

# Preserving “family relations”: an essential feature of the child's right to identity



CHILD  
IDENTITY  
PROTECTION

## Acknowledgements

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This publication was prepared by team members at Child Identity Protection, notably Christina Baglietto, Laurence Bordier, Mia Dambach and Cécile Jeannin, with editing support by Gisela Sin Gomiz and Siena Demetriou.

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### Feedback :

[info@child-identity.org](mailto:info@child-identity.org)

We welcome any input to this publication to help improve our understanding of the current situation, which is quickly changing (e.g. sharing promising practices or continuing challenges). Please let us know if and how you have used this publication in your work, as it will help with CHIP's future initiatives.



## Foreword

Every child has a unique identity, including birth, name, nationality, and family relations. Without society's formal recognition of this reality, the child is invisible and their capacity to access other rights becomes impossible. The consequences can be very dire and significantly compromise the child's harmonious development, the deployment of his or her evolving capacities, and his or her very sense of self-worth and well-being with a life-long impact.

This publication builds on initiatives promoting birth registration and nationality, by focusing on family relations, a crucial element of a child's identity. It explores the right to have one's family relations legally established or recognised, as a stand-alone right. This is significant, as every person has a family history – genetic, gestational, social and legal – that contributes to his or her identity and origins. Family relations include connections that arise as a result of this history, encompassing a wide range of potential intergenerational ties. Moreover, the natural course of interaction between birth parents and children may be severed when they are separated in a variety of situations, for

example when they are abandoned, placed in alternative care, adopted, born through surrogacy, sold and/or trafficked, displaced or migrating, or when conflict or natural disaster arises.

This publication complements the efforts within the United Nations and regional mechanisms to ensure that the identity of every child is established and preserved in accordance with the Convention on the Rights of the Child, including their legal identity (SDG 16.9), by increasing attention on the often under-explored impact of children being deprived of their family relations and/or knowing their origins. It further provides concrete guidance on mechanisms to restore children's identities whenever there are missing elements by exploring access to remedies (SDG 16.3).

We warmly welcome the work undertaken by the team at Child Identity Protection, which shows that by Preserving "family relations": an essential feature of the child's right to identity, this provides an additional and important protective layer for children, facing multiple situations where their rights are at stake.

### **Maud de Boer-Buquicchio**

President, Child Identity Protection

UN Special Rapporteur on Sale and Sexual Exploitation (2014-2020)

### **Philip Jaffé**

UN CRC Committee member

Professor, Centre for Children's Rights Studies, University of Geneva

### **Cornelius Williams**

Director  
Child Protection Programme Team,  
Programme Group,  
UNICEF

## Acronyms

<b>ACERWC</b>	African Committee of Experts on the Rights and Welfare of the Child
<b>ACHR</b>	American Convention on Human Rights ('Pact of San José, Costa Rica')
<b>African Charter</b>	African Charter on the Rights and Welfare of the Child
<b>ART</b>	Assisted reproductive technology
<b>ASEAN</b>	Association of Southeast Asian Nations
<b>AU</b>	African Union
<b>AUC</b>	African Union Commission
<b>BIA/BID</b>	Best interest assessment/best interest determination
<b>CAA</b>	Central Adoption Authority
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CHIP</b>	Child Identity Protection
<b>CNAOP</b>	National Council for Access to Personal Origins
<b>CRC</b>	United Nations Convention on the Rights of the Child
<b>CRC Committee</b>	United Nations Committee on the Rights of the Child
<b>CR</b>	Civil Registration
<b>CRVS</b>	Civil Registration and Vital Statistics
<b>DSWD</b>	Department of Social Welfare and Development
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>ECOSOC</b>	United Nations Economic and Social Council
<b>HCCH</b>	Hague Conference on Private International Law
<b>HCCH 1993 Adoption Convention</b>	Convention of 29 May 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption
<b>HCCH 1996 Child Protection Convention</b>	Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children
<b>HRC</b>	Human Rights Council

<b>IACITM</b>	Inter-American Convention on International Traffic in Minors
<b>IACtHR</b>	Inter-American Court of Human Rights
<b>ICA</b>	Intercountry adoption
<b>ICCR</b>	International Committee on Red Cross
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICCS</b>	International Commission on Civil Status
<b>ICPPED</b>	International Convention for the Protection of All Persons from Enforced Disappearances
<b>ILO</b>	International Labor Organization
<b>Inter-American Commission</b>	Inter-American Commission on Human Rights
<b>OAS</b>	Organisation of American States
<b>OPIC</b>	Optional Protocol to the Convention on the Rights of the Child on a communications procedure
<b>OPAC</b>	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
<b>OPSC</b>	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
<b>SDG</b>	Sustainable Development Goal
<b>UN</b>	United Nations
<b>UN Guidelines</b>	United Nations Guidelines for the Alternative Care of Children
<b>UN SR on sale of children</b>	United Nations Special Rapporteur on sale and sexual exploitation of children
<b>UN SR on transitional justice</b>	UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNICEF</b>	United Nations Children's Fund
<b>UNDESA</b>	United Nations Department of Economic and Social Affairs
<b>UNDP</b>	United Nations Development Program
<b>UNDSS</b>	United Nations Department of Safety and Security
<b>UNLIA</b>	United Nations Legal Identity Agenda
<b>UNODC</b>	United Nations Office on Drugs and Crime

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## Introduction

Every person is unique, “born free and equal in dignity and rights,” as proclaimed by the Universal Declaration of Human Rights 1948. This uniqueness is an integral part of one’s identity and should never lead to unequal access to various rights. To this end, States Parties to the United Nations Convention on the Rights of the Child 1989 (CRC) have an obligation to preserve the child’s identity, including **birth registration, name, nationality, and family relations**, and speedily re-establish it, when elements are missing (Arts. 7 - 8 CRC).

Having an identity and knowing one’s origins is fundamental to the child’s physical, psychological, cultural and spiritual development (Art. 6 CRC). UNHCR notes that “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. [...] Continuity of contact with external surroundings, including people and places, has an extremely important psychological effect on the child’s development ...”.<sup>1</sup>

This right to identity is also closely linked to the achievement of other rights such as keeping families together (Art. 9 CRC), facilitating contact with families across countries (Art. 10 CRC) and promoting continuity in a child’s upbringing including ethnic, religious, cultural and linguistic background (Arts. 20 and 30 CRC).

Without all the information relevant to forming a cohesive identity, children systematically face a range of challenges, which can be of a legal, medical and psychosocial nature. The lack of formally recognised and documented identity invariably puts children at risk of multiple human rights violations, including their right to be protected, to education, health (physical and mental), social services, social security and justice. They are also at greater risk of being sold and trafficked, the worst forms of child labour, child marriage, underage recruitment into armed forces and prosecution as an adult if their age cannot be determined due to lack of identity (proof of age) (e.g. Arts. 12, 24, 26, 28, 32 CRC).



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In terms of right to **birth registration** and **name**, “society first acknowledges a child’s existence and identity through birth registration. The right to be recognized as a person before the law is a critical step in ensuring lifelong protection and is a prerequisite for exercising all other rights.”<sup>2</sup>

A birth certificate documents the facts of a child’s birth – such as date, place of birth, family relations and name. The facts contained in the birth certificate may in turn be used to determine which nationality rules apply, which is often linked to the child’s family relations.<sup>3</sup> Despite this right, UNICEF notes that 237 million children under five do not have a birth certificate, including 166 million children, who are not registered.<sup>4</sup> Poverty<sup>5</sup> and discrimination<sup>6</sup> are among the main obstacles for accessing this specific right.

Denial of the right to **nationality** may result in statelessness, where in 2018, there were an estimated 10 million people in this situation.<sup>7</sup> According to UNHCR, one third of those who are stateless are children.<sup>8</sup> UNHCR further estimated in 2015 that a child is born stateless every ten minutes and that these children cannot be legally vaccinated in at least 20 countries.<sup>9</sup> The Institute on Statelessness and Inclusion notes that “inherited statelessness is an endemic problem that locks generations out of nationality and traps people in a vicious cycle of exclusion and discrimination.”<sup>10</sup>

Discrimination is a major factor that leads to statelessness by excluding those that are considered foreign<sup>11</sup> and from minority groups.<sup>12</sup> In 25 States, women cannot pass their nationality to their children.<sup>13</sup> Other factors that may lead to statelessness include gaps in nationality laws, conflict in laws, and the emergence of new States.<sup>14</sup>

The number of children without **birth registration and/or nationality**<sup>15</sup> increased due to the COVID-19 pandemic’s varying impact on infrastructure (e.g. suspension of recording of vital events such as births in Argentina, civil registries closed in Uganda, shorter working hours in Samoa), budget shortages and other delays.<sup>16</sup> Evidence is emerging that after a slow-down in 2020, Civil Registration (CR) systems are on a recovery path from the impact of the COVID-19 pandemic. At least three in every five countries in 2021 have shown improvement in the number of children notified (65 per cent), registered (67 per cent), and certified (75 per cent) from 2020.<sup>17</sup>

In addition to birth registration, name and nationality, as features of the right to identity, the **right to have one’s family relations** legally established or recognised is a stand-alone right. Each person has a family history – genetic, gestational, social and legal – that contributes to his or her identity and origins. Family relations include connections that arise as a result of this history, continuity or separation, encompassing birth, adoptive and intending parents in surrogacy arrangements, gamete donors, siblings, grandparents and other potential ties. Millions of children may be deprived of their family relations in varied situations for example, when placed in alternative care; falsely registered as orphans; as victims of an illicit adoption and/or trafficking; forced into child marriage; recruited into an armed force; subject to the worst forms of child labour; living in street situations; separated or unaccompanied in emergency situations; or born through (anonymous) recourse to assisted reproductive technology (ART). In situations that involve illicit practices, children may, as well as later as adults, report feeling “commodified.”

A further layer of complexity may be added to these situations, when multiple States are involved in the creation, modification and/or falsification of the child's identity. Legal challenges may arise in identifying which State, courts or authorities have jurisdiction to decide on identity issues and which laws apply. Further, CR systems are generally not set up to ensure the automatic recognition of the child's legal status across borders, from another State.<sup>18</sup> Challenges equally arise when information about origins is not stored appropriately, including in perpetuity and/or accessible in these cross-border contexts.

At a global level and in response to the above realities, there are a number of **targeted initiatives working towards the achievement of the child's right to identity**. Significant efforts are underway led by the UN Legal Identity Agenda<sup>19</sup> to ensure universal birth registration and legal identity linked to the achievement of Sustainable Development Goal 16.9,<sup>20</sup> primarily focused on strengthening CR and implementing identity systems (i.e. recording as a minimum, name, sex, place and date of birth). UNICEF's Global Child Protection Strategy 2021-2030 identifies the right to legal identity as a thematic priority, which will guide the work and attention of its country offices on this issue.<sup>21</sup> UNHCR has been leading the I Belong campaign to end statelessness by 2024, with UNHCR and UNICEF co-leading the Coalition on Every Child's Right to a Nationality as part of the campaign, partnering with several actors.<sup>22</sup> The issue of identity related to family relations has received less co-ordinated attention at an international level.<sup>23</sup> While birth registration and nationality initiatives, may indirectly include the issue of family relations, targeted endeavours are necessary.

For children and adults, the importance of family history cannot be underestimated. Without transparent and accurate information about family origins, specific challenges arise. This includes possible exclusion from the rights deriving from legal parentage such as child support and hereditary laws. It may also lead to statelessness, as nationality is often linked to blood relations.<sup>24</sup> Comprehensive information about family origins is essential to ensure the highest attainable standard of health and well-being. Deprived of family health history, children and adults affected have less information about genetic health risks. For example, whilst some risk factors, such as family history in cancer cannot be changed, being aware of this reality can effectively reduce associated mortality.

**Given the millions of children whose identity rights related to family relations are at risk and have serious consequences when breached, this publication provides an overview of this global issue, which requires an effective global response. This response should encompass laws, policies and practices that preserve all features that contribute to a full and transparent identity, as well as the restoration of missing or falsified elements.**

## OBJECTIVES AND OUTLINE

The aim of this publication is to highlight the protective aspects related to the child's identity rights, with a focus on the family relations element, as embedded in international, regional and national standards. The publication provides direction on how to build identity safeguards, drawing on past lessons and capitalising on current opportunities. To do this, the right to identity is explored through a range of examples of existing challenges, promising practices and testimonies. The Chapters are divided into key moments when the right to identity in family relations may be protected and/or at risk, through its **Creation, Modification, Falsification, Preservation and Restoration** (Chapters 1 to 5 respectively).

Concerning the **creation of the child's identity**, Chapter 1 examines the key role of CRVS systems in recording relevant "family relations" information. It also explores what factors lead to the equipping of these mechanisms to record all necessary data and outlines the circumstances where this may be impossible.

Once the child's identity at birth is established, there are many situations where the **child's original identity may be modified**, including his or her family relations, as explored in Chapter 2. This can occur through a formal change in filiation, through the transfer of legal parentage. It may also be an informal change, such as change in parental responsibility, through private arrangements without involvement of a competent authority. In both these situations, whenever the modification of a child's identity related to family relations is not in the best interests of the child, this can lead to the inappropriate deprivation of original identity.

While Chapters 1 and 2 focus on the creation and modification of a child's identity, Chapter 3 explores **where illicit practices can lead to its falsification related to family relations**. This may include situations where the child's identity is sold.

Chapter 4 builds on the preceding Chapters focusing on the **preservation of all relevant information** about the creation, modification and (possible) falsification of the child's identity, as well as ensuring accessibility.

Chapter 5 concludes on the need for **expeditious restoration of the child's identity**, when elements are missing and/or contain illicit facets. Restoration efforts contribute to ensuring access to justice for all, including the achievement of SDG 16.3.<sup>25</sup>

These Chapters provide the framework for exploring the key moments at which identity rights should be protected. Within these moments, three specific contexts are considered where the respect for identity rights related to the family are at particular risk - alternative care and adoption, ART and emergency situations, as reflected in the chapter's sub-sections. Given that some general considerations and cross-border identity considerations are cross-cutting, they will be addressed throughout. This list is not exhaustive, however, and other issues will be examined in future publications.

### INTERNATIONAL AND REGIONAL STANDARDS

CHAPTER 1	CHAPTER 2	CHAPTER 3	CHAPTER 4	CHAPTER 5
Creation of identity	Modification of identity	Falsification of identity	Preservation of identity	Restoration of identity

## METHODOLOGY AND LIMITATIONS

This publication is based on existing research and remote interviews with experts working on the issue of children's identity rights. A limitation of the methodology is that primary in-country research could not be carried out due to the COVID-19 pandemic. Further, the lack of (recent) data created its own challenges in terms of providing an accurate picture of the current context.

Nevertheless, centralised for the first time in one publication, this work provides an overview of the breadth of child identity issues at stake, with a specific focus on family relations. Opportunities to evaluate specific States and regions, as well as other connected issues, will be explored in other publications.

### **Article 7**

*1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents. [...]*

### **Article 8**

*1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.*

*2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.*



## LEGAL FRAMEWORK

### iii.a International framework

International standards provide clear identity protections for every child.<sup>26</sup> UNICEF notes that “the right to be recognized as a person before the law and to be registered at birth is acknowledged in nearly every major human rights instrument.”<sup>27</sup>

Art. 24 of the [International Covenant on Civil and Political Rights 1976](#) (ICCPR) specifically sets out the right of the child to be registered at birth, have a name and nationality. Name and nationality are mentioned in Arts. 7 and 8 of the [CRC](#) along with the addition of “family relations” in Art. 8 to indicate the scope of “identity.”

The proposal for Art. 8 focusing on the restoration of identity was submitted in 1985 by Argentina, after the fall of that country's dictatorship during which children had been illegally removed from families linked to the opposition, stripped of their identity and placed for adoption with families supportive of the regime.<sup>28</sup> Argentina's original proposal referred to “the true and genuine personal, legal and family identity” of the child. However, “family identity” had no legal meaning in a wide range of countries, so consensus was reached on using the term “family relations” as one explicit element of identity. The term “relations” stresses the importance of children knowing their wider family. Indeed, the concept of family goes well beyond the traditional Western construct of nuclear family comprising just biological parents and their children.<sup>29</sup>

According to the UN Committee on the Rights of the Child (CRC Committee), family is understood as “a variety of arrangements that can provide for young children's care, nurturance and development, including the nuclear family, the extended family, and other traditional and modern community based arrangements, provided these are consistent with children's rights and best interests.”<sup>30</sup>

In 2022, UNICEF and CHIP launched a [Briefing note on children's rights and surrogacy](#), advocating for the preservation of child's identity, including family relations, noting that donor and/or surrogate anonymity can prevent the child knowing their origins.

Art. 7 creating the right to birth registration, name, nationality and know and be cared for by one's parents wherever possible and Art. 8 must be read concurrently with the other articles of the CRC. For example, when the family environment is changed, Art. 20(c) notes that “when considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.” Preserving detailed information about one's family background and if possible, promoting continuity goes to the heart of the child's identity rights when the family environment is being changed (Chapter 2). Complementing the CRC with its emphasis on “family relations”, among others, is Art. 25 of the [International Convention for the Protection of All Persons from Enforced Disappearance 1992](#), which contains safeguards for the child's identity that is incomplete or falsified (Chapter 3).

### iii.b UN Legal Identity Agenda

The [UN Legal Identity Agenda](#) (UN LIA) promotes a holistic approach to civil registration, vital statistics and identity management. The right to birth registration and legal identity, including a name, has been supported most recently through the 2030 Agenda for Sustainable Development, agreed by all Member States in September 2015, which established a specific target within the Sustainable Development Goals (SDGs) – Target 16.9 to “provide legal identity for all, including birth registration.”<sup>31</sup> UNICEF, UNDESA and UNDP, co-chair the UN Legal Identity Agenda Task Force established by the UN Deputy Secretary-General in 2018. The Task Force is mandated to develop a coherent and integrated UN response to the issue of legal identity, including birth registration, working together with stakeholders to ensure policy and implementation coherence when it comes to supporting Member States to strengthen Civil Registration Vital Statistics (CRVS) and identity management systems in a holistic and interoperable manner. The UN LIA has adopted a [common definition of legal identity](#) across the UN Development System (UNDS) and with the World Bank. The definition of Legal Identity, as “*the basic characteristics of an individual's identity, for example, name, sex, and place and date of birth, conferred through registration and the issuance of a certificate by an authorized civil registration authority following the occurrence of birth. In the absence of birth registration, legal identity may be conferred by a legally recognized identification authority; this system should be linked to the civil registration system to ensure a holistic approach to legal identity from birth to death. Legal identity is retired by the issuance of a death certificate by the civil registration authority upon registration of death*” (E/CN.3/2020/15).

