

Entanglement of the Formal and Informal in Everyday Surrogacy Negotiations: The Case of Georgia

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Abstract

With surrogacy-friendly legislation and relatively affordable reproductive services, Georgia has become one of the centres of surrogacy worldwide. Despite the legality of surrogacy, the scarcity of legislation leaves this field largely unregulated. Georgian law regulates only the pre- and post-procedural periods of surrogacy, and the surrogacy process is almost entirely omitted from the legal framework. In this article, we explore how surrogacy is regulated and managed in everyday life in Georgia. A closer examination shows that to manage the process efficiently, agencies and clinics create their own fluid regulations that, on the one hand, are based on global guidelines but, on the other hand, reflect the shared norms relevant in the Georgian context. The paper is largely based on a study of surrogacy clinics and agencies in Tbilisi and Batumi during 2020 and 2022. Our study revealed the sizeable role informalities have in everyday surrogacy negotiations. Moreover, these informalities are not separate but entangled with formal regulations and institutions. We explored the complementary, compensating, and enabling character of informalities for formalities both at the institutional (agencies and clinics) and the individual level (intended parents and surrogate women).

Keywords: surrogacy agencies, fertility clinics, informality, self-regulation, Georgia.

Introduction

With surrogacy-friendly legislation and relatively affordable reproductive services, Georgia has become one of the centres of surrogacy worldwide. Despite the legality of surrogacy, little has been written in Georgian law to regulate this field. At first glance, we can assume that the lack of legal regulations should create an unconstrained field for agencies and clinics, where nothing is forbidden. However, a closer examination shows that to manage the process efficiently, they become self-regulating entities, expanding the restrictions imposed by the law and creating rules of conduct within the framework of the law. The regulations created by the clinics and agencies themselves consider the indications of global guidelines;¹ however, they continue to function in their local spatial and temporal fields. They negotiate between medical innovations and traditional local schemes.

We are interested in exploring surrogacy beyond official legislation or contracts and focus on how the field is regulated and managed in everyday life. Legislation creates a framework within which agencies and clinics create their own regulations, enabling actors to manage negotiations and processes. We will explore that process of self-regulation on the part of the agencies and clinics through the concept of informality. We look at informalities not as something contrary and separate to formal institutions but want to explore their complementary, compensating and enabling character for actors, networks and formal processes.

This article elaborates on informalities and the informal practices of actors in surrogacy negotiations on both individual and institutional levels. On an individual level, we mean ordinary people - intended parents and surrogate women; on an institutional level, we mean surrogacy agencies and fertility clinics. We first review the literature on informality and surrogacy, and then

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1 In interviews, in the context of global guidelines, lawyers, agencies, and clinics frequently mentioned ESHRE (European Society of Human Reproduction and Embryology), <https://www.eshre.eu/>

describe the context of surrogacy in Georgia. Second, we talk about the declared and undeclared rules for recruiting surrogate women. Third, we discuss a regulation most surrogacy agencies use – restricting direct contact between intended parents and the surrogate women. We show the perspectives of the actors in surrogacy negotiations in terms of this regulation. Finally, we elaborate on the entanglement of formal and informal elements.

Our article is based on a research project *Surrogacy as a Networked Phenomenon: the study of key actors and their interrelations* examining the diverse aspects of the surrogacy process. In this paper, we studied the legislative framework of surrogacy in Georgia and examined the statistical data showing the dynamics of demand for surrogacy. Both existing scientific literature and interviews with lawyers working in the field helped us examine Georgia's legislative context. Statistical data about surrogacy in Georgia is very scarce. The minimal statistical data used in our work was obtained through the Georgian Public Service Development Agency. The number of clinics and agencies working in this field and the scale of their services are not accurately recorded; there is no registry of clinics that would oblige them to publish their data. Studying surrogacy contracts, advertising pages of agencies and clinics, and messages published on social networks helped us to see the picture more fully.

The paper is largely based on the study of surrogacy clinics and agencies in Tbilisi and Batumi during 2020 and 2022. We met and talked with different actors in surrogacy agreements: ten representatives of surrogacy agencies and clinics, six intended parents, ten surrogate women, five lawyers and notaries involved in surrogacy negotiations, two representatives of the House of Justice, and two representatives of the Georgian agency for the state care of the victims of trafficking. Due to the issue's sensitivity, obtaining consent from the informants was challenging. The surrogate women were afraid to talk to us because surrogacy is stigmatised in Georgia, and the women were very reluctant to disclose information about themselves. As for the agencies and clinics, they often felt that our study might bring unwanted attention to their activities and, in the long run, a ban on surrogacy². Because of this context, we had to make a special effort to gain the trust of the informants and convince them that our goal was to show the perspectives of all parties involved in the process and not harm anyone. To protect anonymity, we tried to blur all the data which would make it possible to identify the actors. We also changed the names of our respondents.

