



**CASABLANCA  
DECLARATION**

For the universal **abolition of surrogacy**



ADF INTERNATIONAL

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**Joint submission by:**

Casablanca Declaration

ADF International

## Introduction

1. The following written contribution is jointly submitted by Casablanca Declaration and ADF International, focused particularly on Armenia's implementation of its obligations under international human rights law to protect the dignity and rights of children and women.
2. Casablanca Declaration is an international organization that protects women and children from the surrogacy market and promotes an international treaty to abolish surrogacy worldwide.
3. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people.
4. This report outlines how Armenia's legalization of surrogacy undermines its international obligations regarding the rights of children and women under various international human rights instruments. In particular, it highlights the detrimental impact of this harmful practice on the health of surrogate mothers and children.

## Surrogacy

5. The demand for surrogacy is rapidly growing worldwide. According to recent estimates, the surrogacy industry is projected to be worth \$130 billion by 2032.<sup>1</sup>
6. Armenia is one of the few countries in the world that has explicitly legalized both commercial and so-called "altruistic" forms of surrogacy under the 2002 Law on Human Reproductive Health and Reproductive Rights.<sup>2</sup>
7. According to the National Statistical Committee, Armenia has faced a major deterioration of birth rates over the past three decades, with an average birth rate of 1.7 children per woman as of 2022, well below the replacement rate of 2.1.<sup>3</sup> This was explicitly cited as a justification for a 2024 amendment further expanding access to surrogacy.<sup>4</sup>
8. While no government statistics on the prevalence of the practice are kept, it is estimated that around 60 children were born via surrogacy in 2022, up from 20-30 in previous years.<sup>5</sup> This increase is partially explained by a January 2022 government program, which funded surrogacy requests by couples who had lost sons during the conflict with Azerbaijan at a

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<sup>1</sup> Global Market Insights 'Surrogacy Market' (November 2022) < <https://www.gminsights.com/industry-analysis/surrogacy-market>>.

<sup>2</sup> Armenia Law on Human Reproductive Health and Reproductive Rights (Law No. 474 of 11 December 2002), Article 15(11) <<https://www.arlis.am/documentview.aspx?docid=195987>>.

<sup>3</sup> Statistical Committee of the Republic of Armenia 'The Demographic Handbook of Armenia, 2023' (2023),

<sup>4</sup> Armenia Parliament 'Draft Amendment to the Law on Human Reproductive Health and Reproductive Rights' (8 May 2024) <<http://parliament.am/drafts.php?sel=showdraft&DraftID=14980&Reading=0>> .

<sup>5</sup> JAM News 'Demand for surrogacy on the rise in Armenia' (28 February 2023) <<https://jam-news.net/surrogacy-in-armenia/>>.

rate of around 14'000 USD per surrogate.<sup>6</sup> Twenty-eight children are reported to have been born through this program.<sup>7</sup>

9. Surrogacy in Armenia is currently expanding significantly, including as a result of a possible ban on foreign couples seeking surrogacy arrangements in neighboring Georgia, which has served as a major hub in the international surrogacy market in previous years.<sup>8</sup>
10. Article 11 of the Law on Human Reproductive Health and Reproductive Rights (hereinafter 'HRHRR Law') permits the use of assisted reproductive technologies, including 'implantation of a donor embryo in the womb of a surrogate mother' (surrogacy).<sup>9</sup>
11. Article 12 of the same law permits the use of surrogacy services by a married couple or an individual less than 55 years old, except for unmarried men who are not the biological father of the child and women who have 'no medical contraindications to carrying the pregnancy'.<sup>10</sup>
12. A July 2024 amendment also prohibited foreigners from requisitioning Armenian surrogate mothers.<sup>11</sup> Yet, foreigners can requisition non-Armenian surrogates in the country, thus opening the door to the international surrogacy market. This is evidenced by the way in which international surrogacy providers advertise Armenia as a desirable option for affordable surrogacy, even after the amendment was adopted.<sup>12</sup>
13. The intended parents (husband and wife or unmarried women) are not required to be the biological parents of the future child, as long as permission is granted by an interdepartmental commission.<sup>13</sup> Moreover, the surrogate mother cannot use her own egg and be biologically related to the baby.<sup>14</sup> The HRHRR thereby prohibits traditional surrogacy and only permits gestational surrogacy, while opening up the possibility for third parties to provide the gametes.
14. Article 15 regulates the requirements for surrogate mothers. Among other conditions, women must be aged 20-38, have at least one child, must not have given birth more than

