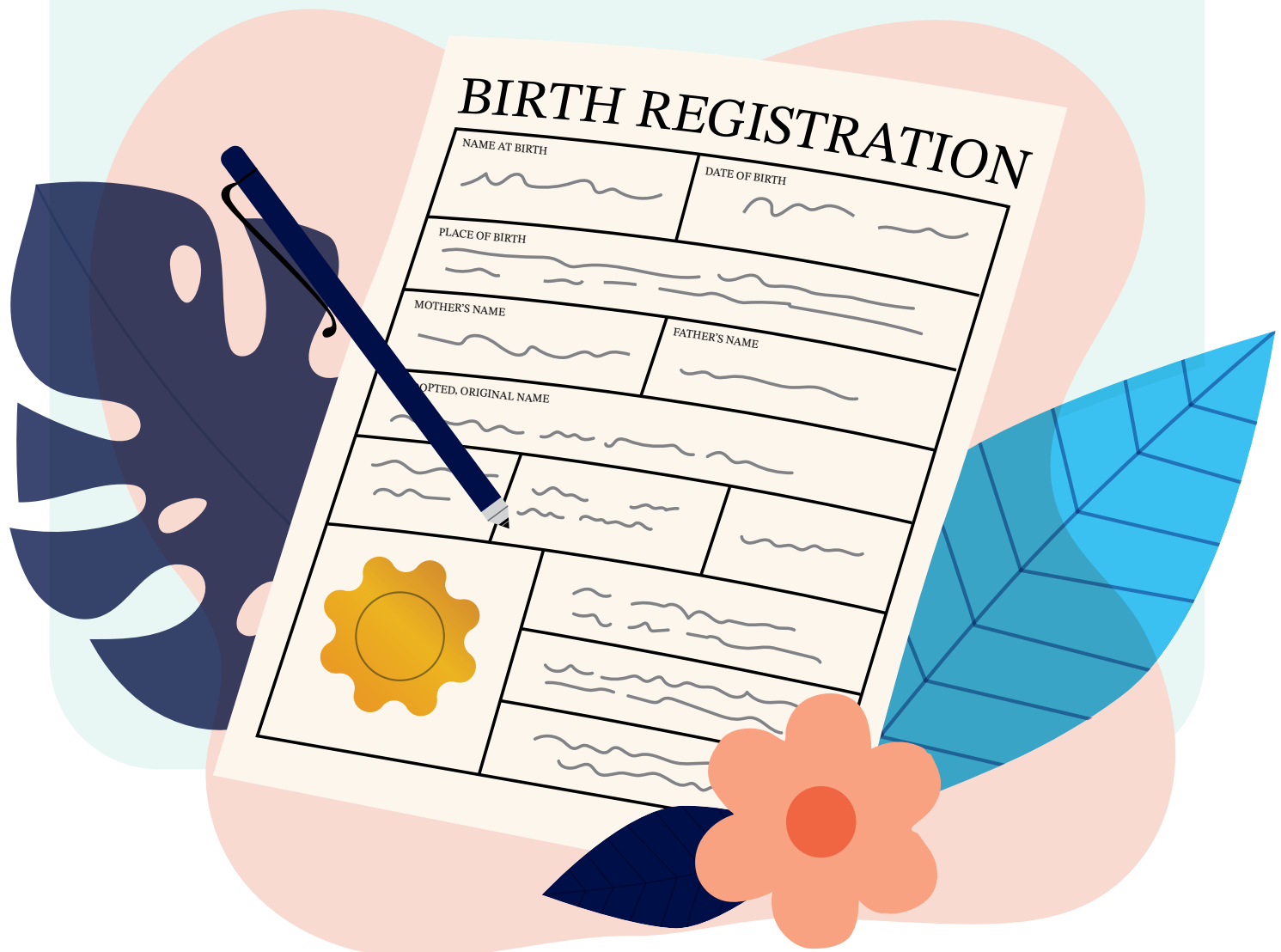


<b>Title</b>	Registration of births of children born through surrogacy arrangements in Latin America and the Caribbean
<b>Document</b>	Info. Doc. No 3 of February 2026 – <i>available in English and Spanish only</i>
<b>Author</b>	United Nations Children’s Fund (UNICEF), Organization of American States (OAS), the Latin American and Caribbean Council for Civil Registration, Identity and Vital Statistics (CLARCIEV) and Child Identity Protection (CHIP)
<b>Agenda Item</b>	Item II.1
<b>Mandate(s)</b>	N/A
<b>Objective</b>	To inform about this report which aims to explore the process of registration of children born through surrogacy arrangements in Latin America and the Caribbean. While all countries have legal provisions related to birth registration, most do not have a clear legal framework on the practice of surrogacy including implications for the registration of the child’s full genetic, gestational, biological and legal identity. As such, civil registration authorities are often faced with complex issues and <i>a fait accompli</i> , regardless of whether the practice is allowed, prohibited or if the legislation is silent.
<b>Action to be Taken</b>	<div>For Decision <input type="checkbox"/></div> <div>For Approval <input type="checkbox"/></div> <div>For Discussion <input type="checkbox"/></div> <div>For Action / Completion <input type="checkbox"/></div> <div>For Information <input checked="" type="checkbox"/></div>
<b>Annexes</b>	N/A
<b>Related Documents</b>	N/A

# REGISTRATION OF BIRTHS OF CHILDREN BORN THROUGH SURROGACY ARRANGEMENTS

IN LATIN AMERICA AND THE CARIBBEAN



# REGISTRATION OF BIRTHS OF CHILDREN BORN THROUGH SURROGACY ARRANGEMENTS IN LATIN AMERICA AND THE CARIBBEAN

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## **Suggested citation:**

United Nations Children's Fund, Organization of American States, the Latin American and Caribbean Council for Civil Registration, Identity and Vital Statistics and Child Identity Protection, *Registration of Births of Children Born through Surrogacy Arrangements in Latin America and the Caribbean*, United Nations Children's Fund (UNICEF), Panama City, Panama, 2026.

Title: Registration of births of children born through surrogacy arrangements in Latin America and the Caribbean

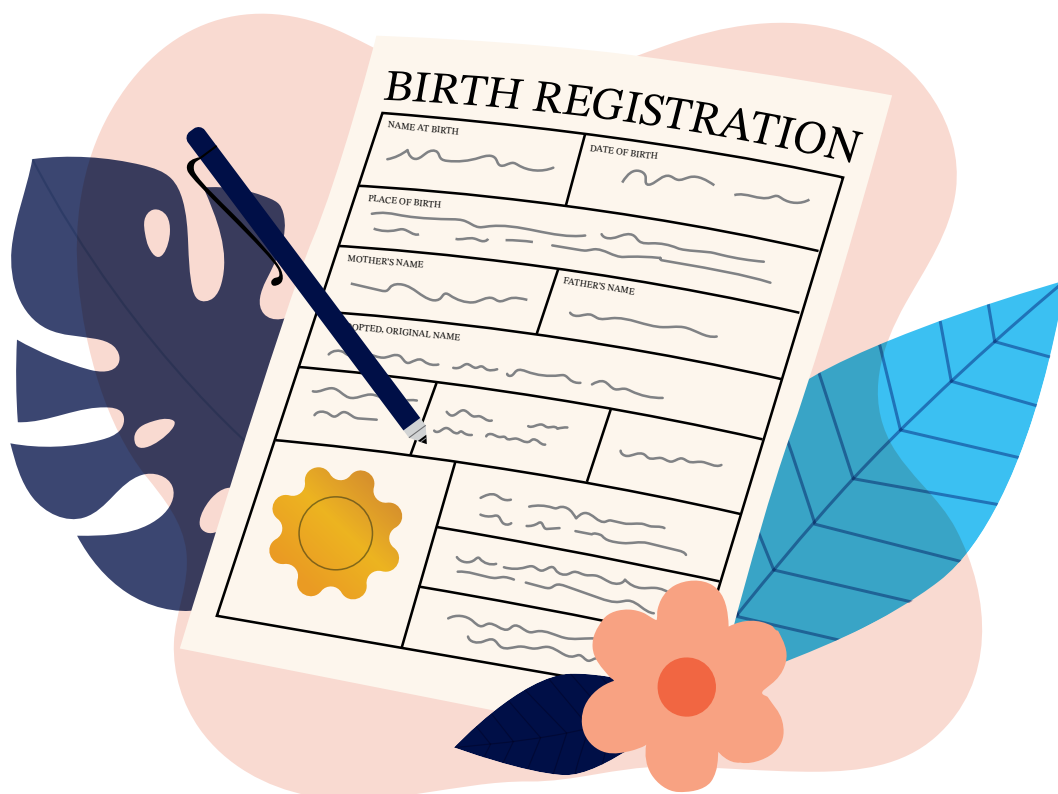
**ISBN:** 978-92-806-5732-6

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# REGISTRATION OF BIRTHS OF CHILDREN BORN THROUGH SURROGACY ARRANGEMENTS

IN LATIN AMERICA AND THE CARIBBEAN



# Foreword

Every child, no matter where they are born or the circumstances of their birth, has rights. One of the most fundamental is the right to an identity. Birth registration is that first step, it gives a child a name, a legal identity, and the foundation for claiming other rights. It records where they were born and who their family is, helping to establish nationality. Without it, doors to essential services like health care, education, and even a passport may remain closed. That is why every child should be registered as soon after birth as possible.

With surrogacy becoming more common across the globe complex questions surrounding birth registration have arisen:

Whose names should appear on the birth certificate? Should information about gamete donation be included in the registration? What documents are required? Does the surrogacy

agreement matter? How to align the certificate of live birth with the birth certificate? How to prevent double registration, especially in international surrogacy arrangements? How should the surrogate mother and the intending parents be recognized? When there is an international surrogacy arrangement, what documents are required to determine the child's nationality? These are not easy questions, and presently there are no unified responses or guidelines that registrars can follow.

This paper explores how countries in the region are addressing these challenges. It looks at practices that uphold a child's right to a full identity and responds to queries and concerns raised by civil registrars through the Latin American and Caribbean Council for Civil Registration, Identity, and Vital Statistics. Our goal is to share practices and recommendations to help registrars navigate these issues and ensure that every child born through surrogacy receives what they deserve—a legal identity from the very start.

Because birth registration is more than a formality. It is a child's passport to protection.

# Acknowledgements

This report is the result of a partnership between the Regional Office for Latin America and the Caribbean of the United Nations Children's Fund (UNICEF LACRO), the Organization of American States (OAS) and Child Identity Protection (CHIP), with the support of the Latin American and Caribbean Council for Civil Registration, Identity, and Vital Statistics (CLARCIEV). It aims to explore the process of registration of children born through surrogacy arrangements in Latin America and the Caribbean. In this context, the partners wish to extend their appreciation to all individuals, authorities and organisations that supported this research and are very grateful to all Member States of the OAS and/or CLARCIEV that were approached in this process for their interest in this study.

The partners are particularly grateful for the active participation and information received from the Civil Registry in Antigua and Barbuda, the Servicio de Registro Cívico in Bolivia, the Associação Nacional dos Registradores de Pessoas Naturais (Arpen-Brasil) in Brazil, the Servicio de Registro Civil e Identificación in Chile, the Registraduría Nacional del Estado Civil in Colombia, the Junta Central Electoral in the Dominican Republic, the Dirección General de Registro Civil, Identificación y Cedulación in Ecuador, the Registro Nacional de las Personas Naturales in El Salvador, the Registro Nacional de las Personas in Guatemala, the Registro Nacional de las Personas in Honduras, the Registro Nacional de Población e Identidad of the Secretaría de Gobernación in Mexico, the

Registro Nacional de Identificación y Estado Civil in Peru, the Registry of Civil Status in Saint Lucia and the Ministry of Home Affairs in Suriname. The additional discussion time offered by Karine Boselli and Pedro Giamberardino in Brazil, by María Cristina Manzano Noguera in Colombia as well as by Roberto Zárate Rosas and Balam Isrrael Cruz Hernández in Mexico has been valuable in understanding the situation and approaches in these countries and thereby offering enriching inputs for the report.

Likewise, appreciation and thanks are owed to the experts and organisations that provided their support and insightful feedback in the review of drafts of the report. In particular, the partners wish to thank Candy Fabio Salas and Carolina Klein of UNICEF Chile, Loria-Mae Angela Heywood of UNICEF Guyana and Kristen De Martino of UNICEF Headquarters for their valuable inputs. In addition, this paper benefited from the expert views of Laura Martinez-Mora and Ignacio Goicoechea at The Hague Conference on Private International Law.

Finally, special thanks to the author of the report, Christina Bagliatto of CHIP as well as for the ongoing support and inputs of Kendra Gregson at UNICEF's Regional Office for Latin America and the Caribbean, Rebeca Omaña at the Secretariat of CLARCIEV in the Organization of American States and Mia Dambach of CHIP. The partners are also grateful for the endorsement of this report by CLARCIEV and hope this research will prove useful to Civil Registrars across the region.

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# Acronyms

<b>ART(s)</b>	Assisted reproductive technology/ies
<b>CHIP</b>	Child Identity Protection
<b>CLARCIEV</b>	Latin American and Caribbean Council for Civil Registration, Identity, and Vital Statistics
<b>CNJ</b>	National Council of Justice (Brazil)
<b>CURP</b>	Clave Única de Registro de Población (Mexico)
<b>DNV</b>	Declaração de nascido vivo (Brazil)
<b>HCCH</b>	The Hague Conference on Private International Law
<b>ICBF</b>	Instituto Colombiano de Bienestar Familiar (Colombia)
<b>ISA</b>	International surrogacy arrangement
<b>LACRO</b>	Latin America and Caribbean Regional Office (UNICEF)
<b>NUIP</b>	Número Único de Identificación Personal (Colombia)
<b>OAS</b>	Organization of American States
<b>OPSC</b>	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
<b>RENIEC</b>	Registro Nacional de Identificación y Estado Civil (Peru)
<b>RUN</b>	Rol Único Nacional (Chile)
<b>SCJN</b>	Suprema Corte de Justicia de la Nación (SCJN)
<b>SERECÍ</b>	Servicio de Registro Cívico (Bolivia)
<b>UNCRC</b>	United Nations Convention on the Rights of the Child
<b>UNICEF</b>	United Nations Children's Fund
<b>Verona Principles</b>	Principles for the protection of the rights of the child born through surrogacy

## Key definitions

<b>Assisted reproductive technology/ies</b>	<p>All treatments or procedures that include the <i>in vitro</i> handling of both human oocytes and sperm or of embryos for the purpose of establishing a pregnancy. This includes, but is not limited to, <i>in vitro</i> fertilization and embryo transfer, gamete intrafallopian transfer, zygote intrafallopian transfer, tubal embryo transfer, gamete and embryo cryopreservation, oocyte and embryo donation, and gestational surrogacy. Assisted reproductive technology/ies (ARTs) do not include assisted insemination (artificial insemination) using sperm from either a woman's partner or a sperm donor.<sup>1</sup></p> <p>The present report focuses on third-party gamete donation and surrogacy only.</p>
<b>Intending parent(s)</b>	Person(s) who request a surrogate mother to carry and give birth to a child for them. <sup>2</sup>
<b>Surrogacy</b>	[A] form of "third party" reproductive practice in which the intending parent(s) and the surrogate mother agree that the surrogate mother will become pregnant, gestate, and give birth to a child. (...) Surrogacy generally occurs in the context of assisted reproductive technologies. <sup>3</sup>



## Introduction

The United Nations Children's Fund (UNICEF), the Organization of American States (OAS), the Latin American and Caribbean Council for Civil Registration, Identity, and Vital Statistics (CLARCIEV) and Child Identity Protection (CHIP) fully recognise the efforts undertaken by civil registration authorities in the Latin American and Caribbean region to uphold the right to an identity for all children, including through prompt birth registration.

While all countries have legal provisions related to birth registration, most do not have a clear legal framework on the practice of surrogacy including implications for the registration of the child's full genetic, gestational, biological and legal identity. As

such, civil registration authorities are often faced with complex issues and *a fait accompli*, regardless of whether the practice is allowed, prohibited or if the legislation is silent.

The present technical document gathers available information from 30 countries in the region in terms of their approach to the civil registration of children born through surrogacy arrangements. The document identifies potential promising practices to record, preserve and access these children's full identity. Civil registration authorities – in collaboration with the health sector and potential intermediaries – are key actors in protecting information about a child's identity. Birth registration is also key to preventing statelessness as it provides legal proof of identity and family ties, enabling children to claim their nationality.

The present technical document does not intend to advocate for or against the practice of surrogacy.<sup>4</sup> It intends to review the variety of approaches and

procedures available regionally – and, to some extent, globally – and to ensure that practices respect children’s rights and specifically the right to identity. All children – irrespective of the circumstances of their conception or birth – have the right to be registered with no discrimination. This, in turn, allows children to enjoy a broader range of identity rights, including to a name, a nationality and family relations in accordance with Articles 7 and 8 of the United Nations Convention on the Rights of the Child (UNCRC), in keeping with the principle of

the best interests of the child (Article 3) as well as in close alignment with Article 9 and the access to other rights too. The implementation of the right to be registered should entail a process that ensures that the establishment of legal parentage does not facilitate or inadvertently allow for the sale of children<sup>5</sup> or other violations of children’s rights. It should also be in line with the key provisions on children’s rights and the right to identity in the American Convention on Human Rights.<sup>6</sup>

## Methodology

UNICEF LACRO commissioned CHIP to undertake a technical review of current legal, policy, institutional frameworks as well as practices relevant to the registration of births of children born through surrogacy arrangements across Latin America and the Caribbean. The OAS, as the Secretariat of CLARCIEV, has been part of this partnership too, facilitating discussions with Member States. Brazil, Colombia and Mexico expressed a particular interest in this research and in a more in-depth analysis of their current practices.

In this context, a brief questionnaire was drafted and inspired by an earlier questionnaire prepared by the Hague Conference on Private International Law (HCCH) (*see Annex I*).<sup>7</sup> This was sent to the civil registration authorities of all Member States of the OAS and/or CLARCIEV. Fourteen replies were returned to the research team from Antigua and Barbuda, Bolivia, Brazil, Chile, Colombia, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Peru, Saint Lucia and Suriname.

Supplementary secondary sources including jurisprudence were also reviewed. The research team undertook key informant interviews with the civil registration authorities in Brazil and Colombia as well as with the population registry in Mexico, in order to have a more in depth understanding of their diverse approaches.



## Global context and legal frameworks

There are reports that *'the practice of surrogacy is on the rise worldwide, with a significant and growing proportion of arrangements involving cross-border dynamics'*.<sup>8</sup> However, there are currently no official statistics. It is important to remember that children born through surrogacy have the same rights as all children under the UNCRC,<sup>9</sup> the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC)<sup>10</sup> and the American Convention on Human Rights.<sup>11</sup>

While there is no binding international framework dedicated to surrogacy, there are efforts that provide global guidance. These include the UN CRC Committee's recommendations – most of which address birth registration<sup>12</sup> while only a few look into the practice of surrogacy,<sup>13</sup> the UN Special Rapporteur on the sale and sexual exploitation

of children's reports on surrogacy in 2018 and 2019,<sup>14</sup> the 2021 Principles for the Protection of the Rights of the Child Born Through Surrogacy (Verona Principles),<sup>15</sup> and UNICEF and CHIP's 2022 briefing note.<sup>16</sup> While not explicitly dedicated to children, the UN Special Rapporteur on violence against women and girls' report in 2025 calling for a total prohibition of all surrogacy practices and for measures to safeguard children also provides guidance.<sup>17</sup> Finally, considerable efforts have been led by the Hague Conference on Private International Law, through an Expert's Group (2016–2022), and then a Working Group (2023–2025), to develop a potential global instrument designed to address the private international law issues being encountered in relation to the legal parentage of children, including in surrogacy arrangements.<sup>18</sup>

Together, this international guidance highlights a number of children's rights that are applicable in surrogacy arrangements, notably the right to human dignity,<sup>19</sup> non-discrimination, best interests, identity (*i.e.* birth registration, name, nationality and family relations) and not to be sold; all rights should however be given due and equal consideration.



# 1

## Overview of the birth registration and parentage process

### 1.1. BIRTH REGISTRATION

Birth registration processes vary from one country to another, as noted below.



**Timeframe:** Birth registration by the official civil registration authority is subject to a clear timeline, which varies from the requirement to register the child within five days from birth in **Suriname** to within 180 days – or six months – from birth in **Antigua and Barbuda**, the **Dominican Republic** and **Saint Lucia**,<sup>20</sup> with the notable exception of **Bolivia** which has set a maximum period for the registration of births to up to the child's 12<sup>th</sup> birthday.<sup>21</sup>



**Documentation:** Each country has detailed the documentation that must be provided at the registration of the child's birth. In the case of late registration, additional documents or proceedings are also required (e.g. identity documents of the mother and father, marriage certificate,<sup>22</sup> an administrative<sup>23</sup> or judicial decision, etc.). Supplementary evidence for late registration is required in some countries and may include, among others, an *affidavit* explaining the delay, supporting documents (e.g. baptismal record), a judicial sentence, a notarised declaration, the family book and/or the payment of a fee.

In all countries reviewed, **the health sector issues an initial document – mostly known as a certificate of live birth, which clearly confirms the fact of the birth of the child, the child’s health situation and records the identity of the woman giving birth to the child.**<sup>24</sup> It is not an act of registration of the child’s birth, nor does it certify their birth, as this is incumbent on the civil registration authority of each country. This document is essential to register the child<sup>25</sup> and to evidence the legal parenthood of the woman, who gave birth to the child.<sup>26</sup> None of the countries reviewed currently allows for anonymous birth, *i.e.* the option not to record the woman giving birth on the live birth certificate if she wishes to remain anonymous.<sup>27</sup>



**Informants:** Most countries set out the profiles of informants, who may register the child at the civil registration authority, including:

- in all countries, the mother and/or the father.<sup>28</sup> This condition may be challenging for birth registration in cases of surrogacy when the surrogate mother is married or for same-sex couples (*see Section 2*);<sup>29</sup>
- a relative or person with legal responsibility or custody of the child (*e.g.* grandparents, guardian);<sup>30</sup>
- the head of a health facility or a medical professional – or any other witness present at birth;<sup>31</sup>
- a relevant authority.<sup>32</sup>



#### **Issuance of a unique identification**

**number:** In some of the countries

reviewed, the birth registration process also allows for the immediate issuance of a unique identification number, that is created at the time of the registration of birth, as is the case with the *Cadastro de Pessoas Físicas* in **Brazil**,<sup>33</sup> the *Rol Único Nacional* (RUN) in **Chile**,<sup>34</sup> the *Número Único de Identificación Personal* (NUIP) in **Colombia**,<sup>35</sup> the *Número Único de Identificación* in **El Salvador** and the *Clave Única de Registro de Población* (CURP) in

**Mexico**<sup>36</sup>. Similarly, in **Peru**, the *Código Único de Identificación* (CUI) that appears on the live birth certificate is transferred to the National Identity Document (DNI).

## **1.2 ESTABLISHMENT OF LEGAL PARENTAGE**

Birth registration is closely linked to the establishment of a child’s legal parentage, *i.e.* who their legal mother and/or father may be. Specific issues may arise in particular situations, such as adoption, same-sex couples and third-party reproduction.