Conceptualising informality

In this article, we contribute to the surrogacy literature by introducing the concept of informality. The concept of informality was coined in the context of informal economic practices, which were not regulated by state institutions and formal contracts (Hart, 1973). The term *informality* has long been associated with a large body of literature on the informal economy; it later began to acquire a broader meaning, adapting to various social contexts. This process made the conceptualisation of the term more difficult (Aliyev, 2015b).

In this paper, we differentiate between formal and informal regulations. By formal we mean the surrogacy rules standardised via Georgian law and contracts between surrogacy parties. By informal, those unwritten rules that are related to a common understanding of morality and culture. Our understanding of informality is related to Helmke and Levitsky's (2004) definition of informal institutions. For them informal institutions correspond to shared and, 'widely accepted' expectations. Disregarding widely shared informalities may cause social disapproval (Helmke & Levitsky, 2004, p. 727). Helmke and Levitsky elaborate on the interaction of formal and informal, naming four types of informal institutions: 'complementary, accommodating, competing, and substitutive' (2004, p. 726). We want to focus on the *complementary* character of informalities in formal procedures. Complementary informal institutions co-exist with formalities; they, 'fill in

² On June 12, 2023, the Prime Minister of Georgia announced that the government is developing a draft law to restrict surrogacy for foreign couples. The proposed law would only permit surrogacy arrangements for Georgian citizens. <https://www.radiotavisupleba.ge/a/32455516.html>

gaps by addressing contingencies not dealt with in the formal rules or by facilitating the pursuit of individual goals within the formal institutional framework' (2004, p. 728). What we observed while meeting with the parties to surrogacy negotiations is that in the context of the deregulated field of surrogacy, agencies become self-regulating entities, creating informal regulations within the formal laws and regulations for managing the risks and maintaining human relations.³

The outcomes of informalities are often debated. On the one hand, informalities are thought to sometimes support human security in post-Socialist spaces in coping with worsened economic situations. On the other hand, they are thought to challenge the effective transition process (Aliyev 2015a, p. 48). Therefore, formalisation was often seen as a solution for faster post-Socialist transition (Knudsen, 2015; Slade, 2017). Formalisation and reforms decreased some informalities in post-Soviet spaces, but they did not make informalities disappear (Aliyev, 2015a). As Morris and Polese observe, despite the efforts of formalisation practices, 'informality remains one of the most important socio-economic and, indeed, culturally inflected phenomena in the world' (Morris & Polese, 2015, p. 1). Trust in networks and dependence on informalities is typical in post-Soviet transition societies (Sneath, 1993; Round & Williams 2010; Jones 2013; Morris & Polese, 2015; Knudsen & Frederiksen, 2015; Gurchiani, 2017; Darchiashvili, 2018). Informality in post-communist countries is not only widespread and historically rooted, but it is much more critical than in non-post-communist countries (Aliyev, 2015b). In contrast to evaluating the negative result of informal practices, scholars of informalities have disclosed the complexities and moralities embedded in such practices (Ledeneva, 2008; Humphrey, 2012; Humphrey, 2019; Polese, 2008; Pardo, 2017; Fehlings, 2017; Khutsishvili, 2018; Darchiashvili, 2021). On the sustaining and complementary role of informalities, Rekhviashvili and Sgibnev observe that, 'informal networks can come in handy: in the absence of formalised social protection' (2020, p. 7). Their research on *marshrutka* [minibus] drivers shows that, 'drivers themselves informally team up to handle risks and insecurities' (2020, p. 7). Such entanglements of formal and informal is especially worth exploring in the context of health care institutions in post-Soviet spaces (Polese, 2014; Hardenberg & Fehlings, 2016).

Surrogacy - an object of scientific interest

The rapid development of assisted reproductive technologies significantly changed the way people approach fertility and family planning. Global medical reproductive technologies often challenge traditional settings such as family, heritage, and biological belonging. Surrogacy, as an assistive reproductive method, has grasped the scientific community's interest since the end of the twentieth century (Annas, 1988; Dworkin, 1983; Markens, 2007; Pande, 2009; Ragoné, 1996; Teman, 2010). The ethical dilemmas accompanying the surrogate method are widely discussed, particularly the issue of the exploitation of women from lower socio-economic backgrounds and the commodification of children (Pilcher & Whelehan, 2016). In the wake of the introduction of the practice of surrogacy, some feminist writers have pointed out that the process exploits economically vulnerable women and subjects them to various forms of patriarchal control (Arditti, Klein & Minden 1984; Rothman 1988). Surrogacy is also referred to as a commercial form of selling children (Annas, 1988), and emphasis is placed on the structural similarities of surrogacy and prostitution (Dworkin, 1983). A frequent criticism of assisted reproductive technologies is that it is a new form of eugenics. According to various authors, the real eugenic side of assisted reproductive technologies is not in their use, but in the deprivation to use them (Daar, 2018).