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<sup>6</sup> ARLIS Armenia Legal Information System 'Decision of the government while participating in combat operations of defense or performing combat order or special task or service duties in the line of contact with the adversary, due to cause concerning the approval of the event to support the reproductive health of parents of older (dead) army servants' (13 January 2022) <<https://www.arlis.am/documentview.aspx?docid=159687>>; <https://www.rferl.org/a/armenia-couple-surrogate-baby-death-two-sons-karabakh-war-azerbaijan/32544260.html>

<sup>7</sup> Supra note 5.

<sup>8</sup> IVF Conceptions 'Surrogacy in Armenia: Process, Legal And Surrogacy Costs in Armenia' <<https://www.ivfconceptions.com/surrogacy-in-armenia/>>; Radio Free Europe Radio Liberty 'Georgia Aims to Ban Booming Surrogacy Business for Foreigners' (June 2023) <<https://www.rferl.org/a/georgia-surrogacy-babies-foreigners-legislation/32464403.html>>.

<sup>9</sup> Armenia Law on Human Reproductive Health and Reproductive Rights (Law No. 474 of 11 December 2002), Article 11(1.3) <<https://www.arlis.am/documentview.aspx?docid=195987>>.

<sup>10</sup> Ibid, Article 12(1).

<sup>11</sup> Amendment to Law on Human Reproductive Health and Reproductive Rights (Bill HO-317-N of 12 July 2024), Article 9(2) <<https://www.arlis.am/documentview.aspx?docid=195984>>.

<sup>12</sup> See e.g. Pons Medical Research 'Surrogacy Legal Aspects in Armenia: Easy Guide' (2024) <https://surrogacybypons.com/surrogacy-legal-aspects-in-armenia/>.

Gestlife 'Surrogacy in Armenia' (2024) <https://www.gestlife.com/surrogacy-in-armenia.php>.

<sup>13</sup> Supra note 9 at Article 12(1.2).

<sup>14</sup> Ibid, Article 15(5).

three times and must undergo a medical examination showing no medical contraindications. They cannot be a surrogate more than twice.<sup>15</sup>

15. The HRHRR Law permits commercial surrogacy, stressing that the surrogate mother 'may receive monetary payments for pregnancy and childbirth at a health facility or reproductive facility in a pre-contracted agreement by a person or spouse and a spouse who uses auxiliary technology.'<sup>16</sup>
16. Finally, the HRHRR Law states that the '[surrogate] mother does not have the right to refuse to surrender a child born to those who have signed a contract under this law to a person or spouse who uses reproductive assistance technology'. In the case of a signed surrogacy contract, 'a mother has no right to a child born to her and does not bear any duty [vis-à-vis the child]'.<sup>17</sup>
17. A recent study has found that surrogate mothers involved in gestational surrogacy face a higher risk of complications than other pregnant women. They are at two to three times the risk of health problems such as postpartum haemorrhage, pre-eclampsia, and serious postpartum infection. The study also shows a higher risk of premature birth.<sup>18</sup>
18. Another study comparing non-surrogate pregnancies with gestational surrogate pregnancies shows that 'women...were significantly more likely to experience postpartum depression following the delivery of surrogate children than after delivering their non-surrogate children'.<sup>19</sup>
19. In Armenia, cases have arisen showing the detrimental impact of surrogacy on the mental health of the surrogate mother. Armenian psychologist Araks Karapetyan describes how 'serious psychological work is done with a surrogate mother from the very first moment'. A 30-year-old surrogate mother from Armenia's southeastern Vayots Dzor Province admitted that she herself had trouble dealing with letting go of her baby: 'I carried the baby inside me, I felt his first moves...it was hard for me'.<sup>20</sup>
20. Emerging evidence also highlights the adverse health impacts of surrogacy on children born through this practice. Studies in perinatology have demonstrated that the bonding process between mother and child begins in utero. A child learns to recognize the mother's voice, her scent, and heartbeat in the amniotic fluid, which have been proven to play a soothing role in the child's post-birth adjustment.<sup>21</sup> Furthermore, during labor, oxytocin triggers a hormonally driven bonding process between mother and baby. Longitudinal studies on child development suggest that children separated from their gestational mothers are, by the age of seven, more likely to experience adjustment difficulties and be

