# CONSULTATION PAPER
# ON
# FINAL REPORT
# OF
# THE COMMITTEE ON
# SCIENTIFICALLY ASSISTED HUMAN REPRODUCTION

**March 1993**

CB(2) 416/98-99(05)

THIS paper invites views on the recommendations by the Committee on Scientifically Assisted Human Reproduction (SAHR), as set out in its Final Report at ***Appendix A***.

## Infertility

2. It is conservatively estimated that at least one in every ten couples is affected by infertility. This suggests that in Hong Kong about 50,000 couples of child-bearing age are infertile. Childlessness, even if by choice, can be a source of stress.

3. Infertility is well recognised as a clinical condition meriting remedy. Conventional therapy includes counselling a couple about intercourse, hormonal treatment and surgical intervention. Where conventional therapy fails, infertile couples have to resort to other alternatives: traditionally, adoption.

4. The lack of genetic linkage and scarcity of available babies have made adoption less popular. On the other hand, medical technology has developed considerably since the late 1970's to make unconventional therapy, SAHR procedures, a real alternative to alleviate infertility.

## SAHR Procedures

5. SAHR procedures assist human conception by artificial means with one or more of the following features :

(a) use of human gametes (ie sperm or egg) of a third party, with one (or both) parent(s) who raise the child not being its genetic parent(s);

(b) fertilisation of embryos outside the body, with a woman becoming pregnant without sexual intercourse;

(c) creation of "excess" human embryos to achieve pregnancy; and

(d) surrogacy whereby one woman (the surrogate mother) carries a child for another.

Different couples may benefit from different SAHR procedures, depending on their medical conditions. A brief explanation of the available SAHR procedures is at *Appendix B*.



## Position in Hong Kong

6. Donor insemination (DI) and artificial insemination by husband (AIH) procedures have been available in Hong Kong for more than 18 years. More sophisticated SAHR procedures such as in-vitro fertilisation (IVF) procedures have been practised successfully here only since 1986. Different SAHR procedures are now available from the Faculty of Medicine at the two universities, the Family Planning Association, a private hospital and some private practitioners. Available statistics on SAHR procedures in Hong Kong are at *Appendix C*.

## Debate on SAHR

7. SAHR procedures have wide-ranging social, moral, ethical and legal implications. They have attracted considerable and continuing debate the world over.

8. Those who ***favour*** SAHR procedures make the following points :

(a) SAHR procedures, taken with the intention of overcoming infertility, should be available as substitutes for natural fertilisation.

(b) Whereas introduction of a third party may be seen as a threat to the stability of marriage, parallels exist. For example, a step-parent can enjoy a good relationship with his child without being genetically related.

(c) Given the frustrations of infertility and childlessness, the continuing desire to participate in SAHR procedures manifests a deep commitment to the marriage and the anticipated child. This assures loving care for the child.

(d) Children born of SAHR procedures without genetic linkage to their parents may be considered as "adopted", not "natural". SAHR procedures themselves should not cause concern. It is current attitudes towards children born of SAHR procedures that ought to change.

(e) Any risk of incestuous relationships can be greatly reduced by limiting the number of children fathered or mothered by one donor.



(f) Infertile couples should not be deprived of the benefit of surrogacy as it may be their only way to have a child. In this context, bearing a child for another is not an undertaking that demeans or commercialises pregnancy but a deliberate and thoughtful act of generosity on the part of one woman for another.

(g) Like adoption, SAHR procedures should also be available to single men or women under certain circumstances.

(h) The human embryo is entitled to some added measure of respect beyond that accorded to other animal subjects. However, use of "excess" human embryos for research should be weighed against the benefits this may bring.

9. People who ***object*** to SAHR procedures raise the points below :

(a) Treatment of infertility by SAHR procedures is interference with Nature or the will of God.

(b) Marriage ought to be an exclusive relationship between husband and wife. To introduce a third party, as gamete donor or as surrogate mother, into the process of procreation is an assault on the value of the marital relationship.

(c) Separating intercourse from procreation violates the sanctity of marriage or of the family.

(d) Children born of SAHR procedures are born "unnaturally". This may impact adversely on the children.

(e) Children born of SAHR procedures may unwittingly enter into an incestuous relationship or marriage.

(f) Surrogacy is inconsistent with human dignity in that a woman should use her uterus for financial profit and as "an incubator" for someone else's child.

(g) Extending SAHR procedures beyond treatment of infertility, like using surrogacy for convenience or making parenthood available to single men or women or homosexual couples, is seen as "outrageous".



(h) The human embryo has potential for human life and should have the same status as a child or an adult. Research on, or any other tampering with, human embryos is therefore morally wrong.

## Committee on Scientifically Assisted Human Reproduction

10. In the light of these concerns and controversies, the Secretary for Health and Welfare in 1987 appointed a Committee on Scientifically Assisted Human Reproduction to look into the issues involved. The Committee has presented its ***Final Report*** (at ***Appendix A***) with 22 recommendations. They are summarised below.

### (a) Statutory controlling body

(Recommendations 1 to 5)

Government should assess the feasibility and resource implications of setting up a multi-disciplinary statutory body to register, and issue a code of practice to, medical institutions performing SAHR procedures. The body should maintain a central registry of sperm donors and the code should require registered institutions to keep proper records of SAHR procedures.

**(b) Legal status of children born of DI procedures**
**(Recommendation 6)**

The legitimacy of children born of DI procedures should be protected by legislation, as these involve third-party gamete(s).

**(c) Artificial insemination**
**(Recommendations 7 to 11)**

AIH should be allowed. For DI, the husband's consent should be required; only banked sperms should be used; the identity of donors should be kept confidential and the number of children sired by any one donor should be not more than three.