Works that analyse the ethnographic perspectives of surrogacy focus on shedding light on the actors' positions in the process rather than the evaluation of the method (Jadva, 2003; Teman, 2010; Ragoné, 1996; Pande, 2009; Pande, 2014). In these works, the experiences of the parties directly involved in the surrogacy process, especially the surrogate women, are presented. They talk about the motivations for becoming a surrogate woman or the relationship between the surrogate and the biological parents.

3 This assumption is based on the interviews and observations conducted during 2020–2022.

Even though surrogacy in Georgia is becoming more and more popular in the international arena, little scientific literature has studied this topic. Existing papers mostly analyse the legislative situation, focusing on the strengths and weaknesses of the legislative framework (Bogveradze, 2019; Goshadze, 2021). One of the exceptions is a study that the Public Defender's Office of Georgia conducted in 2018 (Sexual and Reproductive Health and Human Rights: National Assessment, 2019). The report shows surrogates as a fragile group and states that the main object of care during their pregnancy is the fetus, not them. Another exception are articles that draw attention to the global inequality accompanying the process of transnational surrogacy (Vertommen, 2021; Vertommen & Barbagallo 2022).

Surrogacy in the Georgian context

Georgian law on Health Protection, chapter 143 defines who can have a child through surrogacy and who has the right to the child.⁴ Only heterosexual couples can use a surrogate woman's assistance; the potential mother must have a relevant health certificate and the potential parents must prove that they have been married or cohabiting for at least one year.⁵ The law does not specify that the couple must necessarily be heterosexual. However, in one section it mentions wife and husband, which implies the necessity of marriage. According to the 2017 amendment to the Constitution of Georgia, marriage is a union between a man and a woman.⁶ One thing the law defines very clearly is that in the case of childbirth, the donor or the surrogate mother do not have the right to be recognised as parents.⁷ As we see the Law on Health Protection, in combination with an amendment to the Constitution of Georgia, defines the prerequisites that a couple must have in order to be able to use the surrogacy service. The record that the child does not belong to the donor, or a surrogate woman regulates the post-procedural period. Laws regulating the registration of a child's birth,⁸ the granting of citizenship,⁹ or the issue of departure from the country¹⁰ also refer to the post-procedural period.

As the review of the legal framework shows, the law regulates the pre- and post-procedural periods of surrogacy. The surrogacy process itself is almost completely omitted from the legal framework. The law does not say anything about the standards for the selection of surrogate women – the upper limit of the age of potential parents, the number of embryos to be transferred into the body of the surrogate woman. The law does not limit the number of children born through surrogacy and the method of using biological material from donors.

According to lawyers, the problem is the paucity of law and the presence of misleading concepts in it. The Georgian law on Health Protection does not mention the term *surrogacy*. It mentions only the term *surrogate mother*. In the amendment adopted in 2020 on the issue of surrogacy the term *extracorporeal fertilisation*¹¹ is highlighted, which according to actors working in the reproductive

4 As Georgian law on Health Protection states, 'In vitro fertilization shall be allowed (a) a) to treat infertility, if there is a risk of transmitting a genetic disease from the wife or the husband to the child, using the gametes or embryo of the couple or a donor, if a written consent of the couple has been obtained; (b) if a woman does not have an uterus, by transferring the embryo obtained as a result of fertilization to the uterus of other women (surrogate mother) and growing it there; obtaining a written consent of the couple shall be obligatory' (Law on Health Protection, Chapter XXIII - Family Planning, Article 143, 1997).

5 The obligation of at least one year of cohabitation or marriage came into force in the law on September 1, 2020, based on the order of the Minister of Justice. With the same change, the notary's role in signing the surrogacy contract was also determined.

6 Constitution of Georgia, Chapter Two – Fundamental Human Rights, Article 30 - Article 30 – Right to marry, rights of mothers and children.

7 Order of the Minister of Georgia №18 the Procedures for Civil Registration elaborates what is already written in the Law on Health Protection about who is considered to be the parents of a child born as a result of extracorporeal fertilization.

8 Law of Georgia on Civil Status Acts, Chapter II - Registration of Birth, Article 30; Order of Minister of Georgia №18 On Approval of the Procedures for Civil Registration, Chapter II - Birth Registration, Article 19.

9 Organic law of Georgia on Georgian citizenship, Chapter II - Acquiring Georgian Citizenship, Article 10. Acquiring Georgian citizenship by birth.

10 Law of Georgia on the legal status of aliens and stateless persons, Article 49. Departure from Georgia of children born in Georgia through extracorporeal fertilization (surrogacy).

11 Order of the Minister of Justice of Georgia №598 2020, August 25, Tbilisi 'on the rule of registering civil acts.'

field is a misleading term because it may not refer to surrogacy but to the In Vitro fertilisation procedure in general. The same term is used in the Georgian law on Patient Rights.¹² Despite the legality of surrogacy, the law leaves space for interpretation.

The recruitment of surrogate women

As we emphasised, Georgian law manages only the pre- and post-procedure phases of surrogacy. A gap must be filled for the surrogacy procedure to be efficient. Surrogacy agencies and fertility clinics are the main actors managing the surrogacy process.