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<sup>15</sup> Ibid, Article 15 (1-4).

<sup>16</sup> Ibid, Article 15(11).

<sup>17</sup> Ibid, Article 15(9-10).

<sup>18</sup> Maria P. Velez, Marina Ivanova, Jonas Shellenberger, et al. Severe Maternal and Neonatal Morbidity Among Gestational Carriers: A Cohort Study. *Ann Intern Med.* (Epub 24 September 2024) <<https://www.acpjournals.org/doi/10.7326/M24-0417>>.

<sup>19</sup> Jennifer Lahl et al 'A Comparison of American Women's Experiences with Both Gestational Surrogate Pregnancies and Spontaneous Pregnancies' *A Journal of Analysis of Exploitation and Violence, Dignity* Vol.7 Issue 3 (2022) < <https://digitalcommons.uri.edu/dignity/vol7/iss3/1/>>.

<sup>20</sup> <https://oc-media.org/features/giving-birth-to-someone-else-s-child-surrogacy-in-armenia/>

<sup>21</sup> Sullivan et.al., 'Infant bonding and attachment to the caregiver: Insights from basic and clinical science' (2011) 38, 4 *Clinics in Perinatology*, 644.

vulnerable to the effects of maternal distress compared to their peers.<sup>22</sup> Research has also shown that maternal separation—an inherent aspect of surrogacy—can even disrupt proper brain development and maturation.<sup>23</sup> The distress experienced by caregivers owing to the disputes over parenthood can also severely undermine the health of the child.<sup>24</sup>

21. Surrogacy raises critical human rights concerns for the rights of both the mothers and the children involved.
22. The Universal Declaration of Human Rights (UDHR) recognized the inherent dignity of all members of the human family to be the foundation of human rights and related state obligations under human rights instruments.<sup>25</sup> In surrogacy arrangements, the child becomes the object of a contractual transaction for one purpose only: to fulfill the commissioning party's desire to have a child. The surrogate mother, on the other hand, asserts personal autonomy as a justification for surrendering her reproductive capabilities to third parties. However, the planned separation of the child from his or her biological mother constitutes the prioritization of the realization of personal desires at the expense of the human dignity and rights of the child.
23. Firstly, surrogacy meets the definition of 'sale of children' under the second Optional Protocol to the Convention on the Rights of the Child (OPSC).<sup>26</sup> Article 25 of the Convention of the Rights of the Child (CRC) mandates States Parties to 'take all appropriate national, bilateral and multilateral measures to prevent ... the sale of ... children for any purpose or in any form'.<sup>27</sup> The phrase 'for any purpose' clarifies that motives of the involved parties are irrelevant in determining what constitutes the sale of children. Furthermore, Article 2(c) of the OPSC, which prohibits the sale of children, defines it as 'any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration, or any other consideration'.<sup>28</sup> Interpreted broadly, having in mind the overarching principle of the best interests of the child, the reference to 'any consideration' aims to prevent any loopholes that might allow for the sale of children without direct monetary exchange.
24. Secondly, surrogacy violates the child's right to the enjoyment of the highest attainable standard of health, including both physical and mental health, as protected under Article 24 of the CRC, as outlined in the previous section.<sup>29</sup> This right includes a negative obligation: that States refrain from undermining this right, whether through acts or omissions.

