

# **Child's right to identity and family relations**

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# Child identity in relation to the family - CRC

- The **right to know** (as far as possible) their **parents** and to be cared for by them (Article 7)
- the right to **preserve** their **identity**, including their **family relations as recognized by law without unlawful interference** (Article 8, para 1)
- The right **not to be separated** from their parents against their will, except when this is necessary to ensure the child's best interests (Article 9)
- The right to have their **identity speedily re-established** in case the child has been illegally deprived of their identity (Article 8, para 2).

## Article 7: identity, related to family, should be established / and right to know

The state must take **positive actions to facilitate the enjoyment of this right** (obligation to **fulfil**) in relation to:

- Systems of birth registration – not discriminatory!
- Adoption
- ART including Surrogacy

# Right to identity: equal access to establish the family relation at birth

- Children of unmarried parents or whose father is unknown (Kiribati, Oman)
- Children born to unmarried parents or of incest have the right to take on the name of at least one of their parents (State of Palestine);
- Children born to same-sex couples (Greece)
- Children belonging to ethnic or religious minority or indigenous groups (Vietnam, Cambodia);
- Children of Nomadic families (Djibouti);
- Indigenous children (Canada, 2022);
- Aboriginal and Torres Strait Islander children, including those placed for adoption (right to their identity, name, culture, language and family relationships) (Australia 2022).

# Right to know: disclosure of biological origin of the child

- Anonymous Vs **confidential** births (Baby boxes) – (Germany, France, Poland, Hungary, Austria, Switzerland, Luxemburg, North Korea, The Netherlands etc.)
- Secrecy of adoption,
- Secrecy of genetic origin of children born through ART incl. surrogacy.

# Right to know and anonymous births

The practices of **anonymous child abandonment / baby boxes violate art.7 rights:**

- **Anonymous births (France, 2011, 2016);**
- **“Simulated births”** - fraudulent registration of births (Philippine, 2022, para 27);
- ...urges the SP to **completely abolish** the practice of **anonymous abandonment of infants (“baby hatches”)** (Austria, 2021, para 20);
- urges the SP to introduce **confidential birth registration** to prevent the abandonment of children while phasing out the so-called **“baby box”** (incubator) programme (Hungary, 2019, para 26);
- urges the SP to address **the causes of the anonymous abandonment of children**, ...and consider introducing, as a last resort, the possibility of **confidential hospital births**, in order **to end the anonymous abandonment of children in “baby boxes”** (Poland, 2021, para 22);
- to strengthen measures to promote the use of **confidential births** and ensure that **information about the biological origins of such children are preserved**, with a view to eliminating the use of baby boxes (Germany/5-6, 2022, para 19);

# Right to know and anonymous births 2

- **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** (Republic of Korea, 2019, para 23);
- **... end the anonymous abandonment of children in “baby boxes ”** (Czechia 2021);
- children should have access to information regarding their **identity if born via anonymous birth** (Luxemburg, 2022, para 16);
- develop a **standardized procedure for confidential birth services to ensure that information about the biological origins of such children are preserved, and promote its use with a view to eliminating the use of baby boxes** (Switzerland, 2022, para 22).



## Right to know secured

- **The Committee notes that no newborns have been placed in “baby rooms” without information about their mother during the reporting period, and recommends that the State party continue to ensure that the right of children left at hospitals to know their origins is respected (The Netherlands, 2022).**

# Right to know and adoption

**Children should have access to information regarding their biological parents:**

- adopted children are **informed of their right to seek and have appropriate access to information on their biological parents** (Rep. Korea, 2019, para 36);
- **support any requests from adopted children** to have access to information on their origins (Viet nam, 5-6; 2022);
- children **should have access** to information regarding their identity if they were adopted (Greece, 2022, para 22 and Luxemburg, 2022, para 16)
- While welcoming the legislative measures to ensure the rights of adopted children (2018) **to have access** to information regarding their biological origins, ....recommends that the SP **remove legitimate interests as a precondition for a child's right to information** regarding his or her biological origins, (Switzerland, para 22).