The [UN LIA](#) also developed UN Country Team (UNCT) Operational Guidelines (available in [English](#) and [French](#)) to accelerate the implementation of the UN LIA at country level. The Task Force developed guidance on Maintaining Civil Registration and Vital Statistics during the COVID-19 Pandemic in April 2020 (available in [English](#) and [French](#)). The UN LIA focuses primarily on birth registration and providing a legal identity to all, and to a lesser extent on aspects related to family relations as set out in Art. 8 CRC.

### iii.c UN Committee on the Rights of the Child (CRC Committee)

The views of the CRC Committee on the child's right to identity with respect to birth registration and nationality are generally captured, when pertinent, in their Concluding Observations and Recommendations to States Parties under “section C. Civil rights and freedoms (Arts. 7, 8, and 13–17).” This can be illustrated with recent recommendations to Angola, Argentina, Lesotho and Norway, to implement SDG 16.9. However, the issue of “identity and family relations” has received lesser attention, even when it is relevant, admittedly due, in part, to the absence of information provided to the CRC Committee. Nevertheless, the CRC Committee has referred to the family aspect of identity rights in several more recent recommendations.

One of the most telling recommendations of the CRC Committee in promoting the right to identity in family relations occurs with its recommendations to France (2016) where “33. *The Committee reiterates its recommendations to take all appropriate measures to fully enforce the child's right to know his or her biological parents and siblings and urges it to adopt the necessary measures for all information about parent(s) to be registered and filed, in order to allow the child to know, to the extent possible and at the appropriate time, his or her parents (see CRC/C/FRA/CO/4 and Corr.1, para. 44). The Committee also recommends that the State party consider removing the requirement of the biological mother's consent to reveal her identity and to increase its efforts to address the root causes that lead parents to choose to use confidential birth.*”<sup>32</sup>

The CRC Committee has promoted the full recording of possible family relations by for example, discouraging anonymous births through “baby boxes” in Austria (2020)<sup>33</sup> and South Korea (2019),<sup>34</sup> ensuring access to information about origins in surrogacy arrangements in Australia (2019)<sup>35</sup> and removing discriminatory birth registration practices for children born to unmarried parents in Palestine (2020).<sup>36</sup>

### iii.d UN Special Rapporteur on the Sale and Sexual Exploitation of Children (UN SR on sale of children)

The UN SR on sale of children has significantly addressed the issue of identity in family relations by considering the practice of illegal adoption as well as of surrogacy arrangements. Specifically, she analysed the issue of illegal adoption and falsification of identity in family relations through sale in her 2017 report to the Human Rights Council (HRC), emphasising the importance of transitional justice<sup>37</sup> In her 2018 report to the HRC,<sup>38</sup> the UN SR on sale of children tackled the issues that arise in surrogacy arrangements, including the child's right to identity. She recommended at a national level that States: "*(j) Protect the rights of all surrogate-born children, regardless of the legal status of the surrogacy arrangement under national or international law, including by protecting the best interests of the child, protecting rights to identity and to access to origins, and cooperating internationally to avoid statelessness.*"

Building on her 2018 HRC report, in her thematic UNGA report in 2019<sup>39</sup>, the UN SR on sale of children dove into more detail on protecting identity rights, by emphasising equal access to origins for children born through surrogacy noting that "*although surrogacy changes the constitutive elements of identity, by breaking the link between genetic, gestational and social parenthood, the fundamental rights of the child remain the same. From the child's perspective, genetics, gestation and the exercise of parental responsibility are all a part of the constitutive elements of identity. The right of the child to birth registration, to a name, to a nationality and to know and be cared for by his or her parents, as far as possible, should not be affected by the method of the child's birth.*" (Para. 32).

As a result, she called upon all States to among other things: "*(d) Preserve, in all cases, all pertinent information, and establish and maintain registers and national records containing information about the genetic and gestational origins of surrogate-born children, through which children can seek to access, in line with their evolving capacity and maturity and subject to the cultural context of the country, in particular with regard to the use of donor gametes: regardless of the determination of parentage, there should be comprehensive safeguards to ensure that records of the surrogate arrangement are kept in order to enable the surrogate-born children to have access to information about their origins; (e) Ensure the right of surrogate-born children to access information about their identity and origin, including their cultural, ethnic, religious and linguistic background, in line with their evolving capacity and in accordance with the legal regulations of the given country.*"



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### iii.e The Hague Conference on Private International Law (HCCH)

When more than one State is involved in matters relating to children and their families, [the Hague Conference on Private International Law \(HCCH\) Family Conventions](#),<sup>40</sup> in particular its Children's Conventions, provide identity protections albeit indirectly. A clear example is offered by the [Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption](#) (HCCH 1993 Adoption Convention), which applies when a child is moved from one Contracting State to another either after his or her adoption in the State of origin or for the purposes of such an adoption in the receiving State.<sup>41</sup>

In such matters, the child's identity (i.e. name and family relations) is modified, with the involvement and approval of both States within the cooperative framework established by the Convention. As a result of an intercountry adoption (ICA) and the modification of the child's original identity, adoptees may in the future seek information about their origins. Consequently, the 2015 Special Commission reviewing the practical operation of the Convention notes that for State parties, *"the possibility of a child searching for his or her origins be included in the counselling and preparation of the prospective adoptive parents. When an adopted child or an adult adoptee undertakes such a search, professional support at all stages is recommended."*<sup>42</sup>

Since 2015, the HCCH has set up an experts' group to consider the feasibility of drafting a Private International Law instrument on legal parentage and a separate instrument on legal parentage established as a result of (international) surrogacy arrangements noting that *"in an era of globalisation, when family's cross borders with increasing frequency, these differences in States' domestic laws can give rise to complex questions of private international law concerning the establishment, contestation and recognition of children's legal parentage."*<sup>43</sup> The issue of establishment of legal parentage in cross-border matters is directly linked to identity rights, in terms of potential family relations that may or may not be recognised. The reports for these expert meetings provide a comprehensive overview of the latest developments in relation to legal parentage and surrogacy.<sup>44</sup>

### iii.f Other international initiatives

International Social Service, with experts has drafted the Principles for the protection of the rights of the child born through surrogacy, referred to as the *"Verona Principles."* Principle 11 focuses on the protection of identity and access to origins.<sup>45</sup>

### iii.g Regional frameworks

#### Africa

The African Charter on the Rights and Welfare of the Child (ACRWC) is the main regional instrument that protects children.<sup>46</sup>

Specifically, its Art. 10 provides protections on privacy and Art. 19 notes "1. Every child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, have the right to reside with his or her parents ... 2. Every child who is separated from one or both parents shall have the right to maintain personal relations and direct contact with both parents on a regular basis." Likewise, Article 25 states that children who are separated from their parents should get special protection and should be provided with alternative family care. States should also take all possible steps to trace and re-unite children with parents. These provisions protect the child's identity rights related to the family.

Whilst Art. 6 ACRWC deals with identity, unlike the CRC, it does not expressly extend to family relations. The [General Comment on Article 6 of The African Charter On The Rights And Welfare Of The Child: "Right To Birth Registration, Name And Nationality"](#) provides a link at Paragraph 7: "the greatest obstacle to the effective realization of the right to a nationality in Africa is the lack of functional and universal civil registration systems. In the absence of proof of the circumstances of a child's birth – both the child's parentage and place of birth – it is very difficult to ensure that the child obtains recognition of its nationality, whether that of his or her parents, or of the State where he or she is born."

As such, this practical difficulty of proving the child's parentage is linked to identity rights in family relations. The General Comment recommends that the birth registration process includes "children born out of wedlock, children born to a parent or parents who are foreigners (including those whose parents are in an irregular immigration status, or who are refugees or asylum seekers), children whose parents are unknown, and all other groups at risk of non-registration." The modification of the child's identity, may occur under the following circumstances "the nationality of a child may be impacted by a change in status of his or her parents: in particular in case of marriage, divorce, or change of nationality of a parent. In general, it is in the best interests of the child that, when his or her parent acquires a new nationality through marriage, naturalization or similar procedure, the child also acquires that nationality. However, where a parent loses or is deprived of nationality, that loss or deprivation should not affect the child and in no case may a child lose or deprived of his or her nationality if he or she would be left stateless." Arguably, the African region implicitly recognises the necessity of recording of family relations to preserve the child's identity and avoid statelessness.



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## Americas

Identity rights in family relations have been an important issue in this region, in particular due to some countries' past political, social and legal contexts. The American Convention on Human Rights 1969 (*Pact of San José*)<sup>47</sup> explicitly mentions the right to a name, to family life, to nationality and the rights of the child. Furthermore, Art. XII of the Inter-American Convention on Forced Disappearance of Persons<sup>48</sup> states that “the States Parties shall give each other mutual assistance in the search for, identification, location, and return of minors who have been removed to another state or detained therein as a consequence of the forced disappearance of their parents or guardians”, which responds to the history of some of the region's countries.

The Inter-American Commission of Human Rights and the Inter-American Court of Human Rights have expressly addressed children's identity rights in family relations. In particular, in the case of *Ramirez Escobar v Guatemala* (2018),<sup>49</sup> the Commission considered that the State was responsible for the violation of the right to identity and to a name, as the name of the adopted brothers had been changed arbitrarily, and these were a fundamental component of their identity (Para. 358). The Court further emphasised that identity is a right that includes various elements, including family relations (Para. 359), and that names and surnames are essential to formally establish an existing bond with different members of the family (Para. 360). Guatemala was considered responsible in the events that generated a change of name and identity, and the country recognised the irregularities committed in the process of declaration of abandonment (Para. 361).<sup>50</sup>

## Asia-Pacific

The Association of Southeast Asian Nations (ASEAN) has a few initiatives connected to the issue of identity, mostly related to victims of trafficking, especially women and children. For example, the 2017 ASEAN Convention against trafficking in persons, especially women and children notes that “the parties shall prevent the movement of traffickers and victims of trafficking in persons by effective border control and controls on the issuance of identity papers and travel documents, and through effective measures to prevent counterfeiting, forgery or fraudulent use of identity papers and travel documents” (Art. 13, s. 2).<sup>51</sup> The ASEAN Commission on the promotion and protection of the rights of women and children work plan 2016-2020 covers broadly identity issues.<sup>52</sup>

For example, in partnership with UNHCR, they have been promoting inclusion and sustainable development in building the ASEAN Community through ensuring the recognition of the identity of all women and children. Regional workshops were held in Indonesia on “Birth registration and the right of everyone to recognition everywhere as a person before the law” and in Thailand on “Promoting control on surrogacy through surrogacy law to protect the rights of surrogate children and all relevant parties.”

## Europe

Europe has a number of legislative provisions<sup>53</sup> that are relevant to the issue of identity rights, including Art. 8 of the European Convention on Human Rights and Art. 22 of the European Convention on the Adoption of Children (Revised). Specifically Art. 20(3) allows for competent authorities to have laws where parents of origin have a legal right not to disclose their identity, where privacy laws can be overridden on a case by case basis.

The latest jurisprudence of the European Court of Human Rights (ECtHR) has recognised the right to obtain information about one's origins including parent's identity. This is protected under the right to private and family life, as outlined in its Guide, noting *Odièvre v. France*, Para. 29; *Gaskin v. the United Kingdom*, Para. 39; *Çapın v. Turkey*, Paras. 33-34.<sup>54</sup> These decisions do not promote an absolute right to access to origins, as a balance of other rights, including those of the birth mother, is required. The Guide notes:

234. *In Odièvre v. France [GC], the applicant, who was adopted, requested access to information to identify her natural mother and natural family, but her request was rejected under a special procedure which allowed mothers to remain anonymous. The Court held that there was no violation of Article 8 as the State had struck a fair balance between the competing interests (§§44-49).*

235. *However, where national law did not attempt to strike any balance between the competing rights and interests at stake, the inability of a child abandoned at birth to gain access to non-identifying information concerning his or her origins or the disclosure of the mother's identity was a violation of Article 8 (Godelli v. Italy, §§57-58)*

Other important cases which take note of the importance of having information and/or maintaining contact with the family include *Jäggy v. Switzerland*, Paras. 38 and 40; *Strand Lobben and Others v. Norway*; *Pedersen and Others v. Norway*; *Roda and Bonfatti v. Italy* and *Scozzari and Giunta v. Italy*.

More recently, Recommendation 2156 in 2019 on Anonymous donation of sperm and oocytes: balancing the rights of parents, donors and children<sup>55</sup> notes "the ECHR's judgments include guidance with respect to the importance of balancing all rights, without giving absolute priority to any of them. However, an additional difficulty is to ascertain the best interest of the child in a given situation, and once this is established, how to make sure that this is given primary consideration, while at the same time considering the rights and interests of all other relevant stakeholders."

Recommendation 7.1 from this report states that "anonymity should be waived for all future gamete donations in Council of Europe member States, and the use of anonymously donated sperm and oocytes should be prohibited. This would mean that (except in exceptional cases, when the donation is from a close relative or friend) the donor's identity would not be revealed at the time of the donation to the family, but would be revealed to the donor-conceived child upon his or her 16th or 18th birthday. The donor-conceived child would be informed at that time (ideally by the State) that there was supplementary information available on the circumstances of his/her birth. The donor-conceived person could then decide whether and when to access this information containing the identity of the donor, and whether to initiate contact (ideally after having had access to appropriate guidance, counselling and support services before making a decision)."

There are currently two requests – N° 21424/16, introduced in April 2016 by Audrey Gauvin-Fournis (Kermalvezen) and N° 45728/17 introduced in June 2017 by Clement Silliau on whether France would consider allowing donor-conceived persons through an authority the opportunity to ask donors whether they would consent to having their personal details revealed.(Chapter 5.3)



CHAPTER 1

# Creation of a child's identity related to “family relations”

The right of the child to an identity begins with the right to have the constituent elements of identity inscribed in an official document: registration at birth, the possibility of obtaining a complete birth certificate, which includes the child's name, date and place of birth, as well as information about parents.

A November 2021 report presenting the views, experiences, and recommendations of 561 children and youth from 11 countries across Asia and the Pacific on CRVS notes the importance of birth, marriage, and death registration that is easily accessible, free, and without erroneous information. The children and youth noted that "no registration equals no protection" and "no registration means no essential services."<sup>56</sup>

In this moment, where the child's identity is created, CRVS systems have a key role in upholding the child's right to identity, with the key objective *"to ensure certainty in legal matters, that individuals be provided with probatory instruments which allow them to prove, with ironclad certainty, the facts relating to their existence, identity, and personal and family situation."*<sup>57</sup> Despite this identity right and existence of CRVS systems, UNICEF notes that *"of the 166 million children without a legal identity, half live in just five countries: the Democratic Republic of the Congo, Ethiopia, India, Nigeria and Pakistan."*<sup>58</sup>

This Chapter explores the various situations whereby the child's identity is not established at birth, or is incomplete, due to laws, policies or practices. While the name, date and place of birth are often recorded, other information is not always mandatory. Most CRVS systems are currently not set up to record all relevant information including genetic and gestational origins. For example, it is essential that birth registries be set up to include information about biological origins, including, for instance, the person who gave birth and those involved in conception, when there is recourse to ART.

## 1.1 General considerations

**The stage of creating a child's identity through birth registration may be impeded because of a few practical obstacles.**

UNICEF mentions in a 2019 report that “the reasons are often the same: lack of resources and investment in precise, complete systems of registration in the civil registry, together with obstacles blocking access to services for the registration of births, and further complicated by political, legal and institutional obstacles.”<sup>59</sup>

Further, it is a worldwide problem that children born in rural areas from underprivileged backgrounds and whose mothers have a low level of education are less likely to have their births registered.<sup>60</sup>

**Gender discrimination remains a major challenge in many countries, which can also lead to statelessness,<sup>61</sup> where a marriage certificate is required (e.g. Indonesia), and where a child of unknown father cannot be registered (e.g. Nepal and Qatar).<sup>62</sup>**

Race discrimination may also prevent birth registration and formal creation of the child's identity. For instance, in Latin America and Caribbean, “the registration process in a number of countries lacks sensitivity to indigenous peoples' culture and tradition. The cross-border ‘nature’ of indigenous communities adds to these obstacles,”<sup>63</sup> which has contributed to the three million children under the age of five that have never been recorded.<sup>64</sup>

The European Commission has also noted that “*the social exclusion of Roma children is often linked to the lack of birth registration and identity documents.*”<sup>65</sup>

Other obstacles to birth registration may occur in countries, where for example, registration is costly (e.g. Uzbekistan<sup>66</sup>) and administrative procedures for birth registration are cumbersome, or may be difficult for children who are refugees or born from undocumented migrant workers, who do not seek birth registration due to fear of arrest (e.g. Malaysia<sup>67</sup>). It may also be a combination of these factors, such as fees, discriminatory criteria on whether the child's parents are married or not, coupled with the administrative burden requiring several documents, which makes it particularly inaccessible for those living in poverty (e.g. Philippines<sup>68</sup>).

Decentralisation and twinning with the health sector have proved highly effective in promoting registration at birth. Rwanda increased its birth registration rate to 86% in 2019-2020, a jump by 30% points over 2014-2015 by delegating the responsibility of birth registration of newborns to health facilities. UNICEF likewise supported efforts in Tanzania to strengthen the equitable reach of services, where the one-stop/one-visit system was extended to two additional provinces. The new system has bridged the rural-urban divide improving access for underserved groups, with the aim that “*within the first 2 months of its operation, to provide more than 580,000 children under 5 with birth certificates.*”<sup>69</sup>

Even if all birth information is properly recorded, in cross-border situations, most national CRVS systems are not set up to communicate with systems of other countries.<sup>70</sup> As such, when a child moves to another country, birth records reflecting his or her identity, may not be recognised by the new country (e.g. *decision of the CRC Committee in M.B.S v. Spain* (2020) in Chapter 5.4).



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Paradoxically, although international instruments to facilitate international co-operation in civil-status matters and further the exchange of information between civil registrars are available, they are insufficiently known and used. Strengthening such an exchange between CR authorities will undoubtedly be a better way than including everything in a birth certificate or adding too many languages in a birth register.

