



CHILD
IDENTITY
PROTECTION

Policy Brief 2

Child's right to identity in alternative care



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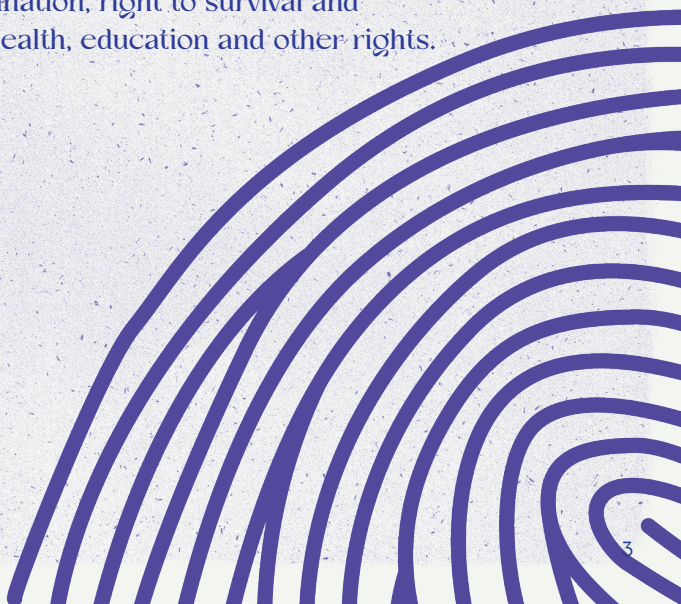
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We welcome any input to this publication to help improve our understanding of the situation, which is quickly changing (e.g. sharing promising practices or continuing challenges). Please also let us know if and how this publication has been used in your work.



These policy briefs are designed to explore specific issues through the protective lens of the child's right to identity as established in articles 7-8 of the Convention of the Rights of the Child (i.e. birth registration, name, nationality and family relations).

In their concise format, these policy briefs seek to complement the existing work of other stakeholders and where possible, reference is made to their work, with a view of facilitating a holistic approach to protecting children's rights. As such, the policy briefs do not purport to provide a comprehensive analysis of all children's rights at stake such as non-discrimination, right to survival and development, health, education and other rights.



Child's right to identity in alternative care

Abstract¹

The right to identity including birth registration, name, nationality² and family relations is an important right when preventing unnecessary separation and considering suitable alternative care for children deprived of their families (Articles 7-8 Convention on the Rights of the Child (CRC)). The right to identity transverses the entire life experience of the child before, during and when leaving care.³

The right to identity is closely linked to other rights such as keeping families together (Article 9 CRC), facilitating contact with families across countries (Article 10 CRC) and promoting continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background (Articles 20 and 30 CRC). Having an identity and knowing one's origins, in relation to alternative care, is equally part of the physical, psychological, cultural, spiritual and development needs of a child (Article 6 CRC). It is therefore imperative that those working in child protection, alternative care and adoption, give greater attention to the child's right to identity.

When these dual goals of finding suitable quality care and preserving the child's identity are not achieved, the lifelong impact for the child and the wider society, causes significant damage. Child Identity Protection (CHIP) hopes that this policy brief will help foster an understanding that the provision of quality alternative care, requires that the child's right to identity is safeguarded. In particular, this policy brief aims to contribute to the achievement of Sustainable Development Goals (SDG) on eliminating poverty (SDG 1), access to justice (SDG 16.3) and legal identity for all (SDG 16.9). CHIP will continue to work to ensure that every child and later adult, that has been in care, has full access to their origins, including remedies when necessary.

"Digging into our roots to find out where we come from [is important]."

Boy, 11–14, Ecuador⁴

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Introduction

Without access to the relationships and information relevant to forming a cohesive identity, children systematically face a range of challenges – legal, psychosocial and medical – throughout their life. Losing the connections and family relations that are essential for maintaining lifelong relationships to parents, siblings, friends, as well as community and wider social networks can have significant implications for the child's psychosocial and emotional well-being as well as result in loss of protective networks and sense of belonging that are critical as they become adults.