**Legal parentage:** In all countries reviewed, the woman who gives birth to the child – and who is the one that is recorded on the health sector document confirming the live birth – is considered the legal mother of the child (*see Section 1.1*).<sup>37</sup> This may also be the case when the child is born as a result of assisted reproductive technologies (ARTs) (*see Key definitions*), either because the law establishes the process as such or because it is silent. Whether there should be potential adjustments in relation to same-sex couples is under discussion in some countries.<sup>38</sup>

As for the legal father, he is usually the husband of the woman who gave birth<sup>39</sup> or her male partner in a civil partnership.<sup>40</sup> A number of countries have also mentioned that the legal father may be the genetic father, whose gametes (sperm) contributed to the child,<sup>41</sup> the person who recognised the child<sup>42</sup> or when and as determined by a Court decision – including an adoption decision<sup>43</sup>. The mother and/or father may also recognise the child’s legal father via a declaration or a judicial proceeding.<sup>44</sup> In **Peru**, for example, two declarations coincide in the registry record: the birth declaration *per se* and the parentage declaration, when permitted by law. For example, the marital child declared by the father only contains the declaration of the vital event, not the parentage, since there are two proofs of marital paternity: the birth certificate and the parents’ marriage certificate. A potential challenge of legal

paternity was also mentioned by several countries, including **Guatemala**, **Honduras** and **Saint Lucia**, when a legal father wishes to challenge it or a mother wishes to establish it through forced recognition, and may entail a DNA test.<sup>45</sup>

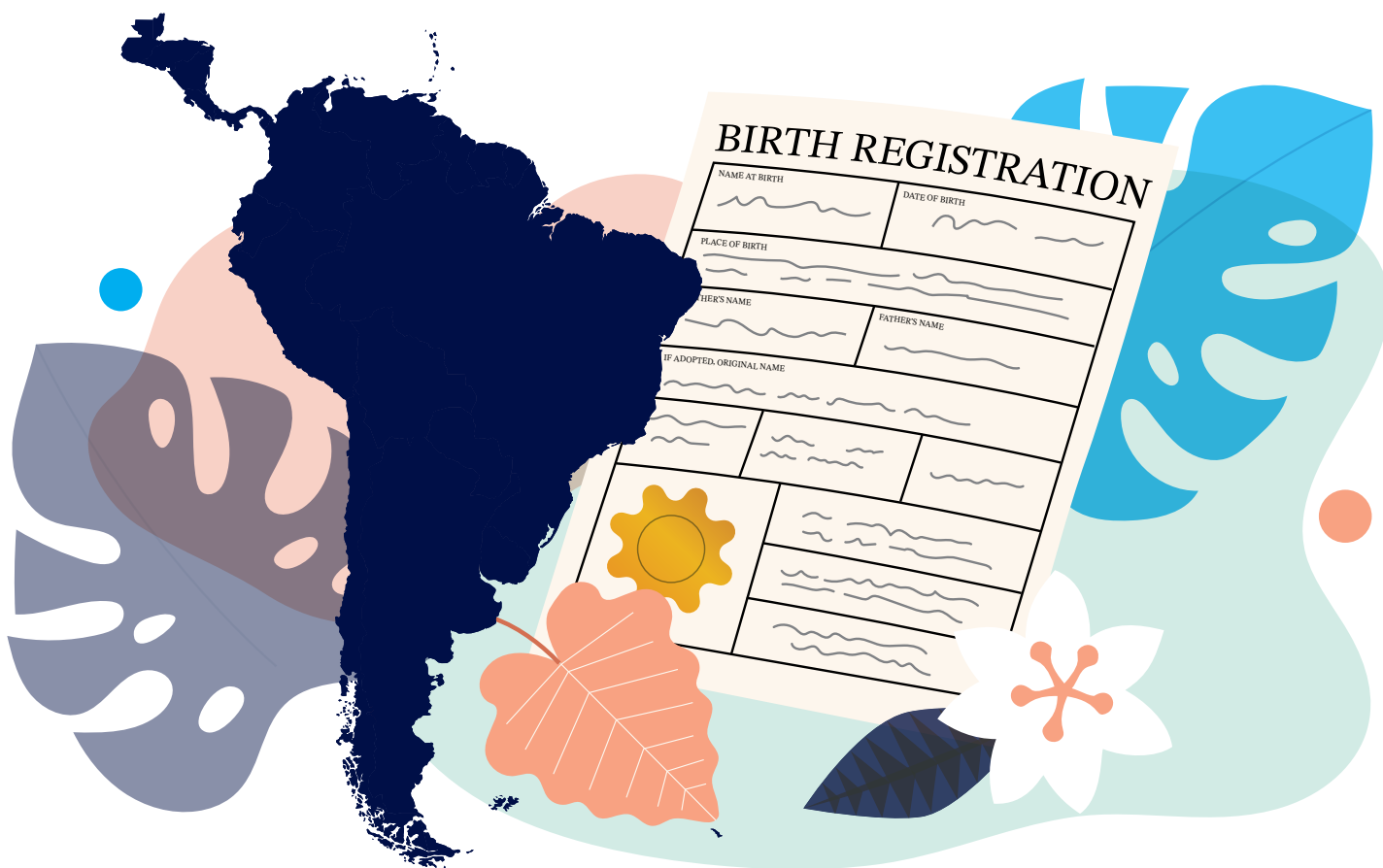
**Legal parentage when resorting to assisted reproductive technologies:** In **Argentina**, the legislation has clearly focused on the parents' 'procreational will' to establish legal parentage in cases of resort to ARTs.<sup>46</sup> In **Brazil**, the intending parents (see *Key definitions*) may be the legal parents at the child's birth, when ARTs have been undertaken in accordance with the law, *i.e.* in regulated medical clinics, irrespective of the existence of a genetic link or not. This is then reflected in the declaration that the technical director of the human reproduction facility signs and which includes the names of the beneficiaries of the process. This document is a requirement of the birth registration process.<sup>47</sup> The civil registration authority clarifies that this process enables the intending parents to be declared as legal parents omitting any verification of the child's genetic identity and the possibility that the gamete donor may be considered a legal parent. In other agreements, of an informal nature, an investigation of paternity would have to be undertaken via the judicial system, which would determine the kind of parentage (biological through a DNA test or 'socio-affective'). In **Honduras**, a gamete donor may not be considered the legal parent of a child, taking the view that the intention of the person or couple to raise the child takes precedent over the child's genetic link to a donor.<sup>48</sup> In **Mexico**, the authorities have made it clear that the woman and/or the man who have signed a surrogacy agreement may be considered the legal mother and/or legal father of the child born through a surrogacy arrangement (see *Section 2.2.b*). In **Brazil** and **Uruguay**, gamete

donation is anonymous; in general, it is also anonymous in **Colombia**, although it may not always be the case.<sup>49</sup> Nonetheless, in **Brazil**, a judicial petition could be a potential means for persons conceived through an ART to access information kept on the medical facilities' records.<sup>50</sup>

**Legal parentage in relation to same-sex parents where same-sex marriage is allowed:**<sup>51</sup>

In **Brazil**,<sup>52</sup> the National Council of Justice (CNJ) has established specific rules on birth registration and legal parentage for children born in these contexts. The birth certificate must be adapted to include the names of the same-sex parents, without reference to paternal or maternal parentage.<sup>53</sup> In 2015, the Federal Supreme Court recognised the possibility of adoption by same-sex couples. As adoptions require the involvement of the Judiciary, the registration is carried out by the Registrar of Natural Persons after a Court order. In **Chile**, legal parentage can be granted to children born through third-party reproduction to same-sex couples.<sup>54</sup> In **Colombia**, the Constitutional Court has called for the presumption of legitimacy by analogy, in order to ensure the same safeguards to all families in the registration of their children.<sup>55</sup> The Court has ordered the civil registration authority to grant the same safeguards to children born and recognised outside of marriage.<sup>56</sup> Same-sex couples in Colombia may also resort to adoption to become the legal parents of a child.<sup>57</sup> In **Ecuador**, legal parentage to same-sex couples may be granted via a judicial sentence or an order issued by another authority.<sup>58</sup> In **Mexico**, same-sex couples may become the legal parents of children conceived from ARTs through a judicial sentence or an order by a state authority.<sup>59</sup> This includes via an adoption, which is allowed for same-sex couples in at least 12 of the country's 32 states.





## 2

## Birth registration and parentage in cases of surrogacy in Latin America and the Caribbean

### 2.1. OVERVIEW OF THE LEGAL FRAMEWORKS AND SITUATION ACROSS THE REGION

Despite a general legal vacuum, the practice of surrogacy appears to have been emerging over the past years across the Latin American and Caribbean.<sup>60</sup> Few

countries have expressly prohibited it and few have expressly allowed it – with clear conditions and consequences attached, but most domestic legal frameworks in the region remain silent on the practice, thereby resulting in differing interpretations (see Table 1).



**Table 1: Current legal frameworks on surrogacy per country**

	Country prohibits surrogacy	Country allows surrogacy	Country remains silent on surrogacy
Antigua and Barbuda			✓
Argentina			✓ <sup>61</sup>
Barbados			✓ <sup>62</sup>
Belize			✓
Bolivia			✓ <sup>63</sup>
Brazil		✓(altruistic, up to fourth degree of kinship)	
Chile			✓ <sup>64</sup>
Colombia			✓ <sup>65</sup>
Costa Rica			✓ <sup>66</sup>
Dominica			✓
Dominican Republic			✓
Ecuador			✓ <sup>67</sup>
El Salvador			✓
Grenada			✓
Guatemala			✓
Guyana			✓ <sup>68</sup>
Haiti			✓
Honduras			✓
Jamaica			✓ <sup>69</sup>
Mexico <sup>70</sup>	✓ (Querétaro, San Luis Potosí) <sup>71</sup>	✓ (Sinaloa, Tabasco) <sup>72</sup>	✓ <sup>73</sup>
Panama			✓ <sup>74</sup>
Paraguay			✓
Peru			✓ <sup>75</sup>
Saint Kitts and Nevis			✓
Saint Lucia			✓
Saint Vincent and the Grenadines			✓
Suriname			✓
The Bahamas			✓
Trinidad and Tobago			✓
Uruguay		✓ <sup>76</sup> (altruistic, up to second degree of kinship)	

There are currently no official statistics on the number of surrogacy arrangements undertaken in the region, nor of the children born through such arrangements in those countries that specifically participated in this research. Nonetheless, as mentioned elsewhere in this report, there are some limited indications that countries may be promoting continuity in the numbering of birth records, *i.e.* from the live birth certificate, to the birth registration

process, to any change in records resulting from administrative or judicial decisions. This could enable some form of tracing of surrogacy cases, *e.g.* **Colombia** (see *below*). In **Brazil**, the official portal of the Civil Registry mentions that, between 2020 and 2021, over 36,000 pregnancies were achieved in the country through ARTs<sup>77</sup> and the research undertaken by Ribeiro and Bezerra de Menezes – the authors of a comprehensive chapter on surrogacy in Brazil

– mentions that in 2019, there were approximately 180 ART centres, most of them privately managed.<sup>78</sup> Unfortunately, there are no official statistics on surrogacy, despite the fact that ART clinics must keep a permanent registry of all pregnancies resulting from the various ART techniques. This reflects the absence of a central body that would collect, compile, analyse and publish these numbers.<sup>79</sup> In addition, there appear to be complex surrogacy arrangements that are undertaken informally, outside any regulated framework or resort to medical assistance.<sup>80</sup>

**Colombia** has usefully shared some recent numbers of those medical live birth certificates on which the name of the mother was changed as a result of a judicial sentence while maintaining the same unique identification number. These were 43 in 2020, 38 in 2021, 39 in 2022, 67 in 2023, 51 in 2024 and 40 so far in 2025.<sup>81</sup> In addition, a recent press article echoes a significant growth in surrogacy in Colombia, calling this trend a 'boom' in 'reproductive tourism'. It stated that *'in 2024, 8,435 lawsuits challenging maternity and paternity were filed in the judicial system. This is 445 more than in 2023, according to figures from the Superior Council of the Judiciary, and many of these legal actions, in the case of mothers, were brought by assisted reproduction clinics operating in the country that offer surrogacy services, mostly to foreign same-sex couples'*<sup>82</sup> (international surrogacy arrangements (ISAs) will be further addressed below, see Part 3).

In **Mexico**, it has not been possible to obtain official figures on surrogacy procedures. For example, Sosa Pastrana – the author of a comprehensive chapter on surrogacy in Mexico – mentioned that, in Tabasco, *'four cases had been registered between January 2016 and March 2017. However, this number seems to contradict the claim, also made by the state government [of Tabasco], that there were more than 100 pregnancies in progress in 2017'*.<sup>83</sup> Another source has been able to gather some additional data from the states of Sinaloa and Tabasco: *'The General Directorate of Civil Registration of Tabasco responded to a public information request that it has records dating from 13 January 2016 of 'notarial notices of assisted and surrogate pregnancy contracts' [4 in 2016, 8 in 2017, 10 in 2018, 13 in 2019, 12 in 2020, 7 in 2021 and 5 in 2022] (...) In the case of Sinaloa (...) [t]he state Civil Registry says it received eight notarial notices of proceedings in 2019, another five the following year,*

*again eight in 2021 and three [in 2022]. The Ministry of Health, for its part, reported in a transparency request that in 2017 it received 17 notifications of surrogacy contracts made before a notary, in addition to five in 2018, seven in 2019, three in 2020, and four in 2021'*.<sup>84</sup>

While there is currently no legal framework on the practice of surrogacy in **Peru**, ISA cases have emerged, as reflected in recent jurisprudence.<sup>85</sup> However, these court rulings have been issued in specific cases that are only applicable to the parties and do not set a legal precedent; in addition, they solely refer to cases of ART undertaken abroad. Finally, according to one expert, informal agreements seem to take place in some countries in the **Caribbean**.<sup>86</sup>

## 2.2. REQUIREMENTS FOR BIRTH REGISTRATION AND DETERMINATION OF PARENTAGE IN SURROGACY ARRANGEMENTS

### 2.2.a. Notification, declaration, registration and certification of birth of children born through surrogacy arrangements

The general birth notification, declaration, registration and certification process<sup>87</sup> has been adapted for children born through surrogacy where the practice is explicitly regulated in law or in some countries where there is no official position. In these cases, additional documents or legal mechanisms may be resorted to.

In **Argentina** – a country whose legislation is currently silent on the practice of surrogacy,<sup>88</sup> at the time of registration, the parents will have to provide the informed and free consent of the parties involved, which will have to be certified before the Ministry of Health or formalised before a public notary.<sup>89</sup>

In **Brazil**, only altruistic surrogacy is permitted and such an arrangement is limited to relatives up to the fourth degree of kinship (with certain exceptions, see below).<sup>90</sup> The country implements the practice of surrogacy solely on the basis of medical guidelines issued by medical bodies. Supervision of the surrogacy practice is incumbent on the health sector, as regulatory provisions

exist making them in charge of key decisions in surrogacy processes. This includes the formalisation of an agreement between the parties and the pre-birth establishment of parentage. The health authorities will also have an important contribution in those cases in which the surrogate mother and the intending parents are not relatives up to the fourth degree of kinship, as these cases must be submitted to the Regional Council of Medicine or analysed by the Judiciary.<sup>91</sup> The health sector does not address the registration of births of children born through surrogacy. This has been dealt with most recently in Order N° 149 (2023) of the CNJ<sup>92</sup> in 'Book A', 'regardless of prior judicial authorisation and in compliance with the relevant legislation in force'.<sup>93</sup>

On this basis, Article 513 of the Order lists the **essential documents required to register the birth and to issue a birth certificate**.<sup>94</sup>

It is essential to highlight that **the surrogate mother's name will appear on the 'declaração de nascido vivo' (DNV) issued by the hospital or by the person responsible for the birth**. The DNV also includes a unified national identification number and the characteristics of the newborn, the pregnancy and the birth. It mentions the '*full name, place of birth, occupation, residential address and the age of the mother at the time of birth as well as the father's full name*'.<sup>95</sup> However, this document does not include whether a surrogacy was used and does not allow for information on a potential parental agreement to be included.<sup>96</sup> It equally does not mention whether any gametes were used in the conception of the child. Also at the time of the registration of birth,<sup>97</sup> a pre-birth agreement between the intending parent(s) and the surrogate mother is part of the documents to be presented.<sup>98</sup> A 2022 resolution likewise mentions such an agreement among the documents to be included in the patient's medical records in cases of ART (see Section 1.2).<sup>99</sup> One concern that has been mentioned by the civil registration authorities relates to those surrogacy arrangements that are undertaken informally, outside any regulated framework or resort to medical assistance, which only come to the attention of the Civil Registry

once the child has already been born. In this legal vacuum, the child is registered only in relation to one parent, and the other must resort to either a traditional adoption (which would exclude the surrogate mother), to a unilateral adoption (which requires a judicial decision and adds a parent without excluding the surrogate mother) or to 'socio-affective parentage', which incorporates another parent through a judicial sentence, but is limited to those cases in which the child is already aged 12 or over as there is a requirement to recognise an existing emotional relationship.<sup>100</sup>

As mentioned above (see Section 2.1), in **Colombia**, there is currently no specific legislation on surrogacy, although some case law has appeared over the years to address some issues and to call for regulation,<sup>101</sup> starting with Constitutional Court ruling T-968 of 2009,<sup>102</sup> which addressed the preservation of the identity of the parties to the surrogacy.<sup>103</sup> Ruling SU-696 of 2015, from the Constitutional Court confirmed the lower court's decision ordering immediate registration of two children born through an ISA entered into by a same-sex couple. It based its decision on the safeguard of protection of the right to have a family and not be separated from it,<sup>104</sup> constitutional protection for 'diverse families',<sup>105</sup> the need to correct the discriminatory actions of notarial authorities against children and their parents because of their family origin, and the need to remedy the constitutional protection deficit suffered by children of 'diverse families'<sup>106</sup> who cannot be registered.<sup>107</sup> While it addresses positive elements of a child's right to identity, as expressed by one expert, '*although the Court did not rule on the practice of surrogacy, (...) concerns arise about the value of this silence in the face of the practice carried out abroad, as it would involve endorsing a specific parentage situation declared by foreign authorities with jurisdiction to do so*'.<sup>108</sup> Furthermore, this ruling fails to address the substance of the practice by prioritising the child's legal parentage and offers limited guidance in the face of a *fait accompli*. It does not address the preservation of identity in terms of use of gametes, nor does it consider whether sale of child has occurred.

### **In order to register the child at the Civil**

**Registry**, in all cases in which a live birth certificate is issued,<sup>109</sup> the certificate from the doctor or nurse who assisted the mother during the birth must be presented,<sup>110</sup> and the general presumption of maternity also applies to the registration of children born through surrogacy.<sup>111</sup> However, as explained by the civil registration authority in the country, the birth registration function may also be delegated to notaries across the country. While this may result in differing practices, the Colombian Institute of Procedural Law in the context of the 2025 ruling of the Superior Tribunal of Bogotá stated that *‘the notary, (...), must strictly refer to the fact of the birth and its evidence, (...). Their role is limited to formal and documentary verification, without the power to assess evidence or dispute the original maternal parentage’*.<sup>112</sup> It should be noted, that the procedure for registering children born during the marriage or civil partnership of same-sex couples includes asking about the couple’s situation, whether the child was born abroad, the child’s birth certificate (apostilled/ legalised and translated), and any other legal requirements for birth registration (e.g. certificate of live birth, authenticated documents, witness statements, etc.).<sup>113</sup> This can be a helpful practice to have some oversight of ISAs.

In terms of the **validity of the surrogacy contract and its implications for the registration of birth**, Rueda – the author of a comprehensive chapter on surrogacy in Colombia – believes that the informed consent for the procedure must comply with the requirements of the Code of Medical Ethics.<sup>114</sup> For its part, consent *‘must be expressed in writing, and some suggest considering the rules of the Code of Childhood and Adolescence on consent to adoption. The latter can only be granted after receiving “sufficient information and advice on the psychosocial and legal consequences of the decision” and one month after the birth (...)*’.<sup>115</sup> Rueda concludes that *‘the lack of regulations worsens the situation of uncertainty regarding all aspects surrounding the assessment of the validity of the clauses stipulated in the surrogacy agreements, which could then suffer from unfairness or unconstitutionality or be vitiated by the imbalance*

*between the parties’*.<sup>116</sup> The 2025 case decided by the Superior Tribunal of Bogotá, however, has taken a different approach to the validity of the contract, by considering that it must be questioned in light of public order rules.<sup>117</sup>

### **Colombia’s recent move towards recognising the surrogate mother’s legal parentage at birth – an important safeguard for the child’s right to identity**

*‘Although these contracts are not expressly regulated by law in Colombia, they cannot disregard public order rules or contradict the provisions contained in international law instruments in force in the country (...) several of the clauses included in the contract are not valid or effective under Colombian law (...) the Court held that the surrogacy contract at stake could not and cannot be considered a valid basis for the notary to refrain from registering the pregnant woman as the mother of the child on the civil birth register.’*<sup>118</sup>

The Instituto Colombiano de Derecho Procesal took a similar view of the case, confirming that *‘the surrogacy contract is not a suitable document to justify the omission of the surrogate mother from the civil register, especially when there is a medical certificate identifying her as such. Likewise, the surrogate mother’s statement that she does not consider herself to be the mother does not have sufficient legal value to invalidate the legal presumption of maternity derived from childbirth’*.<sup>119</sup>

In **Mexico’s states of Sinaloa and Tabasco**, the surrogacy contract – which includes information about the identity of the surrogate mother and intending parent(s) must be concluded before a Notary and approved by a Court, in the case of Tabasco. This process apparently does not capture information about any potential gamete donor. The information gathered is then notified to the respective state’s Health Ministry and to the Civil

Registry prior to the child's birth.<sup>120</sup> In both states, the surrogacy contract is ultimately a requirement for the registration of the child's birth and the determination of the child's legal parentage, thus imposing an important responsibility on civil registration authorities. **In addition to the birth notification mentioned above** (see Section 1), when registering a child in Tabasco, it is also necessary to present *'the form issued for this purpose by the State Government's Ministry of Health, which shall contain, in this case, proof that the pregnancy was undertaken through an ART or medical practice known as surrogacy'*.<sup>121</sup> Sinaloa, for its part, requires prior notification of the surrogacy to the health authority and the civil registry to determine parentage with the intending parents from the moment of fertilisation,<sup>122</sup> together with the birth notification mentioned above, which also contains 'proof that the pregnancy was undertaken through an ART or medical practice'.<sup>123</sup> In Tabasco, an additional legal mechanism may be resorted to when the surrogate mother contributes with her own gametes (ovules), in which case the intending mother must then adopt the child (full adoption) via the relevant judicial authority. This was subsequently confirmed by Mexico's Supreme Court of Justice of the Nation (SCJN) in an appeal for legal protection.<sup>124</sup> In Sinaloa, this is not the case as the surrogacy agreement has sufficient validity to consider that the intending parents are the legal parents of the child from birth.<sup>125</sup>

### **Mexico's Supreme Court has focused on children's best interests and the right to identity**

The SCJN has also emphasised the **child's best interests and their right to identity as central elements to be assessed in each particular situation of surrogacy**.<sup>126</sup> It has also repeatedly called for more solid regulation of the practice across the country,<sup>127</sup> in particular as the practice is taking place in states where there is no legislation. Indeed, the SCJN has had to issue decisions relating to the denial of birth registration in Mexico City or the state of Yucatán.<sup>128</sup> In general, it has been established that identity is a fundamental human right that must be respected and safeguarded by all registration authorities in the country.

The registration of children born through surrogacy should be granted when there is no specific regulation in the place where it occurred.<sup>129</sup> Several jurisprudential theses have also addressed these issues,<sup>130</sup> and other actors have confirmed events of denial of birth registration in practice.<sup>131</sup> In the most recent case on this matter before the Supreme Court, the First Chamber resorted to a provisional birth certificate and a plan of restitution of rights for the child (see attached box).

### **Mexico's Supreme Court has called for provisional birth registration to ensure the rights of the surrogate mother and for the implementation of a child rights protection plan**

The First Chamber modified the *amparo* ruling so that the State's Civil Registry would issue a birth certificate, meant as a provisional registration, until the informed consent of the surrogate mother is obtained, to whom the content of this resolution will be explained. Once this had been done, the marginal note on the birth certificate would be removed and the birth registration would become final.

From a child rights perspective, this ruling is also noteworthy as it instructed the local child protection authority in Mexico City to initiate a comprehensive rights restitution plan in favour of the child, including an assessment of whether it would be appropriate for the intending mother to adopt the child, which would allow the establishment of legal parentage between the two.<sup>132</sup>

Recently, the Supreme Court of Justice of the Nation agreed to analyse the legal loophole regarding the issuance of birth certificates for children born through surrogacy.<sup>133</sup>



### Mexico's Supreme Court determines a series of elements to be considered prior to the registration of birth of a child born through surrogacy

In a case of denial to register a child not yet born in the framework of a surrogacy arrangement and omitting the identity of the surrogate mother, the jurisprudential thesis on the matter confirmed that judges must take into account a series of criteria beyond the surrogacy contract: the child's best interests, the 'procreational will' – or lack thereof – of the intending parents and the surrogate mother, the context of the contractual relationship and of the consents provided, in order to ensure that the contract does not amount to an instrument of exploitation.<sup>134</sup>

Finally, it is worth mentioning that in other states in Mexico, intending parents have resorted to legal mechanisms prior to the surrogacy arrangement being implemented, with a view to formalising the process pre-birth. In addition, it appears that even though surrogacy contracts are only established in law in Sinaloa and Tabasco, the jurisdiction of these contracts may be expanded to other states across the country on the basis of the principle of extra-territoriality of the functions of notaries, and that the pregnancies may therefore be carried and the births occur in other states. The involvement of a network of other persons or bodies in these processes has undoubtedly facilitated the resort to this practice.<sup>135</sup>

#### 2.2.b. Impact on parentage of children born through surrogacy arrangements

The adjustment of the birth registration process for children born through surrogacy arrangements has had diverse implications for establishing legal parentage, as the person giving birth to them, the gamete donors and the intending parents reflect a diversity of parties in the child's identity and family relations.

In **Brazil**, based on the above-mentioned signed medical statement (see Sections 1.2 and 2.2.a.), **the intending mother and father will declare that they are the legal parents of the child and in whose name the registration shall be made.** While it is not a contract *per se* (because it

is considered an altruistic act), the medical clinic responsible for the surrogacy procedure obtains a document that legitimizes the legal father and mother for subsequent registration.<sup>136</sup> The National Code of Standards of the CNJ establishes that an agreement must be signed by the surrogate mother clarifying the issue of parentage, which will support the respective registration.<sup>137</sup>

Several judgements have addressed *'the implications of surrogacy in relation to third parties, such as the birth certificate in cases of rejection by the Civil Registry'*.<sup>138</sup> One Tribunal in São Paulo determined that **it was not necessary to amend the live birth declaration to register the intending parent(s) on the birth certificate** (see attached box). Ribeiro and Bezerra de Menezes have explained that *'the parents of the newborn are the intending parents of the pregnancy and may therefore immediately declare the birth before the Civil Registry, irrespective of any judicial authorisation or other administrative measure'*,<sup>139</sup> creating no legal parentage between the surrogate mother and the child.