Fertility clinics and surrogacy agencies in Georgia function in the private sector. Some agencies have branches abroad, others operate only in Georgia, although couples from different countries use their services. The Georgian government does not provide funding for ART,¹³ and the majority of citizens' precarious financial situations prevent them from considering surrogacy. According to the data requested from the Public Service Development Agency, approximately 20% of the parents of children born through surrogacy in Georgia are Georgian citizens.¹⁴ Behind the increased number of agencies and clinics is the demand from international couples trying to make their reproductive dreams come true despite the legal restrictions in their own countries. Foreign couples come from countries where surrogacy is prohibited or strictly regulated.¹⁵

In most cases, potential surrogates, donors, and childless couples apply to the agencies.¹⁶ In some cases, surrogacy agencies are affiliated with only one clinic, and sometimes they cooperate with several. The agency needs to collaborate closely with the clinic because all examinations and procedures are conducted in the clinic at the stage of recruiting the surrogate women. Agency representatives supervise the entire process; they take upon themselves the legal, medical, and emotional mediation of this process.

Georgian law does not say anything about surrogate recruitment standards; however, as the interviews with actors working in the field of reproduction show, the *righteous* selection of surrogate women is the most essential element for the efficiency of the surrogacy process. The agencies and clinics develop regulations concerning the selection of surrogates, which are self-regulations that consider both international and local best practices.

Nina is the head of one of the most famous and large agencies in Tbilisi, founded about 10 years ago.¹⁷ Nina says that they try to make such a decision so that they can 'sleep peacefully at night.' In 'sleeping peacefully' Nina means that the surrogate women should be responsible and not make the already complicated process even more difficult. Recruiting a surrogate woman unites both declared and undeclared rules.

Declared rules

Formally, a proper surrogate should have her uterus completely healthy, she should have a healthy child of her own and should be aged between 18 and 38. We encounter such age ranges in surrogacy advertisements in social media. However, self-regulation of the age range is clear yet flexible. Some agencies also recruit 39 or 40-year-old women and do not go below the age of 21. Nina believes that such youth may cause problems in the surrogacy process:

12 Law of Georgia on Patient Rights, Chapter IV – Consent, Article 22.

13 So far, the only exception is Adjara, where the 'Infertility Diagnosis and Treatment Program' has been launched since 1 July 2022. For details see: <https://droa.ge/?p=127765>

14 This information is based on data that was present in the Georgian Public Service Development Agency's database on 3 August 2022.

15 Israel permits commercial surrogacy; however, there are very rigorous regulations. According to information obtained from the Georgian Public Service Development Agency, Israel (34.42%) and China (9.20%) are the two countries with the highest demand towards Georgia.

16 Surrogates get information about agencies mostly from advertisements or from women who already have experience as surrogates. In many cases, the authors of advertising statements spread on social networks are not the representatives of the agency itself, but the so-called agents, women who cooperate with the agency and help it recruit surrogate women.

17 Nina, head of the surrogacy agency. The interview was conducted in January 2021.

I don't take a 20-year-old surrogate, because it is harmful, it is a very immature decision for her, in which you take part and then get lost if you feel your responsibility. It is a similar feeling like you are sitting on a bomb. (Nina, head of surrogacy agency)

Regardless of these words, at Nina's agency we meet Ani, who is only 24, preparing for surrogacy for the second time. This shows that Nina's recruiting principles are more flexible than fixed. Another example of flexibility is the story of a young woman who came to Nina's agency with her mother-in-law. After the medical check-up, it appeared that the young woman had health issues. Spontaneously, Nina looked at the mother-in-law and asked: 'do you want to try it?' The woman agreed.

Agencies are not required by law to ensure that a surrogate mother has her own biological child, although this is such a common and universal, almost formalised self-regulation that it is often stated in surrogacy advertisements. This self-regulation has several explanations. A woman who has gone through pregnancy gives more informed consent. In addition, having a child confirms her reproductive potential and makes parting with a baby less painful for a surrogate woman. The demand for a biological child is connected to another extreme possibility – the risk of losing the uterus due to medical complications. As Nina says, this is a defence for them: 'The possibility of complications is always there, why should we put a girl at such a risk if she does not have a child of her own and leave her without the opportunity of having one?!'

Representatives of agencies and clinics believe that a person can take risks when giving birth to her own child, but in a surrogacy deal, the risks should be insured as much as possible. Mary is the head of one of the large fertility clinics, and she, like Nina, emphasises the need to insure against risks in the surrogacy process.¹⁸ Mary says that potential surrogate women who want to participate in the programme may try to hide the risk factor. However, there is data on the health portal, which displays the patient's health history, helping decision-makers make the right decision.¹⁹

I will not select a girl who has had two caesarean sections. She can give birth to a child of her own, but there is a risk that the uterus will be pulled, so I am careful. She doesn't understand, we do. (Mary, head of fertility clinic)

The law does not limit how many times a woman can serve as a surrogate; therefore, some agencies and clinics establish their own regulation to cover this. As Mary says, after serving as a surrogate for two terms, their clinic refuses to allow women to participate in the surrogacy programme anymore. Although she is afraid that after such a restriction, women may turn to another clinic, which may allow them to become a surrogates.