**(d) Information on children born of DI procedures**
**(Recommendation 12)**

Registered medical institutions may, on request from a person born of DI who has reached the age of majority, provide him with information relating to his birth. This should be restricted to confirmation of performance of DI procedures on his mother, without revealing the identity of the sperm donor. Apart from this, the institution should maintain strict confidentiality.



(e) Surrogacy
(Recommendations 13-18)

Commercial surrogacy should be banned. Only genetic IVF surrogacy should be allowed, ie where the commissioning couple contributes both the sperm and egg to be fertilised outside the body of the surrogate mother. It should be allowed only for infertile married couples where no other treatment is possible. A woman who has never been married or who has no child of her own should not be allowed to be a surrogate mother. Surrogacy should require the consent of both the surrogate mother and her husband.

(f) Embryo research
(Recommendations 19-22)

Requirements should be specified for storage of gametes and embryos. Guidelines should be set on what activities are allowed or not in embryo research. Institutions should obtain the consent of the genetic parents regarding the disposal of stored embryos and the use of embryos for research. No embryo should be created deliberately for research and no research should be allowed after the 14th day of fertilisation.

## Parent and Child Bill Implications

11. The Law Reform Commission addressed the issue of illegitimacy, including those flowing from SAHR procedures, in a report published in 1991. The Parent and Child Bill was therefore introduced into the Legislative Council on 24 June 1992 with a view to reducing the legal disabilities associated with illegitimacy. The implications of the Bill, if enacted, on the recommendations by the Committee on SAHR are set out below.

(a) **Legal status of children born of SAHR procedures**
**(Recommendation 6)**

The Committee recommends that children born of DI should be protected by law, along the lines of sections 27-29 of the Human Fertilisation and Embryology Act 1990 of the United Kingdom. Clauses 9-11 of the Parent and Child Bill are local adaptation of these sections. They provide that the husband of the carrying mother of a child born of SAHR procedures should be treated as the child's legal father where he has given consent to the procedures. If the carrying mother is unmarried, the man together with whom she undergoes the SAHR procedures, who is not the sperm donor, is to be treated as the child's legal father. On the other hand, the carrying mother of a child born of SAHR procedures should be treated as the legal mother.

(b) Surrogacy
(Recommendations 13-18)

Clause 12 of the Parent and Child Bill seeks to introduce a new court procedure to determine parentage in surrogacy under limited circumstances. Where a couple have commissioned another woman to carry a child on their behalf and at least one of them has provided the sperm or egg, they may, within six months of the child's birth and subject to specified statutory conditions, apply to the court for an order to be the child's legal parents. This clause obviates the adoption procedures, envisaged in paragraph 3.27 of the Final Report, for children born of surrogacy. It also goes further than recommendation 14 of the Final Report, which proposes that only genetic IVF surrogacy should be allowed.

12. Clauses 9-12 of the Parent and Child Bill are reproduced at *Appendix D*.

## Consultation

13. As SAHR procedures have wide-ranging implications, public views and attitudes must be carefully assessed. We welcome views generally on whether, and how, to take the Final Report forward. We invite views specifically on the following points :

(a) Should Government intervene in respect of SAHR procedures? If so, to what extent and with which activities ? Should intervention be outright prohibition or some form of regulation?

(b) If it is to be regulation, how should control be exercised ?

(i) by a statutory body, with SAHR-specific legislation ?

(ii) by a Government department, with specific legislation or by administrative guidelines ?

(iii) by a professional body, through voluntary self-regulation? or



(iv) through the courts, by development of common law principles ?

14. Please send your views before 30 June 1993 to :

Secretary for Health and Welfare
(Attn: Mr David Wong)
Government Secretariat
Central Government Offices
Main Wing 7/F
Lower Albert Road
Hong Kong

We await your views. Thank you.

Health and Welfare Branch
March 1993

# FINAL REPORT
# OF
# THE COMMITTEE ON
# SCIENTIFICALLY ASSISTED HUMAN REPRODUCTION

May 1992

CONTENTS

# CHAPTER 1

# INTRODUCTION

1.1. In November 1987, the Secretary for Health and Welfare appointed a Committee on Scientifically Assisted Human Reproduction (SAHR). This report sets out the recommendations of the Committee.

## Terms of Reference

1.2. The Committee was given the following terms of reference -

> "In the light of local developments in scientifically assisted human reproduction, to consider the social, moral, ethical and legal issues arising from these developments and assess the public's reaction towards them, and to advise Government on how these issues should be addressed."





## Membership

1.3. The members of the Committee were -

Dr the Hon LEONG Che-hung (Chairman)

Mr Christopher CHAN Cheuk

Mr Jimson CHAN Wing-tai

Dr Fanny CHEUNG Mui-ching, JP

Dr the Hon Conrad LAM Kui-shing

The Hon Mrs Peggy LAM PEI Yu-ja, MBE, JP

Dr LAW Chi-lim

Representative from Attorney General's Chambers

Representative from Health and Welfare Branch

Representative from Medical and Health Department (from November 1987 to April 1989)

Representative from Hospital Services Department (from April 1989)

Representative from Department of Health (from March 1990)

Representative from Social Welfare Department (from March 1990)

1.4. Except for the Government representatives, the Chairman and members of the Committee were appointed in their personal capacities. Members were drawn from a broad range of backgrounds and professions, including medicine, law, social work, psychology and family planning. This diversity was intended to enable a thorough and balanced discussion.

## Proceedings of the Committee

1.5. Between December 1987 and August 1991, the Committee held 19 meetings. It also made two familiarisation visits to see the in-vitro fertilization (IVF) facilities of the University of Hong Kong and the artificial insemination facilities of the Hong Kong Family Planning Association.

