# Recommendations to the UN Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material

## By RFSL, the Swedish Federation for LGBTQ Rights

**Interest and Expertise**

1. RFSL is a non-profit organization founded in 1950. RFSL's goal is that LGBTQ people should have the same rights, possibilities and obligations as everybody else in society. RFSL wants altruistic surrogacy arrangements, or altruistic host pregnancy arrangements as we refer to it, to become a legally safe way to form a family in Sweden. RFSL has emphasized that it is of the utmost importance that a regulation securing the abortion right and a revocation time period applying to the person who gives birth, but not for the intended parents. RFSL also wants legislation regulating the establishment of parenthood and citizenship, specifically for children born after host pregnancy arrangements abroad.

**The legal situation of surrogacy in Sweden**

2. In Sweden, there is no specific legislation on surrogacy arrangements. Instead, it is considered to be following the rules of assisted reproduction, which state that it is not allowed to perform assisted reproduction within the Swedish health care system with the aim of implementing a surrogacy arrangement. Assisted reproduction is regulated mainly in chapters 6 and 7 of the The Genetic Integrity Act (2006:351).[[1]](#footnote-1) At the same time, there is no prohibition against making unofficial private arrangements through existing adoption regulation within Sweden nor surrogacy arrangements abroad. Even though this applies both to commercial (for-profit) surrogacy arrangements and altruistic (non-profit) arrangements, surrogacy arrangements made abroad lack legal effects in Sweden. There is, however, a small number of surrogacy agencies in Sweden offering consultation and support prior to surrogacy arrangements abroad, as well as unofficial arrangements within Sweden.

3. In a report from SMER, the Swedish National Council on Medical Ethics, published in 2013, SMER found that altruistic surrogacy arrangements can be an ethically acceptable method that should be allowed in Sweden. In 2016, a government investigation that investigated the issue, among other things, came to the opposite conclusion, that altruistic surrogacy arrangements should not be allowed within the Swedish health care system and that the possibilities of recognising foreign determinations of maternity, paternity or parenting should not be extended.[[2]](#footnote-2) SMER stated in their referral response to the investigation that the the proposals made by the investigation regarding surrogacy arrangements abroad are too restrictive.[[3]](#footnote-3) Contrary to the investigation, SMER found that the possibilities of establishing legal parents for these children should be expanded. SMER stated in their referral response that this applies to foreign determinations of paternity as well as maternity and parenting. It added that the child's interest in legal protection in this case is of greater interest than the state's interest in counteracting surrogacy arrangements abroad. RFSL share these views.

**Identity rights**

4. Most people who are born in Sweden or move to Sweden are registered in the Swedish population register. When one has been registered, one will be given a Swedish personal identity number and be registered at an address. One´s name, civil status, spouse, children or parents will be registered. An application for a move to Sweden for a child shall be made in writing by the child's legal guardian or guardians.

5. The purpose of a surrogacy arrangement is that the intended parents are the ones to have custody of a child, not the person giving birth to the child. If the guardianship has been regulated in a foreign surrogacy arrangement, it lacks, however, legal effects in Sweden (as does unofficial surrogacy arrangements in Sweden). According to the Swedish law, the one who gave birth to the child is regarded as a legal mother and is therefore normally the one who has custody of the child with the authority to make decisions for the child. If the person who gave birth to the child is married, the spouse shares parental responsibility with her. A result of this is that it creates uncertain or “limping” parentage for the child, meaning that children risk being both without a legal guardian and stateless from birth. There has also been recent cases where children have been prevented from travelling home to Sweden, before the paternity of the genetic father has been established.[[4]](#footnote-4)

6. If the person who gave birth is the sole guardian, the paternity must be established in order for a genetical father residing in Sweden to be registered as a father in the Swedish population register. Although it is determined that the genetical father is the legal father, he will not automatically become the child's guardian.

