



THE GLOBAL SOCIAL WORK ORGANISATION

LEGAL TRENDS IN SURROGACY

Towards a greater protection for the rights of children born through surrogacy?

A report by the International Social Service

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This report was researched throughout 2024 and minor adjustments were made in early 2025. It was drafted by the team of the International Reference Centre ([IRC](#)), a specialised research and advocacy programme at the General Secretariat of ISS based in Geneva. The programme is composed of a small team of child rights specialists, with extensive experience and expertise on private international law and international human rights law. The IRC team has also been instrumental in the coordination and development of the Verona Principles and participates in ongoing discussions on international and regional Private International Law instruments. For further information or if you have any questions, please contact: irc-cir@iss-ssi.org.

Drafted and edited by

Carlotta Alloero
Giovanna Ricciardi
Beatriz Santaemilia del Hoyo
Jeannette Wöllenstein Tripathi

With the support of

Olga Casian
Ursula Rölke
Léa Sannier
Iris Utasena
Alissa van Ham

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Foreword

Surrogacy has long been a subject of both hope and debate, representing a unique intersection of medical advancement, legal considerations, and deeply personal journeys. As societal attitudes and legal frameworks continue to evolve, so too does the landscape of surrogacy worldwide. This report on surrogacy trends provides an insightful exploration of the current state of surrogacy, with a central focus on protecting the rights and well-being of children born through these arrangements.

The increasing visibility of surrogacy, driven by advances in reproductive technology and a growing demand for alternative pathways to parenthood, underscores the urgent need to ensure that children's rights remain at the heart of surrogacy discussions. From birth registration and nationality rights to access to information about their origins, children born through surrogacy must be afforded their rights. This means States have to consider whether their laws and practices are truly advancing children's rights and must make the necessary improvements if not.

This report delves into key trends shaping surrogacy policies, emphasising the need to prioritise the rights of children. It examines the varying global regulatory approaches to surrogacy, the challenges faced in securing legal recognition for children. By offering data-driven insights and expert perspectives, this report serves as a vital resource for policymakers, legal professionals, and advocates committed to ensuring that where surrogacy is happening it must be ethical and compliant with human rights standards, including children's rights.

This report aims to foster meaningful dialogue and informed decision-making that ultimately centres on ensuring every child born through surrogacy has a secure legal identity, access to information about their origins, and the right to grow up in a stable and loving family environment.



Professor Ann Skelton

(Ann Skelton is the former Chairperson the Committee on the Rights of the Child - 2023 to 2025 – and Professor of Law at the University of Leiden, and the University of Pretoria).

Executive Summary

This report by the International Social Service (ISS) reviews legal, policy and jurisprudential developments in surrogacy from 2019 to early 2025 at global, regional and national levels, focusing on how these developments affect the rights of children born through such arrangements.


Surrogacy remains a deeply complex and contested practice. While it keeps growing globally, it continues to be unevenly regulated. This creates serious legal and human rights challenges—particularly for children—when laws fail to keep pace with the practice. Surrogacy often crosses borders, but protections for children do not. The result: many children are born into legal limbo, with unclear parentage, nationality, or access to their origins.

Across different countries and regions, several **cross-cutting trends** have emerged:

- **Increased visibility, limited oversight:** Surrogacy is more widely debated, yet accurate data and reliable oversight remain lacking. Without proper data, it is difficult to assess impacts, enforce safeguards, or shape evidence-based policies.
- **A shift toward altruistic surrogacy:** Some States are moving away from commercial forms of surrogacy, but clear safeguards and definitions are often missing.
- **Persistent gaps in children's rights:** Access to identity, legal recognition, and protection from exploitation is still far from guaranteed in many contexts.
- **Legal and policy fragmentation:** While some international and regional initiatives show promise, the lack of coherent and coordinated legal frameworks creates confusion and inconsistency.
- **Soft law and expert guidance:** In the absence of binding international rules and clear definitions, initiatives like the Verona Principles have emerged to provide child-focused guidance. These efforts are crucial but rely on voluntary adoption and political will.
- **Courts stepping in:** In the absence of legislation, courts are increasingly tasked with resolving complex parentage and rights issues—on a case-by-case basis.
- **Gaps in international coordination:** Despite some progress, international bodies—including human rights mechanisms—have yet to develop a coherent and unified approach to surrogacy that prioritises children's rights. Coordination among actors remains limited.

This report underscores the urgent need for **joined-up international responses that centre children's rights**, regardless of a country's position on surrogacy. Efforts must go beyond regulating parentage alone and instead take a holistic approach—addressing the lived realities and long-term needs of children and other parties involved.

In this report, ISS calls for continued and collective action. It encourages stronger legal safeguards for children, improved international cooperation, greater attention to lived experiences, and the integration of child rights into all surrogacy-related discussions. Surrogacy should never leave a child in legal limbo or without protection—regardless of where or how they are born.



This report (1st edition) intends to capture the current panorama of recent legal trends. The report is not intended to be comprehensive. It was drafted based on pro-bono work and the continued commitment by the IRC team to advance the discussions on how to better protect children’s rights in a surrogacy context.

Are you interested in further exchanging and engaging with ISS on this topic? Then please contact irc-cir@iss-ssi.org

Introduction

The protection of children’s rights has always been at the heart of the **International Social Service’ (ISS)** actions. ISS is indeed one of the longest-standing international non-governmental organisations with more than 100 years of existence dedicated to assisting children and families confronted with complex socio-legal problems resulting from a migration or displacement across borders. With a robust operational presence in over 120 countries, ISS plays a global role in advocating for individualised solutions grounded in the best interests of the child. This mission is achieved, among others, by facilitating communication and information exchange between administrative and judicial authorities across different countries involved in cross-border situations with the objective for the latter to make informed decisions. Each year, ISS’ network assists globally over 75’000 families. At a broader level, ISS works for systemic change through evidence-based advocacy, striving to shape international legal frameworks and policies to better protect children’s rights in cross-border contexts, while also ensuring their effective implementation.

While the organisation has historically focused on migration and the re-establishment of family links, ISS has continuously evolved to address emerging challenges and adapt its services to the shifting socio-legal landscape. **One such area is surrogacy, which raises multifaceted challenges for children’s rights and demands urgent, coordinated global responses.**

Recognising these pressing needs, ISS has undertaken the preparation of a brief report analysing key developments in surrogacy over the past five years (2019–2024). The aim of the report is to analyse the socio-legal trends in surrogacy since 2019, with a special focus on the evolving position of the UN Committee on the Rights of the Child’s (UN CRC Committee). Consequently,

the current report builds upon the work and research¹ undertaken by Prof. Ann Skelton² and her colleague Prof. Benyam Dawit Mezmur³.

ISS' position on surrogacy

By adopting a **child-rights-approach**, ISS calls for greater protections for children born through surrogacy. This approach does indeed acknowledge surrogacy as a reality yet does not equate to encouraging nor promoting the practice itself.

(See also Section 2.1. on the **Verona Principles** below).

The present report is structured in four chapters. The first provides a brief overview of the global trends related to the expanding phenomenon of surrogacy, including statistical data where available. The second chapter examines efforts at the international, regional, and national levels to adopt guiding principles and/or a legal framework to protect the rights of all parties involved in surrogacy, with a specific focus on children's rights. The third chapter reviews recent developments in surrogacy jurisprudence from an international, regional, and national perspective. It highlights how surrogacy has been addressed at the UN level, focusing on different UN human rights mechanisms and the recommendations adopted, such as through the UN CRC Committee's State review processes. Finally, the last chapter is dedicated to ISS' key recommendations and future steps to further enhance the protection of children born globally through surrogacy arrangements.

¹ A. SKELTON, B.D. MEZMUR, *Technology Changing @ a Dizzying Pace: Reflections on Selected Jurisprudence of the UN Committee on the Rights of the Child and Technology*, in *Peace Human Rights Governance*, 2019, 3(3), p. 275-305.

² Former Chairperson the Committee on the Rights of the Child - 2023 to 2025 – and Professor of Law at the University of Leiden, and the University of Pretoria

³ Associate Professor of Law at the Dullah Omar Institute for Constitutional Law, Governance and Human Rights, University of the Western Cape.

Chapter 1. Global and national figures

Surrogacy, a rapidly expanding global phenomenon, is operating to date without an internationally agreed legal framework. Its growth is fuelled by several interlinked factors, among others, rising infertility rates⁴, the desire of many individuals and couples to become parents, as well as the decreasing chances to adopt a child internationally⁵.

Surrogacy is also the result of an increasing awareness and societal acceptance of different types of family formation through artificial reproductive technologies (hereinafter ART), of which, many unfold in regulatory grey zones. For a variety of reasons, numerous intending parents are seeking family solutions outside their own country. This trend increases the international dimension of surrogacy, adding layers of complexity to a practice that is already *per se* prone to risks of abuses and violations of the fundamental rights of all parties involved largely due to the socio-economic and legal issues at stake. Indeed, international surrogacy is often characterised by evident and stark socio-economic disparities as well as power imbalances between the intending parents, and surrogate mothers⁶. Particularly for children born through this practice, surrogacy can pose significant risks. For instance, a breakdown or unforeseen development in the surrogacy arrangement can lead to significant emotional and legal complications. Likewise, children born through surrogacy may face longer-term issues, such as difficulties knowing their origins and navigating possible questions on their identity.

Considered by many as a private matter – often to avoid the scrutiny or backlash in States with restrictive policies – it is extremely difficult to get a clear and comprehensive picture of the real extent of this phenomenon⁷, both domestically⁸ and internationally⁹.

For instance, in the UK, the first country in Europe¹⁰ to regulate surrogacy¹¹, 500 children are born through surrogacy each year according to the family court statistics, a significant rise from just 80 in 2008. However, these figures are acknowledged to represent only a small fraction of the

⁴ World Health Organization (WHO), "1 in 6 people globally affected by infertility," *WHO News*, April 4, 2023, <https://www.who.int/news/item/04-04-2023-1-in-6-people-globally-affected-by-infertility>.

⁵ K. HORSEY, *The future of surrogacy: a review of current global trends and national landscapes*, in *Reproductive BioMedicine Online*, Volume 48, Issue 5, May 2024.

⁶ 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*, 2018, para 13; Kristy Horsey, *The future of surrogacy: a review of current global trends and national landscapes*, in *Reproductive BioMedicine Online*, Volume 48, Issue 5, 2024.

⁷ European Parliament's Committee on Petitions, *Cross-Border Legal Recognition of Parenthood in the EU*, available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/746632/IPOL_STU\(2023\)746632_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/746632/IPOL_STU(2023)746632_EN.pdf), p. 20 ff.

⁸ "Growing families, unregulated countries," *The Economist*, 2021; "Why the baby business is booming," *The Economist*, 2021; "Surrogacy reform is spreading in the rich world," *The Economist*, 2021.

⁹ Final report of the Irish Joint Committee (2022), available at: <https://www.oireachtas.ie/en/committees/33/international-surrogacy/>

¹⁰ UK Surrogacy Arrangements Act 1985, available at: <https://www.legislation.gov.uk/ukpga/1985/49#:~:text=An%20Act%20to%20regulate%20certain,carrying%20children%20as%20surrogate%20mothers.>

¹¹ Surrogacy law reform: Parliamentary briefing paper, November 2023, available at: <https://brilliantbeginnings.co.uk/wp-content/uploads/2023/10/Parliamentary-briefing-paper-2023.pdf>.

actual numbers¹² in the country. In the Netherlands, the number is lower but remains relevant, with approximately 30-50 children born annually¹³.