The lack of documented identity invariably creates problems for children accessing basic rights such as education, health, development, social services, social security, access to justice and they are also at greater risk of being sold, trafficked and being recruited into armed groups (e.g. Articles 12, 24, 26, 28, 32 CRC). Without formal recognition of the child's identity, such as their name and family relations, it may be subjected to arbitrary changes, when in an alternative care setting. It is therefore important that efforts are made to preserve the child's identity in family relations by preventing unnecessary separation (section 1), the child's identity is restored when unnecessary separation occurs that results in its improper modification (section 2) as well as specific attention to the child's identity in humanitarian and migration contexts is made (section 3).

SECTION 1:

Preservation of the child's identity in family relations by preventing unnecessary separation

While a wide range of harm and abuse may occur when children are placed in care, those related to the loss of the child's identity have received scarce attention, despite having serious lifelong consequences.

Such harm can arise when children cannot grow up in their family of origin and are not able to maintain a relationship with them and/or when there is incomplete or falsified information about their family relations, contrary to international standards.⁵ This includes situations where family kinship care may not be prioritised or when siblings are unnecessarily separated,⁶ which inevitably leads to discontinuity in family relationships and cultural identity of the child. While a specific focus on kinship care will be addressed in another policy brief, it is important to note at the outset its benefits over placement into stranger care. The emphasis on 'family care' in alternative care policy recommendations to date has not adequately explored the implications for a child being placed in a "new family" environment and the impact to their family bonds, cultural identity etc.

The child is likely to be given "another" identity as they are integrated into a "new family" environment. This dual identity is a complex psychological experience that has not been fully researched. One of the strengths of kinship care is that there is in principle no dual identity or second family and therefore the child maintains a sense of belonging. When foster care placements occur in a way where the child's original family ties are maintained, the child equally has an opportunity to embrace both the new family and his or her family of origin.

1.1 STATE-LED INITIATIVES AND/OR ABDICATION LEADING TO LOSS OF IDENTITY

*"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."*⁷

Loss of identity may equally include multiple examples where the State has used its coercive decision-making powers to inappropriately remove children from their families, a few of which are noted below:

gender discrimination may occur when either the mother or father is treated less well due to their sex, resulting in needless breakups in families. For example, single women due to reasoning such as moral and cultural views about their capacities to parent-alone, have had their children removed

as in Australia,⁸ Republic of Korea,⁹ Ireland¹⁰ and Switzerland.¹¹ These examples show how State-endorsed legislation such as secrecy provisions and/or lack of reflection periods has unduly affected these birth mothers. This stigmatisation of single mothers continues where there is lack of access to birth registration and nationality may not be passed on in multiple countries.¹² Gender discrimination may also occur against the birth father, such as in child protection proceedings, where his participation may be excluded, such as in the UK¹³ or South Africa.¹⁴

racial discrimination against indigenous, ethnic and/or other minority groups etc. as occurred for instance in Australia,¹⁵ Canada,¹⁶ Switzerland¹⁷ and USA¹⁸ may result in needless separation. In these instances, children were forcibly removed from their families, in an effort to assimilate them into dominant cultures without due regard for continuity in their upbringing, ethnic, religious, cultural and linguistic background. In December 2021, the European Court of Human Rights (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 cultural and religious origins would not be possible.¹⁹ In the earlier proceedings of the same case, the ECtHR held that the right to "family life" of Ibrahim, a Muslim refugee from Somalia was violated when her 10-month-old son was removed from her by the Norwegian Child Welfare Services and placed with a Norwegian couple who were members of the Evangelical Mission Covenant Church. The ECtHR found in the case that "insufficient weight attached to mother and child's mutual interest in maintaining family ties and personal relations through contact."

