



UNITED FAMILIES
INTERNATIONAL

Securing a Future for the Family Since 1978

Written contribution to the Human Rights Council's Universal Periodic Review of **Republic of Armenia**

United Families International
July 2019

United Families International is an international non-governmental organization working to strengthen and defend family, marriage, human life, parents, and religious freedom. United Families International has worked to secure a future for the family since 1978 and has enjoyed consultative status with the United Nations Economic and Social Council since 1999. Our work has taken us around the world consulting with other like-minded entities to build a culture that is supportive of children and their parents and to shore up sustainable societies capable of helping all humans to flourish.

P.O. Box 2630

Gilbert, Arizona, USA 85299

+1.480.442.4195

ufi@unitedfamilies.org

www.unitedfamilies.org

Surrogacy and Third-Party Reproduction in Armenia

1. The birth of a child to parents who are unable to conceive naturally is one of the great success stories of modern medicine, but assisted reproductive technology and the industry it has spawned is not without significant ethical challenges, including violations of long-standing human rights.
2. United Families International urges the Human Rights Council to take this matter into serious consideration. In the following contribution, we explain why surrogacy and third-party reproduction undermines the principles of human dignity and endangers the human rights of women and children. These rights are protected by the international human rights instrument to which Armenia is a party.

An overview of surrogacy, third-party reproduction, and gamete donation rights in Armenia

3. Surrogacy is defined as a type of assisted reproductive technology (ART), the application of which is the conception and birth of a child. There are several types of individuals that can be involved: 1) *The genetic father* - the person who provided the sperm for fertilization and after birth, assumes the responsibilities of the child's father, 2) *The genetic mother* - the woman providing the egg for fertilization and concurring, after birth, to assume the responsibilities of the mother, 3) *The gestational carrier* - a woman of childbearing age who agreed on a fee to carry a child from the genetic parents without intending to assume maternal responsibilities, 4) *The paternal donor* - the genetically unrelated male who provides the sperm for fertilization without intending to assume responsibilities of the father, 5) *The maternal donor* - the genetically unrelated female who provides the egg for fertilization and does not intend to assume responsibilities of the mother, 6) *The surrogate* - the female who provides her egg for fertilization as well as carries the child to birth, without intending to assume responsibilities of the mother.
4. In traditional surrogacy, the surrogate is genetically related to the resulting child. This type of surrogacy is illegal in Armenia.
5. Gestational surrogacy does not involve the surrogate's genetic material. An embryo, usually made from the sperm and egg of the intended parents, is implanted in the surrogate, who then carries the biologically unrelated child to term. This is the only type of surrogacy legal in Armenia.
6. In Armenia, traditional surrogacy is illegal and is viewed as human trafficking. But gestational surrogacy is largely approved and widely practiced. There is a robust commercial surrogacy market in the country, where 14 percent of couples struggle with infertility, a percentage marked critical by the World Health Organization.¹ Surrogates must be 20 to 35-years-old with an existing child of their own.²
7. Third-party reproduction is human reproduction in which a third-party donates or sells the genetic material (egg, sperm, or embryo) or gestation of a child to another individual or couple who will ultimately raise the resulting child. The

third-party participates only in reproduction, while the intended parents raise and care for the child.

8. The use of third-party reproduction is legal and common in Armenia. Three auxiliary types are legal and commonly practiced in Armenia: (1) artificial insemination with a spouse or donor seed, (2) artificial fertilization with spouse or donor seed and embryo, and (3) transplant of a donor's embryo into the mother's womb.³
9. Under the laws regulating embryo donation, an infertile couple may receive a donated embryo from another married couple for use in *in vitro* fertilization if the embryo meets medical and social guidelines approved by the Public Health Authority of the Republic of Armenia.
10. Fertility clinics are prohibited from disclosing anyone's identity except by court order, in the case of criminal or civil cases.

Third-Party gamete donation undermines human value (mainly women and children)

11. While often viewed as a gift to infertile couples eager for children, these practices undermine the principles of human dignity and endanger the human rights of women and children.
12. The transfer of a third-party's egg or sperm to another is typically described as a "donation." This is a misnomer. In most cases, third-party gametes are not donated, but are bought and sold on a commercial market. This commodification of the fundamental building blocks of human life replicates the harms created by commercial markets in human organs.
13. The World Health Organization's Guiding Principles on Human Cell, Tissue and Organ Transplantation condemn commercial payment for human organs because payment "is likely to take unfair advantage of the poorest and most vulnerable groups," and it "conveys the idea that some persons lack dignity, that they are mere objects to be used by others."⁴ For these reasons, the UN General Assembly continues to combat trafficking in human organs.⁵ Likewise, third-party gamete donation is positioned to take advantage of the poorest and most vulnerable and compromises human dignity.
14. Each egg or sperm conveys distinct genetic attributes, which when combined with gametes from the opposite sex, create a unique human life. Historically, the genetic connection carried by gametes has been the foundation of biological, ethical, and social relationships between mothers, fathers, and children.⁶ The commodification of this life-creating human tissue erodes the dignity of the life and relationships it creates.
15. Furthermore, where payment is involved, the most vulnerable, especially women, have the highest likelihood of exploitation. Surrogacy payment in Armenia is consistently 20 percent of what it can be in other countries, and the surrogate mother has no rights. If there are health issues with the baby upon delivery, the surrogate will receive no payment.
16. The process of egg stimulation and extraction exposes women to risk of ovarian hyper-stimulation syndrome, which can lead to blood clots; kidney failure; and in

rare cases, death.⁷ It can also lead to intra-abdominal bleeding; infection; ovarian torsion; and short-term infertility.⁸ The long-term risks following the procedure are unknown, because there are no meaningful longitudinal studies of the medical and psychological risks of egg donation.⁹

