



Working document : key identity considerations for HCCH Special Commission on the practical operation of the 1993 Adoption Convention (Special Commission)

Introduction

Child Identity Protection (CHIP)ⁱ is an international NGO based in Geneva working to uphold the child's right to identity and to know their origins (Arts. 7-8 CRC). CHIP is honoured to have the opportunity to participate as an observer at the Special Commission from 4 to 8 July 2022. CHIP would like to acknowledge and congratulate the entire team at the HCCH, in particular Laura Martinez-Mora and Capucine Page for their excellent preparation of documents, which has benefited from inputs by States and others.

Intercountry adoptions (ICA) are at an important cross-road with a number of States imposing different restrictions, including moratoriums. There is an encouraging momentum of actors including States to provide more holistic post-adoption support, to give greater recognition to the voice of adoptees and to better respond to past illicit practices. Such trends are in part, due to the growing appreciation of the child's right to identity as outlined in Arts. 7- 8 Convention on the Rights of the Child (CRC) in terms of State's obligations to preserve and speedily re-establish missing or falsified identity elements. This Special Commission provides a unique opportunity to ensure that future practices are fully aligned with international standards, notably the CRC and 1993 Adoption Convention, with identity rights being central.

Every child has a unique identity, including birth registration, name, nationality and family relations. Without an identity, the child's capacity to access other rights is compromised (such as education, health and social security) as well as greater risks of exploitation. The consequences can be dire and long-lasting for children's harmonious development, the deployment of their evolving capacities, sense of self-worth and well-being.

CHIP broadly supports the multiple documents prepared for this SC and welcomes the systematic inclusion of identity rights. The purpose of this working document is to highlight some key identity considerations that are relevant to the multiple factsheets (FS), preliminary and information documents (PD and ID) prepared by the HCCH, given that CHIP fully appreciates that the online discussions will be led by States parties.

Key identity considerations :

1. Identity includes birth registration, name, nationality and family relations (Arts. 7-8 CRC) (FS 4 endnote)
2. Preservation of "family relations" is an essential feature of the child's right to identity (Art. 8(1) CRC). Each person has a family history – genetic, gestational, social and legal – that contributes to his or her identity and origins. Family relations include connections that arise as a result of this history, continuity or separation, encompassing birth, adoptive and intending parents in surrogacy arrangements, gamete donors, siblings, grandparents and other potential ties. Therefore, in addition to importance of ensuring that the child is registered at birth, it is essential that full records are kept on the child's dossier related to potential family relations (FS 9: paras 13 & 22, PD 6c: paras 7 – 11, PD 6d: para 29). Further reading.ⁱⁱ
3. If at any time before, during or after the adoption, the child's dossier is missing information about his or her identity, including birth registration, name, nationality and family relations, States' have an obligation to speedily re-establish these elements (PD 6c: para 11, PD 6d: paras 2, 29).