At the global level, the last attempt to provide an estimation of the number of children born yearly through surrogacy arrangements (ranging from 5 000 to 15 000) seems not to extend beyond 2014¹⁴. Despite the lack of up-to-date figures, broader trends in ART usage provide valuable insights. In 2019, it was estimated that eight million children worldwide had been born as a result of ART, reflecting the increasing recourse to these technologies, including for surrogacy purposes.¹⁵

In the absence of clear statistical data, various factors demonstrate that surrogacy is a growing practice and industry, especially when commercial in nature. It is a fact that nowadays the fertility market (which includes both donor conception and surrogacy) is among the highest earners at international level¹⁶. Suffice it to say that in 2023 the global market on surrogacy was worth almost \$18 billion (£14 billion), and according to the research firm *Global Market Insights*, it is projected to rise to \$129 billion by 2032¹⁷. Remarkably, this market has shown resilience even in the face of conflict: only in the first year since the outburst of the war in Ukraine (in 2021), more than 1 000 children were born to surrogate mothers in Ukraine¹⁸.

Finally, this growth highlights a real globalisation of the surrogacy practice, as new 'markets' continue to emerge in all parts of the world. The variety of domestic responses and legal approaches to surrogacy – ranging from legally permissive, partially regulated at administrative level, silent or unregulated to legally prohibitive – has led intending parents to seek surrogacy arrangements in jurisdictions which are more 'surrogacy-friendly'¹⁹. This, together with the financial benefits associated with surrogacy has resulted in the gradual development of an international commercial surrogacy market, with inherent risks of human rights abuses. Furthermore, it has also led to extremely complex and delicate cross-border problems, particularly in terms of safeguarding the rights of the children concerned.

¹² Law Commission of England and Wales, 2023, p. 1, available at: <https://lawcom.gov.uk/project/surrogacy/>.

¹³ WODC News, *Regeling voor draagmoederschap is hard nodig, maar wetsvoorstel biedt nog onvoldoende bescherming* (2024), available at: <https://www.wodc.nl/actueel/nieuws/2024/10/17/regeling-voor-draagmoederschap-is-hard-nodig-maar-wetsvoorstel-biedt-nog-onvoldoende-bescherming>.

¹⁴ Hague Conference on Private International Law, *A Study of Legal Parentage and the Issues Arising from International Surrogacy Arrangements* (2024), available at: <https://assets.hcch.net/docs/bb90cfd2-a66a-4fe4-a05b-55f33b009cfc.pdf>, p. 55 ff.

¹⁵ Council of Europe, Parliamentary Assembly, Recommendation 2156 (2019), Anonymous donation of sperms and oocytes: balancing the rights of parents, donors and children, available at: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=27680>

¹⁶ The Lancet, *The fertility industry: profiting from vulnerability*, Vol. 404, Issue 10449, p. 215 (2024), available at: [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(24\)01484-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(24)01484-3/fulltext).

¹⁷ Surrogacy Market - By Type (Gestational Surrogacy, Traditional Surrogacy), By Technology (Intrauterine Insemination (IUI), In-vitro Fertilization (IVF)), By Age Group, By Service Provider & Forecast, 2023-2032 (2022), available at: <https://www.gminsights.com/industry-analysis/surrogacy-market>.

¹⁸ The Guardian, "The bombs don't stop us: business brisk at Ukraine's surrogacy's clinics, 26 July 2023, retrieved November 2024, available at <https://www.theguardian.com/world/2023/jul/26/the-bombs-wont-stop-us-business-brisk-at-ukraines-surrogacy-clinics>.

¹⁹ K. HORSEY, *The future of surrogacy* cit.

The lack of official data on the extent of surrogacy practices is extremely concerning and underscores a critical gap in understanding the phenomenon’s scope and impact. ISS believes that the UN CRC Committee could play a crucial role in encouraging State parties to systematically collect, centralise and store this information, especially on the number of children born through surrogacy, regardless of their position on the subject matter. Comprehensive data is essential for developing evidence-based laws and policies but also for ensuring the protection of children born through surrogacy arrangements and strengthening accountability mechanisms to address potential human rights violations.

Chapter 2. An overview of recent legal developments (2019-2024): international, regional and national perspectives

2.1. The Verona Principles

In a world where concrete legislative initiatives on surrogacy at international, regional and national levels have been long overdue, condemning many children across the world to live in a legal limbo and more broadly have their fundamental rights violated, an important role has been played by soft law. Non-binding legal instruments can indeed help to navigate the polarised and complex market of surrogacy, aiming to reconcile conflicting State legislations while protecting the rights of those involved. Among the most important soft law instruments adopted in recent years are certainly *the Verona Principles – Principles for the protection of the rights of the child born through surrogacy*²⁰ published in March 2021 by ISS.

The origins of this international standard-setting instrument date back more than ten years ago, when ISS recognised the urgent need to protect children born through surrogacy in national and international debates and to stimulate the adoption of a legal framework to safeguard their rights adequately. Back in 2013, it was, indeed, self-evident that the surrogacy phenomenon would not come to a halt and that the lack of a legal reference framework would place especially children, in an extremely vulnerable situation. Therefore, starting in 2013, ISS called for urgent international regulation of surrogacy arrangements from a child rights perspective, and subsequently launched in 2016 the initiative to draft a set of principles on which to reach consensus by renown experts from across the world and disciplines, to guide and inform policy and legislation. Confirmed and encouraged in 2018 by the UN Special Rapporteur on the sale and sexual exploitation of children in this endeavour to draft international principles for the protection of children born through surrogacy²¹, ISS thus convened and coordinated a core group of international experts from different fields, who prepared the first draft of principles.

This draft was submitted for regular consultation to a larger group of experts. The first meeting of these experts was held at the *Università degli Studi* of Verona - Italy in 2017 (hence the name of the principles) followed by numerous other meetings (Zurich, Israel, The Hague, London, Geneva, Cape Town, and Cambodia, to name a few). In these fora, a larger group of experts and observers was involved, including from the UN CRC Committee, governments of several countries, the HCCH, UNICEF, the UN Special Rapporteur on the sale and sexual exploitation of children, numerous academics, members of the judiciary and other practitioners. The lived experiences of persons conceived through the provision of human reproductive material and born through

²⁰ The Verona Principles are available in

- English, at https://iss-ssi.org/wp-content/uploads/2023/05/Principios_de_Verona_PT.pdf,
- Portuguese, at https://iss-ssi.org/wp-content/uploads/2023/05/Principios_de_Verona_PT.pdf, and
- Italian, at https://iss-ssi.org/wp-content/uploads/2024/10/Principi-di-Verona_IT.pdf.

²¹ UN Doc. A/HRC/37/60, available at <https://documents.un.org/doc/undoc/gen/g18/007/71/pdf/g1800771.pdf> para 78.

surrogacy, women rights experts and advocates, and others were also sought and received in this process.

This joint effort resulted in the publication of a set of 18 interconnected principles drafted from the point of view of children's rights as enshrined in the Convention on the Rights of the Child (CRC Convention)²² and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC)²³ as well as other relevant international standards²⁴.

The Verona Principles aim to guide States, professionals, and parties exposed to surrogacy in adopting a legal framework capable of protecting the rights of children born out of this practice, and by consequence of all those involved in it. The neutral position adopted in the Verona Principles, which does not serve as a basis for condoning or encouraging surrogacy, makes their provisions adaptable to all contexts, irrespective of the legal stance of the State vis-à-vis this practice.

The five cross-cutting elements that emerge from these principles, in fact, concern fundamental human rights that must be guaranteed to all children.

- The **right not to be discriminated against based on the circumstances of birth** applies also to children born through surrogacy agreements. Children born as a result of this practice are entitled to the same rights as any of their peers and the circumstances of their conception and birth should not affect the enjoyment of these rights.
- The **best interests of the child** is the guiding consideration in every decision affecting a child, including when born through surrogacy. This also entails, specifically, pre-surrogacy protections, namely arrangements that cover legal, psycho-social, and health issues, and that are concluded prior to the beginning of the gestation with the involvement of all concerned parties. The aim of these arrangements is to limit some of the risks concerned with surrogacy. Likewise, the Verona Principles foresee a post-birth best interests of the child determination in proceedings concerning legal parentage and/or parental responsibility where, among other circumstances, there have not been adequate pre-surrogacy arrangements and/or where consents have not been properly obtained.
- **Respecting identity rights through transparency of information and openness of relations:** a child should be granted, through counselling and support, access to information about their genetic, gestational, social, and legal origins which should be preserved in perpetuity. Surrogacy arrangement create indeed a new concept of family, in which children should know about their origins in full transparency and be able to

²² Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

²³ Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-sale-children-child>

²⁴ For instance, the provisions of the HCCH 1993 Child Adoption Convention, the HCCH 1996 Child protection Convention or the 2009 UN Guidelines for the Alternative Care of Children.

nurture a relationship with those who contributed to their conception. To this end, only surrogate mothers and persons providing human reproductive material who are willing to share personal information should engage in this practice. Furthermore, the child should be biologically related to at least one of the intending parents, who has successfully gone through a psycho-social suitability assessment and counselling from an independent and qualified practitioner.

- **Prevention of the sale, exploitation and trafficking of children** entails, among other protections, the regulation of intermediaries' services in those States where surrogacy is permitted. To this end, intermediaries should be subject to authorisation, regulation, and periodic review. Furthermore, intermediaries should not receive remuneration which is unreasonably high in relation to services rendered.
- **Confidence in the integrity of the circumstances surrounding the surrogacy arrangement** can be granted only when free and informed decisions in all legal, social, financial and medical matters have been made by the parties involved, namely, the surrogate mother, the intending parent(s), and the persons providing human reproductive material.

These transversal elements show that the Verona Principles represent an ambitious guiding tool in the treatment of surrogacy globally, that provide comprehensive safeguards for protecting the rights of children born through this practice. The non-prescriptive character of the Verona Principles, shaped by a careful balancing act among those who participated in their drafting and inception, as well as by reflections on practices and challenges encountered, equips legislators and other decision-makers to best adapt their provisions to different national contexts.

2.2. The HCCH Parentage/Surrogacy project

Well before the global action coordinated by ISS resulting in the publication of the Verona Principles, the Permanent Bureau (PB) of the Hague Conference on Private International Law (HCCH) had been assessing the need for a new legal instrument that would provide 'greater predictability, certainty and continuity'²⁵ of legal parentage in cross-border situations for all the parties concerned, included when established through a surrogacy arrangement. Even though the establishment of legal parentage is governed by national family law provisions, its recognition abroad usually calls for the application of private international law (PIL) rules. Hence, as per the objective of the HCCH project, this is where a response at the international level might be beneficial and desirable.

Therefore, since 2011, the HCCH has been working on a new legal instrument on the recognition of foreign decisions on legal parentage in general, including legal parentage resulting from an international surrogacy arrangement. This future legal instrument would focus also on children's

²⁵ An overview on the steps taken by the Permanent Bureau from 2011 onwards is available at: <https://www.hcch.net/en/projects/legislative-projects/parentage-surrogacy/surrogacy-2011-2015>.

human rights and ‘in particular their right that their best interests be a primary consideration in all actions taken concerning them’²⁶ as laid down in the CRC Convention. As is the case for ISS, the PB also adopts a neutral approach to the practice of surrogacy, and its efforts should therefore not be understood as supporting or opposing surrogacy’²⁷.

From a children’s rights perspective, ISS takes a positive view on discussions being held on how to integrate child protection safeguards and human rights standards into the future legal instrument to ensure fair and consistent application of its provisions across the globe. Yet, there are still States that strongly advocate for the instrument to include solely PIL rules. In this context, ISS plays a critical role, particularly, in raising awareness and advocating for HCCH conventions to align with and explicitly refer to relevant international human rights standards. By providing insights into current practices and challenges from a practical perspective, ISS informs these discussions, while also promoting articulated and coordinated approaches that align with other established international children’s rights standards such as from the child protection, alternative care, and adoption fields²⁸. Indeed, as an organisation whose work stands at the intersection of international human rights law and PIL, ISS is well positioned to contribute evidence-based and comprehensive solutions to critical standard-setting processes.

The enactment of this new legal instrument appears auspicious to establish stronger safeguards for children across the globe; however, these international efforts are met with important challenges. The process has been spanning several decades, largely due to deeply conflicting State positions and policies regarding this practice. Additionally, uncertainties persist about its overall future effectiveness, particularly with regard to the likelihood of States’ ratification and the effective implementation of accompanying measures.