17. In a commercial market, those most in need of financial resources are the most likely to undergo such a procedure and to suffer all of the short- and long-term risks.
18. Third-party gamete donation also undermines the resulting child's right to know his or her origins. Article 7 of the Convention on the Rights of the Child (CRC) provides that every child has a "right to know and be cared for by his or her parents." The definition of "parents" includes "genetic parents," such as third-party donors.¹⁰ Provisions regarding the child's relationship with their surrogate or donor after delivery are unclear.
19. Article 8 of the CRC also guarantees the "right of the child to preserve his or her identity." This provision is, at its root, a child's right to know his or her biological origin.¹¹
20. The Committee on the Rights of the Child has confirmed that Articles 7 and 8 protect a child's right to know his or her biological origins and has repeatedly encouraged states to protect this right in the context of both adoption and third-party gamete donation.¹²
21. The importance of knowing one's biological origins to identity formation and well-being is reaffirmed by the literature on children conceived through donors.
22. While the research is limited, particularly in the Middle East, the available studies in western countries consistently show that donor-conceived children desire to know their genetic origins and view information on their donor parent(s) as critical to their sense of identity.¹³ One study found that 65 percent of children conceived through sperm donations agreed that their sperm donor is half of who they are, and approximately two-thirds of donor-conceived children support their right to know their biological origins.¹⁴
23. Donor-conceived children can also be bothered by the circumstances of their conception.¹⁵ Some feel wronged by the transactional and sterile nature of their conception.¹⁶ Where information of a donor-conceived child's conception is withheld and then discovered, there is often a strong sense of loss, confusion, and betrayal.¹⁷
24. Armenia violates the right of donor-conceived children to understand their identity and know their biological parents by intentionally dismantling the family through undermining the importance of the biological relationships between father, mother, and child.

Surrogacy's impact on human value

25. Like third-party gamete donation, commercial surrogacy undermines human dignity and violates the fundamental human rights of women and children. The reproductive capacity of the female body becomes a means of economic production, and the resulting child, the object of a financial transaction.
26. The General Assembly's working group on the issue of discrimination against women in law and in practice has found that "the instrumentalization of women's bodies lies at the heart of discrimination against women," and has urged states to combat "all forms of instrumentalization of women's bodies and biological functions."¹⁸ Commercial surrogacy is the clearest form of instrumentalization of women's bodies and biological functions.
27. Beyond the moral harm of instrumentalization, surrogacy violates women's human rights. Surrogacy agreements impose significant burdens on the personal autonomy and bodily integrity of the surrogates. The agreements can limit the surrogate's freedom to engage in sexual intercourse, dictate what she eats and where she lives, and constrain her ability to travel. When the fetus is found to be undesirable, the agreements can even give intended parents the authority to direct the surrogate to obtain an abortion.¹⁹
28. Where commercial surrogacy is present, including Armenia, poor and low-income women are the most likely to accept this work.
29. The vast majority of women who become surrogates do so because of poverty. Unemployment and a desire to pay for the education of their children were the some of the other primary motivations for surrogates. A study found that half of surrogates were illiterate or were only educated to the primary level.²⁰
30. The international community has long recognized that the sale of children runs contrary to the best interests of the child and undermines the child's human dignity and worth. For this reason, the Convention on the Rights of the Child directs states to take all appropriate measures to prevent the sale of children "for any purpose or in any form."²¹
31. The Committee on the Rights of the Child has repeatedly expressed concern that surrogacy may "lead or amount to the sale of children."²² And the Special Rapporteur on the sale and sexual exploitation of children recently found, "Commercial surrogacy as currently practiced usually constitutes sale of children as defined under international human rights law."²³

Recommendations

32. Armenia has committed to human rights instruments supporting principles of human dignity and the human rights of women and children. With the rights of children to know their biological origins, and to know and be cared for by both of their parents in mind, we recommend Armenia ban all forms of third-party gamete transfer.
33. In order to prevent the commodification of babies and the commercialized use of women's bodies, we recommend surrogacy arrangements, both commercial and altruistic (no monetary exchange), be deemed illegal. If altruistic surrogacy

should remain legal, we recommend Armenia institute a strict framework for transfer of parental rights to intended parents and all parental rights transfers be approved by local courts.

34. Surrogacy arrangements, as a whole, should be subject to scrutiny as they violate the surrogate mother and child's human dignity, reducing both to mere objects of contracts.²⁴
35. These recommended changes are essential steps in protecting human rights and safeguarding the most vulnerable members of society.

