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Experts weigh in after Govt codifies surrogacy

Domitilla Mukantaganzwa, Chairperson of the Rwanda Law Reform Commission (RLRC).

Alice Umutesi / Sunday, August 25, 2024

The revised law on persons and family, published on July 30, now formally recognises surrogacy.

Article 279 of the law specifies that reproduction between spouses can occur naturally or through assisted reproductive technologies, including surrogacy.

The law also says that assisted reproduction can involve a third party, facilitated through a written contract in accordance with relevant laws.

Domitilla Mukantaganzwa, Chairperson of the Rwanda Law Reform Commission (RLRC), explained the rationale behind the revised law.

"The 2016 law governing family and persons acknowledged that when a couple is unable to conceive, they may turn to a surrogate mother, involving a third party in the process," she said.

However, the original law lacked guidelines for signing contracts. The revised law now specifically requires written contracts in surrogacy arrangements

"Carrying a baby for nine months and then handing the child over is not a simple matter. Some may feel that the child is theirs, which is why it's important to have legally binding contracts before the process begins," she said.

She noted that the amendments aimed to make it easier for couples who previously had to seek court approval for surrogacy.

"By incorporating the court's decisions into the law, it makes the process more accessible to the public," she said.

Mukantaganzwa said that all specific regulations related to surrogacy will be included in the law governing healthcare services, as surrogacy is considered a healthcare service.

"The benefit of this law is that it will help those who cannot conceive naturally. It also enhances our knowledge, aligning us with practices already established in other parts of the world. This is a step forward in the development of reproductive technology," she added.

Mukantaganzwa also said that this legal development will promote good relations and cooperation among Rwandans in addressing such challenges.

Christopher Sengoga, HDI-Rwanda Director of the Centre for Health and Rights explained that the 2016 law governing family and persons, Article 254, only mentioned methods of reproduction without further detail.

"The law only described natural reproduction between a man and a woman or medically assisted reproduction. However, it did not address the rights of the child born through surrogacy, the surrogate mother, or the responsibilities of the intended parents," he said.

He added that the new law now includes regulations that will guide both parties involved in surrogacy.

However, Sengoga said challenges remain, particularly the high cost of the process, as it involves expensive IVF procedures that are not covered by insurance. Additionally, only legally married couples are allowed to pursue surrogacy, while couples who live together but are not married are not eligible.

Dr. Emmanuel Semwaga, a leading obstetrician and gynecologist at Mediheal Diagnostic and Fertility Centre in Kigali, spoke on the implications of this new legal framework.

"Surrogacy is now recognised clearly under the new law, but we are awaiting detailed guidelines from the Ministry of Health. These guidelines will help us and other institutions offering surrogacy services ensure that everything is done according to the law.

"In these guidelines the Ministry will also provide direction for couples interested in surrogacy and establish legal protections for surrogate mothers. The law will also dictate how the child, once born, will be handed over to the biological parents," he added.

Understanding surrogacy

Dr. Semwaga explained the process; surrogacy involves a woman carrying and delivering a child on behalf of a couple, typically when the intended mother is unable to carry the pregnancy herself, even though she and her partner have healthy reproductive cells.

The mother's eggs are retrieved, and the father's sperm is collected. These are then fertilised in a laboratory to create embryos.

Selected embryos are then transferred into the surrogate's uterus. The surrogate mother then carries the baby, and upon birth, the child is handed over to the biological parents.

Dr. Semwaga stressed that not everyone is eligible for surrogacy services.

"There should be a thorough assessment of the couple requesting surrogacy to ensure that it is medically necessary.

If the woman has a functional uterus and the man has viable sperm, we may advise against surrogacy. However, in cases where the uterus is absent or non-functional, surrogacy becomes a valid option," he said.

He also noted that some couples might seek surrogacy for reasons beyond medical necessity, such as severe pregnancy complications or time constraints.

"These cases will also be carefully evaluated to determine their legitimacy before proceeding with surrogacy," he said.

Clarifying misconceptions

One of the key points Semwaga addressed was the concern over the genetic connection between the surrogate mother and the child.

"The important thing to understand is that the child carries the DNA of the biological parents, not the surrogate mother. The surrogate is simply providing a nurturing environment for the child to grow, similar to an artificial uterus in a laboratory. There is no genetic link to the surrogate mother," he said.

Benefits of surrogacy

He said that this now offers new hope to individuals and couples who have been unable to conceive naturally.

"Many people experience frustration and depression due to infertility, which is often beyond their control. With the introduction of surrogacy services, these individuals can now look forward to building families and experiencing the joy of parenthood," said Semwaga.

He said that surrogacy could be life-changing for many, especially women who lack a uterus or face other reproductive challenges.

"This law will allow more people to create families and find happiness, contributing to the overall well-being of our society."