

## **Briefing note to the CRC Committee on the child's right to identity: birth registration, name, nationality, and family relations**

### **Background**

The child's right to identity – including birth registration, name, nationality, and family relations under Articles 7-8 CRC – is a stand-alone right. The right to have one's birth registered and acquire a nationality are also stand-alone rights. The lack of formally recognized and documented identity - a legal identity (SDG 16.9) - prevents children from accessing basic rights such as education, health, development, and social services. Children who lack an identity are also at greater risk of violence, abuse, neglect and exploitation. Articles 7 and 8 are likewise closely linked with the achievement of other rights such as Article 9 (ensuring that a child shall not be separated from his or her parents), Article 10 (family reunification and the right to maintain direct contact with parents residing in different states) and Article 20 (ensuring a child deprived of a family environment is afforded alternative family care which aligns with his or her ethnic, religious, cultural and linguistic background).

Knowing one's origins and identity - name, nationality and family relations - is equally part of the physical, psychological, cultural, spiritual and developmental needs of a child (Article 6 CRC). Protecting a child's right to identity is fundamental to their best interests, because "the feeling of being wanted and valued is the basis for a healthy emotional life. Such feelings are rooted in family relations and broaden as a person matures into increasingly larger circles that encompass relatives, peers, the community and society. The need to feel valued grows into a need to belong to social groups and have a place in society. Continuity of contact with external surroundings, including people and places, has an extremely important psychological effect on the child's development".<sup>1</sup>

Among the groups that are especially vulnerable to violations of their identity rights are children who migrate, children belonging to minority or nomadic communities, children affected by armed conflict, children in street situations, children born through assisted reproductive technology, child brides, unaccompanied and separated children, and children in alternative care and adoption.

### **Right to identity: birth registration, name, nationality, and family relations**

**Birth registration and name:** UNICEF notes that "*society first acknowledges a child's existence and identity through birth registration. The right to be recognized as a person before the law is a critical step in ensuring lifelong protection and is a prerequisite for exercising all other rights.*"<sup>2</sup> A birth certificate documents the facts of a child's birth – such as date, place of birth, family relations and name. Information included in birth certificates concerning the place of birth and parentage in turn assist children to confirm or acquire nationality. Despite the right to birth registration, an estimated 237 million children under the age of five do not have a birth certificate, including an estimated 166 million children who are not registered.<sup>3</sup> Poverty<sup>4</sup> and discrimination<sup>5</sup> are among the main obstacles to accessing birth registration. COVID -19 severely disrupted the availability of Civil Registration (CR) systems. In 2020, the number of children under five registered and certified declined by 2% and 22%, respectively, compared to 2019. However, in 2021, countries showed signs of recovery with the

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<sup>1</sup> UNHCR (2021) Best interests procedures guidelines: Assessing and determining the best interests of the child. <https://www.refworld.org/pdfid/5c18d7254.pdf>

<sup>2</sup> UNICEF. (2019). *Birth Registration for Every Child by 2030: Are we on track?* UNICEF. <https://data.unicef.org/resources/birth-registration-for-every-child-by-2030/>

<sup>3</sup> *Supra* footnote 2.

<sup>4</sup> *Loc. Cit.*

<sup>5</sup> *Loc. Cit.* See also UN High Commissioner for Refugees (UNHCR). (2021, July). *UNHCR and UNICEF: Background Note on Sex Discrimination in Birth Registration.* <https://www.refworld.org/docid/60e2d0554.html>

number of children U5 registered and certified increasing by 79% and 125%, respectively, over 2020. Yet substantial efforts are needed to register all newborns at birth and clear the backlog of unregistered children to recover from the full impact of the pandemic and accelerate the progress to achieve the 2030 Agenda of legal identity for all, including universal birth registration. Various strategies have yielded considerable progress, including those that simplified business process, increased interoperability among systems and sectors, and demand creation through policy and legislative reform.

**Nationality:** One of the most extreme consequence of the denial of this right is statelessness – a predicament which is an antithesis to the best interests of the child.<sup>6</sup> There are estimated to be millions of stateless people globally. Inherited statelessness is a primary driver of statelessness amongst children, locking generations out of nationality and trapping adults and children alike in a vicious cycle of exclusion and discrimination. Children can also be left without a nationality as a result of “discriminatory laws, policies and practices that aim to exclude or have the effect of excluding people who are considered as foreign”,<sup>7</sup> with an estimated 75% of the world’s stateless people belonging to minority groups.<sup>8</sup> Moreover, in 25 countries, women cannot pass their nationality to their child on an equal basis as men, meaning these children must acquire nationality from their father, but where his whereabouts are unknown, or he himself is stateless or is unwilling or incapable to confer his nationality, the child is left in a precarious situation with no access to nationality.<sup>9</sup> Migration, displacement, conflict, the re-drawing of borders, lack of birth registration, child separation or abandonment, and lack of recognition of family relations are all factors that can expose children to a heightened risk of statelessness.