# Right to know and adoption: Procedure

- encourages the State party to protect the right of the adopted child to know his or her original identity, **establishing appropriate legal procedures for this purpose, including recommended age and professional support measures** (Russian Federation, 2005, paras 40-41);
- **Ensure that children are informed, especially about their origins, ....depending on their age and maturity** (Russian Federation, 2014).

# Right to know and ART, incl. surrogacy

- ... urges the SP to ensure the right of children to have access to information **about their origin** if born through **assisted reproduction technologies**, including **surrogacy** and **donor arrangements** (Greece, 2022, para 22);
- Noting with concern that article 4 of the Act on Artificial Fertilization and Use of Human Gametes and Embryos for Stem-Cell Research **allows for the anonymity of donors**, ...**recommends that the SP guarantee the right of children conceived by medically assisted reproduction to information regarding their biological origins** (Iceland, 2022, para 20);
- While welcoming the legislative measures to ensure children conceived by medically assisted reproduction have access to information regarding their biological origins **remove legitimate interests as a precondition for a child's right to information** regarding his or her biological origins, (Switzerland, 2022)
- Recommends ...that the draft legislation provide for children to have access to information regarding their identity if born via ART, including technologies involving gamete or embryo donation, or via surrogacy arrangements concluded abroad regarding parents who are resident in the State party (Luxemburg, 2022, para 16).

## Right to know and ART, incl. surrogacy 2

- Children born through assisted reproduction technologies, in particular through surrogacy, **are able to access** information about their origin (Australia, 2022);
- Ensure that all children, including those born through assisted reproduction technologies (including surrogacy), **have access** to information about their origins (Ireland, 2023),
- Children born through assisted reproduction technologies, in particular with the involvement of surrogate mothers, have their best interests taken as a primary consideration in **facilitating their access to the relevant register**, court file or other records of information about their biological origins (New Zealand, 2023).

# The Committee recommends (art.4 measures)

## 1. Legislation:

- consider introducing, as a last resort, **the possibility of confidential hospital births**
- provides clear procedures for managing and storing data regarding children's origins in cases of conf. birth, adoption, ART.
- consider removing the requirement of **the biological mother's consent to reveal her identity** (France, 16);
- **remove legitimate interests** as a precondition for a child's right to information regarding his or her biological origins (Luxemburg)
- **ensure that women and men are equally legally entitled to pass their indigenous status to their grandchildren.**
- **establish appropriate legal procedures for child's access to information, including recommended age and professional support measures / oblige (?) adoptive parents to inform the child of adoption before the child starts school.**

# The Committee recommends (art. 4 measures) 2

2. **Address the causes of the anonymous abandonment of children /** root causes that lead parents to choose to use confidential birth (France, 16, Poland 21).
3. Develop a standardized procedure for confidential birth services to ensure that information about the biological origins of such children is **preserved** (Germany 22)/ is **registered** and **filed**, in order to allow the child to know, to the extent possible and at the appropriate time, his or her parents (France 16).
4. Increase **access to counselling** and social support for pregnant women (families) in crisis situations (Poland).
5. **All involved in ART are provided with appropriate counselling and support** (Au, 22):
  - the State party should consider **providing surrogate mothers and prospective parents with appropriate counselling and support.**
6. **Restore names on birth certificates where they have been illegally altered or removed.**
7. Adopt legislative and administrative measures to account for the rights, **such as name, culture and language, of children belonging to minority and indigenous populations** and ensure that the large number of children in the child welfare system receive an education on their cultural background and do not lose their identity.

## Preservation of identity – articles 8 and 9 CRC,

- The right to respect for family relations - article 8/1 CRC:  
the state must **refrain** from interfering **unlawfully and arbitrarily** with or curtailing the enjoyment of the **right to preserve the family relations** (obligation to respect) and should protect the child against abuses of the right (obligation to protect) from third parties.
- Separation - article 9/1 CRC requirements.
- The state must take **active measures** to speedily re-establish the identity of the child article 8/2 CRC.



