

CRIN – child rights international network

<https://www.crin.org/en/home/rights/convention/articles/article-8-preservation-identity>

UN CRC Article 8: Preservation of identity

Text

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 speedily re-establishing his or her identity*
-

What does article 8 say?

Article 8 protects children's right to preserve their identity, including their nationality, name and family relations, without unlawful interference. In addition, States are required to help children regain any aspect of their identity that has been taken away from them illegally.

Article 8 explicitly mentions just three aspects of children's identity. But, read with the rest of the Convention, this article protects all other aspects of children's identity, for example, their sexual orientation and the right to their own culture.

Why is this important?

Article 8 was proposed by Argentina in the wake of the 1970s and 80s' dictatorships, during which time babies born to political prisoners were removed from their biological parents after birth and their parents were forcibly disappeared. This article was intended to prevent any similar situation from ever arising again, and to help re-establish the identity of those children whose parents had been disappeared. While the article is a consequence of a specific historical period, it has many applications - from helping children who have been displaced to re-establish contact with their family to assisting children in State care to trace aspects of their identity they are too young to remember. In essence, it protects the personal characteristics, relationships and histories that make children who they are.

What are the problems?

In Argentina and Uruguay in the 1970s and 80s, thousands of children were kidnapped from political prisoners and cast into adoption networks. Many of these individuals - who are now adults - remain unaware of their biological family relations ([Gelman v. Uruguay](#)). Similar situations persist today in different guises, in particular where corruption, lax record-keeping and oversight are rife in State care institutions. In many of these places, no record exists of children's name, age and location of placement. This heightens children's vulnerability to trafficking and other abuse, because if a child has no official identity, they have no legal status and therefore no way of challenging abuse - particularly when the State authorities are the perpetrators ([Mexico](#)). Elsewhere, countries have come under fire because of insufficient legislation to prevent and punish the disappearance of children or the falsification of identity documents.

Children may also lose the thread of family relationships which form part of their identity as a result of war, disaster, adoption or divorce, among many other reasons. Where tracing systems and record-keeping are inadequate, children may never re-establish these connections. Children's right to preserve 'family relations as recognised in law' means more than just knowing who their parents are. But in the case of laws governing divorce or adoption, children's wider family relationships, for instance, with grandparents are often not taken into the equation and children lose more than their relationship with one or both parents. In some countries, parents may be blocked from changing their children's name upon divorce or remarriage. In such cases, children may be obliged to take on their father's name - they are given no choice in the matter.

Children may be deprived of an aspect of their identity because of State policies to assimilate minority groups. There are countless examples of countries banning the use of minority names and language and forcibly removing children from their families ([Roma](#), [Aboriginal](#) children). Even in the absence of an overt ban, the exclusion of minority languages, religion and culture from the education system can, in effect, break down distinct minority identities.

Other aspects of children's identity may be denied because they are deemed unacceptable in the society in which they live, for example their sexual orientation or children with gender dysphoria.

What can States do about it?

The first step to helping children preserve their identity is to make sure adequate laws are in place and that these are enforced. These should ensure that records on children are properly maintained and not falsified for any reason. This is particularly important for children in institutions and children who have been fostered or adopted for whom it is more difficult to find out about their early childhood. Records should include details of children's genealogy, date and place of birth, among other details.

Children should have access to these records and a say in who else can access them (in line with CRC article 16 - the right to privacy). Where there is a conflict of interests between children's right to know their birth circumstances and their parents' right to privacy, children should at the bare minimum be given medical information about their genetic parents. Read more in article 7.

The [UN Convention for the Protection of All Persons from Enforced Disappearance](#) obligates States to criminalise enforced disappearances and, where they do occur, investigate and bring those responsible to justice. Article 25 of this Convention requires States to prevent and punish the wrongful removal of children from their parents arising from enforced disappearance. This also requires States to criminalise the falsification or concealment of documents revealing children's true identity, and take measures to search for and identify these children, returning them to their own family - in line with CRC article 20. In addition, legal procedures should be in place to review all placements and to annul adoptions originating from an enforced disappearance. In all cases, children's best interests should be a primary consideration, and their right to express their views and have these taken into account according to their age and maturity should be respected.

In the case of children who have been displaced or evacuated as a result of war, [Additional Protocol I to the Geneva Conventions](#) requires that each child be given an identity card to send to the Red Cross Central Tracing Committee. The card should contain a photo and other identifying information (article 73(3)). In addition, the UN High Commissioner for Human Rights has issued some [Guiding Principles on Internal Displacement](#) (1998). These protect the right of people who have been displaced to know the fate of their missing relatives, establish their whereabouts, and receive assistance from the relevant organisations (Principle 16). The Principles also require States to issue internally displaced persons with the documents they need to enjoy their legal rights, like passports and birth certificates, especially where these have been lost in the course of upheaval (Principle 20).

Other ways in which States are expected to help children re-establish their identity include by dedicating resources to measures like using the media to issue information about missing children and reunite families; actively tracing relatives of unaccompanied or refugee children; and amending nationality laws to make sure children's best interests are considered in issues like deportation of family reunification; and speeding up nationality and asylum procedures. While aspects of children's identity are being recovered, they should be cared for and told what is happening and why to help them retain a sense of security and well-being.

This page forms part of a guide to children's rights as set out in the articles of the UN Convention on the Rights of the Child. The guide explains what these rights mean, why they are important and what States should do to guarantee them.