



CHILD  
IDENTITY  
PROTECTION

Child Identity Protection's Policy Briefs

# Child's right to identity in intercountry adoption



These policy briefs are designed to explore **specific issues** through the protective lens of the child's right to identity as established in article 8 of the Convention of the Rights of the Child (i.e. 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 intercountry adoption<sup>1</sup>

## Abstract:

Article 8 of the UN Convention on the Rights of the Child (CRC) notes that a child has a right to identity including a name, a nationality and family relations. Whenever a child is deprived of one of these elements, States have an obligation to restore the child's identity speedily. At the heart of any intercountry adoption (ICA) is the modification of a child's identity given at birth.

This article explores the conditions that justify such a modification is in the child's best interests as the paramount consideration. Secondly the article then examines what mechanisms must be in place to record the modification, including the reasons behind the change, to ensure that the adoptee can access information about their origins.

Thirdly the article focuses on how to prevent the falsification and possible sale of the child's identity when it is modified through an ICA. The article concludes by examining promising practices on how different States have taken up their responsibility to re-establish the child's identity when it is incomplete and/or sold and options for those seeking redress when States abdicate.

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

## Introduction:

Intercountry adoption (ICA) brings about a substantial modification of the identity of the child, since it involves changes of name, nationality and family relations (article 8 CRC). ICA results not only in a definitive separation of children from their biological family – including biological parents, siblings and grandparents - but also causes a break with their social and cultural environment. All these elements, which constitute the identity of the child, will undergo profound transformations.

In light of this, the question then arises as to what justifications could reach the benchmark of the child's best interests as the paramount consideration, as discussed in section one. Should an ICA be deemed in the child's best interests, section two explores the importance of recording any changes to the child's identity in their entirety and with full transparency. Section three further examines situations where

the child's identity is falsified and/or sold in ICAs. This situation can for example occur when children are falsely recorded as "orphans" or "abandoned", or when remuneration and or any other consideration is given in exchange for the child. Section four concludes with promising practices on how different States have taken up their responsibility to re-establish the child's identity, as well as options for those seeking redress when States abdicate that responsibility.

## **Child's identity related to family relations should only be modified via an ICA when in the child's best interests as the paramount consideration**

The best interest of the child must be scrupulously evaluated and determined when choosing the measure of protection for the child. In order to ensure that ICA truly respects the right of the child to their identity, it will be necessary to establish that all the legal, procedural and medico-psychosocial guarantees covered by the 1993 Hague Convention are met, and that it is the measure best able to respond to the individual needs of the child concerned.

The process of evaluating and determining the best interest of the child is of prime importance, and deserves the full attention of governments. The professionals involved need to be adequately trained and equipped for this purpose.<sup>2</sup> UNHCR<sup>3</sup> notes meeting the child's identity needs involves 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. The Guidelines note "the feeling of being wanted and valued is the basis for a healthy emotional life. Such feelings are rooted in family relations and broaden as a person matures into increasingly larger circles that encompass relatives, peers, the community and society. The need to feel valued grows into a need to belong to social groups and have a place in society. It is therefore important to prevent possible uprooting effects of the BIP, in particular a BID decision. Continuity of contact with external surroundings, including people and places, has an extremely important psychological effect on the child's development ...".

In its judgment “Ramirez Escobar and others versus Guatemala” of 9 March 2018,<sup>4</sup> the Inter-American Court of Human Rights pinpoints the role of the authorities responsible for allowing an ICA. The Court specifies that these authorities must evaluate whether such a measure is able to guarantee the best interest of the child in terms of their individual circumstances, the definitive separation from their family, and the consequent break with his culture and national identity.

Furthermore, respect for the double principle of subsidiarity<sup>5</sup> is fully in line with the list of criteria to be taken into consideration when evaluating and determining the best interest of the child, notably the preservation of the child's family relationships (first level of subsidiarity). [According to the UN Guidelines for the Alternative Care of Children](#), this means that all efforts should be made to support the family in their caregiving role and ensure access to basic and targeted services, as well as if temporary separation occurs, that family reintegration is prioritised, referred to as the principle of necessity.<sup>6</sup> Should despite all

support, the child is nevertheless in need of care, then efforts should be made to identify the most suitable option in the child's country.

Furthermore there should be continuity in their cultural background through a family like placement in the child's country of birth (second level of subsidiarity) contributing to the respect of their identity. Accordingly, any rupture of filiation should be consonant with considerations linked to the child's cultural and social identity, as noted in article 20(3) CRC which states:



3. Such care could include, *inter alia*, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. 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.

