

'Trafficked' into a better future? Why Mexico needs to regulate its surrogacy industry (and not ban it)

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Surrogacy is frequently associated with trafficking in Mexico, but efforts to ban it only serve as fig leaves for not engaging with the structural problems women face.

The Mexican parliament is currently discussing a ban on surrogacy on the grounds that Mexican politicians and media alike consider it a new form of human trafficking. Recent media reports have accused international surrogacy agencies of trafficking Mexican women into surrogacy and, given that the country has long been singled out as a hotspot for the many practices often termed trafficking, these new accusations have sparked fierce debate about the moral and legal status of surrogacy. Politicians and the media describe surrogate mothers as vulnerable and exploited women, who are duped into surrogacy arrangements with the promise of making a fortune in nine months.

However, associating surrogacy with human trafficking and highlighting its exploitative potential serves as a fig leaf to ban surrogacy. It is an easy way out of a complicated issue that does not require seriously engaging with the structural problems that 'force' women to sell their reproductive labour. Indeed, to ban surrogacy could easily be doing these women a disservice. As long as contracts are in place and the living conditions of the surrogates are acceptable, their labour in the surrogacy industry is often more secure and stable than the other forms of labour available to them.

Travelling surrogacy markets

The rise of the Mexican surrogacy market is a consequence of a rapidly changing legal landscape for the surrogacy industry, which has seen India, Nepal, and Thailand all legislate or ban the business in recent years. Just after India started to regulate its multi-million dollar surrogacy business in 2012, surrogacy agencies and in vitro fertilisation (IVF) clinics moved house and set up in Thailand and Nepal to offer their services to an (often gay) international clientele. When the Thai government banned surrogacy in summer 2014, after the case of Baby Gammy become public, Mexico started to witness rapidly increasing demand for surrogates in its territory.

The Mexican surrogacy industry—which is focused in the Mexican state of Tabasco—has risen without much attention from the wider public or state authorities. Although legalised by the state code in 1997, it wasn't until 2012 and the closure of the Indian market that surrogacy agencies started to think of Tabasco as a new centre for their business. The legal framework in Tabasco, its geographical proximity to the United States, and the comparatively low prices soon started to attract intended parents from abroad. During the last two years, the market has grown quickly. Approximately 70 to 80 percent of the intended parents are gay and/or single men who seek to fulfil their dream of a family with the help of a Mexican surrogate and an egg donor. Heterosexual couples who face different

kinds of infertility problems also travel to Mexico for surrogacy.

A network of actors has emerged to facilitate the surrogacy process: local agencies recruit surrogate mothers and egg donors, fertility clinics perform the medical procedures, lawyers set up contracts, and international agencies coordinate the journeys of intended parents to Mexico. Just like in Mexico's *maquiladora* industry, a whole supply chain is set up that involves both Mexico-based actors and agencies operating from abroad. What kind of labour is outsourced to Mexico, and the prices charged for certain services, vary from agency to agency.

Political outrage

Surrogacy agencies operated without much knowledge of the public or interference from state authorities until last year, when the 'discovery' of 'victims of human trafficking' in surrogate houses sparked public debates about how to best regulate or even ban surrogacy.

In October 2015, Meloy Romero Celis, a politician from the ruling PRI party, presented an initiative that would not only ban surrogacy completely but also threaten violators with a sanction of 17 years imprisonment as well as a fine. She admits that data on the situation in the state of Tabasco do not exist, but claims that experience in Thailand and India has shown "that women are exploited for reproductive purposes" in the surrogacy market. In her view, surrogacy must be banned in order to *prevent* women from possibly being locked into surrogate houses and forced to rent their womb.

The main opposition party PAN has joined in the call to ban surrogacy completely in order to make Mexican women's bodies unavailable for exploitation. This initiative, however, has not gone entirely unopposed. The feminist organisation GIRE and a feminist politician from the 'Citizen Movement' emphasise the need to regulate rather than to ban the surrogacy business. They see danger in not only effectively criminalising surrogate mothers, but also in laying the groundwork necessary for a black market to flourish completely outside government control and regulation.

Context, conditions and contracts matter

The PRI/PAN initiative builds on a report from the Early Institute titled 'Exploitation for reproductive services'. The report consists of an overview of the legal situation of surrogacy in different countries and does not contain any empirical data about the situation of surrogate mothers in Mexico. We argue that to formulate a new law, it is crucial to talk to those labouring and consuming in the Mexican surrogacy market: surrogates, oocyte donors, clinicians, agencies, and intended parents. Over the last two years, we have interviewed these different actors and our research reveals three important insights.

First, surrogate mothers come from a variety of backgrounds: from women with higher education to women with little schooling, from women without children to single mothers and those co-living with the fathers of their own children. Some live middle class lives while others exist under the poverty line. Their common denominator is that, for one reason or another, they are unemployed and in a tight financial situation. As one surrogate expressed

it in an interview: “If someone has a stable [well paying] job, you don’t offer yourself as a surrogate mother. We all do it out of an economic necessity, because we are in a very difficult situation”. Their financial crisis stems from a variety of different causes, including: the unemployment of themselves or their partners; accumulated debts; expensive treatment for an ill family member in the private health system; father’s unwillingness to pay alimony after separation; or the need for better housing, which is often linked to the wish to leave a particularly dangerous neighbourhood in order to provide a safer future for their own children.

This does not mean that surrogate mothers do it *only* for the money, as is often claimed. Given the cultural importance of families in Mexico, many surrogate mothers have emphasised in interviews that they know how important a child is for one’s happiness: “I think it is a beautiful thing to do to help others to build the families they have dreamed of for so long”.