Then, depending on the need, the country of birth can provide a certified copy of the birth certificate in the destination country's language. The International Commission on Civil Status (ICCS) has adopted 34 International Conventions to harmonise the provisions in force in the States parties on matters relating to the status and capacity of persons, to the family and to nationality and improving the operation of

civil-status departments in those States. The ICCS conventions have multilingual civil status forms, which allow any State authority to understand an act issued in another State Party, without having to face the problem of translation (Convention N° 16, in force in 24 States). Cooperation between authorities is facilitated through different ICCS Conventions, which encourage direct international communication between the civil registrars. This allows for simplified updating of civil status documents in the various States Parties (Conventions N° 3, 23 and 26). A new Convention adds to these forms the possibility of direct communication between civil status authorities in case of serious doubt as to the authenticity or the content of an act (Convention N° 34, not yet in force but signed by 5 States). Fraud can thus be effectively combated.





**Challenges in creating full and accurate information about the child's identity may occur when they are abandoned by their birth parent(s).**

## 1.2 Alternative care and Adoption

The magnitude of this situation is unknown as worldwide statistics do not exist – although dated information is available.<sup>71</sup> Abandonment is where parents leave the child without any identifying information. For example, certain countries authorise such practices, by allowing anonymous childbirth or “baby boxes” in order to avoid infanticide.

**Taking into account the necessity to prevent identity loss during abandonment and infanticide, international standards, for example Paragraph 42 of the UN Guidelines for the Alternative Care of Children (UN Guidelines) states that “when a child is relinquished or abandoned, States should ensure that this may take place in conditions of confidentiality and safety for the child, respecting his/her right to access information on his/her origins where appropriate and possible under the law of the State.” It seems that the opportunity for confidential birth may be less intrusive for the mother and better preserves the child's right to know his or her family relations.**

### 1.2.1 Anonymous births

Since 1941 anonymous childbirth has been authorised in France, referred to as “*naissance sous X*.” A mother can be admitted to hospital and give birth anonymously. She is asked to leave information pertaining to her health and that of the father, the circumstances of the birth, the origins and identity of the child, all of which is kept in a sealed envelope. The first names and sex of the child, the date and place of birth, are inscribed on the outside of the envelope. According to a study carried out in 2016-2017, at the request of the Director General of Social Cohesion, only 10% of the 457 mothers who had given births anonymously in 77 French departments had left her identity in the file of the child, and 42% did not leave a sealed envelope.<sup>72</sup> The French National Council for Access to Personal Origins (CNAOP)<sup>73</sup> was created in 2002 to collect and preserve information on the identity of birth parents and the child's history.

Likewise, in 1999 the United States of America introduced a system of “American Safe Haven laws.” The laws differ from State to State<sup>74</sup>, but exist in 50 States. They allow parents to leave their newborn child anonymously in a safe place, hospital, emergency room, police station, or with an employee at an organisation working in child protection. Time limits allowing for abandonment vary from one State to another, between 72 hours after the birth to one year.<sup>75</sup>



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The parents are not obliged to leave personal information, but must fill in questionnaires concerning the child, particularly their medical history. The children are then placed provisionally with a foster family, and later adopted when the rights of the biological parents have expired.<sup>76</sup>

Such practices are allowed in other countries: for example, in Austria, it is legal to give birth anonymously,<sup>77</sup> and in Slovakia and Poland, it is possible to leave a child anonymously at a hospital.<sup>78</sup> In the Philippines, the Department of Social Welfare and Development (DSWD) reports that out of 1,604 children issued the Certification Declaring a Child Legally Available for Adoption from 2018 to 2020, 20% or 320 children<sup>79</sup> were foundlings, defined as children who are abandoned and with unknown parentage.<sup>80</sup> Upon registration a Foundling Certificate is issued in lieu of a birth certificate.<sup>81</sup> When the foundling is available for adoption, the guardian's name and residence are given instead of the birth parents on the petition for adoption.<sup>82</sup>

In these cases, where information about the child's parents is not available, it is of vital importance that the efforts to locate them be recorded and accessible for the child at a later stage (Chapter 4.1).

## 1.2.2 "Baby boxes"

"Baby boxes" exist in several countries, including Austria, Belgium, Czech Republic, Germany, Japan, Hungary, Italy, Latvia, Lithuania, Poland, Portugal, Russia, Slovakia, Switzerland and the United States of America. In this way, a mother or parent(s) can deposit a child anonymously at a hospital or elsewhere. The objective of the "baby box" is to prevent abandonment in unsafe conditions and infanticide of new-borns.<sup>83</sup>

It is interesting to note that these "baby boxes" have resurfaced in the years 2000, of which 80 in Germany, 47 in the Czech Republic, 27 in Hungary and 45 in Poland.<sup>84</sup> In the 15 years after 1991, Switzerland went from one to eight "baby boxes".<sup>85</sup> Between 2001 and June 2016 (date of survey), 17 children were deposited anonymously and the mothers of two of them were later identified in Switzerland.<sup>86</sup> In Japan, a "baby box" appeared in a hospital in 2007. Between 19 May 2007 and 31 March 2008, 17 new-borns were abandoned. In 10 cases relevant information concerning the parents was left. In the United States of America, "baby boxes" appeared in 2016 and there are now 66 in Indiana, four in Ohio, four in Kentucky, seven in Arkansas, one in Florida, six in Arizona.<sup>87</sup>

In addition to the ethical problems over the use of "baby boxes" as a practice, many countries do not keep data concerning the number of children deposited, as noted by 2012 study by the University of Nottingham.<sup>88</sup>

In countries where these “baby boxes” exist, the CRC Committee has expressed its concern, for example urging Switzerland (2016 and 2021) and Slovakia (2014) “to prohibit the use of baby boxes, and to reinforce and promote already existing alternatives, and to consider introducing, as a last resort, the possibility of confidential hospital births.”<sup>89</sup> A 2016 report by the Swiss Government has noted its efforts to prioritise support to mothers.<sup>90</sup>

Another goal to ensure complete information is recorded at birth, relates to practices preventing abandonment such as early intervention initiatives, which seek to support parents in their caregiving roles. For example, improving access to health and other services, when a child is born with a disability, has helped parents in their caregiving role (Paras. 9 and 10 UN Guidelines). This should include addressing discriminatory social norms and beliefs, provision of community-based support and services for children with disabilities and their parents as well as targeted education on the child's disability and peer support programs. In Europe, several measures have been introduced, such as an increase in subsidies to families, the development of guidelines and regulations concerning the abandonment of children, improved training for professionals and a growing public awareness of abandonment and its consequences. The University of Nottingham report shows how change carried out at the local level can influence the rates of abandonment.<sup>91</sup> According to this report, all measures, including those which encourage the bond between mother and child during the first days of the baby's life, can prevent abandonment and often less costly for governments.

In Brazil, a local court in Rio de Janeiro<sup>92</sup> has established several multi-disciplinary initiatives to encourage birth registration and obtention of documents leading to legal identity, which has prevented the abandonment of children. For example, this local court has been working with women who have been arrested and imprisoned while pregnant to ensure that the new-born is registered. Often this firstly requires efforts to locate proofs of the mother's identity. The multi-disciplinary team works with the child's father and mother's family, both of whom she is often estranged from. As a result of these efforts, the mother feels supported in her care-giving role and family ties are re-established. Consequently there is an environment where the bond between the mother and the new-born may flourish, preventing unnecessary separation.

## 1.3 Assisted reproductive technology

**While recourse to ART, creates opportunities for family formation, it also brings a number of risks, including those related to the creation of the child's identity, due to the lack of information preserved.**

The legislation in many countries permits anonymous donation of human reproductive material, which leads to gaps in identity creation related to genetic history.<sup>93</sup> In Belgium, the Czech Republic, Greece and Spain, anonymous donation of sperm is allowed. The donors of oocytes are accepted both anonymously and in an identifiable manner in Belgium, Bulgaria, Hungary, Latvia, Romania, and Slovenia.<sup>94</sup>

**In the United States of America, where tens of thousands of children are born every year from donations, the law varies from one State to another, but many States still allow anonymous donations. For example, in 2011, the State of Washington changed its law, and the donor has to ask specifically to remain anonymous. California, in 2020, made it easier for children born through donations to obtain medical information which concerns them.<sup>95</sup>**

Other countries do not allow anonymous donations of sperm such as Germany, Austria, Finland, Netherlands, Sweden, Switzerland and the United Kingdom. For instance, since 2001, the donation of sperm is no longer anonymous in Switzerland.<sup>96</sup>

The Swiss law allows the child born through donation to obtain information about biological origins once he or she reaches the age of maturity. Efforts to offer psychological support for couples, such as the University Hospital of Lausanne exist, noting that *"in the specific case of insemination with the sperm of the donor, counselling is obligatory because of the multiple issues involved. Certain subjects are covered in depth with the couple, such as the break in the genetic parentage, the bond with the future child, and possible alternatives (adoption, abandoning the project), etc."*<sup>97</sup>

In addition to the challenges that arise with the use of anonymous donation of human reproductive material, specific issues arise in surrogacy arrangements. Without official statistics, surrogacy appears to be on the rise, and the BBC noted on 25 April 2019 that the estimated value of the industry was USD six billion worldwide in 2012, and there was a 200% increase in demand between 2011 and 2018.<sup>98</sup> In the context of surrogacy increasing, a growing number of children are at risk of not being able to access their origins.

In terms of recording details about the surrogate mother, surrogacy legislation varies from country to country and there are often gaps when creating the child's identity. In some countries such as Georgia, Russia and Ukraine, and some states in the USA, such as California and New York, the name of the surrogate mother, genetic or not, does not appear on the birth certificate, only those of the intending parents. In other countries, the information is preserved, but access to it by the child is not always envisaged. In Russia, indeed, the name of the surrogate mother does not appear on the birth certificate, but it is reflected in the birth registry book and is available when the child reaches 18.



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Furthermore, countries which explicitly prohibit surrogacy (e.g. France, Germany, Italy, Spain and Switzerland) have no legislation on determining legal parentage and in some cases may have to recognise legal filiation without having complete information on the origins of the child. The *NZZ am Sonntag* collected data for the first time in Switzerland: *"last year 48 children born abroad through a surrogate mother were registered in Switzerland, twice more than in 2016. In four years, that represents 144 children, most born in the United States of America, followed by Ukraine and Canada."* According to the *NZZ am Sonntag*, *"professionals estimate the real number to be higher, as the methods of birth abroad are not always declared. This data collection was launched by the Conference of Directors of the Departments of Justice and Police. The objective is to open the debate in order to guarantee the right of the child to know his or her origins, and also to clarify the role of each person involved in the surrogacy"*.<sup>99</sup> Moreover, there are countries like the Philippines that have no law allowing nor prohibiting surrogacy occurring within or outside the country involving their citizens. As a result, the rights of the child born through the arrangement, surrogate mother, providers of human reproductive material, and intending parents remain unsettled, with the status and identity of the child precarious.<sup>100</sup>

The UN SR on sale of children has noted that *"a blanket enforcement of anonymity for gamete donors, and/or the surrogate, including by only recording the intending parents on the birth certificate, will prevent the child born from a surrogacy arrangement from having access to his or her origins. This is a particularly common violation of the rights of the child and is amplified in the case of international surrogacy arrangements."*<sup>101</sup> To preserve the child's identity, a State may decide that the details of donors of human reproductive material and/or surrogate mother be included in the birth register or other central depository, and not necessarily in a birth certificate, as the latter may be publicly accessible to others.



“

(...) Thibault, on the other hand, has not tried to know his origins. Now that he is adult the secret weighs on him more and more. *“The two questions which haunt me are what does the face of my genetic father look like, and what was his motive when he gave me life”* he says. *“It is a profound existential suffering. And I do not even know if the donor who allowed me to exist is alive or dead.”*<sup>102</sup>

Stephanie only learned at the age of 35 that she was one of those babies born at the Frauenklinik in Berne. She very quickly met Dr Gigon, one of the most eminent specialists at the time, who practised insemination. He dashed her hopes: he explained that the hospital did not keep any names and covered up the traces by mingling the sperm. Faced with this dead end, the young woman tried her luck on an American site which identifies DNA profiles. In this way she discovered the existence of at least one half brother, living in Berne.

*“I had never thought that one day I would be going to discover a brother. It is completely crazy. Not only he is my brother but it is also a piece of the puzzle that I can reconstruct with the famous unknown donor. Discovering him, I discover myself. On a physical level I see everything I was missing for years. All these resemblances that I had with no one, I find them when I look at him. It feels good”.*

Mathias, the half brother of Stephanie, had never imagined that his father was not truly his father. A few months ago, like many Swiss people, he took a DNA test to know his ethnic and geographical origins. The internet site taught him about the existence of Stephanie and two other half brothers. And it is perhaps only a beginning.<sup>103</sup>



## 1.4 Emergency situations

**Children born in regions of armed conflict, during natural disasters or where widespread migration occurs run a greater risk of not being registered at birth.**

The lack of mechanisms to preserve information in these situations, may result in children never having access to their origins. 29 million children were born during conflicts in 2018.<sup>104</sup> The children born to women belonging to the armed groups risk being abandoned and/or never having their identity established at birth.<sup>105</sup>

In Ukraine for example, only 43% of children born in those territories not under government control obtained a birth certificate in 2019.<sup>106</sup> These situations can in turn lead to statelessness.

**In Joint General Comment N° 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return noted that:**

*"25. Nationality laws that discriminate with regard to the transmission or acquisition of nationality on the basis of prohibited grounds, including in relation to the child and/or his or her parents' race, ethnicity, religion, gender, disability and migration status, should be repealed. (...) 26. States should strengthen measures to grant nationality to children born in their territory in situations where they would otherwise be stateless. When the law of a mother's country of nationality does not recognize a woman's right to confer nationality on her children and/or spouse, children may face the risk of statelessness. Likewise, where nationality laws do not guarantee women's autonomous right to acquire, change or retain their nationality in marriage, girls in the situation of international migration who married under the age of 18 years may face the risk of being stateless, or be confined in abusive marriages out of fear of being stateless."*

In emergency situations, where civil registries, may be destroyed, collaboration within the community to preserve vital information is key. For example, UNICEF Cote d'Ivoire has supported authorities to register new births and re-establish vital information during and post conflict in the North (2002-2010). In terms of registering new births, village and community leaders, were given the responsibility to work with families to record vital details. This information would later be transcribed onto the official registries that would be reconstructed through collaboration with the Judges and civil status officers. An operating manual outlining the specific process, including the digitalisation of all information, was created and this prevented the need to rely solely on paper trails. In these emergency contexts, the NGO Plan International notes the necessity of having a decentralised registration system, including teams who go into the field and collaborate with people such as medical personnel, midwives and local officials trained at the local level to register births, as occurred in Burkina Faso after mass flooding.<sup>107</sup>

## 1.5 Key points for building identity protections when the child's identity is created:



### **Legislation, policies and practices should promote the recording of all relevant elements**

(e.g. avoid discriminatory practices preventing access to identity, abolish use of anonymous gametes);



### **Support to families at risk of abandonment in their caregiving role,**

including appropriate psychosocial support and access to basic and targeted services;



### **Introduction of confidential hospital births**

to replace "baby boxes" and anonymous births;



### **CRVS systems should:**

- be set up to include all relevant elements of the child's identity, especially genetic and gestational origins, which may be facilitated by having separate birth registration forms,
- have its civil registration (CR) laws amended where necessary (definition of live birth, definition of mother and father, adoptive / intending parents as informants, explicit provisions for registration/ re-registration of such children, including a necessary clause on data privacy and access to data, etc.),
- allow for multilingual civil status forms which allow any State authority to understand an act issued in another State without translation problems (e.g. ICCS Conventions N° 16 and 34),
- establish direct international communication between the civil registrars in cross-border matters (e.g. recognition procedures and simplified updating of civil status documents);



### **Actors responsible for CRVS systems should be trained and equipped**

to record all relevant information and work with other sectors to obtain this information.



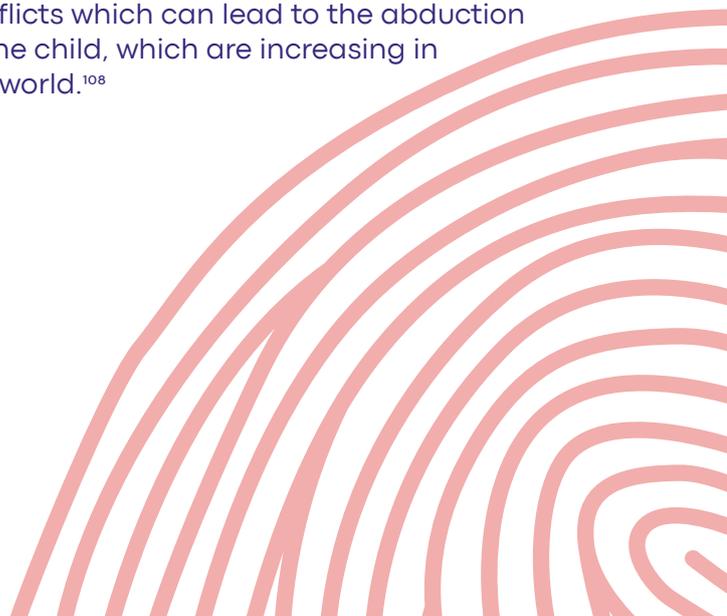
CHAPTER 2

# Modification of the child's identity related to "family relations"

There are several permissible situations where the child's original identity at birth, may be modified according to international standards (e.g. Arts. 9, 20 and 21 CRC). However, the life of a child and later as an adult, can be deeply disturbed as a result of inappropriate modification of his or her name, nationality and family relations, established at birth (Chapter 1).

When such modifications occur, information about the original identity should be preserved and accessible (Chapter 4). The true facts surrounding birth circumstances should never be changed, as origins are unalterable. A civil registry serves a vital role, post birth registration, to maintain a record of all subsequent changes and keep proof(s)/ document(s) that triggered such changes. While CRVS laws generally support such a practice, resources are needed to ensure their implementation, for example for the safe storage of documents that generated those changes. This should include training of relevant professionals. Digitization can play an important role in preserving the child's identity (Chapter 4).