7. If there is no foreign custody decision that is valid in Sweden, the Swedish court may decide that the legal father shall receive custody of the child. This involves a DNA test of the genetic father and the child. After that the father can apply for a court order to become the sole guardian. A partner of the father can then apply for adoption of the child. This type of adoption process normally takes 6-8 months meaning that the child during the process only has a legal bound to one of the parents.

8. A child born after 1 April 2015 automatically becomes a Swedish citizen, if one of the legal parents is a Swedish citizen. However, paternity needs to be proven before Swedish citizenship can be granted for the child.

**Access to origins**

9. In Sweden children are entitled to the right to their origin. Swedish legislation presumes that children born within a different-sex marriage always are the couple’s common children even when the child has been conceived through egg-, sperm- or fertilised egg (embryo) donation. A paternity presumption can, however, be overturned, if the man in the marriage is not genetically linked to the child or has not consented to assisted reproduction at a Swedish clinic or an authorized clinic abroad where the child can obtain information about the donor’s identity.

10. When an unmarried person or a woman in a same-sex marriage gives birth to a child, that person will be summoned to the social services (family court) for a paternity investigation and, if applicable, confirmation of paternity or parenthood.

11. According to The Genetic Integrity Act, donor-conceived children have the right to obtain information about the donor’s identity, recorded in the hospital’s special record, when they have reached sufficient maturity, which is up to the discretion of the clinic to decide what it is. Donors of eggs, sperm or fertilised eggs (embryos) cannot be anonymous, but they are most often unknown to the prospective parents. The donor has no obligations to the child.

12. After assisted reproduction with a sperm donation at a clinic abroad where the child cannot obtain information about the donor’s identity, or after insemination at home with a sperm donation, a partner who wishes to establish a joint legal parentage cannot confirm the parenthood but has to apply for adoption.

**Protection of the family environment**

13. The Swedish family law has a built-in contradiction between the right to origin and the right to get the relationship with the intended parents explicitly recognised from birth in cases that are not regulated in the Swedish Children and Parents Code. This apply to legal parenthood after surrogacy arrangements as well as legal parenthood after assisted reproduction with donated sperm outside a Swedish fertility clinic or a clinic abroad where the child cannot obtain information about the donor’s identity. In these cases a parent who has not given birth to the child or has not donated sperm, has no other option than to adopt the child in order to be recognised as a legal parent. If the adoption is not granted or something happens prior to or during the adoption process that jeopardizes the adoption the child loses the right to get the relationship with one of the intended parents recognised. The problems of the lack of legal protection for children are not consistent with the principle of children's best interests. It would instead be beneficial to have a solution where an investigation of a child’s origin could be documented without being automatically linked to legal parenting, in the event that there are other parents who want to be responsible for the child's well and upbringing.

**Recommendations**

1. The Special Rapporteur should take a stand for the development of uniform international laws that can assist States in resolving limping parentage, in order to provide predictability, certainty and continuity of legal parentage in international situations.
2. The Special Rapporteur should recommend that altruistic host pregnancy arrangements become a legally safe way to form a family.
3. The Special Rapporteur should recommend that legislation is introduced that regulates how parenthood and citizenship should be established for children born after host pregnancy arrangements abroad.

RFSL recognizes the importance of the work carried out by the UN Special Rapporteur on the sale and sexual exploitation of children. The organization is ready to provide any additional information, if needed in the process.

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1. <https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2006351-om-genetisk-integritet-mm_sfs-2006-351> [↑](#footnote-ref-1)
2. <https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2016/02/sou-201611/> [↑](#footnote-ref-2)
3. <http://www.smer.se/remissvar/remissvar-ang-olika-vagar-till-foraldraskap-sou-20161/> [↑](#footnote-ref-3)
4. See for example <https://www.svt.se/nyheter/inrikes/svenska-foraldrarna-fick-inte-ta-hem-chleo-6-veckor-gammal> [↑](#footnote-ref-4)