**Questionnaire on Safeguards for the protection of the rights of children born from surrogacy arrangements**

* In all responses to the following questions please ensure to indicate how the primary consideration of the best interests of the child is applied.
* If surrogacy is prohibited or permitted, respectively, in your State, please respond only to the relevant parts of the questionnaire.

**Identity, origins and parentage**

* Describe safeguards protecting identity rights (CRC art. 7 and 8) that are currently being implemented in your State. Safeguards include laws, judicial and administrative procedures, enforcement actions, and other practices intended to prevent or remedy violations of human rights norms. Note whether and how such general safeguards protecting identity rights apply in the context of surrogacy arrangements. Israeli law of surrogacy arrangements (1996) [only applies to domestic surrogacy] requires a preapproval of any surrogacy arrangement by a dedicated approval committee, prior to initiating medical procedures; the hearings of the approval committee are confidential. Regulations on surrogacy arrangement (1998) state that there will be a registry book with regards to all surrogacy births, that shall include (among others) the name of the child before and after the parentage order, and names of the intended parents and the surrogate. The book is as confidential as the registry book on adoptions. Court files are managed manually and not via the courts electronic system (the same way like adoption cases). Names of the parties for the court hearing do not appear in the registry of cases in front of the courtroom for that hearing day. Court order is send in a sealed envelope stating “confidential” to the appointed registrar.
* Describe safeguards protecting the access to origins (CRC art. 7 and 8) that are currently being implemented in your State. Note whether and how such general safeguards protecting the access to origins apply in the context of surrogacy arrangements. Three assisting registry books in an alphabetical order: (1) with the surnames and first names of the children born (both those after the order and before, if the child was given any other name before); (2) with the surnames and first names of the intended parents (and any previous names they had); (3) with the surname and first name of the surrogates (and any previous names they had). All three would have referrals to the registry number for easier access. A person that wants to review a registry has to submit a written request to the Registrar; if that person is an adult born from surrogacy, registrar shall forward the request to Chief Welfare Officer, and shall set a date for review access within no less than 45 days unless otherwise permitted by chief welfare officer. Access would be granted to same related persons as it is according to adoption law: Attorney General; Marriage Registrar; Chief Welfare Officer. The review access shall only be granted in the presence of Registrar, and only with regards to the chart of the person whose chart review was requested.
* Describe how the right to access origins is balanced with the right to privacy of parents and gamete donors. Indicate specifically how the best interests of the child are factored in. There is no registry of gamete donors or children born via gamete donors. One of the biggest problems under Israeli laws on ART, in my opinion, is that Israel does not allow known sperm donations, and is limiting non-anonymous egg donations to donations between people who are previously known to each other (i.e. a donor can ask to dedicate her eggs to specific recipients). A man who is willing to give his sperm on a known basis, must sign a co-parenting contract with the recipient woman, and submit it to the IVF clinic before they would be allowed to undergo joint insemination or IVF procedures. Such contract includes the man’s declaration that he is aware no agreement between parties that is dismissing his parental responsibilities will be upheld.
* Describe safeguards protecting the family environment (CRC art. 7, 8, 9, 10, 20) that are currently being implemented in your State. Note whether and how such general safeguards protecting the family environment apply in the context of surrogacy arrangements. Indicate specifically how the best interests of the child are factored in. All couples undergoing domestic surrogacy in Israel must have a psychosocial education, and surrogate must be psychologically approved, as a preterm of submission of an arrangement to the approval committee. A social worker is involved throughout the process: must be notified at 5 months of pregnancy regarding the expected due date, and within 24 hours after birth. Social worker is the sole legal guardian until a parentage order is signed by court; court may require an additional report from the social worker (and it will always be required if the surrogate has announced that she intends to withhold her consent for IPs’ parentage). Court hearings regarding parentage orders are confidential.
* Provide information on existing laws, regulations or practices for the establishment, recognition and contestation of legal parentage. Indicate specifically how the best interests of the child are factored in. Law of surrogacy arrangements (1996) outlines the legal process applied to domestic surrogacy only. Proposals to revise the law to formally establish ways of naturalization after foreign surrogacy (after surrogacy crisis’s in Thailand and Nepal, i.e. in 2014 and further) have failed to pass due to political reasons.
* Specify how the establishment of parentage occurs in the context of surrogacy arrangements. Indicate specifically how the best interests of the child are factored in. Law on domestic surrogacy requires the intended parents (or the social worker via Attorney General’s representative) to file for parentage order for IPs within 7 days of birth. If petition for parentage was filed and social worker has concerns regarding the child’s welfare, or social worker has learned that Surrogate intends to revoke her consent for IPs’ parentage, social worker shall notify the court and then the court shall not give an order of parentage prior to receiving a social worker’s report. If GC revoked consent, court may only give parentage order in her favor if social worker’s report shows significant change in circumstances that justifies her revocation of consent, and it will not harm the interests of the child. After a parentage order has been signed, surrogate cannot revoke her consent anymore. If court has approved surrogate’s revocation of consent, it shall grant a parentage order in her favor; if surrogate did not request to parent the child, or if court found that granting her parenting status is against the best interests of the child, it shall order as it sees fit in the best interests of the child. As mentioned below, since 1996 and throughout around 700 births, no surrogate has ever asked to revoke her consent to this day.

