Opening statement to the Joint Committee on Health
December 19th 2018
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Thank you for inviting me to present my observations on the General Scheme of the Assisted Human Reproduction Bill 2017. As a member of the Commission on Assisted Human Reproduction I welcome the publication of this Bill.

My background is psychology and professionally my focus is on early child development and education. I am a founder member of the Children’s Rights Alliance and I approach my work and research from a child rights perspective, which holds that children of every age are independent rights holders – a position now captured in the 31st Amendment of our Constitution. The Committee on the Rights of the Child [the Committee] is clear in their guidance “that implementation of the Convention requires states continually to review how law, policy and practice affect children’s rights” (Wade, 2017). It is in this context that I present.

My observations relate to three particular issues – (i) the design of the Bill, (ii) the welfare of the child and (iii) the child’s right to identity in surrogacy.

(i) Design of the Bill:
The intention behind Assisted Human Reproduction [AHR] is, in all case, the safe arrival of a child and I believe that the current design of the Bill could be strengthened by a more robust child rights approach. Such an approach would draw attention to the need to realise and protect children’s rights at all stages of their childhood and take account of their views in keeping with Article 12 of the UN Convention on the Rights of the Child 1989 [CRC]. It would also provide a basis from which to address the central role of parents in protecting the rights of their children and the states responsibility to support them in this regard. The issues raised are particularly relevant to surrogacy where due attention must be paid to the developmental needs and rights of very young child.
Under Article 18(1) parents are recognised as having primary responsibility for the upbringing and development of the child; Article 18(2) notes that State Parties shall render appropriate assistance to parents and legal guardians in the performance of these responsibilities and shall ensure the development of institutions, facilities and services for the care of children. The Bill should therefore endeavour, in its design, to support parents in protecting children’s rights to know their parents (Article 7) and their right to have their views taken into account (Article 12). The Committee on the Rights of the Child notes that ‘... the views expressed by children may add relevant perspectives and experiences and should be considered in decision-making, policy making and preparation of laws and/or measures as well as their evaluations’ (CRC Committee, 2009:para 9).

How can this latter right to participation be realised at birth? The Committee note that, in relation to the totality of the CRC, participation can be addressed by using reliable data on and from children ‘to identify and to inform all policy development for children’ (CRC Committee, 2003:para 48). There is a growing population of children and young people who are the direct outcome of AHR procedures and, over their lifetimes, they can offer insights into how policies and practices have affected them and could be changed or improved. The current Bill only references research in terms of medical research; I suggest it be amended to include a recognition of the importance of social science research into the lives and experiences of children born through AHR and the contribution such research evidence could make to the quality of lives of future generations of children born through AHR.

(ii) The welfare of the child
The Bill specifically attends to the welfare of the child noting that ‘AHR treatment may be provided ... subject to a consideration of the welfare of any child who would be born as a result of the proposed treatment’ (Head 6(1)).

Relationships are the primary mode through which children develop and the effect of the relational process is often more powerful than that of the context within which it occurs (Hayes, O’Toole and Halpenny, 2017). The close day-to-day routines in the early lives of infants impact on the architecture of the brain with concomitant impact on development and behaviour. Living in environments characterised by chronic,
poorly managed stress has a direct impact on early brain development, especially in the weeks and months immediately after birth. Stressors in early childhood can disrupt neurologic, metabolic, and immunologic systems, leading to poorer developmental outcomes (Robison, Bitsko, Thompson et al, 2017).

Where parents experience stress through uncertainty or lack of clarity around the security of their role as parents the environment within which children are developing may be unnecessarily stressful. Strong, stable, positive relationships can protect against the impacts of potentially damaging environments. Proactively supporting the development of positive relationships between adults and children requires careful consideration of the relationships that happen in the lives of children and the factors that can contribute to enhancing or challenging the quality and impact of such relationships.

In places the Bill may be contributing to stress in the lives of parents and children. For instance, in the case of the proposals re surrogacy outlined in Head 43 the explanatory notes identify three stages of counselling - 1) before the agreement, 2) after the birth of the child but before the child is living with the intending parents and 3) at the time of the application for the transfer of parentage of the child. These requirements could span a period of up to six months and seem onerous, adding a dimension of uncertainty around the precise parentage of the child. Such distress could have a negative impact on the child (Asok et al., 2013). Providing for a judicial pre-authorisation, where legal parenthood is granted to the intending parents before the birth of a child, would provide clarity and certainty from the moment of birth thus minimising the stress in the immediate environment of the child following birth.

(iii) The child’s right to identity in surrogacy
The child’s right to identity in cases of Donor Assisted Human Reproduction [DAHR] is protected under the Children and Family Relationships Act 2015. However, the Act makes no explicit reference to the issue of the right to identity in relation to surrogacy. In light of this it is critical that the Bill makes clear the right to identity and the procedures to ensure the realisation of this right for children born through surrogacy.
In this regard the Bill proposes that children born through surrogacy be issued with a ‘surrogacy certificate’ [Head 52(5)]. In a rights-based Bill efforts would be made to ensure that the language used would limit the degree to which proposals create situations where children stand out as different from other children. In this regard, and to limit the emphasis on any particular type of birth, I suggest that the ‘surrogacy certificate’ be re-titled the ‘birth certificate [by surrogacy]’.

In conclusion, this Bill is a welcome step on the path to regulating for a safe AHR environment in Ireland for parents and children. However, in design it highlights welfare considerations without due attention to the rights of the child particularly in relation to (i) support for the realisation of children’s rights across their lifespan, (ii) identity in surrogacy and (iii) support for parents to protect and realise the rights of children.

Thank you for your time and attention.