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Ethical Surrogacy? Practices of legalisation and regulation of the surrogacy market in Mexico

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Abbreviations

ART:	Assisted reproductive technologies
COFEPRIS:	Comisión Federal para la Protección contra Riesgos Sanitarios.
DF:	Distrito federal, District of Mexico City
ECtHR:	European Court of Human Rights
FLO:	Fair Trade Labelling Organizations International
GDP:	Gross domestic product
GIRE:	Grupo de Información en reproducción elegida
HCCH:	Hague Conference on Private International Law
ICCPR:	International Covenant on Civil and Political Rights
ICESCR:	International Covenant on Economic, Social and Cultural Rights
ICMR:	Indian Council of Medical Research
IFTA:	International Federation for Alternative Trade
IP:	Intended parent
ILO:	International labour organisation
IVF:	In-vitro fertilisation
LGBTQ:	Lesbian, Gay, Bisexual, Transgender and Queer
NGO:	Non-government organisation
PRI:	Partido revolucionario institucional
SM:	Surrogate mother
STA:	Socio-technical arrangement or agencement
STS:	Science and technology studies
WFTO:	World Fair Trade Organization
WHO:	World Health Organization
WTO:	World Trade Organization

Summary

Being practiced since the 1970ies, surrogacy is considered as a relatively new form of assisted reproductive technology (ART). Gestational surrogacy, a form where a woman carries a child with no genetic relation and intends to give it away after birth, did stimulate an international market. On the one hand, countries in the global south are often more attractive due to lower costs, on the other hand, those countries often have a less restrictive legislation on surrogacy, which especially attracts international agencies. It can be observed that countries which experienced an international surrogacy boom often adjust their regulation through being more restrictive in access. This proceeding was first observed in India (the first and biggest international surrogacy destination), Thailand and Nepal. Often, the closure of market borders is a consequence of debates about ethical concerns and juristic disputes. Because of welfare disparities between the involved actors (intended parents (IP), agencies, clinics and the surrogates, the most vulnerable group), the surrogates are often said to be exploited. However, legal questions about the recognition of filiation have to be considered a critical situation as well, because the vocabulary of the common market analysis is not sufficient to solve such problems. And after the breakdown of the international surrogacy market in those mentioned countries, Mexico seems to follow the same course.

Commodification of body parts and functions is one of the major concerns in ethical debates. Mexico tries to prevent such phenomena, by restricting the trade (and rent) of organs to altruistic intentions of the surrogate mothers. On the national level, not much more is said about surrogacy and any further regulation falls under the jurisdiction of each state separately. In only two of the 32 Mexican states' civil codes surrogacy is legally allowed. Only in one of them, Tabasco, is international surrogacy possible, allowing foreigners, homosexuals and single parents to enter the process as it is not explicitly prohibited in the only paragraph concerning surrogacy. This gives agencies, the intermediaries between IP(s) and SM(s), quite a free hand in doing their job. As the demand increased, agencies had to search for ways to recruit more SMs. Because payment is not an option due to the law, they call it compensation. IPs reimburse the surrogate for their expenses, whereby the amount roughly equals twice the annual income of the SMs, who are often single parent mothers. This becomes a problem when those women claim for concessions they were given, because their legal status is not under protection of the working rights. The few-pages long contract they have to

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sign is drafted in favour of the IPs, and transparency is not given. Some of the agencies did only see the quick money and tales of exploited women, human trafficking, children with no authorisation to travel and non-payments became public.

After similar stories in other international operative countries, voices of international regulation become louder. There are also people who want to prohibit surrogacy as a whole, or at least international surrogacy, in order to prevent legal problems and ethical concerns due to a lower social and cultural stratification. In this thesis, I try to focus more on the national regulatory tools of Mexico, as that possibility is often forgotten when talking about international regulation. Since the approval of surrogacy, Mexico has been leading discussion about the regulation of ART, which can be observed in the multitude of vast launched initiatives on a national, as well as a regional level. My assumption is that the locals know best what and how they want to prevent women to be exploited, but legal steps are time-consuming. Seeing international regulation, such as the Hague Convention, as beneficial but not sufficient on the more practical part, I further want to examine a possible international ethical surrogacy standard. As the Hague Convention would be focusing more on the international recognition of children born through surrogacy, ethical surrogacy standards would actually try to improve working conditions and rights of the surrogates. As international surrogacy is a complex subject, I will focus my standard suggestions on the Mexican background only, in the knowledge that additional steps may be necessary in a global context. During the course of this work, Tabasco also restricted access, by allowing only Mexican heterosexual couples to enter the process. Still, international surrogacy may arise in another state, and the claim for humane working conditions remains.

1. Introduction

In the last century reproductive techniques have advanced, due to technological progress. Part of these popular techniques is the so-called assisted reproduction (short ART), which includes donation of sperm and oocytes, in-vitro fertilisation (IVF) and also gestational surrogacy (Vayena et al., 2002). Surrogacy is when a woman carries a child for another person. This is meant to be one of the most fiercely debated practices amongst ART. A main concern is related to commercial surrogacy and its doubtful moral aspect (Brunet et al., 2013).

In-vitro fertilisation enables to inseminate oocytes with sperm and to implant the fertilised egg to a woman under laboratory conditions (Lozanski, 2014). There is no phenotypical similarity between the child and the carrying woman like there would be with a sperm and oocyte donation, because no genetic material from the surrogate mother (SM) is involved (Almeling, 2013). Before that technological progress, parents preferred to choose a surrogate mother (SM) in their immediate environment, in order to reach a high resemblance with their child. But since this technological progress the ethnicity of the SM is no longer decisive for the parents choosing their surrogate. In the wake of this dissolution of borders more and more markets arose in the global south (Waldby, 2012). Differences in the legal framework additionally intensifies cross-border surrogacy “tourism” into other countries (Vayena et al., 2002), meaning that many states are prohibiting surrogacy (Darnovsky, 2014). Only few countries are allowing it, such as Canada, Greece, South Africa, Israel and the United Kingdom. A rather low regulation can be found in Belgium, Finland and Mexico (Pande, 2011). There is an assumption that transnational surrogacy leads to exploitation, especially in developing countries. Therefore some claim it to be prohibited, but this would only lead to a geographical displacement into regions with even less regulations (Schurr, 2014) or, at worst, continue in an uncontrollable black market (Wilkinson, 2003). But questions about regulation are complex regarding the interaction between the commodification of bodies and their monetary remuneration for reproductive work. Also the ethical principle that “life is beyond price” poses an ethical challenge to these questions. These discrepancies and gaps in regulation get reinforced with the appearance of transnational markets. Resolving that is not only a question of ethics and legality, but also concerns the demand for more transparency in supply and demand.

The seemingly infeasibility of a regulation is notable, especially in consideration of the fact that there already exist standards which try to even up markets in

other disparities. Fair Trade represents one of those mechanisms which tries to protect human rights among economic relations (Davies & Crane, 2003: 79). The question must be asked, why such a commitment for fair working conditions exists for primary commodities but only progresses slowly for human services. In this master thesis, I face the question which regulation proposals are undertaken by the Mexican government and which regulations would be desirable by the intended parents and their chosen surrogates. A further focus lies on the research of an implementation based on the idea of "Ethical Surrogacy," which attempts to apply major transparency and improved working conditions for the surrogate mothers.

1.1. Surrogacy in Mexico

The United Mexican States (from now on only Mexico) is a federal republic composed of 31 federal states and one district. Each state has its own Constitution and legislation. Mexico is also member of the UN (United Nations) and the OECD (The Organisation for Economic Cooperation and Development) (Horak, 2002).

As a result of structural adjustment programs in Mexico in the 1980s, many hospitals have been privatised. This is how the fertility market could open its doors for an international public (Schurr & Abdo, 2014). Transnational surrogacy has first been detected in other countries, with India as the best known. But since 2012 the access to surrogacy is limited for heterosexual couples. Mexico is one of the countries where this market has been increasingly shifted (Schurr, 2014). Due to packages, which are offered by agencies, that combine holidays at the Mexican beach and the fertility treatment, the term "reproductive traveling" has been established (Bogeljic, 2015). Agencies represent important roles as intermediaries between IPs and the surrogate mothers. Since countries such as India and Mexico offer their services at a lower price, the possibility of having a child with this method is also made accessible for the middle class, which reinforces the transnational market (Schurr & Fredrich, 2014). Stated in numbers, surrogacy costs in Mexico (including administrative and juridical expenses) are about one third cheaper than in Europe or the USA (Ehrensperger, 2015a).

Understanding the legal framework of Mexico is crucial to understand where and how surrogacy can be done. In Mexico, medical aspects, including ART, are regulated in the federal law. Gestational surrogacy in particular is subject to the federal states and their civil legislation. Some civil codes are referring explicitly to

this subject; Coahuila and Querétaro¹, for instance, void surrogacy, as the birth mother is always considered as the legal mother. Therefore, any contract that considers another woman as the legal mother will not be recognized. On the other hand, Tabasco and Sinaloa are two states which recognize and regulate surrogacy in their civil codes (Tamés, 2015a).

Tabasco does make a difference in the legal process of recognition for the mother. In the civil code of Tabasco, Article 92 (Codigo civil, 1997), they differentiate between “la madre gestante sustituta,” the *gestational substitute mother*, and “la madre subrogada,” the partial surrogate. Partial, because the surrogate mother also transfers her genetic material to the child, which makes her the genetic mother.

A substitute mother or a gestational surrogate woman does not have any genetic expression with the child. In this case the subscribing person is legally the parent as long this happens in mutual consent with the bearing mother. In the case of a partial surrogacy, a traditional adoption process is applied (Tamés, 2015a).

Another state, Sinaloa, is more restrictive in its regulation about partial and gestational surrogacy. First, it is regulated in the Family Law Act, whereby issues about health, kinship and penal system are discussed. In Article 284 (and the following articles), additional differences compared to the legislation of Tabasco can be declared (López Valdez, 2013). The largest impact in terms of international restrictions is the fact that only Mexican residents are entitled to use this kind of process, and only opposite sex couples. This is why Sinaloa only plays a minor role in the international surrogacy market. More details about the legislation in these districts and their impact on the actual process will be discussed in chapter 5, *Surrogacy in an international context*.

The federal district itself approved norms considering this matter, however, until now they have not yet been published. What all of the legislations have in common is the part that this service has to be non-lucrative (Secretaria de Salud Mexico, 2015), for the General Health Law in Mexico prohibits any transaction or profitable agreement over body parts. This means that surrogacy contracts are only valid with altruistic intentions (Ramirez and Figueroa, 2011).

However, the practice looks quite different. Surrogacy is commercially marketed, which has been shown above with the “all-inclusive packages”. For the surrogate mothers, altruistic restriction means that their remuneration would not officially be recognized and so they are not able to claim the contractual concessions they

¹ Two of 31 states of Mexico, additionally to one district (namely Mexico city)

were given. Planet Hospital is one famous negative incident; an agency which was forced into bankruptcy after financial mismanagement, leaving five pregnant surrogates behind (Tuckman, 2014). Accusations of exploitation or even human trafficking are not the only concerns related to SMs. Administrative barriers and juridical uncertainties also provoked cases where the intended parent/s were not allowed to take “their” child back home; see for instance the Spanish gay couple, which was stuck in Mexico, because the twins were denied Mexican passports and, therefore, they were not allowed to leave the country (Pérez-Stadelmann, 2015). More detailed reports about those and similar cases follow in chapter 6.2.

The ethical debate is led by two feminist approaches about the juridical dependability of the “free consent”. Whereas one approach defends the right of every person to decide what to do with its own body and the other approach states the governmental responsibility to protect vulnerable individuals from exploitation (Wilkinson, 2003). Such discussions also occur in Mexican local and federal politics and have led to several efforts in changing the legislation concerning surrogacy in Mexico. At the national level, eight initiatives have been presented until October 2015 (Lovero, 2015). Since then, there have been at least three more initiatives².

In reality, only one initiative has been approved in Tabasco. Hence, my research focuses on the question whether a commercialised surrogacy could improve the ethical standard for the SM and what kind of international standards in form of labels would be appreciated by the IPs.

1.2. Research questions

I divide the investigation area in two main research questions which can be summarised under the umbrella terms “regulation” and “implementing standards”. First, the difficulties of implementing a wide federal regulation have to be demonstrated. This derives from the complex juristically system in Mexico. As already mentioned, the states are responsible for legislation over the surrogacy subject. While at the same time the Health Law is subject to government’s duty. Jurisdiction has to be broken down into its component parts in order to understand task areas and the protective role provided of the federal government and state. To analyse each of the 32 states of Mexico individually would be beyond the scope of the discussion. The primary concern is at local government level of the State of Tabasco, because of its unique position in the international surrogacy context. The regulation standards of Sinaloa and the State of Mexico will be used as a

² See for instance; Contreras Julian (2015); Díaz Salazar (2015) and Topete (2015)

comparison. The building of the health system in Mexico has to be defined for the national understanding about concerns of ART access. Furthermore, the existence of an international convention with regards to this issue and the implications on the international relation has to be examined. But the focus remains on the national regulation tools, which get often neglected in international regulation suggestions. The following bundled sets of questions shall cover those theme blocks and subsequently provide a better overview of the current legal situation in Mexico.

Regulation

- How is the transnational market for surrogacy regulated in Mexico?
- What kind of regulations are currently postulated and by whom?
- In analogy of creating fair markets for goods, how can this be implemented in Mexico for the service of bearing a child?

The second block of questions goes one step further, assuming that the legal steps are insufficient or incomplete due to the hesitant political decision-making. Regarding the already suggested initiatives during the last eight years, and the fact that Tabasco approved the one limiting it to Mexican residents, there is still a need for international standards. Such a certification for agencies might bridge the time such legal steps would take. In the majority of literature there is only a claim of international regulation, however legal means have weak binding forces. Standards might fill this gap. Therefore the analogy of the Fairtrade market design will be considered as an opportunity for “consumers” to choose freely an *Ethical Surrogacy Package* even that leads to higher prices. How and why precisely this trading model is used as reference will be explained in chapter 3.2.

Implementation Standards

- Current regulation by legislation seems difficult. How could this market be regulated by (non-) state actors due to the pressure of the consumers?
- Could a label be generated as “Ethical Surrogacy” in analogy to the implementation and regulation of Fair Trade-driven standards?
- On which bases and standards would such a fair surrogacy rely on?

Hypothesis

- I claim that regulations on the national level are at slow pace or even insufficient, and that those regulations do not attack the root of the problem, or more precisely, that agencies are not incorporated in their practices.
- Standards might build bridges to overcome those disparities, in order to improve the specific working condition of surrogates and create more transparency in transnational surrogacy arrangements.

The *marketization theory* has been chosen as the underlying concept for this hypothesis. This theory enables me to link customs such as body services with economic understanding. In that way, practices such as surrogacy can be understood in the context that goods are constructed under constant performative exchange (Çaliskan & Callon, 2010). Such an exchange takes place in an economic and social environment whereas markets arise under interdependency of the afore-mentioned ones (Berndt & Boeckler, 2012). Berndt and Boeckler (2012) acknowledge the term “socio technical agencement” where global economic powers perform a major influence on the global creation of markets. Those markets are created and evaluated through price settings and constant trade. Those mentioned settings and trades are always based on a socio-economic environment and therefore their function is variable. These practices of qualification and requalification of market-relevant factors will be discussed in the theoretical chapter 2. After that theoretical framing, chapter 3 focuses on the current discussions and chapter 4 discusses the methods of how the information was generated in order to answer the research questions. The month-long internship at GIRE³, a Mexican NGO which promotes women reproductive rights, was the main source to obtain an overview of the current situation about legislation and the initiatives in Mexico. Using document analysis helped to create building blocks to set up semi-structured interviews. Therefore existing standards and how they are constituted were examined. On the local level a micro-qualitative procedure was chosen to create the expert interviews (Pickel et al., 2009: 13). Organisations, institutions and politically engaged people should be questioned concerning the development of the surrogacy practices in Mexico. Besides the regulations the estimation about the actual working conditions of the SM are particularly negative (Ackerly et al., 2006: 25). Questions about “Fair surrogacy” shall be generated

³ GIRE= “Grupo de de Información en Reproducción Elegida (Information Group on Reproductive Choice, GIRE) is a non-profit, non-governmental organization founded in 1991.”Our mission is to promote and defend women’s reproductive rights, within the context of human rights” (GIRE, 2015, Ch. Who We Are. Online available: <https://www.gire.org.mx/en/gire/who-we-are> [09.12.2015])

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while breaking down some critical parts in their working situation. Since I was only able to conduct one interview with a SM, already existing interviews, conducted by my tutor Dr. Carolin Schurr, were verified for their valuable statements. As consumers are the driving force for an establishment of a “Fair Surrogacy” their thoughts and ambitions are fundamental components. The methodical and conceptual background is based on the *Grounded Theory* by Corbin and Strauss. This theory enables to extant the research process and adapts the different working states with the interaction of data collection and data interpretation.

The qualitative content analysis is based on the methodological background of Mayring (2010). The access to the field was facilitated by the already established contacts by the tutor Carolin Schurr.

In Chapter 7, *Analysis and Interpretation*, the results are presented and later on discussed.

2. Commodification and regulation practices framed with Marketization

In order to establish a theoretical framing, theories of how markets are being created have to be gathered. How do markets develop and what instruments are needed to make a good tradable? Which tools enable us to make services tangible? What kind of good will is created and to which category does it belong in terms of statutory regulation?

The orthodox economic theories have dealt with the economy itself. Like Adam Smith's ideology of a market, this exists with a supply and a demand side. With the price acting as a distribution system, economy was said to be self-regulatory or more common, the idea of the invisible hand raised. "Markets involve anonymization, the cutting of social ties, and rational, calculative, and efficient post-social coordination" (Berndt & Boeckler, 2012: 199). One orthodox theory supports the understanding of the market, which requested a distinction of economy and culture. Unrestricted access to this cohesive system is necessary, which is problematic in the context of global trades and hence also global inequalities. So the socio-economic aspect gained more and more recognition and the focus is placed on the processes which are forming and setting up markets – in short, *marketization*. *Geographies of marketization* describes the spatial expansion of markets within the global context (Berndt & Boeckler, 2012: 199). This process represents a particular aspect in the *theory of economization*.

Based on the background of performativity programs, where economic development has to be seen in requalification of economic theories, Çalışkan and Callon (2009, 2010) coined the term **economization**:

"This term is used to denote the processes that constitute the behaviours, organizations, institutions and, more generally, the objects in a particular society which are tentatively and often controversially qualified, by scholars and/or lay people, as 'economic'. The construction of action(-ization) into the word implies that the economy is an achievement rather than a starting point or a pre-existing reality that can simply be revealed and acted upon." (Çalışkan & Callon, 2009:

370)

So performativity of the discourse about economic activities and change-producing forces is not only explainable by heterodox economic theories, but rather in conjunction with social theories. Those enhance the spectrum to find possible entities, which might help to evaluate *economization* processes. In the

second part of their work *Economy and Society*, Çaliskan and Callon (2010) describe the fundamental characteristics of the **marketization theory** and introduce the term *agencemets*.

The above presented *economization*, including its strategy and establishment of markets, is summarized here by the comprehensive term *marketization*. Markets can be seen as a conglomeration of notions and actions expressed by market and non-market agents. Or, in other words, markets are socio-technical arrangements (STA) or – in short, *agencements*. This definition includes the constitution of market devices such as prices to trade goods. It compasses technical, cultural and economic comprehensions and, therefore, also offers a setting for confrontation, because of differences which may result from the above mentioned constitution of markets (Çaliskan & Callon, 2010: 3).

“Marketization concerns the question of how markets are performed in practice and reproduce a socio-technical agencements embracing a calculated and monetarized exchange of goods and services. From this perspective a market is a bundle of practises (structured spatial and temporal manifolds of action) and material arrangements (assemblages of material objects, persons, artefacts, organisms, and things).” (Berndt & Boeckler, 2012: 209)

This broader understanding of how markets are created is one of the central points of these heterodox approaches. The next question is how goods are getting commodified to match the economic assessment criteria. Especially in the surrounding of biomedicine and generating markets for body parts and body services, **commodification** has received a renewed utilization (Çaliskan & Callon, 2010: 6). Commodification has a long history whilst showing how things and services can be made tangible for markets by being priced and hence being exchangeable. For instance, Zelizer (1985) illustrated how persons can be evaluated for market suitability. To do so she examined how life insurances for children have been developed and illustrates the combination of economic aspect of monetary evaluation in insurances and the non-economic factor of social values. In the course of technical development such combinations are also applied in biomedical materials. Almeling (2013) goes one step further in examining not only persons and body parts, but also gendered body cells. This direction of examining body parts and body services considering the different emotional attachment will further be treated separately within the framework of clinical and emotional labour. There are jobs where the management and appearing of emotions are

demanded to satisfy professional requirement. As there exist several descriptions and applications to the field, only topic-related scopes will be presented in this work, such as the repeated references of commodification and clinical labour of organ and egg donation. So the requalification process claimed by Çaliskan and Callon gets in touch with the commodification and marketization process of calculating physical goods and services.

2.1. About clinical and emotional labour

Schurr (2013) addresses the issue of how the impact of **emotional labour** in economic understandings can be complemented with feminist aspects. She uses this concept under the term “affective economic geography” (Schurr, 2013: 3). This is meant to bring together the two current feminist discourses of emotional labour and affective geographies. Considered to be the founder of the term “emotional labour”, Arlie Hochschild (2003) demonstrates how emotions apply as professional entities which are linked with gendered assumptions, like jobs which require to manage or/and produce feelings. Schurr (2013) claims not to forget that markets can also produce a yearning for a product and that they can act affectively.

“While the concept of emotional labor allows capturing the emotional investment of service workers and clients/patients, the notion of ‘engineering of affect’ pays explicit attention how affects are generated for economic ends through new technologies.” (Schurr, 2013: 20)

Schurr (2013) concludes that the understanding of these feminist geographies and the economic understanding à la Çaliskan and Callon facilitate the insight of the genesis of reproductive techniques. But affective labour can also be understood as work of attention and care (Vora, 2009a: 267). Kalindi Vora (2012) gives us two portraits of jobs as examples of affective and clinical labour. She depicts that the work in a call centre as the work as a surrogate both transmit attributes to their work in order to satisfy the requirement of the consumer. Hence, affective as well as biological labour can be described as a commodification of humans, leading in a neoliberal, globalised context to a revival of colonial powers (Vora, 2012: 682f). The work of Waldbly and Cooper (2006) is based on the consideration of neoliberal changes in biopolitics and reproductive work. They describe a gendered and racialized reproductive labour in a post-Fordism context. The context arises of **clinical labour**, where reproduction abilities have been medicalised,

commodified and outsourced⁴ (Waldby & Cooper, 2006: 8). Or, in other words, post-Fordism made the borders disappear between reproductive and productive labour.

“Rather, we understand “clinical labor” as the process of material abstraction by which the abstract, temporal imperatives of accumulation are put to work at the level of the body.” (Cooper & Waldby, 2014:12)

One method to obtain such an abstraction is to quantify it and to put a price on it. Nahman (2008) demonstrates this practice with Romanian egg *sellers*, which are meant to do it for financial rather than altruistic reasons. They may even feel more “westernized” when they are able to freely choose what to do with their bodies, in order to improve their own financial situation (Nahman, 2008:77). This first example has demonstrated how clinical labour fits into market practices.

2.2. How to create a market for surrogacy?

Disentanglement of body parts and, therefore, also a general basis to ease commodification have been seen with Indian surrogates, which describe their womb as an “empty space, where a (foreign) babe stays for nine months” (Vora, 2009b). Hence, the clinics offer actual trainings for the SM to create an understanding of detachment to their uteri. The alliance between capitalistic consideration of saleable biopower in a national sense and the medical detaching from the human and the reproductive force in a concrete sense a breeding ground for marketization.

In her study *New spaces of biological commodification* (2006), Parry Bronwyn addresses the Convention on Biological Diversity, which tries to regulate trades of bioinformation and tissues (Parry, 2006: 29). One regulation law should ensure that the benefit generators have to compensate their suppliers. Exploitation like in the colonial era should be prevented, but in fact, tracing the resource of bioinformation is complicated and, therefore, compensation hardly works.

Bronwyn (2015) integrates the concept of clinical labour into the discourse of outsourcing and the establishment of monitoring mechanisms in reproductive care in India. She claims that such concepts should be interpreted carefully and no general conclusion should be drawn. For, even if contractualisation and spatial and emotional separation may influence clinical labour, the actual working conditions may differ and are always to be understood in their cultural contexts.

