

International Principles for Donor Conception and Surrogacy

Purpose:

The International Principles for Donor Conception and Surrogacy (the Principles) have been drafted to provide minimum standards for laws and practice in Nation States where surrogacy and/or donor conception are already permitted or tolerated. The Principles require strict regulation of such practices to uphold the human rights and best interests of people born as a result, in accordance with the principles universally agreed to by Member States as per the United Nations Convention on the Rights of the Child (UNCRC), the most successful human rights treaty in history.

Background:

Donor conception is the commonly used term for the practice of intending parents using third party gametes (such as third party sperm, egg or embryos) to create their own child(ren).

Donor conception also applies to people who are born via surrogacy arrangements, where one or more gametes do not come from the intending parents. These surrogacy-born people are also donor-conceived. The birth mother in surrogacy may or may not be related to the child she carries and births, but she is always also important to the person born as a result.

The Principles are based on the recognition that regardless of the type of assisted reproduction used, all donor-conceived people and people born of surrogacy have a fundamental human right to their full and true identity, a right to preserve relations with their families, and a right not to be bought or sold as enshrined in the UNCRC and other international instruments.

The Principles originally arose out of a [presentation](#) by the drafters at the Conference on the 30th anniversary of the UNCRC, at the Palais des Nations, Geneva, November 19, 2019. They are informed by the lived experience of the drafters as donor-conceived. They respond to practices past and present that have impacted and/or continue to impact their lives. Many feel that they are the products of an international industry in human eggs, sperm, embryos and wombs which profits from human life – their lives. Yet as of this writing there is no jurisdiction in the world that fully protects the human rights of donor-conceived or surrogacy-born people despite all UN Member States having signed, and all but one having ratified, the UNCRC.

The Principles are also informed by extensive engagement by the drafters in advocacy on behalf of their community at local, national and international levels, and examination of laws and policy that directly impact them and their genetic, social and gestational families. In addition, the drafters draw upon their professional legal, communications, policy, social services, scientific and other qualifications and experience to inform their work.

In drafting the Principles, it is recognised that many countries maintain prohibitions on assisted reproduction including surrogacy and/or donor conception, as contrary to their values and the

human rights of men, women and children. The Principles are not intended to be used to condone, widen or to encourage such practices. Rather, they are intended to set minimum standards that should be adhered to by nations that already permit such practices, and to require strict regulation where such practices occur. They are relevant to all donor-conceived people, including those born of surrogacy – past, present, and future.

Former and current initiatives to formulate policy and/or principles on donor conception and surrogacy by government agencies and not-for-profits are unacceptable. They have failed to adequately consult with donor-conceived and surrogacy-born people. They often choose to ignore the voices of donor-conceived and surrogacy-born people who do not support certain practices in favour of the interests of the fertility industry and intending parents. All policy-making, both national and international, henceforth must include meaningful consultation with a broad representation of donor-conceived and surrogacy-born persons in recognition that the people created by reproductive technology are overwhelmingly those most affected by it. These voices need to be heard, listened to, and acted upon.

We call upon all governments, agencies, and lawmakers to hear directly from this constituency, to recognise the rights of donor-conceived and surrogacy-born people and to enact laws that uphold and implement the following principles.

The Principles:

Best Interests and Human Rights of the Child Paramount

1. The best interests and human rights of the child who will be or has been born as a result of donor conception and/or a surrogacy arrangement must be the paramount consideration in all relevant laws, policies and practices and in any judicial and administrative decisions relating to donor conception and surrogacy.

Pre-Conception Screening and Post-Birth Review

2. Pre-conception assessments and screening of donors, intended parents and potential surrogate mothers and post-birth review of the best interests and human rights of the child born as a result must occur in every case of surrogacy and donor conception.

The Right to Identity and to Preserve Relations

3. All donor-conceived and surrogacy-born people have an inalienable right to identifying information about all of their biological parents, regardless of when or where they were conceived or born.

4. All donor-conceived and surrogacy-born people have an inalienable right to identifying information about all of their biological siblings, be they half or full siblings, regardless of when or where they were conceived or born.

5. All surrogacy-born people have an inalienable right to identifying information about their surrogate mother, regardless of when or where they were conceived or born.

6. All donor-conceived and surrogacy-born people have the right to preserve relations with biological, social and gestational families, regardless of when or where they were conceived or born. Such relations should be able to be maintained if mutually agreeable.

7. Anonymous donation of gametes and embryos, and anonymous surrogacy must be prohibited.

Record Keeping, Birth Records, and Access to Information

8. Comprehensive and complete records of the identity and familial medical history of all parties involved in the conception and birth of donor-conceived and surrogacy-born people must be kept. Such records must be held by each Nation State in which the conception and birth is commissioned and/or occurs, in perpetuity and for future generations. Verification of the identity of donors, surrogate mothers, and intending parents must occur.

9. All children's births should be notified to and registered with the appropriate competent authority in the Nation State of birth. Truth in registration, noting the child is donor-conceived and/or surrogacy-born, must occur. Birth records must be maintained in perpetuity and for future generations that recognise biological, social, and birth parents.

10. All donor-conceived and surrogacy-born people have the right to be notified of their status and to access records pertaining to their identity, familial medical history, and birth registration.

