**Submission by Child Identity Protection (CHIP) to discussions on EC Proposal 2022 695 (24 June 2025)**[1]

Surrogacy continues to be used as a method of family formation around the world. Children born through surrogacy have the same rights as all children under the United Nations Convention on the Rights of the Child (UN CRC) and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC). However, because of the way that the practice of surrogacy has evolved, the fundamental rights of these children are at risk, especially in international arrangements.

To continue its support to States and other bodies to respond to surrogacy in a way that fully respect all rights of children, Child Identity Protection (CHIP) with its special advisors has drafted two documents – firstly, a briefing note related to Priority Issues Relating to Children's Rights Protection in 2023[2] and secondly, a legal memorandum in response to the latest decision of the ECtHR in cross-border surrogacy arrangements: K.K. and others v. Denmark.[3] The European Court of Human Rights (ECtHR) has increasingly ruled on cross-border surrogacy cases, shaping legal parentage across jurisdictions and is influencing EU practices. However, its approach has led to significant conflicts with international human rights standards, particularly the United Nations Convention on the Rights of the Child (UNCRC).

**It is in the context of these two documents that CHIP has the honour of providing additional input to the EC Proposal 2022 695 on Enhancing Child Protection: Private International Law on Filiation as an observer. CHIP supports the openness and willingness of the ELI to consider a broad range of opinions. While CHIP welcomes the amendments in the latest version particularly with respect to preserving the child's right to identity, we have concerns that the Proposal could inadvertently undermine the Rights of the Child. These concerns are listed below:**

1. **Protecting the fundamental rights of the child according to international standards should be the ultimate objective if surrogacy is permitted and/or nevertheless occurs. When universal parentage is the primary goal for regularising surrogacy arrangements, other children's rights risk being sidelined.**

European Commission Proposal 2022 695 [hereinafter Proposal] begins by highlighting Commission President von der Leyen's statement, identified as a "key action," that *"[i]f you are a parent in one country, you are a parent in every country.*" (page 1, emphasis added). The Proposal then identifies as "the **objective** of the proposal" as strengthening "the protection of the fundamental rights and other rights of children in cross-border situations, including their right to an identity, to non-discrimination, and to a private and family life…taking the best interests of the child as a primary consideration." (page 1) Unfortunately, prioritizing uniquely universal parentage in the EU could inadvertently profoundly undermine the very rights of the child the Proposal aims to protect, in addition to undermining at-risk rights of the child that the current Proposal does not give sufficient and equal attention.

"Member States have different substantive rules on the establishment of parenthood in domestic situations, which are and will remain their competence," (page 2). As applied to surrogacy, Member States and Candidate States protect (or fail to protect) to various degrees the child's rights to identity, protection from abuse, exploitation and harm, right not to be sold or trafficked, and best interests. The proposed Union rules on

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[2] https://www.child-identity.org/wp-content/uploads/2023/04/CHIP-2023-Surrogacy-ChildrensRights.pdf

[3] https://www.child-identity.org/wp-content/uploads/2023/04/CHIP-2023-Surrogacy-LegalMemorandum.pdf

jurisdiction, applicable law, and recognition as applied to parenthood could create incentives for forum shopping (i.e. a race to the bottom in the practice of surrogacy as to the protection of the rights of the child, in a similar way that allowance of child labour would create a race to the bottom in the context of cross-border trade). States with less protective practices and laws would increasingly become hubs for surrogacy arrangements that would be universally recognized within the EU as is currently the case with countries such as Greece and Romania becoming attractive destinations for those living in States that prohibit the practice.

The Proposal apparently fails to adequately appreciate these risks. Instead, the Proposal emphasizes deprivations of rights that may occur through **refusals of recognition** of parentage, (see pages 3, 9-10), while omitting a comprehensive analysis of deprivations of rights that would be exacerbated or created by **recognition of parentage**.