### The live birth certificate should not be amended in São Paulo, Brazil, as it reflects the name of the woman giving birth – which is promising as it preserves a fact about the child's identity

In one case, the Court determined that the live birth declaration should preserve the name of the woman giving birth, even though the birth registration process will reflect the intending parents as the legal parents of the child. According to Ribeiro and Bezerra de Menezes, *'a Tribunal of the State of São Paulo ( ) recognised that, in order to supplement birth registration, it is not necessary to amend the live birth declaration to record the intending parent as the mother of the newborn instead of that of the woman giving birth'*.<sup>140</sup> The live birth certificate should not be changed and the woman giving birth will continue to be recorded on the live birth declaration, even though the final post-registration birth certificate will only reflect the beneficiary of the surrogacy as being the mother.<sup>141</sup> Indeed, under no circumstances should the judiciary undermine or compromise the core civil registration process.

In **Colombia**, the intending parents may challenge the maternity<sup>142</sup> and once the judge has issued the respective Court order, the surrogate mother may be excluded from the birth registration registry so as to include the intending mother instead. The other intending parent – father or same-sex partner – can recognise the child as per the legal provisions in force (as an expression of will),<sup>143</sup> thus focusing on who is ‘entitled’ to the child. This may explain why surrogacy arrangements undertaken in the country are usually resorting to unmarried women, thereby facilitating the transfer of parentage in relation to one person only.<sup>144</sup> This is the case, for example, in the ruling by Bogotá’s Family Court No. 38 in 2024.<sup>145</sup> In this case, no information about the genetic donor was known or had been preserved, and the ruling recognised the existence of multiple parenthood. The Civil Chamber of the High Court of Bogotá<sup>146</sup> recently seems to have granted more recognition to the identity of the surrogate mother on the birth records by including her name on the birth registration records of a baby born through surrogacy (see *attached box*).

### Colombia’s recognition of the importance of the surrogate mother at the time of registration of births

The ruling addressed the case from the perspective of the fundamental rights of the child, who had been left stateless due to the lack of validity of her birth certificate – due to the absence of a mother’s name. **The ruling sought to recognise the importance of the surrogate mother in the process.** In this ISA, the child could not be registered in the country of residence of the intended father because she did not have a complete – and therefore invalid – birth certificate.<sup>147</sup> Thus, the Court stated that the notary, given the evidence in the certificate of live birth referring to the name of the woman who gave birth, must necessarily include her as the mother in the respective civil birth register, including in the case of no genetic link with the child. It also recognised that *‘[the child’s] right to identity was violated by the notary’s conduct, as the statement made by the surrogate mother in a public deed, according to the content of the surrogacy agreement, was legally unsuitable for the purposes of rebutting the legal presumption of parentage based on birth’*.<sup>148</sup>

In the states of **Sinaloa and Tabasco, Mexico**<sup>149</sup> the authorities have made it clear that **the woman and/or the man, who have signed a surrogacy agreement may be considered the legal parent(s) of the child born through a surrogacy arrangement at the time of birth**<sup>150</sup> (see *Section 1*). Several judgements issued by the country’s Supreme Court emphasise the ‘procreative will’ of the intending parents as the main element that should result in their registration as the legal parents.<sup>151</sup> This would also apply to same-sex couples in these states, even though the legislation remains ambiguous on this point as it refers to surrogacy being possible when the woman suffers from a physical impossibility or medical contraindication to and the signature of the surrogacy contract by ‘*a man and a woman*’ and the ‘*intending mother and father*’.<sup>152</sup> In Mexico City, where the practice of surrogacy is not regulated, a local Court has determined that there is no need to demonstrate a biological link to establish parentage in relation to a child born through any ART, including surrogacy, based on the child’s best interests.<sup>153</sup>

In cases of surrogacy carried out in Sinaloa, the legislation makes it clear that, **based on the surrogacy agreement and its due notification to the aforementioned authorities, ‘the child born from this practice shall be considered in their parentage as a child from the moment of fertilisation by their biological parents, that is, the intending mother and father’**.<sup>154</sup> This approach is different from that promoted by Tabasco’s legislation, which resorts to full adoption to establish the child’s parentage with the intending parents when the surrogate mother has provided her own eggs.<sup>155</sup> However, the same regulatory instrument later appears to resort to full adoption for any form of surrogacy.<sup>156</sup> Such full adoption and its procedure are established in the Civil Code.<sup>157</sup> A recent ruling by the SCJN that pointed out the correct differentiation of the process according to the type of surrogacy, and that full adoption would only proceed in the case of a ‘surrogate pregnancy’ (and not ‘substitute pregnancy’ – the difference in terminology is set out in the state law).<sup>158</sup> Sosa Pastrana pointed out, in relation to those states whose legislation prohibits or does not regulate surrogacy, that maternity is generally attributed to the gestational mother, and that ‘*the criterion of the First Chamber of the Supreme Court of Justice in the Yucatán case leaves open the possibility that the transfer*

of paternity, in the absence of regulation on the matter, could occur through mechanisms such as recognition, which would avoid the intending parents having to resort to a more complex mechanism such as adoption'.<sup>159</sup>

### Confirmation of the key role for Mexico's Civil Registries in establishing parentage and for the Courts in undertaking a potential best interest procedure

According to Sosa Pastrana, 'as a general rule, **the procedures for recognition of paternity and registration are incumbent on the Civil Registry of each federal entity, in the event of any conflict with these, as well as in the event that the transfer is carried out by means of adoption, the intervention of the competent judge in family matters will be necessary**'.<sup>160</sup> Furthermore, the **intervention of a Court** may also be needed if a conflict arises regarding the parentage of the child, whether between the parties (intending parents and surrogate mother) or between them and the authority,<sup>161</sup> and could offer an opportunity to undertake a 'best interests procedure' for each child born through a surrogacy arrangement.

In **Uruguay** – a country that allows only altruistic surrogacy through a relative up to the second degree of kinship, the law is clear on the fact that *'the parentage of the child shall correspond to those who have requested and agreed to the surrogacy of the pregnancy'* and that *'maternal parentage shall be determined by the birth or cesarean of the biological mother or, where applicable, by the woman whose pregnancy has been surrogated'*.<sup>162</sup>

In the **other reviewed countries** – all of which do not have legislation that addresses surrogacy or the registration of births of children born through this practice, **the approach is varied and mostly silent on potential legal mechanisms to establish parentage**.<sup>163</sup> The general birth registration procedure should be complied with on the basis of analogy, *i.e.* the woman recorded on the document issued by the health sector is considered the legal mother and the biological father or the man recognising the child is entered

as the legal father on the basis of a post-birth legal or other process (see Sections 1.1 and 1.2).<sup>164</sup> This would be case in **Antigua and Barbuda**, where an intending biological father could attempt to use the standard process for unmarried fathers,<sup>165</sup> which requires a joint application or a declaration of paternity, but would not reflect the surrogacy agreement. For a non-biological intending parent or the second intended parent, it appears that the only clear pathway would be a post-birth adoption order under the *Children (Care and Adoption) Act, 2015*,<sup>166</sup> which provides for the amendment of the birth register upon receipt of an adoption order.<sup>167</sup> In the **Dominican Republic** and **Guatemala**, the authorities consider that the only option to proceed to register the child and establish the child's legal parentage in relation to the intending parents would be via the adoption procedure.<sup>168</sup> In the Dominican Republic, *'any case of surrogacy, particularly those of an international nature, cannot have automatic effects in the Civil Registry (...), in accordance with the principles of legality, public order in registration, and legal certainty. All determinations of parentage must strictly comply with the current constitutional and legal framework, with special regard for the best interests of the child and the fundamental right to identity'*.<sup>169</sup> In **Suriname**, as far as the Civil Affairs Bureau is aware, no relevant cases have been brought before the Court concerning surrogacy arrangements for the provision of identity (birth registration) to the child and the determination of parentage.<sup>170</sup>

In **Peru**, the cases that have been subject to judicial rulings have involved pregnancies that took place abroad, in accordance with those countries' legislation. Indeed, in recent years, cases were brought against the civil registration authority – Registro Nacional de Identificación y Estado Civil (RENIEC) – to challenge the parentage registered at birth and to request a modification of the latter in order to record the intending parents as the legal parents of the child. The Court finally determined the annulment of the original birth record and ordered RENIEC to issue new birth certificates for the children.<sup>171</sup> However, as explained by the civil registration authority, some of these cases have arisen because they are not regulated in the country's legislation and, as a result, have had to be brought before the Courts. However, these cases are specific and do not set a legal precedent.<sup>172</sup>



### 2.2.c. Recording, preservation and access to children's full identity

When a child born through a surrogacy arrangement is registered and their legal parentage established, there remains an important right to be considered: their right to access information about their origins and their full identity. This includes the right to the identity of any potential donor(s) of gametes, the surrogate mother and the intending parents in addition to name, nationality and any other family relations (e.g. siblings).

#### Implementation of a right to access in Argentina

Argentina's legislation has clearly established a right of those born through ARTs – i.e. gametes for third parties – to access information on the records of their birth registration process. The law specifies that, at the request of persons born through ARTs, *'it is possible to: a) obtain information from the health center involved regarding the donor's medical data, when relevant to health; b) disclose the donor's identity, for duly justified reasons, assessed by the judicial authority through the shortest procedure provided for by local law.'*<sup>173</sup> This is a progressive approach to the preservation and access to a child's full identity as it ensures that information on gamete donors is available.

This was further strengthened by the civil registration authority in Buenos Aires through its implementing instrument, which stated that *'the General Director of the Registry of Civil Status and Capacity of Persons calls to (Article 1) authorize the registration, on a preventive basis, of the births of children born through highly complex Assisted Human Reproduction Techniques, known as surrogate pregnancy, under the following conditions, namely: 1) that the children be born in the Autonomous City of Buenos Aires through the method of surrogate pregnancy; 2) that the procreative will of the parents has been expressed in a prior, free, and informed manner; 3) that the surrogate mother has previously and reliably expressed that she does not have a procreative will; and 4) that the registration must*

*be done on a provisional basis, and the surrogate mother's data must be recorded in the file (...).'*<sup>174</sup>

The National Appeal Chamber also moved in a similar direction, ordering the Ministry of Health to establish the measures considered convenient to effectively preserve information on donors of ovules in assisted reproduction.<sup>175</sup>

In **Brazil**, the main actor that would gather information about the identity of the parties to the surrogacy agreement would be the assisted reproduction facility. Indeed, the 2022 Resolution,<sup>176</sup> offers a general catalogue of duties incumbent on clinics, centres and assisted reproduction services, including *'the collection, handling, storage, distribution, transfer and disposal of human biological material from patients undergoing ARTs'* (Para. III).<sup>177</sup>

In ART procedures in general, Resolution No. 2.320 (2022) makes it clear that the *'the identity of gamete and embryo donors, as well as recipients, must be kept confidential, with the exception of item 2 of Chapter IV'* (Para. IV.4).<sup>178</sup> However, that same Paragraph also opens the door to access to some non-identifying information relating to medical reasons: *'In special situations, information about donors may be provided exclusively to doctors for medical reasons, safeguarding the civil identity of the donor'*.<sup>179</sup> Given the body issuing this Resolution, it may be inferred that this obligation on the confidentiality of gamete and embryo donors is incumbent on the medical and health sector.

The surrogacy agreement as such is part of the procedure undertaken in such a clinic, center or service and will ultimately result in the document signed by the head of the latter and that is required for the child's registration. Similarly to the situation in Mexico (see below), the surrogacy act is not mentioned on the birth record or certificate,<sup>180</sup> but would be part of the documentation required for registration. Ribeiro and Bezerra de Menezes explain that *'the registration of the birth will not mention the surrogacy, based on Article 227.6 of the Constitution, which prohibits any discriminatory mention relating to parentage and promotes equality amongst children'*.<sup>181</sup> Thus, information about the genetic, biological, and gestational identity of children is filed in the respective documents that support the registration, in particular, the live birth certificate issued by the health sector.<sup>182</sup>

### Potential access to documentation relating to surrogacy arrangements by persons born through the practice in Brazil

Even though Article 513.3 of the Order clearly states that *'knowledge of biological ancestry shall not imply recognition of the family relationship and the respective legal effects between the donor and the child generated through assisted reproduction'*, the authorities have made it clear that the person born through a surrogacy arrangement themselves, if they request the documents that led to the act of registration, may access the documentation containing the information that legitimized the parentage to their legal parents but not that explaining the relationship to the birth mother.<sup>183</sup>

A copy of the DNV will be kept at the Civil Registry, which registers the birth, in accordance with Order N° 149 (2023), which clearly states that *'all documents submitted in accordance with this Chapter shall remain on file at the office where the civil registration was made'*.<sup>184</sup> Thus, any person born through a surrogacy agreement, may access the full content of the DNV, which would include information on the person who gave birth to him or her.<sup>185</sup>

In **Colombia**, there is currently no authority in charge of gathering and preserving the information on the parties' identities to the surrogacy. The surrogacy agreement is not a required piece of documentation for birth registration. The only information that may be preserved and keeps a record of the surrogate mother's identity would be the original birth certificate, which is subsequently replaced by a new birth record mentioning the intending parents and the replacement. It does not mention the grounds of the change. Thus, it appears that a violation of the right to identity took place since *'the civil registry should have recorded the maternal parentage and established her name in accordance with it until a judge determined otherwise'* and that the civil registry *'must include*

*information relating to maternity - even if it is presumed, regardless of the alleged renunciation of civil status by public deed, as a result of the surrogacy agreement, made prior to registration'*.<sup>186</sup> In this regard, Rueda considers that *'in a case of surrogacy, the authorities must (...) ensure the certainty of parentage, (...) safeguard information about biological origins and not hinder the recognition of a nationality or legal personality'*.<sup>187</sup> This seems to be a critical issue as the country's civil registration authority has mentioned the occurrence of cases, in which a notary – illicitly – excludes the surrogate mother from the registration without any Court intervention.<sup>188</sup> In these cases, the civil registration authority may be faced with a cause for nullity provided for in law, but it has also assumed that if actions were taken, these children might be – at least temporarily – at higher risk of lack of protection and violation of their basic rights, including their right to identity.<sup>189</sup>

### General call for further regulation of surrogacy

In this context, when relevant case law has emerged from the Constitutional Court calling for the regulation of surrogacy, one of the requirements and conditions for a *'comprehensive regulation'* has included *'preserving the identity of the parties'*, an element that to date is not regulated by law and to which only the above-mentioned cases and the interpretation by the judicial branch have referred to.<sup>190</sup>

In **Mexico's states of Sinaloa and Tabasco**, as the surrogacy contract is ultimately submitted together with the other required documents for the registration of the child's birth, it is duly received and preserved by the civil registration authorities, even though it is not mentioned on the birth certificate. Access to this information would be possible as civil registration is a public mechanism in Mexico,<sup>191</sup> and, as explained by Sosa Pastrana, the relevant health authorities *'are obliged to preserve such information confidentially and, when appropriate, allow the data subject*

access to it'. In jurisdictions where legislation is silent or insufficient on the matter, Sosa Pastrana concludes *'that the recording, preservation, confidentiality and eventual access to the data are governed by the general rules applicable in cases of recognition or adoption of children'*.<sup>192</sup>

In **Uruguay**, the regulations of the legislation on ARTs includes a legal provision on the right to identity, in the following terms: *'children born through highly complex assisted human reproduction techniques [which includes surrogacy] shall have the right to know the procedure used for their fertilization by submitting a written request to the institution where the technique was performed, in accordance with the procedure established in the law that regulates it'*.<sup>193</sup> This allows the person to know the method of conception but not additional information pertaining to identity.

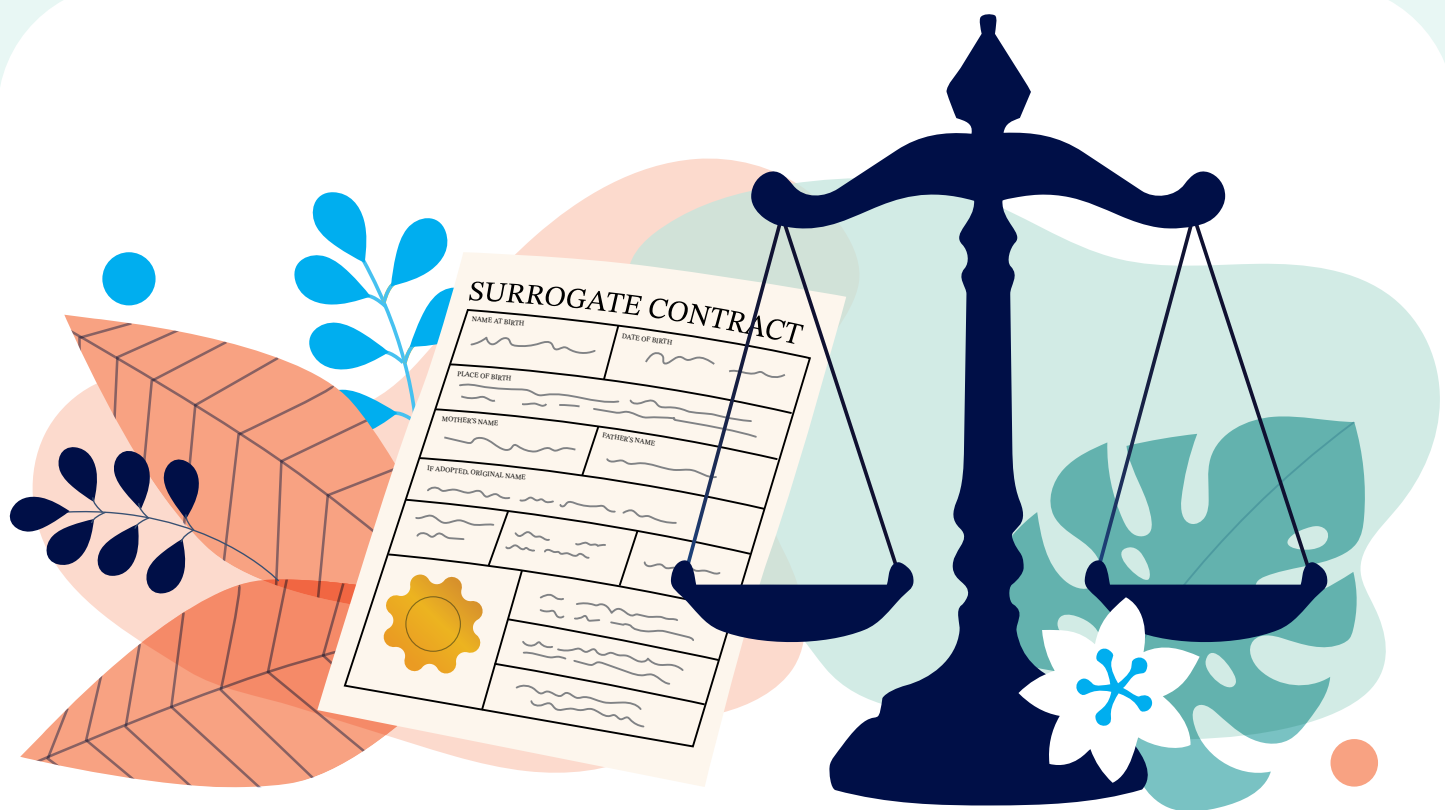
Finally, in terms of the information gathered and preserved in the **other countries** on the child's full identity, this remains limited and does not include any surrogacy agreement, as any such agreement would be considered void and have no legal recognition.<sup>194</sup> For example, in **Antigua and Barbuda**, there is no statutory mandate under the *Civil Registration (Vital Statistics) Act 2020* to collect or preserve data on surrogates, gamete donors or intending parents and only the standard birth declaration and medical certificate of live birth are accepted under the 2020 Act. Likewise, the resulting birth record and certificate would not refer to the specific circumstance of birth from a surrogacy arrangement and access to such information would not be feasible in the future. In **Ecuador**, the authorities consider that access to information – if any – would be addressed in accordance with the legislation in force on the protection of personal data.<sup>195</sup> It is worth mentioning that one case before the Constitutional Court in **Peru** called for access by children born through surrogacy to information about the person giving birth to them (see attached box). However, this proposal has not been approved by Congress to date.

### Call for the establishment of a mechanism of access to information about identity of parents in Peru

*'(...) [t]he Constitutional Court, with the authority conferred upon it by the Political Constitution of Peru, has resolved (...) to urge the Congress of the Republic, within the scope of its powers, (...) to establish a system or procedure so that when a child, after registration, wishes to know the identity of the other parent, they may do so through a confidential registry to which they may have access.'*<sup>196</sup>

#### 2.2.d. Nationality of children born through surrogacy arrangements

The impact of the registration of a child born through a surrogacy arrangement on the determination or acquisition of nationality has proven complex, in particular in ISAs (see further below). In the **reviewed countries**, children acquire the country's nationality either by place of birth (*ius soli*) and/or by descent (*ius sanguinis*). In most countries, this also includes situations in which the child was born abroad<sup>197</sup> or on the basis of parentage through adoption. This is the case in **Antigua and Barbuda**,<sup>198</sup> **Bolivia**,<sup>199</sup> **Brazil**,<sup>200</sup> **Chile**,<sup>201</sup> **Colombia**,<sup>202</sup> the **Dominican Republic**,<sup>203</sup> **Ecuador**,<sup>204</sup> **Guatemala**,<sup>205</sup> **Honduras**,<sup>206</sup> **Mexico**,<sup>207</sup> **Peru**,<sup>208</sup> **Saint Lucia**<sup>209</sup> and **Suriname**.<sup>210</sup> The additional information gathered in relation **Brazil**, **Colombia** and **Peru** reflects the challenges of granting nationality to children born through surrogacy arrangements with an international element (see Section 3.3).



# 3

## Particular characteristics and implications of international surrogacy arrangements in Latin America and the Caribbean

### 3.1. CURRENT CONTEXT

Most reviewed countries do not have legislation allowing or prohibiting surrogacy – including ISAs. For example, **Antigua and Barbuda** explains that there is presently no designated State agency responsible for data collection on ISAs. In practice, such matters, if ever arising, would fall under the Civil Registry, Ministry of Legal Affairs, or the

Attorney General's Office, depending on the legal issue involved. However, there are currently no known or documented cases identified for the years 2020 – 2024 and no administrative or judicial intervention has been recorded for incoming and outgoing cases.<sup>211</sup> Likewise, **most countries** provided no estimation of incoming or outgoing cases due to unavailable information or were not informed of any cases to date.<sup>212</sup>

In **Brazil**, there appears to be no official numbers published on incoming cases of ISAs. In relation to potential outgoing cases, the civil registration authorities explained that, as Brazil has restrictive rules on surrogacy, prohibiting any form of financial compensation and only allowing it between relatives up to the fourth degree in a direct or collateral line, any statistical information would be incumbent upon the specialised and certified clinics, which control the information about patients undergoing insemination, which is a medical procedure.<sup>213</sup>

In **Colombia**, Rueda mentioned that *'the explanatory memorandum to Bill 263 of 2020 states that from March 2020 to September 2020, the visa office of the Ministry of Foreign Affairs received 16 applications from foreign nationals seeking to take with them a baby born under agreements entered into through the intermediation of fertility clinics'*.<sup>214</sup> However, to date, the lack of information on the number of surrogacy cases undertaken in the country has been a concern addressed by the Court. Indeed, the Constitutional Court has issued exhortations and invitations for the Civil Registry to comply with, for example, inviting *'the Colombian Family Welfare Institute (ICBF), the National Administrative Department of Statistics (DANE), the Special Administrative Unit of Migration Colombia, and the National Civil Registry to produce statistical information on the number of people born in Colombia under ISAs'*.<sup>215</sup> Since there is no registry kept by the clinics that perform these procedures, nor is there an entity that has the obligation to keep such a registry, the civil registration authority considers that this currently is impossible for the Registry and the other entities summoned to generate this information. This is further complicated by the fact that there is a lack of regulation of facilities undertaking surrogacy procedures. In Ruling T-127 of 2024,<sup>216</sup> the Court suggested that the Registry and judges *'refrain from altering the identity documents of the children and adolescents referred to in this decision, so that the State can protect them and exercise due control over their nationality, parentage, name, and, in general, reinforce the required immigration control'*; but tools are needed to ensure this is undertaken appropriately in cases of surrogacy. Indeed, the civil registration authority confirmed that by excluding the surrogate mother from the birth records and replacing her with the

intending mother, the child no longer has a right to Colombian nationality and therefore to any form of protection from the Colombian State.<sup>217</sup> Recent case law, however, seems to move towards preserving the identity of the surrogate mother on birth records (*see further above*).