poverty²⁰ when it is the primary reason for separation is an indicator of State abdication to support families. This is well-illustrated by the documented lack of support to kinship families, who are the main form of alternative care globally. Without access to support, this can lead to violations of children's rights including child labor and exploitation within families as well as outside them. This can be seen in informal arrangements where a child may be placed away from their families of origin in an extended family setting, where they may become involved in child domestic work. International Labour Office (ILO) notes that "*17.2 million children are in paid or unpaid domestic work in the home of a third party or employer.*"²¹ Examples include the restaveks in Haiti²² and criaditas in Paraguay.²³ In high-income countries, children and families in poverty, especially those suffering from multiple disadvantages, are significantly more likely to be the subject of state intervention in the form of child protection investigations and care proceedings than those not living in poverty. Children in the UK's most deprived communities, for example, are over 10 times more likely to enter the care system than those from the most affluent areas.²⁴

political, economic or religious motivations.²⁵ Political motivations, such as the one child policy in China and enforced disappearances during dictatorships in Argentina, Chile and Spain²⁶ have resulted in unnecessary separation. Economic motivations may likewise drive children into care. As the funding of residential care is habitually based on the number of children in the institution, children may be recruited or trafficked to be placed in these facilities for financial benefits, despite the great majority having at least one living parent or families able to care for them. In such cases children are falsely named “orphans”, or their identity changed through the process of “paper orphaning”, and can be further exploited for the purpose of fundraising in the context “orphanage tourism”²⁷ in facilities that are usually located in popular tourist areas.



The work of Terre des hommes in Nepal to vindicate “paper orphans” is worth mentioning where children were lured into residential care with the promise of better education and later adopted internationally without the consent of their parents.²⁸ A similar situation has occurred in Haiti where following the earthquake in 2010, the good intentions of donors and volunteers, led to the unnecessary separation of children into orphanages, including trafficking and abuse. Research has noted that funding from overseas has led to the establishment of “orphanages” for profit, whereby only 15% are registered.²⁹

Religious motivations can also drive children into unnecessarily into care where 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. While the provision of care by all faith-based organisations does not necessarily improperly modify the child’s identity, it does when family

relations are severed including through lack of communication. This can occur when care is provided under the guise of education but with the primary purpose of changing the religious identity of the children through proselytization. It may equally occur where religious institutions are using children for exploitative purposes. To illustrate, 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.”*³⁰

combination of the above factors, coupled with lack of access to economic, social and cultural rights and a context of corruption and civil war has also resulted in for example, forced separation leading to illegal adoptions in Guatemala.³¹ It should be noted that a closer examination into the issue of adoption, family separation and identity is addressed elsewhere.³²

1.2 ANONYMOUS ABANDONMENT OF CHILDREN LEADING TO LOSS OF IDENTITY IN FAMILY RELATIONS

**So I don't know where I originate from ... I don't know and obviously my children and grandchildren will have the same problem you see it goes down in generations."*
(Female, 64)³³

Children without an identity at birth include those who are abandoned and eventually placed into care. The magnitude of this situation is currently unknown as worldwide statistics do not exist – although outdated information is available for Europe.³⁴ In practice, anonymous abandonment is where a parent leaves the child without any identifying information about the child's origins including their "family relations". When this occurs, compliance with the child's right to identity through access to his or her origins is almost impossible. Some countries authorise such practices, by allowing anonymous childbirth such as in France and Luxembourg (e.g. *naissance sous X*) or USA (e.g. *safe haven laws*)³⁵ or baby boxes (e.g. Austria, Belgium, Czech Republic, Germany, Hungary, Italy, Japan, Latvia, Lithuania, Poland, Portugal, Republic

of Korea, Slovakia, Switzerland). These practices facilitating anonymous abandonment are contrary to international standards, for example para 42 of the UN Guidelines for the Alternative Care of Children (UN Guidelines) which 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."³⁶

Instead of proactively creating frameworks allowing anonymous births, States should be encouraged to abolish such initiatives and set up confidential births, which may be less intrusive, as recommended by the CRC Committee to Austria (2020),³⁷ Republic of Korea (2019)³⁸ and France (2016).³⁹ In these situations, personal data about birth is kept confidentially, which helps limit some of challenges related to anonymity. Confidential births are currently being promoted by Switzerland as a way to protect the different rights at stake, notably the child, mother and father.⁴⁰ One promising practice in Germany has

occurred with the introduction of a law on confidential births and how children can access their origins.⁴¹ As a measure of first resort, States should importantly be encouraged to support families in their caregiving role to prevent the abandonment of children, in addition to systems that allow for confidential births.

