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THE HOWARD CENTER

*For Family, Religion & Society*

Written contributions to the Human Rights Council's Universal  
Periodic Review of the **Republic of Kazakhstan**

The Howard Center for Family, Religion & Society

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The Howard Center for Family, Religion and Society is a non-governmental organization working around the world to gather and unite leaders and civil society in efforts to affirm, celebrate and defend the natural family as the only fundamental and sustainable unit in society. The Howard Center has enjoyed consultative status with the United Nations Economic and Social Council since 2003. Our organization works with other like-minded entities to affirm a sustainable culture where the natural family, faith and freedom thrive.

## **Surrogacy and Third-Party Reproduction in the Republic of Kazakhstan**

1. The birth of a child to parents who were 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. The Howard Center for Family, Religion and Society 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 international human rights instrument to which the Republic of Kazakhstan is a party.

### **An overview of surrogacy and third-party reproduction in Kazakhstan**

1. Surrogacy is defined as a type of assisted reproductive technology (ART), the application of which is the conception and birth of a child. Involved are three types of individuals 1) The genetic father- the person who provided the sperm for fertilization and concurring after birth to assume 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. The surrogate mother- A woman of childbearing age who agreed on a fee, or free of charge, to carry and give birth to a child from the genetic parents and not pretending to be the mother of this child.<sup>i</sup>
2. In traditional surrogacy, the surrogate is genetically related to the resulting child. She provides her own eggs and is inseminated with the sperm of either the intended father or a sperm donor.
3. Gestational surrogacy, on the other hand, 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.
4. 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. Conception is typically achieved through in vitro fertilization, wherein an embryo is created in a lab and inserted in a female uterus for gestation.

5. Third-party gamete donation occurs when a person provides the underlying genetic material, either egg or sperm, necessary to create a human embryo; but does not intend to parent any resulting child. The gametes may be combined with the genetic material of an intended parent, or both the egg and sperm may be provided by third-party donors in the form of an embryo. In the absence of a surrogacy arrangement, the intended mother typically carries the child to term.
6. Statistics show that up to 15 percent of married couples are childless in the Republic of Kazakhstan, about 30 percent of such pairs, which is about 7,000 pairs a year, require the use of assisted reproductive technology (ART).<sup>ii</sup> Many of these cases involve third-party reproduction, in its many varied forms.
7. The Republic of Kazakhstan has relatively extensive contract law regarding rights, obligations and responsibilities of each party involved in *surrogacy*. These laws regulate the order and conditions of the surrogate's compensation, stipulate age, physical, mental and reproductive health conditions, mandate the surrogate's spouse agree to the contract and govern "the transfer" of the child. The use of third-party gamete donation requires "comprehensive information on the used biological material of these persons, willing to have a child, or a donated bank."<sup>iii</sup>
8. In spite of these laws, third-party reproduction in the Republic of Kazakhstan, particularly where commercial and cross-border, is a controversial and deeply divisive issue due to a range of human rights, child welfare and ethical concerns.

### **Third-party gamete donation undermines human value (primarily of women and children)**

9. 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.
10. 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.

11. 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."<sup>iv</sup> For these reasons, the UN General Assembly continues to combat trafficking in human organs.<sup>v</sup> Likewise, third-party gamete donation is positioned to take advantage of the poorest and most vulnerable and compromises human dignity.
12. 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.<sup>vi</sup> The commodification of this life-creating human tissue erodes the dignity of the life and relationships it creates.
13. Furthermore, where payment is involved, the most vulnerable, especially women, are most likely to be exploited.
14. The process of egg stimulation and extraction exposes women who donate eggs to risk of ovarian hyper-stimulation syndrome, which can lead to blood clots; kidney failure; and in rare cases death.<sup>vii</sup> It can also lead to intra-abdominal bleeding; infection; ovarian torsion; and short-term infertility.<sup>viii</sup> 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.<sup>ix</sup>
15. 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.
16. Third-party gamete donation also undermines the resulting child's right to know his or her origins.
17. 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.<sup>x</sup>