Modification can be a formal change of parentage/transfer of parental rights resulting in a new (legal) identity or an informal modification, for example, when the child is deprived on a psychosocial level of family bonds. Several situations can lead to this modification of identity, such as alternative care and adoption for the child following separation from his or her family of origin (Chapter 2.2); children born through ART including surrogacy (Chapter 2.3); and in emergency situations (Chapter 2.4). Other situations which result in modification exist, but are beyond the scope of this publication, such as family conflicts which can lead to the abduction of the child, which are increasing in the world.<sup>108</sup>



## 2.1 General considerations

**Any decision which leads to the modification of the identity of the child should be preceded by a best interest assessment and determination (BIA/BID), carried out by competent and qualified professionals.**

It should actively encompass the views of the child (as age permits) and family members.<sup>109</sup> This assessment should include detailed information on the family situation and origins as stated by the UN Guidelines.<sup>110</sup> A thorough and well-prescribed process, as advocated by Nigel Cantwell,<sup>111</sup> is essential in order to avoid arbitrary interpretations of what constitutes the best interest of the child, and to guarantee that all the child's rights are respected.

**For example, according to international standards, States have the powers to make coercive decisions to remove children and place them in other settings (Art. 9 CRC). However, these decisions may not be justified, when they are unnecessarily separated from their families, which can lead to an improper modification of children's identities.**

Specific guidance on identity rights and best interests is outlined in Paragraphs 55–57 of the CRC Committee's General comment N° 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Art. 3, Para. 1).<sup>112</sup> It is further argued that when any modification of a child's identity is considered, the best interests of the child should be "the paramount consideration" and not just "a primary consideration." The CRC sets a basic standard for the "best interests of the child" as "a primary consideration" in all decision-making affecting a child. The CRC explicitly elevates those best interests to the status of the determining factor in decision-making when identity is being modified. This occurs, for example, when the State is considering separating the child from his or her family<sup>113</sup> or when a (full) adoption occurs.<sup>114</sup> It is important to note that the very existence of such frameworks guaranteeing that modification of the child's identity occurs only when it is in his or her best interests, including his or her participation, remains a challenge in many countries. This is especially true in contexts where child protection systems may be weak.

This may occur for example, when children are involved in the worst forms of child labour outside the family. Deprived of family care, they may not receive the protections offered by the child-parent relationship<sup>115</sup> and may be drawn into situations where they may be exploited. While not "technically" receiving any care, these children are in need of safe and caring environments to live and family relations preserved. For example, in some Latin American countries, the majority are girls and are called "criaditas", such as in Paraguay, or "restavek" in Haiti where more than 250 000 live in dire conditions,<sup>116</sup> and are frequently victims of exploitative forms of child labour or sexual abuse. Far from their families and often without identity documents, they are left to their own devices and lose, among other things, the opportunity to maintain family ties. Unfortunately, these placements are private arrangements and possible contraventions fall under the radar.

These situations of the worst forms of child labour equally occur in other regions and countries, such as Angola<sup>117</sup> and Mozambique.<sup>118</sup> UNICEF and the International Labor Organization (ILO) note that the COVID-19 pandemic will probably result in an increase in these arrangements as "*children can easily step in as unskilled labourers. Threats to children's rights from an enlarged informal sector should therefore not be underestimated. Greater informal employment coupled with economic hardship could push many children out of school and into the labour market.*"<sup>119</sup> It is therefore difficult to detect this form of deprivation of identity, despite the significant risks.



**When children are separated from their families of origin, their ties with the latter and consequently their identity, will be affected to varying degrees.**

## 2.2 Alternative care and Adoption

According to available statistics, about one child in ten in the world is cared for by a relative;<sup>120</sup>

2.7 million children in 142 countries are living in institutions, of whom 90% are “social orphans” according to a 2020 report;<sup>121</sup> and between 1990 and 2013, more than half a million children were adopted internationally in the main receiving countries.<sup>122</sup> “Social orphans” are children, who have at least one living biological parent and are in alternative care, for other “social” reasons including poverty, violence etc. Global statistics are not available on the numbers of domestic adoptions.

### 2.2.1 Alternative care

**Different forms of alternative care will involve a change in parental responsibility (i.e. day to day care of the child), and in some cases legal parentage. On a psychosocial level, the separation of the child from the birth family, especially when for extended periods, can impact family relationships and potentially their social development. This situation can create challenges with protecting the child's identity, particularly related to “family relations” .**

Many children are cared for informally by family members or close friends when parents migrate to work in other countries or children require access to education, thus geographically separated from their parents. Other children are formally placed in foster families, and over time many develop a feeling of belonging to this new family, which modifies their construction of identity connected to the family element. Some children are subjected to multiple placements, which greatly impedes the building of their identity, and their feeling of belonging becomes fragile or disappears altogether. According to Emilie Potin, French sociologist, *“the child in alternative care sees himself or herself through two types of parentage. None of the children she met renounced their family of origin, but with time and everyday life the child fits into the shared day-to-day life of his or her foster family (...) He or she recognises this family as one which will accompany him or her and which the child will accompany throughout his or her life.”*<sup>123</sup>

For example, in some countries, legislation formalises these relationships, such as in the Philippines, where if a child's stay with his or her foster parent has lasted at least seven years, the foster parent may file an application for long-term foster placement, subject to Department of Social Welfare and Development's assessment and evaluation every three years for the child's best interest.<sup>124</sup>

The child's identity related to the family may therefore be modified through the development of a feeling of dual allegiance. These modifications are not without danger, especially when the child is unduly placed in a foster family and efforts to prevent separation from the family of origin are inadequate.

In addition, some children are subjected to multiple placements, which greatly hinders the construction of their identity, and their sense of belonging is weakened or disappears completely.

A high number of children are placed in institutions, with a significant number having a disability, where their identity and individuality are likewise under threat and risk being destroyed.<sup>125</sup>



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This may occur because they are falsely identified as “paper orphans” (Chapter 3.2) or because family tracing mechanisms and reintegration (e.g. initiatives to facilitate contact) are absent, although progress is underway (Chapter 5.2). An Australian study among people who have lived in large-scale institutions reveals tragic situations where children are no longer called by their name, but simply by a number, and they lose all contact with brothers and sisters, their family and their place of origin (Chapter 2.6). Settings where children may have greater opportunities to attach to the “carer”, may provide better overall outcomes for them.<sup>126</sup>

In other cases, some children are placed in religious institutions to receive care and education, together with spiritual instruction. It is important that children maintain contacts with their families in these settings, to preserve their identity. For instance, in Cambodia, thousands of children, especially boys aged 10 and over, were placed in one of the 65 Pagodas as of 2014/2015.<sup>127</sup> This situation also occurs in Bhutan, where Zhabdrung Ngawang Namgyel, the Zhung Dratshang (the Central Monk Body), a highly respected institution fulfils critical functions such as caring for children.<sup>128</sup>

However, studies carried out by *Human Rights Watch* have denounced abuse which is rife in some of these religious institutions. For example, according to a 2019 report “about 100,000 talibé children living in boarding schools in daaras throughout Senegal are obliged by koranic masters or marabouts to beg every day for money, for food, for rice or for sugar.”<sup>129</sup> These situations can stretch, or even rupture, original family relationships, and the creation of a bond with a religious leader may unduly modify the child's identity.

#### **The experience of a child placed in a foster family (France)**

*“Astrid has two families but has a stronger bond with her foster family, not only because of shared daily life, but also on an emotional level, through her personal story and the family story, through the intensity of the family fabric, an anchor in time and space.”<sup>130</sup>*

#### **The words of children placed in institutions (Australia)**

*“The absolute sadness I still have is the loss of family, never receiving or giving presents, having birthdays and all that family stuff. That is all I ever wanted.”*

*“It was here in Parkside I was given the name “NUMBER FIVE”. The number you are given is what you answer to, it is sewn on all your clothes, it is your locker number and your bed and cell number. I ceased being Alan and became number five.”<sup>131</sup>*



## 2.2.2 Adoption

In adoption, social, legal and cultural changes among others are made to the child's identity. This situation primarily occurs in full adoptions, an unknown concept in some countries of origin. Full adoptions severing ties with families of origin are very different from customary forms of adoption, akin to simple adoptions. In Polynesia for example, a 2018 study on confiage of children called "fa'a'amura'a" notes that "in Western culture adoption is accompanied by a complete break with the biological environment of origin, with a change of civil and legal status, whereas in the Maohi culture, the fa'a'amu does not lose the trace of his or her genetic origins."<sup>132</sup>

In these contexts, the identity of the child is changed to that of foreign adoptive parents, but meanwhile his or her parents of origin are waiting for his or her return, believing they have entrusted them for a period of time to another family. These cultural misunderstandings, can also occur in countries which practice simple adoption, such as Haiti (before the law of 2013 on adoption)<sup>133</sup> or Thailand.<sup>134</sup>

Whatever type of adoption applies, traceable family origins of the child must be kept so as to preserve his or her identity. Records must bear witness to this family history in a transparent way, and with integrity.

The European Court of Human Rights (ECtHR) in 2021<sup>135</sup> held that the Norwegian authorities gave "insufficient weight attached to mother and child's mutual interest in maintaining family ties and personal relations through contact" when a Muslim refugee from Somalia, 10-month-old son was removed and placed with a Norwegian couple who were members of the Evangelical Mission Covenant Church. In a follow up case, the ECtHR found that the Norwegian authorities failed to take into account the boy's religious and cultural background, when placing him in a context where continuation of his origins would not be possible. This case provides precedence for ensuring that factors such as child's family relations as well as continuity in cultural and religious origins be given due consideration prior to the modification through an adoption.

In the Australian State of New South Wales, Integrated Birth Certificates were introduced in August 2020, giving adopted people the option to retrospectively have on their birth certificate both their birth and adoptive families. It has been stated that, "*these reforms will give adopted people across the State the choice to use a birth certificate that includes information about their parents and siblings at birth, as well as their parents and siblings after they have been adopted.*"<sup>136</sup>

It seems that the Victorian Law Reform Commission in its 2017 reports, were also advocating for similar changes, "*for many people affected by closed and forced adoptions, the amended birth certificate symbolizes the serious problems they see with adoption. Their birth certificates represent erasure of their past and fabrication of their birth; a re-writing of their identity; and dishonesty and injustice which must be corrected.*"<sup>137</sup>



*"It took me 25 years to find my biological parents, I want to avoid that happening to other adopted children. I began to take an interest in adoption and the stories of adoptees as soon as I came full circle in my search for origins in 2014. I was lucky to find my biological mother, my biological father, and a half brother and a half sister. My path lasted nearly 25 years. In April 2015, with Laura Giraud, born in Bucharest and adopted by a French family, we decided to co-found the Association of French Orphans from Romania (A.F.O.R.), and one of the objectives is to accompany adopted people in the search for their biological families, during the phase of soul searching, the discovery of the country and the meeting with the biological families, up until the post-meeting support. In fact, after the fall of Ceausescu, almost 40,000 Rumanian children were adopted in seven main countries: the United States of America, Spain, Italy, Switzerland, Israel, Canada and France. Today, these children are adults and are asking questions about their origins (...)."<sup>138</sup>*

**Le Roy Dagen, M.**



## 2.3 Assisted reproductive technology

**More than eight million children in the world were born through medically assisted procreation, many conceived through donations of sperm or oocytes, according to a 2019 estimation of the Council of Europe.<sup>139</sup>**

The rapid development of these techniques, in response to the desire for a child, also raises questions concerning the child's identity, particularly with respect to family relations. In addition to the challenges of anonymity in the creation of the child's identity (Chapter 1.3), the child's identity may equally be unduly modified in these situations.

Where surrogacy is concerned, for example, in many countries where it is practised, the surrogate mother is recorded on the birth certificate. Parental rights are transferred to the intending parents, thus modifying the "family element" of the child's identity.

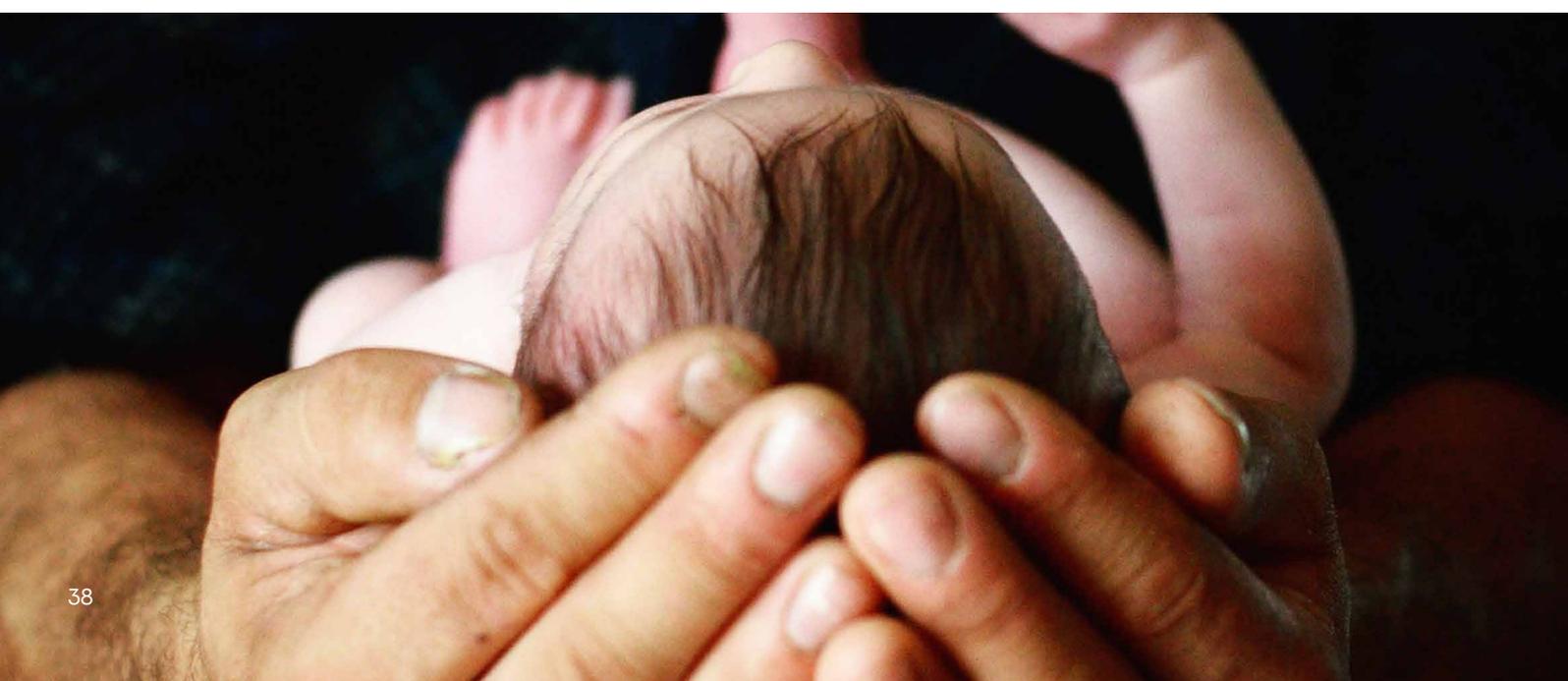
**In cases where the identity of the surrogate mother, and sometimes that of the donor(s) of human reproductive material, disappear from CR systems, the child's identity with regards to the family element is amputated.**

As noted earlier, Maud de Boer-Buquicchio, Special Rapporteur on the sale and sexual exploitation of children (2014-2020) points out that "*from the point of view of the child, genetics, gestation and the exercise of parental authority are all constituent elements of identity*".<sup>140</sup>

She also points out that "*the right of access to the origins significantly overlaps with the right to identity, as a constitutive element of the latter right*". The CRC Committee, through its Concluding Observations, often reminds States to guarantee that children born by ART – and in particular by surrogacy – have access to information on their origins, with appropriate support from all concerned. (Chapter 4).<sup>141</sup> The lack of certainty surrounding the child's origins becomes even more problematic in emergency situations, such as during COVID-19 or due to conflict when hundreds of children were "stranded".<sup>142</sup>

While priority was given to ensuring that these children were able to live with their intending parent(s), less attention was given to ensuring that their origins were preserved and other CRC rights protected.

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## 2.4 Emergency situations

**Children in emergency situations can also have their original identities at birth modified, when they are separated from their families.**

In this context, they may be deprived of a part of their identity (e.g. family relations and/or nationality) when for example, they are unaccompanied and/or asylum seekers, which affects tens of thousands.<sup>143</sup> It should be noted that in 2019, there were 37.9 million children and young people migrating, many of whom may become separated from their families along the journey (compared with 28.7 million in 1990).<sup>144</sup> The conditions of their registration in receiving or transit countries do not always respect their rights, in particular that of identity.

**The absence of mechanisms to guarantee an immediate search for information concerning family background, which would lead to renewed contacts and reunification, means that the identity of the child risks being unnecessarily modified (Chapter 3).<sup>145</sup>**

It may also be the case that CRVS systems are not able to communicate with each other in cross-border situations, where birth and identity documentation may not be recognised in another country (Chapter 1).<sup>146</sup>

These situations impact the right of the child to identity. These acute challenges have been evident in the 2022 conflict in Ukraine where millions have been forced to leave the country or have been internally displaced, where it is important that efforts prioritise peace, safety and protection measures that enable children to remain with or return to their families whenever it is in their best interest. Displacement should be fully prepared, supported and carried out in compliance with international standards to safeguard all elements of identity. Given the significant number of children in alternative care, particularly in residential care, specific attention should be given to preserving the identity of this vulnerable group.

Any modifications to a child's identity including legal parentage and/or parental responsibility should be subject to a best interest determination with minimum safeguards including long term considerations. For example, such safeguards are essential for protecting children born through surrogacy, who are at greater risk of rights violations in conflict situations, including abandonment as well as deprivation and/or sale of their identity.

