The right to identity is recognized by articles 7 and 8 of the Convention. These provisions reaffirm the right of the child to be registered at birth, to a name and to acquire a nationality; but beyond other previously adopted human rights treaties, they further recognize:

a) the right of the child to know and be cared by his or her parents - thus also implying the right of the child to information about his or her origins and the need for authorities to preserve such information and enable children’s access thereto;

b) and the child’s right to preserve his or her identity”; according to the Convention, the identity of the child includes his or her name, nationality and “family relations as recognized by law.”

Special attention is given to the protection of this right – indeed “where a child is illegally deprived of some or all of the elements of his or her identity” States Parties are required to “provide appropriate assistance and protection, with a view to re-establishing it speedily.”

Moreover, the identity of the child is envisaged in broad terms. With this in mind, the Convention indicates that, in choosing the most appropriate solution in the context of alternative care, due regard needs to be paid to … “to the child's ethnic, religious, cultural and linguistic background.” ¹

¹ The Guatemalan children’s code defines the right to identity as including “the right to nationality and name, to know and be cared for by one’s parents, and to one’s language and cultural expressions”; and the Mexican code defines it as including the “right to belong to a cultural group and share with members its customs, religion and language” (art.14 and 22, respectively). The laws of many countries in the Latin American region contain special provisions designed to prevent the removal of indigenous children from their communities, except in special circumstances. [Translation by Innocenti Research Centre. The texts of all Latin American children’s codes and laws on adoption cited in this paper can be found in Spanish on the website of the Inter American Children’s Institute www.iin.org]
These and other relevant dimensions of the Convention on the Rights of the Child – including the general principles guiding this treaty’s implementation, namely the best interests of the child, the protection of the child from all forms of discrimination, and the right to the respect for children’s views on matters affecting their lives - gain a special relevance in the context of alternative family care and child adoption.

Indeed they have constituted a reference for national law reform and for the development and implementation of the Hague Convention on Protection of Children and Co-operation in Respect of Inter-Country Adoption, a treaty at the heart of today’s discussions. One meaningful illustration is the emphasis given by the Hague Convention to assisting adopted children preserve their cultural links with their country of origin, and adoptive parents recognize the value and importance of such links for the child’s development.

The UNICEF Innocenti Research Centre is currently completing a study on general measures of implementation of the Convention on the Rights of the Child, framed by the reporting process to the Committee on the Rights of the Child. The study covers some 60 countries, including many that are countries of origin in the context of inter-country adoption. I am very pleased to share with you an overview of the changes made by some of those countries in their legislation since the entry into force of the Convention on the Rights of the Child, as they concern the right to identity of adopted children.

Our study suggests that adoption is one of the areas where the Convention has had the greatest impact, in terms of influencing law and practice. The Convention, as you know, establishes a number of requirements specifically concerning inter-country adoption, and encourages States Parties to “concluding bilateral or multilateral arrangements or agreements” to ensure that inter-country adoptions, where appropriate, are carried out in full compliance with the rights of the children involved.

The 1993 Hague Convention was developed as a result. The Committee on the Rights of the Child considers the Hague Convention as an ideal way of complying with the Convention on the Rights of the Child, and systematically encourages States parties to the CRC to also become parties to it.

The Hague Convention contains an article designed to preserve the right of adopted children to information about their origins. In fact, article 30 provides that “The competent authorities of a Contracting State shall ensure that information held by them concerning the child’s origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.”

No reservations have been made to this provision. The adoption of the 1993 Hague Convention, its ratification by a large and still growing number of States and the mechanisms for international cooperation that it has generated are one important consequence of the Convention on the Rights of the Child.
But let us now turn to how the provisions of these treaties are reflected in the legislation adopted by selected countries of origin, in particular in Asia, Eastern Europe and Latin America, reviewed by the study of the UNICEF Innocenti Research Centre.

a) Latin America

In Latin America, the right to identity has been a high profile issue, as a result of the widespread practice of illegal adoption of babies taken from political prisoners by the repressive regimes in power during the 70s and 80s and allegations of trafficking for purposes of adoption during the 1990s. The forced disappearance of babies and the change of their birth records was indeed the direct cause for the inclusion in the Convention on the Rights of the Child of a specific wording on preservation of the child’s identity.