**The Proposal fails to recognize that a refusal of recognition, and rules requiring additional procedures and best interests determinations prior to recognition, may be necessary to protect a child from deprivations of fundamental rights. Where parenthood is established through arrangements involving or risking the sale of a child or trafficking, refusals of recognition, and/or the requirement of additional procedures, investigations, and best interests determinations, would protect the rights of the child. Similarly, when parentage is established through practices and procedures that fail to protect the identity of the child, do not provide individualized best interests of the child determinations, and lack adequate procedures to protect children from harm or abuse, additional investigations and court proceedings may be necessary to protect the rights of the child. Any rules as to recognition, jurisdiction, and applicable law that fail to recognize all of the risks to the rights of the child at stake in cross-border surrogacy arrangements will be fatally flawed in ways that would facilitate practices destructive of the broad spectrum of rights that all children should enjoy.**

2. **The ELI analysis correctly describes some of the ways in which the use of private international law (PIL) in the EC Proposal implicates public international norms**

As the ELI notes, the Proposal's private international law (PIL) approach preserves a "primary goal to merely coordinate legal orders in a neutral way….This means…that a private international law instrument's main aim is to coordinate those legal orders that regulate contracts having the live birth of a child as consideration with legal orders which consider these contracts as a serious breach of the basic values enshrined in their Constitutions. The project … does not value one legal approach to filiation over the other. Instead, it focuses on the child, her best interests, and the concrete child-parent relationships." (ELI, pg. 8, emphasis in original).

While the ELI analysis correctly highlights this issue, it is not clear that the analysis adequately conveys the inherent contradictions and risks in such a PIL approach to parentage.

Such a PIL approach to parentage implicitly normalizes violations of the rights of the child, including contraventions to the right to identity (section 3) and treating the sale of a child as if it were a legitimate form of family formation under national, regional, and international law (sections 4 and 5). As will be explained in more detail below, "contracts having the live birth of a child as consideration" precisely constitute the sale of a child under the OPSC, particularly since, in the context of filiation or parentage, such contracts also have the transfer of the child as a part of such consideration (i.e. physical and/or legal transfer). Contractually-based filiation as a legally sanctioned, systemic practice is inherently a severe violation of the rights of the child. It constitutes sale and determines parentage according to the contractual wishes of adults, without providing individualised best interest determinations and without providing protection of the child from harm and abuse. The UN SR on sale and sexual exploitation in her 2018 report shows that "commercial surrogacy could be conducted in a way that does not constitute sale of children, if it were clear that the surrogate mother was only being paid for gestational services and not for the transfer of the child. In order to turn this into more than a legal fiction, the following conditions would all be necessary."[4] She then goes on to explain what these conditions would be. However, the UN SR observes that "Commercial surrogacy as currently practised usually constitutes sale of children as defined under international human rights law."[5]

[4] Paras 72-73 https://docs.un.org/A/HRC/37/60
[5] Para 41 https://docs.un.org/A/HRC/37/60

It is a contradiction to argue that automatically ratifying the parentage determinations of such contractual surrogacy systems through PIL can be accomplished consistent with a focus on the "the child, her best interests, and the concrete parent-child relationship."

As the ELI notes, **this approach provides for the possibility of recognizing the filiation of a trafficked child** (page 8). It as though a child was kidnapped at birth and we asked whether the child had met developmental mile-stones at age 1, or appeared to be emotionally attached to the kidnapper, to determine whether to regularize the kidnapping. Any set of PIL rules or minimum standards that requires such results is fatally flawed in its basic conceptions. One cannot be "neutral" toward rights violations such as lack of preservation of identity and the sale of children and human trafficking and be consistent with the fundamental rights of the child.

**3. The EU proposal does not currently give due consideration to all rights of children**

CHIP welcomes the emphasis on child's right to identity in the ELI proposal. However, the proposal does not adequately address how this would be protected in practice and prioritises identity in terms of filiation. Identity rights are much broader. Permissive states, and particularly those that facilitate and legitimate contract-based surrogacy arrangements, may lack sufficient procedures and rules to protect all identity rights of children as required in Arts.7-8 CRC, notably in relation to preserving the child's right to family relations. Not only should this information be preserved but it should be accessible to children as is systematically recommended by the CRC Committee. It is accepted that identity concerns are less likely to arise in permissive States involving truly altruistic surrogacy where the relationships are open.

The protection of identity rights requires extensive actions by which data relevant to the identity of the surrogate-born person is obtained, preserved, and made available to surrogate-born children, at least by adulthood. Obtaining such information in cross-border surrogacies is particularly difficult, because intending parents and surrogate mothers would typically come from different states, with surrogate mothers potentially being moved into permissive states from states outside of the EU temporarily for purposes of the surrogacy arrangement. In traditional surrogacy arrangements, children may also not have information about potential siblings and wider family such as grandparents, aunts and uncles. Permissive states are unlikely to undertake these extensive efforts, and unlikely to succeed even if they tried to do so.