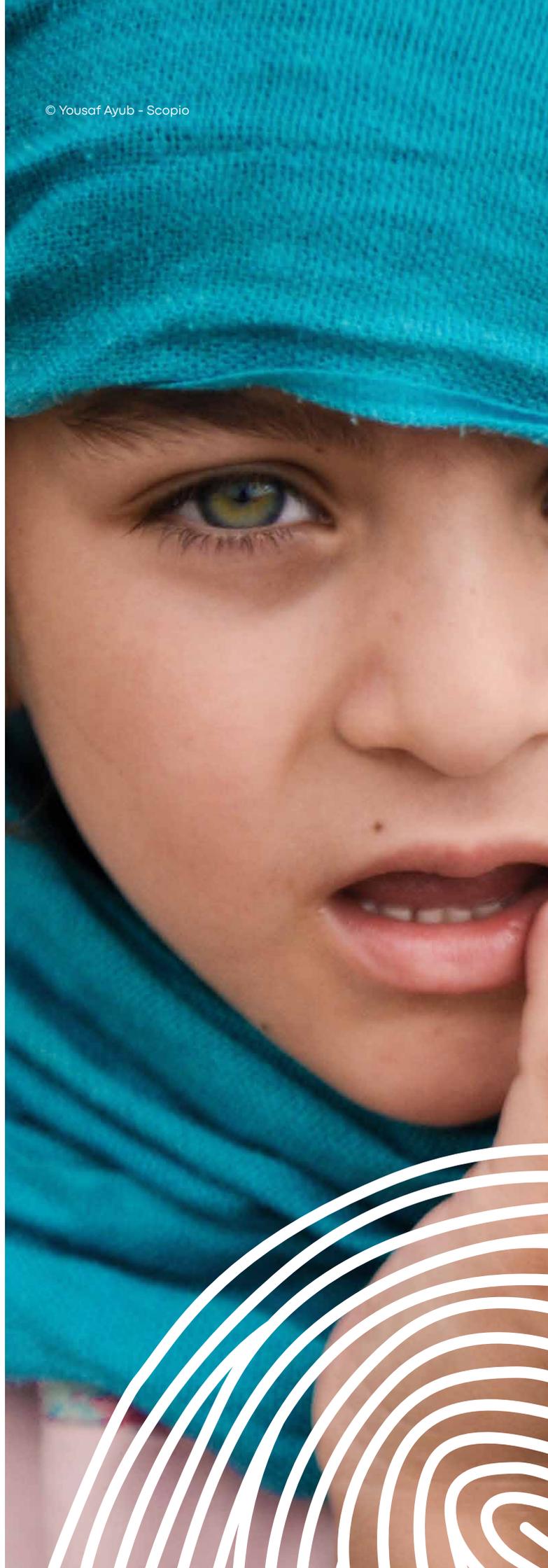
To this end, UNHCR has produced a helpful tool for these emergency contexts. On the basis of its long experience with refugee populations, and children in particular, the UNHCR developed guidelines in 2008 concerning the evaluation and determination of the best interests of the child with significant attention on the child's right to preserve identity in the updated 2021 version.<sup>147</sup>

“

### **Multidisciplinary Committee on Surrogacy (Israel)**

*During the pre-surrogacy assessment process there is a committee whose mandate is to evaluate and authorize the agreement according to the parameters of the law (which include medical, social, psychological, economic factors). The committee consists of a social worker and also psychologists, doctors and lawyers. The committee receives information provided by the intended parents and the surrogate and there is a psychological evaluation. When there are other children involved (either the surrogate's or the intended parents') this information comes up in the psychological evaluation and also in the hearing before the committee and they will be questioned about whether their children (obviously depending on their age) are aware of the process, whether they are supportive, do they foresee any problems in the future etc. The experience of the committee shows that whenever a genetic issue comes up, the intended parents initiate Preimplantation genetic testing (PGD) tests on their own and the committee has yet to meet a couple that were not willing to do so. In case of objection, the committee will try to convince the couple to do the appropriate genetic testing and if the couple will continue to object, the committee will have to decide whether to reject the authorization of the process under these circumstances.”*

**Testimony from Ministry of Social Affairs and Services in Israel, Leora Abramowitz, Attorney, Legal Department and Dr Tali Burla Chief Social Worker, Surrogacy Law, Supervisor for Surrogacy and New Families.**



## 2.5 Key points for building identity protections when the child's identity is modified :



### **Mandatory BIA/BID frameworks whenever modification of the child's identity is being considered.**

This should include both short- and long-term considerations, including life-long impact;



### **Best interests of the child**

should be the primary consideration in modification decisions;



### **Children should always have independent legal representation**

in modification processes to avoid conflict of interests;



### **Appeal and complaint systems should be place**

whenever identity modification takes place;



### **CRVS system should allow for preservation**

and access to information about reasons for modification;



### **Openness in relationships with families of origin**

or persons that contributed to identity, should in principle be encouraged;



### **Train all relevant professionals**

on importance of identity information, including preservation and access;



### **Whenever separation and/or displacement occurs in an emergency situation, immediate efforts should concentrate on maintaining contact with the child**

and their family and eventual reunification whenever in their best interest, to protect the child's right to identity and family relations. Long-term decisions as to the extra-familial care of a child, such as adoption or surrogacy, must never be made during or in the immediate aftermath of the emergency, as this can cause, among other things, the arbitrary and unwarranted modification of a child's identity in violation of international law.



CHAPTER 3

**Falsification of the  
child's identity related  
to “family relations”**

As noted, the child's right to identity may be jeopardised in situations where discrimination and other situations may prevent the full recording of potential family relations, when it is created (Chapter 1) and/or when it is inappropriately modified (Chapter 2). There are a number of situations where illicit practices may be equally present in the process of creating and/or modifying the child's identity.

This can lead to the falsification of the child's identity and, in some cases, result in the sale of the child, including his or her identity. The sale of children can occur, when "any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration."<sup>148</sup> The transfer of a child from the family of origin into a new family or other setting, for remuneration or any other consideration, is considered the sale of a child.

To prevent this situation, a regulatory mechanism is essential to ensure the correctness of information generated at the source. This will involve investing in CRVS systems, given that UNICEF notes that more than 100 countries do not have fully functioning civil registration systems.<sup>149</sup> In practice, civil registrars will usually have no means to verify the credentials of information beyond what is reported to them. Therefore, it is vital that such details are authenticated through a judicial order or an administrative order. Setting up a central identification repository by linking systems across sectors including civil registries, health, child protection, ART, refugees and migration etc. can arguably facilitate the process. In the absence of specific laws to deal with cases that involve falsification, these institutions can be brought under civil registry laws for strict enforcement. Any information that goes into a birth register will automatically be covered under CR laws, and informants are liable for punishment, including cancellation of birth registration if they provide false information. All details should be provided under oath which can act as a safety mechanism for the civil registrar when enforcing the submission of correct information.

## 3.1 General considerations

**Given the “underground” nature of illicit practices, that may possibly affect the creation and/or modification of a child’s identities, such activities are generally difficult to detect.**

For example, children are deprived of their identities, whenever they are separated from their family of origin or are missing information about them, in situations of slavery<sup>150</sup> and through trafficking, including sexual exploitation. The UN Global Initiative to Fight Human Trafficking (UN.GIFT) has been established to combat trafficking.<sup>151</sup> It does not seem that its scope has yet turned to the importance of identity protection, as per the latest 2018 report of the United Nations Office on Drugs and Crime (UNODC).<sup>152</sup>

**Another challenge in ensuring the integrity in the creation and/or modification of a child's identity is linked to corruption. UNODC defines corruption** *“as a crime committed by officials (public or private) abusing of their role to procure gain for themselves or somebody else. Several forms of corruption exist: bribery, embezzlement, abuse of power, just to name a few.”*<sup>153</sup>

Given that identity procedures are the responsibility of State officials that operate in systems that are not fully operational and are at times corrupt, there is always a risk that they are marred by illicit practices. Issues of fraudulent birth certificates have been raised in the past for example in Guatemala<sup>154</sup> and recently in Guinea.<sup>155</sup>

Transparency International notes that no country is immune to corruption, which is particularly pervasive *“where big money can flow freely into electoral campaigns and where governments listen only to the voices of wealthy or well-connected individuals.”*<sup>156</sup> Linked to this situation, there may be examples of high profile personalities sometimes participating in acts that can lead to violations of children's rights to identity, but are less open to criticism due to their celebrity status.

**Harmful traditional practices** can likewise result in the improper modification of a child's identity, by creating new family relations and civil status, contrary to international standards. Child marriage is a *harmful practice* detrimental to girls' well-being and in violation of their rights. It is becoming less common due to global efforts like the UNFPA-UNICEF Global Programme to Accelerate Action to End Child Marriage. However, it affects 650 million girls and women around the world, and global *progress is not fast enough* to achieve the SDG target of eliminating child marriage by 2030.<sup>157</sup> The COVID-19 pandemic is likely to lead to a rise in child marriage, due to increased poverty and school closures.<sup>158</sup>



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The negative consequences have focused on how *“child marriage threatens girls’ lives and health, and it limits their future prospects, as well as risks of becoming pregnant while still adolescents, increasing the risk of complications in pregnancy or childbirth which can lead to the cause of death among older adolescent girls”*<sup>159</sup> and less on the importance preserving the child’s original family ties (i.e. identity in family relations). One means of preventing child marriages could be that CRVS systems require that birth documents be produced as a mandatory document prior to registering the marriage (Chapter 1).<sup>160</sup>

Even when corruption, criminal activities and harmful traditional practices are less prevalent, **CRVS systems may be inappropriately set up to prioritise certain interests** at the expense of the child’s right to identity. This includes mothers who wish to remain anonymous (Chapter 3.1), those of prospective parents who want to erase the records relating to birth mothers (Chapters 3.2 and 3.3), and those related to political motivations in emergency situations (Chapter 3.4). For example, in the interests of potential parents, the integrity of the child’s identity may be violated by practices such as **simulation of birth registry**, intended to circumvent what are perceived as expensive and time-consuming legal procedures. In the Philippines, simulation of birth registry refers to the tampering of the civil registry to make it appear in the record of birth that a child was born to a person who is not the child’s biological mother causing the loss of the true identity and status of such child.<sup>161</sup> Since legitimate parentage is established by “the record of birth appearing in the civil register or a final judgment,”<sup>162</sup> recording false entries in a child’s birth certificate alters the child’s filiation and civil status.

A cross-cutting issue related to interests other than those of children is linked to the commercialisation of activities. While reasonable costs may be charged for the provision of services, the opportunity for profit can lead to breaches of children’s rights, including their commodification. In recording “half-truths”, children – and later as adults – may have legitimate claims that their true identities have been stolen.





*"A lot of girls are forced into marriage because they don't realise they can say no." Yelina, 17-year-old child bride in Dzaleka refugee camp after fleeing from the Democratic Republic of Congo as a child.<sup>163</sup> Girls not Brides notes that "child marriage has been rising at an alarming rate in humanitarian settings. Families often see child marriage as a way to cope with economic hardship and to protect girls from increased violence. In Dzaleka, many girls are forced into marriage at 13 or 14 years old."<sup>164</sup>*

## 3.2 Alternative care and Adoption



**When a child is deprived of family care, States have an obligation to provide a suitable alternative, prioritising care options that are family based.**

### 3.2.1 Alternative care

The change in environment may lead to a temporary change in family, such as kinship care, foster care, kafalah and, on a permanent basis, adoption after all other options that maintain family connections are explored (Chapter 2). The provision of these alternatives – either by the States and/or others such as civil society – involves a cost. Given the potential to procure gain for themselves or somebody else, particularly in adoption, there may be an environment that is conducive for criminal activities and corruption and denial of the child's right to identity (Chapter 3.1).

**Notably, there are a few situations where a child may be placed in informal settings, away from his or her family of origin, where they may be subject to slavery or the worst forms of child labour (Chapter 2.1 and Chapter 3.1). As the employer may be part of the family in kinship care arrangements, the practice may be accepted as it appears that the child is provided with a protective environment. As the worst forms of child labour do not in principle have the objective of providing care for the child, they are generally not part of alternative care. When combined with these (informal) family arrangements it therefore likely to be considered an unsuitable living arrangement.**

**The most significant concerns that the ILO has identified in these situations include** *“long and tiring working days; use of toxic chemicals; carrying heavy loads; handling dangerous items such as knives, axes and hot pans; insufficient or inadequate food and accommodation, and humiliating or degrading treatment including physical and verbal violence, and sexual abuse.”*<sup>165</sup> **ILO notes that** *“17.2 million children are in paid or unpaid domestic work in the home of a third party or employer.”*<sup>166</sup>

It does not seem that the family element of identity rights has been included as an issue to consider. In terms of the elimination of child labour, including domestic servitude, the UN General Assembly has urged the international community to step up efforts in this area, declaring 2021 as the Year for the Elimination of Child Labour.<sup>167</sup>

Further efforts are needed to protect children in informal arrangements or when children are removed from their family to achieve SDG 8.7 which requires that States *“take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour ...”*<sup>168</sup>

Further, in formal arrangements, children may also illicitly lose part of their identity related to their families. For example, as the funding of residential care is almost invariably based on the number of children in the institution's care – whether the funding source be public or private, domestic or foreign – children may be drawn unnecessarily into these settings in many countries, with the great majority having at least one living parent (Chapter 2.2). For example, in Cambodia, a 2015 study *“found that as many as 79 per cent of 13–17 year-old children in residential care homes have at least one living parent.”*<sup>169</sup>

In certain situations, these children may be falsely named “orphans”, and the process of “paper orphaning”, may have links to “orphanage tourism”<sup>170</sup> in facilities that are usually located in popular tourist areas, which is known to draw in significant amounts of money. The ChildSafe Movement has launched multiple advocacy campaigns to protect the identity of children, including “Children are not tourist attractions,” “Don't create more orphans” and “Keeping families together.”<sup>171</sup> These campaigns have raised international awareness, in part, about the importance of preserving the child's identity.

Additionally, discrimination in the enforcement of children's identity rights in relation to their families and communities of origin has likewise been a cross-cutting issue. Discrimination against children from ethnic minorities may occur due to assimilation practices, which can deprive the child of a part of their family origins, as for example in Viet Nam.<sup>172</sup> This has also occurred in a number of countries, such as Canada, where indigenous children were removed from their families and culture, and placed elsewhere in the country or abroad.<sup>173</sup>



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### 3.2.2 Adoption

In adoption matters, there are countless examples of children being illegally adopted and having their identity falsified. Over a decade ago, David Smolin highlighted the issue of “paper orphans”, stating that “*child laundering occurs when children are illicitly obtained by fraud, force, or funds, and then processed through false paperwork into “orphans” and then adoptees.*”<sup>174</sup>

The UN SR on sale of children outlined specific examples of this, as well as push and pull factors for illegal adoptions, in her 2017 report (A/HRC/34/55) to the HRC.<sup>175</sup>

The term “illegal adoptions” covers “*adoptions resulting from crimes such as abduction and sale of and trafficking in children, fraud in the declaration of adoptability, falsification of official documents or coercion, and any illicit activity or practice, such as lack of proper consent by biological parents, improper financial gain by intermediaries and related corruption.*”<sup>176</sup>

Multiple examples of “paper orphans” exist where families of origin have been lured into temporarily placing their children in residential care by profiteering intermediaries, only to find that they have been adopted into other countries without their consent, for example in Chad,<sup>177</sup> Guatemala,<sup>178</sup> Nepal,<sup>179</sup> and Viet Nam.<sup>180</sup> In addition to falsehoods about the absence of biological families, some legislative systems allow for falsification of other information related to the identity of the child. For example, Art. 252(1) of the Ukraine Civil Code of Procedure<sup>181</sup> gives adopters the right to change information on the place and date of birth of the child:

- 1. A person that applied for an adoption may wish to change information on the place and date of birth of the child.**
- 2. Date of birth may be changed not more than for six months.**
- 3. In its decision to grant the adoption, the court changes information on the place and date of birth of the child if this is in the interest of the child.**

To address the illicit practices in ICA matters, the HCCH has set up Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption. This Working Group is currently drafting multiple factsheets on issues such as fraudulent documents and lack of consent, which will be helpful resources in this field.<sup>182</sup>

Further in early 2021, the Final Report of the Commission of Investigation into Mother and Baby Homes in Ireland (Commission of Investigation) was published providing an analysis of the social history and context in which Mother and Baby Homes operated.<sup>183</sup> At the end of 2021, the High Court ruled that this report was unlawful as eight survivors were denied fair procedures by the Commission of Investigation, confirming urgent need to ensure full access to the Commission’s archives and that the redress scheme is extended to include all affected by “forced family separation, illegal vaccine trials, forced labour, abuse as an adopted child, institutional abuse of any duration, and death inquests must be held into the deaths and disappearances of children and mothers.”<sup>184</sup> (Chapter 5.4)



*"I was stolen from my parents" Céline Giraud,<sup>185</sup> author of the book shares through this story about the quest for her origins during which, she will discover the true story of her adoption at 23 years old. Contrary to what she had always believed, she discovers that she was not abandoned by her parents due to poverty in which they lived but was a victim of child trafficking. This book testifies to the impact of this news on the entire life of Céline Giraud and of this terrible feeling of having been stolen from her parents, and thus deprived of her true identity. After many years of forced separation, she eventually finds her genetic mother and is reconnected with her origins. In order to support adoptees in their research efforts of origins, Céline Giraud founded in 2005 the French association "La Voix des Adoptés".*

### 3.3 Assisted reproductive technology

**As in alternative care and adoption matters, children's identities may also be illicitly created and/or modified when ART is used (Chapters 1.3 and 2.3).**

The use of human reproductive material solely with identifying information is not mandatory in all countries and as such there is the possibility of creating "paper biological children." The truth about the child's origin is not registered anywhere, let alone on birth documents. As birth certification is often proof of one's place of birth and family ties, there is a presumption that the persons recorded are the "birth parents"

**In these situations, it seems that current CRVS systems may be at risk of unintentionally facilitating the falsification of the identity of the child. It is therefore important that information about any gametes used and the surrogate mother is included in a birth registry or other centralised repository. Without transparency and integrity about this information, children are deprived of important facts about their origins.**

In addition to the issue of falsification of a child's family history, another pressing issue is related to the sale of children that may occur in surrogacy arrangements. The UN SR on sale of children, in her 2018 report to the HRC,<sup>186</sup> outlines the sale of children in particular contexts. For example, children may be sold through the use of intermediaries, who physically or legally transfer the child to intending parents in exchange for "remuneration or any other consideration." The CRC Committee has likewise confirmed that surrogacy arrangements occurring in a legal vacuum can lead to the sale of children. For example, it noted in 2014 that in India "*commercial use of surrogacy which is not properly regulated is widespread, leading to the sale of children and the violation of children's rights.*"<sup>187</sup>

Likewise, regarding Mexico, the CRC Committee noted in 2015 that "*the fact that the regulation on surrogacy in the State of Tabasco does not provide sufficient safeguards to prevent surrogacy from being used as a means to sell children.*"<sup>188</sup>

Further, even in well-regulated contexts, "*... widespread commercial use of surrogacy in the State party may lead, under certain circumstances, to the sale of children. The Committee is particularly concerned about the situations when parentage issues are decided exclusively on a contractual basis at pre-conception or pre-birth stage,*"<sup>189</sup> as observed in some States in the USA in 2017. In these situations where children are sold, their identity is not only unduly modified but it is commodified.