In **Mexico**, there is no obligation to collect or provide this information. The civil registration authorities explain that, in the two jurisdictions allowing surrogacy, surrogacy contracts may only be entered into between Mexican citizens, meaning that ISAs are not legally possible in this country and that mothers and/or intended parents residing in another country cannot participate.<sup>218</sup> This, however, has been questioned in some of the case law that has emerged in the country, thus allowing for incoming and mostly outgoing ISAs.<sup>219</sup> The civil registration authorities have confirmed that some surrogacy arrangements undertaken in Mexico are ISAs.<sup>220</sup> Likewise, there is no obligation for persons residing in the country (nationals or foreigners) to report their participation in ISAs as intended mothers and/or fathers in another country.<sup>221</sup>

Finally, in **Peru**, where the practice of surrogacy has not been regulated to date, there appears to have been some cases of ISAs, of which the most publicised resulted in sanctions and the detention of the intending parents – a Chilean couple – on grounds of trafficking. Following the application of DNA tests, confirming a biological link, the case was finally solved in their favour.<sup>222</sup>

### 3.2. RELATED ISSUE: FOREIGN BIRTH CERTIFICATES, APPLICABLE LAW RULES AND RECOGNITION OF FOREIGN JUDGEMENTS<sup>223</sup>

ISAs have raised a number of challenges in terms of registration of births of children born abroad, the law rules applicable to foreign birth certificates and the recognition of decisions on legal parentage, a risk of double birth registration records and additional serious implications for the acquisition of nationality – or, as has been evidenced in the region, a higher risk of stateless – for these children.



### 3.2.a. International jurisdiction for birth registration

The authorities in the reviewed countries usually assume international jurisdiction for the registration of a child's birth when born on the territory and/or when the child is born from a national mother and/or father abroad. This is the case in **Antigua and Barbuda**,<sup>224</sup> **Brazil**,<sup>225</sup> **Chile**,<sup>226</sup> **Colombia**,<sup>227</sup> **Ecuador**,<sup>228</sup> **El Salvador**,<sup>229</sup> **Guatemala**,<sup>230</sup> **Honduras**<sup>231</sup> and **Suriname**<sup>232</sup>. The **Dominican Republic** operates a separate birth registration for children of foreign mothers.<sup>233</sup> In **Peru**, international jurisdiction is not applied to registration. Children born in Peru are Peruvian by birth, as are those born abroad to a Peruvian father or mother by birth, provided they are registered. They are registered in accordance with the Peruvian procedure. The supporting document may be the foreign live birth certificate or the foreign birth certificate, translated and apostilled.<sup>234</sup> In **Saint Lucia**, it only assumes international jurisdiction in relation to children born or adopted on its territory,<sup>235</sup> and so does **Suriname** for children born on its territory and in relation to persons of foreign nationality<sup>236</sup>.

### 3.2.b. Potential conditions and rules applicable to foreign birth certificates

There may also be **cases where applicable law rules concern birth certificate drawn up in another country, in which case certain conditions must be met**.<sup>237</sup> In **Brazil**, there are two possibilities in this case. In the first, *i.e.* the case of children born to Brazilian citizens abroad, the birth must be registered with the Civil Registry of Natural Persons<sup>238</sup> based on the birth certificate issued by the Brazilian consular authority or the birth certificate issued by the foreign registry authority (duly legalized/apostilled and translated by a sworn translator). **The analysis of compliance with the requirements in relation to surrogacy will be carried out at the time of consular registration before the Brazilian authority or at the time of transcription before the Brazilian registrar.** If consular registration or registration with the foreign registry authority has not been done, it is possible to register a Brazilian born abroad via a late registration procedure<sup>239</sup> and, at that time, **the analysis of surrogacy cases will also be carried out. The**

**authority responsible for analyzing the factual situation and the respective documentation will determine whether the foreign birth certificate will be recognized.** The Civil Registry Officer for Natural Persons will be responsible for promoting the transcription or registration. They will not be recognized as Brazilian nationals if a situation is found that does not allow them to be recognized as Brazilian or if there is a lack of documentation, doubt, or suspicion of document fraud. In the case of children of foreigners born abroad, a registration is made before the Registrar of Titles and Documents, solely for the purpose of publicizing the act and giving it effect. There is no control over cases of surrogacy, but only over formal aspects of the act.<sup>240</sup>

### Surrogacy from the perspective of a country's public order

In Brazil, Ribeiro and Bezerra de Menezes explain that *'the High Court of Justice is competent to approve foreign judgements, for which it must ascertain the absence of obvious violation of public order. In some cases, a foreign judgement that establishes parentage may be the result of a costly surrogacy arrangement, which could be considered contrary to Brazil's public order. While no such cases have been examined, it is estimated that the High Court would still approve these foreign judgements, based on the child's best interests and Article 227 of the Constitution'*.<sup>241</sup> This is relevant to the recognition of a foreign judgement on legal parentage in cases of ISAs.

In **Bolivia**, the registration of children of Bolivians born abroad can be undertaken through an administrative procedure, while the holder is alive, at the Departmental Offices of the Civil Registry Service (SERECÍ) within the country or at Bolivian consular offices abroad. For registrations carried out within the country and for persons over the age of 18 at consular offices, it is mandatory to present the live birth certificate or similar document of the children of Bolivian citizens, duly apostilled or legalized and translated. The live birth certificate or similar document must necessarily contain the full names of the parents proving their Bolivian nationality.<sup>242</sup>

In **Chile**, the Civil Registrar – or the Consul, if abroad – are responsible for determining whether a foreign birth certificate may be recognised. The original birth certificate, issued by the Civil Registry or the entity that records vital events in the country of origin, must contain at least the first and last names of the registered person, sex, date and place of birth, and names of their parents. It must be apostilled or legalized by the Chilean Consul in that country, and its translation duly certified if not in Spanish, and the Consul's signature must be legalized by the Chilean Ministry of Foreign Affairs. Chilean parents must submit an original birth certificate, updated for general procedures, and a marriage certificate and identity cards, if relevant. If the Chilean parent(s) was born abroad, their relationship to their grandfather or grandmother born in Chile must also be proven by means of the birth certificates of their father or mother (as applicable) and the birth certificate of the grandfather or grandmother. Other documents are also required and fingerprints may be taken.<sup>243</sup> The registration of the birth of children must be requested by the Chilean father or mother. The surnames are recorded in accordance with Chile's legal provisions,<sup>244</sup> which states that when applying for the birth registration of a child in common, both parents must determine by mutual agreement, using a form signed by both, the order of the surnames of the registered child. The aforementioned legal provision specifies that the surnames of the parents that can be passed on to their children are the father's first surname and the mother's first surname.<sup>245</sup>

In **Colombia**, the document required for registering the birth of Colombian children born abroad will be the birth record, duly apostilled or legalized and translated, as appropriate. If it is not possible to prove the birth with this document, it may be done with the declaration of two witnesses who have had direct and reliable knowledge of the fact. In the case of persons born outside the national territory, *e.g.* children of a Colombian mother and/or father, the birth certificate issued abroad must be provided, duly apostilled or legalized and translated, as appropriate.<sup>246</sup>

In **Mexico**, a foreign birth certificate is recognized when it is inserted or registered in the Mexican Civil Registry; in this regard, the authorities responsible for determining whether it is recognized are precisely the Civil Registries of the 32 federal entities or the Mexican Consular Offices abroad acting as Civil Registries. In general, the presentation of an apostilled or legalized foreign birth certificate is required, as well as a translation of the same when it is not written in Spanish, accompanied by the birth certificates of the parents proving their Mexican nationality, and their identification. Mexico is currently moving to eliminate the requirement for consular legalization or apostille for birth documents proving nationality and identity;<sup>247</sup> it will be sufficient to present the foreign birth certificate and the birth certificate of the Mexican father or mother to prove their identity and Mexican nationality in order to obtain the registration of their birth with the Civil Registries of the country, in accordance with the applicable regulations.<sup>248</sup>

**Suriname** also provided extensive information on the recognition of foreign birth certificates. It explained that the Court has the authority to issue a declaratory judgment regarding the validity in Suriname of a foreign certificate or judgment, based on the Civil Code.<sup>249</sup> The Court's declaratory judgment must be submitted to the civil registrar to enable registration in the civil registers and the birth certificate submitted to the Surinamese Court to obtain the declaratory judgment must be apostilled or legalized, and translated into Dutch by a sworn translator in Suriname. Furthermore, a foreign birth certificate may be refused recognition or registration if its content fundamentally conflicts with public order – interpreted as protecting essential principles of Surinamese law and society, including family law and the legal requirements for descent and recognition of children.

### 3.2.c. Referral to internal law on parentage

**All countries reviewed will refer to their *lex fori* (i.e. their internal law) to determine the legal parents by operation of law,**<sup>250</sup> while two countries mentioned also taking or being able to take into account the legislation from the other country at stake.<sup>251</sup>

### 3.2.d. Addressing potential double birth registration

Double birth registration is particularly concerning as international guidance is that all vital events should be registered in the country where they occurred.<sup>252</sup> In ISAs, this may mean that the child has been registered in the country of birth, but that once the intending parents return to their country of residence, they simply apply for another registration in that second country. **Few countries have mentioned difficulties related to double birth registration**, although not specifically connected with ISAs. **Honduras** mentioned that *'the most common cases involve children of Hondurans born in countries that grant nationality by right of soil (ius soli). These children are registered in their country of birth and subsequently registered by their parents at Honduran Consulates, resulting in dual registration: one in the country of birth and another in the country of birth of one or both parents. If the information on both registrations, such as name or date of birth, does not match, administrative and legal conflicts may arise'*.<sup>253</sup> **Suriname** also mentioned several situations in which its civil registration authorities have faced complex circumstances, of children's births being registered in two countries. The child is recorded in both countries as born in the respective territory, resulting in a double registration. When applying for a birth certificate, passport, or recognition, it may be discovered that the person has certificates in both countries.<sup>254</sup> Under Surinamese law,<sup>255</sup> the child may take the father's surname, the mother's surname, or a combination of both. Prior to 1 May 2025, if a child was born in French Guyana to a Surinamese mother and recognized in Suriname, the child took the father's name under Surinamese law, while in French Guyana the child retained the mother's name. This discrepancy arises from differences in naming rules.<sup>256</sup>

Should there be any change to such legal parenthood on the basis of a Court order, it appears that the latter will be transmitted to the foreign



missions if recognition abroad is sought. **Honduras**, for example, mentioned that this is not an automatic process.<sup>257</sup> **Suriname**, on the other hand, explained that verification is conducted via its Embassies. Surinamese nationals giving birth in French Guiana, for example, must present a birth certificate issued by the Surinamese authorities.<sup>258</sup>

### 3.3. RELATED ISSUE: THE GRANTING AND ACQUISITION OF A NATIONALITY IN INTERNATIONAL SURROGACY ARRANGEMENTS

**Most countries** have not addressed this issue in their legislation, nor have they addressed it in practice or case law.<sup>259</sup>

In **Brazil**, the consular authority is competent to register the birth of a child of a Brazilian father or mother that has occurred in another country.<sup>260</sup> A foreign birth certificate stating that they are the child's father or mother must be submitted and will serve as proof of birth and parentage, including when the child was conceived through ART. This would be sufficient to grant Brazilian nationality to the child.<sup>261</sup> Indeed, nationality will be granted based on the place of birth or the relationship with the legal



parents. There is a contract signed and executed abroad that has less restrictive rules on surrogacy, in which the Brazilian State recognizes the relationship between the legal parents because the birth took place abroad and the registration is made in the name of the Brazilian parents.<sup>262</sup> However, the civil registration authorities have raised some concerns as to the granting of Brazilian nationality in cases of incoming ISAs, in particular in cases in which limited information is known about the circumstances of the surrogacy arrangement.<sup>263</sup>

The civil registration authority in **Colombia** mentioned that it has faced complex situations of birth registration of children born through surrogacy arrangements undertaken in Colombia by foreign and non-resident intending parents. It refers to children born in Colombia to foreign parents who are not domiciled in Colombia, meaning that when the Colombian mother is excluded from the civil registry, the child is at risk of statelessness. This is an additional issue for the Civil Registry, which is competent to recognise Colombian nationality by birth.<sup>264</sup> It has been suggested by the civil registration authority that, when the identity of the woman giving birth has been omitted, a mention should be included so as to explain that this change cannot be used to demonstrate nationality. This may however generate statelessness, in particular when many of the countries of residence of the intending parents prohibit surrogacy. In this regard, the aforementioned 2025 ruling<sup>265</sup> also confirmed that *'the child, daughter of a Colombian surrogate mother, was entitled to nationality and that as a result of the actions of the notary and the Embassy of the foreign country, she was placed at risk of statelessness'*.<sup>266</sup> This partially follows on the steps of Ruling T-127 of the Constitutional Court in 2024, which emphasised

non-discrimination against children born through surrogacy and their right to identity, in this case to nationality in the context of a denial to issue a passport. This ruling urged, among other actions, that the Colombian Institute of Family Welfare (ICBF), the Special Administrative Unit for Migration in Colombia, and the National Civil Registry to cooperate in resolving situations such as the one in this matter.<sup>267</sup>

Despite approach taken to the granting of nationality in surrogacy arrangements based on principles of equality and non-discrimination,<sup>268</sup> some issues have emerged in **Mexico**. Indeed, although the Civil Code of Tabasco establishes that the parties to a surrogacy contract must be Mexican citizens,<sup>269</sup> the reviewed *'amparo'* 129/2019 by the SCJN determined that this provision was reasonable for the purposes of preventing human trafficking, but that it was also disproportionate and therefore unconstitutional.<sup>270</sup> This opened the way for a return to ISAs. As reflected in some judicial theses, obtaining nationality and, in particular, a passport has been a challenge for some children born through ISAs in Mexico. A recent ruling stated that *'the Ministry of Foreign Affairs must issue administrative regulations governing the issuance of passports for children conceived through ARTs, known as surrogacy or substitute pregnancy'* in response to these situations of uncertainty.<sup>271</sup> This situation had already been highlighted in the report published by the Grupo de Información en Reproducción Elegida (GIRE), which *'documented the difficulties faced by intended parents in obtaining a passport for their children born through a surrogacy agreement. The [Ministry of Foreign Affairs], the federal body responsible for issuing this document that allows people to leave the country, has sometimes hindered access to passports in cases involving male couples'*.<sup>272</sup>

# Conclusion: Key findings and recommendations

## KEY FINDING 1: A VARIETY OF LEGAL FRAMEWORKS HAVE AN IMPACT ON THE BIRTH REGISTRATION PROCESS

- There is a **general absence of legislation on surrogacy across the region** with the **notable exceptions** of **Brazil** and **Uruguay**, which allow some form of surrogacy, as well as a couple of states in **Mexico** (see Table 1). In all countries, there remain **insufficient guidelines**

for the prompt registration of the births of children born through surrogacy, the clear determination of their parentage and the preservation of all information relating to their full identity as required by international frameworks such as the UNCRC (Arts. 7 and 8) calling for prompt birth registration and recording of identifying information.

- When children are born through surrogacy, clear procedures are necessary in terms of **documentation required, the profiles of informants and the legal parentage resulting from the event, and potentially a best interests procedure** aimed at ensuring that the surrogacy does not amount to any form of sale of the child, in line with the UNCRC and its OPSC (see Key finding 2).
- Including in those countries where the law remains silent on the practice, **there is an emergence of cases that have resulted in a growing set of legal precedent**. In most of these, **birth registration and the determination of legal parentage are central and complex issues at the heart of the cases**. Approaches have varied from one country to another, but the child's right to identity and their best interests are generally raised as key considerations in order to identify a prompt resolution to the situation (e.g. Colombia, Mexico). Nonetheless, safeguarding other children's rights – in particular recording of all identity elements and protection against any form of sale of children – could be further strengthened.
- **Risks remain in relation to the creation, preservation and access to the full identify of children born through surrogacy arrangements**, i.e. their name, nationality and family relations. Each country's legal vacuum should be addressed through clear



legal provisions – irrespective of the country's approach to surrogacy – and comprehensive procedural guidelines for these children's registration and the determination of their legal parentage and preservation of their origins.

- The present research has also evidenced the **clear lack of reliable and complete statistics of children born through surrogacy arrangements at national and**

**regional level**, whether domestic surrogacy arrangements or those with an international element. **Data collection mechanisms within civil registration authorities and/or other relevant actors** (e.g. health facilities/clinics, Consulate, etc.) would offer a clearer panorama of the practice nationally and regionally, improve transparency and potentially draw attention to these cases' compliance – or not – with national and international legal frameworks.<sup>273</sup>

### Recommendations for Key Finding 1:

The practice of surrogacy should be regulated in each country – whether the country allows or prohibits the practice – to ensure that the rights of children are fully upheld. Such legal frameworks should allow for prompt birth registration of any child. Should a child be born in countries that prohibit surrogacy, they should not be discriminated against due to the circumstances of their birth, and in line with the latter, their right to identity must be safeguarded.

Civil registration authorities should develop and adopt clear guidelines for civil registrars, aimed at the registration of births of children born through surrogacy arrangements. These would address procedural issues as well as potential elements that may need to be further evidenced to ensure children's rights are protected, including, for example, a review of the surrogacy agreement, verification of consent, recording of the identities of surrogate mothers and potential gamete donors, preservation of origins, etc. Upon

receiving a live birth certificate, the civil registrar should proceed to register the child's birth, with the intending parents as the legal parents, while recording the names of the biological parents in the birth register.

The range of information about a child's origins and identity should be collected and preserved in a central coordinating agency and its registry, which would act as the central repository for all surrogacy-related data, including certified copies of all supporting documents. In this case, the civil registry may play a limited role in the search, retrieval, and disclosure of information on biological parents, strictly in accordance with domestic legislation. This would be in line with growing practice in this regard in some countries<sup>274</sup>

This would also contribute to gathering reliable statistics on surrogacy arrangements undertaken in the country, with a view to have information that ensures that this group of children is not discriminated against and that their right to identity is safeguarded.

### KEY FINDING 2: INSUFFICIENT INFORMATION RECORDED ON CHILD'S FULL IDENTITY

- The research confirmed that, in many surrogacy cases, there is a **lack of correlation between the identity of the woman giving birth – registered on the document confirming the child's**

live birth and issued by the respective health sector, *i.e.* the surrogate mother – **and the legal parents** recorded at the time of registration, *i.e.* the intending parent(s). In some countries, modifications to the latter have been addressed – and allowed – while a recent approach seems to promote the preservation of the original information, including on the surrogate mother.

- Most countries **omit any mention of potential gamete donation in the information to be gathered and preserved, including in countries that allow the practice.** Indeed, anonymity remains the general norm in this regard and the incomplete recording of the identities of donors has not been sufficiently addressed across the region contrary to developing international guidance.<sup>275</sup>
- Some countries, particularly those facing complex cases at judicial level, have approached the resolution of cases from a **child-rights perspective and called for the best interests of the child to be addressed** (e.g. Mexico). The means to undertake such a **best interest procedure** do not seem to have been formalised in the countries reviewed, including any post-birth determination (Principle 6 of the Verona Principles). Some of the practices offer a progressive approach to preserving children's original identity in terms of information about the surrogate mother (e.g. Brazil). These are welcome especially the preservation of original documentation by civil registration authorities.
- Despite modifications of a child's legal identity and parentage having been determined in

Court proceedings, there remains an **absence – with the notable exception of Brazil, as mentioned earlier – of preservation of the original identity of the child, including the identity of the surrogate mother and any potential donor of gametes.** From a child rights perspective, access to the original identity is necessary and would contribute to safeguarding children's right to their full identity. The collection of information about the identity of all parties to surrogacy arrangements could be promoted and ordered by Court decisions.

- There is **limited recognition of a child's right to access information about their full identity.** Some limited guidelines exist to do so by means of general access to documentation sustaining birth registration (*i.e.* live birth document issued by the health sector, surrogacy contract, authorisation of the surrogacy process, confirmation of the process issued by the health center or clinic, etc.). However, access to comprehensive and transparent information about a child's full genetic, gestational and biological background should be promoted and strengthened in all countries, in particular donor information (*see above*).

## Recommendations for Key Finding 2:

In any case of modification of a child's identity, all information on their original identity must be carefully documented and preserved, including the identity of the surrogate mothers and potential gamete donors.

A best interest procedure would allow to safeguard children's rights in surrogacy arrangements. It can be undertaken both, before entering a surrogacy arrangement (*a priori*) in line with Principle 6 of the Verona Principles or after the birth of a child (*a posteriori*) 'in proceedings concerning legal parentage and/or parental responsibility' (Principle 5.6). The Civil Registrars should be able to contribute to the determination procedure by providing the documents submitted to them as part of the birth registration process. There is therefore a need

for effective engagement with the Judiciary to inform them and raise awareness about ART and surrogacy and civil registration processes, in order to avoid any undermining of the birth registration process.

It is also important that legal frameworks facilitate a child's – or an adult's – access to this information, as enshrined in Brazil's legislation on children's rights<sup>276</sup> (*see Section 2.2.c*). This entails addressing any potential obstacles to the implementation of this right of access, such as restrictive data protection norms, complex and costly procedures, etc. Mechanisms facilitating such access may include records held by health facilities and clinics, by civil registration authorities, by the Courts or specific registers designed to monitor surrogacy arrangements – potentially based on each country's system of unique identification number.

### KEY FINDING 3: DEVELOPMENT OF LEGAL MECHANISMS TO SUPPLEMENT OR MODIFY CHILDREN'S LEGAL IDENTITY AND PARENTAGE

- In a regional context with limited but incipient legal frameworks on surrogacy, there is, however, an **evident emergence of, and resort to, legal mechanisms for the determination and potential modification of legal parentage in cases of surrogacy**. Indeed, some parties to surrogacy arrangements faced with a denial of birth registration or incomplete determination of parentage, have challenged decisions (*e.g.* *amparo* proceedings), requested writs of protection, applied for guardianship, undertaken adoption proceedings. As explained by one country, these judicial measures have been resorted to despite not being established specifically for surrogacy cases,<sup>276</sup> and most probably only addressing some of the most obvious difficulties and not always other child rights, such as the sale of children, trafficking and the right to access their origins. Indeed, several countries mentioned, in particular, the **resort to adoption proceedings to ensure that children born through surrogacy arrangements can be registered and their legal parentage promptly established**.
- This report focuses primarily on the registration of the births of children born through surrogacy and the establishment of their legal parentage and nationality. However, some **risks that may arise in surrogacy arrangements must be considered and prevented**. Indeed, intermediaries might have an important role to play insofar as they can provide Civil Registrars with background information on the circumstances of births (*e.g.* surrogacy contracts, details about donors and surrogate mothers, etc.). Civil Registrars, on their part, may have a potential role as gatekeepers whenever information is provided that would indicate illicit practices, including addressing the child's right not to be sold.<sup>277</sup>

#### Recommendations for Key Finding 3:

Adoption should not be used to establish legal parentage or to formalise a surrogacy arrangement.<sup>278</sup> This legal mechanism cannot ensure full protection against any form of sale or exploitation, as certain conditions cannot be met in surrogacy arrangements (*e.g.* declaration of adoptability of the child, eligibility and preparation of the potential parents, the birth parent(s)' consent must not have been expressed on the basis of any financial or other consideration).

When regulating the practice via other legal mechanisms (*e.g.* writs of protection, challenges in court or applications for guardianship), countries must address the above-mentioned risks, including through a best interest procedure.<sup>279</sup> For example, in Colombia, Civil Registrars may raise a 'reasonable doubt', which can be a means for them to detect any unethical or irregular practice. Such a doubt could input into the best interest procedure undertaken by other authorities, such as the Courts.

## KEY FINDING 4: ISSUES RELATED TO INTERNATIONAL SURROGACY ARRANGEMENTS (ISAS)

- In addition to the issues addressed above, some additional elements are particularly relevant to ISAs and the registration of the births of children born through such arrangements. Approaches to these situations have resulted in **practices that may not fully comply with children's rights** and may also **violate some countries' legal frameworks** on surrogacy (*e.g.* total prohibition). The need for guidance to address potential cross-border parentage issues has been expressly referred to by one country,<sup>280</sup> although several of them have faced cases in their judicial system.<sup>281</sup>
- Common questions of interests have included the **applicable law rules relevant to foreign birth certificates** as, in some cases, the latter do not take into account the circumstances of the child's birth (*e.g.* no mention of a surrogacy arrangement, no recording of the identity of the woman giving birth, etc.) and the subsequent **determination of the child's legal parentage or nationality or recognition thereof in foreign judgements**. For example, the minimum information recorded on a child's birth certificate has led to cases being submitted to the Courts, *e.g.* no mention of the woman giving birth/ mother, partial recognition of parentage to intending parents, etc. In addition, this has also resulted, in some contexts, in conflicting identity documents, *e.g.* double registration and duplicated birth records, modified legal parentage.
- Children born through ISA are also at **higher risks of statelessness**. Several countries reported and explained the complex implementation of nationality laws – whether by birth or descent – in ISAs. In addition, they explain that this leads to limited oversight of these children's protection and heightened risks of sale, trafficking and exploitation.

### Recommendations for Key Finding 4:

Any reforms to countries' legal frameworks and any guidelines on the registration of births of children born through surrogacy arrangements must consider how foreign births are recorded so all the relevant documentation is available and ensure that the registration includes all of the necessary information so that the child is not stateless. This is also applicable to the granting of nationality to children born through ISAs, as countries have a duty to ensure no child is stateless and all efforts should be undertaken to safeguard all aspects of a child's identity, i.e. a name, a nationality and family relations. Any legal limbo may be addressed through interim measures for the recording, preservation, confidentiality, and eventual access to identity-related information.

To safeguard a child's right to a unique and consistent legal identity, a birth should be registered only once in the jurisdiction where the event took place (primary registration) and may be subsumed (not duplicated) through a formal transcription or recognition in the country of the intending parents, based on its derivative nature and reference the original record.