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<sup>22</sup> Susan Golombok et al., 'Children born through reproductive donation: a longitudinal study of psychological adjustment' (2013) 54, 6 *Journal of Child Psychology and Psychiatry* 653

<sup>23</sup> Sara Mejía-Chávez et al., 'Maternal Separation Modifies the Activity of Social Processing Brain Nuclei Upon Social Novelty Exposure' (2021) *Frontiers in Behavioural Neuroscience* 15: 651263

<sup>24</sup> Wade K 'The regulation of surrogacy: a children's rights perspective' *Child Fam Law Q.* 2017;29(2):113-131 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5540169/>>.

<sup>25</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) preamble.

<sup>26</sup> United Nations, Optional Protocol to the Convention on the Right of the Child on the Sale of Children, Child Prostitution and Child Pornography (adopted 25th May 2000, entered into force 18th January 2002, U.N. Doc. A/RES/54/263) art 2(c).

<sup>27</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) art 25.

<sup>28</sup> *Supra* note 20.

<sup>29</sup> *Supra* note 21 at art 24.

25. Thirdly, surrogacy creates a situation whereby the right of the child to preserve his or her identity, as protected under Article 8(1) of the CRC is undermined.<sup>30</sup> According to the travaux préparatoires for the CRC, the term ‘identity’ refers to ‘true and genuine personal, legal and family identity’.<sup>31</sup> Research in behavioural genetics shows that a great deal of our personality traits is hereditary. A child’s likeliness of experiencing bullying, for example, has a heritability of over 70 percent.<sup>32</sup> Moreover, studies have shown that around 40 percent of diseases are genetically influenced.<sup>33</sup> It follows that deliberately accepting the severance of a child’s belonging with his or her genetically-related parents and siblings—who would best understand his or her natural identity, character attributes, weaknesses, strengths, and medical conditions—is an intentional undermining of their right to identity and health.
26. The concerns raised with regard to the child’s rights to health and identity provide a clear rationale for why the CRC also explicitly protects the right of the child to, as far as possible, know and be cared for by his or her parents in Article 7(1).<sup>34</sup> These rights are intrinsically linked to ensuring the best interest of the child. In this regard, understanding the wording ‘as far as possible’ is key. It implies that the right to be cared for by his or her parents must be the general rule, with state interference being the exception, such as when the parents have died, or to protect the best interest of the child in exceptional cases involving parental abuse and neglect.<sup>35</sup> When surrogacy is legalized, however, the right of the child to be cared for by his or her biological parents is a priori denied.
27. Surrogacy also has significant implications for the human rights of women. As outlined above, surrogacy is a social intervention that significantly threatens the health of both the egg donor and surrogate mother. Article 25 of the UDHR protects the right to ‘a standard of living adequate for the health and well-being of himself and of his family’, which in part (2) states that ‘Motherhood and childhood are entitled to special care and assistance’.<sup>36</sup> Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) reaffirms this right.<sup>37</sup>
28. It should be noted that international law strongly supports the family as a foundational social institution. Simultaneously, it protects this natural unit from manipulation and exploitation: Article 10 of the ICESCR requires States to accord ‘the widest possible protection and assistance’ to the family, which is described as ‘the natural and fundamental group unit of society’.<sup>38</sup> International law also highlights the significance of maternity:

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<sup>30</sup> Ibid, art 8(1).

<sup>31</sup> Working Group on the Convention on the Rights of the Child, ‘Report of the Working Group on a Draft Convention on the Rights of the Child’ (1985) UN Doc. E/CN.4/1985/6 4 Annex 11, 1 ¶ 35.

