.9 Termination of a Pregnancy by the Surrogate Mother (Section 300) 169

5.10 Payment in respect of Surrogate Agreements (Section 301) 170

5.11 Confidentiality and Identity of Parties (Section 302) 172

5.12 Prohibition of Certain Facts (Section 303) 173

6 STRENGTHS AND LIMITATIONS OF CHAPTER 19 OF THE CHILDREN'S ACT 38 OF 2005 173

6.1 Strengths of Chapter 19 173

6.2 Limitations of Chapter 19 174
7 CONSTITUTIONAL FRAMEWORKS UNDERPINNING THE REGULATION OF SURROGATE MOTHERHOOD IN SOUTH AFRICA 176
7.1 Constitution of the Republic of South Africa 176
7.2 Judgments involving Surrogacy Arrangements 183
8 CITIZENSHIP ISSUES IN SURROGACY AGREEMENTS 187
9 MEDICAL PRACTICE AND SURROGACY IN SOUTH AFRICA 189
9.1 Pre-Conception Counselling and Legal Advice 189
9.2 Medical Procedures and Healthcare Considerations 190
10 PROPOSED REFORM AND FUTURE DIRECTIONS 194
10.1 Suggested Reforms for Improving Surrogacy Regulation 194
10.2 Ongoing Debates about Commercial Surrogacy 195
10.3 Future of Surrogacy Law in South Africa 195
11 CONCLUSION 196
CHAPTER SIX 198
A COMPARATIVE OVERVIEW OF THE GHANAIAN AND SOUTH AFRICAN FRAMEWORKS REGULATING SURROGATE MOTHERHOOD 198
1 INTRODUCTION 198
2 STRENGTHS AND LIMITATIONS OF SOUTH AFRICA'S SURROGACY 199
LEGAL FRAMEWORK 199
2.1 Strengths 199
2.2 Limitations 200
3 STRENGTHS AND LIMITATIONS OF GHANA'S SURROGACY LEGAL FRAMEWORK 202
3.1 Strengths 203
3.2 Limitations 205
4 LEGAL COMPARISON OF SURROGATE MOTHERHOOD REGULATION IN GHANA AND SOUTH AFRICA 208
4.1 Legal comparative overview between legal frameworks governing surrogate motherhood regulation 208
5 LESSONS GHANA MAY LEARN FROM THE SOUTH AFRICAN LEGAL FRAMEWORK REGULATING SURROGATE MOTHERHOOD 214
5.1 Lessons 214
6 BENEFITS FOR GHANA BY ADOPTING BEST PRACTICES FROM THE SOUTH AFRICAN FRAMEWORK 218

6.1 Legal Certainty 218
6.2 Fair and Transparent Processes in Surrogacy 219
6.3 Prevention of Exploitation in Surrogacy 219
6.4 Establishing a Legal Mechanism for Automatic Transfer of Parenthood 220
6.5 Establishing a Child-Centred Legal Framework 220
6.6 Role of Psychological and Medical Screenings 222
6.7 Empowering Women in Surrogacy Arrangements 223
6.8 Cultural Harmony in Surrogacy 223
7 SOUTH AFRICA'S ALTRUISTIC SURROGACY MODEL: A PANACEA FOR SURROGACY IN GHANA? 224
7.1 Adopting the South African Altruistic Model in Ghana 225
7.2 Challenges with the Adoption of South Africa's Surrogacy Framework in Ghana 225
8 SOME POINTERS FOR DEVELOPING AN AUTHENTIC SURROGACY LEGAL FRAMEWORK FOR GHANA 227
8.1 Legal Clarity and Comprehensive Framework 227
8.2 International Considerations and Cross-border Surrogacy 228
8.3 Ethical and Moral Considerations 228
8.4 Gender Equality and Empowerment of Women 229
8.5 Religious and Cultural Sensitivity 229
8.6 Medical Oversight and Regulation 230
8.7 Involvement of the Appropriate Stakeholders in the Drafting of Surrogacy Regulation 230
9 A MODEL SURROGATE MOTHERHOOD FRAMEWORK FOR GHANA 235
9.1 Legal Definition and Scope 235
9.2 Eligibility Criteria 235
9.3 Legal Recognition of Parentage 236
9.4 Surrogacy Agreement Requirements 236
9.5 Compensation and Financial Regulation 236
9.6 Medical and Psychological Safeguards 237
9.7 Ethical and Cultural Considerations 237
9.8 Regulatory Oversight 237
9.9 Child Protection Provisions 237
9.10 Confidentiality and Data Protection 238
10 A RECOMMENDED QUASI-COMMERCIAL FRAMEWORK FOR GHANA ... 238

10.1 Definition and Scope 238
10.2 Altruistic and Compassionate Surrogacy 239
10.3 Eligibility of Surrogates and Intended Parents 239
10.4 Legal Parentage Order 239
10.5 Domicile and Cross-Border Surrogacy 240
10.6 Surrogacy Agreement Requirements 240
10.7 Compensation 241
10.8 Medical and Psychological Safeguards 241
10.9 Ethical and Cultural Oversight 241
10.10 Regulatory Oversight 242
10.11 Children's Rights Provisions 242
10.12 Confidentiality 242
10.13 Criminal and Civil Penalties 243
10.14 Limitations for Ghana to Consider 243
11 CONCLUSION 243
CHAPTER SEVEN 244
CONCLUSION AND RECOMMENDATIONS 244
1 INTRODUCTION 244
2 ATTAINMENTS OF OBJECTIVES 244
3 SUMMARY AND CONCLUSION 250
4 RECOMMENDATIONS 251
8 BIBLIOGRAPHY 253
8.1 Books 253
8.2 Book chapters 261
8.3 Theses and dissertations 263
8.4 Journal articles 265
8.5 Internet references 292
8.6 International and regional human rights instruments 298
8.7 Statutes 300
8.8 Case law 301
8.9 Local and international reports and guidelines 304
9 ETHICS CLEARANCE CERTIFICATE 310
10 SIMILARITY REPORT 311

CHAPTER 1

INTRODUCTION TO THE STUDY, PROBLEM STATEMENT, RESEARCH QUESTION AND METHODOLOGY

1 INTRODUCTION

Every society's backbone and the keepers of family lineage are children, which among other reasons, motivate couples to have children. Other reasons include that parenthood bestows social recognition in the sense that it is considered as an element of wealth[1] that gives meaning to the lives of parents, including the wish to receive unconditional love and provide love in return. Reproduction is one of the most well-established characteristics associated with mankind, woven into the fabric of humankind and also closely associated with man's quest for survival.[2] From the earliest times, childlessness has in some societies been viewed as God's retribution for a couple's earlier transgressions, family beliefs, and activities.[3] In some African cultures specifically, childless couples are encouraged to participate in certain ceremonies and requests, as well as make offerings to satisfy God or to take a second bride.[4] Despite reservations regarding these conventions,[5] beliefs attributing childlessness relate to diseases, poor lifestyle, or even selfishness, persist.[6]

As the global rate of infertility continue to climb and childlessness becoming more common, assisted reproductive technologies offer new choices for couples to have children.[7] Surrogate

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1 Tartakovsky E and Mizrahi M "What do we need kids for? Childbearing motivations, personal values, and socio-demographic differences" *Frontiers in Psychology* (2025)16:1612384. doi:10.3389/fpsyg.2025.

2 Pillai AP "*Surrogacy under Indian Legal System: Legal and Human Rights Concerns*" (PhD thesis, Cochin University of Science and Technology 2013).

3 Gouni O et al "Concept analysis of parenthood: Motivations, meanings, and social dimensions" *International Journal of Environmental Research and Public Health* (2022)19(3), 146.

4 Hiadzi RA *Couples in Search of Children: A Study of Strategies and Management of Infertility in Contemporary Ghana* (PhD thesis, University of Ghana 2014) 33-39.

5 Hiadzi *Couples in Search of Children: A Study of Strategies and Management of Infertility in Contemporary Ghana* 33.

6 Hiadzi *Couples in Search of Children: A Study of Strategies and Management of Infertility in Contemporary Ghana* 33.

7 Saxena P, Mishra A and Malik S "Surrogacy: Ethical and Legal Issues" 2012 (37)4 *Indian Journal of Community Medicine* 211-213

motherhood has become one of several choices to address infertility, including circumventing conventional conception and pregnancy, to enable a couple to obtain a long-awaited biological child. This may be contrasted with the position of often destitute surrogate mothers, who opt for surrogacy to receive a much-needed income,[8] even though many jurisdictions currently frown upon and prohibit the payment of incentives to surrogate mothers.

For some decades, surrogate motherhood has remained a controversial topic in many countries, with commercial surrogacy deemed legal in very few countries, or outright illegal or restricted in many others. On the African continent specifically, surrogate mothers often come from low-income backgrounds and see surrogacy as a means to improve their financial situation.[9] As may be expected, this has led to reports of exploitation and abuse.

The regulation of surrogacy across the globe differs greatly. Whilst altruistic surrogacy is the only permissible type of surrogacy allowed in Kenya[10] and South Africa, commercial surrogacy is legally acceptable in the Ukraine.[11] Some of the states in the United States, such as California, provides in §7962 of the Family Code[12] for the regulation of commercial surrogacy arrangements. The Family Code, in §7962(a) and §7962(4), passed in 2014, requires disclosure of how the intended parents will compensate the surrogate mother, which includes the medical expenses of the surrogate and the newborn(s). The Child-Parent Security Act: Gestational Surrogacy Agreements, Acknowledgment of Parentage and Orders of Parentage (CPSA) in New York State, passed in April 2020.[13] legalises commercial surrogacy in New York State. The law paved the way for residents to hire and act as surrogates with protections in place. In Nigeria, commercial

8 Saxena, Mishra and Malik 2012 "Surrogacy: Ethical and Legal Issues" 211-213

9 Okenwa-Vincent EE "Ethics of Surrogacy: A Review of the African Perspective" In: Omutoko L and Jaoko W (eds) *Bioethics from the Global South. Advancing Global Bioethics* (vol 21) (Springer, Cham, 2024).

10 Rashid F *The Legal and Framework of Surrogacy in Kenya: Theory and Practice* (LLM dissertation, University of Nairobi 2017).

11 As per Article 123 of the Ukraine Family Law 2002, amended on December 22, 2006, under No. 524 and Orders 24 and 771 of the Health Ministry Code 2003.

12 California Family Code of 2014, revised in 2025. https://california.public.law/codes/family_code (accessed 26 November 2025).

13 Child-Parent Security Act: Gestational Surrogacy Agreements, Acknowledgment of Parentage and Orders of Parentage (CPSA) of New York, entered into force on April 2, 2020. https://www.health.ny.gov/vital_records/child_parent_security_act/ (accessed 26 November 2025).

surrogacy is illegal. Section 30 of the Child Rights Act 2003 prohibits the buying, selling or dealing in children. Section 13 of the Trafficking in Persons (Prohibition) Enforcement and Administration Act (TIPPEA) 2015 (as amended) criminalises trafficking and the exploitation of persons. Akintola and Egbokhare[14] highlight the inability of existing Nigerian laws to adequately address questions of legal parenthood and the protection of children born through ART, while Adewumi[15] emphasizes the regulatory uncertainty surrounding surrogacy practice in Nigeria and the need for legislative intervention.

In Ghana, although section 22 of the Registration of Births and Deaths Act, 2020 (Act 1027)[16] requires the registration of all births and deaths, including those of surrogate children, and acknowledges the legal parentage of intended parents if prescribed administrative steps are followed, surrogacy is not specifically regulated in this Act or any other law. One can at most state that surrogacy is partially recognised in a very weak manner.[17]

One of the consequences of a lack of comprehensive regulation of surrogate motherhood is that commercial surrogacy practices may become the norm in jurisdictions where surrogate motherhood is not regulated. In addition, the rights of the relevant parties in involved in the surrogate motherhood arrangement may as a consequence not be adequately protected. Ghana is a jurisdiction where surrogate motherhood is not regulated, with the result that it is being practiced covertly.[18] This situation is deeply troublesome for a number of reasons that this thesis will explore.

2 BACKGROUND TO THE STUDY

[14] Simisola OA and Olohikhuae O E "Parenthood: Is the Law in Nigeria Fit for Assisted Reproductive Technology?" *Indian Journal of Medical Ethics* (2018) 107:113, DOI: 10.20529/IJME.2018.012.

[15] Tayewo AA "Rethinking Legal and Regulatory Framework for Surrogacy through Assisted Reproductive Technology in Ghana and Nigeria: Lessons from the South Australian Surrogacy Act 2019" *UCC Law Journal* (2022) 239:264, DOI: 10.47963/ucclj.v2i2.1125.

[16] Registration of Births and Deaths Act 1027 of 2020, which entered into force on June 15, 2020

[17] The Registration of Births and Deaths Act 1027 of 2020. https://ghalii.org/akn/gh/act/2020/1027/eng@2020 10-06 (accessed 26 November 2025).

[18] Akangah R, Der AD, Sefogah PE et al "Socio-ethical and legal issues regarding surrogacy in Ghana: a qualitative study" *Reproductive Health* (2025) 22:181. https://doi.org/10.1186/s12978-025-02007-z.

In Ghana, as is the case elsewhere, infertility and childlessness have become a burden for those couples who wish to have a family. The ability to conceive and bring children in the world is an important objective for Ghanaians, where boys are deemed to be responsible for sustaining the family name and girls expected to bring in money for their families through marriage. The absence of children in a family implies a lack of money and the continuity of the family name.[19] With surrogate motherhood becoming an option for infertile or childless couples to have children, a clear regulatory framework needs to be in place in Ghana to regulate the practice.

This thesis will demonstrate that surrogate motherhood agreements create novel family constructions. Surrogate motherhood not only provides childless couples with he option to have a family, but this possibility may be extended to same-sex—and single individuals.[20] Because of these different scenarios, surrogacy has expanded the definition of family, which has led to a range of ethical and legal issues, not to mention the effect of surrogacy on the rights of all the parties involved in the surrogacy process.

Before the research problem is addressed, it is necessary to explore a few key issues relevant to the context of surrogate motherhood, such as the prevalence of infertility and the impact of the new family arrangements relating to surrogacy on the rights of the parties involved.

2.1 Infertility

Infertility generally refers to the situation where couples are unable to conceive or carry a pregnancy to term due to various factors, such as hormonal imbalances, age, medical conditions, genetics, or lifestyle.[21] Infertility, whether primary or secondary, may affect the mental and emotional well-being of individuals or couples experiencing infertility.[22] Primary infertility refers to the inability of an individual or couple to achieve pregnancy after engaging in regular and

19 Nukunya GK *Tradition and Change in Ghana: An Introduction to Sociology* (2nd ed, University Press Ghana 2003) 41-54.

20 Johnson KM and Bouchard TJ "Family formation through assisted reproductive technologies: Legal and ethical considerations" 2019 (81) 3 *Journal of Marriage and Family* 723-741.

21 World Health Organisation (2024) "Infertility" https://www.who.int/news-room/fact-sheets/detail/infertility (accessed 26 November 2025).

22 World Health Organisation 2024 "Infertility" (accessed 26 November 2025).

unprotected sexual activity for a minimum of one year without using contraception. On the other hand, secondary infertility occurs when an individual or couple has previously experienced a successful pregnancy and birth but is unable to conceive again.[23] Primary and secondary infertility are influenced by the various factors referred to above, including specific environmental factors. Individuals or couples facing these challenges may seek advice from a medical professional or fertility specialist for treatment.[24]

Infertility affecting couples in Ghana is often the cause of divorce and mental breakdowns among couples.[25] Ghana has seen several studies on divorce causes, but the most authoritative is the 2021 exploratory analysis of divorce suits in Ghanaian courts, published in the *Journal of Divorce and Remarriage*. It found that infidelity, neglect, abuse, infertility, and incompatibility were among the leading reasons cited in divorce petitions.[26]

Studies on the causes of divorce in Ghana is important because it shed light on the real and often unexpected causes for marriages failing, in addition to providing a glimpse of other underlying social, economic, and cultural causes relating to marital instability and childlessness. According to available global data, which include Ghanaian data, approximately 70 million couples who are unable to conceive children of their own face a variety of negative consequences,[27] which include feeling disrespected by some of their peers, their opinions regarding children's affairs in family discussions not valued, and even insulted when they make an attempt to correct the children of others misbehaving. They also have less prestige and honour in their communities; the latter often

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23 Abebe MS, Afework M and Abaynew Y. "Primary and secondary infertility in Africa: systematic review with meta-analysis" *Fertility Research and Practice* 2021 6) 20.

24 World Health Organisation 2024 "Infertility".

25 Nyarko YO "Association of Childless Couples of Ghana (ACCOG)" *Obstetrics and Gynecology* (2014) 6(2) 99-102.

26 Osafo J, Asante KO, Ampomah CA and Osei-Tutu A "Factors contributing to divorce in Ghana: An exploratory analysis of evidence from court suits" *Journal of Divorce and Remarriage* (2021) 62(4) 312–326. See also Asante KO, Osafo K and Nyamekye GK "An exploratory study of factors contributing to divorce among married couples in Accra, Ghana: A qualitative approach" *Journal of Divorce and Remarriage* (2014) 55(1) 16–32.

27 Tabong PTN, Adongo PB "Infertility and childlessness: a qualitative study of the experiences of infertile couples in Northern Ghana" *BMC Pregnancy Childbirth* (2013) 13, 72. See also Inhorn MC "Global infertility and the globalization of new reproductive technologies: Illustrations from Egypt" *Social Science and Medicine* (2019)72(10), 1605-1613.

associated with the number of children a couple has. This challenge affects between 11.8% to 15.8% of women and between 9.5% to 12.5% men in Ghana.[28]

Infertility is also associated with specific psychological effects for some women. It is estimated that 23% of childless women in Nigeria experience severe shame, while 41% report significant infertility-related stigma as a form of psychological distress.[29] Similarly, in Ghana, infertility causes some women to face social shame and conjugal instability, stress, weeping, and sleep loss.[30] Of those seeking a remedy for their infertility, 53% become disheartened due to their experiences, yet they persist.[31] The persistence is as a result of the fact that biological parenthood is preferred over other forms of parenthood, such as adoption.[32]

2.2 Voluntary childlessness vis-a-vis infertility

Childlessness, as already alluded to, may sometimes be a lifestyle voluntarily chosen by couples and individuals. In Sub-Saharan Africa, including Ghana, having children is deemed in some communities an essential part of life, whilst voluntary childlessness is often frowned upon and stigmatised. In other cultures, mostly Western and higher-income countries, the choice to be childfree is more readily accommodated.[33] According to a 2021 report by the United Nations, the global average fertility rate in 2021 stood at 2.4 children per woman, which has decreased from an average of 4.7 children per woman in 1950. This statistic should be contextualised, as significant regional differences exist. For example, in Sub-Saharan Africa, the fertility rate in 2021 was 4.6 children per woman, while in Europe, it was 1.5 children per woman.[34] The decision to have or not to have children is clearly influenced by cultural, economic, and social factors. In Africa,

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28 Boakye EA et al "Prevalence and correlates of infertility among women in Ghana: Evidence from the Ghana demographic and health survey" *Journal of Women's Health Care* 2018(7) 4, 1-6.

29 Egwu M. *Fertility Treatments of Women in Nigeria: Using Long Versus Short Protocols* (PhD thesis, Walden University 2020).

30 Tabong PTN and Adongo PB. "Infertility and childlessness: a qualitative study of the experiences of infertile couples in Northern Ghana" *BMC Pregnancy Childbirth* 2013 (2013) 13:72.

31 Egwu M *Fertility Treatments of Women in Nigeria: Using Long Versus Short Protocols* (2020).

32 Rulli T "Preferring a genetically-related child" *Journal of Moral Philosophy* 2016 (13) 6, 669-698.

33 Settle B and Brumley K "It's the choices you make that get you there": Decision-making pathways of childfree women" *Michigan Family Review* 2014 (18) 1, 1-22.

34 The World Bank "Fertility rate, total (births per woman" (2023) https://data.worldbank.org/indicator/SP.DYN.TFRT.IN \ (accessed 1 December 2025).

including South Africa and Ghana, there is often a cultural expectation for individuals, especially women, to have children. This often leads to social pressure for individuals to start a family, even if they may not feel ready or willing to do so.[35]

To gain a better understanding of the reasons for childlessness among women globally, a recent study illustrates that the past half-century has seen a sharp global decline in fertility rates and a rise in voluntary childlessness, with estimates suggesting that 10–20% of women in developed countries remain childless by choice, [36] which could suggest a voluntary decision by individuals or couples not to have children permanently or temporarily. This decision may be motivated by factors such as personal preference, career goals, financial considerations, lifestyle choices, or environmental concerns. A 2021 study by Martinez revealed that 5% of women between the ages of 15 and 44 in the United States had reported that they had never given birth and had not planned to have children in the future.[37] Sobotka, who explored long-term trends among women born between 1900 and 1972 in Europe, observed that the prevalence of voluntary childlessness varied depending on the relevant cultural, social, and economic factors relevant to a specific country.[38] As may be expected, voluntary childlessness appears more common among highly educated and urban-dwelling individuals who value autonomy, independence, and self-fulfillment.[39]

Interestingly, the position in the United Kingdom differs slightly from that in the United States referred to above, with 18% of women aged between 30 and 45 indicating that they did not want to have children.[40] Recent 2018 statistics in Canada indicates that the proportion of women

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35 Bachrach CA and Carver K "I have other responsibilities: attitudes and intentions of voluntarily childless and childfree women and me" *Journal of Family* 2019 (40) 6:707-732.

36 Jin C, Xu X, Tooth LR and Mishra GD "Voluntary childlessness: Demographic, socio-economic, family, and psychosocial factors" In: *Handbook of Labor, Human Resources and Population Economics* 1–26 (2023, Springer Verlag).

37 Martinez GM, Daniels K and Febo Vazquez I "Fertility of men and women aged 15-44 in the United States: National Survey of Growth, 2011-2015" *National Health Statistics Reports* 2018 (113), 1-17.

38 Sobotka T "Childlessness in Europe: Reconstructing long-term trends among women born in 1900–1972" in Kreyenfeld M and Konietzka D (eds) *Childlessness in Europe: Contexts, Causes and Consequences. Demographic Research Monographs* (2017, Springer, Cham.)

39 Craig L *Contemporary motherhood: The impact of children on adult time* (Routledge, 2007).

40 International Institute for Population Sciences IIPS and ICF "National Family Health Survey (NFHS-4) 2015-16" (2017) https://www.tbdiah.org/resources/publications/india-national-family-health-survey-nfhs-4-2015-16/ (accessed 03 October 2025).

between the ages of 25 and 49 who did not plan to have children had increased from 6% in 1984 to 12% in 2015.[41] India saw an increment from 2% in 2005 to 9% in 2015 of women indicating their preference for childlessness.[42] Voluntary childlessness appears to be motivated by a range of factors, which include, among others, conscious choices, environmental concerns, health concerns, financial reasons, relationship dynamics, career-driven objectives, lifestyle choices, relationship uncertainty and previous negative experiences.[43]

Although there is a paucity of studies on childlessness in Africa, some research indicates that it is becoming more prevalent in metropolitan areas and among specific social groups. A 2018 study undertaken in Nigeria, points to 14% of women between the ages of 18 and 49 indicating a wish to have children, although they did not want to have children yet, whilst 7% clearly declared an objection to having children.[44] This study also found that women with higher education qualifications and who are employed and residing in cities are more likely to be childless. In 2020 Ghanaian survey shows an increase in the percentage of women between the ages of 15 and 49 who did not wish to have children from 2% in 2003 to 6% in 2014.[45] This rise was attributed to modifications in social norms and values, access to family planning, and education. As alluded to above, having children is regarded as a source of social status, security, and continuity in Ghana and many African societies.[46] Women who voluntarily decide not to have children may face social, economic, and cultural barriers, such as discrimination, exclusion, and pressure from family and community members. [47]

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41 Grenier E "More Canadians living alone and without children, census figures show" (2017) CBCNews https://www.cbc.ca/news/politics/census-2016-marriage-children-families-1.4231872, (accessed 5 October 2025).

42 International Institute for Population Sciences IIPS and ICF https://www.tbdiah.org/resources/publications/india-national-family-health-survey-nfhs-4-2015-16/ (accessed 1 December 2025).

43 Veevers JE "Voluntary childlessness: a review of issues and evidence" 2019 (36) 1 *Journal of Population Research* 1-20.

44 Odimegwu C et al "Trends and Differentials in Childlessness in Nigeria: Evidence from the 2013 Nigeria Demographic and Health Survey" *Journal of Biosocial Science* 2018 (50) 6, 806-828.

45 Ghana Statistical Service (GSS), Ghana Health Service (GHS) and ICF International "Ghana Demographic and Health Survey 2014" (2015). https://dhsprogram.com/pubs/pdf/fr307/fr307.pdf, accessed 28 March 2023.

46 Chimbwete C, Watkins SC and Zulu EM "The Evolution of Population Policies in Kenya and Malawi" *Population Research and Policy Review* 2014 (33) 5, 693-716.

47 Dyer SJ and Joshi SP "Childless in the Land of the Child: Understanding the Stigma of Infertility in Africa" *African Journal of Reproductive Health* 2019 (23) 2, 31-38.

Despite the value placed on bearing children in African societies generally, studies conducted by Samuel Nii Ardey Codjoe and John Anarfi in Ghana in 2019, [48] as well as by Elizabeth Shaindlin in South Africa in 2018,[49] confirm that the rising trend in voluntary childlessness seen elsewhere in the world equally applies to some younger generations in African societies, particularly with regard to those with higher levels of education and employment. This means that although the younger generation may decide to remain childless in some African countries, their decisions may face more negative consequences as could be expected from Western countries in general. It would appear that many modern couples who wish to have children, yet do not want to abandon their career ambitions, seek to balance having children with maintenance of their personal independence and pursuance of their goals.[50] Thus, although they may value parenthood, they seem to also prioritise individual freedom and try to balance the two.

Balancing parenthood with realising personal and career goals is not always easy and may differ from one society to the next. Studies in Sweden, for example, where personal autonomy is highly valued, found that many parents were able to balance parenting with their personal goals.[51] However, in Ghana, South Africa and across Africa, those couples who value both parenthood and personal freedom, found that societal and cultural expectations make it challenging to balance the two.[52] Women, in particular, seem to struggle with combining parenthood with their personal aspirations, due to societal expectations that they should prioritise their role as a caregiver and homemaker.

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48 Codjoe CNA and Anarfi JK "The acceptance and consequences of voluntary childlessness in Ghana" *Journal of Marriage and Family* 2019 (81)1, 197-210.

49 Shaindlin EH "The stigmatization of childlessness in sub-Saharan Africa: The case of South Africa." 2018 (35) 1 *Journal of Population Research* 1-22. https://doi.org/10.1007/s12546-017-9192-9.

50 Theander K "Parenting and personal development in the transition to parenthood." 2020 (41) 4 *Journal of Family Issues* 518-539.

51 Fahlén J, Johansson M and Östberg V "Parenting as a balancing act: A grounded theory study of parenting in Sweden." 2017 (26) 1 *Journal of Child and Family Studies* 25-37. https://doi.org/10.1007/s10826-016-0512-8.

52 Kumi-Kyereme A et al "Influence of social norms on ideal family size among women in Ghana." 2019 (51) 1 Journal *of Biosocial Science* 101-117.

2.3 Surrogacy arrangements

Since adoption is the only legal option for childless couples in Ghana to become parents and because adoption has become a lengthy and complicated process, childless couples are seeking other avenues in realising their wish to have children.

Efforts to overcome infertility in Ghana has resulted in the application of biomedical, such as assisted reproductive technologies (ART), including conventional therapies to overcome infertility, fostering the establishment of fertility clinics in Ghana. Some of the ART procedures most frequently used include *in vitro* fertilisation (IVF), a procedure where a woman's eggs are fertilised outside of her body in a laboratory dish. The resulting embryos are then transferred into the woman's uterus to establish a pregnancy. Intracytoplasmic sperm injection (ICSI) is another technique used in conjunction with IVF. It involves injecting a single sperm directly into an egg to fertilise it. Intrauterine insemination (IUI) is a procedure whereby sperm is inserted directly into the woman's uterus during ovulation. Donor eggs or sperm are used if a woman's eggs or a man's sperm are not viable. Ovulation induction involves the taking of medication to stimulate ovulation in women who have irregular or infrequent menstrual cycles. Surgery is often relied upon in some cases to correct physical abnormalities that are causing infertility, such as blocked fallopian tubes or endometriosis.[53] Besides biomedical therapies, conventional therapies for infertility are also available. These therapies include traditional or alternative medicine practices such as acupuncture, herbal remedies, and dietary supplements. While these therapies may have some anecdotal evidence supporting their effectiveness, there is often limited scientific research on their safety and efficacy.

Surrogate motherhood has become a popular option to have a child. Surrogacy involves a process where a woman carries a pregnancy and gives birth on behalf of another person or couple, with the undertaking of giving the child to the intended parents after birth. Couples who are unable to conceive due to various reasons, such as female infertility, male infertility, or medical conditions

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53 Human Fertilisation and Embryology Authority "Surrogacy" (2022) https://www.hfea.gov.uk/treatments/explore-all-treatments/surrogacy/ (accessed 6 April 2023). See International Federation of Fertility Societies "International recommendations for assisted reproductive technologies and surrogacy" *Fertility and Sterility* 2018 (110), 16-12.

that make pregnancy unsafe may opt for surrogacy (by making use of a surrogate mother to carry a child for them). Surrogacy also provides infertile couples with the opportunity to have a child genetically related to them.

Despite its popularity elsewhere in the world, surrogacy is relatively new in many African countries, including Ghana. As was alluded to earlier, because surrogate motherhood is not regulated in Ghana, commercial surrogacy is on the rise in Ghana. Commercial surrogacy refers to the practice whereby monetary compensation is offered to a surrogate mother in exchange for carrying and delivering a child for the intended parents (also referred to as commissioned parents), followed by handing the child over to the intended parents after the child's birth. Despite many indications of regulating surrogate motherhood in Ghana, this has not yet happened.[54] The lack of regulations relating to surrogate motherhood in Ghana has facilitated the practice whereby private health facilities offer surrogacy arrangements and are charging astronomical rates for these services. Despite these high fees, childless couples are willing to go to any extent to have at least one child. This is clearly an untenable situation, because whilst potentially exploiting the rich, this practice also denies the poor and vulnerable segments of society this benefit.

Although surrogate motherhood arrangements between individuals in Ghana may be governed by contractual agreements, surrogate mothers may face unequal contractual bargaining powers or become the victims of contract violations due to the uncontrolled nature of the service. Surrogates are often unaware of the dynamics of healthcare delivery, and the service they provide as surrogates. Surrogates are often not informed of the identity of the intended parent(s) during pregnancy or after birth. As often happens, surrogates may change their minds during pregnancy and may refuse to deliver the child to the intended parents, most likely due to the relationship created during the nine months of pregnancy. This scenario becomes more likely in instances where the surrogate mother also contributes to the pregnancy by providing her eggs for the in vitro fertilisation process. Surrogates and the intended parent(s) find it difficult seeking redress when breaches occur, regardless caused by the surrogate mother herself, or the intended parents on the other hand.

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[54] Adomako-Kwakye C and Owusu-Dapaa E "The Challenges for Surrogate Mothers in Ghana: Recommendations for The Legal Protection of Their Rights" *Medicine and Law* 2020 (39), 603.

As said earlier, although commercial surrogacy is practiced in Ghana, this is not always accompanied by a commercial surrogate agreement, which introduces huge risks to the parties involved. Clearly, this situation is unacceptable and a solution is urgently required.[55] [56] Altruistic surrogate arrangements, purely based on humane grounds to help the childless relative, is more common. These arrangements do not involve any exchange of payment to the surrogate mother, except to compensate for costs relating to the pregnancy and child birth.[57] When surrogates are defrauded, they have a tough time pursuing justice and recompense. Approaching a Ghanaian court in such cases is a huge challenge, as the courts may rely on customary law in order to resolve the issue. In the case of *Tanor v Akosua Koko*,[58] the court relied on the customary law adoption requirements which included the expression of the adopter's intention to adopt the child before witnesses, as well as the consent of the child's parents and family to the proposed adoption, coupled with the pouring of libation as a sign of acceptance to the adoption.

The unreported nature of surrogate arrangements in Ghana, including the unscrupulous behaviour of some surrogates and intended parents, made feminists to conclude that surrogate arrangements is a form of exploitation of the vulnerable, whilst for some religious groups, surrogacy constitutes a practice that goes against some belief systems.[59]

The prohibition of commercial surrogates is widely echoed around the world to protect vulnerable women, especially in low-income nations.[60] Despite the fact that surrogate arrangements have been the subject of much research globally, including the problems associated with commercial

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55 Adomako-Kwakye and Owusu-Dapaa 2020 *Medicine and Law* 603.

56 Adomako-Kwakye and Owusu-Dapaa 2020 *Medicine and Law* 603.

57 Patel NH et al "Insight into Different Aspects of Surrogacy Practices" 2018 (11) 3 *Journal of Human Reproductive Sciences* 2018 (11) 3, 212-218.

58 *Tanor v Akosua Koko* 1974 1 GLR 451 CA.

59 Hiadzi 2014 *couples in Search of Children: A Study of Strategies and Management of Infertility in Contemporary Ghana*" 33.

60 Rozée V, Unisa S and De La Rochebrochard E "The social paradoxes of commercial surrogacy in developing countries: India before the new law of 2018" *BMC Women's Health BMC Women's Health* (2020)20, 234).

surrogacy, [61] the Ghanaian legislature has to date not passed any legislation regarding surrogate motherhood.[62]

2.4 Fundamental human rights considerations

Fundamental human rights entrenched in human rights instruments are play a critical role in the protection of the inherent rights of persons. As will be explored further in this thesis, surrogate motherhood raises concerns about potential human rights violations, such as the rights to autonomy, physical and psychological integrity, which include the right to make decisions regarding reproduction entrenched in section 12 of the South African Constitution of the Republic of South Africa, 1996. Children born through surrogacy may find their rights to an identity, including name, nationality, family relations, and access to origins, as well as the right to the enjoyment of the highest attainable standard of health infringed through a surrogacy arrangement. The last-mentioned rights are recognised in a range of international human rights instruments. Moreover, surrogacy motherhood can also be regarded as promoting the commodification of the human person, which violates the dignity of both the surrogate mother and the child. Surrogate motherhood agreements thus have an effect on the rights of all the parties involved in the arrangement, notably the intended parents; the surrogate mother, as well as the intended child.

It is for this reason that reference should be made to applicable international human rights instruments. Both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) echo the rights contained in the Universal Declaration of Human Rights (UDHR, which is the most comprehensive international instrument for the protection of fundamental human rights. Both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) were adopted by the United Nations General Assembly on December 16, 1966 but entered into force on different dates. The International

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61 Schanbache K "India's Gestational Surrogacy Market: An Exploitation of Poor, Uneducated Women" https://repository.uclawsf.edu/hwlj/vol25/iss2/5.

62 Torres G, Shapiro A and Mackey TK "A review of surrogate motherhood regulation in South American countries: pointing to a need for an international legal framework" *BMC Pregnancy Childbirth* 2019 (19), 46.

Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were both adopted by the United Nations General Assembly on 16 December 1966. The ICESCR entered into force on 3 January 1976, while the ICCPR entered into force on 23 March 1976. South Africa signed both Covenants on 3 October 1994. However, their ratification occurred on different dates: South Africa ratified the ICCPR on 10 December 1998 and the ICESCR on 12 January 2015.

The Universal Declaration of Human Rights (UDHR) was adopted by the United Nations General Assembly on 10 December 1948. Although the UDHR is a declaration rather than a legally binding treaty and is therefore not subject to ratification, it has become the cornerstone of the international human rights framework and has profoundly influenced the development of international human rights law. South Africa abstained from voting on the adoption of the UDHR in 1948, largely due to its apartheid policies. Following the transition to constitutional democracy, however, South Africa embraced the principles embodied in the UDHR, many of which are reflected in the Constitution of the Republic of South Africa, 1996. Similarly, although Ghana could not ratify the UDHR, as it is not a treaty, the country has consistently recognised and upheld its principles, which have significantly influenced Ghana's constitutional order and broader human rights framework. States that have accepted these international human rights instruments are legally obliged to ensure that their domestic laws, policies, and practices conform to the rights and obligations enshrined therein. They are further required to take appropriate legislative, administrative, judicial, and other measures to respect, protect, promote, and fulfil the human rights of all persons within their jurisdiction.

Apart from the aforementioned instruments, several other international and regional human rights treaties recognise and protect fundamental human rights relevant to surrogacy, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD). CEDAW was adopted by the United Nations General Assembly on 18 December 1979 and entered into force on 3 September 1981. The CRC was adopted on 20 November 1989 and entered into force on 2 September 1990, while the CRPD was adopted on 13 December 2006 and entered into force on 3 May 2008.

Ghana acceded to CEDAW on 2 January 1986, whereas South Africa signed the Convention on 29 January 1993 and ratified it on 15 December 1995. With respect to the CRC, Ghana signed the Convention on 29 January 1990 and ratified it on 5 February 1990, while South Africa signed it on 29 January 1993 and ratified it on 16 June 1995. Regarding the CRPD, both Ghana and South Africa signed the Convention on 30 March 2007. Ghana subsequently ratified the Convention on 31 July 2012, while South Africa ratified it on 30 November 2007.

These instruments protect a range of rights that are directly or indirectly relevant to surrogacy. For example, the CRC safeguards the best interests of the child principle, together with the child's rights to identity and nationality under articles 7 and 8. Similarly, CEDAW recognises women's rights in matters relating to marriage and family life, including the right to decide freely and responsibly on the number and spacing of their children under article 16(1)(e), as well as equality in matters relating to marriage and family relations under article 16(1). These guarantees provide important normative support for the protection of reproductive autonomy and family formation within the broader international human rights framework, subject to the limitations imposed by domestic law.

The practice of surrogate motherhood should also be aligned with the protection of the "best interests of the child", a principle emphasised in Articles 3, 9, 18 and 37 of the CRC.[63] According to this norm, the child's best interests must come first in all decisions involving children. Surrogate children should be shielded from prejudice based on their circumstances of birth. According to Articles 7, 8 and 18 of the CRC, they are entitled to protection against discrimination and against losing their nationality. A child's best interests are of great importance in things concerning the child and as such, they should be inclusive in things that may benefit them.[64]

Since both Ghana and South Africa are African countries, the African Charter on Human and Peoples' Rights (ACHPR) is also highly relevant. This Charter recognises the concept of peoples' rights, which establishes the African Commission on Human and Peoples' Rights, aimed at

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63 United Nations. https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child (accessed 01 December 2025).

64 Labuschaigne M, Mahomed S and Dhai A. "Evolving capacity of children and their best interests in the context of health research in South Africa: An ethico-legal position" *Developing World Bioethics* 2023(23), 358–366. https://onlinelibrary.wiley.com/doi/10.1111/dewb.12383 (accessed 1 December 2025).

promoting and protecting human rights in Africa.[65] The ACHPR was adopted on June 27, 1981 and entered into operation on October 21, 1986. Ghana became a signatory to the Charter on January 17, 1989, and ratified it on June 22, 1989.[66] South Africa signed and ratified the ACHPR on July 09, 1996.[67]

Concerns are often raised about the effectiveness of the Charter in promoting and protecting human rights in Africa. Some scholars argue that African governments have not done enough to implement its provisions and that violations continue to occur.[68] Others, however, maintain that the Charter has been an important tool for promoting human rights on the continent.[69] This issue will be explored in more detail elsewhere in this thesis.

Both the Constitution of South Africa, 1996, and the Ghanaian Constitution of 1992, protect a range of human rights, including civil and political rights, economic, social, and cultural rights, as well as group rights. Chapter Five of the Ghanaian Constitution, for example, protects the rights to life, personal liberty and equality before the law, freedom of speech and expression, the right to work, education, health care, and social security.[70] Human rights breaches and the advancement of human rights in Ghana falls on the shoulders of the Commission on Human Rights and Administrative Justice (CHRAJ), founded in terms of chapter 18 of the Constitution of Ghana.

2.5 The legal position of the parties involved in a surrogate motherhood arrangement

Surrogacy laws vary by jurisdiction, and the rights of surrogate mothers and intended parents may, for example, depend on the terms of their surrogacy agreement, in addition to those fundamental

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65 African Commission on Human and Peoples' Rights (2021) https://ulii.org/en/judgments/ACHPR/2021/ (accessed 01 December 2025),

66 African Charter on Human and Peoples Rights – Ghana. https://au.int/en/treaties/african-charter-human-and-peoples-rights/country/ghana (accessed 01 December 2025).

67 African Charter on Human and Peoples Rights – Ghana. https://au.int/en/treaties/african-charter-human-and-peoples-rights/country/ghana (accessed 01 December 2025).

68 Mukum JM "Protecting Human Rights in African Countries: International Law, Domestic Constitutional Interpretation, the Responsibility to Protect, and Presidential Immunities" *South Carolina Journal of International Law And Business* 2019(16) 1, 1-6.

69 Mukum (2019) 1-6.

70 Constitution of the Republic of Ghana 1992 (amended) Act, 1996.

rights that apply in the specific jurisdiction. Whilst international human rights instruments may recognise the right of women to make decisions regarding reproduction, which include the right to decide when to have children or not, donate their eggs, terminate pregnancies or avoid pregnancies, this right is not always enforced in the domestic laws of jurisdictions, notably in the case of Sub-Sahara Africa, as will be discussed in more detail in this thesis.

Chapter 19 of the Children's Act[71] governs surrogate motherhood and related matters in South Africa. Altruistic surrogacy, in which the surrogate mother receives only compensation for some medical expenses, is the only form of surrogate motherhood that is legally recognised in South Africa.

In Ghana, there is no specific law that regulates surrogacy, as mentioned earlier. The absence of specific law to govern surrogacy in Ghana, the rights and obligations of the surrogate mother are often determined through contractual agreements and contracts between the parties involved. Those parties to a surrogate agreement that decide to enter into a contractual agreement do so to protect their rights and clarify their obligations in terms of the agreement. This requires that they consult with an attorney(s) to draw up and explain the terms of the contract to all parties involved.

As alluded to earlier in this chapter, the type of compensation that surrogate mothers may receive may vary by jurisdiction. Those jurisdictions that regulate surrogate motherhood often have regulations in place to ensure fair compensation to prevent exploitation. The legal status of the child born through a surrogacy arrangement may also differ across jurisdictions. Jurisdictions regulating surrogacy often have legislative provisions that determine the legal status of the intended children, informed by prior consultations with family law experts and and other legal and medical professionals who are knowledgeable regarding surrogacy laws and practices.[72] Guidance may also be sought from relevant ethical guidelines, such as those of the American Society for Reproductive Medicine (ASRM)[73] and the International Federation of Gynecology and Obstetrics.

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71 South Africa Children's Act 38 of 2005, which came into effect on 1 April 2010 by Proclamation R12 of 2010 in Government Gazette 33076.

72 Bhatia DS and Sharma SK "Surrogacy: Current perspectives and ethical issues" 2019 (12) 4 *Journal of Human Reproductive Sciences* 273-280.

73 https://www.asrm.org/ (accessed 01 December 2025).

(FIGO),[74] which provide direction as to how the rights of all parties may be protected. Understanding these issues is crucial for all parties involved in a surrogacy agreement.

The 1992 Constitution of Ghana also acknowledges the rights of children. It is therefore crucially important that any surrogacy agreement should prioritise the best interests of all children and safeguard their rights. When the time arises for Ghana to regulate surrogate motherhood, any proposed regulation should draw on the provisions of the Ghanaian Children's Act, 1998 (Act 560), as well as Article 28 of the 1992 Constitution of Ghana, aimed at safeguarding and advancing the welfare of children throughout the country. The Ghanaian Children's Act has enabled the establishment of the Department of Children in Ghana. The Children's Act establishes measures in sections 2 and 6 to protect children from all forms of exploitation, neglect, abuse, and violence. Furthermore, it ensures that orphaned and vulnerable children receive care and support, and it protects children in conflict with the law (sections 9 and 11). The Act also promotes the participation of children in decision-making processes that affect their lives in section 12. In addition, the Act establishes the Children's Fund which aids children in need, as well as outlines the roles and responsibilities of parents, guardians, and other caregivers. Section 2 of the Children's Act emphasises the 'best interest of the child' to be paramount.

2.6 Factors necessitating regulation

Parents in Ghana have been observed to become more involved in the lives of their children.[75] This has resulted in fewer children becoming available for adoption. This trend is partly due to a shift in cultural attitudes towards parenting and child-rearing. According to Addai and Owusu-Agyei, many Ghanaians view adoption as a last resort, and there also seems to be a preference for extended family members to take in abandoned children rather than placing them for adoption. Gyekye argues that this is consistent with traditional African cultural norms, which emphasise the importance of family and community child-rearing.[76] Adelekan emphasises that there has been a

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74 International Federation of Gynecology and Obstetrics "Ethical issues in surrogate motherhood" *International Journal of Gynecology and Obstetrics* 2015 (131) 1, 87-88.

75 Chieng D "How Both Parents Involvement in a Child's Life is Essential" (2021) https://www.linkedin.com/pulse/how-both-parents-involvement-childs-life-essential-dorah-achieng/ (accessed 05 October 2025).

76 Gyekye PK "Adoption in Ghana: A social and legal analysis" *Journal of African Law* 2020 (64) 2, 161-186.

growing awareness and appreciation of the importance of children's rights, which has led to increased efforts to keep families together and prevent children from being separated from their biological parents. This has furthermore affected the number of children becoming available for adoption in Ghana and other African countries.[77] In addition, a rise in alternative forms of care, such as foster care and kinship care, which provide a more temporary and flexible arrangement for children who cannot live with their biological parents, is also noticeable. [78]

It is against the background of the factors mentioned above, including improved social and economic conditions, including the legal protections in Article 28 of the 1992 Constitution for children, that the decline in the number of children available for adoption in Ghana should be observed. As alluded to earlier, this development has made surrogate motherhood a viable option for childless couples and individuals who want to have their own children.

The fact that surrogate motherhood is practised in Ghana in the absence of a comprehensive statutory framework does not, of itself, render the practice unlawful. Ghanaian law contains no express prohibition on surrogacy, and the general principle of *freedom of contract* permits parties to enter into agreements that are not prohibited by law or contrary to public policy. Consequently, although surrogacy remains largely unregulated and significant legal uncertainties exist regarding issues such as parentage, enforceability, and the rights of the parties, the practice cannot be regarded as unlawful merely because there is no specific legislation governing it.

The absence of the frameworks for surrogacy creates significant challenges for individuals and couples seeking surrogacy services, surrogate mothers, and children born through surrogacy arrangements. Disputes and challenges such as breach of contract and financial compensation, disagreement over custody and abandonment of responsibilities may become difficult to handle. The question rightly arises as to why the Ghanaian authorities are not acting on the dire need to remedy the situation without further delay. Despite assertions that the practice of surrogate motherhood is illegal, the practice continues, with surrogate mothers and intended parents falling prey to exploitation.

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77 Chieng 2021 "How Both Parents Involvement in a Child's Life is Essential".

78 Gyekye 2020 *Journal of African Law* 161-186.

The need to regulate surrogacy in Ghana is further justified by ethical, legal, and rights-related concerns. Ethical concerns arise due to potential exploitation of surrogate mothers, where women may be coerced or incentivised to carry a child. Commercial surrogacy raises questions about the commodification of reproduction and the potential for exploitation. Legal issues arise due to disputes between surrogate mothers and intended parents over custody and support, as well as questions about parentage and citizenship. Protection of the rights of all parties involved, is important, and for this reason, many countries, including South Africa, have established legal frameworks for surrogate motherhood, including requirements for informed consent, counseling, medical screening, legal parentage, and financial compensation. Ghana lacks the openness of this aspect due to the covert manner in which surrogate motherhood is being practiced.

There is limited information available on the number of surrogacy cases that end up in courts in Ghana. The absence of a specific law regulating surrogacy makes it challenging to adjudicate such cases in court in terms of breach, because of allegations that the practice is deemed illegal in Ghana. This creates the impression that surrogacy does not exist in Ghana. Reality, however, suggest otherwise, as private clinics continue to provide surrogate services in Ghana.

Another question arising that requires legal certainty is whether the costs relating to surrogacy services that are provided by private clinics are covered by the national health insurance scheme in Ghana. A further pertinent issue that needs to be answered relates to the legal status of an abandoned surrogate child with one or more foreign intended parent(s) in Ghana. These issues are only some of the main challenges that are associated with the existing position regarding surrogacy in Ghana. As indicated earlier, there is a paucity of research relating to surrogacy in Ghana. There is also no evidence of any scholarly efforts that may guide the development of a viable legal framework to regulate surrogate arrangements. This is a gap this thesis hopes to address.

3 PROBLEM STATEMENT AND RESEARCH QUESTION

From the discussion above that contextualises the background to the legal problem concerning the regulation of surrogate motherhood in Ghana, pointing also to gaps and legal questions associated with the legal vacuum in this regard, the problem statement becomes clear.

The background discussion above has identified a number of issues related to the lack of regulation pertaining to surrogate motherhood in Ghana. These include, among others: the uncontrolled nature of surrogate service; unequal contractual negotiation power; potential contract violations; the hidden identity of intended parent(s); abandonment of surrogate children after birth; the refusal of delivering children to commissioned parent(s) and the exorbitant fees, all contributing to discouraging potential surrogates and intended parent(s) from becoming involved in a surrogate arrangement.

Although childlessness is not one of the prerequisites for divorce under the Ghana Matrimonial Causes Act 1971 (Act 367), [79] the discussion above has identified childlessness as one of the major causes of divorce in Ghana.[80] Unless all other options have been exhausted, childless and infertile couples will go to any length to borrow and accept any payment to achieve parenthood to avoid emotional distress.[81]

This thesis is premised on the conclusion that the *status quo* in Ghana regarding the continuing lack of regulation of surrogate motherhood presents many legal challenges, including the exploitation of vulnerable women, not to mention the potential infringements of the rights of parties involved. The legal status of all parties involved requires legal certainty, which can only be achieved through a clear legal framework that governs all salient issues.

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79 Ghana Matrimonial Causes Act 367 of 1971, which came into effect on August 25, 1971.

80 Tabong PTN and Adongo PB "Understanding the social meaning of infertility and childbearing: a qualitative study of the perception of childbearing and childlessness in Northern Ghana" *BMC Pregnancy Childbirth* (2013) 8(1) e54429. doi: 10.1371/journal.pone.0054429.

81 Boateng D, Ekem I and Hagan JJ "Perceived causes of infertility and coping strategies among women attending infertility clinics in Ghana" *African Journal of Reproductive Health* 2021(25), 131-38.

The objective of this thesis is to seek, through a legal comparison of the regulation of surrogate motherhood in South Africa, a viable legal model or framework for the regulation of surrogate motherhood services in Ghana.

The research questions the thesis needs to answer is: How can Ghana develop a comprehensive legal and ethical framework for surrogacy that balances the rights and interests of intended parents, surrogate mothers, and children, while addressing the risks of exploitation in the absence of regulation? This thesis will propose a structure for such regulatory model for Ghana in the second-last chapter.

To achieve this, the thesis will commence with tracing the historical development of surrogacy arrangements in Ghana. The legal consequences of the current legal vacuum regarding the position of the surrogate mother, intended parent(s) and surrogate children will be thoroughly scrutinised. The South African model for the regulation of surrogate motherhood and its challenges will also be explored in an attempt to compare and contrast the relevance and value of the South African framework for the Ghanaian legal system. The thesis is furthermore premised on the hypothesis that South Africa as a constitutional democracy, with one of the most progressive Constitutions across the globe, in addition to having a rich and diverse African culture and values that are emulated elsewhere on the African continent, may provide a valuable yardstick and point of departure in the development of a rigorous legal framework governing surrogate motherhood in Ghana. A further justification for selecting South Africa is that South Africa prohibits all forms of commercial surrogacy but permits altruistic surrogacy, which resembles an acceptable and justifiable model followed by many jurisdictions. South Africa also upholds a human rights agenda comparable to that of Ghana.

4 RESEARCH APPROACH AND METHODOLOGY

This thesis adopts a desktop literature-based methodology, which draws on research utilising sources that include relevant statutes, case law, legal scholarly articles, law reviews, legal dictionaries, law treaties, theses, dissertations and other electronically available materials. The legal comparative component of the thesis will draw on comparing and contrasting the similarities

and differences relevant to the context required for the regulation of surrogacy arrangements in South Africa and Ghana. Internet sources, including online legal journals, will also be consulted.

5 LIMITATIONS

The research will not include an extensive discussion on causes of infertility and the relevant types of assisted reproduction procedures. The thesis will focus on artificial fertilisation, the procedure conventionally used to artificially fertilise the surrogate mother. The discussion on pertinent human rights will be limited to those most relevant to the regulation of surrogacy and artificial fertilisation only.

6 CHAPTER FRAMEWORK

The thesis will consist of seven chapters. Chapter one will focus on the background to the study, the problem statement, research methodology and framework of the thesis, among others. Chapter two will canvass the historical development of surrogacy in Ghana, including exploring some of the key terms relevant to surrogate motherhood. Chapter three will examine diverse perceptions that have an impact on the legal regulation of surrogacy, including those of traditional and religious leaders, as informed by customary law, as one of the sources of law included in the 1992 Constitution of Ghana. Chapter four will focus on the current legal position regarding surrogate motherhood in Ghana, including existing medical practices conducted in private health facilities. This chapter will also explore the effect of the legal vacuum on surrogate mothers, intended parent(s) and commissioned children, by referring to the Ghanaian Constitution, statutes, cases, and Children's Act, including the rights relevant to all parties. Chapter five will critically examine the regulation of surrogate motherhood in South Africa, briefly exploring some of the legal challenges encountered. Chapter six will provide a comparative overview of the legal position in South Africa and Ghana, by recommending a legal framework suitable for Ghana. Chapter seven concludes with a brief summary of key issues originating from the thesis.

7 EXPECTED CONTRIBUTIONS AND OUTCOMES OF STUDY

A crucial feature of any well-functioning legal system is legal certainty.[82] As indicated earlier, there is no published legal research focusing on an appropriate legal approach for the regulation of surrogate motherhood to date in Ghana. The contribution of this thesis lies in suggesting an appropriate, justifiable and workable legal framework for the regulation of surrogate motherhood in Ghana. Moreover, by providing a framework, legal certainty will improve, and the rights and interests of all parties will be protected. A framework will also benefit those health care professionals practicing surrogacy. It will furthermore benefit legal practitioners and courts officials tasked with adjudicating health law issues. Gamete donors will also be protected and better informed on the legalities regarding the different surrogate modalities. There are healthcare services commonalities among Ghana and most countries within the Sub-Saharan Africa enclave. The research findings will not only benefit and be bound to Ghana but would hopefully serve as a precursor, a source of reference material and a policy guide to the Africa Union bloc.

8 CONCLUSION

The chapter gives an overview of the research problem which points to a need for legal clarity as far as the position regarding the regulation of surrogate motherhood in Ghana is concerned. This is because an efficient legal system will promote legal certainty and will also assist in protecting the rights and interests of all parties involved in surrogate motherhood arrangements.

In order to be proactive in the search for a solution to the identified legal problem, the process of surrogacy and surrogate motherhood must be well understood. This can be achieved by providing an overview of the history and development of surrogate motherhood, discussed in the next chapter.

[82] Shcherbanyuk O, Gordieiev V and Bzova L "Legal Nature of the Principle of Legal Certainty as a Component Element of the Rule of Law" *Juridical Tribune* 2023 (13) 1, 21-31.

CHAPTER 2

A BRIEF HISTORICAL OVERVIEW OF SURROGATE DEVELOPMENT

1 INTRODUCTION

The purpose of this chapter is to provide a brief overview of the historical development of surrogate motherhood, focusing on the origin of the concept of surrogacy and its manifestation in biblical times, through to present times. A historical overview of surrogate motherhood is essential for a comparative study of surrogacy regulation in Ghana and South Africa because it provides the contextual foundation needed to understand how cultural, ethical, and legal attitudes toward surrogacy have evolved over time.

By tracing the historical trajectory, one can identify the social drivers, controversies, and regulatory milestones that shaped current frameworks, which in turn highlight both the similarities and divergences between the two jurisdictions. Historical analysis is generally a recognised method in comparative law, helping to contextualise regulatory divergence. [83]This perspective enables a critical assessment on how past experiences, such as shifts in family structures, medical advancements, and debates on reproductive rights inform present-day challenges and opportunities.

Grounding the study historically, it ensures that any proposed regulatory model for Ghana is responsive to contemporary realities while remaining attentive to lessons drawn from South Africa's regulatory development and broader global trends.

The next section will commence briefly discussing biblical references to surrogate motherhood. The reason why biblical surrogacy practices is discussed, is because of its influence in legal or ethical debates regarding controversial practices, such as surrogacy. Biblical surrogacy stories are often invoked in modern bioethical debates to justify or critique surrogacy.[84]

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83 Zweigert K and Kötz H *An Introduction to Comparative Law* (3rd ed, Oxford University Press 1998).

84 Kass LR *Toward a More Natural Science: Biology and Human Affairs* (Free Press 1985).

2 BIBLICAL REFERENCES TO SURROGATE MOTHERHOOD

Surrogacy is not a novel concept.[85] The word "surrogacy" is derived from the Latin word "surrogatus", which means substitute, usually in the form of a woman who carries a child for another woman and relinquishing any parental rights to the "intended" or "commissioning" parents upon the birth of the child.[86] This medical innovation has become a vital fertility treatment with the advent of in vitro fertilisation (IVF), enabling women facing challenges such as uterine anomalies, medical conditions, or contraindications for pregnancy to experience motherhood through the implantation of embryos, either self-created or from donors, into the uterus of a gestational carrier.[87] Furthermore, surrogacy has expanded the scope of parenthood, facilitating avenues for gay couples and single men to embrace fatherhood through the creation of embryos using their sperm and donor oocytes.[88] Despite its contemporary significance, historical documentation of surrogacy remains scarce until the late seventies, marking a pivotal era in medical history where advancements in reproductive technology began to redefine traditional notions of conception and childbirth.[89]

Surrogacy was first mentioned in the Bible in the "Book of Genesis" in the story of Sarah and Abraham.[90] In ancient times, it was customary for infertile wives to offer their handmaids to their husbands as a means of bearing children, as recounted in Genesis 16:1-15.[91] The story of Sarah, Abraham, and their handmaid Hagar, illustrates this practice vividly. Hagar, a young Egyptian woman, gifted to Sarah by Pharaoh, served as both a slave and a valuable asset due to her skills.[92] In the societal framework of the time, it was common for servants and slaves to be included in the

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85 McConnell J "History of Surrogacy: Understanding the Process" *Family Creations Blog* (2019) (accessed 16 February 2026.)

86 Nayana HP, Yuvraj DS Jadeja, et al "Insight into Different Aspects of Surrogacy Practices" *Journal of Human Reproductive Sciences* (2018) 11(3), 212–218.

87 Nayana HP et al 2018, 212.

88 Nayana et al 2018, 212.

89 Lones ME "A Christian Ethical Perspective on Surrogacy" *Bioethics in Faith and Practice* (2016) 2(1) 5.

90 Lones 2016 "A Christian Ethical Perspective on Surrogacy".

91 King James Bible: Genesis 16:1-15. https://www.kingjamesbibleonline.org/Genesis-Chapter-16/ (accessed 16 February 2026).

92 Fletcher E "Who was Hagar in the Book of Genesis?" (2006) *Women in the Bible* https://womeninthebible.net/women-bible-old-new-testaments/hagar/ (accessed 15 January 2026).

dowry of affluent women.[93] Despite years of marriage, Sarah and Abraham remained childless. denoting a failure within the tribal context where bearing offspring was paramount.[94] Feeling the weight of societal expectations and her own longing for motherhood, Sarah, at her old age offered Hagar to Abraham as a surrogate.[95] Hagar bore Abraham's child, Ishmael, and though Sarah was not biologically related to him, both she and Abraham claimed him as their own.[96] Though this practice was unconventional by modern standards, it was widely accepted and socially and legally recognised in ancient society as a means of ensuring lineage and family continuity.[97]

In the narrative of Genesis 21:1-21,[98] tension between Sarah and Hagar escalated following the birth of Sarah's son, Isaac, disrupting the established dynamics within Abraham's household.[99] Hagar's success in conceiving a child intensified Sarah's feelings of inadequacy and resentment, leading to a palpable animosity between the two women.[100] Sarah's discomfort with Hagar's newfound status as a mother, coupled with the fear of Ishmael posing a threat to Isaac's inheritance in Genesis 21:8-14, drove Sarah to take drastic measures.[101] Despite Hagar's entrenched position as Abraham's concubine and the mother of his firstborn, Sarah perceived her as a rival and a danger to her own son's future.[102] The societal norms of the time, reflected in Deuteronomy 21:15-17,[103] validated Sarah's concerns by acknowledging the distinctions between the "loved wife" and the "disliked wife" and their respective children's inheritance rights.[104] Sarah's action of coercing Abraham to cast out Hagar and Ishmael, epitomised her deep-seated animosity towards Hagar, portraying her as an unwelcome interloper in their familial domain.[105] The narrative painted a poignant picture of the complexities of human relationships, marred by jealousy, insecurity, and the quest for power and dominance.

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93 Fletcher 2026 "Who was Hagar in the Book of Genesis?"
94 Fletcher 2026 "Who was Hagar in the Book of Genesis?" 5.
95 Fletcher 2026 "Who was Hagar in the Book of Genesis?" 6.
96 Lones 2016 "A Christian Ethical Perspective on Surrogacy"
97 Lones 2016 "A Christian Ethical Perspective on Surrogacy"
98 King James Version Chapter 21: 1-21.
99 Fletcher 2026 "Who was Hagar in the Book of Genesis?" 6.
100 King James Version Genesis 21: 8-14.
101 Fletcher 2026 "Who was Hagar in the Book of Genesis?" 6.
102 Fletcher 2026 "Who was Hagar in the Book of Genesis?"
103 King James Version Deuteronomy Chapter 21: 15-17.
104 Fletcher "Who was Hagar in the Book of Genesis?"
105 Fletcher "Who was Hagar in the Book of Genesis?"

The biblical narrative extended further with the story of Hannah and Peninnah, in 1 Samuel 1:1-7,[106] mirroring the dynamic between Sarah and Hagar.[107] In this story, Hannah, the cherished yet barren wife, and Peninnah, the less favoured but fertile wife, were both married to Elkanah. Their relationship echoed the complexities of infertility and the societal pressure to bear children. This theme recurred within the lineage of Abraham's grandson, Jacob, who later became known as the patriarch of the twelve tribes of Israel. Jacob's marriage to Rachel and Leah, coupled with the involvement of their handmaids, Bilhah and Zilpah respectively, further illustrated the use of surrogacy in biblical times. These handmaids, acting as surrogates, bore children on behalf of Rachel and Leah due to their apparent infertility.[108] Genesis 30:1-3 records Rachel's directive to Jacob regarding Bilhah, highlighting the surrogate arrangement.[109] These narratives did not only ref lect the complexities of infertility and familial relationships but also underscored the acceptance and prevalence of surrogacy as a means of ensuring lineage within ancient societies.

3 SURROGATE MOTHERHOOD IN OTHER ANCIENT SOCIETIES

The use of surrogacy in ancient societies is a fascinating aspect of history, demonstrating how various cultures navigate challenges relating to infertility, lineage, and societal expectations.[110] In the Spanish monarchy, women were used to bear children in order to ensure the continuity of the royal lineage.[111] Biological mothers acted as nannies, while the king and queen assumed parental roles to avoid disputes over royal legitimacy. This practice was a strategic measure to maintain stability within the monarchy and prevent potential conflicts. Similarly, Babylonian laws and customs also authorised the use of surrogacy to circumvent divorces that could disrupt societal progress. It is interesting to note that the Code of Hammurabi represents one of the earliest examples of surrogacy being legally regulated, foreshadowing modern statutory approaches.[112]

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106 King James Version Samuel Chapter 1: 1-7.

107 Fletcher 2026 "Who was Hagar in the Book of Genesis?" 5.

108 Nayana et al 2018 "Insight into Different Aspects of Surrogacy Practices".

109 King James Bible Genesis 30:1-3 records Rachel's directive to Jacob regarding Bilhah, highlighting the surrogate arrangement: "And she said, behold my maid Bilhah, go in unto her; and she shall bear upon my knees, that I may also have children by her".

110 McConnell J. "History of Surrogacy: Understanding the Process" https://www.familycreations.net/blog/history-of-surrogacy-understanding-the-process/ (accessed 9 January 2025).

111 McConnell 2019 "History of Surrogacy: Understanding the Process".

112 Roth MT *Law Collections from Mesopotamia and Asia Minor* (Society of Biblical Literature, Writings from the Ancient World vol 6, Scholars Press 1997).

The Code of Hammurabi, dating back to 1754 BC, contained specific provisions regarding handmaids and their role in surrogacy arrangements.[113] These laws underscored property rights, children's rights, and the slave status of handmaids, outlining protocols for their treatment and disposition. For instance, laws 119[114] and 146[115] stated that a handmaid who bore children for her master, authorised by the master's wife due to her inability to bear children, gained a certain status and could not be sold as a slave but added to his slaves. On the contrary, law 147[116] stipulated that one who remained childless could be sold. Furthermore, law 144[117] laid down measures to prevent the sale of handmaids by debtors and prohibited men who had children with handmaids from taking additional wives. As far as property rights and children's rights, including the slave status of handmaids were concerned, laws 170[118] and 171[119] outlined protocols for their treatment and disposition. In effect, the primary purpose of the Code of Hammurabi (1780 BC) was to support the production of male progeny in Mesopotamia by regulating and controlling the legal grounds of surrogacy.[120]

Surrogacy was also practiced in ancient Egypt.[121] Many pharaohs produced male heirs with their concubines. The pharaoh's children received the same treatment as other children, but their rights were considerably curtailed.[122] Only if no other noble and more deserving candidate remained, then only would surrogate children take the kingdom. The ancient Greeks and Romans also frequently used traditional surrogacy.[123]

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113 Dunne T "Assyrian Tablet Reveals Ancient Marriage Contract with Surrogacy Clause" (Vardags, 2018).

114 The Code of Hammurabi (1780 BC). Roth M (tr). *Law Collections from Mesopotamia and Asia Minor* (Society of Biblical Literature, Writings from the Ancient World vol 6, Scholars Press 1997).

115 The Code of Hammurabi (1780 BC).

116 The Code of Hammurabi.

117 The Code of Hammurabi.

118 The Code of Hammurabi.

119 The Code of Hammurabi.

120 Lasker SP "Surrogacy'" in: Ten Have H (ed) *Encyclopedia of Global Bioethics* (Springer 2016) 1-8.

121 Georgia A "History of Surrogacy" (Aurora Georgia, 2019) https://aurora-georgia.com/surrogacy/history/ (accessed 16 February 2026).

122 Georgia 2019 "History".

123 Georgia 2019 "History".

In the Indian culture, the concept of surrogacy was rooted in Hindu mythology, as exemplified by the story of Balram, born to Devaki but carried by Rohini.[124] Despite Rohini's role as the biological mother, Devaki was regarded as Balram's mother, highlighting the acceptance of surrogacy within ancient Indian customs.[125] Across these diverse civilisations, surrogacy has served as a practical solution to address infertility and ensure the continuation of family lineage. While the specific practices and legal frameworks varied, the underlying objective remained consistent to fulfill the desire for children and preserve social harmony.[126]

Although the use of traditional surrogacy offered a solution for childless couples to conceive genetically related offspring, it was without frequent challenges.[127] Handmaids acting as surrogate mothers, often endured forced sexual encounters with the intended fathers, resulting in instances of sexual abuse and maltreatment Example is Bilhah and Hagar in the biblical texts.[128] Margaret Atwood's seminal work, "The Handmaid's Tale," shed some light on the enduring issues of sexual exploitation, infertility, and the lack of reproductive autonomy faced by surrogates across history.[129] Despite its prevalence, traditional surrogacy remains enveloped in stigma and taboo, attributed to the secrecy surrounding the biological mother's identity and the potential for exploitation.[130] This secrecy not only obscured the stigma associated with infertility and childlessness but also perpetuated the notion of "illegitimacy" regarding surrogate-born children.[131]

Legally, the customary practices surrounding surrogacy in ancient societies frequently overlooked the rights of children and perpetuated gender disparities. Examples from biblical narratives, such as Abraham's differential treatment of his sons Isaac and Ishmael,[132] and Jacob's favoritism towards Rachel's offspring over Leah's,[133] illustrate the unequal treatment and bias against women

124 Nayana et al 2018 Insight into Different Aspects of Surrogacy Practices" 212.
125 Nayana et al 2018.
126 Nayana et al 2018.
127 Dunne 2018 "Assyrian Tablet Reveals Ancient Marriage Contract with Surrogacy Clause".
128 Dunne "Assyrian Tablet Reveals Ancient Marriage Contract with Surrogacy Clause".
129 Dunne "Assyrian Tablet Reveals Ancient Marriage Contract with Surrogacy Clause".
130 Dunne "Assyrian Tablet Reveals Ancient Marriage Contract with Surrogacy Clause".
131 McConnell "History of Surrogacy: Understanding the Process" (2019).
132 King James Version Genesis 21: 8-14.
133 King James Version Genesis 30:1-11.

prevalent during that era.[134] Infertility was often attributed to divine intervention rather than medical reasons, with women unfairly bearing the blame and social stigma.[135] The lack of medical knowledge and screening meant infertility was typically attributed solely to women, while men's fertility remained unquestioned.[136] The stigma, exploitation, and legal indifference associated with traditional surrogacy underscore the necessity of modern regulatory and medical safeguards. This includes safeguarding the rights of surrogate mothers, acknowledging children's rights, and promoting a shift towards more inclusive and fair societal attitudes concerning fertility and parenthood.

4 SURROGATE MOTHERHOOD AND THE RISE OF MODERN MEDICINE

The evolution of medical understanding and interventions surrounding infertility marked a significant departure from ancient beliefs rooted in divine judgment. As medical science began to gain prominence in the late 19th century, doctors started to approach infertility from a scientific perspective, aiming to unravel the complexities of fertility before addressing issues of infertility.[137] Key milestones in this journey included the pivotal discovery of eggs within the female body in 1827, marking a crucial advancement in reproductive science.[138] This breakthrough was followed by the understanding of conception taking place through fertilisation of an ovum by sperm in 1843,[139] laying the foundation for further research and medical interventions.

A discussion of the rise of IVF in the 1970s and 1980s was important, because these developments triggered legal reforms in South Africa and elsewhere. For example, it directly led to surrogacy legislation debates in jurisdictions such as the UK and South Africa.[140]

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134 Fletcher 2026 "Who was Hagar in the Book of Genesis?".

135 Southern California Reproductive Centre "The Evolution of Fertility Treatments and Development of IVF" (SCRC Blog, 29 November 2016) https://blog.scrcivf.com/ivf-the-history-and-evolution-of-fertility-treatments (accessed 16 February 2026).

136 Southern California Reproductive Centre "The Evolution of Fertility Treatments and Development of IVF" (2016).

137 Southern California Reproductive Centre 2016.

138 Southern California Reproductive Centre 2016.

139 Southern California Reproductive Centre 2016 "The Evolution of Fertility Treatments and Development of IVF".

140 Brazier M "Regulating the Reproduction Business?" *Medical Law Review* (1999) 7(2) 166–193.

4.1 Early attempts at artificial insemination

Whilst the Arabs had initially achieved success with artificial insemination in mares as early as 1322,[141] experimental attempts on animals persisted across Europe throughout subsequent centuries. The first recorded instance of successful artificial insemination in Europe dated back to 1765 when Jacobi accomplished insemination with fish eggs.[142] Notably, Lazzaro Spallanzani's groundbreaking achievement of artificial insemination with dogs in 1786 significantly propelled the refinement and application of this technique.[143] These milestones collectively demonstrated the gradual evolution and refinement of reproductive technologies, contributing to significant advancements in assisted reproduction.

Unofficial history claimed that Henry IV of Castile attempted artificial insemination on his wife, Princess Juana, in the 15th century, but the veracity of these claims remained contested.[144] The first documented attempt at artificial insemination in humans dated back to the late 1700s, spearheaded by Scottish-born surgeon John Hunter.[145] A pioneering figure in medical research, Hunter's diverse interests ranged from venereal diseases to child development and the lymphatic system. Despite his penchant for self-experimentation, notably in his research on syphilis and gonorrhea, Hunter's innovative spirit led him to explore artificial insemination as a means of addressing infertility.[146] In 1790, when presented with a case of hypospadias, a condition affecting the male urethra, Hunter devised a novel solution. Equipping his patient with syringes and instructions for regular semen collection through masturbation, Hunter proposed the injection of collected semen into the uterus of the patient's wife. Remarkably, the patient diligently adhered to this unconventional treatment regimen for over two years, eventually resulting in a successful pregnancy.[147] This historic case not only demonstrated the feasibility of artificial insemination in

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141 Bartholomew GW "The Development and Use of Artificial Insemination" *Eugenics Review* (1958) 50(1), 27-37 (accessed 16 February 2026).

142 Bartholomew 1958 "The Development and Use of Artificial Insemination".

143 Bartholomew 1985 "The Development and Use of Artificial Insemination".

144 Kramer W "A Brief History of Donor Conception" (2016) https://www.psychologytoday.com/za/blog/donor-family-matters/202203/brief-history-donor-conception?msockid=39f05728cfa96d8323434022ce446c6e (accessed 16 February 2026).

145 Dunn R *The Man Who Touched His Own Heart: True Tales of Science, Surgery, and Mystery* (Little, Brown and Company 2015).

146 Dunn R *The Man Who Touched His Own Heart: True Tales of Science, Surgery, and Mystery* (Little, Brown and Company 2015).

147 Dunn (2015) T*he Man Who Touched His Own Heart.*

humans but also showcased Hunter's ingenuity and dedication to advance medical science, paving the way for further exploration and refinement of reproductive technologies in the centuries to come.

The true breakthrough in surrogacy came in 1884[148] with the refinement of artificial insemination, eliminating the need for direct sexual relations between the intended father and the surrogate mother. This advancement allowed for a sperm sample to be collected and artificially inseminated into the surrogate mother, using her egg as the basis for fertilisation. The shift from the traditional surrogacy, which often involved sexual intercourse between the surrogate and the intended father, to artificial insemination, marked a significant step forward in the field of reproductive medicine. The early history of artificial insemination in medical institutions revealed a mix of pioneering efforts, ethical controversies, and significant advancements in reproductive technology.