The 2020 law on alternative care and adoption in Paraguay has a specific provision on promoting cultural continuity in both national and intercounty adoption<sup>7</sup> as does the Civil Code of Honduras<sup>8</sup>.

It may be worth noting that a promising practice is being considered by a Central Adoption Authority in Latin America whereby a third level of subsidiarity is applied. Prior to an ICA being considered outside of the region, prospective adoptive parents from neighbouring States will be prioritised. Such a practice can facilitate the continuity in the child's ethnic, religious, cultural and linguistic background.



Another indicator that the modification of the child's identity through an ICA may be in their best interests, is whether the risks of statelessness are avoided. As adoptions are "full adoptions" with a new filiation created under the 1993 Hague Convention, the child should have the same rights as a biological child of the adopters, including their nationality. Article 5c 1993 Hague Convention gives the Central Authority the obligation of ensuring that "the child is or will be authorised to enter and reside permanently in that State." The 2005 Special Commission recommended that the "child be accorded automatically the nationality of one of the adoptive parents or of the receiving State, without the need to rely on any action of the adoptive parents. Where this is not possible, the receiving States are encouraged to provide the necessary assistance to ensure the child obtains such citizenship."<sup>9</sup>

Despite the importance of the child's identity related to nationality, in some ICA cases the adopted person may become stateless, for example in cases of adoption breakdown<sup>10</sup> or where authorities failed to complete administrative procedures to grant nationality.<sup>11</sup> States of origin should only cooperate with receiving States that guarantee that the adopted child will be granted their nationality and/or permit dual nationality.

Receiving States allowing for the automatic granting of nationality in adoption include Australia (only when State of origin is a Convention country)<sup>12</sup>, Finland,<sup>13</sup> Italy<sup>14</sup> Malta<sup>15</sup> Netherlands,<sup>16</sup> New Zealand<sup>17</sup> and Norway<sup>18</sup> - although it should be noted a number of administrative procedures must be met in most cases, so it may not be automatic in practice. The majority of receiving States grant<sup>19</sup> nationality provided certain conditions are met, such as Belgium, Canada, Denmark, France, Germany, Ireland, Luxembourg, Monaco, Sweden, Switzerland and USA.

## **Recording any modification to the child's identity related to family relations and ensuring full access to records in perpetuity**

The creation of a new filiation as a result of adoption will bring about modifications to the identity of the child, such as the registration of the adoptive parents on their birth certificate, or a change of name often requested by the adoptive parents for various reasons (easier integration of the child in their new family and social environment, for example<sup>20</sup>).

However, too many children are today deprived of a part of their origins due to civil registration and vital statistic (CRVS) systems not being set up to record all relevant identity information and/or lack of access to such systems. It is a worldwide problem 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.<sup>21</sup>

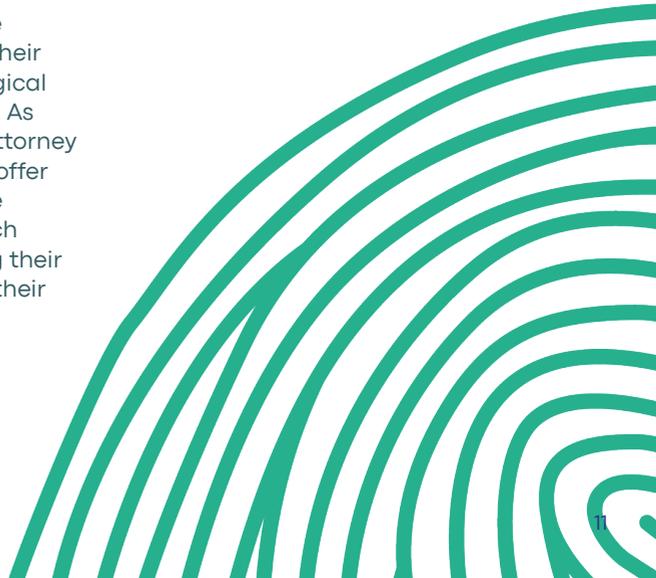
For example, “the births of around 3 million children under the age of five in Latin America and the Caribbean have never been recorded.”