2.3. The EU Proposal on the Parenthood Regulation and the EU Anti-trafficking Directive

Aware of the negative implications of the lack of recognition of the legal parentage established abroad, the European Union (EU) has since 2020 engaged in a similar initiative to promote the adoption of a new regional instrument to harmonise PIL rules on the establishment and recognition of legal parentage in cross-border situations. Following the EU Commission’s President Ursula von der Leyen’s statement ‘if you are parent in one country, you are parent in every country’²⁹, in 2022 the EU Commission adopted the *Proposal for a Regulation on*

²⁶ 2023 CGAP Conclusions and Decisions, available at: <https://assets.hcch.net/docs/5f9999b9-09a3-44a7-863d-1ddd4f9c6b8.pdf>, par. 5 b.

²⁷ ‘Working Group on Parentage / Surrogacy: Report of the second meeting (from 8 to 12 April 2024)’, para. 4.

²⁸ ISS contributed to the drafting of the HCCH 1980 Child Abduction Convention, the 1993 Child Adoption Convention (emphasising the central role of the principle of subsidiarity) and the 1996 Child Protection Convention. For more than three decades, ISS, and, in particular, the International Reference Centre (IRC) have been very active in advocating wider adherence and ratification to the mentioned conventions.

²⁹ State of the Union Address by President von der Leyen at the European Parliament Plenary, available at: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655.

*jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood*³⁰.

Similar to the envisaged international PIL instrument by the HCCH, the proposal aims at strengthening ‘the protection of the fundamental rights and other rights of children in cross-border situations’³¹ such as their right to identity, non-discrimination, and private and family life. This objective, however, is achieved by providing legal certainty and predictability also about the rules on international jurisdiction for the establishment of legal parentage in cross-border situations. In December 2023, the EU Parliament adopted its non-binding position on this matter³², and negotiations in the Council of the EU on the proposed legislation – which requires adoption by unanimity – are ongoing³³.

While the aim is to enhance the protection of families and children in the EU, the proposal potentially leaves those children who were born in a third country following a surrogacy arrangement without safeguards. Indeed, the uniform rules on PIL regarding the recognition of documents on parentage will seemingly only apply if the latter has been established within the EU³⁴. Although the proposal discussions are still at an early stage, and it is difficult to predict whether this instrument will be adopted after all and in what form³⁵, those seeking recognition of legal parentage established in a third country might³⁶ have no choice but to rely on the above-mentioned international legal framework of the HCCH which, however, is still under discussion.

In parallel to this legislative initiative, as part of the EU Strategy on Combatting Trafficking in Human Beings in the period of 2021-2025³⁷, the EU has recently adopted the *Directive (EU) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*³⁸. This legal instrument, which must be transposed into the Member States’ national legislations by 15 July 2026³⁹, recognises the exploitation of surrogacy in the form of coercing or deceiving a woman into acting as surrogate as a criminal offence falling under the definition of trafficking of human beings⁴⁰.

³⁰ COM/2022/695 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52022PC0695>

³¹ COM (2022) 695 final cit., para. 1.

³² See Art. 81(3) of the Treaty of Functioning of the European Union (TFUE) according to which ‘[...] measures concerning family law with cross-border implications shall be established by the Council, acting in accordance with a special legislative procedure. The Council shall act unanimously after consulting the European Parliament.’. The steps of the procedure are available at: <https://eur-lex.europa.eu/legal-content/EN/HIS/?uri=celex:52022PC0695>.

³³ European Parliament, [E-002599/2024](#), Answer given by Mr. McGrath on behalf of the European Commission (26.3.2025); see also: [News European Parliament](#).

³⁴ COM (2022) 695 final cit., para. 1.

³⁵ The adoption of the mentioned regulation will have to reach unanimity at the Council. Achieving unanimity, especially given the inclusion of surrogacy-related issues, might prove challenging.

³⁶ Some academics see the possibility that parentage established in a third State could be certified through the regulation in an EU Member State and gain EU-wide validity.

³⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy on Combatting Trafficking in Human Beings 2021-2025, available at: eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0171.

³⁸ Directive (EU) 2024/1712 of the European Parliament and of the Council of 13 June 2024, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32024L1712>.

³⁹ *Ivi*, Art. 2.

⁴⁰ *Ivi*, considerando No. 6.

The inclusion of exploitation through surrogacy in the amended directive represents a step forward in reinforcing legal safeguards on surrogacy at the national level. It serves as a critical measure to prevent and address arrangements that explicitly involve exploitative purposes, particularly in the context of commercial surrogacy. Even though the scope of the directive is limited, as it provides a legal framework for EU Member States only, it can certainly serve as an example to other non-EU States to enhance the protection of women involved in this practice. However, by focusing exclusively on the protection of women's rights, the directive misses a critical opportunity to safeguard the rights of children born through surrogacy. These children too, are vulnerable to exploitation and harm in surrogacy contexts, yet their rights are often overlooked and not equally considered and protected.

Regulating surrogacy in a harmonised way, considering its complexities, facets and dimensions is an almost impossible task given the polarised and conflicting approaches adopted by States. While the ongoing legislative efforts at international and regional levels are to be commended for their purposes and perseverance, the slow pace of negotiations and the current lack of concrete legislative outcomes are impeding the development of the necessary safeguards for all parties involved, especially children. Likewise, while the Verona Principles provide clear guidance on required safeguards and procedures, further work is needed to raise awareness on their existence and promote their effective integration in national laws, practices, and across borders through solid cooperation mechanisms. Further, it remains problematic that the ongoing legislative initiatives are not addressing surrogacy in a holistic child rights perspective but merely seek to legislate some of the immediate consequences of surrogacy arrangements (e.g. resulting parentage).

In the respective fora, ISS has additionally observed that international human rights principles and provisions – while vaguely referred to – are rarely concretely addressed. Hence, there is a clear need for the UN CRC Committee to be more actively engaged in ongoing discussions and to promote and guide coherent and comprehensive child rights approaches. For ISS, children’s rights can only effectively be protected in such a complex and sensitive subject matter, if a joint approach is adopted, integrating the rules of PIL and international human rights law. To advance this goal, the UN CRC Committee might consider contributing to the promotion of such necessary joint approach by providing further international guidance, such as through the issuance of a joint Statement with other relevant UN bodies, like CEDAW, or by working on a new General Comment on children’s identity rights, including the dimension of family relations and environment, which could also address the necessary safeguards for children born through surrogacy.

2.4. National initiatives to regulate surrogacy⁴¹

The challenges encountered at the international and regional level in finding a compromise for the adoption of uniform PIL rules on surrogacy are the result of different, and sometimes even opposing, national responses and policies towards this practice. Globally, alongside traditional systems and established practices related to surrogacy⁴², ISS has identified the following recent heterogenous trends:

- **Legislative reforms towards prohibiting commercial surrogacy, while still admitting it when altruistic in nature.** This group concerns States in which a legislative reform has prohibited commercial surrogacy – including through ministerial or inter-ministerial acts – still admitting, however, forms of altruistic surrogacy either through regulations or in practice. A representative country is, for instance, **India**, where in 2002, commercial surrogacy became unofficially allowed via the Indian Council of Medical Research (ICMR) guidelines⁴³ to promote the medical industry and tourism. As a result, surrogacy operated in a largely unregulated manner. For years, the practice was primarily informed and governed by case

⁴¹ Since the publication of Verona principles, in March 2021, the IRC team has continuously followed the legislative developments around the globe and has worked on country-specific factsheets that would provide an overview of surrogacy-related issues from a child rights perspective, covering among other aspects such as legislation, competent authorities, requirements, procedures, sanctions, costs, statistics, current issues at stake, etc. IRC has collected information on Colombia, Georgia, India, Israel, the UK, Thailand, Ukraine and some US States (Texas, Washington, California).

⁴² See, for instance, in South Africa, Israel, and some US States such as California.

⁴³ Indian Council of Medical Research (ICMR), *The Assisted Reproductive Technology (Regulation) Act, 2021 and the Surrogacy (Regulation) Act, 2021*, in *ICMR.gov.in*, 2021, available at: <https://www.icmr.gov.in/the-assisted-reproductive-technology-regulation-act-2021-and-the-surrogacy-regulation-act-2021>.

law, with various unsuccessful attempts to regulate it since 2018. However, in response to widespread concerns over abusive practices⁴⁴, India enacted new legislation in 2021, officially prohibiting commercial surrogacy, both domestically and internationally. However, while altruistic surrogacy is still permitted⁴⁵, the procedural framework remains vague, especially in relation to the following: the rights of children born through this practice, and the access to altruistic surrogacy between relatives as it might be difficult due to cultural considerations towards infertility⁴⁶. Likewise, in **Cambodia** in 2016 its Royal Government issued an administrative decision⁴⁷ banning surrogacy. Reforms are expected, given that the Cambodian government has been working on a surrogacy law draft since 2017⁴⁸.

- **Legislative reforms to strengthen guarantees for parties involved in surrogacy arrangements.** Reforms have taken place in the province of **Quebec (Canada)** where surrogacy was already permitted at the federal level⁴⁹. The new law on surrogacy brought several important changes, such as the need for a written agreement among the involved parties outlining the terms of the arrangement, responsibilities, and consents to be signed prior to the beginning of the gestation; and the necessity of the surrogate mother's consent after birth to change the legal parentage in favour of the intending parents.⁵⁰
- **Legislative reforms aimed at further restricting the recourse to surrogacy.** While more and more States globally have enacted laws aimed at strengthening the rights of those parties involved in surrogacy arrangements, **Italy** has adopted a convergent approach towards this issue. Indeed, in very recent times, Italy's parliament has approved a new law⁵¹ with

⁴⁴ Surrogacy (Regulation) Act, 2021, Sections 3i) and 38, available at: <https://www.indiacode.nic.in/bitstream/123456789/17046/1/A2021-47.pdf>. The country also introduced *The Assisted Reproductive Technology (Regulation) Act (2021)*.

⁴⁵ See section 2 b) Surrogacy (Regulation) Act: « (...)surrogacy in which no charges, expenses, fees, remuneration or monetary incentive of whatever nature, except the medical expenses and such other prescribed expenses incurred on surrogate mother and the insurance coverage for the surrogate mother, are given to the surrogate mother or her dependents or her representative. » It is, however, not clear whether international altruistic surrogacy is still possible under the new law (see also under “Requirements/criteria for IPs” of the Surrogacy (Regulation) Act, 2021). Indeed, since 2015, a circular (MHA's circular no. 25022/74/2011-F., Vol. III, dated 3 November 2015, available at: <http://mea.gov.in/images/attach/surrogacy03112016.pdf>) prescribed that foreign nationals, including those with Overseas citizen card holders, cannot be granted visa to enter nor permission to leave India with a child born through surrogacy.

⁴⁶ Y. HIBINO, *Ongoing Commercialization of Gestational Surrogacy due to Globalization of the Reproductive Market before and after the pandemic*, available at: <https://link.springer.com/article/10.1007/s41649-022-00215-4>

⁴⁷ Prakas on the Management of Birth by Surrogacy, signed 24 October 2016, available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Children/SR/Surrogacy/AcademicInstitutions/KasumiNakagawaPannasastraUniversityCambodia.docx>. No specific law has been enacted to explicitly prohibit surrogacy. To address this, the Cambodian government has resorted to applying human trafficking laws, which carry penalties of 7 to 20 years imprisonment, to prosecute surrogate mothers and intermediaries. A Bill on surrogacy is currently under revision which prohibit commercial surrogacy but would allow altruistic surrogacy under certain conditions.

⁴⁸ Khmer Times. Ministry to review draft surrogacy law with legal experts, available at: <https://www.khmertimeskh.com/501056334/ministry-to-review-draft-surrogacy-law-with-legal-experts/>.

⁴⁹ Assisted Human Reproduction Act (AHRA), Article 6, available at: <https://laws-lois.justice.gc.ca/PDF/A-13.4.pdf>.

⁵⁰ See <https://www.quebec.ca/en/famille-et-soutien-aux-personnes/grossesse-parentalite/grossesse-autrui/surrogacy-inside-quebec#c265529>.