This historical context explains why Latin America is the region where most progress has been made in recognizing the right of adopted children to information about their origins.

Most Latin American countries have adopted codes designed to incorporate the Convention on the Rights of the Child into national law.\(^2\) Most of these codes contain provisions concerning the right to identity,\(^3\) and many include specific provisions on adoption.

In some cases, they address the right of adopted children to information about their origins.

- The Venezuelan children’s code recognizes a qualified right of adopted persons to information about their origins “when their interests warrant.”\(^4\)
- Most such provisions are more generous. The Bolivian code of 1999, for example, provides that:

> *Every adopted child has the right to information about his adoption and biological family. Adoptive parents have an obligation to give them this information.*\(^5\)

\(^2\) Colombia in 1989, Brazil in 1990, Bolivia and Ecuador in 1992, Peru in 1993, the Dominican Republic in 1994, Honduras in 1996, Costa Rica and Nicaragua in 1998, Mexico in 2000 and Guatemala and Paraguay in 2003; the codes adopted by the Bolivia, the Dominican Republic, Ecuador and Nicaragua were replaced by newer codes in 1999 (Bolivia) and 2003.

\(^3\) See e.g. Art.96 of the Bolivian Code; Art.17 of the Brazilian code; Art.5 of the Colombian code of 1989; Art. 23 and 34 of the Costa Rican code; Art.33 of the Ecuadorian code; Art.14 of the Guatemalan code; Article 29 of the Honduran code; Art.22 of the Mexican code; Art. 13 of the Nicaraguan code; Art.18 of the Paraguayan code; Art.7-9 of the Peruvian Code, and Arts. 16-17, 25 and 27 of the Venezuelan code. The code of the Dominican Republic recognizes the various elements of the right to identity, including name and nationality and contact with one’s parents and grandparents, in separate articles (Art.4 to 9)

\(^4\) Art.429

\(^5\) Art.78
• The Colombian code expressly recognizes the standing of the adoptee to seek a judicial remedy if otherwise unable to obtain such information.6

• The Ecuadorian code recognizes not only the right to information, but also the right to contact with biological relatives:

> Adopted persons have the right to know of their adoption, their origins, personal history and their consanguineous relatives, unless this is expressly prohibited by them.7

All these provisions apply to adoption in general, whether domestic or international. Several other countries in the region have enacted legislation recognizing the right of adopted children to information about their identity.

• The Family Code of Panama was amended in 2001 by the addition of a provision stating that “Every adopted child or adolescent has the right to know his or her origins”; and the adoption law enacted by Paraguay in 1997, several years prior to the enactment of a children’s code, contains a similar provision.8

• Argentine and Chilean laws adopted during the 1990s recognize the right of adopted persons to access adoption records when they reach the age of 18.9

b) Central and Eastern Europe

Prior to 1989, procedures concerning adoption were weakly regulated in many countries of Central and Eastern Europe. In Poland, for example, the first public agencies having responsibility for adoption were established in 1993; previously, this function was ensured by private social agencies, law offices and religious organizations.10

In Russia, the courts were not given jurisdiction over adoption until 1996. In 1998, the Constitutional Court of Belarus ruled that the provisions of the Marriage and Family Code allowing children to be adopted by an extrajudicial procedure without the consent of their parents were inconsistent with the Constitution and the Convention on the Rights of the Child.11