<sup>22</sup> Further obstacles to birth registration occur in countries such as Uzbekistan, where registration costs money, in Indonesia where a marriage certificate is required, and in Bhutan where a child of unknown father cannot be registered.<sup>23</sup> 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 to undocumented migrant workers, who do not seek birth registration due to fear of arrest.<sup>24</sup>

As such it is of utmost importance for due processes to be in place to ensure the authenticity and accuracy of any original birth records as well as any civil records that may be modified to note that an ICA has taken place. States should be encouraged to ratify/accede to the [34. Convention on the issue of multilingual and coded extracts from civil-status records and multilingual and coded civil-status certificates](#) signed at Strasbourg on 14 March 2014 to ensure the portability of civil status records across borders, such as birth records.

In order for adoptees to have complete access to their origins, the State of New South Wales (NSW) in Australia introduced birth certificates called "Integrated birth certificates" in August 2020<sup>25</sup>, which provide the option for adoptees to have on their birth certificate both their biological family and their adoptive family. As pointed out by Mr Speakman, Attorney General of NSW, "these reforms offer adoptees in the State the choice of having a birth certificate which includes information concerning their birth parents and siblings after their adoption".

It is encouraging that it is universally accepted that children have birth records and a legal identity, as reflected by SDG 16.9 which notes that by 2030, each and every person shall have a legal identity. Significant efforts are now underway led by the [UN Legal Identity Agenda](#) and others to protect children's identity.



To date, these have focused on the right to name (i.e. birth registration initiatives focusing on recording the minimum of name, sex, and place and date of birth) and nationality.<sup>26</sup> While some registration may include some family relations, targeted endeavours are equally required to ensure a more comprehensive recording of vital information. Specifically, each person has family history – genetic, gestational, social and legal – that contributes to their identity and origins. Family relations include connections that arise as a result of this history, continuity or separation, encompassing birth, adoptive parents, siblings, grandparents and others.

Therefore, the potential involvement of family relations, or lack thereof, should be fully recorded when an ICA is envisaged for any child. For a child who is to be adopted, the question of family origins covers more than just the information concerning the identity of their biological family, it also includes all the events of their life story before adoption. It is therefore important to verify if the collection and preservation of data and access to the information relating to the names of the members

of the biological family and the circumstances of the adoptee's birth – and even their abandonment and/or relinquishment – are guaranteed by adequate mechanisms established by States, including the inclusion of this theme in the preparation and accompaniment of the future adoptive parents. Of equal importance are the documents which describe the research undertaken to find the biological family of the child, or the support given to this family in the event of a potential family re-integration, as well as the social reports on the child's possible placement in a foster family or an institution, and concerning the preparation and accompaniment of the child for their adoption.

All this information is precious as an integral part of their life story and the construction of their identity. The more gaps there are in their life history, the greater the risk that the child, and later the adult, will suffer from this void and find it more difficult to construct their identity on the solid foundation necessary for advancing serenely in their life. There are also risks involved on the medical side when information is lacking. If it is known that certain medical conditions exist in the biological family, this knowledge can help to prevent and treat these conditions in the child or adult concerned.

Whenever there is question of adoption, and in particular ICA, all the different elements that constitute the identity of the child, including not only name, nationality and family relations, but also cultural environment, must be taken into account. These elements are fundamental for the construction of the child as a unique person with their own internal and external characteristics which belong to them alone, and enable them to answer at least partially the most basic existential question: "Who am I?"



## **Falsification and/or sale of children's identities in ICAs.**

Regrettably there are countless examples of children being illegally adopted and consequently having their identity falsified and/or sold.<sup>27</sup> It should be noted that the prevention of trafficking and sale of children was an important impetus behind the drafting of the 1993 Hague Convention. The explanatory note records the need for a system that ensures among other things “...how can children be protected from being adopted through fraud, duress or for monetary reward...”<sup>28</sup>

Professor David Smolin was one of the first to bring the issue of “paper orphans” to the international scene post-entry of the 1993 Hague Convention,

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>29</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>30</sup> Guatemala,<sup>31</sup> Nepal,<sup>32</sup> and Viet Nam.<sup>33</sup>

*"I don't even know when I was born," says Brenda Lynch, whose certificate is false and who does not know the identity of her biological mother: "Somebody said, "Well, that is not important. But do you know what? It is:"*

The UN Special Rapporteur on sale and sexual exploitation, Maud de Boer-Buquicchio, outlined specific examples of falsification of identity, as well as push and pull factors for illegal adoptions, in her 2017 report (A/HRC/34/55) to the Human Rights Council.<sup>34</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>35</sup>

These acts are part of an enabling environment *"generally linked to deficiencies in the child protection system (such as inadequate procedures for providing counselling to biological parents and flawed relinquishment procedures), which are exploited by criminal networks driven by the lucrative business of selling children and facilitating illegal adoptions, often with the involvement of State officials."*<sup>36</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. The latter is arguably to keep the adoption secret and to prevent any contact with the biological parents. However, this reveals a lack of consideration for the child as a rights holder, and their right to identity is violated.