⁵¹ See Bill No. 824, amending Article 12 of Law No. 40 of February 19, 2004, available at: https://www.senato.it/3818?seduta_assemblea=25589.

extraterritorial effects aimed at criminalising surrogacy practices even when conducted abroad by Italian citizens, including in surrogacy-friendly legislations.

- **Legislative initiatives through the development of specific laws in States where surrogacy was previously unregulated.** Recently, new laws on surrogacy have been adopted, while several legislative projects are currently ongoing. One of the most recent surrogacy laws was passed in **Ireland** in July 2024⁵². Extensively inspired by the Verona Principles regarding the legal safeguards for those involved in this practice⁵³, this new law has legalised altruistic surrogacy and set out the rights and obligations of all parties involved. The newly adopted law is expected to go under another reform to, among others, better protect the rights of donor-conceived children by allowing access to information on their origins⁵⁴. **Denmark** also follows within this category, where a new law legislating both on international and domestic surrogacy and explicitly mirroring some provisions of the Verona Principles, came into force on 1 January 2025.⁵⁵
- **Current ongoing debates aimed at potential legislative reforms.** Numerous State situations fall within this category. For instance, in the **Netherlands**, while surrogacy is currently not governed by a dedicated legislative framework, the Dutch Penal Code prohibits commercial surrogacy under article 151b, but does not address non-commercial arrangements, permitting therefore altruistic surrogacy in practice in some cases.⁵⁶ A recent proposal on a new surrogacy law aims to ensure greater legal certainties. Endorsing an ‘a priori approach’, the proposal foresees intending parent(s) and the surrogate mother to formalise an arrangement (art. 216) prior to the beginning of the gestation and after access to medical, psychosocial, and legal counselling (art. 215)⁵⁷. Further amendments, however,

⁵² Assisted Human Reproduction (AHR) Bill 2022 available at:

https://data.oireachtas.ie/ie/oireachtas/bill/2022/29/eng/ver_b/b29b22d.pdf. Under the newly adopted law, intending parents are recognised as legal parents of the child from their birth, without any need for a court order after birth. Parents of children born through surrogacy prior to the entry into force of the said new law, will now be able to apply to the High Court for measures to ensure their relationship with their children.

⁵³ In May 2022 the ISS/IRC was invited to intervene at a parliamentary hearing on the Verona Principles before the Irish Joint Committee on International Surrogacy established to consider and make recommendations on measures to be taken to address issues arising from international surrogacy. The video and script are available at:

https://www.oireachtas.ie/en/debates/debate/joint_committee_on_international_surrogacy/2022-05-26/3/

See also the Follow-up observations by the Irish Ombudsman for Children’s Office) on the Health (Assisted Human Reproduction) Bill 2022, May 2024.

⁵⁴ C. NELSON, Ireland proposes legislative changes on international surrogacy, in *Out-Law News*, 2024, available at:

<https://www.pinsentmasons.com/out-law/news/ireland-proposes-legislative-changes-international-surrogacy>.

⁵⁵ E. SINANDER, *Political Agreement in Denmark on International Surrogacy Agreements*, in *The EAPIL Blog*, 2024, available at <https://eapil.org/2024/10/14/political-agreement-in-denmark-on-international-surrogacy-agreements/>.

Under the new law, intending parents will be granted legal parentage *ex lege* from the child’s birth, whereas currently, being the surrogate mother the legal parent of the child, even if biologically unrelated to the child, intending parent(s) cannot but go through an adoption proceeding.

⁵⁶ Government of the Netherlands, *Draagmoederschap: wat mag en wat mag niet*, in *Rijksoverheid.nl*, 2024, available at: <https://www.rijksoverheid.nl/onderwerpen/draagmoeder/draagmoederschap-wat-mag-en-wat-mag-niet>.

⁵⁷ Furthermore, for international surrogacy, a simplified recognition process is introduced, provided there is a genetic link between the child and their intended parent(s), traceable parentage information, and a judicial review in the State of origin. See *Dutch House of Representatives (Tweede Kamer), Legislative Proposal No. 36390 – Legal Process Overview*, available at:

<https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?cfig=wetsvoorstel&details&qry=wetsvoorstel%3A36390#wetgevingsproces>.

might still occur⁵⁸. Other legislative reforms to strengthen the surrogacy legal framework have been in progress for some years also in the **UK**, where domestic altruistic surrogacy is admitted - although its arrangements are not enforceable by law - while prohibited when commercial in nature⁵⁹. Mindful of the need to provide adequate protection to those involved in surrogacy, a joint report and a draft legislation have been recently published⁶⁰. A Government's response is now awaited. Likewise, reform efforts have been ongoing in **New Zealand** to ensure a legal framework that meets the needs and expectations of all parties involved in surrogacy arrangements. A report of the Law Commission published in 2022⁶¹ has affirmed the existing prohibition on commercial surrogacy and made recommendations to improve the law and practice surrounding altruistic surrogacy⁶², also by endorsing some provisions of the Verona Principles stressing the importance to prohibit anonymous donor conception⁶³. In recent years, the **German** stance on surrogacy has sparked ongoing political discussions, with a commission scrutinising its legalisation when altruistic in nature under strict conditions to prevent abuse⁶⁴. Despite this, surrogacy is not included in the current proposals presented by the Federal Ministry of Justice⁶⁵. No reforms are anticipated for now⁶⁶, reaffirming the government's restrictive position. Likewise, reform efforts have been undertaken by **Colombia**, a country where surrogacy arrangements are common and tolerated despite the lack of a legal framework. Two proposed bills to regulate surrogacy were introduced, but both were shelved early in the early stages of the congressional debate. Another development has been observed in **Thailand**, where discussions are occurring on the possibility of lifting the ban on commercial surrogacy introduced almost a decade ago

⁵⁸ See the report commissioned by the Scientific Research and Documentation Centre (WODC) of the Dutch Ministry of Justice and Security indicating, among others, the need for enhancing guarantees for children in the access to their origins available at: <https://www.wodc.nl/actueel/nieuws/2024/10/17/regeling-voor-draagmoederschap-is-hard-nodig-maar-wetsvoorstel-biedt-nog-onvoldoende-bescherming>. The report in Dutch language can be consulted at: <https://repository.wodc.nl/bitstream/handle/20.500.12832/3401/3357-het-gedragen-kind-volledige-tekst.pdf?sequence=1&isAllowed=y>.

⁵⁹ As per the main applicable laws: the Surrogacy Arrangements Act (SAA) 1985 available at: <https://www.legislation.gov.uk/ukpga/1985/49?view=extent> and the Human Fertilisation and Embryology Act 2008 available at: <https://www.legislation.gov.uk/ukpga/2008/22/contents>. Some of the key changes regard pre-conception screening and safeguarding checks, as well as the right of intending parents to become the legal parents of the child from birth and the surrogate mother's right to withdraw her consent.

⁶⁰ In 2019 and 2023, the Law Commission of England and Wales published a joint report with the Scottish Law Commission and a draft legislation, outlining recommendations for a robust new system to govern surrogacy, available at: <https://lawcom.gov.uk/project/surrogacy/>.

⁶¹ The report NZLC-R146 is available at: <https://www.lawcom.govt.nz/assets/Publications/Reports/NZLC-R146.pdf>, while its key recommendations can be consulted at <https://www.lawcom.govt.nz/about-us/news-and-media/review-of-surrogacy-law-commission-report-published/>.

⁶² In New Zealand, surrogacy is governed by the Human Assisted Reproductive Technology Act 2004, available at: <https://www.legislation.govt.nz/act/public/2004/0092/latest/whole.html>.

⁶³ NZLC-R146 Report cit., page 77 ff.

⁶⁴ A commission established by the federal government has included a sub-working group dedicated to exploring the potential legalisation of egg donation and altruistic surrogacy and adopted a report. See 'Bericht der Kommission zur Reproduktiven Selbstbestimmung und Fortpflanzungsmedizin – Kurzbericht', available at: <https://www.bmfsfj.de/resource/blob/238404/08fd14b5eb28265c8201b69d12e456f4/kurzbericht-kommission-zur-reproduktiven-selbstbestimmung-und-fortpflanzungsmedizin-data.pdf>.

⁶⁵ U. ROELKE, *Die aktuelle Debatte um Leihmutterchaft: Vorgaben aus der Sicht der Kinderrechte und des Kindeswohls*, in *NDV* 3/2024, available at: https://www.issger.de/fileadmin/user_upload/issger/pdfs/Roelke_-_Die_aktuelle_Debatte_um_Leihmutterchaft_-_NDV_3_2024_-_116-120.pdf

⁶⁶ Discussions have, however, highlighted potential paths for future legislative efforts. See *ivi*, page 39.

after a string of scandals⁶⁷. The proposed changes are part of a wider reform of regulations on surrogacy, in-vitro fertilisation, and artificial insemination to also enhance medical tourism.⁶⁸ Finally, reform discussions are also ongoing in **Uruguay**, where surrogacy is allowed in its altruistic form⁶⁹, after a bill was passed in 2022 by the Chamber of Deputies to the Senate⁷⁰. Debates explore the possibility of establishing some requirements for surrogate mothers to provide gestational services, her right to withdraw the consent to place the new-born up for adoption, as well as the child's right to access information on their origins⁷¹.

The above examples show significant and ongoing developments in national laws and policies related to surrogacy in recent years. While it is promising that some States do seek to regulate and increase the safeguards for all parties involved in surrogacy, the diverse national approaches adopted and/or maintained lead *de facto* to heterogeneous protections of those concerned. This also adds complexity to navigating laws and policies on this topic, especially in an international surrogacy context. The complexities and specificities of different laws on surrogacy need to be considered by the UN CRC Committee, especially in the State review processes. Consulting with specialised NGOs and experts with in-depth knowledge on this matter could help the UN CRC Committee navigate these nuances and identify protection gaps.

A prominent trend is the shift towards altruistic surrogacy. Considering the increased understanding of the risks and potential for abuses inherent to commercial surrogacy arrangements, numerous legislations moved towards admitting and regulating surrogacy in its altruistic form. In such contexts, however, the distinctions between altruistic and commercial surrogacy need to be thoroughly clarified both in laws, policies but most importantly in practice. Effective monitoring mechanisms, overseen by competent public authorities, should be established to ensure proper implementation and oversight.

⁶⁷ VOA News, *Thailand Prepares to Lift Commercial Surrogacy Ban*, in VOA News, 2024, available at: <https://www.voanews.com/a/thailand-prepares-to-lift-commercial-surrogacy-ban/7521512.html>.

⁶⁸ Reuters, *Thailand Plans to Legalise Surrogacy for Foreign Couples*, in Reuters, 2024, available at: <https://www.reuters.com/world/asia-pacific/thailand-plans-legalise-surrogacy-foreign-couples-2024-03-01/>.

⁶⁹ D. M. SÁNCHEZ, *Surrogacy in Latin America*, Cambridge, 2024, p. 231 ff.

⁷⁰ M. VIERA CHERRO, M. CACCIA, *Gestación subrogada en Uruguay: aportes para una discusión latinoamericana*, in *Revista Ambivalências*, 2024, page. 89.

⁷¹ *El País Uruguay*, *Cámara de Representantes vota proyecto de ley que amplía la gestación por subrogación*, in *El País*, 2024, available at: <https://www.elpais.com.uy/informacion/politica/camara-de-representantes-vota-proyecto-de-ley-que-amplia-la-gestacion-por-subrogacion> and *Montevideo Portal*, *Presentan proyecto alternativo de maternidad subrogada que amplía grado de consanguinidad*, in *Montevideo.com.uy*, 2024, available at: <https://www.montevideo.com.uy/Noticias/Presentan-proyecto-alternativo-de-maternidad-subrogada-que-amplia-grado-de-consanguinidad-uc832767#>.

