



CHILD'S RIGHT TO IDENTITY IN INTERCOUNTRY ADOPTION (ICA): MODIFICATION, PRESERVATION AND RISKS OF FALSIFICATION

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“One's identity is not just a crisis that a person undergoes in adolescence, but is a lifelong desire that cannot be satisfied by anything else.. Growing up with a happy adoptive family or establishing one's own family are not replacements for an adoptee's right to knowledge of their origin.”

Lee Kyung-eun, Director of Human Rights Beyond Borders

- ICA entails profound modification of a child's identity
- Article 8(1) CRC (name, nationality and family relations)
- Article 8(2) CRC (re-establish identity when there are missing elements)





Creation of the child's identity



**Modification
of the child's identity in ICA**



**Preservation
of the child's identity in ICA**



**Falsification
of the child's identity in ICA**

Restoration
of the child's identity in ICA





Modification of the child's identity when in best interests



Modification of the child's identity when in best interests

- Modification ONLY when in the child's best interests AND when the child's identity needs are met
- UNHCR BIP Guidelines note
“the feeling of being wanted and valued is the basis for a healthy emotional life. Such feelings are rooted in family relations and broaden as a person matures into increasingly larger circles that encompass relatives, peers, the community and society. The need to feel valued grows into a need to belong to social groups and have a place in society. It is therefore important to prevent possible uprooting effects of the BIP, in particular a BID decision. Continuity of contact with external surroundings, including people and places, has an extremely important psychological effect on the child's development ...”.
- IACtHR – Ramirez Escobar v Guatemala





- Principle of double subsidiarity
- UN Guidelines for the Alternative Care of Children (principles of necessity and suitability)
 - Access to basic services
 - Access to targeted services
 - Reunification and reintegration
 - National solutions
- Concrete measures to keep the child with family of origin is both in the child's best interests and preserves the right to identity in family relations





- Desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background (Article 20(3) CRC) (Paraguay, Honduras)
- Prevention of statelessness (Article 8 CRC)
Need for automatic granting of nationality





Preservation of the child's identity





- ICA results in a change in the child's identity – name, nationality and family relations
- Preservation of identity through Civil registration and civil statistic systems: challenges and improvements (SG.16.9; UN Legal Identity Agenda, Convention 34 ICCS)





- Preservation of information on family origins: content and gaps in origins information (legal, medical, psychosocial)
- Integrated birth certificates in NSW

Adequate preservation should answer the question «Who am I»?





Falsification and sale of the child's identity



Modification of identity due to falsification in ICAs to date

- Countless numbers of children being illegally adopted, more or less publicised cases over the years (Guatemala, Nepal, Vietnam, amongst others)
- Identity of children falsified and/or sold to facilitate (illegal and unethical) adoptions

- Pre-1993 Hague Convention: Many examples to which the Convention intended to respond by ensuring '...how can children be protected from being adopted through fraud, duress or for monetary reward...' (Parra-Aranguren G. (1993). Explanatory report)

Post-1993 Hague Convention: Still many examples, including 'paper orphans' (Smolin): 'child laundering occurs when children are illicitly obtained by fraud force, or funds, and then processed through false paperwork into "orphans" and then adoptees.'





Factors and means of falsification of identity in ICAs to date

- Luring of biological families into placing their child into care;
- Lack of proper consents of biological families, including coercion and flawed procedures;
- Abduction, sale and trafficking of children by criminal networks;
- Improper profiteering by range of intermediaries;
- Poor legislation or standards relating to adoption, care and criminal offences;
- Political grounds and motivations, in particular in emergencies and regimes;
- Legislation permissive on modification of identity (due to secrecy of adoption);
- Deficiencies in the general child protection system).

For further information: see Report of the SR on sale of children on illegal adoptions (2017)





Impact of the falsification of identity in ICAs to date

- Deprivation of fundamental elements of the adoptee's identity
- Difficult or impossible access to origins and to know one's family origins
- Complex restoration of the child's identity
- Lived experiences present on this webinar reflect the life-long implications of falsification

AND

the need for prompt restoration of identity





Thank you 😊

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