1.6. The programme of work of the Committee can be broadly divided into two stages. In Stage I, ten meetings were held, followed by the publication of an Interim Report in July 1989. In Stage II, public response to the recommendations in the Interim Report was considered and assessed by the Committee. There was also in-depth discussion of the legal and operational implications of 'SAHR' in Hong Kong.





# CHAPTER 2

# INTERIM REPORT : RECOMMENDATIONS AND CONSULTATION

2.1. The Committee came to an early view that "surrogacy" and "artificial insemination" should be examined in particular detail in the Hong Kong context. The Interim Report made 12 recommendations on these two subjects.

## Recommendations on Surrogacy

2.2. Surrogacy can be defined as the practice whereby the surrogate mother is artificially inseminated or receives an embryo-transfer and carries a child for another person with the intention that the child be handed over to that person after birth. Genetic in-vitro fertilization (IVF) surrogacy occurs when the commissioning couple contribute both the egg and semen, which are brought together outside the surrogate mother, and the resultant embryo is transferred to and implanted in the surrogate mother. In this case, the commissioning couple are the genetic parents of the child. The recommendations of the Committee on surrogacy were as follows -

(a) In view of the very complicated social, moral and ethical issues involved, only genetic IVF surrogacy should be allowed, subject to strict control.

(b) Commercial surrogacy (i.e. where an agency or the surrogate mother makes profit out of a surrogate arrangement) should be banned in Hong Kong.

(c) Genetic IVF surrogacy should be allowed only for infertile married couples where no alternative medical treatment is possible.

(d) A woman who has never been married nor has had a child of her own should not be allowed to act as a surrogate mother.

(e) Proper professional counselling on the likely problems for both the commissioning couple and the surrogate should be made an integral part of the process before, during and after surrogacy.

## Recommendations on Artificial Insemination

2.1. Artificial insemination involves the intra-vaginal or intra-uterine placement of semen in the female body by a syringe or





similar means other than sexual intercourse. There are two types of artificial insemination : where semen is contributed by husband (AIH) or by donor (AID). The latter is also known as donor insemination (DI). The recommendations of the Committee on AIH and DI were as follows -

(a) AIH should be allowed. Since DI has been practised in Hong Kong for over 15 years and seems to be acceptable, it should also be allowed to continue.

(b) The legitimacy of children born by DI should be protected by legislation. The Committee favoured legislative measures along the lines of the United Kingdom Family Law Reform Act 1987. (Pursuant to section 27 of the Act, a child born as the result of the artificial insemination of a married woman by the semen of a donor is treated in law as the child of the married woman and her husband, unless it is proved that the husband did not consent to the artificial insemination.)

(c) The identity of semen donors should be kept confidential.

(d) A child born of DI should be given the legal right of verification on reaching the age of majority. The information to be released should be restricted to

confirmation that the person was born following the performance of DI procedure on his mother, without revealing the identity of the semen donor. No other party should be given access to such verification.

(e) Only banked semen should be used for DI in Hong Kong. This would allow time for donors to be checked for diseases and reduce the possibility of incest in a small and closed society. For AIH, either banked or fresh semen could be used.

(f) Semen from any one donor should not be used to produce more than 3 pregnancies. This would be ensured by (g) below.

(g) A central registry of donors should be established. The setting up of a central semen bank was not recommended in consideration of practical difficulties such as transport and centralised storage.

## Consultation and Response

2.4. The Committee's Interim Report was published in July 1989. Copies were sent to all Legislative Councillors and District Board members, to relevant medical, educational and legal organisations, to





representative religious organisations (Protestant, Roman Catholic, Buddhist, Taoist and Islamic), and to the media. Copies were also sent to the reference libraries of the Urban and Regional Councils. In total, more than 700 Chinese copies and 450 English copies of the Interim Report were distributed.

2.5. The consultation period for the Interim Report ended on 31 October 1989. 14 written submissions were received, giving diverse views on the subject. In general, most of the submissions were thoughtfully presented. About half considered the recommendations in the Interim Report acceptable. Three submissions indicated strong objection to both surrogacy and DI. Another submission specifically raised objection to DI.

2.6. Among the submissions, concern was most frequently expressed regarding the legitimacy of the child born of surrogacy, the need of provision of medical and psychological care for the surrogate mother and the banning of commercial surrogacy. Several submissions approached the problem from a religious perspective.

2.7. After the consultation period had ended, some ten more submissions were received during the period November 1989 to February 1991. Most of these letters commented on whether the semen of any one

donor should be used to produce more than three pregnancies. Some writers suggested that Hong Kong should follow the UK and USA standard where the semen from any one donor could be used to produce a maximum of ten pregnancies.





# CHAPTER 3

# FINAL RECOMMENDATIONS

3.1 After careful consideration of the public response, the Committee affirmed all the recommendations made in the Interim Report but it also identified areas where further recommendations should be made. The subsequent deliberation of the Committee therefore largely focused on legal and operational aspects of SAHR. Moreover, since the Committee appreciates the importance of devising an appropriate mechanism to control and monitor the performance of SAHR procedures, it has also suggested some of the recommendations should be embodied in legislation and some should be included in a code of practice.

## The Controlling Body

3.2 Having considered the Human Fertilisation and Embryology Act 1990 which provides for the establishment of a licensing authority in the United Kingdom in respect of activities relating to human fertilisation, the Committee recommends that a controlling body with statutory powers should be set up to monitor SAHR activities in Hong Hong.

3.3 The idea is that the powers of the controlling body should be laid down in broad terms in legislation. The Committee recommends that the controlling body should be empowered to register institutions for the performance of SAHR and to issue a code of practice to guide these institutions. The Committee further recommends that the Government should conduct an early assessment of the feasibility and resource implications of setting up such a body in Hong Kong.