⁴ Their call of clinical labour is based on the example of oocyte donation, where bodily labour has been made market available

Bronwyn (2006) specifies that such trades of biological materials always have been spatially concentrated to privileged groups. She points out that biomedical commodities thus imply new or reinforce old spatially distributed justice and injustice (Parry, 2006: 30). It is a common problem of global regulations, that markets are of such complex interrelations and associated with various (non) regulation and emotional laden attitudes.

Although laws are designed to protect the competitive marketplace, in most cases regulations failed to ensure a fair access to markets. In the surrogacy case in India in 2005, the Indian Council of Medical Research (ICMR) created guidelines to ensure equal involvement of the parties (Rimm, 2009). But only the addition of the Indian ART Bill⁵ makes it legally effective. The problem arises in the public discussion, whether it is ethically justifiable to pay a woman for this service. But Rimm concludes that referring to labour rights would provide an opportunity to protect SMs in a global market context.

Comprehensive work on a national level over surrogacy and its all-attendant problems have also been conducted in Mexico. Paz and Muñoz have already denounced the missing or insufficient regulation of surrogacy in Mexico in 2008. They did an analysis for the General Secretary of Mexico. They see the problem of deconstruction of the procreation process and the value of giving each step, each body function, and each tissue, as they are changeable and requested. They name it “mercantilización” when market mechanisms are reinforcing this supply and demand relationship. They fear that culture and politics have minor impact to this market and that decisions are often made in favour of the demand side (Paz & Muñoz, 2008: 66f).

Further discussion about regulations attempts and their theoretical and practical application will follow in the next chapter, *Current discussions*.

⁵ More detail of the ART bill follow in the chapter 5.2.1

3. Current discussions

I first want to relate to the issue of feminist debates on ART in general. The research about egg sellers in Mexico serves as a connecting passage to the surrogacy debates, where some more specific concerns about the surrogacy practice itself will be presented. At the end of this chapter I will present some examples of international surrogacy and how they have developed.

3.1. Debates

Christa Wichterich (2015) is a sociologist working in the field of gender studies and mainly focuses on women's policies, also on the question of access to ART. She argues that reproductive rights are laid under a normative background which makes them available. This background is divided into three parties: a) norms, values and rights, b) biopolitics and biopower and c) reproductive technologies and bio-economies (Wichterich, 2015: 11). The first party consists of the tension field of self-determination and the collective community norms around reproductive rights.

The **feminist debate** is based on these two fundamental assumptions. Wichterich outlines the differences of definitions of self-determination. Whilst feminists from the global north focus more on individualism, some cultures of the global south place greater emphasis on social practices (Wichterich, 2015: 19f). Consequently, such a claim of global sisterhood, has to be treated with caution, some might feel patronised⁶. In analogy with ART, some feminist approaches regarding the selfless motivation, may differ depending the cultural background.

With reference to Foucault (2005), **biopower**⁷, like fertility and mortality has always been in the interest of nations resulting in **biopolitics**. In the course of decentralisation, **bioeconomies** play an important role in the commodification of bodies and body functions, due to their fragmentations and isolation to enable medical research and improvement of health issues. The technical feasibility gains more and more power over the use of ART. Still Carolin Schurr (2016) depicts how a racialized biopolitic in the Mexican background is linked with international bioeconomies. The racialized accesses to ART in Mexico lead to a continuation of former biopolitics in bioeconomies. This can also be seen in the shift of the perception of the concept of a mother; on the one hand, Mexico with the religious impact on the importance of family and the perception of being a mother

⁶ See for instance analogy to third-wave feminism

⁷ Biopower: mostly unwaged reproductive labour

and on the other hand, the racialized politic of birth control. This situation gets more and more ousted from the market. The technical feasibility and the softening terms of mother and motherhood follow up the process of biopolitics.

In a broader understanding of motherhood, Chavkin and Maher (2010) elaborate the variable signification and importance of family and motherhood in their work *The Globalization of Motherhood: Deconstructions and reconstructions of biology and care*. Not only are there new responsibilities due to migration of family members, the increasing demand of female labour including care, reproduction and sex work, also stand for a global economization. Kinship is tradeable and diverse family relations have occurred. In the meaning of surrogacy in India for instance, the SM is absent during her pregnancy and, therefore, there has to be a replacement for her own children. All in all, this book reveals risks and opportunities of the clash of technologies, and cultural narratives about family and ART usage.

Hence the **legal and social perception** of the birth-giving mother has to be questioned. Daniel Gruenbaum (2012) pursues this matter in his work *Foreign surrogate motherhood: Mater semper certa*⁸. Historically, the birth-giving mother has always been the legal mother. In almost every country today, nothing about this fact has changed. Only California has something like a differentiation between the gestational and genetic mother, for the legal mother is the one who “intends” to raise the child (Gruenbaum, 2012: 475). Gruenbaum depicts the associated international problems with the different legislations and asks questions such as, who is the (legal) mother? Is surrogacy allowed? How is the acceptance of foreign judgments? Gruenbaum concludes that adoption could be an option, whereas Claudia Mayer (2014) reached a different conclusion. She claims that the German legislation has to revise outmoded rules such as the *Mater semper certa* rule. Legislation has to deal with the new technologies and the new implications on the current family understanding.

However, a longer-lasting debate on biopower, reproductive power and economic interactions exists for **egg donation**. Authors such as Cooper and Waldby (2014), Almeling (2013), Krawiec (2009) and Nahman (2008) have already dealt with this subject. Michal Nahman’s research is about egg “traffic” between Israel and Romania. In her qualitative fieldwork she investigates how those Romanian egg sellers can be understood in a global market of reproductive labour. Important here is the term “seller”, as those women openly admit to do it for the

⁸ Latin for “the mother is always certain”

money. In response to the feminist concern about commercializing body functions, Nahman draws attention to another important feminist perspective:

“The fact that the women in my study themselves feel ‘dignity’ in gaining stuff for their homes and in becoming westernized women who ‘choose’ what to do with their bodies puts one in a quandary. It would be a kind of feminist imperialism to tell them they are wrong to desire these neoliberal ideals.” (Nahman, 2008: 77)

Nahman also refers to the temporal detachment instrument these women use to separate themselves from some body parts in order to fulfil other long-term desires. Or, in other words, they give up some self-determination during a certain time but obtain a bigger autonomy in the future from the earned money.

An ethnographic investigation on egg sellers in Mexico was conducted by Laura Perler (2015). She conducted interviews with Mexican egg donors, not sellers because this is legally forbidden, but still the economic compensation is the main reason for them to do it. At the same time, there is a bigger altruistic discourse in Mexico due to the non-economic titling and as an attempt to take away the horror of a baby commerce. Perler (2015) shows how stratified the health system and the access to ART are in Mexico. New power structures may be created or enforced and they take place at several different levels. Special attention lies on the Mexican culture to rate different kinds of family-related aspects. As egg donation and ART usage is commonly accepted but inhibited for poor and rural people. Abortion is highly debated and often stigmatized what comes along with the social obligation to fulfil the life sense of being a mother.

Concerns have been raised about the voluntary intent and self-determination of **surrogacy** (Feliciano, 2015; Hochschild, 2003; Schurr & Fredrich, 2014). Especially in feminist studies, the arguments are divided into two camps; those who see surrogacy as exploitation and commodification of bodies, and those who emphasise the self-determination of everybody. Those against surrogacy argue that hierarchies might get reinforced, and serious harm to people is done (Johansson Agnafors, 2014) and, therefore, they demand the ban of surrogacy. Those who promote the right of the own body support the establishment of fair conditions.

To come back to the topic of international (and also national) surrogacy, it is important to note that in most publications and media news the negative sides, ethical concerns and bad cases, represent a majority, whereby concrete ideas for a

solution of the situation are scarce. Amongst the different problems which may occur, Andrea Whittaker focuses especially on the ethical aspect.

Whittaker (2004) summarizes **ethical concerns** of transnational surrogacy into eight main aspects that should be improved: 1) informed consent; often the SM is not aware of all the risk she is taking, 2) unjust contracts; mostly in favour of the IPs, 3) working conditions; are there working requirements like separating the SM from their family? 4) medical treatment; how is the quality and what happens after pregnancy? 5) salary; how is the remuneration or compensation calculated? 6) multiple embryo transfer; who has the right to decide a selective reduction? 7) advocacy for SMs: is the professional consulting possible regarding their financial resource? and, at last, 8) free choice; what economic situation is compatible to use this argument? (Whittaker, 2004: 101). She concludes that situated ethics may be the key to first understand how those concerns may be applied in a concrete market. Darnovsky (2014) enlarges those concerns with two further components; on the one hand, adoption as a (failed) opportunity and, on the other hand, the focus on the intermediaries. It has to be questioned whether the agencies have the potential of improvement or if they even represent the main cause of harm. In the next step we turn our attention to those concerns applied in the actual practice.

In the light of **transnational surrogacy**, India rates as one of the best studied examples. Amrita Pande is one of the leading researchers of this field. In *Wombs in Labor. Transnational Commercial Surrogacy in India* (2014), Pande offers interesting insights into the everyday life and fears and hopes of SMs in India. She states that most of the SMs expect appreciation from the IPs. They even use the term "sisterhood" for the intended mother. Pande (2011) shows those expressions such as "gift-giving" and "helping others to fulfil their dream of a family" try to ease the atrocity of selling a priceless child. Especially for non-commercial surrogacy, those selfless motivations are often used, also in order to proof good intentions of the SM. Thinking those intentions cannot be transmitted to Indian surrogates, due to the commercial management, is wrongly assessed. They extended the concept of altruism by understanding it as a gift of God, because they can bear children and should hence help out a woman in need, and this gift will enable them to support their own families financially. Pande advises to be careful with a general gift-giving metaphor, for such presumptions often end badly for the SM (because the "sisterhood" often ends after giving birth).

Referring back to the ART Bill in India which aimed to stop the multimillion international business, in order to avoid further legal disputes, Pande (2011, 2015) and Crozier et al. (2014) depict newly arisen problems, which might be the result of the missing involvement of surrogates in the creation of the Bill (Crozier et al., 2014: 47). The Bill restricts surrogacy only to Indian IPs and they have to be heterosexuals. It does not say anything about an improvement of the working conditions and emotional labour is still not taken into consideration, which is likely to be persistent as long as SMs are isolated from their families during pregnancy. As bioeconomies consider the procreative ability and emotional involvement separately, there is no need to remunerate and attend emotional labour.

Another consequence of the prohibition has been observed after the ART Bill, namely the displacement from India's international surrogacy market to Nepal. As Nyaupane (2015) brings the upcoming international surrogacy market in Nepal into correlation with the shutdown of the surrogacy industry in India and Thailand. She also blames the agencies and middlemen for depriving SMs of their money. After several bad experiences, including foreign companies that sent their SMs to give birth in Nepal the government decided on the 18th of September 2015 to banish surrogacy for foreigners. This is a perfect example of how bioeconomies may influence biopolitics and vice versa.

3.1.1. Those debates transferred to the Mexican context

After the presentation of the most common concerns of surrogacy and the more specific context in India the following literature review is focused on the Mexican context. Paz and Muñoz (2008) have put light on a very comprehensive investigation of surrogacy in Mexico. Considering the (missing) regulation, they highlight the juristically caused problems once the process bears complications. After describing the basics and definitions how this market has become into being, they are concerned with the concept of family. On the one hand, there is an extended filiation through surrogacy and, on the other hand, they are wondering how many of those new forms of families the Mexican culture is ready and willing to accept, and whether there exists a right to procreate at all.

A more theoretical approach to surrogacy in Mexico and the establishment of biopower à la Foucault⁹ is given by Eleonora López Contreras (2015). She relates to the hierarchy of the economically better situated reproductive applicants as biopower. This power is exercised over vulnerable "reproductive machines";

⁹ Biopower as the recognition of body functions, as procreation, to be regarded separately and as part of personal capital and so on being of interest for politics

the surrogates. She denies seeing reproductive labour as work and hints to the socioeconomic disparities of the involved parties. There is a broad Mexican denial to commodify body parts. Therefore, commercial surrogacy would not be possible, since it is not considered as work. However, Contreras (2015) queries the accuracy of altruistic surrogacy too. She doubts the selfless intention, for the contract partners do not even know each other. She concludes that the middlemen handle surrogacy commercially anyway and doubts the free choice of those economically poor situated surrogates and highlights the need to supervise the practices of the middlemen.

For a long time, no qualitative studies have been conducted over those “poor” surrogates and the common opinion has been influenced by media headlines of bad cases, as we will see in chapter 6.2. Carolin Schurr intends to fill this research gap in her research project “Making Baby Markets Transnational” (ongoing since 2013), this puts the surrogates experiences into focus. In the meantime, Schurr has published papers about background settings and ART in Mexico (Schurr, 2014; Schurr & Abdo, 2014). In her work with Fredrich (2014), the geographical extent of international surrogacy and the ongoing inequalities are discussed using a feminist approach. Additionally to the already discussed concerns of surrogacy, they put the finger on the majority of western feminist accusations of the exploitative purpose of this market and the doubtful self-determination of those women with little (or less attractive) alternatives. They raise the question of whether international surrogacy may be used as a development strategy by means of attaining bigger economic autonomy of the SMs. To answer this question, further ethnographic investigation in the Mexican environment has to follow.

In this connection, Laura Perler (2015) conducted such an inquiry with Mexican egg donors. In her ethnographic study, Perler was confronted with a highly stratified and power-related imbalance between the biographies of the egg donors and the perspective of the egg receivers. As well as surrogacy, egg and sperm donation are only allowed with altruistic intentions. The reality is that as well as the surrogacy market, egg donors get recruited through financial incentives. Clinics promote the happy family for a wealthy consumer, whilst the realities of the donors look very different. Due to the legal weakness of those women’s rights, Perler proposes an international egg donor standard, in order to protect from abusive medical, financial and personal mistreatment.

Under the direction of Schurr and her ongoing research project, Kathrin Ehrensperger (2015) examined the question of how the price of a Mexican child is cal-

culated and what market characteristics have been met. She conducted an extensive research and investigation into the swamp of agencies and clinics that offer surrogacy in Mexico. She is the first to summarize and compare the different services and prices that are often offered as packages, whereby every additional desire are charged separately. However, with 100'000 USD a hundred percent successful pregnancy can be acquired. Pricing services and promoting it through middlemen is significant for a market, the stagnated compensation of 13'000 USD shows another reality for the surrogates. Even though this money may represent twice the amount of an average income of those (mostly single parent) mothers, at the end assets and liability do not pay off. Often the initially hoped desires could not be fulfilled, while the emotional and body labour exceeded their imagination.

Nonetheless, Schurr and Perler (2015) express the need to regulate surrogacy and not to ban it. In their article, they sum up the results of their ethnographic research so far. They state that it would be wrong to speak of "the surrogates", since their backgrounds and experiences vary. Some have better education and some live with their partners, but all are doing surrogacy for money. Not all live in poverty and not all are exploited. Schurr and Perler warn of the consequences of banning surrogacy, for not only is it highly probable that the market becomes a black market, it also would criminalize the women and hide the structural problems which lead those women to do it. Jeffrey Kirby (2014) points to the same direction. He argues that informed consent and the consideration of the voices of the SM in elaboration of regulation would prevent exploitative practises (although not ethical concerns) (Ramskold and Posner, 2012).

3.1.2. Suggestions

But what are the alternatives? Better regulation, of course, but considering that previous attempts¹⁰ of regulating surrogacy on a national or local level have failed due to political disagreement, such regulations might take its time. A different proposal was to handle surrogacy with the international order of adoption (Gruenbaum, 2012). This is what The Hague Convention is currently investigating. This would put the children's rights and their best interest into focus. McLeod and Botterell (2014) have portrayed the difficulties of treating the topic of adoption and surrogacy in the same way. There are some disparities, e.g. the prohibition of selling a child (commercial surrogacy), but still the desire to enable a remuneration to prevent exploitation. The legal impossibility to adopt your own child

¹⁰ Listing of attemptings follow in chapter 6.1.

(when the IPs are genetically related to the child). Prospective parents in adoption are examined and called eligible by an authority, whereas “everybody” can apply for surrogacy. But McLeod and Botterell (2014) are positive that The Hague Convention could create such international order to “contract pregnancy”. Besides, they leave the question about the future of children who are waiting to be adopted when the possibility to get a (genetically) own child through surrogacy becomes more attractive (McLeod & Botterell, 2014: 230f). The special Committee¹¹ of The Hague Conference comes to the conclusion that to treat adoption and surrogacy as the same is not the solution. An international regulation of private law would be more adequate (González Martín, 2012: 192)

Ramskold and Posner (2012) also highlight the good intention for a fair surrogacy through the organ of The Hague Conference. And yet, they give slight chance to implement such guidelines into an international acceptance, due to different legal systems, and surrogacy regulations. They suggest that standards have to be set up by an international public health organization, in order to be more successful. More specifically, they believe in a globally recognized certification system for clinics of ART, for instances implemented by the World Health Organization (WHO). This proposal could be extended to agencies, which would be in the interest of Contreras (2006). She justifies such expertise to be done by a supervising body like the state, which, on its part, is also taking the financial benefits of the market.

Crozier et al. (2014) argue in the same way and present a two-dimensional improvement suggestion for surrogates in India: In order to improve their wage, they might get subsidies, which would not affect the consumer or agency. The government itself should provide support as the state benefits from higher tax revenues due to the medical tourism. Further, for the actual improvement of working conditions and informed consent, the government might support a non-profit organisation dedicated to protect SM's rights in a national context. However, such plans might only be successful if surrogacy is considered as work (Crozier et al., 2014: 68f).

To sum up, most proposals for transnational surrogacy claim for an international regulation, but at the same time, this venture brings its own malice and a timely solution seems far away. There is little literature about what can be done in the meantime. The proposals of Casey Humbyrd (2009) represent an exception. She takes on a different perspective on general concerns such as the welfare, exploi-

¹¹ They refer to the investigation of McLeod and Botterell (2014)

tation and commodification approach. The laissez-faire behaviour was the first factor in making it possible for agencies and clinics to establish a market where they set the rules, and the contracts are put in place in favour of the IPs. Fair Trade as well as interventions could be targeted at those weak areas and apply where regulation has failed. In practice this would mean: Fair Trade standards for fair price, fair working conditions and transparency (Humbyrd, 2009: 117). These are the principles I want to follow. The research gap consists of the missing of such specific measures. Following the basic concept of Fairtrade, I attempt to formulate such standards, which seem to be relevant according to the Mexican surrogacy background.

3.2. We do it with bananas- why not with babies?

The Fairtrade concept has been developed in the 1950s (Fairtrade Deutschland). It came into being due to the “bottom-up” ideology of concerned consumers about internationally traded primary goods. Some consumers felt socially responsible for enlarged and/or new inequalities arising from international trades. This political movement pleading for alternative trading forms in the 60s was primarily engaging for countries that suffer from neo-imperialistic marginalisation. In the 80s, 47 associated countries were already part of the so-called *International Federation for Alternative Trade* (IFTA), now known as WFTO, the *World Fair Trade Organization* (Renard, 2003: 83). This federation has committed itself to create an alternative trade, with fair profit distribution in the value chain in order to empower the weakest. At the beginning, such fairly traded products were only available in specific markets, e.g. the world shop. In order to increase the scope of products and sales, some foundations tried to promote those products in a more user friendly accessibility. Labels were created to improve the identifying feature, in order to target more costumers. For the sake of preventing consumers from a confusing amount of different labels, many Fair Trade organisations decided to create one label that would represent common criterions. This specialist unit is known as the *Fairtrade Labelling Organizations International* (FLO) (Renard, 2003: 90). The creation of a standard is linked with the production and implementation of ethical decisions. The problem-based context can be explained in a four stage process: 1) recognition of a moral issue, 2) development of a moral judgment of that issue, 3) creation of a resolution how this judgment could be implemented, and 4) realisation of the resolution (Davies & Crane, 2003: 80). It is of central importance how those ethical debates are internally managed by the organizations, especially as Fairtrade is market-oriented, but at the same time responsible for the conservation of the standards. Those standards are highly influ-

enced by the conventions of the ILO. In a publicly accessible document that implies standards for contracted production, the different requirements can be found. In the chapter *Working condition* in this document, the concerning ILO articles are mentioned to be followed for the employer. These may include, but are not limited to: the Convention of Discrimination, Forced Labour Convention¹², Trafficking in persons and Child Labour (Fairtrade International, 2009: 20f). Furthermore, the guidelines enforce the employer to enhance transparency, in order to pay the worker at least the Fairtrade minimum wage¹³.

Still, the effectualness of primary goods and trading features diverge from surrogacy characteristics. In surrogacy, there is no “production” striving for a big sales market, such service is only provided after a signed contract (Becchetti et al., 2006: 1). But Fairtrade is differentiating the ideology depending whether it is a service or a good. The complexity is enormous, considering the various claims of Fair Trades, even in a manageable value chain of a simple good such as coffee is challenging. Negative remarks are often expressed on the insufficient standard controls. Furthermore, it is alleged that the high social requirements may result in exclusion of the poorest producer. But it is still worth to examine a possible ideology transmission of an international regulatory standard like Fairtrade to a fair international surrogacy (Crozier et al., 2014: 69). To put it crudely, one could ask what could be more important to deserve a fair “production process” than the delivery of a child. As we will see, international surrogacy is a market, whether under the guise of altruistic intentions or not.

Helena Röcklinsberg (2013) tries to extend the complexity of Fair Trades of primary goods to the next level. Part of her investigation is the implications of labelling animal welfare in order to satisfy some commodified moral interests of the consumer. She focuses on the preferences of consumers, in a neoclassical economy approach. This is the key for how products get selected. Amongst the different necessities between the consumers, labelling may be seen as a value enhancement, whereas non-consumers plead more often for a simple monetary tool. Röcklinsberg (2013) concludes that animal welfare improvement is dependent on consumers’ interests and not as an ethical concern of everybody. But this method can only be applied when market-based instruments are deemed appropriate.

¹² Marked in C29 and C105 which contain forced or bonded labour, including trafficking and sexual exploitation. The employer must ensure the worker are informed of their rights

¹³ Recently Fairtrade engages researches in the involved countries to calculate a benchmark for a living wage which may differ a lot from the legal minimum wage

This is exactly where the problem lies; extending this market approach to surrogacy would mean to accept it as work, whereby public ethical concerns speak against this concept. But first, some proposals for ethical surrogacy in analogy of other fair standard implementations shall be presented.

3.2.1. Ethical/ fair surrogacy

As presented above, most researchers appeal for a better regulation, nationally as well as internationally. However, barriers and the difficulty of global acceptance have also been identified. A faster (interim) solution has been presented in analogy of Fairtrade standards. Therefore, the proposals of Humbyrd (2009) will now be examined more closely. One possibility would be to regulate surrogacy through immigration law, such as international adoption. In the same way, prospective parents have to be examined and informed through an accredited adoption service. Such a body would have to be created for surrogacy too. Such an institution might also provide impartial expert advice concerning suggestions for further contracts with “fair” agencies and clinics. In this respect, the middlemen have to apply the living wage benchmark for their country and cover risk, no matter if the child was born or not. Health issues (mental and physical) should be prioritized before, during and after birth. Humbyrd judges it important to improve transparency and informed consent of the contract and the transaction. Further additions for fair requisites are presented from O’Byrne and Gerber (2015). They plead surrogacy contracts to be examined of their lawfulness before starting the process. They ask for freely accessible legal assistance for the SMs (provided by a body with no party affiliation). As fair “wage” is only feasible with commercial surrogacy. O’Byrne and Gerber (2015: 134) highlight the need to clarify what should be classified as compensation, in order to provide clarity of what is illegal. Pande (2014) follows the idea of a living wage, but she highlights the need that such a wage has to be discussed with all involved parties, especially the SM. Neutral legal assistance would not only be needed in order to ensure the informed consent, but also to overtake justified concessions. Regarding the moral and cultural background of those women, there is a small chance that they would empower themselves and demand a higher salary. Specific measures to ensure SM’s health and to reduce risk setting an age limit and limit the number of transferred embryos¹⁴ (Kirby, 2014: 30). A further and not less important measurement would be to form a public understanding of surrogacy, for instance to introduce a

¹⁴ On the one hand, to prevent from multiple gestation which is known to be more risky and on the other hand, to minimize the practice of foetal reduction

SM as a labour worker, not a passive poor woman who has to hide her pregnancy in order to avoid misunderstandings.