They should also take care of their health. It cannot be like that. It's not a factory, is it? They do not understand this themselves or take such great risks, but someone must tell them. We try to be right towards our conscience and choose a somewhat moral way. (Mary, head of fertility clinic)

Undeclared rules

While elaborating on the informal dimensions of recruiting surrogate women, Tina told us the story of a girl who came into their agency before entering the surrogacy programme. Tina was suspicious of the young woman as soon as she entered the building and walked past her. Later, Tina and the surrogate candidate talked. Tina got the feeling that something was wrong, but she could not tell what exactly. After a while Tina sent the girl to the gynaecologist for the medical check-up. The girl left her telephone charging in Tina's room which started calling repeatedly. Tina said she thought there was an emergency and looked at the phone, thinking maybe she could

¹⁸ Mary, head of the fertility clinic. The interview was conducted in January 2021

¹⁹ The portal of the National Center for Disease Control and Public Health was launched in 2016. The system has a module for monitoring pregnant women and newborns. The doctor is given access to the patients' data after recording the personal number of the patient registered with her/him.

bring it to the girl. Suddenly the message came – ‘you shameless woman.’²⁰ Tina said the message was close to her expectations. She had an impression about the girl from her appearance and manners and the message proved it; she had a conflict with a man and maybe she even was a *shameless* woman, at least she was not a proper surrogate candidate. Tina immediately called the gynaecologist asking her about the check-up. The gynaecologist said that the girl was medically fit. Tina asked her to give a formal reason for why the girl could not afford a pregnancy on medical grounds, ‘the only thing I did was that I called the doctor and told her to block her, but with the formal reason that her endometrium did not fit. Otherwise, I could not refuse her.’ (Tina, representative of the surrogacy agency).

As this example shows, there are undeclared but widely shared expectations about what constitutes a proper surrogate – that she should be a caring mother of her child, docile and not a money-loving and shameless woman. Studies conducted in other countries confirm that this division is not relevant only for Georgia. As we see in the example of India, bad surrogate candidates are compared to prostitutes (Pande, 2014, p. 73). Proper surrogates should fill the category of ‘true angels who make dreams happen’ (Pande, 2009, p. 155).²¹ Such expectations are shared globally in the surrogacy market when recruiting surrogates (Jacobson, 2016). Locally in the Georgian context, surrogates should fall into the category of *tsesieri*, a Georgian word for a righteous and good woman:

I prefer a woman who is tsesieri rather than well-dressed with a good house. Let her be a good human being with whom I can have a good relationship, who will not let me down. This is my principle for recruiting surrogate women. (Tina, a representative of another surrogacy agency)²²

There exists a generally held normative agreement over what a *tsesieri* Georgian woman can be, although this idea is interpreted differently depending on the situation. Usually, a *tsesieri* Georgian woman is one who keeps her virginity before marriage and, after the marriage, becomes a devoted wife and a selfless mother (Curro, 2012; Gavashelishvili, 2018). Georgian women are expected to prioritise the happiness of their family over their own, even if it means sacrificing their own desires and aspirations (Gasviani, 2022). Women who engage in premarital or extramarital sexual relations are viewed negatively. The traditional framework considers singleness an undesirable status for a Georgian woman, and this excludes single women from the respectable category, and assigns the label of ‘women of loose behaviour’ (Nogaideli, 2012). Women who must make decisions in their lives that conflict with their traditional roles attempt to legitimise these decisions by finding ways to reconcile them with local cultural norms. For example, migrant women describe their migration as something they had to do because of economic and political reasons, not because they wanted to. When talking about their time as migrants, Georgian women separate themselves from other women and highlight their good behaviour and conformity to gender norms (Hofmann & Buckley 2012). Foreign female researchers living in Georgia also feel pressure, which Rebecca Gould calls ‘the unseen side of being a Georgian woman’ (Gould, 2010).

According to Tina, selecting a *tsesieri* woman is complicated, ‘On the one hand, Georgians are not distinguished as being law-abiding, and on the other hand, surrogate women are particularly problematic and chaotic’. It is crucial for agency representatives to know the potential surrogate mother’s family members to make sure that the spouse/partner (if any) is informed. If the surrogate is considered *tsesieri*, the agency checks her place of residence and marital status. They call her on the ninth day of the cycle, when the doctor checks the thickness of the endometrium. Her photo and data are added to the database if the answer is positive. In interviews conducted with doctors, it was discovered that when evaluating the medical examination results of potential surrogates, they consider not only their overall health but also assess their moral standing, particularly in relation to their sexual behaviour. A doctor from the Batumi clinic explained that if a woman’s

20 In Georgian it said "gatakhsirebulo". When this term is used to describe a woman, it frequently raises doubts about her sexual morality.