## KEY FINDING 5: EMERGING PROMISING PRACTICES TO SAFEGUARD THE RIGHTS OF CHILDREN IN SURROGACY ARRANGEMENTS

- Despite the complexity of ensuring that children born through surrogacy arrangements are duly registered and their parentage and origins fully recorded, some of the practices shared by the countries reviewed reflect **potential promising approaches based on the interoperability and sharing of information between the health and civil registration sectors**. Indeed, by safeguarding the information recorded in the live birth document and at the time of registration, progress could be made in terms of preserving the identities of surrogate mothers, intending parents and potentially donors. In this regard, it is welcome that, in Colombia, for example, the civil registration authority has met with other government authorities to discuss and address emerging issues from the complex registration of the births of children born through surrogacy arrangements.<sup>282</sup>
- **Access to origins**, thanks to the preservation of background documentation submitted during the birth registration procedure is another emerging promising practice. Indeed, some countries mentioned how children born through such procedure could access a wider range of information about their origins by having access to documents that are submitted at the time of registration (e.g. live birth document, surrogacy contract, Court proceeding...).
- The range of issues addressed here and the complex situations faced in several countries reflect the need for **civil registration authorities to be guided as they are often faced with a fait accompli**. While it is complex to call for a regional harmonisation of laws on ART, on surrogacy or on the protection

of children's identity rights, the evolving global framework (see *Part 1*) provides **key guidance and standardised procedures for the resolution of cases in line with international principles and guidelines**.

The work of the HCCH<sup>283</sup> has been particularly useful in this process of moving forward in addressing key international private law issues. These may suggest child rights-based approaches to the regulation of the practice, the registration of children's births in these circumstances and for the recognition or parentage and nationality and mechanisms of access to information on their full identity.

### Recommendations for Key Finding 5:

Coordinated interoperability among the relevant sectors is necessary in ensuring the registration of all children, when countries' legal frameworks enable it. To uphold this for children born through surrogacy arrangements, multi-sector guidelines for their registration should be developed, as well as for the preservation of information on their original identity, their legal parentage, the granting of nationality and access to their origins.

Based on the emerging promising approaches to the preservation of, and access to, children's origins, countries across the region should address the above-mentioned key elements of identity in any legal reforms and guidelines aimed at civil registrars in the delivery of their functions and obligations.

The importance of clear regulatory frameworks, guidance and standardised procedures at country level has become evident; these must fully comply with international principles and standards relating to children's rights.

# Annex I: Questionnaire to Civil Registries and potential other relevant stakeholders

(some questions have been extracted from the questionnaire developed by the Hague Conference on Private International Law in 2013)<sup>284</sup>

## Definition:

**Surrogacy** 'refers to a form of "third party" reproductive practice in which the intending parent(s) and the surrogate mother agree that the surrogate mother will become pregnant, gestate, and give birth to a child. (...) Surrogacy generally occurs in the context of assisted reproductive technologies'.<sup>285</sup>

## PART I: INTERNAL LAW

### A. Birth registration and parentage

**I.A.1.** Please indicate which authorities in your State are responsible for registering the birth of a child.

**I.A.2.** Please briefly describe the procedure for birth registration in your State, indicating whether such registration is mandatory and providing details concerning any specific rules which must be complied with (e.g., within what timeframe must a birth be registered, who can register a birth and where must the birth be registered).

**I.A.3.** Is it possible to give birth anonymously in your State?

- ☐ Yes
- ☐ No

If so, please explain any rules which apply to such an anonymous birth and state what will appear on the child's birth record and / or birth certificate.

**I.A.4.** Please explain what proof (evidence), if any, of legal maternity is required by the authorities in your State in order to register a putative legal mother. Please tick all which apply:

- ☐ a) Hospital birth record (stating the name of the woman who gave birth to the child)
- ☐ b) Sworn statement by the putative legal mother stating that she gave birth to the child
- ☐ c) Signed statement by the putative legal mother stating that she gave birth to the child
- ☐ d) DNA test to prove a genetic link between the putative legal mother and child
- ☐ e) Other: please explain:

**I.A.5.** Please explain what proof (evidence), if any, of legal paternity is required by the authorities in your State in order to register a putative legal father. Please tick all which apply:

- ☐ a) Formal acknowledgement by the putative legal father
- ☐ b) Formal acknowledgement by the putative legal father, with the legal mother and / or the child's evidenced consent: please specify
- ☐ c) Judicial decision (court order) establishing or confirming legal paternity
- ☐ d) Sworn statement by the putative legal father stating that he is the genetic father



- ☐ e) Signed statement by the putative legal father stating that he is the genetic father
- ☐ f) Signed agreement between the legal mother and putative legal father
- ☐ g) DNA test to prove a genetic link between the putative legal father and child
- ☐ h) Other: please explain

**I.A.6.** Please list the documents requested for the registration of a child:

- ☐ in cases of timely registration:
- ☐ in cases of late registration:
- ☐ in cases of delayed registration (if applicable):

**I.A.7.** Please explain who may be an informant of the child's birth.

**IA.8.** Please specify what information is recorded at the child's registration:

- ☐ in cases of timely registration:
- ☐ in cases of late registration:
- ☐ in cases of delayed registration (if applicable):

**I.A.9.** Does the health facility where the child is born issue a notification of live birth? If so, what information about the woman giving birth is recorded?

**I.A.10.** May the health facility act as an informant of the birth? Does it have the power to register it and certify that birth?

## B. Establishment of legal parentage

**I.B.1.** Who, upon the birth of a child, is the legal mother by operation of law in your State (i.e., with no need for the woman to take any steps to establish her legal maternity)?

- ☐ a) The woman who gives birth to the child.
- ☐ b) The genetic mother (i.e., the woman whose gamete (egg) created the child).
- ☐ c) There is no legal mother by operation of law: please explain.
- ☐ d) Other: please explain.

**I.B.2.** Who, upon the birth of a child, is the legal father by operation of law in your State (i.e., with no need for the man to take any steps to establish his legal paternity)?

- ☐ a) The husband of the woman who gave birth is presumed to be the legal father.
- ☐ b) The male partner of the woman who gave birth is presumed to be the legal father – please provide any conditions (e.g., the couple must be cohabiting, etc.).
- ☐ c) The genetic father (i.e., the man whose gamete (sperm) created the child).
- ☐ d) There is no legal father by operation of law: please explain.
- ☐ e) Other: please explain.

If legal presumptions operate in your State, please specify in what circumstances, if any, it is possible to “rebut” these presumptions.

**I.B.3.** Is it possible in your State for two persons of the same sex to be the legal parents of a child?

- ☐ Yes
- ☐ No

If so, please explain the legal mechanisms available in your State which enable this.

Please tick all which apply and provide a brief explanation of the rule(s) and procedure. This may arise by:

- ☐ a) Operation of law:
- ☐ b) Order of the court or other State authorities:
- ☐ c) Adoption:
- ☐ d) Other: please explain

## C. Establishment of legal parentage where assisted reproductive technology has been used

**I.C.1.** Please explain whether gamete donors are, in any situations, considered the legal parent(s) of a child born as a result of assisted reproductive technologies.

## D. Surrogacy arrangements

### Surrogacy and legal parentage

**I.D.1.** Upon the birth of a child following a surrogacy arrangement, who is / are the legal parent(s) by operation of law (i.e., without any further steps being taken by any individuals) according to the internal law of your State?

Please explain, including whether this results from legislation, case law or other source(s) of law.

**I.D.2.** Where necessary, are there any legal mechanisms in your State to enable intending parents to establish their legal parentage?

Please tick all which apply:

- ☐ a) Yes, prior to the birth the intending parents can seek a court order declaring that they will be the parents of the child born to a surrogacy arrangement (a “pre-birth order”).

Please specify any legal requirements to obtain such an order (including any nationality / domicile / residency requirements) and state whether this position arises from legislation, case law or other source(s) of law:

- ☐ b) Yes, following the birth the intending parents can seek a court order transferring legal parentage to them (in some States, known as a “parental order” or “parentage order”).

Please specify any legal requirements to obtain such a transfer of legal parentage (including any nationality / domicile / residency requirements) and state whether this position arises from legislation, case law or other source(s) of law:

- ☐ c) No
- ☐ d) Other: please specify
- ☐ e) Such mechanisms are unnecessary – the surrogacy contract is sufficient to establish the legal parentage of the intending parents.
- ☐ f) Such mechanisms are unnecessary – the intending parents will be the legal parents upon the birth of the child by operation of law:

**I.D.3.** Who collects and records information about the identity of the surrogate, potential donor and intending parents?

**I.D.4.** Upon the birth of a child following a surrogacy arrangement, is a surrogacy agreement required as part of the documents to be provided for the registration of the child’s birth? Must this surrogacy arrangement have received State approval?

**I.D.5.** How is information about the child’s genetic, biological and gestational identity recorded and preserved by Civil Registries?

**I.D.6.** Where a surrogacy arrangement has been undertaken in your State, will the fact of the surrogacy arrangement be visible on the child’s birth record and / or certificate?

- ☐ Yes: please describe exactly what will be on the record and / or certificate.

- ☐ No: please explain.

**I.D.7.** How is access to birth information and origins collected and preserved by Civil Registries foreseen for persons born from surrogacy arrangements?

**I.D.8.** Is information available concerning how many surrogacy arrangements take place in your State each year and how many children are born as a result?

- ☐ Yes: please provide a copy of, or a link to, the information.

- ☐ No.

- ☐ Other: please explain.

Who collects this information?

## F. The acquisition of nationality by children

**I.F.1.** How may a child acquire the nationality of your State?

Please tick all which apply:

- ☐ a) By birth within the territory of the State
- ☐ b) By “descent”, where one or both of his / her legal parents is / are a national of the State: please explain which law, in this context, will apply to the question of who is / are the child’s legal parents for the purposes of determining nationality.

- ☐ c) By “descent”, where one or both of his / her genetic parents is / are a national of the State: please explain how the genetic link must be evidenced.
- ☐ d) If the child would otherwise be “stateless” (i.e., without the nationality of any other State): please specify.
- ☐ e) Other: please specify

## PART II: PRIVATE INTERNATIONAL LAW AND COOPERATION RULES

### A. Private International Law and cooperation rules concerning birth registration

**II.A.1.** Please explain when the relevant authorities in your State will assume (international) jurisdiction to register the birth of a child:

- ☐ a) Only when the child is born on the territory of the State
- ☐ b) When at least one of the putative legal parents is a national of the State, regardless of the place of birth of the child
- ☐ c) When at least one of the putative genetic parents is a national of the State, regardless of the place of birth of the child
- ☐ d) When the child is considered a national of the State, regardless of the place of birth of the child
- ☐ e) Other, please specify:

**II.A.2.** When registering a child’s birth, which law will the relevant authorities apply to the question of who is / are the legal parent(s) of the child by operation of law?

- ☐ a) The lex fori (i.e., the internal law of your State) is always applied by the relevant authorities
- ☐ b) If the situation has foreign elements (e.g., the putative parent(s) or child are foreign nationals, or the child was born overseas, etc.), foreign law may, or must, be applied to this question. Please specify the applicable law rules:
- ☐ c) Other: please specify

**II.A.3.** Have your State authorities ever encountered difficulties resulting from a child’s birth being registered in two (or more) States (e.g., the child is

registered in your State as the State of birth, and in the State of the parents’ nationality and the registers conflict)?

- ☐ Yes: please explain the circumstances of the case(s) and the difficulties which arose:
- ☐ No

**II.A.4.** Are there any bilateral or multilateral agreements in force between your State and any other State such that:

- a. When a child’s birth is registered which involves foreign elements (e.g., one or more foreign national parents), this information is communicated to the authorities in the other relevant State?
  - ☐ Yes, please specify:
  - ☐ There are no formal agreements but this may happen in practice: please explain:
  - ☐ No
- b. When there are changes to a child’s legal parentage subsequent to birth registration as a result of steps taken in your State (e.g., due to a subsequent voluntary acknowledgement of paternity in your State, or a contestation of legal parentage, etc.), this information is communicated to the relevant authorities in the State of the child’s birth (where this is not your State)?
  - ☐ Yes, please specify:
  - ☐ There are no formal agreements but this may happen in practice: please explain:
  - ☐ No

## C. PIL rules concerning the recognition of legal parentage established abroad

### Birth certificates

**II.C.1.** Please explain when, if ever, a birth certificate drawn up in another State will be recognised in your State as validly establishing the legal parentage of those persons recorded within it (i.e., the recognition of the content of the certificate).

Please explain in your answer:

- a. which authorities are responsible for determining whether the foreign birth certificate will be recognised;

- b. the procedure which must be undertaken for recognition;
- c. any conditions for recognition (e.g., the birth certificate must be authenticated by way of legalisation or apostille); and
- d. any grounds of non-recognition.

If public policy ("ordre public") is a ground for the non-recognition of a foreign birth certificate, please explain, with reference to case law where applicable, the interpretation of this concept in your State in this context:

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## PART III: INTERNATIONAL SURROGACY ARRANGEMENTS (ISAs)

### A. Incoming cases

**III.A.1.** Do you have any information concerning:

- a. The number of Incoming cases of ISA which have required the assistance of your State authorities in recent years?
  - ☐ Yes – please provide any figures available: 2024, 2023, 2022, 2021, 2020
  - ☐ No information is available
- b. How many children have been born to surrogate mothers in another State as a result of ISAs involving intending parents resident in your State?
  - ☐ Yes – please provide any figures available: 2024, 2023, 2022, 2021, 2020
  - ☐ No information is available

If you have provided any figures above, please comment upon whether you consider that these figures reflect the true number of Incoming cases of ISA involving your State and, further, please provide a general comment concerning the prevalence of Incoming cases of ISAs and whether such cases have increased in the past five years:

If you have not provided figures above, are you able to provide any comment concerning the prevalence of Incoming cases of ISAs involving your State and / or whether this has increased in the past five years:

**III.A.2.** Who collects this information?

## B. Outgoing cases

**III.B.1.** Do you have any information concerning:

- a. The number of Outgoing cases of ISA which have required the assistance of your State authorities in recent years?
  - ☐ Yes – please provide any figures available: 2024, 2023, 2022, 2021, 2020
  - ☐ No information is available
- b. How many children have been born to surrogate mothers in your State as a result of ISAs involving intending parents resident in another State?
  - ☐ Yes – please provide any figures available: 2024, 2023, 2022, 2021, 2020
  - ☐ No information is available

If you have provided any figures above, please comment upon whether you consider that these figures reflect the true number of Outgoing cases of ISA involving your State and, further, please provide a general comment concerning the prevalence of Outgoing cases of ISAs and whether such cases have increased in the past five years:

If you have not provided figures above, are you able to provide any comment concerning the prevalence of Outgoing Cases of ISAs involving your State and / or whether this has increased in the past five years?

**III.B.2.** Who collects this information?

## C. Nationality

**III.C.1.** How does the granting of nationality by your State differ in cases of international surrogacy arrangements?

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## PART IV: ADDITIONAL QUESTIONS

**IV.1.** Have there been any relevant cases brought to justice in relation to surrogacy arrangements in your State, for the provision of an identity (birth registration) to the child and recording of parentage? Please refer names of cases and years.

**IV.2.** What has been the impact of this case-law on the practice in your State? Please explain.

**Are there any other issues you wish to raise in the framework of this research?**

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All relevant domestic legislation, case law and country-specific resources are duly referenced in the endnotes.



# Endnotes

- 1 Zegers-Hochschild, F., Adamson, G. D., de Mouzon, J., Ishihara, O., Mansour, R., Nygren, K., Sullivan, E. and Vanderpoel, S. for ICMART and WHO, *International Committee for Monitoring Assisted Reproductive Technology (ICMART) and the World Health Organization (WHO) revised glossary of ART terminology*, 2009, <<https://www.fertstert.org/action/showPdf?pii=S0015-0282%2809%2903688-7>>.
- 2 The Hague Conference on Private International Law, A preliminary report on the issues arising from international surrogacy arrangements, 2012, <<https://assets.hcch.net/docs/d4ff8ecd-f747-46da-86c3-61074e9b17fe.pdf>>, in *Principles for the protection of the rights of the child born through surrogacy (Verona principles)*, 2021, at 15.
- 3 Human Rights Council, Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, A/HRC/37/60, 15 January 2018, Para. 10, <<https://docs.un.org/en/A/HRC/37/60>>.
- 4 'Children born through surrogacy have the same rights as all children under the United Nations Convention on the Rights of the Child (CRC). Regardless of individual State positions on surrogacy, all States have a duty to protect the human rights of all children born through surrogacy without discrimination, including ensuring appropriate legal and regulatory frameworks exist at the national level to protect and promote their rights.' United Nations Children's Fund and Child Identity Protection, *Key Considerations – Children's Rights and Surrogacy*, 2022, <<https://www.unicef.org/media/115331/file>>.
- 5 Human Rights Council, Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, A/HRC/37/60, at 3; United Nations General Assembly, Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, *Study on safeguards for the protection of the rights of children born from surrogacy arrangements*, A/74/162, 15 July 2019, <<https://www.ohchr.org/en/special-procedures/sr-sale-of-children/annual-reports-human-rights-council-and-general-assembly>>.
- 6 Organization of American States, *American Convention on Human Rights, Pact of San Jose*, 1969, Arts. 17-20, <[https://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights.htm](https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm)>.
- 7 The Hague Conference on Private International Law, Questionnaire No 1 - *Questionnaire on the Private International Law issues surrounding the status of children, including issues arising from international surrogacy arrangements – for Members of HCCH and non-Member interested States*, drawn up by the Permanent Bureau, Parentage / Surrogacy Project, Prel. Doc. No. 3 A, April 2013, <<https://share.google/QNMGXCkz2b3641iQe>> and <<https://www.hcch.net/en/projects/legislative-projects/parentage-surrogacy>>.
- 8 United Nations General Assembly, Report of the Special Rapporteur on violence against women and girls, its causes and consequences. The different manifestations of violence against women and girls in the context of surrogacy, A/80/158, 14 July 2025, Para. 6, <<https://docs.un.org/en/A/80/158>>.
- 9 United Nations General Assembly, *Convention on the Rights of the Child*, Resolution 44/25, 1989, <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>>.
- 10 United Nations General Assembly, *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, Resolution A/RES/54/263, 2000, <<https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-sale-children-child>>.
- 11 *American Convention on Human Rights*, at 6.
- 12 See, e.g. Committee on the Rights of the Child, Concluding observations on the combined second to fourth periodic reports of Antigua and Barbuda, CRC/C/ATG/CO/2-4, 30 June 2017, Paras. 26-27, <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FATG%2FCO%2F2-4&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FATG%2FCO%2F2-4&Lang=en)>; Committee on the Rights of the Child, Concluding observations on the combined fifth to seventh periodic reports of Brazil, CRC/C/BRA/CO/5-7, 25 July 2025, Para. 23, <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FBRA%2FCO%2F5-7&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FBRA%2FCO%2F5-7&Lang=en)>; Committee on the Rights of the Child, Concluding observations on the sixth periodic report of the Dominican Republic, CRC/C/DOM/CO/6, 18 October 2023, Para. 20, <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FDOM%2FCO%2F6&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FDOM%2FCO%2F6&Lang=en)>; Committee on the Rights of the Child, Concluding observations on the seventh periodic report of Ecuador, CRC/C/ECU/CO/7, 27 February 2025, Para. 21, <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FECU%2FCO%2F7&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FECU%2FCO%2F7&Lang=en)>; Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of El Salvador, CRC/C/SLV/CO/5-6, 29 November 2018, Para. 18, <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FSLV%2FCO%2F5-6&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FSLV%2FCO%2F5-6&Lang=en)>; Committee on the Rights of the Child, Concluding observations on the seventh periodic report of Guatemala, CRC/C/GTM/CO/7, 21 June 2024, Para. 21, <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGTM%2FCO%2F7&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGTM%2FCO%2F7&Lang=en)>; Committee on the Rights of the Child, Concluding observations on the combined sixth and seventh periodic reports of Honduras, CRC/C/HND/CO/6-7, 26 February 2025, Para. 19, <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FHND%2FCO%2F6-7&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FHND%2FCO%2F6-7&Lang=en)>; Committee on the Rights of the Child, Concluding observations on the combined sixth and seventh periodic reports of Peru, CRC/C/PER/CO/6-7, 25 February 2025, Paras. 17-18, <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FPER%2FCO%2F6-7&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FPER%2FCO%2F6-7&Lang=en)>; Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Suriname, CRC/C/SUR/CO/3-4, 9 November 2016, Para. 17, <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FSUR%2FCO%2F3-4&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FSUR%2FCO%2F3-4&Lang=en)>.



- 13 *The Committee notes the incorporation of the right to identity into the General Act on the Rights of Children and Adolescents and recommends that the State party further facilitate the access to information on biological origin by adopted children and children born from surrogacy arrangements and to take measures to speedily re establish children's identity, particularly in cases of illegal adoption.* Committee on the Rights of the Child, Concluding observations on the combined sixth and seventh reports of Mexico, CRC/C/MEX/CO/6-7, 8 October 2024, Paras. 22-23, <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FMEX%2FCO%2F6-7&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FMEX%2FCO%2F6-7&Lang=en)>. See also: International Social Service, *Legal trends in surrogacy. Towards a greater protection for the rights of children born through surrogacy?*, ISS, Geneva, 2025, <[https://iss-ssi.org/storage/2025/04/LEGAL-TRENDS-IN-SURROGACY\\_ISS-Report-2025.pdf](https://iss-ssi.org/storage/2025/04/LEGAL-TRENDS-IN-SURROGACY_ISS-Report-2025.pdf)>.
- 14 Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, A/HRC/37/60, at 3; United Nations General Assembly, Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, *Study on safeguards for the protection of the rights of children born from surrogacy arrangements*, A/74/162, at 5.
- 15 *Principles for the protection of the rights of the child born through surrogacy (Verona principles)*, 2021, <[https://bettercarenetwork.org/sites/default/files/2021-03/VeronaPrinciples\\_25February2021.pdf](https://bettercarenetwork.org/sites/default/files/2021-03/VeronaPrinciples_25February2021.pdf)>.
- 16 *Key Considerations – Children's Rights and Surrogacy*, at 4.
- 17 Report of the Special Rapporteur on violence against women and girls, its causes and consequences. The different manifestations of violence against women and girls in the context of surrogacy, at 8.
- 18 The Hague Conference on Private International Law, Parentage/Surrogacy Project, n.d., <<https://www.hcch.net/en/projects/legislative-projects/parentage-surrogacy>>.
- 19 *Convention on the Rights of the Child*, Preamble, at 9; *American Convention on Human Rights*, Pact of San Jose, Art. 11, at 6.
- 20 Other country examples include 15 days from the date of birth (with exceptions) in Brazil, 30 days in Colombia, 30/60 days in Chile, 45 days in El Salvador, 60 days in Guatemala, México and 90 days in Ecuador. In Peru, ordinary birth registrations are those recorded between birth and 60 calendar days (up to 90 days in remote areas). After this period, registrations are considered late registrations, with no time limit. The supporting document is the live birth certificate; only when this is not available are additional documents requested for late registrations. Otherwise, Article 41 of Organic Law No. 26497 of the RENIEC applies.
- 21 Dirección Nacional Servicio de Registro Cívico, Inscripción de nacimiento de 0-12 años ante Oficial de Registro Civil Filiación ambos padres, SRC-INO-01, Bolivia, 2025, <<https://www.gob.bo/tramites/inscripcion-de-nacimiento-de-0-12-anos-ante-oficial-de-registro-civil-filiacion-ambos-padres-src-ino-01>>.
- 22 Reply to questionnaire (Annex I) from Peru.
- 23 Ibid.
- 24 This is the case of the Notification of Birth Form in Antigua and Barbuda, the 'Certificado de nacido vivo' in Bolivia, the 'Declaração de Nascido Vivo' in Brazil, the 'comprobante de parto' in Chile, the 'certificado de nacido vivo' in Colombia, the 'Informe Estadístico de Nacido Vivo físico o electrónico' in Ecuador, the 'Ficha Medica de Nacimiento' in El Salvador, the 'informe de nacimiento' in Guatemala, the 'constancia de nacimiento' in Honduras, the 'Certificado de Nacimiento (Nacido Vivo)' in Mexico (see also: Secretaría de Salud, Certificado Electrónico Nacimiento, Mexico, 2016, <<https://www.gob.mx/salud/documentos/cen?state=published>>), the 'Certificado de Nacido Vivo' in the Dominican Republic, a hospital notification of birth in Saint Lucia and in Suriname.
- 25 See, e.g. Norma Oficial Mexicana NOM-035-SSA3-2012 en materia de información en salud, Mexico, 2012, <[https://dof.gob.mx/nota\\_detalle\\_popup.php?codigo=5280848](https://dof.gob.mx/nota_detalle_popup.php?codigo=5280848)>.
- 26 Replies to questionnaire (Annex I) from Colombia, Dominican Republic and Guatemala.
- 27 Replies to questionnaire (Annex I) from Antigua and Barbuda, Bolivia, Brazil, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Saint Lucia, Suriname. In Chile, whereas the reply from the civil registration authority states that it is allowed, it also explains that when the identity of the mother and potentially that of the father is unknown, the child may be registered on the basis of a judicial order and, on the birth certificate, the child's parentage is not determined. Likewise, Law No. 4.808 provides for the possibility to register a newborn on the basis of the declarations of two capable witnesses. In terms of the implementation of the child's right to identity, a move towards prohibiting anonymous birth is a positive contribution to the preservation of the child's identity as per the Committee on the Rights of the Child's preference for confidential – rather than anonymous – birth. See: Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Poland, CRC/C/POL/CO/5-6, 6 December 2021, Para. 23, <<https://docs.un.org/en/CRC/C/POL/CO/5-6#:~:text=party%20to%20address%20the%20causes,25>>; Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of India, CRC/C/IND/CO/3-4, 7 July 2014, Para. 42, <<https://docs.un.org/en/CRC/C/IND/CO/3-4#:~:text=Right%20to%20identity.and%2019%20of%20the%20Convention>>.
- 28 Mother and/or father, e.g. Antigua and Barbuda, Bolivia, Brazil, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, México, Peru, Saint Lucia, Suriname. In Peru, regardless of age, any underage person, who is a mother or father, can register the birth of their child. Replies to questionnaire (Annex I) from these countries.
- 29 See, e.g. Antigua and Barbuda, Brazil, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, Honduras, Mexico, Peru, Saint Lucia. Replies to questionnaire (Annex I) from these countries.
- 30 See, e.g. Antigua and Barbuda, Bolivia, Brazil, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Peru, Saint Lucia. Replies to questionnaire (Annex I) from these countries.
- 31 See, e.g. Chile, Colombia, Dominican Republic, Mexico, Peru. Replies to questionnaire (Annex I) from these countries.
- 32 See, e.g. municipal, ecclesiastical, administrative, judicial and indigenous authorities, community organizations and Directors of public or private care homes in Bolivia; the Consejo Nacional para la Niñez y Adolescencia (CONANI) in the Dominican Republic; Procuraduría General de la Nación in Guatemala; Defensoría del Niña, Niño y Adolescente (Demuna) in Peru, the District Commissioner in Suriname. Replies to questionnaire (Annex I) from these countries.