Such multi-level instruments could be headquartered in the ideology of the WFTO. For some it might appear inadequate to compare surrogacy with other goods that are under scope for Fair Trade improvements. But considering surrogacy solely as an international trading process would put the World Trading Organization (WTO) into responsibility. But, as in The Hague Convention, or the World Health Organization (WHO), a legally-binding agreement is missing. Either the unequal scope of surrogacy (work/ compensated or altruistically) is excluding some countries from the proposed regulations or a disregard of the rules does not have any consequences (Brugger, 2012).

For those reasons I pursue the goal of a multi-level strategy for an ethical international surrogacy market. To do so a special attention is given to the potential and opportunity of a standard implementation and labelling à la Fair Trade.

In the next chapter, *Methodology and fieldwork* I present my strategy how to gather information about regulation tools in Mexico and who wishes what improvements are needed.

4. Methodology and fieldwork

Under the framing of marketization and the agencement concepts (Çalışkan & Callon, 2010) knowledge generated by scientific methods form part of the constitution of a market. This also includes methodical tools related to management¹⁵, which elaborate knowhow and strategies for firms. STS (Science and Technology Science) represents a more interdisciplinary programme, adding the concept of emotional labour from Schurr and Abdo (2014). This method of feminist geographies offers a versatile toolkit for this investigation. It refers to the research field of how a researcher positions him/herself in the study area, how hierarchies are considered and, additionally, how emotions are created and influenced by the investigator as well as by the subject. Schurr and Abdo coined the term “engineering emotions” (Schurr & Abdo, 2014: 2). The process of methodological application was based on the **Grounded Theory** (Strauss & Corbin, 1994). This theory was developed in social sciences and in contrast to *a priori* theories, where a presumed methodology is already defined before data collection. Thus, during qualitative research, the appropriate theory is developing during data collection and analysis, especially with focus on the interaction of different actors at different levels (Strauss & Corbin, 1994: 278).

“Thus theory in sociology is a strategy for handling data in research, providing modes of conceptualization for describing and explaining”. (Glaser & Strauss, 2009: 3).

Glaser and Strauss (2009) highlight the perks of this theory over customarily structured, positivistic and deductive theories. Manifold data sources are also one of the characteristics of the Grounded Theory methodology. Pickel et al., (2009) provide a compilation of comparative methods and analyses in application to political and social sciences. They emphasise the diversity of combinations and the mix of qualitative and quantitative data collection that arise in modern developments of a research design.

Data collection for this work consists of personally conducted interviews in Mexico City and Villahermosa and participatory observation of ongoing discussions of public and private entities, where especially the political debates could be followed. The inspections of two important institutes were possible; GIRE and Early

¹⁵ Tools which help firms and enterprises to improve their performance and competitiveness

Institute, which represent opposing points of view on surrogacy. Facebook and WhatsApp served as orientation for agencies' offers and client's concerns and contacting. A further set of data was provided by the tutor Carolin Schurr, which was particularly useful for more opinions from SMS, and insights of hospital and attorney work. Webpages, blogs and official websites (e.g. of the Mexican government) served as a basis for information about agencies and IP information platforms. Also an overview of compiled standards as well as political and ethical debates and ongoing initiatives were generated through internet research. These data vary in ascertainment and application. The research method is compiled of document analysis, interviews, informal interviews, email/Facebook/WhatsApp exchanges, participatory observation and internet investigation. This mix of methods was applied to update current regulations in Mexico and international processes and experiences of the involved actors, and the international standards and their implementation. However, in the course of this work, the initial focus of the implementation of standards à la Fairtrade was extended to include the domestic regulation attempts. Table 1 shows how the method and the research subject are connected with each other. Further inside talks and additional information have been gathered through exchange dialogues with Carolin Schurr, Kathrin Ehrensperger, Laura Perler, Isabel Fulda and April Hovav¹⁶.

Due to the connections of my tutor, I was given the opportunity to complete a trial course with GIRE. As one of the few NGOs of women's rights about reproductive accessibility, this internship was intended to provide a legal overview about surrogacy in Mexico. Given that this topic was just recently added to their task area, they demonstrated the previous legal situation and I was free to continue my research about collecting current legislation attempts. I was also able to observe their meetings and insights into their current legal cases. This also gave me an idea over other problem areas they are facing and how the general situation in Mexico looks like. I took notes and had the opportunity to ask questions, conducted an informal interview with the only employee that was engaged in the surrogacy cases and also a formal interview with the director¹⁷ of the NGO. During my stay in Mexico City, there also was the book presentation of "": Explotación de

¹⁶ She started her PhD in Sociology as a Provost fellow at USC in the fall of 2012. Her ethnographic research is about the international surrogacy market in Mexico. We met in Villahermosa and had Skype conversations

¹⁷ Regina Tamés Noriega, lawyer and specialised in Human Rights

mujeres con fines reproductivos¹⁸ (EMFR) where I conducted a participatory observation over current debates in a political and cultural sense.

Table 1: Data collection

	Regulation	Practices	Standards
Document analysis	- Mexican law and civil law of Tabasco, Sinaloa, DF -International laws	- especially surrogacy international and India and Europe	-ILO -The Hague -Fairtrade
Interviews	- 1 Politician Health Secretary - GIRE/Early Institute	- 1 SM, 1 IP - 2 SMs, 6 doctors, 2 agencies and 1 lawyers (Carolin Schurr)	
Informal interviews	- internship NGO	- former employee of an agency - Isabel Fulda	- Isabel Fulda
Mail/Facebook/WhatsApp	Email request on politician	-IP Facebook groups and WhatsApp	- Email requests Isabel Fulda
Participatory observation	Book presentation, debate of surrogacy		
Internet		- Blogs pro and contra -Websites clinics and agencies	Labelling

This publication is commissioned by Early Institute; “[...] an autonomous and interdisciplinary group of Mexican professionals dedicated 100% to the analysis and design of proposals for the inclusion of policies that ensure, in the maximum extent possible child well-being and development.” (Early Institute, [Stand 17.12.2015])

One guided interview took place later on with a representative¹⁹ of this institute. But also during my vacation time²⁰ political conversations have been followed. Talks with active feminists were insightful on the one hand, considering surrogacy in Mexico, but on the other hand, also to learn more about the vast other stumbling blocks²¹ of gender inequalities in some parts of Mexico. One interview was

¹⁸ Medial presentation and debate over *Exploitation of women with reproductive means* in Mexico. Almost all co-workers were represented (Bartolini Esparza et al., 2014) and several senators

¹⁹ A lawyer and consultant of Early Institutes publication of surrogacy

²⁰ Before starting with the practical, I passed one month in Mexico to get used to the surroundings of language and culture

²¹ In chapter 6 there will be more detail on the Mexican background

taken with a senator²² who also contributed to the EMFR book. For the interviews with SMs and IPs I went to Villahermosa, facilitated by the contacts of Carolin Schurr²³. After several cancelations and postponements, only one interview has been completed with a SM. Also, only one IP was willing to give an interview, two IPs put off till "later" and were no longer available. Schurr provided some of her interviews, especially to gather more data on Ethical surrogacy. 11 additional interviews have been coded. (Consisting of: six doctors, two SMs, two agencies and one lawyer). Data about standards and labels in the surroundings of fair working conditions or women's rights was gathered mainly from the internet, webpages of ILO, Fair Trade and the International Right.

The iterative process of the Grounded Theory and the reciprocal effect of data collection, method and theory have been in practical use. Qualitative research covers a sequence of decisions, for instance to decide how to approach the problematics which accompany surrogacy. Furthermore, the decision how to narrow the focus group and which methods for data collection and interpretation should be used. Detailed considerations before and during qualitative research are given in Helfferich (2009, Chapter 5. Interview planning and organisation). In order to create a manual for the (expert) interviews, the SPSS²⁴ method was used. This is a four-step method 1) **compile**: *to note any question which occurs to the research object*, 2) **analyse**: *do they spread new knowledge and do they imply own assumptions*, 3) **assort**: *structure remaining questions in thematic blocks* and 4) **subsume**: *create an overreaching question where those subsumed aspects are included* (Helfferich, 2009: 182f). This method should provide the researcher with a maximum of openness and transparency. While the interview structure with the SM and IPs were designed openly, micro-qualitative expert interviews were, as it is defined, more focused on the key elements of the research (Pickel et al., 2009). Finally, the basic structure for the interviews was set up. They are designed for four focus groups, institutions, politicians, SMs and IPs (see Appendix A1-A3). Specific characteristics and the particular background of the actual interviewee have been considered and, therefore, some slight adjustments were added.

Internet research was also divided into the three thematic blocks. Many of the national and local initiatives are available online, as well as official documents of international organisations. As a first step, I tried to gather an overview of the

²² From now on called Ida (pseudonym), Senator of PRI (Partido revolucionario institucional). This centre-right party is very powerful in Mexico and share centralistic and neoliberalist values

²³ Former agency assistant, already conducted interviews to the research of Carolin Schurr

²⁴ SPSS, german for "sammeln, prüfen, sortieren, subsumieren"

different agencies that operate in Mexico, where they are located and what they offer. In a second step regulation documents were analysed. Another research subject was the open access of contracts, certifications and price lists²⁵. Online platforms/blogs and Facebook groups served as a great source to obtain insights of the actual surrogacy process. Especially concerning IPs' opinions, such Facebook groups present a vast information pool, since it proved difficult to gain extra information from interviews. In those same platforms, I was spy hopping for topics such as:

- How the whole process is experienced
- What the anxieties of the involved parties are
- What they are advising each other
- If they claim something

In a next step, the approach of coding will be presented. This procedure was conducted according to the Coding Theory of Strauss et al. (1996) considering the epistemological approach of the Grounded Theory. Hence, data collection and analysis depicts a cyclic procedure.

„Kodieren stellt die Vorgehensweisen dar, durch die die Daten aufgebrochen, konzeptualisiert und auf neue Art zusammengesetzt werden. Es ist der zentrale Prozess, durch den aus den Daten Theorien entwickelt werden.“ (Strauss et al., 1996: 39)

I continuously commented on the text passages and, therefore, the coding process also means that (at least at the beginning) code titles are built on personal discretion. Coding is an analytical process where there is no step by step process, but rather a mix of handlings in an iterative cycling (Flick, 2005: 258f). Roughly summarized, codes become more and more superordinated, which means that the more descriptive initial codes get pooled together to umbrella terms. There is a differentiation in three analytical coding procedures: a) open b) axial and c) selective coding. In a content-oriented analysis, those three procedures may be applied separately or more often mixed, as they have blurred boundaries and can be seen as a sequence of coding hierarchies. a) *open, subjective codings* are often the first step to create conceptual formulations and descriptions of the phenomena. This is followed by creating categories. This analytical process and concept forming is in the sense of the Grounded Theory. In a

²⁵ Fortunately Ehrenspergers Master Thesis about pricing was completed during the study period of this work

next step, b), *the axial coding*, those created categories get redefined, differentiated and expanded to an axial direction with the same principle categories. Whilst searching for comparisons and interaction of the categories, a so called *coding paradigm* arises (Strauss et al., 1996).

„Dieses sehr einfache und gleichzeitig sehr allgemeine Modell dient dazu, Beziehungen zwischen einem Phänomen, seinen Ursachen und Konsequenzen, seinem Kontext und den dabei von den Beteiligten verwendeten Strategien zu verdeutlichen“. (Flick, 2005: 265)

Codes raise questions about content-relation and connections to other categories. In the last step, c), *the selective coding* those axial coding groups are united oneself to on term, one overreaching code which sums up all its subcategories. This specification enables to establish and examine the umbrella theory. The pattern depicts the conditions under which other conditions occur.

I focused my research question on the second, the axial coding procedure. The main focus lies on the combination of categories and what conclusions can be drawn from it. Especially connections with the regulation topic are a matter of great interest. In the last section of the applied methodology, the approach of the content analysis will be presented.

Those created categories during the coding process are also provided for the qualitative content analysis à la Mayring (2010). Step by step documents and interviews get systematically analysed. Mayring describes four characteristics of this method: a) classification in communicative models: which reflects the socio-cultural background of the interviewee and how he/she interacts with the research subjects; b) compliance: internal and systematic logic of the establishment of categories to understand the results; c) focus on categories: in the course of the study, categories may change and d) quality criterion: complying with transparency over the methodological steps will improve the comprehensibility. First, categories were established on inductive criteria, second, those text passages were complied with content-wise criteria.

To guarantee comparability with results of topic relevant literature²⁶, their used methodology will shortly be resumed.

4.1. Methods in analogy

Quite often, research papers about surrogacy refer to the methodology and theoretical debate of other reproductive related investigations. It helps to trace the

²⁶ Detailed exposé of those works follow in chapter 3. *Current discussion*

origins of economization and marketization of body parts and biological labour. Egg donation is said to have close relation with surrogacy, see, for example, Almeling (2013); Cooper & Waldby (2014), Waldby (2012), Waldby and Cooper, (2006). Their ethnographic field work has proved to be exemplary. Hence Nahmans (2008) ethnographic research of transnational ova exchange between Romania and Israel will serve as a role model.

In order to do so, Nahman conducted semi-structured interviews with ova donors, doctors and medical care service personnel. Participant observation was also part of this ethnographic research, which Nahman describes as “hanging out” in the waiting room of the clinic (Nahman, 2008: 78). She admits that her research method is more focused on bioethics and is aware of the epistemological perks of anthropologists and that a social scientist may have a greater conceptual tool disposal than bioethic researchers do. Such an anthropological approach has also been used by Amrita Pande, who is one of the most famous social researchers about surrogacy in India.

In order to obtain an overview of the (young) transnational surrogacy market in India, Amrita Pande (2014) conducted six years of ethnographic field work in India. Hence she did in-depth and open interviews with a representative number of SMs, with doctors and agencies and participatory observation in the surrogate houses. She also critically scrutinises her positionality and interaction (socially and emotionally) with the involved actors. In order to emphasize power inequalities and political obstacles that SMs are facing, Pande lists text passages of the interviews to enable the reader to form their own assessment.

I am aware of the importance of positionality and the establishment of emotional ties during field work. In the last section of the *Conclusion*²⁷, I critically reflect my own positionality.

The next chapter, *Surrogacy in an international context*, is meant to compile the legal scenarios of surrogacy all over the world. A great emphasize is given to international surrogacy regulation in order to transfer to the Mexican legislation background.

²⁷ Chapter 8.6. *Personal thoughts*

5. Surrogacy in an international context

Trimmings and Beaumont work on a book about international surrogacy, which is based on two years of research (2010 to 2012) (Trimmings & Beaumont, 2013). They try to show an overview of the different legislations and practices of surrogacy in every country that obtains a legal framework on this topic. The aim is to create a funded basis to support further efforts of generating international regulation systems (as The Hague Convention is about to do²⁸). They highlight the international juridical differences as the biggest challenge. But first, let us return to the roots of surrogacy. The focus here lies on gestational surrogacy. Surrogacy has been performed for a long time, even though in a slightly different sense. Traditionally, sisters or cousins often acted as a replacement when child bearing wasn't possible by themselves (Inhorn & Van Balen, 2002)

5.1. Technical evolution

The IVF technology originated in 1978 where the first baby was produced on a petri dish in the United Kingdom (Inhorn, 2009: 172). Further, the first baby carried by a woman who was not genetically its mother was born in the 70s (Rimm, 2009: 3). This technological evolution is thus important when we consider the amount of infertile people all over the world. Vayena et. al. (2002) point out that 8 to 12% of all the couples on earth suffer from infertility. Infertility is divided into primary and secondary infertility. Secondary infertility is mainly caused after transmitted diseases or a consequence due to untreated or mistreated diseases. This is also one of the reasons why developing countries, including Latin America, suffer more from secondary infertility than developed countries. Generally, developing countries are said to suffer from more infertility due to lack of medical services and also because of the higher amount of sexual transmitted diseases (Vayena et al., 2002: 15f). To increase the insemination success, IVF has become a promising alternative and was first used to support fertilisation through re-implantation of the inseminated egg to the woman's uterus. But not only infertile couples may fulfil their dream of having a baby, also same sex couples or single persons may acquire a genetically related child through surrogacy. So technically, up to six persons can be involved in the process of surrogacy: the two intended parents, the donors of sperm and oocytes, the surrogate mother and her

²⁸ In March 2015 The Hague Conference on Private International Law (HCCL) decided to establish an expert group, which examines the feasibility of creating and international law in cases of international surrogacy affairs (Council of HCCH, 2015: 2)

husband²⁹ (Bartolini Esparza et al., 2014). Considering that these six people might be living (and they mostly do) in different nations with different legislations, one can easily imagine that legal conflicts might arise. As we look ahead, keeping in mind that uterus transplantations have already been done, genetic relation questions might become even more complicated.

5.2. Legislative restrictions

As it was already mentioned in the *Introduction*, more states are prohibiting surrogacy than permitting it³⁰. In Switzerland, for example, such an agreement is said to be a “violation of the child’s and the surrogate mother’s human dignity” (Hague Conference on Private International Law, 2012: 9). Those countries which allow surrogacy mostly restrict the practice to altruistic intentions, meaning that it has to be a non-profit act³¹. The report of HCCH 2014 also revealed that most countries which allow pro-profit surrogacy do not explicitly permit it, but rather that there is a legal grey zone. According to The Hague Convention of Adoption, which is not allowed by means of payment, this was also applied for ova and sperm donation. Hence it is not surprising that the 90 countries which subscribed this convention do not recognize paid surrogacy as legal (O’Byrne & Gerber, 2015: 141) Also important to mention is the fact that surrogacy regulation is subject to civil law, which can vary within a state. But restrictions on the process is the one hand, on the other hand, the parental recognitions also requires regulation. In most cases all over the world, the birth-giving mother is also the legal mother. The common custom in surrogacy is that the birth-giving woman is first registered as mother. She may renounce this status in the birth certificate, or she gives her consent before birth so the IPs get directly registered as the legal parents. It is also possible to state it as an adoption process (HCCH, 2014: 17). So, even if surrogacy is not allowed in the IPs home country, in most cases the infant obtains their nationality, especially when a genetically connection can be proved. This decisions are often embedded in the third article of the Convention of Children’s Right, in which it has to be decided on the best interest of the child (General Assembly, 1990). But this does not mean that the home jurisdiction can simply be avoided, as we have seen in May 2015, when the Swiss Federal Tribunal stated that the second father of a registered partnership will not be recog-

²⁹ If the SM is married, in most cases the husband has to give his consent so she can enter the process

³⁰ 2012 12 jurisdictions prohibit and even sanctioned any form of surrogacy, Germany, Finland and Switzerland are amongst them (Hague Conference on Private International Law (HCCH), 2014: 16)

³¹ Australia, Brazil, Canada, Denmark, New Zealand, UK (HCCH, 2014: 17)

nized as the legal father³² (Bundesgericht Schweiz, 2015). A lot easier is it, when the IPs are also the genetic parents. According to the European Court of Justice, it is a child's right to know its origin/identity. If no genetic relation exists, the regular adoption procedure is applied (Hausammann & Hitz Quenon, 2015). In the same direction goes the Supreme Court in Spain, where a lot of cases are known for international surrogacy contracted in Mexico. There have been various cases of homosexual couples, which were not able to acquire legal registration for the baby(ies) born through surrogacy. In 2015, a judgment was challenged and stated inadmissible, with the claim that such renouncement abuses Human Rights³³. Only a little later in that year, a similar court decision was declared null and void in France by The European Court of Human Rights (ECtoHR). This illustrates the inconsistency of the legal treatment (Durnán Ayago, 2015). Mayer (2014) also summarizes the worldwide juridical management of surrogacy, with a focus on the European and, more particularly, the German juridical management. As already mentioned, Germany is one of the countries which strictly prohibits any practice of surrogacy³⁴. So in case of cross-border treatment, the entry permit of the child is refused. This is supplemented with the Human Rights of the wellbeing of the child. In many cases after exhaustive autocratic and juristic debates with the German *ordre public* and the Human Rights of bloodline, the child obtains citizenship.

More specific regulation, even it is not as a whole, can be observed in the USA. Given that the legal system is based on the common-law and varies between the states, agencies adapted the contracts to respective precedent cases. In 1988, the National Conference of Commissioners on Uniform State Laws intended to uniform legislation of surrogacy due to inconsistent and contradictory court decisions. However, it only got accepted by a few states. While most states prohibit surrogacy completely, some differentiate between traditional and gestational, sexual orientation of IPs, compensation or payment, or do not have any regulation at all and decide for each case individually (Quinlan, 2013). It is interesting to look at some states, which do only allow altruistic surrogacy, as Mexico does too. Canada, New Zealand, Greece and the UK do not allow commercial surrogacy and with exception of Canada, do neither accept international commercial surro-

³² Declining the jurisdiction of the invalidity of same-sex couples to apply as legal parents

³³ Inadmissible on the following ground: Surrogacy in Spain is forbidden and the liberty of family affairs weren't violated.

³⁴ In Germany the birth giving mother is also the legal mother, and also the socio-cultural father is the legal father, means the husband of the birth giving mother

gacy. As a result not many women are willed to act as a surrogate (Lozanski, 2014: 4).

One of the most liberal states, which allow commercial surrogacy, is California. This will serve as comparison in the debate of altruistic and commercial surrogacy in Chapter 6.3.

In the course in this thesis of international surrogacy, India serves as an example of how transnational character could have been established and what implication resulted from this business.

5.2.1. India; the first international baby market

Same as California, India is one of the few regions where a liberal market strategy has been allowing commercial surrogacy since 2002 with low state regulation. With the advantages of low prices (medical and service charges), India has distinguished itself as the first developing country for international surrogacy (Pande, 2011). In order to attract foreign clients India's agencies developed the strategy for "tourism" packages³⁵ offers. The almost exclusive method of gestational surrogacy in terms of price has been made affordable for middle class IPs. This approach has proven useful, since a multi-billion dollar market has been established in India. Even though SMs may earn money which is up to a five-year household income, the obstinate dogma of "gift giving" is still maintained. Not only in the sense of helping the IPs through bearing the child, they sustain their own family with the income. Also (the mainly northern) IPs see themselves as gift givers, in the sense of enabling a woman to earn so much money, or also through buying them additional items of desire. This commitment is often called *sisterhood* by the IPs and SMs, what Pande (2011) depicts as a downplaying of the contractual and commercial aspect of the process. But in terms of India's absence of regulation, the mostly private fertility treatment centres establish the general settings. Contracts and other disputed processes are actioned in favour of the client (Rimm, 2009: 1431). This has also led to surrogate housing, where the SMs are all kept in a house/flat of the agencies in order to control them, to assure the IPs that their baby gets healthy nurture, that the SMs comply with the obligation of medical treatment and screenings and also to make sure that there is no sexual intercourse with their husbands (Pande, 2014: 150). There have been debates almost since right from the beginning of the market, but as a con-

³⁵ "See Taj Mahalby the moonlight while your embryo grows in a Petri-dish" (Pande, 2011: 619)

sequence after cases like Baby Manhji³⁶, the Indian Parliament restricted visa³⁷ conditions for foreigners. IPs have to express the agreement of their home country that they recognize citizenship of the child, that they have to be married for two years and that surrogacy is limited to heterosexual couples (O'Byrne & Gerber, 2015: 186). An ART Bill³⁸ is about to regulate surrogacy in India even more specifically. But new problems have emerged and the insufficient state overview of the many fertility clinics are said to have created more illegal practices. There is even a dialog of human trafficking. The other famous international surrogacy market in Thailand is also said to have shut down its borders due to the case of baby Gammy. It was the proverbial straw which broke the camel's back, when an Australian IP didn't take their baby born with down syndrome. But the established business in those countries searched its new niches, which some of them found in Nepal. Afterward, negative headlines followed of human trafficking, this means the international market in Thailand and India remained, the women just had to give birth in Nepal. But step by step, the market in Nepal became autonomous, with high attraction due to the low state control, which is said to be even more tolerant when there is enough money (Nyaupane, 2015).

But not only Nepal has been the target for the surrogacy evasion. Around the same time when those big international markets for surrogacy (especially for homosexuals and individuals) shut down in Thailand and India, the market in Tabasco, Mexico, achieved a growing international reputation for this market gap.