3.4 For better monitoring and control, it is proposed that registration should be given to medical institutions and not individual medical practitioners. Such institutions, which may include medical clinics managed by medical practitioners, should be under the control of a registered medical practitioner and must meet specific requirements relating to equipment and staffing. After registration, the institution will be required to comply with the code of practice and other specified conditions.

3.5 SAHR involves social, moral, ethical, legal, as well as medical and technological considerations. The Committee recommends that the controlling body should be multi-disciplinary in composition. The Committee also recommends that an ethics committee should be set up as part of the controlling body.





## The Code of Practice

3.6 The Committee recommends that the future controlling body should draw up a code of practice for registered institutions to follow. Taking into consideration the rapid developments in science and technology, the Committee recognises that details of the code will be subject to change.

## Donor Insemination (DI) and Artificial Insemination by Husband (AIH)

3.7 Regarding DI and AIH, the Committee recommends that only banked semen should be used for DI. This will allow time for donors to be checked for diseases and reduce the possibility of incest.

3.8 A child born during the subsistence of a marriage is presumed to be the legitimate offspring of the married couple. However this presumption may be rebutted by evidence to the contrary. In order to protect the interests of a child born of DI and avoid the stigma of illegitimacy being attached to him, the Committee recommends that legislation along the lines of sections 27 to 29 of the Human Fertilisation and Embryology Act 1990 should be enacted. These provisions are similar to section 27 to the Family Law Reform Act 1987 mentioned in the Committee's Interim Report in July 1989. Under these provisions, a child born as the result of the artificial insemination of

a married woman by the semen of a donor is treated in law as the child of the married woman and her husband, unless it is proved that the husband did not consent to the artificial insemination. The Committee recommends that as a matter of good practice the medical practitioner performing the DI on a married woman should require her husband to give his written consent to the DI, but it is not proposed to stipulate this requirement in legislation because of the hardship which may be caused to children in cases where the husband has in fact consented but failed to comply with the required formalities.

3.9 To protect the interests of the donor, the Committee recommends that the identity of semen donors should be kept confidential.

3.10 The Committee noted that in UK and USA, the semen from any one donor could be used to produce up to ten pregnancies. The Committee however holds that the local social context is different and the important point is always to minimise the risk of accidental incest. According to a 1990 statistical estimation by the Hong Kong Family Planning Association, the risk of incest will be 5.5 per million if the number of pregnancies attained from any one donor is limited to three. The Committee does not consider a risk higher than this level as recommendable and it therefore maintains the view that the number of children sired by any one semen donor should not be more than three.





3.11 In this respect, it should be noted that the promotion of SAHR in Hong Kong was not one of the Committee's objectives. Rather, the Committee was concerned more with how to give maximum protection to all parties involved in SAHR. The Committee is of the view that even if there is a large demand for DI, it is preferable to encourage more donors, rather than allowing more pregnancies from each donor.

3.12 The Committee observes that a child born of DI is not genetically related to the husband of his mother and a child born by IVF surrogacy is not genetically related to his surrogate mother and the surrogate mother's husband. A child born of DI would not know who his real father was and even his mother would not know the answer unless she had been told by the centre performing the DI procedure or by the central registry. The Committee affirms its recommendation in the Interim Report that a child born by DI should be given the right of verification on reaching the age of majority, but that the identity of the semen donor should remain confidential.

3.13 In IVF surrogacy cases, the surrogate mother knows the identities of the child and his genetic parents. She is in a position to disclose her relationship to the child or to others. In such cases, the Committee notes that it would be difficult to maintain confidentiality and no special recommendation is made in this respect.

14 The Committee reaffirms that AIH should be allowed and ther banked or fresh semen could be used.

## urrogacy

15 The Committee has re-examined its recommendations on rrogacy in the Interim Report and has discussed problems relating to e genealogy of the child and the enforceability of IVF surrogacy rangements.

16 Regarding the genealogy of the child, the Committee noted at since the surrogate mother would continue her marital relationship ith her husband, the child would be presumed to be the offspring of her id her husband unless there is evidence to prove the contrary. It is ot considered desirable to require the surrogate mother or the child to ndergo blood and tissue tests against their wishes to establish the ild's genealogy.

17 Given the above, it is considered advisable for the mmissioning couple to assume the legal status of parents through loption of the child. In order to minimise the possibility of disputes tween the surrogate mother and the commissioning couple over the ild's adoption, the Committee upholds its recommendation that proper unselling should be provided for both the commissioning couple and the





surrogate mother before, during and after the surrogacy. The Committee also recommends that every measure should be taken to facilitate the process of adoption.

3.18 Regarding the enforceability of IVF surrogacy arrangements, the Committee considers that making such arrangements enforceable would seriously infringe the rights and liberties of the surrogate mother. A surrogate mother should not be forced to go through an unwanted pregnancy. The Committee therefore recommends that such arrangements should not be made enforceable.

3.19 The Committee reaffirms the recommendation that commercial surrogacy should be banned in Hong Kong.

## The Use of Embryos for Research and Other Purposes

3.20 The Committee has considered the ethical and scientific aspects of the use of embryos for research and other purposes. The Committee recommends the following -

(a) No embryo should be deliberately created for the purpose of research. No research on an embryo should be allowed after the 14th day of fertilisation which is the usual timing of appearance of the primitive streak (i.e. rudimentary nervous tissue) in the embryo;

(b) The registered medical institution should obtain the consent of the commissioning couple regarding the use of stored embryos for IVF, donation to other parties, research or disposal.

## Other Requirements for Registered Medical Institutions

3.21 The Committee recommends that registered medical institutions should be required to keep proper records of all SAHR procedures carried out.