Similarly, information about the use of human reproductive material should be available to surrogate-born children. This includes identification of any gametes that may be used, as well as ensuring that they are procured in a way that respects human dignity. This means that providers should provide full consent for their use, that limitations in numbers to avoid serial donors exist as well as prohibition of third party gametes from deceased persons.

Further, permissive systems often do not apply individualized best interests of the child determinations, but instead presume that recognizing intending parentage is in the best interests of the child. Such systems therefore lack sufficient procedures to prevent potential harm to children

For similar reasons, permissive states conducting cross-border surrogacy arrangements, including from prohibitionist states, often do not even attempt to screen intending parents as to the risks of harm or abuse, and would have difficulty doing so since the intending parents reside in other jurisdictions.

**4. The EC Proposal does not give due weight to the definition of Sale of Children under International Law**

The OPSC states in art. 2(a):

> "Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration."

As stated in the 2018 Report by the UN Special Rapporteur on the Sale and Sexual Exploitation of the Child (SR):[6]

[6] https://docs.un.org/A/HRC/37/60

> "There are three elements in the definition of sale of children: (a) "remuneration or any other consideration" (payment); (b) transfer of a child (transfer); and (c) the exchange of "(a)" for "(b)" (payment for transfer)." (para. 42).

As already noted and explained by the SR, "Commercial surrogacy as currently practised usually constitutes the sale of children as defined under international human rights law" (para. 41). Payment exists by definition in commercial surrogacy arrangements (para. 43). Despite legal fictions to the contrary, legal and/or physical transfer of the child also occurs generally in surrogacy arrangements (para. 44 – 49), which is made even clearer in contractual surrogacy arrangements, based on the undertakings stated therein, and on the role of the contract in itself constituting a legal transfer (para. 47-48). Finally, the third element of sale, payment for transfer, is also typically met, as explained by the SR:

> "Commercial surrogacy arrangements typically include this element of an exchange between the payment and the transfer. In commercial surrogacy arrangements, the promised and actual transfer of the child is usually of the essence of the arrangement and accompanying agreements and contracts, without which payments would be neither made nor promised. If a surrogate mother underwent becoming pregnant, pregnancy, and giving birth, she would not be deemed to have fulfilled her promises and contractual obligations if she refused to participate in the legal and physical transfer of the child to the intending parent(s). While the surrogate mother is paid, in commercial or compensated surrogacy arrangements, for the services of gestating and giving birth to a child, she is also being paid for the transfer of the child. Commercial surrogacy legislation and practice which mandate the enforcement of the surrogacy contract, including specifically the transfer of parentage and parental responsibility, make it even clearer that the transfer is of the essence of the contract and is a part of the consideration for which the surrogate mother is paid. Thus, under current practice, the third element of an exchange is met in most commercial surrogacy arrangements." (para 51, footnote number omitted).

As the SR points out, a truly altruistic surrogacy arrangement does not constitute sale because there is no payment (para. 69).

> "However, the development of organized surrogacy systems labeled 'altruistic', which often involve substantial reimbursements to surrogate mothers and substantial payments to intermediaries, may blur the line between commercial and altruistic surrogacy. Therefore, labelling surrogacy arrangements or surrogacy systems as 'altruistic' does not automatically avoid the reach of the [OPSC]…(para. 69).

Further, purportedly altruistic surrogacy systems that typically involve intermediaries, and/or which include substantial payments beyond reimbursement for receipted particular expenses, also may meet the OPSC definition of sale of children (para. 69).

**5. Sale of children, Trafficking, and the EU**

Most states in the EU prohibit commercial surrogacy. Such states should be seen not only as protecting domestic constitutional values as indicated by the ELI analysis, but also as protecting the rights of the child under international law. Such policy stances may be taken based on the view that prohibiting commercial surrogacy protects children as a group from being commodified through market transactions often constituting the illicit sale of children, while avoiding the normalization of systems that disregard the identity rights and best interests of children.