A number of States have introduced effective practices to prevent abandonment and give support to young mothers, noting that early intervention are cost effective, as seen for example, in many East European countries.⁴² Improving access to health and other services as well as having specialist workers in maternity units when a child is born with a disability, has also supported parents in their caregiving role (paras 9 and 10 UN Guidelines) as illustrated by the services at Angkor Wat Children's Hospital in Cambodia.⁴³ Another promising example of support from the health sector is in Kenya at Pumwani Maternity hospital, including their work with pre-term babies.⁴⁴

Specific services to accompany children and adults searching for their origins have likewise been developed. For example, the French National Council for Access to Personal Origins (CNAOP)⁴⁵ was created in 2002 to collect and conserve information on the identity of birth parents and the child's history – to date limited to *naissance sous X*. The CNAOP has a duty to search for the biological mother and seeks to obtain her consent should the child request information about his or her origins. In 2019 the report indicates that *"297 people have had access to the identity of at least one of their birth parents through the CNAOP."* The "Afstammingscentrum" (Filiation centre) has also been set up in the Flemish community of Belgium to provide support to those searching for their origins.⁴⁶

1.3 IMPROVE ACCESS TO CIVIL REGISTRATION AND VITAL STATISTIC SYSTEMS FOR FAMILIES AT RISK OF SEPARATION

It should be noted that families that cannot access Civil Registration and Vital Statistics (CRVS) systems are likely to be the same that are at risk of separation, due to lack of access to basic services and pervasive discrimination. It is widely accepted that children born in rural areas from underprivileged backgrounds and whose mothers may have a low level of education are less likely to have their births registered.⁴⁷

For example, UNICEF notes that around three million children in Latin America and the Caribbean do not have birth documents as “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. Urban-rural differences also mask deeper underlying disparities, mainly related to poverty.”⁴⁸ Further obstacles to birth registration occur in countries where registration costs money (e.g. Uzbekistan), where a marriage certificate is required (e.g. Indonesia), and where a child of unknown father cannot be registered (e.g. Bhutan).⁴⁹ In Malaysia, like other countries, other factors include cumbersome

administrative procedures for birth registration, and difficulties in obtaining birth certificates for children who are refugees or born from undocumented migrant workers, who do not seek birth registration due to fear of arrest.⁵⁰ States should therefore address the underlying obstacles to accessing CRVS systems as a preventative measure to avoid risk of separation. The abolishment of birth registration fees by Togo starting on 1 January 2022 can only be encouraged in all countries to ensure legal identity for all children.⁵¹

SECTION 2:

Restoration of the child's identity in family relations when unnecessary separation occurs

The preservation of children's identity in alternative care, firstly occurs with preventing unnecessary separation (section 1) and secondly with active efforts by child protection professionals to uphold the child's right to identity when in care.

As noted in "Celebrating and maintaining identity"⁵² summarising the views and ideas shared by 1,188 children and young people in preparation of the DGD on alternative care **"For many children and young people across each region, staying connected with their personal and cultural identity and language is crucial."**

The importance of recording and accessing personal records is also stressed as well as the significance to telling children and young people the truth about their backgrounds. According to a young woman from New Zealand "Even if children in care don't talk about their backgrounds, the adults still have a responsibility to help them maintain their identity."

This report builds on 2019 research which shows that independent of the care environment, meeting their birth families was an important priority for children and that *"that knowledge of, and contact with their birth family did not modify the quality of the children's relationship with them (foster carers or adoptive parents)."*⁵³

Given the importance of identity preservation work by child protection professionals working in different alternative care settings, CHIP will dedicate a complementary policy brief on this topic. This specific policy brief will however concentrate on whenever the child's identity is not preserved, and the need for active efforts to restore the missing and/or falsified elements.

2.1 CURRENT CASES: ACCESS TO JUSTICE, ACCOUNTABILITY AND SUITABLE REPARATION

Restorative measures and accountability for violations of children's right to identity in the context of alternative care and adoption are vital, particularly when children are unnecessarily separated from their families. Articles 9 and 25 CRC create broad obligations for the State to preserve family relations for children separated from their families, including requiring that decisions to separate a child from his or her parent against their will are only taken by a decision of competent authorities and subject to judicial review ((Article 9(1)), and Article 8(2) CRC creates a responsibility to re-establish missing elements of the child's identity including in family relations.