21 More on this topic see: Anleu, 1992; Ragoné, 2019.

22 Tina, representative of the surrogacy agency. The interview was conducted in July 2022.

“safe blood” analysis and Pap test reveal infectious diseases, it suggests that she has engaged in multiple sexual relationships, which is deemed inappropriate for a suitable surrogate candidate. According to our research findings, the reputation of a potential surrogate (undeclared rules) carries equal importance to meeting satisfactory health conditions (declared rules).

Formalised feelings

The agencies’ representatives believe that in surrogacy, it is crucial to justify the trust of the involved parties. According to Nina, the situation in the field of surrogacy is complex; there are agencies that only focus on making money and agencies which ‘play’ more honestly. In Nina’s words, their agency is one of the most respectable. To confirm this, she argues that the people employed in their agency have fixed and not earned salaries; therefore, they do not need to enter dubious deals to increase their income. Nina focuses on more human features that are very important to customers. For Nina, there are ‘norms, frameworks, rules’ which she follows. Here Nina refers not only to the legal regulations that regulate the field, but also to what she calls the righteous management of this process.

One of the regulations we want to elaborate upon below is how contact between the commissioning couple and the surrogate woman is restricted to a minimum level. We encountered such a formalisation of feelings not only in the Georgian context, but also in other sources in the literature (Berk, 2015; Roberts, 1998, Siegl, 2018). This regulation is present in most contracts signed by negotiating parties.²³ Throughout our fieldwork, we have reviewed surrogacy contracts and came to a similar observation as that of Berk (2015) that surrogacy contracts manage not only behaviours but also the emotions of the intended parents and surrogate women. By formalising feelings, these contracts try to reduce risks and informalities. This regulation that hinders direct communication between the intended parents and the surrogate women indicates how the agencies function as mediators between the parties. When speaking to lawyers, clinics and agency representatives about this regulation, their explanation is very similar to this position:

There should be lines, which must not be crossed for security purposes. Surrogates are from different social backgrounds; they have economic problems. They may ask for money from the intended parents and what will they do when a surrogate is carrying their child. The surrogate may ask them for money repeatedly. (Tina, representative of the surrogacy agency)

Through this regulation, the agencies say they are protecting both parties, one from being asked for money, the other from being controlled. Tina said that sometimes intended parents wanted to control the surrogates, see what they eat and what they do the whole day: ‘It is a big burden for the surrogates.’ Another agency representative said that surrogates do not speak the language of the intended parents, and therefore they stand between these two sides. The position taken by the agency representatives on this regulation was that ‘we must ensure that the surrogate hands over the baby without causing any trouble. After the labour, couples can build their golden castles.’ (Tina, representative of the surrogacy agency). Despite this position, our field results show that the intended parents and the surrogate women do not always obey this regulation and often find informal ways of getting what they want.

The perspectives of the intended mothers

When the commissioning couples are from abroad and tend to be away during the pregnancy of the surrogate mother, it is simpler to restrict direct contact between them. However, Lena’s story shows the desire for direct communication. Lena is from England.²⁴ She went through eight IVFs, as she says, failed to keep her pregnancy. She had been trying to get pregnant for six years. She told us how disappointing it was to find out about her failed pregnancies and go through medical

²³ It is worth noting that we have heard of cases where a contract has not been signed due to a complex legislative situation, although during our research the informants did not talk about such cases.

²⁴ Lena, intended mother. Conversation with her took place in the summer of 2021.

procedures and new rounds of IVF. She was 46 when she decided she should opt for surrogacy. She had the feeling she was running out of time. She was not happy with the surrogacy options in England and decided to try surrogacy abroad. By that time, her husband got a new job in London, and they were able to find the money for commercial surrogacy. She said she wanted to be in control. This was the impression she had about commercial surrogacy abroad. She conducted an internet search: Ukraine and Georgia seemed like the best options for commercial surrogacy. She did not choose Ukraine because by that time Russia invaded Crimea, it was 2014 and Ukraine did not feel politically stable. 'We did not even discuss America, as we knew it costs hundreds of thousands of USD there.' Lena got in touch with a surrogacy agency in Georgia.

As our interviews show, when deciding, parties to a surrogacy arrangement consider the *image* of the clinic or agency. However, this image itself is independent of scientific evidence; for example, the clinic's success rate. When planning, such characteristics as the support, attentiveness, and friendliness of the working staff are often considered. As Lena said, 'I made my choice about the particular agency, as I found the coordinator trustworthy, she patiently and honestly answered all my questions.' A representative of the Georgian agency contacted Lena with a woman also from England, who had had children via surrogacy in Georgia with the same agency. Lena went to see this family, who lived outside London. As she said, she saw real-life children via surrogacy and became convinced it would be possible to fulfil her dream.