5.2.2. Let's do it in Mexico

Vayena (2002) already considered 2002 that infertility is about 8 to 10 % in Latin American countries About 100 million people were living in Mexico at that time, so some four to five million couples would be suffering from infertility. Mexico has realized that there is a sufficient demand for ART treatment, especially while considering American medical tourists, which already formed part of the medical service clientele. This development was mainly the result of the structural adjustment programs in the 1980s³⁹, during which a majority of the health system got privatized. But not only the economic and technological settings were given in

³⁶ 2008 a Japanese IP couple got separated during the pregnancy of the Indian surrogate. Indian government wouldn't allow a single man to adopt (his genetically) child and Japanese Government wouldn't give nationality to a baby born through surrogacy (Rimm, 2009: 1432f)

³⁷ Foreign medical recipients have to apply for a medical visa, at the beginning a tourist visa was enough

³⁸ Surrogacy only for heterosexual Indian citizen (or at least married to one), the contract says they have that they will take care of child, but only gestational surrogacy possible, also restrictions for SM (no unprotected intercourse (Chandra Sharma, 2015)

³⁹ Further information in Chapter 6. *The Mexican Background*

Mexico, the permissive and vague legislation also created expendable conditions for the establishment of an international ART (and surrogacy) market. The Mexican Ministry of Health does not have specific regulation for ART and, therefore, the clinics have a generous leeway. Surrogacy, on the other hand, is not specifically offered by the government and they actively distanced themselves from such a market through shifting the negotiation onto the hands of the IPs and the surrogates (Vayena et al., 2002: 268). Unlike ART regulation, surrogacy affairs are not the duty of the federal government, but of each state. Only in the state of Tabasco has international surrogacy been legally allowed since 1997, if only with altruistic intentions of the surrogates (Noriega, 2013: chapter 6). As a consequence of the low “compensation” for the SMs and the cheap medical treatment compared to Northern clinics, Mexico provides an additional financial advantage. For trained middlemen such as agencies, these are ideal conditions to build up a business. But this new market did not only attract serious companies, exploitive enterprises⁴⁰ and defrauded IPs carry a bitter aftertaste to this market (Schurr, 2014). But it is the actual handling with the SMs that causes most of the problems; the contracts that are made available by the agencies are beneficial for the IPs, since they may decide how much implanted embryos should be carried out and whether an unhealthy child should be aborted or pregnancy enforced, even if the life of the SM is in danger. Kathrin Ehrensperger (2015) has dealt intensively with the different offer “packages” from the agencies. Those packages cover mostly four units, namely: administration, legal advice, medical service, and, most importantly, coordination and birth certification. Agencies have a manifold marketing strategy, they are advertising online, in webpages, conventions and also with flyers. The agencies take account of the different wishes of the customer, for instance, whether own or donated embryos will be transferred. Additional services such as foetal reduction, sex selection, life insurance of SM and baby or insemination from HIV positive IPs and more can be chosen for an extra fee. Nonetheless, the agencies stress the fact that it is not a sale of children and that the SMs do not do it for money, but as an act of love.

Since surrogacy is not a “job” to earn money but to receive compensation, SMs do not have the right to claim for more money and it might even lead to a loss-making venture for them. Several local and also national initiatives tried to fight such problems.

Previous attempts to regulate ART in Mexico have failed (Tamés, 2015b). The political system in Mexico on a federal basis compromises the chamber of Depu-

⁴⁰ Examples follow in Chapter 6.2. *The picture drawn by the media*

ties and the chamber of Senators. Every initiative has to be approved from both of the chambers before it get presented to the president who is declaring it finally as operative. Since surrogacy is a matter of the civil codes, each state has its own regulation about surrogacy. Only one state has been permitting international surrogacy; Tabasco. Tabasco came more and more under pressure to establish a better regulation in order to prevent negative cases⁴¹. One of the initiatives has now definitively been adopted the 14.12.2015 (Comisión Orgánica de Gobernación de Tabasco, 2015). One of the major impacts of this initiative is the restriction of surrogacy only to Mexicans. So as soon as this initiative is published on the new civil code, there is no longer a transnational surrogacy market in Mexico⁴². Nevertheless, the consequences of this market in Mexico will be discussed; on the one hand, that this initiative might be considered as discriminatory and, therefore, illegal, and on the other hand, the shifting of the market into a new Niche abroad or in the black market. Overall, because the issue is not yet taken off the table, as the state of Veracruz launched a new initiative on the 26th of November 2015, with the intention to allow and regulate surrogacy in Veracruz, without restriction on the IPs nationality (Ortega Arteaga, 2015). The movement is high on this topic and deserves a public attention. In the following chapter, the regulatory strategies of Mexico will be discussed.

⁴¹ More details of those cases follow in chapter 6.2. *The picture drawn by the media*

⁴² More details of the initiative follow in chapter 6.1. *Regulation by law or by ignorance*

6. The Mexican background

As in the majority of Latin American countries, children do not just belong to the picture of a common family; children are often also the retirement provision for the families. In Vayena et al. (2002), the meaning and needs for ART in Latin America are represented, as well as the controversial and ethical consequences followed by it. The right to have children is viewed as a public Health Right, so the access to ART is requested to be accessible by everyone⁴³ and kinship has been legally recognized in Mexico since 2007 (Navas et al., 2014: 259).

The situation of the women is characterised by a highly patriarchal society. Nationwide analysis of 2014 (Instituto Nacional de Estadística, 2015) of different daily aspects of women and men shows: the amount of women decreases the higher the education level is. 70 to 80 % of non-remunerated housework, child-care and nursing is done by women⁴⁴. In average, women are less waged in the same jobs and poverty in female-headed households is more frequent. Especially single mothers often do not receive alimony for the children and are very much depended on family support⁴⁵.

As already mentioned, infertility is also a problem in Mexico. Even if the access to ART is supposed to be open⁴⁶, the government has failed to regulate it on a national level. This would be necessary as the clinics manage their own guidelines as to who is allowed to undergo such a treatment. GIRE has noted that some of those admission requirements are discriminatory and, given that the human rights are anchored in the Mexican constitution, such requirements are offensive (Tamés, 2015: 213f). But there are not only limits to access due to required characteristics, wealth is quite a basic criterion to obtain ART treatment. Since the structural adjustment programs in the 1980s and 1990s⁴⁷, health care has become more and more privatized (Fisk, 2000). Medical treatment is up to private insurance and, therefore, only affordable for wealthier people. This is also true for ART and in this case, internationally oriented markets become more and more established. There are some public hospitals with open access, but due to their scarcity and limited means, all of them established selection criteria which are discriminatory (Tamés, 2015: 218). The people who can afford it choose a private

⁴³ In most countries ART access is up to private payment, and so reserved for middle and upper classes (Vayena et al., 2002: 37f)

⁴⁴ Which is estimated to account for approximately 15% of GDP (Gross domestic product)

⁴⁵ Diary entry and informal interview with Lety 23.10.15

⁴⁶ This bases its reasoning in Human Rights, same as the right to create a family (Art. 4 in Constitution)

⁴⁷ Mexico entered in neoliberal practices on pressure of the World Bank in order to pay some debts

clinic (with better reputation than the public ones). Some clinics are even specialised on foreign patients (Schurr, 2013: 9). Especially people from the United States come for medical treatment, because of the geographical proximity and the economic benefits. Inhorn (2009) refers to the term “stratified reproduction”, which means that accessibility and, more importantly, affordability for ART treatment is reserved for the wealthier segment of the society. Those factors have created a solid foundation for the establishment of a market. Especially after India and Thailand are no longer attractive for foreigners, Mexico has become a good alternative. Due to the existence of price stratigraphy from North to South, there is even a talk about “outsourcing” ART from the North to the cheaper (and unregulated) South (Schurr & Fredrich, 2014: 238). However, as it was seen in the previous transnational surrogacy paradises, it did not take long for the first problems to appear in Mexico.

In the following subchapter the first questions of my research will be examined; the Mexican regulatory tools concerning surrogacy.

6.1. Regulation by law or by ignorance

Each of the 31 federal states and the federal district (Mexico City) has its own constitution and legislature. Beside the Mexican federal act, the civil code is up to the states as well as the court of first instance (Horak, 2002). Family law varies from state to state and, therefore, also the access to ART. In 2012, the first birth certification to a same-sex couple was approved, shortly after homosexual marriage was legalized in some states. But to create more order in the jumble of laws in Mexico, the laws regarding ART and especially surrogacy shall be examined more profoundly. As this would be too extensive for each state, I focus on the national law, civil law of Tabasco and Sinaloa (where surrogacy is permitted) and the Federal District (hereafter known as DF for *Distrito federal*).

6.1.1. Nation wide

Article 3 of the General Health Law (Secretaria de Salud Mexico, 2015) establishes that the regulation of the health control of organs, tissues and cells is a general health matter, exclusively regulated at the federal level.

Consequently, the issuance of norms applicable to health services, specifically ART, is of federal jurisdiction and based on **Article 73 of the Constitution**. It is the responsibility of the General Health Law to establish the basis for its regulation. It is also mentioned that no commercial trade of the above-mentioned body parts is allowed. The access to ART is based on the **right to form a family**,

which is protected by Article 23 of the ICCPR⁴⁸, Article 10 of the ICESCR⁴⁹ and Article 17 of the American Convention on Human Rights (Tamés, 2015: 2016) as well as Article 4 of the Constitution. Even though some aspects of ART are regulated on a national level, surrogacy is understood as a matter of local implication. Like matters of birth certification are also a local duty, surrogacy is subject to the civil code of each state. Nevertheless, there have been attempts on the national level to create a wider legal framework for surrogacy. Eight such initiatives have been launched, all of which were rejected or returned for revision. As already mentioned, there is a pending initiative from the Institutional Revolutionary Party (short PRI for Spanish *Partido Revolucionario Institucional*) launched on the 24th of September 2015 (Romero Celis et al., 2015). The central message from this initiative is the prohibition and sanctioning of surrogacy with 6 to 18 years of prison, whereby there is no detailed explanation if this also applies to the surrogates. The main argument of this initiative consists of the non-recognition of the altruistic intention and entitles it as trafficking in human beings through exploitation of vulnerable women (following the statement from EMFR). Only shortly after, on the 22nd of October 2015, another initiative was launched, also by some members of the PRI, which does not support the idea of prohibition, but calls for a regulation (Díaz Salazar, 2015). They stress the importance of the Article 73 of the Constitution, which states that the Mexican Health Secretary is responsible for licensing the clinics that meet the necessary requirements. Especially for this task a decentralised organ was established from the Health department, named COFEPRIS⁵⁰. Detailed requirements will continue to be a matter of the state's civil codes.

⁴⁸ International Covenant on Civil and Political Rights

⁴⁹ International Covenant on Economic, Social and Cultural Rights

⁵⁰ COFEPRIS= Comisión Federal para la Protección contra Riesgos Sanitarios. In English; The Federal Commission for the Protection against Sanitary Risk. With technical, administrative and operational autonomy, whose mission is to protect the population against sanitary risks, through sanitary regulation, control and promotion.

GESTACIÓN SUBROGADA EN CÓDIGOS CIVILES Y FAMILIARES



Figure 1: Regulation of surrogacy in Mexico in May 2015 (Tamés 2015: 237)

Figure 1 depicts how those regulations looked like in May 2015. As it is illustrated, only five of the 32 states express regulation in their civil code.

Since there is no legislation to document when a mother hands over her “mother right”, no numbers of how many surrogacy cases have already taken place are available. Let us focus on the states which are permissive on the subject.

6.1.2. Civil Code DF

Since the 30th of November 2010, the Federal District has adopted the legislation regulating surrogacy in the state. But since this new regimentation has not been published in the official gazette, the practice is not officially approved. Hernández Ramírez and Santiago Figueroa (2011) have examined the presented articles and have pointed out some inconsistencies. One article states that gestational surrogacy can only be admitted by heterosexual married couple or cohabited partner. This could be unlawful and discriminatory in a state where homosex-

uals have the same legal status, because marriage is allowed. Further, surrogacy must be non-lucrative for the SM. It is the responsibilities of the licensed doctors to provide information and physiological and psychological care. The article that allows the SM to abort until the 12th week is contrary to the signed contract to deliver a living being. The informed and voluntary consent should be certified by an independent notary (Hernández Ramírez & Santiago Figueroa, 2011).

6.1.3. Civil Code Sinaloa

Several articles⁵¹ are dedicated to regulate surrogacy in the family law of the Civil Code of Sinaloa. The requirements for SMs consist; age limits, to have at least one own child, being examined for mental stability and physical health. IPs have to be of opposite sex and residents of Mexico. Informed consent and the validity of the contract are certified by a public notary. As prescribed, Sinaloa abides by the national law of a non-lucrative process for the SMs. However, they have to be informed by the treating doctor of the risks and may press charges against the IPs, if additional costs would arise after improper medical treatment or consequential damages. According to the response from the Registry of the Civil registration of Sinaloa to GIRE, at the end of the year 2013⁵² there have not been any registrations of a birth through surrogacy (Tamés, 2015a: 237).

6.1.4. Civil Code of Tabasco

As already described, in 1997, Article 92 was adopted in the Tabasco Civil Code (Codigo civil, 1997). The conditions appear rather unspecific in comparison to the Civil Codes of DF and Sinaloa. The article only expresses the process of the civil registry and that a certified contract is sufficient to prove the birth-giving woman as a surrogate. With this consent the intended mother gets registered directly in the birth certification. The only exemption is that no restriction on the IP's civil status or sexual orientation has been expressed. Only after the shut-down of transnational, and especially for gay couples, surrogacy in India and Thailand, the "fertility tourism" in Tabasco came under pressure. And so it happened that the first initiative regulating surrogacy in Tabasco was presented in 2013. The conditions were very restrictive: surrogacy was limited to residents of Tabasco only, only heterosexual IPs were allowed and in order to prevent the contractual act of "compensation" a pure altruistic procedure was intended (Madrigal Méndez, 2013). This initiative has been returned to the commission committee to be revised. It passed the Constitution for Human Rights and Equality, where some adjustments have been made (Legislatura Congreso del Estado

⁵¹ Article 282-297 of the Civil Code from 2013 (López Valdez, 2013)

⁵² On my demand to receive current data (22.09.2015) the reply is still outstanding

Tabasco, 2014). One year later, those modifications have been inserted in a new initiative, which has been approved on the 14th of December 2015. This initiative reforms the civil code to a similar dimension as was intended by Madrigal Méndez two years ago. Henceforth, only Mexican citizens will be allowed to use surrogacy, as long they are a married (heterosexual) couple, and the intended mother has to proof her physical impracticability to bear a child. IPs have medical insurance which covers the life of the surrogate, too, and their age is limited from 25 to 40. The secretary of Health will examine the physical and mental ability of the SM (aged from 25 to 35). As soon as those adjustments are public in the new Civil Code, those provisions will in fact become effective, what turned out to be the case the 14 January 2016.

There is only little chance to reverse this process⁵³. However, some problems will remain, also with respect to the recent initiative in Veracruz, where the international surrogacy market might arise anew.

Agencies have been allowed almost free hand in their practical procedures and are hard to handle, since the common response to complex and multicausal problems is to forbid it.

6.2. The picture drawn by the media

Worldwide a different reporting structure can be observed. There are documentaries that show the intimate relationship between the IPs and SMs. Those reportages focus on the long and desperate way from the prospective parents and the selfless mother helping in fulfilling their dream where everybody leaves with positive memories. Other reports depict the emotionally desperate women, abandoned or/and restricted from their freedom restricted. Especially in international surrogacy, the exploitation accusation against the foreign IPs is a recurrent issue. One of the first headlines about fraud and exploitation in Mexico was published in 2014, when the already internationally known agency “Planet Hospital” went bankrupt (Tuckman, 2014). Several dozen clients were betrayed for thousands of dollars, having paid for unfinished services whereby five women were still pregnant. Those women were taken into care by a former manager, who set up a new agency, called “Babies at Home”. Media attention was high, especially after further investigation of “Surrogacy Beyond Borders”. An agency was set up by a former employee of Planet Hospital, who was also the owner of an ova donation agency. Tales of mistreated women, non-payments and bad medical service became public (Del Siglo, 2014). Political discussions often refer to those

⁵³ E.g. the LGBTQ community or/and agencies might raise an objection for discriminatory action

vulnerable women, whereby LGBTQ⁵⁴ movements point to the difficulties the IPs may confront such as not being able to turn back with their baby⁵⁵. More important to the IPs are the stories of women interrupting the embryos growing and absconding with the first pay check (González Placencia, 2015). Also, less debated but mentioned in the media, are the contracts the surrogates are signing. “Surrogacy Beyond Borders”, for instance, has an eight-page contract, which states that the women express the agreement to bear all risks on their own and that makes promises which will ultimately not be fulfilled (Paón, 2015). Seemingly, it is no secret that those “compensations” in the contracts are more a legal necessity, where in fact the surrogates get recruited in the guise of paying a wage. Still the agencies and surrogates hold on to the altruistic motivation.

6.3. Altruism- Making a molehill out of a mountain?

As Pande (2014) already stated, the gift and altruistic intention are individually designed (like the received money as a gift to support the own family). The general understanding of altruism is to be an act of love, often related to kinship. But this rhetoric is not only limited to non-commercial surrogacy, gift giving is also broadly used in international, commercial surrogacy. “The preponderance of such an ideology is meant to imbue the arrangement with some level of sanctity and legitimacy considering its positioning in relation to the commoditization of intimate relationships.” (Majumdar, 2014: 289).

But still, the notion remains persistent, that when it is altruistically, there is no commodified reproductive labour or child, what is paid for. Contreras (2006) also entitles the altruistic way as less vulnerable to be connected with commercial purposes. Nevertheless, the problematic is more about the exploitation of vulnerable women than due to the fact that altruism is just a euphemism for commercial surrogacy.

While most of the debates about altruism and commercialism are often based on ethical arguments, Walker and Van Zyl (2015) seek to expand this problematic to a further area, namely to the right of decision over medical interventions. Who decides in cases of multiple pregnancy or foetal abnormalities? Commercial contracts (like in California) have everything contractually agreed and, legally, the foetus “belongs” to the IPs. However, such treatments directly interfere with the SMs body. Acting contrarily to the contract may lead to a cut of payment and

⁵⁴ Lesbian, Gay, Bisexual, Transgender and Queer. E.g. “Son nuestros hijos” a family association from Spain

⁵⁵ For instance a gay couple from Spain. As the birth giving mother was subscribed as the legal mother and therefor the children didn't obtain passports (Pérez-Stadelmann, 2015)

even a renouncement of the child. The big advantage of altruistic surrogacy is that during the whole pregnancy, the SM has full authorisation over her body (and foetus), yet the IPs can put her under pressure and threaten her with not adopting the child after birth.

6.4. International standards?

As already mentioned in the *Introduction*, there is currently an expert group of The Hague Convention working in this area. Their three step program is initially characterized with an overall information collection. Hence they intend to draw a clear picture of the actor-related problems which arise. In a second step a more detailed expert consultation follows like health or legal professionals. The last step is dedicating an international law comparison, in order to investigate a feasibility of an internationally binding regulation within this diverse private law concerning surrogacy (Hague Conference on Private International Law, 2012). It should be noted that The Hague Convention places the greatest emphasis to an international regulation, a common law which prevents contractual discrepancies to harm any of the involved actors. A more protective role of the actual treatment of the persons might emanate from the WHO. One suggestion is to supervise the fertility clinics and to issue certificates (Ramskold & Posner, 2012).

An even more detailed claim and high validity has the International Labour Organization (ILO), which draws up international labour standards. As already mentioned, the ILO “[...] promotes such values as equality, decent work and good and safe working conditions.” (Brugger, 2012: 694). But Brugger (2012) adds that due to the organizational structure of the ILO it is required that a representative group of surrogates expressing their requests. At the moment this seems rather unlikely, furthermore it is questionable if the ILO is sufficiently qualified to deal with the specific problems of surrogacy and to assist in legal terms.

However it is undeniable that every clarification about an international acceptable regulation or standard implementation allows an easier handling for the private law as well as the courts such cases.

7. Analysis and Interpretation

In the course of data analysis and interpretation a la Mayring (2010), as presented in chapter 4, his four step analysis tool was applied. To code the interviews with the data analysis software MAXQDA helped to classify the data. The additional field notes, which were made of each interviewee, provided some background information of the persons. The two following steps; finding internal logic and filtering quality criterion were a process that lasted over the whole coding process. After sorting data and identifying the stakeholders I tried to give an overview of each of those interest groups, their worries, attitude to regulation, personal involvement and improvement proposals (see chapter 7). The self-conducted interviews were coded in the manner of Strauss and Corbin (1994), see chapter 4. At first glance, it seemed difficult to subsume the various codes of the wide range of positions and attitudes into reasonable umbrella-terms, but finally, some interesting findings developed during the comparison of those terms. In respect of the Grounded Theory, the iterative process was followed by data collection and interpretation. In the following figure 2 the most important codes are depicted.

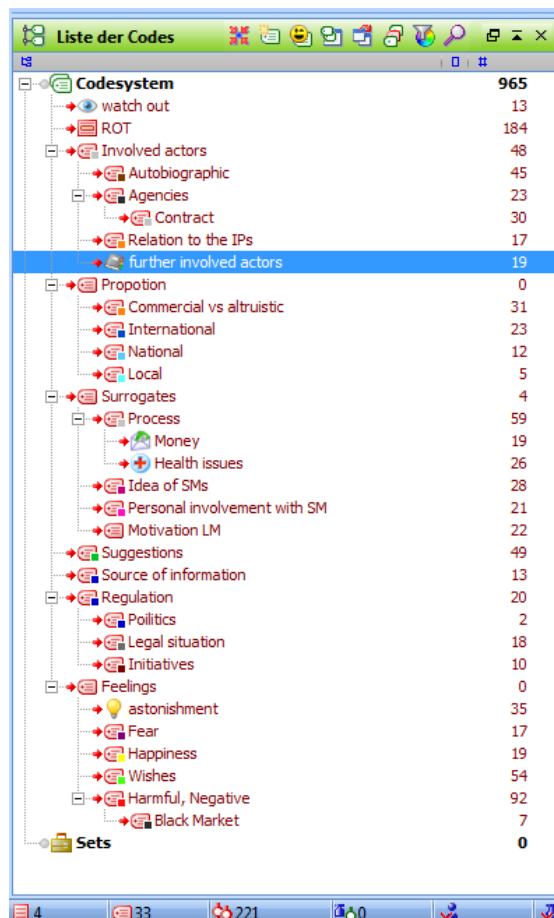


Figure 2: List of codes

The red marker served as an indicator for especially interesting, new or emphasized passages. Even though the transcription of the interviews and the coding-process began immediately after the meetings, field notes and my diary have also proven to be useful. It is out of scope to present every actor in detail, which is why I will mainly focus on the following actors: the politicians, the doctors, the lawyers, the institutions (Health Secretary, Early Institute and GIRE), the IPs and the surrogates. In these first analysis sections, representative quotations of those actors shall be illustrated, divided in case studies. To narrow down and precise this endeavour relating to the research questions, four codes serve as reference points; 1) the attitudes towards the current regulation and 2) everything concerning the agencies, the code, “relation to the surrogates,” depicts 3) what the actors actually know about the daily life and motivation of the surrogates, and the last code, 4) “autobiography/motivation,” reflects the hopes and fears described by surrogates themselves. This last point forms the transition between the identification of the problems and the debate “commercial vs compensated” (chapter 7.2). Those four codes were chosen to point out to missing aspects in the regulation attempts as most improvement suggestions and negative connotations were assigned with those keywords.

7.1. Case studies

What does the current legislation actually do?

“But it is only allowed, there are no further specifications or a good regulation. Hence not every bad consequence resulting from this situation can be foreseen” (Politician_Ida⁵⁶: 6).⁵⁷

This statement can be defined as representative of the common opinion concerning the surrogacy reality in Tabasco. The representative from Early Institute is even more explicit in his statement:

⁵⁶ Individual data protection as well as anonymization of the personal data will be assured by giving pseudonyms to every interviewee

⁵⁷ “Pero solamente esta permitido, ni si quieres está bien reglamentado o regulado. Entonces no preve todas las consecuencias negativas que se están dando a partir de esta situación” (Politician_Ida: 6).

“Unfortunately, the way Tabasco is regulating surrogacy is very weak and unclear. But they don’t point out to the implications, risks or consequences that might arise like: in relation with the legal authority, the custody of children, the alimentations and negotiations, medical services and the diverse claims of paternity and maternity etc” (Early Institute: 6).⁵⁸

Those first two quotes do also represent the underlying idea of the surrogacy opposition, which are pleading for a general ban of surrogacy. There is no doubt that the few articles in Tabasco’s civil code are not sufficient or even lead to arbitrary practices. What is actually meant by the term “arbitrary practices” can be deduced by an agency’s worker (I) and his insider knowledge concerning the birth certification:

“It is not well regulated; there were no protocols on the contracts. There were lies in the hospitals regarding information; there were lies in the civil registration regarding information. This was normal, it was just normal when you asked the people” (Agency_Ricardo: 58).⁵⁹

As a whole, the situation is clear and the claims are going in the same direction, namely a better and more reliable regulation. The already mentioned CareSurrogacy employee used the abortion debate in Mexico as a reference. He refers to the procedure when politicians recognized the need to regulate and legitimate abortion, in order to prevent hundreds of deaths due to clandestine and insecure practices⁶⁰.