Where there has been an undue separation of the child from his or her parents, family reunification and reintegration should be encouraged (10(1) CRC) when in the child's best interests.⁵⁴ Arguably, the benefits of having a family can only be achieved if the child knows who their family

relations are, as outlined in Article 8(1) CRC in their right to identity, which assumes that CRVS systems are in place and functioning well. If the child cannot and does not know who their family relations are, then family reunification is virtually impossible.

In practice, restoring the child's original identity through family reunification requires further efforts. The issue of reintegration is often missing from national legislation and policy, with ineffective practices such as failure to address the reasons for initial separation and inadequate post-support services.



International efforts such as the 2022 Annual Day on the Rights of the Child at the Human Rights Council dedicated to family reunification as well as inter-agency collaboration that led to the Guidelines on Children's Reintegration,⁵⁵ should contribute to strengthening implementation of the child's right to identity through these efforts. Kinship care should be seen as a key solution to prevent separation from birth family where the child is not able to live with the parents (section 1). This ensures that the child's roots are still retained and identity with the family is continued and maintained. Kinship care across borders should also been seen as an option for children on the move, where third countries may be considered, as a way to preserve the child's family identity and allow for suitable care.

At a regional level, the ECtHR has provided helpful jurisprudence. For example, in 2020 it ruled that there was a violation of the right to privacy, when the Norwegian child protection authorities did not facilitate contact with the family of origin, nor did they provide adequate support to them while the child was in alternative care to enable reunification. The lack of social contact with the birth family was

one factor that led to the decision to remove their parental authority and led to the adoption of the child. The ECtHR held that the child protection authorities were responsible for the family breakdown and failed in their duty to promote family reunification.⁵⁶ The Inter-American Court of Human Rights has provided remedies to re-establish the child's identity, for example, requiring that Guatemala adopt all necessary and adequate measures to facilitate the restitution of family ties between the child and his parents, as well as modify the child's birth certificate to reinstitute legal family ties.⁵⁷

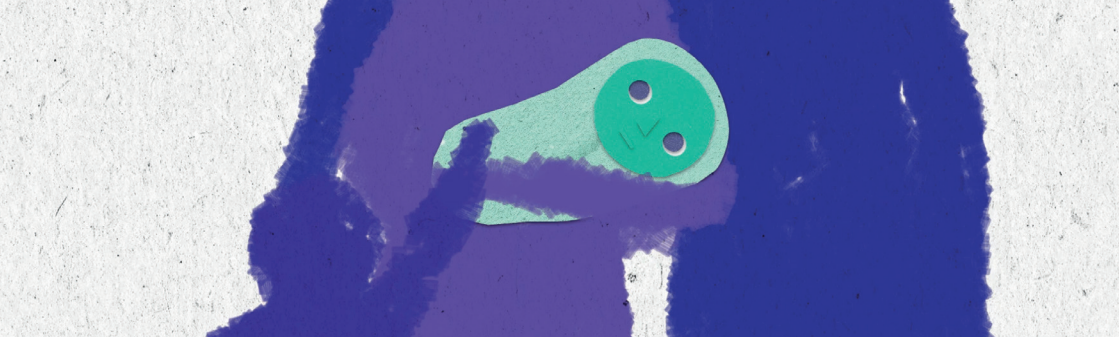
At a national level, a number of countries have introduced important measures to promote the child's right to identity. For example, Cambodia has undertaken an initiative in this direction, with a 2015 Action Plan for improving child care, with the target of safely returning 30 per cent of children in residential care to their families during 2016 - 2018.⁵⁸ Paraguay has also recently introduced a law that promotes the maintenance of family ties, although its full implementation still remains a challenge.⁵⁹

2.2 PAST CASES: ACCESS TO JUSTICE, ACCOUNTABILITY AND SUITABLE REPARATION

In past situations of abuse in alternative care related to the child's right identity, particularly when large numbers of children are involved or the abuse has been systematic, different challenges may exist to accessing justice, accountability and reparation, related to the scope of State's responsibility. The discovery of missing or falsified information related to a child's identity is likely to occur years later when the child is an adolescent or an adult. In such cases, statutes of limitations may apply and/or existing international, regional and national frameworks may not have been in force at the time of the violation. Such legal challenges may be compounded by lack of political will, limited pathways to justice, and a culture of impunity. Practical realities may mean that even the existence of DNA databases cannot help to restore identity as records may not have been preserved and in some situations, may have been even (purposefully) destroyed.