18. 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.<sup>xi</sup>
19. 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.<sup>xii</sup>
20. The importance of knowing one’s biological origins to identity formation and well-being is reaffirmed by the literature on children conceived through donors.
21. While the research is limited, in some regions of the world, 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.<sup>xiii</sup> One study found that 65 percent of children conceived through sperm donors agreed that their sperm donor is half of who they are, and approximately two-thirds of donor-conceived children support the right of donor-conceived children to know the truth about their biological origins.<sup>xiv</sup>
22. Donor-conceived children can also be troubled by the circumstances of their conception.<sup>xv</sup> Some feel wronged by the transactional and sterile nature of their conception.<sup>xvi</sup> 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.<sup>xvii</sup>
23. We remind the Republic of Kazakhstan of their commitment to Article 7 of the Convention on the Rights of the Child (CRC) which provides that every child has a “right to know and be *cared for by his or her parents*” which must surely include the right, barring unavoidable circumstances, to be cared for (and reared) by biological/genetic parents.

### **Surrogacy’s impact on human value**

24. 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.
25. 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."<sup>xviii</sup>

Commercial surrogacy is the clearest form of instrumentalization of women's bodies and biological functions.

26. Beyond the moral harm of instrumentalization, surrogacy violates women's human rights. Surrogacy agreements often 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.<sup>xix</sup>
27. A surrogate's risk is great and her compensation relatively small. It is impossible to ascertain a surrogate's risk, pre-pregnancy, to such things as eclampsia, diabetes, various diseases, thrombosis, prolapsed of uterus, loss of uterus/fallopian tubes. This largely uncompensated risk must be considered as exploitation of women.<sup>xx</sup>
28. Where commercial surrogacy is present, poor and low-income women are the most likely to accept this work. While data on surrogates in Kazakhstan is limited, the exploitation of young poor women by the surrogacy industry has been clearly documented in other countries where the surrogacy industry has taken root.
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.<sup>xxi</sup> A study found that half of surrogates were illiterate or were only educated to the primary level.<sup>xxii</sup>
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 or traffic in children "*for any purpose or in any form.*"<sup>xxiii</sup>
31. The Committee on the Rights of the Child has repeatedly expressed concern that surrogacy may "lead or amount to the sale of children."<sup>xxiv</sup> 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.”<sup>xxv</sup>

## Recommendations

32. The Republic of Kazakhstan 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, to know and be care for by their parents, in mind, we recommend Kazakhstan 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.
34. Surrogacy arrangements, as a whole, should be subject to intense scrutiny as they violate the surrogate mother and child’s human dignity, reducing both to mere objects of contracts.<sup>xxvi</sup>
35. These recommended changes are essential steps in protecting human rights and safeguarding the most vulnerable members of society.

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<sup>i</sup> <http://egov.kz/cms/en/articles/2F12207surrogatemother>

<sup>ii</sup> <https://articlekz.com/en/article/14432>

<sup>iii</sup> [https://online.zakon.kz/Document/?doc\\_id=31583872&mode=p&page=2#pos=371;-57&sdoc\\_params=text%3Dembryo%2520donors%26mode%3Dindoc%26topic\\_id%3D31583872%26spo s%3D1%26tSynonym%3D1%26tShort%3D1%26tSuffix%3D1&sdoc\\_pos=0](https://online.zakon.kz/Document/?doc_id=31583872&mode=p&page=2#pos=371;-57&sdoc_params=text%3Dembryo%2520donors%26mode%3Dindoc%26topic_id%3D31583872%26spo s%3D1%26tSynonym%3D1%26tShort%3D1%26tSuffix%3D1&sdoc_pos=0) (Chapter 9, Article 55)

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

<sup>v</sup> 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).

<sup>vi</sup> 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.

<sup>vii</sup> 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.

<sup>viii</sup> 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.

<sup>ix</sup> *Ibid.* pp. 662-63.

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

<sup>xi</sup> *Ibid.*, p. 113.

<sup>xii</sup> 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).

<sup>xiii</sup> 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.

<sup>xiv</sup> 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.

<sup>xv</sup> *Ibid.*, p. 7.

<sup>xvi</sup> 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.

<sup>xvii</sup> 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.

<sup>xviii</sup> 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.

<sup>xix</sup> "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](https://drive.google.com/file/d/0B-f1Xldg1JC_Ui04RmIYUkNsTFE/view).

<sup>xx</sup> Complications of Pregnancy, American Pregnancy Association. <https://americanpregnancy.org/pregnancy-complications/>

<sup>xxi</sup> *Ibid.*

<sup>xxii</sup> *Ibid.*, p. 31

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

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

<sup>xxv</sup> *Ibid.*, p. 12.

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