The child is deprived of fundamental elements of their identity, which will make it very difficult, or virtually impossible, to have access to their origins.

For example, article 230 of the Ukraine Family Code gives adopters the right to change information on the place and date of birth of the child:<sup>37</sup>

- 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.**

In the above and other situations, the child's identity including information about their birth family is falsified and/or sold. The child is then improperly deprived of their right to know their family origins.

In the Philippines, the issue of birth certificates and connected illicit practices seems to be evolving. The introduction of a new law and jurisprudence have clarified the legality and veracity of the birth certificates which mention that the adopted child was born to his adoptive parents. The government notes that this amnesty law "has been approved to absolve adoptive parents of any crime, who simulated the birth record of a child and lays out a system for them to correct the birth record and legally adopt the child. The latter addresses cases, in which the civil registry was tampered with to make it appear in a child's birth record that he was born to someone other than his biological mother."<sup>38</sup> Other States are encouraged to move in the same direction of restoring the child's identity where possible. It may in some instances be necessary to consider other remedies, including sanctions as noted in section four.



## **States taking responsibility to re-establish the child's identity and options for those seeking redress when States abdicate.**

In line with international standards, different legal remedies and other responses to illegal adoptions involving the sale of identity are available.<sup>39</sup> The HCCH have set up a working group on illicit practices and developed factsheets which are helpful for preventing the use of fraudulent documents and proceeding with an ICA despite the lack of consents, which can contribute to the falsification of the child's identity.<sup>40</sup>

At the outset it should be noted that forms of open adoption 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>41</sup>

Other measures for restoration include creating opportunities for adoptees to access their records, notably related to their family origins. The challenge is that partial, erroneous or non-existent records may exist for both past and current cases.<sup>42</sup> For ICAs today, Central Adoption Authorities may have difficulty obtaining complete files, or at least with sufficient details, on children proposed for adoption, despite the HCCH recommending that the background report on the child must contain information on the child's identity, personal and family development and medical history.

The HCCH has specifically noted 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>43</sup>

It is therefore necessary that social workers and others who work with the families are trained on the importance of the child's right to identity, improving how and what information is recorded in the child's dossier. Experts from Child Identity Protection are currently working as independent consultants for the HCCH to provide technical assistance to the Paraguayan Central Adoption Authorities on this specific issue, to discuss opportunities with them on how to improve their understanding, capacity and practices.

In addition to the practical difficulties related to content, adoptees may face legal obstacles in accessing their **records**, such as requiring children to have reached the age of majority or requiring the consent a third party.<sup>44</sup> Fortunately a number of receiving States have created opportunities for greater access to their records.

For example, Quebec (Canada)<sup>45</sup> and Switzerland<sup>46</sup> have revised their respective laws to open up access for adoptees to their origins.<sup>47</sup> Some countries have helpfully set up programmes/protocols for access to origins and offer quality support for adoptees, as in Chile<sup>48</sup>, Colombia<sup>49</sup>, South Korea<sup>50</sup> and Quebec.<sup>51</sup> A recent example is the establishment of the Afstammingscentrum<sup>52</sup> ("Filiation Centre") in Belgium (Flemish community) which is fully funded by the government from 2021 to help search for origins in both adoption and assisted reproductive technology matters. The Centre is also working with a local University to set up a DNA database to facilitate their work and has employed psychologist/social workers for its casework.

Unfortunately, many countries do not have such programmes, and so a multitude of private actors are involved in the search for origins, often for financial profit. Adoptees do not have access to support services and therefore are frequently not accompanied in their search for origins, in particular when they use social media<sup>53</sup> or, increasingly, DNA databases.

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 in principle, in perpetuity. Some countries, such as Viet Nam through its Central Adoption Authority, have scanned data – especially children for adoption – in order to guarantee the conservation of information on family origins. This is not the case for care institutions. This information must of course be in line with data protection rules and the child's right to privacy.