Finally, common to the above-cited national illustrations, is the lack of consultations with surrogate mothers, intending parents but most importantly children or adults with lived surrogacy experiences in ongoing or recent law reforms. A pioneer initiative aimed at understanding children’s perception on surrogacy and their demands for law reform does exist in the UK – a surrogacy-friendly context – but could benefit from replication in other contexts including internationally. The UN CRC Committee could indeed play a key role in promoting consultations on surrogacy with children, ensuring their opinions are effectively heard and considered in shaping the international legal landscape on surrogacy.

Chapter 3. Recent jurisprudence on surrogacy: international, regional, and national perspectives

3.1. The UN CRC Committee's guidance and interpretations

This section examines the most recent guidance provided by the UN CRC Committee in its Concluding Observations since 2019⁷², with the aim to explore how the protection of the rights of children born through surrogacy has been addressed in recent years by the UN CRC Committee.

The UN CRC Committee has not considered any individual communications⁷³ nor inquiry procedures related to surrogacy under the OPIC in recent years. However, an earlier OPIC case⁷⁴ did touch upon issues related to ART, surrogacy and identity rights. As such, this analysis will exclusively focus on **State review processes**.

A noticeable point to raise is the **limited attention** given to surrogacy-related issues in the reports submitted by States to the UN CRC Committee. Additionally, these issues have not always been included in the Committee's Concluding Observations, further highlighting the lack of a systematic discussion on surrogacy-related matters during the State review process. Over a seven-year period (2018-2024), the issue of surrogacy was explicitly addressed in the Committee's Concluding Observations in 12 instances, despite nearly 100 States being examined during this time. The latest Concluding Observations were made to Bhutan (2024), Georgia (2024), Mexico (2024), Namibia (2024), Ireland (2023), and New Zealand (2023). Under OPSC, only in four occasions, namely in the Concluding Observations to Russia (2018), the Netherlands (2020), the USA (2022), and Georgia (2024). In some instances, surrogacy-related questions appear in the List of Issues for several countries (Slovakia⁷⁵, Georgia⁷⁶, Bulgaria⁷⁷ and Ukraine⁷⁸).

While the reasons behind this limited consideration of surrogacy by the UN CRC Committee certainly are diverse and multifaceted, **ISS has observed that surrogacy – whether in its**

⁷² A. Skelton, B.D. Mezmur, Technology Changing cit.

⁷³ As per the latest information (June 2023), there are no pending cases addressing the topic of surrogacy. See: <https://www.ohchr.org/sites/default/files/documents/hrbodies/crc/TablePendingCases.xlsx>.

⁷⁴ Costa Rica, [CRC/C/74/D/5/2016](#), The case was reviewed by the Committee on the Rights of the Child on March 1, 2017. The case involved a Costa Rican and United States citizen who underwent in-vitro fertilization in the United States, resulting in the birth of twin sons carried by a surrogate mother. The American courts declared the father the sole legal parent of the twins, and their births were registered in the US under the father's surname as well as the name of the egg donor. When the father returned to Costa Rica, he applied to register the birth of the children under the same names. However, Costa Rican authorities registered the children using only the father's surnames. The father appealed the decision through the Costa Rican courts. The UN CRC Committee reviewed the case and found the complaint inadmissible.

⁷⁵ UN Committee on the Rights of the Child, List of issues in relation to the sixth periodic report of Slovakia, [CRC/C/SVK/Q/6](#), 2024, question No. 4.

⁷⁶ UN Committee on the Rights of the Child, List of issues prior to the submission of the combined fifth and sixth reports of Georgia, [CRC/C/GEO/QPR/5-6](#), 2021, para. 17.

⁷⁷ UN Committee on the Rights of the Child, List of issues prior to the submission of the combined sixth and seventh reports of Bulgaria, [CRC/C/BGR/QPR/6-7](#), 2021, para 29(b).

⁷⁸ UN Committee on the Rights of the Child, List of issues prior to the submission of the combined fifth and sixth reports of Ukraine, [CRC/C/UKR/Q/5-6](#), 2020, paras. 2(c) and 17(d).

domestic or international form – is a prevalent reality in most States that have gone through a review process in recent years (see Section 3.5. below).

Another aspect worth mentioning is that while different rights of the child are implicated in the context of surrogacy, the right most frequently emphasised by the UN CRC Committee has been **the child's rights to know their origins**⁷⁹. This aligns with the UN CRC Committee's position, as reflected in its Concluding Observations⁷⁹ over the past decade: ensuring that all children, including those born through surrogacy, have access to information on their origins.

Regarding the right to identity of children born through surrogacy, the UN CRC Committee calls on State Parties to, firstly, adopt legislation that is respectful of this right; and secondly to prevent possible violations of this right as well as to guarantee access to information on their origins. In the absence of any regulation, the UN CRC Committee urged, for instance, Namibia⁸⁰ to take actions to remedy this. It is encouraging to see that some States seem to have followed the UN CRC Committee's recommendations, given the recent reforms highlighted above in Section 2.4.

Further, the UN CRC Committee has recognised the **importance to provide adequate services to raise awareness of the right to identity** of children born through surrogacy. To this end, it encouraged State parties 'to provide surrogate mothers and prospective parents with appropriate counselling and support' (Ukraine⁸¹) and to ensure that children born through surrogacy 'receive appropriate counselling and support' while accessing information about their origins (Georgia⁸²). This echoes the Verona Principles⁸³ which call for openness and transparency among others through counselling and support services during the entire process (pre-surrogacy, pregnancy, and post-birth)⁸⁴.

It is also worth mentioning that in some instances, while recognising the need to protect the right to identity of adopted children or those born via the recourse to ART, the UN CRC Committee did not explicitly refer to children born through surrogacy. This is the case of Switzerland⁸⁵ or Bulgaria⁸⁶ for which the UN CRC Committee recommended 'to ensure that, in instances where a child is born through assisted reproduction technologies, the child is able to access information about their origin as well as appropriate counselling and support'. The absence of explicit references to children born through surrogacy could be explained by the prohibitive approach taken by both States towards surrogacy. However, a State could still encounter cases involving

⁷⁹ Art. 7 CRC Convention.

⁸⁰ UN Committee on the Rights of the Child, Concluding observations on the combined fourth to sixth reports of Namibia, [CRC/C/NAM/CO/4-6](#), 2018, para. 20.

⁸¹ UN Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth reports of Ukraine, [CRC/C/UKR/CO/5-6](#), 2022, para. 21.

⁸² UN Committee on the Rights of the Child, Concluding observations on the fifth and sixth periodic reports of Georgia, [CRC/C/GEO/CO/5-6](#), 2024, para 20 (a).

⁸³ See Verona Principles 5, 7, and 8.

⁸⁴ See Verona Principles 5 and 6.

⁸⁵ UN Committee on the Rights of the Child, Concluding observations on the fifth and sixth periodic reports of Switzerland, [CRC/C/CHE/CO/5-6](#), 2021, para 22.

⁸⁶ UN Committee on the Rights of the Child, Concluding observations on the sixth and seventh periodic reports of Bulgaria, [CRC/C/BGR/CO/6-7](#), 2024, para 22.

children born through international surrogacy and will need to guarantee the rights of children concerned. This is, for example, the case faced by Swiss courts (see Section 3.5. below).

Likewise, on some occasions, the UN CRC Committee addressed surrogacy from the point of view of the **child's right to birth registration and nationality**. In the Concluding Observations to Ireland⁸⁷, the UN CRC Committee urged the State to 'prevent(ing) the deprivation of nationality to children born through surrogacy arrangements'. Similar recommendations were made towards Namibia⁸⁸ and Australia⁸⁹. Towards the latter, the UN CRC Committee stressed the importance to 'ensure that children born through international surrogacy arrangements can obtain Australian nationality through a clear process and rules applied uniformly throughout the country'.

As highlighted before, surrogacy-related issues have also been brought to the attention of the UN CRC Committee **under the OPSC**. In this context, due to the inherent risks associated with surrogacy, the latter has mainly been analysed in relation to the **definition of sale of children**. Indeed, surrogacy arrangements, especially when commercial in nature, can constitute or lead to the sale of children. Therefore, States must prohibit surrogacy arrangements that promote or constitute the sale, trafficking and exploitation of children, and ensure adequate safeguards that apply in the context of surrogacy.⁹⁰

In line with the 2019 Guidelines on the implementation of the OPSC⁹¹, the UN CRC Committee has continued to share its concerns on the risk of commodifying children in the context of commercial surrogacy arrangements and encouraged State parties with this practice to take all necessary measures, including regulation, to prevent the sale of children under surrogacy arrangements. A fundamental step in this direction would be to strengthen national legislations and introduce specific criminal provisions.⁹² In accordance with previous Concluding Observations concerning the implementation of OPSC, the UN CRC Committee also recommended to the Russian Federation⁹³ and the Netherlands⁹⁴ to proceed with the introduction of stricter prevention and responsive measures. While a reform is underway in The Netherlands, its exact outcomes and alignment with the guidance provided by the UN CRC

⁸⁷ UN Committee on the Rights of the Child, Concluding observations on the fifth and sixth periodic reports of Ireland, [CRC/C/IRL/CO/5-6](#), 2023, para 19(ii).

⁸⁸ UN Committee on the Rights of the Child, Concluding observations on the fourth to sixth periodic reports of Namibia, [CRC/C/NAM/CO/4-6](#), 2024, para. 21(b).

⁸⁹ UN Committee on the Rights of the Child, Concluding observations on the fifth and sixth periodic reports of Australia, [CRC/C/AUS/CO/5-6](#), 2018, para. 23(c).

⁹⁰ See Verona Principle 1.3.

⁹¹ UN Committee on the Rights of the Child, Guidelines on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, [CRC/C/OPSC/3](#), 2019.

⁹² Following the new EU Directive (EU) 2024/1712 mentioned above, all EU Member States will be now legally bound to introduce similar provisions, a further step towards the concrete implementation of the CRC Committee's recommendations.

⁹³ UN Committee on the Rights of the Child, Concluding observations on the initial report of the Russian Federation under the Optional Protocol on the sale of children, child prostitution and child pornography, [CRC/C/OPSC/RUS/CO/1](#), 2018, para. 22.

⁹⁴ UN Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth reports of the Netherlands, [CRC/C/NLD/CO/5-6](#), 2022, para. 42 (a).

Committee remain unclear. Similar recommendations were issued to Georgia in 2019⁹⁵. The UN CRC Committee was concerned that 'surrogate motherhood, if not properly monitored and regulated, may lead to the sale of children', and hence urged the country to 'introduce additional safeguards to prevent the use of surrogacy for the sale of children', a recommendation which was reiterated in 2024⁹⁶.

In response to the Committee's Concluding Observations in 2017 which expressed concerns about the widespread use of commercial surrogacy in the United States⁹⁷ and the high risk for the sale of children in such contexts, the United States government shared its diverging views in its Fifth Periodic Report to the UN CRC Committee on measures giving effect to its obligations under the OPSC⁹⁸. For the United States, surrogacy does not fall within the definition of 'sale of children' and hence there is no need to criminalise certain acts or activities under article 3 of OPSC. 'No federal legislation exists regarding payments to surrogate mothers and there are no plans to formulate federal laws or regulations on surrogacy at this time'. The United States' stance shows the complexity in conducting constructive dialogues with certain States on the importance of introducing child protection safeguards in a surrogacy context. It also illustrates that the achievement of a global consensus may not be immediate. Thus, coordinated approaches and clear positions by UN human rights mechanisms are more crucial than ever.

3.2. The UN Special Rapporteur on the sale and exploitation of children

The UN Special Rapporteur on the sale and sexual exploitation of children is the only UN Special Procedures mandate that has addressed the issue of surrogacy over the years.⁹⁹

However, since 2019, **neither country visit reports nor thematic reports** have referred to surrogacy. The UN Special Rapporteur on the sale and sexual exploitation of children has considered surrogacy as a new and emerging form of the sale of children¹⁰⁰. However, ISS observes a shifting nuance in the mandate holder's approach to the topic: in the initial thematic Report to the Human Rights Council in 2018, the Special Rapporteur had equated commercial surrogacy in principle and as currently practiced with the sale of children as defined by

⁹⁵ UN Committee on the Rights of the Child, Concluding observations on the initial report of Georgia under the Optional Protocol on the sale of children, child prostitution, and child pornography, [CRC/C/OPSC/GEO/CO/1](#), 2019, para. 22.