In response to gross occurrences of abuse including deprivation of identity, national enquiries such as in Australia,⁶⁰ Canada,⁶¹ Ireland,⁶² Spain,⁶³ and Switzerland⁶⁴ have been set up. The outcome and recommendations from these enquiries vary in degree, noting that apologies, memorialisation processes, reparation and non-recurrence measures are key responses.

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) that is helpful for past abuses in alternative care.⁶⁵ The formal apologies of the Australian government for forced adoption practices of single mothers⁶⁶ and treatment of indigenous peoples,⁶⁷ including the establishment of a victim's fund are promising practices. Similar political will was shown for the "Forgotten Australians and former child migrants, collectively known as care leavers" including the introduction



of a new Find and Connect service.⁶⁸ As noted earlier, Switzerland provides another promising practice, where formal apologies have been made to survivors of past abuse and significant funds have been dedicated to research addressing the coercive practices of the past and present, such as the study on coercive measures for welfare purposes and out of home placements, which led to the Federal Act on Compulsory Social Measures and Placements prior to 1981 (CSMPA), effective on 1 April 2017.⁶⁹ The 2019–2022 Amacker study on “Private and public actors in out-of-home child care processes” will contribute to knowledge on the role of financial and supervisory frameworks in coercive decision in all out of home placements including residential care.⁷⁰ The formal apology published by SOS Children’s Villages in 2021 in response to failures in safeguarding and governance likewise moves in the right direction of recognising the responsibility to prevent and address such violations and hopefully reparation.⁷¹

Despite such efforts, additional responses to situations of past abuse must be developed. For instance, States should systematically implement memory processes. The UN SR on transitional justice’s 2020 report⁷² in this context is helpful as it outlines the importance of

archives and ensuring access to that information (paras 70 to 73). This is particularly relevant in the case of Ireland where following the enquiry into Mother and Baby Homes, certain records of victims and witnesses were destroyed to ensure anonymity, which will significantly limit the fulfilment of the right to identity.⁷³ German authorities, have in contrast, opened the archives of the Stasi (the Ministry of State Security of the former German Democratic Republic) as a promising practice to ensure open access.⁷⁴

States should likewise be cautious in applying the General Data Protection Regulation (GDPR), to withhold “mixed data” from children about their personal identity information in alternative care.⁷⁵ It seems that governments in Europe such as those in the UK are narrowly interpreting Article 15(4) GDPR so that children (and later adults) cannot fully access their rights to identity and know their origins when mixed data is involved – which can potentially affect the 30,000 children that enter care each year.⁷⁶

"I feel they just try and shelter you from a lot, but they don't actually realise, they're sheltering you from you at the end of the day. I've been trying to build myself up, based on what I know. And then out of nowhere, when you feel like a person's old enough, then you want to say well actually, this, this, this, this and that happened. Then it's a bit like: well, the person who I was, that's not me then, because now you're telling me all of this, I'm a different person."
(Paige)⁷⁷

In responding to past abuses, States should equally be working towards the elimination of impunity for violation of the child's right to identity in alternative care and adoption. It is of vital importance that strategic litigation and the promotion of access to justice by survivors, including by lifting statutes of limitations be encouraged. 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.⁷⁸

Through a grant of the Swiss National Science Foundation, CHIP is currently working with the University of Geneva and other experts to evaluate coercive decision making in foster care, and where possible adoption, in Switzerland through the lens of international standards.⁷⁹ The results of this research should be helpful in providing concrete examples of how States can effectively meet the child's identity needs and tackle the issues raised beforehand.