In addition to preserving and ensuring access to records, it is vital that States take responsibilities for any illicit practices that may have led to unjustified modification of a child's identity through an ICA – through research as well as restorative actions. Many adoptees are waiting for an acknowledgment that there has been wrongdoing, such as a formal apology, which is part of their healing and restorative process.

Of interest is the Dutch decision on 8 February 2021 to place a moratorium on ICA following the Parliamentary Committee's investigations into past practices, where multiple abuses were found and in some cases due to the government's involvement.<sup>54</sup> The Committee recommends that adoptees be helped to search for their origins by setting up a specific Centre. While this investigation is useful for past abuses, its findings cannot be used to draw conclusions that these practices are ongoing to the same extent and that all States were equally involved.

While a moratorium may be desirable, specific goals should be set and actions undertaken during this reflective period, as to what guarantees are needed to ensure that ICA – if undertaken again – are truly in the child's best interests (see section one). It is clear that a system of ICA driven by money or that potentially draws children into the system through means such as contributions, donations and humanitarian aid, is not in the child's best interests, or those of anyone else.<sup>55</sup> The future of ICA will require an overhaul of the current system to remove the enabling environment that encourages illicit practices, as identified by the UN SR on sale and sexual exploitation in her 2017 report (A/HRC/34/55) to the Human Rights Council.<sup>56</sup> This will mean that ICA is an exceptional measure, where individual assessments of the child's best interests are undertaken and the number of dossiers are not driven by the demands of prospective adoptive parents and other actors.

The Swiss response to past abuses in ICA related to Sri Lanka is particularly to be commended. On 16 March 2018, the National Council adopted the Ruiz Postulate 17.4181 investigating illegal adoptions of children from Sri Lanka in the 1980s, and instructed the Federal Council to examine the practices of authorities and private intermediaries.<sup>57</sup> The work undertaken was also to cover the search for origins and analyse the current adoption system. As a result, the Federal Council formally apologised to adult adoptees from Sri Lanka and committed to greater support to their origins search.<sup>58</sup> The Federal Council has set up a working group of key authorities, organisations and actors to examine measures in response and to prevent systemic irregularities in adoptions.<sup>59</sup> This research seeks to build synergies with these and other initiatives by identifying areas for alignment of coercive decisions in ICA placements with international standards.

It should be noted that the UN Committee on Enforced Disappearances in May 2021 further recommended to Switzerland in the case of Sri Lanka that <sup>60</sup>

**The Committee engages the State party :**

- a. to carry out thorough, impartial studies to determine whether children adopted in Sri Lanka during the 1980s and 1990s were victims of enforced disappearances and removal, and if other violations also occurred, such as the falsification, dissimulation or destruction of identity documents, in order to be able to identify and punish the perpetrators;*
- b. in consultation with the persons concerned, to identify and provide the support necessary to determine their identity and filiation and shed light on the circumstances of their adoption;*
- c. to guarantee the right to seek redress for any person who has suffered direct harm as a result of an enforced disappearance, whenever it occurred and including if it occurred in another State, and even if no criminal proceedings have been initiated against the alleged perpetrators or if they have not been identified.*

While such a recommendation certainly has its merit, it is arguable that it would be difficult for a receiving State to unilaterally explore the decisions made by a State of origin without their co-operation and during a period where few records apparently exist.

In addition to the Swiss example, the Final Report of the Commission of Investigation into Mother and Baby Homes in Ireland was published in 2021.<sup>61</sup> This Report, along with the adopted person- and survivor-led work of the Clann Project<sup>62</sup> and a further research report published by the Irish Department of Children in recent months<sup>63</sup> refers to the widespread illegal registration of 'adoptive' parents in the place of natural parents on children's birth certificates, as a method of avoiding adoption laws generally and of effecting illegal adoptions in the absence of legislation authorising foreign adoption.

Although its 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>64</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>65</sup>

States should also be cautious in applying the General Data Protection Rules to withhold “mixed data” from children about their personal identity information, contrary to overarching international standards of the CRC.<sup>66</sup>

In order to effectively restore the identities of adoptees, it is clear that legislation is required. For example, in the case of Chile, in 2019, the UN Committee on Enforced Disappearances has 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>67</sup>

In addition to these opportunities for restoring the child's identity, other responses are available as noted earlier.<sup>68</sup> 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>69</sup> The formal apology of the Australian government for forced adoption practices of single mothers is a noteworthy example.<sup>70</sup>