Contract is considered important contract between the SM and IP(s); which has to grant some securities for the surrogates, but also for the parents. The interviewed doctors too, are asking for a clear regulation, because they do not want to be involved in illegal practices. Even though the fertility centres have to be certi-

⁵⁸ “Lamentablemente (...) la forma como lo regule el estado de Tabasco, es muy pobre, muy poca, es muy gris. (...) Pero no están señalando de las implicaciones o riesgos o consecuencias que pueden haber con relación a la parte potestad, a la guardia custodia, a los alimentos, a los sesiones, al atención del servicio médico, a la consideración también de la concurrencia de distintas personas de la paternidad, de la maternidad de este niño (...) etc” (Early Institute:6).

⁵⁹ “Hay muchas cosas más, no se tenía bien regulado, no se protocolizaba el contrato, en los hospitales se mentía con la información, en el registro civil se mentía con la información, era una práctica normal y con la gente si tú preguntabas era de lo más normal, tú preguntabas a la gente y era normal” (Agency_Ricardo:58).

⁶⁰ “(...) que se está muriendo mucha gente en México porque el aborto no está regulado en la ciudad de México ¿qué hago? lo voy a regular porque sé que ¿qué pasaba con el aborto en México? se podía realizar 500 abortos en México de manera clandestina y se moría mucha gente y punto y no se iba a reducir el número aunque fuera legal” (Agency_Ricardo: 92).

fied by the health authorities, the requirements only apply to the technological aspect and not to the care duties responsibilities. A representative of the Health Secretary⁶¹ states that:

“But specific questions about the observation and, as I would identify the treat of embryos as such, cannot be verified. The couple should decide their further development (...). So what happens with those persons? There will be some technical questions but also some more related to the involved persons. Also the whole part with the Human Rights should be considered” (Health Secretary: 15).

So not only interpersonal treatment is not highlighted enough in the requirements regarding licensing, but also that some technological aspects are missing in the monitoring process. For instance, there is no information about the right use of the genetic material, whether the right embryo is implanted or what is happening with the surplus genetic material. These are all examples of what the interviewed institutions have in mind when they talk about regulation and the general consensus seems to be that regulations are insufficient. The two prevailing solutions to the weak regulation problematic which stand out are 1) banning the surrogacy practice itself or 2) improving the regulations.

By taking a closer look at the arguments of the “pro-regulation” actors, some kind of snowball effect can be observed. The two agencies represented by Ricardo and Rosa and the lawyer Hugo see the politicians as the main cause of the emergence of non-serious businesses, which damaged the reputation of all agencies. They differentiate themselves from those unfair practices and emphasize that on the long term, only reliable firms would survive. Doctors on the other hand, are more in favour of a better regulation of agency affairs and of the contracts between the SMs and the IPs. Nothing has been said so far of the SM's opinions. It turns out that they do not know or care much about legislation. They get the information from the agency, they sign a short contract (often in English, which they do not understand). The only statement which was given concerns what is missing in the law:

⁶¹ “(...)La ley General de Salud te dice que tiene que tener licencia sanitaria, todos que están en la práctica de salud como actos ginecológicos o ostétricos. En este punto, si todos obtienen licencia. Pero no se puede revisar cuestiones específicas como las cuestiones de la observación o como yo identifico yo efectivamente uno de los embriones por este desarrollo pertenece a una pareja(..). Como consiguen, es de, que hacen de estas personas. unas serían cuestiones de técnicas y otros digamos están más objetivas relacionadas con las personas que están involucradas. Y tambien todo el parte que tendría que ver con los derechos humanos (...)” (Health Secretary: 15).

“Well, the only thing is that they change. (...) They should have a life insurance for the SMs” (SM_Valentina: 96).⁶²

This comes along with the general findings the surrogates are concerned about, and what they suggest to be improved on the process. Questions regarding regulatory measures do not affect them in the same way as the actual attainment and attention of the other actors does. They care about how they are treated by the agency, by the doctors and about the appreciation they get from the IP(s). Only if they are directly affected themselves or hear negative stories from a friend, do they reflect on the lack of insurance, on the forced Caesarean Section or the misleading remuneration information, since they have to pay for some medicaments out of their own pockets.⁶³ However, every SM has expressed the initial concern of what the IPs would be like, if they can take care of the baby and if they will love it. Maybe those thoughts have their source in the fact that the women often do not know for whom they are carrying a child at the beginning. In one case, the SM only met the IPs right after the delivery. So in conclusion, in addition to the financial and working situation claims, the interpersonal contact and appreciation by the IP(s) must not be overlooked. What can be deduced from their suggestions concerning the agency is:

- Full transparency about payment: when they get it, for what, and what is included in the payment and what treatments they have to pay for on their own.
- Life insurance and risk adapted surplus compensation (e.g. for multiple pregnancy)
- Direct and full access to the information about the IP(s) with possibility of making contact without requiring a “detour” through the agency

To come back to the new legislation in Tabasco again, none of those above-mentioned suggestions are treated in any manner. So, regardless of the new

⁶² “Pues lo único que se, es que cambiaron. Por que creo que lo. Tiene que tener un contrato, perdón no un seguro de vida a las madres” (SM_Valentina: 96).

⁶³ “(...) por medio de ayuda sabía de su agencia que la pagaron mucho menos. El le dieron mas que 150 000, y al final solo le dieron 135 000. por que le sacaron una cuenta de 15 000 Pesos que nunca explicaron” (SM_C: 90). “(...) y la niña sabe no es diabética. entonces son cosas que mi molestaron despues saber que el médico me habia dado culpa mí, obviamente para justificar a los padres la falte de profesionalismo que hubo” (SM_C: 64). “Mis dos hijos son partos normales, me asusta el proceso del dolor, la cesárea, de todo eso, hay no” (SM_Frida: 166). “(...) que Madison nos daba los 10.000 pesos y ahí si no me gustó porque en realidad yo no recibí los 150 porque yo agarraba para los medicamentos y tuve menos dinero” (SM_Christa: 273).

regulation in Tabasco which prohibits an international market, GIRE maintains its claim for better regulation. As they already stated before the adoption of the new initiative, this legislation is only a first step to protect the women, even though this will not solve all the problems, because they would have to get active and stand for their right:

“The problem today is that there is no real procedure, no defence because nobody protects you. There are no rights so legislation would be the first step to stop corruption. The civil registry does the things the secure way; they earn money out of every new birth certification. As a consequence legislation would make an example which would be a first step. Law will not solve the problem; I think the agencies should be regulated, right?” (GIRE: 20).⁶⁴

In their argumentation nothing has changed after the international ban. They joined with different civil organisations, promoting human rights and same-sex parenthood, to challenge the new legislation and they called it discriminatory, in the sense of human reproductive rights for same sex couples and singles (Notiese, 2016).

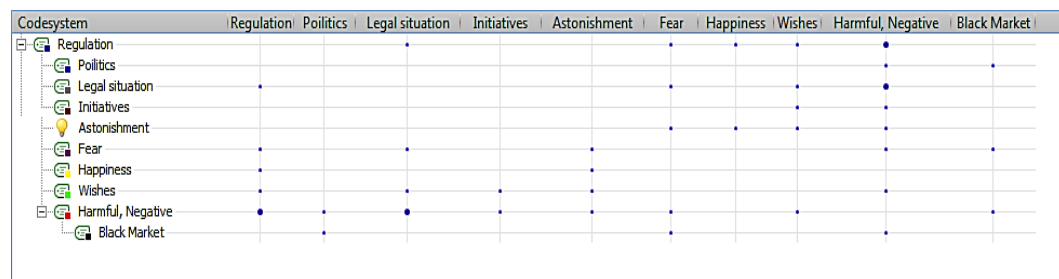


Figure 3: Relation between Regulation and Feelings

When it comes to the term “regulation,” feelings also come into play. Especially negative feelings have the highest overlapping rate when the actors talk about regulation (see figure 3). This figure represents the correlation between the codes concerning “regulation” and the associated emotions that can be observed in sum of all interviewees. What one may see here too, is that the legal situation is also associated with wished. Besides the correlation between “negative feelings” and the “legal situation,” the second code “agencies” has the second high correlation with “negative feelings”. The quote of doctor Leon demonstrates this exemplary;

⁶⁴ “Ahorita la problema es que no tienes ni como, ni como pelearlo por que nadie te protege,. No hay derechos entonces la legislación sería el primer paso y de ahí lograron la implementación en adonde no hay corrupción. El registro civil que hace las cosas como se ven de hacer seguramente ahora ganaron dinero con cada certificado de nacimiento. Entonces con todos los temas la ley es importante es un marco, a tener un marco legal es un primer paso. La ley no va solucionar. yo creo que algo que se tendría que hacer es de regular las agencias, no?” (GIRE: 20).

“Unfortunately we observe the practices of the agencies offering surrogacy, which are many, treating the women like objects” (Doctor_Leon: 14).⁶⁵

Experiences with Agencies

First, it has to be clear that not every actor has had bad experiences with agencies and some statements of harmful treatment are only known by hearsay, for example, the story of Planet Hospital is mentioned repeatedly. There are stories of agencies which do not care about their surrogates, that they give them little information about the IPs, about the process and about the risks. In summary, those bad agencies are often described as being greedy and as treating the women like objects. It has to be mentioned that the interviewed IP (Elma) has done the process in California. Even though Elma knew a story about a bad experience in another agency in California, she still preferred the well organised and legally settled procedure over a Mexican treatment. In the two Facebook groups about surrogacy in Mexico, I was able to peruse their browser history, where recommendations and questions about the process were discussed. Suggestions of direct contact with women and lawyers are mentioned, so that no agency would be required. There were also stories of happiness and joy, IPs posting happy family photos and being grateful with the agency and the SM. But also negative experiences were shared; after problems with birth certification or leaving the country the affected people often cautioned against their agency. However, even after repeated requests, no feedback was received by any of the requested persons; no one was willing to give an interview.

As with the regulation-question, the surrogates have their own position regarding agency-related criticisms. Most discussions are about the money they (are promised) to get. The lack of transparency gets high attention as soon as the final payment does not correlate with the promised amount, or when the surrogates compare the money with other agencies.

⁶⁵ “(...) no es practicar como desafortunadamente vemos como las agencias de maternidad gestante que con números y manejan a las mujeres como objeto” (Doctor_Leon: 14).

Surrogates

“We don’t know if in the end the parents pay us this amount of money, at best they say to themselves; let’s give this girl a little surplus because here it would have been much more expensive. But we don’t know if they do or not, we know nothing” (SM_Christa: 383).⁶⁶

This leads this surrogate to have no longer confidence in agencies;

“I think now there is no agency doing things right, especially in Mexico city, they see the money, they want to have it but do not want to do anything. If the doctor asks less, even better. Right now I don’t trust the agencies. When there is an agency promising me the pie and the sky, I don’t believe them, I already experienced it. I don’t believe them, they often steal from you” (SM_Christa: 433).⁶⁷

But again, one interviewed surrogate was completely satisfied with her experience with the agency, the parents and the money she received. This surrogate could only refer to a colleague, which experienced bad surprises with her agency;

“I helped her so I knew her agency; they paid her much less. They told her 150 000 (pesos) but at the end they only gave her 135 000. They charged her 15 000 they never explained. So they robbed her 15 000 and the IPs left with a bad experience” (SM_Valentina: 90).⁶⁸

Another group which is directly working with the agencies are the hospitals and doctors. Also here, (non) payment plays a major role that worsens the cooperation.

Doctors

⁶⁶ “(...) pero no sabemos nosotros si en realidad nos pagan esa cantidad los papas, a lo mejor por ahorrarse un dinero pues dicen "nos le damos un poquito más a la chica porque está más caro acá y le dan un bono, pero nosotros no sabemos si les dan o no les dan porque no tuvimos contacto, no sabemos nada” (SM_Christa: 383).

⁶⁷ “Creo que ahorita no hay agencia que haga cosas buenas, más aquí en el DF porque vamos, ven dinero y si quieren tener, tener y no quieren hacer las cosas, si el doctor me cobran menos ¿pues mejor me cobran menos, yo ahorita no confío en una agencia, si veo una agencia y me la pintan bonito ya no le creo ya porque vivió, aunque me lo digan pues no creo en eso porque les roban mucho” (SM_Christa: 433).

⁶⁸ “Y por medio de ayuda sabía de su agencia que la pagaron mucho menos. El le dieron más que 150 000, y al final solo le dieron 135 000. Porque le sacaron una cuenta de 15 000 Pesos que nunca explicaron donde fueron. Entonces les arobaron 15 000 Pesos a ella y los padres contratantes se fueron con muy mala experiencia” (SM_Valentina: 90).

Analysis and Interpretation

“Well look, we have a lot of experience. First we worked with every (agency) which wanted to work with us, but then we had a bad experience with Planet Hospital” (Doctor_Ramon: 62).⁶⁹

But two statements of the doctors do also concern the surrogates, and how they get treated by the agency;

“There are agencies which do carry about details with capable people, but there are others which only see the money” (Doctor_Ramon: 198).⁷⁰

“Unfortunately, it is not the practice we see the agencies doing, where a lot are treating the SMs like objects” (Doctor_Manuel: 14).⁷¹

The interviewed institutions and the politician do more refer to the lack of information, underpinning the argument, that those women have a reduced ability to assess the danger of surrogacy;

Surrogacy opponents

“There are agencies trying to persuade women to carry a child. They defraud them and give them little information” (Politician_Ida: 8).⁷²

The representative from Early Institute additionally questions the altruistic intention, especially when the agency inhibits the contact between the solicitors and the SM in order to prevent the parent’s affection for their replacement mother.⁷³

As institutions and politicians receive more media attention, it is not surprising that the interviewed IP had relative negative picture of the Mexican agencies;

“Well, this may sound horrible, but at the time I would recommend it to nobody working with a Mexican agency. Especially when you have the means to do it elsewhere” (IP_Elma: 27).⁷⁴

⁶⁹ “Pues mira hemos tenido muchas experiencias, de entrada trabajábamos con cualquiera que quisiera trabajar pero tuvimos una mala experiencia con Planes Hospital” (Doctor_Ramon: 62).

⁷⁰ “(...) hay algunas agencias que si ponen atención a esos detalles, gente capacitada hay otras que solo ven el dinero” (Doctor_Ramon: 198).

⁷¹ “(...)no es practicar como desafortunadamente vemos como las agencias de maternidad gestante que con números y manejan a las mujeres como objeto” (Doctor_Manuel: 14)

⁷² “Hay agencias que están buscando convencer a mujeres que acepten gestar a un bebe. Les enganan o les dan información a media” (Politician_Ida: 8).

⁷³ “Es más, si no conoce a los solicitantes, por que hay agencias, hay intermediarios que impiden el contacto entre los solicitantes y las gestantes, para evitar que se encarnen” (Early Institute: 18).

⁷⁴ “Bueno, va a sonar horrible, pero yo recomiendo que ahorita no entren en contacto con agencia en Mexico. Osea sobre todo si tienen recursos para ir a otro lado” (IP_Elma: 27).

It is now worthy to examine, where the actors get their information from and how do they know, what is best for the surrogates.

Do you even know a surrogate?

In the first section of this chapter, the need of a clear and fair regulation has been shown. The second part has highlighted the actual problems that arise in the process, while in the third part, the actors have a more sophisticated opinion of how agencies should be improved than the SMs do themselves. Hence it should be questioned where those actors have their information from and what they actually know about the concerned parties that have to be protected.

The politician Ida names some institutions as the main sources of information, namely La Red de Acción Ética Política⁷⁵, the Health Secretary and Early Institute. The Health Secretary is more dedicated to legal and medical questions, such as how much embryos should be transplanted and what happens with the surplus of genetic material? Early Institute investigates exploitative practices, but does not conduct its own research. They obtained information from The National Institute of Perinatology and the famous reporter Luis Pavón, who revealed several stories about corruption, human trafficking and abandoned women and babies. From those mentioned actors, the following picture of the SMs can be produced; they have low education standards, insufficient access to claim right and are in vulnerable economic situations. As a result of missing information those women are said to be not fully aware of the consequences of this practice⁷⁶. Doctors, lawyers and the agencies are more into personal contact and are more concerned with the different requirements the SM must comply, such as physical health, right age, already being mother and being reliable. The decisive factor is always the need of money, which often applies to single mothers. But this “need of money” is a multi-faced concept. In the regulation discussion remains the persistent request that women should not do it out of lucrative intentions. This fine ramification of financial and altruistic intentions leads us to an important section of the analysis: the misleading practice of the words “compensation and altruism”.

⁷⁵ A network of politicians business and social leaders promoting and defending the dignity of every life and enhancing the importance of marriage and family for the future.

⁷⁶ “Todavía no tenemos ni niveles educación ni cobertura en materia de seguridad. Si quieres, desafortunadamente, garantía de ejercicio de derechos plenos. Entoncens, como no tenemos una condición que permita a las mujeres tener conciencia realmente de que significaría esta práctica. Lo que estamos, si se permite, estamos permitiendo que ellas cayan en una situación de trata, de explotación. Y a mi me parece que si necesitamos a buscar que se prohíba en principio” (Politician_Ida: 20).

7.2. Commercial vs compensated surrogacy

The connotation of the term “commercial” is highly infused with the sense of business. Commercialisation and commodification are important requirements for a market. In order to identify surrogacy as a market, there shall shortly follow a repetition of the theoretical approach. In the course of the marketization concept (chapter 2), this work’s excursus into the international surrogacy practice has shown that the requirements and requalification have already been completed to allow a market. The increasing infertility and the economic development all over the world is probable to maintain (if not increasing) the demand for this practice. Medical service and middlemen constructed the idea that motherhood and pregnancy may be considered separately and therefore made pregnancy tangible for the market. To prize such services makes it comparable and accessible for the market like any other work. Those settings belong to the socio-technical arrangement, where values are created for the production of a market. Or as Çalis-kan and Callon (2010: 3) called it *agencements*. But in the context of surrogacy, those *agencements* vary, especially concerning the dualism in the social perception of “work”. The word “wage” is understood to be paid for work. If the SM is paid a wage, then pregnancy is defined to be work so that it can be concluded that the baby is the fabricated outcome of this work. This exaggerated description may indeed lead to negative reactions. The solution has been found to call the act as selfless, and the SM motives as altruistic. But the priceless child is not priceless for anybody. The prospective parents still have to pay for any other involved actors’ service, whereby the “compensated” surrogates get recruited with promises of huge amounts of money (compared to their usual income). In a catholic country like Mexico, the altruistic intention enjoys a higher level of acceptance than paid surrogacy. This assumption does not apply to the reality; surrogates often hide their pregnancy from the environment⁷⁷, in most cases only the close family knows about the surrogacy pregnancy. Often the families do not know exactly what surrogacy means and how it technically done, so at first they are suspicious at the beginning. But the SMs call their family as supportive after they get informed what surrogacy actually means. The main reason not to openly discuss surrogacy is a pervasive fear; people might think the pregnancy took place in a traditional way and that the woman is giving away her proper child. As doctor Lorena explains:

⁷⁷“Lo comenté es según a ver me como una mujer soltera muchas se preguntaron cuándo estuvo embarazada, de dónde venía el hijo, eso es que.. Tuvo la oportunidad de explicarles que, a que se debía que soy embarazada de la subrogación, subieron crítica, subieron mucho es que.. hablaron mucho sobre este tema y para muchas de ellas vinieron como vendedora an un hijo propio” (SM_Valentina: 17).

“No, this is something that is against people’s mentality of this country. There is such a conflict because of the fact that they don’t understand that there is this uterus and there is that uterus of the surrogate, this causes emotional conflicts”

(Doctor_Lorena: 56).⁷⁸

In conclusion, the international demand of surrogacy provoked an agency boom in Mexico. Not all did a proper job, and stories of exploitation have become public. The already vulnerable section of society, like single mothers, has found an opportunity to earn money. To call things as they are; a market with clear working conditions seems not to be acceptable in the context of this highly emotional topic. This is understandable in a highly catholic country, especially when considering that many people assume that the surrogate is giving away her proper child. But practice doesn’t change due to this perception; on the contrary the legal status of those women makes them even more vulnerable

The law stipulates that no lucrative incentive shall be pursued and so the public image features a selfless motivated woman. But there is this big question of the surrogates’ motivation. People ask how such an act can be out of love, if the majority of those SMs do not even know the parents for whom they carry the child. It would now be appropriate letting the surrogates speak for themselves.

Autobiography/motivation

“It was really hard to lose a child. So this program deserves it, if god gave the woman the gift of having children, giving life, I told to myself; you cannot be without children. This was my idea, give it to this family, what I have lost, give them a child. This is why I entered the program and an additional effect was for economic reasons, for the business I run. So they help me, I help them, we help each

other.” (SM_Valentina: 19)⁷⁹

⁷⁸“No, pero es tambien algo que no va tanto por la mentalidad de la gente, del país. Es en tanto conflictivo el hecho de no entender que es tal y tal útero subrogado, causa conflictos emocionales” (Doctor_Lorena: 56)

⁷⁹ “Pero ya hace unos años atras yo tuvo la perdida de un bebé. Entonces si, fue algo muy muy duleroso perder a este hijo. Entonces es que, al ver menecer el programa, si dios dió a la mujer el don de tener hijos, más para dar vida, pues yo me dije que no puedes quedar sin hijos. Mi idea fue darle a esta familia de poder tener que yo he perdido. es tener un hijo. Esto ha fue el motivo de entrar en este programa y una pequeña racha económica por el trabajo que yo empleo. Pues me ayudó, les ayuda y asi nos ayudamos” (SM_Valentina: 19).

This quote is exemplary for many women acting as a surrogate. Undoubtedly, the money plays a key role, but it has been observed this motivation is poorly respected in public. In an informal conversation with a former agency employee, a woman was called “cold blooded” as she entered the process for a fourth time only to get a little luxury. Most women talk with pride about “their” child/ren and how they look now. They often tell about the joy they saw in the eyes of the IPs as they hold their baby/ies after delivery. Still, the financial aspect plays a major role in recruiting the surrogates, but the incentives may differ from the broadly depicted poor single mother. Some were at this time unemployed, some want their children to get better education, some have an ill person in the family which requires expensive medical care and some are just dreaming of an own house or additional financial resources to stay at home with their families. In a further informal conversation, there was some talk about human trafficking and women obliged to stay in a “surrogate house”. There were tales that this kind of housing was not completely perceived as a bad thing by those women, since they were provided with a secure place away from home. However, this would not appear to justify the whole process, but sensitize the reader to consider extensively terms, such as exploitation.

It has to be understood that the debate of surrogacy only focuses on international surrogacy and not the cases where such service is provided by a family member or a friend. It is not surprising that politicians and the media are often reluctant to comment on this paradox. The health secretary commented on this disregard and is concerned that the whole debate is only focusing on social fertility, but does not take into consideration that there are also women with no functional uterus, for whom surrogacy is the last hope of a child⁸⁰

So the old as well as the new legislation in Tabasco prohibit a profit-motivated market. Hence the lawyers highlight the term “compensation,” which is used instead of remuneration. While remuneration is enforceable, compensation is voluntary and intended to cover the cost of the surrogate, when she has to leave work or hire someone to take care of her own children. Early Institute sums the current situation as following:

⁸⁰ Pero a mi me parece a este sospechoso que se urge en este momento, sabes decir. Va más por el tema de la infertilidad relacional. Qué se lo tienen más claro, a que hay pensar que hay mujeres que no tienen un útero funcional” (Health Secretary: 21).

“In a country like Mexico, they say it to be altruistic or for free and they have the cynicism to advertise it in the telephone boxes of the villages, offering payments in turn to a donation. This is a deception, it is a fraud” (Early Institute: 22).⁸¹

Their argument is simple; even though it has to be altruistic, those women do it for money. Consequently, the baby is a product someone can pay for and through this practise the child as well as the mother is deemed nothing more than objects.

GIRE interprets the situation the same way, but in their conclusion, the surrogacy market will last even when it is prohibited, referring to the black market (Schurr & Perler, 2015). GIRE argues that the decision of those women has to be respected. Even though women act as a surrogate because of a lack of opportunities, GIRE states that still no one can decide what is best for her. A better protection could be generated if surrogacy is considered as a form of labour. However, GIRE adds;

“(…) where it is considered as work, done for nine months or more, consisting being pregnant and...I think Mexico is not ready yet for this” (GIRE: 28).⁸²

For the catholic Mexican state, no politician likes to see his/her image tarnished while expressing him/herself to be in favour of commercializing and commodifying women and children. Even though the state has benefits out of this market, which would even be higher, when the women had to pay taxes out of their payment⁸³.