- 33 Cadastro de Pessoas Físicas (CPF), Brazil, <<https://www.gov.br/receitafederal/pt-br/assuntos/meu-cpf>>.
- 34 *Decreto 18 que establece el Rol Único Nacional para fines de identificación y estadística*, Chile, 1973.
- 35 *Resolución 146 de 2000 de la Registraduría Nacional del Estado Civil por la cual se adopta el Número Único de Identificación Personal (NUIP)*, *Diario Oficial No. 43.863 de 22 de enero de 2000*, Colombia.
- 36 *Instructivo Normativo para la asignación de la Clave Única de Registro de Población*, 2018, Mexico.
- 37 See, e.g. Antigua and Barbuda, Bolivia, Brazil, Chile, Colombia, the Dominican Republic, Ecuador, Guatemala, Honduras, Mexico, Peru, Saint Lucia, Suriname. Replies to questionnaire (Annex I) from these countries.
- 38 See, e.g. Antigua and Barbuda, Ecuador (where there is no law on the subject, but one is currently under debate at the National Assembly), Guatemala. Replies to questionnaire (Annex I) from these countries.
- 39 See, e.g. Antigua and Barbuda, Bolivia, Brazil, Chile, Colombia, Dominican Republic, Ecuador, Guatemala, Honduras, Mexico, Peru, Saint Lucia, Suriname. For example, in Peru, there is a presumption of paternity of the son or daughter of a married woman, unless the mother declares that the son or daughter is not her husband's, in accordance with Article 362 of the Civil Code (amended by Legislative Decree No. 1377 of 24 August 2018). Replies to questionnaire (Annex I) from these countries.
- 40 See, e.g. Antigua and Barbuda, Bolivia, Chile, Colombia, Guatemala, Honduras, Mexico, Suriname. Replies to questionnaire (Annex I) from these countries.
- 41 See, e.g. Brazil. Replies to questionnaire (Annex I) from Brazil.
- 42 See, e.g. Dominican Republic, Guatemala, Suriname. Replies to questionnaire (Annex I) from these countries.
- 43 See, e.g. Antigua and Barbuda, Dominican Republic, Mexico, Suriname. Replies to questionnaire (Annex I) from these countries.
- 44 See, e.g. Bolivia, Brazil, Colombia, Guatemala, Peru, Suriname. Replies to questionnaire (Annex I) from these countries.
- 45 Replies to questionnaire (Annex I) from Guatemala, Honduras, Peru and Saint Lucia as well as additional information received from Peru.
- 46 *Ley 26.994 - Código Civil y Comercial de la Nación*, Argentina, 2014, Art. 562.
- 47 Reply to questionnaire (Annex I) from Brazil; *Provimento N° 149 - Institui o Código Nacional de Normas da Corregedoria Nacional de Justiça do Conselho Nacional de Justiça - Foro Extrajudicial (CNN/CNJ-Extra)*, que regulamenta os serviços notariais e de registro, Brazil, 30 August 2023, Art. 512 ff., <<https://atos.cnj.jus.br/atos/detalhar/5243>>.
- 48 Reply to questionnaire (Annex I) from Honduras.
- 49 Interview with Associação Nacional dos Registradores de Pessoas Naturais (Arpen-Brasil), Brazil, December 2025; Interview with Registraduría Nacional del Estado Civil, Colombia, November 2025; *Ley 19.167 - Regulación de las Técnicas de Reproducción Humana Asistida*, Uruguay, 2013, Art. 12.
- 50 Interview with Associação Nacional dos Registradores de Pessoas Naturais (Arpen-Brasil), Brazil, December 2025.
- 51 Amongst the countries reviewed, Antigua and Barbuda, Bolivia, Dominican Republic, Guatemala, Honduras, Peru, Saint Lucia, Suriname do not allow legal parentage by two persons of the same sex. Replies to questionnaire (Annex I) from these countries.
- 52 Federal Supreme Tribunal, Decision ADI 4277 (*Procurador-Geral da República v. Presidente da República*) and ADPF 132 (*Governador do Estado do Rio de Janeiro v. Tribunais de Justiça dos Estados*), Brazil, 2011.
- 53 Reply to questionnaire (Annex I) from Brazil; *Provimento No. 149*, at 47, Art. 512.
- 54 Reply to questionnaire (Annex I) from Chile; *Ley No. 21.400 que modifica diversos cuerpos legales para regular, en igualdad de condiciones, el matrimonio entre personas del mismo sexo*, Chile, 2021.
- 55 Constitutional Court, *Sentencia SU-696*, Colombia, 12 November 2015, <<https://www.corteconstitucional.gov.co/relatoria/2015/su696-15.htm>>.
- 56 Constitutional Court, *Sentencia T-105*, Colombia, 12 March 2020, <<https://www.corteconstitucional.gov.co/relatoria/2020/t-105-20.htm>>.
- 57 *Ley 1098 por la cual se expide el Código de la Infancia y la Adolescencia*, Colombia, 2006.
- 58 Reply to questionnaire (Annex I) from Ecuador; Corte Constitucional, *Sentencia No. 184-18-SEPCC - Caso No. 1692-12-EP*, Ecuador, 2018.
- 59 Reply to questionnaire (Annex I) from Mexico.
- 60 See, e.g. 'Caso alemán destapa gestación subrogada ilegal en Argentina', DW, 20 October 2025, <<https://www.dw.com/es/caso-cero-alemán-destapa-48-casos-de-gestación-subrogada-ilegal-en-argentina/a-74424904>>; 'El drama de una pareja chilena encarcelada en Perú tras intentar viajar con sus bebés nacidos por vientre de alquiler', *Univisión*, 8 September 2018, <<https://www.univision.com/noticias/america-latina/el-drama-de-una-pareja-chilena-encarcelada-en-peru-tras-intentar-viajar-con-sus-bebes-nacidos-por-vientre-de-alquiler>>; 'Hasta por redes sociales se alquilan vientres en Honduras', *El Herald*, 13 March 2018, <<https://www.elheraldo.hn/honduras/hasta-por-redes-sociales-se-alquilan-vientres-en-honduras-CAEH1159920>>.
- 61 *Ley 26.994 - Código Civil y Comercial de la Nación*, Argentina, at 46, Arts. 562, 563 and 564. See also: National Appeals Chamber – Federal Administrative Cases, Chamber V, C., E. M. y Otros v. EN-M. *Salud s/ amparo Ley 16.986*, <<http://www.derecho.uba.ar/institucional/deintereses/2014-fallo-cem.pdf>>. In Buenos Aires, see also: Dirección General del Registro del Estado Civil y Capacidad de las Personas, *Disposición No. 93/DGRC/17, de 13 de octubre de 2017 (completada por las Disposiciones No. 103/2017 (DGRC) y 122/2020 (DGRC))*.
- 62 'Barbados, in particular, hosts one of the region's most internationally recognized fertility clinics, offering the medical tools necessary to facilitate surrogacy, yet it operates without a standard legal framework.' Information provided by Dominique King, University of the West Indies, Cave Hill Campus, currently completing her thesis *Assisted Reproduction: Surrogacy from a Caribbean Perspective*, 2025.
- 63 Reply to questionnaire (Annex I) from Bolivia.
- 64 In Chile, there have been several initiatives to regulate surrogacy, but so far they have not been successful in Parliament. Reply to questionnaire (Annex I) from Chile.

- 65 To date, there are no clear legal provisions prohibiting or allowing surrogacy in the country, beyond legislation that sets certain requirements for medically assisted reproduction processes. However, it is worth mentioning some regulatory instruments such as [Law 1751](#) (2015), which establishes the fundamental right to health; [Law 1953](#) (2019), which established guidelines for the enactment of a public policy on the prevention of infertility and reproductive health treatment; and the subsequent [Public Policy on Infertility Prevention and Treatment](#), adopted by the Ministry of Health and Social Protection through Resolution 228 (2020). See: HCCH, *Questionnaire on the Private International Law issues surrounding the status of children, including issues arising from international surrogacy arrangements*, 2013, <<https://www.hcch.net/en/projects/legislative-projects/parentage-surrogacy/responses-q1>>. See also: Rueda, N., *La gestación por subrogación en Colombia*, in: Espejo Yaksic, N. et al. (Eds.), *La gestación por subrogación en América Latina*, SCJN, CEC and Cambridge Family Law, 2022, pp. 123-124.
- 66 *Norma No. 39210-MP-S - Autorización para la realización de la técnica de reproducción asistida de Fecundación In Vitro y transferencia embrionaria*, Costa Rica, Arts. 1, 4, 11, 13; *Norma No. 39616-S - Norma para Establecimientos de Salud que realizan la Técnica de Reproducción Asistida de Fecundación In Vitro y Transferencia Embrionaria (FIV)*, Costa Rica, Ss. 3.1., 11.3-11.5; *Norma No. 39646-S - Norma para la habilitación de establecimientos de salud que realizan la técnica de reproducción asistida de Fecundación In Vitro y Transferencia Embrionaria (FIV-TE)*, Costa Rica, S. 4.4.
- 67 Ecuador does not have any legal framework governing medically assisted reproduction, surrogacy, or legal motherhood and fatherhood. Currently, the National Assembly and other relevant entities are debating a bill on this issue. Reply to questionnaire (Annex I) from Ecuador.
- 68 *Status of Children Act*, S. 15 (Presumption of parentage arising from use of fertilisation procedure).
- 69 The Jamaican Network of Seropositives (JN+), *Submission to the United Nations Office of the High Commissioner for Human Rights Special Rapporteur on Violence Against Women and Girls. Thematic Report on Surrogacy and Violence Against Women*, 2025, <<https://www.ohchr.org/sites/default/files/documents/issues/women/sr/cfis/unga80/subm-sr-violence-against-cso-82-jamaican-ne2rk-seropositives.pdf>>.
- 70 Mexico is a federal country, where certain legal matters fall under federal jurisdiction, while others fall under the jurisdiction of the federal entities (or states) and, finally, some fall under both jurisdictions, such as civil and family matters.
- 71 Two states expressly prohibit this practice: San Luis Potosí (Art. 243 of the [Family Code](#)) and Querétaro (Art. 400 of the [Civil Code](#)).
- 72 Two federal entities expressly recognise, regulate and allow this practice: the states of Sinaloa (Chapter V of Title Eight (Arts. 282-297) 'On Assisted Human Reproduction and Surrogacy' of its [Family Code](#)) and Tabasco (Chapter VI (Arts. 380 Bis – 380 Bis 7) 'On assisted and surrogate pregnancy' of its [Civil Code](#)).
- 73 Other federal entities address assisted reproduction techniques in their Civil and Family Codes without specifically mentioning surrogacy; and others make no mention whatsoever of any form of assisted reproduction technique or surrogacy. As one expert explains, 'there is an important provision that, with slight variations, seems to be present in most legal systems, consisting in the prohibition of subjecting parentage to the will of the parties, as is the case, for example, in the Civil Code for the Federal District (Mexico City)'. See: Sosa Pastrana, F., Capítulo 8: *La gestación por subrogación en México*, in: Espejo Yaksic, N. et al. (Eds.), *La gestación por subrogación en América Latina*, SCJN, CEC and Cambridge Family Law, 2022, pp. 249 and 256.
- 74 *Ley No. 31 que regula el registro de los hechos vitales y demás actos jurídicos relacionados con el estado civil de las personas y reorganiza la Dirección Nacional de Registro Civil del Tribunal Electoral*, Panama, Arts. 85-86, <<https://docs.panama.justia.com/federales/leyes/31-de-2006-jul-31-2006.pdf>>; *Decreto No. 3 por el cual se reglamenta la Ley 31 de 25 de julio de 2006, que regula el Registro Civil, modificada y adicionada por la Ley 17 de 22 de mayo de 2007*, Panama, 2008, Arts. 15-16; *Código de la Familia*, Panama, 1994, Arts. 4, 236, 243, 245.
- 75 While Peru's legal framework does not expressly regulate surrogacy, it is prohibited as it is not allowed in ARTs for the woman carrying the child and the genetic mother to be different persons. Law No. 26842 – General Law on Health provides that 'any person has the right to resort to a treatment of their infertility, as well as to procreate through the use of assisted reproduction technologies, only if the genetic mother and the woman carrying the pregnancy are the same person. For the implementation of assisted reproduction technologies, the prior consent in writing of the biological parents is required. The fertilization of human gametes for purposes other than procreation is prohibited, as well as the cloning of human beings' (Art. 7) [Note: Unofficial translation]. Any amendment to this legal framework would require a reform to Law No. 26842 – General Law on Health as well as other legal instruments, including the Civil Code.
- 76 *Ley 19.167 - Regulación de las Técnicas de Reproducción Humana Asistida*, at 49, Ch. IV.
- 77 Portal oficial do Registro Civil, Como funciona o registro de filhos gerados por técnicas de reprodução assistida, Brazil, 2024, <<https://blog.registrocivil.org.br/como-funciona-o-registro-de-filhos-gerados-por-tecnicas-de-reproducao-assistida/>>.
- 78 Ribeiro, G. and Bezerra de Menezes, J., Capítulo 2: *La gestación por subrogación en Brasil*, in: Espejo Yaksic, N. et al. (Eds.), *La gestación por subrogación en América Latina*, SCJN, CEC and Cambridge Family Law, 2022, p. 61.
- 79 *Ibid*, p. 60.
- 80 Interview with Associação Nacional dos Registradores de Pessoas Naturais (Arpen-Brasil), Brazil, December 2025.
- 81 Figures presented during the CLARCIEV meeting on modifications undertaken over the last five years by court order in which the first serial number was registered based on the live birth certificate, changing the mother's information and retaining the same NUIP, October 2025.
- 82 Quevedo Delgado, S. V., 'Maternidad subrogada: cascada de demandas refleja el 'boom' del 'turismo reproductivo' en el país', *El Tiempo*, 12 July 2025, <<https://www.eltiempo.com/justicia/cortes/maternidad-subrogada-cascada-de-demandas-refleja-boom-del-turismo-reproductivo-en-el-pais-3471429>> [Note: Unofficial translation].
- 83 *La gestación por subrogación en México*, at 73, pp. 253-254.
- 84 Sarabia, D. and Montalvo, T., 'Maternidad subrogada: El fallo de SCJN es letra muerta, gestantes son víctimas de abuso', *Animal Político*, 19 December 2022, in Pulitzer Centre, <<https://pulitzercenter.org/stories/maternidad-subrogada-el-fallo-de-scn-es-letra-muerta-gestantes-son-victimas-de-abuso>> [Note: Unofficial translation].



- 85 See, e.g. Corte Superior de Justicia de Lima, *Francisco David Nieves Reyes y otros c. RENIEC*, Expediente 06374-2016-0-1801-JR-CI-05, Resolución: 05, Peru, 21 February 2017, <<https://img.lpderecho.pe/wp-content/uploads/2020/07/345430227-Expediente-06374-2016-0-1801-JR-CI-05-LP.pdf>>; Corte Superior de Justicia de Lima, *Edgar Abel Mejía Vilcahuamán y otra c. RENIEC y otra*, Primera Sala Constitucional, Expediente No. 1707-2022, Peru, 12 January 2024, <<https://img.lpderecho.pe/wp-content/uploads/2024/07/Expediente-1707-2022-LPDerecho.pdf>>; Tribunal Constitucional, *E.M. y C.M. representados por Ricardo Morán Vargas c. RENIEC*, Expediente No. 00882-2023-PA/TC, Peru, 26 September 2023, <<https://tc.gob.pe/jurisprudencia/2023/00882-2023-AA.pdf>>.
- 86 Information provided by Dominique King, University of the West Indies, Cave Hill Campus, currently completing her thesis *Assisted Reproduction: Surrogacy from a Caribbean Perspective*, 2025.
- 87 **Birth notification:** Notice of the occurrence of birth by an individual or institution to the registrar of vital events in a country. The notification is usually done by health institutions and birth attendants; or by local government officials when births take place at home. The birth notification only has a record value, it is not a legal registration record.
- Birth declaration:** Formal statement made by an informant (usually a parent or legal guardian) to the civil registrar, providing the specific details and characteristics of the birth and parentage in accordance with national legal requirements.
- Birth registration:** Birth registration is the continuous, permanent and universal recording, within the civil registry, of the occurrence and characteristics of births in accordance with the legal requirements of a country, based on the information provided in the declaration.
- Birth certification:** Issuance of the vital record that documents the birth of a child. The birth certificate is a personal document issued by the State to the child.
- Terminology based on: United Nations Department of Economic and Social Affairs, *Principles and Recommendations for a Vital Statistic System Revision 2*, Series M/19, Statistics Division, United Nations, New York, 2001; United Nations Children's Fund, *A Passport to Protection: A guide to birth registration programming*, UNICEF, New York, 2013; United Nations High Commissioner for Refugees, *Birth registration. UNHCR Global Field Survey on Policies and Practices*, UNHCR, 2016, <[https://www.refworld.org/en/download/115462?\\_cf\\_chl\\_tk=B82XUwApXdHqHk\\_azgf.g9FEYeyEi4B02Wi27Z5bNBm-1766330314-1.0.1.1-xH57.djrdb0dXuAN6uX67qC75HvzV8Nrr.MuDKGNLCU](https://www.refworld.org/en/download/115462?_cf_chl_tk=B82XUwApXdHqHk_azgf.g9FEYeyEi4B02Wi27Z5bNBm-1766330314-1.0.1.1-xH57.djrdb0dXuAN6uX67qC75HvzV8Nrr.MuDKGNLCU)>.
- 88 This is based on secondary sources, as the authorities in Argentina did not submit a reply to the questionnaire (Annex I).
- 89 Gobierno y Vínculo Ciudadano, Registro Civil, Trámites, Inscripción del nacimiento, Argentina, n.d., <<https://buenosaires.gob.ar/tramites/inscripcion-del-nacimiento>>.
- 90 The *Conselho Federal de Medicina* (CFM) is the public body in charge of regulating medical practice, undertaking inspections, and amongst others, guiding the medical profession in the application of ART and surrogacy. *Resolution CFM N° 2.320/2022*, adopted by the Federal Council of Medicine (CFM), states that donation cannot be for profit or commercial gain (Para. IV.1), that the 'temporary transfer/use of a uterus' (i.e. surrogacy) cannot be for profit or commercial gain, and that the fertility clinic cannot act as an intermediary in the choice of the surrogate mother (Para. VII.2). One key characteristic of surrogacy in Brazil has been that there the surrogate mother and one of the intending parents should be relatives up to the fourth of kinship (as reflected in Para. VII.1.b of the Resolution of 2022 but also in previous resolutions). It appears, however, that there has been flexibility in the past as this requirement has been dispensed with following authorisations issued by Regional Councils of Medicine and applications have therefore been granted without major justification as to the motives. Furthermore, the 2022 Resolution now explicitly takes into account this flexibility by stating that 'if it is impossible to comply with item b [i.e. kinship up to the forth degree], authorisation must be requested from the Regional Medical Council (CRM)' (Para. VII.1.c), thereby opening the path more widely to non-relative surrogacy arrangements. Another important criterion is that the 'egg or embryo donor cannot be the temporary surrogate mother' (Para. IV.2.2). See: *La gestación por subrogación en Brasil*, at 78, pp. 58 and 67.
- 91 Ibid, p. 59.
- 92 *Provimento No. 149*, at 47.
- 93 Ibid, Art. 512. See also: Lei No. 6.015 - *Lei de Registros Públicos (Texto Atualizado)*, Brazil, 1973, Art. 33, <<https://www2.camara.leg.br/legin/fed/lei/1970-1979/lei-6015-31-dezembro-1973-357511-norma-pl.html>>.
- 94 'I. 'A declaration of live birth; II. A notarised statement from the technical director of the clinic, centre or human reproduction service where the assisted reproduction was performed, indicating that the child was conceived through heterologous assisted reproduction, as well as the names of the beneficiaries; III. A marriage certificate, certificate of conversion of a stable relationship into marriage, public deed of stable relationship or sentence in which the stable relationship of the couple was recognised'. Para. 2 of Article 513 states that 'in cases of post-mortem assisted reproduction, in addition to the documents listed in the items of this article, as applicable, a specific prior authorisation from the deceased for the use of the preserved biological material must be presented, drawn up by a public or private instrument with a recognised signature' [Note: Unofficial translation].
- 95 *Lei No. 12.662 - Assegura validade nacional à Declaração de Nascido Vivo - DNV, regula sua expedição, altera a Lei nº 6.015, de 31 de dezembro de 1973, e dá outras providências*, Brazil, 2012, Art. 4, <[https://www.planalto.gov.br/ccivil\\_03/\\_ato2011-2014/2012/lei/l12662.htm](https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/l12662.htm)> [Note: Unofficial translation].
- 96 *La gestación por subrogación en Brasil*, at 78, pp. 70-71.
- 97 The main legislation governing birth registration is Law No. 6.015, which sets out the timelines for registration, the informants and the content of the registration. See: *Lei No. 6.015*, at 93, Arts. 50 ff. In this regard, it is also worth mentioning *Order No. 149 (2023) of the National Council of Justice* (CNJ), which provides further information on surrogacy and the subsequent registration of children born from this practice. See: *Provimento No. 149*, at 47.