# Preservation of identity related to family relations

- Change of names
- Article 9 – separation from family
- Alternative care – child files
- Contact rights
- Reintegration
- Combat illegal adoptions
- Repatriations
- Humanitarian situations

# Prevent unnecessary removal from the family

**Only where necessary for the BIC – art.9/1 standard, for example:**

- To strongly invest in measures developed and implemented by Aboriginal and Torres Strait Islander children and communities **to prevent their placement in out-of-home care, provide them with adequate support while in alternative care and facilitate their reintegration into their families and communities** (Australia, 2019);
- ...Maori children and communities **to prevent their placement in out-of-home care, limit removal, when it is deemed necessary, to the shortest time possible, provide them with adequate support while in alternative care, and facilitate reintegration into their families and communities** (New Zealand, 2023).

# Preservation of family identity while in care

Keep the child's file/information:

- **Create a registry of children in residential care**, disaggregated by sex, age, ethnic origin and type of disability, aimed at enhancing social reintegration (Guatemala, 2017);
- Ensure the right of children to preserve their identity **in cases of abandonment in institutions, strengthen data collection on .. children living in them**, including with regard to privately run and church-run institutions (Greece, 2022, para 22);
- **Ensure full respect for the preservation of identity for all children and take effective measures to ensure that indigenous children in the child welfare system are able to preserve their identity** (Canada, 2022, para 24);
- Adopt legislative and administrative measures to account for the rights, such as name, culture and language, of children belonging to minority and indigenous populations and ensure that **the large number of children in the child welfare system receive an education on their cultural background and do not lose their identity** (Canada, 2022, para 24).
- opportunities for all children in care **to maintain contact** with their parents (Gr 22);

# Family tracing – reunification

- **facilitate family reunification and to provide services, including education and health-care services, to children who lack identification**
- **including by raising awareness among the population to eliminate the stigmatization** faced by children of unmarried parents and their mothers (State of Palestine, 2022, para 29);

# Committee recommends: re-establish the identity

- 1. Investigate and prosecute those involved in illegal birth registrations, and ensure that those affected receive legal and other support in finding out about their origins (Ireland, 2023);**
- 2. Restore names on birth certificates where they have been illegally altered or removed (Canada, 2022);**
- 3. Adopt legislative and administrative measures to account for the rights, such as name, culture and language, of children belonging to minority and indigenous populations and ensure that the large number of children in the child welfare system receive an education on their cultural background and do not lose their identity (Canada, 2022);**
- 4. Revise its legislation to ensure that women and men are equally legally entitled to pass their indigenous status to their grandchildren (Canada, 2022).**
5. Maintain registries of children in alternative care.
6. Train professionals on BIC AD and monitor placements.

# Illegal intercountry adoptions: Joint statement

- **Prevent** - subsidiarity and BIC! **birth registration for every child! Address the higher risk of separation** (migrant, asylum seeking, refugee and internally displaced children, of children with disabilities as well as of children victims of armed conflict and natural disasters, including climate-related disasters).
- **Remedy**: right to truth - to victims, including those adopted in the past - assistance they need to **know their origins**.
- swift action to re-establish the true identity of the adoptee
- The State shall play an active role in efforts **to search for and locate missing children**.

# Separated children: extraterritorial jurisdiction to protect

Instrumental role of family identity – a factor to prove extraterritorial jurisdiction/ obligation to repatriate and protect (linked to the nationality of children):

Cases No 89 and 109/2019 against **France** and No. 100/2019 against **Finland**:

1. **Some of the authors** are direct ascendants of the children (grandparents).  
The consent of children - not a criterion since it would make the Convention practically impossible to apply **to separated children in a conflict zone**.
2. **Grandparents or mothers can act on behalf of /without their consent – because it is in the BIC.**
3. **The family link should be established** - their personal details or identities are to specified at least (case inadmissible for 30 children with unspecified identity)

Thank you for your attention!