

Child Identity Protection (CHIP)¹ welcomes the opportunity to provide input to the thematic report of the Special Rapporteur on violence against women and girls (UN SR VAWG) to the General Assembly 80th session on surrogacy and violence against women and girls.²

There is no international consensus from a legal, normative, policy, or ethical perspective on surrogacy. States parties to the UN Convention on the Rights of the Child (CRC) and/or its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) have obligations towards all children within their jurisdiction, including those born through surrogacy, without discrimination.

Regardless of a State's stance on surrogacy, it should ensure that its framework is fully compliant with all obligations under the CRC, ensuring that children are able to fully enjoy all their rights. Countries may have regulatory frameworks in place, but if these are not aligned with international standards, this can create false assumption that the surrogacy should proceed.

Guidance on applying these standards to surrogacy has been provided by the CRC Committee through its concluding observations and recommendations, the two reports by the UN Special Rapporteur on Sale and Sexual Exploitation (UN SR on SSE) on surrogacy,³ the *2021 Principles for the Protection of the Rights of the Child Born Through Surrogacy* (Verona Principles),⁴ the 2022 Child Identity Protection (CHIP) and UNICEF's briefing note: *Key Considerations – Children's Rights and Surrogacy*⁵ and 2023 CHIP's note on *Priority Issues Relating to Surrogacy*.⁶

This brief submission builds on the work of the UN SR SEE as requested by the UN SR VAWG by highlighting issues that should receive further attention in line with protecting all children's rights :

- **Any policy stance on surrogacy should consider the impact on children and their rights.** Discussions surrounding International Surrogacy Arrangements (ISAs) to date have primarily focused on the certainty, continuity, and predictability of legal filiation, including those at the HCCH as per their mandate, and the ECtHR. Less attention has been given to the potential impact that ISAs have on other children's rights under the CRC. While certainty, continuity, and predictability in legal filiation are important, privileging these aspects as the key considerations in ISAs, while disregarding other children's rights – including their right to dignity, identity, a determination of their best interests, protection from sale - can result in incomplete and unsafe legal filiation decisions and/or violations of other children's rights.
- **All States should ensure that the human dignity of all actors involved is respected (UDHR).**
- **All States should ensure that the child's right to identity as foreseen in Arts. 7-8 CRC are respected in any surrogacy arrangement.⁷**
- **All States should prevent the sale of children from occurring in surrogacy arrangements.⁸**

¹ www.child-identity.org

² <https://www.ohchr.org/en/calls-for-input/2025/call-input-thematic-report-special-rapporteur-violence-against-women-and-girls>

³ <https://www.ohchr.org/en/special-procedures/sr-sale-of-children/surrogacy>

⁴ https://bettercarenetwork.org/sites/default/files/2021-03/VeronaPrinciples_25February2021.pdf

⁵ <https://www.unicef.org/media/115331/file>

⁶ <https://www.child-identity.org/wp-content/uploads/2023/04/CHIP-2023-Surrogacy-ChildrensRights.pdf>

⁷ See Chapter by Mia Dambach and Nigel Cantwell <https://www.child-identity.org/childs-right-to-identity-in-surrogacy-chapter-drafted-by-mia-dambach-and-nigel-cantwell/>. See also papers/presentations <https://www.child-identity.org/wp-content/uploads/2023/11/Actes-colloque-2023-final.pdf>

⁸ See recent updates in paper/presentation by Maud de Boer-Buquicchio at <https://www.child-identity.org/wp-content/uploads/2023/11/Actes-colloque-2023-final.pdf>