As a doctor mentioned, there is a general fuzzy understanding of what surrogacy really is, so a vast majority of the population is forming their opinion through the media. As already mentioned, Luis Pavón Vasquez was one of the first reporters to detect exploitative cases in Cancún and Tabasco. Especially after the “Planet Hospital” case, foreign reporters⁸⁴ also produced documentaries about the industry in Mexico. Afterwards, further agencies became the focus to be mistreating some of their surrogates, such as CARE Surrogacy Mexico, Surrogacy Beyond Borders and New Life. All of them address a broad, international audience and

⁸¹ “En un país como México dicen que es altruista o gratis, y tienen el cinismo de pegar anuncios en los postes de teléfonos de los pueblos, diciendo que pagan a cambio donativo. Es una simulación, es un fraude de la ley” (Early Institute: 22).

⁸² “Pensar que este es una relación contratual/laboral. Endonde se hacer un trabajo para 9 meses o más, en todo que implique quedar embarazada y que se.. Creo que México no está preparado” (GIRE: 28).

⁸³ Mentioned by the Lawyer_Hugo: 89-91

⁸⁴ See for instance on Youtube; ABC Australia and the British Channel 4.

often operate also in other countries. However, those stories created an image where international agencies drive a shady business on behalf of an often homosexual clientele at the cost of vulnerable Mexican women. Regarding this situation, it is no longer surprising that a vast majority of the population identify the foreign demand as the cause of many problems.

In Spain, too, where surrogacy is forbidden and many IPs come from, the country is split into two camps. One party is pleading for an inherent prohibition of surrogacy, also when it is done abroad. The organization, called “No somos vasijas”

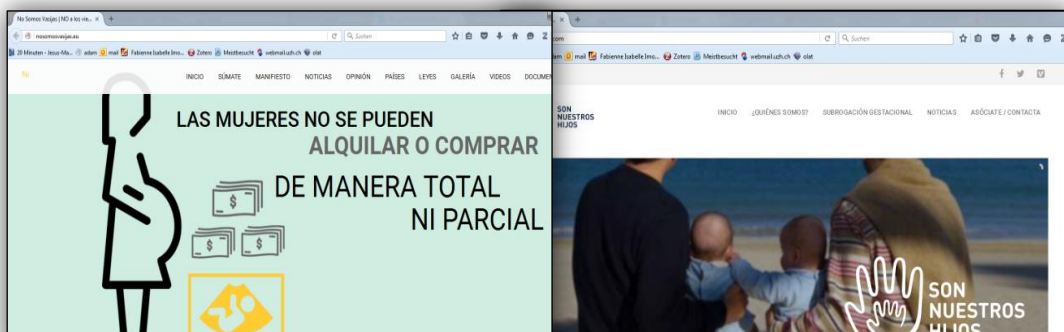


Figure 4: “No somos Vasijas” on the left being against and “Son nuestros hijos” on the right in favour of surrogacy

(engl. *We are not containers*) deny any regulation, calling it a modern way of sexual control. They do not accept the “right and wish to have a child” as an excuse to rent a woman, doing it out of structural inequalities.

On the other hand, the organization “son nuestros hijos” (engl. *These are our children*) are fighting for the right to create a family especially for homosexuals. They make an effort to build the legal base for reproductive rights for everybody, and do plead for a reintroduction of this practice in Spain.

In Mexico, such debates can be followed online. GIRE members post articles on the independent, digital publication *Animal Político* about political subjects (see Feliciano, 2015b; Fulda, 2014; Tamés, 2015a, 2015b). In one entry, the national attempt to ban surrogacy completely, with the politician Ida as one of the supplicants, has been analysed. For instance, a comment was added about the outdated family models those opponents are sticking on. Other vulnerable sections in society should also be considered like the LGBTQ community and, finally, the dispute of the argumentation of “protecting” those women, when at the same time the anti-abortion movement is causing a much greater harm to many more women (Feliciano, 2015a).

In this chapter, the various aspects relating to surrogacy have been considered, with the knowledge that there are many more. The idea was to demonstrate and to increase the awareness of the complexity of this issue. The cultural conditions and regulation attempts have to be understood beforehand, in order to present and international method of resolution from the perspective of an outsider.

As GIRE stated, the current legislation does not prevent from exploitation. Hence I present the derivation, suggestion and justification for the implementation of ethical standards à la Fairtrade in the next chapter.

7.3. To label what cannot be regulated

It can take years until a proper regulation is established. As long as there is no federal legislation, the different states may change their legislation at any time. The international surrogacy market was shut down in Tabasco, but might arise again in Veracruz.

Until now, federal initiatives tempted to regulate access, to ensure physiological and psychological health of the surrogate and maintained the strict specification to be non-lucrative (for the SMs). The hesitation as to which of the two labels is adequate; compensation or remuneration, what counts at the end is the SMs get a higher income as they usually do. The legal situation has a clear division of tasks, so any further regulation is up to the states or has to be determined at national level.

As a first step at the national level there is a need to have an overview of all the clinics which offer such treatments, to evaluate and re-evaluate them while licensing them. The Mexican COFEPRIS department is responsible to check the medical and technical preconditions but has no influence on the treatment the clients receive. Seemingly, efforts are already made to give more attention to the licensing mechanism, but, at the same time, there is a lack of knowledge how many clinics are actually offering such treatments to surrogates. In view of the circumstances of these various improvement strategies, three possible intervention possibilities remain, in order to actually improve the situation of the surrogates: Protection from the ILO, WHO and The Hague Convention, or a label implementation à la Fairtrade. ILO is difficult to transfer, because surrogacy is not work in the Mexican context and WHO standards are not binding and not enforceable. Hence a label with internationally recognized standards might help the current situation as soon as an efficient national handling becomes established.

The prohibition concept follows a similar guideline as international standards; while prohibiting surrogacy on a national level, the vulnerable and insecure situa-

tion of many women (and also men) could be improved in Mexico. But as long as the alternatives would be less attractive and corruption persists, it is highly probable that surrogacy finds its way to the market. This is not just an assumption. As Doctor Luis admits that “That’s the way it is, you will notice (that there are non-registered clinics)” (Doctor_Luis (246)⁸⁵. Similar information about agencies already reached the politician Ida⁸⁶ (16), who admits having heard of clandestine cases in Michoacán, Guerrero and Tabasco.

Implementing standards and labelling the agencies does not prevent from such dubious practices, but fosters the perceptibility for the suppliants. IP(s) were highly depending on word to mouth advertising until now. Usually, they gather information in forums, surrogacy meetups or Facebook groups about which agency, lawyer or clinic is reliable. Still, people give advice on the basis of their own experiences, often little is known about the life of the SM, and how much they get paid. Internet researches have been proved useful responding effectively to this problem. “Surrogacyadviser.com” is a rating and review platform, where members of the NGO “Man having babies” rate the agencies and clinics they worked with. This platform focuses on the US market and some firms abroad, but none in Mexico, which would certainly be helpful.

A consumer driven “ethical surrogacy” would be focusing on the demand side. In my interviews this alternative is almost never taken into account. There is a preference for many to solve the problematic internally. The new regulation in Tabasco does not tackle the problem at source, because it does not say anything about the actual working condition. International regulations as well would take its

time and, furthermore, recognition and implementation of such instructions are two different things. Having the surrogates under the protection of the ILO is more of a theoretical approach. It could improve an international consensus of the workers’ rights, but is very limited in its practice, due to the legal differences and recognition, especially in countries like Mexico, where surrogacy is not seen as work (Brugger, 2012).

This lack of transferability of working rights in Mexico is the reason why a comparison of the Californian way to handle surrogacy to Mexico is not possible. The interviewed IP was highly in favour of the Californian option, because every-

⁸⁵ “Así es y lo van a encontrar (...)” (Doctor_Luis: 246).

⁸⁶ “A que se puede diseñar un mecanismo para denunciar si se sucede clandestinamente como nos, ahora también me llegan información, me dicen que Michoacán, que en el estado de México, que en Guerrero además en Tabasco está sucediendo” (Politician_Ida: 16).

thing is well regulated and everything settled in the contract. But not only the difference of the legal and judicial system bar the way of comparison, also the legal status of the practice – namely to be considered as work – makes a comparison difficult. However, even in California the handling is still evolving and equally cause of concerns about the entire method. It is ethically questionable who has the right over a child, also as long as it is carried out. In California the IP(s) are the legal parent(s) as soon as it is alive, namely in the third month of pregnancy. Who decides whether an additional or ill embryo should be aborted? If the IP(s) will only have the means to bring up one child, should multiple fecundated eggs still be implanted? Should a gender selection be possible? Those and many more concerns even arise in an environment where apparently everything seems clearly regulated (Goldberg, 2016). Hence it has been observed that the Mexican government takes European countries more often as a reference through emphasizing that a majority is prohibiting surrogacy in order to protect vulnerable women. Additionally, Thailand and India give a perfect example of how an international market is not a desirable objective. At the same time, in the interview with Early Institute, it could not have been expressed more clearly that European countries like Germany or Switzerland cannot be compared to Mexico⁸⁷

“While you are thinking of an aging society with a low birth rate (...) and providing incentives for people to have children (...) our country [Mexico], our authorities are different, the topic of reproduction and frauds are factors I invite you to consider” (Early Institute: 35).

This quote stresses the need to overcome our own ideas of a reliable state with established effective structural mechanisms. The lack of judicial force in a market with a lot of blank spots serves as a last argument for me to consider “ethical surrogacy” the standard of an opportunity.

This chapter was meant to sum up again the different solution approaches and their limited means considering an improvement of the surrogacy situation in Mexico. Against the Grounded Theory, there was already an initial incentive to

⁸⁷ “Entonces mientras ustedes pueden estar pensando en una poblacion se hace vieja, en un tasa de natalidad pobre, en una tasa de reposicion negativa, en crear en "cheques" en crear institivos para que las parejas tengan hijos, y que tengan problemas por que no saben que hacer con el dinero (...) En nuestro país la realidad es realmente distinta. Nuestras autoridades también son distintas, el tema de reproducción y de simulación, y de fraude a la ley también es un factor que les invitaria a considerar. No estamos trabajando con las autoridades, con las leyes, y los ciudadanos de Alemania, esto es México. It's quite different” (Early Institute: 32).

see a Fair Trade analogy as the solution. Several situations forced me to modify this approach. The field experience on the basis of the iterative process of data collection and interpretation showed a much wider panorama of the different tools being available. Ethical surrogacy standards can be a positive asset to the national efforts to prevent exploitation.

7.3.1. Suggestions for "Ethical Surrogacy standards"

In this chapter, I present some possible spheres of action, where "ethical surrogacy" standards could close the improvement gap that exists in the surrogacy market in Mexico at the moment. Those suggestions cannot be seen separately from national regulation, because some prerequisites must be met: the state has to be aware of the exact amount of actors involved, agencies and fertility clinics have to be registered and approved by the Health Department. In the Mexican legislation, the further detailed rules are supplied by the federal states. The measures affect three areas: the legal, the technical and the practical sector. In table 2 I sum up every request that was made by the interviewees. As they did not mention international standards I submit some proposals in the last, the practical part. The last two columns illustrate if the requests can be achieved through national authorities and regulation or/and an international standard, such as an "ethical surrogacy" label.

This subdivision can be observed in a similar way with Casey Humbyrd (2009). Except that she sees the Fairtrade's principles as an opportunity to have influence on a fair payment, which cannot be transferred to the Mexican legal background. Two further implementation opportunities she sees in the accountability like transparency of financial transferences and health working conditions.

Analysis and Interpretation

Table 2: Collation of imposed requirements

	Requirements	Law	Label
Legal	Agencies and clinics have to be registered and licensed by the Health department. Verification is performed regularly; otherwise the licence can be withdrawn automatically.	✓	
	A standardized procedure and transparent parentage transference protect the legal statuses of the child so it does not become stateless.	✓	
	Free and informed consent of the SM is only valid when approved by an autonomous notary.	✓	
	It is generally agreed and transparent what is labelled as compensation	✓	
	- The birth giving mother has to be registered in confidential documents	✓	✓
Medical	Medical and mental care is provided during and after delivery.	✓	
	Surrogacy shall be performed three times at maximum by the SM.	✓	
	No more embryos shall be implanted as the IPs are capable to take responsibility for but not more than 3 (high risk pregnancy).	✓	✓
	- Only gestational surrogacy shall be allowed	✓	✓
Practical	- The contract includes statements like:		
	- IP(s) and SM have to make contact before signing a contract.		✓
	The IP(s) can pay life insurance for the women and the baby/ies.		
	The IP(s) can prove the birth certification accountability in their home state.	✓	✓
	- How often do the parties want to be in contact.	✓	✓
	- Both parties agree on the further process when abnormalities and/or illness is detected on the child, or when the pregnancy puts the woman's life in danger		✓
	The surrogate decides how to live during pregnancy (at home, in a house).		✓
	- The surrogate decides how to carry out delivery (natural or caesarean) as long as there is no medical need.	✓	✓
Raising awareness of this topic, what it is, how it works, what is legal and what the rights are (e.g. NGO, NPO, state etc.).	✓	✓	

Those suggestions of table 2 shall now be examined step by step.

Legal steps

When we talk about national forms of regulation, we have to understand the regulatory background. Having the clinics and agencies licensed by the health department also implies having a clear view of the situation. According to the health secretary, it is not that easy to obtain an entire list of all the operating clinics. The state would have to allocate additional funding to improve supervision. But not every clinic offering IVF treatments works with an agency, or deals with surrogates. When the fact that it is a surrogacy process is concealed from the clinics, why should those women be treated differently and be asked for their consent? Because for the clinics there is no difference between the treatment of a surrogate mother or any other woman. To expand this licence system to the agencies would be aggravated by the fact that some agencies operate internationally and do not have their headquarters in Mexico. Such internationally working agencies can escape effectively any state control.

Furthermore, agencies could circumvent a reporting obligation by offering their mediation work on internet platforms. An easier first step to develop regulatory measures would be a uniform and transparent procedure of birth certification. Such a standardized practice would prevent cases, in which the baby/ies is/are legally not allowed to leave the country.

In case there is no agency involved, and the IP(s) do address the clinic directly, contracts have to be presupposed by the clinics. A state notary, or an attorney⁸⁸, attests the free and informed consent of the surrogate and that there has been a physical and mental verification of the women's health. Additionally, the treatment should only be started when the costs are covered for medical and psychological supervision during and after birth (some further clarification about how long after birth is still needed). This suggestion has the same problem as the licencing proposal. If it is neglected that it is a surrogacy arrangement, or no agency is involved, no such consent may be available.

Regulation of the contract is more difficult, because of the various actors involved. The state could transfer more responsibility to the clinics while obligating them to examine the validity of the contract; this could be done when the free consent of the SM is certified by an impartial notary. Such a notary might be provided by the state or an NGO. A further point concerning the contract is the clear explanation of the term "compensation". A list of what shall be remunerated or not provides clarity to the parties and limits the practice of the agencies to recruit

⁸⁸ Provided for instance from an international „Ethical Surrogacy“, or a national NPO, or by the state.

women by promising them large earnings. However, transferring those “promised wage costs” to the consumer is pretty easy for the agencies, as they control the cash flow between the IPs and the SM.

A further suggestion that would be straightforward to implement is the registration of the surrogates. Their personal details would remain confidential, but in this way the Mexican legislation provides the child's the right to know its parentage to the mother. Furthermore, a registration would prevent women from doing surrogacy more than the legally permitted cycles and protect their health. Such measure could be interpreted as pretty patriarchal, as the state does not believe that those women are able to decide how often they want to undergo such cycle.

Medical steps

The main reason for such an upper limit of surrogacy cycles is to determine the health and safety of the women. A limitation of two times would even be better, since many births are Caesarean sections, particularly in the case of multiple babies. There should also be a limitation of implemented embryos. Clinics shall no longer be allowed to implement more than three embryos. For the agencies this means they can no longer give a one hundred percent guarantee (see Ehrensperger) of success through instructing the clinics to implement more embryos, in order to then withdraw the surplus implanted embryos.

Agencies advertise the mental and physiological health of their surrogates, but what about the credibility of such a certification when the doctor and the agencies are working together? Furthermore, such an attestation does not say anything about the healthiness during and after delivery, especially mental care gets neglected. The same is true for the notary: the state or an NGO might provide an impartial psychologist during the whole pregnancy, and if needed also after delivery.

In table 2, the last technical suggestion is written in italics. This request came from the health department declaring it would be legally easier if only gestational surrogacy was allowed. But on a national level this would also mean that partial surrogacy, such as family stand-ins or among friends, would be illegal. Some people want a relative to do it, in order to have a certain degree of kinship or because of non-affordability of a donor. Furthermore, Pande (2014) adds that the negative side effects are bigger with gestational surrogacy, because more hormones are needed than with traditional surrogacy.

Looking at these suggestions at the legal and medical level, it becomes clear that most of those proposals can be achieved through national legislation. Only some treatments such as the legal and medical support could also be made available

by an NGO, e.g. Fairtrade. In the last level of proposals, there will be more application area for an NGO, whereas the direct influence of legislation decreases.

Practical steps

Some measures have to be contractually bound in order to improve the actual working condition and to fulfil the suggestions of the surrogates themselves. So first, the IPs as well as the SMs have to build their own profile before entering the process, with all the requests they have on this practice. This would also lead to a higher conformity between the actors. For instance, the surrogate declares whether she is willing to have an embryo reduction, if this would not be necessary medically. Furthermore, she may state how she wants to give birth (naturally or through Caesarean). The surrogate should be able to decide by herself if she wants to live at home during pregnancy or if she prefers to live in a surrogacy house, as long as she respects the examination appointments. Both parties declare how often they would like to be in contact, also after delivery, and of whether contact is desired at all, so profiles with the highest conformity would match.

When two parties do agree on those preconditions they have to meet before signing the contract. The IPs have to approve the accountability of birth certification in their home state. On the financial side, an obligatory life insurance for the surrogate as well as for the babies should be established. An additional point would be that the IPs can provide proof of their liquidity before entering the whole process, or even better, a life insurance for the SM.

Especially this last suggestion opens up the discussion on the efficiency of such standard implementations. While the greatest impediment to the adoption of the legal and medical proposals would be the missing of a reliable and assertive state. The practical suggestions are more probable to fail, because of economic reasons result in? reduced competitiveness compared to agencies with no restriction. In the next chapter the implications of those suggestions will be analysed.

7.3.2. Limits to competition

On the one hand, suggestions such as proving accountability in home country, assuring financial liquidity and limited embryo implantation do protect the surrogates. On the other hand, such incentives do restrict the accessibility for the IP(s) while diminishing attractiveness of the agency. Costs may increase due to the obligatory life insurance and the possible increase of IVF cycles, as only a limited amount of embryos shall be implanted. Since the Mexican surrogacy market is characterized by financial advantages, such price increases may cause a re-

duced demand. Such worries about financial losses may influence the agencies. It is a common practice for labelling standards that the concerned parties have to apply to get certified themselves, hence, there needs to be an incentive for the agencies to do so. Even though an NGO might not increase the costs, or the state is financially supportive of such interventions, some further “ethical surrogacy” suggestions might be discouraging the IPs. For instance, the need to prove the legal acceptance in the home country could influence IPs decision to go rather somewhere else. As already mentioned in chapter 4.2. *Legislative restrictions*, the acceptance of a surrogate child differs from country to country. Often, recognition is granted only by higher courts in the best interest of the child. But what happens if the state’s consent has to be obtained in prior manner? Countries which prohibit surrogacy would not allow it and, therefore, the only chance to get away with it, is to do surrogacy with an agency without such requirements.

Another critical point in these standard suggestions is the so-called free will of the surrogate. Women working with “ethical” agencies operate in direct competition with surrogates from “normal” agencies. While creating their profile and giving restrictions in what she is willed to accept or not, it is probable she will not be selected. It became clear that many surrogates would prefer giving natural birth, but especially for international clientele a Caesarean birth improves the time schedule.

In sum, the implementation of a standard is not just an ethical question, it would still be reliable on some regulation basis of the state. The advantages must outweigh the potential risks for an agency to consider applying for such a label. Maybe international pressure could be supportive for such a labelling, as previous examples have shown that the market got forbidden due to ethical debates. To put it as a national obligation, (allowing licensed agencies only) can be an option. It can be assumed that agencies which have done a proper job so far might benefit from such a label. On the one hand, no significant additional expenses would arise, as the additional doctor attestation and notary are provided by an NGO (which procure their money from subsidies of the state or the agencies). On the other hand, they may stand out from other agencies which do a bad job and, therefore, are no longer put under general suspicion.

Some suggestions can only be implemented when there is an international consent of the legal status of those children born through surrogacy. Such legal framework may be proposed by The Hague Convention. Having a legal basis

means that the IP(s) are no longer required to agree to dubious deals with agencies/lawyers/doctors in hope that the child will be recognized by the home state.

In the next chapter I want to refer back to my research questions about the current regulation status.

7.4. Questions and answers

As formulated in chapter 1.2., my aim was to investigate how surrogacy is currently regulated in Mexico.

Regulation

- How is the transnational market for surrogacy regulated in Mexico?
- What kind of regulations are currently postulated and by whom?
- In analogy of creating fair markets for goods, how can this be implemented for the service of bearing a child in Mexico?

I would like to start answering the third question, about making surrogacy accessible for the market and then how it gets implemented into the Mexican culture. At the first place, caring for a child has to be made tradeable. Regarding the marketization theory, such process of qualification and requalification was discussed in chapter 2. The question is how things and services got in the area of the market. The influence of Commodification of bodies, contracts and medical practices have high responsibility in this particular case how surrogacy became marketable. Additionally with the so-called socio-technical agencements, markets can be viewed from the performativity approach. Those STAs describe human beings, objects and socio-technical tools and build consecutive constructions of the market. This approach is also applicable to the international surrogacy context. The mentioned "making surrogacy tradeable" is depending on the separation of multiple capacities, such as conception and reproduction. But with surrogacy, reproduction has to be understood differently; surrogacy implies a separation of the surrogate and her uterus. Furthermore we can observe a financial reproduction, such as the transition from the IP(s) to the SM. This constellation of commodified bodies and financial flow gives this process the character of an ordinary market with a supply and a demand side. Nothing new, Mexico has ong benefited from medicl tourism, mainly from the USA. This is highly related with the structural adjustment programs and the biopolitic of Mexico. The racist biopolitics of Mexico shifted to a stratified and also racist bioeconomy driven by the access to ART.

Ehrensperger (2015) called pricing a market device, by serving to make the different medical and “working” steps tangible. But in the Mexican context, such pricing and separation of emotional and physical work is hindered by the altruistic requisite. Legislation forbids economic interests and, therefore, only an emotional interest is tolerated. The agencies find themselves caught between the legal framework of non-payment for the surrogates and the monetary incentives they promise the surrogates. But regulation through the nation state is weak in the neoliberal and corrupt⁸⁹ Mexican state. Nonetheless, this leads me to the first regulation question, namely how Mexico is actually regulating international surrogacy.

During my stay in Mexico, it emerged that the national regulation attempts are in high movement. It is highly simplified when Mexico is only said to have little regulation on surrogacy because it does not relate on the ongoing debates, which is very much there. On the political level much happened after the international surrogacy boom when the market in India and Thailand got closed for foreigners. It became clear that the poor initial legislation of Tabasco did not only attract an international demand, but also allowed great freedom in the implementation of those few prerequisites. A contract, by which the surrogate cedes her rights as a mother, was sufficient to put the name(s) of the intended parent(s) on the birth certification. Besides, the process has to be altruistic (for the surrogate). Already in 2013 there was an initiative aiming to halt the international market, motivated by the bankruptcy case of Planet Hospital. Only after several problematic cases occurred, as described in chapter 6.2., the political pressure outweighed the discriminatory request of the initiative. The problematic cases were linked with the international market in Tabasco (and the fertility centers in Cancún), whereas the state of Sinaloa did not cause any problems. Their legislation served also as a basis for the initiative in Tabasco, namely to restrict access only to Mexican citizens and married, heterosexual couples. Even though some organizations did unite to challenge this legislation – namely accusing it of discrimination –, this initiative was finally published, and, therefore, entered into vigor on January 14, 2016. But, as already mentioned, those organizations continue to declare this legislation as void. Another aspect considers the possibility for any other state, than Tabasco, to change their legislation about surrogacy in order to obtain an international market for themselves. Considering the pressure of the agencies as

⁸⁹ Early Insite: 16

well as the fertility centers, this possibility should not be forgotten, and such plans could already be observed in the state of Veracruz (cf. Topete, 2015).

