

# Comment on the General Comment on the implementation of the rights of the child during adolescence

## VIII CIVIL RIGHTS AND FREEDOMS

### Introduction

This comment is written by Patrick Noordoven<sup>1</sup> and supported by Dida Guigan<sup>2</sup>. They were deprived of their identity, through false birth registration, for the purpose of illegal intercountry adoption.

In their adolescence, both started searching for their identity and origins in their respective countries of birth.

As they experienced first-hand, the potential of adolescents is widely compromised by the failure to recognise or invest in the measures needed to enable them to enjoy their rights.

Their searches for their origins learned them that there are no measures in place to ensure access to their human rights to know one's origins and identity.

Therefore, they advocate for the implementation of institutionalized expertise, in the form of an international competent body, to ensure enforcement and recovery of the right to identity and origins.

Based on their personal and professional experiences, they are pointing out that different approaches are required to ensure the realisation of the rights of adolescents in search of their identity and origins, which are differing significantly from implementing safeguarding measures to ensure that the deprivation of identity through false birth registration should become an impossible practise.

- 45. Birth registration:** False birth registration is a flagrant human rights violation resulting in severe life-complications, starting during adolescence when searching for identity and origins usually commences. Without veracious identification documents, adolescents cannot search for their original identity.

International and national human rights law does not allow for effective prevention of this human rights violation because it is not yet universally recognised that the right to birth registration, as put forward in article 24(2) of the ICCPR, includes a right to a birth certificate<sup>3</sup>.

The right to birth registration, provided for by Article 7(1) of the UNCRC, essentially does not protect the right to identity. The benefits of birth registration, according to the CRC, in practice, depend on a birth certificate, which is issued upon civil registration. Hence, the provision of a birth certificate is conceived by the CRC as a fundamental component of a complete and veracious birth registration process<sup>4</sup>. However, this process should be accompanied by establishing, implementing and enforcing proper checks and balances.

Thus, the right to birth registration, being of fundamental importance for civil registration and resulting in a birth certificate, should be based on a certificate of birth registration (e.g. issued by the hospital of birth) to safeguard the right to identity. The aim is to prevent the deprivation of the right to identity, in particular for the purpose of – illegal – intercountry adoption.

- 46.** State parties have the obligation to ensure that all children are registered at birth. Furthermore, a system of national, compulsory, accessible and free birth registration of all children, should become part of a comprehensive, rights-based civil registration and vital statistics system, safeguarding the issuing of

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<sup>1</sup> For more information on the case of Patrick Noordoven, see: 'Promising Practice: Raising Awareness About False Birth Registration Practices, Known as the Brazil Baby Affair', available at: [https://issuu.com/issirc/docs/iss\\_illegal\\_adoption\\_handbook/64](https://issuu.com/issirc/docs/iss_illegal_adoption_handbook/64)

<sup>2</sup> For more information on the case of Dida Guigan, see: 'Personal Testimony: Born in Lebanon and Adopted as an 'Orphan'', available at: [https://issuu.com/issirc/docs/iss\\_illegal\\_adoption\\_handbook/84](https://issuu.com/issirc/docs/iss_illegal_adoption_handbook/84)

<sup>3</sup> Gerber, P, Gargett, A and Castan, M (2011). 'Does the right to birth registration include a right to a birth certificate?', in *Netherlands Quarterly of Human Rights* 29.4, p. 435

<sup>4</sup> *Ibid.*, p. 454 – 455.

veracious birth certificates. Vital statistics systems should ensure the preservation of documents and records in case of emergencies.

Adolescents who have been falsely registered at birth or immediately after should be provided with adequate support of an international competent body to ensure recovery of the right to identity and origins and allowing for ex-post veracious birth registration and documentation, and civil registration.

Birth registration should be accompanied by adequate checks and balances in order to prevent false birth certificates from being issued, which were and still are being used in illegal domestic adoption and intercountry practices.

To achieve this vision, we are advocating for complete avoidance of any kind of illegal adoption practice through the recognition of the right to a birth certificate to be included in the human right for birth registration: the right to a birth certificate should be accompanied by safeguarding measures to ensure the authenticity of the registration (e.g. obligatory civil registration of birth within the hospital of birth).

## Conclusion

Adolescents in search of their identity and origins represent a period characterised by vulnerability. Therefore, they should be able to seek adequate institutionalized assistance protecting and allowing them ownership of their rights to identity and origins.

Adolescents are agents of change, with the potential to contribute positively to their original families, communities and countries. Hence, adolescents should be enabled to engage positively in their search for their origins. Furthermore, their potential for political engagement and monitoring accountability should be taken into due consideration, in particular by the mentioned international competent body.

Adolescents and young adults are important stakeholders of the UNCRC. Therefore, it should become recognised that victims of the deprivation of the right to identity have a crucial voice in decisions on how to invest in the measures needed to enable them to enjoy their rights.

Adolescents deprived of their identity and in search of their origins and identity are entitled to appropriate State assistance. State parties should provide all measures necessary to ensure the realisation of the rights of the child during adolescence and adulthood.

With this comment, we are also highlighting the importance of the UNCRC in all de facto intercountry adoption cases: first and foremost, the right to know and be cared for by his or her parents and right to preserve his or her identity, including nationality, name and family relations.

Finally, we are stressing the importance of recognition and respect for adoptees' dignity by universally applying the UNCRC's subsidiarity principle in any intercountry adoption case and thereby minimizing the troublesome access to the human rights to know one's origins and identity.

This way, we are envisioning empowerment of anyone in search of his or her identity and origins and allowing for application of original citizenship according to their original identity. Here through allowing active participation in their own lives; creating ownership of their well-being and development deriving from their original identities. We are advocating for full commitment to the rights of every adolescent without discrimination.



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