SECTION 3:

Preservation of the child's identity for those in alternative care in humanitarian and migration contexts

Children in emergency situations, including unaccompanied and separated refugee and migrant children,⁸⁰ may be deprived of their identity. For example, only 45% of children born in Donetsk and Luhanska (Non- Government controlled areas, NCGA) and around 12% born in Crimea have obtained a birth certificate issued and recognised by the Ukrainian Government.⁸¹

While procedures exist that allow children from the NCGA to obtain birth certificates, the steps are cumbersome, expensive and not fully implemented.⁸²

While procedures exist that allow children from the NCGA to obtain birth certificates, the steps are cumbersome, expensive and not fully implemented. Significant expenses occur for parents to get certificates approved by the courts related to travel/ overnight stay in the GCA. Further in some countries, the conditions of the child's registration in receiving or transit countries do not always respect their rights

For example, thousands, including children, with Mexican nationality born in a country other than Mexico do not have a birth certificate due to cumbersome administrative procedures and costs.⁸³

Moreover, when a child arrives unaccompanied in a new country, there may be inadequate mechanisms in place to facilitate an immediate search for information concerning family background - when safe to do so. Paragraphs 162-167 of the UN Guidelines provide helpful orientations on what should be recorded and how family reunification should occur in emergency settings. Without these family tracing and reunification (FTR) services in place, renewed contacts with the family may be challenging.⁸⁴

For example, this can be seen where a considerable number of children, who had migrated with their parents to the USA were separated from their families, not eligible for reunification or release. A 2021 Homeland Security report identified 3,948 children who were separated from their parents at the United States-Mexico Border between July 1, 2017 and January 20, 2021.⁸⁵ It seems that “identified holes in the system that allow[ed] state court judges to

grant custody of migrant children to American families - without notifying their parents”, could eventually become eligible for adoption by American families.⁸⁶ In addition to being an example of separation being used to deter immigration, it also entailed serious changes to the family identity of these children without an exhaustive child protection process compliant with international standards.

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.⁸⁷

UNHCR Best Interests Procedure Guidelines, Assessing and Determining the Best Interests of the Child (UNHCR BIP Guidelines)⁸⁸ revised version, launched in 2021 is an extremely important tool for assessing and determining the best interests of the child in these settings. It is filled with important guidance notably meeting the child's identity needs including "sex, sexual orientation, national origin, religion and beliefs, cultural identity and personality." In considering the child's development and identity needs, a strong emphasis is made on understanding the child's family environment, family relations and contacts. If alternative care is deemed necessary, it is important that case workers are equipped to understand the importance of identity – continuity, preservation and restoration.

*"Celebrate their culture/
religion, encourage
communication with relatives,
and provide them with
knowledge of their caste."*
Young man, 18–25, Nepal⁸⁹

It is likewise necessary that authorities in the different States cooperate well in all cross border settings. The 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 (Hague 1996 Child Protection Convention) provides a useful framework for such co-operation. Switzerland has developed an aide memoire to encourage cantonal authorities to consider the child's best interests, including family relations in these cross-border alternative care placements.⁹⁰

*"I needed to talk about those
good times before the war. But
the more I talked about my
father, the more I missed my
mother and little brother, too. I
didn't grow up with them. I felt
as if I missed that chance and
would never get it again, and
that made me sad."*

Ishmael Beah, former child soldier

Still, armed groups deliberately set out to change child soldiers' identities as a means of cutting them from their previous lives and reducing attempts to escape. Often they do this by saying, "Now you are soldiers," requiring them to wear uniforms and other symbols of their identity, and subjugating them through brutality and control processes."⁹¹

FTR services may also be limited in how they can effectively apply to children separated from their families and suspected of having been recruited by terrorist groups. The UN SR on violence against children notes in a [2020 report](#) that "tens of thousands of foreign, Iraqi and Syrian children are being held in detention on suspected ISIS association or terror-related offenses, or in camps. These children are exposed to violence, due process violations and family separation. Securing solutions for these children must be pursued in advance or in parallel with efforts to facilitate repatriation."⁹² According to the

Special Representative of the Secretary General for children and armed conflicts in June 2020, "more than 7,000 children have been recruited or used during conflicts."⁹³ When children enter such groups, their family existence is often 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."⁹⁴ Work is needed to explore family reunification when the identities of families of origin may have little meaning and/or when families may have difficulties in accepting the children.