Prohibiting commercial surrogacy, or even surrogacy generally, does not violate the rights of adults who seek to form families, because there is no right to a child under international or regional human rights law. As the SR noted in 2018, "[a] child is not a good or service that the State can guarantee or provide, but rather a rights-bearing human being. Hence, providing a 'right to a child' would be a fundamental denial of the equal human rights of the child." (SR 2018, para. 64.) Further, surrogacy is not merely a medical technology but involves the use of another's body for someone else's reproductive project, and there cannot be a right to use another

person in such a way, including by contract and with pay, particularly given the economic and power inequalities typically found in such arrangements.

In the near future the EU will likely include nations with commercial surrogacy systems. States are often under political pressure from prospective intending parents, and from others sympathetic to the desire for family formation, which may eventually lead states not currently permitting commercial surrogacy to eventually legalize it. In addition, two countries admitted to EU candidacy, Ukraine and Georgia, are prominently involved in cross-border commercial surrogacy. The Proposal therefore must be evaluated under the assumption that the EU would in the future include member states that engage in commercial surrogacy and are involved substantially in cross-border surrogacies with intending parents from states that prohibit commercial surrogacy.

Recently, it was discovered that Thai nationals had been moved to Georgia by Chinese nationals for purposes of egg donation and surrogacy, and allegedly held there against their will, being confined in group homes with their passports confiscated by the intermediaries. Human trafficking investigations ensued.[7] This demonstrates the concrete risks of incorporating commercialized surrogacy arrangements, which generally involve for-profit intermediaries and complex international networks, into a PIL scheme designed to effectuate universal parentage. As the ELI notes, such a PIL scheme is literally designed to potentially uphold parentage or filiation determinations that are a product of human trafficking. (ELI, pg. 8).

**The recent** 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 victim, recognized the risks of human trafficking present in surrogacy:

> "The exploitation of surrogacy, of forced marriage or of illegal adoption can already fall within the scope of offences concerning trafficking in human beings as defined in Directive 2011/36/EU, to the extent that all the criteria constituting those offences are fulfilled. However, in view of the gravity of those practices, and in order to tackle the steady increase in the number and relevance of offences concerning trafficking in human beings committed for purposes other than sexual or labour exploitation, the exploitation of surrogacy, of forced marriage or of illegal adoption should be included as forms of exploitation in that Directive, in so far as they fulfil the constitutive elements of trafficking in human beings, including the means criterion. More specifically, as regards trafficking for the exploitation of surrogacy, this Directive targets those who coerce or deceive women into acting as surrogate mothers." (para. 6)

It is self-contradictory for Europe to simultaneously be recognizing that surrogacy may involve exploitative conduct by intermediaries which constitutes a form of human trafficking, a "serious crime," (Directive, para. 1), while at the same time implementing PIL principles which implicitly legitimate such crimes and give effect to the goals of such trafficking.

Several member states are in process of implementing laws providing for altruistic surrogacy. The developing rules for such include provision for "remuneration," for example, as in Greece, for "physical strain," or other open-ended categories. See European Parliamentary Research Service, *Surrogacy: The legal situation in the EU, Document number: PE 769.508,* page 7 (David de Groot, Feb. 2025). Such states could, under the analysis of the OPSC by the SR, be the kind of purportedly altruistic systems that still constitute the sale of children.

If the Proposal in essence requires cross-border surrogacies conducted in states with legal systems that systemically enable the sale of children to be, through recognition, choice of law, or jurisdictional rules, effective in creating EU-wide parentage, even as to intending parents from prohibitionist states, the net effect would be a PIL system that systemically effectuates and legitimates violations of public international law.

### 6. PIL rules on recognition, choice of law, and jurisdiction cannot create a human-rights compatible practice regarding parentage or filiation

[7] See, e.g., https://www.humanrightsresearch.org/post/trapped-in-the-surrogacy-boom-thai-women-rescued-from-human-egg-farms-in-georgia; https://police.ge/en/shinagan-saqmeta-saministrom-bangkokis-interpolidan-mighebuli-tserilis-safudzvelze-gamodzieba-daitsko/16560.

PIL rules concern the question of which states laws govern in particular cross-border scenarios. Hence, in order for PIL rules to be rights-protective, adequate rights-protective laws and procedures must already exist in at least one of the states involved.

