

***מ ד י נ ת י ש ר א ל מ ש ר ד ה מ ש פ ט י ם***

# S t a t e o f I s r a e l

**M i n i s t r y o f J u s t i c e**

**Office of the Deputy Attorney General (International Law)**

***המחלקה למשפט בין-לאומי בייעוץ וחקיקה***

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# The Government of Israel's Reply to the Questionnaire on Safeguards for the protection of the rights of children born from surrogacy arrangements

1. **General: Recognition of Parenthood in cases of Adoption and Surrogacy**
2. According to the Israeli law, legal recognition of parenthood is conducted by different types of judicial orders:
   1. Biological parenthood is recognized by a declarative court order, when necessary.
   2. Parenthood by way of adoption is recognized by a constitutive judicial adoption order, pursuant to the *Adoption of Children Law* 5741-1981.
   3. Parenthood by gestational surrogacy conducted in Israel is recognized by a constitutive judicial parenthood order, pursuant to the *Agreements for Carrying of Embryos (Approval of the Agreement and Status of the Infant) Law* 5756-1996.
3. In cases of foreign surrogacy, the previous legal arrangement dictated that the parenthood of a parent to which the child is genetically related is recognized by a declarative court order, while recognition of the parenthood of a parent who is not genetically related to the child requires an adoption order. Following a decision of the High Court of Justice (H.C.J. 566/11 *Doron Memet Meged et. al v. The Ministry of Interior et. al* (28.1.2014), the previous requirement for an adoption court order was replaced with a judicial parenthood order. The best interests of the child must be taken into account by the court in its decision on a judicial parenthood order and a social services review could be required for this purpose. The social services review is similar

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to the one required for adoption, however the process is significantly shorter than that of an adoption and the child is not registered as adopted.

1. Furthermore, in cases of same-sex female couples and hetero-sexual couples, the partner of the biological mother can be recognized as a parent of the child by a judicial parenthood order on the basis of the partners' relationship and certain additional criteria, and without having to officially adopt the child, as was required by the previous legal arrangement. In such case a social services review could be required. In addition, a mutual initial intent to raise the child must be proven in order for a judicial parenthood order to be issued. Note that the order can only be issued in situations in which the sperm donor's identity is unknown to the parents.
2. In April 2018, the Ministry of Labor, Social Affairs and Social Services, following a request of the Attorney General, appointed a professional inter-ministerial team for the review of the conditions for the issuance of a judicial parenthood order in cases of sperm donation for same-sex female couples. Its members included social workers and legal experts from the relevant Government Ministries. The inter-ministerial team met with members of the academia, relevant professionals and LGBTQ community representatives, and concluded its work in October 2018.

# International Surrogacy

1. The State of Israel perceives the issue of international surrogacy as a matter of great importance and urgency, which requires the creating of an appropriate international framework, and the cooperation of all states in preventing human rights abuse and exploitation in this context.
2. Israel faces, as a receiving state, numerous day-to-day difficulties in dealing with the rights, expectations and concerns of children, surrogate mothers and intending parents in the context of international surrogacy. Israel takes an active part in the international efforts to accomplish an international framework of agreed rules and safeguards to be implemented by permitting states in cases of International Surrogacy Arrangements.
3. Often, the parties involved in international surrogacy (intending parents, surrogate mothers, brokerage services, medical personnel and clinics) are located in different countries, creating numerous difficulties in extremely sensitive issues. These include

the rights and safety of the surrogate mothers (including their right to bodily autonomy), lack of examination of the parental eligibility of the intending parents, risk of abandonment of children - especially those with special needs, risk of child trafficking, and other questions regarding the child's best interest.

1. In addition, there is a need to clarify the child's legal status (to determine who are the child's legal parents), both in the state of origin and the receiving state, in order to prevent situations which can lead to cases where children cannot leave the state of origin or enter the receiving state for long periods of time.
2. **On this note, we wish to strongly dispute the notion presented in the Report according to which "*Israel (is) employing surrogate mothers from India and Thailand" under the title "abuse practices*".**1 Factually, this accusation is incorrect, has no grounds and is grossly misleading. Furthermore, the implication as if international surrogacy arrangements in Israel "*pose human rights concern*" is, to our view, factually distorted. It should also be stated that in the past few years, there are no surrogacies preformed for Israelis in those countries, due to changes of internal laws in both India and Thailand in 2013, and in Nepal in 2014.
3. Israel acts relentlessly to ensure that surrogacy procedures include a guarantee that there is a genetic link to at least one of the Israeli parents in order to prevent violations of international conventions such as the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the the Hague Convention on the Civil Aspects of International Child Abduction. A newborn's status in Israel is granted and her/his entry to Israel permitted only after the genetic connection to the Israeli citizen-parent is proven, in accordance with Section 4(a)(2) of the *Citizenship Law* 5712-1952 (hereinafter: the *"Citizenship Law"*), which provides that every person who was born outside of Israel, will be granted Israeli citizenship from the moment of his/her birth if his/her father or mother is an Israeli citizen. In order to prove the genetic connection between the newborn and the Israeli

1 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. Para 14, 29.

citizen, a request for conducting a genetic test should be filed with a Family Matters Court in Israel, in accordance with the *Genetic Information Law* 5761-2000.