¹ Abrahamyan, G. (2019, March 29). On the Edge of Fertility: The Complexities of Having a Child in Armenia. *EVN Report*. Retrieved from <https://www.evnreport.com/raw-unfiltered/on-the-edge-of-infertility-the-complexities-of-having-a-child-in-armenia>

² Armenia. (n.d.). *Law on Human Reproductive Health and Rehabilitation Rights* (1-236-Article 5). Yerevan. Retrieved from <https://www.arlis.am/DocumentView.aspx?docid=75284>

³ Is surrogacy legal in Armenia? (2018, June 6). *Ilex Law Firm*. Retrieved from <https://www.ilex.am/en/archive/364-is-surrogacy-legal-in-armenia.html>

⁴ World Health Organization, *Guiding principles on human cell, tissue and organ transplantation*, WHA63.22 (May 2010), pp. 5-6

⁵ See General Assembly resolution 59/156, *Preventing, combating and punishing trafficking in human organs*, A/RES/59/156 (20 December 2004); General Assembly resolution 71/322, *Strengthening and promoting effective measures and international cooperation on organ donation and transplantation to prevent and combat trafficking in persons for the purpose of organ removal and trafficking in human organs*, A/RES/71/322 (25 September 2017)

⁶ For further treatment of this argument, see Cynthia B. Cohen, "Selling bits and pieces of humans to make babies: the gift of the Magi revisited", in *The International Trafficking of Human Organs: A Multidisciplinary Perspective*, Leonard Territo and Rande Matteson, eds. (Boca Raton, Florida: CRC Press, 2012), pp. 169-86

⁷ Institute of Medicine and National Research Council, *Assessing the Medical Risks of Human Oocyte Donation for Stem Cell Research: Workshop Report* (Washington, DC: The National Academies Press, 2007), pp. 17-22

⁸ Molly Woodriff, Mark Sauer and Robert Klitzman, "Advocating for longitudinal follow-up of the health and welfare of egg donors," *Fertility and Sterility*, vol. 102, no. 3. (September 2014), p. 662

⁹ *Ibid.*, pp. 662-63

¹⁰ UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 3rd ed. (Geneva, Switzerland: United Nations Children's Fund, 2007), p. 105

¹¹ *Ibid.*, p. 113

¹² See the following concluding observations of the UN Committee on the Rights of the Child: CRC/C/DNK/CO/5 (26 October 2017); CRC/C/BGR/CO/3-5 (21 November 2016); CRC/C/TKM/CO/2-4 (10 March 2015); CRC/C/LUX/CO/3-4 (29 October 2013); CRC/C/MKD/CO/2 (23 June 2010); CRC/C/UZB/CO/2 (2 June 2006); CRC/C/RUS/CO/3 (23 November 2005); CRC/C/15/Add.198 (18 March 2003); CRC/C/15/Add.182 (13 June 2002); CRC/C/CHE/CO/2-4 (26 February 2015)

¹³ Vardit Ravitsky and Joanna E. Scheib, "Donor-conceived individuals' right to know", *The Hastings Center* (20 July 2010), available at <https://www.thehastingscenter.org/donor-conceived-individuals-right-to-know/>; Inmaculada d Melo-Martin, "How best to protect the vital interests of donor-conceived individuals: prohibiting or mandating anonymity in gamete donation?", *Reproductive BioMedicine and Society Online*, vol. 3 (2016), p. 102

¹⁴ Elizabeth Marquardt, Norval D. Glenn and Karen Clark, "My Daddy's Name Is Donor: A New Study of Young Adults Conceived Through Sperm Donation", *Institute for American Values* (2010), pp. 11-12

¹⁵ *Ibid.*, p. 7

¹⁶ Margaret K. Nelson, Rosanna Hertz and Wendy Kramer, "Gamete donor anonymity and limits on numbers of offspring: the views of three stakeholders", *Journal of Law and the Biosciences*, vol. 3, no. 1 (October 2015), p. 57

¹⁷ Eric Blyth and others, "Donor-conceived people's views and experiences of their genetic origins: a critical analysis of the research evidence", *Journal of Law and Medicine*, vol. 19, no. 4 (June 2012), pp. 782-83

¹⁸ Human Rights Council, *Report of the working group on the issue of discrimination against women in law and in practice*, A/HRC/32/44 (8 April 2016), pp. 1, 21

¹⁹ "Surrogate motherhood: ethical or commercial", Center for Social Research (2012), pp. 44-45, available at https://drive.google.com/file/d/0B-f1Xldg1JC_Ui04RmIYUkNsTFE/view

²⁰ *Ibid.*, p. 31

²¹ General Assembly resolution 44/25, *Convention on the Rights of the Child*, A/Res/44/25 (2 September 1990), Art. 35

²² See Human Rights Council, *Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material*, A/HRC/37/60 (15 January 2018), p. 3 (collecting CRC concluding observations)

²³ *Ibid.*, p. 12

²⁴ See Article 21 of the Convention on Human Rights and Biomedicine, 1997. This Convention has not been signed and ratified by all Contracting States