**Family relations:** The right to have one’s family relations legally established or recognized is a stand-alone right is also integral to achieving the right to name and nationality. Specifically, 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 others. Without transparent and accurate information about family origins, children’s identity is incomplete. This may lead to children being excluded from benefits of legal parentage such as child support, and hereditary and maintenance laws. It may also lead to statelessness. Comprehensive information about family origins is further essential to ensure the highest attainable standard of health and well-being. Deprived of family health history, children and adults affected have less information about their genetic health risks.<sup>10</sup>

A further layer of complexity may be added to these situations, when multiple States are involved in the creation, modification and/or falsification of the child’s identity. Legal challenges may arise in identifying which State, courts or authorities have jurisdiction to decide on identity issues and which laws apply. Further, Civil Registration systems are generally not set up to ensure the automatic

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<sup>6</sup> African Committee on the Rights and Welfare of the Child, *Nubian Minors v. Kenya*, Decision, 22 March 2011.

<sup>7</sup> UNHCR, Background Note on Gender Equality, Nationality Laws and Statelessness 2021, 5 March 2021. <https://www.refworld.org/docid/604257d34.html>.

<sup>8</sup> UN Human Rights Council, Impact of the arbitrary deprivation of nationality on the enjoyment of the rights of children concerned, and existing laws and practices on accessibility for children to acquire nationality, inter alia, of the country in which they are born, if they otherwise would be stateless, 16 December 2015, A/HRC/31/29.

<sup>9</sup> Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, A/HRC/38/52, 25 April 2018, paras 41 and 55.

<sup>10</sup> For example, World Health Organization. (n.d.). *Breast cancer: prevention and control*. <https://www.who.int/cancer/detection/breastcancer/en/>.

recognition of the child's legal status across borders, from another State.<sup>11</sup> Challenges equally arise when information about origins is not stored appropriately, including in perpetuity and/or accessible, including in emergency situations, where records may be lost.

### **Current efforts related to the right to identity**

Significant efforts are now underway within the UN Legal Identity Agenda and other frameworks to ensure universal birth registration and legal identity to all. Whilst these efforts have primarily focused on strengthening civil registration and implementing digital identity systems, other aspects of identity such as nationality<sup>12</sup> and family relations<sup>13</sup> have received far less attention. Given the risks and opportunities associated with the legal identity agenda for the enjoyment of these identity rights, further work is needed in terms of preserving all these key elements of a child's right to an identity – including addressing new questions that arise around the use of new technologies, such as biometrics, especially its relevance for children under five and newborns, data protection and privacy, and assisted reproductive technology.

Concrete and innovative efforts are required in terms of improving access to justice (SDG 16.3) and the States obligation to speedily re-establish the child's identity whenever there are missing elements. This must include ensuring CRVS systems are set up to include information about the child's family or birth histories, including when they are modified. Greater political will is needed to change laws, policies and practices, including lifting the statute of limitations for cases involving children to restore missing or falsified elements. The Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OPIC)<sup>14</sup> provides an opportunity for the restoration of the child's identity. For example, the case of W.M.C<sup>15</sup> shows the potential scope of the Convention in relation to the child's right to identity.

The joint UNHCR-UNICEF Coalition on Every Child's Right to Nationality, seeks to expand and strengthen international cooperation to combat childhood statelessness, complementing UNHCR's 10-year #IBelong Campaign to End Statelessness by 2024 and offering an important framework in which to centre attention on the child's right to a nationality. A High-Level Segment on Statelessness was convened in 2019 to mark the halfway point of the campaign where States made pledges to address statelessness within their respective countries. However, many States with large stateless populations failed to make pledges. Engagement by the CRC Committee is critical to elevating the issue and to ensuring a rights-based approach to the avoidance and eradication of statelessness – one focused on the positive realisation of the right of every child to acquire and preserve their nationality as a right that informs and is informed by broader child rights principles.

Another avenue that could provide remedies in the context of establishing family relations when grave past abuses have occurred, is exploring transitional justice through the work of the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (UN SR on transitional justice), who has provided a comprehensive report on the design and implementation

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<sup>11</sup> Michaels, R., Ruiz Abou-Nigm, V., and van Loon, H. (eds). (2021). *The Private Side of Transforming our World - UN Sustainable Development Goals 2030 and the Role of Private International Law*, Intersentia Online, <https://www.intersentiaonline.com/library/the-private-side-of-transforming-our-world-un-sustainable-development-goals-2030-and-the-role-of-p>

<sup>12</sup> For example, see the #IBelong campaign to End Statelessness by 2024, spearheaded by UNHCR (<https://www.unhcr.org/ibelong/>) and the related the Coalition on Every Child's Right to a Nationality (<https://www.unhcr.org/ibelong/unicef-unhcr-coalition-child-right-nationality/>); and the work of Institute on Statelessness and Inclusion ([www.institutesi.org](http://www.institutesi.org)).

<sup>13</sup> See work of Child Identity Protection ([www.child-identity.org](http://www.child-identity.org)).

<sup>14</sup> UN General Assembly. (2011). *Optional Protocol to the Convention on the Rights of the Child on a communications procedure* (A/RES/66/138) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/467/10/PDF/N1146710.pdf?OpenElement>.

<sup>15</sup> <https://juris.ohchr.org/Search/Details/2748>

of apologies (*e.g.* motivation, acknowledgement and truth, timing, preparation the apology, after the apology: follow through, non-recurrence and reconciliation)<sup>16</sup>.

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<sup>16</sup> UNGA (2019). *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*. Retrieved from: <https://undocs.org/en/A/74/147>.