In contrast to Lena's expectations that she would be in control throughout the surrogacy process, she said 'I had no idea what was happening throughout the whole process, being away in a different country, with the language barrier, I had no control over the situation.' The agency picked a surrogate for her, as she says according to some 'magical particularities', but the agency did not let her communicate with the surrogate without their mediation. It was a regulation of the agency, as Lena says. Once, the agency organised an online meeting for Lena, her husband, the surrogate, and an interpreter. The meeting took place at the offices of the agency. 'It was awkward; the woman was perplexed, so were we', remembers Lena. The second time she saw her was at the 20-week scan. 'This is a major event in the UK', Lena said, and specifically for this occasion she and her husband took a holiday and came to Tbilisi.

It was the first time we met her [surrogate woman]. I asked her if I could contact her, and she did not mind. Since then, I found a Georgian girl in London who was translating all my messages to her, there was nothing much to ask, but I kept writing to her: how are you? How is it going? (Lena, intended mother, 51)

Lena said that writing letters to the surrogate woman helped her feel more engaged in the process from which she ultimately felt detached. Every morning after she found out that her surrogate woman was doing well, she was happy that her baby twins were doing well too. Lena's casual interaction with her surrogate, without the presence of the agency representative, went against the regulations set by the agency. However, this informal communication was providing her with moral strength, aiding in her connection with the twins and enhancing her perspective as the intended mother, thereby supporting the surrogacy process.

The perspectives of the surrogate women

Throughout the research, we met and talked with many surrogate women. Most of them were financially vulnerable women who had to engage in the surrogacy process because of the material needs of their children (Gavashelishvili, 2022; Tarkhishvili, 2022). We asked them how they felt about the regulation of having no direct communication with the intended parents. Most of them confirmed they did not communicate with the intended parents, just had formal meetings with them via social media, organised by the agencies. They expressed their interest in getting to know and socialising with the intended parents, knowing more about them, and their cultures, as they were from different countries. One surrogate mother said: 'I can speak some English, and I could talk to them directly'; another woman said 'I heard them say I had beautiful eyes; I wish they knew me better and learned I had a good personality too.' One woman also said, 'they sent some presents to my friend, a surrogate mother, I do not think they will send me anything; they don't know me at all.'

As the results showed, mediated communication with the intended parents was easier for those surrogate women who trusted the agency and had a good relationship with the coordinators. The presence of a reliable party in this difficult process becomes especially important because surrogacy is a much-stigmatised and shameful practice in Georgia. Some surrogates hide the fact that they work as surrogate women even from family members, changing their place of residence, saying they are leaving to work abroad and start living an isolated way of life. Sometimes it is only the agency representatives who know about their work and support them emotionally through these hard times when they have anxiety or physical pain. They therefore completely understand the need to handle this complexity. As Nina, the head of a surrogacy agency told us, 'You cannot disappoint trusting surrogate women and treat them without emotion. For them you are a mother, a friend, a reliable person, she can call.'

We see that trust and support factors are also significant in the surrogate women's narratives. As Ani, a young surrogate woman, recalls, she lived alone in a rented apartment during her pregnancy. Talking to Nina (head of a surrogacy agency) helped her emotionally when she felt lonely and sad. While recalling this, Ani's voice became filled with love, calling her Niniko. Adding the 'ko' suffix means showing love and care, 'If I was bored, I would call Niniko, I would talk to Niniko. That conversation meant a lot to me ... I'm very glad that I have such a good friend as Nina, more than a friend' (Ani, surrogate woman, 24). It depends on the agency representatives how they treat the surrogate women - 'righteously' or in a 'business style.' Throughout our research, we encountered surrogate women who shared stories similar to and different from Ani's story.²⁵

Barbare is a young woman who did not have a good cooperation experience with the surrogacy agency and the clinic, and she was very determined to talk about her experience. We met Barbare in the centre of Tbilisi, near the subway. She chose a café nearby for the interview. As Barbare explains, the difficult economic situation pushed her to think about surrogacy, which she saw as the only way to support her own children at that time. Barbare started cooperating with one of the agencies, where she negotiated before signing a contract. The agency would pay her \$400 per month, even though \$300 was written in the contract.

Barbare met the commissioning parents once, on signing the contract. She fondly recalls that the couple liked her very much, telling her 'You are very beautiful'. Then she added 'It's nice to have a nice-looking woman carrying your child, isn't it?' Barbare's pregnancy was soon confirmed, and she found herself pregnant with twins: 'I had to feed myself three and not two times more.' As Barbare says, the agency coordinator gave her hope that there might be a higher payment and asked her to sign the contract which was 'just a formality'. This attitude shows that formalities are often equated with bureaucratic procedures, which do not mean as much as informal negotiations. Barbare trusted the coordinator, but after the first payment, she discovered that she received only \$300. '\$300 meant that I was left with only one hundred lari to feed myself and my children as I had to pay the rent of the house.' The agency denied they had given any other promises and pointed to the signed contract, which defined the payment as \$300. According to Barbare, she 'went through hell.' She wished to take this information to the eyes and ears of the commissioning parents, but the agency did not give her their contact information and the right to talk to them. Once when Barbare was dealing with the paperwork at the agency, she saw the phone number of the intended parents and got in touch with them directly. Direct communication with the couple was not easy for Barbare as she did not know the foreign language. Her friend helped her by interpreting. As Barbare says the couple believed her story. They asked Barbare to maintain the contract with the agency and they would send her additional money from their side. They sent Barbare 500 euros once, and then they sent her 100 euros every month. This was additional money and not paid from her contract with the agency. In Barbare's words, this money was spent feeding the twins.