<sup>32</sup> Attributed to Robert Plomin in ‘Modern genetics will improve health and usher in “designer” children’ The Economist (November 2019) .

<sup>33</sup> Harvard Gazette ‘ZIP code or genetic code?’ (2019)

<https://news.harvard.edu/gazette/story/2019/01/researchers-able-to-determine-the-effects-of-genes-and-environment-in-560-common-conditions/>.

<sup>34</sup> Supra note 21 at art 7(1).

<sup>35</sup> See for example CRC art 9(1).

<sup>36</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 25.

<sup>37</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) art 12.

<sup>38</sup> Ibid, art 10.

Article 4 of the Convention on the Elimination of Discrimination against Women (CEDAW) invites States to 'adopt special measures aimed at protecting maternity'.<sup>39</sup>

29. Furthermore, surrogacy is deeply intertwined with trafficking in persons, as defined by the UN Palermo Protocol.<sup>40</sup> The definition involves three elements, notably:

- Action: recruitment, transportation, transfer, harbour or receipt of persons;
- Means: threat or use of force or other means of coercion, abduction, fraud, deception, abuse of power, abuse of a position of vulnerability or the giving or receiving of payments to achieve the consent of having control over another person; and
- Purpose: exploitation including forced labour or services and practices similar to slavery. The parallels between human trafficking and surrogacy are clear. Advertisements offering large sums of money for women to see their eggs or rent their wombs as part of the surrogacy process, for example, are a direct means of recruitment.<sup>41</sup> Under some transnational surrogacy arrangements, women are even transferred from one country to another to circumvent relevant restrictions, as is the case between Georgia and Armenia.<sup>42</sup> Coercion, deception, and fraud are also evident throughout testimonials of ethnographic studies.

30. Rather than promoting surrogacy to the detriment of the human rights of mothers and children, Armenia should redirect its efforts towards promoting family-oriented policies that empower women in their role as mothers and uphold the best interests of children, while tackling the root causes of the national fertility crisis.

## Recommendations

31. In light of the aforementioned, the submitting organizations suggests the following recommendation be made to Armenia:

- a. Amend Armenia's Law on Human Reproductive Health and Reproductive Rights to prohibit surrogacy in all its forms.
- b. Protect the dignity and rights of children and women from the harms of surrogacy, in line with relevant human rights instruments, including the Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol to the Convention on the Rights of the Child and the sale of children, child prostitution and child pornography.

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<sup>39</sup> Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1989) 1249 UNTS 13 (CEDAW) art 4.

<sup>40</sup> United Nations Convention against Transnational Organized Crime 'Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children' (15 November 2000) 2237 UNTS 319 (Palermo Protocol) art 3(a).

<sup>41</sup> See for example: Elizabeth Ziff, "'The Mommy Deployment'": Military Spouses and Surrogacy in the United States' (4 March 2017) 32,2 Sociological Forum 406-425; Annie M. Lowery, 'Will You Be My Baby's Mama?' (29 April 2004) The Crimson <<https://www.thecrimson.com/article/2004/4/29/will-you-be-my-babys-mama/>>.

<sup>42</sup> For example Sharmila Rudrappa, 'India outlawed commercial surrogacy – clinics are finding loopholes' The Conversation (23 October 2017) <<https://theconversation.com/india-outlawed-commercial-surrogacy-clinics-are-finding-loopholes-81784>>.

- c. Take all necessary steps to guarantee the right of the child to the highest attainable standard of health, preservation of identity, and to, as far as possible, know and be cared for by his or her parents, and the right of mothers to health, freedom from exploitation as well as trafficking.
- d. Amend laws and adopt policies aimed at prohibiting and eliminating the international surrogacy market in Armenia, including through enhanced cross-border cooperation.
- e. Comprehensively address the drivers of surrogacy, including women's economic vulnerability and infertility.
- f. Cease the practice of state-funded surrogacy and instead redouble efforts to promote family-oriented policies aimed at addressing the root causes of the national fertility crisis.