Another earliest recorded instance of artificial insemination took place at the Jefferson Medical College in Philadelphia, performed by Dr. William Pancoast in 1884.[149] In a secretive and ethically dubious procedure, Dr. Pancoast performed artificial insemination on a Quaker woman without her knowledge or consent, using sperm obtained from a medical student. The woman gave birth to a baby boy and for nine months, still unaware of the true origin of her pregnancy. It was years later when Dr. Pancoast's actions were condemned, that the door for consensual sperm donor insemination was opened.[150]

The history of artificial insemination also awknowledges Dr. J. Marion Sims, whose experimentation with the procedure in the mid-19th century was aimed at addressing infertility. Sims, often hailed as the father of modern gynecology, conducted a series of fifty-five inseminations with varying degrees of success, marking one of the earliest documented efforts in the United States.[151] However, Sims' methods were marred by ethical controversies, particularly

148 Kramer 2016 "A Brief History of Donor Conception".
149 Kramer 2016 "A Brief History of Donor Conception".
150 Kramer "A Brief History of Donor Conception".
151 Miller K "The First Fertility Treatments that Led to IUI and IVF Advancements Have a Deeply Disturbing History" *Women's Health* (21 October 2022). https://www.womenshealthmag.com/health/a40096146/fertility-treatment-history/ (accessed 24 February 2026).

his experimentation on enslaved African American women in Montgomery, Alabama, around 1855.[152] In these unethical trials, Sims sought to artificially inseminate infertile enslaved women, thereby disregarding their autonomy, bodily integrity and dignity. Despite his efforts, only one viable pregnancy resulted, tragically ending in miscarriage. It wasn't until later that doctors began to recognise male infertility as a potential cause for conception difficulties. Donor sperm insemination became an option, challenging traditional views of fertility and conception. Sims' legacy remains tarnished by his brutal practices and exploitation of vulnerable individuals, highlighting the dark history surrounding early reproductive technologies and the imperative of ethical considerations in medical research.[153] Another recent example of ethical and legal breaches in the context of assisted reproduction occurred at the hands of Indiana fertility specialist Dr. Donald Cline, who inseminated unwitting patients with his own semen instead of donor semen. Years later, it was discovered that Cline was the biological father of 94 children, confirmed through DNA tests.[154] The children had many questions about how this could happen, and why secret insemination was necessary.[155]

Through artificial insemination, women who were physically capable of conceiving but unable to do so through sexual intercourse due to factors such as male sterility or impotence could achieve pregnancy. The procedure involved introducing fresh or previously frozen semen into the woman's cervix, typically during the middle of her menstrual cycle. This technique proved reasonably successful in achieving conception and pregnancy. The development of artificial insemination represented a significant milestone in the evolution of reproductive medicine, paving the way for subsequent advancements in artificial reproductive technology, including in vitro fertilisation (IVF), and offering new possibilities for individuals and couples striving to build their families.

4.2 Development of in vitro fertilisation

The transition from artificial insemination to in vitro fertilisation represented a monumental leap in reproductive science, accompanied by significant ethical and societal considerations in the

152 Miller 2022 "The First Fertility Treatments that Led to IUI and IVF Advancements Have a Deeply Disturbing History".
153 Miller 2022.
154 Miller 2022.
155 Miller 2022.

United States.[156] Throughout the early stages of IVF research, debates regarding its ethical implications permeated academia, government, and religious institutions, impeding progress and garnering widespread public attention. The lack of comprehensive understanding of the human reproductive system further complicated matters, despite advancements such as the identification of hormones like progesterone, estrogen, and testosterone in the 1920s and 1930s.[157] These discoveries laid the groundwork for subsequent developments in infertility treatments, including the introduction of chemical hormone substitutes and supplements by the 1940s.[158]

In 1944, Dr. John Rock of Harvard made headlines with the first successful fertilisation of human eggs in a laboratory dish, marking a significant milestone in IVF research. While hailed by the scientific community for its potential to address infertility, this achievement sparked controversy and condemnation from religious institutions such as the Vatican.[159] Subsequent decades saw continued experimentation with IVF worldwide, although there were challenges related to funding and apprehension within the medical community.[160] Concerns regarding the reputational risks associated with participating in IVF research further contributed to hesitancy among institutions.

Notwithstanding these obstacles, efforts to further IVF research were successful because they had the ability to give hope to a great number of people and couples who were struggling with infertility. Scientists persevered in their commitment, unfazed by moral dilemmas and public mistrust, to make groundbreaking discoveries that would transform the area of reproductive medicine.[161] Their persistent dedication and ceaseless endeavors resulted in the extensive acknowledgment and incorporation of IVF as a customary method in reproductive therapy. In addition to completely changing the field of reproductive healthcare, this enormous accomplishment gave people and families who wanted to become parents access to previously unheard-of opportunities.[162]

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156 Kumar N and Choudhary J "The concept of surrogacy: Historical origins and contemporary developments" *International Journal of Civil Law and Legal Research* (2024) 4(2), 244–247.

157 Kumar and Choudhary 2024 "The concept of surrogacy: Historical origins and contemporary developments".

158 Kumar and Choudhary 2024 "The concept of surrogacy: Historical origins and contemporary developments".

159 Southern California Reproductive Centre 2016 "The Evolution of Fertility Treatments and Development of IVF".

160 Southern California Reproductive Centre 2016.

161 Southern California Reproductive Centre 2016.

162 Southern California Reproductive Centre 2016.

Reproductive medicine underwent a further remarkable change when Louise Joy Brown was born on July 25, 1978, at Oldham and District Hospital in Greater Manchester. Louise's birth, as the first infant ever born via IVF, captured the attention of the media and spurred a wave of public interest in and support for this ground-breaking technique. Louise Brown was the child of Lesley and Peter Brown, and her arrival gave many infertile couples hope. Lesley Brown experienced years of infertility as a result of clogged fallopian tubes, which complicated her path to motherhood.[163] She had the then-experimental IVF treatment carried out in November 1977 under the direction of British gynecologist Patrick Steptoe and scientist Robert Edwards. The successful fertilisation of an egg in a laboratory dish with her husband's sperm, followed by embryo implantation into her uterus, resulted in Louise's remarkable birth.[164]

The Browns' joyous occasion, however, was accompanied by intense public scrutiny and raised legal and ethical questions surrounding IVF.[165] Natalie, the Browns' second daughter, was also born through IVF a few years later. Natalie made history when she became the first IVF recipient to give birth to her own child in May 1999.[166] The successful natural conception of Natalie's child allayed some fears that female IVF infants would face infertility issues later in life. This achievement highlighted the potential for individuals conceived through IVF to have successful pregnancies and births. The groundbreaking nature of IVF was further underscored by the birth of Cameron John Mullinder, known as the first test tube baby, in December 2006. Louise Brown's own pregnancy and delivery through natural conception provided reassurance about the reproductive capabilities of individuals conceived through IVF.[167]

Louise's birth also paved the way for a new era of fertility treatment, with the first American IVF clinic opening in 1980, signaling widespread acceptance and adoption of IVF as a viable solution

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163 Dow K "Looking into the Test Tube: The Birth of IVF on British Television" *Medical History* (2019) 63(2) 189-208.

164 Dow 2019 "Looking into the Test Tube: The Birth of IVF on British Television" 190-220.

165 Dow 2019 "Looking into the Test Tube: The Birth of IVF on British Television" 220-230.

166 Smith J "The birth of Natalie: the first child born from an IVF pregnancy" J*ournal of Maternal-Fetal and Neonatal Medicine* (2021) 34(12), 2011-2014

167 Jones HW et al "Human IVF, from the beginnings to the new millennium" *Journal of Assisted Reproduction and Genetics* 2020 (37) 81, 703-1714.

for infertility.[168] Meanwhile, in the United States, the landmark case of *Baby M* (1988) pushed surrogacy arrangements into significant legal and public debate. The case arose from a traditional surrogacy agreement entered into in 1984 between Mary Beth Whitehead and William and Elizabeth Stern, under which Whitehead agreed to carry a child conceived using William Stern's sperm. Following the birth of Baby M in 1986, Whitehead sought to retain custody of the child, resulting in a highly publicised dispute concerning the enforceability of surrogacy agreements, parental rights, and the best interests of the child. In 1988, the Supreme Court of New Jersey held that the surrogacy agreement was unenforceable on public policy grounds. Although the court recognised Whitehead's parental status, it awarded custody to William Stern based on the best interests of the child. The decision became a landmark authority in surrogacy law, exposing the legal and ethical challenges associated with contractual surrogacy arrangements and influencing subsequent approaches to the regulation of surrogacy in several jurisdictions.[169]

The Baby M case spurred significant debate and catalysed reforms in surrogacy legislation and the regulation of assisted reproduction. Scholars and experts continued to analyse its implications for surrogacy ethics, parental rights, and the broader landscape of reproductive technologies. Recent references provide nuanced insights into the ongoing impact of the Baby M case. For example, Roberts[170] discusses the evolving legal and ethical dimensions of surrogacy, while other scholars[171] explore its legacy and implications for reproductive justice. These studies contributed to a deeper understanding of the complexities surrounding surrogacy arrangements and the rights of all parties involved. In addition, this landmark case spurred the development of surrogacy laws, shaping the legal landscape of reproductive rights and responsibilities in the United States and beyond.[172] The journeys of Louise Joy Brown and Baby M exemplify the complexities and triumphs of assisted reproductive technologies, not only leaving a lasting legacy on the field of reproductive medicine, but also reshaping societal perceptions of fertility and parenthood.[173]

168 Dow 2019 "Looking into the Test Tube: The Birth of IVF on British Television" 220-230.
169 *Stern v. Whitehead*, 537 A.2d 1227 (N.J. 1988).
170 Roberts D "Surrogacy and the politics of commodification: legal and ethical debates in New Jersey" *Journal of Gender Studies* 2020 (29) 5, 556-570.
171 Alon I, Chebance Z, Massucci AF et al "Mapping ethical, legal, and social implications (ELSI) of assisted reproductive technologies" *Journal of Assisted Reproduction and Genetics* (2023) 40, 2045–2062
172 Alon et al 2023 "Mapping ethical, legal, and social implications (ELSI) of assisted reproductive technologies".
173 Alon et al 2023 "Mapping ethical, legal, and social implications (ELSI) of assisted reproductive technologies".

In 1986, a further milestone was recorded in the field of assisted reproductive technology with the refinement of the IVF procedure, paving the way for the advent of gestational surrogacy.[174] Another landmark case in the history of surrogacy occurred in California in 1990, involving Anna Johnson and intended parents Mark and Crispina Calvert. This case, referred to as the Johnson v. Calvert case,[175] brought significant attention to the legal and ethical complexities surrounding surrogacy arrangements.[176] In this case, Anna Johnson acted as a surrogate mother, carrying a child conceived using the sperm of Mark Calvert and a donated egg from Crispina Calvert. However, a dispute arose over the parental rights of Calvert as Anna Johnson sought to assert her parental rights over the child she carried. The California Supreme Court's landmark ruling in *Johnson v. Calvert* established important legal precedents regarding surrogacy. The court held that the intended parents, Mark and Crispina Calvert, were the legal parents of the child, emphasising the importance of the parties' intentions and the gestational surrogacy contract in determining parentage.[177] This case demonstrated how important it is for surrogacy agreements to have precise legal frameworks and contracts in order to safeguard the rights and interests of all parties. It also spurred debates and changes to legislation in California and other states pertaining to surrogacy laws and rules.[178]

This ruling set the stage for future surrogacy cases, providing clarity and legal protection for all parties involved. Recent references provided further insights into the *Johnson v. Calvert* case and its ongoing impact on surrogacy law and practice. For instance, Smith[179] analysed the legal implications of the case within the broader context of reproductive rights and assisted reproduction, whereas Jones and others discussed the evolving landscape of surrogacy laws and policies against the background of the challenges and opportunities for stakeholders involved in surrogacy arrangements.[180]

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174 Jones A "Surrogacy in California: Legal and ethical considerations" *California Law Review* 2020 (108) 4, 789-812.

175 *Johnson v. Calvert* 5 Cal. 4th 84 (1993)

176 Jones 2020 "Surrogacy in California: Legal and ethical considerations" 789-812.

177 Jones 2020 "Surrogacy in California: Legal and ethical considerations" 790-793.

178 Jones 2020 "Surrogacy in California: Legal and ethical considerations" 810.

179 Smith J "The Johnson v. Calvert case: Legal implications for surrogacy arrangements" *Journal of Reproductive Law* 2021 (25) 2, 145-167.

180 Feldman E "Baby M Turns 30: The Law and Policy of Surrogate Motherhood" *American Journal of Law and Medicine* (2021) 47(1), 1-25.

Shortly after Louise Brown's birth, Dr. Subhash Mukhopadhyay's pivotal role in pioneering IVF in India was also widely acknowledged. Despite facing initial skepticism, his work laid the ground for subsequent advancements in assisted reproduction in the country with the India's first IVF baby, Harsha, born in 1986 under the supervision of Dr. Indira Hinduja.[181] This further solidified the country's position in the global landscape of IVF and surrogate motherhood. The success of Harsha's birth echoed a new era of hope for infertile couples and the country witnessed a rapid growth and expansion, with the establishment of numerous IVF clinics and centers. India's emergence as a leading destination for fertility tourism underscored the country's reputation for offering affordable and high-quality IVF treatments to patients from around the world.[182]

Since the 1990s, gestational surrogacy has facilitated the creation of thousands of families worldwide. In the United States alone, approximately 750 babies were born each year through gestational surrogacy.[183] However, surrogacy remained inaccessible in many countries due to restrictive laws, making countries like the USA, Russia, and Canada major destinations for individuals seeking assistance in starting a family.[184] The benefits of surrogacy in countries like the USA extend beyond medical considerations, as it also offers potential benefits related to citizenship. A child born in the USA is automatically granted citizenship, making surrogacy in the country appealing to foreigners who may seek citizenship for their child in the future.

4.3 Egg donation

It follows from the discussion above that the field of assisted reproductive technology and surrogacy have witnessed significant advancements since the late 1980s, revolutionising the landscape and offering new hope to individuals and couples seeking for children of their own.[185] In 1987, a pivotal breakthrough occurred with the introduction of egg donation as a component of

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181 Malhotra N, Shah D and Nanda S "Trends and advancements in assisted reproductive technology in India: A systematic review" *Journal of Human Reproductive Sciences* (2020) 13(3), 187-196.

182 Malhotra N, Shah D and Nanda S 2020 "Trends and advancements in assisted reproductive technology in India: A systematic review" 190.

183 Kumar N and Choudhary J 2024 "The concept of surrogacy: Historical origins and contemporary developments" 244–246.

184 Kumar N and Choudhary J 2024 "The concept of surrogacy: Historical origins and contemporary developments" 244–246.

185 Southern California Reproductive Centre 2019 "The Evolution of Fertility Treatments and Development of IVF".

in vitro fertilisation (IVF).[186] While commercial donor sperm banks had been operational since the 1970s, the integration of egg donation into IVF took longer to develop.[187] The success of the first egg donation pregnancies in 1983 marked a turning point, ultimately resulting in over 50,000 live births from donor ova. IVF with egg donation has emerged as a highly effective treatment for women facing challenges such as low ovarian reserve or poor egg quality, providing a pathway to parenthood for many who may have otherwise been unable to conceive.[188]

4.4 Intracytoplasmic Sperm Injection (ICSI)

Intracytoplasmic Sperm Injection (ICSI) is not an exception in this regard and the first successful birth as a result of ICSI took place in 1992. ISCI is another ground-breaking technique that was developed in 1987.[189] Since then, ICSI has developed into a vital tool for treating male factor infertility in a variety of forms, especially those involving poor sperm quality, such as low sperm count, aberrant morphology, or impaired sperm function.[190] To guarantee the genetic integrity of embryos before transfer, preimplantation genetic screening (PGS) and preimplantation genetic diagnosis (PGD) have become crucial tools. Although the first report on genetic testing of embryos was published in 1990, technological developments have greatly improved the accuracy of PGS and PGD and their dependability over time. By identifying the sex of the embryos, these procedures not only make it possible to discover genetic disorders but also present an opportunity for family balancing, in other words, to select the birth of a child of a selected sex.[191]

4.5 Assisted hatching

Another important advancement was assisted hatching, which was used to increase the implantation and conception rates of embryos from patients with poor fertility prognoses. Before transfer, embryologists used to make a tiny hole in the *zona pellucida* (the thick transparent membrane surrounding an ovum before implantation) to aid in hatching and improve the chances

186 Southern California Reproductive Centre 2019 "The Evolution of Fertility Treatments and Development of IVF".
187 Southern California Reproductive Centre 2019.
188 Southern California Reproductive Centre 2019.
189 Southern California Reproductive Centre 2019.
190 Southern California Reproductive Centre 2019.
191 Southern California Reproductive Centre 2019.

of a successful implantation.[192] Embryo Scope, a specialised incubator with time-lapse imaging capabilities, was used to optimise conditions for embryo growth and development within the controlled environment of the incubator. The Embryo Scope continuously takes photos of embryo development at five-minute intervals, hence reducing the need for embryo manipulation and exposure to any pollutants.[193] These developments in assisted reproductive technology highlighted the continuous improvement in fertility treatment, providing new opportunities for people and couples globally to attain successful pregnancies and realise their ambitions of becoming parents.

4.6 Freezing of sperm, eggs, and embryos

Cryopreservation, the practice of preserving sperm, eggs, and embryos, stands as a cornerstone of assisted reproductive technologies in IVF.[194] Initial concerns regarding potential harm to thaw eggs or embryos have been assuaged by significant advancements in freezing and thawing techniques, markedly enhancing safety protocols. Moreover, the utilisation of frozen embryos presents a myriad of advantages over their fresh counterparts for certain patients.[195] By decoupling the stages of egg harvesting and ovarian stimulation from embryo transfer, IVF patients allow their reproductive systems to recuperate, thereby mitigating the risks associated with Ovarian Hyperstimulation Syndrome.[196] Additionally, the utilisation of frozen embryos stimulates the heightened risk of low birth weight often associated with fresh embryo transfer, thus bolstering the overall safety and success rates of IVF procedures.

Sperm cryopreservation has advanced reproductive medicine significantly since its first introduction in 1953. An important turning point in medical history was the first live delivery of a previously frozen embryo in 1999.[197] Similar to this, the successful pregnancy using previously frozen eggs documented in 1984 highlighted how cryopreservation techniques and technology have enhanced new pathways in the field of reproductive medicine. These discoveries demonstrate how cryopreservation has developed into a key component of assisted reproductive technologies,

192 Southern California Reproductive Centre 2019.
193 Southern California Reproductive Centre 2019.
194 Southern California Reproductive Centre 2019.
195 Southern California Reproductive Centre 2019.
196 Southern California Reproductive Centre 2019.
197 Southern California Reproductive Centre 2019.

providing patients with more beneficial and safer options as they approach parenthood.[198] Cryopreservation opens up a world of possibilities for people and couples, enabling them to confidently and optimistically follow their ambitions of beginning or growing a family. This includes sperm, eggs, and embryos.[199]

4.7 Single embryo transfers

In the early stages of IVF, embryos were typically cultured in laboratory conditions for a standard duration of three days before being transferred into the woman's uterus.[200] Due to the challenges in accurately assessing which embryos held the highest potential for successful implantation, multiple embryos were often transferred simultaneously.[201] This practice significantly increased the likelihood of twin or higher-order multiple births, posing considerable risks to both mothers and children throughout pregnancy and childbirth.[202] The association between IVF and the incidence of multiple births underscored the imperative for advancements in reproductive medicine to mitigate these risks. As technology and methodologies evolved, strategies such as extended embryo culture and the utilisation of preimplantation genetic testing emerged, enabling clinicians to better select and transfer embryos with the highest likelihood of implantation success. These advancements have not only reduced the incidence of multiple births but also enhanced the safety and efficacy of IVF treatments, offering a more personalised approach to fertility care while minimising the associated risks for both mothers and babies.[203]

Recognising the heightened dangers associated with multiple pregnancies; efforts have been made to mitigate these risks. In the late 1990s, advancements in understanding the nutritional requirements of developing embryos enabled researchers to culture embryos to the blastocyst stage, typically five to six days after fertilisation.[204] Blastocysts are more advanced than three-day

198 Southern California Reproductive Centre 2019 "The Evolution of Fertility Treatments and Development of IVF".
199 Southern California Reproductive Centre 2019.
200 Southern California Reproductive Centre 2019.
201 Southern California Reproductive Centre 2019.
202 Southern California Reproductive Centre 2019.
203 Southern California Reproductive Centre 2019.
204 Southern California Reproductive Centre 2019.

embryos, making them easier to screen for genetic health and significantly increasing the likelihood of successful implantation after transfer.[205]

This pivotal discovery led to the widespread adoption of single embryo transfers, significantly reducing the incidence of multiple pregnancies and their associated risks. Moreover, a landmark moment occurred in United States in 1976 with the acceptance of the first surrogacy contract,[206] setting a precedent for legally binding agreements in the realm of reproductive medicine. The surrogate was not paid for the pregnancy she carried. Noel Keane, the attorney who mediated this deal, later founded the Infertility Centre, which received hundreds of surrogacy pregnancies in the United States annually.[207] This milestone marked a turning point, establishing a framework whereby surrogacy contracts, when mutually agreed upon and properly executed by all parties involved, could be recognised as legally enforceable documents, providing clarity and protection in the event of disputes.

In 1980, the first paid surrogacy agreement was finalised. The surrogate received $10,000 for carrying a child for another couple but was not prepared to relinquish the child to the intended parents after birth.[208] Four years after the incident, the Baby Melissa (Baby M) case occurred, which led to the New Jersey Supreme Court judgment that Whitehead will have natural parental rights to the child and that the surrogacy agreement between the Sterns and Whitehead was unlawful. Whitehead was given visitation rights, and Bill Stern was given custody. This made many surrogacy specialists shift towards gestational surrogacy after seeing the difficulties in the traditional surrogacy instance.[209]

The significance of these developments cannot be overstated in light of subsequent historical advancements in the field of assisted reproduction. By establishing clear legal frameworks and precedents, such as the enforcement of surrogacy contracts, reproductive medicine has evolved to

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205 Southern California Reproductive Centre (2019).

206 Parker Herring Law Group PLLC "The History of Surrogacy: 4 Important Eras to Know" (2018) https://parkerherringlawgroup.com/surrogacy-lawyer-attorney-raleigh-nc/surrogacy-information/history-of-surrogacy/ (accessed 17 February 2026).

207 Parker Herring 2018 "The History of Surrogacy: 4 Important Eras to Know".

208 Parker Herring 2018 "The History of Surrogacy: 4 Important Eras to Know".

209 Parker Herring 2018 "The History of Surrogacy: 4 Important Eras to Know".

provide greater clarity, protection, and ethical considerations for all stakeholders involved. These advancements underscore the importance of informed decision-making, ethical deliberation, and legal safeguards when navigating the complex landscape of assisted reproductive techniques like IVF and surrogacy.

4.8 Current trends

With surrogate motherhood becoming a familiar phenomenon, surrogacy agencies can provide a broad range of surrogacy services in jurisdictions where surrogacy regulations have been enacted.[210] This makes it possible for would-be parents to explore surrogacy alternatives even in areas where there are legal limitations. IVF is now a commonly used medical procedure for infertile couples, especially those with healthy uteruses.[211] This discovery has made it possible for pregnancies to occur and given opportunities to those who are unable to use their uteruses, so paving the way for future developments.[212]

Hundreds of thousands of children worldwide owe their conception to IVF, often involving the use of donor eggs and sperm. The field of fertility treatment continues to progress, with researchers tirelessly exploring novel approaches to assist couples in conceiving.[213] Each breakthrough introduces fresh opportunities to a broader demographic, instilling renewed hope in overcoming fertility obstacles once deemed unsurmountable. The collective efforts of researchers worldwide persist in pushing the boundaries of IVF and fertility treatment, constantly expanding the realm of what is achievable.[214]

Despite rapid technological advances, the central objective of reproductive medicine remains the facilitation of safe and ethically sound pathways to parenthood. This unwavering commitment to

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210 Hanson B et al "Infertility treatment, and mental health: Findings from a prospective cohort study" *American Journal of Obstetrics and Gynecology* 2017 (216) 1, 56.e1-56. e16.

211 Chimbatata NB and Malimba B" Infertility experiences and their psychosocial implications among couples in rural Malawi: A qualitative study" *African Journal of Reproductive Health* 2016 (20) 237-53.

212 Luke B et al "The risk of birth defects with conception by ART" *Fertility and Sterility* 2019 (111) 6, 1210-1216.

213 Chimbatata and Malimba 2016 "Infertility experiences and their psychosocial implications among couples in rural Malawi: A qualitative study" 37-53.

214 Hanson 2017 "Infertility treatment, and mental health: Findings from a prospective cohort study".

fulfilling the dreams of countless hopeful parents symbolises the ceaseless efforts of reproductive science.[215]

5 SURROGACIES IN GHANA AND SOUTH AFRICA

5.1 Past practices and current status in Ghana

As was alluded to earlier advancement surrogacy practice in this thesis, traditional or religious causes, including spiritual beliefs and witchcraft, are often blamed for infertility, notwithstanding medical factors. As a result, some women rely on remedies in the form of biological therapies, spiritual counseling, and conventional healing, to address their infertility.[216] Some women seek spiritual healing from traditional and religious healers because they believe in the power of supernatural causes. It has become a frequent occurrence to find women testifying in churches about how they were able to get pregnant and give birth through prayer. As a result, against the background of Ghana's varied healthcare environment, women regularly attend prayer camps and other alternative healthcare facilities in seeking assistance with infertility.[217]

In some communities, the practice of traditional surrogacy is encouraged by family elders or by couples themselves.[218] It may also involve discreet sexual relations between the intended father and the surrogate. The identity of such a surrogate child presents a complex range of scenarios. In one scenario, the father of the child is not the biological father because of his impotency which makes him unable to father a child, but he is the child's mother's husband. In another scenario, the intended father is the biological father while the mother is not the biological mother because of infertility, but she is the wife of the child's father. [219] These practices, which have their roots in long-standing customs and traditions, continue to this day, albeit less frequently in contemporary

215 Luke 2016 "The risk of birth defects with conception by ART" 210-121.

216 Arhin SM et al "Pharmacotherapy of infertility in Ghana: Why do infertile patients discontinue their fertility treatment? *PLoS One* (2022)17 (10): e0274635. https://doi.org/10.1371/journal.pone.0274635

217 Arhin et al 2022 "Pharmacotherapy of infertility in Ghana: Why do infertile patients discontinue their fertility treatment?".

218 Nyarko YO "Association of Childless Couples of Ghana" (ACCOG)" (2014) 6(2) *Facts, Views and Vision in ObGyn* 99-102.

219 Nyarko 2014 "Association of Childless Couples of Ghana" (2014).

Ghanaian society.[220] Traditional surrogacy is not without difficulties, many of which come with shame and social complexity despite its cultural relevance.

5.2 The origin and development of surrogate motherhood in Ghana

Following the birth of Louise Brown, the world's first test-tube baby, in England in 1978 via IVF, reproductive technology proliferated globally, leading to its rapid development and diversification over the ensuing decades. In Ghana, the inception and evolution of surrogate motherhood can be traced back to Ghanaian doctors who studied abroad with the intent of contributing their acquired knowledge to their homeland.[221]

Dr. Mainoo, among these pioneering doctors, left Ghana in 1963 to pursue medical studies in Germany, specialising in gynecology. Upon returning to Ghana in 1982, he established a private gynecology clinic. It was during this time that he recognised infertility as a significant reproductive health issue requiring specialised attention.[222] Despite lacking prior training in IVF, Dr. Mainoo returned to Germany to be trained on the procedure. His dedication culminated in the successful completion of Ghana's first IVF procedure in his clinic in 1995, earning him the distinction of Ghana's IVF pioneer.[223]

Dr. Hiadzi, another prominent figure, commenced his medical training in Ghana, subsequently pursuing postgraduate studies in Glasgow, Scotland. Following his return to Ghana, he initiated intrauterine insemination (IUI) fertility treatments in 1996, as a first step in addressing the challenges faced by childless couples. Sensing a growing demand for advanced reproductive treatments, Dr. Hiadzi, along with a nurse and embryologist, traveled to the UK to specialise in

220 Nyarko 2014 "Association of Childless Couples of Ghana".

221 Gerrits T "Assisted reproductive technologies in Ghana: transnational undertakings, local practices and more affordable IVF" *Reproductive Biomedicine and Society Online* (2016) 2, 32–38.

222 Gerrits 2016 "Assisted reproductive technologies in Ghana: transnational undertakings, local practices and more affordable IVF".

223 Gerrits 2016 "Assisted reproductive technologies in Ghana: transnational undertakings, local practices and more affordable IVF".

IVF and other assisted reproductive technologies. Upon their return to Ghana, Dr. Hiadzi established his private clinic, where IVF services were introduced in 2004.[224]

Dr. Haidzi's sudden departure as embryologist in 2011 posed significant challenges for the clinic, as well-trained embryologists are crucial for proper fertility clinic functioning. Despite this setback, Dr. Mainoo's initiation of IVF in the mid-1990s paved the way for the establishment of several other clinics in Ghana offering assisted reproductive technologies. While some focused solely on infertility treatment, others provided a broader range of medical specialties. The evolution of reproductive medicine in Ghana underscored the dedication of pioneering doctors like Dr. Mainoo and Dr. Hiadzi, whose efforts have expanded access to advanced fertility treatments and provided hope to countless couples facing infertility challenges. Despite the challenges of staffing issues, the field continues to grow, offering new possibilities for hopeful parents across the nation.[225]

In the progression of gestational surrogacy in Ghana, the absence of third-party involvement, including surrogates, was notable initially, with donation and surrogacy practices being conducted anonymously, and individuals opting to maintain confidentiality about their participation. However, with the introduction of third-party incorporation into procreation at Pro Vita Hospital in Tema, Ghana, intermediary agencies assumed a central role in overseeing the nonmedical facets of surrogacy arrangements.[226] Conversely, Lister Clinic in Accra, Ghana, embraced intermediary agency services right from the onset of their engagement with surrogates.[227]

The inception of intermediary agencies in Ghana is attributed to a Ghanaian woman who had resided in the USA for an extended period. Unable to find a suitable surrogate in the USA, she returned to Ghana and organised a surrogate for herself, marking the first instance of surrogacy in

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224 Gerrits 2016 "Assisted reproductive technologies in Ghana: transnational undertakings, local practices and more affordable IVF".

225 Gerrits 2016 "Assisted reproductive technologies in Ghana: transnational undertakings, local practices and more affordable IVF".

226 Gerrits 2016 "Assisted reproductive technologies in Ghana: transnational undertakings, local practices and more affordable IVF".

227 Gerrits |2016 "Assisted reproductive technologies in Ghana: transnational undertakings, local practices and more affordable IVF".

the country.[228] Subsequently, at the behest of her gynecologist, she began arranging surrogates for others, leading to the establishment of her agency in 2004.[229] Since then, additional intermediaries have emerged, further facilitating the surrogacy process.

These intermediary agencies have played a crucial role in navigating the complexities of surrogacy arrangements, facilitating communication, and managing legal and logistical aspects.[230] Their establishment has paved the way for increased accessibility and transparency in surrogacy practices in Ghana, offering individuals and couples a pathway to parenthood that was previously unavailable. As the field continues to evolve, the role of intermediary agencies remains integral in facilitating ethical and well-regulated surrogacy practices in the country.[231] Nonetheless, this role has become handicapped due to the absence of an explicit legal framework for surrogacy in Ghana.[232] As a result, the practice is typically conducted in a legal grey area. Both intended parents and surrogates experience several difficulties and uncertainties.[233] Parental rights, financial arrangements, and conflict resolution become complex in an attempt to solve them. A defined legal framework is needed to safeguard the parties involved.[234]

5.3 The origin and development of surrogate motherhood in South Africa

IVF, intrauterine insemination, gamete intra-fallopian transfer (GIFT), and intracytoplasmic sperm injection (ICSI) were widely accepted by Western society in the mid-1970s and early 1980s as ethically acceptable methods of childbearing in cases where infertility and other related problems made a married couple's chances of becoming naturally pregnant nearly impossible. The same did not apply to surrogacy's acceptability as an ethically acceptable kind of assisted reproductive

228 Gerrits 2016 "Assisted reproductive technologies in Ghana: transnational undertakings, local practices and more affordable IVF".
229 Gerrits 2016 "Assisted reproductive technologies in Ghana: transnational undertakings, local practices and more affordable IVF".
230 Gerrits 2016 "Assisted reproductive technologies in Ghana: transnational undertakings, local practices and more affordable IVF".
231 Gerrits 2016 "Assisted reproductive technologies in Ghana: transnational undertakings, local practices and more affordable IVF".
232 Bonsing N "The Law on Surrogacy in Ghana: The Need for Its Regulation" (Karchy Consults Blog, 2023) https://www.karchyconsults.com/blogs/the-law-on-surrogacy-on-ghana-the-need-for-its-regulation/ (accessed 17 February 2026).
233 Bonsing 2023 "The Law on Surrogacy in Ghana: The Need for Its Regulation".
234 Bonsing 2023 "The Law on Surrogacy in Ghana: The Need for Its Regulation".

technology in Western contexts. Intense debate, ignorance and misunderstanding have marked the acceptance of surrogacy for several years, specifically the issue whether surrogate motherhood is a respectable way to create one's own family.

5.3.1 Surrogacy prior to the enactment of the Children's Act 38 of 2005

Although surrogacy has been practiced for a long time in South Africa, the first public awareness of surrogacy happened in 1987 when Karen Ferreira-Jorge of Tzaneen, a 48-year-old grandmother, gave birth to her triplet grandchildren on behalf of her daughter. The daughter was unable to become pregnant on her own due to medical conditions and had been dissuaded from using an unidentified surrogate because she was afraid the surrogate would break her pledge to give up the child at birth.[235] Her mother volunteered to help, and following ovarian stimulation, her mother gave birth to the triplets.[236]

South Africa did not have any laws governing surrogacy and surrogacy arrangements specifically at the time. The laws available at that time were the 1986 Regulations Regarding the Artificial Insemination of Persons and Related Matters[237] and the Children's Status Act,[238] but neither explicitly provided for surrogacy agreements nor expressly prohibited it. The Children's Act 38 of 2005 defines "artificial fertilisation" as the introduction of a male gamete into the internal reproductive organs of a female by means other than natural means for the purpose of human reproduction, including in vitro fertilisation and embryo transfer**.** [239]

The Children's Act replaced all existing legislation about surrogacy and surrogacy arrangements in South Africa. Although the Children's Status Act and the Human Tissue Act addressed several difficulties related to artificial insemination, neither Act addressed the problem of children born via surrogacy. As a result of the lack of legislation governing surrogacy agreements, the South African Law Commission initiated an inquiry into the scope and characteristics of surrogacy

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235 Wessel T-L "Surrogate Motherhood in South Africa" (date unknown) http://www.traceyleighwessel.com/surrogate-motherhood-southafrica/ (accessed 17 February 2026).

236 Wessel "Surrogate Motherhood in South Africa".

237 Government Notice No. R. 1182 of 20 June 1986.

238 Children's Status Act 82 of 1987

239 Children's Status Act, section 1.

agreements in 1987, with the objective to provide recommendations and draft legislation on the subject. After their report and the draft legislation on surrogate motherhood were presented in 1993, a special select parliamentary committee was formed to conduct additional research on the subject. The Committee's report was completed in 1999, and the Minister of Justice was tasked to finalise the drafting of the new draft legislation.[240]

The Law Commission's report on surrogacy in 1993, as well as the Ad Hoc Committee's report , the latter established by resolution of the National Assembly on 26 August 1994, both concluded among others: (1) that there was a significant public movement in favour of surrogacy arrangements as a workable solution to infertility; (2) that legislation governing surrogacy arrangements was desperately needed; (3) surrogacy arrangements should only be allowed as a last resort; (4) the commissioning mothers should have a permanent and irreversible medical condition that prevents them from bearing children or from carrying them to term; (5) at least one of the commissioning persons to such an arrangement should be genetically related to the child; (6) the agreement shall be put to writing and approved by the High Court; and (7) each party to the agreement should go through a rigorous screening procedure.[241]

The Law Commission and the Ad Hoc Committee recommended that only altruistic surrogacy be permitted and that commercial surrogacy be outlawed. It was proposed that the typical costs associated with being pregnant, going through the pregnancy and the eventual process of giving birth, should be paid for. The guidelines also outlined the conditions that needed to be met in order for a woman to be accepted as a surrogate mother. The Ad Hoc Committee recommended that the commissioning couple be given automatic parental rights and obligations if they are the child's biological parents. This suggestion addressed the position of the child born out of such an arrangement. The application of the Children's Status Act, which was in effect at the time the recommendation was made, provided, however, that the surrogate mother would have sole parental

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240 International Surrogate Forum "Introduction and terminology: Chapter 19 of the Children's Act" http://www.internationalsurrogacyforum.com/content/south-africa#:~:text=Surrogacy%20in%20exchange%20for%20commercial,or%20renouncement%20of%20the%20child (accessed 17 February 2026).

241 Silkstone C "A Critical Analysis of the South African Law Commission's Report on Surrogate Motherhood: (Project 65: 1993)" (LLM thesis, University of Cape Town, February 1999). This thesis provides a detailed academic critique of the SALC's report and contextualizes the Ad Hoc Committee's findings.

responsibility and rights over the child and that the commissioning couple would only acquire these rights through adoption.

Regarding a partial surrogacy agreement, the Ad Hoc Committee suggested allowing the surrogate mother, who is the child's genetic and gestational mother, sixty days after the child is born to confirm her choice to follow the surrogacy arrangement or not. Throughout the Law Commission's and the Ad Hoc Parliamentary Committee's recommendations, there was a consistent theme that the child's best interests must always come first. It was proposed that the High Court be empowered to refuse to approve any arrangement in which it was evident that carrying out the intended surrogacy would not be in the child's best interests.

Surrogacy is currently regulated in South Africa by Chapter 19 of the Children's Act in sections 292 to 303, which came into effect on 1 April 2010.[242] As the main piece of legislation regulating surrogate motherhood, chapter 19 also provides for a procedure of judicial confirmation prior to the start of the surrogate pregnancy. Chapter 19 of the Children's Act will not be canvassed in this chapter, as it is discussed in detail elsewhere in the thesis.

6 KEY TERMS ASSOCIATED WITH SURROGACY

A proper and informed understanding of surrogate motherhood and artificial insemination requires a clear understanding of key terms in the context of assisted reproduction. For the ease of convenience, these key terms are briefly described below.

6.1 Artificial Insemination-Husband (AIH)

AIH entails the collection of the husband's (or male partner's) semen, which is subsequently processed and inserted into the woman's reproductive system. When the male's sperm count, motility, or quality is below ideal norms, this technique is usually used. The assisted reproductive

[242] Proclamation R12 of 2010, GG 33076 (1 April 2010).

technology method known as AIH is a common and frequently used technique to treat male infertility.[243]

6.2 Artificial Insemination-Donor (AID)

AID involves the use of donor sperm to inseminate a woman's reproductive tract. This technique is employed in cases where the male partner is unable to produce viable sperm or has a genetic condition that could be passed on to the couple's offspring. AID allows couples to achieve pregnancy using donor sperm from a healthy, screened donor.[244]

6.3 Gamete Intra-fallopian Transfer (GIFT)

GIFT involves the retrieval of eggs from the woman's ovaries, which are then immediately transferred along with sperm into the woman's fallopian tubes, where fertilization occurs naturally. This method bypasses the need for fertilisation to take place in a laboratory setting, as it mimics the natural process of conception. GIFT is suitable for couples with unexplained infertility or when other ART methods have been unsuccessful.[245]

6.4 Peritoneal Oocyte and Sperm Transfer (POST)

POST is a less popular ART technique which involves direct transfer of eggs and sperm into the peritoneal cavity, the latter housing organs, including the liver and intestines. The sperm and eggs are positioned close to one another in the hope that the woman's body will naturally fertilise them. POST is regarded as a substitute technique for partners unable to carry out conventional IVF treatments.[246]

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243 Suarez-Pascual B et al "Artificial insemination with husband's sperm (AIH) or donor sperm (AID): analysis of factors associated with pregnancy rate" *JBRA Assisted Reproduction* 2020 (24) 4 426-430.

244 Leeton J and Grover S "Intrauterine insemination with donor sperm" In: Tan SL (ed) *Female Infertility* 63-71 (Springer Verlag, 2020).

245 Sills ES and Alper MM "Gamete intrafallopian transfer (GIFT): Historical perspectives, current trends, and future directions" *JBRA Assisted Reproduction* 2020 (24) 3, 260-265.

246 Nargund G "Peritoneal oocyte and sperm transfer (POST)" In: *Textbook of Assisted Reproduction Techniques*" (CRC Press, 2020) 553-558.

6.5 Vaginal Intro-peritoneal Sperm Transfer (VISPER)

VISPER represents a recent innovation in reproductive technology, entailing the direct introduction of sperm into the peritoneal cavity via the vaginal route. This method is designed to enhance sperm delivery to the fallopian tubes, thereby optimizing the prospects of successful fertilisation. VISPER is currently under investigation as a viable treatment avenue for couples struggling with male factor infertility, offering a promising alternative to conventional IVF procedures.

6.6 Oocyte or Ovum

An oocyte, also known as an egg cell or ovum, is the female gamete or reproductive cell. It is produced by the ovaries through the process of oogenesis and is capable of being fertilised by sperm to form an embryo. Oocytes are essential for sexual reproduction in organisms with sexual dimorphism, including humans.[247]

6.7 Sperm

Sperm, or spermatozoon, is the male gamete or reproductive cell. It is produced in the testes through the process of spermatogenesis and is specialised for fertilizing the female gamete, the oocyte. Sperm consists of a head containing the genetic material, a midpiece with mitochondria for energy production, and a tail for propulsion.[248]

6.8 Gamete

A gamete is a singular, haploid reproductive cell endowed with the capacity to fuse with another gamete during fertilisation, culminating in the formation of a diploid zygote that ultimately evolves into a new organism. Within sexually reproducing organisms, gametes arise through the specialised process of gametogenesis, wherein dedicated cells undergo meiosis to yield gametes.

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247 Almeida C et al "Oocyte quality and aging: A current review" *JBRA Assisted Reproduction* 2021 (25) 3, 322-333.

248 Barratt CL et al "The diagnosis of male infertility: an analysis of the evidence to support the development of global WHO guidance—challenges and future research opportunities" *Human Reproduction Update* 2021 (27) 5, 781-796.

In the context of humans, oocytes and sperm stand as quintessential examples of gametes, serving as fundamental components crucial for the continuation of the species through sexual reproduction.[249]

6.9 Gamete Donor

A gamete donor is an individual who donates their gametes (either oocytes or sperm) for use in assisted reproductive procedures, such as IVF or artificial insemination. Gamete donation allows individuals or couples who are unable to produce viable gametes to conceive a child using donor gametes. Donors may choose to remain anonymous or have varying levels of involvement in the process.[250]

6.10 Embryo Transfer

Embryo transfer is a crucial step in assisted reproductive technology (ART), where one or more embryos are delicately introduced into the uterus of a woman to initiate pregnancy. These embryos are usually obtained through techniques such as IVF and are transferred at a specific developmental stage, typically the blastocyst stage. This procedure marks a significant milestone in the path toward achieving pregnancy through ART.[251]

6.11 Assisted Reproductive Technology (ART)

ART refers to medical procedures or techniques used to assist individuals or couples in achieving pregnancy when a natural conception is not successful. ART encompasses various fertility treatments, including but not limited to intrauterine insemination (IUI), in vitro fertilisation (IVF),

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249 Gardner DK et al *Textbook of Assisted Reproductive Techniques: Laboratory and Clinical Perspectives* (6th ed, CRC Press 2021).

250 Harper J et al "International Federation of Fertility Societies (IFFS) Surveillance 2020: Global trends in reproductive policy and practice" *Human Reproduction* 2021 (36) 7, 1700-1709.

251 Practice Committees of the American Society for Reproductive Medicine and the Society for Assisted Reproductive Technology "Guidance on the limits to the number of embryos to transfer: a committee opinion" *Fertility and Sterility* 2021 (116) 4, 764-766.

and third-party-assisted reproduction. ART procedures involve the manipulation of eggs, sperm, or embryos outside the body, often in a laboratory setting, to facilitate conception.[252]

6.12 Intrauterine Insemination (IUI)

IUI, also colloquially known as artificial insemination, stands as a pivotal procedure within the realm of assisted reproductive technology (ART). It involves the meticulous placement of processed sperm directly into a woman's uterus during her fertile window, enhancing the likelihood of sperm reaching the fallopian tubes and fertilising an egg, thereby amplifying the prospects of conception. It is widely utilised to address diverse infertility factors such as male infertility, unexplained infertility, or challenges related to cervical factors. IUI offers a tailored approach to overcoming reproductive hurdles. By harnessing advanced reproductive techniques, IUI empowers individuals and couples on their journey towards parenthood, offering a ray of hope in the face of fertility challenges.[253]

6.13 In Vitro Fertilisation (IVF)

IVF is a complex ART procedure that involves the retrieval of eggs from the ovaries, fertilisation of the eggs with sperm in a laboratory dish, and subsequent transfer of the resulting embryos into the woman's uterus. IVF is utilised to treat various causes of infertility, including tubal factor infertility, male factor infertility, endometriosis, and unexplained infertility. It is also commonly used in cases where other fertility treatments have been unsuccessful.[254]

6.14 Third-party Assisted Reproduction

Third-party assisted reproduction refers to ART procedures in which one or more third parties,

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252 ESHRE Capri Workshop Group "Intrauterine insemination: Recommendations from the ESHRE Capri Workshop Group" *Human Reproduction Open* (2020) (4) https://doi.org/10.1093/hropen/hoaa002 (accessed 17 February 2026).

253 ESHRE Capri Workshop Group (2020).

254 Zegers-Hochschild F et al "The international glossary on infertility and fertility care 2017" *Human Reproduction* 2020 (35) 11, 2299-2309.

such as egg donors, sperm donors, or gestational carriers/surrogates, are involved in the conception and/or gestation of a child for intended parents who may be unable to conceive or carry a pregnancy on their own. Third-party-assisted reproduction allows individuals or couples to overcome various infertility challenges or genetic concerns, enabling them to achieve their desired parenthood goals.[255]

6.15 Intracytoplasmic Sperm Injection (ICSI)

ICSI is a sophisticated technique within assisted reproductive technology (ART), utilised to combat male infertility by directly injecting a single sperm cell into an egg (oocyte), thereby bypassing natural barriers to fertilisation.[256] This method has demonstrated remarkable success even in cases of severe male factor infertility, including low sperm count, poor sperm motility, or abnormal sperm morphology.[257] It is typically integrated into IVF procedures. ICSI involves the retrieval of a woman's eggs from the ovaries, followed by fertilisation in a laboratory setting.[258] After fertilisation, embryos are cultured for a few days before transfer into the woman's uterus, significantly improving the chances of conception for couples facing sperm-related challenges.[259] As alluded to earlier, the advent of ICSI has revolutionised the treatment of male infertility, making it a widely adopted and highly successful technique in the field of assisted reproduction.[260]

6.16 Preimplantation Genetic Screening (PGS)

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255 Rienzi L et al "Oocyte, embryo and blastocyst cryopreservation in ART: systematic review and meta-analysis comparing slow-freezing versus vitrification to produce evidence for the development of global guidance" *Human Reproduction Update* 2020 (26) 3, 443-461.

256 Palermo GD et al "Pregnancies after intracytoplasmic injection of single spermatozoon into an oocyte" *Lancet* 1992 (340) 8810, 17-18.

257 Esteves SC et al "Reproductive outcomes of testicular versus ejaculated sperm for intracytoplasmic sperm injection among men with high levels of DNA fragmentation in semen: systematic review and meta-analysis" *Fertility and Sterility* 2020 (114) 5, 1014-1025.

258 Yan H et al "The Comparison of Assisted Reproductive Technology Outcomes between In Vitro Fertilisation (IVF) and Intracytoplasmic Sperm Injection (ICSI) during Different Stages of Fertilisation: A Comprehensive Review" J*ournal of Healthcare Engineering* (2021) 1-8.

259 Dyer S and Chambers GM "International Committee Monitoring Assisted Reproductive Technologies: world report on assisted reproductive technologies" In: *Reproductive Biomedicine Online* (Elsevier, 2020) 641-692.

260 Ombelet W, Dhont N and Thijssen A "Semen analysis and sperm function testing" *Asian Journal of Andrology* 2019 21 (1), 5-11.

PGS serves as a vital genetic testing method utilised to meticulously examine embryos for chromosomal abnormalities, notably aneuploidy, characterised by an abnormal number of chromosomes. During PGS, a targeted biopsy of a few cells is performed on each embryo, followed by comprehensive genetic analysis to ascertain the presence of any abnormalities. This meticulous screening process enables the identification of embryos harbouring the correct number of chromosomes, thereby significantly bolstering the likelihood of successful implantation and substantially mitigating the risk of miscarriage. Particularly invaluable for couples undergoing IVF, PGS proves instrumental in cases where there is an elevated risk of producing embryos with chromosomal aberrations, such as women of advanced maternal age or couples with a history of recurrent miscarriages. By providing crucial insights into embryo viability and genetic integrity, PGS empowers individuals and couples with the information necessary to make informed decisions on their reproductive journey, fostering the realisation of their aspirations for a healthy pregnancy and childbirth.[261]

6.17 Preimplantation Genetic Diagnosis (PGD)

PGD represents a pivotal genetic testing method employed to meticulously screen embryos for precise genetic disorders or mutations known to be carried by one or both parents. This advanced technique enables the targeted detection of specific genetic conditions such as cystic fibrosis, Huntington's disease, or sickle cell anemia, among others. During PGD, a meticulous biopsy of a few cells is conducted of each embryo, with subsequent genetic analysis aimed at determining the presence or absence of the particular genetic mutation or condition of interest. By discerning embryos free from the targeted genetic disorder, PGD empowers couples undergoing IVF to selectively choose embryos devoid of the condition for transfer, thereby significantly mitigating the risk of transmitting the genetic disorder to their offspring. This precision screening process is especially advantageous for couples who are carriers of genetic disorders, offering them invaluable insights and opportunities to safeguard the health and well-being of their future progeny, thereby embarking on their parenthood journey with confidence and peace of mind.[262]

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[261] Capalbo A, Hoffmann ER and Cimadomo D "Preimplantation genetic testing for aneuploidy (PGT-A) and structural rearrangements (PGT-SR)" In: *Preimplantation Genetic Diagnosis in Clinical Practice* (Springer, Cham., 2017) 15-31.

[262] Sermon K and Pennings G "Preimplantation genetic diagnosis and screening: Current status and future challenges" *Human Reproduction Update* (2014) 20 (1), 108-120.

Both PGS and PGD are valuable tools in ART that can help improve the success rates of IVF procedures and reduce the risk of genetic disorders in offspring. However, it is important for couples considering these procedures to discuss their options with a reproductive specialist and understand the potential benefits, limitations, and ethical considerations associated with genetic testing in assisted reproduction.

6.18 The Embryo Scope

The use of the embryo scope in IVF has been shown to improve outcomes in some studies, including higher implantation rates, lower miscarriage rates, and increased live birth rates. However, its widespread adoption may be limited by factors such as cost and availability, as well as the need for further research to establish its long-term benefits. Overall, it is fair to conclude that the embryo scope represents a valuable tool in ART for optimizing embryo culture and selection, ultimately aiming to improve success rates and outcomes for couples undergoing fertility treatment.[263]

7 SURROGACY TYPES

Chapter one of this thesis has briefly alluded a few types of surrogacies. This section of chapter two will briefly describe the different types of surrogacies found in literature on the topic.

7.1 Altruistic surrogacy

Altruistic surrogacy refers to a type of surrogacy arrangement where the surrogate mother agrees to carry a child for intended parents out of altruism or goodwill, often without financial compensation beyond the reimbursement of reasonable expenses related to the pregnancy. In

[263] ESHRE Capri Workshop Group "Intrauterine insemination: Recommendations from the ESHRE Capri Workshop Group" *Human Reproduction Open* 2020(4).

altruistic surrogacy, the surrogate typically has a pre-existing relationship with the intended parents, such as being a friend or relative.[264]

7.2 Commercial surrogacy

Commercial surrogacy, also known as compensated or paid surrogacy, involves a contractual arrangement in which the surrogate mother receives financial compensation or remuneration beyond the reimbursement of expenses for carrying and delivering a child to the intended parents. In commercial surrogacy, the surrogate may not necessarily have a personal relationship with the intended parents, and the arrangement is often facilitated through surrogacy agencies or clinics. [265]

7.3 International surrogacy

International surrogacy refers to surrogacy arrangements where intended parents engage the services of a surrogate mother who resides in a different jurisdiction from their own. International surrogacy may involve legal, cultural, and logistical complexities, as laws and regulations regarding surrogacy vary widely between countries. Intended parents may choose international surrogacy for various reasons, including legal considerations, cost, or accessibility to surrogacy services.[266]

7.4 Formal surrogacy

Formal surrogacy describes surrogacy arrangements that are governed by a legally binding contract between the surrogate mother and the intended parents. In formal surrogacy, all parties involved typically undergo legal counseling and sign a surrogacy agreement outlining their rights, responsibilities, and expectations during the surrogacy process.[267]

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264 Rockin SL "Assisted Reproductive Technology: A Lawyer's Guide to Emerging Law and Science" (American Bar Association 2020).

265 Shenfield F et al "Cross-border reproductive care in six European countries" *Human Reproduction* 2021 (36) 4, 865-875.

266 Spar DL *The Baby Business: How Money, Science, and Politics Drive the Commerce of Conception* (Harvard Business School Press, 2006)

267 Pennings G "Surrogacy and gamete donation: What role should the state play?" In: Bayertz C and Snow T (ed) *Cryopolitics: Frozen life in a melting world* (MIT Press, 2019) 123-138.

7.5 Informal surrogacy

Informal surrogacy, often termed traditional surrogacy, operates on informal agreements between the surrogate mother and intended parents, circumventing legal contracts or professional mediation. Despite its simplicity, informal surrogacy arrangements may lack a legal framework, leaving all parties vulnerable to potential risks and uncertainties. The absence of formal legal frameworks may result in complexities and misunderstandings, emphasising the need for caution and consideration in navigating such arrangements.[268]

7.6 Full surrogacy

Full surrogacy, commonly referred to as gestational surrogacy, is a surrogacy arrangement wherein the surrogate mother carries and delivers a child conceived through IVF, utilising the egg and sperm of the intended parents or donors, unlike partial surrogacy. The resulting child is not genetically related to the surrogate mother. This is because the embryo is created outside the surrogate's body through IVF and then transferred into her uterus for gestation. This ensures that the surrogate serves as a gestational carrier, solely providing a nurturing environment for the developing embryo, while genetic parentage remains with the intended parents or donors. Full surrogacy offers a pathway to parenthood for individuals or couples facing infertility challenges. Clear communication, legal agreements, and comprehensive support are essential in navigating the intricacies of full surrogacy, ensuring the well-being and rights of all parties involved.[269]

7.7 Partial surrogacy

Partial surrogacy represents a distinctive arrangement wherein the surrogate mother provides her own egg for fertilisation, facilitated either by artificial insemination with the intended father's sperm or through IVF with donor sperm. This unique dynamic results in a child who shares genetic material with both the surrogate mother and the intended father, yet not with the intended mother.

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268 Pennings "Surrogacy and gamete donation: What role should the state play?" In: Bayertz and Snow (eds) *Cryopolitics: Frozen life in a melting world* (MIT Press, 2019) 123-138.

269 Pennings 2019 "Surrogacy and gamete donation: What role should the state play?".

By enabling a genetic connection between the intended parents and the child, partial surrogacy serves as a profound pathway to parenthood amidst the intricate landscape of reproductive technologies. However, navigating this complex terrain requires a thorough understanding of the multifaceted considerations involved in family-building journeys. Clear communication, legal guidance, and ethical awareness are paramount to ensuring the well-being and rights of all parties engaged in the partial surrogacy process. By fostering transparency and collaboration, individuals and couples embarking on this journey can navigate the complexities with confidence and compassion, ultimately realising their dreams of parenthood with integrity and respect for all involved.[270]

7.8 Surrogate mother

A surrogate mother, also known as a gestational carrier, is a woman who carries and gives birth to a child on behalf of another individual or couple. In gestational surrogacy, the surrogate mother is not genetically related to the child she carries, as the embryo is created using the gametes of one or both intended parents or donors.[271]

7.9 Biological parents

The biological parents or parent are/is one or both individuals who provide the sperm and egg to be used for the embryo through IVF or other ART procedures, in order to have the desired child.

7.10 Gestational parents

Gestational parents describe the individuals who intend to become the legal parents of a child born through gestational surrogacy. In this process, the embryo is created using the genetic material of one or both intended parents and then transferred to a surrogate mother's uterus to carry to term. These intended parents may or may not be genetically related to the child.

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270 Shenfield F et al "Cross-border reproductive care in six European countries" *Human Reproduction* 2021 (36) 4, 865-875.

271 Serafini A "Gestational surrogacy: psychological and medical aspects in a couple from the United States treated in Italy" 2020 (44) 2 *Rivista di Sessuologia* 2020 (44) 2, 105-115.

7.11 Surrogate child

A surrogate child is a child brought into the world via a surrogacy arrangement, where a surrogate mother carries and delivers the child on behalf of the intended parents or a single individual. The surrogate child may inherit genetic traits from one or both intended parents or maybe conceived using donated gametes.[272]

7.12 Surrogacy arrangement or surrogate motherhood agreement

A surrogacy arrangement denotes the formal agreement between the intended parents and a surrogate mother, delineating the terms and conditions of the surrogacy journey. This comprehensive agreement typically encompasses the rights and obligations of all parties involved, financial compensation, medical procedures, and the envisioned outcome of the surrogacy process.[273]

8 CONCLUSION

In the past, the only way to assist childless women in becoming parents before the development of ART was through natural surrogacy, that is, direct sexual intercourse between the surrogate and the intended father of the intended child. Subsequently, using artificial insemination to become pregnant replaced natural surrogacy as the preferred method. Despite its long history fraught with legal battles, surrogacy has evolved significantly with technological advancements and legal standards. IVF has facilitated the conception of children using donor sperm and eggs, further expanding the options available to individuals' pursuing parenthood. Hundreds of thousands of infants have been conceived worldwide through IVF, offering hope and opportunities for individuals and childless couples. Again, IVF together with surrogate motherhood is recognised as a standard medical procedure for addressing infertility, with advancements in technology and protocols continually improving success rates and outcomes. Today, solid, legally binding

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272 Golombok S and Zadeh S "Parenting and the adjustment of children born to gay fathers through surrogacy" *Child Development* 2011 (82) 2, 702-715.

273 Nicholson C and Bauling A "Surrogate motherhood agreements and their confirmation: A new challenge for practitioners?" *De Jure* (2013) 46, 510

surrogacy contracts protect the rights of intended parents and their newborns, ensuring a smoother and safer surrogacy journey, depending on the type that is practiced.

Although the future looks promising for couples and individuals embarking on the surrogacy path to parenthood, with ongoing advancements in technology and legal protection, surrogacy arrangement has been criticised by various opinion leaders in Ghana and South Africa, such as the various religious groups, feminists and other activists. This issue will be explored in more detail in the next chapter. This thesis is premised on the conviction that Ghana can learn from South Africa's statutory framework, which itself was shaped by unique historical, ethical, and medical developments.

CHAPTER THREE

CULTURAL, RELIGIOUS AND SOCIAL VIEWS IN GHANA REGARDING SURROGATE MOTHERHOOD

1 INTRODUCTION

The chapter provides a summary of social, cultural, and religious views regarding surrogacy in Ghana. Where relevant, the chapter will refer to the perspectives of opinion leaders and activists. The final section of the chapter assesses the significance of these views on the proposed regulation of surrogacy in Ghana.

Commenting on the influence of prevailing social, religious, and cultural views on the legal regulation of surrogacy, Akangah and Others observe that Ghana's cultural and religious norms, particularly the emphasis placed on lineage, kinship, and the sanctity of marriage, interact with the country's statutory framework, including the *Children's Act* and the *Marriage Act*, both of which are discussed elsewhere in this thesis. Their study demonstrates that these norms shape societal understandings of parenthood, parental rights, legitimacy, and the acceptability of surrogacy, thereby contributing to the absence of a comprehensive and coherent legal framework governing surrogacy in Ghana.[274]

Similarly, indigenous, customary, and traditionalist perspectives on surrogacy are deeply rooted in longstanding religious, ethical, social, and cultural values. Within these belief systems, kinship, lineage, ancestry, and biological continuity occupy a central place, with procreation traditionally regarded as a means of preserving the family lineage and maintaining ancestral ties. Consequently, surrogacy may be viewed with caution or resistance where it is perceived to challenge established notions of parenthood, inheritance, and family identity.[275]

2 FACTORS SHAPING BELIEF SYSTEMS AND PERCEPTIONS

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274 Akangah R, Der AD and Sefogah PE et al "Socio-ethical and legal issues regarding surrogacy in Ghana: a qualitative study" *Reproductive Health* (2025) 22, 181.

275 Adegoke A "Surrogacy and the African Family System: Cultural Implications and Ethical Dilemmas" *Journal of African Family Studies* (2021) (9)1, 30-47.

Kinship, lineage, and ancestral relationships are highly valued in many African indigenous communities, where children are regarded as vital to the continuation of the family lineage and the preservation of ancestral ties. Consequently, reproductive practices such as surrogacy are often evaluated against these deeply rooted cultural values. These traditional beliefs are well ingrained in the customs of delivery and parenting.[276] Motherhood and taking care of the family are often the traditional definitions of women's duties in these communities.[277] The idea of surrogacy, where a different woman bears a child for another, obviously goes against these established roles and ideals. A woman's identity and standing in the community are strongly linked to the act of having and rearing children.[278] One example is that surrogacy is perceived to upset the cultural and natural order of family life and reproduction.[279] In some African indigenous cultures such as the Akan cultures in Ghana,[280] the Igbo culture in Nigeria,[281] and the Zulu traditional practices such as the *ukungena* (a cultural custom where a relative may step in to bear a child for a couple) in South Africa,[282] address infertility through kinship without financial transactions. In these cultures, payment for surrogacy is often viewed with mistrust or disfavour.

The idea of compensating a surrogate mother is seen as going against social norms that place a strong emphasis on solidarity and mutual assistance.[283] Both the intended parents and the surrogate mother may experience stigmatisation, as the surrogacy arrangement may be viewed as inconsistent with prevailing moral values and traditional conceptions of the family**.** Altruistic surrogacy is generally more in line with societal norms of empathy and support and is therefore perceived favourably than commercial surrogacy.[284] The financial component of commercial

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276 Agyemang N "Gender Roles and Surrogacy in Ghanaian Society" 2 *Journal of Gender and Society in Africa* (2022) (9), 50-68.

277 Agyemang 2022 *Journal of Gender and Society in Africa* 50.

278 Mbiti JS "Traditional African Perspectives on Marriage and Modern Reproductive Technologies" *African Journal of Social and Cultural Anthropology* 2023 (11) 289-105.

279 Mbiti 2023 "Traditional African Perspectives on Marriage and Modern Reproductive Technologies" 89.

280 Agyekum K "The Sociolinguistic Analysis of the Akan Naming System" *Nordic Journal of African Studies* 2012 (21) 1, 1-27: See also Amoah JE a *Cultural Perspectives on Reproduction and Childbirth in Ghana* (Routledge, 2020).

281 Nwoye A "Igbo Cultural and Religious Worldview: An Insider's Perspective" *International Journal of Sociology and Anthropology* 2011 (3) 9, 304-317.

282 Bonthuys E "Surrogacy in South Africa: Constitutional Rights and Cultural Perspectives" *South African Journal on Human Rights* 2015(31), 95. See also Mbatha L "Cultural and Legal Challenges of Surrogacy in South Africa" *African Journal of Reproductive Health* 2017(24), 73.

283 Nwogu C "Ethical Concerns in Surrogacy: An African Perspective" (2023) 6(2) Journal of African Ethics 120–136.

284 Nwogu 2023 "Ethical Concerns in Surrogacy: An African Perspective" 120.

surrogacy also brings up ethical questions concerning the monetisation of women's reproductive potential.[285] The root of this stigmatisation is the belief that surrogacy upsets the normal order of family life and reproduction.[286] Mutual assistance and solidarity are highly valued in African indigenous societies generally, where family and community members are expected to assist one another without demanding payment. Commercial surrogacy may be viewed as going against these social ideals since it is viewed as a transactional connection.[287]

As discussed in earlier chapters, human reproduction in African indigenous culture is often regarded as a process strongly correlated with spiritual or divine involvement. Surrogacy is consequently seen as interfering with these divine or natural processes, which could result in rejection or disapproval of the practice. One important component of these beliefs is the emphasis on natural conception and childbirth as components of the divine plan or natural order. Given that surrogacy entails medical intervention, these notions may become compromised,[288] as expressed in Pillay's studies. [289]

It has been alluded to earlier in this thesis that surrogate motherhood lacks comprehensive regulation in many African countries. This gap points to the need for the creation of policies to guarantee that surrogacy activities conform to cultural norms and ethical standards, and that policies take into account indigenous or customary views. As cautioned, the lack of thorough legal frameworks may exacerbate uncertainty and lead to possible exploitation.[290] This ambiguity makes surrogacy a potentially divisive topic that is difficult to embrace and practice.[291] A consideration of prevailing customary or indigenous views may assist in validating surrogacy procedures, recognising and upholding ethical standards and cultural values while at the same time also safeguarding the interests of all parties concerned.[292]

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285 Nwogu 2023 "Ethical Concerns in Surrogacy: An African Perspective" 120.

286 Kalu O "Spiritual Dimensions of Reproduction: An African Perspective" *African Spirituality Journal* 2022 (5), 145-162.

287 Kalu 2022 *African Spirituality Journal* 45.

288 Fayemi AK and Chimakonam AE "Global justice in the context of transnational surrogacy: an African bioethical perspective" *Theoretical Medicine and Bioethics* (2022) 43(2–3), 75-93.

289 Pillay T "Health Risks and Ethical Considerations in Surrogacy: Insights from South Africa" *South African Health Review* 2021 (12) 4, 89-105.

290 Nwogu 2023 Ethical Concerns in Surrogacy: An African Perspective" 120-136.

291 Kagaba L "Integrating Modern Reproductive Technologies with African Traditional Beliefs" 2022 (7) 1, 54-70.

292 Kagaba 2022 "Integrating Modern Reproductive Technologies with African Traditional Beliefs" 54.

By bridging the gap between contemporary medical procedures and conventional wisdom, these policies can promote surrogacy acceptability and understanding on a larger scale.[293] The rights and welfare of intended parents, children, and surrogate mothers are promoted by including ethical concerns and indigenous perspectives in the creation of policies.[294] This, in turn, will reduce confusion and promote surrogacy as a practice that is sensitive to cultural differences.[295]

In African cultures where surrogacy agreements receive support from extended families or community networks, they are perceived as a way to assist a family member who is unable to conceive.[296] The extended family remains an important source of support for infertile people in many African societies.[297] If surrogacy preserves family unity and as a result gains community support, it may be seen as a good thing.[298] This will facilitate interest and a call for surrogacy to be recognised and regulated among different cultural and indigenous groups. [299] Proponents of surrogacy regulation stress the necessity of moral standards that guard against the exploitation of surrogate mothers and guarantee equitable treatment for all parties.[300] It cannot be emphasised how critical it is to create regulations that take cultural sensitivity and indigenous populations' values and beliefs into consideration.[301] This will facilitate greater acceptance and may assist in assuring those affected by the regulation that surrogacy procedures are morally and culturally acceptable.[302]

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293 Moyo P "Educating African Communities on Surrogacy: Challenges and Opportunities" *African Journal of Community Education* 2023 (10) 2, 101-118.

294 Kagaba 2022 "Integrating Modern Reproductive Technologies with African Traditional Beliefs" 54.

295 Moyo 2023 "Educating African Communities on Surrogacy: Challenges and Opportunities" 101.

296 Dlamini Z "Harmonizing Legal Frameworks and Traditional Beliefs: The Case of Surrogacy in South Africa" *Journal of South African Legal Studies* 2023 (14), 170-185.

297 Asante A "The Role of Traditional Leaders in Modern Reproductive Technologies in Ghana" *Journal of African Leadership Studies* 2021 (10) 1, 25-40.

298 Asante 2021 "The Role of Traditional Leaders in Modern Reproductive Technologies in Ghana" 25.

299 Dlamini 2023 "Harmonizing Legal Frameworks and Traditional Beliefs: The Case of Surrogacy in South Africa" 173.

300 Dlamini 2023 "Harmonizing Legal Frameworks and Traditional Beliefs: The Case of Surrogacy in South Africa" 174.

301 Dlamini 2023 "Harmonizing Legal Frameworks and Traditional Beliefs: The Case of Surrogacy in South Africa" 174.

302 Ababio F "Health and Ethical Implications of Surrogacy: Insights from Ghana" *Ghana Health Review* 2021 (9) 4, 112-128.

African societies are gradually undergoing a process of cultural adaptation that involves accepting new reproductive technologies, including surrogacy.[303] This adaption is part of a larger trend that aims to address current issues like infertility by fusing traditional values with modern medical methods.[304] Reproductive technologies are now viewed differently because of increased urbanisation and exposure to global cultural norms. As a result of easier access to healthcare and information, urban areas exhibit a higher acceptability rate for surrogacy and related activities. More people now have access to cutting-edge reproductive technology because of increased healthcare infrastructure brought about by economic development.[305] Redefining attitudes and lessening the stigma attached to surrogacy are being accomplished through increased community advocacy and awareness campaigns.

3 RELIGIOUS VIEWS ON SURROGACY IN GHANA

3.1 Role of belief systems

Religion and traditional beliefs play an important role in Ghana. Not only does religion contribute to a sense of social cohesion and identity among Ghanaians, which are strengthened by festivals, rituals and communal worship, but it also provides important moral guidelines that shape behaviour and ethical standards. As alluded to in the introduction, cultural practices and traditions are intertwined with religious beliefs, which includes rites of passage such as naming ceremonies, marriages, and funerals. These are often conducted with religious or traditional rituals. It is therefore necessary to provide an overview of these views, because religious and traditional beliefs can influence laws and policies. For example, certain laws and regulations around marriage, inheritance, and family life may reflect the values of the dominant belief systems. The role of belief systems as an integral part of the fabric of Ghanaian society, influencing everything from personal conduct to public policies, is furthermore underscored by the role of religious organisations that often-run schools, hospitals, and other social services, playing a critical role in the development and welfare of communities. Finally, religious and traditional leaders are often involved in mediating disputes and resolving conflicts within

303 Ababio 2021 "Health and Ethical Implications of Surrogacy: Insights from Ghana" 112-128.

304 Ababio 2021 "Health and Ethical Implications of Surrogacy: Insights from Ghana" 115-128.

305 Pillay T "Health Risks and Ethical Considerations in Surrogacy: Insights from South Africa" *South African Health Review* 2021 (12) 4, 89-105.

communities, promoting peace and stability. Due to the inevitable overlap of views between the different belief systems, this chapter will provide a brief overview of the dominant views.

As the dominant religion, Christianity plays a significant role in shaping societal attitudes towards surrogacy. Many Christian denominations in Ghana have conservative views on reproductive technologies, often viewing surrogacy as morally problematic. This can lead to resistance against the practice and influence the development of regulations that may restrict or limit surrogacy. Christianity is the largest religion in Ghana, with approximately 71-72% of the population identifying as Christians.[306] The Christian population is divided into various denominations, with Pentecostal and Charismatic Christians being the largest group, followed by Protestants and Catholics.

Islamic teachings also emphasise the sanctity of marriage and procreation within the bounds of marriage. Surrogacy, particularly when it involves third parties, is generally considered incompatible with Islamic principles, as will be canvassed below. This can affect the acceptance and regulation of surrogacy among the Muslim population in Ghana. Islam is the second-largest religion in Ghana, with approximately 17–19% of the population identifying as Muslim.[307] The majority of Muslims in Ghana are Sunni, with smaller communities of Shia and Ahmadiyya Muslims.

There are also small communities of people practicing other religions such as Baha'i, Buddhism, Hinduism, Judaism, and Rastafarianism. Due to the limited role of the latter belief systems, this chapter will focus on the main belief systems only.

3.2 Christianity

Christianity does not adopt a uniform position on surrogacy; rather, Christian perspectives differ according to denominational beliefs, scriptural interpretations, and ethical considerations. The views on surrogacy across the different branches of Christianity, including Catholicism, Protestantism, Pentecostalism, charismatic movements, and other groups vary widely.

306 Misachi "Religious Beliefs in Ghana" (WorldAtlas, 25 April 2017) https://www.worldatlas.com/articles/religious-beliefs-in-ghana.html (accessed 18 February 2026).

307 Misachi 2017 "Religious Beliefs in Ghana".

The largest representation of the Christian belief comes from the Pentecostal or Charismatic group, which comprises 1.6% of the Christian population in Ghana.[308] The Protestant category, which constitutes 17.4% of the Ghana population, comprises denominations such as Methodists, Presbyterians, Lutherans, Baptists, and Evangelical churches.[309] Approximately 10% of the Christian population consists of Catholics, who are part of the Global Roman Catholic Church that follows the teachings of the Pope. The remainder of the Christian denominations include the Seventh-Day Adventists (SDA) (3% of the Christian population), the Church of Jesus Christ of the Latter-day Saints (LDS), and other various African Independent Churches.

3.2.1 Pentecostal and Charismatic Views

Pentecostal and charismatic churches hold a unique perspective on surrogacy, shaped by their strong focus on the Holy Spirit, divine healing, and adherence to biblical teachings. As some of the fastest-growing Christian movements in the country, this denomination significantly influences societal values concerning reproduction and family life. Generally, they oppose surrogacy, basing their objections on theological interpretations, spiritual beliefs, and concerns over the ethical and moral implications of assisted reproductive technologies.[310]

Pentecostal and charismatic Christians believe in God's healing power, including overcoming infertility. Many Pentecostal leaders teach that God can miraculously intervene, citing biblical examples of barren women who conceived through divine intervention.[311] This belief in general rejects surrogacy, seeing it as bypassing God's will to rely on human methods. Infertility is viewed as a spiritual challenge to be overcome through prayer, fasting, and trust

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308 Ghana Statistical Service "Population and Housing Census: General Report Volume 3C – Background Characteristics" (2021) https://census2021.statsghana.gov.gh/gssmain/fileUpload/reportthemelist/2021%20PHC%20General%20Report%20Vol%203C_Background%20Characteristics_181121.pdf (accessed 11 November 2025).