1. The State of Israel conditions its approval of such a test on the plaintiff presenting both the factual and legal aspects of the case to the court and proving, among other things, that the surrogacy procedure conducted abroad was legal according to the foreign state's law.
2. Thus, the State requires (a) medical documents affirming the IVF procedure and the origin of the genetic material (both sperm and egg); (b) the surrogacy agreement; (c) proof of consent of the surrogate mother for the permanent removal of the newborn child from that state and for conducting a genetic test. The test is required to be provided in a deposition authenticated by a diplomatic or consular representative of the State of Israel after a consulate employee has identified the birth mother; (d) a duly authenticated birth certificate; (e) proof of the legality of a surrogacy procedure in the foreign state in which it was conducted and proof of the legality of the specific procedure. If the result of the genetic test affirms that there is a genetic connection between the newborn and the Israeli citizen, as a rule, the newborn will be granted Israeli citizenship on the grounds of birth to an Israeli citizen. **The genetic parent's partner can receive a parenthood order by the Family Matters Court – receiving this order necessitates the surrogate mother's consent and the legality of the surrogacy process in the foreign country.**

# Surrogacy performed within Israel

1. On July 17, 2018, Amendment No. 2 of the *Agreements for Carrying of Embryos (Approval of the Agreement and Status of the Infant) Law* 5756-1996, was legislated by the Knesset with the purpose of, *inter alia*, strengthening the protection of the rights of the child, the surrogate mothers and the intended parents throughout the surrogacy process in Israel. Section 5 of the Amendment sets out detailed criteria for the qualification of the surrogate mother and the intended parents throughout the Law, such as age limits and the absence of a criminal record.
2. The Law applies to heterosexual couples and to single mothers, in cases where the woman suffers from a medical disorder preventing her from bearing children. An ongoing petition regarding this aspect of the Law is pending before the High Court of

Justice, its main claim being that the Law discriminates against same-sex couples and single men, as it denies them access to surrogacy in Israel. The petitioners request to expand access to surrogacy in Israel to same-sex couples and single men (H.C.J. 781/15 *Arad-Pinkas et. al. v. The Committee for Approval of Agreements for Carrying of Embryos et. al.*).

# Preventing Trafficking Patterns in Surrogacy Process

1. Section 377A(a) of the *Penal Law* defines the offence of trafficking in persons as a transaction in a human being for purpose of (1) organ removal, (2) giving birth to a child and taking the child away, (3) slavery, (4) forced labor, (5) prostitution, (6) participation in a obscene publication or obscene display, or (7) committing a sexual offense against the victim. Such an offence is punishable by 16-20 years imprisonment.
2. Though to date no surrogacy case has led to the filing of an indictment for a trafficking offense, several cases are under investigation. The State of Israel is mindful of the fact that the possibility of extreme circumstances leading to subjugation or exploitation of a surrogate woman, and particularly the involvement of brokerage agencies, may occur (even though the entire procedure takes place outside of Israel), and even constitute an offence of trafficking for the purpose of the birth of a child and the taking of same child, according to Israeli Law.
3. The State of Israel believes that there is an urgent need to address the challenges raised by international surrogacy.
4. Therefore, the Israeli authorities including the National Anti-Trafficking Unit (NATU) have gathered extensive information on this subject, reviewed the International Surrogacy Agreements and the possible issues that could arise in relation to human trafficking, issued a report on the matter and are closely monitoring this subject and discussing possible avenues of action. In addition, in October 2018, the NATU Coordinator participated in the ISS experts group hosted in Israel, working towards the development of international principles on surrogacy that focus on the rights of the child.
5. In November 2018, a round table forum was assembled to discuss the subject of international surrogacy and the potential it has to relate to human trafficking, with the

participation of the State Attorney's Office, the Police, the Population and Immigration Authority, the Ministries of Foreign Affairs, Labor and Social Affairs, and Health and the Deputy Attorney General's Office. In April 2019, another roundtable forum was held, with the participation of all Government Ministries representatives, on a related topic.

1. In addition, the NATU works to achieve regulation of overseas surrogacy and holds other Inter-ministerial meetings on this matter, with the aim of preventing exploitation of surrogate mothers and trafficking in infants.
2. As previously mentioned, there are various legislative initiatives aimed at regulating international surrogacy for Israeli citizens, similarly to the existing law on internal surrogacy procedures, to eliminate trafficking and exploitation of surrogate women, and the selling and trafficking of new-born children.
3. The advancement of these efforts were defined as a high priority goal in the new National Program for combatting trafficking in persons conducted by the NATU, that was confirmed by the GOI in a resolution from January 2019, that also instructed the Director Generals Committee on Human Trafficking, to present an operative and budgeted plan for the implementation of the new 5-year national plan.
4. Furthermore, Israel is actively involved in an experts group of the HCCH (Hague Conference on Private International Law) attempting to promote the drafting of a binding international instrument on recognition of foreign parentage, including in cases of international surrogacy arrangements, and also in an experts group on behalf of the ISS (International Social Service), developing international standards for such arrangements. Israel hosted a session of this experts group in October 2018.
5. Please note, that further elaboration on this subjects and other relevant matters which were raised in the Questioner, can be found on Israel's 3rd Periodic Report Concerning the Implementation of the Convention on the Rights of the Child and its Additional Protocols which will be filed soon.