3.22 The Committee agrees that the strictest confidentiality should be observed but records should be kept for possible use in checking of hereditary disease, genetic linkage, research, etc. The information is also required for compiling a central registry of semen donors.

3.23 To ensure that embryos and gametes will be properly stored, the Committee recommends that particular storage requirements should be specified.

3.24 The Committee recommends that the future controlling authority should work out guidelines on what activities are allowed and not allowed in embryo research, which registered institutions should be required to observe.





## Adoption of Children Born by Genetic IVF Surrogacy

3.25 Regarding the adoption by the commissioning couple of a child born following the performance of IVF procedure on the surrogate mother, the Committee recommends that the usual adoption procedure should be followed. The Committee has considered the provisions of the Human Fertilisation and Embryology Act 1990 relating to the parentage of a child born of human fertilisation techniques. If a child born of surrogacy is regarded as the child of the surrogate mother, the commissioning couple can still assume the legal status of parents by adopting the child.

3.26 The Committee observes that in ordinary adoption cases administered by the Social Welfare Department involving unmarried mothers, the birth mother is given six weeks after the birth to consider her decision before signing off her baby for adoption. The baby will then become a ward of the Director of Social Welfare. Within three months after the relinquishment of her baby, the mother can notify the Director of Social Welfare if she wishes to reverse her consent to adoption. Beyond these three months and before an adoption order is made on the baby, the mother can apply to Court to revoke her consent. After the mother has signed off the baby and if a suitable couple is found, the baby will be placed in that couple's home for a minimum period of six months. After these six months, an application may be

made to the Court for an adoption order. Generally speaking, for a baby of normal circumstance, she/he can be legally adopted before reaching one year old.

3.27 Regarding the adoption by the commissioning couple of a child born subsequent to the performance of IVF procedure on the surrogate mother, the Committee takes the view that it is in nature quite different from ordinary adoption. A long time to comply with the current legal requirements may not be beneficial to any of the concerned parties in such a case. The Committee therefore recommends that while the usual adoption procedures should be followed in general, the processing of such a case should be greatly facilitated and hopefully be completed within three months. The medical institutions where the IVF procedure was carried out would however issue a certificate of its own, certifying that the child was born following the performance of IVF procedure on the carrying mother. If in future the child and his adopted parents wished to ascertain their genetic relationship, they could decide among themselves whether or not to visit a medical institution for tissue testing.

## Central Registry of Semen Donors

3.28 It remains the view of the Committee that a central registry of semen donors should be set up as part of a mechanism to check records and monitor procedures.





# CHAPTER 4

# CONCLUSION AND SUMMARY OF RECOMMENDATIONS

## Summary of Recommendations

4.1 The Committee makes the following recommendations -

(1) A controlling body should be established by statute. It should be multi-disciplinary in composition. An ethics committee should be set up as part of the body;

(2) The controlling body should be empowered to register medical institutions for the performance of SAHR and to issue a code of practice governing such institutions;

(3) The controlling body should maintain a central registry keeping a record of semen donors;

(4) The government should conduct an early assessment of the feasibility and resource implications of setting up such a body;

(5) A registered medical institution should comply with the code of practice and any other conditions imposed by the controlling body. In particular a registered medical institution should keep proper records of all SAHR procedures carried out;

(6) The legitimacy of children born by Donor Insemination (DI) should be protected by legislation;

(7) Artificial insemination by husband (AIH) should be allowed;

(8) Only banked semen should be used for donor insemination;

(9) The husband's consent to DI procedure should be required;

(10) The identity of semen donors should be kept confidential;

(11) The number of children sired by any one semen donor should not be more than three;

(12) A registered medical institution may provide a person born of DI with information relating to his birth if that person has reached the age of majority and has made such a request. The information to be released should be





restricted to confirmation that the person was born following the performance of DI procedure on his mother, without revealing the identity of the semen donor. Except for this, the institution should maintain strict confidentiality and should not disclose information to any other person;

(13) Commercial surrogacy should be banned;

(14) Only genetic in-vitro fertilization (IVF) surrogacy (i.e. where the commissioning couple contribute both the egg and semen fertilised outside the surrogate mother) should be allowed;

(15) For genetic IVF surrogacy, the consent of the surrogate mother and her husband should be required;

(16) Genetic IVF surrogacy should only be allowed for infertile married couples where no alternative medical treatment is possible;

(17) A woman who has never been married nor has had a child of her own should not be allowed to act as a surrogate mother;

(18) Proper professional counselling on likely problems for both the commissioning couple and the surrogate should be made an integral part of the process before, during and after the surrogacy;

(19) No embryo should be deliberately created for the purpose of research. No research on an embryo should be allowed after the 14th day of fertilisation which is the usual timing of the appearance of the primitive streak (i.e. rudimentary nervous tissue) in the embryo;

(20) Particular storage requirements for gametes and embryos should be specified;

(21) The registered medical institution should obtain the consent of the genetic parents regarding the disposal of stored embryos and the use of the embryos for IVF, research and donation to other parties;

(22) There should be guidelines on what activities are allowed and not allowed in embryo research.





## Conclusion

4.2 The Committee recognises that scientifically assisted human reproduction is a rapidly developing area involving complex social, moral, ethical, legal and technological considerations. It is aware that this is not an issue about which society at large can easily arrive at a consensus. In formulating the recommendations in this report, the Committee on Scientifically Assisted Human Reproduction has all along adopted an open and neutral position. It has neither promoted nor discouraged scientifically assisted human reproduction. Rather, given that it is not regarded appropriate or desirable to ban scientifically assisted human reproduction in Hong Kong, the Committee recognises the need to introduce a controlling and monitoring mechanism to protect the interests of all parties concerned. The recommendations of the Committee are made to Government with this direction in mind.