309 Ghana Statistical Service (2021).

310 Appiah D "Faith, Miracles, and Family: Pentecostal Perspectives on Infertility and Surrogacy" *Journal of African Christian Theology* 2023 (5) 2, 34-49.

311 Appiah 2023 Faith, Miracles, and Family: Pentecostal Perspectives on Infertility and Surrogacy".

in divine timing, with pastors advising against surrogacy as it reflects a lack of faith in God's provision.[312]

The churches value the sanctity of marriage and the biblical family model, which includes a husband, wife, and biological children.[313] They view surrogacy, which involves a third party in reproduction, as undermining the marital bond. Concerns include potential spiritual and emotional complications, such as confusion over the child's identity and tensions between the surrogate and the intended parents. These disruptions to family unity and the emotional well-being of both the child and parents are key reasons for Pentecostal opposition to surrogacy.

The church leaders emphasise the spiritual and ethical concerns surrounding surrogacy. They believe that infertility and the choice to pursue surrogacy may result from spiritual warfare, curses, or demonic influences, and encourage prayer and deliverance sessions instead of relying on technological solutions.[314] Nevertheless, there are concerns about the exploitation of surrogate mothers, particularly in economically disadvantaged contexts. Commercial surrogacy is viewed as commodifying women's bodies, undermining their dignity, and contradicting Christian teachings on the sanctity of life.[315]

Pentecostal and Charismatic churches in Ghana generally oppose surrogacy but promote adoption as a more ethical alternative for infertile couples. Adoption is viewed as a biblical way to care for orphans and avoid the moral and spiritual issues tied to surrogacy. This perspective is reinforced by the theological concept of spiritual adoption, where believers are seen as part of God's family through faith in Christ, making adoption a respected and morally sound way to build a family.[316] The churches strongly oppose surrogacy, citing beliefs in divine healing, the sanctity of marriage, and concerns about exploiting surrogate mothers. They advocate prayer and faith to address infertility and argue in favour of adoption as a more ethical alternative, in line with biblical teachings. Despite cultural pressures for biological children,

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312 Owusu S *Adoption and Surrogacy: Pentecostal Reflections on Modern Reproductive Ethics* (Accra: (Kingdom Books Press, 2023) 17-26.

313 Kusi M "Marriage, Reproduction, and Ethics in Independent Churches in Ghana" *African Journal of Christian Theology* 82022 (11), 27-101.

314 Agyeman P *Spiritual Warfare and Reproductive Ethics in Pentecostalism* (2023, Accra: Charismatic Faith Publishers).

315 Boateng K *Global Pentecostal Teachings on Family and Reproduction: A Ghanaian Perspective* (2022, Kumasi: Pentecostal Heritage Press).

316 Owusu S 2023 *Adoption and Surrogacy: Pentecostal Reflections on Modern Reproductive Ethics* 17-26.

these churches counsel against surrogacy, encouraging spiritual solutions and trust in God's timing.[317]

3.2.2 Roman Catholic Views

The Catholic Church opposes surrogacy, viewing procreation as a sacred act that should only occur within the marital bond through natural intercourse. The Church believes surrogacy disrupts the unity of marriage by involving a third party, violating God's design for family and marriage. The Vatican's *Donum Vitae* (*Instruction on Respect for Human Life in Its Origin and on the Dignity of* Procreation, 1987) reinforces this stance, stating that assisted reproductive technologies like surrogacy contradict the sacredness of human life and procreation.[318] The document emphasises that children have the right to be conceived and raised within marriage, teaching upheld by Catholic leaders in Ghana, who warn against separating procreation from the marital act.[319]

The Catholic Church's teaching in this document outlines in paragraph 3 its objection regarding surrogacy, citing concerns about the dignity of both the surrogate mother and the child. The Church believes surrogacy risks commodifying both parties, reducing them to mere means for others' ends. The Church is troubled by the potential exploitation of impoverished women in Ghana, who may feel pressured into surrogacy for financial gain. Church leaders warn that commercial surrogacy could exploit vulnerable women for the benefit of wealthier couples. The Church's teachings on justice and human dignity emphasise protecting the most vulnerable from such exploitation.

There are also concerns regarding the impact of surrogacy on the traditional understanding of family, as some Christian perspectives regard the family, founded on marriage between a man and a woman, as a fundamental institution of society. Surrogacy is seen as undermining this traditional model by introducing a third party. In Ghana, where family bonds and lineage are culturally significant, this is particularly troubling. The Church argues that surrogacy can cause

317 Owusu S 2023 *Adoption and Surrogacy: Pentecostal Reflections on Modern Reproductive Ethics* 18.

318 Congregation for the Doctrine of the Faith. *Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation (Donum Vitae)* (22 February 1987) https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html (accessed 11 November 2025).

319 Pillay 2021 "Health Risks and Ethical Considerations in Surrogacy: Insights from South Africa", 89.

confusion for the child regarding identity and parenthood and may lead to legal and emotional conflicts between the intended parents and the surrogate, threatening the family's stability.[320]

While opposing surrogacy, the church recognises the emotional and spiritual difficulties of infertility. In Ghana, where infertility carries a social stigma, the Church provides pastoral care and encourages alternatives like adoption or ethical medical interventions that align with its teachings. Adoption is promoted to fulfil the desire for parenthood, respecting the dignity of the child and family, and reflecting Christian values of caring for vulnerable children rather than pursuing biological offspring at any cost.[321]

The leaders of the Church strongly oppose surrogacy, supported by historical and recent papal teachings. Pope John Paul II's encyclical *Evangelium Vitae* (1995) and Pope Francis's more recent statements underscore the Church's stance against practices that undermine the sanctity of life and commodify human beings.[322] In Ghana, Catholic bishops actively reinforce these teachings through sermons, pastoral letters, and public statements. The Ghana Catholic Bishops' Conference issued warnings against surrogacy, urging Catholics to adhere to Church teachings and resist societal pressures. Surrogacy is in essence opposed due to both theological and ethical concerns. The Church further argues that surrogacy undermines the dignity of motherhood, treating them as mere instruments rather than sacred. Additionally, the psychological impact on children born through surrogacy is of concern to the Church.[323] It emphasises that separating genetic, gestational, and social parenthood can lead to confusion about a child's origins and family relationships, potentially causing emotional issues.[324]

Although both commercial and altruistic surrogacy is opposed, it is particularly critical of commercial surrogacy due to concerns about the financial exploitation of economically

320 Sefogah P et al "Legal, Ethical and Regulatory Challenges of Assisted Reproductive Technology in Developing Countries – The Case of Ghana" *Fertility and Sterility* (2022)118 (4), e323–e324.

321 Mensah D "Christian Responses to Infertility and Assisted Reproductive Technologies in Ghana" *Christianity in Africa Today* 2023 (17) 2, 21-34.

322 Boaheng I "Theological and Ethical Reflections on Surrogacy from an African Perspective" *International Journal of Social Science Research and Review* (2022) 277-288.

323 Asare J "Adoption as a Christian Response to Infertility: A Comparative Study in Ghana" *Ghanaian Journal of Theological Ethics* 2022(3) 1, 42-55.

324 Whittaker A et al "The Divine in the Clinic: Assisted Reproduction and Religious Practice in Ghana and South Africa" *Journal of Religion and Health* (2025) 64(1) 369-384.

vulnerable women in Ghana.[325] Commercial surrogacy is viewed as a form of reproductive labour that disproportionately affects poorer women. Altruistic surrogacy, while not involving financial transactions, is also condemned by the Church for separating the gestational role from traditional family structures, thus undermining the principle that procreation should occur within marriage.[326] The Church advocates for adoption as a compassionate and ethical alternative to surrogacy. Adoption is viewed as an act of charity that mirrors God's spiritual adoption of people, allowing couples to become parents while respecting the dignity of the child and adhering to Church teachings.[327] Unlike surrogacy, adoption avoids issues like commodification and exploitation, providing a loving home for children in need. Catholic charities and social services support this approach by offering counselling and guidance to the parties.

In summary, the Catholic Church in Ghana opposes surrogacy based on its theological principles regarding marriage, family, and human life. It believes procreation should occur through natural intercourse within marriage and raises concerns about the exploitation of women and the commodification of children. The Church advocates for adoption as a moral alternative to surrogacy. Influenced by global Catholic teachings, it rejects both commercial and altruistic surrogacy for its potential to disrupt family structures and exploit women. Through pastoral care, advocacy, and legislative engagement, the Church promotes an ethical vision of family life that upholds human dignity and the sanctity of life. [328]

The discussion above on Pentecostal and Catholic views on surrogacy in Ghana is important as it would significantly shape the consideration of a proposed legal framework for regulating surrogate motherhood, because both traditions are influential in Ghanaian society and lawmaking often reflects prevailing cultural and religious norms. Not only does the Pentecostal view emphasises divine healing and faith, it may lead to a rejection of surrogacy as bypassing God's will. Infertility is seen as a spiritual challenge to be overcome through prayer and fasting rather than medical intervention. Its impact on lawmaking is that followers of this belief system are likely to push for a restrictive morally acceptable alternative. This may have an influence

325 Asare J 2022 "Adoption as a Christian Response to Infertility: A Comparative Study in Ghana" 42-55.

326 Glover E "Exploitation or Empowerment? The Ethics of Surrogacy in Ghanaian Christian Thought" *African Journal of Christian Ethics* 2023 (12) 1, 35-48.

327 Owusu 2023 *Reproductive Ethics: Theological Perspectives on Surrogacy in African Christianity* 18.

328 Mensah (2023) "Christian Responses to Infertility and Assisted Reproductive Technologies in Ghana" 21.

on policymakers through sermons, lobbying, and community mobilisation. The legal consequence of this is that any framework would need to address these concerns about exploitation, commodification of women's bodies, and disruption of family unity. These concerns could influence legislative approaches, resulting either in the prohibition of commercial surrogacy or in the adoption of a tightly regulated framework with safeguards addressing ethical, social, and legal risks.

A brief recap of the impact of Catholic views on the law in Ghana, includes the view that the Catholic Church believes that procreation must occur within marriage through natural intercourse. Surrogacy is seen as undermining marriage, commodifying children, and exploiting vulnerable women. The impact that this view on lawmaking is that it would strongly support the prohibition of surrogacy, both commercial and altruistic. Adoption will most likely be seen as the appropriate ethical alternative, which may possibly impact on parliamentary debates, given the Catholic Bishops' Conference's active role in public policy. A legal framework shaped by Catholic views would also emphasise protection of women and children, potentially outlawing surrogacy altogether or restricting it to prevent exploitation.

3.2.3 Protestant (Mainline Denominations) Views on Surrogacy

Protestant churches in Ghana have varied views on surrogacy. They emphasise ethical reflection, acknowledging the pain of infertility while expressing concerns about the ethical dilemmas and impacts on family structure, particularly the separation of biological and gestational motherhood.[329] They also warn about the commodification of women's bodies and children n commercial surrogacy. While not outright condemning surrogacy, they advocate for thoughtful consideration and support alternatives such as adoption.[330] They have diverse but generally conservative views on surrogacy. Their perspectives are also influenced by theological beliefs, scriptural interpretations, and cultural factors.[331] While lacking formal, unified statements, these churches emphasise ethical considerations and the preservation of traditional family structures in their approach to assisted reproductive technologies.[332]

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329 Sefogah P et al (2022) "Legal, Ethical and Regulatory Challenges of Assisted Reproductive Technology in Developing Countries – The Case of Ghana" e323–e324.

330 Mensah 2023 "Christian Responses to Infertility and Assisted Reproductive Technologies in Ghana" 21.

331 Whittaker A, Gerrits T and Manderson L "The Divine in the Clinic: Assisted Reproduction and Religious Practice in Ghana and South Africa" *Journal of Religion and Health* (2025) 64(1): 369–384.

332 Whittaker, Gerrits and Manderson 2025 "The Divine in the Clinic: Assisted Reproduction and Religious Practice in Ghana and South Africa" 369–374.

It is understandable that these denominations base their views on surrogacy on biblical teachings. Genesis portrays marriage as a covenant for procreation between a man and a woman, and surrogacy is seen as violating this divine order by introducing a third party. Ephesians 5:31, emphasising marital unity and exclusivity, is often cited to illustrate how surrogacy disrupts this biblical understanding by involving external factors. Protestants generally view surrogacy from a moral perspective, focusing on concerns about the exploitation of economically vulnerable women and the commodification of children.[333] They worry that financial pressures could coerce poor women into surrogacy and that commercial surrogacy might reduce children to commodities rather than respecting their inherent value as gifts from God.[334] The various denominations include; Methodist, Presbyterian, Anglican, and Evangelical Lutheran churches with their various opinions on surrogacy.[335]

The Methodist Church in Ghana, as one of the Protestant denominations, maintains a conservative view on surrogacy, rooted in Wesleyan theology which upholds the sanctity of life and traditional family structures.[336] It believes procreation should occur within marriage and views surrogacy as disrupting this natural order by introducing a third party, which can complicate family dynamics.[337] Methodist leaders provide pastoral care to couples facing infertility, urging them to consider adoption and other ethical alternatives. They emphasise respect for moral principles and commitment to supporting families in line with the Church's values and ethical standards.[338] The Methodist Church in Ghana, while lacking formal statements on surrogacy, actively participates in public discussions through sermons and community outreach.

The leaders stress ethical considerations in reproductive technologies and advocate for policies that protect women from exploitation and support child welfare, reflecting a commitment to

333 Mensah 2023 *Christianity in Africa Today* 21-34.

334 Whittaker, Gerrits and Manderson 2025 "The Divine in the Clinic: Assisted Reproduction and Religious Practice in Ghana and South Africa" 369-370.

335 Mensah 2023 "Christian Responses to Infertility and Assisted Reproductive Technologies in Ghana" 34.

336 Whittaker, Gerrits and Manderson "The Divine in the Clinic: Assisted Reproduction and Religious Practice in Ghana and South Africa" 369–373.

337 Mensah D "The Impact of Surrogacy on Family Dynamics: A Protestant Reflection" *Ghanaian Journal of Christian Studies* 2022 (11) 1, 25–37.

338 Whittaker, Gerrits and Manderson 2025 "The Divine in the Clinic: Assisted Reproduction and Religious Practice in Ghana and South Africa" 380.

thoughtful and principled engagement with these issues.[339] The Church's stance on surrogacy reflects a cautious and principled approach consistent with its theological and ethical teachings.[340]

The Presbyterian Church of Ghana, influenced by the Reformed tradition, shares an equally cautious stance on surrogacy, very similar to the Methodist Church. The Church advocates the sovereignty of God in natural processes and is concerned about how surrogacy affects family sanctity and children's well-being.[341] It upholds the family as a fundamental societal unit and is wary of surrogacy disrupting traditional family structures and potentially exploiting vulnerable women.[342] Surrogacy is seen as a threat to traditional family structures, as it can separate biological and gestational roles, challenging the scriptural boundaries of family relationships.[343]

The Presbyterian Church of Ghana's view on surrogacy is guided by its commitment to preserving traditional family structures, safeguarding vulnerable individuals, and maintaining ethical standards consistent with its theological beliefs.[344] The Church prioritises adherence to a divinely ordained framework for procreation and the sanctity of the family, reflecting its broader dedication to upholding biblical values and protecting the integrity of family relationships.

The Anglican Church in Ghana, while lacking a formal unified stance, generally discourages surrogacy due to ethical concerns about the sanctity of marriage and the dignity of all parties involved.[345] Surrogacy is viewed as disrupting the marital bond by introducing a third party. In addition, the church is concerned about the potential psychological and social challenges for

339 Mensah 2023 "Christian Responses to Infertility and Assisted Reproductive Technologies in Ghana" 23.

340 Addo K "Surrogacy and Christian Ethics in Ghana: A Methodist Perspective" *Journal of Christian Ethics in Africa* 2022 (4) 2, 56–70.

341 Whittaker, Gerrits and Manderson "The Divine in the Clinic: Assisted Reproduction and Religious Practice in Ghana and South Africa" 375.

342 Whittaker, Gerrits and Manderson "The Divine in the Clinic: Assisted Reproduction and Religious Practice in Ghana and South Africa" 373.

343 Whittaker, Gerrits and Manderson "The Divine in the Clinic: Assisted Reproduction and Religious Practice in Ghana and South Africa" 376.

344 Whittaker, Gerrits and Manderson "The Divine in the Clinic: Assisted Reproduction and Religious Practice in Ghana and South Africa" 379.

345 Amponsah J "Marriage, Family, and Surrogacy in the Anglican Church" *African Journal of Theology* 2022 (9) 3, 102-115.

children born through surrogacy, emphasising the importance of stable family structures and the well-being of children.[346] Similar to the religious views discussed above, the church views marriage as a sacred union intended for procreation, seeing surrogacy as potentially undermining this bond by involving a third party. The church cautions about the psychological and social challenges for children born through surrogacy, such as identity issues and complex family dynamics that can lead to conflicts over parental rights and impact the child's sense of belonging.[347]

The Anglican Church approaches surrogacy with ethical reflection and cultural sensitivity, considering traditional Ghanaian family values and potential risks. While not formally promoting specific alternatives, it supports exploring options, similar to the Catholic Church, like adoption that align with ethical principles. This cautious stance reflects concerns regarding the implications of surrogacy for marital unity, family dynamics, and the acceptability of assisted reproductive practices within particular cultural and theological frameworks.[348]

The Lutheran Church, much smaller compared to other mainline denominations, also aligns with broader Protestant concerns regarding surrogacy. Guided by the teachings of Martin Luther, the Church prioritises the importance of family and natural childbirth within marriage. Lutheran leaders often raise ethical concerns about surrogacy, particularly its potential to commodify both women and children.[349] In line with broader Protestant statements, the Evangelical Lutheran Church advocates for the protection of vulnerable individuals, including surrogate mothers who might be exploited in commercial surrogacy arrangements. The Church also considers the potential long-term effects of surrogacy on family dynamics and the child's understanding of their origins.

The Evangelical Lutheran Church addresses surrogacy through sermons, educational programs, and community outreach. Church leaders advocate for careful ethical reflection and support practices that align with Lutheran theological principles and uphold human dignity. This approach allows the Church to navigate the complexities of surrogacy in a way that is

346 Amponsah 2022 “Marriage, Family, and Surrogacy in the Anglican Church” 112.
347 Amponsah 2022 “Marriage, Family, and Surrogacy in the Anglican Church” 112.
348 Amponsah 2022 “Marriage, Family, and Surrogacy in the Anglican Church” 114.
349 Ofori-Attah K “The Church's Role in Ethical Guidance: A Survey of Christian Leaders’ Perspectives on Surrogacy in Ghana” *African Religious Ethics Review* 2022 (10) 4, 67-83.

consistent with its faith and ethical values.[350] In this way, the Church approaches surrogacy with a focus on ethical and theological considerations, reflecting its commitment to traditional values related to marriage and family.

To show care and support for infertile couples, many Protestant denominations in Ghana, while opposing surrogacy, offer extensive pastoral care and support to couples facing infertility. They advocate for alternatives like adoption and ethical medical treatments that align with biblical principles.[351] This support includes counselling, prayer, and community support. In addressing the social stigma of infertility, these churches promote adoption as a loving and morally acceptable way to build a family, guided by their focus on grace, faith, and reliance on God's sovereignty.[352]

In Ghana, where cultural norms prioritise biological children and lineage, Protestant churches confront the tension between these expectations and biblical teachings on surrogacy. Despite societal pressures and the increasing accessibility of surrogacy due to advancements in reproductive technology, Protestant leaders continue advocating the importance of adhering to biblical principles. They encourage ethical alternatives that uphold Christian values and preserve family integrity as outlined in scripture.

3.3 Islam and Surrogacy

Surrogate motherhood is a contentious issue with varying perspectives among the most prominent Islamic schools of thought in Ghana. Sunni Islam typically opposes surrogacy due to concerns about family lineage, marital integrity, and potential confusion with adultery, demonstrating the importance of biological ties in Sharia law, as the discussion below will highlight. Shia Islam and other Islamic groups may have differing views. Some Sunni scholars are open ed to gestational surrogacy, particularly if it uses the wife's egg and husband's sperm to preserve biological ties. The broader debate on surrogacy in Islam also involves ethical and legal concerns, such as the possible exploitation of surrogate mothers, the commercialisation of children, and the need for comprehensive legal safeguards. Any acceptance of surrogacy

350 Mensah 2022 "The Impact of Surrogacy on Christian Family Dynamics in Ghana*" 27.*

351 Mensah 2022 "The Impact of Surrogacy on Christian Family Dynamics in Ghana" 27.

352 Owusu 2023 *Adoption and Surrogacy: Pentecostal Reflections on Modern Reproductive Ethics* 7-26.

within the Muslim context would require adherence to both human rights laws and Islamic principles.

Islam's stance on surrogacy in Ghana aligns with broader Islamic ethical principles regarding assisted reproductive technologies. Generally, Islamic jurisprudence considers surrogacy, particularly commercial surrogacy, impermissible due to concerns about lineage, the sanctity of marriage, and the involvement of third parties in procreation. Authoritative Islamic bodies like Al-Azhar and the International Islamic Fiqh Academy have issued Fatwas against traditional surrogacy, arguing that it violates marital sanctity and creates ambiguity in the child's lineage.[353] While there is a paucity of information regarding Muslim practices regarding surrogacy in Ghana, Muslim communities in Ghana typically adopt global Islamic guidelines. As a result, the major Islamic groups in Ghana hold a conservative view on surrogate motherhood. While interpretations and emphasis may vary slightly among the different Islamic groups, their overall stance align with traditional Islamic principles that prohibit surrogacy.

There are several groups of Muslims in Ghana. These groups comprise the Sunni, Shia, Ahmadiyya and Salafi. The Sunni represents the largest segment of the Muslim population in Ghana, encompassing various schools of thought including the Maliki, Hanafi, Shafi'i, and Hanbali schools. Each of these schools follows the broad principles of Sunni jurisprudence but may have slight variations in interpretation.[354] However, their collective view on surrogacy tends to align with traditional Islamic legal and ethical principles.[355]

In Sunni Islam, surrogacy is considered impermissible (haram) due to concerns about lineage (Nasab), family integrity, and the involvement of third parties in the reproductive process. One of the fundamental concerns is the preservation of lineage. Islam places a strong emphasis on the clear identification of biological lineage. Surrogacy, particularly when it involves a third-party carrying a child for another couple, introduces ambiguity in lineage, which is problematic in Islamic law.[356] Islam considers procreation to be an act that should occur within the bounds

353 Shabana MR *Islamic Bioethics: Between Sacred Law, Science, and Politics* (University of South Carolina Press, 2024) chapter 3.

354 Abd al-Raziq A *Islam and the Foundations of Political Power* (Edinburgh University Press, 2014) chapter 4.

355 Niazi Islamic SM "Islamic law and the surrogate mother" *Islamabad Law Review* 2017 (1), 1-14.

356 Mansooreh S and Mehdi K "Modern Assisted Reproductive Technologies and Bioethics in the Islamic Context" *Theology and Science* (2021)19(2), 146–154.

of a marital relationship. The involvement of a surrogate mother, who is not part of the marital relationship of the intended parents, is seen as conflicting with the sanctity of marriage. Surrogacy introduces a third party into the reproductive process, which is viewed as interfering with the natural and intended process of childbirth between a husband and wife.[357]

Traditionalist Sunni scholars approach surrogacy using Islamic legal principles derived from foundational texts like the Quran, Hadith, and classical jurisprudence by scholars such as Imam Abu Hanifa, Imam Malik, Imam Shafi'i, and Imam Ahmad ibn Hanbal.[358] Their views on surrogacy vary within different Sunni schools. Hanafi Scholars' opinions range from expressing reservations due to concerns about lineage and the child's parentage to permitting gestational surrogacy under specific conditions that protect the rights of all parties involved.[359]

Contemporary Sunni scholars offer more nuanced perspectives on surrogacy, integrating traditional Islamic sources with modern medical, ethical, and social considerations. Some may permit gestational surrogacy under specific conditions, ensuring the child's lineage and protecting all parties' rights.[360] Institutions like Dar al-Ifta al-Misriyyah and the Islamic Fiqh Academy provide religious rulings, focusing on ethical issues such as consent, familial relationships, and children's well-being.[361] Scholars engage in interdisciplinary dialogue with medicine, law, and ethics to develop recommendations that emphasise justice, compassion, and human rights within Muslim societies.

In Ghana, Islamic teachings on surrogacy are guided by local religious authorities and scholars who adhere to traditional Sunni views. Sunni Muslims typically regard surrogacy as impermissible (*haram*), aligning with broader Islamic jurisprudence. This stance is rooted in concerns about preserving lineage, maintaining the sanctity of marriage, and avoiding third-party involvement in reproduction. All Sunni schools of thought, eg Maliki, Hanafi, Shafi'i,

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357 Gilliat-Ray S *Muslims in Western Europe: Religion and Belonging* (Edinburgh University Press, 2021) chapter 7.

358 Abd al-Raziq A *Islam and the Foundations of Political Power* (Edinburgh University Press, 2014) chapter 4 in general.

359 Gilliat-Ray S *Muslims in Western Europe: Religion and Belonging* (Cambridge University Press, 2010) chapter 7.

360 Shabana MR *Islamic Bioethics: Between Sacred Law, Science, and Politics* (University of South Carolina Press, 2014) chapter 3.

361 Yudha AT et al "Surrogacy in Islamic Jurisprudence: A Comprehensive Study of Maqasid al-Shariah and Ethical Viability" *Pharos Journal of Theology* (2023) 106(4), Article 401.

and Hanbali, share a similar perspective on surrogacy, demonstrating firm commitment and adherence to traditional Islamic ethical principles.[362]

Shia Islam tends to be more open to surrogacy compared to Sunni Islam. Shia Muslims, like their Sunni counterparts, adhere to traditional Islamic teachings, but there are some differences in interpretation and practice. For instance, Shia Islam places a strong emphasis on the role of Imams and the concept of justice, which can influence their social and political views. However, it's important to note that within both Shia and Sunni communities, there are individuals and groups who advocate for progressive values such as gender equality, human rights, and democratic governance. [363]

Shia Muslims generally have a more permissive view on surrogate motherhood compared to Sunni Muslims. Many Shia scholars allow surrogacy under certain conditions, primarily through the application of *Ijtihad* (independent reasoning) and *Maslaha* (public interest). For instance, Ayatollah Khomeini issued a fatwa in 1999 permitting the use of donor technology, including surrogacy, provided that the egg and sperm come from a legally married couple, if it serves the public interest, helps preserve the marital bond, and does not involve physical acts of adultery.[364] Shia scholars distinguish the embryo as a separate entity, viewing its transfer to another uterus as a morally neutral act. The acceptance of surrogacy is also influenced by the high prevalence of infertility and the fact that Islamic family law may consider infertility as grounds for divorce. This aligns with Islamic principles advocating for seeking treatments for illnesses, as noted in the Hadith of Prophet Muhammad.

In Ghana, Shia Islam is a minority compared to Sunni Islam, but it has a significant presence. Shia Islam in Ghana includes various groups, notably the Twelver Shia (Ithna Ashariyya) and, to a lesser extent, the Ismaili Shia. Their views on surrogacy are informed by their interpretations of Islamic jurisprudence and ethical considerations.[365] Twelver Shia scholars, who represent the largest branch of Shia Islam, interpret Islamic teachings on contemporary

362 Abd al-Raziq 2014 *Islam and the Foundations of Political Power* chapter 4.

363 Ya'arit Bokek-Cohen YB, Limor Dina Gonen LD and Tarabeih M "The Ethical Standards of Sunni Muslim Physicians Regarding Fertility Technologies that are Religiously Forbidden" *Journal of Religion and Health* (2022) 61, 2876–2904.

364 Aramesh K "Iran's experience with surrogate motherhood: an Islamic view and ethical concerns" *Journal of Medical Ethics* 2009 (35), 320-322.

365 Aramesh 2009 "Iran's experience with surrogate motherhood: an Islamic view and ethical concerns" 320.

issues like surrogacy based on the Quran, Hadith, and the teachings of the Twelver Imams.[366] Their perspectives on surrogacy are nuanced and grounded in Shia jurisprudence, emphasising considerations such as lineage, family integrity, and the well-being of all parties involved. Twelver Shia scholars utilise a rich jurisprudential tradition, including fatwas (legal rulings) and *usul al-fiqh* (legal principles), to address ethical and legal matters, including surrogacy.[367]

Contemporary Twelver Shia scholars engage with modern medical advancements and ethical principles, considering the benefits of assisted reproductive technologies while addressing issues like consent, lineage, and the welfare of children. They draw upon the teachings of the Twelve Imams, particularly Imam Ja'far al-Sadiq, to ensure that modern bioethical practices remain consistent with Twelver Shia values. These scholars also engage in interdisciplinary dialogue to navigate complex ethical challenges and promote justice, compassion, and the common good in addressing medical ethics and reproductive technologies.[368]

The Ismaili Shia community, known for its relatively progressive interpretations of Islamic teachings, still upholds traditional concerns about lineage and family integrity. While there might be some flexibility in interpretation, most Ismaili scholars would also view surrogacy with caution, aligning with traditional Shia perspectives on the importance of maintaining clear lineage and the potential ethical issues involved.[369]

Ismaili Shia Islam, guided by the living Imam, Aga Khan IV, supports a progressive and adaptable approach that may allow for a more permissive stance on surrogacy. While direct statements on surrogacy are scarce, the Ismaili community prioritises ethical principles such as compassion, family welfare, and modernity.[370] Ismaili scholars and institutions, such as the Institute of Ismaili Studies, advocate for a pragmatic approach to Islamic jurisprudence,

366 Sachedina A *Islamic Roots of Democratic Pluralism* (New York: Oxford University Press, 2001) chapter five.

367 Sachedina 2001 *Islamic Roots of Democratic Pluralism*.

368 Sachedina 2001 *Islamic Roots of Democratic Pluralism*.

369 Gilliat-Ray S *Muslims in Western Europe: Religion and Belonging* (Edinburgh University Press, 2021) chapter 7.

370 Andani, K "A Survey of Ismaili Studies: Early Ismailism and Fatimid Ismailism" *Religion Compass* (2016) 10(8), 191-206.

suggesting that surrogacy could be permissible if it aligns with ethical guidelines and addresses the needs of modern society.[371]

In Ismaili Shia Islam, guidance on surrogacy is personalised and considers individual circumstances, with local councils and health boards providing tailored advice. While surrogacy may be permissible, it requires careful ethical consideration, focusing on the rights of the child and the role of the surrogate. Overall, Ismaili Shia Islam adopts a flexible, context-sensitive approach that may permit surrogacy if it aligns with the values of preserving family. Modern Islamic reform movements which involve scholars and organisations reinterpret Islamic teachings to address contemporary issues like surrogacy. These movements consider justice, equality, and human rights, advocating for the permissibility of surrogacy when it includes informed consent, fair compensation, and the protection of all parties' rights. Progressive scholars focus on humanitarian values and engage in interdisciplinary discussions to navigate ethical dilemmas, aiming to align Islamic teachings with modern standards of compassion and social justice. They challenge traditional interpretations to address systemic issues and evolving social and scientific contexts.[372]

It is interesting to note that Islamic feminism, gaining momentum in Ghana, seeks to align Islamic teachings with feminist principles, advocating for gender equality within Muslim communities. Scholars and activists challenge patriarchal interpretations by focusing on women's rights, gender justice, and social equality. Regarding surrogacy, Islamic feminists strive to promote women's agency, autonomy, and reproductive rights, engaging critically with Islamic texts to promote gender equality. They use an intersectional approach to address the diverse experiences of Muslim women and the interconnected forms of oppression they face. Islamic feminism evolves to shape discussions on gender, religion, and social justice, contributing to the advancement of women's rights and gender equality.[373] Their views are aligned with those of liberal Muslim thinkers who advocate for a flexible interpretation of Islamic teachings, individual freedom, pluralism, and human rights. Scholars like Asma Barlas

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371 Mutaz al-Khatib "Contemporary Ijtihād, Ethics and Modernity" *Journal of Islamic Ethics* (2019) 3(1–2) 1-7.

372 Kecia A *Sexual Ethics and Islam: Feminist Reflections on Qur'an, Hadith, and Jurisprudence* (Expanded edition, One World, 2016)

373 Barlas A *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'an* (2nd ed, University of Texas Press, 2019), especially the discussion on women's rights and responsibilities in chapter 4.

and Khaled Abou El Fadl emphasise individual freedom, pluralism, and inclusivity within Islamic frameworks.[374] Liberal Islam fosters open discourse and aims to reconcile Islamic teachings with modern values such as democracy and human rights, particularly in the context of surrogacy.[375]

The discussion on Muslim perspectives on surrogate motherhood would be incomplete without a reference to the development of Islamic bioethics. Islamic bioethics apply Islamic principles to contemporary issues like surrogacy, focusing on ethical concerns such as consent, justice, and family integrity. The field combines Islamic jurisprudence, medical ethics, and social sciences to create guidelines for modern Muslim societies.[376]

In conclusion, Islamic views on surrogacy are not straightforward. Many Shia scholars support gestational surrogacy for infertile couples, seeing it as consistent with Islamic principles, while most Sunni scholars oppose it, equating it with adultery though some see it differently due to its medical nature. Recent fatwas and discussions within Shia Islam continue to prioritise the welfare of all parties involved, while Sunni organisations like the Islamic Fiqh Academy have issued (albeit limited) conditions for permitting surrogacy. It is clear that debates on broader reproductive ethics highlight the need for guidelines that balance Islamic values with modern medical and societal realities.

4 FEMINIST PERSPECTIVES

Feminism refers to a spectrum of socio-political ideologies that strive to define and establish political, economic, personal, and social equality of the sexes.[377] The purpose of this section is to focus on a selection of feminist critiques regarding surrogate motherhood briefly. The various types and waves of feminism are vast and will not be canvassed in this thesis.

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374 Barlas *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'an* chapter 4.

375 Barlas *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'an*.

376 Islamic Perspectives on the Principles of Biomedical Ethics: Intercultural Dialogue in Bioethics (volume 1) (London: World Scientific Publishing Company, 2016). The focus of chapters 6 and 7 is pertinent for this study. Whilst chapter 6 focuses on cross-cultural issues, chapter 7 turns to bioethics, assisted reproduction, including surrogacy.

377 Javeed AR "Feminism: An Overview" (2020) 13(4) *International Journal of Research* https://edupediapublications.org/journals (e-ISSN: 2348-6848, p-ISSN: 2348-795X) (accessed 18 February 2026).

It is undeniable that feminist movements in Ghana have played a role in shaping the discourse around surrogate motherhood in advocating for the rights and protections of surrogate mothers.

4.1 Feminist movements focusing on surrogate motherhood regulation

The Women's Manifesto Coalition and other feminist organisations in Ghana have been vocal in calling for regulations that ensure the dignity and autonomy of surrogate mothers. They emphasise the importance of informed consent, fair compensation, and legal recognition of the rights of all parties involved. The Women's Manifesto for Ghana is a political statement by Ghanaian women demanding rights and equality. The Manifesto came about in 2004 as a result of insufficient attention paid to critical issues affecting women including under-representation in politics, policy and decision-making, and in public life in general. Through the Manifesto, women's organisations wanted to provide an agenda for policy makers. The Manifesto not only addresses various areas such as women's economic empowerment, land rights, social policy, political participation, human rights, and discriminatory cultural practices, it also calls for equal female participation in government decision-making and demanding that the government take steps to ensure women's human rights, including access to reproductive health care.[378] While there is no specific legislation in Ghana that directly addresses surrogacy from a feminist perspective, the broader feminist movement has contributed to raising awareness and promoting discussions on the ethical and social implications of surrogacy.

Feminist critiques of surrogacy arrangements encompass diverse perspectives and concerns, reflecting the complexities of gender, power, and reproductive rights. These critiques include, among others, the Exploitation and Commodification Feminists (ECF), Reproductive Labour and Autonomy Feminists (RLAF), Gender and Patriarchy Feminists (GPF), Legal and Ethical Concerns Feminists (LECF), Global Inequalities (GI), Impact on Children Feminists (ICF), Reproductive Justice Framework Feminists (RJFF), Motherhood and Care Labour Feminist (MCLF) and Global and Intersectional Perspectives Feminist (GIPF). Other feminist organisations include Global Feminist Groups, Online and Social Media Feminist

[378] The Coalition on the Women's Manifesto for Ghana: Women's Manifesto for Ghana 2004 (ABANTU for Development, Accra 2004.hhttps://library.fes.de/pdf-files/bueros/ghana/02983.pdf (accessed 11 November 2025).

Communities, Mainstream Feminist Organisations, Liberal Feminists, and Radical Feminists. Each of these groupings focuses on specific issues relating to surrogacy that affect women in general.

Exploitation and Commodification Feminists (ECF) often argue that surrogacy can exploit and commodify women's bodies, particularly those from economically disadvantaged backgrounds. These feminists highlight the power imbalances and economic disparities that may compel women to become surrogates out of financial necessity rather than genuine choice. Reproductive Labor and Autonomy Feminists (RLAF)[379] critique focuses on the potential loss of autonomy for surrogate mothers. They argue that surrogacy can reduce women to mere vessels for carrying a child, undermining their autonomy and bodily integrity. The contractual nature of surrogacy agreements may impose significant restrictions on a surrogate's lifestyle and health choices.[380]

The Gender and Patriarchy Feminists (GPF) critique surrogacy arrangements for reinforcing traditional gender roles and patriarchal structures.[381] By framing women primarily as mothers or caregivers, surrogacy can perpetuate stereotypes that limit women's roles in society. The Legal and Ethical Concerns Feminists (LECF) prioritise the need for robust legal frameworks to protect surrogate mothers' rights.[382] They argue that existing laws often inadequately address issues of consent, compensation, and parental rights, potentially leaving surrogates vulnerable to exploitation and abuse.[383]

The feminists constituting the group known as Global Inequalities (GI) examine the global inequalities exacerbated by international surrogacy arrangements. They point out that wealthy individuals or couples from developed countries often seek surrogacy services in less affluent countries, exploiting global economic disparities. The Impact on Children Feminists (ICF) also raises concerns about the impact of surrogacy on the children born through these arrangements.

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379 Banerjee S and Pande A "Between Desperation and Respectability: Commercial Surrogacy in India" *Journal of Women in Culture and Society* 2014 (39) 2, 471-494.

380 National Organization for Women (NOW) "Commercialized Surrogacy Exploits Women" (2019) https://now.org/blog/commercialized-surrogacy-exploits-women/ (accessed 18 February 2026).

381 Ziegler M *Abortion and the Law in America: Roe v. Wade to the Present* (Cambridge University Press, 2020). Chapter 2 is important for this study, as it traces the reactions and mobilisations that are alluded to in this chapter.

382 Ziegler 2020 *Abortion and the Law in America: Roe v. Wade to the Present*.

383 Ziegler 2020 *Abortion and the Law in America: Roe v. Wade to the Present*.

They question the ethical implications of creating children through a commercial transaction and the potential psychological effects on children who learn about the circumstances of their birth. [384]

The Reproductive Justice Framework Feminists (RJFF) advocate for a broader understanding of reproductive rights, encompassing the right to have children, the right not to have children, and the right to parent children in safe and healthy environments. They argue that surrogacy practices must be evaluated within this comprehensive framework to ensure justice for all parties involved.[385] Motherhood and Care Labour Feminists (MCLF) also interrogate traditional notions of motherhood and caregiving within surrogacy arrangements. Some argue that surrogacy reinforces stereotypical gender roles by valuing biological motherhood whilst potentially undervaluing and compromising the labour of surrogate mothers. This perspective highlights the need to recognise and value the care work performed by surrogate mothers, challenging societal norms that prioritise biological ties over caregiving relationships. [386]

Intersectional and Global Views Feminists (GIPF) contend that because wealthy Westerners may take advantage of the reproductive labour of women in less developed countries, surrogacy can reinforce colonial and neocolonial power dynamics. In talks around surrogacy, this viewpoint highlights the significance of tackling interlocking forms of oppression and elevating the voices of marginalised women. Taken together, these feminist perspectives provide a comprehensive analytical framework for understanding the complex legal, social, and ethical dimensions of surrogacy arrangements**.** They stress on how critical it is to address power disparities, provide informed consent, and safeguard the welfare and rights of all people concerned.[387]

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384 Joseph E Stiglitz JE, Abdenur A, Byanyima W et al. "G20 Extraordinary Committee of Independent Experts on Global Inequality: Report" (G20 South Africa Presidency, November 2025) https://www.wits.ac.za/news/latest-news/research-news/2025/november/g20-report-we-are-facing-an-inequality-emergency.html (accessed 18 February 2026).

385 Nandagiri R, Senderowicz L and Sigle W "Global Reproductive Justice: A New Agenda for Feminist Economics?" *Feminist Economics* (2025) 31(1), 1-28 https://doi.org/10.1080/13545701.2025.2462667 (accessed 18 February 2026).

386 Mulumba M, Oga J and Muhumuza N "Beyond reproductive rights: implementing the Africentric reproductive justice framework in sexual and reproductive health and rights litigations in Africa" S*exual and Reproductive Health Matter* (2025) 33(1) (no page numbers) *https://doi.org/10.1080/26410397.2025.2570579* (accessed 18 February 2026).

387 See in general, D'Agostino S and Brown NE (eds) *Intersectional (Feminist) Activisms: Global Practices and Experiences* (Routledge, 2024).

Intersectional feminist groups recognise that gender inequality intersects with other forms of oppression, such as race, class, sexuality, and disability. They work to address the unique challenges that women who experience multiple forms of marginalisation face. Organisations like Sisters Uncut in the UK and Black Women's Blueprint in the US focus on issues at the intersections of race, gender, and other identities. Their impact is likely to grow among feminists in Ghana, due to the focus on issues affecting women of colour.

Black Women's Blueprint (BWB) focuses on the intersection of race and gender in reproductive justice and prioritises the need to protect Black women from exploitation in surrogacy arrangements.[388] They advocate for policies that ensure fair compensation, informed consent, and comprehensive healthcare for surrogate mothers. They highlight the importance of addressing systemic inequalities in reproductive health.[389] Black Women's Blueprint, a US-based organisation, has critiqued surrogacy for its potential to perpetuate historical patterns of exploitation and commodification of Black women's bodies. [390]

These feminists promote the recognition of ways in which racism, economic inequality, and reproductive injustice intersect in surrogacy arrangements.[391] These intersectional feminist groups' perspectives underscore the importance of recognising and addressing the intersecting forms of oppression that shape women's experiences in surrogacy arrangements.[392] They advocate for policies and practices that prioritise the rights, agency, and well-being of marginalised women, whilst challenging systemic inequalities and injustices. Their critiques highlight the multifaceted ethical, social, and political dimensions of surrogacy arrangements, emphasising the need for a nuanced and intersectional approach to understand and address the complex issues involved.[393]

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388 Black Women's Blueprint et al "Policy as Power: Providing a Path Toward Black Reproductive Justice" (2025) *Black Reproductive Justice Policy Agenda* (accessed 18 February 2026).

389 Black Women's Blueprint 2025 "Policy as Power: Providing a Path Toward Black Reproductive Justice".

390 Black Women's Blueprint 2025 "Policy as Power: Providing a Path Toward Black Reproductive Justice".

391 Black Women's Blueprint 2025 "Policy as Power: Providing a Path Toward Black Reproductive Justice".

392 Black Women's Blueprint 2025 "Policy as Power: Providing a Path Toward Black Reproductive Justice".

393 Black Women's Blueprint 2025 "Policy as Power: Providing a Path Toward Black Reproductive Justice". See also Women's International League for Peace and Freedom *Stories of Feminist Peace 2020: Annual Report* (WILPF 2020) https://www.wilpf.org/stories-of-feminist-peace-2020/ (accessed 18 February). 2026).

Other feminists' organisations and movements whose view may influence feminist thinking in Ghana include the Global Feminist Groups, Online and Social Media Feminist Communities, Mainstream Feminist Organisation, Liberal Feminist Perspectives on Surrogacy and Radical Feminist Perspectives on Surrogacy, briefly referred to below.

Global feminist organisations prioritise gender inequality globally and advance women's rights and empowerment in a variety of contexts. Their areas of focus include reproductive health and rights, economic fairness, political participation, and education. Organisations like the Women's International League for Peace and Freedom (WILPF) and the Global Fund for Women (GFW) offer global support for the advocacy of women's rights. The global feminist groups approach surrogacy from a perspective that considers the intersecting forms of oppression faced by women worldwide, advocating for policies and practices that prioritise reproductive autonomy, bodily integrity, and social justice. The Women's International League for Peace and Freedom (WILPF) highlights the need to address the ethical and human rights implications of surrogacy, particularly the exploitation of women's bodies and labour.[394] They emphasise the importance of centring the voices and experiences of marginalised women in discussions about reproductive technologies and commercial surrogacy. The WILPF also advocates for a feminist approach to surrogacy regulation that prioritises the rights and well-being of all parties involved, particularly surrogate mothers.[395]

The Global Fund for Women (GFW) raised concerns about the impact of surrogacy on women's rights and gender equality worldwide. They argue that surrogacy can reinforce gendered inequalities and perpetuate the commodification of women's bodies, particularly in contexts where economic disparities and legal protections are lacking.[396] The Global Fund for Women supports grassroots feminist movements working to address the root causes of reproductive injustice and advocate for policies that uphold women's autonomy and agency.

394 Women's International League for Peace and Freedom 2020 *Stories of Feminist Peace 2020: Annual Report*.

395 See also Women's International League for Peace and Freedom *Stories of Feminist Peace 2020: Annual Report* (WILPF 2020) https://www.wilpf.org/stories-of-feminist-peace-2020/ (accessed 18 February). Global Fund for Women *Annual Report 2021: Advancing Gender Justice and Equality* (Global Fund for Women 2021) (accessed 18 February 2026).

396 Global Fund for Women 2021 Annual Report *Advancing Gender Justice and Equality*.

The Association for Women's Rights in Development (AWID) draws attention to the complex ethical, legal, and social dimensions regarding surrogacy, emphasising the need for surrogacy rights for all women involved.[397] This Association advocates for policies and practices that recognise surrogacy as a reproductive justice topic and focuses on the oppressions women face which include race, class, and nationality. The AWID supports feminist movements working to challenge the commodification of women's bodies and advance reproductive rights and justice globally.[398] The AWID furthermore places emphasis on the need for regulatory frameworks that will protect the interests of surrogate mothers and challenge the systemic inequalities that shape reproductive choices and opportunities.

4.2 Online Feminist and Social Media Feminist Movements

With the rise of social media, many feminist groups have emerged online, creating virtual communities for advocacy, education, and support. These groups use platforms like Twitter, Instagram, TikTok, and Facebook to raise awareness about gender issues, share resources, and organise collective action. Examples include the *#MeToo* movement, Everyday Feminism, and Feminist Internet. Online and social media feminist communities provide diverse perspectives on surrogacy, reflecting a broad range of opinions within the feminist discourse. While some individuals and groups express support for surrogacy as a form of reproductive choice and empowerment, others raise concerns about its potential to perpetuate exploitation and commodification of women's bodies.

Everyday Feminism, an online platform dedicated to intersectional feminist analysis and activism, has published articles exploring various perspectives on surrogacy. Some contributors highlight the agency and autonomy of surrogate mothers, framing surrogacy as a legitimate choice that allows women to exercise control over their bodies and reproductive decisions. [399]

The *#MeToo* movement that initially focused on exposing sexual harassment and assault, has also provided a platform for discussions on reproductive rights, including surrogacy. Activists

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397 Miller K and Jones R *Toward a Feminist Funding Ecosystem: A Framework and Practical Guide* (Association for Women's Rights in Development (AWID) 2019) (accessed 18 February 2026).

398 Miller and Jones 2019 *Toward a Feminist Funding Ecosystem: A Framework and Practical Guide.*

399 Everyday Feminism "Everyday Feminism Action Guide" (2022) https://www.everydayfeminism.com (accessed 18 February 2026).

within the movement focus on the importance of informed consent, bodily autonomy, and the need to protect women from coercive practices. The movement advocates for policies that ensure surrogate mothers are fully informed and voluntarily choose to enter into surrogacy agreements without any form of pressure.[400]

Feminist Internet is an online collective that aims to ensure the internet is a safe and empowering space for women and marginalised communities. They engage in discussions about the digital dimensions of surrogacy, such as the use of online platforms for surrogacy arrangements and the potential for digital exploitation. The group advocates for regulations that protect surrogate mothers from exploitation and ensure that online surrogacy platforms operate ethically.[401] In summary, these online and social media feminist movement or communities highlight the importance of balancing reproductive choice and autonomy with the need to protect women from exploitation and ensure ethical practices in surrogacy arrangements.

4.3 Mainstream Feminist Organisations

Mainstream feminist movements concentrate on addressing discrimination against women and promoting their rights within the confines of the current social, political, and legal structures. They frequently work on topics including women's representation in leadership roles, equitable pay, and reproductive rights. Examples include Women's Rights Organisations (WRO), Amnesty International (AI), Human Rights Watch (HRW), Planned Parenthood (PP), Women's Equality Party (WEP), and the National Organisation for Women (NOW) in the United States and the Fawcett Society in the United Kingdom.

The National Organisation for Women (NOW) raises concerns over the commercialisation of surrogacy and its potential to take advantage of economically disadvantaged women.[402] They support comprehensive laws that provide provisions for financial compensation, legal representation, and medical care to safeguard the rights and welfare of surrogate mothers.

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400 #MeToo *Impact Report 2021: Reflections and Future Direction* (MeToo Movement 2021). See also #MeToo *More Than a Hashtag: 2020 & 2021 Annual Report* (accessed 18 February 2026).

401 Smith V "Surrogacy and the Rise of the Female Patriarch" (2023) *The Critic Magazine* (accessed 18 February 2026).

402 National Organization for Women (NOW) 2023 *Commercial Surrogacy and Women's Rights: Addressing Exploitation and Economic Inequality*.

The Fawcett Society (FS) has also brought to light how surrogacy affects women's autonomy and bodily integrity.[403] Both the FS and the NOW groups emphasise the need to guarantee surrogate mothers' autonomy and prevent them from being forced into contracts by societal pressure or economic need.[404] Women's Rights Organisations (WRO) around the world have persisted in discussing the moral ramifications of surrogacy, trying to strike a balance between the necessity of reproductive autonomy vis-à-vis potential exploitation concerns. The WRO's recent concern is to create ethical standards and make sure surrogates are fully educated and safeguarded.[405]

The perspectives from the majority feminist organisations highlight the complexity of surrogacy as an issue that intersects with gender, economic justice, and human rights. The emphasis is often on ensuring that surrogacy arrangements are conducted ethically, with full respect for the rights and well-being of surrogate mothers.

Despite the significant impact of the work of the Liberal, the Radical- and Neoliberal Feminist Movements on the rise of feminism globally, their impact in Ghana is limited. A study by Fidelia, Ohemeng, Ogum and Others,[406] after analysing mainstream feminist perspectives in Ghana, highlights how these feminist movements fail to address local realities, including reproductive justice and surrogacy. They emphasise the need for context-specific, Africentric approaches rather than importing liberal or neoliberal feminist frameworks. For this reason, the discussion on the impact of feminist views in Ghana will not delve into these views.

All of the various perspectives canvassed above demonstrate the diversity of approaches and strategies employed in the fight for gender equality and women's rights, reflecting the complexity of addressing gender-based oppression in different social, cultural, and political contexts.

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403 The Fawcett Society: https://www.fawcettsociety.org.uk/?form=MG0AV3 (accessed 4 November 2025).

404 National Organization for Women (NOW) 2023 *Commercial Surrogacy and Women's Rights: Addressing Exploitation and Economic Inequality*.

405 Doubossarskaia L "Surrogate Motherhood: A Feminist Issue?" (National Organization for Women Blog, 25 March 2010). https://now.org/blog/surrogate-motherhood-a-feminist-issue/?form=MG0AV3 (accessed 18 February 2026).

406 Fidelia NA, Ohemeng, DO, Akakpo DT and Coker-Appiah D. *Feminists' Perspectives as Transformative Levers in Ghana* (IDOS Discussion Paper 6/2025). https://hdl.handle.net/10419/313629 (accessed 18 February 2026).

4.4 Naturalist perspectives

Naturalist perspectives on surrogacy provide a comprehensive overview of the ethical concerns and biological considerations raised by some critics.[407] Some naturalist perspectives raise ethical concerns about the artificial manipulation of reproductive processes through surrogacy. Critics argue that surrogacy involves unnatural interventions, such as IVF and embryo transfer, which conflict with naturalists' principles of reproduction.[408] Naturalist perspectives on surrogacy value the biological norms and processes of human reproduction. Critics argue that surrogacy disrupts the natural bond between gestational mother and child, which has evolved over millennia to ensure optimal offspring development and maternal care.[409]

From a naturalist perspective, surrogacy may also be viewed as potentially detrimental to evolutionary fitness,[410] as it involves the transfer of genetic material and parenting responsibilities to individuals who may not have a biological connection to the child. Critics argue that surrogacy challenges the natural processes of genetic inheritance and parental bonding, which have evolved to promote the survival and reproduction of offspring.[411] Naturalist perspectives on surrogacy prioritise traditional family structures and kinship ties rooted in biological relatedness. [412]

4.5 Benefits and objections

From the foregoing discussion, starting with belief system views and ending with feminist views, the identified benefits and objections regarding surrogate motherhood may be summarised as follows:

- Surrogacy is a legitimate means for individuals or couples to exercise their reproductive autonomy and fulfil their desire for parenthood.[413]

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407 Hilgers TW "Ethical aspects of surrogacy: Current views" *Linacre Quarterly* 2019 (86) 2, 159-171.

408 Hilgers 2019 *Linacre Quarterly* 159.

409 Dixon T "The biology of surrogacy: Who decides?" 1 *Hastings Center Report* 2018 (48), 8-9.

410 Levick MR "Evolutionary implications of modern reproductive technologies: A critical analysis" *Journal of Evolutionary Psychology* (2020) 163-178.

411 Levick 2020 *Journal of Evolutionary Psychology* 163-165.

412 Levick 2020 *Journal of Evolutionary Psychology* 163-169.

413 Smith R "Natural law and human reproduction: Catholic teachings" *Journal of Religious Ethics* 2021 (37) 2, 154-167.

- Surrogacy assists those who cannot conceive to have a child genetically related to them.
- Surrogate mothers experience a sense of emotional fulfilment by assisting an infertile couple to have their own child.
- Surrogate mothers have the right to make informed choices about their bodies and reproductive futures, including the option to participate in surrogacy arrangements.[414]
- Surrogacy empowers women by providing them with financial compensation, agency over their bodies.

Some of the negative perceptions and concerns regarding surrogacy include:

- Surrogacy perpetuates exploitation and inequality by commercialising the bodies and reproductive abilities of women, especially those from low-income backgrounds.
- Surrogacy exploits women's bodies and reinforces gendered inequalities, turning pregnancy and childbirth into commercial transactions.[415]
- Surrogacy undermines the traditional family unit and fragments notions of family relationships.
- The surrogate mother may experience feelings of loss or attachment to a child that they have borne. Significant health risks and psychological difficulties, such as the possibility of medical issues and the emotional burden of giving up a child, may be faced by surrogate mothers.[416]
- Surrogacy compromises the social institution of motherhood and its status in conventional society. It introduces two "mothers", e.g the gestational mother and the genetic mother.
- Surrogacy may be seen to compromise the dignity of the commissioned child that is carried in another woman's womb, as well as the dignity of the surrogate mother.
- Surrogate mothers who choose to become surrogates run the risk of experiencing medical difficulties during pregnancy.
- Concerns with the rights and identities of children are brought up by surrogacy, especially when there is a possibility of identity confusion due to the differences

414 Rebecca JC, Dickens BM, and Fathalla M *Reproductive Health and Human Rights: Integrating Medicine, Ethics, and Law* (Oxford University Press, 2003). See also Dickens BM and Cook RJ "The Scope and Limits of Conscientious Objection" *International Journal of Gynecology and Obstetrics* (2001) 71-77.

415 Garcia E "Surrogacy and exploitation: A feminist critique" 2022 (48) 2 *Feminist Studies* 87-104.

416 Choi Y "The health risks and emotional challenges of surrogacy: A critical analysis" 2018 (24) 3 *Journal of Reproductive Health* 201-215.

between gestational and genetic mothers. Understanding one's roots and forging an identity can be difficult for surrogate children, especially if they know little about their genetic and gestational parents.[417]

5 VIEWS OF OPINION LEADERS AND ACTIVISTS' VIEWS ON SURROGACY

The introduction to this chapter has alluded to the potential impact of the views of opinion leaders, whether from a religious, social or cultural perspective, in shaping societal attitudes and policies regarding surrogacy. These perceptions are valuable for several reasons, discussed in more detail next.

5.1 Influence on Public Opinion

Opinion leaders, such as religious figures, medical professionals, and community leaders, have significant sway over public attitudes. Their views can either normalise or stigmatise surrogacy. They can help educate the public on the complexities of surrogacy, addressing misconceptions and highlighting ethical considerations. Opinion leaders also shape public discourse on surrogacy, influencing societal acceptance or rejection. Studies indicate that media representations and endorsements by prominent figures significantly impact public perceptions and attitudes toward surrogacy.[418]

Recent studies highlight how media representations and endorsements by prominent figures impact public perceptions and attitudes toward surrogacy.[419] According to some researchers,[420] including Smietana,[421] celebrities who have openly discussed their experiences with surrogacy can shift public opinion, making the practice more mainstream and acceptable.

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417 Lee H "Children's rights and identity in surrogacy arrangements: A critical examination" 2023 (98) 1 *Child Welfare Journal* 45-60.

418 See in general, Lindheim SR and Kavic SM *Reproductive endocrinology and infertility handbook for clinicians* (Springer Verlag, 2017).

419 Lindheim and Kavic 2017 *Reproductive endocrinology and infertility handbook for clinicians.*

420 Dhillo W, Davies M, Jayasena C and Seal L "Reproductive Endocrinology" in: *Oxford Handbook of Endocrinology and Diabetes* (Oxford University Press, 2021) 329-468 .

421 Smietana M, Rudrappa S and Weis C "Moral frameworks of commercial surrogacy within the US, India and Russia" *Sexual and Reproductive Health Matters* (2021) 29(1) 1-17.

5.2 Policy Development

Policymakers often look to opinion leaders for guidance when crafting legislation. Leaders' insights can help ensure that policies are ethical, fair, and reflective of societal values. Their support or opposition can significantly impact the implementation and acceptance of surrogacy laws. Policymakers often rely on expert advice and public opinion shaped by opinion leaders. Research shows that the ethical, social, and legal frameworks surrounding surrogacy are often significantly influenced by the advocacy and perspectives of medical professionals, ethicists, and legal experts.[422] For example, the American Society for Reproductive Medicine (ASRM) provides guidelines that have shaped surrogacy practices and influence state and federal legislation in the United States of America.[423]

Policymakers also rely on expert advice and public opinion shaped by opinion leaders. Recent research shows that the ethical, social, and legal frameworks surrounding surrogacy are influenced by the advocacy and perspectives of medical professionals, ethicists, including legal experts.[424] The United Kingdom's Human Fertilisation and Embryology Authority (HFEA) is a case in point. The HFEA is guided by experts and opinion leaders and continues to provide regulatory oversight that shapes surrogacy practices and legislation.[425]

5.3 Ethical and Moral Direction

Opinion leaders often provide ethical and moral frameworks that individuals and families use to make personal decisions about surrogacy. Their perspectives may help navigating or understanding the moral dilemmas associated with surrogacy, such as the rights of the surrogate mother, the intended parents, and the child. Opinion leaders may offer ethical and moral perspectives or clarity that is crucial for navigating the complexities of surrogacy. These

422 Blyth E and Farrand A "Anonymity in donor-assisted conception and the UN Convention on the Rights of the Child" *International Journal of Children's Rights* 2005 (13) 3, 391-413.

423 American Society for Reproductive Medicine (ASRM) "Definitions of infertility and recurrent pregnancy loss: A committee opinion" *Fertility and Sterility* 2012 (97) 3, 63.

424 Horsey K and Sally Sheldon S *Surrogacy in the UK: Myth, Miracles and Misconceptions* (Hart Publishing, 2017).

425 Human Fertilisation and Embryology Authority "Fertility treatment 2018: trends and figures" (HFEA 2020. https://www.hfea.gov.uk/about-us/publications/research-and-data/fertility-treatment-2018-trends-and-figures/ (accessed 18 February 2026).

perspectives help balance the interests of all parties involved, [426] as well as promoting ethical practices.[427] Bioethicists often highlight the importance of informed consent and the ethical treatment of surrogate mothers, ensuring that their rights and well-being are protected.[428]

5.4 Support and Advocacy

Opinion leaders may advocate for the rights and well-being of all parties involved in surrogacy arrangements. They can push for legal protections, fair compensation, and comprehensive support systems for surrogate mothers. Their advocacy ensures that surrogacy arrangements are fair and humane.[429] For example, organisations like Surrogacy UK promote the importance of emotional and legal support for surrogates, guided by the advocacy of experienced professionals and former surrogates.[430]

5.5 Opinion Leaders

In many cultures and religions, opinion leaders hold positions of authority and trust. Their acceptance or rejection of surrogacy can influence cultural norms and practices. They can help integrate surrogacy practices within cultural and religious frameworks, making the process more acceptable and less controversial.[431] By understanding and addressing the concerns and values of opinion leaders, stakeholders in the surrogacy process can work towards more ethical, equitable, and socially accepted practices. A good example is that of India where the involvement of religious leaders in discussions on surrogacy has shaped both public opinion and regulatory approaches, balancing traditional values with modern reproductive technologies.[432]

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426 Deonandan R et al "Ethical concerns for maternal surrogacy and reproductive tourism" *Journal of Medical Ethics* 2012 (38) 12, 742-745.

427 Baylis F "Transnational commercial contract pregnancy in India" *Bioethics* 2013 (27) 5, 231-237.

428 Deonandan et al 2012 "Ethical concerns for maternal surrogacy and reproductive tourism" 42.

429 Crockin and Jones "Third-Party Reproduction" In: Crockin S L and Peipert JF (eds) *Legal Conceptions: The Evolving Law and Policy of Assisted Reproductive Technologies* (Johns Hopkins University Press, 2010) 177–204.

430 UK Working Group on Surrogacy Law Reform *Surrogacy in the UK: Myth Busting and Reform – 10 Years On* (2026). https://www.surrogacyuk.orgaccessed (accessed 18 February 2026).

431 UK Working Group on Surrogacy Law Reform 2026 *Surrogacy in the UK: Myth Busting and Reform.*

432 Sama CB "Infertility: Perspectives from stress and coping research" In: Hobfoll SE (ed) *Stress, social support, and women* (Psychology Press, 2012) 179-205.

6 CONCLUSION

Despite its positive aspects, surrogate motherhood continues to face opposition due to concerns about its impact on traditional family values, the dignity of human life, and the responsibilities associated with motherhood. Critics argue that surrogacy may commodify reproduction, fragment family relationships, and affect the emotional well-being of all involved. Religious perspectives, whilst often cautious, generally uphold the intrinsic dignity of all humans, including those conceived through assisted reproductive technologies, viewing children as gifts to be loved and cared for. As technology advances, there is increasing recognition that assisted reproductive technologies, including surrogacy, can align with belief systems and religious perspectives if approached ethically.

Surrogacy is increasingly seen as a medically valid procedure rather than an act of marital infidelity, with many viewing it as a means to alleviate suffering and help others. The acceptance of surrogacy is growing, reflecting a shift in perceptions over time. With a well-structured legal framework, surrogacy could offer a solution to infertility while ensuring the protection of all parties involved.

From all angles, a well-structured legal framework for the regulation of surrogacy is critically important for protecting the rights and interests of all parties involved. Canvassing some of the relevant key social, cultural and religious perspectives regarding surrogate motherhood, the objective of this chapter, assists in contextualising the sensitive and nuanced context underpinning surrogacy. These views will inform subsequent policy development and legal reform in Ghana once a decision is made to legislate the practice in a comprehensive manner.

The next chapter will examine the existing legal frameworks that regulate surrogacy and its challenges in Ghana.

CHAPTER FOUR

CURRENT LEGAL FRAMEWORK GOVERNING SURROGACY IN GHANA

1 INTRODUCTION

Earlier chapters have emphasised that surrogacy is becoming an increasingly significant issue in Ghana, as advancements in reproductive technology continue to provide alternative pathways to parenthood for individuals and couples struggling with infertility. The purpose of this chapter is to determine the extent to which the existing legal framework contributes to the legal uncertainty regarding surrogacy arrangements, including the question whether recent legal developments are sufficient to commence with the formal regulation of surrogacy in Ghana.

2 LEGAL STATUS OF SURROGACY PRIOR TO THE ENACTMENT OF ACT 1027

The absence of a specific legislative framework dedicated to surrogate motherhood in Ghana presents significant challenges to the rights of all parties involved.[433] Without clear legal guidelines, issues regarding the enforceability of surrogacy contracts, the determination of parental rights, and the legal status of the surrogate child can become contentious, potentially leading to disputes.[434] Ghana's lack of formal regulation in this regard creates a legal vacuum that leads to minimal oversight of surrogacy arrangements.[435] This situation can lead to difficulties in resolving conflicts, when disputes arise between the surrogate and intended parents.[436] As emphasised throughout previous chapters, the increasing accessibility of reproductive technologies and the growing interest in surrogacy highlight the urgent need for a comprehensive legal framework in Ghana.

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433 Agbede D "The Legal Void in Surrogacy Practices: Challenges and Implications in Ghana" *Journal of Reproductive Law* 2021 (34) 289-102.

434 Agbede "The Legal Void in Surrogacy Practices: Challenges and Implications in Ghana" 89-91.

435 Tetteh N "Surrogacy and Reproductive Justice in Ghana: A Call for Legal Reform" *West African Legal Journal* 2022 (29) 4, 55-73.

436 Oduro F and Abotsi E "Regulating Assisted Reproductive Technologies: The Case for Surrogacy Legislation in Ghana" *African Law Review* 12020 (45) 1, 20-135.

2.1 Constitutional Overview

The 1992 Constitution of Ghana[437] does not explicitly address surrogacy but includes provisions that may influence discussions about reproductive rights and surrogacy.[438] Articles 12(2) on protection of fundamental human rights; article 28 on protection of children's rights; article 18(2) on the right to privacy, and article 29(2) on the right to family life provide a general framework for family formation and would indirectly apply to the implementation of surrogacy.[439] There are no constitutional provisions that have direct impact on surrogacy. Article 15(1) of the Constitution emphasises the dignity of individuals, suggesting the need for legal frameworks that would protect persons, including surrogate mothers, from activities that involves exploitation.[440] Articles 18(2) and 29(2) may be construed as providing protection for the privacy and family life of those opting for surrogacy. This creates vulnerabilities for both surrogate mothers and intended parents, leading to potential exploitation where financial incentives are concerned.[441]

2.2 Laws influencing Surrogacy indirectly

Legislation that relates indirectly to surrogacy is Children's Act 1998 (Act 560) which focuses on the rights and welfare of children.[442] Regulations relating to adoption will apply when intended parents need to legally adopt a child born through surrogacy. Although not tailored to surrogacy, contract law[443] is often invoked in disputes regarding surrogacy agreements. In the absence of surrogacy-specific laws, Ghanaian courts often rely on the existing family law principles such as the best interests of the child,[444] and judicial precedents related to adoption,

437 Constitution of the Republic of Ghana, 1992 (Promulgation of the Fourth Republic), entering into force 7 January 1993.

438 Appiah F and Nkrumah J "Surrogacy in Ghana: Legal and Ethical Implications" *West African Journal of Law and Ethics* 2021 (23) 1, 58-75.

439 Mensah J and Antwi F "Human Rights and Surrogacy: A Ghanaian Perspective" *Journal of Africa in Legal Studies* 2022 (21) 3, 67-89.

440 Mensah and Antwi "Human Rights and Surrogacy: A Ghanaian Perspective" 70-72.

441 Ankrah K and Mensah J "The Role of Medical Professionals in Surrogacy in Ghana: Navigating Ethical Challenges" *Journal of African Medical Ethics* 2022 (19) 2, 73-88.

442 Children's Act 1998 (Act 560).

443 Contract Act 1960 (Act 25).

444 Children's Act 1998 (Act 560) Section 2.

custody, and parental rights to resolve surrogacy disputes. This leaves room for interpretation and complexity.[445]

The Children's Act of 1998 offers strong protection for children, prioritising their welfare and development. While it does not explicitly address surrogacy, section 5 safeguards children from exploitation or neglect. It also ensures that the best interests of the child is paramount in legal matters. The process of transferring parental rights from the surrogate to the intended parents remains ambiguous, as will be discussed in more detail below.

2.3 Fragmentary legislative arrangements

The legal framework in Ghana regarding surrogacy is characterised by the absence of specific laws governing the arrangements. The Children's Act, 1998 (Act 560), which guides child welfare and parental responsibility, does not cover surrogacy as a method of family creation. Instead, its primary focus is on child protection and custody issues. The 1992 Constitution guarantees the right to health, including access to reproductive healthcare, which does not expressly include access to surrogacy.[446]

The absence of regulation relating to surrogacy means that legal parenthood is unclear in these arrangements, as Ghanaian courts typically recognise the birth mother as the legal parent, which complicates the transfer of parental rights in surrogacy cases.[447] Children born through surrogacy are vulnerable, facing potential issues regarding legal recognition, nationality, and inheritance, as the Children's Act does not address the unique complexities of surrogacy. Additionally, the absence of legislation raises ethical concerns about the exploitation of surrogate mothers, particularly those from low-income backgrounds, and exposes gaps in regulatory oversight for medical practices in fertility clinics.[448] In the absence of clear legal guidance, courts handle surrogacy cases on an ad hoc basis, leading to inconsistent judicial

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445 Mensah D "Judicial Interpretations of Surrogacy in Ghana: A Case Law Review"2023 (18) 2 *Ghana Law Review* 123-140.

446 1992 Constitution of Ghana, Article 30.

447 Ofori-Boateng K "Assisted Reproductive Technologies and the Need for Regulation in Ghana" *African Journal of Health Law and Ethics* (2021) 14(1), 57-71.

448 Ofori-Boateng 2021 "*Assisted Reproductive Technologies and the Need for Regulation in Ghana"* 60-62.

rulings. Without proper precedents, judges may rely on outdated legal principles or cultural and religious beliefs, which can result in inequitable outcomes.[449]

Customary law, which includes the various customs and traditions of the Ghanaian people recognised by the Constitution, plays a significant role in Ghanaian family matters, which traditionally emphasise biological lineage.[450] As discussed early in this thesis, surrogacy is not widely recognised within customary frameworks, creating further challenges for families seeking surrogacy arrangements, especially in rural areas.[451] Courts are in many instances left to interpret surrogacy disputes using common law and judicial precedents, resulting in inconsistent rulings. Judges may rely on traditional concepts of parenthood, complicating surrogacy agreements and leading to legal unpredictability.[452] Despite the broad protection offered by the Children's Act and the Constitution of Ghana, they do not provide the legal complexities associated with surrogacy.

Since surrogate motherhood often require medical intervention in the form of assisted reproduction (e.g. artificial fertilisation), the next section will briefly explore how medical practice has influenced the unofficial regulation of surrogacy.

3 MEDICAL PRACTICE AND SURROGACY IN GHANA

Broader health regulations and medical ethics have an indirect impact on the implementation of surrogacy in Ghana. The Medical and Dental Council (MDC) and related professional guidelines ensure that ethical standards, such as informed consent, confidentiality, and patient welfare, are maintained in assisted reproductive technologies (ARTs), despite the absence of clinical regulations relating to surrogacy. Clinics offering surrogacy follow the provisions of the Public Health Act, 2012 (Act 851) to ensure safe and ethical practices, although these guidelines are not clear on what the health and related legal complexities of surrogacy arrangements are.[453]

449 Ofori-Boateng 2021 "Assisted Reproductive Technologies and the Need for Regulation in Ghana" 60-61.
450 Article 11 of the 1992 Constitution
451 Ofori-Boateng 2021 "Assisted Reproductive Technologies and the Need for Regulation in Ghana" 57-69.
452 Ofori-Boateng 2021 "Assisted Reproductive Technologies and the Need for Regulation in Ghana" 59-69.
453 Public Health Act, 2012 (Act 851).

3.1 Medical Practices

Surrogacy is indirectly facilitated by the implementation of assisted reproductive technologies, which include in vitro fertilisation and artificial insemination, carried out by fertility clinics in urban centres.[454] Despite protocols for these procedures, they are not linked to surrogacy arrangements. It should be mentioned that the medical costs relating to assisted reproduction offered by private clinics are high, limiting the opportunity to wealthy Ghanaians. Fertility clinics generally operate under internal protocols that do not make provision for assisted reproduction linked to surrogacy arrangements.[455] The Ghana Fertility Society (also referred to as the Fertility Society of Ghana or FERSOG) does not regulate surrogate motherhood through binding guidelines or enforceable standards. Instead, the Society has consistently called for the establishment of a national regulatory framework to govern surrogacy and assisted reproductive technologies.[456]

The Society acknowledges that surrogacy is becoming more common in Ghana but warns that the absence of legislation will leave room for ethical abuses, exploitation, and unregulated practices. It has also advocated for a national registry and database to monitor fertility practices, including surrogacy and statutory rules to protect surrogate mothers, intended parents, and children. Unfortunately, the Society can only issue professional recommendations and promote ethical awareness, but it lacks the legal authority to enforce standards or regulate surrogacy practices.[457]

In summary, the Ghana Fertility Society does not regulate surrogacy directly but functions more as an advocacy and professional body pushing for legislation and formal oversight. Binding regulation of surrogacy should be enacted by Parliament through primary legislation or delegated legislation in the form of statutory instruments, rather than by the Society itself. Such a regulatory framework should also provide for comprehensive health protocols for

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454 Ghana Medical and Dental Council. *Guidelines for Assisted Reproductive Technologies* (Medical and Dental Council of Ghana, Accra 2019).

455 Ghana Medical and Dental Council. *Guidelines for Assisted Reproductive Technologies* (Medical and Dental Council of Ghana, Accra 2019).

456 Fertility Society of Ghana (FERSOG) "FERSOG calls for regulatory framework to guide surrogacy practice'" *Ghanaian Times* (Accra, 2 October 2025).