Legal proceedings after foreign surrogacy are not established by law but by practice. They are done via establishment of parentage in family court, with the involvement of Attorney General. **Step 1: proving that surrogacy arrangement was according to all local laws and Israeli requirements** (contract signed and initialed by all parties prior to embryo transfer, clinic’s letter stating whose genetics was used, legal opinion regarding the local law or court order of parentage, postnatal voluntary waiver by the surrogate). After having passed step 1, Attorney General agrees for IPs to undergo **step 2 = DNA testing** (which according to Israeli law on genetic testing for family lineage can only be performed by an Israeli certified lab – no foreign accredited lab results are accepted to prove genetic parentage). If DNA test proves child is not genetically related to any of the IPs, child wouldn’t be allowed to acquire citizenship

\*\*see additional notes at the end of this paper regarding naturalization proceedings and problematic issues with it, including examples.

Due to considerations of best interests of the child, we were able to convince the State (starting with very first cases of parentage for children born out of foreign surrogacy, which were handled by me in early 2000’s – V.G.) to allow to file such parentage proceedings **during the pregnancy, as default** (generally, the Israeli Attorney General requires to file petitions for parentage only after the birth of a child). The considerations that I presented regarding children born via foreign surrogacy were striving to achieve their naturalization as soon as possible after birth, to allow them to enter Israel and receive medical care and all other rights of citizens, and make their stay in the foreign countries (especially third world countries such as India at the time) as minimal as possible. This method allows to finalize parentage proceedings within 3-4 weeks after birth, instead of many months – since petitions are filed and examined by Attorney General starting from second trimester of pregnancy.

**Sale of children**

* Provide information on the laws prohibiting the sale and trafficking of children as well as corresponding implementation measures. Note whether and how such general safeguards against the sale and trafficking of children apply in the context of surrogacy arrangements. “Protocol to prevent, suppress and punish trafficking” was ratified by Israel in 2008
* Describe any safeguards against the sale of children and child trafficking specifically created for surrogacy arrangements.  Criminal punishment for those participating in non-pre-approved surrogacy proceedings in Israel, and the surrogate would remain the legal parent. For foreign surrogacy: during the naturalization process Attorney General verifies that the surrogacy agreement was signed by all parties prior to an embryo transfer, and no status in Israel is given to those the children born abroad prior to proof of genetic relationship to the intended parent. In the couple of recorded cases where DNA testing proved surrogate was the genetic mother, the child was not allowed in Israel and had to remain with the surrogate.
* Comment on the adequacy of current safeguards against the sale of children and child trafficking in the context of surrogacy arrangements.  Regarding each new country where Israelis undergo surrogacy, Attorney General uses significant efforts to assure that the legal status of surrogacy in that country was adequately presented (without distortion) by the attorneys representing the Intended Parents in naturalization proceedings. Surrogate is required to sign a voluntary waiver a an Israeli consulate even if by her local laws her parental rights have already been terminated by court, or have never existed from birth. Non-genetically related surrogacy is unaccepted by the State, as an attempt to bypass adoption and due to State’s “fear of sale of children”.
* Note situations and provide data, if any, where a lack of safeguards have allowed or unduly risked violations of these norms in the context of surrogacy arrangements. There were criminal charges against a program operator whose single female client(s) was found to have undergone non-genetically related surrogacy in the US, as a violation of limitations set under the law on foreign adoptions. Since then, mothers who have children born abroad – while requesting to grant citizenship to their children according to a foreign birth certificate – must provide documentation proving that they were the ones who have born and gave birth to their children
* Note the number and types of cases where safeguards against the sale of children have been used in criminal cases in the context of surrogacy arrangements.