# A BRIEF EXPLANATION
# OF
# SCIENTIFICALLY ASSISTED HUMAN REPRODUCTION
# (SAHR) PROCEDURES

## Artificial Insemination (AI)

This refers to the placing of sperms inside a woman's vagina or uterus (ie womb) by means other than sexual intercourse. In artificial insemination by husband (AIH) the husband or partner's sperm is used. In artificial insemination by donor (AID or DI) sperms collected from a man who is not the woman's husband or partner is used.

## In-Vitro Fertilisation (IVF)

3. This technique is used mainly where a woman has no fallopian tubes or they are blocked. It has also been used in dealing with some types of male infertility and where the cause of infertility is unknown. A ripe egg is taken from the woman's ovary shortly before it would have been released naturally. It is then mixed with sperms in a dish (in-vitro) so that fertilisation can occur. Once the fertilised egg has started to develop it is transferred back to the woman's womb. If a pregnancy is to be established the embryo must then implant in the womb.

IVF although simple in concept is not an easy technique in practice. Currently the success rate is thought to be of the order of 15%. To increase the chances of success, it is usual to create





and transfer to a woman more than one embryo. Several eggs are thus required. To obtain these eggs, the woman is given superovulatory drugs which ensure that a number of eggs is produced in one menstrual cycle to be available for fertilisation.

4. Fertilisation of these eggs may result in more embryos than it is appropriate to transfer to the woman's womb. These embryos can then be preserved by freezing for later transfer to the womb or scientific use or they may be left to perish. At present it is not possible for embryos to grow outside a woman's body for longer than 9-10 days.

## Egg donation

5. The IVF technique allows pregnancy to be achieved where the woman cannot produce an egg. An egg by another woman is fertilised with the husband's sperm in-vitro and the resulting embryo is then transferred to the infertile woman.

## Embryo donation

6. In this case, donated eggs and sperms would be used to create an embryo for transfer to the infertile woman. The technique could apply where both partners are infertile.

## Gamete intra-fallopian transfer (GIFT)

7. A process by which eggs are transferred with sperms into the woman's fallopian tubes so that fertilisation can occur in-vivo.

## Zygote intra-fallopian transfer (ZIFT)

8. Where eggs fertilised in-vitro are transferred to the fallopian tubes at the zygote (pronuclear) stage (1 day).

## Fallopian replacement of eggs with delayed insemination (FREDI)

9. Eggs of any maturity are replaced without spermatozoa, which are supplied later by high intrauterine insemination (IUI) of wasted sperms, injected at a time when the eggs are judged to be fully mature.

## Pronuclear stage tubal transfer (PROST)

10. A variant of ZIFT.





## Surrogacy

11. This term describes the practice involving one woman carrying a child for another with the intention that the child be handed over after birth. The use of artificial insemination by sperms of the commissioning mother's husband and the development of in-vitro fertilisation and other SAHR procedures have eliminated the necessity for sexual intercourse, giving the practice a new life.

12. Surrogacy makes it possible for a couple to have a child in cases where the wife cannot bear a child at all, or for long enough for the foetus to be capable of being born alive. SAHR procedures may involve more than two parents :

| Participants' involvement | Remarks |
|---|---|
| (a) Husband sperm + Wife egg + Surrogate womb (genetic IVF surrogacy) | Husband and wife fertile but wife's health does not permit pregnancy. (Three-parent situation) |
| (b) Husband sperm + Surrogate egg and womb | Wife infertile and cannot carry pregnancy. (Three-parent situation) |

| Participants' involvement | Remarks |
|---|---|
| (c) Husband sperm + Donor egg + surrogate womb | Wife infertile and cannot carry pregnancy. (Four-parent situation) |
| (d) Donor sperm + Wife egg + Surrogate womb | Husband infertile and wife cannot carry pregnancy. (Four-parent situation) |
| (e) Donor sperm + Surrogate egg and womb | Husband and wife infertile and wife cannot carry pregnancy. (Four-parent situation) |
| (f) Donor sperm + Donor egg + Surrogate womb | Husband and wife infertile and wife cannot carry pregnancy. (Five-parent situation) |

# SCIENTIFICALLY ASSISTED HUMAN REPRODUCTION
# LOCAL STATISTICS

The following statistics are collated from data until end 1991 supplied by -

(i) Faculty of Medicine, University of Hong Kong
(ii) Faculty of Medicine, The Chinese University of Hong Kong
(iii) a private hospital
(iv) Hong Kong Family Planning Association of Hong Kong

| SAHR Procedures | First introduced | No. of cases | Cases of donor sperm used | Cases of donor egg used | Cases of both donor egg & sperm used | Successful pregnancies |
|---|---|---|---|---|---|---|
| Artifical Insemination by Husband (AIH) | 1985 | 1175 | 0 | not applicable | not applicable | 130 plus * |
| Donor Insemination (DI) | 1981 | 722 | 722 | not applicable | not applicable | 148 plus * |
| In-vitro Fertilisation (IVF) | 1985 | 1376 | 33 | 15 | 3 | 125 |
| Gamete Intra-Fallopian Transfer (GIFT) | 1986 | 729 | 87 | 29 | 3 | 225 |

* Some couples do not report the result after treatment.



| SAHR Procedures | First introduced | No. of cases | Cases of donor sperm used | Cases of donor egg used | Cases of both donor egg & sperm used | Successful pregnancies |
|---|---|---|---|---|---|---|
| Pronuclear Stage Tubal Transfer (PROST) | 1988 | 127 | 0 | 0 | 0 | 26 |
| Zygote Intra-Fallopian Transfer (ZIFT) | 1988 | 26 | 4 | 2 | 0 | 5 |
| Fallopian Replacement of Egg with Delayed Insemination (FREDI) | 1988 | 49 | 13 | 0 | 1 | 10 |
| Surrogacy | - | 0 | 0 | 0 | 0 | 0 |

# EXTRACT
# FROM
# PARENT AND CHILD BILL 1992

## PART V

### DETERMINATION OF PARENT WHERE BIRTH OR PREGNANCY RESULTS FROM MEDICAL TREATMENT

**9. Meaning of "mother" where birth or pregnancy results from medical treatment**

(1) The woman who is carrying or has carried a child as a result of the placing in her of an embryo or of sperm and eggs, and no other woman, is to be treated as the mother of the child.

