

The solidary gestation, reproductive opportunity for Cuban families

La gestación solidaria, oportunidad reproductiva para las familias cubanas

Yariuska Fernández Sopena^{1*} <https://orcid.org/0000-0001-6368-5623>

Denny Matos Laffita² <https://orcid.org/0000-0003-3971-8848>

Alexander Durán Flores¹ <https://orcid.org/0000-0003-0550-7997>

¹Teaching Polyclinic Hermanos Martínez Tamayo. Guantánamo, Cuba.

²Faculty of Medical Sciences of Baracoa, University of Medical Sciences of Guantánamo. Baracoa, Guantánamo, Cuba.

*Address for correspondence. E-mail: yariuska1982@gmail.com

ABSTRACT

Solidarity gestation is an assisted human reproductive technique intended for different or same sex couples and to single people with some infertility problems which prevent them from conceiving in a natural way. In this respect, the Cuba's Family Code clarifies that this procedure should only be carried out due to altruistic reasons and human solidarity, without any fees. Taking into account the above considerations, the topic was analyzed from different points of view, aimed at socializing this practice as a reproduction opportunity for Cuban families.

Keywords: pregnancy; surrogate mothers; reproductive techniques; Cuba.

RESUMEN

La gestación solidaria es una técnica de reproducción humana asistida, destinada a parejas de distinto o igual sexo y a personas solas con alguna causa de infertilidad que les impide concebir el embarazo de manera natural. Al respecto, en el Código de las Familias en Cuba se esclarece que este proceder solo debe realizarse por motivos

altruistas y de solidaridad humana, ajenos a cualquier tipo de honorarios. Teniendo en cuenta las consideraciones anteriores, se analizó el tema desde diferentes puntos de vista, con el objetivo de socializar esta práctica como una oportunidad de reproducción para las familias cubanas.

Palabras clave: embarazo; madres sustitutas; técnicas reproductivas; Cuba.

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Introduction

Solidary gestation (SG) is an assisted human reproductive technique for different or same sex couples and to single people who suffer from some cause of infertility that prevents them from conceiving naturally.⁽¹⁾ In this respect, the Cuba's Families Code⁽²⁾ clarifies that this procedure should only be carried out for altruistic reasons and human solidarity, without receiving any remuneration.

In the bibliography it is also mentioned as gestational surrogacy because it is the practice by which a woman carries a pregnancy and relinquishes the child to an intended single person or couple. This is a new phenomenon in terms of the sociological and legal fields.⁽³⁾

Gestational surrogacy has its origins in antiquity. Its practice in Rome is another form of paternity; it is also known that in many African or South Pacific populations woman carries a pregnancy for another woman or for a family community, where the idea of motherhood is much broader and shared.

In this context, the advances of science and technology have made possible to implement other methods such as *in vitro* fertilization, first performed in 1978 in Great Britain by Robert Geoffrey Edwards and Patrick Steptoe, which led to the birth of the first test-tube baby. Subsequently, in the state of Michigan, United States, between 1970 and 1980, Noel Keane established gestational surrogacy and along with Ringold founded the first

surrogacy clinic called Infertility Center. Also in the United States in 1988, a legal dispute took place to try to solve this kind of conflict based on the present-day family law.^(4,5)

Likewise, from 1976 to 1988 about 600 children were born in the United States through gestational surrogacy. The practice became more popular, between 1987-1992 the number came to 5000, which means that births through this method are increasing every year in this northern country.⁽⁶⁾

As reported,^(7,8) in 2018 this practice had been standardized in 8 countries including Israel, United Kingdom, Australia, Canada, Brazil and Mexico, where compensation to the surrogate mother is prohibited; while in the United States, Russia, Ukraine, Georgia and India payment is required.

It should be noted that there are two methods of conception in the surrogacy practice:⁽⁷⁾

1. Traditional surrogacy: The surrogate mother is also the genetic mother (she provides her genetic material to carry out the gestation).
2. Gestational surrogacy: The surrogate mother does not provide genetic material, that is, the conception takes place from the egg or eggs of a different woman, who is normally the commissioning mother.

Accordingly, the non-existence of a genetic link between the child and the surrogate mother explains why the latter method has greater support from those national legal systems that contemplate it.⁽⁷⁾

In view of this situation, the authors proposed to carry out this research with the objective of socializing the solidarity gestation as a reproductive opportunity for Cuban families.