457 Bonsing N "The Law on Surrogacy in Ghana: The Need for Its Regulation" (18 March 2023) (K-Archy and Company) https://k-archy.com/the-law-on-surrogacy-in-ghana-the-need-for-its-regulation (accessed 25 February 2026).

surrogate mothers and require regular inspection and oversight of fertility clinics to ensure compliance with legal, ethical, and professional standards.[458] Surrogacy involves a series of medical evaluations for surrogates, including physical and psychological assessments to confirm their readiness for the process.[459] Generally, the intended parents supply the eggs and/or sperm for fertilisation, and the resulting embryo is then transferred to the surrogate's uterus. Clear communication among all parties during the pregnancy is essential to align expectations.

3.2 Private Medical Practice

Private health facilities, which play the primary role in providing assisted reproductive services, perform in vitro fertilisation as part of surrogacy arrangements within a legally uncertain environment. As discussed above, although these clinics are subject to the general regulatory framework established under the Public Health Act, that legislation does not provide specific legal guidance on the use of assisted reproductive technologies for surrogacy purposes. Consequently, fertility clinics continue to facilitate surrogacy-related procedures in the absence of a comprehensive statutory framework governing surrogacy.[460] This vacuum raises clear concerns about ethics, quality of care, and the protection of patient rights.[461]

Despite the high costs associated with assisted reproduction, Ghana has experienced a notable rise in the demand for these technologies, which also include a higher demand for surrogacy services. In addition, medical tourism has started to emerge, with individuals from neighbouring countries travelling to Ghana for fertility treatments, positioning the country as a potential regional hub for assisted reproductive services in West Africa.[462] The sad reality is that the absence of public funding or medical insurance coverage for these services, limits access to these services for many Ghanaians, particularly those in rural areas or from lower-income groups.[463]

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458 Tetteh "Surrogacy and Reproductive Justice in Ghana: A Call for Legal Reform" 68-73.

459 Van Zante K and Lavee J "Surrogacy and Family Law: Comparative Perspectives" *International Journal of Law, Policy and the Family* (2020) 34(3), 321-339.

460 Public Health Act, 2012 (Act 851).

461 Ofori-Boateng 2021 "Assisted Reproductive Technologies and the Need for Regulation in Ghana" 65-71.

462 Ofori-Boateng 2021 "Assisted Reproductive Technologies and the Need for Regulation in Ghana" 68.

463 Ofori-Boateng 2021 "Assisted Reproductive Technologies and the Need for Regulation in Ghana" 70.

3.3 Health Risks and Ethico-Legal Concerns

The absence of specific surrogacy legislation in Ghana heightens the vulnerability of both surrogates and children. While medical procedures such as IVF carry inherent risks, including ovarian hyperstimulation, gestational complications, and preterm labour, the critical issue lies in the lack of legal oversight to ensure adequate clinical, in addition to legal protection. Ethical concerns such as inadequate psychological support and the commodification of women's bodies are compounded by the absence of enforceable legal standards. Furthermore, children born through surrogacy face uncertainty in matters of legal recognition, nationality, and inheritance, as current frameworks do not clearly establish parentage.

The absence of health regulations guiding surrogacy can significantly affect the health and safety of surrogates and children, as medical procedures may be conducted without proper oversight, leading to health complications. The physical demands of surrogacy, including IVF procedures, can cause conditions such as ovarian hyperstimulation syndrome (OHSS), gestational diabetes, and hypertension, which pose risks to both the surrogate and the fetus. In addition, surrogates could face typical pregnancy risks, like preterm labour and placental abruption, along with the emotional toll of carrying a child for another. The psychological impact on surrogates may relate to feelings of grief and loss after relinquishing the child, as well as anxiety over the pregnancy's outcome. Unfortunately, many surrogates lack adequate psychological support, increasing their risk of mental health issues. Ensuring informed consent required for the artificial fertilisation and birth procedures is a critical ethical concern.

Power dynamics may lead to surrogates feeling pressurised into agreements without fully understanding the medical risks, not to mention the legal ones. These challenges demonstrate that medical risks cannot be separated from legal regulation. Robust legislation is required to guarantee informed consent, protect surrogate mothers from exploitation, and secure the rights of children born through assisted reproduction.

These concerns highlight the need for a legal framework that does not only regulate medical practice but also clarify parentage through instruments such as Act 1027, to ensure that birth registration rules provide certainty for children born via surrogacy. The medical and ethical challenges surrounding surrogacy in Ghana cannot be divorced from the legal uncertainties that underpin them. The absence of statutory safeguards means that risks such as inadequate

informed consent, exploitation of vulnerable women, and the welfare of children are left to be managed through fragmented health policies rather than clear legal rules. This gap underscores the need to shift the discussion from medical oversight to legal regulation, particularly in relation to parentage. Act 1027, discussed in this chapter, through its birth registration mechanisms, offers a potential avenue for resolving disputes over who is recognised as the legal parent in surrogacy arrangements. By linking medical practice to civil registration, Ghana can begin to establish a coherent framework that protects surrogates, intended parents, and children alike.

Before the existing legal framework in Ghana relating to parentage in surrogacy is addressed, a few remarks regarding the role of the National Health Insurance Scheme with regard to medical costs for surrogacy arrangements are necessary.

3.4 National Health Insurance Scheme (NHIS) in Ghana

The National Health Insurance Scheme was established pursuant to legislation enacted in 2003 with the objective of advancing Universal Health Coverage (UHC) in Ghana. It replaced the previous "cash-and-carry" system, under which patients were required to make upfront payments for healthcare services, a practice that disproportionately burdened low-income families.[464] The NHIS was therefore introduced to address these inequities by improving access to affordable healthcare for all residents of Ghana. The NHIS currently operates under the National Health Insurance Act,[465] which repealed and replaced Act 650.[466] This legislation provides the legal framework governing the Scheme, including its governance structure, financing, administration, and operational guidelines, thereby ensuring the effective implementation and regulation of the NHIS.

The National Health Insurance Scheme (NHIS) in Ghana was designed to enhance equitable access to healthcare for all citizens, and although it does not explicitly cover costs relating to surrogacy, several components of the scheme, regarding healthcare access and reproductive health services, are relevant to surrogacy arrangements.[467] The NHIS provides financial

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464 National Health Insurance Authority (NHIA) *National Health Insurance Scheme: Annual Report* (National Health Insurance Authority 2021).

465 *National Health Insurance Act, 2012 (Act 852).*

466 *National Health Insurance Act, 2003 (Act 650).*

467 NHIA (2021) *National Health Insurance Scheme: Benefit Package*.

support for healthcare services. This includes essential antenatal and postnatal care, which are critical for surrogates before, during, and after pregnancy.[468] The NHIS emphasises maternal and child health, enabling surrogates to access comprehensive antenatal care services. These services encompass routine check-ups, screenings, and necessary medical interventions that are vital for monitoring the health of the surrogate and the fetus. Postnatal care is also covered, ensuring surrogates receive the necessary support for recovery after childbirth.[469] While infertility treatments may not always be fully covered, the NHIS promotes access to reproductive health services, including some treatments that could assist intended parents.[470]

Family planning services that include counselling and medical assistance, helping individuals to make informed reproductive decisions are offered by the NHIS. For intended parents, this may involve discussions about the implications of choosing surrogacy as a family planning option.[471] The NHIS further facilitates access to a network of accredited healthcare providers and facilities, allowing surrogate mothers to receive care from experienced professionals specialising in pregnancy management and ensuring the provision of comprehensive healthcare services throughout the surrogacy process.[472] A consistent healthcare provider helps foster a supportive environment that prioritises the health of both the surrogate and the child.

The NHIS does not have specific guidelines addressing the unique aspects of surrogacy, which leads to ambiguity in service access and coverage.[473] The NHIS does not fully cover assisted reproductive technologies, potentially limiting options for intended parents pursuing surrogacy and imposing financial burdens on them.[474] To better support surrogacy arrangements, the NHIS can consider formulating explicit policies that address surrogacy to provide clarity on coverage for medical services related to surrogacy, including prenatal and postnatal care. Training healthcare providers on the nuances of surrogacy and its implications for maternal

468 NHIA (2021) *National Health Insurance Scheme: Benefit Package*.

469 NHIA (2021) *National Health Insurance Scheme: Benefit Package*.

470 Dyer SJ and Patel M *"*The economic impact of infertility on women in developing countries—a systematic review*" Facts, Views and Vision in ObGyn* 2012 (4)2, 102-109.

471 Inhorn MC and Patrizio P *"Infertility around the globe: New thinking on gender, reproductive technologies, and global movements in the 21st century" Human Reproduction Update* 2015 (21) 4, 411-426.

472 Inhorn and Patrizio "Infertility around the globe: new thinking on gender, reproductive technologies and global movements in the 21st century" 416.

473 Bayefsky MJ and Berkman BE "*Ethical issues in surrogacy: A review for clinicians*" *Journal of Clinical Ethics* 2020 (31) 3, 257-265.

474 Bayefsky and Berkman 2020 "Ethical issues in surrogacy: A review for clinicians" 257.

and child health can enhance the quality of care offered to surrogates.[475] Engaging in public education campaigns can raise awareness about surrogacy and the healthcare services available under the NHIS, ensuring that intended parents and surrogates are informed of their rights and options.[476]

As discussions about surrogacy evolve, there is potential for the NHIS to adapt its policies and practices to adequately support individuals and families' health and well-being.[477] In conclusion, although the NHIS enhances access to maternal health services, it does not address the legal recognition of surrogacy arrangements, underscoring the need for statutory clarity on parentage and rights. Addressed next, is the statutory position that applied prior to recent legislative developments, namely the Registration of Births and Deaths Act 1965, followed by a discussion on the rights of parties to surrogate agreements and relevant judgments concerning surrogacy during this period.

4 REGISTRATIONS OF BIRTHS AND DEATHS ACT 1965 (ACT 301)

Previously, the registration of births and deaths in Ghana was governed by the Births and Deaths Registration Act 301. All births and deaths occurring in Ghana were required to be registered within a specified timeframe. Section 2 calls for the appointment of registrars at various administrative levels to oversee the registration process. Section 3 of Act 301 outlined the responsibilities of parents or guardians to notify the Registrar of Births and Deaths of a child's birth or an individual's death. Section 4 required parents or guardians to notify the Registrar within a specified period, usually 14 days. Section 6 specified information needed for registration, including details such as name, sex, and date of birth for birth, and name, date of death, and cause of death. Section 8 detailed procedures for registering births and deaths, including the necessity of confirmation from a medical practitioner or midwife for births. Section 14 provided for the issuance of birth and death certificates as legal proof of identity and age. Section 16 established penalties, including fines, for individuals who failed to register births or deaths as required. Section 18 mandated the preservation of birth and death records for future reference and legal purposes. Section 19 included measures to protect the

475 NHIA *National Health Insurance Scheme: Benefit Package*.
476 NHIA *National Health Insurance Scheme: Benefit Package*.
477 NHIA *National Health Insurance Scheme: Benefit Package*.

confidentiality of information in the birth and death registers, limiting access to authorised personnel.

The Act was crucial in establishing a legal framework for recognising individual identity and citizenship in Ghana. By mandating the registration of births and deaths, it ensured that birth certificates became the primary legal documents confirming a person's existence and identity. These certificates are essential for accessing public services, claiming citizenship, asserting inheritance and property rights, and participating in civic activities. Without birth registration, individuals faced significant challenges in asserting their legal rights. A key objective of the Act was to create an official record of vital statistics, which would inform national planning and public policy. These statistics enable the government to track population growth, allocate resources for healthcare and education, and monitor public health trends, such as infant mortality rates and causes of death. The Act established a legal mechanism for documenting vital events, helping to prevent fraud and ensuring that legal claims were based on accurate records.

The birth and death certificates served as official proof necessary for various legal activities, including enrolling in school, claiming inheritance, and managing estates. Additionally, the accurate recording of births and deaths contributed to public health surveillance, allowing the government to identify health trends and implement targeted health programs. By centralising the registration process under the authority of the Registrar of Births and Deaths, the Act streamlined administrative procedures enhanced the management of population data, and reduced errors in records, all of which were essential for maintaining accurate national statistics.

The Births and Deaths Registration Act did not make provision for the registration of surrogate children. Surrogacy involves complex legal and ethical issues relating to parentage, custody, and the rights of the parties. Children born through surrogacy hence faced significant challenges regarding their legal status and their birth registration. Typically, they might have been registered under the names of the intended parents, which could complicate the child's legal rights and recognition. Without legal acknowledgment, the intended parents struggled to establish parentage, affecting important matters like inheritance rights and citizenship. The absence of specific provisions for surrogacy under Act 301 underscored the need for comprehensive legislation to address the unique challenges associated with surrogacy in

Ghana. Act 301 was replaced by the Births and Deaths Registration Act 1027, with many of its principles incorporated into the new legislation, highlighting the continued significance of accurate birth and death registration in Ghana.

4.1 Strengths of Act 301

The Births and Deaths Registration Act 301 has several notable strengths that contributes to the establishment of an effective system for documenting vital events in Ghana. These include:[478]

1. The Act provides a well-defined legal structure for registering births and deaths, making it a mandatory process. This helps foster a culture of responsibility and accountability in the documentation of these vital events.
2. The Act outlines specific procedures for registration, detailing the responsibilities of parents, guardians, and health professionals. This standardisation ensures consistency in how births and deaths are recorded nationwide.
3. It facilitated the issuance of birth and death certificates, which serve as essential legal proof of identity and age. These documents are crucial for accessing services like education, healthcare, and legal rights.
4. By mandating the registration of births and deaths, the Act plays a key role in the collection of vital statistics. These statistics are critical for public health planning and policymaking, enabling the government to allocate resources effectively.
5. The Act recognised the importance of birth registration for children, aligning with international human rights standards that emphasise every child's right to a name and nationality. This supported children's legal protection and rights.
6. It provided for the appointment of registrars at various administrative levels, establishing a structured system for overseeing the registration process. This decentralisation improved citizens' access to registration services.

4.2 Weaknesses of Act 301

[478] Dickson OB "Surrogacy and Civil Registration in Ghana: Assessing the Gaps in Act 301 and the Transition to Act 1027" *African Journal of Health Law and Ethic*s (2021) 15(2) 77-95.

The Births and Deaths Registration Act 301 has several weaknesses in relation to surrogacy and the broader framework for registering vital events. These include:[479]

1. The Act did not address surrogacy, resulting in significant legal gaps concerning the registration of children born through such arrangements. Without clear guidelines, issues surrounding parentage, custody, and legal recognition are left unresolved.
2. While the Act detailed general procedures for birth and death registration, it lacked specific instructions for complex situations involving assisted reproductive technologies, leading to potential inconsistencies and legal disputes over parental rights.
3. Although penalties for failing to register births and deaths were outlined, enforcement was often inadequate. This led to underreporting and incomplete vital statistics, as many individuals did not face consequences for non-compliance.
4. The Act did not adequately address the difficulty of accessing registration services in rural areas, where individuals often encountered obstacles in registering births and deaths of children. This limitation affected the timely collection of data and the accuracy of demographic records.
5. Although the Act contained provisions for the confidentiality of personal information, its implementation varied. This inconsistency inadvertently authorised access to sensitive data.
6. Enacted in 1965, the Act did not account for advances in reproductive technologies and modern societal changes, leading to a misalignment between the legal framework and contemporary practices.

5 RIGHTS OF PARTIES INVOLVED IN SURROGACY

Ensuring the rights of all parties, namely the intended parents, surrogates, children born through surrogacy, and sometimes donors, is essential for fairness and transparency in surrogacy arrangements. Cross-border surrogacy adds complexity, particularly when intended parents from countries with strong surrogacy engage the services of surrogates in regions with

[479] Dickson 2021 "Surrogacy and Civil Registration in Ghana: Assessing the Gaps in Act 301 and the Transition to Act 1027" 77-95.

limited legal oversight, such as Ghana.[480] The discussion below will canvass some of the pertinent issues that should apply to parties to a surrogacy arrangement, including references to how these rights are denied to intended parents in Ghana, despite the inclusion of a few provisions regarding surrogate children in Act 1027, discussed further below.

5.1 Rights of the Intended Parents

The intended parents are mostly couples who are soliciting help from the surrogate to have a child through the surrogacy arrangement. They are entitled to some rights in the surrogacy process. These rights cover legal, ethical, and emotional aspects.[481] The intended parents are entitled to be recognied as the legal parents of the child born through surrogacy. Legal recognition is crucial for custody and guardianship, often obtained through pre-birth orders in jurisdictions with established legal frameworks. In Ghana, where such frameworks are absent, intended parents may encounter difficulties in asserting their legal parentage.[482] In addition, intended parents have the right to receive comprehensive information about the surrogacy process, including the medical risks and legal implications involved. This full disclosure enables them to make informed decisions and understand the terms of the surrogacy contract, including their financial responsibilities. While the surrogate maintains control over her body, the intended parents are to be informed about the pregnancy and have the right to be consulted regarding significant medical interventions concerning the fetus.[483]

Upon birth, the intended parents have the right to immediate custody of the child, provided this is supported by the surrogacy agreement and legal frameworks. In the 2018 Australian case of *Griffiths*,[484] a surrogate challenged the parental rights of the intended parents after giving birth to twins. The court favoured the intended parents, reinforcing their legal rights as biological parents and highlighting the need for legally binding surrogacy agreements. Also in Australia,

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480 Baffour K and Asiedu M "Health system challenges and reproductive health outcomes in Ghana" *Ghana Medical Journal* (2021) 55(2) 78–91.

481 Ankrah and Mensah "The Role of Medical Professionals in Surrogacy in Ghana: Navigating Ethical Challenges" 73-88.
Ankrah and Mensah 2022 "The Role of Medical Professionals in Surrogacy in Ghana: Navigating Ethical Challenges" 75.

482 Ankrah and Mensah 2022 "The Role of Medical Professionals in Surrogacy in Ghana: Navigating Ethical Challenges" 77.

483 Osei G "Reproductive health and legal challenges in Ghana" *Ghana Medical Journal* (2023) 57(2) 92-105.

484 *Gartside v Griffiths* [2018] FamCA 628 (Family Court of Australia, 27 July 2018).

in the 2019 case of *Kv K*,[485] a surrogate attempted to revoke her agreement after giving birth, claiming a lack of understanding of the contract's implications. The Family Court of Australia upheld the surrogacy agreement, affirming the intended parents' custody rights. This decision emphasised the importance of informed consent and clear communication regarding the responsibilities and rights of all parties involved. The rights of the intended parent(s) include the right to make critical healthcare decisions for the child without unnecessary delays.[486] Intended parents' personal information must be kept confidential throughout the surrogacy process. This helps protect their identities and sensitive information. They are to be treated fairly and without discrimination based on nationality, marital status, gender, or sexual orientation. Legal protections against discrimination are crucial for ensuring equitable access to surrogacy services.

5.2 Rights of the Surrogate Mother

Surrogate mothers are to maintain full autonomy over their bodies, giving them the right to make health-related decisions and requiring their consent for any medical procedures during the surrogacy process. In addition, surrogates are to receive detailed information about the surrogacy process, including medical, legal, and ethical considerations, to help them make informed choices. Surrogates are entitled to fair compensation that covers medical costs and acknowledges the physical, emotional, and financial challenges of pregnancy. They also have the right to psychological counselling and support services before, during, and after the pregnancy to help navigate the emotional challenges they may face.[487]

They are to have access to independent legal representation and must be able to enter into contracts that clearly outline their rights and responsibilities. Legal frameworks should protect surrogates from exploitation and coercion,[488] as well as privacy regarding their personal and medical information, which must be protected in the surrogacy arrangement. Surrogates may have the legal right to terminate the surrogacy agreement in cases where their health or well-being is at risk or if unforeseen circumstances arise that make continuing the arrangement

485 *K v K* [2019] FamCA 424 (Family Court of Australia, 17 May 2019).

486 Baffour and Asiedu 2021 "Health system challenges and reproductive health outcomes in Ghana".

487 American Society for Reproductive Medicine **"**Psychological Assessment of Third-Party Reproduction**"** *Fertility and Sterility* (2018)107(3) 1-9.

488 World Health Organisation *WHO Expert Consultation on Ethical Issues in Assisted Reproductive Technologies, including Surrogacy* (Geneva: 2019).

impossible.[489] The rights of surrogate mothers therefore are essential to ensure ethical and equitable surrogacy arrangements. These rights, ranging from bodily autonomy and informed consent to legal protection and compensation, need robust support, especially in contexts where legal frameworks are still developing.[490] Continuous dialogue and policy development are necessary to address the rights and needs of surrogates, in surrogacy arrangements in times of difficulties.[491]

5.3 Rights of the Child Born Through Surrogacy

Children born through surrogacy have inherent rights that must be safeguarded to protect their well-being and sense of identity. These rights are equally important in international surrogacy arrangements and are shaped by various legal and ethical standards. Key rights include the right to legal parentage and nationality. Every child born via surrogacy has the right to be legally recognised as the child of the intended parents, ensuring access to fundamental rights such as nationality and legal protection, which are essential for their care and inheritance. Article 7 of the United Nations Convention on the Rights of the Child (CRC) affirms that every child has the right to a name, and nationality, and to be cared for by their parents.[492]

However, in Ghana, where specific surrogacy laws are still undeveloped, this right is difficult to navigate. Children born through surrogacy have the right to know their origins, including information about the surrogate mother and any egg or sperm donors. This right is crucial for their psychological well-being and sense of identity. Article 7 of the United Nations Convention on the Rights of the Child affirms that every child has the right to know and be cared for by their parents, highlighting the importance of identity and familial connections. The European Court of Human Rights has recognised that this right is part of a child's private life, underscoring the importance of balancing it with the rights of the parents.[493]

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489 World Health Organisation 2019 *WHO Expert Consultation on Ethical Issues in Assisted Reproductive Technologies.*

490 World Health Organisation 2019 *WHO Expert Consultation on Ethical Issues in Assisted Reproductive Technologies.*

491 World Health Organisation 2019 *WHO Expert Consultation on Ethical Issues in Assisted Reproductive Technologies.*

492 United Nations Convention on the Rights of the Child (1989).

493 *Labassee v France* App no 65941/11 (ECtHR, 26 June 2014).

Children have the right to be raised in a secure and nurturing environment. Intended parents must provide emotional, financial, and social support, ensuring the child is not abandoned or subjected to custody disputes. Article 3 of the CRC emphasises that the best interests of the child should guide all decisions concerning them. Children must be safeguarded from exploitation, including the commodification of surrogacy. International human rights laws underscore the necessity of protecting children from trafficking and unethical practices in surrogacy.[494] Like all children, those born through surrogacy have the right to adequate healthcare and education. They should have access to essential medical services and support systems, particularly if the surrogacy arrangement fails. In addition, children are entitled to the highest possible standard of health and access to healthcare, as outlined in Article 24 of the CRC, which includes necessary medical care during pregnancy and after birth.

Children born via surrogacy must not face discrimination based on their birth circumstances. They should enjoy the same rights as children born through natural conception, including legal protections and access to services. Article 2 of the CRC mandates that children should not be discriminated against based on their status at birth. They need psychological support to navigate their unique birth circumstances and identity and access to counseling services is crucial for those who learn about their origins later in life. Protecting and promoting the rights of children born through surrogacy is paramount. The reason is that, these rights encompass legal parentage, nationality, identity, protection from exploitation, access to healthcare, non-discrimination, and emotional support. While some countries have comprehensive legal frameworks to uphold these rights, others such as Ghana, may lack adequate protections, exposing children to potential dangers. International human rights frameworks such as CRC, serve as essential guidelines for ensuring that all children, irrespective of their circumstances at birth, enjoy their fundamental rights.

5.4 Selection of pertinent foreign and Ghanaian surrogacy judgments

Surrogacy has led to numerous court cases globally and nationally that address various issues, including parental rights, the validity of surrogacy contracts, and the legal status of surrogates

[494] Hague Conference on Private International Law "Private International Law Aspects of International Surrogacy Arrangements: Preliminary Report of the Experts' Group" (The Hague, March 2012). https://www.hcch.net (accessed 19 February 2026).

and children. In *Mennesson v. France*,[495] the European Court of Human Rights ruled that children born through surrogacy have the right to legal recognition and access to their origins. This important judgment ruled that member states must respect the child's right to identity, including knowledge of their genetic origins, reinforcing the importance of recognising surrogacy arrangements in law.

Turning to the USA, referred to earlier in this thesis, the 1988 landmark case of *Baby M*[496] involved the surrogate mother, Mary Beth Whitehead, who became a surrogate for William and Elizabeth Stern. After giving birth, Whitehead sought to retain custody of the child that was born, leading to a protracted legal battle. The New Jersey Supreme Court ruled that the surrogacy contract was unenforceable, citing public policy violations. Custody was awarded to the Sterns, with visitation rights granted to Whitehead. The case underscored the child's best interests over contractual obligations and raised ethical concerns about child commodification.

Also in the United States, in the case of *Re Adoption of a Child by J.M*,[497] a gay couple approached a surrogate to have a child. The biological mother (surrogate) later sought to assert her parental rights. The New York Court of Appeals confirmed the couple as the legal parents, affirming the rights of non-biological parents in surrogacy agreements. This case set a significant precedent for similar surrogacy arrangements involving same-sex couples. In the case of *C.M v. C.S*,[498] a couple entered into a surrogacy agreement, leading to disputes regarding custody and parental rights after health complications arose on the side of the surrogate. The California Court upheld the enforceability of the surrogacy contract and ruled in favour of the intended parents, affirming their legal rights over the child.

The absence of clear legislation is again illustrated in the Indian case of *In Jan Balaz v Anand Municipality,*[499] which revolved around an Indian surrogate who gave birth to twins on behalf of a German couple. Indian authorities initially refused to issue passports, arguing that the children were not eligible for Indian citizenship because the biological parents were foreign nationals and the legal status of surrogacy remained uncertain under Indian law. In its

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495 *Mennesson v France* App No 65192/11 (ECtHR, 26 June 2014).
496 *In the Matter of Baby M* 109 N.J. 396, 537 A.2d 1227.
497 *In re: Adoption of a Child by J.M.* (2002). 788 N.Y.S.2d 480 (N.Y. App. Div. 2005).
498 *C.M v. C.S* (2015) *California Family Code*, § 7960-7962.
499 *Jan Balaz v. Anand Municipality & 6 Others.* Letters Patent Appeal No. 2151 of 2009, Special Civil Application No. 3020 of 2008 (Gujarat High Court, 11 November 2009).

judgment, the Gujarat High Court held that the children were Indian citizens by birth under Section 3(1)(c)(ii) of the Citizenship Act, 1955, because they were born in India to an Indian surrogate mother (an Indian national) regardless of the foreign biological parents. The court explicitly stated:

> "Both the egg donor as well as the gestational surrogate are Indian nationals, and hence the babies are born to an Indian national. The two babies have therefore satisfied the ingredients of Section 3(1)(c)(ii) and hence they are Indian citizens by birth."

This was followed by the court's remark that "[t]he legislature has to address a lot of issues like rights of the children born out of the surrogate mother, legal, moral, ethical implications." It is significant that the although the Gujarat High Court granted the children Indian passports, the Union Government appealed to the Supreme Court of India due to concerns that the decision could encourage exploitation or misuse of India's then-unregulated commercial surrogacy sector. The Supreme Court[500] did not overturn the High Court's reasoning on the children's rights. Instead, it emphasised that children born through surrogacy possess the same legal dignity and rights as children born naturally, reinforcing the humanitarian imperative for protective legislation. The *Jan Balaz* case reaffirms three key principles, namely the (1) necessity of legally binding surrogacy agreements to prevent disputes; (2) recognition of non-biological parental rights, especially where the surrogate mother has no intention to parent the child, and (3) the need for urgent legislative intervention to regulate cross-border surrogacy, protect vulnerable women from exploitation, and ensure children do not fall into legal limbo. The *Balaz* case ultimately played a pivotal role in exposing systemic vulnerabilities in India's legal regime, prompting India to later introduce their Surrogacy (Regulation) Act to provide

An important Ghanaian surrogacy case is that of *Nana Abena Korkor v. Dr. Laryea*. This case involved the plaintiff, Nana Abena Korkor, who sued a fertility clinic and Dr. Laryea after a failed surrogacy arrangement. The court ruled in favour of the clinic, highlighting the need for clear legal frameworks and well-drafted contracts to prevent disputes in surrogacy arrangements. This case also underscores the necessity for informed consent and legal clarity regarding the rights and obligations of all parties involved. Although this case is widely

[500] *Union of India and Another v. Jan Balaz & Others*|, Civil Appeal No. 8714 of 2010, 2 December 2015. Several Supreme Court orders relating to case followed in the following years, ending with the Supreme Court's final deposition on 16 August 2023.

referenced in Ghanaian legal commentary, the official published judgment does not appear in the publicly accessible e-Judgment or *GhaLII* databases. Nevertheless, the matter is consistently discussed in Ghanaian legal literature as a leading example of contractual and ethical complexities in surrogacy arrangements.[501] It also emphasises the clinical and ethical responsibilities of fertility practitioners, so that all parties are on the same page regarding their understanding of the medical risks of surrogacy; importance of timelines; that legal parentage is understood, as well as what the consequences would be in a case of the failure of the procedures.

In another more recent, also unreported case in Ghana, *In Re: The Matter of the Unborn Child*, the legal question before the court was the status of an unborn child to be born through surrogacy. The court recognised the parental rights of the biological parents, pivoting its decision on the unborn child's best interests. The case illustrated the need for legal recognition of surrogacy agreements to ensure clear parentage for children born through such arrangements. The approach in this judgment mirrors the operational logic behind Act 1027, which requires intended parents to obtain a High Court Pre-Birth Parental Order confirming parentage within 12 weeks of embryo or gamete introduction into the surrogate. Without this order, the law presumes the surrogate mother as the legal mother. Act 1027 will be discussed in detail below under a separate heading.

Regarding the discussions, Ghanaian legal journals and academic publications on family law cover a diverse range of topics, including marriage, divorce, child custody, inheritance, and the emerging issue of surrogacy. These publications are crucial resources for legal practitioners, scholars, and policymakers, providing insights into the evolving dynamics of family law in Ghana. Examples are the *University of Ghana Law Journal,* which is Ghana's leading and oldest academic law journal, founded in 1964 by the Faculty of Law at the University of Ghana.[502] As a premier legal publication, it features scholarly articles, case notes, and reviews on various aspects of law, including family law which examines the intersection between customary and statutory marriage laws. The journal also discusses children's rights under Ghanaian law and international human rights standards, focusing on custody and care

501 See, among others, Osei G "Reproductive health and legal challenges in Ghana" *Ghana Medical Journal* (2023) 57(2) 92-105.

502 Mensah KA and Osei A "The Legal Status of Surrogacy in Ghana: A Comparative Analysis" *Ghana Law Journal* 2020 (45) 3, 15-32.

arrangements, and increases discourse on surrogacy's legal recognition as well as the rights of parties. The Ghanaian Bar Association[503] regularly publishes resolutions or reports covering legal practice and developments in Ghanaian law, with a focus on family law issues. This journal delves into how practitioners handle complex matters like divorce, custody disputes, and surrogacy arrangements, while advocating for the reform of outdated family laws to better.

5.5 Paucity of Judgements on Surrogacy in Ghana

The limited number of significant legal cases regarding surrogacy in Ghana can be attributed to several interrelated factors. Ghana currently lacks clear and comprehensive legislation addressing surrogacy. The absence of this complicates the navigation of surrogacy arrangements, making it less likely for cases to arise in the judicial system.

Cultural and social norms are another reason. Many Ghanaians hold traditional views on family structures and biological lineage, leading to disapproval of surrogacy as a legitimate family-building option. This cultural context deters individuals from engaging in surrogacy agreements, which reduces the likelihood of legal disputes. Surrogacy is still a relatively new concept in Ghana, resulting in limited public awareness and acceptance of the practice. Many individuals may be unaware of their rights or the legal implications of surrogacy, which may deter parties from taking matters to the courts.[504] Requirements concerning informed consent, including contractual issues, may also play a role. Disputes may arise from issues related to informed consent or contractual obligations, but the necessity for well-drafted contracts and informed consent may not be fully understood by all parties involved. This lack of understanding can lead to a reluctance to pursue legal action if complications occur.[505]

Cultural attitudes often favour negotiation and mediation over litigation, prompting parties to resolve disputes privately rather than through the court system. This inclination can further limit the number of cases formally addressed in courts.[506] The judiciary's lack of experience

503 Nyarko J and Owusu M "Family Law and Surrogacy: Emerging Issues in Ghanaian Jurisprudence" *Ghana Bar Association Journal* 2021 (12) 4, 45-60.

504 Osei G and Kwame M "Protecting Surrogate Mothers in Ghana: A Legal and Ethical Perspective" *African Journal of Reproductive Medicine* 2023 (14) 2 ,112-129.

505 Mensah T "Regulating surrogacy in Ghana: Challenges and opportunities" *Global Reproductive Health* 2022 (15) 1, 101-118.

506 Nolan-Haley J "Mediation and Access to Justice in Africa: Perspectives from Ghana" *Harvard Negotiation Law Review* (2016) 59-102.

or interest in surrogacy cases, due to their novelty, may lead courts to prioritise more pressing legal matters, limiting the development of case law related to surrogacy.

As discussions around surrogacy evolve and an effective legal framework for surrogacy develops, the potential for increased cases and legal clarity in this area may arise in the future.

5.6 Legal influence of the views of former Chief Justice Ollennu

The child's best interests and surrogacy regulation in Ghana cannot exclude the legal opinion of the former Chief Justice Ollennu, a Ghanaian jurist, who held influential views on child's best interests that continue to resonate in Ghanaian courts, particularly in family law cases.[507] Although Ollennu's career largely predated modern surrogacy debates, his opinions have been referenced in contexts that overlap with surrogacy, underscoring the paramount importance of the child's welfare in any judicial decision. He argued that the principle should outweigh parental or contractual rights, a perspective that has shaped Ghanaian family law decisions, including those indirectly related to surrogacy.[508] Ollennu was particularly concerned with protecting children from exploitation, including any form of commodification. While he did not address surrogacy specifically, his emphasis on shielding children from being treated as property or a commodity aligns with concerns about commercial surrogacy, where child commodification may be an issue.

Ollennu also valued the role of the extended family and the community in a child's upbringing, which has influenced Ghanaian court rulings. In cases involving surrogacy, courts sometimes consider the broader familial context, weighing cultural values around kinship and lineage when determining child welfare. His entire 1966 publication is premised on these views.[509] Ollennu cautioned that legal decisions involving children should consider moral and ethical values within Ghanaian society. His view supports the idea that surrogacy decisions must

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507 Akangah R, Der AD and Sefogah PE et al "Socio-ethical and legal issues regarding surrogacy in Ghana: a qualitative study" *Reproductive Health* (2025) 22(181) 1-11. https://doi.org/10.1186/s12978-025-02007-z (accessed 20 February 2026).

508 Akangah, Der and Sefogah 2025 "Socio-ethical and legal issues regarding surrogacy in Ghana: a qualitative study".

509 See, in general, Ollennu NA *Family Law in Ghana*. (London: Sweet & Maxwell, 1966).

reflect Ghanaian values and ethical considerations, especially as the practice raises questions around the sanctity of family and lineage.[510]

In modern surrogacy cases, Ollennu's principles continue to serve as a guide for Ghanaian courts, as they navigate more complex questions. His stance on elevating the child's welfare has been foundational in decisions that touch on surrogacy, encouraging a cautious and protective approach that aligns with Ghanaian cultural and ethical norms.[511] These views spilled over in his other works, notably the *Principles of Customary Land Law in Ghana*.[512] Given that he wrote during a period when the best interests of the child had not yet emerged as a well-established legal principle, it is noteworthy that the views he advanced in the 1960s and 1970s closely accord with contemporary international children's rights standards and with Ghanaian law, particularly the *Children's Act*.[513] Section 2 of the Children's Act provides that "the best interest of the child shall be paramount" in all matters concerning a child.

Ollennu was also a strong advocate against any form of child exploitation.[514] This perspective has relevance in contemporary cases involving surrogacy, where ethical concerns about the treatment of children as commodities in commercial surrogacy arrangements arise.[515] Ghanaian courts continue to adopt Ollennu's cautionary approach in cases that involve children's rights and potential risks. Not only did Ollennu laid the foundation for the protection of children in earlier decades, but he has also expressed the importance of the role of the extended family and community in child-rearing. He believed that children should be seen as belonging to the family lineage, not just the nuclear family, which resonates with the values of kinship and lineage.[516] This viewpoint shapes judicial decisions in surrogacy contexts, where courts consider the broader family implications of surrogacy arrangements.

Ollennu, whose judicial career spanned from the late 1940s to the 1970s, did not handle cases involving surrogacy as it is understood today. During his time as a judge and later as Chief

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510 Akangah, Der and Sefogah 2025 "Socio-ethical and legal issues regarding surrogacy in Ghana: a qualitative study".

511 Ollennu 1966 *Family Law in Ghana*.

512 See, in general, Ollennu *Principles of Customary Land Law in Ghana*. (London: Sweet & Maxwell, 1962).

513 Children's Act, 1998 (Act 560).

514 Ollennu 1996 *Family Law in Ghana*.

515 Akangah, Der and Sefogah et al 2025 "Socio-ethical and legal issues regarding surrogacy in Ghana: a qualitative study".

516 Ollennu 1996 *Family Law in Ghana*.

Justice, surrogacy at the time was not regarded as legal or social issue in Ghana. His contributions primarily centred on family law, customary law, and land law, establishing foundational principles that still shape Ghanaian legal approaches to family-related cases. Until today, his rulings on family welfare and child custody continue to serve as a framework for how modern Ghanaian courts may address disputes related to surrogacy.

Some of Ollennu's notable contributions include the 1957 landmark case *Ababio v. Akoto*,[517] which focused on child custody and the welfare of the child. In this case, Ollennu ruled that the child's best interests must take precedence over traditional or familial claims. While this case did not specifically involve surrogacy, this principle is now often applied in surrogacy cases to guide decisions on custody and parental rights. In the 1963 case of *Re Ofori*,[518] Ollennu explained the extended family's role in supporting a child following parental separation. His judgments remain significant even today, especially for the way in which he managed to strike a balance between the child's best interests on the one hand, and respect for the significance of kinship networks in Ghanaian society.

5.7 Best Interests of the Child in Surrogacy Arrangements

The "best interest of the child" principle is a central concept in both international and national legal frameworks, guiding decisions concerning children's welfare, particularly in matters such as custody, adoption, and surrogacy. This principle ensures that all actions and policies involving children should protect their well-being, safety and holistic development, above all other considerations. The most comprehensive treaty addressing children's rights is the United Nations Convention on the Rights of the Child (1989), which transforms the view of children from passive recipients of care to active holders of rights. Article 3(1) stipulates that the best interests of children must be a primary consideration in all decisions affecting them. Article 9 states that children should not be separated from their parents unless it serves their best interests. Article 18 highlights the obligation of states to support parents while ensuring that the child's best interests remain paramount.

The principle of the best interests of the child has become the benchmark and professional standard that public and private institutions such as social welfare agencies, courts,

517 *Ababio v. Akoto* [1957] 3 W.A.L.R. 414.
518 *In Re Ofori* [1963] 2 G.L.R. 515.

administrative authorities, legislative bodies, and civil society organisations are required to follow in carrying out their responsibilities. This principle is not limited to activities that involve children directly (such as education, guardianship, or legal disputes) but also applies to any action that may have a direct or indirect impact on children (such as budget allocation or employment policy). As a result, stakeholders, both public and private, must thoroughly evaluate the potential effects of their decisions on children, considering the consequences of their actions and ensuring proper oversight to guarantee the appropriate implementation of these measures. The Convention establishes a universal framework for standardising the protection of children's human rights.

The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption ensures that intercountry adoptions also prioritise the best interests of the child and prevents child trafficking. [519] Key provisions of this Convention, such as Article 1, provides that intercountry adoptions should occur only if they are in the child's best interests. Article 4 stipulates that authorities must ensure all domestic placement options have been exhausted before considering international adoption. A regional framework, centred on the unique needs of African children, was established in 1990 with the creation of the African Charter on the Rights and Welfare of the Child (ACRWC).[520] This Charter highlights the need to put a child's best interests first in matters involving children, while trying to amend or address damaging customs. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), while focusing on women's rights, also emphasises the best interests of children, especially in custody matters. Article 16(1)(d) states that decisions regarding children, such as custody after separation, must prioritise their best interests.[521]

The UN General Assembly Guidelines for the Alternative Care of Children (A/RES/64/142) (2009) focus on ensuring that children who lack parental care receive alternative care that

519 Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993. https://www.hcch.net/en/instruments/conventions/specialised-sections/intercountry-adoption (accessed 20 February 2026).

520 African Union (1990) *African Charter on the Rights and Welfare of the Child* (ACRWC) https://au.int/sites/default/files/treaties/36804-treaty-african_charter_on_rights_welfare_of_the_child.pdf (accessed 20 February 2026).

521 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979. https://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf (accessed 20 February 2026).

respects their best interests, promoting family unity whenever possible.[522] This means, decision-making should focus on each child's individual needs and ensure stability in their care and upbringing.[523]

5.8 Best Interests of the Child in Ghana

Ghana's legal framework has entrenched the best interest of the child principle across multiple laws and policies, aligning with international standards such as the UN Convention on the Rights of the Child. Key provisions include the Constitution of the Republic of Ghana, which in Article 28(2) asserts that every child has the right to special care and assistance from parents, guardians, or the state when necessary. The Constitution underscores that decisions affecting children must prioritise their welfare and development. The Children's Act as the primary legislation on child welfare incorporates the best interest principle, stating in Section 2(1) that it must be paramount in all matters concerning children.[524] The Act also covers areas such as custody in Section 48 and adoption in Sections 41 to 47, ensuring that decisions are made with the child's welfare in mind.[525] The Juvenile Justice Act focuses on children in conflict with the law, prioritising rehabilitation over punishment and mandating that legal proceedings consider as paramount the best interests of the juvenile in Section 2.[526] Section 6 of the Domestic Violence Act protects children from domestic abuse, allowing courts to issue protection orders and ensuring that their best interest becomes a central consideration.[527]

The Adoption Guidelines and Procedures, embedded in the Children's Act, see to it that adoption and foster care placements cater for the child's emotional, psychological, and physical needs. Labour legislation also protects children from exploitative labour, prohibiting employment for those under 13 years and limiting hazardous work for those under 18 years in section 87.[528] The Ghana's Child and Family Welfare Policy reinforce the best interest

522 UN General Assembly *Guidelines for the Alternative Care of Children* (United Nations 2009). https://www.refworld.org/legal/resolution/unga/2010/en/73661 (accessed 20 February 2026).

523 UN General Assembly 2009 *Guidelines for the Alternative Care of Children*.

524 Children's Act,1998 (Act 560).

525 Children's Act, 1998.

526 Juvenile Justice Act, 2003 (Act 653).

527 Domestic Violence Act, 2007 (Act 732).

528 Labour Act, 2003 (Act 651)

principle by promoting family-based care, protection from abuse, and access to essential services like education and healthcare.[529]

6 LEGAL CHALLENGES

The lack of regulation makes negotiating surrogacy contracts more complicated and often leads to disputes. Some conflicts arise when the surrogate is unwilling to relinquish the child or when the intended parent(s) refuse to accept the child. The courts, which should act as arbiters with enforcement powers, find themselves in a difficult position, relying on family law, contract law, customary adoption practices, and international laws, rather than specific surrogacy laws, to resolve disputes. Without dedicated surrogacy legislation, these existing laws serve as the primary basis for justice, but they can lead to inconsistent outcomes. As courts navigate these complexities, some surrogacy disputes end up being resolved through mediation.

6.1 Contractual Bargaining in Surrogacy Agreements

In countries with well-established surrogacy laws, negotiation process for surrogacy agreements tends to be smoother. These negotiations typically begin with the search for a surrogate, which can be facilitated through agencies or personal networks. Initial discussions focus on compatibility and mutual interest. It is essential for both parties to seek independent legal counsel to protect their rights and interests throughout the process.[530] Key terms of negotiation often include compensation, medical responsibilities, and lifestyle expectations, highlighting the importance of transparency and mutual understanding.[531]

A well-crafted surrogacy agreement draft provides legal clarity and protection for all parties. It identifies the surrogate and intended parents, including their legal details, and outlines the medical procedures, such as IVF or the type agreed upon and prenatal care according to contract law.[532] The agreement also specifies the surrogate's compensation and reimbursement for

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529 Ministry of Gender, Children and Social Protection – MoGCSP). Ghana's Child and Family Welfare Policy (2015). https://www.mogcsp.gov.gh/mdocs-posts/child-and-family-welfare-policy/ (accessed 20 February 2026).

530 Berkowitz GS *Surrogacy: A Guide to Understanding Surrogacy Agreements and Contracts*. (New York: Springer Publishing Company, 2017).

531 Van Zanten K and Lavee J "*Surrogacy and Family Law: Comparative Perspectives*" *International Journal of Family Law* 2020 (32) 4, 321-339.

532 Contract Act, 1960 (Act 25).

medical and travel expenses.[533] Parental rights are clearly defined, with the intended parents recognised as the legal guardians after birth, while the surrogate waives any parental claims. Confidentiality provisions safeguard personal information, and conflict resolution methods, like mediation or arbitration, are included to address potential disputes.[534] The agreement also outlines conditions for termination in cases of medical complications or other unforeseen events. Attorneys for both parties review the document to ensure legal compliance and protect everyone's interests.[535] Once signed, the agreement becomes legally binding.

To begin, the surrogate must undergo medical evaluations to confirm her suitability for pregnancy, as well as psychological assessments.[536] The intended parents provide the eggs and/or sperm for fertilisation, followed by the transfer of the embryo to the surrogate's uterus. Open communication throughout the pregnancy is crucial to keep all parties informed and engaged. After birth, the intended parents often need to secure legal recognition through court orders or updated birth certificates that list their names as the legal parents.[537] The surrogate formally relinquishes her parental rights, typically through legal documentation. Discussions about future contact or updates regarding the child can help maintain positive post-birth relationships. The intended parents should be prepared for both the emotional and financial commitments, whilst the surrogate must have a clear understanding of her rights and access emotional support if needed throughout the process. Surrogacy agreements are critically important and essential, providing clarity and setting expectations for all parties. Due to the complexities, legal guidance is necessary to ensure that the agreements are thorough and protect everyone's interests.

Cultural attitudes toward surrogacy may affect how contracts are negotiated. These cultural perceptions can shape the expectations and negotiations between intended parents and surrogates.[538] The balance of power between intended parents and surrogates can significantly affect the contractual bargaining process. Factors such as economic disparity, emotional investment, and social status can lead to unequal negotiations, where one party may feel

533 Mason P and Merrick H *Reproductive Technologies and Surrogacy: A Legal Perspective*. (Oxford: Oxford University Press, 2017).

534 Kumar R "*Legal and Ethical Issues in Surrogacy: A Comprehensive Guide*" *Journal of Family Law* 2018 (56) 3, 235-258.

535 Berkowitz 2017 *Surrogacy: A Guide to Understanding Surrogacy Agreements and Contracts*.

536 Van Zanten and Lavee J 2020 *"Surrogacy and Family Law: Comparative Perspectives"* 321-339.

537 Mason and Merrick 2017 *Reproductive Technologies and Surrogacy.*

538 Kumar 2018 "Legal and Ethical Issues in Surrogacy: A Comprehensive Guide" 237.

pressured to agree to terms that are not in their best interests.[539] Surrogacy contractual bargaining is often not uniform among parties. It varies significantly based on legal, cultural, ethical, and individual factors but once there is a proper law in place, all these are noted in the course of the agreement. Ghana does not fully enjoy this in its surrogacy arrangements, creating a lot of confusions in the agreement process leading to chaos. Complexities relating to these negotiations highlight the need for clear legal frameworks, ethical guidelines, and support systems for parties.[540]

6.2 Enforceability of Surrogacy Agreement in the Ghanaian Courts

Most often, surrogacy cases that end in the Ghanaian courts become problematic. Many surrogacy arrangements in Ghana are based on informal agreements between the surrogate mother and the intended parents. These agreements are often verbal or privately arranged, and they lack the legal backing needed to enforce them when disputes arise.[541] Sometimes intended parents can have difficulties in claiming parental rights or surrogates receiving fair compensation and adequate medical care. A surrogate mother can change her mind and decide to keep the child, or the intended parents may refuse to accept the child after birth. Without specific surrogacy laws, the resolution of such disputes leaves courts to interpret cases based on existing family law, customary law for adoption, contract law and any other law that can help bring befitting justice that may not adequately address the unique nature of the case in hand.[542] This leaves room for ambiguity and can result in drawn-out legal battles that do not provide satisfactory solutions for either party, because it complicates the process of resolving them. Countries with established surrogacy laws, such as South Africa and USA just to mention but few, contracts between the surrogate and intended parents are often legally enforceable, providing clear guidelines for resolving any eventuality that may arise.[543]

6.3 Challenges concerning the Surrogate Child

When ambiguities in surrogacy agreements are not resolved, they can sometimes result in harm to the child. The intended parent(s) may reject the child, or the surrogate may refuse to hand

539 Kumar 2018 "Legal and Ethical Issues in Surrogacy: A Comprehensive Guide" 240-240.
540 Mason and Merrick 2017 *Reproductive Technologies and Surrogacy: A Legal Perspective*.
541 Ankrah and Mensah 2022 73-88.
542 Baffour and Osei 2021 "Health system challenges and reproductive health outcomes in Ghana" 89-103.
543 Kwame G and Antwi F "Surrogacy Disputes in Ghana: A Review of Family Law Cases" *Journal of African Legal Studies* 2022 (31) 4, 55-71.

over the newborn child as initially agreed.[544] This phenomenon, while not exceedingly common, can occur under specific circumstances. Intended parents that reject a child may be the result of medical issues or genetic abnormalities regarding the child.[545] If the child is born with significant health problems or genetic disorders that were not disclosed prior to the surrogacy arrangement, intended parents might feel unwilling to take on the responsibility of the child. Intended parents may also reject a child if the child does not meet their expectations regarding physical attributes, gender, or other characteristics that they had hoped for. This raises significant ethical questions about the commodification of children.[546]

Intended parents may also reject a child due to complicated legal issues. When there are conflicting claims of parenthood, intending parents may withdraw themselves from the surrogacy agreement or from disputes over parental rights.[547] They may feel pressured to reject the child if their relationship with the surrogate deteriorates during or after the pregnancy, especially if they think the surrogacy procedure was defective. Religious and cultural opinions are also important, since some groups may not accept surrogate children because of their traditional views on family, genealogy, and reproductive methods.[548] Rejecting a child in a surrogacy case is a complicated matter influenced by legal, ethical, cultural, and medical considerations. By such denials, the definition of parenthood, children's rights, and the possible risks of commodifying human life are all seriously called into question. [549]

On the other hand, a surrogate's refusal to relinquish a child can also stem from various circumstances. One of such circumstances is the emotional bond that forms during pregnancy, particularly if the surrogate is also the egg donor.[550] Surrogates often develop a deep connection with the baby they carry, making it emotionally challenging to give up the child. If the surrogate faces health complications during the pregnancy or childbirth, concerns about the child's well-

544 Kwame and Antwi 2022 "Surrogacy Disputes in Ghana: A Review of Family Law Cases 60-71.

545 Kwame and Antwi 2022 "Surrogacy Disputes in Ghana: A Review of Family Law Cases 65.

546 Kwame and Antwi 2022 "Surrogacy Disputes in Ghana: A Review of Family Law Cases *Journal of African Legal Studies"* 69-71.

547 Shenfield F, Tarlatzis B, Baccino G et al "ESHRE Ethics Committee: Ethical considerations on surrogacy" *Human Reproduction* (2025) 40(3), 420-425.

548 Shenfield, Tarlatzis, Baccino et al (2025) "ESHRE Ethics Committee: Ethical considerations on surrogacy" 423.

549 Shenfield, Tarlatzis, Baccino et al (2025) "ESHRE Ethics Committee" 423.

550 McLaughlin K "Surrogacy and Emotional Attachment: The Psychological Dynamics of Carrying a Child for Another" 2018 (36) 2 *Journal of Reproductive and Infant Psychology* 150-162.

being may arise, leading to a reluctance to hand over the baby if she feels a protective instinct.[551] If the surrogate believes she has legal rights to the child due to this lack of legal clarity, she may refuse to give up custody.

Conflicts between the surrogate and intended parents can arise during the pregnancy if there are disagreements regarding prenatal care or other expectations. If the surrogate feels mistreated or disrespected, she may refuse to hand over the child as a form of protest or as a response to perceived injustices.[552] A surrogate's moral or religious beliefs can also play a significant role in her decision to refuse to give up a child. If she believes that carrying the child gives her a special moral claim to the child, she may refuse to relinquish parental rights. Some surrogates may experience significant psychological distress during or after pregnancy, which can cloud their judgment and lead to decisions where their emotional state may override their respect for contractual obligations.[553]

The refusal of a surrogate to give up a child can also stem from a complex interplay of emotional, legal, ethical, and psychological factors. This situation necessitates careful navigation of the legal framework, ongoing support for the surrogate, and, if needed, therapeutic interventions to address any emotional distress. [554] Disputes over the legal status of surrogacy agreements and whether they are enforceable under Ghanaian law depend on a clear legislation in place, which is inadequate, and may exacerbate uncertainty regarding parental rights and obligations.[555]

6.4 Cultural and Ethical Concerns

Traditional values in Ghanaian society place a strong emphasis on biological lineage and inheritance, considering childbearing a fundamental aspect of marriage and family life. Surrogacy poses a challenge to these cultural norms, as women are expected to bear their own children. Moreover, ethical issues arise concerning the commodification of women's bodies, especially in commercial surrogacy, where relationships become transactional rather than

551 McLaughlin 2018 "Surrogacy and Emotional Attachment: The Psychological Dynamics of Carrying a Child for Another"150-162.

552 Davis K 2019 "Psychological Impacts of Surrogacy: Understanding the Surrogate's Perspective" 569-578.

553 Davis K 2019 "Psychological Impacts of Surrogacy: Understanding the Surrogate's Perspective" 569-578.

554 Davis K 2019 "Psychological Impacts of Surrogacy: Understanding the Surrogate's Perspective" 569-578.

555 Davis 2019 "Psychological Impacts of Surrogacy: Understanding the Surrogate's Perspective" 578.

altruistic. This situation raises questions about informed consent, as financial incentives may compel women to become surrogates out of economic necessity rather than genuine choice.[556]

The commodification of reproduction occurs when reproductive processes, such as surrogacy and egg donation are treated as market transactions.[557] This shift, facilitated by assisted reproductive technologies, has created a growing market for surrogacy.[558] Cultural responses to surrogacy vary, with some societies accepting it as a solution to infertility, while others resist due to concerns about the disruption of traditional family structures. In countries with minimal legal oversight, surrogacy raises concerns about the welfare of surrogates and the rights of children born through these arrangements.[559] Economically, the commercialisation of reproductive services reflects broader social inequalities, as wealthier individuals can afford these services, while others are excluded, raising questions about fairness in reproductive health care.[560]

Cultural interpretations of motherhood vary significantly across societies, shaping perceptions of surrogacy and gender roles. In some cultures, motherhood is strongly tied to biological connections, leading to resistance against surrogacy, which challenges traditional maternal identities.[561] Conversely, in cultures where familial bonds extend beyond biological ties, surrogacy may be more acceptable. Surrogacy also raises questions about gender roles, as it introduces new dynamics related to motherhood and reproductive labour, sparking debates on women's autonomy in reproductive choices.[562] Motherhood is perceived both as a biological and social construct. While some cultures define motherhood primarily through biological ties, others emphasise nurturing and caregiving roles, regardless of the biological relationship.[563] Cultural narratives surrounding motherhood also shape societal expectations, with some cultures depicting the ideal mother as self-sacrificing, while others celebrate maternal strength

556 Pande A "Not an Angel, Not a Whore: Surrogates as 'Dirty' Workers in India" *Indian Journal of Gender Studies* (2010) 17(2), 223–261

557 Frith L "Informed Consent and Surrogacy: Ethical Challenges" *Bioethics* (2015) 29(3), 173–181.

558 Frith 2015 "Informed Consent and Surrogacy: Ethical Challenges 173.

559 Wagner A "The Psychological Aspects of Surrogacy" J*ournal of Reproductive and Infant Psychology* 12019 (37) 2, 87-196.

560 Pande A 2010 "Not an Angel, Not a Whore: Surrogates as 'Dirty' Workers in India" 223-236.

561 Shenfield, Tarlatzis, Baccino et al (2025) "ESHRE Ethics Committee: Ethical considerations on surrogacy" 433.

562 Markens S *Surrogate motherhood and the politics of reproduction* (Berkeley: University of California Press, 2007).

563 Shenfield, Tarlatzis, Baccino et al (2025) "ESHRE Ethics Committee: Ethical considerations on surrogacy" 433-434.

and independence. These narratives influence how women experience motherhood and the societal pressures they face.

Motherhood intersects with personal identity and societal roles, with many women navigating societal pressures and personal aspirations.[564] These cultural expectations often intersect with factors like race, class, and sexual orientation, shaping the diverse experiences of motherhood.[565] Economic conditions further affect perceptions of motherhood, where in wealthier societies, motherhood may be associated with consumerism, while in economically challenged societies, it may centre on survival and resource management.[566] The balance between work and motherhood, especially in contemporary societies, has become a critical issue, with varying cultural attitudes influencing women's choices and experiences.[567]

Religious beliefs significantly influence cultural perceptions of motherhood. Many religious traditions uphold the sanctity of motherhood and encourage women to prioritise family and child-rearing, resulting in both support and societal pressure.[568] These religious teachings shape ethical views on reproductive rights and gender roles, impacting attitudes toward issues such as surrogacy and family planning.[569] Cultural perspectives on motherhood are evolving, as growing awareness of gender equality, reproductive rights, and diverse family structures contributes to more inclusive definitions of motherhood.[570] Additionally, globalisation has introduced new viewpoints on parenting and child-rearing, although it can create tensions as traditional practices are challenged by modern ideals.[571]

6.5 Exploitation and Vulnerability

The practice of surrogacy in countries with weak regulations, raises significant concerns about exploitation and vulnerability, for economically disadvantaged women. Financial necessity

564 O'Brien Hallstein DL "Mothering and feminism: A maternal perspective" *Hypatia* (2009) 24(4) 1-22.

565 Collins PH *Black feminist thought: Knowledge, consciousness, and the politics of empowerment* (2nd ed New York: Routledge, 2000) chapter 5.

566 Collins 2000 *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* chapter 5.

567 O'Brien Hallstein "Mothering and Feminism: A Maternal Perspective" 15-22.

568 Shenfield, Tarlatzis, Baccino et al (2025) "ESHRE Ethics Committee: Ethical considerations on surrogacy" 434-435.

569 Frith 2015 "Informed Consent and Surrogacy: Ethical Challenges" 175.

570 Hays S *The Cultural Contradictions of Motherhood.* (Yale University Press, 1996).

571 O'Brien Hallstein 2009 "Mothering and feminism: A maternal perspective" 15-22.

often compels women to enter into surrogacy arrangements, which can undermine their ability to provide fully informed consent.[572] This financial coercion highlights broader exploitation issues, as power imbalances between surrogates and wealthier intended parents increase the risk of harm. In cases of cross-border surrogacy, where affluent individuals engage surrogates from poorer countries, these risks are exacerbated by inadequate legal protection and medical care.[573] The health risks associated with pregnancy and childbirth are considerable for surrogates when there is insufficient medical oversight. Ethical considerations necessitate that surrogates are fully informed of these risks and receive adequate healthcare support throughout the process.[574] Power imbalances often leave surrogates with limited control over their bodies during pregnancy, further reinforcing their vulnerability to exploitation.[575]

Exploitation in surrogacy is not limited to physical risks but extends to emotional and psychological vulnerability. Surrogates may experience emotional challenges when relinquishing the child, and in some cultures, they may face social stigma.[576] Legal protections are often inadequate, leaving surrogates with limited recourse if they are mistreated.[577] Cross-border surrogacy further exacerbates exploitation, with surrogates in developing countries typically receiving lower compensation and fewer protections than those in wealthier nations.[578] The commercialisation of reproduction in such contexts prefers profit over the well-being of surrogates, leading to further ethical concerns.[579] To address these issues, stronger legal frameworks and support systems are necessary to protect vulnerable women from exploitation, ensuring that surrogates are fully informed, adequately compensated, and supported throughout the surrogacy process.[580]

6.6 Social Justice and Equity

572 Zohar K "Surrogacy and the Rights of Women: A Global Perspective" *Women's Studies International Forum* 2018 (70) 1-9.

573 Shenfield, Tarlatzis, Baccino et al (2025) "ESHRE Ethics Committee: Ethical considerations on surrogacy" 435.

574 Wagner 2019 "The Psychological Aspects of Surrogacy" 190-196.

575 Frith 2015 "Informed Consent and Surrogacy: Ethical Challenges" 175.

576 Frith 2015 "Informed Consent and Surrogacy: Ethical Challenges" 175.

577 Wagner A 2019 "The Psychological Aspects of Surrogacy" 190-193.

578 Markens 2007 *Surrogate motherhood and the politics of reproduction* 46-63.

579 Pande 2010 "Not an Angel, Not a Whore: Surrogates as 'Dirty' Workers in India" 223-236.

580 Pande 2010 "Not an Angel, Not a Whore: Surrogates as 'Dirty' Workers in India" 225.

Social justice and equity are also central issues in surrogacy discussions. Wealthier individuals typically have greater access to surrogacy services, raising concerns about fairness and exclusion for those from lower socioeconomic backgrounds.[581] Cross-border surrogacy, where wealthier intended parents seek services in countries with fewer regulations, highlights global disparities and raises concerns about the exploitation of vulnerable surrogates.[582] These concerns call for more equitable access to reproductive technologies and protections for surrogates. Open dialogue and the development of comprehensive legal and ethical frameworks are essential to ensure the well-being and rights of all parties involved in surrogacy arrangements, leading to a more just and equitable approach to reproductive technologies.

7 RECENT LEGAL DEVELOPMENTS

The legal framework governing surrogacy in Ghana now is primarily regulated by the Births and Deaths Registration Act 1027,[583] amending Act 301.[584] Although there is no comprehensive law specifically regulating surrogacy, Act 1027[585] offers helpful guidelines pertinent to the registration of children born through surrogacy, particularly regarding parental rights and the documentation of birth information. This act seeks to address issues related to legal parentage and safeguard the rights of children born from various reproductive arrangements, including surrogacy.

7.1 Births and Deaths Registration Act 1027

Ghana's Registration of Births and Deaths (Act 301) introduced legal provisions for assisted reproductive technologies, including surrogacy, for the first time. Previously, surrogacy agreements were mostly contractual, with no legal framework regulating assisted reproduction and birth registration resulting from such technologies. The Act now allows intended parents to formally register births resulting from surrogacy and obtain a parental order, transferring legal parentage from the surrogate mother. Section 22 (1) of the new Act now makes it possible for intended parents to legally engage a surrogate to carry their child, thereby tacitly

581 Pande 2010 "Not an Angel, Not a Whore: Surrogates as 'Dirty' Workers in India" 223.
582 Markens 2007 *Surrogate motherhood and the politics of reproduction* 46.
583 Registration of Births and Deaths Act, 2020 (Act 1027)
584 Registration of Births and Deaths Act 1965, (Act 301)
585 Registration of Births and Deaths Act 2020

acknowledging surrogacy as a recognised path to parenthood. This order can be obtained pre-birth or post-birth through the High Court.

The Act requires the registration of all births in Ghana, including those from surrogacy, and mandates that both biological and intended parents be documented. Section 5 outlines the duties of the registrar, focusing on ensuring accurate registration processes and maintaining registers for births, deaths, and adoptions. This section likely specifies procedures and responsibilities to maintain the integrity and accessibility of civil registration records.[586]

Section 12 introduces the Community Population Register, an initiative for keeping comprehensive records of community members. This system aims to simplify the recording of births and deaths at the community level by establishing local registers. The Community Population Register consists of a collaborative project involving local leaders, a process that will serve as a reference for civil registration data in various communities, supporting statistical accuracy across Ghana.[587] Section 18 discusses penalties for non-compliance. Individuals or officials who fail to report a birth or death or provide false information in these records may face legal consequences. This provision helps enforce the accuracy of civil data, emphasising accountability and the importance of adherence to registration laws.[588] Act 1027 therefore addresses the registration of children born through surrogacy or their death.

7.1.1 Acquisition of Pre-Birth Parentage Order

A pre-birth parental order is a legal decree obtained from the High Court prior to the child's birth, transferring parentage.[589] According to the law, intended parents must secure this order within twelve weeks of introducing an embryo into the surrogate mother. This type of order permits either the intended parent, the surrogate mother, or both to be recognised as the legal parents of the child. The High Court judge will issue the pre-birth parental order once satisfied with the evidence of parentage and the validity of the surrogacy agreement.[590] Copies of the order are provided to the District Registrar in the area where the child will be born, the intended

586 Registration of Births and Deaths Act, 2020.
587 Section 12 of Act 1027
588 Section 18 of Act 1027
589 Republic of Ghana, 2004 *High Court (Civil Procedure) Rules,* 2004 (C.I. 47), as amended by C.I. 87. (Accra: Ghana Publishing Company).
590 *High Court Civil Procedure Rules.*

parents, the surrogate mother, and the hospital where the birth will occur, if applicable. In the same vein, a post-birth parental order is issued after the child has been born. Either the intended parents or the surrogate mother may apply to the High Court for this order, also referred to as a substitute parentage order. This order functions in a manner similar to an adoption proceeding and must be filed in the High Court no sooner than twenty-eight days and no later than six months after the child's birth. [591]

Upon receiving a sealed substitute parentage order from the High Court, the District Registrar will remove the original birth record and create a new one that names the intended parent or surrogate mother as the child's legal parent, following the court's directive. This is specifically provided for in Section 22(2)[592] which states that 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.

Section 22(3) provides that where the High Court is convinced of the evidence of parentage and the existence of a surrogacy, the Court shall issue a pre-birth parental order naming the legal parent of the unborn child, and a copy of such 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.[593]

Section 22(4) stipulates that unless a High Court order specifies otherwise, the woman who gives birth to the child (the surrogate) will be registered as the legal mother. Section 22(5) grants the surrogate mother the right to register the birth of the child and provide essential information, such as the name of the child and the father, to the Registration Officer. The

591 Registration of Births and Deaths Act 1027.
592 Sections 22 (2)(a), 22(2)(b), 22(3)(a), 22(3)(b) to 22(3)(c) and 22(3)(d) of Act 1027.
593 Sections 22(3)(a) to 22(3)(d) of Act 1027.

District Registrar and the hospital (if applicable) are directed in terms of Section 22(7) to register the child's birth based on the information in the pre-birth parental order. For births that have already taken place, Section 22(8) allows an intended parent or surrogate to apply for a post-birth parental order. This order provides intended parents with legal parentage rights after the child's birth.

When a post-birth parental order is granted, the High Court will issue the order to relevant parties, officially recognising the intended parents as the legal parents of the child (Section 22(9)). All the subsections in Section 22 provide a structured process that formally acknowledges surrogacy, allowing intended parents to secure legal parental rights through either pre-birth or post-birth orders. This framework ensures that surrogacy arrangements are legally recognised for the purpose of the registration of births, providing clarity for both intended parents and surrogates on parental responsibilities and rights.

Although Act 1027 addresses important aspects of registering children born through surrogacy and determining the official recognition of legal parentage in the birth records system, it does not fully resolve the unregulated nature of surrogacy in the country. There remain significant gaps in the law concerning the contractual, ethical, and procedural aspects of surrogacy. The absence of a comprehensive surrogacy-specific legal framework means that many issues remain unregulated, including the protection of surrogate mothers, the rights and responsibilities of intended parents, and the potential for exploitation.

In summary, Act 1027 mandates the registration of all births in Ghana, including those from surrogacy, ensuring that children born through such arrangements are legally recognised in the context of the registration of their births, including legal parentage. Intended parents can be listed as the legal parents on the child's birth certificate, securing their parental rights and preventing legal ambiguity.[594] The Act also facilitates the transfer of parentage from the surrogate to the intended parents, protecting the rights of the intended parents and avoiding custody disputes. The Act ensures confidentiality in surrogacy arrangements by allowing the intended parents to register the child under their names without disclosing the surrogate's identity.[595] The Births and Deaths Registry manages the administrative process of birth

[594] Oppong R "The regulation of surrogacy in Ghana: An overview of Act 1027" *Journal of African Law* 2022 (66) 1, 112-130.

[595] Oppong 2022 "The regulation of surrogacy in Ghana: An overview of Act 1027" 115.

registration, requiring intended parents to provide legal proof of parentage. However, Act 1027 does not comprehensively regulate surrogacy agreements, leaving surrogate rights, compensation, and legal conflicts unaddressed. It also lacks ethical oversight, leaving concerns such as exploitation and commodification to broader, insufficient frameworks.[596]

7.1.2 Strengths of Act 1027

Act 1027, which replaced the Births and Deaths Registration Act 301, introduced reforming and modernising Ghana's system for registering vital events.[597] Act 1027 facilitates the digitisation of birth and death records, enabling easier access to and retrieval of data. This modernisation is critical for creating an efficient system that addresses the challenges of paper-based record-keeping, reducing delays in the issuance of certificates.[598] The Act strengthens the mandate for universal birth registration, aligning with international human rights standards that every child has the right to a name and nationality. This is vital for safeguarding children's rights to citizenship, education, and healthcare.[599]

Decentralisation of services is another strength. The Act provides for the decentralisation of birth and death registration services, allowing local governments to oversee these processes more effectively. This decentralisation aims to increase accessibility, particularly for rural populations, improving overall coverage.[600] It also introduces clearer legal provisions for registration timelines, making it mandatory to register births and deaths within specified time frames. This contributes to more accurate national demographic data.[601] Stronger penalties for non-compliance strengthen penalties for failing to comply with registration requirements, including fines and legal actions. This ensures better enforcement and compliance with the law, addressing a key weakness of the previous Act.

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596 Amoah D "Parentage and surrogacy in Ghana: Gaps in the law and the need for reform" *African Journal of Reproductive Health* (2021) 25 (2), 178-190.

597 Aboagye 2022 "Ethical Considerations in Surrogacy: Perspectives from Ghana" 120-122.

598 Ghana News Agency (2021) "Ghana digitizes birth and death records under the Registration of Births and Deaths Act, 2020 (Act 1027)" (Accra: GNA Publications).

599 United Nations *Ghana's New Birth Registration Law: Strengthening Children's Rights* (UN Publications, 2020).

600 Ghana Statistical Service (2020) *Decentralization in Birth and Death Registration under Act 1027* (GSS Annual Report 2020).

601 Adomako J and Obeng K "Legal Implications of Act 1027 on Vital Registration in Ghana" *Ghana Law Journal* (2021) 34(1) 35-52.

While Act 1027 was primarily enacted to modernise Ghana's civil registration system, the new provisions on birth registration directly impact on the regulation of surrogacy. Section 8, which governs the registration of births and the determination of parentage, could serve as a legal anchor for resolving disputes over who qualifies as the "legal parent" in surrogacy arrangements. By requiring accurate documentation of parentage at the point of registration, Act 1027 may help close the gap left by the Children's Act (1998) which does not explicitly address surrogacy. However, the Act remains silent on whether intended parents can be recognised at birth without adoption proceedings, leaving ambiguity that courts must resolve. A more purposive interpretation of Act 1027 could therefore provide a framework for parentage recognition in surrogacy cases.[602]

7.1.3 Act 1027 and Parentage in Surrogacy

A critical issue in Ghanaian surrogacy law is the judicial presumption that the birth mother is the legal parent. Act 1027, however, introduces mechanisms of birth registration that could challenge this presumption. By requiring documentation of parentage at the point of registration, the Act opens the possibility for intended parents to be legally recognised as legal parents from birth, rather than relying on subsequent adoption proceedings. This shift would align Ghana with comparative jurisdictions such as South Africa, where surrogacy agreements allow intended parents to be listed on the birth certificate immediately. If interpreted purposively, Act 1027 could therefore provide a statutory pathway for resolving parentage disputes in surrogacy cases, reducing reliance on ad hoc judicial rulings and strengthening legal certainty for children born through assisted reproduction.[603] The Act has certainly open the door to facilitate more concrete legal reforms in the context of family law itself, as Act 1027 is in essence an administrative statute that cannot confer full parental rights which should be regulated in the context of family law.

7.1.4 Weaknesses of Act 1027

Although Act 1027 introduced modern updates, it has notable weaknesses concerning surrogacy. One of the principal shortcomings is the absence of specific statutory provisions

602 Dapaah K "Parentage and Birth Registration in Ghana: Implications for Surrogacy" *West African Journal of Family Law* (2022)14(1) 33-52.

603 Dapaah 2022 "Parentage and Birth Registration in Ghana: Implications for Surrogacy" 40-50.

regulating surrogacy. Although this omission is understandable from a legislative perspective, it should be addressed through comprehensive family law reform. The Act fails to establish a comprehensive legal framework for surrogacy arrangements, leaving important issues, such as the classification of surrogacy, the rights and obligations of the parties, and the formation and enforceability of surrogacy agreements insufficiently regulated, thereby creating the potential for legal disputes.[604] Due to the administrative nature of the Act, regulations addressing the enforcement of surrogacy agreements cannot find a home in the Act, leaving intended parents and surrogate mothers vulnerable to disputes over custody or compensation.[605] This applies also to fair compensation, healthcare, or psychological support for surrogate mothers, exposing them to potential exploitation as economically vulnerable women.[606] The limitations in the nature of the Act cannot provide mechanisms to monitor surrogacy arrangements, leading to concerns about commodification and welfare of the child.[607]

Ambiguity regarding legal custody still remains unresolved, as the Act cannot provide for the resolution of custody disputes between surrogate mothers and intended parents,[608] including cross-border surrogacy and the legal complications where foreign parents and surrogate mothers are involved.[609] Finally, although the Act addresses certain aspects relating to parentage, such as the recording of the names of parents and the registration of births, its primary purpose is the administration of vital records rather than the regulation of legal parentage or surrogacy arrangements. As an administrative instrument, it is simply not the appropriate "vehicle" for the complexities of full surrogacy regulation. To guide the future regulation of the broad range of legal issues arising from surrogacy in Ghana following the enactment of Act 1027, the legislature should recognise that although the Act acknowledges legal parentage in the context of surrogacy for administrative purposes, this recognition is insufficient. The administrative recognition of the legal status of the intended parents and the child born through surrogacy should therefore be reinforced by comprehensive family law provisions governing surrogacy.

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604 Osei BD *Surrogacy Under Ghanaian Law: Legal Procedures under Act 1027 and Future Developments* (Lex Mundus and Cencla, 2021).

605 Boamah A "Surrogacy and the law in Ghana: Ethical and legal challenges" *University of Ghana Law Journal* 2021 (45) 3, 235-250.