The couple trusted me, they saw how much I fought for their children. In the end I handed in completely healthy children. I believe I saved these children. If I had followed the agency's instructions, only one child would be born with serious health problems. (Barbare, surrogate woman, 27)

25 Our study relies on observations and interviews with our informants. Journalist investigations about surrogacy agencies in Georgia are relatively critical, more on this see: The Baby Broker Investigation, iFact, <https://ifact.ge/en/surogacy/>; Selling surrogates: wombs for hire in Georgia, Unreported World, <https://www.youtube.com/watch?v=HvCUvUvbXio>

In conversation with us, Barbare differentiated between righteous and ‘business oriented’ agencies, saying that she was aware of the ‘good’ ones too. She says her agency mistreated her, so she justifies acting contrary to the agency’s formal regulation about not communicating with the commissioning couple. She discusses her informal communication with the couple as a solution to a complicated situation. For her, the informal practice was a tactic (Certeau, 1984), a legitimate coping mechanism for dealing with the strict and rigid formal rules. Here we want to highlight the socially constructed character of the word ‘legitimate’. What is legitimate for Barbare is illegitimate for the agency and understandable for the couple. Morality and formality are not always in agreement with one another. We have seen that there can be moral ambiguities throughout the surrogacy negotiations, and a closer examination shows complexities embedded in this field.²⁶

Conclusion

The Georgian law on surrogacy regulates only to the pre- and post-procedural periods of surrogacy. It functions as an external framework for surrogacy in Georgia. The surrogacy process is almost completely omitted from the legal framework, and this is where surrogacy agencies and fertility clinics step in. They create their own regulations like webs within the framework for the parties involved in surrogacy to negotiate and proceed. Some of these regulations become formalised and materialised in notarised contracts, while others remain unwritten, widely shared informal institutions. It is also noteworthy that the line between the formal and informal self-regulations is fluid and not fixed; sometimes informal norms become formalised while other times morality may override the contracts.

We revealed the complementary aspects of the informal self-regulations implemented by surrogacy agencies and clinics. By complementary, we refer to informal practices that address areas not covered by the formal institutional framework. Within this complementary realm, we examined how clinics and agencies carefully select surrogate women and emphasised the informal institution of *tsesieri* [morally upright] women in this procedure. In contrast, we observed the implementation of standardisation and regulation within agencies to control the relationship between surrogate women and intending mothers, aiming to minimise informalities. Nevertheless, we also witnessed resistance towards formalisation, as some individuals preferred to maintain informal practices and emotional connections. These informalities were viewed by intending mothers and surrogate women as having complementary, compensatory, and enabling qualities.

We aimed to present the mentioned instances as evidence supporting the entanglement of formal and informal, highlighting how informalities sustain or reproduce surrogacy in Georgia. Our aim was to make a contribution to the existing body of literature that examines or indicates the interconnection between formalities and informalities (Helmke & Levitsky, 2004; Ledeneva, 2008; Humphrey, 2012; Polese, 2014; Morris & Polese, 2015; Knudsen & Frederiksen; Hardenberg & Fehlings, 2016; Rekhviashvili & Sgibnev, 2020). Our argument asserts that informalities are not merely present alongside formalities but play a crucial role in the operation and perpetuation of formal systems. We observed that the presence of informalities enhances the effectiveness of formal procedures by fostering trust and respect among the individuals involved in interactions. Surrogacy agencies are sustained through trust and interconnected networks, with some surrogates recommending other potential surrogates who possess the desired qualities and reliability. Some agencies provide nurturing and supportive assistance. The relationship between agency representatives and surrogate mothers highlights the significant impact of informal connections based on trust and personalised interactions within formal contractual arrangements. This network needs additional investigation to gain deeper insights.

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Acknowledgements

We are grateful to our research group members Ketevan Gurchiani, Nino Rcheulishvili, and Lasha Jaiani for their teamwork and inspiring discussions. We also want to express our gratitude to our interlocutors, without whom it would be impossible to understand the dynamics of surrogacy negotiations.

Funding

The research is part of a wider anthropological research project Surrogacy as a Networked Phenomenon: the study of key actors and their interrelations (2020–2023). The project has been financially supported by the Shota Rustaveli National Science Foundation (FR-19-7478).