**Data**

* Indicate if surrogacy arrangements are legal in your State and if so how many occur every year. Legal only for heterosexual couples with proven material fertility problems (for married or common law couples. Not to same sex couples or co-parenting arrangements without spousal relationship). Couples must use the sperm of the intended father, but may use donated eggs. Revision of law in 2018 (entered following 3 petitions to Supreme Court of Justice) finally allowed surrogacy procedures to singles intended mothers as well, but only when using their own eggs. Surrogates are compensated highly, with current range of around 45-50,000 US$. There is state medical insurance coverage for all Israeli residents, thus no additional expenses for maternity coverage are required. Arrangement between the IPs and GC must be preapproved by an approval committee prior to any medical procedures taking place; otherwise punishable as a criminal offence. Numbers: since 1996 (when law was published) until end of 2017, **1458** requests for approval were submitted to the committee, a growing number each year. Out of those, in 2012-2017 there were on average over 100 requests annually. Data on requests DENIED by the committee wasn’t collected prior to 2016; in 2016+2017, out of total of 210 requests, 8 were denied. Surrogacy **births: 666** within 1998-2017 (total of **823 children**). I.e. around half of approved procedures do not end up with a child.
* For countries where surrogacy is permitted, please indicate the number of cases, if any, of contract breaches or of refusal to transfer the child. None! According to our Attorney General, as well as my own perspective of over 300 cases and interviews of colleagues who have administered hundreds of procedures overseas.
* Indicate if intermediaries facilitating surrogacy arrangements must be registered and, if so, how many are registered in your State. Don’t have to be registered or altruistic.
* For countries where surrogacy is prohibited, please indicate the number of cases, on an annual basis, where nationals have made a surrogacy arrangement abroad and have returned to their country of origin with the surrogate-born child.
* Following on the previous question, please indicate under which circumstances authorities have allowed their nationals to bring the child born from a surrogacy arrangement back into their country of origin and if so please indicate which ones (e.g. domestic parenting orders, judgements, best interests of the child determinations, etc.), and how often they have been used. Allowed via a naturalization process through: (1) proof of legality of the proceedings in country of origin; (2) submission of surrogate’s post-birth voluntary waiver at an Israeli consulate; (3) proof of parentage via DNA testing through an Israeli certified lab only. Israeli position denying recognition of foreign parentage orders and birth certificate on their own (and requires the intended parents to conduct DNA testing) was challenged in the High Court of Justice (H.C.J 566/11 D.M.-M. et al. v. The Ministry of the Interior), but in 2014 the Court has ruled in favor of the State’s position.

Between 2005 (when Israelis started undergoing surrogacy abroad) and end of 2017 there were **1513** recorded cases, with the actual number estimated (by me – V.G.) to be higher by a few dozens, as some cases went under the radar. 740 cases out of those were of heterosexual intended parents, i.e. couples most of which could undergo surrogacy in Israel but chose to do it elsewhere; other IPs were singles and same sex couples. During same years (of 2005 to 2017) there were **1194** requests for approval submitted for surrogacy in Israel. Between 2013-2017 the number of Israelis who underwent surrogacy **abroad** was **more than double** than of those who went on domestic journeys.