In regard to surrogacy PIL approaches meet a fundamental difficulty, in that none of the states typically involved in a cross-border surrogacy arrangement are likely to have within their domestic legal system rules or procedures adequate to the protection of human rights, and children's rights---unless PIL rules are willing to apply the laws of states that prohibit surrogacy to cross-border surrogacies. It is not clear to CHIP how one would apply the rules of the prohibitionist State in a country that currently permits the practice, except by limiting the practice to intending parents from other permissive States. The EC Proposal, however, seems to be designed to do the opposite, which is to effectuate recognition of parentage from cross-border surrogacy arrangements, regardless of whether those surrogacy arrangements are permitted, whether or not they respect children rights (section 3) and whether or not they constitute the sale or trafficking in children (sections 4 and 5).

Assuming the purpose of the EC Proposal is to preserve parentage determinations in cross-border surrogacies, the hope of finding regulatory provisions to protect the rights of children is futile, as neither prohibitionist nor permissive states generally have those regulatory provisions in their laws regarding surrogacy.

**Prohibitionist states do not intend to regulate surrogacy (or commercial surrogacy), but to prohibit it. Such states therefore typically lack legal regimes sufficient to regulate surrogacies that do occur. Requiring prohibitionist states to validate surrogacies those states, with good reason, consider violations of fundamental human rights norms would be improper. Expecting prohibitionist states to enact laws by which such surrogacy arrangements may be regulated, rather than prohibited, is unrealistic, and would require the creation of new laws and procedures not currently being employed. This goes well beyond the proper role of PIL, and arguably beyond the proper scope of the EC, given the premise that states will continue to have competency regarding the substantive laws governing surrogacy.**

In addition to the unlikelihood of prohibitionist States having safeguards to protect children born through surrogacy, the practices of permissive States are also not fully aligned with international standards (section 5). Thus, cross-border surrogacies are particularly difficult to regulate, because information relevant to identity exist in more than one state, as does information relevant to child protection and an individualized best interests of the child determination. Permissive legal regimes seem to be designed primarily around facilitating adults in satisfying their desire for a child, while prohibitionist states are designed to prevent surrogacy arrangements that are perceived as inherently violative of human rights.

Thus, PIL approaches meant to effectuate recognition of parentage in cross-border surrogacy arrangements, no matter how creative, cannot create a regulatory environment that is human rights compatible.

**Preventing cross-border surrogacies between prohibitionist states and permissive states**

Practically, the only way to protect the rights of the child, as to cross-border surrogacies, particularly ones between prohibitionist and permissive states, is to prevent such surrogacies in the first place. This is the position taken, for example, by the Verona Principles, which states:

> "States that permit surrogacy should limit access to surrogacies to intending parents from States that permit surrogacy." (18.3)

Such a PIL approach is already reflected in other instruments such as the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (ICA). ICAs can only proceed when the receiving State agrees under certain conditions (Art. 17) and there is a certificate of conformity (Art. 23) provided by the State of origin. In this case, the prohibitionist State would need to agree beforehand that the surrogacy arrangement can occur. Such an approach can drastically improve limping parentage and is currently practiced by New Zealand. However, questions can be raised about consistency of internal policy that prohibits domestic commercial surrogacy and nevertheless allows international commercial surrogacy.

More specifically, this also means that states that permit commercial surrogacy should limit access to intending parents from states that permit commercial surrogacy. In general, cross-border surrogacy should not be allowed as a means for intending parents to evade the laws of their own jurisdiction.

Hopefully, such a rule could be implemented through a PIL approach focusing especially on applicable law (or choice of law) within the EU.

In order to do so, a fundamental distinction would have to be made between truly domestic surrogacy arrangements, and cross-border surrogacy arrangements. If a permissive state conducts a truly domestic surrogacy with intending parents and surrogate mother both being residents of that state, then that parentage determination could later be effective if the family moves to another state. In that sense, the EC President's goal, "[i]f you are a parent in one country, you are a parent in every country," could be met. Presumably, however, that is already the practice, so the EC Proposal might be unnecessary to effectuate this. It is doubtful that families moving within the EU experience, on a regular basis, the new EU states to which they move looking behind the parentage or filiation determinations made in their prior state from years previously.

On the other hand, the situation of cross-border surrogacies conducted within the EU for the purposes of evading the domestic law of the intending parents, and where the intending parents intend to take the child back to their own state shortly after birth, should NOT be permitted. In such cases the determinations of parentage or filiation in the permissive jurisdiction should not be binding. Even better, permissive states should be bound to employ, in those circumstances, the prohibitions in the laws of the prohibitionist states, and therefore prevent, in the first instance, such surrogacies from occurring.