(2) Subsection (1) does not apply to any child to the extent that the child is treated by virtue of adoption as not being the child of any person other than the adopter or adopters.

(3) Subsection (1) applies whether the woman was in Hong Kong or elsewhere at the time of the placing in her of the embryo or the sperm and eggs.

*[cf. 1990 c. 37 s. 27 U.K.]*

**10. Meaning of "father" where birth or pregnancy results from medical treatment**

(1) This section applies in the case of a child who is being or has been carried by a woman as the result of the placing in her of an embryo or of sperm and eggs or her artificial insemination.

(2) If—

(*a*) at the time of the placing in her of the embryo or the sperm and eggs or her insemination, the woman was a party to a marriage; and

(*b*) the creation of the embryo carried by her was not brought about with the sperm of the other party to the marriage,

then, subject to subsection (5), the other party to the marriage shall be treated as the father of the child unless it is shown that he did not consent to the placing in her of the embryo or the sperm and eggs or to her insemination (as the case may be).

(3) If no man is treated, by virtue of subsection (2), as the father of the child but—

(a) the embryo or the sperm and eggs were placed in the woman, or she was artificially inseminated, in the course of treatment services provided for her and a man together, and

(b) the creation of the embryo carried by her was not brought about with the sperm of that man,

then, subject to subsection (5), that man shall be treated as the father of the child.

(4) Where a person is treated as the father of the child by virtue of subsection (2) or (3), no other person is to be treated as the father of the child.

(5) Subsections (2) and (3) do not apply to—

(a) any child who, by virtue of any Ordinance or other rule of law, is treated as the child of the parties to a marriage; or

(b) any child to the extent that the child is treated by virtue of adoption as not being the child of any person other than the adopter or adopters.

(6) Where—

(a) the sperm of a man other than—

(i) the other party to the marriage; or

(ii) the man receiving treatment services together with the woman,

was used,

(b) the sperm of a man was used after his death, or

(c) any embryo was used after the death of the man with whose sperm the embryo was created,

that man is not to be treated as the father of the child.

(7) The references in subsection (2) to the parties to a marriage at the time there referred to—

(a) are to the parties to a marriage subsisting at that time, unless a judicial separation was then in force, but

(b) include the parties to a void marriage if either or both of them reasonably believed at that time that the marriage was valid, and for the purposes of this subsection it shall be presumed, unless the contrary is shown, that one of them reasonably believed at that time that the marriage was valid.

(8) This section applies whether the woman was in Hong Kong or elsewhere at the time of the placing in her of the embryo or the sperm and eggs or her artificial insemination.

*[cf. 1990 c. 37 s. 28 U.K.]*





**11. Effect of sections 9 and 10**

(1) Where by virtue of section 9 or 10 a person is to be treated as the mother or father of a child, that person is to be treated in law as the mother or, as the case may be, father of the child for all purposes.

(2) Where by virtue of section 9 or 10 a person is not to be treated as the mother or father of a child, that person is to be treated in law as not being the mother or, as the case may be, father of the child for any purpose.

(3) Where subsection (1) or (2) has effect, references to any relationship between 2 persons in any Ordinance, instrument or document (whenever enacted or made) shall, unless the contrary intention appears, be read accordingly.

*[cf. 1990 c. 37 s. 29 U.K.]*

**12. Parental orders in favour of gamete donors**

(1) The court may make an order providing for a child to be treated in law as the child of the parties to a marriage (referred to in this section as "the husband" and "the wife") if—

(a) the child has been carried by a woman other than the wife as the result of the placing in her of an embryo or sperm and eggs or her artificial insemination;

(b) the gametes of the husband or the wife, or both, were used to bring about the creation of the embryo; and

(c) the conditions in subsections (2) to (7) are satisfied.

(2) The husband and the wife must apply for the order within 6 months of the birth of the child or, in the case of a child born before the commencement of this section, within 6 months of such commencement.

(3) At the time of the application and of the making of the order—

(a) the child's home must be with the husband and the wife or either of them; and

(b) the husband or wife, or both of them, must—

(i) be domiciled in Hong Kong;

(ii) have been habitually resident in Hong Kong throughout the immediately preceding period of 1 year; or

(iii) have a substantial connection with Hong Kong.

(4) At the time of the making of the order both the husband and the wife must have attained the age of 18 years.

(5) The court must be satisfied that both the father of the child (including a person who is the father by virtue of section 10), where he is not the husband, and the woman who carried the child have freely, and with full understanding of what is involved, agreed unconditionally to the making of the order.

(6) Subsection (5) does not require the agreement of a person who cannot be found or is incapable of giving agreement and the agreement of the woman who carried the child is ineffective for the purposes of that subsection if given by her less than 6 weeks after the child's birth.

(7) The court must be satisfied that no money or other benefit (other than for expenses reasonably incurred) has been given or received by the husband or the wife for or in consideration of—

(a) the making of the order;

(b) any agreement required by subsection (5);

(c) the handing over of the child to the husband and the wife; or

(d) the making of any arrangements with a view to the making of the order,

unless authorized by the court.

(8) Subsection (1)(a) applies whether the woman was in Hong Kong or elsewhere at the time of the placing in her of the embryo or the sperm and eggs or her artificial insemination.