Those adjustments on the civil code this year in Tabasco did not cause the implementation of a national legislation or ban of surrogacy. Until now, the regulation of ART access is up to the federal level of Mexico, but surrogacy in particular is a matter of the birth registration process. Any further specific regulation is subordinated to the civil law of the regions. There have been many attempts to create a comprehensive regulation of ART. There are the more traditionally-oriented politicians, pleading for the traditional picture of a family who are very restrictive with regard to the issue of embryo surplus. Other politicians claim that reproduction is part of Humans Rights, and that no one can be excluded from these techniques and that scientific research and shock freezing surplus embryos should be allowed. But there is still no general agreement and so it may be difficult to put surrogacy as a subject to ART regulation. But as soon as there is a general agreement, especially the more technical questions of surrogacy may be regulated by the state. For instance, considering the access to such treatment, the maximum of embryos that the fertility clinics may implement and what should happen with the surplus of embryos. It would also be helpful for the states if there were a national agreement about what is considered as compensation and what would be an illegal payment. Yet, there are still initiatives which plead for a national ban of surrogacy. In this regard some politicians launched a counter-initiative that pleads for a better regulation rather than a national ban, because a ban would also criminalize women doing surrogacy for a relative or a friend. Furthermore, this possibility would not apply to homosexuals and women with no (functioning) uterus. In Mexico, where being a mother is of vital importance, such a method is much more likely to be accepted.

In the first part of this subchapter, the regulation attempts in Mexico were summarized. In what follows, I consider the international regulation to complete the list of possible suggestions that may limit the exploitative potential of the surrogacy market.

Mexico does not stand alone with the unsatisfactory legal situation. Whether done commercially or altruistically, international surrogacy agreements are not always recognized by every state, especially when surrogacy is prohibited in all forms. Often such juridical disputes are primarily to the detriment of the children. The Hague did recognize the judicial problem and addresses this issue in form of an expert group working on solutions. They investigate the validity and application of the international adoption conventions to surrogacy. The proposal failed as

any payment in the adoption process is void and, therefore, countries or states where commercial surrogacy is allowed would not fall under the convention. This is not likely to happen, especially as The Hague Convention can be agreed on but not be enforced. Hence, The Hague convention did establish an expert working group that will present their suggestions of an international surrogacy legal framework this spring.

Hypothesis

- I claim that regulations on the national level are at slow pace or even insufficient, and that those regulations do not attack the root of the problem, or more precisely, that agencies are not incorporated in their practices.
- Standards might build bridges to overcome those disparities, in order to improve the specific working condition of surrogates and create more transparency in transnational surrogacy arrangements.

As discussed before, the establishment and acceptance of a new/additional **regulation** in Tabasco took about three years. It is still possible that this new legislation can be contested on the basis of discriminatory approaches. On the national level, some dissent about ART regulation still exists. So far, surrogacy has not been a matter for the national Government

As demonstrated in chapter 6.1., the local initiatives mostly intend to regulate the access to surrogacy. They tackle the problem through limiting access, and this often means excluding foreigners and homosexuals. Furthermore, most initiatives seek to incorporate the national law of non-lucrative intention in their legislations. None of the initiatives details how this can be achieved. On the national level, there was an initiative that demanded punishment for an offence. Resulting that the SMs themselves could also be criminalized. This initiative got returned to revision. As discussed in chapter 7 and 7.1., on the part of the surrogates, the agencies are mainly responsible for negative experiences. There are tales of missing money, non-providing medical treatment (during and after birth), forced moving away from home or caesarean birth, restricted contact with the IPs. But also non-lasting appreciation by the IPs or being condemned by the environment as an uncaring mother, provoked unsatisfactory situations for the SMs.

Regarding the concerns of the IPs and doctors and lawyers, the legal situation is the main problem. Not only that problems may arise with birth certification, but also that the poor regulation does not prevent unserious agencies to build up

their business. In sum, none of the launched and the adopted initiatives deals with this subject in detail. A first and effective step would be to have a national agreement on what is called compensation and what payment.

An essential precondition to test the feasibility of an “ethical surrogacy” label implementation could not have been demonstrated. Unfortunately, the demand side – the IPs – were not willing to give any statement about this. Furthermore, it may be challenging to prove whether the reporting requirement, such as not paying the SM, has been fulfilled. The proportionally small budget reserved for the surrogate, in comparison with the total cost, can easily be set off in the financial reporting. In addition, such verification is hard to do with international companies, which do not pay taxes in Mexico.

Referring to table 2 at the beginning of chapter 7, the suggestions and possible improvements concerning the agencies are mostly reachable through a **label**. Some points concerning the contract, like the obligatory life insurance for the unborn child and the surrogate as well as the legal and financial hedges of the IPs can be regulated by a label. The supervision of this practice would still impose a major problem because a) such a supervising entity would first have to be established, knowing each individual firm offering mediation tasks and b) regarding the current situation in Mexico, especially concerning medical affairs, equality and other fundamental debates, e.g. about abortion, put surrogacy in a lower priority. Until national legal frameworks are established, the international ethical surrogacy approach could in the meantime improve the working conditions of the affected women, who agree to this uncertain economic environment in order to escape an even worse economic situation.

As the analogy of Fairtrade in chapter 3.2. has shown, the main impact of a standard or a label can be seen in the transparency of the surrogacy process. In addition to the growth of self-determination, these two elements (higher transparency and free self-determination) are compelling reasons to consider ethical surrogacy standards as a promising approach. From a geographical perspective, such labels always try to challenge spatial and cultural borders. From an economic point of view, such standards point to the unsatisfactory perception of a simple monetary exchange. When big disparities in payment, working conditions and provisions are apparent (as it usually is with international markets), standards serve as a tool to minimize such stratifications. But how would this actually work? An international standard has to cover the central aspects in an international context and not only in Mexico. As international surrogacy faces diverse problems that depend on the legal framework, such standards have to cover a

broad range of problems. For Mexico, the most important elements have been mentioned above, namely full transparency (full information for every actor about risks and rights and the unhindered access to contact information and cash flow) and self-determination (giving the SM the possibility to choose her way to go through pregnancy and what she accepts as conditions with the IPs). The surrogate mother may declare in her profile whether sexual orientations of the IP matter, how often she wishes to have contact, how much cycles she is willing to pass, if she is willing to abort even when her life is not in danger etc.

Linking back to the Mexican international surrogacy market, I have to emphasize the missing information about the IP's response to such a label. And the consumer's interest is essential in the implementation of such standards. Unfortunately, all contacted IPs were not willing to comment on my questions. In an informal interview with another researcher of this topic, the view was expressed that at the end everything what counts for the IP is to get their child and that they may afford it. In her opinion there is little interest of the IP(s) in the situation of the SM. I want to refer here, however, to the examples of the interviewed SMs who talked with affection about their IPs and their role in caring about her.

But as with every other well-intentioned label product, **limits and risks** are linked with it.

Referring to the Californian context, where commercial surrogacy is allowed, many of those mentioned points are regulated in the working contract, but this alone does not solve every problem. In California, there is an increased disagreement on the validity of such a contract (cf. Goldberg, 2016). Who has the right to allow invasive treatment, when the child legally belongs to the IP(s) but the uterus/the body belongs to the surrogate? There is a more fundamental doubt whether a person can sign a contract about the management of her own behavior and body before this situation occurs. That means, when an SM signs that she will allow abortion, but then denies this process; can she be forced to do it? Can the IP(s) withdraw from the contract? Who will be the legal parents of the child? What if the IP(s) cannot take care and/or afford multiple children? This brings me to the next important legal step, namely to guarantee the recognition of the home state and existing liquidity of the IPs. International standards could improve the image of the surrogacy market and, therefore, promote an international agreement on the recognition of "ethical" surrogacy babies. Liquidity would prevent cases where embryo reduction or abortion is undertaken due to financial reasons. This point is critical, because even if the maximum of desired embryos get implanted, further cell division can occur. In this thesis, I did not focus only on ethi-

cal concerns, even though this topic is of great potential. For this last remark on ethical surrogacy standards I want shortly summarize some ethical implications.

When talking about a maximum amount of implemented embryos and higher successful rates due to hormones, multiple pregnancies do occur with higher proportion, should the IP still be allowed to reduce a healthy embryo? Is a legally-determined intended mother to be weighed as more important as the genetic or gestational mother? Does an international label have the right to decide what is best for the SM or the child? Does an international label not disguise the ethical debate, by calling the process ethical?

Besides all ethical concerns, the practical question remains, whether agencies are interested in getting such a label. Of course the credibility of such an institution would be increased if applied in all countries where surrogacy is allowed, but as long as there remain countries which do not want to recognize a child out of this process, the most vulnerable actor in this process will still not be protected.

In the next chapter, I would like to summarize my work and give a brief outlook. At the end, I will give my personal reflexion and position regarding international surrogacy in the Mexican context.

8. Conclusion and outlook

With its regulation, Tabasco enabled the establishment of an international surrogacy market. The regulation not only allows foreigners to enter this process, it also gives homosexual couples and singles access to this possibility. Even though this legislation exists since 1997, the market is booming since the Indian restriction to married heterosexual couples in 2012. When it became known that India also wants to ban international surrogacy (which was actually the case in 2015 as well as for Thailand), Mexico represented an excellent alternative with its privatized and comparatively cheap medical system. The combination of the legal opportunities with the existing modern medical technologies in attractive locations, such as Mexico City and Cancún, have created the basis for an international surrogacy market. The cost-effectivity made such process affordable for the middle class of Western countries. In order to supply the increased demand, the agencies were dependent on recruiting more surrogates. They advertised openly with monetary incentives and motivate their surrogates to facilitate contact with possibly interested friends. Because of the legal bases of non-lucrative intentions, the agencies call such incentives “compensations”. This does not encompass any legal obligations, so the SM has no possibility to claim her promised concessions, as she is legally not entitled to receive it. The poor legislation has left much room for the agencies and clinics and it is therefore not surprising that shady providers were also attracted to enter the market. Nationally, as well as locally, politicians recognized the need to improve the legal situation.

My initial attempt to focus only on the “ethical standard” applicability was rethought as laid down in the Grounded Theory approach. This inductive methodology, with its iterative process in data interpretation and theoretical characteristics, made it clear to me that the research about the regulatory and legislation processes in Mexico is of high relevance. During my stay in Mexico, a high willingness of politicians to address the regulation of the surrogacy market could be observed. This convinced me to adapt my research question by focusing more on the national improvement tools for transnational surrogacy.

In the marketization theory, the term “agencement” was presented and has become a key factor in the Mexican understanding of surrogacy. Highly developed technical and economical practices mingle with a highly heterogenic culture in a country where equality and stability is still establishing in some parts. Surrogacy is just another phenomenon that makes such problems apparent. There are different actors and forces addressing this problem, convinced that an emerging

country is capable of solving those problems without the need of an international organisation or supervision. However, I first want to sum up the national and regional tools addressing the problem in Mexico.

8.1. Current attempts to regulate

There have been multiple attempts to regulate, and also to ban surrogacy, on a federal as well as a regional level. Surrogacy has for a long time not been considered as a medical issue (as for instance ART is) and falls under the jurisdiction of the states, or more precisely of their civil codes. The federal constitution only determines that no lucrative rent or sale of body parts and performance is allowed, resulting in the ruling that the only civil codes, which do allow surrogacy, only accept altruistic surrogacy. There have been several requests of politicians to put surrogacy in the remit of federal government, but there are still disagreements on how to legislate ART. The health department's duty to licence fertility clinics remains the only direct sphere of influence on the national level. But so far only technical skills and equipment are evaluated. It is not determined how much embryos are allowed to be implanted, or what happens to surplus cryopreserved embryos or if the clinics do work with agencies and as a consequence treat surrogates too.

On the regional level, Tabasco was the only state allowing transnational surrogacy and access to it for singles and homosexuals until the end of 2015. Sinaloa is the other state in which surrogacy can be practiced, although access is limited to married, heterosexual Mexican couples. In the district of Mexico, the legislation allowing surrogacy was never published and hence did not come into action. Tabasco became a hotspot, to which all the surrogates from all over the country came to give birth (it does not matter where the insemination takes place). The few pages-long contracts between the IP(s) and the SM are highly in favour of the IPs. Already in 2008, the first initiative to improve regulation was launched. But only after tales of exploitation and human trafficking came to light, high political movement could have been observed. In the adopted initiative, the following points are newly regulated; there has to be an obligatory life insurance for the surrogate, constant medical and mental care has to be available and detailed screening of the SM has to be carried out, before she enters the process. The SMs are restricted to follow only one insemination cycle. This requires that the surrogate get registered. But there are also restrictions concerning access for the IPs, namely for age (20-45), sexual orientation (heterosexual), civilian status (married), nationality (Mexican) and reason (only when traditional conceiving

failed). Since such restriction can be interpreted as discriminatory, there is a current movement that appeals against this new legislation. However, it cannot be said that international surrogacy is off the table in Mexico, primarily because other states may adapt their civil code and provide the market with a new place.

So when talking about international surrogacy and international legislation, we should not forget to examine more closely the regulatory measures that are taken, or established, in the concerned countries.

8.2. International impact

It could have been observed that the return to the home coming with the child can be challenging for the IP(s). Statelessness and refused approval of the birth certification and have led to refuse entry for the child. On the one hand, a country may insist on its ban, because it would be a fraud against the own law to accept a surrogate child from abroad whilst it is forbidden in the home state. On the other hand, international courts often do enforce the recognition of the child for his/her best interest. As some countries do not allow surrogacy in order to express the aversion to see surrogacy as a commodification of children and mothers, it cannot be expected that trade facilitation through uniform regulation is going to happen soon. Furthermore there is discordance in surrogacy allowing states, whether to see it as work or not, this hinders an international agreement, such as ILO standards implementation. Currently The Hague expert group seems to be the most promising approach to create an international legal framework with exemplary guidelines to ease international cooperation.

Setting new standards is a common tool to interfere directly in processes, while creating incentives to support “ethical” working conditions.

8.3. “Fair surrogacy” suggestions

The interviewed agencies, doctors and lawyer clearly want to distinguish themselves from shady and un-serious firms. They see the lack of proper regulation as the main problematic, why such firms could even enter in business. In fact every actor did see the lack of regulation as the main problem but they consider different alternatives to tackle it. The agencies reliance to their good reputation and consider those shady agencies to have little time surviving in this business. The doctors, lawyer and GIRE do express a better regulation as the best strategy to create a transparent birth registration process and to prevent agencies to exploit women. A first step would be that those women have to get full information. Mental and physiological care shall be provided whenever the SM does desire it,

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also after delivery. At best this can be reached with a life insurance provided by the IP(s).

Such a statement was also given by the SMs themselves, wanting to be covered in case of complications. But the most important point regarding regulation on the part of the SM is a transparent communication about the compensation, because most negative experiences were associated with missing money. The first promised amount of money causes great expectations, but unexpected high charges for medical service, transportation and food has a sobering notion. In addition with physical and emotional stress at the end little is left of the initial enthusiasm.

This unfair game with monetary incentives and their little legal validity is a thorn in the eye of many politicians. The interviewed politicians and Early Institute are clearly opposed to the commodification of children and consider surrogacy as a legal violation of the federal statement; requiring it to be out of altruistic intentions. They question how it can be done out of love for unfamiliar persons. They see transnational surrogacy as a clear act of exploitation of vulnerable Mexican women. As a consequence they are against regulation and see a national prohibition as the best solution.

I am thus of the view, that such ban could a) provoke a rising black market and b) does criminalize exactly those "vulnerable" women affected from it. A partial ban, as it happened at the beginning of this year for the international market in Tabasco does furthermore not prevent agencies to continue their usual practice because none of the compensation/payment question is addressed and the women are still given little self-determining rights. Whereby guidelines considering the compensation, the maximum of cycles and embryonic research issues can be established by the state, questions of working conditions could be regulated and consolidated under an international ethical surrogacy label.

Such label could verify the contract if it contains:

If there is an impartial notary that states whether

- The profile of the IP and the SM do match and they do agree on the most important points (accept the counterpart so they have to meet before signing, they do agree on frequency of contact, on abortion terms, the manner of birth)
- Free choice of SM where to live during pregnancy
- Life insurance is granted
- Free access to medical and mental care

As it is usual for a label, information promotion is part of their duty. To increase awareness of what surrogacy actually is and why it happens is of international relevance. Such campaigns may support international agreement through showing that a surrogacy ban in a country does not free it of any guilt. Regardless the ongoing ethical debates on what should be in a market and not, commodification of body parts and abilities is nothing new and borders become blurred in a multifaceted way; geographically speaking trade has to be understood in a globalised sense, the neoliberal approach should take place without interference of the state. Medically speaking much has changed considering the perception of the right of body parts and abilities. Property rights may differ when medical research is important. Infertility became a serious problem and boosts the market and therefore bioeconomics take the place of biopolitics. There is a tendency to put a price for everything, based on the demand. Whether this is accepted or not, it happens, also for a pregnancy.

8.4. The commodified baby

The marketization theory is the underlying concept of this work. From the geographical perspective such marketization systems do link and unlink in order to stabilize a market. Such process is crucial in an international "trade" because there has to exist a common idea of what can be in a market and what not. Commodification plays an important role in such requalification of a market; it makes body parts and functions tangible. The detachment of emotions and labour, body functions and the body as a whole and gestational and genetical has been achieved through medical practices. The conversion into a contract with price lists was an additional prerequisite to open a new market. I could identify those processes during my work. But there are manifold opinions how to consider a child's affiliation and the marketization process cannot be seen as an emotional free performance. No matter how surrogacy can be reflected on a sober view in legal terms, the involvement of an innocent child generates high emotions, especially when financial exchange is involved. So on the one hand, there is the rejection to accept a baby as an affordable object, but also a rejection to see women as incubators. On the other hand, there is an understanding of the urge to have family, what goes along with medical techniques, whereby a compensation for the surrogates is only a fair recognition for their effort.

Emotional labour could be considered as an improvement in valuating surrogacy by reflecting better the reality. Then again such valuation could serve the market as an additional commodification and hence softening the boundaries of what is

marketable and what not. In geographical terms such processes are interesting to observe, as they do not only blur national legal boundaries, but as well moral and ethical concepts and values.

8.5. Outlook

Surrogacy is the respond to the demand to have a child, with genetic relation or without. It is probable that the number of infertile people increases and it is also probable that the same happens to the global wealth imbalance. Legislations about surrogacy access will continue to differ from state to state and pressure on markets with international surrogacy will increase. There are at least two more driving forces which increase this pressure: a) the family and legal norm to have a genetic child and b) the extensive adoption process limited to a traditional family model. Surrogacy in Mexico has led to an agency boom and many people have gathered profit out of this market. In some way, it also promoted stability to some SM in a financial, medical but also security way. To ban international surrogacy makes it less attractive for many middlemen, but does not put the surrogates in a better position. The Mexican government has to work on many problem areas, especially on the fight against corruption.

The source of exploiting behaviour is that many willing women are available, as they accept a lot to improve their and their families' situation. Preventing people to get into such situations is a basic task of the government. Furthermore, an established and working police state is also capable to survey and sanction unlawful conduct. But what will happen in the meantime? Regulation attempts will pursue further, maybe Veracruz will be the next international destination, maybe there will be a federal agreement on ART legislation and surrogacy may be recognized as a part of ART and, therefore, be subject to federal law. They may indicate a general prohibition and the market moves on to new shores.

Standards in form of a label could provide countries with time to adjust legislation. An international agreement would be needed for the children in first place. But an ethical surrogacy standard can also mislead countries to do nothing to improve the situation, as an international organization takes care of it. Not to forget that the label "ethical surrogacy" might be misinterpreted, thinking that it is ethically justifiable, when there is the term "ethical" in it. There has to be a discussion on a global level on who gives whom the right to value one's right higher than the others; is there even a right to have a family and for who? Is there a right to make decisions about the own body? What is meant by protecting the child? How do you prize emotional labour?

There are many more questions concerning surrogacy which would be interesting to discuss in an international context. Establishing standards is likely to improve current injustices, but in the long term it would be interesting to follow the further actions on a national legal level such as The Hague Convention. It would also be interesting for further investigation to examine the impact of renewed adoption possibilities, also for singles and homosexuals on the surrogacy market.

This work has shown that a high movement on this topic exists in Mexico and that setting standards has to be seen as a fast interim solution, but that in an international market, a national limited approach cannot be the solution.

8.6. Personal thoughts

Right from the beginning, surrogacy caught my attention. I did not know much about it and, a fortiori, that it is a thing in Mexico. This topic combines several characteristics that connect my interest; question of stratification and how markets and debates cope with it, the role of the state and culture in a strong and highly dynamic market entity, and the importance of equality.

That Carolin Schurr has her research area in Mexico made it even more interesting, because a different context and embeddedness were needed to consider. As one of my personal goals, I planned to apply anyway and practice my practical skills in an unfamiliar environment, preferably in a region where I can communicate with reasonable accuracy.

As I underestimated the preparation time and the innumerable amount of literature, many things got only clear after I spend three months in Mexico. The internship with GIRE gave me the necessary information about where to dig and ask for information. It was also at this time, when I realized that I did not provide sufficient space to the question of regulation in Mexico. Combined with my personal experiences, I realized that a direct demand for an ethical surrogacy takes the problematic in insufficient account. Mexico is an emerging country, with high pride of its cultural richness; acceptance is quite low in having an international supervision on this market.

But as soon as I decided with my tutor to adapt my focus more on regulatory measures, I got lost in legal language and the access to important documents. As most contacted IPs did not respond and several SMs did not show up to the rendezvous, I experienced what happens to most researchers; there was no back and forth.

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At the end, and with a lot of help, I am now satisfied with my data collection, even though it is incomplete (only one IP and due to my lack of experience in conducting interviews and persistent inquiry). Still, I could meet most of my own requirements and I am, as a whole, satisfied with the result.

With all that focus on regulatory mechanisms, I tried to refuse analyzing on the ethical debate itself, but now at the end I would still like to give some remarks on this. During the whole process I was torn between understanding and rejection of the surrogacy process. Because surrogacy is not simply surrogacy and has many faces. Still, I want to refer to and conclude my work by quoting Veronika Siegl in a panel discussion⁹⁰:

„Maybe one day our understanding of being a mother or the concept of a family might be questioned, insofar that genetic relation does no longer have to be essential to family affiliation” (Veronika)

⁹⁰ Event on the University of Basel (09.12.2015) about; „Streitfall Leihmutterschaft. Transnationale Reproduktionsmärkte, Rechte und Handlungsmacht“

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Figure 1: Regulation of surrogacy in Mexico in May 2015 (Tamés 2015: 237)

Figure 2: List of codes (own presentation)

Figure 3: Relation between Regulation and Feelings (own presentation)

Figure 4: "No somos Vasijas" on the left being against and "Son nuestros hijos" on the right in favour of surrogacy online available: <http://nosomosvasijas.eu/#manifiesto> [Stand 03.04.2016) and <http://sonnuestroshijos.blogspot.ch/p/quienes-somos.html> [Stand 03.04.2016]

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Table 1: Data collection (own presentation)

Table 2: Collection of imposed requirements (own presentation)

10. Transcription rules

Symbol		Meaning
.	Point at the end of the sentence	The end of the sentence
...	Three points in a row	Long pause
,	Comma	Interruption of a sentence
(...)	Round bracket with three points	Omission in a quote
[]	Square bracket	Author's note

11. Procedure of anonymization

Interviewees		
Anonymized Name	Origin	Employment function
Valentina	Mexico	Former surrogate
Frida	Mexico	Surrogate
Christa	Mexico	Surrogate
Elma	Mexico	Intended mother
Ida	Mexico	Politician
Rosa	Mexico	Agency
Ricardo	Mexico	Agency
Hugo	Mexico	Lawyer
Luis	Mexico	Doctor
Leion	Mexico	Doctor
Ramon	Mexico	Doctor
Manuel	Mexico	Doctor
Ruben	Mexico	Doctor
Lorena	Mexico	Doctor
Vanessa	Mexico	Health Secretary

12. Appendix

Interview Protocols

A1: Interview guidelines „Institutions“

- ¿Cuáles son las principales actividades de su organización/empresa?
- ¿Cuál es la opinión de su organización/empresa sobre este tema?
- ¿Cómo se aborda en su organización el tema de la gestación subrogada/sustituta?
- ¿Cuáles son las principales fuentes de consulta para tener mayor información sobre el tema?
- ¿Podría describir cómo se lleva a cabo el proceso de la subrogación -qué papel juegan los diferentes actores, cómo se redactan los contratos, etcétera-?
- ¿Conoció algún caso particular que lo haya impactado de gran manera y que le haya persuadido a trabajar en esta temática para lograr algún cambio?
- ¿Cuál es el principal cambio que desean lograr en este tema?
- ¿Cuál es la estrategia o plan de acción para lograr un cambio en este tema?
- ¿Cuál ha sido su mayor logro hasta la fecha?
- ¿Qué cambios hacen faltan o qué se necesita para lograr mayores cambios?
- ¿Han evaluado el impacto de su labor sobre los diferentes actores de este tema - madres sustitutas, padres, agencias, clínicas, estado, otros estados-?
- ¿Qué piensan de los argumentos de sus adversarios respecto a la prohibición/regulación/permisividad?
- Existen diversas iniciativas para la regulación de la gestación subrogada, ¿cómo considera usted que quedarán redactadas las leyes en su aprobación final?
- ¿Qué piensan de la idea de ver la subrogación como trabajo y con estándares internacionales de trabajadores?
- Si existe algo adicional que sea importante describir o argumentar sobre la gestación subrogada, favor de señalarlo.