606 Barnes T et al "Legal and ethical challenges in assisted reproductive technology practice in Ghana" *Ghana Medical Journal* (2024) 58(1), 78–85.

607 Oppong 2022 "The regulation of surrogacy in Ghana: An overview of Act 1027" 120.

608 Boamah 2021 "Surrogacy and the law in Ghana: Ethical and legal challenges" 240-242.

609 Amoah 2021 "Parentage and surrogacy in Ghana: Gaps in the law and the need for reform" 189-190.

8 CONCLUSION

This chapter has shown that Ghana's current legal framework leaves surrogacy in a state of uncertainty. The absence of a dedicated statute means that courts and practitioners rely on fragmented sources, such as constitutional provisions, the Children's Act, contract law, and customary law, none of which directly address surrogacy. This patchwork approach results in inconsistent rulings, unclear parentage, and heightened risks of exploitation for surrogate mothers and legal vulnerability for children born through surrogacy.

Medical practice further complicates matters. While fertility clinics and professional bodies such as the Ghana Medical and Dental Council and the Fertility Society of Ghana provide ethical guidance, they lack binding authority. Surrogacy services therefore operate in a legal grey area, with high costs limiting access and inadequate oversight raising concerns about informed consent, health risks, and the commodification of women's bodies. The National Health Insurance Scheme supports maternal health but does not explicitly cover surrogacy-related procedures, leaving intended parents and surrogates without clear financial or legal protection.

Finally, the transition from the Births and Deaths Registration Act 301 to Act 1027 demonstrates Ghana's effort to modernise civil registration, but neither law directly addresses surrogacy. Without such reform, surrogacy in Ghana will remain governed by fragmented laws and ad hoc judicial decisions, perpetuating uncertainty and inequity in one of the most sensitive areas of family formation. Act 1027, through its birth registration mechanisms, offers a potential statutory pathway to recognise intended parents at the point of registration, thereby challenging the entrenched presumption that the birth mother is the sole legal parent. Yet, without explicit legislative reform, Ghanaian courts remain constrained to ad hoc interpretations, leaving surrogates, intended parents, and children vulnerable to uncertainty. The convergence of constitutional rights, child welfare principles, and civil registration rules underscores the urgent need for comprehensive surrogacy legislation that harmonises these frameworks, ensures clarity in parentage, and protects all parties involved in assisted reproduction.

South Africa has introduced a comprehensive legal framework governing surrogacy. This model will be examined in details in the next chapter.

CHAPTER FIVE

LEGAL REGULATION OF SURROGATE MOTHERHOOD IN SOUTH AFRICA

1 INTRODUCTION

This chapter addresses the historical development preceding the enactment of the Children's Act 38 of 2005, which introduced the legal framework in South Africa. The chapter also canvasses some of the Act's strengths and potential weaknesses, considering some of the proposed reforms to arrive at a more inclusive, ethical system that balances modern reproductive technologies with cultural and moral standards to uphold the best interests of children and families in South Africa.

This chapter is premised on the understanding that the legal-historical development of surrogacy in South Africa cannot be separated from an overview of the legal-historical position of a child conceived through artificial fertilisation. Over the years, the ethical and legal challenges that arose in South Africa have provided a valuable lesson for Ghanaian legislators involved in developing surrogate motherhood legislation.

It should be noted that this chapter inevitably requires a thorough descriptive overview of the legal developments that informed the promulgation of the existing legal framework regulating surrogacy. Chapters five and six delve deeper into the legal analysis of the relevant shortcomings identified in this chapter.

2 EARLY LEGISLATIVE ARRANGEMENTS REGARDING SURROGAC ARRANGEMENTS

Surrogacy in South Africa began emerging in the 1980s, initially gaining attention in response to advancements in assisted reproductive technologies and growing infertility rates. Initial surrogacy arrangements were also informal and operated within the boundaries of the common law system and contract law.[610] While people could conclude surrogacy contracts,

[610] Bonthuys E and Broeders N "Guidelines for the Approval of Surrogate Motherhood Agreements: Ex parte WH" *South African Law Journal* (2013) 130, 485–511

these contracts ran the risk of being deemed unenforceable due to the lack of specific legislation. Agreements between persons involving parental rights transfer or financial compensation were viewed in terms of the common law as conflicting with public policy, resulting in significant legal uncertainties.[611] For instance, if a surrogate mother chose to keep the child, the intended parents had limited legal recourse. Surrogates also lacked protection if the intended parents changed their minds, leaving both parties vulnerable.[612]

Courts faced ethical dilemmas around the enforcement of surrogacy contracts, particularly those involving financial exchanges, due to concerns about commodifying women and children. These public policy issues made judges hesitant to enforce such agreements, even when voluntarily agreed between the contracting parties.[613]

Due to the absence of specific legislation addressing its complications, surrogacy in South Africa remained uncontrolled and continued to be inadequately regulated before the Children's Act's introduction much later.[614] During the late 1980s, the need for regulation became evident, especially after the widely reported case in 1987 of Pat Anthony, a Tzaneen grandmother who gave birth to her grandchildren. This case involved a married grandmother who had acted as a surrogate mother, giving birth to triplets as a way of helping her daughter who had developed complications after giving birth to her firstborn and was medically declared unfit thereafter to carry another pregnancy to term.

Since the Tzaneen triplets were born 13 days before the enactment of the (now repealed) Children's Status Act 82 of 1987, they were legally considered the children of their genetic parents and not that of the grandmother (who gave birth) and the grandmother's husband. This outcome was aligned with the conventional view that consanguinity determines legal parenthood, and the genetic mother was therefore considered the legal mother of the children. Had the triplets been born two weeks later, they would have been considered the legal children of their grandmother in terms of the Children's Status Act.

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611 Bonthuys and Broeders 2013 "Guidelines for the Approval of Surrogate Motherhood Agreements: Ex parte WH" 485-488.

612 Louw A *Child Law in South Africa: Domestic and International Perspectives* (1st ed, Juta 2012).

613 Louw A "Surrogacy in South Africa: Should we reconsider the current approach? *Tydskrif vir Hedendaagse Romeins-Hollandse Reg* (2013) 76, 564-578.

614 Louw 2013 "Surrogacy in South Africa: Should we reconsider the current approach?" 564-565.

The Children's Status Act, which came into effect shortly after, sought to grant legitimacy to children previously deemed illegitimate. The Tzaneen case sparked a broad public discussion on the moral and legal ramifications of surrogacy and became a common topic of conversation in South African households. The South African Law Commission (now the South African Law Reform Commission) investigated surrogacy in response to concerns that arose following the birth of the Tzaneen triplets. In 1992, the Law Commission released a report and draft legislation.[615] The Children's Status Act, however, was promulgated before the introduction of South Africa's Constitution of 1996 and the Bill of Rights.[616]

During this time, surrogacy arrangements were indirectly governed by three statutes not specifically intended to regulate surrogacy. These were the Human Tissue Act 65 of 1983, the Child Care Act 74 of 1983, and the Children's Status Act 82 of 1987. These laws were inadequate to capture and regulate the complexities of surrogacy. For instance, the Human Tissue Act was highly restrictive, allowing only married women to undergo artificial insemination or in vitro fertilisation, thereby excluding unmarried women from serving as surrogates.[617] Under the Children's Status Act, the gestational mother and her husband, provided he had consented to the procedure, were recognised as the legal parents of any child conceived using donor gametes.[618] Consequently, in surrogacy arrangements, this provision automatically designates the gestational mother and her consenting husband as the child's legal parents, irrespective of their intent to relinquish parental rights to the intended parents or not.

As stated earlier, the Children's Status Act was not designed to address the complexities of surrogacy. Its provisions inadvertently created legal conflicts by assigning parenthood to a surrogate mother who had no intention of raising the child and, in some cases, to her husband, whose involvement might have been limited or non-existent. This oversight made the legal framework for surrogacy arrangements untenable in cases involving minimal

615 South African Law Commission *Report on Surrogate Motherhood: Project 65* (South African Law Commission 1992).

616 Pretorius R "Surrogate Motherhood: A Detailed Commentary on the Draft Bill" *De Rebus* (1992) 29 at 114.

617 Nicholson C and Bauling A "Surrogate motherhood agreements and their confirmation: A new challenge for practitioners?" *De Jure* 2013 46(2) 510–538.

618 Heaton J and Kruger H *South African Family Law* (4th ed, LexisNexis, 2015) Part 4.

spousal participation.[619] In situations where donor sperm was used, the Children's Status Act stipulated that the donor's parental rights were terminated. This termination, however, complicated matters further. For instance, the presumption of paternity under the common law Latin maxim, *pater est quem nuptiae demonstrant* (the father is presumed to be the husband) could leave the surrogate's husband unable to challenge paternity, even in surrogacy cases.

For commissioning parents, the only legal pathway to acquire parental rights and responsibilities was through formal adoption. This adoption process was complex and fraught with its own legal and procedural challenges, making it not an ideal solution for addressing the needs of surrogacy arrangements.[620] Commissioning parents may prefer surrogacy to adoption for several reasons. Among these is the relatively shorter gestation period of nine months with regard to the surrogate mother's pregnancy, compared to the often-lengthy waiting period for adoption. The above-mentioned three pieces of legislation prevailing at the time preceding the enactment of the Children's Act are next discussed in more detail. It is submitted that the evolution of these laws and their limitations present valuable insights for legislators from elsewhere when surrogacy regulation is considered.

2.1 Children's Status Act 82 of 1987

The Children's Status Act was introduced to clarify the legal status of children born outside of marriage and to address issues of parentage and legitimacy. While it did not explicitly address surrogacy, its provisions were relevant, particularly as surrogacy arrangements often involve determinations regarding the legal status of children conceived through assisted reproductive technologies.

Section 5 of this Act provided a general framework for allocating parental rights between biological parents, with a focus on children born out of wedlock. It established guidelines for recognising the rights and responsibilities of the mother and father and the legal steps a biological father was required to take to obtain certain rights regarding their children, if not automatically recognised. In instances of surrogate motherhood, the implementation of

619 Heaton and Kruger 2015 *South African Family Law* Part 4.
620 Heaton and Kruger 2015 *South African Family Law* Part 4.

section 5 of the Children's Status Act determined that a child born as a result of artificial fertilisation would be legitimate in circumstances where donor gametes were utilised and the woman's husband consented to the procedure.

Section 5(1)(a) established that, unless otherwise provided, the biological mother of a child born out of wedlock is considered the child's sole legal guardian and custodian. This meant that she held full parental rights and responsibilities, including decision-making authority and care for the child, in cases where the parents were unmarried. Section 5(1)(b) specified that the biological father of a child born out of wedlock did not automatically gain legal parental rights unless he took formal legal steps to claim these. He had to apply through a court process or other legal arrangements to acquire guardianship, custody, or visitation rights. This provision reflected the Act's focus on the mother's primary legal status in cases of children born outside a marriage, emphasising the father's need to establish his parental role if desired.

It is submitted that, while section 5 outlined the basic framework for parental rights, sections 5(1)(a) and 5(1)(b) specifically differentiated the default status of parental roles for the mother and father, focusing on the mother's initial exclusive custodianship and the father's need for legal action to gain parental recognition.

Applied to surrogate motherhood, the legal framework created by section 5 effectively deemed the surrogate mother and her husband to be the natural parents of the child, which often contradicted the intentions of all parties involved. In some instances, the surrogate mother, who may have had no genetic connection to the child, would suddenly be recognised as the legal parent. Section 5(1)(a) was later declared unconstitutional by the Constitutional Court in the landmark case of *J and Another v Director General, Department of Home Affairs and Others*[621] for its unfair, discriminatory treatment of unmarried same-sex partners. In this case, a same-sex couple in a permanent life partnership had a child through artificial insemination. However, as per section 5(1)(a) of the Children's Status Act, only the partner who gave birth would automatically be recognised as the child's legal parent, unlike married heterosexual couples who were both automatically recognised as legal parents in

621 *J and Another v Director General, Department of Home Affairs, and Others* (CCT 46/02) [2003] ZACC 3, 2003 (5) BCLR 463, 2003 (5) SA 621 (CC).

similar circumstances. The applicants challenged this unequal treatment, arguing that it was unconstitutional. The Constitutional Court agreed, finding that section 5(1)(a) unfairly discriminated against unmarried same-sex couples by denying automatic legal recognition to both partners as parents. The discrimination violated the equality provisions under section 9 of the South African Constitution. This judgment significantly advanced the rights of same-sex couples in South Africa, ensuring equal parental recognition and affirming the Constitution's commitment to equality and non-discrimination. Regrettably, this ruling did little to resolve the issues surrounding surrogacy agreements, as the intending parents were still required to follow the adoption process to obtain parental rights over their children.

2.2 Human Tissue Act 65 of 1983

It is necessary to briefly refer to the Human Tissue Act that preceded Chapter 8 of the National Health Act, as Act 65 of 1983 regulated artificial fertilisation.

Between 12 July 1985 and 2 May 2005, artificial insemination and in vitro fertilisation procedures in South Africa were governed by the Human Tissue Act and its accompanying regulations, e.g those relating to the Artificial Insemination of Persons and related Matters.[622] This legal framework was later repealed and replaced by the National Health Act 61 of 2003. Under the Human Tissue Act, a husband's written consent was required for the artificial fertilisation of his wife, and failure to obtain such consent rendered the child illegitimate. Additionally, artificial insemination was restricted to married women, and the regulations did not refer to surrogate motherhood, addressing only artificial insemination using donor gametes.

Section 22 of the Human Tissue Act stipulated that gametes obtained from a living person could not be used for artificial insemination unless the procedure complied with the relevant Regulations relating to Artificial Insemination of Persons and related Matters (published in Government Notice R1182 in Government Gazette 10283of 20 June 1986).[623] (Regulations R175 published in Government Gazette 35099 of 2 March 2012.") Furthermore, section 23 regulated the removal and use of tissue and blood, limiting the execution of such procedures

622 Republic of South Africa "Regulations regarding Artificial Insemination of Persons and Related Matters" (Government Notice R 1182 in Government Gazette 10312, 1986).

623 Amended by Government Notice R1354 in Government Gazette 18362 of 17 October 1997.

to medical practitioners or individuals acting under their supervision. The same restriction applied to artificial insemination, which could only be performed by medical professionals or those under their direction.

Regulations 6 and 10 of the Regulations regarding Artificial Insemination imposed confidentiality requirements regarding donor and recipient records, restricting access to such information to the recipient and her husband. The disclosed details were limited to the donor's age, height, weight, eye colour, hair colour, complexion, population group, nationality, sex, religion, occupation, highest educational qualification, and fields of interest.[624] It is necessary to point out that this Act's restriction on access to genetic information in current times would raise concerns about the rights of children to know their genetic origins, a right recognised under Article 7 of the United Nations Convention on the Rights of the Child (1989), which affirms a child's fundamental right to know their biological heritage.

2.3 Child Care Act 74 of 1983

The repealed Child Care Act served as the third significant piece of legislation, focusing on the welfare of children in South Africa through provisions related to child protection, adoption, and custody. While it did not specifically address surrogacy, the Act laid a foundational framework for child welfare that shaped subsequent legislation, including surrogacy arrangements.[625] It also provided detailed definitions for key terms, ensuring clarity and consistency throughout its application.

The framework imposed a legal duty on certain professionals and individuals, including teachers, social workers, and healthcare providers, to report any suspicions of child abuse, neglect, or abandonment to the appropriate authorities.[626] This provision aimed to facilitate timely intervention for children in potentially harmful situations. It played a vital role in early detection and was aligned with South Africa's broader commitment to safeguarding children's rights and welfare.

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624 Regulations regarding artificial insemination, 1986, reg 6(1)(a)(ii).

625 Child Care Act, section 1.

626 Child Care Act, section 14.

Chapter 4 of the Child Care Act also established the legal framework for adoption in South Africa, outlining the criteria, processes, and requirements for lawful adoption. The reason this is relevant is because adoption featured in earlier surrogacy regulatory models where intended parents had to adopt a child conceived through surrogacy.

Chapter 4 of this Act specified who could adopt, who could be adopted, and the procedural requirements, including court orders and consent from biological parents (if applicable). Chapter 4 aimed to protect the best interests of the child in adoption processes by ensuring that only eligible and vetted individuals could adopt and that necessary consents were in place. By regulating adoption in this way, chapter 4 of the Child Care Act helped prevent the exploitation of children and ensured that adoptive placements were safe and beneficial for the child.

The Child Care Act was replaced by the current Children's Act 38 of 2005, which presently provides an updated and more comprehensive framework for child protection, incorporating modern principles of child welfare, such as the best interests of the child and children's participatory rights. Nonetheless, reference must be made to the Child Care Act that laid the foundation for these advancements in child welfare law in South Africa by setting out significant provisions designed to protect children's welfare in the adoption process, focusing on criteria for adoptive parents, consent requirements, and assessments to ensure the child's best interests.

2.3.1 Requirements for Adoption under the Child Care Act

One of the requirements for adoption referred to the eligibility of the adoptive parents. In terms of Chapter 4 of the Child Care Act, prospective adoptive parents were to demonstrate responsibility, stability, and the ability to meet the child's needs. Section 17 indicated that a child could be adopted by (a) a husband and wife together, (b) an individual who was widowed, unmarried, or divorced; (c) a married individual whose spouse was the biological parent of the child and (d) the biological father of a child born outside of marriage. Although preference was given to married couples, single individuals could adopt under specific

conditions.[627] Married couples had to show a secure relationship and financial readiness to support the child.

The best interests of the child yardstick were not left out in the process. Adoption decisions were guided by the child's best interests, focusing on emotional, physical, and psychological needs (section 18). Social workers assessed the potential family's ability to meet these needs to ensure the child's growth and well-being. A comprehensive home study and background check of prospective adoptive parents were mandatory. Social workers evaluated the home environment, parenting skills, and motivation for adoption to ensure a safe, nurturing, and supportive home for the child (section 18).

2.3.2 Adoption Procedures

Although adoption legislation is used to secure legal parental rights due to absence of a dedicated legal framework for surrogacy, the process is always lengthy, complex and not suitable for surrogacy cases.[628] The adoption process comprises formal procedures such as social work assessments, consent protocols, and judicial approvals, treating intended parents like unrelated adoptive parents, despite their prior agreement with the surrogate. This reliance on adoption law often leads to delays and emotional strain for both intended parents and surrogates, as the surrogate has to retain legal rights until the adoption is complete, even if she has no desire to keep the child.

At the time, in the absence of a clear legal framework governing surrogacy, South African courts were required to determine parental rights in accordance with the principle of the best interests of the child. This often resulted in unpredictable outcomes, as courts could prioritise the surrogate mother's biological connection to the child where disputes arose, potentially disregarding the terms of the surrogacy agreement. Consequently, intended parents faced considerable legal uncertainty regarding the recognition and enforcement of their parental rights. This often leads to unpredictable outcomes, as judges can prioritise the surrogate mother's biological connection to the child if disputes arose, potentially disregarding the

627 See, in general, Jamieson L (ed) *Children's Act Guide for Child and Youth Care Workers* (2nd ed, Children's Institute, UCT and NACCW, 2013).

628 Sloth-Nielson J "Surrogacy, South African Style" (2013) published in *Family Law News* (International Bar Association Legal Practice Division) 6(1) 21–23.

surrogacy agreement. Intended parents, therefore, faced significant legal challenges in surrogacy.

Adoption law did not grant them by default or parental rights at the birth of the intended or commissioned child, leaving them without the authority to make important decisions for the child during the lengthy adoption process. If the surrogate changed her mind, adoption law allowed her to retract consent, giving intended parents limited legal recourse.[629] Additionally, courts, guided by the best interests of the child principle, often leaned towards the surrogate's biological connection in disputes, which added to the uncertainty. As already stated, this inconsistency led to unpredictable outcomes and uncertainty for both surrogates and intended parents. The differing judicial interpretations highlight the limitations of case-by-case discretion and illustrate the need for standardised surrogacy regulations.[630]

Because South Africa's legal framework offered limited avenues for intended parents to secure legal recognition of their parental rights in surrogacy arrangements, particularly in the event of disputes, both intended parents and surrogates were compelled to work within existing legal structures to establish parentage. This made it impossible to address the unique intentions and prior agreed contractual arrangements.

3 STRENGTHS AND WEAKNESSES OF THE STATUTES PRECEDING THE CHILDREN'S ACT

To contextualise the current regulatory model governing surrogacy in South Africa, a few remarks regarding legislative gaps in the above discussed statues are necessary.

3.1 Strengths of the Children's Status Act

The Children's Status Act recognised the importance of protecting children's interests. One of its principal strengths is its emphasis on the paramountcy of the child's best interests.

629 Bonthuys and Broeders 2013 "Guidelines for the Approval of Surrogate Motherhood Agreements: Ex parte WH" 485-488.

630 See in general, Schäfer L *Child Law in South Africa: Domestic and International Perspective* (LexisNexis, 2011).

Although the Act predated the Constitution, this principle would remain consistent with section 28(2) of the Constitution and international instruments such as the UN Convention on the Rights of the Child. However, the Act did not regulate surrogacy arrangements, which constituted a significant weakness when assessed against the contemporary legal framework. It provided clear guidelines for establishing legal parentage in conventional assisted reproduction cases. The Act included provisions for the care and protection of vulnerable children, such as those in need of foster care, adoption, or special guardianship. These measures helped to provide safeguards for children at risk of neglect.

3.2 Weaknesses of the Children's Status Act

The Act was criticised for restricting access to surrogacy and other reproductive technologies to specific groups, such as married heterosexual couples. This limitation would have infringed on constitutional principles of equality and non-discrimination in the case of same-sex partners.[631] There was no guidance on how to regulate or resolve surrogacy disputes. While the Act covered many aspects of child protection, it lacked detailed mechanisms for resolving disputes arising from surrogacy arrangements, such as disagreements between the surrogate and commissioning parents. The Act also did not fully account for advances in reproductive technologies, which would have left gaps in its application to modern surrogacy practices.

3.3 Strengths of the Human Tissue Act

The Human Tissue Act established clear ethical guidelines for the donation and use of human tissues, gametes, and embryos, which are relevant in the surrogacy context. It ensured that reproductive materials used in surrogacy arrangements were managed responsibly and with informed consent. By regulating the donation of gametes and embryos, the Act helped protect individuals, especially vulnerable women, from potential exploitation or coercion to sell their gametes. Furthermore, the Act required that all donors provide informed consent before their tissues or gametes could be utilised, safeguarding against unauthorised use or misuse of reproductive materials.

631 De Vos P and Barnard J "Same-sex marriage, civil unions and domestic partnerships in South Africa: Critical reflections on an ongoing saga" *South African Law Journal* (2007) 124(4) 795-826.

3.4 Weaknesses of the Human Tissue Act

Enacted in 1983, the Act was introduced when medical technology and reproductive practices had not yet reached the advanced level that we are currently witnessing. For instance, it did not adequately address contemporary issues such as embryo freezing (cryopreservation) or advanced fertility treatments. Furthermore, public awareness of the rights and responsibilities outlined in the Act remained limited, particularly regarding gamete donation for surrogacy specifically, which would inadvertently have resulted in violations of the law at the time.[632]

3.5 Strengths of the Child Care Act

The Child Care Act placed significant emphasis on the care and protection of children. It provided a framework for foster care, adoption, and care orders, ensuring that vulnerable children received appropriate guardianship. The Act established mechanisms for the regulation of childcare facilities and services, ensuring that institutions providing care for children met minimum safety and quality standards. Regarding support for orphaned and abandoned children, the Act facilitated processes such as adoption and fostering for children who were orphaned or abandoned, ensuring that they were integrated into stable and loving environments.

3.6 Weaknesses of the Child Care Act

As one of South Africa's outdated statutes, the Child Care Act had limitations in addressing contemporary issues, such as the increase in the demand for surrogacy or challenges related to advanced reproductive technologies. The Act did not sufficiently address alternative family structures, such as those created through surrogacy, single-parent adoption, or same-sex parenting. This omission limited its applicability to arising diverse family models. It is therefore no surprise that surrogacy was brought into the focus of the South African Law Commission's report on Surrogate motherhood, discussed next.

632 Thaldar D and Shozi B "Is open-identity gamete donation lawful in South Africa?" *South African Medical Journal* (2022) 112(6) 420-425.

4 THE SOUTH AFRICAN LAW COMMISSION'S REPORT ON SURROGATE MOTHERHOOD (PROJECT 65) AND RESPONSES

The report of the South African Law Commission[633] on Surrogate Motherhood was developed before the adoption of the current 1996 Constitution. Project 65 focused on developing a legal framework for surrogate motherhood in South Africa.

The SALRC Working Paper was published in 1992 while the final Report on Project 65 was published in 1993. This published final report on Project 65 included a Draft Bill on Surrogate Motherhood. The Draft Bill recommended a legal framework for surrogacy, emphasising court-approved agreements, the rights of intended parents, and restrictions on commercial surrogacy. Although the Draft Bill itself was not enacted, Project 65 laid the foundation for South Africa's current legal framework on surrogacy. Many of the Draft Bill's provisions were later incorporated into chapter 19 of the Children's Act which currently regulates surrogate motherhood.

Whether the Draft Bill would have complied with existing constitutional principles, would have required an understanding that surrogate motherhood involves several fundamental rights, including the right to procreate (right to reproduction), the right to human dignity, the right to bodily autonomy, to mention a few. The 1996 Constitution introduces a range of rights relevant to reproductive decisions, including the rights to equality in section 9, dignity in section 10, privacy in section 14, and reproductive autonomy (section 12(2)(a)). Although the Constitution does not explicitly protect a right to procreate, scholars have argued that such a right may be inferred from various constitutional provisions.

Academic commentary preceding and following the Law Commission's Bill on surrogacy includes significant observations, particularly those of the late Professor Rika Pretorius. She highlighted that although surrogacy involves several public law aspects, it resides primarily within the private law domain, emphasising the advisory role of legal professionals.[634] Pretorius urged legislators to address critical issues such as the child's legal status, provisions for abortion, and the welfare of the child, suggesting a review of the Canadian

633 South African Law Commission, *Report on Surrogate Motherhood: Project 65* (South African Law Commission 1993) 45, 47.

634 Pretorius R "Surrogate motherhood: a detailed commentary on the draft Bill" (1996) *De Rebus* 114.

contract law model as a benchmark.[635] In her detailed critique, Pretorius recommended limiting the eligibility to become surrogate mothers to adult women, allowing unmarried persons to act as surrogates, and permitting surrogacy only under specific medical conditions, such as evidence of prior childbirth via Caesarean section.[636] She also criticised the draft Bill for its restrictive definition of marriage, excluding same-sex couples, and its limitation of commissioning parents to married infertile couples.[637]

Additionally, she opposed the exclusion of partial surrogacy arrangements, which she argued exacerbated complexities.[638] Pretorius welcomed provisions requiring a valid legal agreement before initiating medical procedures, as this introduced certainty and allowed parties to regulate aspects not explicitly legislated.[639] She supported court confirmation of surrogacy agreements contingent on thorough screening of all parties and consideration of the child's best interests. She also advocated for medical expertise to guide the timeframe for artificial insemination after court approval.[640]

The Surrogacy Draft Bill proposed several measures to regulate surrogacy agreements, protect participants' rights, and address ethical concerns.[641] Clause 8 of the Bill stated that the surrogate's parental rights would terminate upon the child's birth, provided that a valid and confirmed agreement was in place; otherwise, the *status quo* would remain.[642] Clause 9 dealt with abortion, granting the surrogate the authority to make the final decision on whether to terminate the pregnancy, a position supported by Pretorius.[643] However, Pretorius expressed concerns about the potential exploitation of commercial surrogacy and supported Clause 10 of the Bill, which restricted payments to surrogates to reasonable compensation for medical and pregnancy-related expenses, explicitly prohibiting commercial surrogacy.[644] Clauses 10 to 12 also placed limits on agency fees.[645]

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635 Pretorius "Surrogate motherhood: a detailed commentary on the draft Bill" 114.
636 Pretorius "Surrogate motherhood: a detailed commentary on the draft Bill" 116.
637 Pretorius "Surrogate motherhood: a detailed commentary on the draft Bill" 116.
638 Pretorius "Surrogate motherhood: a detailed commentary on the draft Bill" 117.
639 Pretorius "Surrogate motherhood: a detailed commentary on the draft Bill" 117.
640 Pretorius "Surrogate motherhood: a detailed commentary on the draft Bill" 116.
641 South African Law Commission, *Report on Surrogate Motherhood: Project 65*.
642 South African Law Commission, *Report on Surrogate Motherhood: Project 65* at 45.
643 South African Law Commission, *Report on Surrogate Motherhood: Project 65* at 45.
644 South African Law Commission, *Report on Surrogate Motherhood: Project 65* at 45.
645 South African Law Commission, *Report on Surrogate Motherhood: Project 65* at 45.

Pretorius advocated for a complete ban on surrogacy agencies and advertisements. The Bill introduced provisions to protect privacy and imposed penalties for non-compliance, such as unauthorised artificial insemination. It underscored the need for formal surrogacy agreements to provide legal clarity and prevent informal arrangements. The Bill sought to minimise exploitation risks and maintain the dignity of all parties involved particularly the surrogate. Although the Draft Bill laid a solid foundation, it was never enacted. Surrogacy later became legislated under Chapter 19 of the Children's Act, which, as alluded to above, incorporated many of the principles from the draft Bill but did not fully address all the complexities of surrogacy. Many years passed (since the South African Law Commission's Project 65 recommendations) before surrogacy returned into the focus of the (now) South African Law Reform's Commission, discussed next.

5 CURRENT LEGAL FRAMEWORK REGULATING SURROGATE MOTHERHOOD IN SOUTH AFRICA

Under the common law and before the enactment of the Children's Status Act, children conceived through artificial insemination using donor sperm within marriage were deemed illegitimate, necessitating legal reform.

In 2019, the South African Law Reform Commission (SALRC) identified gaps in the legal framework regarding surrogacy and artificial fertilisation.[646] Despite their positive aspects and weaknesses, the early laws, such as the Children's Status Act, Human Tissue Act, and Child Care Act, alongside the Draft Bill on Surrogacy,[647] laid the foundation for the provisions in Chapter 19 of the Children's Act, now the main legal framework for regulating surrogacy. The Children's Act covers earlier identified legislative gaps, providing clear guidelines and protection, particularly for the commissioned child, and outlines stringent requirements for lawful surrogacy arrangements (sections 292 to 303).

The discussion that follows is structured around the chronological order of Chapter 19 of the Children's Act, accompanied by brief reference to recent relevant judgments confirming or

646 South African Law Reform Commission *Draft Bill on Surrogate Motherhood, Working Paper 38, Project 65* (1992). The Draft Bill appears as a Schedule to the Report.

647 South African Law Reform Commission *Draft Bill on Surrogate Motherhood, Working Paper 38, Project 65* (1992).

questioning some of Chapter 19's provisions, requiring clarification. Due to the vast range of surrogacy judgments regarding Chapter 19, the next discussion will briefly allude to the most pertinent cases without offering a critical analysis of each of these cases.
Following the exposition of Chapter 19's provisions below, the chapter will turn to a discussion of the relevant human rights aspects relevant to Chapter 19 that were raised in some of the surrogacy judgments to date.

5.1 Requirements for a Valid Surrogate Agreement (Section 292)

The Children's Act requires that all surrogacy agreements be signed by all involved parties, and approved by the High Court (section 292(1)). At least one commissioning parent, as well as the surrogate mother, must be domiciled in South Africa at the time of the agreement (section 292(1)(d)–(e)). If these conditions are not met, the agreements will be deemed invalid and unenforceable (section 292(2)).

Judicial confirmation serves as a safeguard against individuals circumventing South African regulations by entering into agreements in jurisdictions with more permissive laws (section 292(1)(b)). Likewise, the domicile requirement prevents foreign nationals from exploiting the country's surrogacy framework. However, under exceptional circumstances, such as when the only suitable surrogate is a relative living abroad, the court may waive this requirement (section 292(2)). Notably, the law does not explicitly prohibit a surrogate from leaving South Africa after conception to avoid legal obligations, which could pose risks for commissioning parents. Additionally, it is notable that section 292 does not provide clear guidelines on the specific information required for High Court approval.

The importance of compliance with section 292 was emphasised in the 2018 case of *Ex parte CJD and Others*,[648] involving the commissioning parents who applied to the High Court of South Africa (Gauteng Division, Pretoria) for confirmation of the surrogacy agreement under section 292(2) of the Act. The intended mother was medically unable to sustain a pregnancy, making surrogacy her only option for having a biologically related child. The surrogate mother and her spouse had provided their consent, meeting the domicile and consent requirements outlined in sections 292 and 293. The court approved the agreement,

[648] *Ex parte CJD and Others* [2018] ZAGPPHC 253, 2018 (3) SA 197 (GP) [464].

confirming that the applicants had met all legal requirements under section 292, including section 295 of the Act. The ruling highlighted the necessity of full and transparent disclosure by the applicants as part of the judicial confirmation process.

Tolmay J presided over the case and stressed that the commissioning parents' suitability must be evaluated beyond their medical incapacity to conceive. A permanent relationship for unmarried commissioning parents must be carefully assessed to ensure the child's future stability. Once confirmed, a surrogacy agreement is legally binding, and the surrogate mother cannot claim parental rights post-birth. Honesty and transparency from applicants are critical, as surrogacy involves long-term legal and ethical implications.

South Africans are not precluded from entering into surrogacy arrangements abroad, but the recognition of legal parentage in South Africa may not be guaranteed. The *Ex parte CJD* case is significant as it also highlighted the absence of regulations establishing clear documentation requirements for surrogacy confirmation. Lacking in this judgment was the absence of a discussion of measures to prevent surrogates from absconding, such as requiring notification to the commissioning parents. The ruling conveyed the necessity for strengthening judicial discretion to ensure that the best interest of the child remains paramount.[649]

5.2 Consent of the Commissioning Mother and the Surrogate Mother's Spouse or Partner (Section 293)

Section 293(1) of the Children's Act regulates the issue of consent of the commissioning mother and the surrogate mother's spouse or partner. A commissioning parent who is married or in a permanent relationship must secure written consent from their spouse or partner before entering into a surrogacy agreement. Similarly, the surrogate mother's spouse or partner must provide written consent (section 293(2)). The same provision states that if the spouse or partner of the surrogate mother (who is not the genetic parent) unreasonably withholds consent, the court may override their refusal and confirm the agreement

649 *Ex parte CJD and Others* [2018] ZAGPPHC 253, 2018 (3) SA 197 (GP) [464].

The Act does not define a permanent relationship, but courts appear to interpret it broadly. In *Ex parte CJD*,[650] referred to above, Tolmay J stated that a partner who consents to a surrogacy agreement acquires parental responsibilities once the court confirms the arrangement. Courts need to assess whether the relationship is stable and supportive for raising a child.

In the case of *Ex parte WH and Others*,[651] the North Gauteng High Court addressed an application for confirmation of a surrogate motherhood agreement. A legally married same-sex male couple in South Africa, unable to conceive a child together, sought to enter into a surrogacy agreement with a willing surrogate mother. Both the surrogate and her husband consented to the arrangement, and all parties applied for court approval as required by law. The court confirmed the agreement, determining that all statutory requirements regarding section 295 had been met. In this judgment, the court drew attention to the fact that surrogacy agreements must be altruistic rather than commercial, aligning with the provisions of the Children's Act.[652] It also reinforced the legal requirement that at least one commissioning parent must have a genetic link to the child, as required in section 294 of the Act. The court flagged concerns about potential exploitation in surrogacy arrangements and stressed the importance of clear guidelines to prevent commercialisation. Additionally, the court noted the lack of detailed information regarding the origin of the donor eggs used in this case and advised that future applications should provide comprehensive details about gamete sources to ensure transparency and compliance with legal standards.[653]

Marriage in South Africa, in the context of surrogacy regulation, includes unions under civil law, customary law, and religious marriages recognised by the Marriage Act 25 of 1961 and the Recognition of Customary Marriages Act 120 of 1998. The Civil Union Act 17 of 2006 treats same-sex unions equally and on the same basis as conventional marriages.[654] The courts have the discretion to determine if a relationship meets the legal threshold.

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650 *Ex parte CJD* [464].

651 *Ex parte WH and Others* [2011] ZAGPPHC 62, 2011 (6) SA 514 (GNP) [29].

652 *Ex parte WH and Others* [2011] ZAGPPHC 62, par 29.

653 *Ex parte WH and Others* [2011] ZAGPPHC 62, par 29.

654 South African Law Reform Commission**,** *Discussion Paper 126: Review of Aspects of the Law Relating to Surrogate Motherhood* (Project 123, Department of Justice and Constitutional Development 2008) 87.

Discussing the consent requirements, the legal scholar, Anne Louw, questions whether consent for surrogacy includes and also covers consent regarding the artificial fertilisation of the surrogate mother.[655] Considering the integral role of artificial fertilisation in the surrogacy process, consent is likely implicit as far as the execution of this procedure is concerned. If a surrogate mother's spouse refuses to consent to her artificial fertilisation, the surrogacy agreement cannot proceed. The law requires that all parties involved, including the surrogate mother and her spouse (if married), must provide informed consent for the agreement to be valid. Without the spouse's consent, the agreement would not meet the legal requirements for confirmation by the High Court, which is a mandatory step before any artificial fertilisation can occur. Failing to have the required consent in place would render a child born under these circumstances to be legally considered the child of the surrogate mother. Courts, however, as stated above, may override unreasonable refusal to consent. These provisions ensure that all parties involved in a surrogacy agreement, including spouses and partners, are legally bound to the arrangement, thereby protecting the interests of the child and the stability of the parental structure.

5.3 Genetic Link Requirement by the Commissioning Parent(s) (Section 294)

Section 294 of the Children's Act mandates that at least one of the commissioning parents' gametes must be used in conception. In cases of a single commissioning parent, their gamete must be utilised. This requirement ensures a genetic connection between the child and the commissioning parent(s), while prohibiting surrogacy arrangements that rely exclusively on donor gametes. The legal framework prohibits the exclusive use of donor gametes, as this would resemble a so-called commissioned adoption or double-donor surrogacy.

Meyerson argues that the genetic-link requirement in section 294 infringes on constitutional rights, particularly the right to equality under section 9 of the Constitution. She further contends that this discriminates against commissioning parents unable to provide genetic material, imposing a contested "bionormative" view of family.[656]

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655 Louw A *Surrogate Motherhood and the Legal Rights of the Child* (LLD thesis, University of South Africa, 2010) 124.

656 Meyerson D "Surrogacy, Geneticism and Equality: The Case of *AB v Minister of Social Development*" *Constitutional Court Review* (2019) 9, 317-341.

The genetic link requirement for excluding infertile individuals from surrogacy means that it may be discriminatory, particularly against couples suffering from both pregnancy and conception infertility. Furthermore, compelling these individuals to pursue adoption seems unjust due to lengthy adoption processes and restrictive age criteria. The mere existence of a genetic link does not inherently guarantee the child's well-being. Section 12(2)(a) of the South African Constitution guarantees the right to make reproductive choices. The restriction on the use of donor gametes may be said to potentially infringe upon this right, necessitating a constitutional review of section 294.

The constitutionality of this genetic-link requirement was the focus of the 2016 case of *AB v Minister of Social Development*.[657] The facts of this case were as follows: the first applicant, identified as AB, was a single woman unable to conceive or carry a child due to medical reasons.[658] The majority opinion, delivered by Justice Nkabinde, upheld the genetic link requirement, emphasising that the genetic link fosters a connection between the child and the commissioning parent(s), which serves the child's best interests.[659] The provision also aims to prevent potential psychological harm that could arise from a lack of genetic ties to the commissioning parent(s). While the court recognised the difficulties faced by individuals like AB, it ultimately found the legislature's decision to impose this requirement reasonable and justifiable.

In contrast, the minority opinion, represented by Justice Khampepe, argued that section 294 unfairly discriminates against individuals unable to establish a genetic link, thereby violating their rights to equality and dignity.[660] Khampepe J's stance was that section 294 constitutes an unjust limitation on reproductive autonomy, restricting access to surrogacy for those who cannot contribute genetically.[661] The minority contended that the genetic link requirement was not the least restrictive means of achieving the legislature's objectives and that alternative measures could safeguard the child's best interests without infringing on constitutional rights.[662] This case underscores the delicate balance between legislative goals

657 *AB and Another v Minister of Social Development and Others* [2016] ZACC 43, 2017 (3) SA 570 (CC).
658 *AB and Another v Minister of Social Development and Others* par 193.
659 *AB and Another v Minister of Social Development and* Others par 193.
660 *AB and Another v Minister of Social Development and Others* par 153.
661 *AB and Another v Minister of Social Development and Others* par 153.
662 *AB and Another v Minister of Social Development and Others* par 153.

in regulating surrogacy and the constitutional rights of individuals seeking parenthood through such arrangements.

The intended mother in the *AB* case had pursued surrogacy after fourteen failed IVF attempts, which one may argue adequately demonstrates "good cause shown" for the court's discretion to confirm a surrogate agreement. Legal scholars[663] and practitioners[664] have advocated for a case-by-case approach in permitting surrogacy for individuals suffering from both pregnancy and conception infertility in cases with facts similar to the *AB* case.

It is submitted that the genetic link requirement, despite its aim to balance infertility support and the prevention of surrogate exploitation, should be balanced with its restrictive effect, as it arguably violates reproductive rights, and excludes those unable to contribute genetically to the surrogacy process. A comprehensive discussion of the constitutional issues in this case falls outside the scope of this thesis. It is recommended, though, that legal reforms should consider expanding eligibility criteria while upholding the child's best interests and ethical safeguards.

5.4 Rights of the Surrogate Mother (Section 295)

Section 295 of the Children's Act provides all the legal criteria for confirming surrogacy agreements, ensuring compliance with section 292(1)(e). It highlights the necessity of a genetic connection between the child and at least one of the commissioning parents. Commissioning parents must be permanently and irreversibly infertile. They must be legally competent, deemed suitable for parenthood, and fully aware of the legal implications of entering into a surrogacy agreement.

Section 295 stipulates that surrogacy must not be financially motivated and should be done for altruistic reasons (sections 295(b)(iv) and 295(b)(v)). The surrogate must have had at least one successful pregnancy and viable delivery of a child, and a living child of her own. The agreement must ensure a stable home environment and addresses scenarios such as

663 Meyerson 2019 "Surrogacy, Geneticism and Equality: The Case of AB v Minister of Social Development" 319.

664 Friedman R *Founding Affidavit on Behalf of the Surrogacy Advisory Group in Support of the Application in AB v Minister of Social Development* (2015) 1, 25.

death, divorce, or separation of the commission parents. Section 295 also pre-supposes that the court may not confirm the agreement if the application does not include adequate provisions for the contact, care, upbringing and general welfare of the child that is to be born in a stable home environment, including the child's position in the event of the death of the commissioning parents or one of them, or their divorce or separation before the birth of the child.

Commercial surrogacy is explicitly prohibited. The criteria for the confirmation of the surrogate agreement make it clear that before an agreement is confirmed, courts need to conduct a fact-specific, case-by-case inquiry, prioritising the child's welfare. On this issue, although the judgment in *AB v Minister of Social Development* reaffirms that the child's best interests must be the primary consideration in confirming surrogacy agreements, the absence of objective criteria for evaluating surrogates is concerning because reliance on subjective assessments by psychologists and judges could lead to inconsistencies in legal decisions.

In the case of *Ex Parte KAF and Others*,[665] the court initially denied confirmation of the surrogacy agreement, citing concerns about commercialisation and potential bias in the first application. However, in a subsequent attempt to have the surrogate agreement confirmed, the Court carefully considered the requirements in section 295. The case underscores the challenges associated with commercial surrogacy and the need for a legal framework that maintains a fair balance.

The first applicant in this case, *KAF*, was an attorney married to the second applicant, *CF*, a business executive. Together, they wished to have a child. However, *KAF* was diagnosed with uterine septum, a congenital condition in which a septum divides the uterus. Despite undergoing corrective procedures and five unsuccessful in-vitro fertilisation attempts, medical reports confirmed that she was unable to conceive and sustain a pregnancy. As a result, surrogacy was recommended as the safest option for the couple to have a biologically related child. The surrogate mother, *ND*, had voluntarily offered her services through Medfem Clinic's internal surrogacy program,[666] which connects commissioning parents with potential surrogates.

665 *Ex Parte KAF and Others* (14341/17) [2017] ZAGPJHC 227 (GJ).

666 *Ex Parte KAF* (2018/5329) [2018] ZAGPJHC 529; 2019 (2) SA 510 (GJ) par 6.

The surrogate mother, *ND*, and her partner, *JD* had been in a stable relationship for seven years.[667] The Court evaluated the surrogate agreement against the requirements set out in section 295, which stipulates, among others, that the commissioning parents must be unable to give birth to a child, which condition that should be permanent and irreversible. The court determined that the commissioning parents complied with all the requirements in section 295 and confirmed the agreement.

In yet another case, *Ex Parte WH and Others*,[668] the court raised concerns about the interpretation in section 295 regarding what should be "stable home environment" is, especially in the absence of clear guidelines on what documentation should be submitted to confirm the existence of a "stable home environment". This may, for example, differ within certain cultural and contextual frameworks, including medical evidence standards, and the question arose as to whether multiple expert reports are necessary to determine this.[669] Although section 295 provides a comprehensive legal framework for judicial confirmation of surrogacy agreements, judicial discretion and a lack of clear regulatory guidance may create potential inconsistencies in decision-making.

5.5 Artificial Fertilisation of the Surrogate Mother (Section 296)

Section 296 of the Children's Act governs the timing and legality of artificial fertilisation in surrogacy arrangements. It strictly prohibits artificial fertilisation from occurring before judicial confirmation of the surrogacy agreement (Section 296(1)) and sets an 18-month timeframe for conception following court approval. For the sake of enabling the commissioning parents to have a genetic link to the intended child, surrogate mothers need to be artificially fertilised. If fertilisation occurs prematurely, legal consequences will follow. While courts may technically grant retrospective approval in a child's best interests, this is not guaranteed. If the court ultimately denies confirmation, the child will legally be recognised as the surrogate mother's child, requiring the commissioning parents to pursue adoption of the child that is born. This provision underscores the principle that legal parentage is only established after court approval.

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667 *Ex Parte KAF* (2018/5329) [2018] ZAGPJHC 529; 2019 (2) SA 510 (GJ), para 2 and 4.

668 *Ex Parte WH and Others* 2011 (6) SA 514 (GNP).

669 *Ex Parte WH and Others* 2011 (6) SA 514 (GNP) par 67.

As stated above, section 296(2) stipulates that fertilisation must occur within 18 months of confirmation of the agreement, preventing complications arising from significant personal changes such as death or divorce of the commissioning parents, which could impact the validity of the agreement. Furthermore, section 296(3) allows for the possibility that pregnancy may not be achieved within this period, enabling the parties to seek approval for a new surrogacy agreement. To complicate matters, section 296 does not explicitly regulate gamete or embryo cryopreservation for future surrogacy arrangements.

The regulation of artificial fertilisation is governed by Chapter 8 of the National Health Act 61 of 2003. This Act defines "artificial fertilisation" in the Regulations relating to the Artificial Fertilisation of Persons[670] as "the introduction by other than natural means of a male gamete or gametes into the internal reproductive organs of a female person for the purpose of human reproduction and includes artificial insemination, in vitro fertilisation, gamete intrafallopian tube transfer, embryo intrafallopian transfer or intracytoplasmic sperm injection". This description is aligned with the definition of "artificial fertilisation" in the Children's Act, which defines it as "the introduction, by means other than natural means, of a male gamete into the internal reproductive organs of a female person 15 for the purpose of human reproduction, including- (a) the bringing together of a male and female gamete outside the human body with a view to placing the product of a union of such gametes in the womb of a female person; or (b) the placing of the product of a union of male and female gametes which have been brought together outside the human body, in the womb of a female person". What is further unclear, however, is whether a commissioning couple may store fertilised eggs or a cryopreserved embryo or embryos created with gametes of one of the commissioning parents and the surrogate mother, for future surrogacy arrangements with the same surrogate mother.

Section 296 establishes a strict regulatory framework for artificial fertilisation in surrogacy, ensuring that legal procedures in the Children's Act align with the clinical procedures regulated under the National Health Act and the Regulations relating to Artificial Fertilisation. However, gaps in legislation, particularly regarding gamete and embryo cryopreservation or storage, as well as the retrospective confirmation of surrogate

670 Regulations R175 published in Government Gazette 35099 of 2 March 2012.

agreements, highlight the need for further clarity while upholding the best interests of the child.

5.6 Consequences of a Surrogate Motherhood Agreement on the Status of the Child (Section 297)

A legally confirmed and valid surrogate agreement has significant legal consequences regarding the status of the commissioned child. Under section 297(1) of the Children's Act, a child born under a valid surrogacy agreement is, from birth, regarded as the legal child of the commissioning parent(s). The surrogate mother must hand the child over to the commissioning parent(s) as soon as possible after the child's birth. The surrogate, her spouse or partner, and relatives have no parental rights of contact with the child unless stipulated in the surrogate agreement (sections 297 and 293). However, if a surrogate agreement is found to be invalid or if the agreement is lawfully terminated, the child is legally considered the surrogate's child, and the commissioning parents will not have parental rights over such child in section 297(2). Under section 297(2), neither the surrogate, nor her relatives, can claim maintenance or inheritance rights from the child. Once artificial fertilisation has occurred, the agreement cannot be terminated. This deviates from the common law principle, *mater semper certa est*, which recognises the birth mother as the legal mother.

Section 297 provides a robust legal framework for surrogacy, ensuring that the commissioned child is the legal responsibility of the commissioning parents. However, legal challenges, particularly concerning termination of the agreement, discussed below, highlight the need for further regulatory clarity to protect all parties and uphold the best interests of the child.

5.7 Termination of the Surrogate Motherhood Agreement (Section 298)

In terms of section 298(1) of the Children's Act, a surrogate mother who is genetically related to the child has the legal right to terminate the surrogacy agreement within sixty days of birth by submitting a written notice to the court. Section 298(2) requires the court to confirm the termination and, if necessary, issue additional orders in the best interests of the child, provided all parties have been notified and a hearing has taken place. If the surrogate terminates the agreement, she is not liable to the commissioning parents but must reimburse

them for any payments received under section 301, as stipulated in section 298(3). This provision ensures financial protection for the commissioning parents while safeguarding the surrogate's rights. If the surrogate refuses to surrender the child, the commissioning parents must initiate legal proceedings.

It is for this reason that surrogates and their spouses or partners must fully understand the legal consequences of retaining the child after birth. The legal consequences may give rise to legal uncertainties and enforcement challenges, which necessitate stronger legal protections for commissioning parents, clear guidelines on termination rights, and judicial clarity on enforcement in cases where the surrogate refuses to hand over the child in violation of the surrogate agreement.

South African law follows a so-called "delayed direct-parentage" model for partial surrogacy,[671] meaning the legal effect of the agreement is postponed for sixty days after birth. During this "cooling-off" period, the surrogate retains the right to revoke the agreement, preventing the commissioning parents from acquiring full parental rights. This distinction is crucial in differentiating between partial surrogacy, where a genetically related surrogate may terminate the agreement within sixty days and retain custody of the child, and full surrogacy, where the surrogate has no genetic link to the child. In full surrogacy arrangements, the commissioning parents and the surrogate may only terminate the agreement before artificial fertilisation. Once the child is born in accordance with a full surrogacy arrangement, legal parentage automatically transfers to the commissioning parents.

Termination requires a formal written notice filed in court. The Act ensures legal, financial, and parental clarity for all parties involved. Although section 298 provides legal procedures for surrogacy termination, protecting both surrogates and commissioning parents, the financial and parental implications of this provision underscore the importance of thorough legal guidance before entering a surrogacy agreement.

671 Louw A "Surrogacy in South Africa: Should we reconsider the current approach?" *Tydskrif vir Hedendaagse Romeins-Hollandse Reg* (2013) 76, 564.

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5.8 Effect of Termination of the Surrogate Motherhood Agreement (Section 299)

Two possible scenarios arise concerning the termination of a surrogacy agreement: termination after the child's birth and termination before birth its birth. If the agreement is terminated post-birth, the parental rights granted under section 297 are revoked and instead transferred to the surrogate mother, her spouse, or partner (if applicable), or, in their absence, the commissioning father. If termination occurs before the child is born, legal parenthood is automatically assigned to the surrogate mother, her spouse or partner (if applicable), or, if neither is present, the commissioning father from the moment of birth. In this case, the surrogate and her spouse or partner (if applicable), or the commissioning father, assume full parental responsibility.

In terms of section 299(e), a surrogate child will have no legal claim for maintenance or succession against the commissioning parent(s) or their relatives if their rights of parenthood are terminated. The surrogate's right to terminate the pregnancy will be discussed in the following section.

5.9 Termination of a Pregnancy by the Surrogate Mother (Section 300)

Section 300 of the Children's Act determines that any termination of a pregnancy carried out in terms of the provisions of the Choice on Termination of Pregnancy Act 92 of 1996 will cause the surrogate agreement to be terminated. The final decision rests with the surrogate mother, but she must inform the commissioning parents of her decision before the termination and consult with the commissioning parents before the termination is carried out (section 300(2)). The surrogate incurs no legal liability towards the commissioning parents, except for compensating them for any payments made to her benefit under section 301 if the termination is not medically necessary. Despite any prior agreement to carry the child to term, section 300(3) upholds the surrogate's right to terminate the pregnancy. According to Louw, this implies that the surrogate also has the right to refuse termination, even in cases of severe fetal abnormalities.[672]

672 Louw A "Surrogate Motherhood" in Visser DP (ed) *Bioethics, Human Rights and Health Law: Principles and Practice* (1st eds Juta 2015) 231 at 245.

The question arises as to what the commissioning parents may do if the intended child is born with a disability. If the surrogate terminates the pregnancy for reasons other than medical necessity, the commissioning parents may be entitled to seek reimbursement from the surrogate mother of the medical and other costs that they have incurred. However, if termination is due to life-threatening risks to the surrogate mother or the fetus, no reimbursement is required. While parties should establish clear procedures regarding termination, the law ensures that no agreement can override the surrogate's fundamental right to terminate her pregnancy.[673]

5.10 Payment in respect of Surrogate Agreements (Section 301)

Section 301(1) of the Children's Act strictly prohibits offering, promising, or receiving any reward or compensation in connection with a surrogacy agreement, except for specific permitted expenses. The only lawful payments include costs related to artificial fertilisation, pregnancy, and childbirth, confirmation of the surrogacy agreement, loss of earnings for the surrogate, insurance covering pregnancy-related risks in sections 301(2) and 301(3), including reasonable legal or medical fees for the agreement's confirmation or execution. This provision reinforces that commercial surrogacy is illegal, with violations constituting a criminal offence punishable by a fine, and up to ten years' imprisonment, or both. Additionally, any agreement offering compensation beyond permitted expenses is unenforceable. These provisions are reinforced by section 60(4)(a) of the National Health Act, which unequivocally prohibits any form of financial or other compensation for the donation of human biological material, which would include gametes, rendering commercial surrogacy entirely illegal in South Africa.

In the matter of *Ex parte WH*,[674] which involved the confirmation of a surrogate motherhood agreement, the court allowed payments to the surrogate for certain expenses such as compensation for expenditure related to the artificial fertilisation and pregnancy of the surrogate mother; the birth of the child, and the confirmation of the surrogate motherhood agreement. There were also expenses on loss of earnings suffered by the surrogate mother because of the surrogacy arrangement, and insurance to cover the surrogate mother for anything that may lead to death or disability brought about by the pregnancy.

673 Choice on the Termination of Pregnancy Act 92 of 1996.

674 *Ex Parte WH and Others* 2011 (6) SA 514 (GNP).

However, these payments (including health insurance at R20,400 per annum, life insurance at R6,000 per annum, and an amount of R20,000 for various expenditures such as transport and maternity clothing) fell outside the narrowly defined exceptions set out in section 301 of the Children's Act, requiring closer scrutiny by the court. The court acknowledged the risk that commercial surrogacy arrangements could be disguised as legitimate expense reimbursements, raising concerns about unlawful payments being concealed within seemingly lawful transactions.[675] Despite this recognition, the High Court did not rigorously interrogate the specific expenditures submitted in this case. The court emphasised that, in future cases, a comprehensive and transparent breakdown of payments should be presented, clearly detailing and justifying each proposed expense.

This judgment has faced significant criticism for its inability to provide definitive guidance on the issue of permissible payments.[676] Bonthuys and Broeders argued that the court missed a key opportunity to clarify permissible payments, risking exploitation of legal gaps.[677] Madeleine Carnelley highlighted the inadequate assessment of the surrogate's background, including her financial position, which may compromise the process's integrity.[678] Anne Louw pointed to the judgment's failure to address financial issues relating to international surrogacy, particularly involving foreign commissioning parents.[679] Sheetal Soni and Julia Sloth-Nielsen also criticised the absence of guidance on interpreting section 301 of the Children's Act, which may result in legal inconsistency.[680]

Lastly, Donrich Thaldar added a strong voice by arguing that the decision overlooked constitutional rights to reproductive autonomy and equality.[681] These critiques were simply

675 *Ex Parte WH and Others* 2011 (6) SA 514 (GNP) par 64.

676 *Ex Parte WH and Others* 2011 (6) SA 514 (GNP) par 64.

677 Bonthuys and Broeders 2013 "*G*uidelines for the Approval of Surrogate Motherhood Agreements: Ex Parte WH*"* 485.

678 See, in general, Carnelley M *"*Ex parte WH 2011 6 SA 514 (GNP): Discussion of genetic links and monetary payments in South African and foreign surrogate mother agreements with particular reference to the English experience*" De Jure* (2012) 45(1), 179-188.

679 Louw A "Surrogacy in South Africa: Should we reconsider the current approach?" *Tydskrif vir Hedendaagse Romeins-Hollandse Reg* (2013) 76, 564.

680 Soni S and Sloth-Nielsen J "Reproductive Rights and the Legal Implications of Surrogacy in South Africa" *South African Journal on Human Rights* (2015) 33(2), 138-156.

681 Thaldar D "Surrogacy, Reproductive Rights, and the Best Interests of the Child" *International Journal of Law, Policy and the Family* (2015) 6, 89-106.

for stronger judicial and legislative direction on surrogacy in South Africa. By failing to address these ambiguities comprehensively, the ruling missed an opportunity to offer greater legal certainty on the enforcement and interpretation of surrogacy laws.

It is argued that the relevant payment limitations prevent the exploitation of financially vulnerable individuals. Allowing compensation could encourage commercial surrogacy and unethical facilitation agreements.[682] For Louw, the rigid surrogacy framework in section 301, together with the courts' lack of discretion to approve payments beyond those explicitly permitted, is troublesome.[683] The interpretation of section 301 clearly differs from more flexible approaches permitted by the courts under other provisions where courts have greater discretion.

5.11 Confidentiality and Identity of Parties (Section 302)

Section 302 of the Children's Act guarantees and protects the confidentiality of all individuals involved in a surrogacy arrangement. Identities can only be disclosed with writtn consent in court proceedings, and the identity of the commissioned child must remain confidential. Violating these provisions may result in a fine, imprisonment, or both. The surrogate mother's identity is also withheld from the child. The Report of the Ad Hoc Committee on the South African Law Commission's Report on Surrogate Motherhood, dated 11 February 1999, specifically stated that a commissioned the child could unwittingly be publicly identified, and even if the parties have agreed to reveal their arrangement, they should not reveal the identity of the child or children.[684] However, Clarke challenges this restriction in cases of gestational surrogacy,[685] contending that the surrogate merely serves as a carrier and that section 297(1) conflicts with section 41. While section 41 prohibits revealing the surrogate's identity to the child, section 297(1) permits contact between them if mutually agreed upon, inevitably leading to identity disclosure. The Ad Hoc Committee acknowledged[686] that complete anonymity may not always be practical, highlighting the

682 *Ex Parte WH and Others* 2011 (6) SA 514 (GNP).

683 Louw 2013 "Surrogacy in South Africa: Should we reconsider the current approach?" 567.

684 South Africa Ad Hoc Committee "Report on Surrogate Motherhood" (1999) at 45.

685 Skosana T "A Donor-Conceived Child's Right to Know its Genetic Origin: A South African Perspective" *Obiter* (2017) 38(2) 326-342.

686 South Africa Ad Hoc Committee "Report on Surrogate Motherhood" 45-46.

importance of mutual trust between the surrogate and the commissioning parents to facilitate a smooth transition for the child.

5.12 Prohibition of Certain Facts (Section 303)

Section 303 outlines specific prohibitions related to surrogacy, stating that artificial fertilisation of a surrogate, or any assistance in the procedure, may only occur with court authorisation under the provisions of the Act. Additionally, it explicitly bans any individual from advertising surrogacy services for compensation. A violation of this section is considered a criminal offence, carrying potential penalties of a fine, imprisonment, or both. Given that many of the provisions discussed in this chapter have recently been challenged in courts, it is essential to analyse these judicial decisions to determine whether they have provided clarity and guidance on the legal ambiguities identified in this section.

6 STRENGTHS AND LIMITATIONS OF CHAPTER 19 OF THE CHILDREN'S ACT 38 OF 2005

While Chapter 19 of the Children's Act provides a legal framework for the regulation of surrogate motherhood, it has several strengths and legal, medical, and ethical limitations.

6.1 Strengths of Chapter 19

Chapter 19 of the Children's Act establishes a comprehensive legal framework for the recognition and protection of children born through surrogacy. It designates commissioning parents as the legal parents once a court-approved surrogacy agreement is in place, thereby preventing legal uncertainty and ensuring that the child's status, care, and parental responsibilities are clearly defined from birth. This framework aligns with section 28 of the Constitution by safeguarding children's rights to a name, nationality, family or parental care, basic services, and protection from abuse or neglect.

The Act is consistent with South Africa's international obligations under the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, both of which emphasise the best interests of the child and protection from exploitation. By requiring court confirmation of surrogacy agreements, the Act ensures that

arrangements are lawful, ethical, and child-centred, thereby preventing children from being placed in legal limbo.[687]

Further safeguards include strict eligibility criteria for surrogate mothers (minimum age of 25, prior childbirth, and no previous surrogacy), reinforcing protection against coercion and exploitation. The best interests of the child remain paramount throughout the process, guided by section 7 of the Act. Mandatory medical and psychological screening of all parties, together with requirements of informed and voluntary consent, protect both the surrogate and the child, while respecting the surrogate's autonomy and ensuring ethical participation.

6.2 Limitations of Chapter 19

Although the Children's Act provides a comprehensive framework for surrogacy in South Africa, several legal, medical, and ethical limitations remain.

Legal limitations include the absence of uniform judicial criteria for confirming surrogacy agreements under section 292, resulting in inconsistent court decisions and uncertainty.[688] The requirement of prior High Court confirmation before artificial fertilisation has been interpreted strictly in cases such as *Ex Parte MCM*,[689] limiting IVF procedures before approval and potentially undermining reproductive autonomy. Subsequent judgments, including *Ex Parte MS*,[690] have allowed retrospective confirmation in exceptional circumstances, while academic commentary (notably by Thaldar)[691] argues for a more purposive and medically aligned interpretation. The Constitutional Court challenge in *Surrogacy Advisory Group NPC v Minister of Health*[692] further exposed regulatory

687 Skelton A and Proudlock P "Interpretation, Objects, Application and Implementation of the Children's Act" in: Davel CJ and Skelton AM (eds) *Commentary on the Children's Act* (loose-leaf ed, Juta 2019) 1-34.

688 Auret E, Labuschaigne M and Mabeka N "Surrogate Motherhood Regulation in South Africa: Medical and Ethical-Legal Issues in Need of Reform" *South African Journal of Bioethics and Law* (2024) 17(3), 104.

689 *Ex Parte MCM and Another* (28084/22) [2022] ZAGPPHC 712 (26 September 2022).

690 *Ex parte: M S & Others* (48856/2010) [2014] ZAGPPHC 457 (2 December 2013).

691 Thaldar D "Performing IVF for surrogacy before confirmation of the surrogacy agreement by the court: a critical analysis of recent case law in South Africa" *Humanities and Social Sciences Communications* (2023) 10(15). See https://doi.org/10.1057/s41599-022-01492-y (accessed 22 February 2025).

692 *Surrogacy Advisory Group NPC v Minister of Health (*038988/2022) [2024] ZAGPPHC 431 (7 May 2024).

incoherence between the Children's Act and the National Health Act, particularly regarding embryo creation and IVF timing.

The Act also provides limited recourse where a surrogate with a genetic link to the intended child elects to terminate the agreement within 60 days after birth (section 296), potentially leaving commissioning parents without the child despite a genetic connection. Conversely, commissioning parents cannot withdraw once the agreement is confirmed, even if circumstances change. The Act is largely silent on post-birth disputes, psychological consequences, and procedural clarity, increasing the risk of litigation.

Medical limitations arise from the absence of standardised clinical guidelines governing assisted reproduction in surrogacy, including embryo transfer limits, cryopreservation, genetic screening, and pre- and post-pregnancy care. Medical eligibility is left largely to professional and judicial discretion, creating inconsistency. Although court confirmation prior to fertilisation is mandatory (as reaffirmed in *Ex Parte WH*),[693] there is no statutory limit on the number of surrogacy arrangements or caesarean sections a surrogate may undergo, as clarified in *Ex Parte JVJM*.[694] Psychological support is not legally mandated, leaving gaps in protection for surrogate mothers' emotional well-being.

Access restrictions further limit participation: surrogate mothers must have at least one living child (section 293), a requirement criticised for restricting reproductive autonomy and narrowing the pool of potential surrogates. Intended parents must demonstrate a permanent and irreversible medical condition preventing pregnancy, limiting broader access to surrogacy.

Ethical concerns persist despite the prohibition of commercial surrogacy. While only altruistic surrogacy is permitted and commercial arrangements are criminalised, enforcement mechanisms are weak, raising the risk of covert financial exploitation, particularly of economically vulnerable women. Additionally, although section 294 requires a genetic link to at least one commissioning parent, the Act does not clearly address a child's

693 *Ex Parte WH and Others* 2011 (6) SA 514 (GNP).
694 *Ex parte: J V D M and Others* (104620/2024) [2025] ZAGPPHC 179; 2025 (4) SA 616 (GP).

right to know their genetic origins, unlike adoption law, creating uncertainty regarding identity rights and long-term psychological interests.

Overall, scholars advocate clearer and consistent court approval criteria, harmonisation between reproductive health legislation and surrogacy law, comprehensive medical protocols, and stronger ethical safeguards to ensure fairness, legal certainty, and enhanced protection for children, surrogates, and commissioning parents.

7 CONSTITUTIONAL FRAMEWORKS UNDERPINNING THE REGULATION OF SURROGATE MOTHERHOOD IN SOUTH AFRICA

7.1 Constitution of the Republic of South Africa

The Constitution of South Africa, as the supreme law of the country, provides a foundation for the protection of human rights, equality, and dignity, all of which have implications for surrogacy. It provides broad protections that influence the legal framework surrounding surrogacy arrangements, including reproductive rights, the rights to human dignity, privacy, and equality.

7.1.1 Right to Equality

Section 9 of the Constitution guarantees the right to equality and prohibits discrimination based on various factors, including gender, sex, and marital status. The Constitutional Court, in the case of *Du Toit and Another v Minister for Welfare and Population Development and Others*,[695] demonstrated the Court's commitment to eliminating discriminatory barriers to fundamental rights, regarding the issue of parenthood. In this case, Suzanne du Toit and Anna-Marié de Vos, life partners since 1989, sought to jointly adopt two children. However, South African law at the time restricted joint adoption to married couples, excluding same-sex partners. As a result, only de Vos was legally recognised as a parent. The couple challenged the Child Care Act 74 of 1983 and the Guardianship Act 192 of 1993, arguing that these laws discriminated based on sexual orientation and marital status, violating their constitutional rights to equality and dignity while failing to serve the best interests of the child.

695 *Du Toit and Another v Minister for Welfare and Population Development and Others* 2003 (2) SA 198 (CC).

The Constitutional Court unanimously ruled that restricting joint adoption to married couples was unconstitutional. It was found that such provisions unfairly discriminated against same-sex couples, violating section 9(3) of the Constitution of the Republic of South Africa, 1996. The Court emphasised that the best interests of the child in section 28(2) should take precedence in adoption cases. The exclusion of same-sex couples deprived children of the opportunity to grow up in a stable and loving family environment.[696] The ruling ordered legislative amendments to allow same-sex life partners to adopt jointly, marking a significant step in recognising same-sex parental rights. Justice Skweyiya, delivering the judgment, affirmed that excluding same-sex partners from joint adoption directly violated the constitutional rights to equality in section 9 and dignity in section 10. The ruling reinforced the principle that all individuals, regardless of sexual orientation, should have equal access to parenthood. This landmark decision demonstrated the Constitutional Court's dedication to dismantling discriminatory barriers in South Africa's legal system.[697]

It is the function of the Constitution and the law to counter unfair discrimination against a minority. In the landmark case of *AB and Another v Minister of Social Development*,[698] the Constitutional Court of South Africa considered the constitutionality of section 294 of the Children's Act in the context of the rights to equality, dignity, reproductive autonomy and access to health care services. Section 294 requires at least one commissioning parent in a surrogacy agreement to be genetically related to the child.

AB, a single woman unable to contribute her gametes, challenged this provision as unconstitutional, arguing it violated her rights to equality, dignity, reproductive autonomy, and healthcare. The High Court found in her favour, declaring section 294 invalid for unjustifiably limiting the rights of individuals unable to provide their gametes. However, the Constitutional Court, in a split decision, upheld the provision. The majority held that the genetic link requirement was rational and served the best interests of the child by promoting identity and belonging. The dissenting judges argued that the provision unfairly

696 *Du Toit and Another v Minister for Welfare and Population Development* par 38.
697 *Du Toit and Another v Minister for Welfare and Population Development* para 38-44.
698 *AB and Another v Minister of Social Development and Others* [2016] ZACC 43; 2017 (3) SA 570 (CC).

discriminated against those with total infertility and unjustly limited their right to become parents. The judgment affirmed the constitutionality of section 294, reinforcing the legal requirement for a genetic connection in surrogacy arrangements in South Africa.

Thaldar offered a critical perspective on the Constitutional Court's ruling in *AB and Another v Minister of Social Development* that addressed the constitutionality of section 294. Thaldar contends that the Court's reasoning was grounded in unfounded assumptions about the necessity of a genetic connection for a child's identity and well-being. He critiques this as "post-truth jurisprudence," where legal outcomes are shaped more by societal prejudice than by objective evidence.[699] In another article, Thaldar further argues that the Court failed to give adequate weight to the constitutional right to family life. He maintains that section 294 unjustly excludes completely infertile individuals (both conception and gestational) from pursuing surrogacy, thus violating their rights to equality, dignity, and reproductive autonomy. Thaldar advocates for reform that respects the diversity of modern families and affirms reproductive rights beyond biological constraints.[700] To remedy this situation and obviate unfair discrimination, he argues that an amendment to section 294 of the Children's Act is necessary, one that does require a genetic link between the commissioned child and the commissioning parents. Further, it is submitted that the construction of section 9 of the Constitution supports the conclusion that surrogacy must be treated equally to any other form of childbirth, including conception.[701]

A recent 2024 Supreme Court case,[702] *KB and Another v Minister of Social Development*, focusing on the genetic link requirement in section 294 of Chapter 19 centred around the issue whether surrogate children already born have a right to a genetic link with their siblings. In this appeal case, a married couple challenged section 294 of South Africa's Children's Act, which requires that at least one commissioning parent in a surrogacy agreement be genetically related to the child. Unable to conceive using their own gametes and seeking to use a surrogate for their donor-created embryos, they argued the law violated their living child's constitutional rights to dignity, equality, and best interests, claiming she

699 Thaldar D "The Constitution as an Instrument of Prejudice: A Critique of AB v Minister of Social Development" *Constitutional Court Review* (2019) 9, 343–361.

700 Thaldar D "The Right to Family Life: Why the Genetic Link Requirement for Surrogacy Should Be Struck Out" *South African Journal of Bioethics and Law* (2023) 15(3), 84–91.

701 Thaldar "The Constitution as an Instrument of Prejudice'" 23.

702 *K B and Another v Minister of Social Development* (462/23) [2024] ZASCA 54.

was being denied a sibling for emotional or medical benefit. The High Court dismissed their application, noting that no specific constitutional right had been infringed and reaffirming the Constitutional Court's earlier decision in *AB v Minister of Social Development*, which upheld the genetic link requirement. The Supreme Court of Appeal (SCA) upheld the High Court's ruling, holding that there is no constitutional right to a genetically related sibling and that the appellants had not shown violations of sections 9, 10, or 28 of the Constitution. The SCA emphasised that the law serves valid purposes like legal certainty, identity preservation, and child protection, and that any amendment must come from Parliament and not the courts.

The Supreme Court found no constitutional basis to overturn the provision. The appeal was dismissed with costs, reaffirming the legitimacy of South Africa's genetic-link requirement in surrogacy arrangements.[703]

This thesis supports Thaldar's push for legal reform to respect the nature and diversity of modern families and to affirm a reproductive right beyond biological constraints.[704] This will further underscore the fact that the equality clause is designed to eradicate discriminatory practices that hinder access to fundamental rights, such as the right to parenthood. At its core, assisted reproduction, whether via surrogacy or other methods, is intended to respect the right and desire of individuals or couples to become parents. When the law emphasises the intent of the commissioning parents rather than the mere fact of gestation and pregnancy of the surrogate mother, it respects the mutual understanding, ethical considerations, and contractual arrangements that underpin these reproductive methods. The legal focus should be on ensuring that the relationship between the child and the intended family is recognised, regardless of whether the child's gestation occurred in a surrogate or through other assisted reproduction procedures. Surrogate motherhood should be seen in the same legal light as other forms of assisted reproduction because doing so will:

- Uphold the constitutional rights to equality and reproductive autonomy;
- provide uniform legal and administrative procedures for determining parentage;

703 *KB and Another v Minister of Social Development* 54.

704 Thaldar 2023 "The Right to Family Life" 17.

- Respect the intent and responsibilities of both the commissioning parents and all parties involved; and
- Align South Africa's legal framework with international trends and progressive ethical standards.

Integrating surrogate motherhood into the broader category of assisted reproduction would not only secure the rights of the children and intended parents but also reinforce the integrity and clarity of family law in South Africa.

7.1.2 Right to Dignity

Section 10 of the Constitution enshrines the right to human dignity, which is fundamental to the interpretation and application of surrogacy laws. This right asserts that every individual has inherent dignity and the right to have their dignity respected and protected. Surrogacy laws in South Africa must ensure that the dignity of the surrogate mother is respected. The Children's Act requires that surrogacy agreements be entered into voluntarily, ensuring that the surrogate is not coerced into the arrangement. By outlawing commercial surrogacy, the Act prevents exploitation and ensures that surrogacy is conducted for altruistic reasons, preserving the dignity of the surrogate mother.