## 3.4 Emergency situations



**Children's identities related to the family element may be falsified in emergency settings, for instance, to enable them to become part of an armed force or terrorist group.**

According to the Special Representative of the Secretary General for Children and Armed Conflicts in June 2020, thousands of children find themselves in these situations.<sup>190</sup> The [Child Soldiers World Index](#) notes that 46 States continue to allow for the recruitment of persons under 18.<sup>191</sup>

For example, some children are separated from their families with a view of becoming part of the Islamic State in Iraq and Syria<sup>192</sup> – ISIS – where they are submitted to physical and psychological abuse.

**When children belong to these groups, their family existence is erased and they have a new identity linked to the group. As described by a Dutch report, "one of the aims of these training camps is to detach the very young children from their families and to develop a feeling of belonging to the group, in opposition to their individual identity."<sup>193</sup>**

UNICEF notes that *"false registration may be forced on children. In Timor-Leste, among the children who fled with their families to West Timor in September 1999, several hundred remain separated. Some of these children were reportedly placed in boarding schools in West Timor under a false identity and have been prevented from reuniting with their families. In war-affected countries children may also be illegally sold and trafficked for international adoption. This has reportedly been the case in Afghanistan, Guatemala and countries of Eastern Europe."*<sup>194</sup>

The identity of children whose parents are involved in armed groups such as guerrillas or opponents of dictatorial systems can also be falsified for reasons sometimes related to their protection. Some parents choose to change the identity of their children so that they do not suffer violence. In northern Paraguay, for example, children of parents fighting as guerrillas have given them another identity to protect them. These children subsequently encounter difficulties in recovering their original identity.

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*UNICEF provides the example of Ishmael Beah, who like many other children, lost his immediate family – both his parents and his brothers – during the civil war in Sierra Leone killing over 50,000 people. “There was a lot of hardship. We had lots of arms and ammunition, but no food and no medicine. Yet, lots of drugs. When you have lost your family and everything, you quickly learn to belong to this group – but to belong to this new group requires violence. Violence becomes the way of showing loyalty,” explains Ishmael, who, years later, wrote his memories in a book entitled A Long Way Gone: Memoirs of a Boy Soldier.<sup>195</sup>*



### 3.5 Key points for building identity protections when the child's identity is falsified and/or sold:



#### **Falsification and sale of children's identity**

should be clearly prohibited and sanctioned in legislation;



#### **CRVS systems should include safeguarding policies**

against falsification practices;



#### **Authorities responsible for CRVS systems should be equipped**

and trained to detect illicit practices;



#### **Dispensation of statutes of limitations**

should apply in all cases relating to children;



#### **Appeal and complaint systems**

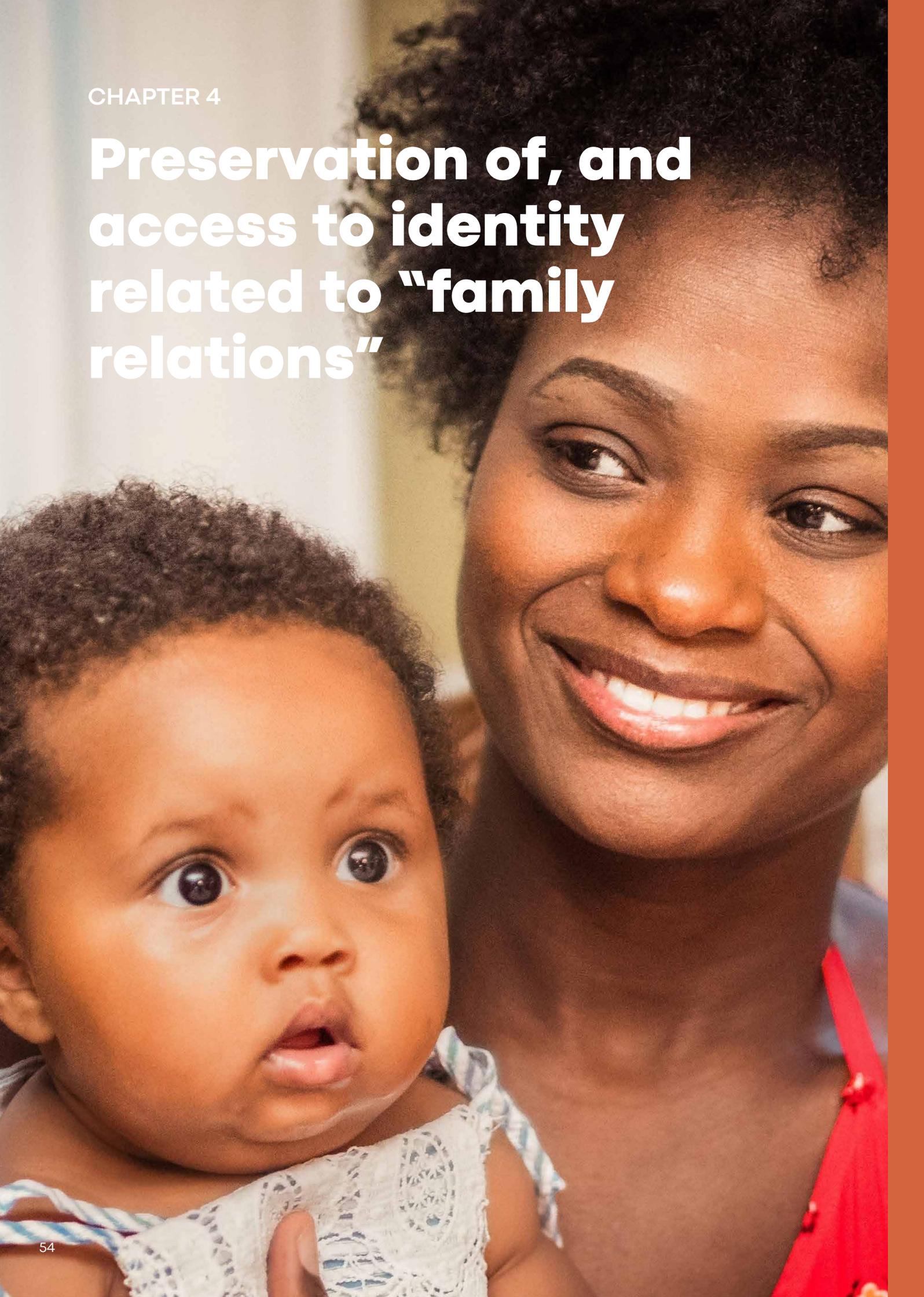
should be in place; whenever a child's identity is unduly created and/or modified;



#### **Access to justice including remedies**

should be available to restore the child's identity.

# Preservation of, and access to identity related to “family relations”



Given the importance of recording the creation, any potential modification and/or falsification of a child's identity (Chapters 1 to 3), it is incumbent on the State to preserve this information, and ensure it is accessible.

As noted earlier, Art. 8(1) CRC requires States Parties to “respect the right of the child to **preserve** his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.”

Related to the preservation and access to information, is the importance of protecting the child's privacy when identifying data is collected. The CRC Committee General Comment General Comment No. 25 (2021) on Children's rights in relation to the digital environment notes: “data may include information about, *inter alia*, children's identities, activities, location, communication, emotions, health and relationships. Certain combinations of personal data, including biometric data, can uniquely identify a child. Digital practices, such as automated data processing, profiling, behavioural targeting, mandatory identity verification, information filtering and mass surveillance are becoming routine. Such practices may lead to arbitrary or unlawful interference with children's right to privacy; they may have adverse consequences on children, which can continue to affect them at later stages of their lives.”<sup>196</sup>

While detailed examination of the benefits and risks of biometrics, blockchains and electronic identification - compliant with human rights are beyond the scope of this publication - UNICEF's 2021 publication on *The Case for Better Governance of Children's Data: A Manifesto*<sup>197</sup> provides guidance on issues such as identity data management, in terms of collection, storage and processing.

## 4.1 General considerations

**Recording information about family origins raises three challenges linked to information collection, preservation and access to information.**

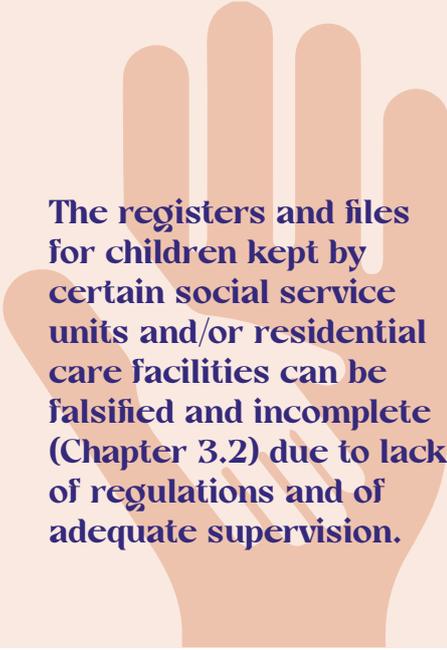
The objective of information collection is to gather and record all elements concerning the family history of the child. It is often difficult to collect this data for children who are abandoned. In many countries, CRVS systems do not fully record all information at birth (Chapter 1), do not include details surrounding modification(s) (Chapter 2) and/or register falsified information (Chapter 3).

**The goal of preservation is to guarantee that information on the origins of the child is preserved in a safe place indefinitely so that the child has access to it throughout his or her life, including access for descendants. Unfortunately, there are still many countries that do not possess centralised CRVS systems ensuring preservation for such a period.**

The aim of **access** to information is to ensure that the child is able to acquire details about his or her family origins. Access to this information must be free of financial, geographic or other obstacles, and should include adequate legal and psychosocial support. However, such access is often blocked by the overriding rights of other people concerned, such as the right of the birth mother or donors of human reproductive material, to refuse to divulge her identity (Chapter 1). For example, it may also be because Data Protection Rules may be interpreted contrary to the rights of children when "mixed information" is concerned.<sup>198</sup> The increasing use of new technologies, DNA databases and social media in the search for origins may involve an element of risk, when support is not available from skilled professionals in search and reunion processes (Chapter 4.3).<sup>199</sup>

All these challenges vary according to the different situations the child has experienced, such as alternative care or adoption (Chapter 4.2), birth through ART, including surrogacy (Chapter 4.3) or emergency situations (Chapter 4.4). Systems capable of responding to these challenges are far from available in all countries.





The registers and files for children kept by certain social service units and/or residential care facilities can be falsified and incomplete (Chapter 3.2) due to lack of regulations and of adequate supervision.

## 4.2 Alternative care and Adoption

### 4.2.1 Alternative care

However the UN Guidelines pinpoint the need for detailed, complete, up-to-date, confidential files for children in care.<sup>200</sup> There are many examples of private institutions withholding information in practice. To help countries improve the collection of comprehensive data on children in residential care, including the family background of the child, UNICEF launched a new Protocol in December 2020 with implementation tools designed to support countries to conduct a national census and survey on children in residential care.<sup>201</sup>

**Primero<sup>202</sup> – the Protection-related information management system - helps social workers, child protection practitioners and service providers to manage, store and analyse data on children, including information about families. Primero manages three types of data, including case management, incident management and information about the localisation and reunification of families.**

Primero is a digital public good supported by the International Rescue Committee, Save the Children, Terre des Homme (Lausanne), Plan International and UNICEF. These partners have cooperated to promote inter-agency best practices for child protection case management including the Child Protection Information Management (CPIMS+) module of Primero. The original aim of this system was to locate families and facilitate reunification for children in an emergency, and was then extended to cover all sectors of child protection.

The book *My life and Me*, provides a much-needed template to help children who no longer live with their family of origin to develop and record an accurate knowledge of their past and their family. Once completed, the book will provide them with a permanent record which children and the adults caring for them can refer to at any time and which the child can carry through life.<sup>203</sup> Moreover, “children separated from their birth families are often denied the opportunity to know about their past and to clarify past events in terms of the present (...). Losing track of the past can make it difficult for children to develop emotionally and socially. **Life Story** work is an attempt to give back some of this past [which leads to cohesive identity formation]. This guide provides a rich and creative treasure of techniques for working with children in different settings”.<sup>204</sup>



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## 4.2.2 Adoption

Access to family origins for the child, including those who have reached adulthood, sometimes meets obstacles, such as partial or even erroneous records<sup>205</sup> (Chapter 3.2). At worst, records simply do not exist. This situation is frustrating the growing number of adoptees seeking their origins.<sup>206</sup> The Central Adoption Authorities (CAA) have difficulty obtaining complete files, or at least with sufficient details, on children proposed for adoption, despite the HCCH recommending "(...) that the inquiry on the past of the child, carried out by qualified authorities, should commence as soon as the child integrates the system of social welfare and protection".<sup>207</sup>

The HCCH also points out that the report must contain information on the child's identity, personal and family development and medical history, noting that this report "will be an important resource when the child grows up and searches for information on his origins. Should elements such as photos of his biological family, his home or his community, appear in the report, they will be highly appreciated by an adopted person in search of his origins."<sup>208</sup>

Apart from these practical obstacles, others of a legal nature can occur during the search for origins. Although a large number of countries recognise the right to have access to origins,<sup>209</sup> certain countries impose conditions that may contravene this right. For example, in some countries, adoptees must reach the age of maturity, or even beyond, to be able to enjoy access to information pertaining to identity (e.g. Andorra, the French Community of Belgium, Brazil, Burkina Faso, Croatia, the Dominican Republic, Greece, Italy, Malta, New Zealand, Norway, Portugal, Romania, South Africa, South Korea, Spain, Uganda, and several states and territories in Australia, Canadian provinces and Mexican states). Other conditions may exist, such as the obligation to receive permission from an authority (e.g. Italy, Portugal, Romania), or consent from one of the parties involved (e.g. Ecuador, Georgia, South Korea, Rumania, certain Canadian provinces). In some countries there is a right to veto (New Zealand, some Australian territories and Canadian provinces).<sup>210</sup>

In recent years, legal obstacles have been relaxed, for example in Quebec (Canada)<sup>211</sup> and Switzerland,<sup>212</sup> which have revised their respective legislations to open up access for adoptees to their origins.<sup>213</sup> Further, some countries have helpfully set up programmes/protocols for access to origins and offer quality support for adoptees, as in Chile,<sup>214</sup> Colombia,<sup>215</sup> South Korea<sup>216</sup> and Quebec.<sup>217</sup> Unfortunately, many countries do not have such programmes, and so a multitude of private actors are involved in the search for origins, sometimes with questionable objectives including for profit.

Generally, there is an ongoing need to reinforce legislation and practices, which guarantee that information on the family of origin is systematically collected, scanned and accessible. Some countries, such as Guatemala and Viet Nam through its CAA, have scanned data – especially children for adoption – in order to guarantee the conservation of information on family origins. This information must, of course, be in line with data protection rules and the child's right to privacy.



“

*The 2016 American-British-Australian film, [Lion](#)<sup>218</sup>, tells the true story of a young child, Saroo, who at the age of five fell asleep at a train station while waiting for his brother and became lost.<sup>219</sup> Alone in Calcutta, and left to his own devices, he learns to survive, and ends up in an orphanage, before being adopted by an Australian couple. He had always remembered his family and village but nobody listened to his story, and as an adult, he began resolutely searching for his origins using Google Earth to find his village. This story is a poignant testimony of the importance for adoptees to know their family history, invest in reunification prior to considering adoption and to find their families if they wish to do so, in order to complete their identity, to find themselves and to become their own person.*

## 4.3 Assisted reproductive technology

**The preservation of information on family origins of children or later as adults born through ART, including surrogacy, is likewise an important consideration.**

Registers in the clinics offering these services are not always covered by the legislation of the countries where such medical and commercial activities exist.

When these registers do not exist or are not robust or accountable to external audits, there is a very real risk that information on the child's family origins – for example, on the surrogate mother or possible donors of human reproductive material – will not be correctly recorded and preserved, making access to family origins very difficult (Chapters 1.3, 2.3 and 3.3).