11. Parents should be encouraged and supported to tell their children of their donor-conceived or surrogacy-born status as early as possible, and preferably from birth. This should be coupled with efforts to reduce stigma related to infertility.

Prohibitions on commercialisation of eggs, sperm, embryos, children and surrogacy

12. All forms of commercialisation of eggs, sperm, embryos, children, and surrogacy must be prohibited. This includes, but is not limited to any kind of consideration (payment or other consideration) for a) the recruitment of potential donors and/or surrogate mothers; b) gametes or embryos; c) 'services', time, effort, 'pain and suffering' related to the conception, pregnancy and/or birth of a child, or termination of pregnancy.

13. The sale and trafficking in persons and/or of gametes in the context of assisted reproduction and surrogacy must be prohibited.

14. The participation of paid intermediaries or agents in arranging surrogacy and/or recruiting or procuring women or donors of gametes for the purposes of surrogacy or gamete donation for profit, should be prohibited on the basis that their participation increases the risks of the sale and/or trafficking of women and children.

Prohibitions on transnational surrogacy and donor conception

15. It is not in the best interests of the child to be conceived or born in circumstances in which the 'intending parents' have circumvented or breached laws within their own country by engaging in cross-border assisted reproduction, including but not limited to donor-conception and/or surrogacy. States that prohibit such practices should include extraterritorial prohibitions in their laws. States that allow such practices should limit access to their own citizens. Extraterritorial prohibitions should be enforced.

16. It is not in the best interests of the child to be intentionally separated from their genetic families by geographical, linguistic or cultural barriers. As such, inter-country transfer of gametes should also be prohibited.

Family limits

17. To avoid the risk of consanguineous relationships, and the psychological impact of an unlimited number of potential siblings, the number of families that may be created using one donor's gametes should be limited to five.

Requirement for Counselling and Legal Advice

18. Independent counselling and legal advice must be a requirement prior to entering into donor conception and surrogacy arrangements. All parties to donor conception and/or surrogacy must be able to give their informed consent after receiving information about the processes involved, material risks, legal and financial implications and their rights and responsibilities. All information must be delivered in a language the person receiving the counselling and advice can understand. All decisions must be made autonomously and free from duress, coercion, and/or exploitation.

19. The provision of counselling and legal advice must always uphold and convey the best interests and human rights of the child(ren) born to be the paramount consideration.

Transfer of Legal Parentage (Surrogacy)

20. Upon the birth of a child conceived as a result of a surrogacy arrangement, the child should share the birth mother's nationality to avoid the situation that a surrogacy-born child is 'stateless', and records to this effect must be kept.

21. Transfer of legal parentage in cases of surrogacy from a surrogate mother to 'intending parent(s)' should never be automatic nor based solely on intention. Intending parent(s) do not have a right to exclusive legal parentage or parental responsibility of a child born through surrogacy, regardless of any expenses they may have incurred through the process. The surrogate mother must never be compelled to relinquish the child(ren) she has given birth to.

22. Where a surrogate mother has carried the full genetic child of another couple and does not wish to relinquish the child, legal parentage of the child should be determined by a Court dependent on the best interests of the child.

23. Enforcement of contractual terms that purport to transfer legal parentage is not consistent with the best interests or human rights of a child.

Posthumous Use of Gametes

24. Gametes or embryos which a) have been retrieved posthumously from a person, or b) are stored by a clinic on behalf of a person who has since died must never be used in donor conception or surrogacy arrangements, regardless of whether any consent had been given by the person from whom those gametes were obtained prior to their death.

Commentary:

The Principles express the common view of the members of the November 2019 UN presentation on The Rights of the Child in the Age of Biotechnology as part of the 30th anniversary conference on the UNCRC.

The Principles recognise that, pursuant to the UNCRC, donor-conceived people and people born of surrogacy have a fundamental human right to:

- as far as possible, know and be cared for by their parents (Article 7);
- preserve their identity, nationality and family relations, to not be deprived of any elements of their identity, and to seek State assistance to re-establish their identity (Article 8);

- maintain personal relations and direct contact with both parents on a regular basis (Article 9);
- express their views in all matters affecting them (Article 12); and
- seek, receive and impart information and ideas affecting them (Article 13).

Most importantly, ALL children have a fundamental human right not to be bought or sold.

Donor-conceived people and people born of surrogacy also have the right to:

- have their rights in the Convention respected by States Parties without discrimination of any kind, irrespective of the child's birth or other status (Article 2); and
- have the best interests of the child as the primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies (Article 3).

States Parties should undertake all appropriate legislative, administrative and other measures for the implementation of these human rights as recognised in the UNCRC (Article 4).

As noted in the background to this document, all policy-making, both national and international, must henceforth include meaningful consultation with a broad representation of donor-conceived and surrogacy-born persons, as they are the population overwhelmingly affected by the practice of third-party reproduction.

The full United Nations Presentation by Donor-Conceived and Surrogacy-born People for the 30th Anniversary of the Convention on the Rights of the Child can be viewed here:

<https://www.youtube.com/watch?v=GEP3ZGPFdeQ>

The transcript of the presentation can be found here:

<https://www.donorkinderen.com/speeches-united-nations>

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