A2: Interview guidelines „Politicians“

- ¿Cuál fue el motivo que lo impulsó a desarrollar una carrera dentro de la política?
- ¿Cuáles han sido los acontecimientos importantes a lo largo de su carrera profesional?
- ¿Cómo fue el primer contacto con el tema de madres sustitutas o gestación subrogada?
- ¿Con qué grupos se reúne o qué información consulta para tener más conocimiento sobre este tema?
- ¿Cómo se desarrolló el entorno jurídico y político sobre este tema?
- ¿Cuáles son los valores que representan su Partido Político y cómo se aplican éstos al tema de la gestación subrogada?
- ¿Con qué actores están trabajando para plantear soluciones de aplicación internacional así como para la revisión del marco jurídico?
- ¿Se siente satisfecho profesionalmente con los avances logrados hasta ahora?
- En su opinión, ¿cuáles son los aspectos negativos y positivos de esta práctica?
- ¿Cuáles son las propuestas de su Partido para mejorar este proceso?
- ¿Está de acuerdo con todos los aspectos legales de la gestación subrogada o que cambiaría?
- ¿Qué opinión tiene sobre el decreto para **cambiar la Ley General** para Prevenir, Sancionar y Erradicar los Delitos en Materia de Trata de Personas y para la Protección a las Víctimas de estos Delitos (presentado el día 28.07.2010)? ¿Esto resuelve todos los problemas o que se espera de esta prohibición?
- ¿Qué impacto tendría el decreto para **cambiar la Ley General** para Prevenir, Sancionar y Erradicar los Delitos en Materia de Trata de Personas y para la Protección a las Víctimas sobre las agencias o el mercado mexicano y otros países de América del Sur?
- Al respecto de la **iniciativa en Tabasco** para establecer mayor regulación de la gestación subrogada en Tabasco reformando el Código Civil, presentada el 8 de mayo de 2013 ¿qué le parecen estas propuestas – de categoría hetero, solo altruista, parcial sin conexión biológica- enfocada solo a mujeres de Tabasco? En su opinión, ¿cómo piensa que va cambiar la vida de las madres sustitutas?
- También se ha pensado en prohibir la maternidad subrogada totalmente como hacen otros Estados y países
- ¿Qué piensa de considerar el embarazo como trabajo y verlo como de una forma donde exista una retribución económica para las mujeres que gestan?

Appendix

- ¿Qué le parece la idea de una supervisión internacional por parte de una organización no lucrativa que conozca y aplique las leyes de los Partidos involucrados?
- ¿Qué espera va a pasar con la gestación subrogada en los próximo 5 años aquí en el estado de Tabasco?
- ¿Si se regula el mercado de turismo reproductivo aquí en Tabasco, qué cree, dónde van a aparecer nuevos mercados?

A3: Interview guidelines „Surrogates”

Background

- ¿Cómo se convirtió en madre sustituta (MS)? (Cómo has escuchado de eso?)
- ¿Qué le motiva de entrar en este proceso?
- ¿Quién sabe al respecto y cómo reaccionaron? (Cómo se dialogó sobre el tema en casa y cómo se trata el tema después que fue tomada la decisión, le sostenían?)
- ¿Cuáles fueron los **miedos**, temores más grandes al inicio?
- ¿Lo recomendaría a una amiga?
- ¿Tenía contacto con otras madres sustitutas? Sabe de mala experiencias?

Agencia

- ¿Cuenta de sus primeras experiencias con la agencia?(Cómo buscaste la agencia, comparaste varias, cómo te informaron antes que firmó el contrato)?
- ¿Cómo fue tratada por la Agencia en general?(quién fue la persona contacto y siempre pusiste hablar con él/ella cuando tuviste problemas)?
- ¿Tuvo temores durante el proceso, a quien se dirige?
- ¿Posteriormente, que le gustaba, y que no le ha gustado de la agencia? (vivía en una casa de madres?)

Contrato

- ¿Al respecto al contrato, le han explicado y tenía la impresión que trata todo necesario?
- ¿Le ha leído? Cuándo la firmaste? (le parecía justo para todos los partes, quiso cambiar algo, qué dijo sobre tus derechos)
- ¿Escuchaste de otros contratos de otras MS que hicieron mejor/peor?

Clínica

- ¿Qué le pareció el funcionamiento de la clínica?
- ¿Cómo le informan de los tratamientos? (se ocuparon de que se entendiera claramente el proceso)?
- ¿Pudo participar en el tratamiento clínico (por ejemplo pedir o denegar a medicamentos)?
- ¿Se sentía tratada bien por los médicos y los enfermeros?
- ¿Tenías cesaréa? Pude elegir? Qué hubiera preferido?

Padres contratantes

- ¿Cómo era lo primero contacto con los padres contratantes?

- ¿Qué sabe de los padres antes de estar embarazada?
- ¿Era importante para usted de saber cómo son los padres? Quisiere elegir de quien gesta el bebe?
- ¿Cómo fue el contacto durante el embarazo, frecuencia y por que media?
- ¿Que se deseó del contacto después del parto?
- ¿Tuvo problemas a non vincularse con el bebe?

Compensación

- ¿Cuánto está la compensación? Y cuando le pagaron?
- ¿Qué intenta de hacer con el dinero y qué hizo con el dinero al final?
- ¿Intenta de participar otra vez con ese proceso?

Fairsurrogacy:

- ¿En tu opinión que aspectos se deberían mejorar respecto al proceso de subrogación?
- ¿Cómo te parece el contrato que has firmado? Sentías que tus derechos están protegidos?
- ¿Cómo te parece la compensación? Crees que debería ser más por el trabajo y riesgo que implica un proceso de subrogación?
- Respecto a cómo la agencia te ha tratado durante el proceso: ¿Que deberían cambiar en su forma de tratar las madres gestantes?
- ¿Conoces la ley en Tabasco sobre la subrogación?
- ¿En tu opinión, como deberían cambiar las leyes en Tabasco/ en México para que tu trabajo como madre sustituta sea más protegida?

A4: Interview guidelines “Intended parents”

Background

- Tell me about your history obtaining a child?
- Where did you get your information about surrogacy?
- Why did you decide to become a parent through surrogacy?
- With whom were you talking about this topic, and how did they react?
- Were you searching for other intended parent? If yes, where did you find them and how did they help you)

Agency in Mexico

- Why and how did you choose to work with a Mexican agency (what did persuade you to work with them?)
- How was the assistance of the agency, what did they offer/promise you?
- What kind of fears were you facing at the beginning of the process?
- What did you like of the agencies service and what not?

Contract features

- How did they explain you the details of the contract (who explained it, was there a notary/lawyer informing you about your rights)?
- Was there somebody you could contact with questions or problems?
- What did the contract say about the risk when; there will be a spontaneous abortion, the mother wants to keep the newborn, your child won't get a passport etc.?
- Was there insurance for the child and the mother (from the agency, or by yourself). What happens with post-natal complications with the surrogate?

Contact with the surrogate mother

- How was the contact with your Surrogate?
- What kind of characteristics was important for you the surrogate should have?
- How was contact before and during the pregnancy (where you/your surrogate searching for it, if yes how often and how did you stay in contact)
- Do you (and she) wish to stay in contact after birth? What will you tell your child about his mother?
- What do you know about her economic situation (and how much the compensation would be in relation to her usual earnings)

Appendix

- What do you think about the amount of money she receives (it is enough, did you talk about that with her)
- Do you know if she received the settled money?
- What do you know about her contact to the agency (did they treat her well)

Ethical Surrogacy, Minimal standard for the agencies

- What could be improved in this process, on the part of the agency, clinics, advisers etc.?
- How do you feel about the contract you signed, you think all the rights are protected?
- Thinking about the negative headlines about agencies like “Planet Hospital” which cheated on the IPs as also treated bad the surrogates, what you think should/can be done to avoid such happenings?
- What do you think the state could do (what changes in law would be helpful)?
- What do you think about “Ethical/Fair surrogacy”, where surrogacy would underlie minimal standard (compare to working standard) and agencies/hospitals would be supervised by a non-governmental non-profit authority?
- How do you think more transparency could be established?
- Como siente que este tema está tratando en público?

B1: National law

TITULO DECIMOCUARTO

Donación, trasplantes y pérdida de la vida

CAPITULO I

Disposiciones Comunes

ARTÍCULO 313. Compete a la Secretaría de Salud:

- I. El control sanitario de las donaciones y trasplantes de órganos, tejidos y células de seres humanos, por conducto del órgano desconcentrado denominado Comisión Federal para la Protección contra Riesgos Sanitarios, y
- II. La regulación y el control sanitario sobre cadáveres.

ARTÍCULO 314. Para efectos de este título se entiende por:

- I. Células germinales, a las células reproductoras masculinas y femeninas capaces de dar origen a un embrión;
- II. Cadáver, el cuerpo humano en el que se haya comprobado la pérdida de la vida;
- III. Componentes, a los órganos, los tejidos, las células y sustancias que forman el cuerpo humano, con excepción de los productos;
- IV. Componentes sanguíneos, a los elementos de la sangre y demás sustancias que la conforman;
- V. Destino final, a la conservación permanente, inhumación, incineración, desintegración e inactivación de órganos, tejidos, células y derivados, productos y cadáveres de seres humanos, incluyendo los de embriones y fetos, en condiciones sanitarias permitidas por esta Ley y demás disposiciones aplicables;
- VI. Disponente, a aquél que conforme a los términos de la ley le corresponde decidir sobre su cuerpo o cualquiera de sus componentes en vida y para después de su muerte;
- VII. Donador o donante, al que tácita o expresamente consiente la disposición de su cuerpo o componentes para su utilización en trasplantes;
- VIII. Embrión, al producto de la concepción a partir de ésta, y hasta el término de la duodécima semana gestacional;
- IX. Feto, al producto de la concepción a partir de la decimotercera semana de edad gestacional, hasta la expulsión del seno materno;

- X. Órgano, a la entidad morfológica compuesta por la agrupación de tejidos diferentes que concurren al desempeño de los mismos trabajos fisiológicos;
- XI. Producto, a todo tejido o sustancia extruida, excretada o expelida por el cuerpo humano como resultante de procesos fisiológicos normales. Serán considerados productos, para efectos de este Título, la placenta y los anexos de la piel;
- XII. Receptor, a la persona que recibe para su uso terapéutico un órgano, tejido, células o productos;
- XIII. Tejido, a la entidad morfológica compuesta por la agrupación de células de la misma naturaleza, ordenadas con regularidad y que desempeñen una misma función, y
- XIV. Trasplante, a la transferencia de un órgano, tejido o células de una parte del cuerpo a otra, o de un individuo a otro y que se integren al organismo

ARTÍCULO 327. Está prohibido el comercio de órganos, tejidos y células. La donación de éstos con fines de trasplantes, se regirá por principios de altruismo, ausencia de ánimo de lucro y confidencialidad, por lo que su obtención y utilización serán estrictamente a título gratuito.

ARTÍCULO 462. Se impondrán de seis a diecisiete años de prisión y multa por el equivalente de ocho mil a diecisiete mil días de salario mínimo general vigente en la zona económica de que se trate:

- I. 1AI que ilícitamente obtenga, conserve, utilice, prepare o suministre órganos, tejidos y sus componentes, cadáveres o fetos de seres humanos, y
- II. 2AI que comercie o realice actos de simulación jurídica que tengan por objeto la intermediación onerosa de órganos, tejidos incluyendo la sangre, cadáveres, fetos o restos de seres humanos, y
- III. 3AI que trasplante un órgano o tejido sin atender las preferencias y el orden establecido en las listas de espera a que se refiere el artículo 336 de esta Ley.

En el caso de la fracción III, se aplicarán al responsable, además de otras penas, de cinco a diez años de prisión. Si intervinieran profesionales, técnicos o auxiliares de las disciplinas para la salud, se les aplicará, además suspensión de cinco a ocho años en el ejercicio profesional, técnico o auxiliar y hasta seis años más, en caso de reincidencia.

ARTÍCULO 466. Al que sin consentimiento de una mujer o aun con su consentimiento, si ésta fuere menor o incapaz, realice en ella inseminación artificial, se le aplicará prisión de uno a tres años, si no se produce el embarazo como resultado de la inseminación; si resulta embarazo, se impondrá prisión de dos a ocho años.

La mujer casada no podrá otorgar su consentimiento para ser inseminada sin la conformidad de su cónyuge.

B2: Law Tabasco

CÓDIGO CIVIL PARA EL
ESTADO DE TABASCO
DISPOSICIONES GENERALES

ARTICULO 92.- Deber de reconocer al hijo

Tanto la madre como el padre, que no estuvieren casados entre sí, tienen el deber de reconocer a su hijo; pero si no cumplen con este deber voluntariamente, no se asentará en el acta de nacimiento el nombre de los mismos y simplemente, se anotará la hora, día, mes, año y lugar del nacimiento, así como el nombre propio y apellidos que se pongan a la persona cuyo nacimiento sea registrado. Si el padre o la madre o ambos piden por sí o por apoderado que en el acta de nacimiento se asiente su nombre, se hará constar éste y se mencionará en su caso la petición que en este sentido hagan el padre, la madre, o ambos, o el apoderado. Cuando el hijo sea presentado por uno de los progenitores, se asentará únicamente el nombre del que lo presente.

En el acta de nacimiento no se hará ninguna mención que califique la filiación en forma alguna. Las palabras "hijo legítimo", "hijo natural", "hijo ilegítimo", "hijo de padres desconocidos", "hijo de padre desconocido", "hijo de madre desconocida", o "habido como consecuencia de cualquier método de reproducción humana artificial", que se inserten con infracción de este artículo, se testarán de oficio, de manera que queden ilegibles. El Oficial del Registro Civil que inserte en el acta alguna de estas menciones será sancionado, la primera vez con una multa por el equivalente a quince días de salario mínimo general vigente en la Entidad y la segunda con destitución del cargo. La investigación de la paternidad y de la maternidad está permitida en los términos establecidos por este Código.

En el caso de los hijos nacidos como resultado de la participación de una madre gestante sustituta, se presumirá la maternidad de la madre contratante que la presenta, ya que este hecho implica su aceptación. En los casos en los que participe una madre subrogada, deberá estarse a lo ordenado para la adopción plena.

Se entiende por madre gestante sustituta, la mujer que lleva el embarazo a término y proporciona el componente para la gestación, más no el componente genético. Por el contrario, la madre subrogada provee ambos: el material genético y el gestante para la reproducción. Se considera madre contratante a la mujer que convenga en utilizar los servicios de la madre gestante sustituta o de la madre subrogada, según sea el caso.

Salvo el caso de que se trate de un hijo nacido de una madre gestante sustituta, cuando el hijo nazca de una mujer casada que viva con su esposo, el Oficial del Registro Civil no podrá asentar como padre a otro que no sea el mismo marido, excepto que éste haya desconocido al hijo y exista sentencia ejecutoria que así lo declare.

B3: Law Sinaloa

Capítulo V

De la Reproducción Humana Asistida y la Gestación Subrogada

Artículo 282. Se entiende por reproducción humana asistida, las prácticas clínicas y biológicas, para la creación de un nuevo ser humano, logrado mediante el conjunto de técnicas científicamente acreditadas y autorizadas por la Secretaría de Salud, y realizadas con la intervención del personal de la salud, constituidas por métodos de fertilización de células germinales, gametos, de uno o ambos sexos; además de la reproducción de cigotos, y embriones, que permita la procreación fuera del proceso natural, de la pareja infértil o estéril.

Se permite a los cónyuges o concubinos la inseminación o fecundación homóloga y heteróloga. Se entiende por fecundación homóloga aquella en la que los gametos son aportados por ambos cónyuges o concubinos; y por fecundación heteróloga, aquella en que por lo menos uno de los gametos es donado por un tercero.

Sólo será válido el consentimiento expresado en vida del disponente primario, con las formalidades que esta Ley exige, para efectos de inseminación post mortem.

Artículo 283. La maternidad subrogada se efectúa a través de la práctica médica mediante la cual, una mujer gesta el producto fecundado por un hombre y una mujer, cuando la mujer, padece imposibilidad física o contraindicación médica para llevar a cabo la gestación en su útero y es subrogada por una mujer gestante que lleva en su útero el embrión de los padres subrogados, cuya relación concluye con el nacimiento.

Pueden ser madres subrogadas gestantes, sólo las mujeres entre veinticinco y treinta y cinco años de edad que tienen, al menos, un hijo consanguíneo sano, una buena salud psicosomática y que han dado su consentimiento voluntario para prestar su vientre.

Artículo 284. La maternidad de sustitución, admite las siguientes modalidades:

- I. Subrogación total, implica que la mujer gestante sea inseminada aportando sus propios óvulos, y que después de la gestación y el parto, entregue el hijo a la pareja o persona contratante;
- II. Subrogación parcial, es la que se da, cuando la gestadora es contratada exclusivamente para portar en su vientre un embrión fecundado in vitro que le ha sido trasplantado, pero que proviene de la unión de espermatozoide y óvulo de la pareja o persona contratante;
- III. Subrogación onerosa, es la que se da cuando una mujer acepta embarazarse en lugar de otra, tal y como si se tratase de un servicio, por el cual se paga una cantidad cierta y determinada, además de los gastos de la gestación; y,

- IV. Subrogación altruista, es la que se da cuando una mujer acepta gestar por cuenta de otra de manera gratuita.

Artículo 285. Ninguna mujer que padezca alcoholismo, drogadicción, tabaquismo o alguna toxicomanía podrá ser madre subrogada gestante. A ésta se le realizará una visita domiciliaria por personal de la unidad de trabajo social del hospital tratante, para comprobar que su entorno familiar sea estable, libre de violencia y su condición económica y social sea favorable para su adecuado desarrollo.

La madre subrogada gestante, deberá acreditar mediante dictamen médico que no estuvo embarazada durante los trescientos sesenta y cinco días previos a la implantación de la mórula, y que no ha participado más de dos ocasiones consecutivas en dicho procedimiento.

Artículo 286. Las personas casadas no podrán donar esperma u óvulo artificialmente a madre portadora, ni a reclamar la progenitura, a no ser que obtuvieren el consentimiento de su cónyuge. Pero en el caso de que demandaren la paternidad o maternidad, no podrán recibir la custodia del producto de la inseminación, salvo por la incapacidad o muerte de la madre y siempre con la anuencia del cónyuge.

La voluntad que manifiesten las partes para la realización del instrumento de la maternidad subrogada debe ser indubitable y expresa. Los derechos y obligaciones que de ella emanan son personalísimos, no habiendo lugar a la representación legal para su firma.

Artículo 287. El instrumento de maternidad subrogada lo firmarán la madre y padre subrogados, la madre subrogada gestante, el intérprete si fuera necesario uno, el Notario Público, el director de la clínica o centro hospitalario, asentándose el lugar, año, mes, día y hora en que hubiere sido otorgado.

Artículo 288. Es nulo el Instrumento para la maternidad subrogada realizado bajo las siguientes circunstancias:

- I. Exista algún vicio de la voluntad relativo a la identidad de las personas;
- II. No cumpla con los requisitos y formalidades que señala este Código;
- III. Se establezcan compromisos o cláusulas que atenten contra el interés superior del niño y la dignidad humana; y,
- IV. Se establezcan compromisos o cláusulas que contravengan el orden social y el interés público.

La nulidad del documento no lo exime de las responsabilidades adquiridas y derivadas de su existencia.

Artículo 289. Los profesionales o personal de salud que realicen esta práctica médica, informarán ampliamente de las consecuencias médicas y legales de la implantación de pre embriones y embriones en el cuerpo de una mujer gestante. Actuarán con estricto apego al

secreto profesional, respecto a la identidad de las personas que intervienen en la implantación. El médico tratante, deberá solicitar los documentos que acrediten que las personas que van a intervenir, cumplen con las formalidades y requisitos legales y físicos.

Artículo 290. El Instrumento para la maternidad subrogada podrá ser suscrito por las partes, previo cumplimiento de los siguientes requisitos:

- I. Ser Ciudadano Mexicano;
- II. Poseer capacidad de goce y ejercicio;
- III. La madre subrogada acredite mediante certificado médico, expedido por el médico tratante, que posee una imposibilidad física o contraindicación médica para llevar a cabo la gestación en su útero;
- IV. La mujer gestante otorgue su aceptación pura y simple para que se lleve a cabo la implantación de la mórula, y acepte su obligación de procurar el bienestar y el sano desarrollo del feto durante el período gestacional y a concluir su relación subrogada, respecto a la persona menor y los padres subrogados con el nacimiento;y,
- V. La mujer gestante cumpla con los requisitos que establece este Código. Para los efectos de la fracción III del presente artículo, el médico tratante deberá extender y solicitar los certificados médicos que acrediten los supuestos correspondientes.

Artículo 291. El médico tratante realizará los exámenes médicos previos a la implantación y que sean necesarios de la salud física y mental de la mujer gestante, para corroborar que no posee ningún padecimiento que ponga en riesgo el bienestar y el sano desarrollo del feto durante el período gestacional.

Artículo 292. La mujer gestante, el padre y la madre subrogatorios, deberán hacerse los estudios que establezca la Secretaría de Salud y que garanticen la salud de los implicados.

Artículo 293. Una vez que sea suscrito el instrumento, deberá ser notificado en sus efectos a la Secretaría de Salud y al oficial del registro civil, para que el estado de la persona menor nacida mediante esta práctica, sea contemplado en su filiación como hijo desde el momento de la fecundación de sus progenitores biológicos, es decir, madre y padre o madre subrogados.

Artículo 294. El certificado de nacimiento será el documento que expida el médico autorizado o tratante que haya asistido a la mujer gestante en el nacimiento del menor de edad y que llenará el formato expedido para tal efecto por la Secretaría de Salud y que contendrá en este caso, la constancia de que la maternidad fue asistida a través de una técnica de apoyo a la reproducción humana o práctica médica, denominada maternidad subrogada. Las alusiones o referencias que hace la normatividad vigente en el Estado,

relativas a la madre o a la identidad de la madre, se entenderán referidas a la madre subrogada gestante del nacido.

Artículo 295. El instrumento para la maternidad subrogada carece de validez, cuando haya existido error o dolo, respecto a la identidad de los padres subrogados por parte de la mujer gestante, en cuyo caso están a salvo sus derechos para demandar civilmente los daños y perjuicios ocasionados e interponer denuncias penales, en su caso.

Artículo 296. También puede la mujer gestante, demandar civilmente a la madre y al padre subrogados, el pago de gastos médicos, en caso de patologías que deriven de una inadecuada atención y control médico prenatal y postnatal.

Artículo 297. Se harán acreedores a las responsabilidades civiles y penales aquellos médicos tratantes que realicen la implantación o fecundación de embriones humanos sin el consentimiento y plena aceptación de las partes que intervienen, de acuerdo a las disposiciones de este Código y los Códigos Civil y Penal vigentes.

B4: Law Federal District

Adjustments for surrogacy legislation has not been published yet. The whole document of the approved initiative can be found in the following hyperlink:

<http://de.scribd.com/doc/36185692/12-Iniciativa-Maternidad-Subrogada>

Personal statement

13. Personal statement

Personal declaration:

I hereby declare that the submitted thesis is the result of my own, independent work. All external sources are explicitly acknowledged in the thesis.

15.04.2016, Zurich

Fabienne Imoberdorf