The right to dignity also extends to the child born through surrogacy, ensuring that the child is not treated as a commodity. Similarly, the commissioned parents' dignity is respected in the law by ensuring that they are legally recognised as the child's parents once the surrogacy agreement is finalised (section 297 (1) of the Children's Act). This ensures their family life is protected, and they can lawfully parent the child. Both the surrogate mother and commissioning parents must undergo assessments to confirm their suitability. This ensures that all parties are emotionally and physically prepared, promoting their dignity and well-being. Finally, the Act establishes that the child born from a valid surrogacy agreement is legally the child of the commissioning parents from birth. This clarity prevents disputes and respects the dignity of all parties involved.

7.1.3 Right to Privacy

Section 14 of the Constitution safeguards the right to privacy, encompassing personal decisions related to family life and reproduction. This protection extends to individuals'

choices regarding reproductive methods, including the use of assisted reproductive technologies such as surrogacy. The constitutional principle of the right to privacy extends to having a private life, which affirms individuals' ability to use surrogacy to create families. Surrogacy agreements must be confirmed by the High Court, and the details of these agreements are kept confidential, protecting the privacy of both the surrogate mother and the commissioning parents.

The Children's Act does not permit public access to surrogacy agreements, limiting disclosure to authorised parties such as legal representatives and medical professionals involved in the process. Moreover, once the intended child is born, the commissioning parents are legally recognised as the child's parents, preventing any unnecessary exposure of the surrogate's identity in official records. Finally, the surrogate's medical history and reproductive details are protected under general healthcare confidentiality laws, ensuring that sensitive information is not disclosed beyond necessary legal and medical contexts.

7.1.4 Right to Reproductive Autonomy

Any restrictions imposed by the state on access to surrogacy arrangements, as outlined in the Children's Act, must undergo rigorous scrutiny to ensure they do not unfairly infringe on the right to reproductive autonomy. In the case of the *Minister of Home Affairs v Fourie*,[705] two same-sex couples contested South Africa's legal ban on same-sex unions, claiming that the Marriage Act 25 of 1962 discriminated against them based on their sexual orientation. They argued that their constitutional rights to equality and dignity were being violated by this discrimination. In a majority ruling, the Constitutional Court ruled that the Marriage Act violated sections 9 (right to equality) and 10 (right to dignity) by barring same-sex couples from the institution of marriage.[706] The current Civil Union Act 17 of 2006, which formally recognised same-sex marriages and guaranteed marriage equality in South Africa, was enacted as a result of the Court's order and instruction for Parliament to address the legislative shortfall within a year. A limitation on access to surrogacy for same-sex couples or unmarried individuals which is unreasonable and not justifiable clearly undermines their constitutional right to reproduce and start a family.

705 *Minister of Home Affairs v Fourie* 2006 (1) SA 524 (CC).

706 *Minister of Home Affairs v Fourie* par 136.

The right to reproductive autonomy is protected in the Constitution under section 12(2), which guarantees the right to make decisions concerning reproduction, security in and control over one's body, and protection from medical or scientific experiments without informed consent. This provision emphasises personal autonomy and bodily integrity, ensuring individuals have the freedom to make reproductive choices. This right is further strengthened from the broader rights of privacy in section 14, equality in section 9, dignity in section 10, and the right of access to health care services and reproductive health care services in section 27. The right to reproductive autonomy undisputably applies to women's decisions regarding surrogacy. The Constitution ensures that women's dignity and autonomy in decisions about reproduction, including acting as surrogate mothers or as one of the intended parents, are upheld. The Children's Act requires informed consent from the surrogate mother, and her decision to participate must be voluntary, respecting her autonomy (section 300).

Section 28(2) of the Constitution dictates that the child's best interests are paramount in every matter concerning the child. Likewise, the Children's Act, which mirrors this principle in the context of surrogate motherhood, requires that the welfare and rights of the child take precedence in all legal and medical processes. South African courts play a critical role in ensuring that surrogacy arrangements comply with the law by rigorously assessing whether the agreement serves the child's best interests.

One landmark decision that involved an alleged violation of the rights to equality, dignity, and reproductive autonomy is that of *AB v Minister of Social Development*, referred to above.[707] The applicants included AB, a single woman who was medically unable to conceive using her own gametes or donor gametes, despite undergoing multiple unsuccessful IVF cycles, as well as the Surrogacy Advisory Group. The applicants sought to challenge the genetic link requirement in chapter 19 of the Children's Act and also contested the requirement that commissioning parents must prove permanent and irreversible infertility to enter into a surrogacy agreement. They argued that this threshold requirement violated several constitutional rights, including the rights to dignity and reproductive autonomy. The Constitutional Court upheld the requirement regarding permanent and irreversible infertility, reasoning that it served the best interests of the child

[707] *AB v Minister of Social Development* 2017 (3) SA 570 (CC).

and ensured that surrogacy was used as a last resort for individuals who could not conceive naturally.[708] The Court emphasised that the regulation was consistent with the legislative intent of the Children's Act.[709] The applicants also contested the Act's requirement that intended parents in surrogacy arrangements must have a genetic connection to the child on the basis that it was discriminatory.

The Constitutional court upheld the genetic link requirement, reasoning that it aimed to prevent commercial surrogacy and to ensure that surrogacy remained a last-resort solution.[710] The case highlighted significant ethical and legal questions surrounding the genetic link requirement and brought attention to the challenges the Act poses for individuals dealing with infertility. The majority of the judges found that the differentiation between the genetic link requirement in section 294 of the Children's Act is rational.

The High Court's finding that section 294 constituted an irrational legal differentiation that violated section 9(1) of the Constitution was hence not upheld. Furthermore, it held in terms of the equality clause in the Constitution that section 294 did not disqualify commissioning parents because they are infertile. It afforded infertile commissioning parents the opportunity to have children of their own by contributing gametes for the conception of the child. Commissioning parents who cannot contribute a gamete to the surrogacy process still had access to other legal options available, such as adoption.

7.2 Judgments involving Surrogacy Arrangements

Since the promulgation of chapter 19 of the Children's Act, courts have made several important judgments covering aspects such as: the best interests of the child, prohibition on commercial benefits in, emphasis on complying with the statutory requirements of Chapter 19, including focusing on parties' domicile in surrogacy.

Because South Africa's surrogacy framework presents an ideal model for comparison in the development of a comprehensive surrogacy approach for Ghana, the few related surrogacy judgments below also warrant closer scrutiny.

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708 *AB v Minister of Social Development* par 7.

709 *AB v Minister of Social Development* par 279.

710 *AB v Minister of Social Development* par 173.

7.2.1 Best Interests of the Child

South African courts consistently prioritise the best interests of the child, as required by section 28(2) of the Constitution and reinforced by the Children's Act. In surrogacy matters, courts ensure that legal parenthood is transferred promptly to the commissioning parents after birth in order to avoid uncertainty regarding the child's legal status. They carefully assess the emotional, psychological, and financial readiness of the intended parents to provide a stable and nurturing environment. In addition, courts seek to safeguard the child's identity and nationality and to prevent risks such as statelessness or lack of registration.

In the case of *In Re Confirmation of Three Surrogate Agreements*,[711] the court strongly criticised procedural irregularities in consolidated applications for confirmation of surrogate motherhood agreements. Although the statutory requirements had ostensibly been met, the court emphasised that surrogacy agreements demand rigorous scrutiny because of their serious implications for children. It highlighted deficiencies in the information provided about the commissioning parents' suitability and suggested that safeguards similar to those used in adoption proceedings, such as expert social work reports and police clearances, should be considered. The case illustrates the judiciary's firm commitment to child welfare and ethical legal practice.

In *Ex Parte MS and Others*,[712] the court was confronted with a situation in which artificial fertilisation had already occurred before judicial confirmation was obtained. Although this sequence did not comply with the Act, the court exercised its discretion to confirm the agreement retrospectively. Emphasising the best interests of the unborn child, as well as constitutional values such as dignity and reproductive autonomy, the court held that rigid procedural formalism could jeopardise the child's welfare and legal status. The judgment thus filled a legislative gap through a rights-based interpretation of the Act. Similarly, in *Ex Parte HPP and Others*,[713] which was decided before Chapter 19 came into force, the court

711 *In Re: Confirmation of Three Surrogate Agreements* 2011 (6) SA 22 (GSJ). Slabbert MN and Roodt C "Surrogate Motherhood: South Africa" in Trimmings K and Beaumont P (eds) *International Surrogacy Arrangements: Legal Regulation at the International Level* (Bloomsbury Publishing, 2013) 325-346.

712 *Ex Parte MS and Others* [2014] ZAGPPHC 457, par 42.

713 *Ex Parte HPP and Others* 2007 (6) SA 542 (T).

confirmed an altruistic surrogacy agreement under the common law, interpreted in light of constitutional principles. The court held that the agreement respected the dignity and reproductive rights of the parties and was consistent with the best interests of the child. This decision demonstrated the judiciary's willingness to develop the law in response to advances in reproductive technology. Collectively, these judgments confirm that the best interests of the child are central to the judicial approval of surrogacy agreements in South Africa.

7.2.2 Prohibition on Commercial Benefits

South African law strictly prohibits commercial surrogacy and permits only the reimbursement of reasonable expenses incurred by the surrogate mother. Courts carefully scrutinise the financial terms of surrogacy agreements to ensure that they do not contravene public policy or result in the commodification of either the child or the surrogate.

In *Ex Parte KAF and Others*,[714] the court confirmed a surrogacy agreement but expressed concern about the impartiality of medical and psychological experts involved in the process. The court emphasised that professionals must remain independent in order to safeguard the integrity of the evaluation process. It further reiterated the statutory prohibition on commercial surrogacy, warning against financial incentives that exceed permissible expenses. The judgment reinforced the principle that surrogacy in South Africa must remain altruistic and ethically regulated to prevent exploitation.

7.2.3 Compliance with Statutory Requirements

Chapter 19 of the Children's Act establishes detailed requirements for lawful surrogacy, and courts have repeatedly insisted on strict compliance. Surrogacy agreements must be confirmed by the High Court before artificial fertilisation occurs, and the parties must undergo psychological and medical assessments. Surrogacy is permitted only for medical reasons, not social convenience, and at least one commissioning parent must have a genetic link to the child. The Act also requires domicile in South Africa and limits compensation to reasonable expenses. In *Ex Parte MW*,[715] the court confirmed a surrogacy agreement after verifying compliance with all statutory requirements, including medical necessity,

714 *Ex Parte KAF and Others* (14341/17) [2017] ZAGPJHC 227 21.
715 *Ex parte MW* 2015 (1) SA 163 (GJ).

psychological evaluation, and domicile. The court stressed that surrogacy agreements are not ordinary contracts but special agreements requiring judicial oversight to ensure ethical and legal integrity.

In *Ex Parte SA and Others*,[716] the court reiterated that judicial confirmation must precede fertilisation and that failure to follow this sequence renders the agreement invalid, leaving the surrogate mother as the legal parent. The judgment reaffirmed that surrogacy is permitted only for medical reasons and that commercial surrogacy is prohibited. Likewise, in *Ex Parte DME and Others*,[717] the court confirmed compliance with the statutory criteria, including the surrogate's prior successful pregnancy and the domicile requirement. The decision underscored the judiciary's gatekeeping role in ensuring that surrogacy arrangements comply fully with the Children's Act.

7.2.4 Dispute Settlement

Although judicial pre-approval reduces the likelihood of disputes, conflicts may arise due to emotional strain, misunderstandings, or breaches of agreement. South African courts play a decisive role in resolving such disputes and enforcing confirmed agreements in accordance with statutory requirements and the best interests of the child. In *APP and Another v NKP,*[718] the court enforced a duly confirmed surrogate motherhood agreement and ordered the surrogate mother to hand over the child to the commissioning parents. The judgment underscored that once a surrogacy agreement has been properly confirmed, it is binding and enforceable. The court reaffirmed that enforcement in this instance served the best interests of the child.

7.2.5 Enforcement of the Domicile Requirement

The Children's Act requires that at least one commissioning parent be domiciled in South Africa when entering into a surrogacy agreement. This requirement ensures that the process is governed by South African law, provides jurisdictional clarity, and prevents the country

716 *Ex Parte SA and Other* 2014 JDR 2616 (GP) at par [16].
717 *Ex Parte DME and Others* 2014 (5) SA 431 (GNP) [43].
718 *APP and Another v NPK* (17962/2020) [2021] ZAWCHC 69 (11 March 2021) paras 24, 30.

from being used for international surrogacy tourism. In *Ex Parte P and Others*,[719] the court refused to confirm a surrogacy agreement because neither commissioning parent was domiciled in South Africa. The court held that domicile is a critical jurisdictional prerequisite and that, in its absence, the High Court lacks authority to confirm the agreement.

Taken together, these judgments demonstrate that South African courts have shaped surrogacy law by placing the best interests of the child at its core, prohibiting commercialisation, insisting on strict statutory compliance, enforcing agreements where appropriate, and upholding jurisdictional safeguards. This jurisprudence promotes ethical, constitutionally grounded, and child-centred surrogacy practices.

8 CITIZENSHIP ISSUES IN SURROGACY AGREEMENTS

Generally, the citizenship of children born through surrogacy in South Africa is determined by the Children's Act, the Citizenship Act 88 of 1995, the Births and Deaths Registration Act 51 of 1992, including section 28 of the Constitution. Section 297 of the Children's Act recognises commissioning parents as the child's legal parents if a valid surrogacy agreement is confirmed by the High Court, establishing the child's citizenship.

Under section 2(1)(b) of the South African Citizenship Act, a child born to at least one South African commissioning parent automatically acquires citizenship by descent, whether born locally or abroad. Section 9(1) of the Births and Deaths Registration Act mandates the registration of the child's birth within 30 days, listing the commissioning parents as the legal parents. Section 28(2) of the Constitution ensures that the best interests of the child are prioritised to prevent discrimination in citizenship matters. For cross-border surrogacy, compliance with South African and foreign laws is required to confirm legal parentage and citizenship. South Africa has aligned itself with the UN's *General Comment No. 14* (2013) to prevent statelessness in surrogate children.[720] Together, these laws safeguard the full citizenship rights of surrogate children born to South African parents.

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719 *Ex Parte P and Others* 2010 (6) SA 63 (GNP).

720 UN Committee on the Rights of the Child, *General Comment No 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Article 3, Paragraph 1)*, UN Doc CRC/C/GC/14 (29 May 2013)

The legal status of children born through surrogacy in South Africa involves significant complexities when the intended parents are foreign nationals. While South African law acknowledges the legal rights of children born via surrogacy within its borders, specific legal provisions regarding citizenship and nationality require careful consideration. Section 9(1) of the Births and Deaths Registration Act and section 297(1)(f) of the Children's Act guarantee that children born through surrogacy in South Africa hold the same legal status as any other child born in the country.

However, for international intended parents, issues surrounding the child's citizenship and nationality can be more nuanced.[721] Upon court approval of the surrogacy agreement, the intended parents are legally recognised as the child's parents under South African law, irrespective of their nationality, as already explained above.[722] Nevertheless, South African law does not automatically recognise surrogacy agreements conducted in foreign countries. As a result, children born to international intended parents through foreign surrogacy arrangements may not possess the same legal standing in South Africa as those born to South African citizens through domestic surrogacy agreements.[723]

If intended parents seek to bring the child to South Africa, they may face challenges in obtaining legal recognition of their parental rights if the surrogacy agreement does not comply with South African legal standards. According to the Children's Act, for a foreign surrogacy arrangement to be recognised in South Africa, it must meet criteria similar to those required for domestic surrogacy agreements (sections 296(1) to 296(4)). South African courts have the authority to recognise foreign surrogacy agreements, but they will only do so if the agreement complies with South Africa's ethical and legal standards. This includes a review of whether the surrogate mother was adequately compensated, whether she gave informed consent, and whether the child's best interests were prioritised throughout the process, as the UN's General Comment No. 14 (2013) also expresses.

The General Comment clarifies the concept of the "best interests of the child" and its application in legal, administrative, and social contexts. It aims to ensure consistent

721 Slabbert MN "The Legal Challenges of Surrogacy in South Africa" (2020) 13(2) *South African Journal of Bioethics and Law* 102-106.

722 Louw A "Legal Parenthood and Surrogacy in South Africa" (2016) 33 *Obiter* 115, 136.

723 Slabbert 2020 "The Legal Challenges of Surrogacy in South Africa" 102.

implementation of Article 3(1) of the Convention on the Rights of the Child (CRC) by all stakeholders, including policymakers, judicial bodies, and service providers. This principle applies universally to all actions or policies affecting children, whether directly or indirectly.

9 MEDICAL PRACTICE AND SURROGACY IN SOUTH AFRICA

South Africa's regulations mandate that all medical procedures related to surrogacy adhere to strict protocols, ensuring safety, ethical compliance, and high medical standards. These protocols encompass several aspects, including accredited fertility clinics,[724] medical screening, psychological assessment, informed consent, ethical use of assisted reproductive technology, monitoring and support, record-keeping, and adherence to legal frameworks.[725] These medical activities and involvement in surrogacy become relevant when there is a surrogacy agreement between the surrogate and intended parent(s) for a child to be born and be relinquished as the starting point.

9.1 Pre-Conception Counselling and Legal Advice

Pre-conception counselling is a critical first step for both parties to understand the psychological, emotional, and legal implications of the process. This counselling typically includes discussions on the roles and responsibilities of each party, the potential challenges of the surrogacy journey, and the anticipated impact on family dynamics. Legal advice is also essential at this stage, helping parties to comprehend the specific legal requirements under the Children's Act and the necessary conditions for court approval of the agreement.[726]

The type of artificial reproductive technology to be selected will depend on a combination of factors. Counselling and legal advice may assist in minimising misunderstandings and prepare parties for the commitments involved, reinforcing informed consent and ethical awareness. After pre-conception counselling, comes the drafting and signing of a surrogacy

724 Health Professions Council of South Africa (HPCSA) *Guidelines for Accreditation of Healthcare Facilities'*(2023).

725 South African Society of Reproductive Medicine and Gynaecological Endoscopy (SASREG). Their website contains a vast range of relevant guidelines. See http://www.sasreg.org (accessed 22 February 2026).

726 Louw 2013 "Surrogacy in South Africa: Should we reconsider the current approach?" 569.

agreement that must comply with the Children's Act and must be approved by the High Court before any medical procedures begin. This court-approved agreement serves as the foundation for all further steps in the surrogacy process, ensuring medical and legal clarity as well as accountability.

9.2 Medical Procedures and Healthcare Considerations

Once the surrogacy agreement is confirmed, the medical procedures can begin. This typically involves in vitro fertilisation, where an embryo is created using the genetic material of the intended parents or donors and then implanted into the surrogate mother. In South Africa, all medical procedures must be performed at accredited fertility clinics, which are required to follow stringent protocols to protect the health and safety of both the surrogate and the fetus. Key medical considerations include regular health screenings for the surrogate, comprehensive prenatal care, and compliance with guidelines established by regulatory bodies such as the Health Professions Council of South Africa (HPCSA). Throughout the process, the surrogate's health is closely monitored to safeguard her well-being, as well as that of the developing fetus.

9.2.1 Accredited Fertility Clinics

Fertility clinics play a central role in the surrogacy process, providing necessary medical services such as IVF, embryo transfer, and prenatal care. In South Africa, these clinics are required to follow regulations outlined by both the HPCSA[727] and the Children's Act, ensuring that ethical and medical standards are upheld. Clinics are responsible for verifying that the surrogacy agreement has been approved by the court before initiating medical procedures.[728] Additionally, they must provide the surrogate with all necessary medical care during the pregnancy and manage any complications that may arise.[729] Clinics are also

727 Health Professions Council of South Africa, *Guidelines for Good Practice in the Health Care Professions: Booklet 4 – Ethical Guidelines for Reproductive Health* (vol 4, HPCSA 2016) 5.

728 Health Professions Council of South Africa, *Guidelines for Good Practice in the Health Care Professions* 5.

729 Bonthuys E "RH v DE: A Feminist Minority Judgment on Adultery" (2015) 31 *South African Journal on Human Rights* 379.

expected to offer psychological support to the surrogate, addressing the unique emotional challenges associated with carrying a child for another family.[730]

9.2.2 Role of Medical Professionals

Medical practitioners involved in surrogacy face several ethical considerations, including respecting the surrogate's autonomy, ensuring her informed consent, and avoiding any potential conflicts of interest.[731] South Africa's ethical guidelines emphasise that surrogacy must prioritise the welfare of both the surrogate and the child and that surrogates should not be subjected to unnecessary medical risks.[732] Practitioners must also navigate complex issues related to genetic parentage, confidentiality, and the psychological impact of surrogacy on all parties. The HPCSA's guidelines remind practitioners of their duty to avoid any exploitation of the surrogate and to act in the best interest of the child to be born, highlighting the ethical weight carried by these medical responsibilities.[733]

Before initiating the surrogacy process, the commissioning parents and surrogate undergo fertility assessments to determine their suitability for the procedure. For the commissioning parents, this may involve testing ovarian reserves, sperm quality, or other reproductive health factors. For the surrogate, uterine health and her ability to carry a pregnancy to term should be evaluated.

South Africa primarily utilises gestational surrogacy, where the surrogate carries an embryo created through IVF. As a duty, they are to retrieve eggs from the commissioning mother or an egg donor, fertilise the eggs with sperm from the commissioning father or a donor in a laboratory setting, and transfer the embryo(s) into the surrogate's uterus once a viable embryo is developed. However, not all the artificial fertilisation involves embryo transfer. In some cases, the fertilised ova are transferred to the surrogate. Sometimes the fertilised

730 Health Professions Council of South Africa, *Guidelines for Good Practice in the Health Care Professions* 5.

731 Health Professions Council of South Africa, *Guidelines for Good Practice in the Health Care Professions: Booklet 4 – Ethical Guidelines for Reproductive Health* (vol 4, Health Professions Council of South Africa 2016) 6

732 Health Professions Council of South Africa, *Guidelines for Good Practice in the Health Care Professions* 6.

733 Health Professions Council of South Africa *Guidelines for Good Practice in the Health Care Professions* 6.

ova or egg are transferred to the surrogate directly. Preimplantation genetic testing may be conducted to screen embryos for genetic abnormalities, to ensure a healthy pregnancy, and minimise the risk of hereditary conditions.[734]

The surrogate is expected to undergo regular antenatal care, including ultrasounds, blood tests, and routine health checks. The medical team monitors both the surrogate and the fetus for a healthy pregnancy. The surrogate's medical care is closely coordinated with legal agreements to align with the terms agreed upon by all parties.[735]

9.2.3 Innovations in Surrogacy-Related Medical Practices

The cryopreservation of eggs, sperm, and embryos represents a significant advancement in assisted reproductive technology.[736] This technique enables embryos to be stored for future use, providing a valuable option if the initial IVF cycle does not succeed. South African fertility clinics adopt advanced technologies to enhance embryo selection for transfer, increasing the chances of successful implantation. South Africa's medical practices related to surrogacy are both advanced and ethically regulated, prioritising safe and effective outcomes for all parties involved.[737]

However, in the context of surrogate motherhood, challenges such as high medical costs, especially relating to artificial fertilisation, medical risks, and the need for comprehensive psychological support remain areas for improvement. The country’s strong legal and ethical framework continues to guide these practices, ensuring they align with constitutional principles of dignity, equality, and reproductive autonomy.

Current advancements in assisted reproduction, which will impact the regulation of the clinical side of surrogacy, include the following: [738]

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734 See in general, De Wert G and Dondorp W “Ethical Considerations in Preimplantation Genetic Testing” in: *Textbook of Human Reproductive Genetics* (Cambridge UP, 2023).

735 See, in general, Sun Y, Dodd S, and Wang Y “Wearable Monitoring Devices in Pregnancy: Current Challenges and Future Opportunities” (2019) 19(24) *Sensors* 5425.

736 South African Law Reform Commission *Project 123 Discussion Paper: Assisted Reproductive Technology* (2019) 38.

737 National Health Act 61 of 2003.

738 Advances in Fertility Treatment Technology: Shaping IVF’s Future 2024 https://www.inovifertility.com/blog/fertility-treatment-technology/ (accessed 4 June 2025).

- *IVF-on-a-chip*: Microfluidic technology mimics the natural reproductive environment, improving sperm and egg selection while reducing costs and procedural time.
- *Embryo vitrification*: Digital microfluidic processing enhances embryo freezing techniques, preventing ice crystal formation and improving survival rates after thawing.
- *Sperm extraction advancements*: New methods are improving the ability to retrieve viable sperm for fertilisation, increasing success rates for couples facing male infertility challenges.
- *Genetic testing improvements*: Preimplantation genetic screening is becoming more precise, allowing for better embryo selection and reducing the risk of genetic disorders.
- *Trends in assisted reproduction*: Ongoing research is focused on improving IVF success rates, making treatments more accessible, and refining protocols for better patient outcomes.

9.2.4 Role of South African Society for Reproductive Medicine and Gynaecological Endoscopy (SASREG)

The South African Society for Reproductive Medicine and Gynaecological Endoscopy[739] is the key professional body overseeing assisted reproductive technologies and minimally invasive gynaecological surgery in South Africa. It sets clinical, ethical, and operational standards for fertility clinics, ensuring safe and responsible practices. SASREG issues guidelines on IVF, gamete donation, embryo transfer, and surrogacy in alignment with laws like the Children's Act. It outlines eligibility criteria, informed consent, and counselling to safeguard the rights of all parties. SASREG also accredits fertility clinics, promotes continuing medical education, and advocates for ethical, patient-centred fertility care. Although SASREG does not hold statutory authority, it encourages collaboration among reproductive medicine specialists, embryologists, and counsellors.[740]

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739 South African Society for Reproductive Medicine and Gynaecological Endoscopy. See https://sasreg.co.za (accessed 22 February 2026).

740 South African Society for Reproductive Medicine and Gynecological Endoscopy https://sasreg.co.za.

Now that this chapter has highlighted some of the benefits and gaps in the Children's Act regarding surrogacy regulation, the next section will turn to issues that may be considered for reform in future.

10 PROPOSED REFORM AND FUTURE DIRECTIONS

10.1 Suggested Reforms for Improving Surrogacy Regulation

South Africa's legal framework governing surrogate motherhood in the Children's Act, have made significant strides in regulating surrogacy, but various stakeholders have suggested reforms to address emerging challenges.

One key proposal is to clarify the Act to include specific provisions that accommodate new family structures, to help infertile heterosexual couples, same-sex couples, single persons or those in permanent relationships recognised by law, who cannot donate gametes to comply with the genetic link requirement in section 294 of the Children's Act, to have access to surrogate motherhood via a double-donor process, to create family for themselves. As this chapter has discussed, double-donor surrogacy is not legally permitted in South Africa, as emerged from the ruling in the case of *AB v Minister of Social Development* that challenged this requirement, arguing that it unfairly discriminates against individuals who cannot provide their own gametes. Although the last-mentioned enabled single individuals to participate in surrogacy arrangements,[741] explicit legislative provisions should clarify these rights and reaffirm inclusivity.

Another proposed reform is the enhancement of psychological assessment protocols for both surrogate mothers and intended parents. Although the Children's Act requires psychological evaluations, it may be argued that standardised guidelines would ensure more consistent and effective assessments, thus reducing emotional and psychological conflicts that may arise during the surrogacy process. Additionally, continuous psychological support could be made available to both parties throughout the arrangement, which may improve outcomes for everyone involved, including the child.

741 *AB v Minister of Social Development* 2016 (3) SA 574 (CC).

Furthermore, it has been suggested that South Africa consider developing a regulatory framework to govern surrogacy arrangements involving parties from other jurisdictions. With more South Africans engaging in cross-border surrogacy due to the limited availability of local surrogates, legislation could address issues such as parental rights, citizenship of the child, and ethical concerns related to cross-border arrangements. Such a framework could guide how international surrogacy agreements align with South African law and minimise legal and logistical challenges for returning parents.

10.2 Ongoing Debates about Commercial Surrogacy

Commercial surrogacy remains a highly debated issue globally. Advocates for legalising commercial surrogacy argue that allowing regulated payments to surrogates could address the shortage of surrogates within the country and reduce the need for international arrangements.[742] He contends that commercial surrogacy could provide an economic opportunity for women who choose to become surrogates, thereby reducing potential exploitation by establishing clear guidelines for compensation. On the other hand, critics of commercial surrogacy argue that it could commodify women's bodies and children, with concerns about the potential exploitation of economically disadvantaged women. Opponents also believe that commercial surrogacy may undermine the ethical foundation of surrogacy in South Africa, which emphasises altruism and child welfare. This debate continues to shape discussions about potential legislative reforms, as lawmakers weigh the ethical implications against the growing demand for surrogacy services.

10.3 Future of Surrogacy Law in South Africa

The future of surrogacy law in South Africa will likely involve navigating the interplay between ethical considerations, societal needs, and advancements in assisted reproductive technologies.[743] As technologies like embryo manipulation and gene editing continue to evolve, the legal framework will need to adapt to address complex ethical dilemmas and redefine parental rights.

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742 Dickenson D and Van Beers B "Surrogacy: New Challenges to Law and Ethics" *The New Bioethics* (2020) 26(4) 293-297.

743 Sloth-Nielsen J and Van Heerden B "The 'Constitutional Family': Developments in South African Child and Family Law 2003–2013" *International Journal of Law, Policy and the Family* (2014) 28(1) 100-120.

These innovations are expected to fuel debates on the boundaries of surrogacy practices, potentially prompting reforms that align with global trends in reproductive ethics. Given the rise of cross-border surrogacy arrangements, South Africa may also move toward establishing a robust framework for surrogacy agreements beyond its geographical borders. Reciprocal agreements with other nations or adherence to international standards could help protect the rights of both commissioned parents and surrogates in cross-border cases, minimising disputes and ensuring consistency.[744] There is no single international convention that comprehensively regulates surrogate motherhood, which is unfortunate.

As South African society becomes increasingly accepting of diverse family structures, future reforms could expand surrogacy rights. Such changes would align the legal framework with evolving societal values while maintaining safeguards for ethical integrity and the well-being of all parties involved.

However, any advancements in surrogacy law must strike a careful balance. Reforms must prioritise the protection of surrogates and children, prevent exploitation, and uphold ethical standards, even as inclusivity and technological progress are embraced. By addressing these challenges holistically, South Africa can create even a more progressive, comprehensive, equitable, and ethically sound surrogacy framework for the future.

11 CONCLUSION

This chapter has demonstrated that surrogacy regulation in South Africa reflects a carefully. constructed, constitutionally infused framework that seeks to reconcile reproductive autonomy with the protection of vulnerable parties, particularly children and surrogate mothers. Anchored in Chapter 19 of the Children's Act and shaped by an evolving body of jurisprudence, South African law adopts an explicitly altruistic model that positions the best interests of the child as the organising principle of all surrogacy arrangements.

744 Sloth-Nielsen and Van Heerden 2017 "The 'Constitutional Family': Developments in South African Child and Family Law" 205.

The analysis has shown that the judiciary plays a decisive gatekeeping role in giving practical effect to this framework. Through its insistence on prior judicial confirmation, strict statutory compliance, and detailed scrutiny of the suitability of commissioning parents and surrogate mothers, the courts ensure that surrogacy agreements are not treated as ordinary commercial contracts but as constitutionally significant arrangements with lifelong consequences. The case law further illustrates how courts have filled legislative gaps through purposive and rights-based interpretation, thereby safeguarding children's legal status and protecting the dignity and reproductive autonomy of the parties involved.

At the same time, the prohibition of commercial surrogacy underscores the legislature's clear policy choice to prevent commodification and exploitation. By limiting compensation to reasonable expenses and scrutinising the conduct of professionals involved in the process, the courts reinforce the ethical boundaries within which assisted reproductive technologies may operate. The domicile requirement and the insistence on medical necessity further reflect a deliberate effort to maintain jurisdictional clarity, prevent surrogacy tourism, and ensure that the South African legal system retains meaningful oversight over all agreements it confirms.

The chapter has also illustrated that, while judicial pre-approval reduces the likelihood of disputes, conflicts may nevertheless arise. In such instances, the courts have not hesitated to enforce validly confirmed agreements, reaffirming both their binding nature and the paramountcy of the child's best interests. This approach reflects a broader commitment to legal certainty, ethical regulation, and the protection of all parties within a sensitive and emotionally charged context.

Taken together, the statutory framework and the jurisprudence analysed in this chapter reveal a model of surrogacy regulation that is cautious yet enabling, rights-conscious yet protective. South Africa's approach seeks to strike a delicate balance between facilitating family formation through assisted reproduction and preventing exploitation or abuse. By centring constitutional values, such as dignity, equality, and the best interests of the child, the law as interpreted and applied by the courts promotes a coherent, principled, and child-centred system of surrogacy regulation. In doing so, it offers an example of how reproductive technologies can be governed in a manner that is both ethically defensible and constitutionally sound.

CHAPTER SIX

A COMPARATIVE OVERVIEW OF THE GHANAIAN AND SOUTH AFRICAN FRAMEWORKS REGULATING SURROGATE MOTHERHOOD

1 INTRODUCTION

This chapter provides a comparative analysis of surrogacy laws in South Africa and Ghana, with the objective of recommending a suitable legal framework for Ghana that will balance local and traditional, social and cultural values with modern reproductive health needs. Contrary to South Africa's robust legal framework for surrogate motherhood with some gaps clarified by case law, the existing framework governing surrogate motherhood in Ghana, examined in chapter four of this thesis, lacks comprehensive regulation, leaving surrogacy arrangements unclear and subject to ethical and legal challenges.

The legal frameworks governing surrogacy in South Africa and Ghana reflect distinct approaches shaped by societal norms and legislative priorities. The previous chapter has canvassed the legal framework for surrogacy regulation in South Africa in detail. Chapter four of this thesis has demonstrated that surrogacy regulation in Ghana is inadequate, relying on the registration of births and death regulation and general family law principles, which create a fragmented and untenable legal situation.

The strengths and limitations of the South African surrogacy framework were addressed in detail in the previous chapter. For the purpose of this chapter, only some key features and limitations of the South African framework will be highlighted, without duplicating discussions in chapter 4. The purpose of this is to refresh those points for the purpose of contrasting the Ghanaian position in the effort to lay down a legal structure for a proposed surrogacy model in Ghana. This is followed by an overview of the strengths and limitations of the existing surrogacy framework in Ghana, after which the chapter will turn to draw aspects that may assist in formulating an improved framework for surrogacy in Ghana.

2 STRENGTHS AND LIMITATIONS OF SOUTH AFRICA'S SURROGACY LEGAL FRAMEWORK

As discussed in previous chapters, South Africa's legal framework for surrogacy, established under the Children's Act stands out as one of the most progressive and comprehensive systems in Africa. It provides robust protections for the rights and interests of all involved parties, including intended parents, surrogate mothers, and children born through surrogacy. This carefully crafted legislation ensures ethical practices and a legal transparency regarding most issues.

2.1 Strengths

2.1.1 Judicial Oversight and Legal Certainty

Section 292 of the Children's Act mandates court approval before conception to ensure legal clarity and prevent disputes. Intended parents are recognised as the legal parents at birth under section 295, safeguarding the child's best interests.

2.1.2 Protection of Surrogate Mothers

Surrogacy agreements require informed, voluntary consent, free from coercion. Section 301 prohibits commercial surrogacy, limiting arrangements to altruistic models that cover medical expenses and lost income, preventing exploitation.

2.1.3 Ethical and International Standards

The framework aligns with global ethical guidelines by banning commercial surrogacy, as recommended by institutions like the Hague Conference[745] and WHO,[746] preventing commodification and human trafficking.

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745 Hague Conference on Private International Law *Report of the Fourth Meeting of the Experts' Group on the Parentage/Surrogacy Project* (Preliminary Document No 3C, 5–8 September 2016).

746 World Health Organisation "Guidelines on Ethical Issues in Sexual and Reproductive Health Research" (WHO 2016) https://apps.who.int/iris/handle/10665/252580 (accessed 23 February 2026).

2.1.4 Inclusivity and Non-Discrimination

South Africa's laws allow surrogacy agreements for individuals and couples, regardless of sexual orientation or marital status, reinforcing constitutional principles of equality.[747]

2.1.5 Mandatory Screening

Medical and psychological assessments ensure the suitability of both the surrogate and intended parents, reducing risks and guaranteeing informed consent. This practice aligns with WHO reproductive health standards.[748]

2.1.6 Surrogacy Restrictions and Risk Mitigation

Surrogacy is limited to South African citizens and permanent residents, reducing risks related to trafficking and cross-border legal conflicts.[749]

2.1.7 Comparative Legal Insights

South Africa's structured surrogacy framework provides a strong model for countries like Ghana, offering legal certainty and ethical safeguards.[750]

2.2 Limitations

Despite all the strengths in the South African framework, no legal system is perfect. Some of the limitations that this thesis identified in previous chapters are briefly listed below.

2.2.1 Strict Eligibility Requirements

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747 Children's Act 38 of 2005, s 292; see also *AB v Minister of Social Development* 2016 (2) SA 27 (GP); *Ex Parte WH* 2011 (6) SA 514 (GNP).

748 World Health Organisation 2016 "Guidelines on Ethical Issues in Sexual and Reproductive Health Research".

749 Children's Act, section 292(2)(a); see also *Ex Parte WH* (GNP) 518, 520.

750 Heaton J "Assisted Reproduction" in: Boezaart T (ed) *Child Law in South Africa* (2nd ed, Juta 2017) 305-330. See also Allan A *The Regulation of Surrogacy: A Comparative Study of International Approaches* (Edward Elgar, 2019) 165, 190.

Intended parents must prove permanent and irreversible medical infertility, excluding those seeking surrogacy for non-medical reasons, limiting reproductive autonomy. The focus on medical infertility overlooks the reproductive needs of non-heteronormative families, leading to unequal access to surrogacy for diverse family structures.[751]

2.2.2 Financial Barriers and Access to Surrogacy

Court approval and confirmation of surrogacy agreements impose high costs, making surrogacy largely inaccessible to lower-income individuals, reinforcing social inequalities. Access to surrogacy in the public health sector is not generally available and due to the weakened infrastructure of public health facilities, surrogacy is a luxury available to the affluent South Africans only.[752]

2.2.3 Altruistic Surrogacy Challenges

Compensation is limited to medical expenses, reducing surrogate availability and potentially driving arrangements underground. Emotional conflicts are more of a risk in altruistic surrogacy due to the absence of financial compensation, which removes transactional boundaries. The altruistic nature of surrogacy does not fully eliminate risks of emotional coercion, especially when surrogates have personal connections with the intended parents. Familial or social pressure can compromise the surrogate's autonomy, leading to uninformed decisions.[753]

2.2.4 Lack of Regulations for Cross-border Surrogacy Arrangements

Cross-border surrogacy presents many uncertainties, creating questions regarding the citizenship of commissioned children and parental rights for foreign intended parents.[754]

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751 Heaton J "Assisted Reproduction" 305.

752 Heaton 2017 "Assisted Reproduction" in: Boezaart T(ed) *Child Law in South Africa* 305-310.

753 Ahmad A "Socioeconomic Barriers to Accessing Assisted Reproduction in South Africa" *Obstetrics and Gynecology Forum* (2016) 34(2), 36-39.

754 Allan S *The Regulation of Surrogacy: A Comparative Study of International Approaches* (Edward Elgar Publishing, 2019).

2.2.5 Lack of adequate Post-Birth Support

Provision is not made for a surrogate's emotional, psychological, or financial well-being after birth, discouraging participation. The payment of medical costs by the intended parents may not extend beyond the pregnancy and delivery of the intended child, leaving the surrogate in a vulnerable position if she does not have access to funds to secure psychological or medical care post-birth.[755]

2.2.6 Judicial Confirmation of Agreements and other Oversight Delays

Approval processes, the confirmation of a surrogate agreement, not to mention complying with the relevant assessments of the parties involved, are time-consuming, complicating fertility treatments. Moreover, there are presently no comprehensive guidelines complementing and clarifying many of the requirements under the legal framework in Chapter 19 of the Children's Act. As discussed earlier, this omission leads to some variability in judicial discretion and even uneven legal outcomes, undermining confidence in the legal framework.[756]

3 STRENGTHS AND LIMITATIONS OF GHANA'S SURROGACY LEGAL FRAMEWORK

Although Ghana lacks a specific and dedicated legal framework for surrogacy, the existing regulatory system consists of a range of unrelated provisions providing indirect protections, such as provisions from the Constitution, the Children's Act 1998 (Act 560), the Marriages Act 1985,[757] the Births and Deaths Act 2020,[758] the Wills Act 1971,[759] the Intestate Succession Law 1985,[760] and the Public Health Act 2012,[761] among others.

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755 Busby K and Vun D "Revisiting The Handmaid's Tale: Feminist Theory Meets Empirical Research on Surrogate Mothers" (2010) 26(1) *Canadian Journal of Family Law* 13-93.

756 Thaldar D and Van der Westhuizen A "South African Surrogacy Law: Uncertainty for Foreign Intended Parents" *Tydskrif vir Hedendaagse Romeins-Hollandse Reg* (2020) 83467-473.

757 Administration of Estates (Amendment) Law 1985 (PNDCL 112).

758 Births and Deaths Registration Act 2020 (Act 1027)

759 Wills Act 1971 (Act 360).

760 Intestate Succession Law 1985 (PNDCL 111).

761 Public Health Act 2012 (Act 851).

The current regulatory framework for surrogate motherhood in Ghana is discussed in detail chapter four of this thesis. The discussion below will only briefly recap the strengths and limitations of the Ghanaian position.

3.1 Strengths

Ghana's regulation of surrogate motherhood has several positive features, as outlined below.

3.1.1 Legal Recognition and Structure

As discussed in chapter four of this thesis, surrogacy is indirectly acknowledged as a form of assisted reproduction under Ghanaian administrative law through the Registration of Births and Deaths Act 2020).[762] This Act provides for intended parents to obtain a Pre-Birth Parental Order from the High Court within 12 weeks of introducing an embryo or gamete into the surrogate mother. This order legally recognises the intended parents as the child's legal guardians for the purpose of this Act. If no pre-birth order was issued, intended parents or the surrogate can apply for a post-birth parental order within 28 days to six months after birth. This functions similarly to an adoption order, seemingly transferring legal parentage. Once a parental order is granted, the District Registrar updates the birth record, ensuring the intended parents are legally recognised while keeping the original record confidential until the child turns 21.

If this order is not obtained, the surrogate mother is considered the legal parent at birth. It is important to note that legal clarity in respect of parentage exists only if these orders are obtained, otherwise uncertainty prevails.

3.1.2 Protection of Parental Rights

The Registration of Births and Deaths Act creates the recognition of parental rights for intended parents, provided that the process detailed in the Act is properly documented and adhered to. It establishes an acknowledgement of parentage, allowing intended parents to be legally recognised as the child's parents, which provides stability and security for families.

762 Births and Deaths Registration Act 2020 (Act 1027).

This clarity helps reduce potential disputes over custody or legal status, benefiting both the child and the intended parents.

The 1992 Ghanaian Constitution, in addition, guarantees fundamental human rights, including protection of the rights of privacy and personal liberty, which, if broadly interpreted, could include protection for individuals' reproductive choices, and indirectly, the right to access assisted reproductive technologies. These legal protections, read together, may assist in establishing or affirming the rights of intended parents and to ensure surrogacy decisions are free from arbitrary interference or discrimination. The result of this is that surrogacy is recognised procedurally under Act 1027, but the broader framework in Ghana remains fragmented. Looking at the position optimistically, it may be said that Ghana's system partially recognises some aspects of surrogacy, but surrogate motherhood as a whole remains inadequately regulated.

3.1.3 Best Interests of Children

Ghana's legal framework prioritises the welfare of all children, which would by default include those born through surrogacy, by emphasising their best interests under Article 28(2) of the Ghanaian Constitution and Section 2 of the Children's Act. Courts often rely on the best interests of the child principle in Section 28(2) of the Constitution to resolve disputes and define parental responsibilities, enabling adaptable decisions without the need for rigid legislative structures.

Children, regardless of how they were conceived, are also entitled to share in the estate of a parent who died alongside the surviving spouse and other dependants in accordance with Section 5 of the Intestate Succession Law 1985. The same applies to surrogate children named as a beneficiary in a last will and testament under the Wills Act 1971. There is no explicit exclusion of surrogate children in these Acts. Once a child is recognised as the legal child of his or her parents, such child will have the same rights that the other children of the same parents. Additionally, Section 13 of the Wills Act grants courts with the function to make "reasonable provision" for dependents, such as a surrogate child, if he or she has been excluded from a Will unjustly.

3.1.4 Compensation and Coverage

Ghanaian law does not expressly prohibit commercial surrogacy, and in the absence of clear provisions regarding the permissible payments, surrogates may receive compensation far beyond medical expenses and other reasonable expenses. Compensation of surrogates is not clearly established and regulated and may vary between altruistic surrogacies (which may include medical cost coverage), as well as commercial surrogacy where surrogates may agree with the intended parents on an amount in return for her services.

3.1.5 Miscellaneous provisions

Ghana's legal framework emphasises protecting women and children from exploitation, which applies to surrogacy arrangements. The Human Trafficking Act 2005[763] criminalises exploitative practices, offering protection to surrogates from coercion, financial abuse, and trafficking while preventing the commodification of children. Customary law in Ghana, particularly regarding family, marriage, and inheritance, supports traditional surrogacy within the framework of cultural norms and values. This approach provides an acceptable solution for infertile couples, allowing surrogacy arrangements to occur informally within families, reducing stigma, and promoting cooperation.[764] I should clarify that customary surrogacy within families may reduce stigma in certain contexts, but broader societal and religious views still stigmatise surrogacy. This means that a distinction exists between between intra-family acceptance and public stigma.

3.2 Limitations

Despite the benefit of the protections outlined above, Ghana lacks a dedicated and stand-alone surrogacy framework that will provide clearer guidelines and direction.

3.2.1 Lack of a Dedicated Surrogacy Law

763 Human Trafficking Act 694 of 2005.

764 Osei-Agyemang A "Customary Law and Family Formation in Ghana: Implications for Modern Reproductive Technologies" *Ghana Legal Studies Review* (2021) 15(2), 112-135.

Ghana does not have a specific dedicated legal framework for surrogate motherhood, resulting in unresolved issues related to agreements, parental rights, exploitation, child welfare, and legal recognition.[765] The registration of the births of surrogate children en their intended parents in the Registration of Births and Deaths is a very limited and indirect acknowledgement that of the administrative status of surrogate children and the intended parents.

3.2.2 Risks for Surrogates

Surrogates face potential coercion, abuse, lack of healthcare, and inadequate compensation, particularly in informal arrangements. Economic vulnerability increases the risk of exploitation.

3.2.3 Limited Protections for Surrogate Children

While Ghana's Constitution and Children's Act emphasise child welfare, there are no specific provisions for surrogate-born children, leaving them vulnerable to legal and social challenges.[766] Despite Act 1027's provisions governing pre- and post-birth orders for children born via assisted reproduction, a failure to obtain these orders leave the status of the surrogate child in a vacuum, making the surrogate mother the legal parent of the intended child. Ghana's Constitution and the Children's Act recognise a child's welfare but do not specifically address the issues faced by children born through surrogacy, such as legal recognition, identity, and social acceptance. The lack of a dedicated legal framework leaves children vulnerable, especially if intended parents fail to assume responsibility.

3.2.4 International Surrogacy Risks and Economic Exploitation

Ghana's lack of regulation makes it a destination for unregulated international surrogacy, increasing the risks of exploitation and trafficking. The absence of fixed guidelines for surrogate compensation allows unfair payment practices and deceptive intermediaries, leading to disputes and ethical concerns. Furthermore, surrogacy costs are significantly

765 Frimpong J "Exploring Ghana's Legal Framework on Assisted Reproductive Technologies" *Ghana Legal Studies Review* (2021) 12(2), 145-162.

766 Nsiah A *Family Law in Ghana: Theory and Practice* (3rd ed, Ghana Legal Publishing 2018).

lower than in Western countries, making Ghana an attractive and financially viable destination for intended parents.[767]

3.2.5 Cross-Border Legal Complications

Foreign intended parents may struggle to secure legal parental recognition due to challenges of leaving surrogate-born children in legal limbo or potentially stateless. International intended parents may face challenges related to parental recognition and exit procedures for newborns. [768] Children born through surrogacy, with foreign commissioning parents, may face difficulties obtaining citizenship, especially if their home country does not automatically recognise surrogacy-born children.[769]

3.2.6 Social Stigma and Cultural Barriers

Traditional family structures and religious beliefs contribute to surrogacy stigma, discouraging open discussions and marginalising surrogates and intended parents. Although surrogacy is gradually gaining acceptance in traditional cultural contexts in Ghana, deep-rooted social stigma due to traditional cultural beliefs emphasising biological parentage and conventional family structures, still present obstacles. In many Ghanaian communities, motherhood is closely tied to natural conception and childbirth, making surrogacy a controversial and misunderstood practice. It is true that customary surrogacy within families may reduce stigma in certain contexts, but the broader societal views may still stigmatise surrogacy.

As discussed in detail early in this thesis, a further challenge is the perception of surrogacy as unnatural or morally questionable, particularly in religious circles where fertility is seen

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767 Growing Families "Surrogacy in Ghana: Affordable, Legal, and Accessible Options" (2024) https://www.growingfamilies.org/surrogacy-in-ghana/ (accessed 8 June 2025).

768 Mills E "Surrogacy and the Law: A Global Overview" *International Journal of Law, Policy and the Family* (2020) 45(3), 232, 257.

769 Eggum E "Global Legal Challenges of Cross-Border Surrogacy: A Comparative Analysis of Surrogacy Tourism" (2024) https://www.researchgate.net/publication/384458007_Global_Legal_Challenges_of_Cross_Border_Surrogacy_A_Comparative_Analysis_of_Surrogacy_Tourism (accessed 9 June 2025).

as a divine gift. Surrogates may be viewed as violating cultural norms, leading to social isolation, discrimination, or even rejection from their families and communities. [770]

3.2.7 No Psychological Support

Unlike countries like South Africa, Ghana does not require psychological assessment or counselling for surrogates or intended parents, increasing the risk of emotional distress and disputes. [771]

3.2.8 Urgency for Legal Reform

Without judicial oversight and the absence of criminal sanctions, informal surrogacy arrangements in Ghana persist, leading to ethical violations and many painful and unresolved disputes. Ghana's lack of regulations contrasts sharply with South Africa's legal framework.

4 LEGAL COMPARISON OF SURROGATE MOTHERHOOD REGULATION IN GHANA AND SOUTH AFRICA

The section below captures the main differences and similarities between the legal frameworks regarding surrogacy in these two jurisdictions. This comparison will assist in identifying the gaps in the Ghanaian legal system more accurately, which, in turn, may benefit from the provisions in the South African framework.

4.1 Legal comparative overview between legal frameworks governing surrogate motherhood regulation	
4.1.1 Differences	
Ghana	**South Africa**

[770] Odoi K "Legal and Ethical Challenges of Assisted Reproductive Technologies in Ghana" *African Journal of Law* (2020) 12(4), 89-105.

[771] Okenwa-Vincent EE "Ethics of Surrogacy: A Review of the African Perspective" in: *Bioethics from the Global South* (Springer 2025) 129-141.

Although surrogacy is recognised as an assisted reproduction practice for the purpose of the registration of births and deaths, it operates legally in a grey area, guided by fragmented legal provisions, customary practices and general health laws.[772]	Surrogate motherhood is regulated by a comprehensive statutory legal framework in the Chapter 19 of the Children's Act.
Both compensated and altruistic surrogacy occur but are not formally regulated.	This statutory framework recognises only altruistic surrogacy and prohibits commercial surrogacy.[773]
Surrogate mothers may face exploitation by agents or clinics due to lack of guaranteed standards. The artificial fertilisation of surrogate mothers is not regulated.	Surrogacy agreements must meet specific legal requirements and must be court-approved before the surrogate mother is artificially inseminated.[774] The National Health Act governs the clinical requirements relating to artificial fertilisation.
No legal eligibility criteria or requirements exist for surrogate mothers or intended parents. Selection often depends on private arrangements, clinics, or agents, increasing risks of exploitation.[775]	Strict criteria apply. A surrogate must be a suitable adult woman, have had at least one child, and not act for profit (altruistic surrogacy only). Intended parents must prove inability to conceive and suitability.[776]

772 Boamah K "Legal Dimensions of Surrogacy and Family Formation in Ghana" *International Journal of Family Law and Policy* (2023) 65, 81.

773 Children's Act 38 of 2005, section 292.

774 Children's Act 3, section 292(2); *Ex Parte WH and Others 2*011 (6) SA 514 (GNP).

775 Boamah 2023 "Legal Dimensions of Surrogacy" 65. See also Osei-Agyemang "Customary Law and Family Formation in Ghana: Implications for Modern Reproductive Technologies" 112.

776 Children's Act, sections 295(a)-295(d).

No legal framework to regulate compensation exists. Commercial surrogacy is not prohibited and is a common practice. There are no limits on compensation paid to the surrogate mother.[777]	The statutory framework provides for reasonable expenses (e.g., medical costs, loss of income), ensuring surrogacy remains altruistic. Commercial surrogacy is prohibited.[778]
Surrogate mothers are unprotected by national laws, facing risks of exploitation, inadequate compensation, and lack of health or legal support.[779]	Surrogates are protected by law, with agreements ensuring medical care, reasonable expenses, and clear terms. The court oversees the process to safeguard all parties.
Parental rights depend on court-approved processes in accordance with the Registration of Births and Deaths Act. Intended parents face uncertainty regarding custody, costs, and outcomes, relying on informal agreements.[780]	Parental rights are clearly defined. After birth, the intended parents become legal parents if the High Court has confirmed the surrogacy agreement if the requirements of the Act are complied with.
There is no regulatory oversight over the artificial fertilisation process involving the surrogate mother. Fertility clinics and agents operate without standardised guidelines, raising ethical and safety concerns. clinical procedure. Medical practitioners are guided by general ethical principles that apply to health care professionals.[781]	Strict oversight by the High Court, which reviews and approves surrogacy agreements to ensure ethical practices and compliance with the law. Artificial fertilisation of the surrogate mother may only take place after confirmation of the surrogate agreement. The provisions of the Children's Act referring to artificial fertilisation of the

777 Okenwa-Vincent EE "Ethics of Surrogacy: A Review of the African Perspective" in: *Bioethics from the Global South* (Springer, 2025) 129-141.

778 Van Wyk T "Legal Aspects of Surrogacy in South Africa" *Obiter* (2015) 32(1) 122-135.

779 Health Professions Regulatory Bodies Act 857 of 2013, s 43; see also Medical and Dental Council *Code of Ethics for Registered Practitioners in Ghana* (MDC, 2017).

780 Registration of Births and Deaths Act1027 of 2020, section 4(1)(b).

781 Health Professions Regulatory Bodies Act 857 of 2013, section 43; see also Medical and Dental Council *Code of Ethics for Registered Practitioners in Ghana* (MDC, 2017).

	surrogate mother are aligned with the Regulations relating to Artificial Fertilisation of Persons, promulgated under the National Health Act.[782]
Lack of regulation leads to exploitation, cheating by agents or clinics, and no guaranteed compensation or health protections for surrogates.	Although surrogate motherhood is well-regulated, a few challenges remain, such as lengthy and expensive court processes and high costs pertaining to artificial fertilisation.
There are no limitations that exclude intended parents who are unable to provide their own gametes to have a genetic link with the intended child.	Some limitations regarding the infertility eligibility criteria exist, which exclude infertile intended parents who are unable to provide their own gametes to establish a genetic link with the intended child.[783]
Ghana faces significant legal uncertainty in cases concerning nationality, cross-border surrogacy, and parental recognition in addressing international surrogacy complexities, due to significant gaps in oversight of and the regulation of surrogacy agreements. The need for legal reform in this area cannot enough be emphasised. [784]	Foreign intended parents who do not meet the domicile requirement in South Africa required for the confirmation of a surrogacy agreement may need to explore alternative legal avenues, such as obtaining South African residency or considering surrogacy in jurisdictions with more flexible laws.

782 National Health Act 61 of 2003, and *Regulations Relating to Artificial Fertilisation of Persons* (Government Notice R1182 in Government Gazette 10312 of 20 June 1986).

783 Children's Act 38 of 2005, section 294.

784 Boamah 2023 "Legal Dimensions of Surrogacy" 65.

Ghana's broader legal framework is shaped by religious and cultural values, with strong traditional African and other belief system influences, emphasising natural procreation and the sanctity of family structures. This underscores the resulting legal and ethical void, raising concerns about exploitation and cultural tensions with assisted reproductive technologies.	The South African broader legal framework is primarily guided by the Constitution and the Bill of Rights, informed by relevant constitutional values, which attempt to strike a balance between competing or conflicting rights, values and interests. Traditional values regarding kinship, family and assisted reproduction are recognised in so far as these are not inconsistent with the Constitution and its values. For example, in the case of *Bhe v Magistrate, Khayelitsha*,[785] the Constitutional Court struck down the rule of male primogeniture in inheritance law, citing gender equality. Transformative constitutionalism requires that customary law be developed to reflect democratic values.
Ghana is confronted with a general low public awareness regarding human rights, which is aggravated by the absence of specific surrogacy laws and the influence of a conservative cultural landscape. Without a formal surrogacy legal framework or open public discourse on the topic, many Ghanaians lack knowledge about surrogacy's implications and face limited access to educational resources.[786]	South Africa generally has an adequate level of public awareness concerning human rights and the regulation of surrogate motherhood, the latter supported by accessible legal counsel and tailored educational programs for surrogates and intended parents.

785 *Bhe and Others v Khayelitsha Magistrate and Others* [2004] ZACC 17, 2005 (1) SA 580 (CC), 2005 (1) BCLR 1 (CC) [11].

786 Adjei A "Customary Law, Inherita nce and Constitutionalism in Ghana: A Reassessment after Bhe" *Ghana Law Journal* (2021) 48(1) 10-128.

4.1.2 Similarities	
Ghana	**South Africa**
Ghanaian law recognises child welfare and the best interests of the child in legislation in the Children's Act 1998 and the Constitution. Ghana has signed and ratified the UN Convention on the Rights of the Child in 1990 but still has to fully implement the provisions of the Convention in surrogacy-related contexts.	Children's rights and the best interests of children are protected in the Constitution, the Children's Act of 2005. The Children's Act is aligned with the UN Convention on the Rights of the Child.
Reproductive autonomy is recognised in Ghana's Births and Deaths Registration Act and public health legislation. Surrogacy motherhood (both altruistic and commercial) is recognised as a form of assisted reproduction, albeit inadequately regulated and as an option to be selected in terms of reproductive autonomy.	Reproductive autonomy is recognised in the section 12 of the Constitution, the National Health Act and Regulations relating to Artificial Fertilisation, among others. Altruistic surrogate motherhood is recognised as a legal form of assisted reproduction (as an option to be selected in terms of reproductive assisted choices and reproductive autonomy).
Although Ghana does not have specific surrogacy laws, its legal system offers general protections against exploitation under broader legal principles.	The main objective of the ban on commercial surrogacy in South Africa is to prevent exploitation, whilst other laws protect against exploitation, abuse, etc. The requirements regarding the surrogate mother's informed, voluntary consent, assist in prioritising surrogates' welfare.[787]
Legal parentage for children born via assisted reproduction and surrogacy is primarily recognised under an administrative instrument, e.g the Births	The Children's Act regulating surrogate motherhood in South Africa provides clear legal parentage recognition for the

[787] Smith J and Osei R "*Ethical Challenges in Surrogacy: Comparative Perspectives from Ghana and South Africa" African Journal of Reproductive Health* (2022) 26(4), 54-71.

and Deaths Registration Act. Limited recognition exists in the Children's Act, the Marriage Act, among others, however, not as explicitly as South Africa's legal processes.[788]	intended parents or the commissioning parents.
Although both Ghana and South Africa recognises surrogate motherhood via different legal mechanisms, Ghana's fragmentary framework remains inadequate in many respects. Just like South Africa, Ghana relies on judicial interpretation of the existing general laws to fill some of the gaps, usually with reference to general family law and on a case-by-case basis. [789]	Despite a comprehensive legal framework for surrogate motherhood, South Africa's structured framework continues to improve as cases are brought to the courts to clarify statutory provisions in Chapter 19 of the Children's Act.

5 LESSONS GHANA MAY LEARN FROM THE SOUTH AFRICAN LEGAL FRAMEWORK REGULATING SURROGATE MOTHERHOOD

There are many lessons and best practices that may be derived from South Africa's legal framework for surrogacy. The frameworks in both jurisdictions are related, yet distinct. The next section will focus on lessons provided by the comparison with South Africa, whilst the discussion on the potential benefits will explore how the Ghanaian legislature can apply these lessons to improve the current legal position.

5.1 Lessons

5.1.1 Comprehensive Legal Framework

Ghana can learn from the South African surrogacy framework by adopting clear legal definitions, judicial oversight, and ethical restrictions, ensuring child welfare and minimising disputes.

788 Births and Deaths Registration Act 1027 of 2020; Children's Act 560 of 1998; Marriage Act 1884–1985 (Cap 127).

789 Boamah 2023 "Legal Dimensions of Surrogacy" 65.

5.1.2 Judicial Oversight of Agreements

Judicial oversight in surrogacy arrangements plays a crucial role in ensuring that these agreements are ethical, lawful, and in the best interests of all parties involved, particularly the child. South Africa's legal requirement that all surrogacy agreements be reviewed and approved by the High Court before conception establishes a safeguard against potential abuses and ensures transparency in the surrogacy process. By requiring court approval, South African law ensures that surrogacy agreements meet strict legal and ethical criteria. For instance, the High Court examines whether the surrogate mother fully understands her rights and obligations and whether the intended parents meet the eligibility requirements outlined in the Children's Act. Judicial scrutiny further helps to protect surrogates from coercion or exploitation. The court ensures that the surrogate's consent is informed and voluntary, as emphasised in recent analyses of South African surrogacy. The requirement for judicial oversight ensures that the surrogacy arrangements prioritise the best interests of the child, as well as constituting gatekeeper protection against unethical and unlawful practices. [790]

Ghana should consider introducing a similar judicial oversight model by following a judicial approval process for surrogacy arrangements. This mechanism would ensure that surrogacy agreements comply with national laws and ethical principles, reducing the risk of disputes and exploitation.

5.1.3 Ethico-Legal Safeguards

South Africa's prohibition of commercial surrogacy protects vulnerable women from economic coercion and ensures reproductive agreements remain ethical. Whether Ghana should adopt a purely altruistic model is a complex issue, discussed in more detail below in this chapter.

5.1.4 Parental Rights and Responsibilities

[790] Children's Act 38 of 2005, sections 292-297.

South Africa's Children's Act ensures that a High Court-approved surrogacy agreement automatically transfers legal parenthood to the intended parents at birth, preventing disputes and protecting all parties. This eliminates ambiguities in parentage and safeguards the surrogate mother from ongoing parental responsibilities. Ghana's recognition of surrogate children via the Births and Deaths Registration Act, albeit providing some legal clarity regarding legal parentage of surrogate children's status, is not a process of automatic transfer as is found under This study recommends that Ghana adopt a court-approved surrogacy model that pre-defines legal parenthood, legally extinguishes the surrogate's parental rights upon birth.

5.1.5 Prioritising the Best Interests of the Child

South Africa's framework adopts a child-centred approach that prioritises the child's best interests in all decisions regarding the surrogacy arrangements. Through the process of judicial oversight and scrutiny in reviewing and confirming surrogate agreements, the child's rights, psychological and physical well-being are protected. A stable environment from birth reduces risks linked to contested parentage or unstable caregiving. This framework that provides a seamless transfer of parenthood avoid disruptions and potential conflict in the child's upbringing.

Drawing on this model, the legislature in Ghana could integrate child-centred principles by mandating judicial review, embedding best-interest provisions in laws, monitoring post-birth caregiving, and safeguarding a stable home for the child.

5.1.6 Psychological and Medical Screening for Readiness of Surrogates and Intended Parents

South Africa's mandatory medical and psychological screening of both surrogates and the commissioning parents, the physical and mental preparedness of both the surrogate and the intended parents are considered and evaluated. Medical screenings prevent health-related complications, while psychological assessments reduce post-birth disputes and ensure emotional stability for all involved. There is no doubt that pre-conception evaluations help address potential concerns early, fostering smoother interactions during and after the surrogacy process.

It is recommended that Ghana follows the South African example by implementing mandatory screenings by qualified professionals, require court-reviewed reports, and encourage counselling sessions to emotionally and psychologically prepare all parties. These recommendations should naturally form part of a transparent and dedicated legal framework governing surrogate motherhood specifically, in terms of which courts should confirm surrogate motherhood agreements.

5.1.7 Protection of Surrogates

South Africa's surrogacy laws prioritise ethical safeguards to ensure surrogates are not vulnerable to undue influence. The South African framework also requires that the surrogate mother's consent must be given freely, without financial or social coercion. Moreover, by permitting only altruistic arrangements, surrogates are protected from potential exploitation and financial gain by intermediaries or agencies. Surrogates also have the legal right to withdraw from agreements before conception, ensuring autonomy and freedom of choice without penalties.

It is recommended that Ghana adopt similar measures by prohibiting commercial surrogacy, safeguarding surrogates from coercion, requiring informed consent and confirming that consent is obtained, as well as granting surrogates the right to withdraw to prevent undue hardship.

5.1.8 Cultural Adaptability

Legal frameworks should strive to respect deeply rooted cultural norms while safeguarding surrogate and child rights. In societies emphasising lineage and traditional family roles, such as Ghana, surrogacy can be seen as conflicting with cultural expectations, despite addressing infertility challenges. Developing a legal framework to acknowledge cultural and varied belief systems may present a challenge. In cultures where the family unit is a core societal pillar, such as in many African nations, surrogacy might be perceived as challenging traditional family roles, regarding the bond between a mother and child. For instance, in Ghana, where there is a strong cultural emphasis on biological children and bloodlines, surrogacy may conflict with societal expectations, but at the same time, it provides a solution

to infertility challenges. Thus, balancing the rights of individuals seeking surrogacy with cultural values becomes an intricate task for lawmakers.

It is in this regard that human rights considerations should guide the process to ensure fairness for surrogates and intended parents and to protect against discrimination and exploitation. [791] Persons with objections to surrogacy due to different belief systems and expectations should not stand in the way of infertile couples wishing to become parents. The availability of surrogate motherhood as an option is an option that needn't be selected by those denouncing the process. Legal systems, including Ghana, should prioritise flexible legal frameworks for surrogate motherhood, one that integrates cultural values as far as possible, whilst also upholding individual rights. This will bring Ghanaian law in line with the provisions of international human rights law, such as the UN Declaration of Human Rights which states that everyone has the right to found a family, and this includes access to reproductive technologies like surrogacy.[792]

In summary, cultural adaptability in surrogacy laws requires balancing the preservation of cultural values with the upholding of human rights principles. As surrogacy becomes more prevalent globally, countries must create legal systems that reflect both the values of their societies and the rights of individuals, ensuring that surrogacy arrangements are ethical, equitable, and free from exploitation.

6 BENEFITS FOR GHANA BY ADOPTING BEST PRACTICES FROM THE SOUTH AFRICAN FRAMEWORK

6.1 Legal Certainty

A well-defined regulatory structure establishes clear roles, responsibilities, and protections for all parties involved. South Africa's framework relies not only on enforceable contracts outlining parental rights, compensation, medical care, and post-birth legal transfers, but these agreements receive endorsement and confirmation from the High Courts. This process provides an additional layer of legal certainty to protect and safeguard surrogate mothers

791 Behrman A *"Global Perspectives on Surrogacy" International Journal of Family Law* (2020) 89-110.

792 United Nations**,** *Universal Declaration of Human Rights* (adopted 10 December 1948) UNGA Res 217 A(III) Article 16.

from exploitation and guarantees protections for children, including parentage, inheritance, and citizenship rights.

Legal clarity will reduce disputes, enhance legal security, and align with international best practices, providing a stable environment for surrogates and intended parents. Without a robust regulatory framework, surrogacy agreements may lack enforceability in court, leaving parties without effective legal remedies in the event of disputes.[793] Establishing legal certainty would address these challenges by providing clear guidelines that define the roles and responsibilities of all parties involved in surrogacy arrangements.

6.2 Fair and Transparent Processes in Surrogacy

Judicial oversight is essential for ethical and legally enforceable surrogacy agreements, ensuring transparency and preventing exploitation. In Ghana, judicial review can safeguard the rights of all stakeholders, e.g. the surrogates, intended parents, and children, by verifying consent, preventing coercion, and ensuring fair compensation and medical care. Without judicial intervention, surrogates from vulnerable backgrounds may face financial exploitation or psychological harm. Courts can ensure that agreements comply with ethical standards and that financial transactions are transparent, reducing risks of manipulation. This process is not normally built into ordinary contract concluding processes, unless the provisions of a legal agreement are challenged in court. [794]

Fair and transparent processes in Ghana would ensure that surrogacy agreements are not only fair and ethical but also backed by legal authority. It is setting that judicial oversight is essential to ensuring that surrogacy agreements in Ghana are fair, transparent, and legally binding.

6.3 Prevention of Exploitation in Surrogacy

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793 Fagbemi T *Legal Regulation of Surrogacy in Africa: Challenges and Opportunities* (Nairobi Legal Press, 2023) 45.

794 Labuschaigne M, Auret E and Mabeka N "Surrogate Motherhood Regulation in South Africa: Medical and Ethico-Legal Issues in Need of Reform" S*outh African Journal of Bioethics and Law* (2024) 17(3) 102-108.

Altruistic surrogacy, which limits compensation to medical and pregnancy-related expenses, offers a more ethical alternative by removing financial incentives and reducing the likelihood of coercion. This model prioritises the surrogate's health and emotional well-being while maintaining a transparent and ethical process.

Countries adopting altruistic surrogacy models aim to prevent exploitation while supporting individuals facing infertility. In Ghana, prohibiting commercial surrogacy could protect economically disadvantaged women from being forced into surrogacy due to financial hardship. A legal framework favouring altruistic surrogacy in Ghana would ensure better healthcare access, psychological support, and ethical safeguards. However, such a recommendation would create unintended consequences for surrogate mothers, discussed in more detail below.[795]

6.4 Establishing a Legal Mechanism for Automatic Transfer of Parenthood

The automatic transfer of parental rights is crucial in surrogacy to prevent disputes and ensure legal clarity. Without a structured legal mechanism, uncertainty over the parentage of children born through surrogacy can lead to custody battles, emotional distress, and potential exploitation. In unregulated surrogacy arrangements, surrogates may retain legal parental rights, complicate the relinquishment process and create prolonged legal uncertainties.

Ghana, lacking a comprehensive surrogacy framework, faces challenges such as custody disputes and surrogate coercion in parental rights transfers. The administrative recognition of legal parentage in Act 1027 in Ghana is a good start, but should be complemented by a comprehensive model that would ensure fair, ethical, and legally enforceable surrogacy agreements, reduce legal uncertainties and support the well-being of all involved parties.

6.5 Establishing a Child-Centred Legal Framework

[795] Van den Akker BA "Psychosocial aspects of surrogate motherhood" *Human Reproduction* (2007) 22(6), 59–165.

A child-centred legal framework in surrogacy is essential to ensure that the rights and welfare of the child are prioritised throughout the surrogacy process. Such a framework would not only secure the child's right to care and protection but also address issues related to inheritance and safeguard against discrimination. By focusing on the child's best interests, a legal system can provide clear guidelines for the protection of children's rights in surrogacy arrangements, ensuring that their welfare is at the forefront of the legal process.

A child-centred legal framework can guarantee that the child is provided with appropriate care and protection, regardless of the circumstances surrounding their birth. This includes ensuring that the child is placed in a stable, loving environment with legally recognised parents who have the ability and responsibility to provide care. In situations where the surrogate is involved, it is crucial that the child's welfare is not overlooked, and that their best interests are a key consideration in legal decisions.[796] A child-centred approach would also ensure that the child is not exposed to exploitation, abandonment, or neglect. This ensures that the child's security and well-being are not subjected to legal disputes or ambiguities.

One of the key issues in surrogacy arrangements is the question of inheritance rights. Without a clear legal framework, children born through surrogacy may face difficulties in asserting their inheritance rights if there is uncertainty about their legal parentage. A child-centered legal framework ensures that children born through surrogacy have the same inheritance rights as children born through traditional means. This can be especially important in cases where the child may need to inherit assets from the intended parents, and the legal rights of the child need to be established from birth.[797] In South Africa, children born through surrogacy are entitled to inherit from the intended parents once parentage is legally recognised. This ensures that the child is treated equally to any other biological child of the intended parents, preventing potential legal complexities related to inheritance.

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796 Boamah K "Legal Dimensions of Surrogacy and Family Formation in Ghana" *International Journal of Family Law and Policy* (2023) 65-81.

797 Oluwaseyi OO and Olatawura O "Surrogacy Agreements and the Rights of Children in Nigeria and South Africa" *Obiter* (2021) 42(1) 20-41.

Children born through surrogacy arrangements are at risk of discrimination if their parentage is disputed or unclear. This can lead to stigma or social exclusion in societies where non-biological parenthood is not fully accepted. A child-centred legal framework would ensure that children born through surrogacy are protected from discrimination by affirming their right to be treated equally to any other children, regardless of the circumstances of their birth. The legal framework would provide a clear, unequivocal statement of the child's right to be recognised as the legal offspring of the intended parents, ensuring that they are not subject to social stigma.

6.6 Role of Psychological and Medical Screenings

A robust legal framework governing surrogacy must prioritise the principle of informed participation, ensuring that all parties are adequately prepared for the physical, emotional, and legal complexities involved. To achieve this, the framework should mandate comprehensive medical and psychological screenings, which serve as essential safeguards for the integrity and ethical soundness of the surrogacy process.

Medical screenings are critical for evaluating the physical readiness of surrogates and the reproductive suitability of intended parents, particularly where assisted reproductive technologies are concern. These assessments help identify potential health risks, ensure safe pregnancy conditions, and inform both parties of their medical responsibilities, thereby minimising complications and enhancing outcomes for the child. This process typically includes assessing the surrogate's general health, reproductive history, and the absence of medical conditions that could complicate the pregnancy, such as hypertension or gestational diabetes.