**As pointed out by Maud de Boer-Buquicchio, former UN SR on sale of children, the legislation of certain countries actually impedes access by the child born through surrogacy to family origins, as in India where “the Surrogacy (Regulation) Bill 2016 proposes that the appropriate authority must preserve details of surrogacy arrangements, but there is no provision for children to access this information. Conversely, under a new law in Thailand, information does not have to be preserved on either the surrogate or the gamete donors. Under such an arrangement, children would not have any mechanism for finding out information on their genetic and biological origins.”<sup>220</sup>**

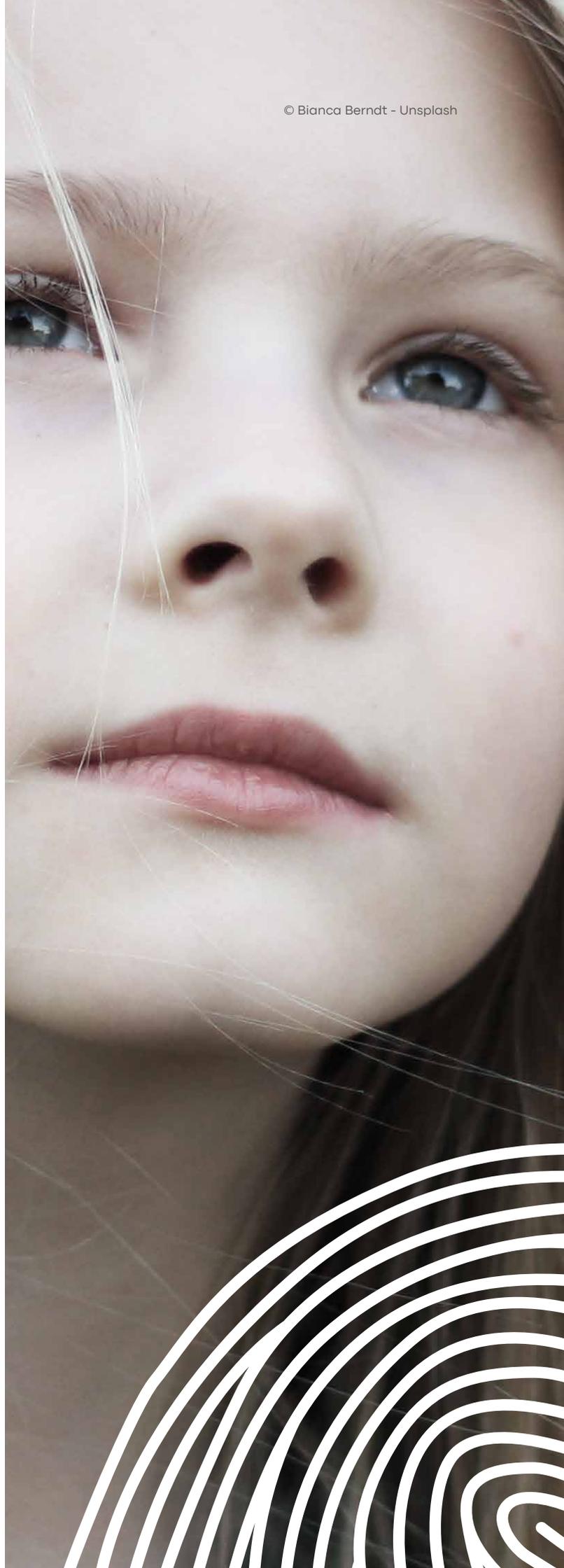
Another challenge linked to access to origins is that of balancing other rights as noted by Petra de Sutter, former member of the Parliamentary Assembly of the Council of Europe, in her 2019 report.<sup>221</sup> The report notes that information about genetic and gestational origins enables donor-conceived persons to complete their history, to know who they are and their genealogy. As Dr Pettle points out, “a late discovery brings with it further complications (Pettle, 2002) when the secrets regarding biological filiation are revealed and more and more people of all ages find new information on their biological parents, a donor, and their extended family, after doing a simple DNA test, which is easily available and inexpensive.”<sup>222</sup>

An increasing number of people are turning to international (Ancestry, Family Tree DNA, MyHeritage, 23&Me, Donor Sibling Registry, for example) and national (Donor Conceived Register in the United Kingdom,<sup>223</sup> or ART Central Register in Australia<sup>224</sup>) genealogical data bases in order to lift the secrecy of their origins.<sup>225</sup> These databases, and in particular international ones, are limited in terms of emotional and physical support. In a 2019 study “We Are Donor Conceived Survey,”<sup>226</sup> 86% of participants said that the emotional needs of persons conceived by donation were neither understood nor respected by those providing DNA database services. Since DNA databases are not designed to provide support, the latter is increasingly provided by self-help and other groups.<sup>227</sup>

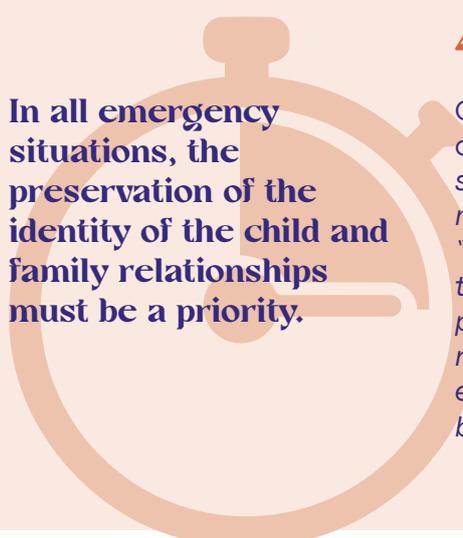
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*“I am 38, and 23 years ago I came to know how I was conceived. Since then I have passed through many phases, from a crisis in my teenage years to recounting my experience on social media and in front of the camera so as to make our situation more visible and to reclaim the right to our own identity and origins via a change in the present legislation. During this time I have met people conceived like myself, and have compared experiences and opinions. I have done research to obtain a more thorough and well-founded idea of an apparent, silent conflict of interests, from the purely legal to the ethical aspects, and also the financial, social and family aspects.”*

**Testimony of a person conceived through an anonymous donor on the importance of knowing his identity (Spain).<sup>228</sup>**



## 4.4 Emergency situations



**In all emergency situations, the preservation of the identity of the child and family relationships must be a priority.**

Complementing Arts. 9 and 10 of the CRC, that create obligations on States to ensure that "family reunification shall be dealt with in a positive, humane and expeditious manner," Paragraphs 155 and 160 of the UN Guidelines note: "155. Organizations and authorities should make every effort to prevent the separation of children from their parents or primary caregivers, unless the best interests of the child so require, and ensure that their actions do not inadvertently encourage family separation by providing services and benefits to children alone rather than to families."

*"160. Children in emergency situations should not be moved to a country other than that of their habitual residence for alternative care except temporarily for compelling health, medical or safety reasons. In that case, this should be as close as possible to their home, they should be accompanied by a parent or caregiver known to them, and a clear return plan should be established."*

The spirit of the UN Guidelines is reinforced by the 2022 Resolution of the Human Rights Council on the Rights of the Child, which focuses on realising the rights of the child and family reunification.<sup>229</sup>

As such, it is of prime importance to locate the family through a systematic and extensive process and to re-establish family bonds with appropriate psychosocial support and timelines before making any decisions regarding the care of the child that permanently sever family ties, and this decision must be taken in his or her best interests (Chapter 2.1). By doing this at an early stage (early intervention strategies), the preservation of, and access to, family origins is facilitated. National and international mechanisms of cooperation must be established for this purpose, so that the transfer and preservation of information on the family environment of the child can occur efficiently, without violating identity rights.

The systems of cooperation established by the Hague Conventions, and in particular the [1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children](#) (HCCH 1996 Child Protection Convention)<sup>230</sup> provide such a framework. This also applies at a regional level, where the systems of cooperation<sup>231</sup> could be extended to include the question of identity (document) recognition beyond borders and their portability (Chapter 1.1 and Chapter 5).

In emergency situations, the International Committee of the Red Cross (ICRC), Save the Children and UNICEF have cooperated to promote an inter-agency system of information management on child protection (protection information management system – CPIMS (Chapter 4.2.1)).<sup>232</sup>

## 4.5 Key points for building identity protections through preservation and access :



### **Judicial or administrative systems should be set up to provide CR systems all elements of information**

concerning the child's family history "genetic, gestational, social, and legal";



### **CRVS systems should be set up to record all relevant information**

related to name, nationality and family relations. This may require a separate birth registration form to record all the elements;



### **As CRVS systems are generally not in a position to verify "all relevant information," processes should be in place that require applicants to submit proof of birth**

(notification for newborns / witnesses and other documents for late and delayed registration) and report details under oath;



### **Civil registrars should be trained to request "all relevant information"**

related in particular to family relations, and where any information is found to be incorrect, registrars should have capacity to nullify registration (with potential penalties for applicants);



### **Cooperation/intersectoral dialogue**

between CRVS and other (child protection) actors should be promoted;



### **Information should be conserved in a safe place, preferably for an indefinite period,**

so that the child has access to it throughout the child's life and accessible by descendants;



### **Access to information must be free of financial, geographic or other obstacles**

and should include adequate legal and psycho-social support, when necessary;



### **Digital practices, such as automated data processing and mandatory identity verification**

should respect the child's right to privacy and be compliant with human rights standards;



### **Use of biometric data processes should respect children's rights.**

Biometric systems are generally not tailored to the needs of young children, especially newborns and infants to ensure sufficient levels of quality/ performance for their inclusion. Efforts should be invested to respond to the real risk associated with the use of inappropriate systems/devices, and questions regarding both the technology performance and the value of biometric data in building a robust civil registration system for children.

# Restoration of the identity of children related to “family relations”



Whenever there are missing elements of a child's identity at the time of its creation and/or modification (Chapters 1 - 2), or elements have been falsified (Chapter 3) or not preserved (Chapter 4), States have a clear obligation to speedily restore the elements in question.

Art. 8(2) CRC states that *"where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity."* In this restoration process, States equally have a duty to protect the privacy of the child victims (Chapter 4).<sup>233</sup> Despite these standards, there are general obstacles to re-establishing speedily the child's identity and ensuring full protection of the child survivor's privacy (Chapter 5.1), as well as specific challenges related to key issues (Chapters 5.2-5.4). This process of restoration of a child's or later an adult's identity dovetails with the right to access justice, as included in SDG 16.3, which promotes *"the rule of law at the national and international levels, and ensure equal access to justice for all"* (Chapter 5.5).<sup>234</sup>



## 5.1 General considerations

**An overarching challenge connected to the restoration of the child's identity occurs when CRVS systems in countries are poorly resourced.**

Even when they are adequately resourced, many CRVS are not set up to record information about the child's genetic and gestational origins (Chapter 1). CRVS are neither systematically geared to include information about the child's family or birth stories, including when they are modified (Chapters 2 and 3). To overcome these deficiencies, the child – or later as an adult – may have recourse to DNA databases, although these are not foolproof. Jurisprudence exists to restore missing elements of the child's identity related to family.

**For example, in the case of *Mikulić v. Croatia (2002)*,<sup>235</sup> in a case of a single mother, the ECtHR decided that national systems should establish procedures for determining paternity, which may or may not include DNA testing, as being important for safeguarding the child's right to identity. The alleged father refused DNA testing on multiple occasions and there were no other systems in place to speedily determine a paternity claim.**

A further challenge is that the discovery of a missing element or an illicit practice regularly occurs outside the statute of limitation period, excluding potential claims (Chapters 5.2-5.5). While statutes of limitations are helpful for ensuring that claims are resolved within a reasonable period of time, they are particularly unhelpful for identity issues which often fall under the radar of authorities and are "discovered" much later, when the child concerned has reached adulthood.

Moreover, whenever an identity is falsified or sold – including with the involvement of authorities – burdens of proof for convictions are understandably high and challenging to meet. The Conference of the States Parties to the United Nations Convention against Corruption has conceded that "*illicit behaviours are hidden and victims are not always willing or able to report to authorities.*"<sup>236</sup> Even when convictions are secured, it still may be impossible to restore missing elements of identity, when the information does not exist. In cross-border matters, convictions may be challenging to implement due to extraterritorial jurisdiction realities.

Lastly, without political will to take responsibility for past government actions, restoration efforts will be limited to *ad hoc* efforts and/or single cases, as opposed to class actions. Authorities may be reluctant to bear the burden of past actions, given the resources, costs and other implications. Such a lack of political will can be seen for example when federal authorities claim that the state authorities are responsible for actions or *vice versa*, or when there are absent complaint mechanisms and/or inadequate remedies. Argentina in December 2021, showed political will to respond to illicit practices, enabling victims of trafficking to find their biological roots through proactive efforts to establish their identities. This started with the Federal National Administrative Court No. 10 of the Autonomous City of Buenos Aires notifying all interested parties, via the country's official review and requesting the Executive to implement a plan to this effect.<sup>237</sup>

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*"In 2016, Ruvimbo Tsopodzi and Loveness Mudzuru appealed to the highest court in Zimbabwe – the Constitutional Court – to amend the Marriage Act. The Act as it stood stated that a child of 16 could get married with parental consent. Supported by ROOTS, a Girls Not Brides member, Ruvimbo and Loveness' appeal was granted by the Court and marked a significant step towards ending child marriage in a country where 1 in 3 girls are married before the age of 18. Ruvimbo herself was a child bride at 16. She was forced to marry a man she had not chosen. "My experience was painful. I was made to sleep outside when I was pregnant... I was not used to eating one meal a day but this became the norm. I used to be beaten up, until I realised that this abuse should not happen to me or to another girl child. This motivated me to take the issue of child marriage to court."<sup>238</sup>*



## 5.2 Alternative care and adoption

**In terms of re-establishing the child's identity when he or she has been deprived of his or her family.**

It should be noted that, to date, the main focus of alternative care and adoption actors has been to ensure that processes are in place to secure a suitable alternative family for the child when this becomes necessary.

This includes, for example, procedures for the evaluation and preparation of prospective families and the establishment of robust gatekeeping mechanisms, including matching and ensuring adequate follow-up support of all parties involved.

**Whilst securing a suitable family for a child is important, it has been increasingly shown that an equally important need is to safeguard the child's identity and family connections where possible throughout their life.<sup>239</sup> Both focuses are essential and result in a holistic response to protecting children in need of alternative care.**

### 5.2.1 Alternative care

Restoring the child's original identity through reintegration with family requires further efforts, as this issue is often missing from national legislation and policy, or unrealistic timeframes are applied. Future efforts can build on the inter-agency collaboration that developed the Guidelines on Children's Reintegration<sup>240</sup> at an international level. On a national level, Cambodia undertook an initiative in this direction, with a 2015 Action Plan for improving child care, with the target of safely returning 30 per cent of children in residential care to their families during 2016 - 2018.<sup>241</sup> The 2021 report on the Action Plan shows that "since the action plan was launched in 2016, there are 43 per cent fewer residential care institutions (RCIs) and 59 per cent fewer children living in residential care."<sup>242</sup>

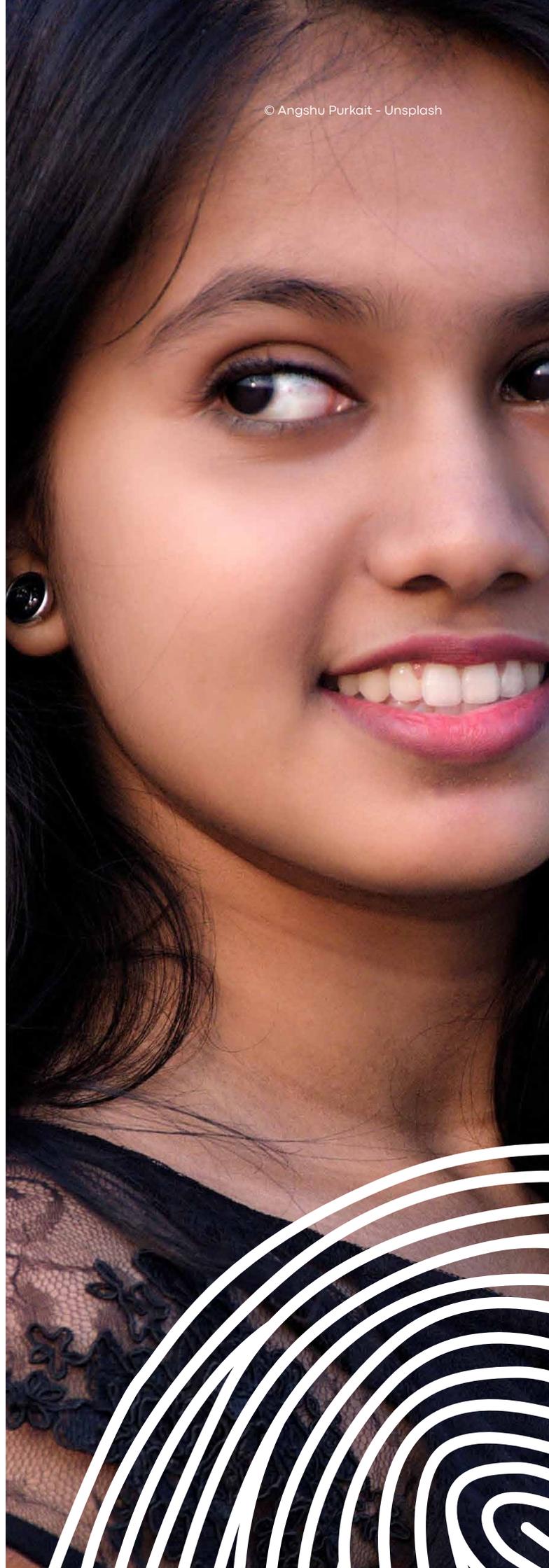
Many of these children are living with their families, which concretely shows Cambodia's efforts to restore the child's identity in family relations for children in alternative care. The Consortium for Street Children has initiated activities to restore the identities of children living in street situations, by developing an online Atlas resource for countries on how to establish legal identity.<sup>243</sup>

This tool helps professionals working with children who do not have birth records, including those who do not have an identified mother or father, and to pinpoint the applicable legal framework.

In Brazil, the local Court in Rio de Janeiro,<sup>244</sup> mentioned earlier (Chapter 1.2), through its multi-disciplinary team, has established a working method to re-establish missing identity elements of children and their parents, including to ensure the veracity of information recorded. These children and families often do not have any documents pertaining to their legal identity, as many have migrated from different parts of the country, which prevents them from accessing basic services such as schools. The judge with her team of social workers and psychologists will work with families, often living in extreme poverty, to collect vital information over a number of interviews. During this puzzle building process, which lasts a maximum of 60 days, the true identities of the children and their families are reconstructed and their origins are established.

“

*“Preethi is fascinated by having an Aadhar card and knows the doors it opens. “My younger brother got his card. He now attends nursery school – I never went to nursery school. They have so many games and toys there for children to play with,” she says with amazement. “I got my health insurance, and now, my mother says that if I ever fall ill, she would be able to take me to a good hospital.”<sup>245</sup>*





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## 5.2.2 Adoption

In adoption matters, an increasing number of adoptees are seeking information about their origins and often discover illicit practices (Chapter 4.2). As mentioned in the Introduction, Argentina has taken a series of positive initiatives to protect identity, starting with its advocacy for Art. 8 CRC, and later with the establishment of the National Commission for the Right to Identity (CONADI)<sup>246</sup>. The work of the *Grandmothers of the Plaza de Mayo*<sup>247</sup> have also helped the Argentinian reforms by setting up the national database in 1987. In Chile, there have been a number of collective lawsuits and an investigation in recent years<sup>248</sup> in response to illegal adoptions. Furthermore, DNA tests have been used in countries, such as Guatemala,<sup>249</sup> to ascertain and restore family relations in response to the widespread irregular practices, including many stolen and trafficked children.

However, many challenges arise in terms of such remedies. In some cases, the legislative framework is lax and may not adequately reflect the seriousness of the practices. For example, in the case of Chile, in 2019, the UN Committee on Enforced Disappearances noted with concern that *“existing legislation does not include specific provisions penalizing all acts relating to the wrongful removal of children, under article 25 (1) of the Convention. The Committee takes note of the information provided by the State party regarding investigations into the removal and/or irregular adoption of 341 children, 279 of which allegedly occurred during the dictatorship. The Committee also notes that a special file has been opened in relation to the detention during the dictatorship of 10 pregnant women, whose children might have been born in captivity and survived. The Committee notes that those children could have been particularly vulnerable to becoming victims of identity substitution (art. 25).”*<sup>250</sup>

In other cases, statutes of limitations may create an obstacle. For example, in the case of Dilani Butink, adopted from Sri Lanka in 1992 to the Netherlands, it seems that her adoption papers were falsified. At the beginning of 2018, Dilani hired a lawyer and, in 2019,

she took legal action against the Dutch government, with one recommendation that the government establish a DNA database to help locate her biological family. On 9 September 2020, the Court declared her case inadmissible because the *“forging of the papers”* was more than twenty years previously. The Court had the power to dispense with the statute of limitations but decided that there were *“no exceptional circumstances”*. The Court states that Dilani should have filed the case in 2012 (when she was 20) even though her search only started in 2015.