* Lastly, in the same context, please indicate how many cases have led to the non-recognition of parentage orders established in the State where the surrogacy arrangement occurred. There is no recognition of parentage orders established in the State per se, these only serve as one of the required documents during establishment of parentage (as detailed above)

* Personal / additional notes on recognition of international surrogacy:
  + The requirement of submission of surrogate’s waiver of parental rights to the child **after its birth** makes some cases of naturalization extremely hard. It requires the surrogates to travel to an Israeli Consulate – sometimes over a thousand km away – postpartum, not long after the child’s birth (so that not to compromise the child’s naturalization process), while she should be recovering from labor. This is absolutely **not** thoughtful of the women involved, almost 100% of whom have already been “dismissed” by then of their parental status (if any) according to their local laws. Example that I gave during our meeting in Cambridge was of children, few years of age, born via surrogacy in Russia to dual citizenship intended parents (Russian + Israeli). By Russian laws, the surrogates have signed waivers and submitted them to the local Registry Office within a few days after birth. A couple of years later, at time of naturalization proceedings to acquire Israeli citizenship, contact with surrogates has been lost long time ago as they moved to other countries. Israeli Attorney General insists on surrogates’ consular waiver as a condition to conclude naturalization proceedings; in its absence, children are denied Israeli citizenship.

* + The suggestion that came up during our session in Cambridge, to “rate” countries of surrogacy according to their credibility or work methods (such as: where you can’t bribe the judge to receive a court order), was considered to be potentially offensive to the countries which would not be listed as credible. In my opinion, despite this shortcoming, this is the only way to:

(1) allow **efficient recognition of parentage** whenever possible;

(2) give **incentive to intended parents** to undergo surrogacy in well-regulated countries.

As matter of an example, the naturalization proceedings in Israel up until 2011 were different with regards to surrogacy in the US and Canada, in comparison to third-world countries: US/Canada born children underwent an administrative procedure through an Israeli Consulate (informally “the American protocol”), while children born in India and similar had to complete the full naturalization process described above, via a family court in Israel (“the Indian protocol”). In 2011, with the intention not to treat various countries of surrogacy differently, the Indian protocol became the only protocol. But, while it was applied quite smoothly in third world countries, application of the Indian protocol is extremely cumbersome with respect to American proceedings (the more regulated and more desirable ones!), as it requires the use of Israeli Consulates by both the intended parents with their newborn, and by their surrogates. And while in India, Thailand, Nepal, etc. all surrogacy journeys were concentrated to take place in the capitals (New Delhi/Mumbai, Bangkok, Kathmandu), with all surrogates and newborns at a driving distance from a Consulate – in the US and Canada surrogates continue to live in their regular households and give birth at local hospitals. They are rarely at any proximity to an Israeli Consulate, and as previously mentioned, are then sometimes required to travel for many hours to get there, postpartum. **This cannot be considered to be in women’s and/or children’s best interests**. By a paraphrase, this is similar to the known cartoon “now climb that tree” (originally with respect to the education system): <https://marquetteeducator.wordpress.com/2012/07/12/climbthattree/>

* + At the very minimum, I would suggest that surrogacy within regulated countries should allow for a **pre-birth and/or fast-track international recognition**, while others would require additional inspection of its parameters. In order not to insult any country for not being internationally recognized as regulated, **fast-track international recognition** can be suggested to apply to countries which representatives submit a statement showing the local regulations and balances; such **representatives must be recognized as reputable professionals in this field** by at least (a certain number of) members of the Hague committee. As long as there is no recognized representative from any given country representing the legality and supervision of the local surrogacy process and vetoed by the committee members (which I assume can take place at least on behalf of US, Canada, South Africa and Israel), surrogacy proceedings from those countries will be scrutinized under “second tier”.

The responses to the questionnaire can be submitted in English, French or Spanish. Please send your input in Word format by email to [srsaleofchildren@ohchr.org](mailto:srsaleofchildren@ohchr.org) before **31 May 2019**. Please limit your responses to a **maximum of 3000 words**. Reports, academic studies and other types of background materials can be attached as an annex to the submission.

If not stated otherwise in your submission, the responses received will be published on the [website](https://www.ohchr.org/EN/Issues/Children/Pages/ChildrenIndex.aspx) of the Special Rapporteur.