Psychological evaluations are equally indispensable. Surrogate mothers must be assessed for emotional resilience and mental preparedness to navigate challenges such as prenatal bonding and post-birth separation. Intended parents benefit from similar evaluations to address issues such as infertility trauma, emotional attachment to the surrogate, and readiness for non-traditional parenthood. Such screenings affirm emotional stability and ensure a nurturing post-birth environment for the child. These evaluations assess mental health history, emotional readiness, and potential risks like anxiety or PTSD, ensuring

surrogates are prepared for the psychological demands of the process. Neglecting these aspects can lead to negative outcomes.

By incorporating comprehensive screenings into the legal framework, Ghana can create a more supportive environment for all parties involved in surrogacy, minimising risks and maximising the potential for a positive outcome for both the child and the families involved.

6.7 Empowering Women in Surrogacy Arrangements

Empowering women in surrogacy is critical to ensuring that their participation is voluntary, informed, and legally protected. In contexts such as Ghana, where economic vulnerability may drive women into surrogacy, strong legal safeguards are essential to prevent exploitation and coercion.

Key protections, drawn from the South African legal framework, include:

- Transparent financial arrangements, guaranteeing fair compensation for surrogates' physical and emotional investment.
- Mandatory informed consent, supported by accessible information on medical, psychological, and legal implications.
- Legal rights to withdraw from agreements without penalty, safeguarding autonomy.
- Comprehensive psychological and medical support, including pre-conception counselling, regular health assessments, and post-birth emotional care.

6.8 Cultural Harmony in Surrogacy

The effective implementation of surrogacy laws in Ghana requires a balance between ethical protections and respect for cultural and religious values. Given the country's strong emphasis on family, lineage, and traditional notions of parenthood, surrogacy may face resistance if perceived as conflicting with cultural norms. To foster acceptance and legitimacy, the following are critically important:

- Legal frameworks should reflect Ghanaian values,[798] especially the importance of family integrity and community involvement in reproductive decisions.
- Ethical standards must be communicated in culturally appropriate ways, promoting informed, voluntary participation and discouraging the commodification of women's bodies. Culturally sensitive legal frameworks for surrogacy again can reduce societal resistance by fostering public trust and understanding, particularly through public education campaigns tailored to community values. Laws that reflect an awareness of cultural and religious concerns are more likely to gain acceptance, especially when religious and community leaders are actively engaged in discussions.
- The rights of children, including inheritance, citizenship, and protection from discrimination, must be enshrined, aligning with local norms that prioritise child welfare.
- Engaging religious and community leaders in public education and legal dialogues may assist to build trust and reduce societal opposition. A culturally attuned, ethically grounded legal approach would help Ghana develop a surrogacy system that is both socially acceptable and protective of all stakeholders, particularly women and children. Culturally sensitive laws allow for the incorporation of ethical standards that consider both global best practices and local cultural norms. For example, while international surrogacy guidelines generally advocate for non-commercial surrogacy to avoid the commodification of women's bodies, these ethical standards would need to be communicated in a way that respects the traditional Ghanaian communities' understanding of fairness and altruism in Ghana. Such a legal framework would protect the surrogate mother from exploitation, ensuring that her participation is voluntary and informed, while also respecting the cultural notion of generosity within the context of family.

7 SOUTH AFRICA'S ALTRUISTIC SURROGACY MODEL: A PANACEA FOR SURROGACY IN GHANA?

It has to be acknowledged that despite South Africa's comprehensive and structured altruistic surrogacy framework, applying some of the elements of the South African

[798] Thaldar D "The Regulation of Surrogacy in South Africa: Constitutional and Legal Perspectives" *Tydskrif vir Hedendaagse Romeins-Hollandse Reg* (2020) 467-473.

framework in Ghana would require careful adaptation to the country's unique socio-cultural, ethical, and legal context, with the result that not all the features may be directly transferable or adaptable to the Ghanaian context.

Key factors to consider include Ghana's prevailing societal attitudes towards surrogacy, which may differ significantly from South Africa's, and the potential challenges in aligning South African regulations with Ghana's legal system. Thus, while South Africa's framework serves as a useful model, Ghana must tailor it to fit its local, social and cultural context. One key challenge that arises is the adoption of an altruistic surrogacy model in Ghana, considering the position of some indigent Ghanaian women whose objective is to become surrogate mothers because of the financial benefit this may offer. The next section will explore this challenge in more detail.

7.1 Adopting the South African Altruistic Model in Ghana

While commercial surrogacy is not formally recognised or regulated in Ghana, anecdotal reports suggest that some surrogacy arrangements are commercial in nature. These arrangements typically occur outside legal oversight, exposing both surrogates and intended parents to legal and ethical uncertainties.[799] Surrogates may receive financial compensation, differentiating these arrangements from altruistic models. Commercial surrogacy in Ghana is generally conducted through private agreements, often facilitated by fertility clinics, and not widely publicised, for it raises concerns. Should Ghana adopt South Africa's altruistic framework, modifications may be needed to reflect local socio-economic conditions. A hybrid model, combining regulated compensation with ethical and cultural safeguards, could offer a practical, inclusive solution. Involving religious and community leaders in shaping this framework is essential to ensure legitimacy and broader public support.

7.2 Challenges with the Adoption of South Africa's Surrogacy Framework in Ghana

[799] Boaheng I "Theological and Ethical Reflections on Surrogacy from an African Perspective" *International Journal of Social Science Research and Review* (2022) 5(5), 277-288.

Adopting South Africa's surrogacy framework in Ghana would require adjustments to account for the country's unique socio-political and cultural context. Ghana's deeply religious and culturally conservative society, where family structures emphasise biological procreation and marital unity, may lead to resistance against surrogacy. In contrast, South Africa has a more liberal stance on reproductive rights.[800] The religious influences in Ghana, such as Christian and Muslim views, present a potential conflict with surrogacy practices.

Altruistic surrogacy is generally more acceptable because it aligns with values of compassion and sacrifice, whilst commercial surrogacy may be reviewed as a commodification of human life. This religious disapproval creates tension between an altruistic vis-à-vis a commercial surrogacy model.[801] Both surrogacy models may pose a risk of stigma for the surrogate mother, who may be judged for carrying another person's child.[802]

Ghana's economic challenges, underdeveloped healthcare and legal systems could hinder the adoption of South Africa's surrogacy framework. While South Africa's model benefits from a robust healthcare and judicial infrastructure, Ghana's lower income levels and lack of financial support for surrogacy may limit access for many families.\ Commercial surrogacy often attracts foreign clients, creating a "baby market" that prioritises profit over ethics. This scenario risks commodifying Ghanaian women and children, which could lead to international scrutiny and reputational harm to Ghana. Additionally, Ghana's legal system lacks the necessary infrastructure, such as specialised family law court to manage surrogacy cases effectively. Implementing South Africa's model in Ghana would require significant reforms, including training legal professionals and building expertise in family law.[803]

Given the above challenges, a hybrid surrogacy model in my view would be more feasible for Ghana. Such a model could introduce regulated compensation for surrogates without turning surrogacy into a profit-driven industry. It should aim to balance cultural and religious

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800 Thaldar D and Van der Westhuizen A "South African Surrogacy Law: Uncertainty for Foreign Intended Parents" *Tydskrif vir Hedendaagse Romeins-Hollandse Reg* (2020) 83, 467-473.

801 Turner N and Götmark F "Human fertility and religions in Sub-Saharan Africa: A comprehensive review of publications and data, 2010–2020" *African Journal of Reproductive Health* (2023) 27(1),181-195.

802 Odoi K "Legal and Ethical Challenges of Assisted Reproductive Technologies in Ghana" *African Journal of Law* (2020) 12(4), 89-105.

803 Van Wyk T "Legal Aspects of Surrogacy in South Africa" (2015) 32(1) *Obiter* 122-135.

expectations with the practical needs of infertile couples and to ensure comprehensive legal protection for all parties involved.[804] Customising the framework to include psychological support and fair compensation for surrogates would also help protect the parties involved and address the complexities of surrogacy. The solution lies in a balanced approach, underpinned by a robust legal framework, is necessary to address these challenges and ensure ethical, equitable, and sustainable surrogacy practices.[805]

8 SOME POINTERS FOR DEVELOPING AN AUTHENTIC SURROGACY LEGAL FRAMEWORK FOR GHANA

Ghana's surrogacy regulation needs to be comprehensive to suit the country's demand. It should include the relevant ethical, legal, medical, and cultural considerations to safeguard the rights and welfare of surrogates, intended parents, children, and society. By taking a holistic approach and learning from established frameworks, like South Africa, Ghana may start to develop a balanced and effective surrogacy system, irrespective of the challenges identified in this thesis.

8.1 Legal Clarity and Comprehensive Framework

Establishing clear surrogacy laws is essential to address uncertainties surrounding parental rights, inheritance, and the legal status of children born through surrogacy. These laws must define legal parenthood, outline the transfer of parental rights, and safeguard the child's rights to inheritance and nationality. A comprehensive framework should include mechanisms to recognise intended parents' roles, minimising disputes and protecting all parties involved, particularly the child. To oversee compliance and ethical practices, Ghana should create an independent regulatory body. This entity would monitor fertility clinics, ensure surrogates' rights, and manage disputes through mediation or arbitration, promoting transparency and fairness in surrogacy arrangements.

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804 Mensah-Bonsu H and Osei Y "The Legal Vacuum in Ghana's Surrogacy Practices" *Law and Policy Review* (2023) 20, 189-104.

805 Frimpong J "Exploring Ghana's Legal Framework on Assisted Reproductive Technologies" *Ghana Legal Studies Review* (2021) 12(2), 145-162.

8.2 International Considerations and Cross-border Surrogacy

Ghana's surrogacy legislation must consider the growing potential for international surrogacy arrangements, as the country's hitherto lenient regulations have attracted intended parents from abroad. To ensure clarity and fairness, the law should address key issues such as citizenship and nationality. It is imperative to explicitly define the legal status of children born through international surrogacy, guaranteeing their right to either Ghanaian citizenship or the citizenship of their intended parents.

Furthermore, the legislation should establish clear frameworks for addressing cross-border legal disputes, particularly those involving parental rights, custody, or other conflicts arising from the involvement of parties from different jurisdictions. By incorporating these provisions, Ghana can ensure that its surrogacy laws remain equitable, robust, and capable of addressing the complexities of international surrogacy.

8.3 Ethical and Moral Considerations

Ghana's surrogacy regulation must carefully consider the ethical implications of surrogacy in light of the country's cultural and religious values. To gain public acceptance, the law must address key ethical concerns.

The law must include robust protections to prevent surrogates, especially vulnerable women, from being coerced or exploited due to financial or social pressures. Ghana's surrogacy regulations should mandate psychological counselling, medical care, and informed consent procedures before any surrogacy arrangement. Both surrogates and intended parents must undergo psychological screening and counselling to address emotional and psychological risks. Ongoing psychological care should be provided throughout the process, including post-delivery support. The regulation must also prioritise the well-being of children born through surrogacy, ensuring their legal protection, inheritance rights, and access to information about their biological parents. This approach ensures that all parties, the surrogates, intended parents, and children, are supported physically, emotionally, and legally.

8.4 Gender Equality and Empowerment of Women

Ghana's surrogacy framework should empower women by ensuring that they are not coerced into surrogacy due to financial pressures but can make informed and voluntary decisions. The law must uphold gender equality and protect women's autonomy, preventing exploitation. Empowerment programs should educate women about their rights in surrogacy arrangements. The regulations should also ensure fair compensation for surrogates and prohibit coercion, drawing from South Africa's model of voluntary surrogacy to uphold women's dignity and promote ethical practices.[806]

Given Ghana's economic context, surrogacy regulations must ensure that surrogates are compensated for medical expenses and other reasonable expenses, including inconvenience and loss of income. If the Ghanaian legislator considers allowing commercial surrogacy, the law should establish reasonable compensation standards and compensation limits to ensure surrogates are neither underpaid nor coerced into surrogacy due to financial pressure of financial gain. Many women in Ghana may consider surrogacy out of economic necessity, so it is crucial to protect them from financial exploitation. The regulation should ensure fair, respectful compensation that acknowledges the surrogate's dignity while preventing the commercialisation of the practice.

8.5 Religious and Cultural Sensitivity

Ghana's surrogacy regulation must respect religious and cultural beliefs about reproduction and family status while ensuring ethical, legally protected surrogacy arrangements. The government should engage with religious leaders and cultural stakeholders to create a law that is both culturally sensitive and widely accepted. Public awareness campaigns are essential to educate the population on the benefits, risks, and ethical considerations of surrogacy, fostering understanding and informed decision-making across diverse communities.

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806 Barnes T et al "Legal and ethical challenges in assisted reproductive technology practice in Ghana" *Ghana Medical Journal* (2024) 58(1) 78–85

Given the strong influence of religion and culture on public attitudes toward surrogacy in Ghana, it is essential to consult religious and cultural leaders during the development of surrogacy regulations. This will help create a law that is culturally sensitive, inclusive, and addresses ethical concerns. The government should engage with religious organisations, especially Christian and Muslim communities, to balance ethical issues with cultural beliefs. Additionally, public awareness campaigns led by these leaders should clarify the benefits, risks, and ethics of surrogacy, reduce stigma and promote informed discussions. This approach will foster an ethically sound surrogacy framework in Ghana.

8.6 Medical Oversight and Regulation

Ghana should implement comprehensive surrogacy regulations to safeguard the health, rights, and well-being of surrogate mothers and children. These regulations should require certified professionals to conduct surrogacy procedures, ensure holistic medical and psychological care for surrogates, and prioritise post-delivery support. Accredited fertility clinics must adhere to strict ethical and medical standards, overseen by a central regulatory authority. The law should include public health surveillance to monitor outcomes, protect surrogates' rights to informed consent and withdrawal, and address their long-term health and emotional needs. By integrating surrogacy into national health insurance policies, Ghana can promote ethical practices, equitable healthcare access, and the well-being of all stakeholders while aligning with public health objectives.

In a nutshell, developing a surrogacy framework in Ghana again requires balancing societal values with individual rights while addressing legal, ethical, financial, psychological, and cultural concerns. Drawing from South Africa's model, Ghana can craft a culturally appropriate framework that protects surrogates, safeguards children's rights, and provides legal clarity for intended parents. Public engagement, legislative reforms, and the integration of surrogacy into national health policies will ensure the framework aligns with Ghana's socio-economic realities while promoting equitable and ethical surrogacy practices.

8.7 Involvement of the Appropriate Stakeholders in the Drafting of Surrogacy Regulation

The involvement of the relevant stakeholders in the development of the surrogacy legal framework process is essential for the development of comprehensive, ethical, and socially acceptable surrogacy regulations in Ghana. Ensuring inclusivity in the regulatory process while excluding entities like unregulated fertility centres or commercial agencies, whose primary motive may conflict with ethical principles, is critical to safeguarding the integrity of surrogacy practices. The individuals and groups involved in creating such a framework should demonstrate that they have the necessary interdisciplinary expertise, cultural competence, and public trust to ensure robust, balanced, and well-rounded regulations. The role of some of the relevant stakeholders is outlined below.

8.7.1 Legal Experts and Lawmakers

Legal experts and lawmakers are essential in designing surrogacy regulations that are constitutionally compliant, enforceable, and aligned with international human rights standards. Their specialised knowledge is vital for identifying and resolving legal loopholes that could undermine the law's fairness and effectiveness. Furthermore, they ensure that surrogacy laws are seamlessly integrated with existing family, inheritance, and child rights statutes, promoting legal clarity and reducing potential conflicts. By tailoring these regulations to Ghana's unique legal framework while adhering to global best practices in reproductive rights, legal professionals may provide a balanced and robust foundation. In contrast, involving individuals with commercial interests, such as private fertility agents or unregulated surrogacy brokers, may present significant risks.

The risks involving private fertility agents or unregulated surrogacy brokers are that they may prioritise financial gain over the rights and welfare of surrogates, intended parents, and children. Such involvement could lead to exploitative practices, commodification of reproductive services, and failure to protect children's welfare adequately.[807] Furthermore, allowing these role players to dominate the regulatory process creates the risk of potential conflicts of interest, the erosion of public trust, and undermining the framework's integrity. Regulatory frameworks must be developed by legal professionals in conjunction with experts in the relevant field to mitigate these risks and prevent ethical breaches or adverse

[807] Whittaker *A Reproduction and Responsibility: Global Perspectives on Assisted Reproductive Technologies* (Routledge 2022) Chapter 2.

outcomes. Excluding commercial interests from the regulatory process also ensures that laws remain focused on protecting human dignity and promoting equitable practices.

8.7.2 Medical Professionals and Bioethicists

Medical professionals and bioethicists are indispensable in developing surrogacy regulations that uphold rigorous health and safety standards for surrogate mothers, intended parents, and children. Medical professionals contribute their scientific expertise by establishing protocols that prioritise the physical and mental well-being of surrogates while ensuring that fertility clinics maintain high clinical standards.[808] Complementing this, bioethicists may address the ethical challenges surrounding surrogacy, offering balanced solutions that integrate medical advancements with moral and social values. Together, they work to prevent exploitative medical practices, ensure the ethical treatment of all involved parties, and enforce strict licensing and accountability measures for fertility clinics. This collaboration ensures that surrogacy regulations are both scientifically robust and ethically sound.[809]

As Sachedina highlights,[810] biomedical ethics frameworks should be developed by impartial experts, including medical professionals and bioethicists, to mitigate the undue commercialisation of reproductive technologies. Such impartiality is essential to safeguarding the rights, health, and dignity of all parties involved.

8.7.3 Religious Leaders and Cultural Authorities

Religious and cultural leaders play a pivotal role in Ghanaian society, where moral and ethical standards are deeply intertwined with religious and cultural values. Their involvement in shaping surrogacy laws is essential to ensure that these regulations align with the beliefs and traditions of the population, thereby promoting public acceptance and compliance. Religious leaders, such as representatives from the Christian Council of Ghana and the Office of the Chief Imam can offer valuable perspectives on moral issues related to surrogacy, including the sanctity of human life, the preservation of lineage, and the ethical

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808 Sachedina A *Islamic Biomedical Ethics: Principles and Application* (Oxford University Press (2009) 171, 200.

809 Sachedina 2009 *Islamic Biomedical Ethics: Principles and Application* 171.

810 Sachedina 2009 *Islamic Biomedical Ethics 200* .

concerns surrounding the commodification of reproduction. Cultural leaders complement this by providing insights into traditional views on family structures and community relationships. Together, they can help bridge the divide between contemporary legal systems and the moral foundation of Ghanaian society.

Excluding religious and cultural leaders in favour of purely secular voices may risk alienating significant segments of the population who regard religious and cultural doctrines as authoritative. A surrogacy law perceived as inconsistent with moral or cultural principles may face widespread resistance, undermining its effectiveness and legitimacy. Without their endorsement, the law could be viewed as an imposition of foreign or disconnected ideals, leading to non-compliance and erosion of trust in the legal system. The pivotal role of religious and cultural institutions in Ghana as arbiters of ethical guidance must be prioritised, emphasising their influence in shaping public attitudes toward modern reproductive technologies and fostering societal acceptance of ethical frameworks.

8.7.4 Women's Rights and Child Welfare Advocates

Advocates for women's rights and child welfare play an essential role in shaping surrogacy regulations that prioritise the protection of vulnerable populations. They focus on ensuring that surrogate mothers, particularly those from economically disadvantaged backgrounds, are not exploited or coerced into surrogacy arrangements. These advocates promote fairness in compensation, informed consent, and equitable treatment throughout the surrogacy process. Additionally, they work to ensure that children born through surrogacy are legally recognised, protected, and provided with the necessary care and rights within Ghana's legal framework. Their involvement helps create a law that upholds ethical principles, mitigates power imbalances, and ensures that surrogacy arrangements serve the best interests of all parties involved.[811]

The absence of women's rights and child welfare advocates in favour of profit-driven entities, such as commercial agencies and unregulated intermediaries and presents serious ethical and social challenges. Without the involvement of these advocates, surrogacy

[811] Frimpong J "Exploring Ghana's Legal Framework on Assisted Reproductive Technologies" *Ghana Legal Studies Review* (2021) 12(2) 160-162.

legislation risks overlooking crucial issues such as fair compensation, psychological support, and safeguards against coercion or abuse. Excluding women's rights and child welfare advocates from the process of developing surrogacy regulations may clearly reinforce systemic power imbalances, heighten the likelihood of exploitation and leave children inadequately protected.

8.7.5 Sociologists and Psychologists

Sociologists and psychologists are integral to addressing the multifaceted emotional, psychological, and societal impacts of surrogacy on all parties involved. Psychologists contribute by developing frameworks for providing comprehensive counselling to surrogate mothers and commissioning parents, ensuring informed consent, emotional preparedness, and mental well-being throughout the surrogacy journey. Sociologists examine the broader societal implications, including how surrogacy reshapes family dynamics, influences societal norms, and impacts public acceptance of assisted reproductive technologies. Their expertise ensures that surrogacy arrangements consider the human and societal dimensions, fostering practices that are ethically and emotionally sound.[812]

Excluding sociologists and psychologists' risks neglecting the psychological and social complexities of surrogacy, potentially leading to emotional distress for surrogates, commissioning parents, and children born through surrogacy. The importance of psychosocial support in surrogacy arrangements is critical, highlighting that its absence can exacerbate emotional harm for both surrogates and commissioning parents.[813] The inclusion of trained professionals ensures that surrogacy is conducted in a manner that safeguards the psychological and social well-being of all parties involved.

In short, if legal experts, medical professionals, religious leaders, women's rights advocates, psychologists, and sociologists are provided with the opportunity to be part of any formulation of the legal framework for a surrogacy arrangement, it will ensure the creation of a balanced, ethical, and practical surrogacy regulation that will reflect Ghana's unique legal, cultural, and societal context. By engaging these credible and multidisciplinary

812 See in general, |Teman E *Birthing a Mother: The Surrogate Body and the Pregnant Self* (University o of California Press 2010) Chapters 2, 5 and 6.

813 Teman 2010 *Birthing a Mother* Chapter 5.

stakeholders, Ghana can establish a surrogacy law that is constitutionally sound, ethically rigorous, and culturally sensitive, fostering public trust and compliance while addressing the complexities of surrogacy in a holistic and equitable manner.

9 A MODEL SURROGATE MOTHERHOOD FRAMEWORK FOR GHANA

Based on Ghana's existing legal landscape, particularly the Registration of Births and Deaths Act, 2020 (Act 1027), and drawing from the South African comparative surrogacy framework, this thesis proposes the following broad legal framework for the regulation of surrogate motherhood in Ghana. Not all of the recommendations below have been canvassed in this thesis, as the premise of this thesis is to make suggestions for consideration in future. It is hoped that these points may encourage further research on the unexplored recommendations below.

9.1 Legal Definition and Scope

- Surrogacy shall be defined as an arrangement where a woman (the surrogate) agrees to carry and give birth to a child on behalf of another person or couple (the intended parent(s)).
- The law shall distinguish between:
    - Altruistic surrogacy: where no financial gain is involved beyond reasonable expenses.
    - Compassionate surrogacy (hybrid model): where regulated compensation is permitted for time, health risks, and inconvenience.
    -

9.2 Eligibility Criteria

For the Intended Parents:

- Must be Ghanaian citizens or legal residents or foreign intended parents domiciled in Ghana.
- Must be medically certified as unable to conceive or carry a pregnancy.
- Must undergo psychological evaluation and counselling.

For Surrogates:

- Must be between 21 and 35 years old.
- Must have given birth to at least one child.
- Must pass prescribed medical and psychological screenings.
- Must provide informed, written consent without coercion.
- Spouses or partners of the surrogate mothers should also consent to the procedure.

9.3 Legal Recognition of Parentage

- Pre-Birth Parental Orders: Intended parents must apply to the High Court within 12 weeks of embryo or gamete transfer or the artificial fertilisation of the surrogate mother. If granted, this order designates them as the legal parents at birth.
- Post-Birth Parental Orders: If no pre-birth order exists, intended parents may apply within 6 months after birth to be legally recognised.
- The surrogate shall not be recognised as the legal mother unless no parental order is granted.

9.4 Surrogacy Agreement Requirements

- All surrogacy arrangements must be formalised in a written agreement and approved by a High Court before embryo transfer or artificial fertilisation.
- The agreement must include:
    - Consent of all parties.
    - Terms of medical care, compensation, and parental rights.
    - A clause affirming the surrogate's right to withdraw before artificial fertilisation of embryo transfer.

9.5 Compensation and Financial Regulation

- Altruistic and controlled commercial surrogacy shall allow reimbursement for:
    - Medical expenses.
    - Travel and accommodation.
    - Loss of income due to pregnancy-related health issues.
- A regulated compensation cap may be introduced under a hybrid system of compassionate surrogacy to prevent exploitation while acknowledging the

surrogate's contribution on terms that are reasonable and acceptable, to be determined by the legislator. The word "commercial" has a negative connotation and should not be equated with my reference to "compassionate" surrogacy, which allows for some form of compensation in addition to those costs mentioned above under the traditional altruistic model. The introduction of a compassionate model in Ghana is discussed in the final section of this chapter.

9.6 Medical and Psychological Safeguards

- Mandatory pre-conception counselling for all parties.
- Psychological and medical health screening before conclusion of a surrogate agreement.
- Regular medical check-ups and mental health support throughout the pregnancy and post-birth.
- Clinics and agencies must be licensed and monitored by a national regulatory body.

9.7 Ethical and Cultural Considerations

- Surrogacy laws must respect Ghanaian cultural values, including family integrity and community involvement.
- Religious and traditional leaders should be consulted in public education campaigns to reduce stigma and promote understanding.

9.8 Regulatory Oversight

- Establish a National Surrogacy Regulatory Authority (NSRA) in Ghana, responsible for:
    - Licensing of surrogacy agencies and fertility clinics.
    - Maintaining a registry of surrogacy agreements.
    - Monitoring compliance and investigate complaints.

9.9 Child Protection Provisions

- Children born through surrogacy must have:
    - Equal rights to inheritance, nationality, and legal recognition.

- Protection from discrimination under Ghana's Children's Act and international conventions.

9.10 Confidentiality and Data Protection

- All personal and medical information related to surrogacy agreements and children born as a result must be kept confidential.
- Access to records shall be restricted, with disclosure permitted only under court order or with informed consent of the parties involved.

This framework builds on Ghana's existing legal foundation under Act 1027, while integrating ethical safeguards, cultural sensitivity, and international best practices.

10 A RECOMMENDED QUASI-COMMERCIAL FRAMEWORK FOR GHANA

Ghana currently permits both altruistic and commercial surrogacy in practice, with a stronger presence of commercial arrangements, but lacks a formal legal framework to regulate them. To address this, Ghana should adopt a balanced legal approach that includes formal recognition of "commercial" surrogacy, clear parentage laws, regulatory oversight, and a national policy distinguishing between altruistic and commercial surrogacy. Therefore, a quasi-commercial or compassionate framework is recommended to cater for both surrogacy arrangements.

10.1 Definition and Scope

- Compassionate (or quasi-commercial) surrogacy shall be defined as a legal arrangement where a woman agrees to become pregnant and deliver a child for a foreign or Ghanaian intended parent(s) in exchange for the pre-determined and capped monetary compensation beyond reimbursement for reasonable expenses.
- An altruistic surrogacy shall be defined as a legal arrangement where a woman agrees to become pregnant and deliver a child for a foreign or Ghanaian intended parent(s) for compensation not beyond reimbursement for reasonable expenses.

10.2 Altruistic and Compassionate Surrogacy

I submit that the Ghanaian legislator consider including both surrogacy options below:

- Permit commercial surrogacy with regulated compensation and safeguards (e.g., through licensing and caps), and
- Permit altruistic arrangements

Boundaries:

- The legal boundaries between **altruistic and compassionate surrogacy** should be determined through a national reproductive health law or policy.

10.3 Eligibility of Surrogates and Intended Parents

Intended Parents:

- Must be a Ghanaian or foreigner.
- Must be adult (21+), medically certified as infertile or unable to safely carry a pregnancy, and undergo psychological screening in a designated fertility clinic possibly through an independent Surrogacy Review Board.

Surrogates:

- Must be between 25 and 35 years old.
- Must be a Ghanaian or foreigner, have had at least one successful live birth, be medically and psychologically fit, and not be economically vulnerable.
- Require independent legal representation for both parties.
- Must provide written informed consent without duress or undue influence.
- Spouses or partners of the surrogate must consent to the procedure

10.4 Legal Parentage Order

Pre-birth Parentage Orders:

- Intended parent(s) must apply within 12 weeks of embryo or gamete transfer or the artificial fertilisation of the surrogate mother to a family or High Court.
- One of the intended parents must be genetically linked to the child. Where it is impossible, they could resort to other gamete donors.
- The surrogate must waive parental rights prior to embryo transfer, subject to judicial confirmation.
- If confirmed by the family or High Court, the intended parent(s) become the legal parents of the child at birth. If the family or High Court declines confirmation, the surrogate mother becomes the legal parent of the child.

Post-birth Parentage Order:

- Where there is no pre-birth order, intended parent(s) may apply within 6 months after birth to be the legal parent(s).

10.5 Domicile and Cross-Border Surrogacy

- Any surrogacy conducted in Ghana must fall under Ghanaian law, regardless of the intended parents' nationality.
- Surrogates domiciled in Ghana would anchor local legal jurisdiction.
- Ghana should have immigration, parentage, and citizenship protocols for children born to foreigners through surrogacy.

10.6 Surrogacy Agreement Requirements

- There must be a written surrogacy agreements reviewed and approved by the High Court court prior to conception.
- Agreements must have:
    - Medical procedures,
    - Compensation terms,
    - Legal responsibilities,

    - Post-birth custody and parentage transfer,
    - Dispute resolution clauses on surrogate's right to withdraw before artificial fertilisation or embryo transfer.
    - The legal consequences of the surrogate's withdrawal, including that of the intended parents, from the agreement should be explained in the agreement.
- It should prohibit any clauses that coerce or exploit the surrogate.

10.7 Compensation

- Allow reasonable compensation for the surrogate's time, effort, lost income, and risks, regulated through a fixed compensation structure.
- Payments is to be managed through licensed agencies or legal custodial accounts to avoid exploitation.
- A cap total allowable compensation may be introduced to require transparency and receipts for all expenses.

10.8 Medical and Psychological Safeguards

- This must require:
    - Full medical screening for both parties,
    - Access to counselling and mental health support before, during, and after pregnancy,
    - Informed consent from the surrogate and intended parents.
- All procedures must take place in a certified fertility clinics regulated by the Ministry of Health.
- Clinics and agencies must be licensed and monitored by a national regulatory body.

10.9 Ethical and Cultural Oversight

- Surrogacy laws must collaborate with faith-based organisations, traditional authorities, and women's groups to align surrogacy practices with Ghanaian values, including family integrity and community involvement.

- Religious and traditional leaders should be consulted in public education campaigns to reduce stigma and promote understanding.
- Surrogacy laws must prohibit commercial surrogacy that:
    - Involves coercion or trafficking,
    - Offends cultural or religious norms.

10.10 Regulatory Oversight

- Establish a Surrogacy Regulatory Authority under the Ministry of Gender, Children, and Social Protection to:
    - License and monitor surrogacy clinics and agencies,
    - Maintain a national registry of surrogacy arrangements,
    - Enforce compliance and handle complaints.

10.11 Children's Rights Provisions

- Ensure the best interests of the child guide every surrogacy arrangement.
- These require:
    - Mandatory health insurance for the child,
    - Protection of the child's right to know their origins (when legally permissible),
    - Monitoring of child welfare post-birth by the Department of Social Welfare.

10.12 Confidentiality

- Surrogacy laws must protect the privacy of all parties through strict data protection laws.
- A confidential national surrogacy database accessible only to authorised officials should be established.
- Penalties for unauthorised disclosure of personal or medical information should be introduced and enforced.

10.13 Criminal and Civil Penalties

- Surrogacy laws must define penalties for violations such as: unapproved commercial arrangements, false consent, or coercion. Enforcement provisions are critical to protect vulnerable women and prevent trafficking or exploitation.
- Surrogacy agreements must include dispute resolution clauses to give the surrogate mother and the intended parents, when disputes arise, the option to either go to court or resort to mediation, arbitration, negotiation or conciliation for possible solution.

10.14 Limitations for Ghana to Consider

The Ghanaian legislator should be cognisant of the following:

- How to address weaker regulatory oversight and the risk of informal, unregulated arrangements.
- How to balance cultural sensitivities with legal reforms concerning kinship, lineage, and motherhood.

To sum up, the current Births and Deaths Registration Act, modified to embrace surrogacy, is not comprehensive enough. As a result, it should be strengthened by a family law statute to include the suggested model to serve as a comprehensive framework for both altruistic and compassionate surrogacy, depending on the desires of intended parents in Ghana. Ghana's quasi-commercial surrogacy framework suggested above, should balance reproductive rights, ethical safeguards, and cultural sensitivity, ensuring fairness, transparency, and the protection of all parties including the child. It must be integrated with Ghana's broader legal system and public health framework, offering a clear path to legal parenthood while preventing abuses and exploitations.

11 CONCLUSION

The comparative overview of surrogacy regulation in South Africa and Ghana underscores the profound divergence between a jurisdiction with a comprehensive statutory framework and one still navigating fragmented provisions and customary practices. South Africa's Children's Act, reinforced by judicial oversight and constitutional principles, offers legal certainty, ethical safeguards, and inclusivity, albeit tempered by strict eligibility

requirements, financial barriers, and limited post-birth support. Ghana, by contrast, relies on a patchwork of constitutional guarantees, family law statutes, and customary norms, which provide some recognition of parental rights and child welfare but leave surrogacy arrangements vulnerable to exploitation, uncertainty, and cross-border complications.

This analysis reveals that while Ghana's framework demonstrates sensitivity to cultural values and the best interests of children, its lack of a dedicated surrogacy law perpetuates risks for surrogate mothers, intended parents, and children born through such arrangements. The reliance on informal agreements and advocacy-driven practices highlights the urgency of reform. Drawing lessons from South Africa's structured approach, Ghana can benefit from codifying clear eligibility criteria, judicial oversight, and protections against exploitation, while tailoring its framework to local sociocultural realities.

This chapter also illustrates that effective surrogacy regulation must balance ethical imperatives, child welfare, and reproductive autonomy with cultural legitimacy and accessibility. For Ghana, the path forward lies in adopting a coherent, rights-based framework that integrates constitutional protections, international standards, and customary values, thereby ensuring that surrogacy arrangements are transparent, equitable, and aligned with both national priorities and global best practices. To ensure acceptance and effectiveness, Ghana's surrogacy framework should be developed collaboratively with local cultural and religious leaders, safeguarding the rights of all parties while respecting traditional values. Furthermore, a Ghanaian surrogacy law must address critical areas such as informed consent, parental rights, fair compensation, and comprehensive medical and psychological support for all parties.

Drawing inspiration from South Africa, Ghana should implement mandatory screening processes for surrogates and intended parents and establish robust post-surrogacy support systems. Fair compensation mechanisms should be designed to prevent the exploitation of economically vulnerable surrogates while upholding their dignity and rights. To ensure effective oversight and compliance, Ghana could consider establishing an independent regulatory body tasked with monitoring surrogacy arrangements. This body could be responsible for supervising fertility clinics, enforcing ethical standards, and resolving disputes fairly and efficiently. Transparent processes for addressing complaints and

resolving conflicts are essential to safeguard all participants, particularly surrogates and children, from exploitation. Above all, Ghana must clearly define its official stance on surrogacy, whether it wants to permit altruistic surrogacy only, or as I have argued, a form of quasi-commercial or compassionate surrogacy, or both, given the current dominance of commercial arrangements in practice.

The next and final chapter will determine whether the objectives of the thesis have been attained successfully, along with the conclusion and recommendations.

CHAPTER SEVEN

CONCLUSION AND RECOMMENDATIONS

1 INTRODUCTION

This chapter synthesises the main findings on the regulation of surrogate motherhood in Ghana, integrating insights from the research to offer a comprehensive perspective. The study aims to propose a viable legal framework for regulating surrogacy services in Ghana, addressing the legal challenges arising from the current regulatory void, which risks infringing the rights of all parties involved. To achieve this, the thesis traces the historical evolution of surrogacy in Ghana, examines the legal vacuum and its implications for stakeholders—including religious leaders, activists, and others—and conducts a comparative analysis of South Africa's regulatory model to identify best practices adaptable to the Ghanaian context.

The research is grounded in the hypothesis that South Africa, as a constitutional democracy with a progressive constitution and a rich African cultural heritage, offers a valuable model for developing a robust legal framework for surrogacy in Ghana. The study analyses cultural and ethical factors shaping attitudes toward surrogacy in Ghanaian society and justifies the selection of South Africa's model, which prohibits commercial surrogacy while permitting altruistic arrangements, aligning with Ghana's human rights commitments.

The research question "How can Ghana develop a comprehensive legal and ethical framework for surrogacy that balances the rights and interests of intended parents, surrogate mothers, and children, while addressing the risks of exploitation in the absence of regulation?" guides this study. The objective of the thesis was to propose a structure for such regulatory model for Ghana. This final chapter of the thesis evaluates whether the study's objectives have been met, summarises key findings, and provides actionable recommendations for policymakers.

2 ATTAINMENTS OF OBJECTIVES

The research question was addressed systematically across the thesis. Chapters one to chapter three laid the foundation, while chapters four, five and six explored the "where" and "how" of establishing a legal framework for surrogacy in Ghana.

Chapter one confirms surrogacy as an increasingly important response to infertility in Ghana, emphasising its socio-cultural significance and the stigma surrounding childlessness. Despite its increasing prevalence, the absence of comprehensive regulation in Ghana leads to ethical and legal challenges, including exploitation, custody disputes, and inadequate protections for surrogates, intended parents, and children. The study proposes a comprehensive legal framework inspired by South Africa's model, balancing constitutional principles with cultural norms to inform policymakers and the legislator in Ghana. The thesis acknowledges that the current model governing surrogate motherhood in Ghana is fragmentary and consists of legal provisions drawn from a range of statutes, the most important of which is an administrative instrument, the Registration of Births and Deaths Act (Act 1027) that regulates among others, the registration of the birth of a surrogate child, including providing for the recognition of the intended parents as the surrogate child's parents, provided that certain administrative processes are adhered to. This falls short of even being described as the partial recognition of surrogacy, despite the sense of clarity that is has brought for the purposes of this Act. The status of surrogate parties (intended parents, surrogate mother and the surrogate child) is indirectly acknowledged in the registration process provided for in the Act.

Chapter two provides a historical overview of surrogacy, tracing its roots from ancient practices to modern medical advancements such as artificial insemination, in vitro fertilisation (IVF), egg donation, and cryopreservation. By tracing the historical trajectory of a phenomenon, one can identify the social drivers, controversies, and regulatory milestones that shaped current frameworks, which in turn highlight both the similarities and divergences between jurisdictions. Historical analysis is generally a recognised method in comparative law, helping to contextualise regulatory divergence. This chapter examines infertility as a primary driver of the need for surrogacy, also canvassing societal perceptions in African contexts. The chapter categorises the different surrogacy types (altruistic, commercial, gestational, traditional, formal, informal), as well as analysing their implications for relevant stakeholders.

Chapter three explores socio-cultural and religious influences on surrogacy regulation in Ghana. Traditional values emphasising kinship and lineage render commercial surrogacy contentious. Dominant religious communities in Ghana, including Pentecostal, Protestant, Catholic, and Sunni Islamic groups, often oppose surrogacy due to concerns about marital sanctity, commodification, and exploitation, although Shia Islam permits it under specific conditions. Feminist perspectives highlight ethical concerns and advocate for surrogates' rights. Urbanisation and globalisation are shifting attitudes, but stigma persists, particularly in rural areas. Despite its positive aspects, surrogate motherhood continues to face opposition due to concerns about its impact on traditional family values, the dignity of human life, and the responsibilities associated with motherhood. Critics argue that surrogacy may commodify reproduction, fragment family relationships, and affect the emotional well-being of all involved. Religious perspectives, whilst often cautious, generally uphold the intrinsic dignity of all humans, including those conceived through assisted reproductive technologies, viewing children as gifts to be loved and cared for. As technology advances, there is increasing recognition that assisted reproductive technologies, including surrogacy, can align with belief systems and religious perspectives if approached ethically. Chapter three also underscores the need for culturally sensitive policies that balance ethical considerations with modern reproductive technologies.

Chapter four analyses Ghana's legal framework, highlighting the absence of a dedicated and comprehensive statute or regulations governing surrogate motherhood. Chapter four illustrates that Ghana's current fragmentary framework regarding surrogacy leaves surrogacy in a state of uncertainty. The absence of a consolidated and dedicated legal framework for surrogacy means that courts and practitioners rely on a diverse range of sources, such as constitutional provisions, the Children's Act, contract law, and customary law, none of which directly addresses surrogacy. This patchwork approach results in inconsistent rulings, unclear parentage, and heightened risks of exploitation for surrogate mothers and legal vulnerability for children born through surrogacy. The chapter also explores the effect of medical practice and clinical regulation in the context of surrogacy. While fertility clinics and professional bodies such as the Ghana Medical and Dental Council and the Fertility Society of Ghana provide ethical guidance, their guidance lacks binding authority. From a clinical point of view, surrogacy services operate in a grey area, with high costs limiting access and inadequate oversight raising concerns about informed consent, health risks,

and the commodification of women's bodies. The National Health Insurance Scheme supports maternal health but does not explicitly cover surrogacy-related procedures, leaving intended parents and surrogates without clear financial or legal protection.

Despite Ghana's transition from the Births and Deaths Registration Act 301 to Act 1027 in an effort to modernise civil registration, neither laws directly regulate surrogacy, except for the recognition of the status of the parties to a surrogacy agreement for the purposes of birth and death registration. Without such reform, surrogacy in Ghana will remain governed by fragmented laws and ad hoc judicial decisions, perpetuating uncertainty and inequity in one of the most sensitive areas of family formation. Chapter four argues that Act 1027, through its birth registration mechanisms, potentially offers a statutory pathway that will facilitate the pathway towards a complementary family law centred surrogacy regulatory model. The convergence of constitutional rights, child welfare principles, and civil registration rules underscores the urgent need for transparent and comprehensive surrogacy legislation that harmonises these frameworks, ensures clarity in parentage, and protects all parties involved in assisted reproduction, and also recognises cultural and religious values.

Chapter five turns to South Africa and evaluates the South African surrogacy framework under Chapter 19 of the Children's Act 38 of 2005, which transitioned from unregulated common law to a structured system requiring court-approved agreements. his chapter has demonstrated that surrogacy regulation in South Africa reflects a carefully constructed, constitutionally infused framework that seeks to reconcile reproductive autonomy with the protection of vulnerable parties, particularly children and surrogate mothers. Anchored in Chapter 19 of the Children's Act and shaped by an evolving body of jurisprudence, South African law adopts an explicitly altruistic model that positions the best interests of the child as the organising principle of all surrogacy arrangements. Chapter five shows that the judiciary plays a decisive gatekeeping role in giving practical effect to this framework. Through its insistence on prior judicial confirmation, strict statutory compliance, and detailed scrutiny of the suitability of commissioning parents and surrogate mothers, the courts ensure that surrogacy agreements are not treated as ordinary commercial contracts but as constitutionally significant arrangements with lifelong consequences. The case law further illustrates how courts have filled legislative gaps through purposive and

rights-based interpretation, thereby safeguarding children's legal status and protecting the dignity and reproductive autonomy of the parties involved.

At the same time, the prohibition of commercial surrogacy underscores the legislature's clear policy choice to prevent commodification and exploitation. By limiting compensation to reasonable expenses and scrutinising the conduct of professionals involved in the process, the courts reinforce the ethical boundaries within which assisted reproductive technologies may operate. The domicile requirement and the insistence on medical necessity further reflect a deliberate effort to maintain jurisdictional clarity, prevent surrogacy tourism, and ensure that the South African legal system retains meaningful oversight over all agreements it confirms.

The chapter, however, illustrates that while judicial pre-approval reduces the likelihood of disputes, conflicts may nevertheless arise. In such instances, the courts have not hesitated to enforce validly confirmed agreements, reaffirming both their binding nature and the paramountcy of the child's best interests. This approach reflects a broader commitment to legal certainty, ethical regulation, and the protection of all parties within a sensitive and emotionally charged context.

Chapter six conducts a comparative analysis of surrogacy laws in South Africa and Ghana. South Africa's framework provides legal clarity, judicial oversight, and ethical safeguards, while Ghana's lack of legislation results in ambiguities, exploitation, and challenges in parental recognition. The comparative overview between the two jurisdictions underscores the profound divergence between a jurisdiction with a comprehensive statutory framework and one still navigating fragmented provisions and customary practices. South Africa's Children's Act, reinforced by judicial oversight and constitutional principles, offers legal certainty, ethical safeguards, and inclusivity, albeit tempered by strict eligibility requirements, financial barriers, and limited post-birth support. Ghana, by contrast, relies on a patchwork of constitutional guarantees, family law statutes, and customary norms, which provide some recognition of parental rights and child welfare but leave surrogacy arrangements vulnerable to exploitation, uncertainty, and cross-border complications. Chapter six's analysis reveals that while Ghana's framework demonstrates sensitivity to cultural values and the best interests of children, its lack of a dedicated surrogacy law perpetuates risks for surrogate mothers, intended parents, and children born through

such arrangements. The reliance on informal agreements and advocacy-driven practices highlights the urgency of reform. Drawing lessons from South Africa's structured approach, Ghana can benefit from codifying clear eligibility criteria, judicial oversight, and protections against exploitation, while tailoring its framework to local sociocultural realities. The chapte recommends that for Ghana, the path forward lies in adopting a coherent, rights-based framework that integrates constitutional protections, international standards, and customary values, thereby ensuring that surrogacy arrangements are transparent, equitable, and aligned with both national priorities and global best practices. To ensure acceptance and effectiveness, Ghana's surrogacy framework should be developed collaboratively with local cultural and religious leaders, safeguarding the rights of all parties while respecting traditional values.

Drawing inspiration from South Africa, Ghana should implement mandatory screening processes for surrogates and intended parents and establish robust post-surrogacy support systems. Fair compensation mechanisms should be designed to prevent the exploitation of economically vulnerable surrogates while upholding their dignity and rights. To ensure effective oversight and compliance, Ghana could consider establishing an independent regulatory body tasked with monitoring surrogacy arrangements. This body could be responsible for supervising fertility clinics, enforcing ethical standards, and resolving disputes fairly and efficiently. Transparent processes for addressing complaints and resolving conflicts are essential to safeguard all participants, particularly surrogates and children, from exploitation. Above all, Ghana must clearly define its official stance on surrogacy, whether it wants to permit altruistic surrogacy only, or as I have argued in this thesis, accepts a form of quasi-commercial or compassionate surrogacy, or both, given the current dominance of commercial arrangements in practice.

The research methodology adopted in this study proved to be effective. The doctrinal approach facilitated comprehensive material collection, while the comparative method enabled a robust analysis in chapter six, weighing the suitability of South Africa's model for Ghana. The study's objectives were fully achieved, providing a clear path toward a viable legal framework.

3 SUMMARY AND CONCLUSION

To address the challenges identified in this thesis, it is recommended that Ghana adopts a comprehensive legal framework that legalises both altruistic and compassionate or quasi-commercial surrogacy, introduces judicial oversight for agreements, ensures automatic parental recognition for intended parents, provides medical and psychological support for surrogates, and promotes public awareness to reduce stigma. However, the study cautions that implementation may face obstacles, including limited legal infrastructure, lack of specialised courts, and resource constraints. A monitoring system is essential to ensure health, safety, and financial transparency in surrogacy arrangements.

The thesis has shown that Ghanaian society, deeply rooted in cultural and religious values, often views surrogacy, particularly strict commercial surrogacy, as challenging traditional norms of family and parenthood. Opposition from Christian and Islamic communities underscores the need for public education and ethical safeguards to foster acceptance. A balanced legal framework must protect surrogates, intended parents, and children while ensuring reproductive autonomy and access to assisted reproduction technology. Policymakers should regulate financial arrangements to prevent coercion while allowing fair compensation and safeguard privacy in a society where stigma persists. Where surrogate mothers opt for the compassionate surrogacy model, clear and reasonable caps should be in place where the surrogates are compensated for costs beyond those associated with altruistic surrogacy, such as medical and hospital expenses; loss of income, etc.

As reproductive technologies continue to evolve, Ghana's laws should remain adaptable to address emerging ethical and legal concerns. Continuous dialogue among lawmakers, medical professionals, ethicists, and the public is critical. Engaging diverse stakeholders, including religious leaders and civil society, will ensure culturally aligned and widely supported regulations. This thesis calls for urgent collaboration to establish a fair, protective, and culturally sensitive surrogacy framework that upholds justice, fairness, and human dignity.

4 RECOMMENDATIONS

To address the regulatory gap in Ghana's surrogacy landscape, chapter six of this thesis has provided a detailed proposed structure for a surrogacy instrument for Ghana. Without repeating chapter six's structure and recommendations, the following points provide some further granularity:

- Enact comprehensive legislation: Develop clear laws defining surrogacy types (gestational, traditional, altruistic, commercial, compassionate (quasi-commercial), outlining rights and responsibilities for surrogates, intended parents, and children, and establishing enforceable contracts to prevent disputes. Court recognition of surrogacy agreements should be established to grant intended parents legal parental rights from birth.
- Ensure health and legal protections: Collaborate with the Ministry of Health to mandate thorough health screenings, quality prenatal and postnatal care, and independent legal representation for surrogates. Psychological evaluations and counselling for surrogates before and after pregnancy to safeguard their well-being should be mandatory.
- Establish regulatory oversight: Create a governmental body to regulate surrogacy, oversee compliance, and resolve disputes. Court-approved agreements before medical procedures should be mandated, as well as a national surrogacy registry be established for transparency. Penalties for unethical practices, such as coercion, fraud, or medical malpractice, should be included in the regulatory framework.
- Financial arrangements should be regulated: Commercial surrogacy that falls outside of predetermined parameters for compassionate surrogacy should be prevented. Third-party brokers should be banned to protect surrogates from possible exploitation.
- Protect children's rights: Ideally, children born via surrogacy should automatically acquire citizenship and parental recognition to ensure access to inheritance, healthcare, and education. Ghana should strive towards measures to give effect to this objective in due course.
- Promote public awareness: Nationwide campaigns to reduce stigma and misinformation about surrogacy should be launched. Religious, traditional, and community leaders should be engaged to balance cultural concerns with reproductive rights.

- Learn from global models: Ghana should continue to draw on best practices from countries like South Africa, Canada, and the United Kingdom. Collaboration with global reproductive health organisations and neighbouring countries will assist in harmonising regulations and addressing cross-border surrogacy issues.
- Enforce medical standards: Accredited hospitals and fertility clinics should be mandated to conduct surrogacy procedures under strict medical guidelines. Clinical ethics review boards may assist in overseeing practices and prevent abuses.
- Provide financial and emotional support: Ghana should strive to ensure that surrogates have health insurance covering pregnancy-related complications and a financial safety net post-birth. Long-term psychological support and peer support groups for surrogates should be put in place.
- Encourage ongoing research: Studies on the sustainability of surrogacy laws to foster continuous debate and improvement should be encouraged.

By implementing these measures, this study submits that Ghana can establish a robust, ethical, and culturally sensitive surrogacy framework that protects all stakeholders and aligns with global standards.

8 BIBLIOGRAPHY

8.1 Books

Abd al-Raziq *Islam and the Foundations of Political Power*

Abd al-Raziq A *Islam and the Foundations of Political Power* (Edinburgh: University Press 2014)

Abdulaziz S 2001 *Islamic Roots of Democratic Pluralism*

Abdulaziz S Islamic Roots of Democratic Pluralism. (Oxford University Press 2001)

Abdulaziz SA 2009 *Islamic Biomedical Ethics: Principles and Application*

Abdulaziz S *A Islamic Biomedical Ethics: Principles and Application* (Oxford University Press 2009)

Adams S 2021 *International Surrogacy Laws*

Adams S *International Surrogacy Laws and Ethical Challenges* (Cambridge University Press 2021)

Adjei K 2021 *Legal Perspectives on Surrogacy*

Adjei K *Legal Perspectives on Surrogacy and Child Welfare in Ghanaian Courts* (Accra: Legal and Social Studies Review 2021)

Agyeman P 2023 *Spiritual Warfare*

Agyeman P *Spiritual Warfare and Reproductive Ethics in Pentecostalism* (Accra: Charismatic Faith Publishers, 2023)

Allan A 2019 *The Regulation of Surrogacy: A Comparative Study of International*

Allan A *The Regulation of Surrogacy: A Comparative Study of International Approaches* (Edward Elgar, 2019)

Ali K 2016 *Sexual Ethics and Islam*

Ali K *Sexual Ethics and Islam: Feminist Reflections on Qur'an, Hadith, and Jurisprudence* (Expanded edition, One World Publications 2016)

Al-Khouli S 2018 *Islamic Bioethics*

Al-Khouli S *Islamic Bioethics and Reproductive Technology* (Beirut: Arab Scientific Publishers, 2018)

Amoah JE 2019 *Cultural Perspectives on Reproduction*

Amoah JE *Cultural Perspectives on Reproduction and Childbirth in Ghana* (University of Ghana Press, 2019)

Andani K 2020 *Ethical Dimensions in Ismaili Jurisprudence*

Andani K *Ethical Dimensions in Ismaili Jurisprudence: Compassion and Modernity* (Ismaili Studies Press, 2020)

Andersen M, Smith J and Lee K 2020 *Ethics in Modern Surrogacy*

Andersen M, Smith J and Lee K *Ethics in Modern Surrogacy: Preventing Exploitation and Commodification* (Springer Press 2020)

Baah T 2021 *Assisted Reproductive Technologies in Ghana*

Baah T *Assisted Reproductive Technologies in Ghana: The Legal Framework and Its Implications for Family Law* (Research Paper, Kwame Nkrumah University of Science and Technology, 2021)

Barlas A 2019 *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'an.*

Barlas A *Believing Women in Islam: Unreading Patriarchal Interpretations of the*

Qur'an (2nd ed: University of Texas Press, 2019)

Bediako E 2022 *Surrogacy*

Bediako E, Surrogacy and Legal Safeguards in Ghana (Accra Legal Press, 2022)

Black Women's Blueprint 2020 *The State of Black Women*

Black Women's Blueprint *The State of Black Women and Reproductive Justice Report* (Black Women's Blueprint, 2020)

Black Women's Blueprint 2019 We Count! The State of Black Women

Black Women's Blueprint *We Count! The State of Black Women and Reproductive Justice Report* (Black Women's Blueprint, 2019)

Boateng K 2022 *Global Pentecostal Teachings on Family and Reproduction*

Boateng K *Global Pentecostal Teachings on Family and Reproduction: A Ghanaian Perspective* (Kumasi: Pentecostal Heritage Press, 2022)

Children's Institute 2020 *South African Child Gauge*

Children's Institute *South African Child Gauge* (University of Cape Town, 2020)

Collins PH 2000 *Black Feminist Thought*

Collins PH *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (Routledge, 2000)

Cool RJ et al 2003 *Reproductive Health and Human Rights*

Cool RJ et al *Reproductive Health and Human Rights: Integrating Medicine, Ethics, and Law* (Oxford University Press, 2003)

Craig L 2007 *Contemporary motherhood: The impact of children on adult time*

Craig L *Contemporary motherhood: The impact of children on adult time* (Routledge, 2007)

Currie I and De Waal J 2013 *The Bill of Rights Handbook*

Currie I and De Waal J *The Bill of Rights Handbook* (6th ed Juta, 2013)

Dunn R 2015 *The Man Who Touched His Own Heart*

Dunn R *The Man Who Touched His Own Heart: True Tales of Science, Surgery, and Mystery* (Little, Brown and Company, 2015)

Echols A 1989 *Daring to Be Bad*

Echols A D*aring to Be Bad: A History of Radical Feminism in America 1967–1978* (13th ed University of Minnesota Press, 1989)

El-Gamal MA 2021 *Islamic Finance*

El-Gamal MA I*slamic Finance: Law, Economics, and Practice* (Cambridge University Press, 2021)

Everyday Feminism 2022 *Guide to Intersectional Feminism*

Everyday Feminism *Guide to Intersectional Feminism and Activism* (Everyday Feminism, 2022)

Everyday Feminism 2020 *Navigating Privilege*

Everyday Feminism *Navigating Privilege: A Resource for Understanding and Addressing Social Inequality* (Everyday Feminism, 2020)

Fagbemi T 2023 *Legal Regulation of Surrogacy in Africa: Challenges and Opportunities*

Fagbemi T *Legal Regulation of Surrogacy in Africa: Challenges and Opportunities* (Nairobi Legal Press, 2023)

Gardner DK et al 2021 *Textbook of assisted reproductive techniques*

Gardner DK et al T*extbook of assisted reproductive techniques: Laboratory and clinical perspectives* (CRC Press, 2021)

Ghaly M 2016 *Islamic Perspectives on the Principles*

Ghaly M *Islamic Perspectives on the Principles of Biomedical Ethics* (World Scientific, 2016)

Gilliat-Ray S 2010 *Muslims in Western Europe: Religion and Belonging*

Gilliat-Ray S *Muslims in Western Europe: Religion and Belonging* (Edinburgh: University Press, 2010)

Graham BL 2019 *Social Identity and the Law*

Graham BL *Social Identity and the Law: Race, Sexuality and Intersectionality* (Routledge, 2019)

Hays S 1996 *The Cultural Contradictions of Motherhood*

Hays S *The Cultural Contradictions of Motherhood* (Yale University Press, 1996).

Heaton J 2015 *Family Law*

Heaton J *Family Law in South Africa* (Oxford University Press, 2015).

Heaton and Kruger 2015 S*outh African Family Law*

Heaton J and Kruger H S*outh African Family Law* (4th ed, LexisNexis, 2015)

Horsey K 2007 T*he legal implications of assisted reproductive technologies*

Horsey K T*he legal implications of assisted reproductive technologies* (Cambridge University Press, 2007)

Horsey K and Sheldon S 2017 *Surrogacy in the UK: Myth, Miracles and Misconceptions*.

Horsey K and Sheldon S *Surrogacy in the UK: Myth, Miracles and Misconceptions* (Hart Publishing, 2017)

Institute of Ismaili Studies (IIS) 2019 *Islamic Jurisprudence and Modern Ethical Challenges*

The Institute of Ismaili Studies (IIS) *Islamic Jurisprudence and Modern Ethical Challenges* (London, IIS Publications, 2019)

Intersectional and Global Views Feminists (GIPF) 2023 *Surrogacy and Global Power*

Intersectional and Global Views Feminists (GIPF) *Surrogacy and Global Power Dynamics: A Critical Feminist Perspective* (GIPF Publishing, 2023)

Kass LR 1985 *Toward a More Natural Science: Biology and Human Affairs*

Kass LR T*oward a More Natural Science: Biology and Human Affairs* (Free Press, 1985)

Kyeremeh O 2020 *Cultural and Religious Dynamics*

Kyeremeh O C*ultural and Religious Dynamics in Family Law* (Palgrave Macmillan, 2020)

Lindheim SR and Kavic SM 2006 *Reproductive endocrinology*

Lindheim S R and Kavic SM *Reproductive endocrinology and infertility handbook for Clinicians* (Taylor and Francis, 2006)

Louw A 2010 *Child Law in South Africa Domestic and International Perspectives*

Louw A *Child Law in South Africa Domestic and International Perspectives* (1st ed, Juta, 2010)

Louw A 2010 *Surrogate Motherhood and the Legal Rights of the Child*

Louw A *Surrogate Motherhood and the Legal Rights of the Child* (LLD thesis, University of South Africa, 2010)

MacKinnon CA 2021 *Butterfly Politics.*

MacKinnon CA *Butterfly Politics* (Harvard University Press, 2021)

Mason P and Merrick H 2017 R*eproductive Technologies and Surrogacy*

Mason P and Merrick H R*eproductive Technologies and Surrogacy: A Legal Perspective* (Oxford: Oxford University Press, 2017)

Mbiti JS 1990 *African Religions*

Mbiti JS *African Religions and Philosophy* (2nd ed, Heinemann, 1990).

Mensah F and Owusu G 2021 *Surrogacy in Africa*

Mensah F and Owusu G S*urrogacy in Africa: Legal and Ethical Considerations* (Routledge, 2021)

Modarresi SM 2010 *Shia Islam and Modern Challenges*

Modarresi M *Shia Islam and Modern Challenges* (London, Tauris, 2010)

Modarresi SM 2024 *Why I Am A Shi'a*

Modarresi SM W*hy I Am A Shi'a* (Independently published, 2024)

Nsiah A *Family Law in Ghana: Theory and Practice*

Nsiah A *Family Law in Ghana: Theory and Practice* (3rd ed, Ghana Legal Publishing, 2018)

Nukunya GK *Tradition and Change in Ghana*

Nukunya GK *Tradition and Change in Ghana: An Introduction to Sociology* (2nd ed, University Ghana Press, 2003)

Ollennu NA 1962 *Principles of Customary Land Law in Ghana*

Ollennu NA P*rinciples of Customary Land Law in Ghana* (London, Sweet and

Maxwell, 1962)

Owusu G and Yeboah D 2022 *Advocacy and Protection in Surrogacy Law*

Owusu G and Yeboah D *Advocacy and Protection in Surrogacy Law: Addressing Implications* (Planned Parenthood Federation of America, 2022)

Parker L 2019 *Legal Considerations in Surrogacy Disputes*

Parker L *Legal Considerations in Surrogacy Disputes* (Oxford University Press, 2019)

Reproductive Justice Framework Feminists (RJFF) 2023 *Expanding Reproductive Rights*

Reproductive Justice Framework Feminists (RJFF) E*xpanding Reproductive Rights: A Justice-Oriented Approach* (RJFF Press, 2023)

Rockin SL 2020 A*ssisted Reproductive Technology*

Rockin SL *Assisted Reproductive Technology: A Lawyer's Guide to Emerging Law and Science* (American Bar Association, 2020)

Roth MT 1997 *Law Collections from Mesopotamia and Asia Minor*

Roth MT *Law Collections from Mesopotamia and Asia Minor: Writings from the Ancient World* (volume 6) (Scholars Press, 1997)

Sachedina A 2009 *Islamic Biomedical Ethics*

Sachedina A *Islamic Biomedical Ethics: Principles and Application* (Oxford University Press, 2009)

Sachedina A 2001 *Islamic Roots of Democratic Pluralism*

Sachedina A I*slamic Roots of Democratic Pluralism* (New York, Oxford University Press, 2001)

Shabana MR 2014 *Islamic Bioethics: Between Sacred Law, Science, and Politics*

Shabana MR *Islamic Bioethics: Between Sacred Law, Science, and Politics* (2014, University of South Carolina Press, 2014)

Spar DL 2006 *The Baby Business*

Spar DL *How Money, Science, and Politics Drive the Commerce of Conception* (Harvard Business School Press, 2006)

Whittaker A 2022 *Reproduction and Responsibility*

Whittaker A *Reproduction and Responsibility: Global Perspectives on Assisted Reproductive Technologies* (Routledge, 2022)

Ziegler M 2020 *Abortion and the Law in America*

Ziegler M *Abortion and the Law in America: Roe v. Wade to the Present* (Cambridge University Press, 2020)

Zweigert K and Kötz H 1998 *An Introduction to Comparative Law*

Zweigert K and Kötz H *An Introduction to Comparative Law* (3rd ed, Oxford University Press, 1998)

8.2 Book chapters

Capalbo A, Hoffmann ER and Cimadomo D 2017 “Preimplantation Genetic Testing”

Capalbo A, Hoffmann ER and Cimadomo D “Preimplantation Genetic Testing for Aneuploidy (PGT-A) and Structural Rearrangements (PGT-SR)” in: *Preimplantation Genetic Diagnosis in Clinical Practice* (Springer Cham, 2017)

Crockin SL and Jones L 2010 “Third-Party Reproduction”

Crockin SL and Jones L “Third-Party Reproduction” in: Crockin S L and Peipert JF (eds) *Legal Conceptions: The Evolving Law and Policy of Assisted Reproductive Technologies* (Johns Hopkins University Press, 2010)

Dhillo W et al 2021 “Reproductive Endocrinology”

Dhillo W, Davies M, Jayasena C and Seal L “Reproductive Endocrinology” in: *Oxford Handbook of Endocrinology and Diabetes* (Oxford University Press, 2021)

Dyer S and Chambers GM 2020 “International Committee Monitoring Assisted Reproductive Technologies”

Dyer S and Chambers GM “International Committee Monitoring Assisted Reproductive Technologies: world report on assisted reproductive technologies” In: Reproductive Biomedicine Online (Elsevier, 2020) 641-692

Heaton J 2017 “Assisted Reproduction”

Heaton J “Assisted Reproduction” in: Boezaart T (ed) *Child Law in South Africa* (2nd ed, Juta, 2017)

Lasker SP 2016 “Surrogacy”

Lasker SP “Surrogacy” in: Ten Have H (ed) *Encyclopedia of Global Bioethics* (Springer, 2016)

Leeton J and Grover S 2000 “Intrauterine Insemination with Donor Sperm”

Leeton J and Grover S “Intrauterine Insemination with Donor Sperm” in SL Tan (ed) *Female Infertility* (Springer, 2000)

Louw A 2015 “Surrogate Motherhood”

Louw A “Surrogate Motherhood” in: Visser DP (ed) *Bioethics, Human Rights and Health Law: Principles and Practice* (1st ed, Juta 2015)

Nargund G 2020 “Peritoneal Oocyte and Sperm Transfer (POST)”

Nargund G “Peritoneal Oocyte and Sperm Transfer (POST)” in: *Textbook of*

Assisted Reproduction Techniques (CRC Press 2020)

Okenwa-Vincent EE 2025 “Ethics of Surrogacy: A Review of the African Perspective”
Okenwa-Vincent EE “Ethics of Surrogacy: A Review of the African Perspective” in: *Bioethics from the Global South* (Springer, 2025)

Sama CB 2012 “Infertility: Perspectives from Stress and Coping Research” in: Hobfoll SE (ed) *Stress, Social Support, and Women* (Psychology Press, 2012)

Skelton A and Proudlock P 2019 “Interpretation, Objects, Application and Implementation”
Skelton A and Proudlock P “Interpretation, Objects, Application and Implementation of the Children’s Act” in Davel CJ and Skelton AM (eds), *Commentary on the Children’s Act* (loose-leaf edn, Juta 2019)

Slabbert MN and Roodt C 2013 “Surrogate Motherhood: South Africa”
Slabbert MN and Roodt C “Surrogate Motherhood: South Africa” in: Trimmings K and Beaumont P (eds) *International Surrogacy Arrangements: Legal Regulation at the International Level* (Bloomsbury Publishing, 2013)

Sobotka T 2017 “Childlessness in Europe: Reconstructing Long-Term Trends Among Women”
Sobotka T “Childlessness in Europe: Reconstructing Long-Term Trends Among Women Born in 1900–1972” in: Kreyenfeld M and Konietzka D (eds), *Childlessness in Europe: Contexts, Causes and Consequences* (Demographic Research Monographs, Springer, 2017)

8.3 Theses and dissertations

Auret E 2023 *Surrogate Motherhood and Assisted Reproduction*

Auret E *Surrogate Motherhood and Assisted Reproduction in South Africa: An Analysis of Selected Constitutional and Medico-Legal Issues*" (LLD thesis, University of South Africa, 2023)

Egwu M 2020 *Fertility Treatments of Women in Nigeria*

Egwu M *Fertility Treatments of Women in Nigeria: Using Long Versus Short Protocols* (PhD thesis, Walden University, 2020)

Francis D 2020 *Surrogacy and Family Law in Ghana*

Francis D *Surrogacy and Family Law in Ghana: A Legal and Ethical Analysis* (Master's thesis, University of Ghana, 2020)

Hiadzi RA 2014 *Couples in Search of Children*

Hiadzi RA *Couples in Search of Children: A Study of Strategies and Management of Infertility in Contemporary Ghana* (PhD thesis, University of Ghana, 2014)

Louw A 2010 *Surrogate Motherhood and the Legal Rights of the Child*

Louw A *Surrogate Motherhood and the Legal Rights of the Child* (LLD thesis, University of South Africa, 2010)

Pillai AP 2013 *Surrogacy under Indian Legal System: Legal and Human Rights Concerns*

Pillai AP *Surrogacy under Indian Legal System: Legal and Human Rights Concerns* (PhD thesis, Cochin University of Science and Technology, 2013)

Rashid F 2017 T*he Legal and Framework of Surrogacy in Kenya*

Rashid F *The Legal and Framework of Surrogacy in Kenya: Theory and Practice* (LLM dissertation, University of Nairobi, 2017).

Silkstone C 1999 *A Critical Analysis of the South African Law Commission's Report on Surrogate Motherhood: (Project 65: 1993)*

Silkstone CA *A Critical Analysis of the South African Law Commission's Report on Surrogate Motherhood: (Project 65: 1993)* (LLM thesis, University of Cape Town, February 1999).

8.4 Journal articles

Ababio 2021 "Health and Ethical Implications of Surrogacy: Insights from Ghana"

Ababio F "Health and Ethical Implications of Surrogacy: Insights from Ghana" *Ghana Health Review* 2021 (9) 4, 112-128

Abebe MS, Afework M and Abaynew Y 2021 "Primary and secondary infertility in Africa: systematic review with meta-analysis"

Abebe MS, Afework M and Abaynew Y "Primary and secondary infertility in Africa: systematic review with meta-analysis" *Fertility Research and Practice* 2021 (6) 1, 1-11

Adegoke A 2021 "Surrogacy and the African Family System"

Adegoke A "Surrogacy and the African Family System: Cultural Implications and Ethical Dilemmas" Journal of African Family Studies 2021 (9) 1, 30-47.

Adomako-Kwakye C and Owusu-Dapaa E 2020 "The Challenges for Surrogate Mothers in Ghana"

Adomako-Kwakye C and Owusu-Dapaa E "The Challenges for Surrogate Mothers in Ghana: Recommendations for The Legal Protection of Their Rights" *Medicine and L*aw Journal 2020 (39), 603.

Adomako J and Obeng K 2021 "Legal Implications of Act 1027 on Vital Registration in Ghana"

Adomako J and Obeng K 2021 "Legal Implications of Act 1027 on Vital Registration in Ghana" *Ghana Law Journal* (2021) 34(1) 35-52

Addo K 2022 "Surrogacy and Christian Ethics in Ghana: A Methodist Perspective"

Addo K “Surrogacy and Christian Ethics in Ghana: A Methodist Perspective” *Journal of Christian Ethics in Africa* 2022 (4) 2, 56-70.

Agbede D 2021 “The Legal Void in Surrogacy Practices”

Agbede D “The Legal Void in Surrogacy Practices: Challenges and Implications in Ghana” *Journal of Reproductive Law* 2021 (34) 2, 89-102.

Agyemang N 2022 “Gender Roles and Surrogacy in Ghanaian Society”

Agyemang N “Gender Roles and Surrogacy in Ghanaian Society” *Journal of Gender and Society in Africa* 2022 (9) 2, 50-68.

Akangah R et al 2025 Socio-ethical and legal issues regarding surrogacy in Ghana”

Akangah R et al “Socio-ethical and legal issues regarding surrogacy in Ghana: a qualitative study” *Reproductive Health* 2025 (22), 181

Almeida C et al 2021 J “Oocyte quality and aging: A current review”

Almeida C et al “Oocyte quality and aging: A current review” *JBRA Assisted Reproduction* 2021 (25) 3, 322-333

Alim A and Imtiaz MH 2023 “Wearable Sensors for the Monitoring of Maternal Health”

Alim A and Imtiaz MH “Wearable Sensors for the Monitoring of Maternal Health - A Systematic Review” Sensors 2023 (23) 5, 2411

American Society for Reproductive Medicine 2017 “Psychological Assessment of Third-Party Reproduction”

American Society for Reproductive Medicine “Psychological Assessment of Third-Party Reproduction” Fertility and Sterility 2017 (107) 3, 1-9

American Society for Reproductive Medicine (ASRM) 2012 “Psychosocial and Medical Evaluation of Gestational Carriers”

American Society for Reproductive Medicine (ASRM): Practice Committee

"Psychosocial and Medical Evaluation of Gestational Carriers" *Fertility and Sterility* 2012 (98) 1093

American Society for Reproductive Medicine (ASRM) 2012 "Definitions of infertility and recurrent pregnancy loss: A committee opinion"

American Society for Reproductive Medicine (ASRM) "Definitions of infertility and recurrent pregnancy loss: A committee opinion" *Fertility and Sterility* 2012 (97) 3, 63.

American Society for Reproductive Medicine 2018 "Psychological Assessment of Third-Party Reproduction"

American Society for Reproductive Medicine Psychological Assessment of Third-Party Reproduction" *Fertility and Sterility* 2018 (107) 3, 1-9

Amoah D 2021 "Parentage and surrogacy in Ghana"

Amoah D "Parentage and surrogacy in Ghana: Gaps in the law and the need for Reform" *African Journal of Reproductive Health* 2021 (25) 2, 178-190

Amponsah J 2022 "Marriage, Family, and Surrogacy in the Anglican Church"

Amponsah J "Marriage, Family, and Surrogacy in the Anglican Church" *African Journal of Theology* 2022 (9) 3, 102-115

Andani K 2016 "A Survey of Ismaili Studies: Early Ismailism and Fatimid Ismailism"

Andani K "A Survey of Ismaili Studies: Early Ismailism and Fatimid Ismailism" *Religion Compass* 2016 (10) 8, 191-206.