Second, not only do the profiles of surrogate mothers vary significantly but so do the terms under which they carry out the surrogate pregnancy. The main differences are found in the terms of their living arrangement: some agencies require women to live in so-called surrogate houses during the whole or part of the process, however most women carry their pregnancy to term in their own houses. With regard to the living conditions in the surrogate houses, we also encountered significant variations: some share a room with up to three other women, while others have a room for themselves. In one agency they can only bring their own children if they are toddlers, while another agency allows children up to the age of twelve. The amount of money also varies significantly. Our research revealed that the ‘compensation’ for their reproductive services—a commonly-used euphemism as surrogacy must be ‘altruistic’ in Mexico, agencies do not speak of wage or payment—range from \$11,000 to \$19,000. This equals three to four times the annual minimum wage and represents the average annual household income in Mexico (\$13,000). Furthermore, the contracts they sign vary from those stipulating only obligations but no rights, to those guaranteeing the right of the woman to have a say over decisions taken regarding the surrogate pregnancy.



Surrogate housing in a gated community in Cancún. (Photo by Schurr)

Third, whether a woman faces the risk of being exploited in the surrogacy industry depends on the way her particular situation intersects with the conditions and contracts offered by the agency. A striking theme that ran through the more than 50 fifty interviews we conducted with surrogate mothers was that they are excited at the beginning about the possibility of earning so much money in so little time. But, as they advance in their pregnancy, they increasingly suffer distress about hormonal or pregnancy-related side effects, as well as anxiety over the standard caesarean section and whether the intended parents will care for the child. Once they have delivered the baby, many are relieved to leave this episode behind while others are instantly thinking about when they can start a second surrogacy journey.

During our two years of ethnographic research, we found only one instance of an agency locking women in their houses, a bizarre situation apparently brought about by its US-base declaring bankruptcy. We have, however, encountered women who experienced constant control and surveillance in their surrogate housing; insufficient medical care during the pregnancy; selective foetal reductions; and post-natal complications that they were forced to treat out of their own pocket. We have also heard about the women's excitement to finally find a way out of violent relationships; have seen their eyes sparkle while showing pictures of their own children in the school uniforms they can now afford; have accompanied them to their first excited 'date' with *their* intended parents; and have received pictures of the children the women delivered with heart breaking comments about the joy of giving birth. In short, it is as difficult to talk about '*the* surrogate' as about '*the* surrogacy journey' or '*the* surrogate agency'. Situational contexts, living conditions provided by the agency, and the stipulations of the contract all matter when it comes to the question of whether surrogacy is an exploitative business or 'merely' the latest expression of global capitalism.



Surrogate housing in a gated community in Cancún (Photo by Schurr)

Human trafficking as a fig leaf for an easy way out of a complicated business

Surrogacy agencies lure Mexican women with the promise of making a fortune in nine months. Facebook and (social) media ads of recruitment agencies paint a picture of a life changing opportunity. Whether women are pulled into a nightmare or find a way to a better future will depend on the way the General Health Law (Ley General de Salud), currently under revision, regulates surrogacy in the future. To equate surrogacy with human trafficking, as the current debate does, does not do justice to the majority of current surrogacy arrangements in Mexico, in which informed women choose to offer their reproductive labour in order to overcome difficult economic situations. As long as those who call for a ban on surrogacy do not offer other employment options or social benefits, many Mexican women will keep offering their reproductive labour on the formal or informal markets.

Banning surrogacy, as Mexican feminist voices rightly point out, will not only result in a black market where surrogate mothers work outside of government control and are therefore excluded from any legal protection. It also ignores the structural conditions surrounding the decision to offer up reproductive labour in the first place. A ban merely serves as a fig leaf to hide a demonstrable lack of engagement with the structural problems women, and particular single mothers, face in Mexico's neoliberal economy: lack of employment options, insufficient access to health care, non-enforceability of alimony payment of fathers, and a general lack of social benefits.

There is a better way. Mexican state bodies and international organisations must work hand in hand to formulate, implement, and monitor regulations that ensure adequate living conditions and improve the legal situation of surrogate mothers in the transnational surrogacy industry. Taking the protection of women's rights and anti-trafficking rights seriously means that both national and international organisations must put forward effort and money to formulate and ensure the enhancement of policies that regulate and control the different actors in the surrogate business. Laws, regulations, and contracts can ensure that the dreams of surrogate mothers for a better future do not become nightmares during the surrogacy process.

Update: On 14 December 2015, the State of Tabasco legislature banned surrogacy for foreign couples and gay men. Twenty-one out of the 30 legislators voted to restrict surrogacy to heterosexual couples of Mexican origin. It will be obligatory to present a medical certificate that evidences the women's incapacity to bear a child. The reform of the Civil Code of Tabasco further prohibits intermediary agencies that recruit surrogate mothers or egg donors. From now on, the Health Department will supervise each surrogacy case and make sure that women working as surrogate mothers do not carry out more than two surrogate pregnancies. The reform follows regulations in India where surrogacy is now also only feasible for Indian citizens in heterosexual living arrangements. Surrogacy agencies have already launched legal action and an online petition, arguing that the reform violates the Mexican constitution as it discriminates against foreigners and homosexual people. With Mexico closing its doors to the gay community, the last destination for gay surrogacy outside of the US has shut down. It needs to be seen which country will appear as new 'low

cost' option. What's for sure is that intended parents and surrogates will be confronted with the chaos and disorganisation that goes along with the emergence of new surrogacy hotspots.

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