Children living in street situations are another example of vulnerable circumstances, that children may be separated from their families and often without legal identities. The Consortium for Street Children has developed an excellent tool through its legal atlas on how legal identity can be established and its restoration for street children in many countries.⁹⁵

Recommendations

- All persons working in prevention and family support, alternative care and post care, should be provided continual training on the importance of the child's right to identity (e.g. preservation and restoration).
- Modification of child's identity related to family relations that leads to State removal of the child from their family and/or change in legal parentage should only occur when in the child's best interests (Art. 9 and 21 CRC).
- In determining the most suitable form of alternative care placements for the child, due consideration, should be given to upholding the child's right to identity in family relations, including:
 - Greater investment into family reunification and reintegration, including comprehensive training on importance of identity rights (i.e. name, nationality and family relations), especially for children who have been inappropriately placed in care and/or those involved in armed conflict;
 - Improved support to families at risk of abandonment and those who cannot access CRVS systems and other services, including appropriate psychosocial support to prevent family separation; and
 - Ensuring continuity in a child's upbringing, ethnic, religious, cultural and linguistic background.

- **CRVS systems should be set up to encompass all relevant elements of the child's identity including:**
 - use of multilingual civil status forms (e.g. ICCS Convention no 16 and no 34);
 - safe and confidential communication between the civil registrars in cross-border matters; and
 - preservation and access to information about origins, in perpetuity.
- **In cross-border alternative care matters, States should:**
 - facilitate contact between family members;
 - cooperate to find the most suitable solutions, including ratification of relevant Hague Conventions such as the Hague 1996 Child Protection Convention
- **For past abuse cases, States should:**
 - lift statutes of limitations in cases involving children
 - consider the importance of apologies and memorialization, including archiving as outlined for example, in the work of the UN SR on transitional justice;
 - develop protocols for victims on available remedies, including free counselling, mediation services, reparation including financial compensation, training of actors, new laws etc.; and
 - introduce search for origins and family reunification initiatives that are well resourced.

- In order to benefit from the existing research on past abuses in alternative care and adoption, a global study centralising the lessons learned in terms of upholding the child's right to identity, should be developed to pinpoint:

- Factors that lead to a successful research/enquiry;

- Measures that have been effective in holding States and other actors accountable;

- Prioritisation of recommendations, given resources;

- What is considered suitable reparation for the abuse in alternative care, such as restoration of identity; and

- Other areas that can benefit from lessons learnt, such as the prohibition of the use of anonymous gametes in assisted reproductive technology etc.⁹⁶

- In emergency situations, all national and foreign entities should prioritise protection measures that enable children to remain with or return to their families.

- Displacement and evacuation should be envisaged only as a last resort, should be fully prepared and carried out in compliance with international standards to protect all elements of identity.

- Long-term decisions as to the extra-familial care of a child, such as adoption, 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.

- International standards, for example a general comment/guidelines, should be developed to protect the child's right to identity (birth registration, name, nationality and family relations) in varied contexts, including alternative care. This work could be facilitated by for example, a Day of General Discussion of the CRC Committee or other international/regional opportunities, focusing on the child's right to identity

End Notes

1 The original basis of this policy brief was part of the submission to the 2021 CRC Committee's DGD on alternative care and its specific objective. The policy brief version has been adapted to include some of the outcomes and other submissions from that day, particularly the voices of children. All the DGD submissions as well as recordings of the day are available at: <https://ohchr.org/EN/HRBodies/CRC/Pages/Discussion2020.aspx>. This submission includes issues related to adoption, as children are often (unduly) placed in alternative care, prior to adoption or when adoption is inappropriately prioritised for children separated from their families. For further information on adoption, see Dambach, M. and Jeannin, C. (2021). Policy brief on Child's right to identity in adoption, Child Identity Protection. Available at: <https://www.child-identity.org/en/resources/policy-briefs/217-policy-brief-1.html> and 2022 webinar <https://www.child-identity.org/en/resources/advocacy-and-policy/357-webinar-intercountry-adoption.html>

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