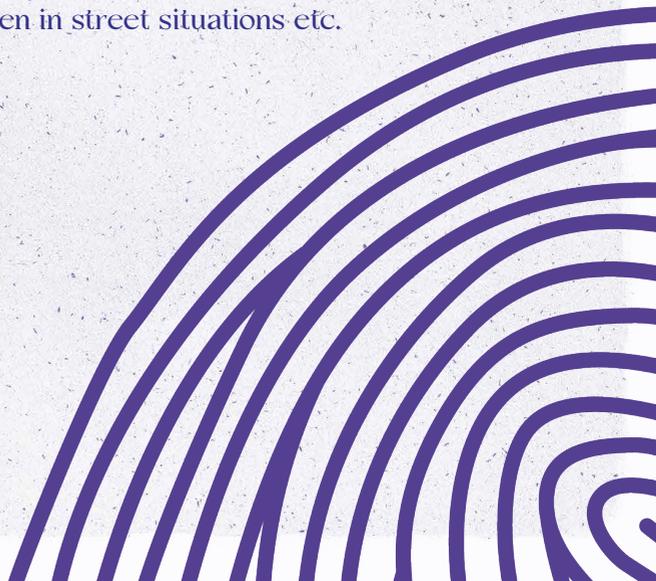
In addition, States should systematically implement memory processes. The UN SR on transitional justice's 2020 report<sup>71</sup> in this context is helpful as it outlines the importance of archives and ensuring access (paras 70 to 73). The promising practice of German authorities, who have opened the archives of the Stasi (the Ministry of State Security of the former German Democratic Republic) to ensure open access is noteworthy.<sup>72</sup>

In responding to past abuses, States should equally be working towards the elimination of impunity for abuse in adoption. 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 and the criminal prosecution of human trafficking for illegal adoption purpose and the different strategies implemented to fight impunity.<sup>73</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>74</sup>

It seems that the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OPIC)<sup>75</sup> provides an untested opportunity for redress and restitution, should national mechanisms be exhausted. To date the CRC Committee has not dealt with an ICA case but has on several occasions dealt with the child's right to identity. The challenge will be the application of the CRC to situations that occurred pre-1989 and OPIC mechanisms that were only introduced in 2014 to the States that are parties.

### Conclusion :

States, and all the actors concerned by the process of adoption, have the responsibility to examine adoption procedures thoroughly in order to guarantee that any modification of the identity of the child, and the separation from their family and cultural environment, are not the result of an arbitrary process which is contrary to their fundamental rights, including that of identity. Child Identity Protection was established in 2021 to support States and other actors in their responsibilities under article 8 CRC, with a specific vision of restoration of incomplete and falsified identities in matters relating to adoption but also in a wide range of matters such as child brides, child soldiers, child trafficking, children in street situations etc.



## Recommendations:

**1**

**Modification of a child's identity through an ICA should only occur when truly in the child's best interest and in exceptional situations**

**2**

**Key indicators that an ICA is in the child's best interests and equally meets their identity needs,<sup>76</sup> include among other things:**

- child's family has been given adequate support in their caregiving role in access to basic and targeted services (first level of principle of subsidiarity)
- prevention of family separation should be given the highest priority. Families that cannot access CRVS due to poverty, discrimination, and lack of access to resources, should receive specific and adequate support.
- if separation has occurred, all efforts have been made towards family re-integration (first level of principle of subsidiarity)
- when despite all efforts, the child is nevertheless in need of care, suitable national solutions that are family like are prioritised (second level of principle of subsidiarity)
- 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
- the child will automatically be granted the nationality of the adoptive parent(s)

**3** States should ensure that full records are kept of any modification to the child's identity and that they are accessible in perpetuity

**4** States should ensure that proper mechanisms are in place to prevent and sanction the sale of child's identity, as well as all illicit practices in adoption to avoid the child's commodification

- ensure that ICA is not driven by money or that potentially draws children into the system through means such as contributions, donations and humanitarian aid
- remove the enabling environment that encourages illicit practices, as identified by the UN SR on sale and sexual exploitation in her 2017 report (A/HRC/34/55)

**5** Where sale and/or falsification of the child's identity has occurred, States should for example

- work speedily towards re-establishing the missing elements
- promote truth, justice and reparation
- identify guarantees of non-recurrence including 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)
- implement memory processes, including record keeping
- strive for the elimination of impunity

## End Notes

1 Prepared by Cécile Jeannin and Mia Dambach, from Child Identity Protection, [www.child-identity.org](http://www.child-identity.org). with input from Nigel Cantwell – July 2021

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