Art. 7 CRC

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Art. 8 CRC

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

4. Respect of the principle of subsidiarity can only be achieved, if all efforts are made to document the child's family relations, and the option of remaining with them is fully supported and duly explored (FS 6 paras 1 and 15, PD 6c: para 13).
5. When undertaking a best interest assessment as to the suitability of an ICA, States are obliged to ensure continuity in the child's identity with respect to cultural, religious, ethnicity, linguistic aspects (Art 20(3) CRC) (FS 9: paras 13 & 22, FS 10: para 4, PD 6c: paras 13, 16, PD 6d: paras 47-48, 51).
6. Due to in part, to the evolution of profile of adoptees, the advantages of simple and open adoptions for adoptees should be promoted wherever in the best interests of the child on a case by case basis, given the direct benefits of preservation of the child's identity in particular his or her family relations as required in Art. 8 CRC. Comprehensive preparation and post-adoption support should prevent and respond to potential challenges raised by simple and open adoptions (PD 9, section 2.4).
7. In terms of post-adoption reports, it is beneficial for the child, to have information about his or her family of origin preserved in an ongoing manner to the extent possible. Such information should be accessible for the child/adoptee at his or her own request. In practice, this could include a life book that includes both families of origin and adoptive, before, during and after the adoption (PD 8: section 4.2).
8. Confidentiality and privacy rules should be read in favour of preservation and restoration of the child's identity, with full and open access (FS 11: para 5, PD 6d: para 5, PD 6e: para 5, PD 8: paras 37, 46, 70). Only when information is preserved in its entirety, with integrity, and fully accessible, can the affected person's identity be speedily re-established when elements are missing and/or falsified, as required by Article 8(2) CRC. Further reading.ⁱⁱⁱ
9. Data and record preservation should have an inbuilt mechanism that can detect "patterns" of illicit practices such as repeated facts, anomalies, etc. (PD 6d: para 32).
10. In terms of preventing and responding to past illicit practices:
 - The HCCH toolkit provides a comprehensive mechanism for achieving the dual goal of preventing and responding to both past and present illicit practices, as well as wider States obligations to speedily restore missing and/or falsified elements whenever these situations occur (PD 6b).
 - States should ensure that there is a complete separation of contributions, donations and development aid from the adoption procedure to prevent the sale of the child, including his or her identity (FS 3)
 - Potential misrepresentation of the child's origins could potentially include as a minimum DOB, place of birth, name and family relations. To prevent this from occurring, Civil Registration and Vital Statistic offices should be equipped to have accurate and complete birth records (FS 4, FS 8 para 15).
 - Full compliance with State's obligations to speedily re-establish the adoptee's identity, will require that States have adequate budget dedicated to provide comprehensive array of services to adoptees and other affected persons. The burden of service provision and costs to access them cannot fall on the private actors alone (PD 6d: paras 15-27, 69, PD 8 : paras 9,15, 22, 54, 65).
 - There is an express obligation to contact all affected persons concerning any potential illicit practice making sure that support is available, as a means of speedy re-establishment of identity. Such contact should be mandatory and not discretionary, excluding the option that Authorities "may" act or not. (PD 6d: para 41, PD 8: paras 40-41).
 - States should not allow for opportunities for identity loss, such as nationality (PD 6d: paras 57, 67).
 - Further research, should be undertaken by independent organisations to avoid conflict of interests. States should consider leveraging their resources to undertake common research (PD 8: para 24).
11. The annulment and/or revocation of child's (adoptee) ICA may occur in situations when his or her original identity is missing and/or includes falsified elements (e.g. name, family relations etc.). In these situations, the effect of the annulment/or revocation should result in the speedy re-establishment of these elements and should never lead to the unnecessary loss of identity such as name, nationality etc. In addition, an assessment of the best interests of the child should always be carried when considering such an annulment and/or revocation (ID 2).

12. Having the dual possibility to retain the original nationality and have the automatic granting of nationality of the receiving State allows for optimal identity preservation. When this is not possible and/or when burdensome administrative procedures are required for their achievement, this creates an unnecessary risk of statelessness (ID 3). Further reading.^{iv}

ⁱ [Child Identity Protection \(CHIP\)](#) is an international not for profit association according to the Swiss Civil Code established in 2020. CHIP is working with States, international organisations and other stakeholders to uphold the child's right to identity (Arts. 7-8 CRC) and to know their origins as outlined in its vision and mission. CHIP is actively working towards the achievement of SDG 16 on legal identity for all, as well as equal access to justice. A significant proportion of its work covers issues related to mandate of the HCCH - where the child's identity is at risk in a cross-border context - although it has a broader scope beyond private international law matters.

ⁱⁱ Baglietto, C., Bordier, L., Dambach, M. and Jeannin C. (2022). *Preserving "family relations": an essential feature of the child's right to identity*. Geneva, Switzerland: Child Identity Protection

ⁱⁱⁱ CHIP (2022). *Briefing note: aligning data protection rules with international standards*. Geneva, Switzerland : Child Identity Protection <https://www.child-identity.org/en/resources/advocacy-and-policy/696-briefing-note-aligning-data-protection-rules-with-international-standards.html>

^{iv} Jeannin, C., and Dambach, M. (2021), [Policy Brief 1: Child's right to identity in intercountry adoption](#), Geneva, Switzerland: Child Identity Protection