Indeed, it would be a major gain for the rights of the child if the EC adopted rules that prevented this kind of cross-border practice, which is inherently risky as to the rights of the child.

**Conclusions and recommendations for Rights-Based PIL approach to Cross-Border Surrogacy**

The Proposal emphasizes deprivations of rights that may occur through refusals of recognition of parentage, (see pages 3, 9-10), while omitting a comprehensive analysis of deprivations of rights that would be exacerbated or created by recognition of parentage. The recognition framework should therefore include conditional or partial mechanisms and a robust public policy exception to address these gaps. A nuanced, rights-based PIL framework could mitigate the risk of endorsing arrangements contrary to international human rights norms. This rights-based PIL approach would bring the EC Proposal more in line with both international child protection standards and the fundamental values shared across the EU legal framework.

To ensure that any cross-border legal framework on parentage arising from surrogacy arrangements is consistent with fundamental rights, including the rights of the child under international law, a revised Private PIL approach should include the following key elements:

**1. Differentiated Treatment Based on Domestic vs Cross-Border Context**

- The PIL rules should distinguish between:
    - Genuinely domestic surrogacy arrangements (intending parents and surrogate reside in the same State which allows for surrogacy); and
    - Cross-border surrogacy arrangements (involving movement between jurisdictions or legal evasion).
- Only genuinely domestic arrangements in States that allow surrogacy should benefit from presumptive recognition mechanisms. This presumes that safeguards are in place to ensure that the rights of children and surrogate mothers are protected. Cross-border arrangements should be subject to stricter scrutiny, particularly where they involve states with divergent standards on children's rights and surrogacy regulation.

### 2. Mandatory Consideration of Public Policy (Ordre Public)

- The recognition of a foreign parentage determination should be refused or made conditional, especially where minimum human rights safeguards are not respected such as:
    - The underlying surrogacy arrangement contravenes peremptory norms (e.g. sale of children, trafficking).
    - There are inadequate safeguards to ensure the child's right to identity, non-discrimination, and best interests.
    - Free and informed consent of the surrogate mother (e.g. proofs should exist that it was not based on remuneration or any other consideration)
- A robust public policy exception should be clearly articulated in the PIL instrument, drawing on Article 24 of the 1993 Hague Adoption Convention.
- States that prohibit surrogacy should also introduce practical measures to support their policy stance. Examples of these measures were recently shared with the UN SR on violence against women and girls who is currently in the process of preparing a report for the UNGA to be launched in October 2025.[8]

### 3. Preventing Use of PIL to Evade National Prohibitions

- A principle should be adopted that prohibits recognition where:
    - The surrogacy arrangement was clearly undertaken to circumvent national prohibitions.
    - There was no effective link between the parties and the State of birth beyond the surrogacy process.
- States should be encouraged to enact measures to prevent recognition of parentage in such cases, protecting both children's rights and national sovereignty.

### 4. Limited or Conditional Recognition Mechanisms

- If children are nevertheless born in such cross-border contexts, particularly between prohibitionist and permissive states, they should not be discriminated due to the circumstances of their birth. They should have access to all their rights and not just legal parentage. All their rights should be respected including preservation of their identity including birth registration, name, nationality and family relations.
- Rather than binary recognition/refusal, the PIL rules should allow for conditional or partial recognition, such as:
    - Providing temporary guardianship subject to judicial review based on the child's best interests.
    - Granting legal parentage to one intending parent (e.g. the biological father) but not necessarily both following a best interest determination.
- This allows the law to protect the child without implicitly validating problematic arrangements.
- It should be clear that adoption should not be used to regularize these situations.[9]

### 5. Applicable Law Must Reflect Fundamental Rights

- The applicable law rules should:
    - Avoid automatic application of the law of the State of birth where it facilitated a surrogacy arrangement contravening international human rights.
    - Include an overriding child protection clause, allowing authorities to disregard otherwise applicable law where it would result in violations of the rights of the child.
- Comparable PIL protections exist in instruments like the 1996 Hague Child Protection Convention (Article 22).

[8] https://www.child-identity.org/wp-content/uploads/2025/05/Submission-Special-Rapporteur-on-violence-against-women-and-girls-17-April-2025.pdf
[9] Cf with analysis of Denmark v KK decision https://www.child-identity.org/wp-content/uploads/2023/04/CHIP-2023-Surrogacy-LegalMemorandum.pdf