Discussion

Ethical aspects

According to the ethical implications related to surrogate motherhood, the European Council considers that women's body and reproductive function are used according to

the interests of others, which undermines the dignity of the woman who carries the baby, and harms the rights and dignity of the child, who become an object of trade.⁽⁸⁾

Nowadays, SG is a diffuse social phenomenon, since many aspects that are often imposed and prevent the ethical evaluation of this practice are ignored and underestimated.⁽⁸⁾

For its part, the Convention on the Rights of the Child states as a priority that children deserve protection from abuse and exploitation, in order to avoid being considered a commodity and that their parental identity and relationship are manipulated.⁽⁹⁾

Legal aspect

Surrogacy represents a legal phenomenon which international law has had to resolve in specific cases. The law should regulate the behavior in a society that evolves and adapts to new scenarios with legal effect, which should guarantee human dignity for the common good.⁽⁷⁾

The article 130 of Cuba's Families Code states that SG favors the exercise of every person's right to have a family, based on respect for human dignity as the supreme value. This practice will only take place for altruistic reasons and human solidarity, between persons united by family or close emotional ties, provided that the health of those involved in the process is not endangered. Likewise, any type of remuneration or gift is prohibited, except for the legal obligation to provide food in favor of the conceived child and the compensation of the expenses generated by pregnancy and childbirth. Those aspects characterize it as a solidarity gestation.⁽²⁾

On the other hand, in order to initiate the process in a health institution, the commissioning parents and the surrogate mother must voluntarily request a judicial authorization, which must be granted by a court specialized in family matters.⁽²⁾ In this respect, to grant such authorization it will be verified if the following conditions are met: voluntariness and absence of retribution, participants' state of health and failure in the use of other assisted reproductive techniques.

The aforementioned document states that health centers cannot proceed with an embryo transfer without judicial authorization. In case this provision is violated, the filiation of the newborn is determined by the rules of natural procreation, which means

that the legal mother will be the surrogate mother. Furthermore, in order to establish who will assume parental responsibility, the will of the commissioning parents will be taken into account, which will decide, in turn, the future participation of the surrogate mother in the life of that child. The foregoing statement does not limit the right of the children born under these terms to know their origin.⁽²⁾

Likewise, if one of the persons who would assume parental responsibility dies during the process, the family ties will be maintained and his or her will declared before a court will be respected. Therefore, the baby is born as his or her legal child, with all the rights and duties derived from this relationship.⁽²⁾

To prevent the practice from commodifying the process, there will be 3 controls, namely: 1) verification of compliance with the requirements stipulated in the Families Code; 2) rigorous health check on the age of those involved and the assisted reproductive techniques to be applied, and 3) judicial scrutiny by the court that will review the regulations to grant authorization.⁽²⁾

Who has the right to a solidarity gestation in Cuba?

The Constitution of the Republic, adopted in 2019, evidences the insertion of the right to solidarity gestation, and reaffirms its principles of equality without differentiation. Successors of heterosexual or homosexual couples, as well as single parents, are granted the same right to have successors.^(10,11)

It should be noted that the SG is an option that favors women that cannot carry a pregnancy, sterile persons, as well as single men or couples of men. Therefore, the reasons to perform this practice will not be convenience, aesthetic reasons or preventing from the effort and time required for gestation, childbirth and breastfeeding, as it has occurred in other countries.⁽²⁾

The family and solidarity gestation

The family is an active element, never stationary, it passes from a lower to a higher form, as society evolves from one stage to another.⁽¹²⁾

In the Western world, the traditional family reflects a two-parent model, consisting of the father and mother of the same children, preferably biological. In this sense, it is suggested that if the legal bond between those parents breaks down or if both, man and woman, have other children with new partners, this does not mean that the binary and exclusive relationship is broken.

Despite the coexistence of new family modalities with this model, the one described above continues to be the predominant one.

Motherhood resulting from SG causes a clear dissociation between biological, social and gestational motherhood.⁽³⁾

Considerations for socialization of reproductive surrogacy in primary health care

In Cuba, SG is a totally new method in primary health care. The Families Code stipulates it as a right and a free health service, with a high cost for the health system.⁽²⁾

The basic health team and the basic work groups should work together and carry out a specific follow-up, focused on the people related to this process (surrogate mother, commissioning parents and the child). It will aim to establish strategies for psychological, biological and social care, as well as carrying out a comprehensive, multidisciplinary and intersectoral evaluation of each one, with their specific roles, according to the position they occupy within this process.

For its part, Cuban society should be educated at the primary health care level in order to learn about this topic, without creating false preconceptions. To achieve this goal, training will be provided to primary health care professionals and promotional activities will be established to the general population and at different educational levels. This is essential to achieve the development and acceptance of this reproductive method and accessibility to the process, always with the premise of avoiding illegalities. The socialization of SG is fundamental to transform negative criteria on the subject and to obtain popular approval of the procedure.

Conclusions

Solidarity gestation is a totally new method at the first level of care in Cuba and a possibility to complete the reproductive function of all families. Hence, it is necessary to prepare the individuals involved in the process and the community in general, to put it into practice in Cuban society.

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Conflict of interests

The authors declared that there is no conflict of interest.

Authors' contributions

Yariuska Fernández Sopeña: conceptualization, data curation, formal analysis, research, methodology, project management, supervision, visualization, original draft-writing, drafting-revising and editing. Participation: 50 %.

Denny Matos Laffita: data curation, formal analysis, research, methodology, visualization, original draft-writing, drafting-revising and editing. Participation: 25 %.

Alexander Durán Flores: data curation, research, visualization, original draft-writing, drafting-revising and editing. Participation: 25 %.



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