- **All States should prevent and sanction the role of intermediaries in the sale of children.**⁹
- **Both prohibitionist and permissive States should work to prevent ISAs between their jurisdictions due to the grave risks these arrangements pose, which cannot be effectively regulated at a national level.** Prohibitionist States may not be in a position to ensure the collection and preservation of all identity information; the use of only identifiable providers of human reproductive material; the effective pre-conception screening of intending parent(s) and surrogate mothers; a timely assessment and determination of the best interests of the child; and may face challenges in safeguarding against any ISA inherently containing risks violating the OPSC's prohibition on the sale of children.
- **States who prohibit surrogacy, should prevent and sanction ISAs as they would any other form of cross-border illegal activity by:**
 - a. **Ensuring that information is made available to relevant stakeholders including intending parent(s), on:**
 - policy and human rights bases for prohibiting surrogacy
 - risks to children and surrogate mothers in terms of enjoyment of their human rights
 - consequences, particularly for intending parent(s), of evading the law
 - intermediaries acting contrary to the prohibitionist stance
 - b. **Enacting and enforcing laws that ban intermediaries¹⁰ offering or providing services in their State, such as:**
 - implementing safeguards against facilitating, providing, or advertising surrogacy-related services (e.g. through online/social media platforms or "market" fairs)
 - identifying such intermediaries and ensuring they cease operations immediately
 - publishing a list of all intermediaries acting unlawfully
 - c. **Addressing ISAs as a criminal matter targeting intermediaries by :**
 - having legislation that defines these activities as a criminal offence
 - requiring intending parents to fully disclose all relevant information for the purposes a criminal investigation in relation to intermediaries, including contracts, communications, and payments made to or with intermediaries and surrogate mothers
 - ensuring that such disclosures do not entail penalties for intending parents if they cooperate fully in investigations [while refusal to cooperate in investigations could be subject to sanctions for obstruction of justice]
 - introducing fines and sanctions
 - taking appropriate child protection measures if a child is at risk
- **Should surrogacy nevertheless occur, all States have an obligation to ensure that children are able to enjoy all their rights without discrimination by:**
 - a. **Implementing a BID, whenever a child is born from surrogacy despite the prohibitionist stance, where States should, *inter alia*:**
 - Require intending parents and intermediaries to fully disclose all relevant information for the purposes of preserving the child's right to identity¹¹

⁹ See Chapter on intermediaries <https://www.child-identity.org/surrogacy-intermediaries-and-the-sale-of-children-paper-drafted-by-david-smolin-and-maud-de-boer-buquicchio/>. See also paper/presentation by David Smolin at <https://www.child-identity.org/wp-content/uploads/2023/11/Actes-colloque-2023-final.pdf>

¹⁰ Cf. definition of intermediary : A person, organisation or network facilitating the initiation, continuation and/or finalisation of a surrogacy arrangement. Those providing only medical, psychosocial or legal services related to a surrogacy arrangement do not meet this definition.

¹¹ Principle 11, Verona Principles

- All information that is collected as part of the BID and/or criminal matters should be centralised and archived for accessing at an appropriate time¹²
- Consider all relevant short and long-term implications for the child
- b. **Discouraging authorities from using adoption to regularise limping legal filiation in surrogacy arrangements for the following reasons:**
 - As a child protection measure, adoption has specific and mandatory safeguards including the evaluation and preparation of prospective adoptive parent(s), preservation of information about origins, and the explicit prohibition of payment for consent from birth parent(s).
 - Applying adoption to surrogacy situations without regard to these safeguards, in order to create a legal filiation with the child, risks contravening other rights that the child should enjoy.
 - While this approach has been accepted by the ECtHR in *Denmark v KK*, the remarks of the judges in the minority opinion are persuasive and align with overarching international standards, notably the CRC and OPSC. These standards require that activities be : “[f]ully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis (...) (a) In the context of sale of children as defined in article 2 (...) for (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption.”
- c. **Provide a child with legal filiation *sui generis* that takes into account all their rights including their best interests, right to identity (e.g. birth registration, name, nationality and family relations) and right to not be sold.**

Discrimination against children based on their family’s status, background, or other grounds unfairly limits their potential to flourish. The right of all children to a childhood with dignity, respect and worth should be upheld, regardless of whether they were born through ISAs.

¹² Principle 12, Verona Principles