⁹⁶ UN Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Georgia, [CRC/C/GEO/CO/5-6](#), 2024, para. 26(d).

⁹⁷ Committee on the Rights of the Child, Concluding observations on the third and fourth periodic reports of the United States of America, [CRC/C/OPSC/USA/CO/3-4](#), 2017, para. 24

⁹⁸ UN United Nations Committee on the Rights of the Child (CRC), Concluding Observations on the United States of America's Fifth Periodic Report under the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, [CRC/C/OPSC/USA/5](#), 2022, paras 55-56.

⁹⁹ See [thematic reports of 2018 and 2019](#).

¹⁰⁰ United Nations Human Rights Council, Report of the Working Group on the Universal Periodic Review: Lao People's Democratic Republic, Addendum, [A/HRC/40/51/Add.1](#), 2019.

international law¹⁰¹, while showcasing that there might be specific circumstances in which the commercial recourse to surrogacy would not constitute the sale of children. In fact, the country visit report on the Lao People’s Democratic Republic introduced a **more nuanced language**: 'commercial surrogacy arrangements that *may (emphasis added by the author)* amount to sale of children' and encourage authorities to tackle this phenomenon 'with effective legislation and prevention strategies'¹⁰².

In line with the concerns expressed by the UN CRC Committee, the UN Special Rapporteur is equally concerned that the lack of proper legislation and a regulatory body responsible for overseeing surrogacy arrangements may further contribute to the risk of the sale of children. In more than one occasion, the Special Rapporteur recommended State parties to 'prohibit surrogacy arrangements that amount to sale of children and adopt comprehensive regulations to govern the practice based, inter alia, on the best interests of the child' as well as 'and set up a regulatory system for clinics to ensure that surrogacy arrangements are consistent with the rights and best interests of the child' (Malaysia¹⁰³, Lao People’s Democratic Republic¹⁰⁴ and Bulgaria¹⁰⁵).

Following the country visit to Ireland in 2019¹⁰⁶, the UN Special Rapporteur recommended the State party to 'enact legislation that would regulate surrogacy arrangements to ensure that the best interests of the child are protected'¹⁰⁷. This recommendation was seemingly followed by Ireland as shown in Section 2.4. by the recent adoption of a legal framework on surrogacy in the country¹⁰⁸.

3.3. The UN CEDAW Committee’s guidance and interpretations

Discussions on surrogacy often involve contrasting views. From a women’s rights perspective, two polarised positions have emerged. One emphasises a woman’s right to make decisions regarding their reproductive choices and bodily autonomy, including participation in surrogacy arrangements. The second opposes the practice, raising concerns about the commercialisation

¹⁰¹ United Nations Human Rights Council, Report of the Working Group on the Universal Periodic Review: Nicaragua, [A/HRC/37/60](#), 2018. Para. 41: “Commercial surrogacy as currently practiced usually constitutes sale of children as defined under international human rights law. As will be described in section IV below, commercial surrogacy may not constitute sale of children if it is closely regulated in compliance with international human rights norms and standards, and in a manner contrary to what exists in many commercial surrogacy regimes. Altruistic surrogacy, too, must be appropriately regulated to avoid the sale of children.”

¹⁰² United Nations Human Rights Council, Report of the Working Group on the Universal Periodic Review: Lao People's Democratic Republic, [A/HRC/40/51/Add.1](#), 2019, para. 19 and 66(f).

¹⁰³ United Nations Human Rights Council, Report of the Working Group on the Universal Periodic Review: Lao People's Democratic Republic, [A/HRC/40/51/Add.3](#), 2019, para. 61(f).

¹⁰⁴ United Nations Human Rights Council, Report of the Working Group on the Universal Periodic Review: Lao People's Democratic Republic, [A/HRC/40/51/Add.1](#), 2018, para. 66(f).

¹⁰⁵ United Nations Human Rights Council, Report of the Working Group on the Universal Periodic Review: Bulgaria, [A/HRC/43/40/Add.1](#), 2019, para. 74(i).

¹⁰⁶ United Nations Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, [A/HRC/43/40/Add.1](#), 2019, para. 74(i).

¹⁰⁷ See above Section 2.4.

¹⁰⁸ See above Section. 2.4.

of women's bodies and their reproductive capacities¹⁰⁹. While both perspectives have contributed important insights to the ongoing debate, as practised in many contexts, surrogacy has shown the potential to exacerbate existing socio-economic disparities and vulnerabilities, particularly for surrogate mothers.

Concerned with these potential vulnerabilities and therefore the risks of exploitation, surrogacy has attracted the attention of the Committee on the Elimination of Discrimination against Women (UN CEDAW Committee). Indeed, the need to investigate the **root causes which drive or push women** to enter surrogacy arrangements has been addressed in the Concluding Observations to Cambodia¹¹⁰. For Cambodia, the UN CEDAW Committee dedicated a specific section in its Concluding Observations to 'women acting as surrogates, encouraging States to address the root causes of women deciding to act as surrogates, such as poverty and the need to pay debts, by ensuring that women in situations of poverty have access to socioeconomic benefits, loans with favourable interest rates and decent income-generating opportunities; c) Ensure that any laws, regulations and policies on surrogacy take into account the unequal power relations between the parties to a surrogacy arrangement, particularly the weak position of women acting as surrogates¹¹¹. As legislative reforms are ongoing in the country, it will have to be seen whether the Committee's recommendations will be effectively implemented¹¹².

Further, surrogacy has mainly been addressed by the UN CEDAW Committee under three clusters: **trafficking in women and exploitation of prostitution¹¹³, nationality¹¹⁴ and marriage and family relations¹¹⁵**. In certain cases, the UN CEDAW Committee addressed the absence of information related to surrogacy in States that are known to be hubs for international surrogacy arrangements, such as Georgia. Indeed, the Committee raised concerns about the absence of information on potential risks of trafficking in women and girls linked to international surrogacy, which is legal in the State party¹¹⁶.

¹⁰⁹ A. M. Morero Beltrán, Surrogacy and feminist movements, *Revista IDEES*, 2020, available at: <https://revistaidees.cat/en/gestacio-subrogada-i-feminismes/>.

¹¹⁰ UN Committee on the Elimination of Discrimination against Women (CEDAW), Concluding observations on the sixth periodic report of Cambodia, [CEDAW/C/KHM/CO/6](#), 2019, para. 46.

¹¹¹ CEDAW, Concluding Observations on the Sixth Periodic Report of Cambodia, [CEDAW/C/KHM/CO/6](#), 2019, para. 46.

¹¹² See above, Section 2.4.

¹¹³ CEDAW, Concluding Observations on the Sixth Periodic Report of Georgia, [CEDAW/C/GEO/CO/6](#), 2023, paras. 27-28.

¹¹⁴ CEDAW, Concluding Observations on the Sixth Periodic Report of Namibia, [CEDAW/C/NAM/CO/6](#), 2024, paras. 35-36.

¹¹⁵ CEDAW, Concluding Observations on the Ninth Periodic Report of Ukraine, [CEDAW/C/UKR/CO/9](#), 2022, paras. 45-46.

¹¹⁶ CEDAW, Concluding Observations on the Sixth Periodic Report of Georgia, [CEDAW/C/GEO/CO/6](#), 2023, para. 27(e).

When analysing the UN CRC Committee's approach to surrogacy in recent State review processes, two main observations can be drawn:

1) When surrogacy was addressed, the UN CRC Committee mainly focused on the right to identity and nationality, or the right to be protected against sale, trafficking or exploitation under OPSC. While these rights are crucial in enabling the realisation of other rights, a more comprehensive approach could be beneficial in addressing children's rights in a surrogacy context holistically. Other topics and angles should equally be considered to ensure a holistic response. In this regard, the Verona Principles can provide a key guidance to the UN CRC Committee.

2) The fact that the UN CRC Committee has not addressed surrogacy in most State review processes requires further exploration. ISS will indeed show below that proof exists that surrogacy is occurring in most States, including those with prohibitive positions, and in general, States are at least confronted with (international) surrogacy cases.

Further, there seems to be limited coordination among UN human rights mechanisms that address the human rights of parties concerned; rights that are heavily intertwined in a surrogacy context. The need and expectation for coordinated approaches to address surrogacy in a holistic human-rights-approach was already raised during the drafting of the Verona Principles (see preamble: *"The Principles are created in the expectation of complementary and evolving efforts in the wider human rights framework. Although global consensus on surrogacy has not yet been reached, the rights of children born through surrogacy need to be addressed urgently."*). ISS notes that while progress in this area has been slow, there are emerging signs of a more harmonised approach. The cases of Namibia and Georgia examined by both the UN CRC Committee and the UN CEDAW Committees in 2024 with guidance on surrogacy related issues demonstrate a positive shift towards cross-committee collaboration and guidance.

However, the limited engagement of other UN human rights mechanisms beyond UN Treaty Bodies, with the exception of the UN Special Rapporteur, further indicates the need for comprehensive, coordinated efforts across the UN system to address the complex human rights issues surrounding surrogacy.

3.4. Regional guidance and interpretations

Considering the global dimension of surrogacy, it is interesting to explore whether surrogacy has been addressed by regional political bodies or human rights fora, offering guidance and interpretation in their different regional contexts.

The African Committee on The Rights and Welfare of The Child (ACERWC)

The ACERWC has not yet addressed surrogacy in any form while analysing the States' reports. Yet, there is evidence that surrogacy does occur in the African region albeit with different approaches. For instance, South Africa has a legal framework governing surrogacy, while in other countries, such as Ethiopia, Kenya, Uganda, Ghana or Nigeria, the practice occurs in a legal grey area, where it seems tolerated but unregulated¹¹⁷.

The Association of Southeast Asian Nations (ASEAN) & Ligue of Arab Nations

While a representative of the Commission on the promotion and protection of the rights of women and children participated in the wider consultation group for the drafting of the Verona Principles and hosted a consultation meeting¹¹⁸, ASEAN has not shared any official position nor guidance on surrogacy. This equally applies to the Ligue of Arab Nations.

The Inter-American Court of Human Rights

Surrogacy has also been unaddressed within the Inter-American Human Rights System, as the Inter-American Court of Human Rights (IACtHR) has not issued any ruling specifically on the matter, nor has the Inter-American Commission on Human Rights made any statements or recommendations on the topic. However, the IACtHR's stance in certain cases might offer insights into its possible future position on surrogacy.

In the first case, *Atala Riffo and daughters v. Chile of 2012*¹¹⁹, the IACtHR confirmed that 'the American Convention does not define a limited concept of family, nor does it only protect a "traditional" model of the family. In this regard, the Court reiterates that the concept of family life is not limited only to marriage and must encompass other de facto family ties in which the parties live together outside of marriage' (para 142, page 47). Similarly, this position has been confirmed in *Fornerón and daughter v. Argentina* in 2012, in which the IACtHR reiterated that the American Convention does not define family in a fixed way, nor does it exclusively support a "traditional" family structure. It has also determined that the term "family members or next of kin" should be interpreted broadly, encompassing all individuals who share a close relationship (para 98, page 29).

Finally, in *Artavia Murillo and others against Costa Rica* in 2012, the IACtHR ruled that the prohibition on assisted reproduction and in vitro fertilisation techniques in Costa Rica is violating

¹¹⁷ Examples of national case law are provided below under Section 3.5.

¹¹⁸ ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) Work Plan 2021-2025, 2022, page 4. Available at [ACWC-Work-Plan-2021-2025_compressed.pdf](#)

¹¹⁹ Case Of Atala Riffo And Daughters V. Chile, Judgment Of February 24, 2012. Available at: https://corteidh.or.cr/docs/casos/articulos/seriec_239_ing.pdf.

the right to privacy, and stated that ‘the decision of whether or not to become a parent is part of the right to private life and includes, in this case, the decision of whether or not to become a mother or father in the genetic or biological sense’ (para 143, 43).