(9) Where an order is made under subsection (1), the Registrar of the court shall notify the Registrar of Births and Deaths, in such manner as may be prescribed, of the making of that order.

*[cf. 1990 c. 37 s. 30 U.K.]*



SUPPLEMENT

TO CONSULTATION PAPER

ON FINAL REPORT

OF

THE COMMITTEE ON

SCIENTIFICALLY ASSISTED HUMAN REPRODUCTION

On 10 March 1993, the Legislative Council passed the Parent and Child Ordinance, with certain amendments to the original Bill (at Appendix D). The general implications of the new law on Scientifically Assisted Human Reproduction remain as reflected in paragraph 11 of the Consultation Paper. Sections 9 to 12 of the Parent and Child Ordinance are reproduced below for reference.

## EXTRACT FROM PARENT AND CHILD ORDINANCE

### PART V

### DETERMINATION OF PARENT WHERE BIRTH OR PREGNANCY RESULTS FROM MEDICAL TREATMENT

**9. Meaning of "mother" where birth or pregnancy results from medical treatment**

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**(3)** Subsection (1) applies whether the woman was in Hong Kong or elsewhere at the time of the placing in her of the embryo or the sperm and eggs.

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**10. Meaning of "father" where birth or pregnancy results from medical treatment**

(1) This section applies in the case of a child who is being or has been carried by a woman as the result of the placing in her of an embryo or of sperm and eggs or her artificial insemination.

(2) If—

(a) at the time of the placing in her of the embryo or the sperm and eggs or her insemination, the woman was a party to a marriage; and

(b) the creation of the embryo carried by her was not brought about with the sperm of the other party to the marriage,

then, subject to subsection (5), the other party to the marriage shall be regarded as the father of the child unless it is shown that he did not consent to the placing in her of the embryo or the sperm and eggs or to her insemination (as the case may be).

(3) If no man is regarded, by virtue of subsection (2), as the father of the child but—

(a) the woman and her male partner together obtained treatment services in the course of which the embryo or the sperm and eggs were placed in the woman or she was artificially inseminated; and

(b) the creation of the embryo carried by her was not brought about with the sperm of that man,

then, subject to subsection (5), that man shall be regarded as the father of the child.

(4) Where a person is regarded as the father of the child by virtue of subsection (2) or (3), no other person is to be regarded as the father of the child.

(5) Subsections (2) and (3) do not apply to—

(a) any child who, by virtue of any Ordinance or other rule of law, is regarded as the child of the parties to a marriage, or

(b) any child to the extent that the child is regarded by virtue of adoption as not being the child of any person other than the adopter or adopters.

(6) Where the sperm of a man other than—

(a) the other party to the marriage; or

(b) the man referred to in subsection (3),

was used, that man is not to be regarded as the father of the child.

(7) For the purposes of the law of succession, where—

(a) the sperm of a man was used after his death; or

(b) any embryo was used after the death of the man with whose sperm the embryo was created,

that man is not to be regarded as the father of the child.

(8) The references in subsection (2) to the parties to a marriage at the time there referred to—

(a) are to the parties to a marriage subsisting at that time, unless a judicial separation was then in force; but



(b) include the parties to a void marriage if either or both of them reasonably believed at that time that the marriage was valid; and for the purposes of this subsection it shall be presumed, unless the contrary is shown, that one of them reasonably believed at that time that the marriage was valid.

(9) This section applies whether the woman was in Hong Kong or elsewhere at the time of the placing in her of the embryo or the sperm and eggs or her artificial insemination.

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**11. Effect of sections 9 and 10**

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(3) Where subsection (1) or (2) has effect, references to any relationship between 2 persons in any Ordinance, instrument or document (whenever enacted or made) shall, unless the contrary intention appears, be read accordingly.

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(b) the gametes of the husband or the wife, or both, were used to bring about the creation of the embryo; and

(c) the conditions in subsections (2) to (7) are satisfied.

(2) The husband and the wife must apply for the order within 6 months of the birth of the child or, in the case of a child born before the commencement of this section, within 6 months of such commencement.

(3) At the time of the application and of the making of the order—

(a) the child's home must be with the husband and the wife or either of them; and

(b) the husband or wife, or both of them, must—

(i) be domiciled in Hong Kong;

(ii) have been habitually resident in Hong Kong throughout the immediately preceding period of 1 year; or

(iii) have a substantial connection with Hong Kong.

(4) At the time of the making of the order both the husband and the wife must have attained the age of 18 years.

(5) The court must be satisfied that both the father of the child (including a person who is the father by virtue of section 10), where he is not the husband, and the woman who carried the child have freely, and with full understanding of what is involved, agreed unconditionally to the making of the order.

(6) Subsection (5) does not require the agreement of a person who cannot be found or is incapable of giving agreement and the agreement of the woman who carried the child is ineffective for the purposes of that subsection if given by her less than 6 weeks after the child's birth.

(7) The court must be satisfied that no money or other benefit (other than for expenses reasonably incurred) has been given or received by the husband or the wife for or in consideration of—

(*a*) the making of the order;

(*b*) any agreement required by subsection (5);

(*c*) the handing over of the child to the husband and the wife; or

(*d*) the making of any arrangements with a view to the making of the order,

unless authorized or subsequently approved by the court.

(8) Subsection (1)(*a*) applies whether the woman was in Hong Kong or elsewhere at the time of the placing in her of the embryo or the sperm and eggs or her artificial insemination.

(9) Where an order is made under subsection (1), the Registrar of the court shall notify the Registrar of Births and Deaths, in such manner as may be prescribed, of the making of that order.

[*cf. 1990 c. 37 s. 30 U.K.*]