Ankomah R and Adomako J 2018 "The Role of the Law in Regulating Assisted Reproductive Technologies"

Ankomah R and Adomako L "The Role of the Law in Regulating Assisted Reproductive Technologies in Ghana" *University of Ghana Law Journal* 2018 (1) 1, 63-85

Ankrah K 2023 “Towards a Regulatory Framework for Surrogacy in Ghana”

Ankrah K “Towards a Regulatory Framework for Surrogacy in Ghana: Implications for Medical Practice” *Ghana Health Law Review* 2023 (15) 1, 101-115

Arhin SM et al 2022 “Pharmacotherapy of infertility in Ghana”

Arhin SM et al “Pharmacotherapy of infertility in Ghana: Why do infertile patients discontinue their fertility treatment?” *PLoS One* 2022 (17) 10, e0274635

Ankrah SM and Mensah J 2022 “The Role of Medical Professionals in Surrogacy in Ghana”

Ankrah K and Mensah J “The Role of Medical Professionals in Surrogacy in Ghana: Navigating Ethical Challenges” *Journal of African Medical Ethics* 2022 (19) 2, 73-88

Appiah D 2023 “Faith, Miracles, and Family”

Appiah D “Faith, Miracles, and Family: Pentecostal Perspectives on Infertility and Surrogacy” *Journal of African Christian Theology* 2023 (5) 2, 34-49

Appiah D 2022 “Confidentiality and Ethical Dilemmas in Medical Practice: Surrogacy in Ghana”

Appiah F “Confidentiality and Ethical Dilemmas in Medical Practice: Surrogacy in Ghana” *West African Journal of Medical Law* 2022 (27) 3, 45-62

Aramesh K 2009 “Iran’s experience with surrogate motherhood: an Islamic view and ethical concerns”

Aramesh K “Iran’s experience with surrogate motherhood: an Islamic view and ethical concerns” *Journal of Medical Ethics* 2009 (35), 320-322

Asante KO, Osafo K and Nyamekye GK “An exploratory study of factors”

Asante KO, Osafo K and Nyamekye GK "An exploratory study of factors contributing to divorce among married couples in Accra, Ghana: A qualitative approach" *Journal of Divorce and Remarriage* 2014 (55) 1, 16–32

Asare J 2022 "Adoption as a Christian Response to Infertility"

Asare J "Adoption as a Christian Response to Infertility: A Comparative Study in Ghana" *Ghanaian Journal of Theological Ethics* 2022 (3) 1, 42-55.

Auret E, Labuschaigne M and Mabeka N 2024 "Surrogate Motherhood Regulation in South Africa"

Auret E, Labuschaigne M and Mabeka N "Surrogate Motherhood Regulation in South Africa: Medical and Ethical Legal Issues in Need of Reform" South African Journal of Bioethics and Law 2024 (17) 3, 104-108

Banerjee A and Pande A 2014 "Between Desperation and Respectability"

Banerjee S and Pande A "Between Desperation and Respectability: Commercial Surrogacy in India" Journal of Women in Culture and Society 2014 (39) 2, 471-494

Bachrach CA and Carver K 2019 "I Have Other Responsibilities"

Bachrach CA and Carver K "I Have Other Responsibilities: Attitudes and Intentions of Voluntarily Childless and Childfree Women and Men" *Journal of Family* 2019 (40) 6, 707-72

Bhatia DS and Sharma SK 2019 "Surrogacy: Current perspectives and ethical issues"

Bhatia DS and Sharma SK "Surrogacy: Current perspectives and ethical issues" *Journal of Human Reproductive Sciences* 2019 (12) 4, 273-280

Bartholomew GW 1958 "The Development and Use of Artificial Insemination"

Bartholomew GW "The Development and Use of Artificial Insemination" *Eugenics Review* 1958 (50) 1, 27-37

Barratt CI et al 2021 “The Diagnosis of Male Infertility”

Barratt CI et al “The Diagnosis of Male Infertility: An Analysis of the Evidence to Support the Development of Global WHO Guidance—Challenges and Future Research Opportunities” Human Reproduction Update 2021 (27) 5, 781-796

Baylis F 2013 “Transnational Commercial Contract Pregnancy in India”

Baylis F “Transnational Commercial Contract Pregnancy in India” *Bioethics* 2013 (27) 5, 231-237.

Blyth E and Farrand A 2005 “Anonymity in Donor-Assisted Conception and the UN Convention on the Rights of the Child”

Blyth E and Farrand A “Anonymity in Donor-Assisted Conception and the UN Convention on the Rights of the Child” International Journal of Children’s Rights 2005 (13) 3, 391-413

Boaheng I 2022 “Theological and Ethical Reflections on Surrogacy from an African Perspective”

Boaheng I “Theological and Ethical Reflections on Surrogacy from an African Perspective” *International Journal of Social Science Research and Review* 2022, 277-288.

Boamah K 2023 “Legal Dimensions of Surrogacy and Family Formation in Ghana”

Boamah K “Legal Dimensions of Surrogacy and Family Formation in Ghana” *International Journal of Family Law and Policy* 2023, 65-81

Boamah K 2021 “Surrogacy and the law in Ghana”

Boamah A “Surrogacy and the law in Ghana: Ethical and legal challenges” *University of Ghana Law Journal* 2021 (45) 3, 235-250

Bokek-Cohen YB, Gonen LD and Tarabeih M 2022 “The Ethical Standards of Sunni Muslim Physicians”

Bokek-Cohen YB, Gonen LD and Tarabeih M "The Ethical Standards of Sunni Muslim Physicians Regarding Fertility Technologies that are Religiously Forbidden" *Journal of Religion and Health* 2022 (61) 2876–2904

Bonthuys E 2015 "Surrogacy and the Law in South Africa"

Bonthuys E "Surrogacy and the Law in South Africa: The Search for Regulation" South Afr*ican Law Journal* 2015 (132) 1

Bonthuys E 2015 "RH v DE: A Feminist Minority Judgment on Adultery"

Bonthuys E "RH v DE: A Feminist Minority Judgment on Adultery" *South African Journal on Human Rights* 2015 (31) 379

Bonthuys E and Broeders N 2013 "Guidelines for the Approval of Surrogate Motherhood Agreements"

Bonthuys E and Broeders N "Guidelines for the Approval of Surrogate Motherhood Agreements: Ex parte WH" *South African Law Journal* 2013 (130) 485–511

Boateng D, Ekem I and Hagan J 2021"Perceived causes of infertility and coping strategies"

Boateng D, Ekem I and Hagan J "Perceived causes of infertility and coping strategies among women attending infertility clinics in Ghana" African *Journal of Reproductive Health* 2021(25) 1, 31-38.

Brazier M 1999 "Regulating the Reproduction Business?"

Brazier M "Regulating the Reproduction Business?" *Medical Law Review* 1999 (7) 21, 66-193

Busby K and Vun D 2010 "Revisiting the Handmaid's Tale"

Busby K and Vun D "Revisiting the Handmaid's Tale: Feminist Theory Meets Empirical Research on Surrogate Mothers" *Canadian Journal of Family Law* 2010 (26) 1, 13-93

Carnelley M 2012 “Ex parte WH 2011 6 SA 514 (GNP): Discussion of genetic links and monetary payments”

Carnelley M “Ex parte WH 2011 6 SA 514 (GNP): Discussion of genetic links and monetary payments in South African and foreign surrogate mother agreements with particular reference to the English experience” *De Jure* 2012 (45) 1, 179-188.

Chimbatata NB and Malimba C 2016 “Infertility in Sub-Saharan Africa: A Woman’s Issue for How Long?

Chimbatata NB and Malimba C “Infertility in Sub-Saharan Africa: A Woman’s Issue for How Long? A Qualitative Review of Literature” *Open Journal of Social Sciences* 2016 (4) 8 96-102

Chimbwete C, Watkins S and Zulu EM 2014 “The Evolution of Population Policies in Kenya and Malawi”

Chimbwete C, Watkins SC and Zulu EM “The Evolution of Population Policies in Kenya and Malawi” *Population Research and Policy Review* 2014 (33) 5 693-716

Choi Y “The Health Risks and Emotional Challenges of Surrogacy”

Choi Y “The Health Risks and Emotional Challenges of Surrogacy: A Critical Analysis” *Journal of Reproductive Health* 2018 (24) 3, 201-215.

Codjoe CAN and Anarfi JK 2019 “The acceptance and consequences of voluntary childlessness in Ghana”

Codjoe CNA and Anarfi JK “The acceptance and consequences of voluntary childlessness in Ghana” *Journal of Marriage and Family* 2019 (81)1, 197-210

Dapaah K 2022 “Parentage and Birth Registration in Ghana: Implications for Surrogacy”

Dapaah K “Parentage and Birth Registration in Ghana: Implications for Surrogacy” *West African Journal of Family Law* 2022 (14) 1, 33-52

Davis K 2019 “Psychological Impacts of Surrogacy”

Davis K "Psychological Impacts of Surrogacy: Understanding the Surrogate's Perspective" *Psychology, Health and Medicine* 2019 (24) 5, 569-578

Deonandan R et al 2012 "Ethical Concerns for Maternal Surrogacy and Reproductive Tourism"

Deonandan R et al "Ethical Concerns for Maternal Surrogacy and Reproductive Tourism" Journal of Medical Ethics 2012 (38) 12, 742-745

De Vos P and Barnard J 2007 "Same-sex marriage, civil unions and domestic partnerships in South Africa"

De Vos P and Barnard J "Same-sex marriage, civil unions and domestic partnerships in South Africa: Critical reflections on an ongoing saga" *South African Law Journal* 2007 (24) 4, 795-826

Dickens BM and Cook RJ 2001 "The Scope and Limits of Conscientious Objection"

Dickens BM and Cook RJ "The Scope and Limits of Conscientious Objection" *International Journal of Gynaecology and Obstetrics* 2001 (71) 1, 71-77

Dyer SJ and Patel M "The Economic Impact of Infertility"

Dyer S J and Patel M "The Economic Impact of Infertility on Women in Developing Countries – A Systematic Review" *Facts, Views and Vision in ObGyn* (2012) 4(2) 102-109

Dickson OB 2021 "Surrogacy and Civil Registration in Ghana"

Dickson OB "Surrogacy and Civil Registration in Ghana: Assessing the Gaps in Act 301 and the Transition to Act 1027" African Journal of Health Law and Ethics 2021 (15) 2, 77-95

Dickenson D and Van Beers B 2020 "Surrogacy: New Challenges to Law and Ethics"

Dickenson D and Van Beers B "Surrogacy: New Challenges to Law and Ethics" *The New Bioethics* 2020 (26) 4, 293-297

Dixon T 2018 “The Biology of Surrogacy: Who Decides?”

Dixon T “The Biology of Surrogacy: Who Decides?” *The Hastings Center Report* 2018 (48) 1, 8-9

Dlamini Z 2023 J “Harmonizing Legal Frameworks and Traditional Beliefs”

Dlamini Z “Harmonizing Legal Frameworks and Traditional Beliefs: The Case of Surrogacy in South Africa” *Journal of South African Legal Studies* 2023 (14) 1, 70-85

Dyer SJ and Patel M 2012 “The Economic Impact of Infertility on Women in Developing Countries”

Dyer SJ and Patel M “The Economic Impact of Infertility on Women in Developing Countries: A Systematic Review” *Facts, Views and Vision in ObGyn* 2012 (4) 2, 102-109

Dyer SJ and Joshi SP 2019 “Childless in the Land of the Child”

Dyer SJ and Joshi SP “Childless in the Land of the Child: Understanding the Stigma of Infertility in Africa” *African Journal of Reproductive Health* 2019 (23) 2, 31-38

ESHRE Capri Workshop Group 2020 “Intrauterine insemination”

ESHRE Capri Workshop Group “Intrauterine insemination: recommendations from the ESHRE Capri Workshop Group” *Human Reproduction Open* 2020 (4)

Esteves SC et al 2020 “Reproductive outcomes of testicular versus ejaculated sperm for intracytoplasmic sperm injection”

Esteves SC et al “Reproductive outcomes of testicular versus ejaculated sperm for intracytoplasmic sperm injection among men with high levels of DNA fragmentation in semen: systematic review and meta-analysis” *Fertility and Sterility* 2020 (114) 5, 1014-1025

Fahlén J, Johansson M and Östberg V 2017 “Parenting as a balancing act: A grounded theory study of parenting in Sweden”

Fahlén J, Johansson M and Östberg V "Parenting as a balancing act: A grounded theory study of parenting in Sweden" *Journal of Child and Family Studies* 2017 (26) 1, 25-37

Fayemi AK and Chimakonam AE 2022 "Global justice in the context of transnational surrogacy"

Fayemi AK and Chimakonam AE "Global justice in the context of transnational surrogacy: an African bioethical perspective" *Theoretical Medicine and Bioethics* 2022 (43) 75

Frimpong 2021 "Exploring Ghana's legal framework on assisted reproductive Technologies"

Frimpong J "Exploring Ghana's legal framework on assisted reproductive Technologies" *Ghana Legal Studies Review* 2021 (12) 2, 145-162

Garcia E 2022 "Surrogacy and exploitation: A feminist critique"

Garcia E "Surrogacy and exploitation: A feminist critique" *Feminist Studies* 2022 (48) 2, 87-104

Gerrits T 2016 "Assisted reproductive technologies in Ghana"

Gerrits T "Assisted reproductive technologies in Ghana: transnational undertakings, local practices and "more affordable IVF" *Reproductive Biomedicine and Society Online* 2016 (2), 32-38

Gerrits T and Hörbst A 2016 "The influence of social media on political trust and participation in Germany"

Gerrits R and Hörbst A "The influence of social media on political trust and participation in Germany" *Politics and Governance* 2016 (4) 3, 51-56

Glover E 2023 "Exploitation or empowerment?"

Glover E "Exploitation or empowerment? The ethics of surrogacy in Ghanaian Christian thought" *African Journal of Christian Ethics* 2023 (12) 1, 35

Golombok S and Zadeh S “Parenting and the adjustment of children”

Golombok S and Zadeh S “Parenting and the adjustment of children born to gay fathers through surrogacy” *Child Development* (2011) 82 2, 702

Gouni O et al 2022 “Concept analysis”

Gouni O and others “Concept analysis” International Journal of Environmental *Research and Public Health* 2022 (19) 3, 1464

Hanson B et al 2017 “Infertility treatment, and mental health: findings from a prospective cohort study”

Hanson B and others “Infertility treatment, and mental health: findings from a prospective cohort study” *American Journal of Obstetrics and Gynecology* 2017 (216) 1, 56.e1-56. e16

Hanson B et al 2017 “Female infertility, infertility-associated diagnoses, and comorbidities”

Hanson B et al ‘Female infertility, infertility-associated diagnoses, and comorbidities: a review” *Journal of Assisted Reproduction and Genetics* (2017) 34 2, 167

Harper J et al 2021 “International Federation of Fertility Societies (IFFS) Surveillance 2020”

Harper J et al “International Federation of Fertility Societies (IFFS) Surveillance 2020: Global trends in reproductive policy and practice” *Human Reproduction* 2021 (36) 7, 1700-1709

Inhorn MC and Patrizio P 2015 “Infertility around the globe: new thinking on gender, reproductive technologies, and global movements in the 21st century”

Inhorn MC and Patrizio P “Infertility around the globe: new thinking on gender, reproductive technologies, and global movements in the 21st century” *Human Reproduction Update* 2015 (21) 4, 411

Inhorn MC 2019 “Global infertility and the globalization of new reproductive technologies”

Inhorn MC “Global infertility and the globalization of new reproductive technologies: Illustrations from Egypt” *Social Science and Medicine* 2019 (72) 10, 1605-1613.

International Federation of Fertility Societies 2018 “International recommendations for assisted reproductive technologies and surrogacy”

International Federation of Fertility Societies “International recommendations for assisted reproductive technologies and surrogacy” *Fertility and Sterility* 2018 (110) 16

International Federation of Gynecology and Obstetrics 2015 Ethical issues in surrogate motherhood”

International Federation of Gynecology and Obstetrics “Ethical issues in surrogate motherhood” *International Journal of Gynecology and Obstetrics* 2015 (131) 1, 87-88

Javeed Ahmad R “Feminism: an overview”

Javeed Ahmad R “Feminism: an overview” *International Journal of Research* 2020 (13) 4

Lee H 2023 “Children's rights and identity in surrogacy arrangements: A critical examination”

Lee H “Children's rights and identity in surrogacy arrangements: A critical examination” *Child Welfare Journal* 2023 (98) 1, 45-60

Levick MR 2020 “Evolutionary implications of modern reproductive technologies”

Levick MR “Evolutionary implications of modern reproductive technologies: A critical analysis” *Journal of Evolutionary Psychology* (2020) 163-178

Johnson KM and Bouchard TJ 2019 “Family formation through assisted reproductive technologies”

Johnson KM and Bouchard TJ “Family formation through assisted reproductive technologies: legal and ethical considerations” *Journal of Marriage and Family* 2019 (81) 3, 723-724

Jones HW et al 2020 “Human IVF, from the beginnings to the new millennium”

Jones HW et al “Human IVF, from the beginnings to the new millennium” *Journal of Assisted Reproduction and Genetics* 2020 (37) 8, 1703

Jones K, Brown R and Patel S 2022 “Surrogacy laws and policies”

Jones K, Brown R and Patel S “Surrogacy laws and policies: Insights from the Johnson v. Calvert case” *Journal of Assisted Reproduction and Genetics* 2022 (39) 3, 521-537

Kagaba L 2022 Integrating Modern Reproductive Technologies with African Traditional Beliefs”

Kagaba L “Integrating Modern Reproductive Technologies with African Traditional Beliefs” *Journal of African Integration Studies* 2022 (7) 1, 54-70

Kalu O 2022 “Spiritual Dimensions of Reproduction”

Kalu O “Spiritual Dimensions of Reproduction: An African Perspective” *African Spirituality Journal* 2022 (5)1, 45-62

Kumi-Kyereme A et al 2019 “Influence of social norms on ideal family size among women in Ghana”

Kumi-Kyereme A et al “Influence of social norms on ideal family size among women in Ghana” *Journal of Biosocial Science* 2019 (51) 1, 101-117

Kumar R 2018 “Legal and Ethical Issues in Surrogacy”

Kumar R “Legal and Ethical Issues in Surrogacy: A Comprehensive Guide” J*ournal of Family Law* 2018 (56) 3, 235-258

Labuschaigne M, Auret E and Mabeka N 2024 “Surrogate Motherhood Regulation in South Africa”

Labuschaigne M, Auret E and Mabeka N “Surrogate Motherhood Regulation in South Africa: Medical and Ethico-Legal Issues in Need of Reform” S*outh African Journal of Bioethics and Law 2024* (17) 3, 102-108

Labuschaigne M, Mahomed S and Dhai A 2023 “Evolving capacity of children and their best interests”

Labuschaigne M, Mahomed S and Dhai A “Evolving capacity of children and their best interests in the context of health research in South Africa: An ethico-legal position” Developing World Bioethics 2023 (23), 358-366

Lones ME 2016 “A Christian Ethical Perspective on Surrogacy”

Lones ME “A Christian Ethical Perspective on Surrogacy” *Bioethics in Faith and Practice* 2016 (2) 1

Loudon J 2021 “Informed Consent in Surrogacy Agreements: Ethical Implications”

Loudon J “Informed Consent in Surrogacy Agreements: Ethical Implications” *Bioethics* 2021 (35) 4, 321-329

Louw A 2016 “Legal Parenthood and Surrogacy in South Africa”

Louw A “Legal Parenthood and Surrogacy in South Africa” *Obiter* 2016 (33), 115-136.

Louw A 2013 “Surrogacy in South Africa: Should we reconsider the current approach?”

Louw A “Surrogacy in South Africa: Should we reconsider the current approach?” *Tydskrif vir Hedendaagse Romeins-Hollandse Reg* 2013 (76), 564-578

Luke B et al 2019 “The Risk of Birth Defects with Conception by ART”

Luke B and others “The Risk of Birth Defects with Conception by ART” *Fertility and Sterility* 2019 (111) 6, 1210-1216

Malhotra N, Shah D and Nanda S 2020 “Trends and Advancements in Assisted Reproductive Technology”

Malhotra N, Shah D and Nanda S "Trends and Advancements in Assisted Reproductive Technology in India: A Systematic Review" *Journal of Human Reproductive Sciences* 2020 (13) 3, 187-196

Mansooreh S and Mehdi K 2021 "Modern Assisted Reproductive Technologies"

Mansooreh S and Mehdi K "Modern Assisted Reproductive Technologies and Bioethics Islamic Context" *Theology and Science* 2021(19) 2, 146-154

Martinez GM et al 2018 "Fertility of Men and Women Aged 15-44 in the United States"

Martinez GM, Daniels K and Febo V "Fertility of Men and Women Aged 15-44 in the United States: National Survey of Family Growth, 2011–2015" *National Health Statistics Report* 2018 (113) 1-7

Mbatha L 2017 "Cultural and Legal Challenges of Surrogacy in South Africa"

Mbatha L "Cultural and Legal Challenges of Surrogacy in South Africa" *African Journal of Reproductive Health* 2017 (24) 73.

Mbiti JS 2023 "Traditional African Perspectives on Marriage and Modern Reproductive Technologies"

Mbiti JS "Traditional African Perspectives on Marriage and Modern Reproductive Technologies" *African Journal of Social and Cultural Anthropology* 2023 (11) 2, 89-105

McConnell J 2019 "History of Surrogacy: Understanding the Process"

McConnell J "History of Surrogacy: Understanding the Process" *Family Creations Blog* (2019)

McLaughlin K 2018 "Surrogacy and Emotional Attachment"

McLaughlin K "Surrogacy and Emotional Attachment: The Psychological Dynamics of Carrying a Child for Another" *Journal of Reproductive and Infant Psychology* 2018 (36) 2, 150-162

Mensah D 2023 Christian Responses to Infertility and Assisted Reproductive Technologies in Ghana"

Mensah D "Christian Responses to Infertility and Assisted Reproductive Technologies in Ghana" *Christianity in Africa Today* 2023 (17) 2, 21-34

Meyerson D 2019 "Surrogacy, Geneticism and Equality"

Meyerson D "Surrogacy, Geneticism and Equality: The Case of AB v Minister of Social Development" *Constitutional Court Review* 2019 (9), 341-367

Mukum JM 2019 "Protecting Human Rights in African Countries"

Mukum JM "Protecting Human Rights in African Countries: International Law, Domestic Constitutional Interpretation, the Responsibility to Protect, and Presidential Immunities" *South Carolina Journal of International Law And Business* 2019(16) 1, 1-6.

Mulumba M, Oga J and Muhumuza N 2025 "Beyond reproductive rights"

Mulumba M, Oga J and Muhumuza N "Beyond reproductive rights: implementing the Africentric reproductive justice framework in sexual and reproductive health and rights litigations in Africa" *Sexual and Reproductive Health Matters* 2025 (33) 1

Mutaz al-Khatib 2019 "Contemporary Ijtihād, Ethics and Modernity"

Mutaz al-Khatib "Contemporary Ijtihād, Ethics and Modernity" *Journal of Islamic Ethics* 2019 (3) 1-21

Jones A 2020 "Surrogacy in California"

Jones A "Surrogacy in California: Legal and ethical consideration" *California Law Review* 2020 (108) 4, 789-812

Nayana, Yuvraj Jadeja, et al 2018

Nayana HP, Yuvraj DS Jadeja, et al "Insight into Different Aspects of Surrogacy Practices" *Journal of Human Reproductive Sciences* 2018 (11) 3, 212–218

Niazi SM 2017 “Islamic Law and the Surrogate Mother”

Niazi SM “Islamic Law and the Surrogate Mother” *Islamabad Law Review* 2017 (1) 11-4.

Nicholson CM and Bauling A 2013 “Surrogate Motherhood Agreements and their Confirmation:

Nicholson CM and Bauling A “Surrogate Motherhood Agreements and their Confirmation: A New Challenge for Practitioners?” *De Jure* 2013 (46) 2, 510-538.

Nolan Haley J 2016 “Mediation and Access to Justice in Africa”

Nolan Haley J “Mediation and Access to Justice in Africa: Perspectives from Ghana” *Harvard Negotiation Law Review* (2016) 59-102

Nwoye CMA 2011 “Igbo Cultural and Religious Worldview”

Nwoye CMA “Igbo Cultural and Religious Worldview: An Insider’s Perspective” *International Journal of Sociology and Anthropology* 2011 (3) 9, 304-317.

Nwogu C 2023 “Ethical Concerns in Surrogacy: An African Perspective”

Nwogu C “Ethical Concerns in Surrogacy: An African Perspective” *Journal of African Ethics* 2023 (6) 2, 120-136

Nyarko J and Owusu M “Family Law and Surrogacy”

Nyarko J and Owusu M “Family Law and Surrogacy: Emerging Issues in Ghanaian Jurisprudence” *Ghana Bar Association Journal* 2021 (12) 4, 45-60

Nyarko YO 2014 “Association of Childless Couples of Ghana (ACCOG)”

Nyarko YO “Association of Childless Couples of Ghana (ACCOG)” *ACCOG* 2014 (6) 2, 99-102

Nardelli AA et al "Assisted reproductive technologies (ARTs): Evaluation of evidence to support public policy"

Nardelli AA, Stafinski T, Motan T, Klein K and Menon D "Assisted reproductive technologies (ARTs): Evaluation of evidence to support public policy development" *Reproductive Health* 2014 (11) 76

O'Brien H 2009 "Mothering and feminism"

O'Brien Hallstein DL "Mothering and feminism: A maternal perspective" *Hypatia* 2009 (24) 4, 1-22

Odimegwu C et al 2018 "Trends and Differentials in Childlessness in Nigeria"

Odimegwu C et al "Trends and Differentials in Childlessness in Nigeria: Evidence from the 2013 Nigeria Demographic and Health Survey" *Journal of Biosocial Science* 2018 (50) 6, 806-828

Odoi K 2020 "Legal and Ethical Challenges of Assisted Reproductive Technologies"

Odoi K "Legal and Ethical Challenges of Assisted Reproductive Technologies in Ghana" *African Journal of Law* 2020 (12) 4, 89-105

Oduro F and Abotsi E 2020 "Regulating Assisted Reproductive Technologies"

Oduro F and Abotsi E "Regulating Assisted Reproductive Technologies: The Case for Surrogacy Legislation in Ghana" African Law Review 2020 (45) 1, 120-35

Ofori-Attah K 2022 "The Church's Role in Ethical Guidance"

Ofori-Attah K "The Church's Role in Ethical Guidance: A Survey of Christian Leaders' Perspectives on Surrogacy in Ghana" *African Religious Ethics Review* 2022 (10) 4, 67-83

Ofori-Boateng K 2021 "Assisted Reproductive Technologies and the Need for Regulation in Ghana"

Ofori-Boateng K "Assisted Reproductive Technologies and the Need for Regulation in Ghana" *African Journal of Health Law and Ethics* 2021 (14) 1, 57-71

Ombelet W, Dhont N and Thijssen A "Semen Analysis and Sperm Function Testing"
Ombelet W and Dhont N and Hijssen A "Semen Analysis and Sperm Function Testing" *Asian Journal of Andrology* 2019 (21) 1, 5-11

Ombelet W and Onofre J 2019 "IVF in Africa"
Ombelet W and Onofre J "IVF in Africa: What is it all About?" *Facts, Views and Vision in Obstetrics and Gynaecology* (2019) 11 (1) 65

Oppong R "The Regulation of Surrogacy in Ghana"
Oppong R "The Regulation of Surrogacy in Ghana: An Overview of Act 1027" *Journal of African Law* 2022 (66) 1, 112-130

Osafo J, Asante KO, Ampomah CA et al 2021 "Factors contributing to divorce in Ghana"
Osafo J, Asante KO, Ampomah CA and Osei-Tutu A "Factors contributing to divorce in Ghana: An exploratory analysis of evidence from court suits" *Journal of Divorce and Remarriage* 2021 (62) 4, 312-326

Osei G 2023 "Reproductive health and legal challenges in Ghana"
Osei G "Reproductive health and legal challenges in Ghana" *Ghana Medical Journal* 2023 (57) 2, 92-105

Osei-Agyemang A 2021 "Customary Law and Family Formation in Ghana"
Osei-Agyemang A "Customary Law and Family Formation in Ghana: Implications for Modern Reproductive Technologies" *Ghana Legal Studies Review* 2021 (15) 2, 112-135

Osei G and Kwame M 2023 "Protecting Surrogate Mothers in Ghana"

Osei G and Kwame M "Protecting Surrogate Mothers in Ghana: A Legal and Ethical Perspective" *African Journal of Reproductive Medicine* 2023 (14) 2, 112-129

Skosana T 2017 "A Donor Conceived Child's Right to Know its Genetic Origin"

Skosana T "A Donor Conceived Child's Right to Know its Genetic Origin: A South African Perspective" *Obiter* (2017) 38(2) 326-342

Shcherbanyuk O, Gordieiev V and Bzova L 2023 "Legal Nature of the Principle of Legal Certainty"

Shcherbanyuk O, Gordieiev V and Bzova L "Legal Nature of the Principle of Legal Certainty as a Component Element of the Rule of Law" *Juridical Tribune* 2023 (13) 1, 21-31

Slabbert MN 2020 "The Legal Challenges of Surrogacy in South Africa"

Slabbert MN "The Legal Challenges of Surrogacy in South Africa" *South African Journal of Bioethics and Law* 2020 (13) 2, 102-106

Serafini A 2020 "Gestational surrogacy: psychological and medical aspects"

Serafini A "Gestational surrogacy: psychological and medical aspects in a couple from the United States treated in Italy" *Rivista di Sessuologia* 2020 (44) 2,105-115

Rulli T 2016 "Preferring a genetically-related child"

Rulli T "Preferring a genetically-related child" *Journal of Moral Philosophy* 2016 13 (6) 669-698

Pande A 2010 Not an Angel, Not a Whore: Surrogates as "Dirty" Workers in India"

Pande A "Not an Angel, Not a Whore: Surrogates as "Dirty" Workers in India" *Indian Journal of Gender Studies* 2010 (17) 2, 223-239

Patel NH et al 2018 "Insight into Different Aspects of Surrogacy Practices"

Patel NH et al "Insight into Different Aspects of Surrogacy Practices" *Journal of Human Reproductive Sciences* 2018 (11) 3, 212-218

Pillay T 2021 "Health Risks and Ethical Considerations in Surrogacy"

Pillay T "Health Risks and Ethical Considerations in Surrogacy: Insights from South Africa" *South African Health Review* 2021 (12) 4, 89-105

Sefogah P et al 2022 "Legal, Ethical and Regulatory Challenges of Assisted Reproductive Technology"

Sefogah P et al "Legal, Ethical and Regulatory Challenges of Assisted Reproductive Technology in Developing Countries – The Case of Ghana" *Fertility and Sterility* 2022 (118) 4, e323–e324.

Rienzi L et al 2020 "Oocyte, Embryo and Blastocyst Cryopreservation in ART"

Rienzi L et al "Oocyte, Embryo and Blastocyst Cryopreservation in ART: Systematic Review and Meta-Analysis Comparing Slow-Freezing versus Vitrification to Produce Evidence for the Development of Global Guidance" *Human Reproduction Update* 2020 (26) 3, 443-461

Roberts D 2020 "Surrogacy and the Politics of Commodification"

Roberts D "Surrogacy and the Politics of Commodification: Legal and Ethical Debates in New Jersey" *Journal of Gender Studies* 2020 (29) 5, 556-570

Rulli T 2016 "Preferring a Genetically-Related Child"

Rulli T "Preferring a Genetically-Related Child" *Journal of Moral Philosophy* 2016 (13) 6, 669-698

Saxena P, Mishra A and Malik S 2012 "Surrogacy: Ethical and Legal Issues"

Saxena P, Mishra A and Malik S "Surrogacy: Ethical and Legal Issues" *Indian Journal of Community Medicine* 2012 (37) 4, 211-213

Sermon K and Pennings G 2014 “Preimplantation Genetic Diagnosis and Screening”
Sermon K and Pennings G “Preimplantation Genetic Diagnosis and Screening: Current Status and Future Challenges” *Human Reproduction Update* 2014 (20) 1, 108-120

Settle B and Brumley K 2014 “It’s the choices you make that get you there”
Settle B and Brumley K “It’s the choices you make that get you there: Decision-making pathways of childfree women” *Michigan Family Review* 2024 (18) 1 1-22

Shaindlin EH 2018 “The stigmatization of childlessness in sub-Saharan Africa”
Shaindlin EH “The stigmatization of childlessness in sub-Saharan Africa: The case of South Africa” *Journal of Population Research* 2018 (35) 1, 1-22

Serafini A 2020 “Gestational surrogacy: psychological and medical aspects”
Serafini A “Gestational surrogacy: psychological and medical aspects in a couple from the United States treated in Italy” *Rivista di Sessuologia* 2020 (44) 2, 105-115

Shenfield F et al 2021 “Cross-Border Reproductive Care in Six European Countries”
Shenfield F et al “Cross-Border Reproductive Care in Six European Countries” *Human Reproduction* 2021 (36) 4 865-875.

Shenfield F, Tarlatzis B, Baccino G et al 2025 “ESHRE Ethics Committee” Ethical considerations on surrogacy”
Shenfield F, Tarlatzis B, Baccino G et al “ESHRE Ethics Committee: Ethical considerations on surrogacy” *Human Reproduction* 2025 (40) 3, 420-425

Sills ES and Alper MM 2020 “Gamete Intrafallopian Transfer (GIFT)”
Sills ES and Alper MM “Gamete Intrafallopian Transfer (GIFT): Historical Perspectives, Current Trends, and Future Directions” *JBRA Assisted Reproduction* 2020 (24) 3, 260-265

Sloth-Nielsen J and Van Heerden 2014 “The Constitutional Family”

Sloth-Nielsen and Van Heerden B "The Constitutional Family: Developments in South African Child and Family Law 2003–2013" I*nternational Journal of Law, Policy and the Family* (2014) (28)100-120

Smietana M, Rudrappa S and Weis C 2021 "Moral frameworks of commercial surrogacy"

Smietana M, Rudrappa S and Weis C "Moral frameworks of commercial surrogacy within the US, India and Russia" *Sexual and Reproductive Health Matters* (2021) 29(1) 1-17

Smith J 2021 "The Birth of Natalie: The First Child Born from an IVF Pregnancy"

Smith J "The Birth of Natalie: The First Child Born from an IVF Pregnancy" *Journal of Maternal-Fetal and Neonatal Medicine* 2021 (34) 12, 2011-2014

Smith J 2021 "The Johnson v Calvert Case: Legal Implications for SurrogacyArrangements"

Smith J "The Johnson v Calvert Case: Legal Implications for Surrogacy Arrangements" *Journal of Reproductive Law* 2021 (25) 2, 145-167

Smith R "Natural law and human reproduction"

Smith R "Natural law and human reproduction: Catholic teachings" *Journal of Religious Ethics* 2021 (37) 2, 154-167

Smith J and Osei R 2022 "Ethical Challenges in Surrogacy"

Smith J and Osei R "Ethical Challenges in Surrogacy: Comparative Perspectives from Ghana and South Africa" *African Journal of Reproductive Health* 2022 (26) 4 54-71

Soni S and Sloth-Nielsen J "Reproductive Rights and the Legal Implications"

Soni S and Sloth-Nielsen J "Reproductive Rights and the Legal Implications of Surrogacy in South Africa" *South African Journal on Human Rights* 2015 (33) 2, 138-156.

Suarez-Pascual B et al 2020 (24) 4 JBRA Assisted Reproduction 426.

Suarez-Pascual B et al "Artificial insemination with husband's sperm (AIH) or donor sperm (AID): analysis of factors associated with pregnancy rate" *JBRA Assisted Reproduction* 2020 (24) 4 426-430

Sun Y, Dodd S, and Wang Y 2019 "Wearable Monitoring Devices in Pregnancy: Current Challenges and Future Opportunities"

Sun Y, Dodd S, and Wang Y "Wearable Monitoring Devices in Pregnancy: Current Challenges and Future Opportunities" *Sensors* 2019 (19) 24, 5425

Tabong PTN and Adongo PB 2013 "Infertility and childlessness"

Tabong PTN and Adongo PB "Infertility and childlessness: a qualitative study of the experiences of infertile couples in Northern Ghana" *BMC Pregnancy and Childbirth* 2013 (13) 1-10

Tabong PTN and Adongo PB 2013 "Understanding the social meaning of infertility and childbearing"

Tabong PTN and Adongo PB "Understanding the social meaning of infertility and childbearing: a qualitative study of the perception of childbearing and childlessness in Northern Ghana" *BMC Pregnancy Childbirth* 2013 (8) 1, e54429

Tartakovsky E and Mizrahi M 2025 "What do we need kids for?"

Tartakovsky E and Mizrahi M "What do we need kids for? Childbearing motivations, personal values, and socio-demographic differences" *Frontiers in Psychology* 2025 (16) 12384

Tetteh N 2022 "Surrogacy and Reproductive Justice in Ghana"

Tetteh N "Surrogacy and Reproductive Justice in Ghana: A Call for Legal Reform" *West African Legal Journal* 2022 (29) 4, 55073

Torres G, Shapiro A and Mackey TK 2019 "A review of surrogate motherhood

regulation in South American Countries"

Torres G, Shapiro A and Mackey TK "A review of surrogate motherhood regulation in South American countries: pointing to a need for an international legal framework" 2019 (19) 46 *BMC Pregnancy Childbirth* 2019 (19) 46

Thaldar 2019 "The Constitution as an Instrument of Prejudice"

Thaldar D "The Constitution as an Instrument of Prejudice: A Critique of AB v Minister of Social Development" *Constitutional Court Review* (2019) 343 -361

Thaldar D 2022 "Performing IVF for Surrogacy Before Confirmation of the Surrogacy Agreement"

Thaldar D "Performing IVF for Surrogacy Before Confirmation of the Surrogacy Agreement by the Court: A Critical Analysis of Recent Case Law in South Africa" *South African Law Journal* 2022 (139) 398-416

Thaldar D 2023 "The Right to Family Life"

Thaldar D "The Right to Family Life: Why the Genetic Link Requirement for Surrogacy Should Be Struck Out" *South African Journal of Bioethics and Law* 2023 (15) 3, 84-91

Thaldar D and Shozi B 2022

Thaldar D and Shozi B "Is open identity gamete donation lawful in South Africa?" *South African Medical Journal* 2022 (112) 6, 420-425

Thaldar D 2015 "Surrogacy, Reproductive Rights, and the Best Interests of the Child"

Thaldar D "Surrogacy, Reproductive Rights, and the Best Interests of the Child" *International Journal of Law, Policy and the Family* 2015, 89-106

Thaldar D and Van der Westhuizen A 2020 "South African Surrogacy Law"

Thaldar D and Van der Westhuizen A "South African Surrogacy Law: Uncertainty for Foreign Intended Parents" *Tydskrif vir Hedendaagse Romeins-Hollandse Reg* 2020 (83) 467-473

Thaldar D 2020 "The Regulation of Surrogacy in South Africa"

Thaldar D "The Regulation of Surrogacy in South Africa: Constitutional and Legal Perspectives" *Tydskrif vir Hedendaagse Romeins-Hollandse Reg* 2020 467-473

Theander K 2020 J "Parenting and personal development in the transition to parenthood"

Theander K "Parenting and personal development in the transition to parenthood" *Journal of Family Issues* 2020 (41) 4, 518-539

Turner N and Götmark F 2023 "Human fertility and religions in Sub-Saharan Africa"

Turner N and Götmark F "Human fertility and religions in Sub-Saharan Africa: A comprehensive review of publications and data, 2010–2020" African Journal of Reproductive Health 2023 (27) 1, 181-195

Van Zanten K and Lavee J "Surrogacy and Family Law"

Van Zanten K and Lavee J "Surrogacy and Family Law: Aligning Expectations in Assisted Reproductive Technologies" International Journal of Family Law 2020 (40) 321-339

Van Wyk T 2015 "Legal Aspects of Surrogacy in South Africa"

Van Wyk T "Legal Aspects of Surrogacy in South Africa" Obiter 2015 (32) 1 122-35

Wagner A 2019 "The Psychological Aspects of Surrogacy"

Wagner A "The Psychological Aspects of Surrogacy" *Journal of Reproductive and Infant Psychology* 2019 (37) 2, 187-196

Whittaker A et al 2025 "The Divine in the Clinic"

Whittaker A et al "The Divine in the Clinic: Assisted Reproduction and Religious Practice in Ghana and South Africa" *Journal of Religion and Health* 2025 (64) 1, 369-384

White JS 2015 "Gestational Surrogacy Contracts in Tennessee"

White JS "Gestational Surrogacy Contracts in Tennessee: Freedom of Contract Concerns and Feminist Principles in the Balance" Belmont Law Review 2015 (2), 1

Yan H et al 2021 "The Comparison of Assisted Reproductive Technology Outcomes"

Yan H et al "The Comparison of Assisted Reproductive Technology Outcomes between In Vitro" *Journal of Healthcare Engineering* (2021) 1-8

Zegers-Hochschild F et al 2020 "The international glossary on infertility and fertility care 2017"

Zegers-Hochschild F et al "The international glossary on infertility and fertility care 2017" *Human Reproduction* 2020 (35) 11, 2299-2300

Zohar K 2018 "Surrogacy and the Rights of Women"

Zohar K "Surrogacy and the Rights of Women: A Global Perspective" *Women's Studies International Forum* 2018 (70) 1-9

8.5 Internet references

Advances in Fertility Treatment Technology 2024

Advances in Fertility Treatment Technology: Shaping IVF's Future 2024 https://www.inovifertility.com/blog/fertility-treatment-technology/ (accessed 4 June 2025)

American Society for Reproductive Medicine 2022

American Society for Reproductive Medicine "Third-party reproduction: a guide for patients" (2022) https://www.asrm.org/globalassets/asrm/asrm-content/news-

andpublications/educational-bulletins-and-fact-sheets/guidelines-and minimum%20standards/third_party_reproduction_guide_to_patients.pdf (accessed 25 January 2024)

Chieng 2021

Chieng D "How Both Parents Involvement in a Child's Life is Essential" (2021) https://www.linkedin.com/pulse/how-both-parents-involvement-childs-life-essential-dorah-achieng/ (accessed 05 October 2025)

Everyday Feminism 2022

Everyday Feminism "EverydayFeminism Action Guide" 2022 https://www.everydayfeminism.com (accessed 18 February 2026)

Fletcher 2006

Fletcher E, 'Who was Hagar in the Book of Genesis?' (2006) https://womeninthebible.net/women-bible-old-new-testaments/hagar/ (accessed 15 May 2025)

Georgia 2019 https://aurora-georgia.com/surrogacy/history/.

Georgia A. "History of Surrogacy" (Aurora Georgia) 2019 https://aurora georgia.com/surrogacy/history/ (accessed 16 February 2026).

Ghana Medical and Dental Council

Ghana Medical and Dental Council "Mandate and Functions (MDC Ghana)" https://mdcghana.org/ (accessed 20 February 2025)

Ghana Statistical Service 2021

https://census2021.statsghana.gov.gh/gssmain/fileUpload/reportthemelist/2021%20PH%20General%20Report%20Vol%203C_Background%20Characteristics_181121.pdf (accessed 25 April 2025)

Ghana Statistical Service 2021
"Population and Housing Census: General Report"
Volume 3C – Background Characteristics" 2021
https://census2021.statsghana.gov.gh/gssmain/fileUpload/reportthemelist/2021%20PHC%20General%20Report%20Vol%203C_Background%20Characteristics_181121.pdf (accessed 11 November 2024)

Ghana Statistical Service (GSS), Ghana Health Service (GHS) and ICF 2015
International "Ghana Demographic and Health Survey 2014." 2015
https://dhsprogram.com/pubs/pdf/fr307/fr307.pdf (accessed 28 March 2024)

Global Fund for Women 2021
Global Fund for Women Annual Report 2021 "Advancing Gender Justice and Equality" 2021
https://www.globalfundforwomen.org/ (accessed 18 February 2026).

Growing Families 2024
Growing Families "Surrogacy in Ghana: Affordable, Legal, and Accessible Options" 2024 https://www.growingfamilies.org/surrogacy-in-ghana/ (accessed 8 June 2025).

History.com Editors 1978
History.com Editors "World's First Test Tube Baby Born" 1978
https://www.history.com/this-day-in-history/worlds-first-test-tube-baby-born

International Institute for Population Sciences (IIPS) and ICF 2017
International Institute for Population Sciences (IIPS) and ICF "National Family Health Survey (NFHS-4) 2015–16" 2017

https://www.tbdiah.org/resources/publications/india-national-family-healthsurvey-nfhs-4-2015-16/ (accessed 3 October 2025)

International Surrogate Forum

International Surrogate Forum “Introduction and terminology: Chapter 19 of the Children's Act” http://www.internationalsurrogacyforum.com/content/southafrica#:~:text=Surrogacy%20in%20exchange%20for%20commercial,or%20renouncement%20of%20the%20child (accessed 17 February 2026).

King James Bible

King James Bible, Genesis 16:1–15 https://www.kingjamesbibleonline.org/Genesis-Chapter-16/ (accessed 16 February 2026)

Kramer W 2016

Kramer K “A Brief History of Donor Conception” 2016 https://pthorn.de/a-briefhistory-of-donor-conception/ (accessed 16 February 2026)

McConnell J 2019

McConnell J, ‘History of Surrogacy: Understanding the Process’ (2019) https://www.familycreations.net/blog/history-of-surrogacy-understanding-the process/ (accessed 9 January 2024)

Miller and Jones 2019

Miller K and Jones R “Toward a Feminist Funding Ecosystem: A Framework and Practical Guide Association for Women’s Rights in Development (AWID)” 2019 https://www.awid.org/sites/default/files/ (accessed 18 February 2026).

Ministry of Gender, Children and Social Protection, ‘Child and Family Welfare Policy 2015

Ministry of Gender, Children and Social Protection "Child and Family Welfare Policy" (2015) https://www.mogcsp.gov.gh/mdocs-posts/child-and-family-welfare-policy/ (accessed 20 February 2025)

National Organisation for Women (NOW) 2019

National Organisation for Women (NOW) "Commercialized Surrogacy Exploits Women" 2019 https://now.org/blog/commercialized-surrogacy-exploits-women/ (accessed 18 February 2026).

Parker Herring Law Group PLLC 2018

Parker Herring Law Group PLLC "The History of Surrogacy: 4 Important Eras to Know" 2018 https://parkerherringlawgroup.com/surrogacy-lawyer-attorney raleigh-nc/surrogacy-information/history-of-surrogacy/ (accessed 17 February 2026)

Southern California Reproductive Center 2016

Southern California Reproductive Center "The Evolution of Fertility Treatments and Development of IVF" 2016 https://blog.scrcivf.com/ivf-the-history-andevolution-of-fertility-treatments (accessed 16 February 2026).

South African Society of Reproductive Medicine and Gynaecological Endoscopy (SASREG)

Accreditation Standards for IVF Centres 2023–2026 (SASREG)

Stork Service 2018

Stork Service "The History of Surrogacy" (Stork Service Blog) 2018 https://stork-service.com/the-history-of-surrogacy/ (accessed 16 February 2026)

Surrogacy UK 2015

Surrogacy UK "Surrogacy in the UK: Myth busting and reform: Report of the Surrogacy UK Working Group on Surrogacy Law Reform" (2015) https://surrogacyuk.org/wp-content/uploads/2023/02/Surrogacy-in-the-UKReport-FINAL.pdf (accessed 11 May 2025)

The Coalition on the Women's Manifesto for Ghana

The Coalition on the Women's Manifesto for Ghana "Women's Manifesto for Ghana" https://library.fes.de/pdf-files/bueros/ghana/02983.pdf (accessed 11 November 202

The Fawcett Society

The Fawcett Society "Homepage" https://www.fawcettsociety.org.uk/ (accessed 12 November 2026)

The World Bank 2023

The World Bank "Fertility rate, total (births per woman" (2023) https://data.worldbank.org/indicator/SP.DYN.TFRT.IN \ (accessed 1 December 2025)

UNICEF and Ministry of Human Rights and Refugees of Bosnia and Herzegovina 2018

UNICEF and Ministry of Human Rights and Refugees of Bosnia and Herzegovina "Guidelines on the Assessment and Determination of the Best Interests of the Child' (2018) https://www.unicef.org/bih/en/media/9726/file/guidelines%20on%20the%20assessment%20and%20determination%20of%20the%20best%20interests%20of%20the%20child%20.pdf (accessed 16 October 2025)

UK Working Group on Surrogacy Law Reform 2026

UK Working Group on Surrogacy Law Reform "Surrogacy in the UK: Myth Busting and Reform – 10 Years On " (2026) https://www.surrogacyuk.orgaccessed (accessed 18 February 2026)

Women's International League for Peace and Freedom 2020

Women's International League for Peace and Freedom "Stories of Feminist Peace 2020: Annual Report (WILPF)" 2020 https://www.wilpf.org/stories-of-feminist-peace-2020/ (accessed 18 February). 2026).

World Health Organisation 2024

World Health Organisation "Infertility" 2024 https://www.who.int/news-room/fact-sheets/detail/infertility (accessed 26 November 2025).

World Health Organisation (WHO) 2016

World Health Organisation "Guidelines on Ethical Issues in Sexual and Reproductive Health Research" (WHO) 2016 https://apps.who.int/iris/handle/10665/252580 (accessed 23 February 2026).

Zheng B "Independent Legal Reasoning"

Zheng B "Independent Legal Reasoning in Islamic Law" Encyclopedia.pub (2022) https://encyclopedia.pub/entry/35633 (accessed 11 November 2024)

8.6 International and regional human rights instruments

African Charter on the Rights and Welfare of the Child

African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999)

Convention on the Elimination of All Forms of Discrimination against Women

Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981)

Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption

Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (adopted 29 May 1993, entered into force 1 May 1995)

Organisation of African Unity (OAU), African Charter on the Rights and Welfare of the Child

Organisation of African Unity (OAU), African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999)

UN Committee on the Rights of the Child "General Comment No 14"

UN Committee on the Rights of the Child, 'General Comment No 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration' (2013)

UN General Assembly "Guidelines for the Alternative Care of Children"

UN General Assembly, 'Guidelines for the Alternative Care of Children' (adopted 20 November 2009)

UN Human Rights Council "Report of the Special Rapporteur on the Sale and Sexual Exploitation of Children'"

UN Human Rights Council "Report of the Special Rapporteur on the Sale and Sexual Exploitation of Children" (A/HRC/37/60, 2018)

Universal Declaration of Human Rights

Universal Declaration of Human Rights (adopted 10 December 1948, UNGA Res 217 A (III))

United Nations: Convention on the Rights of the Child

United Nations. Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3

8.7 Statutes

8.7.1 Ghana

Administration of Estates (Amendment) Law (PNDCL 112) of 1985.

Children's Act, 1998 (Act 560)

Constitution of the Republic of Ghana, 1992 (approved by referendum 28 April 1992, entered into force 7 January 1993)

Contracts Act, 1960 (Act 25)

Domestic Violence Act, 2007 (Act 732)

Ghana National Health Policy (2017)

High Court (Civil Procedure) Rules, 2004 (C.I. 47), as amended by C.I. 87

Health Professions Regulatory Bodies, 2013 (Act 857)

Human Trafficking Act, 2005 (Act 694)

Intestate Succession Law, 1985 (Act 111)

Juvenile Justice Act, 2003 (Act 653)

Labour Act, 2003 (Act 651)

Marriage Act, 1985 (Act 112)

Matrimonial Causes Act, 1971 (Act 367)

Medical and Dental Act, 2012 (Act 857)

Medical and Dental Council Code of Ethics for Registered Practitioners in Ghana (2017)

National Health Insurance Act, 2012 (Act 852)

National Health Insurance Act, 2003 (Act 650) (repealed)

Public Health Act, 2012 (Act 851)

Registration of Births and Deaths, 1965 (Act 301) (repealed)

Registration of Births and Deaths, 2020 (Act 1027) (entered into force 15 June 2020)

Wills Act, 1971 (Act 360)

8.7.2 South Africa

Births and Deaths Registration Act 51 of 1992

Child Care Act 74 of 1983

Children's Status Act 82 of 1987

Choice on the Termination of Pregnancy Act 92 of 1996

Citizenship Act 88 of 1995

Civil Union Act 17 of 2006

Constitution of the Republic of South Africa, 1996

Government Notice No R 1182 of 20 June 1986

Health Professions Act 56 of 1974

Human Tissue Act 65 of 1983

National Health Act 61 of 2003

Prescription Act 68 of 1969

Proclamation R12 of 2010, Government Gazette 33076 of 1 April 2010

Regulations Relating to Artificial Fertilisation of Persons (GN R175 in GG 35099 of 2 March 2012)

Regulations Relating to Artificial Fertilisation of Persons (GN R1182 in GG 10312 (20 June 1986)

8.7.3 Other jurisdictions

Nigerian Child Rights Act 26 of 2003

Ukraine Family Law (2002, amended 22 December 2006)

8.8 Case law

8.8.1 Ghana

Ababio v Akoto [1957] 3 WALR 414

C M v C S NDCA/2015/762

Doe v Roe HCG/2020/112

In re Ofori [1963] 2 GLR 515

In re Surrogacy Agreement SCG/2017/034

Plange v Plange [1977] 1 GLR

Tanor v Akosua Koko [1974] 1 GLR 451 (CA)

8.8.2 South Africa

AB v Minister of Social Development 2017 (3) SA 570 (CC)

APP and Another v NPK (17962/2020) [2021] ZAWCHC 69 (11 March 2021)

Bhe and Others v Khayelitsha Magistrate and Others [2004] ZACC 17, 2005 (1) SA 580 (CC), 2005 (1) BCLR 1 (CC) [11]

Du Toit and Another v Minister for Welfare and Population Development and Others 2003 (2) SA 198 (CC)

Ex parte Applications Related to Surrogacy Contracts 2012 ZAWCHC 143

Ex parte C and Others 2013 ZAGPPHC 526

Ex parte CJD and Others [2018] ZAGPPHC 253, 2018 (3) SA 197

Ex Parte DME and Others 2014 (5) SA 431 (GNP)

Ex parte HD and Another 2016 ZAWCHC 56

Ex parte HPP and Others 2011 (6) SA 548

Ex Parte HPP and Others 2007 (6) SA 542 (T)

Ex parte KAF and Others (14341/17) [2017] ZAGPJHC 227 (GJ) .

Ex parte KAF and Others (2018/5329) [2018] ZAGPJHC 529; 2019 (2) SA 510 (GJ)

Ex parte J V D M and Others (104620/2024) [2025] ZAGPPHC 179; 2025 (4) SA 616 (GP)

Ex parte LM and Others 2015 ZAGPPHC 393

Ex Parte MCM and Another (28084/22) [2022] ZAGPPHC 712 (26 September 2022).

Ex parte MS and Others 2014 ZAGPJHC 217

Ex parte MW 2015 (1) SA 163 (GJ)

Ex parte P and Others [2010] ZAGPPHC 287

*Ex Parte SA and Other*s 2014 JDR 2616 (GP)

Ex parte WH and Others 2011 (6) SA 514 (GNP)
In re Confirmation of Surrogate Motherhood Agreement 2015 ZAGPJHC 269
In Re Confirmation of Three Surrogate Agreements 2011 (6) SA 22 (GSJ)
In the Matter of Confirmation of Surrogate Motherhood Agreements 2020 ZAGPPHC 189
J and Another v Director General, Department of Home Affairs and Others (CCT46/02) [2003] *ZACC 3,* 2003 (5) BCLR 463, 2003 (5) SA 621 (CC)
K B and Another v Minister of Social Development (462/23) [2024] ZASCA 54
Makate v Vodacom (Pty) Ltd [2016] ZACC 13
Minister of Home Affairs v Fourie 2006 (1) *SA 524 (CC)*
S v M [2013] ZACC 19, 2013 (6) SA 203 (CC)
Surrogacy Advisory Group NPC v Minister of Health (038988/2022) [2024] ZAGPPHC 431 (7 May 2024).

8.8.3 Foreign cases

Gartside v Griffiths [2018] FamCA 628 (Family Court of Australia, 27 July 2018)
In re: The Matter of the Unborn Child SL 125/2019 (Sierra Leone)
In the Matter of Baby M NJSC/1988/0345 (New Jersey Supreme Court, USA)
In re: Adoption of a Child by J.M. (2002). 788 N.Y.S.2d 480 (N.Y. App. Div.2005)
Jan Balaz v Anand Municipality GHC/2009/135 (India)
Johnson v Calvert 5 Cal 4th 84 (1993) (Supreme Court of California, USA)
K v K [2019] FamCA 424 (Family Court of Australia, 17 May 2019)
Labassee v France App no 65941/11 (ECtHR, 26 June 2014)
Mennesson v France (App no 65192/11) ECHR 26 June 2014
Nana Abena Korkor v Dr Laryea SL 125/2019 (Sierra Leone)
Olowu v Building Stock Ltd [2018] 1 NWLR (Pt 1601) 343 (Nigeria).
Re Baby M (2017) ONSC 1303 (Ontario Superior Court of Justice, Canada)
Stern v Whitehead 537 A 2d 1227 (NJ 1988) (New Jersey Supreme Court, USA)
Union of India and Another v. Jan Balaz & Others|, Civil Appeal No. 8714 of 2010, 2 December 2015 (India)

8.9 Local and international reports and guidelines

Amnesty International, Protecting Vulnerable Women

Amnesty International, Protecting Vulnerable Women in Surrogacy Arrangements (2021)

Amnesty International, Surrogacy and Human Rights

Amnesty *International, Surrogacy and Human Rights: Ensuring the Protection of Women's Rights in Assisted Reproduction* (Amnesty International Publications 2023)

Association for Women's Rights in Development (AWID)

Towards a Feminist Funding Ecosystem: A Framework and Practical Guide (AWID 2019)

Department of Social Development (South Africa) 2021 *Annual Report*

Department of Social Development (South Africa) *Annual Report* 2020/2021 (Pretoria, 2021)

Friedman R *Founding Affidavit on Behalf of the Surrogacy Advisory Group* 2025

Friedman R *Founding Affidavit on Behalf of the Surrogacy Advisory Group in Support of the Application in AB v Minister of Social Development* (2015) 1, 25

Fertility Society of Ghana (FERSOG) 2025

Fertility Society of Ghana (FERSOG) "FERSOG calls for regulatory framework to guide surrogacy practice" Ghanaian Times (Accra, 2025)

Ghana Health Service, National Reproductive Health Policy 2007

Ghana Health Service *National Reproductive Health Policy and Standards* (Accra: Ghana Health Service 2007)

Ghana Medical and Dental Council Guidelines 2019

Ghana Medical and Dental Council *Guidelines for Assisted Reproductive Technologies* (2019, Accra: Medical and Dental Council of Ghana)

Ghana Medical and Dental Council Code of Ethics 2016

Ghana Medical and Dental Council *Code of Ethics and Professional Conduct* (Ghana Medical and Dental Council 2016)

Ghana Statistical Service 2020

Ghana Statistical Service *Decentralization in Birth and Death Registration under Act 1027* (GSS Annual Report 2020)

Global Fund for Women 2021

Global Fund for Women Annual Report 2021 A*dvancing Gender Justice and Equality*

Global Inequalities (GI) 2023

The Impact of International Surrogacy on Global Inequalities (GI) *The Impact of International Surrogacy on Global Inequality: An Analytical Perspective* (GI Press 2023)

Hague Conference on Private International Law 2016

P*roject Report of the Fourth Meeting of the Experts Group on the Parentage/Surrogacy Project* (Preliminary Document No 3C, 5-8 September 2016)

Health Professions Council of South Africa (HPCSA) 2016

Health Professions Council of South Africa (HPCSA) E*thical Guidelines for Reproductive Health* (HPCSA 2016)

Health Professions Council of South Africa 2021

Health Professions Council of South Africa *Guidelines for Good Practice in the Health Care Professions: Guidelines on Reproductive Health Management* (Booklet 8, revised 2021)

Health Professions Council of South Africa (2021)

Health Professions Council of South Africa *Guidelines for Good Practice in the Health Care Professions: Seeking Patients' Informed Consent — The Ethical Considerations* (Booklet 4, revised December 2021)

Health Professions Council of South Africa 2016

Health Professions Council of South Africa G*uidelines for Good Practice in the Health Care Professions: Booklet 4 – Ethical Guidelines for Reproductive Health* (HPCSA 2016)

Health Professions Council of South Africa 2023

Health Professions Council of South Africa (HPCSA) G*uidelines for Accreditation of Healthcare Facilities* (2023)

Health Professions Council of South Africa 2017

Reproductive Medicine (HPCSA, 2017)

Health Professions Council of South Africa 2025

Health Professions Council of South Africa *General Ethical Guidelines for Reproductive Health* (HPCSA Booklet 8, revised 2025).

International Conference on Population and Development (1994)

International Conference on Population and Development *Programme of Action* (adopted 13 September1994, Cairo)

Medical and Dental Council (Ghana) 2017

Medical and Dental Council *Code of Ethics for Registered Practitioners in Ghana* (MDC, 2017)

#MeToo 2021 Impact Report

#MeToo Impact Report 2021 *Reflections and Future Direction* (#MeToo Movement, 2021)

Ministry of Health, National Health Policy (Ghana) 2021

Ministry of Health *National Health Policy: Ensuring a healthy future for all Ghanaians* (Ministry of Health 2021)

Ministry of Health (Ghana) 1994

Ministry of Health, Ghana *Safe Motherhood Initiative: Strategy and Policy* (Accra: Ministry of Health 1994)

National Health Insurance Authority (NHIA) (Ghana) 2021

National Health Insurance Authority (NHIA) *National Health Insurance Scheme: Annual Report* (National Health Insurance Authority 2021).

National Organisation for Women (NOW)

National Organisation for Women (NOW) *Commercial Surrogacy and Women's Rights* (NOW 2020)

Parliamentary Ad Hoc Committee, Report on Surrogate Motherhood (1999) (South Africa)

Parliamentary Ad Hoc Committee *Report on Surrogate Motherhood* (1999) (tabled in Parliament and referred to Minister of Justice)

South African Law Commission 1993

South African Law Commission Report on *Surrogate Motherhood: Project 65* (South African Law Commission 1993)

South African Law Reform Commission 2011

South African Law Reform Commission Project 123: *Discussion Paper on Surrogacy and Related Matters* (SALRC 2011) 38.

South African Law Reform Commission 2008

South African Law Reform Commission *Discussion Paper 126: Review of Aspects of the Law Relating to Surrogate Motherhood* (Project 123, Department of Justice and Constitutional Development 2008)

World Health Organisation 2015

World Health Organisation *Report on ethical issues in surrogacy* (World Health Organisation. 2015)

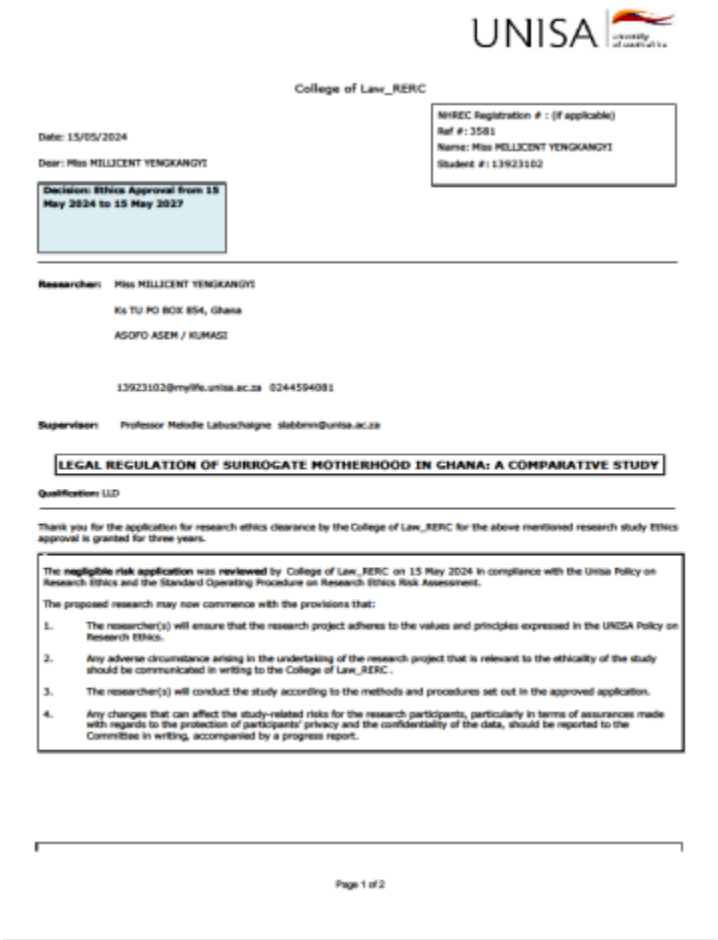
World Health Organisation 2016

World Health Organisation *Guidelines on Ethical Reproductive Health* (2016)

World Health Organisation 2019

World Health Organisation *WHO Expert Consultation on Ethical Issues in Assisted Reproductive Technologies, including Surrogacy* (Geneva: 2019)

9 ETHICS CLEARANCE CERTIFICATE



UNISA

College of Law_RERC

NHREC Registration # : (If applicable)
Ref #: 3581
Name: Miss MILLICENT YENGKANGYI
Student #: 13923102

Date: 15/05/2024

Dear: Miss MILLICENT YENGKANGYI

Decision: Ethics Approval from 15 May 2024 to 15 May 2027

Researcher: Miss MILLICENT YENGKANGYI

Ks TU PO BOX 854, Ghana

ASOFO ASEM / KUMASI

13923102@mylife.unisa.ac.za 0244594081

Supervisor: Professor Melodie Labuschaigne slabbmm@unisa.ac.za

LEGAL REGULATION OF SURROGATE MOTHERHOOD IN GHANA: A COMPARATIVE STUDY

Qualification: LLD

Thank you for the application for research ethics clearance by the College of Law_RERC for the above mentioned research study Ethics approval is granted for three years.

The **negligible risk application** was **reviewed** by College of Law_RERC on 15 May 2024 in compliance with the Unisa Policy on Research Ethics and the Standard Operating Procedure on Research Ethics Risk Assessment.

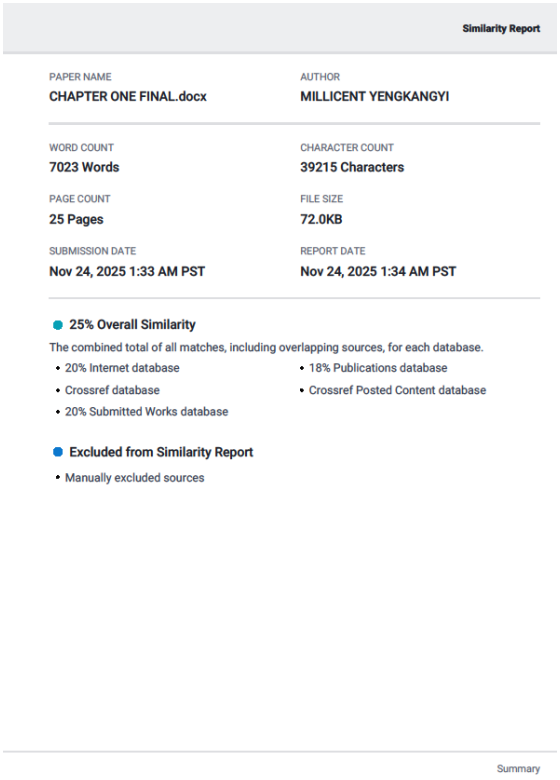
The proposed research may now commence with the provisions that:

1. The researcher(s) will ensure that the research project adheres to the values and principles expressed in the UNISA Policy on Research Ethics.
2. Any adverse circumstance arising in the undertaking of the research project that is relevant to the ethicality of the study should be communicated in writing to the College of Law_RERC .
3. The researcher(s) will conduct the study according to the methods and procedures set out in the approved application.
4. Any changes that can affect the study-related risks for the research participants, particularly in terms of assurances made with regards to the protection of participants' privacy and the confidentiality of the data, should be reported to the Committee in writing, accompanied by a progress report.

Page 1 of 2

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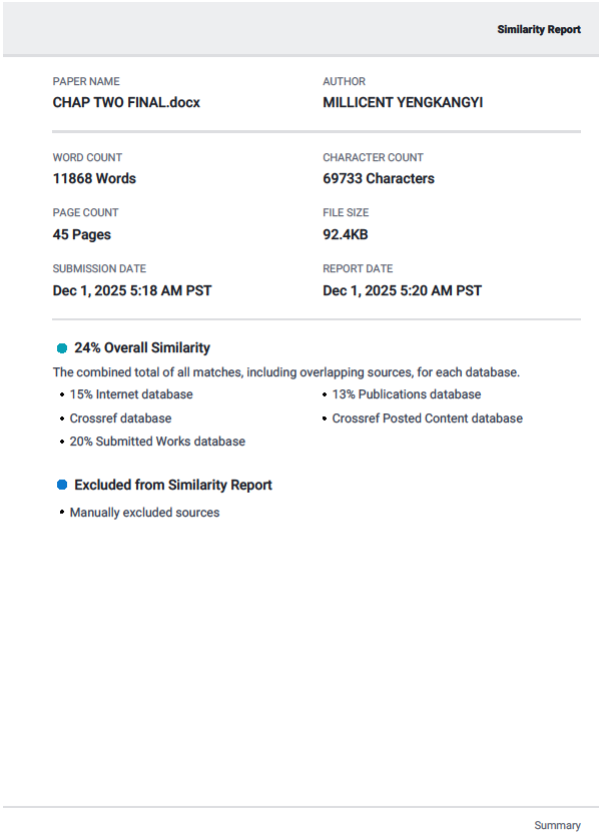
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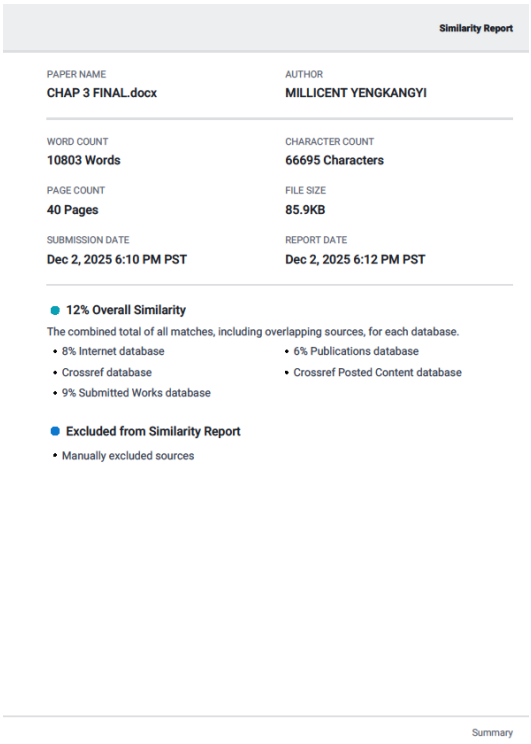
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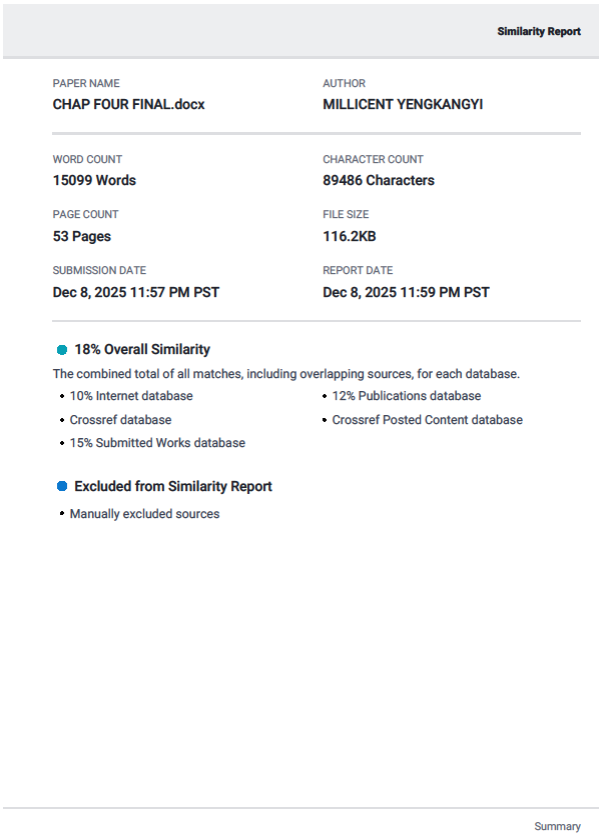
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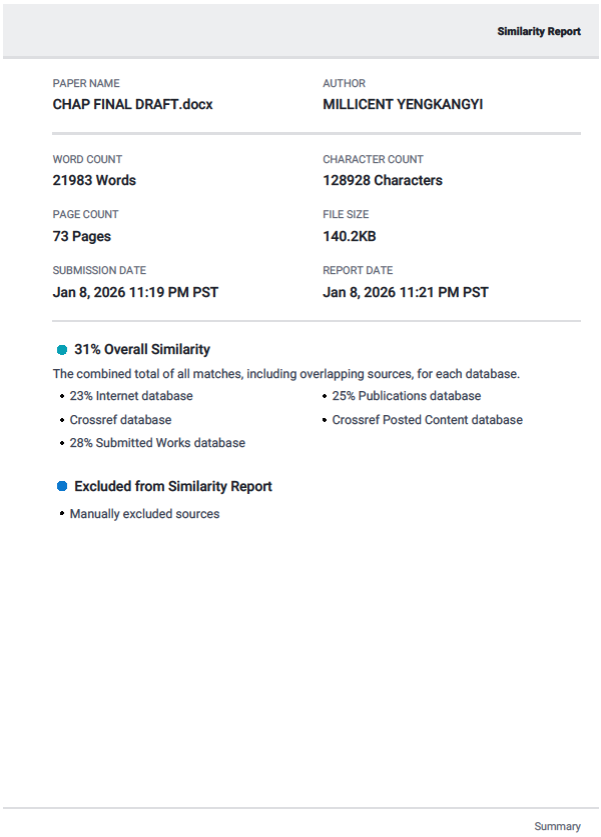
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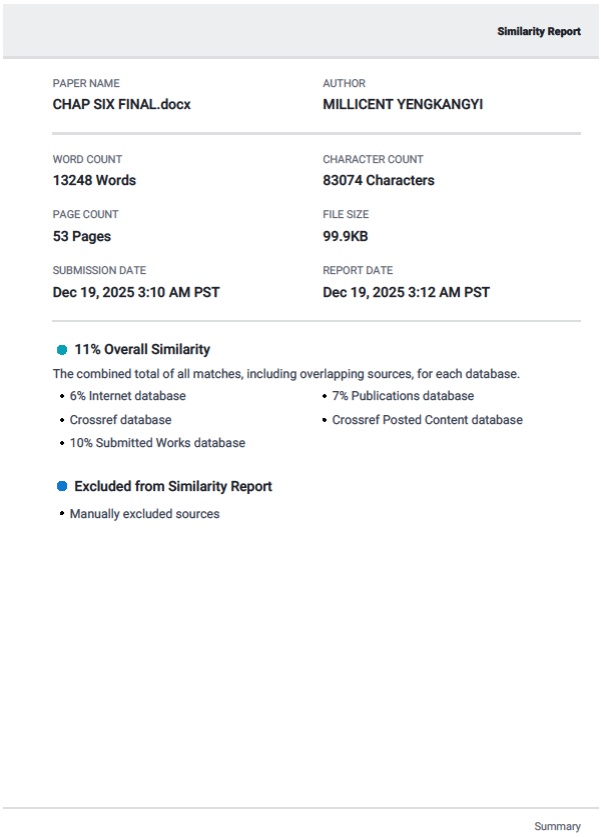
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