- 98 'In the case of a surrogate pregnancy, the name of the birth mother, as stated on the live birth certificate, shall not be included in the registry, and a commitment agreement signed by the temporary uterus donor shall be presented, clarifying the issue of parentage'. *Provimento No. 149*, Ibid, Art.513, Para. 1. Also, as confirmed by the umbrella site of Civil Registries, 'the signed contract and medical documents serve as supporting documentation for the registry office to perform the civil registration correctly'. Portal oficial do Registro Civil, at 77 [Note: Unofficial translation].
- 99 'In assisted reproduction clinics, the following documents and observations must be included in the patient's medical record: a) free and informed consent form signed by the patients and the temporary uterus donor, (...); c) a commitment agreement between the patient(s) and the temporary uterus donor who will receive the embryo in her uterus, clearly establishing the issue of the child's filiation; (...) e) commitment to register the child's birth by the patients, with this documentation to be provided during pregnancy; f) written approval from the spouse or partner, if the temporary uterus donor is married or in a stable relationship'. Conselho Federal de Medicina, Resolução CFM No. 2.320, Adota normas éticas para a utilização de técnicas de reprodução assistida – sempre em defesa do aperfeiçoamento das práticas e da observância aos princípios éticos e bioéticos que ajudam a trazer maior segurança e eficácia a tratamentos e procedimentos médicos, tornando-se o dispositivo deontológico a ser seguido pelos médicos brasileiros e revogando a Resolução CFM No. 2.294, Brazil, 20 September 2022, Para. VII.3, <[https://sistemas.cfm.org.br/normas/arquivos/resolucoes/BR/2022/2320\\_2022.pdf](https://sistemas.cfm.org.br/normas/arquivos/resolucoes/BR/2022/2320_2022.pdf)> [Note: Unofficial translation].
- 100 Interview with Associação Nacional dos Registradores de Pessoas Naturais (Arpen-Brasil), Brazil, December 2025.
- 101 In 2022, a new ruling, T-275, emerged from the Constitutional Court, which highlighted the potential difficulties related to surrogacy in various settings. This ruling reiterated the need for Congress to regulate (or even prohibit) surrogacy. See: Constitutional Court, Sentencia T-275/22, Colombia, 1 August 2022, <<https://www.corteconstitucional.gov.co/relatoria/2022/t-275-22.htm>>; Constitutional Court, Sentencia T-127 2024, Colombia, 18 April 2024, <<https://www.corteconstitucional.gov.co/relatoria/2024/t-127-24.htm>>. See also: Stacey, D., 'La justicia colombiana llena un vacío que deja el Congreso: ordena incluir a la madre gestante en el registro de un bebé nacido por vientre de alquiler', *El País*, 9 April 2025, <<https://elpais.com/america-colombia/2025-04-09/la-justicia-colombiana-saca-la-cara-por-el-congreso-ordena-incluir-a-la-madre-gestante-en-el-registro-de-un-bebe-nacido-por-vientre-de-alquiler.html>>.
- 102 Constitutional Court, Sentencia T-968 of 2009 recognised that surrogacy is a means of responding to infertility among other assisted reproduction technologies, pursuant to [Article 42 on the family in the country's Constitution](#), although it did not address the substance of the matter. Nevertheless, it is worth noting that this ruling called for regulation of this matter, specifying some of the criteria expected of such regulation: that the surrogate mother should not contribute with genetic material, that surrogacy should be altruistic, that the identity of the parties should be preserved, and that the surrogate mother, once she had given her informed consent and the implantation of the reproductive material has been completed, cannot withdraw from the delivery of the child.
- 103 *La gestación por subrogación en Colombia*, at 65, p. 125.
- 104 Paras. 14-20.
- 105 Paras. 21-2 and 42-6.
- 106 As mentioned *verbatim* in the ruling SU-696 of 2015 in reference to same-sex couples. Sentencia SU-696, at 55.
- 107 Paras. 79-80.
- 108 *La gestación por subrogación en Colombia*, at 65, p. 128. [Note: Unofficial translation].
- 109 When the birth is not attended by the health sector, there are other background documents that act as proof of the birth in order to register the birth at the Civil Registry.
- 110 *Decreto 1260 por el cual se expide el Estatuto del Registro del Estado Civil de las personas*, Colombia, 1970, Art. 49, <[https://www.icbf.gov.co/sites/default/files/decreto\\_1260\\_de\\_1970.pdf](https://www.icbf.gov.co/sites/default/files/decreto_1260_de_1970.pdf)>.
- 111 *Ley 84 – Código Civil de los Estados Unidos de Colombia*, Colombia, 1873, Arts. 90 and 335; Ibid, Art. 49, with the sole exception of the adoptive mother
- 112 Instituto Colombiano de Derecho Procesal, 'Filiación materna y valoración probatoria. Límites de la función notarial', Informativo *Virtual del ICDP*, Edición No. 95, Vol. 1, April 2025, <<https://icdp.org.co/wp-content/uploads/2025/04/Informativo-95.pdf>> [Note: Unofficial translation].
- 113 Registraduría Nacional del Estado Civil de Colombia, *Circular Única de Registro Civil e Identificación – Versión 6*, S. 3.9.2.
- 114 *Ley No. 23 por la cual se dictan normas en materia de ética médica*, Colombia, 1981.
- 115 *La gestación por subrogación en Colombia*, at 65, p. 137 [Note: Unofficial translation].
- 116 Ibid, p. 138 [Note: Unofficial translation].
- 117 Superior Tribunal of Bogotá D.C., First Chamber in Civil Decisions, Magistrate: Marco Antonio Álvarez Gómez, 1 April 2025.
- 118 Aranzález De la Hoz, S. and Andrade Delgado, A.G., 'Filiación materna y gestación subrogada: límites jurídicos al contrato y su repercusión en el registro civil de nacimiento del menor. Con ocasión a la sentencia del Tribunal Superior de Bogotá del 1º de abril de 2025', Universidad Externado de Colombia, Facultad de Derecho, Divulgación – Centro de Estudios sobre Genética y Derecho, 11 April 2025, <https://geneticayderecho.uexternado.edu.co/filiacion-materna-y-gestacion-subrogada-limites-juridicos-al-contrato-y-su-repercusion-en-el-registro-civil-de-nacimiento-del-menor-con-ocasion-a-la-sentencia-del-tribunal-superior-de-bogota-del-1o/> [Note: Unofficial translation].
- 119 Instituto Colombiano de Derecho Procesal, at 112 [Note: Unofficial translation].
- 120 *Código Familiar del Estado de Sinaloa*, Mexico, Arts. 287, 288, 290, 293; *Código Civil para el Estado de Tabasco*, Mexico, Arts. 380 Bis 3 - Bis 6.
- Tabasco's legislation provides for the intervention of a notary to ensure the validity of the contract, since 'he or she shall be obliged to require the contracting parties to present a medical report demonstrating compliance with the requirements and conditions (...)', in addition to having to 'notify it within twenty-four hours to the Ministry of Health and the State Civil Registry, by means of a certified copy of the instrument entered into between the parties' (Art. 380 Bis 3 of the Civil Code). Furthermore, the legislation reiterates that 'once the legal instrument has been signed before a notary, it must be approved by a competent judge' (Art. 380 Bis 5), who will also have jurisdiction when proceeding with the full adoption of the child born from the surrogacy arrangement (Art. 380 Bis 6) [Note: Unofficial translation].

In Sinaloa, the intervention of a notary is also foreseen: ‘the surrogacy instrument shall be signed by the intending mother and father, the surrogate mother, the interpreter, if necessary, the Notary Public, and the director of the clinic or hospital, recording the place, year, month, day, and time at which it was entered into’ (Art. 287 of the Family Code). Likewise, ‘once the instrument has been signed, its effects must be notified to the Ministry of Health and the civil registry official, so that the status of the child born from this practice is recognised in their parentage as a child from the moment of fertilisation by their biological parents, i.e. the intending mother and father’ (Art. 293) [Note: Unofficial translation].

It should be noted that both instruments also address those circumstances in which such a contract may be considered null or void (Family Code of Sinaloa, Arts. 288 and 295 and Civil Code of Tabasco, Articles 380 Bis 4 and Bis 7), including any defect, failure to comply with requirements and formalities, and the inclusion of commitments or clauses that violate the best interests of the child, human dignity, social order or the public interest.

121 *Código Civil para el Estado de Tabasco*, Mexico, Art. 380 Bis 6 [Note: Unofficial translation].

122 *Código Familiar del Estado de Sinaloa*, Mexico, Art. 293.

123 *Código Familiar del Estado de Sinaloa*, Mexico, Art. 294. With regard to all references made to the mother of the child, the Code specifies that these are understood to refer to the surrogate mother who carried the child. This point is confusing because, within the terminology of the Code itself, the legislator distinguishes between ‘gestational woman’ and ‘surrogate mother’. Using this term at the end of the article to determine who will be the mother of the child for the purposes of the applicable legal provisions creates confusion and may lead to civil registry officials refusing to register the child. See: *La gestación por subrogación en México*, at 73, pp. 251–252.

124 Supreme Court of Justice, *Amparo en revisión 516/2018*, Gestación subrogada o por sustitución. El asentamiento de una persona recién nacida sólo se hará mediante adopción plena cuando se trate de la modalidad de gestación subrogada, no así cuando se trate de la modalidad de gestación por sustitución, 8 December 2021.

125 Reply to questionnaire (Annex I) from Mexico.

126 Suprema Corte de Justicia de la Nación, *Acción de inconstitucionalidad 16/2016*, <<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=194229>>.

127 *Amparo en revisión 516/2018*, at 124.

128 As explained by the civil registration authorities, the case law issued by the country’s highest Court mainly responds to lawsuits filed by individuals, who are requesting the registration of their children born through surrogacy in states other than Sinaloa and Tabasco. See: Supreme Court of Justice, *Amparo en revisión 553/2018*, Filiación de un menor de edad nacido bajo la técnica de maternidad subrogada. Es deber del Juez establecerla, aún ante la ausencia de regulación específica, 21 November 2018; Supreme Court of Justice, *Amparo en revisión 86/2024*.

See also, e.g. A judicial thesis in relation to a surrogacy carried out in Mexico City, in which it was confirmed that ‘it is possible to request the Civil Registry to issue a birth certificate, after verification of the facts, as a result of the successful recognition of paternity, since it does not refer to a conviction per se, but rather to an act aimed at ensuring the registration of a person’s birth as soon as possible, in accordance with the provisions of Article 4 of the Federal Constitution, which establishes the right of every person to identity and to be registered immediately after birth, especially if that request comes from a procedure in which all parties involved in the surrogacy contract have an interest in its validation’. Tesis aislada I.14o.C.2 C (11a.), Diligencias de jurisdicción voluntaria. Constituyen la vía para que un Juez de lo Familiar ordene al Registro Civil expedir el acta de nacimiento del hijo nacido bajo la técnica de gestación sustituta, Gaceta del Semanario Judicial de la Federación, Décimo Cuarto Tribunal Colegiado en materia Civil del Primer Circuito, Amparo en revisión 3/2023. 13 October 2023 [Note: Unofficial translation].

129 Reply to questionnaire (Annex I) from Mexico. See also: Tesis Aislada I.4o.C.111 C (10a.), Menor de edad concebido mediante técnicas de reproducción asistida. La negativa a inscribir su nacimiento en el Registro Civil de la Ciudad de México por un vacío legal, transgrede el derecho fundamental a la identidad, Cuarto Tribunal Colegiado en materia Civil del Primer Circuito, Queja 9/2021, 25 February 2021.

130 Several judicial theses have addressed the refusal to register the births of children born through surrogacy, in particular the potential violation of their right to identity and other fundamental rights. For example, a Circuit Collegiate Court determines that the refusal to register the birth of a child conceived through ART, such as surrogacy, in the Civil Registry of Mexico City violates the fundamental right to identity, since the existence of a legal vacuum does not justify not registering the child. It was also determined that there was need to issue a provisional birth certificate with limited effects to a child conceived through surrogacy by contract, while the refusal to issue such a certificate is being resolved. Tesis Aislada I.8o.C.21 C (11a.), Suspensión provisional en amparo directo. Debe concederse contra la negativa de expedir el acta de nacimiento de una persona menor de edad concebida mediante técnicas de reproducción asistida – gestación subrogada – por contrato, para que se expida una provisional con efectos limitados, Octavo Tribunal Colegiado en materia Civil del Primer Circuito, Queja 193/2024, 7 May 2024.

In another case, it was decided to ‘grant the provisional suspension against the Civil Registry’s decision to deny the future registration of an unborn person, without the details of the pregnant person, when presented on the occasion of their birth resulting from a surrogacy contract entered into by the complainants, provided that they present the surrogacy contract and the documents accounting for the period of gestation’. More recently, the amparo review 86/2024 determined the issuance of a provisional certificate, given the invalidity of a surrogacy contract in Tabasco, while the situation with the pregnant woman was being resolved. The case was also approached from the perspective of child protection, with the intervention of Mexico City’s Attorney General’s Office for the Protection of the Rights of Children and Adolescents and a plan to restore rights. Tesis Aislada I.4o.C.111 C (10a.), Ibid [Note: Unofficial translation].

131 ‘In the cases documented and litigated by GIRE, however, the most recurrent pattern is the refusal by the Civil Registry Office of Tabasco to issue birth certificates, which are an essential requirement for applying for a passport, proving parentage and accessing basic services such as health care’. Grupo de Información en Reproducción Elegida (GIRE), Surrogacy in Mexico. The consequences of poor regulation, Part 3.2.b., <<https://gestacion-subrogada.gire.org.mx/en/#/>>.



- 132 Amparo en revisión 86/2024, at 128.
- 133 Reply to questionnaire (Annex I) from Mexico.
- 134 Tesis PR.C.CS. J/27 C (11a.). Suspensión provisional con efectos restitutorios en el juicio de amparo indirecto. Parámetros que debe considerar la persona juzgadora cuando se reclama la determinación del registro civil que niega el futuro registro de una persona no nacida con motivo de un contrato de maternidad subrogada, sin los datos de la persona gestante. Pleno Regional en materia civil de la región Centro-Sur, con residencia en Guadalajara, Jalisco. Contradicción de criterios 69/2023. Entre los sustentados por los Tribunales Colegiados Segundo y Cuarto, ambos en Materia Civil del Tercer Circuito. 13 October 2023.
- 135 Interview with the Registro Nacional de Población e Identidad, Secretaría de Gobernación, Mexico, December 2025.
- 136 Conselho Federal de Medicina, Resolução CFM No 2.320, at 99, which supplements the subject due to the lack of an express rule in the legislation.
- 137 Article 513, Para. 1.
- 138 Court of Justice of the State of Bahia, County of Camaçari, First Family Court, Case No. 0501663-67.2015.8.05.0039, 4 June 2020; Court of Justice of the State of São Paulo, County of São Paulo, Second Court of Public Records, Case No. 1028191-10.2015.8.26.0100, 13 July 2015; Court of Justice of the State of Santa Catarina, County of Florianópolis, First Family Court, Case No. 0800779-46.2013.8.24.0090, 30 July 2014; Court of Justice of the State of Rio Grande do Sul, County of Passo Fundo, Second Family Court, Case No. 0011127-22.2014.8.21.0021, 13 June 2014. In: *La gestación por subrogación en Brasil*, at 78, p. 61.
- 139 *La gestación por subrogación en Brasil*, Ibid, p. 68 [Note: Unofficial translation].
- 140 Ibid, pp. 70-71 [Note: Unofficial translation].
- 141 Ibid.
- 142 *'Traditional practice would have no place, while gestational surrogacy with the genetic material of the intending mother would, since by registering the surrogate mother as the mother, maternity could be challenged in a court case in which DNA evidence is presented. This is because in Colombia, the genetic basis of parentage is privileged (...). This would not be possible with donor gametes due to confidentiality (Articles 33 and 36, Decree 2493, 2004), in addition to the fact that if there is no link with the intending mother, it would be impossible to successfully challenge maternity.'* See: *La gestación por subrogación en Colombia*, at 65, pp. 143-144 [Note: Unofficial translation].
- 143 *Ley No. 75 por la cual se dictan normas sobre filiación y se crea el Instituto Colombiano de Bienestar Familiar*, Colombia, 1968, Art. 1. See also: Reply to questionnaire (Annex I) from Colombia.
- 144 Interview with Registraduría Nacional del Estado Civil, Colombia, November 2025.
- 145 Family Court No. 38, Bogotá, Impugnación de maternidad 17-2023-00926-00, 4 December 2024, <<https://es.scribd.com/document/804129384/Sentencia-Ventre-de-Alquiler>>.
- 146 High Superior Tribunal of Bogotá D.C., First Chamber in Civil Decisions, 1 April 2025, at 117.
- 147 'La justicia colombiana llena un vacío que deja el Congreso: ordena incluir a la madre gestante en el registro de un bebé nacido por vientre de alquiler', at 101. See also: 'Filiación materna y gestación subrogada: límites jurídicos al contrato y su repercusión en el registro civil de nacimiento del menor. Con ocasión a la sentencia del Tribunal Superior de Bogotá del 1º de abril de 2025', at 118; 'Tribunal de Bogotá ordena incluir a madre gestante en registro civil: "Una mamá no es un objeto", *Blu Radio, YouTube*, 4 April 2025, <<https://www.youtube.com/watch?v=2ZgjzQAIiTk>>; Agudelo, F., 'Mujeres que alquilen su vientre deberán aparecer en el registro civil de los menores, dictaminó el Tribunal Superior de Justicia', *infobae*, 2 April 2025, <<https://www.infobae.com/colombia/2025/04/03/el-nombre-de-las-madres-subrogadas-debera-aparecer-en-el-registro-civil-de-los-menores-de-acuerdo-al-tribunal-superior-de-justicia/>>; Notary Public 19 of Bogotá, Doble maternidad en el registro civil, 10 February 2025, <<https://www.notaria19bogota.com/doble-maternidad-en-el-registro-civil/>>.
- 148 'Filiación materna y gestación subrogada: límites jurídicos al contrato y su repercusión en el registro civil de nacimiento del menor. Con ocasión a la sentencia del Tribunal Superior de Bogotá del 1º de abril de 2025', Ibid [Note: Unofficial translation].
- 149 It should be noted that the *Family Code of Sinaloa* allows four forms of surrogacy: (a) 'total surrogacy', when the surrogate mother provides her own eggs; (b) 'partial surrogacy', where the surrogate mother carries in her womb an embryo fertilised in vitro that has been transplanted into her, but which comes from the union of the sperm and egg of the intending couple or person; (c) 'compensated surrogacy', whereby a specific amount is paid, in addition to the costs of the pregnancy; and (d) 'altruistic surrogacy', which occurs when a woman agrees to carry a pregnancy on behalf of another free of charge (Art. 284). For its part, the *Civil Code of Tabasco* mentions two forms: (a) a 'surrogate pregnancy contract', in which the surrogate mother is inseminated with her own eggs and gives the newborn to the intending mother through full adoption, and (b) a 'substitute pregnancy contract', in which the surrogate mother is contracted exclusively to carry in her womb an embryo obtained by fertilising the gametes of the intending couple or person (Art. 380 Bis 2). This legislation does not refer at any point to whether or not remuneration is authorised. Finally, it should be noted that both, the legislation of Sinaloa (*Family Code*, Arts. 283, 284 and 286) and that of Tabasco (*Civil Code*, Art. 380 Bis), regulate the donation or use of gametes in surrogacy procedures.
- 150 Reply to questionnaire (Annex I) from Mexico.
- 151 *Acción de inconstitucionalidad 16/2016*, at 126; *Amparo en revisión 553/2018*, at 128.
- 152 *Código Familiar del Estado de Sinaloa*, Mexico, Arts. 283, 287; *Código Civil para el Estado de Tabasco*, Mexico, Arts. 380 Bis 1. However, discrimination was raised in *Acción de inconstitucionalidad 16/2016*, Ibid [Note: Unofficial translation].
- 153 Tesis I.2o.C.3 C (11a.), Filiación de una niña o un niño nacido bajo la técnica de reproducción asistida, conocida como maternidad subrogada o útero subrogado. Para establecer no es requisito indispensable la demostración del vínculo biológico mediante la pericial en genética, en atención al interés superior de la niñez, Segundo Tribunal Colegiado en materia civil del Primer Circuito, Amparo en revisión 131/2022, 30 June 2022.
- 154 *Código Familiar del Estado de Sinaloa*, Mexico, Art. 293.
- 155 *Código Civil para el Estado de Tabasco*, Mexico, Art. 380 Bis 2.
- 156 'The registration of the newborn must be carried out through full adoption approved by a competent judge, under the terms of this Code'. Ibid, Art. 380 Bis 6.
- 157 Ibid, Arts. 398-403.

- 158 *Amparo en revisión* 516/2018, at 124; Tesis Aislada 1a. XIX/2022 (11a.), Gestación subrogada o por sustitución. El asentamiento de una persona recién nacida sólo se hará mediante adopción plena cuando se trate de la modalidad de gestación subrogada, no así cuando se trate de la modalidad de gestación por sustitución, *Amparo en revisión* 516/2018, 8 December 2021.
- 159 *La gestación por subrogación en México*, at 73, p. 265 [Note: Unofficial translation].
- 160 *Ibid*, pp. 265-266 [Note: Unofficial translation].
- 161 *Ibid*.
- 162 *Ley No. 19167 – Regulación de las técnicas de reproducción human asistida*, at 75, Arts. 27-28. See also: *Decreto No. 84/015, Reglamentación de la Ley No. 19167 relativa a las técnicas de reproducción asistida*, Uruguay, 2015 [Note: Unofficial translation].
- 163 See, e.g. Replies to questionnaire (Annex I) from Chile, Honduras, Peru, Saint Lucia, Suriname.
- 164 See, e.g. Reply to questionnaire (Annex I) from Honduras.
- 165 *Civil Registration (Vital Statistics) Act, 2020*, Antigua and Barbuda, 2020, Ss. 14-15.
- 166 Children (Care and Adoption) Act, 2015, Antigua and Barbuda, 2015, Schedules I and IV.
- 167 *Ibid*, S. 123.
- 168 See, e.g. Replies to questionnaire (Annex I) from Dominican Republic and Guatemala.
- 169 Additional information provided by the Junta Central Electoral, Dominican Republic, December 2025 [Note: Unofficial translation].
- 170 Reply to questionnaire (Annex I) from Suriname.
- 171 See, e.g. *Francisco David Nieves Reyes y otros c. RENIEC*, at 85; *Edgar Abel Mejía Vilcahuamán y otra c. RENIEC y otra*, at 85; *E.M. y C.M. representados por Ricardo Morán Vargas c. RENIEC*, at 85.
- 172 Reply to questionnaire (Annex I) from Peru.
- 173 *Ley 26.994 - Código Civil y Comercial de la Nación*, at 46, Arts. 563-564 [Note: Unofficial translation].
- 174 *Disposición No. 93/DGRC/17*, at 61 [Note: Unofficial translation].
- 175 *C., E. M. y Otros c. EN-M. Salud s/ amparo Ley 16.986*, at 61.
- 176 *Resolução CFM No 2.320*, at 99.
- 177 These include: '1. A technical medical director registered with the Regional Medical Council (CRM) of their jurisdiction, with registration as a specialist in areas related to assisted reproduction, who will be responsible for all medical and laboratory procedures performed; 2. Permanent record of pregnancies and their outcomes (...) resulting from the different assisted reproduction techniques applied at the unit in question, as well as laboratory procedures in the handling of gametes and embryos; 3. Permanent record of laboratory tests performed on patients, with the primary purpose of preventing the transmission of diseases. 4. Records must be available for inspection by Regional Medical Councils' (Para. III).
- Furthermore, 'the clinics, centres or services where donations are made must maintain a permanent record with general clinical data and phenotypic characteristics, in accordance with current legislation' (Para. IV.5). Specifically in relation to surrogacy, the Resolution states that 'reproductive clinics, centres or services may use assisted reproduction techniques to create the situation identified as surrogate pregnancy, provided that there is a condition that prevents or contraindicates pregnancy' (Para. VII) and that 'the fertility clinic cannot act as an intermediary in the choice of the surrogate mother' (Para. VII.2).
- 178 'A person conceived using this technique is guaranteed the right to know their genetic ancestry, based on the interpretation, by analogy, of Article 48 of Law 8.069/1990 (Statute of the Child and Adolescent), without this implying the recognition of any family relationship. See: Lobo, P., "Direito ao estado de filiação e direito à origem genética: uma distinção necessária", en Pereira, Rodrigo (coord.), *Afeto, ética, família e o novo Código Civil*, Belo Horizonte, Del Rey, 2004, pp. 505-530. Referred to in: *La gestación por subrogación en Brasil*, at 78 [Note: Unofficial translation].
- 179 See also: *La gestación por subrogación en Brasil*, *Ibid*, p. 68 [Note: Unofficial translation].
- 180 National Council of Justice, National Code of Standards, Art. 513, Para. 1. It established the prohibition of including the name of the woman giving birth in the registry. On the other hand, a commitment agreement signed by the temporary uterus donor must be presented, clarifying the issue of parentage.
- 181 *La gestación por subrogación en Brasil*, at 78, p. 73 [Note: Unofficial translation].
- 182 In accordance with Article 54 of Law No. 6.015 (1973), birth records must include the following data: '1) the day, month, year, and place of birth and the exact time, if possible to determine, or approximate; 2) the sex and colour of the person being registered; 3) the fact that they are twins, if applicable; 4) the surname and first name given to the child; 5) a statement that the child was stillborn or died during or shortly after delivery; 6) the order of filiation of other siblings with the same first name who exist or have existed; 7) the surnames and first names, place of birth, and profession of the parents, the place and registry office where they were married, the age of the mother and the person being registered in full years at the time of birth, and the domicile or residence of the couple; 8) the surnames and first names of the paternal and maternal grandparents; 9) the surnames and first names, profession and residence of the two witnesses to the registration, in the case of childbirth without medical assistance at home or outside a hospital or health centre; 10) the identification number of the Live Birth Declaration, with check digit control, (...) and 11) the place of birth of the informant.' *Lei No. 6.015 - Lei dos Registros Públicos*, at 93 [Note: Unofficial translation].
- 183 Reply to questionnaire (Annex I) from Brazil.
- 184 *Provimento No. 149*, at 47, Art. 514.2 [Note: Unofficial translation].
- 185 *La gestación por subrogación en Brasil*, at 78, pp. 70-71.
- 186 'Filiación materna y gestación subrogada: límites jurídicos al contrato y su repercusión en el registro civil de nacimiento del menor. Con ocasión a la sentencia del Tribunal Superior de Bogotá del 1º de abril de 2025', at 118 [Note: Unofficial translation].
- 187 *La gestación por subrogación en Colombia*, at 65, p. 143. [Note: Unofficial translation].
- 188 Reply to questionnaire (Annex I) from Colombia.
- 189 Reply to questionnaire (Annex I) from Colombia; Interview with Registraduría Nacional del Estado Civil, Colombia, November 2025.
- 190 See, e.g. Constitutional Court, Sentencia T-968, 2009 [Note: Unofficial translation].
- 191 Reply to questionnaire (Annex I) from Mexico.
- 192 *La gestación por subrogación en México*, at 73, pp. 259-260 [Note: Unofficial translation].
- 193 *Decreto No. 84/015, Reglamentación de la Ley No. 19167 relativa a las técnicas de reproducción asistida*, at 162, Art. 11 [Note: Unofficial translation].