In response to such cases, some States have helpfully set up Inquiries or Commissions as in Belgium, the Netherlands and Switzerland. France is planning to establish such a Commission in 2022.<sup>251</sup> The Swiss example is particularly encouraging as the Federal Council in late 2020 formally acknowledged past negligence and wrongdoings of authorities, and expressed its regrets towards the adoptees and their families.<sup>252</sup> While this does not go as far as restoring the child's identity, to some extent, it seeks to remedy some of the consequent psychosocial trauma associated with loss of identity. Other actors in States of origin have established specific programs to search for origins, including in Argentina,<sup>253</sup> Chile,<sup>254</sup> Colombia<sup>255</sup> and Sri Lanka. While these efforts are encouraging, further resources should be invested in restoring lost information important to identity, which is arguably part of States responsibilities under Arts. 8(2) and 35 CRC, where the latter requires that States take all appropriate national, bilateral and multilateral measures to prevent the abduction of, sale of or trafficking in children for any purpose or in any form.

Finally, forms of open adoptions or post-adoption contact provide an opportunity to restore family identities, particularly helpful in ICA. This situation *“generally covers full adoption situations where there is an exchange of information between adopting and biological parents. Consent for contact beforehand is required.”*<sup>256</sup>

## 5.3 Assisted reproductive technology

**In terms of children born through assisted reproductive technology and the use of gametes, there are different initiatives requesting the lifting of anonymity clauses.**

For example, the ECtHR is currently considering the case of Audrey Kermalvezen (née Gauvin), a French bioethics lawyer, born through anonymous donation. She says *"I have an identity that seems diluted to me. I need to humanize the way that I was conceived, to put a face on my donor to be able to anchor myself. This donor is not a father, but neither is it a number or some glitter that comes from nowhere. It is a person. It's not about forcing him to provide his identity, but the least we can do is ask him if he agrees to disclose it."*<sup>257</sup>

**To this end, Audrey Kermalvezen and her husband, the first French national born from anonymous gametes to locate his donor and are lobbying for a platform of resources for others in similar situations.**<sup>258</sup>

France is making some progress with its new law on bioethics adopted on 29 June 2021, establishing access to origins. As of the entry into force of the law, to donate gametes or embryos, it will be necessary to accept that non-identifying data and the donors' identity be transmitted to the donor-conceived person at their majority upon their request. However, until a date set by decree, which could go beyond September 2022, it will remain possible to conceive children using donations from the previous regime.<sup>259</sup> The law does not address the historic situation of persons born through anonymous donations.

Audrey's request may nevertheless be within reach if one follows the decision of the Victorian State of Australia which retrospectively lifted the anonymity surrounding pre-1988 donor treatment procedure giving access to public records according to Art. 56A of the *Assisted Reproductive Treatment Act 2008*.<sup>260</sup>

The Act has a number of other helpful provisions, such as Art. 28, which bans sex selection, Art. 29, which bans using donated gametes to produce more than 10 families and Art. 30, which bans destructive research on embryos created for treatment purposes. The Victorian Assisted Reproductive Treatment Authority (VARTA) has been set up to implement the *Assisted Reproductive Treatment Act 2008* of Victoria and *"is a statutory authority funded by the Victorian Department of Health and Human Services."*<sup>261</sup>

In practice, VARTA can assist donor-conceived persons to access the Central Register under the Act for *"identifying information (name, date of birth, donor code and contact details) and/or non-identifying information (more general information e.g. height, eye colour, occupation etc) about the donor"*<sup>262</sup> as well as help with registering information on the Voluntary Register. VARTA is a statutory authority that can facilitate the reconstruction of a child's identity in surrogacy by providing information on surrogate mothers and donors. While these types of services are developing, much work is required to ensure they are adopted and funded by States. In this same vein, Switzerland has also lifted anonymity as outlined in Arts. 27 and 41 *Federal Act on Medically Assisted Reproduction*.<sup>263</sup>

The Donor Conception Network (DCN)<sup>264</sup> in the United Kingdom was established more than 30 years ago by a group of parents who did not accept the prevailing view that children need not know their origins. The DCN actively encourages openness from the beginning of a child's life, provides preparation workshops, sessions to help parents of children at different ages and publishes an array of relevant books for children and adults.

The High Court of Australia has ruled in [Masson v Parsons \[2019\] HCA 21 S6/201](#) that a man who donated his sperm to a lesbian friend is legally the child's father due to his involvement in the child's life. In this case, the lesbian couple were planning to relocate to New Zealand, which would have limited the child's contact with her biological father. While most state laws in Australia do not consider providers of human reproductive material as legal parents of children, this case shows that the declaration of legal parentage should be based on each individual situation.

## 5.4 Emergency situations

The ICRC has established a free service for “[restoring family links](#)”<sup>265</sup> in an effort to re-establish contact with family members that has been lost as a result of a humanitarian crisis, such as a conflict, a natural disaster or migration.

While contact can helpfully be established, services are limited to “*finding people; putting families back in touch; reuniting families when that is possible and in the best interests of all those concerned; and helping families keep in contact through phone calls and messages.*”<sup>266</sup>

The ICRC does not yet provide assistance to restore the actual identity of children but focuses on ensuring that there is renewed contact.

In their [Joint General Comment N° 4 \(2017\) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families](#) and No. 23 of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return noted that “**22. Should a child's identity documents have been procured irregularly on his or her behalf and the child requests the restoration of his or her identity documents, States parties are encouraged to adopt flexible measures in the best interests of the child, specifically by issuing corrected documents and avoiding prosecution where falsification has been committed.**”

The [Optional Protocol to the Convention on the Rights of the Child on a communications procedure](#) (OPIC)<sup>267</sup> provides an opportunity for the restoration of the child's identity. In October 2020, the CRC Committee adopted 14 decisions against Spain on the issue of age determination of unaccompanied and separated children since 2019. In particular in the case of *M.B.S v. Spain* (2020)<sup>268</sup> the CRC Committee notes “*however, that the author has sufficiently substantiated his claims under articles 3, 8, 12 and 20 of the Convention, in that no representative was assigned to him during the age determination procedure, that this procedure did not respect his right to be presumed a minor and violated his right to identity, and that he did not benefit from the protection to which he was*

*entitled as a minor.*” While the decisions focused on the right to identity in terms of age, and the right to special protection of children deprived of their family environment, the decisions show that there is potential scope for considering the family element of the child's identity rights in future cases.

It should be noted that the [Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict 2000](#)<sup>269</sup> (OPAC) has provides identity protections, despite it not being explicitly mentioned. For example, Art. 6(3) notes that “*States Parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.*” The Office of Special Representative of the Secretary General for Children in Armed Conflict has developed a helpful brief on re-integration of child soldiers into their families and communities<sup>270</sup> (Chapter 2). This work should complement that of the broader UN Global Counterterrorism Strategy (GCTS),<sup>271</sup> which adopted a new resolution based on its 7<sup>th</sup> review mid-2021 after being first adopted by the UNGA in 2006. One of the ongoing debates is the need to protect the rights of the child in countering terrorism in line with international standards, including the question of repatriation. The 2021 resolution requests States to “*enhance cooperation in the development of gender- and age-sensitive rehabilitation and reintegration of children*”<sup>272</sup> which will contribute to the child maintaining relationships with their family and culture, essential to their overall well-being and their identity. Since the start of the conflict in 2013 in South Sudan, UNICEF has helped release over 2,600 children from armed groups, and supported their reintegration back to their families. “*Every time a child is released and able to return to their family, it's a source of great hope - hope for their future and for the future of the country,*” said Mahimbo Mdoe, UNICEF's Representative in South Sudan.<sup>273</sup>

## 5.5 Opportunities to access justice

**It seems that the OPIC provides an opportunity for redress and restitution, should national mechanisms be exhausted. The remaining challenges will be the application of the CRC to situations that occurred pre-1989 and the fact that OPIC was only introduced in 2014. Such challenges were among the factors that led to the inadmissibility of a communication, where it was alleged that a new-born child was stolen from a private hospital.<sup>274</sup>**

Despite these limitations, the CRC Committee through the OPIC, has nevertheless, contributed to the restoration of aspects of children's identities who have been unnecessarily placed in residential care in Chile through its recommendation (at Para. 133):<sup>275</sup>

**a) Establish mechanisms of reparation for current and past victims, prioritizing their right to be heard and to express their suffering.**

**b) Develop an action plan for reparation that includes actions in health, especially psychological treatment, education, housing, justice and, where appropriate, financial compensation.**

In response to this recommendation, it is promising to see that in March 2018, Chile enacted a law creating the Office of the Ombudsperson for Children.

Another avenue that could provide remedies is exploring transitional justice. When there have been systemic cases of abuse, calls for transitional justice may be particularly helpful. The UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (UN SR on transitional justice) has provided a comprehensive report on the design and implementation of apologies (e.g. motivation, acknowledgement and truth, timing, preparation the apology, after the apology: follow through, non-recurrence and reconciliation).<sup>276</sup> The formal apology of the Australian government for forced adoption practices of single mothers is a noteworthy example.<sup>277</sup>

In addition, States should systematically implement memory processes. The UN SR on transitional justice's 2020 report<sup>278</sup> in this context is helpful as it outlines the importance of archives and ensuring access (Paras. 70 to 73). The promising practice of German authorities, who have opened the archives of the *Stasi* (the Ministry of State Security of the former German Democratic Republic) to ensure open access is noteworthy.<sup>279</sup>

In responding to past abuses, States should equally be working towards the elimination of impunity. It is of vital importance that strategic litigation and the promotion of access to justice by survivors, including the lifting of statute of limitations be encouraged. A promising example in this context occurred in Guatemala with the criminal prosecution of human trafficking for illegal adoption purpose and the different strategies implemented to fight impunity.<sup>280</sup> It is also important that States invest significant resources in preventing the recurrence of such abuses, which includes the introduction of frameworks that uphold human rights as a foundational step.<sup>281</sup> It is encouraging to see countries co-operate to encourage search for origins in ICA matters.

The CAA of Sri Lanka has worked with several receiving States, resulting in a protocol on access to origins.<sup>282</sup> As an initial step in the right direction, this should facilitate the restoration of identities, assuming that the information has been preserved and is accessible, and that services are in place to assist in searching and reunification where it is sought.

In practical terms, transitional justice could be considered when there are systemic violations of children's identity rights, as millions of children are affected. For example, in Ireland transitional justice is being considered by those examining the poor practices surrounding the Magdalene's institutions, forced labour and illegal adoptions from the Mother and Baby Homes (Chapter 3.2).<sup>283</sup> The major challenge is that authorities are contemplating a bill that would seal the adoption archives for 30 years.<sup>284</sup> Although the recommendations include that "adopted people should have a right to their birth certificates and associated birth information," the Commission of Investigation was heavily criticised for itself refusing to provide survivors and adopted people with any access to their personal data or other records in its archives, and for refusing to give any survivors or adopted people the opportunity to give their testimony in public.<sup>285</sup> The Commission, furthermore, destroyed the audio recordings of 550 witness testimonies without creating transcripts; these were recovered only after an intense public pressure campaign in late 2020.<sup>286</sup>

## 5.6 Key points for building identity protections to restore missing and/or falsified elements :



### **Falsification, sale of children and their identity**

should be clearly prohibited and sanctioned in legislation;



### **CRVS systems should include safeguarding policies**

against falsification practices and rectification processes;



### **Authorities responsible for CRVS systems should be equipped and trained**

to detect missing or falsified elements of an identity;



### **Appeal and complaint systems should be place**

whenever a child's identity is unduly created and/or modified;



### **Dispensation of statutes of limitations**

should apply in all cases relating to children;



### **Access to justice, including remedies**

should be available to restore the child's identity;



### **Psychosocial support**

should be freely available to victims;



### **Mediation,**

including international should be available;



### **Co-operation mechanisms**

should be established in cross-border cases, including portability of identity information between CRVS's national systems.

## Endnotes

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- 13 *Supra* 7, paras. 41 and 55.
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23 Child Identity Protection ([www.child-identity.org](http://www.child-identity.org)) is the only international not for profit organisation solely advocating for the protection of children’s identity rights in family relations, established in 2020.

24 Nationality may be transferred by jus sanguinis, right by blood.

25 *Supra* 20 (see “target” tab)

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29 *Supra* 26.

30 CRC/C/GC/7/Rev.1 2005, para 15.

31 *Supra* 20

32 CRC Committee, Concluding observations on the fifth periodic report of France, 23 February 2016, CRC/C/FRA/CO/5. [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f-FRA%2fCO%2f5&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f-FRA%2fCO%2f5&Lang=en)

33 “20. While welcoming the information that the possibility of anonymous births has led to a significant decrease in the number of newborns left in “baby hatches” and to a reduction in the number of infanticides, the Committee urges the State party to completely abolish the practice of anonymous abandonment of infants.” UN Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Austria, 6 March 2020, CRC/C/AUT/CO/5-6. [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fAUT%2fCO%2f5-6&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fAUT%2fCO%2f5-6&Lang=en)

34 “23. The Committee urges the State party to prohibit the “baby box” initiative, which is operated by religious organizations and which allows for the anonymous abandonment of children, and to consider introducing, as a last resort, the possibility of confidential hospital births.” UN Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of the Republic of Korea, 24, October 2019, CRC/C/KOR/CO/5-6. [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fKOR%2fCO%2f5-6&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fKOR%2fCO%2f5-6&Lang=en)

35 “24 (b). Ensure that children born through assisted reproduction technologies, in particular through surrogacy, are able to access information about their origin and that all involved are provided with appropriate counselling and support.” UN Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Australia, 1 November 2019, CRC/C/AUS/CO/5-6. [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fAUS%2fCO%2f5-6&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fAUS%2fCO%2f5-6&Lang=en)

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- 210 *Loc. Cit.*

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212 Since the revision of the Law on adoption came into force on 1 January 2018, the biological parents who are looking for their child, or who wish to have information, will be able to obtain personal data, if, once of age, he or she consented. The underage minor will also be able to give his or her consent, if he or she is capable of discernment, and with the agreement of his adopted parents. The law already gave the child the absolute right to know his origins, but now he will also be able to obtain information on his or her brothers and sisters and half-brothers and half-sisters, once they are of age and give their consent.

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- 232 *Supra* 202.
- 233 For example, *supra* footnote 148, Art. 8.1: "States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by: [...] (e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims"
- 234 *Supra* 20.
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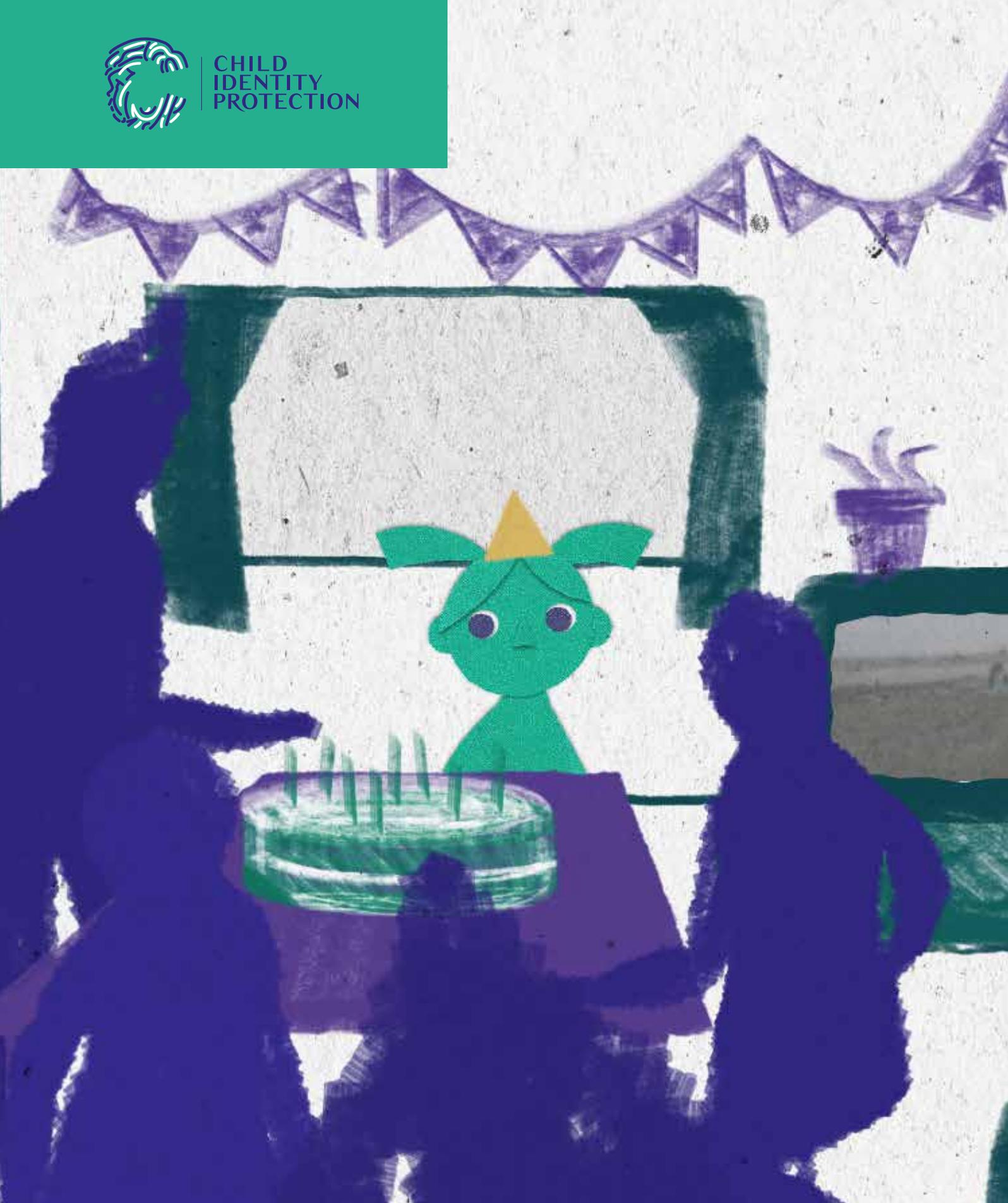
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