Given these previous rulings, it can be inferred that the IACtHR might approach surrogacy in the future from a perspective that emphasises the inclusive understanding of family, individual autonomy, the right to private life and reproductive rights, provided that the arrangements respect the rights and dignity of all parties involved.

European Court of Human Rights (ECtHR)

As opposed to the above-stated regional entities and instances, in recent years, the ECtHR has been repeatedly invested with the delicate task to deal with the consequences of the lack of recognition of the parent-child relationship resulting from a surrogacy arrangement concluded abroad, especially in States where surrogacy is illegal. More specifically, the ECtHR had to decide whether the national authorities’ lack of recognition would amount, among others, to a violation of the child’s and intending parents’ private and family life (Art. 8 ECHR)¹²⁰.

In most of the instances analysed below, and in line with the leading cases in matters of surrogacy¹²¹, the ECtHR identified a violation of the child’s right to private and family life. In contrast, no violation of the intending parents’ right was found.

For instance, in the *Affaire C. v. Italy*¹²² following the refusal of the Italian authorities to recognise the legal parent-child relationship between the new-born and the intending parents established by a Ukrainian birth certificate, the ECtHR held that the Italian authorities had violated the right to respect for private life of the child born through surrogacy as the delays in the establishment of the parent-child relationship with the intending father had forced the child to live in a legal limbo. Conversely, no violation of the same provision has been identified regarding the establishment of the parent-child relationship with the intending mother, given that per the Italian law, such a relationship could be established through an adoption procedure¹²³.

On the same lines, in the *DB and Others v. Switzerland* case¹²⁴, the ECtHR held that the Swiss authorities’ refusal to recognise the parental-child relationship between a child born through

¹²⁰ According to Art. 8 ECHR Everyone has the right to respect for his private and family life, his home and his correspondence (1). There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others (2).

¹²¹ *Mennesson v. France*, no. 65192/11 and *Labassee v. France*, no 65941/11.

¹²² *C. v. Italy*, 31 August 2023, Application No. 47196/21, available at:
[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-226391%22](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-226391%22)

¹²³ See *C v. Italy*, Judgment, 2023, application No. 12261/17, available at:
<https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-7730579-10691896&filename=Judgment%20C%20v.%20Italy%20-%20recognition%20of%20a%20parent-child%20relationship%20established%20via%20the%20birth%20certificate%20of%20the%20child> and *EAPIL*, The European Court of Human Rights Again on Surrogacy and Article 8 ECHR: *C v. Italy*, available at:

<https://eapil.org/2023/08/31/the-european-court-of-human-rights-again-on-surrogacy-and-article-8-echr-c-v-italy/>

¹²⁴ *DB and Others v. Switzerland*, 22 November 2022, application No. 58252/15 and 58817/15, available at:
[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-220955%22](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-220955%22)

surrogacy in the United States and their intending father amounted to a violation of the right to private and family life of the child. The delay in the recognition of the relationship placed the child in legal uncertainty as to their identity in society, depriving them of the possibility to develop in a stable environment¹²⁵. Also in this case, no violation was found concerning the rights of the intending parents, given that the Swiss authorities had struck a fair balance between the applicants' right to respect for family life and the general interests protected by the State with the general ban on surrogacy.

A further judgment, rendered in the *K.K. and Others v. Denmark* case¹²⁶, concerned a Danish man, a woman, and their twins - biologically related only to the father - born through surrogacy in Ukraine. The Danish authorities refused to recognise the woman as a legal parent under Danish law - likewise, her application to adopt the children as stepmother was refused. The ECtHR considered that Denmark had violated the children's rights to private and family life by not having their relationship with the intending mother recognised. The case, however, arose from the narrowest possible majority, underlining how challenging it is to strike a fair balance between the State's margin of appreciation towards surrogacy and the principle of the best interests of the child in these matters¹²⁷. The decision had a positive impact in the State concerned, prompting the initiation of a reform process on surrogacy in Denmark¹²⁸.

Conversely, on a few other occasions¹²⁹, the ECtHR also found that no violation of the applicants', including the child's born through surrogacy, private and family life had occurred. For instance, in the *Valdís Fjölfnisdóttir and Others v. Iceland*¹³⁰ following the refusal of the Icelandic authorities to recognise the Californian birth certificate and the placement of the child in the permanent foster care of the intending parents, the ECtHR ruled that the Icelandic authorities did not violate the applicants' family life, given that their relationship had not been affected but rather reinforced by the care arrangement. Iceland had, indeed, struck a fair balance between the applicants' family life and the State's interest in reconfirming the ban on surrogacy¹³¹. No violation of the child's right to private and family life has been identified also in the case *D v. France*¹³². The ECtHR ruled that recognising a mother-child relationship through adoption, despite the genetic link with the latter, does not amount to a violation of the child's right to private life. The different approaches for establishing parent-child relationships—registration for the intending father and

¹²⁵ *Ivi*, para. 88.

¹²⁶ *K.K. and Others v. Denmark*, 6 December 2022, Application No. 25212/21, available at: <https://hudoc.echr.coe.int/fre#%7B%22sort%22:%5B%22kdate%20Descending%22%2C%22itemid%22:%5B%22001-221261%22%7D>.

¹²⁷ EAPIL, ECtHR Overrules Danish Anti-Surrogacy Judgment, available at: <https://eapil.org/2023/04/13/ecthr-overrules-danish-anti-surrogacy-judgment/>

¹²⁸ See above, under 2.4

¹²⁹ *A.M v. Norway*, 24 June 2022, application No 30254/18, available at: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-216348%22%7D>

¹³⁰ *Valdís Fjölfnisdóttir and Others v. Iceland*, 18 May 2021, application No. 71552/17, available at: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-209992%22%7D>].

¹³¹ A comment on the judgment is available at <https://strasbourgobservers.com/2021/06/30/valdis-fjolfnisdottir-and-others-v-iceland-cross-border-surrogacy-and-foster-care-what-about-the-best-interests-of-the-child/>.

¹³² *D v. France*, 16 July 2020, application No. 11288/18, available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22002-12910%22%7D>].

adoption for the intending mother—were not deemed disproportionate as legal relationships could be established by different means.¹³³

From a child's rights perspective, the mentioned cases show that the States' lack of recognition of the parental-child relationship disproportionately affects children, leaving them in precarious legal situations. Their status remains uncertain, access to fundamental rights such as inheritance, or even citizenship, may be restricted with the risk of becoming stateless. The lack of recognition of a pre-established child-parent relationship undermines children's ability to fully enjoy their private and family life and creates barriers to securing their identity rights. These cases underscore the pressing need for a harmonised international legal framework to protect the rights of children born through surrogacy, who are the most vulnerable subjects, irrespective of the States' position on surrogacy.

Except for the ECtHR, surrogacy has been absent from the discourse or in case law at regional level. This clearly highlights the need for heightened awareness raising and advocacy initiatives to introduce child rights perspectives into respective fora. The cases dealt with by the ECtHR can provide some indications to the UN CRC Committee of questions raised in a surrogacy context, also considering possible future individual communications, and if relevant, inquiry procedures under OPIC.

3.5. Spotlight on some national case law examples

The variety of domestic approaches towards surrogacy, even when prohibitive, have not prevented children being born through domestic or international surrogacy. The high number of national judgments strongly suggests that domestic courts have consistently sought to fill the gaps resulting from a lack of (comprehensive) legislations or policies on surrogacy.

National judges have indeed been confronted with the consequences of this practice and entrusted with the challenging task to decide, among others, on the recognition of legal parentage, potential violation of rights of children born through surrogacy, and related illicit practices. This abundant national jurisprudence has in certain cases, been the starting point for a reform process and the introduction of new laws (i.e. Thailand) or undertaking legislative reforms (i.e. Israel). ISS has observed that domestic courts are seemingly taking on the role of the legislator in various ways, including in cases where the matter is either unevenly regulated

¹³³ D v. France, Judgment, 6 April 2021, available at: <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-6748335-9004685&filename=Judgment%20D%20v.%20France%20-%20refusal%20to%20register%20the%20birth%20details%20of%20a%20child%20born%20abroad%20through%20surrogacy.pdf>

throughout the country (e.g. two Mexican States), unregulated (e.g. Argentina), or explicitly prohibited in certain forms (e.g. Thailand). Courts equally play a key role in regulated contexts where complex cases continue to emerge (e.g. Israel or South Africa).

Argentina

In the face of the existing normative vacuum, where surrogacy was neither regulated nor prohibited, Argentina attempted to adopt a legal framework on this topic already in 2012, with the initial Project for the Reform and Unification of the Civil and Commercial Code¹³⁴. However, the Bill was adopted without any reference to surrogacy. To date, 82 surrogacy cases have been brought to the attention of the Argentinian judges, the majority of which related to domestic surrogacy arrangements¹³⁵. This demonstrates that, over the past decade, a substantial body of copious case law has developed addressing the legal challenges associated with surrogacy arrangements. In most of these cases, international human rights law has been referred to by Argentinian judges to authorise altruistic surrogacy arrangements. In their reasoning, most judges claimed that, based on the Argentinian Constitution, the regulatory void should be addressed by applying human rights treaties. Surrogacy has been approached by the Argentinian judges mainly from the standpoint of the surrogate mother and her right to sexual and reproductive health, to privacy, to form a family, and to enjoy the benefits of scientific progress.

Mexico

In Mexico, surrogacy is a contentious issue, reflecting broader debates on reproductive rights, gender, and family structures. While only two Mexican States have a specific legislation dealing with surrogacy, the Mexican government has yet to reach a consensus on how to address surrogacy at the national level, leaving the issue in a state of legal limbo. Also in the Mexican context, domestic courts have been confronted with the consequences of surrogacy. In 2021, the Supreme Court of Justice of the Nation¹³⁶ ruled that assisted reproduction is a constitutional right, and that homosexual and foreign couples should have the possibility to access this practice¹³⁷. It further encouraged States to adopt a legislation on surrogacy that ensures that the rights of surrogate mothers and children are protected. Nevertheless, three years after the ruling, the situation remains unchanged.

Israel

In Israel – a country where surrogacy has been legal for the last 30 years – significant jurisprudence has been established at the national level. Starting with the landmark Israeli Supreme Court case of *Nachmani v. Nachmani* in 1995¹³⁸, which served as the catalyst for the

¹³³ P. LOPEZ TURCONI, *Assisted Regulation Argentine Courts Address Regulatory Gaps on Surrogacy*, in *Health Hum Rights*, 2023 Dec;25(2):15–28, available at: <https://pmc.ncbi.nlm.nih.gov/articles/PMC10733767/>

¹³⁵ Statistics shared by Prof. Nieve Rubaja in her presentation during the webinar 'International Surrogacy Agreements from the Latin American Perspective. An overview', 10 September 2024.

¹³⁶ Suprema Corte de Justicia de la Nación (SCJN) de 2021 de México, <https://www.zonadocs.mx/2021/06/13/maternidad-subrogada-en-mexico-que-aprobo-la-suprema-corte/>

¹³⁷ P. ALBERTI, K. LÓPEZ, N. SOLANA-VILLANUEVA, S. PIMENTEL-AGUILAR, *Surrogate pregnancies as reproductive exploitation of rural women in Tabasco / Alquiler de vientres como explotación reproductiva de mujeres rurales de Tabasco*, in *Convergencia*, vol. 31, 2024, available at: <https://convergencia.uaemex.mx/article/view/20648>.

¹³⁸ Available at: <https://versa.cardozo.yu.edu/opinions/nahmani-v-nahmani-0>

Israeli parliament to speedily adopt a law turning surrogacy into a State-controlled process in 1996, the jurisprudence of Israeli courts has evolved over the decades. Different legal issues related to surrogacy have been addressed before of the Israeli courts, such as the need to prove a genetic link between one of the intending parents and the new-born child¹³⁹, or the need to initiate a separate procedure to obtain a "judicial parenting order" in cases of a surrogacy conducted overseas.

Additionally, the decisions of the Supreme Court helped in further shaping the national law by declaring unconstitutional the prohibition on surrogacy access for same-sex couples and single men, classifying it as discriminatory. The court ruled that these restrictions must be amended within a year, making surrogacy more accessible to these groups¹⁴⁰.