- 194 See, e.g. Replies to questionnaire (Annex I) from Dominican Republic, Honduras, Peru, Saint Lucia, Suriname.
- 195 Access to personal information is handled solely and exclusively with the owner of the information in accordance with the provisions of the Organic Law on Personal Data Protection. Reply to questionnaire (Annex I) from Ecuador.
- 196 *E.M. y C.M. representados por Ricardo Morán Vargas c. RENIEC*, at 85 [Note: Unofficial translation].
- 197 For further information, see: United Nations Children's Fund Regional Office for Latin America and the Caribbean, the Organization of American States and the Latin American and Caribbean Council for Civil Registration, *Identity and Vital Statistics. Access to and use of civil registration by migrants and refugees in Latin America and the Caribbean*. UNICEF, Republic of Panama, July 2024, <<https://www.unicef.org/lac/informes/acceso-uso-del-registro-civil-por-migrantes-refugiados-en-america-latina>>.
- 198 The Civil Registry records birth particulars and the Passport Office / Ministry of Foreign Affairs, Immigration and Trade uses these records to confer citizenship accordingly. Reply to questionnaire (Annex I) from Antigua and Barbuda.
- 199 Reply to questionnaire (Annex I) from Bolivia.
- 200 The legal parents are the parents listed on the birth certificate. Nationality will be granted by birth on national territory, even if the parents are foreigners, provided that they are not in the service of their country. It will also occur by descent, in the case of children of Brazilians born abroad, provided they are registered with a Brazilian office or come to reside in Brazil and opt for Brazilian nationality, in accordance with Article 12, Para. I, Sub-Para. c) of the Constitution. Children of Brazilians born abroad whose parents are in the service of the country are also Brazilian. Reply to questionnaire (Annex I) from Brazil.
- 201 Reply to questionnaire (Annex I) from Chile.
- 202 Article 96 of the Constitution establishes that the following are Colombian nationals by birth: a. Those born in Colombia to a Colombian father and/or mother; b. Those born in Colombia to foreign parents, provided that one of their parents was domiciled on Colombian territory at the time of birth, with proof of domicile in accordance with the provisions of Article 4 of Law 2332 of 2023; c. Children of Colombian fathers or mothers who were born in a foreign country and later took up residence in Colombian territory or registered at a consular office of the Republic. Reply to questionnaire (Annex I) from Colombia.
- 203 Article 18 of the Constitution establishes that the following are Dominicans: 1. the sons and daughters of a Dominican mother or father; 2. those who enjoyed Dominican nationality before 2015; 3. Persons born on the national territory, except for the sons and daughters of foreign members of diplomatic and consular delegations, foreigners who are in transit or residing illegally in Dominican territory; 4. those born to foreigners who are the sons or daughters of a Dominican father or mother; 5. direct descendants of Dominicans residing abroad. Reply to questionnaire (Annex I) from the Dominican Republic.
- 204 In this case, descent includes 'when one or both of your genetic mothers and/or fathers are nationals of the State'. Reply to questionnaire (Annex I) from Ecuador.
- 205 In this case, descent includes 'by descent in accordance with the provisions of the Political Constitution of the Republic of Guatemala, and in cases of adoption'. Reply to questionnaire (Annex I) from Guatemala.
- 206 Principle of *ius soli*: Children born on Honduran territory acquire nationality; Principle of *ius sanguinis*: A child born abroad to a Honduran father or mother by birth is Honduran. Reply to questionnaire (Annex I) from Honduras.
- 207 Within the national territory or at Mexican Consular Offices abroad, only the foreign birth certificate of the child is required, which must state that both or one of the parents is of Mexican nationality, in order for said certificate to be inserted or registered in the Mexican Civil Registry; a proof of genetic link is not required. Reply to questionnaire (Annex I) from Mexico.
- 208 The son or daughter of a Peruvian citizen by birth, who was born abroad, may be registered in the Civil Registry, at the Consular Office, or at a registry office in Peru when they establish their residence in the country. If the father or mother is a Peruvian citizen by birth, their child born abroad can be registered at the Peruvian Civil Registry and a birth certificate can be issued. *Constitución Política del Perú*, Art. 52 and *Ley No. 26497 Orgánica del RENIEC*, Art. 51-A. Reply to questionnaire (Annex I) from Peru.
- 209 By an adoption court order, where the adoption is registered at the Civil Status Registry in accordance with the Court order. Reply to questionnaire (Annex I) from Saint Lucia.
- 210 Nationality is acquired under the provisions of the *Nationality and Residency Act (WNI)* (G.B. 1975 No. 171, as last amended by S.B. 2014 No. 121). Article 3(c) of the WNI states that a Surinamese by birth is a child born in Suriname, unless it appears that he or she possesses the nationality of another State; in the case where this is evident, he or she is deemed never to have had Surinamese nationality. Thus, Article 3(c) clarifies that a child born in Suriname only acquires Surinamese nationality if they do not already have another nationality. Article 5(1) introduces a specific provision for children born in Suriname to a parent residing there: they may acquire Surinamese nationality only upon reaching the age of 18, provided they have resided in Suriname for the three preceding years and express their wish within one year of turning 18. Reply to questionnaire (Annex I) from Suriname and additional information provided by the Ministry of Home Affairs, Suriname, December 2025.
- 211 Reply to questionnaire (Annex I) from Antigua and Barbuda.
- 212 Replies to questionnaire (Annex I) from Bolivia, Chile, Colombia, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Peru, Saint Lucia, Suriname.
- 213 This is regulated by Conselho Federal de Medicina, Resolução CFM No 2.320, at 99, which supplements rules in the country due to the lack of regulatory legislation. Reply to questionnaire (Annex I) from Brazil.
- 214 *La gestación por subrogación en Colombia*, at 65, pp. 134-135 [Note: Unofficial translation].
- 215 Constitutional Court, *Sentencia T-232*, 18 June 2024, <<https://www.corteconstitucional.gov.co/relatoria/2024/t-232-24.htm>> [Note: Unofficial translation].
- 216 Constitutional Court, *Sentencia T-127*, at 101 [Note: Unofficial translation].
- 217 Interview with Registraduría Nacional del Estado Civil, Colombia, November 2025.
- 218 Reply to questionnaire (Annex I) from Mexico.
- 219 See, e.g. Supreme Court of Justice, *Amparo en revisión 129/2019*, 8 June 2021, <[https://www2.scjn.gob.mx/juridica/engroses/3/2019/2/2\\_250856\\_5501\\_firmado.pdf](https://www2.scjn.gob.mx/juridica/engroses/3/2019/2/2_250856_5501_firmado.pdf)>.
- 220 Interview with the Registro Nacional de Población e Identidad, Secretaría de Gobernación, Mexico, December 2025.
- 221 Reply to questionnaire (Annex I) from Mexico.
- 222 Gutierrez Iquise, S., 'Resultado de ADN confirma paternidad de mellizos de esposos chilenos', *LP Pasión por el Derecho*, 7 September 2018, <<https://lpderecho.pe/resultado-adn-confirma-paternidad-mellizos-esposos-chilenos/>>.



- 223 On the applicability of Private International Law to birth certificates and the recognition of judicial decisions on legal parentage, see: The Hague Conference on Private International Law, *Parentage/Surrogacy Project, WG on Parentage / Surrogacy: Final Report on the Feasibility of a possible Convention on the Recognition of Judgments on Legal Parentage*, Prel. Doc. No 1, November 2025, Ss. 3.2.1 and 3.4, <<https://assets.hcch.net/docs/09215fe7-6f22-4777-9fd4-ad292efd00b9.pdf>>; The Hague Conference on Private International Law, *Explanatory Report by Paul Lagarde of the Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children*, see Part on Article 16 (attribution or extinction of parental responsibility), <<https://assets.hcch.net/docs/5a56242c-ff06-42c4-8cf0-00e48da47ef0.pdf>>.
- 224 Section 5(2) of the *Civil Registry (Vital Statistics) Act 2020* allows a person residing outside the country who is a citizen, was a former resident, or is a relative of such a person, to apply to register a life event. This requires submitting the original certificate or a certified copy from the foreign jurisdiction, along with the appropriate fee (S. 5(3)). The Act confers no extraterritorial authority to register births abroad. Reply to questionnaire (Annex I) from Antigua and Barbuda.
- 225 Every child born on Brazilian territory, even if the child is the offspring of a foreign national, shall be registered with the Civil Registry of Natural Persons in Book A – Births (Art. 50 of Law 6.015/1973). In the case of children of foreigners serving their country, they will also be registered, but will not be entitled to acquire Brazilian nationality (Art. 15 of Resolution CNJ 155/2012). Reply to questionnaire (Annex I) from Brazil.
- 226 A biological determination is not sufficient; parentage must be reliably established in the birth registration in the country of origin. Reply to questionnaire (Annex I) from Chile.
- 227 Reply to questionnaire (Annex I) from Colombia.
- 228 Reply to questionnaire (Annex I) from Ecuador.
- 229 Reply to questionnaire (Annex I) from El Salvador.
- 230 Reply to questionnaire (Annex I) from Guatemala.
- 231 Reply to questionnaire (Annex I) from Honduras.
- 232 Reply to questionnaire (Annex I) from Suriname.
- 233 Junta Central Electoral, *Servicios y requisitos de Registro Civil, Declaración de nacimiento oportuna*, Dominican Republic, n.d., <<https://jce.gob.do/Servicios-y-Requisitos-Registro-Civil#69135-declaracin-de-nacimiento-oportuna>>.
- 234 Reply to questionnaire (Annex I) from Peru and additional information provided, December 2025.
- 235 There is currently a draft bill proposing that vital events occurring outside of the jurisdiction of the State be registered at the Civil Status Registry. Authentication from the originating jurisdiction is a requirement under the proposed draft bill. Reply to questionnaire (Annex I) from Saint Lucia.
- 236 Outside Suriname, birth certificates drawn up by a competent authority according to local regulations may be registered in the Paramaribo birth register, either by order of the Public Prosecutor or at the request of an interested party, if the certificate concerns a person of foreign nationality and a subsequent annotation is required under any provision of this Code (Art. 25, Para. 2 of the *Civil Code*). The Civil Registrar in Paramaribo may also register such certificates ex officio (Art. 25, Para. 3 of the *Civil Code*). Reply to questionnaire (Annex I) from Suriname.
- 237 *Antigua and Barbuda*: If a birth certificate issued abroad is properly authenticated, Antigua and Barbuda recognises it for purposes of evidence, provided it bears the apostille. There are no statutory grounds for non-recognition other than fraud or lack of authentication. Reply to questionnaire (Annex I) from Antigua and Barbuda.
- El Salvador*: In all cases of children of a father or mother with Salvadoran nationality, whose birth occurred abroad, this may be undertaken by presentation of a foreign certificate in the Central Family Registry, with documents proving the Salvadoran nationality of the father or mother, the foreign certificate with an apostille and, if in a foreign language, the appropriate translation before a notary public. Reply to questionnaire (Annex I) from El Salvador.
- Guatemala*: The competent authority for registering a birth originated abroad in Guatemala is the National Registry of Persons (RENAP) and the Ministry of Foreign Affairs (MINEX). To this end, they must comply with the requirements for the Consular modality, which are: the notice of birth to the Guatemalan consulate in the country where the birth took place and the form sent by the Consular Service of the MINEX to the Civil Registry for registration. Likewise, the internal regulations of the RENAP establish the requirements for notarization. Reply to questionnaire (Annex I) from Guatemala.
- Honduras*: The authorities responsible for determining whether a foreign birth certificate is recognized are: the Honduran Consulate in the country of birth (this is the first instance that receives the foreign birth certificate and legalizes it so that it is valid in Honduras); the Honduran Ministry of Foreign Affairs (which authenticates documents from abroad or validates the document's apostille); the National Registry of Persons (RNP) (it is the RNP that approves the registration of the foreign birth in the Honduran Civil Registry, once all the documents have been legalized or apostilled). To recognize a foreign birth certificate and register a child born abroad to Honduran parents, the following procedure must be followed: 1. Obtaining the original birth certificate: The child's birth certificate must be obtained in the country of birth, issued by the competent authority; 2. Registration in Honduras: The interested party submits the apostilled or authenticated birth certificate, along with other documents, to the RNP. The process may vary if it is done through a Honduran Consulate abroad or directly at the RNP in Honduras; 3. Consular registration (optional): The births of children of Hondurans abroad can be registered directly at Honduran Consulates. This simplifies the subsequent registration process at the RNP. Recognition may be refused if it is found that the foreign certificate was obtained by fraud. Reply to questionnaire (Annex I) from Honduras.
- Peru*: The birth certificate, apostilled and reduced if it is not in Spanish, is recognized when registering a child of a Peruvian born abroad and the mother is Peruvian by birth. Reply to questionnaire (Annex I) from Peru.
- Saint Lucia*: Currently, a birth certificate presented from another country will normally be recognised. In some instances, a translation of the content of the certificate may be needed. There is currently a draft bill proposing that vital events occurring outside of jurisdiction may be registered at the Civil Status Registry. Authentication from the originating jurisdiction is a requirement under the proposed draft bill. Reply to questionnaire (Annex I) from Saint Lucia.
- See also replies to questionnaire (Annex I) from Bolivia, Dominican Republic, Ecuador.
- 238 *Lei No. 6.015 - Lei dos Registros Públicos*, at 93, Art. 32.
- 239 Based on a statement by the person if over 12 years of age and the witness testimony of two adults, among other requirements. Reply to questionnaire (Annex I) from Brazil.

- 240 Reply to questionnaire (Annex I) from Brazil.
- 241 *La gestación por subrogación en Brasil*, at 78, p. 77 [Note: Unofficial translation].
- It is worth mentioning here that an opinion from the Association of Natural Persons Registrars, at the request of the National Council of Justice, was issued on surrogate pregnancies by Ukrainian women, who came to Brazil pregnant when the conflict broke out. Faced with doubts about the registration criteria, the opinion of the Association of Natural Persons Registrars was to respect the contract signed abroad, so that birth in Brazil would be considered the mere effect of a legal transaction that would not offend public order and would allow registration in the name of the intending Brazilian parents. However, it is not known how each individual case was resolved, and the numbers were not significant when they were reported in the consultation. Reply to questionnaire (Annex I) from Brazil.
- 242 Information provided by the Servicio de Registro Cívico – Tribunal Supremo Electoral, Bolivia, December 2025.
- 243 A photocopy of the registrant's identity document and a photocopy of the Single Migration Card (entry into the country) issued by the Chilean Investigative Police must be attached. Those registered who are over six years of age must be present at the time of registration in order to have their fingerprints taken, which will be attached to the documentation supporting the registration. Reply to questionnaire (Annex I) from Chile.
- 244 *Código Civil, Chile*, Art. 58 ter (introduced by *Ley 21.334 sobre determinación del orden de los apellidos por acuerdo de los padres*, Chile, 2021) and *Decrees 105 y 149 of the Ministry of Justice and Human Rights*, Chile, 2021.
- 245 Reply to questionnaire (Annex I) from Chile.
- 246 *Decreto Único Reglamentario – Decreto 1069 del Ministerio de Justicia*, Colombia, 2015, Art. 2.2.6.12.3.1. If birth cannot be proven with the above documents, the applicant, or their legal representative if they are a child, must submit a written request to the Civil Registrar, stating their full name, identity document if they have one, date and place of birth, place of residence, facts justifying the late registration, and any other information deemed relevant. In compliance with the provisions of Article 50 of Decree-Law 1260 of 1970 (as amended by Article 10 of Decree 999 of 1988), upon receipt of the application, the applicant must appear with at least two competent witnesses who will make a sworn statement declaring that they witnessed, attended, or had direct and reliable knowledge of the applicant's birth. Reply to questionnaire (Annex I) from Colombia.
- 247 In compliance with the reform of Articles 314 and 1144 of the National Code of Civil and Family Procedures, Mexico, 4 June 2024, which provides that, in the case of birth certificates proving the nationality and identity of Mexican persons born abroad or returning migrants of Mexican nationality, consular legalization or apostille will not be required. Reply to questionnaire (Annex I) from Mexico.
- 248 To date, 11 of 32 states have abolished the aforementioned requirement. Reply to questionnaire (Annex I) from Mexico.
- 249 *Civil Code*, Suriname, 2025, Arts. 25(1), 25(2), 25(3), 25g, 26, and 26a.
- 250 See, e.g. Replies to questionnaire (Annex I) from Antigua and Barbuda, Brazil, Chile, Colombia, the Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Peru, Saint Lucia, Suriname. In Chile, it is possible to register the children and grandchildren of Chilean parents or grandparents born abroad. In Suriname, Articles 198 and 199 of the *Civil Code* (BW) determine who is the legal mother and father of the child, respectively. If the situation has foreign elements, under Article 8 of the *Constitution of the Republic of Suriname*, the court may be approached for a decision, taking into account the rules of Private International Law).
- 251 *Honduras*: The determination of parentage is governed primarily by the *Family Code*, the *Code on Children and Adolescents* and the *Special Law on Responsible Motherhood and Fatherhood*. When there are foreign elements, Honduran law remains the basis for registering parentage, but additional regulations must be considered. The National Registry of Persons (RNP) has established a procedure for registering children born abroad to Honduran parents and Honduran law is based on the principle of the best interests of the child, which is fundamental to the *Code on Children and Adolescents*. This principle includes access to legal identity, the aim of which is to ensure that all children have a legal identity, regardless of the circumstances. Reply to questionnaire (Annex I) from Honduras.
- Bolivia*: Reply to questionnaire (Annex I) from Bolivia.
- 252 Department of Economic and Social Affairs – United Nations, *Handbook on Civil Registration and Vital Statistics Systems. Management, Operation and Maintenance. Revision 1*, ST/ESA/STAT/SER.F/72/Rev.1, UNDESA, 2021, <<https://unstats.un.org/unsd/demographic-social/Standards-and-Methods/files/Handbooks/crvs/crvs-mgt-E.pdf>>.
- 253 Reply to questionnaire (Annex I) from Honduras.
- 254 *Civil Code* (BW), Suriname, Arts. 209–211. These include a Surinamese mother giving birth in Guyana, resulting in the birth record drawn up in Guyana listing a father who does not correspond to reality as he is the mere declarant, which becomes evident at registration. In such cases, the issue is resolved through invocation of status. Another complex situation refers to children born in French Guyana and recognised in Suriname. In these cases, differences may arise between French and Surinamese registers regarding recognition, nationality or the child's name. Under French Guyana law, the child must be recognized by the father within a specific period, receiving either the father's surname or a combination. Late recognition results in the child taking the mother's surname. Another cross-border difficulty arises in relation to children born to a Brazilian woman, as the child is registered in Suriname under the mother's name if no information on the father is provided. Upon registration of the Surinamese birth certificate in Brazil, the child is listed under both mother and father's names. If the child later resides in Suriname and the Brazilian-transcribed certificate is submitted to the civil registrar, discrepancies arise between the original Surinamese certificate and the Brazilian certificate. What usually occurs is that, if the first registration took place in Suriname, the Surinamese birth certificate is considered valid; if the first registration took place in French Guyana, the Surinamese certificate is nullified. Reply to questionnaire (Annex I) from Suriname.
- 255 *Civil Code* (BW), Suriname, Arts. 203–204.
- 256 *Civil Code* (BW), Suriname, Art. 5. Reply to questionnaire (Annex I) from Suriname.
- 257 According to the *Ley del Registro Nacional de las Personas* (RNP) and the laws in force in Honduras, the communication of information on birth registration or changes in legal parentage to authorities in other States is not an automatic process, nor is it regulated by specific bilateral or multilateral agreements for the routine exchange of registry data. There are no specific agreements that oblige Honduran authorities to automatically notify other States of changes in parentage (such as subsequent acknowledgment of paternity or a challenge). Reply to questionnaire (Annex I) from Honduras.
- 258 Reply to questionnaire (Annex I) from Suriname.

- 259 See, e.g. Replies to questionnaire (Annex I) from Antigua and Barbuda (where the birth certificate issued serves as the primary evidence of the facts of birth (place, date, parentage), which are then used by other government agencies to determine nationality eligibility), the Dominican Republic, Chile, Colombia, Ecuador (where the National Assembly and other bodies are currently debating a bill on this issue), El Salvador, Guatemala, Peru, Saint Lucia, Suriname. Nonetheless, '(...) Jamaica, Barbados and Saint Lucia [could] rely on case law precedent as a supplementary tool at times when the legislation proves to be insufficient'. Information provided by Dominique King, University of the West Indies, Cave Hill Campus, currently completing her thesis *Assisted Reproduction: Surrogacy from a Caribbean Perspective*, 2025.
- 260 *Decreto-Lei No 4.657 - Lei de Introdução às normas do Direito Brasileiro*, 1942, Art. 18.
- 261 *La gestación por subrogación en Brasil*, at 78, pp. 75-76.
- 262 Reply to questionnaire (Annex I) from Brazil.
- 263 Interview with Associação Nacional dos Registradores de Pessoas Naturais (Arpen-Brasil), Brazil, December 2025.
- 264 *Ley No. 2136 por medio de la cual se establecen las definiciones, principios y lineamientos para la reglamentación y orientación de la política integral migratoria del Estado colombiano – PIM, y se dictan otras disposiciones*, Colombia, 2021, Art. 57.
- 265 Superior Tribunal of Bogotá D.C., First Chamber in Civil Decisions, at 117.
- 266 'Filiación materna y gestación subrogada: límites jurídicos al contrato y su repercusión en el registro civil de nacimiento del menor. Con ocasión a la sentencia del Tribunal Superior de Bogotá del 1º de abril de 2025', at 118 [Note: Unofficial translation].
- 267 Constitutional Court, Sentencia T-127, at 101.
- 268 Reply to questionnaire (Annex I) from Mexico.
- 269 *Código Civil para el Estado de Tabasco*, Mexico, Art. 380 Bis 5.
- 270 *La gestación por subrogación en México*, at 73, p. 262.
- 271 Tesis Aislada I.22o.A.8 A (11a.), Pasaporte para personas menores de edad concebidas bajo la técnica de reproducción asistida denominada gestación subrogada o por sustitución. La Secretaría de Relaciones Exteriores debe emitir la normativa administrativa para expedirlo, Tribunales Colegiados de Circuito, Vigésimo Segundo Tribunal Colegiado en materia Administrativa del Primer Circuito, Amparo en revisión 132/2023, 5 January 2024 [Note: Unofficial translation].
- 272 *Surrogacy in Mexico. The consequences of poor regulation*, at 131.
- 273 Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, A/HRC/37/60, at 2; Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, Study on safeguards for the protection of the rights of children born from surrogacy arrangements, A/74/162, at 5.
- 274 *Health (Assisted Human Reproduction) Act 2024*, Ireland, 2024; Government of Victoria, Australia, Births, Deaths and Marriages, Surrogacy, n.d., <<https://www.bdm.vic.gov.au/surrogacy>>; The Hague Conference on Private International Law, Parentage/Surrogacy Project, at 18; *Principles for the protection of the rights of the child born through surrogacy* (Verona principles), at 15.
- 275 *Key Considerations – Children's Rights and Surrogacy*, at 4.
- 276 *Lei No. 8.069 - Estatuto da Criança e do Adolescente*, Brazil, 13 July 1990, Art. 48.
- 277 Reply to questionnaire (Annex I) from Colombia.
- 278 Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, A/HRC/37/60, at 2.
- 279 The Hague Conference on Private International Law, *Conclusions and Recommendations and Report of the Special Commission on the practical operation of the 1993 Hague Intercountry Adoption Convention* (17-25 June 2010), drawn up by the Permanent Bureau, Preliminary Document No 4 of March 2011 for the attention of the Council of April 2011 on General Affairs and Policy of the Conference, Paras. 25, 59-61, <[https://assets.hcch.net/upload/wop/adop2010\\_rpt\\_en.pdf](https://assets.hcch.net/upload/wop/adop2010_rpt_en.pdf)>; Child Identity Protection, *ECtHR and cross-border surrogacy arrangements: K.K. and others v. Denmark. Legal memorandum*, <<https://www.child-identity.org/wp-content/uploads/2023/04/CHIP-2023-Surrogacy-LegalMemorandum.pdf>>.
- 280 Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, A/HRC/37/60, at 2, Paras. 40, 62-63, 73, 76, 77.
- 281 Reply to questionnaire (Annex I) from Antigua and Barbuda.
- 281 Replies to questionnaire (Annex I) from Colombia, Mexico, Peru.
- 283 Interview with Registraduría Nacional del Estado Civil, Colombia, November 2025.
- 284 The Hague Conference on Private International Law, Parentage/Surrogacy Project, at 18.
- 285 Questionnaire No 1 - Questionnaire on the Private International Law issues surrounding the status of children, including issues arising from international surrogacy arrangements – for Members of HCCH and non-Member interested States, drawn up by the Permanent Bureau, at 7. The Questionnaire to the Civil Registries includes some questions from the HCCH Questionnaire, but not the full text.
- 286 Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, A/HRC/37/60, at 2, Para. 10.





**CHILD  
IDENTITY  
PROTECTION**  
knowing origins is a right



**OAS**