Thailand

In the Asian region, Thailand is a well-known destination country for foreign intending parents. It is equally renowned for the many cases that have been brought to the attention of the Thai judiciary system addressing the commodification of the surrogacy practice and the involvement fraudulent transnationally organised intermediaries. The notorious *Baby Gammy*¹⁴¹ and *Baby Factory*¹⁴² cases drew international attention to Thailand's unregulated surrogacy industry and led to the introduction of stringent laws in 2015¹⁴³, banning all forms of commercial surrogacy. Despite this ban and the strict approach towards commercial surrogacy, Thai courts are still called upon to decide in cases in which fraudulent transnationally organised intermediaries facilitated commercial surrogacy arrangements. An illustrative example is the high-profile arrest of a man carrying six vials of frozen sperm from Thailand to Laos, evidence of the persistence of international surrogacy practices¹⁴⁴. At the time of writing, the country is working on amending the existing legislation to reopen commercial surrogacy arrangements to foreigner couples¹⁴⁵.

¹³⁹ See: Bagatz 566/11 Memmet Meged v. the Minister of Interior; Jane Doe vs. Ministry of Social Affairs and Social Services.

¹⁴⁰ Library of Congress, Israel: Supreme Court Authorizes Surrogacy Arrangements for Gay Men, 2021, available at: <https://www.loc.gov/item/global-legal-monitor/2021-07-29/israel-supreme-court-authorizes-surrogacy-arrangements-for-gay-men/>.

¹⁴¹ Human Rights Council, 'Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material' (2018). The Baby Gammy Case (2014), at: https://en.wikipedia.org/wiki/2014_Thai_surrogacy_controversy.

¹⁴² The Guardian, Police hunt Japanese man suspected of being human trafficker in Bangkok, 14 August 2014, available at: <https://www.theguardian.com/world/2014/aug/14/police-hunt-japanese-man-suspected-human-trafficker-bangkok>.

¹⁴³ Protection of Children Born through Assisted reproductive Technologies Act B.E. 255 ('Assisted Reproduction Act'), available at <https://law.m-society.go.th/law2016/uploads/lawfile/594cc36374f31.pdf> (unofficial translation).

¹⁴⁴ Y. HIBINO, 'Non-Commercial Surrogacy in Thailand: Ethical, Legal, and Social Implications in Local and Global Contexts' (2020); Nattanit Limpawart, *Legal Measures to Control an Operation of Surrogacy in Thailand*, in *Public Health Policy and Laws Journal*, 2024.

¹⁴⁵ Reuters, Thailand plans to legalise surrogacy for foreign couples, 1 March 2024, available at: <https://www.reuters.com/world/asia-pacific/thailand-plans-legalise-surrogacy-foreign-couples-2024-03-01/> and Bangkok Post, Surrogacy to be legalised for foreigners, 1 March 2024, available at: <https://www.bangkokpost.com/thailand/general/2751296/surrogacy-to-be-legalised-for-foreigners>. See also above para. 2.4.

South Africa

In South Africa, a context where surrogacy arrangements are regulated under the Children's Act, the Courts are required to approve surrogacy agreements prior to conception, and this has led to several judgments. The Constitutional Court of South Africa, in *AB and v Minister of Social Development and Others*¹⁴⁶ the court upheld a legal requirement that provides for a genetic link between the child and at least one of the parents commissioning the surrogacy. A body of jurisprudence from the High Courts has been established over the years, providing substance to the legal requirements,¹⁴⁷ including measures to guard against commercialisation of surrogacy.¹⁴⁸ Recent cases attempting to advance sibling's rights in the context of surrogacy have not been successful, while not closing the door to further developments in future cases.¹⁴⁹

Spain

On December 4, 2024, the Spanish Supreme Court ruled on a case involving the recognition of a foreign surrogacy judgment¹⁵⁰. The case concerned a Spanish couple who had entered into a surrogacy agreement in Texas (USA), where a surrogate mother gave birth to twins in October 2020. The Texas court issued a judgment recognising the intending parents as the legal parents, instructing the authorities to issue birth certificates in their names. However, when the parents sought to have this judgment recognised in Spain, the Spanish courts rejected their request, deeming the recognition of the American judgment incompatible with Spanish public policy.

The case ultimately reached the Supreme Court, which ruled on two issues: (i) whether the recognition of the 20 November American judgement violates Spanish public policy; and (ii) whether the non-recognition of the foreign judgment infringes the best interests of the children involved.

The Spanish Supreme Court rejected the notion that denying recognition of a foreign surrogacy judgment infringes on the principle of the child's best interests. The Court clarified that the determination of what constitutes the child's best interest in each case should not be based on the interests or criteria of the intended parents, nor should it be founded on a foreign surrogacy contract and the resulting parentage favouring the intending parents. Instead, it should be based on the break in any bond between the children and the woman who gestated and gave birth, the existence of a biological paternal link, and a family unit in which the children are integrated.

The ruling concluded that this approach satisfies the child's best interests, as assessed on a case-by-case basis, while also safeguarding the fundamental rights of surrogate mothers and children in general. The Court emphasised that the practice of commercial surrogacy should not be encouraged by facilitating the recognition of foreign surrogacy agreements in Spain, especially if it risks violating the rights of the surrogate mothers and children, who could be treated as

¹⁴⁶ 2017 (3) SA 570 (CC).

¹⁴⁷ *Ex Part WH and others* 2011(6) SA 514 (GNP)

¹⁴⁸ *Ex Parte KAF* 53101/2017) [2017] ZAGPPHC 717.

¹⁴⁹ *Ex Parte Three Surrogacy Applications and Others* (8749/22;9353/22;34190/22) [2022] ZAGPPHC 848 (25 October 2022); *KB & Another v Minister of Social Development* (462/23) [2024] ZASCA 54; 2024 (5) SA 30 (SCA) (19 April 2024).

¹⁵⁰ [STS 5879/2024](#), Tribunal Supremo, Sala de lo Civil.

commodities. It also pointed out the importance of verifying the suitability of the intending parents to be granted parental rights over children born from such arrangements¹⁵¹.

Switzerland

A 2022 case by the Swiss *Bundesgericht*¹⁵² led to further clarifications on the recognition of legal parentage as well as the civil status registration of the child, following a surrogacy arrangement made by Swiss intending parents with a surrogate mother in Georgia. “The Federal Supreme Court held that Russia, Ukraine and Georgia have comparable surrogacy regulations in the sense that the intending parents are automatically declared the legal parents by law. However, these are not foreign “decisions” within the meaning of the of the Federal Act on Private International Law, the recognition of which in Switzerland is compatible with Swiss public policy (fundamental legal and ethical values). This raises the question of the law applicable to the case. In the specific case, Swiss parentage law is applicable (*Abstammungsrecht*); this results from the fact that the intending parents have their centre of life in Switzerland, regardless of their temporary stay in Georgia. Switzerland and therefore the child's “habitual residence” is also in Switzerland. According to Swiss law, the legal mother is the woman giving birth. In the register of civil status, the surrogate mother must therefore be entered as the legal mother (for the time being). If the surrogate mother is not married, for the intending father and sperm donor to be entered as the legal father of the child, only requires recognition of the child. As far as the intending mother is concerned, a stepchild adoption is then possible. According to the European Court of Human Rights (ECtHR), the intending mother must have the opportunity to become the legal parent of the child if it was conceived with the sperm of the intending father.”

While not exhaustive, this national case law section illustrates that surrogacy is a reality in States examined by the UN CRC Committee yet not referred to by the latter. These national cases show an array of different child rights issues at stake, regardless of States’ legal and political stance on surrogacy that could equally arrive to the UN CRC Committee through the individual communications procedure or even the inquiry mechanisms under OPIC. The cases clearly show also the difficulty faced by many national judges in finding the delicate balance in protecting the rights of children born through surrogacy but also in respecting a State’s public interests or *ordre public* (especially in States that have adopted a prohibitive approach towards surrogacy).

¹⁵¹ The full news article can be accessed the *Poder Judicial* website [here](#).

¹⁵² The case is available at:

https://www.bger.ch/files/live/sites/bger/files/pdf/de/5a_0032_2021_2022_08_19_T_d_11_24_42.pdf.

Chapter 4. Concluding remarks and recommendations

Despite surrogacy being an increasing reality in many countries, its complexities and implications for children's rights remain insufficiently addressed by the UN CRC Committee, as well as other human rights mechanisms in the UN human rights system.

Building on the analysis presented in the previous chapters, this final chapter offers key conclusions and actionable recommendations which aim to guide future action and collaboration to ensure the comprehensive protection of the rights of children born through surrogacy are fully protected.

Addressing the lack of data on current practices and absence of effective monitoring

One of the most pressing challenges is the persistent lack of reliable and comprehensive data on surrogacy practices worldwide. Even when and where data does exist, it often fails to reach the UN human rights system in an effective way. This deficit not only hinders efforts to understand and assess the scale and impact of surrogacy but also limits the potential development of solid protection frameworks for children born via this practice.

- Efforts should be intensified to compile and share data on surrogacy practices across countries, including UN human rights mechanisms and agencies, national human rights institutions, and specialised civil society organisations.
- States should be encouraged to collect and report relevant data on surrogacy practices, ideally in a centralised way, ensuring this information reflects the rights and well-being of children born via this practice.
- The UN Treaty Bodies should systematically include questions related to the occurrence and scale of surrogacy in its dialogues with State parties.
- Longitudinal studies gathering the impact of surrogacy on a person's life should be further promoted aimed at capturing the lived experiences of those concerned to inform laws, policies and practice on the matter.
- Specific information on surrogacy should be made available for intending parents, donors as well as surrogate mothers in an accessible and available format.
- Children born through surrogacy should be informed and educated about their fundamental human rights.

Strengthening harmonised and comprehensive international approaches and guidance

Clear and harmonised international guidance is urgently needed to fully comprehend and address the complexities of surrogacy, particularly in relation to children's rights.

- Strengthen collaboration among UN human rights mechanisms to address surrogacy comprehensively, dealing with all the rights of involved parties. Need to build stronger partnerships between human rights bodies such as the UN CRC Committee, UN CEDAW Committee, and the UN Special Procedures.
- Develop further guidance and key instruments such as a joint general comment, a joint statement, or the organisation of a joint day of general discussion focused on surrogacy.
- Ensure that all guidance considers the full spectrum and scope of children's rights, addressing the unique challenges posed by surrogacy practices in a holistic manner.
- Integrate the principles of PIL with international human rights law, by adopting a joint approach that guarantees both legal frameworks reinforce each other and work together to protect the rights of children born through surrogacy.
- Elaborate guidance targeting specifically remaining grey areas such as the distinction between altruistic and commercial surrogacy as well as cases of children born through international surrogacy that require attention in States with prohibitive approaches.
- Foresee accountability mechanisms to address human rights violations of children born through surrogacy.

Fostering and strengthening cooperation within and across borders

Given the complex and multifaceted nature as well as the different responses by States to this phenomenon, fostering cooperation among various stakeholders is essential. Cooperation should not only focus on information sharing and the development of further guidance but also extend to every key area which could contribute to ensuring holistic and coordinated responses.

- In-country cooperation should be further improved between all actors involved in dealing with surrogacy-related issues, such as the administrative and judicial authorities, policymakers and legislators.

- Civil society, particularly specialised NGOs, play a crucial role in raising awareness and advocating for children’s rights in the surrogacy context. Consulting and working together with specialised NGOs and experts with in-depth knowledge on this matter could help UN human rights mechanisms.
- Consultation processes with children born through surrogacy should be prioritised, ensuring meaningful participation.
- Regional human rights systems can complement global frameworks by addressing surrogacy practices within their specific contexts. Greater and better coordination among and with regional bodies is crucial.
- Continuous capacity-building efforts and knowledge-sharing among stakeholders, including UN human rights bodies, national governments, civil society, and academia, are key to fostering a shared understanding and the collective capacity to better respond to the challenges surrogacy practice currently pose.