6 Art.115
7 Art.153.6 (“Las personas adoptadas tienen derecho a conocer su condición de tal, su origen, su historia personal y a su familia consanguínea, salvo, que exista prohibición expresa de esta última.”)
8 Law No.18 of 2 May 2001, Art.4, adding Art.290 C to the Code; Law No 1.136 of 22 October 1997, Art.5.1
9 Law No.24.779 of 1 April 1997, Art.328; Law No 19.620 of 5 August 1999, Art.27
10 See Second Report of Poland to the Committee on the Rights of the Child, 1999, UN doc. CRC/C/70/Add.12, para.168-177
11 Second Report of Belarus to the Committee on the Rights of the Child, 1999, UN doc. CRC/C/65/Add.15, para.127
Excessive reliance on institutional care of ‘social orphans’ was also widespread. The plight of institutionalized children was widely publicized in the early 90s and paved the way to a wave of poorly regulated inter-country adoptions.

This situation – together with the entry into force of the Convention on the Rights of the Child - led most of the countries of the region to adopt new legislation on adoption. Such legislation incorporates many of the principles and safeguards set out in the Convention and focus on the key requirements set forth in Article 21.

In the countries of this region covered by our study we have not come across any new law on adoption that recognizes the right of adopted children to information about their origins.\(^{12}\) The traditional concept that full adoption entails a total rupture of all ties between the adopted child and his or her birth family still prevails. Even the Czech Republic, which acknowledges that children should be informed of their origins and encourages adoptive parents to do so, considers this issue a sensitive one, has not introduced any legislation on the subject and maintains a reservation to the effect that failure to provide adopted children with information about their biological parents does not violate Article 7 of the Convention – an approach which has raised strong concerns by the Committee on the Rights of the Child.\(^{13}\)

A few countries in this region have adopted laws on the rights of children that recognize the right to identity in general terms. The Romanian Law on the Protection and Promotion of the Rights of the Child contains detailed provisions addressing in particular the right of children to "maintain personal relations with parents, relatives and other persons with whom the child has developed relations based on attachment."\(^{14}\) This law specifies that this right applies even when the child has been separated from his or her parent(s) as a result of a legal measure or when the child and his or her parent(s) live in different States, unless the maintenance of relations would be contrary to the best interests of the child.\(^{15}\) Similarly, the Child Rights Act of Belarus recognizes the right of children to know and be cared for by their families and to maintain personal relations with them if they do not live together.\(^{16}\) However, neither of these laws considers the consequences of adoption for the right to an identity.

\(^{12}\) See e.g. Second Report of Georgia to the Committee on the Rights of the Child, 2001, UN doc. CRC/C/104/Add.1, para.141; Second Report of Poland to the Committee on the Rights of the Child, 1999, UN doc. CRC/C/70/Add.12, para.118.

\(^{13}\) Second Report of the Czech Republic to the Committee on the Rights of the Child, 2000, CRC/C/83/Add.4, para.181.

\(^{14}\) Articles 8 to 19 (the quote is from Art.14(1))

\(^{15}\) Art.16 and 17.

\(^{16}\) Law No.400 of October 2000 Art.15 and 16
c) Asia

Most countries within the wide Asian region have not enacted new legislation to bring national law on adoption in conformity with the requirements of the Convention on the Rights of the Child. But there are interesting developments. In two cases, the legislation addresses the right to identity of adopted children.

- **The Indonesian Law** on Child Protection of 2002\(^\text{17}\) recognizes guardianship, fostering and adoption, but provides that “The adoption of a child … shall not sever the blood relationship between the adopted child and his natural parents.”\(^\text{18}\) The duty of adoptive parents to inform the adopted child about his or her “background and natural parents” is also recognized expressly.\(^\text{19}\)

- **The Philippines** adopted new legislation on inter-country adoption in 1994. The new law contains an interesting provision to the effect that agreement by the prospective adoptive parent(s) to “uphold the basic rights of the child as embodied under Philippine laws [and] the U.N. Convention on the Rights of the Child…” is a requirement for adoption.\(^\text{20}\) The Implementing Rules enacted under the law oblige the agency responsible for approving inter-country adoptions to preserve information concerning the identity of biological parents, and provides that adoption records may be made available to the adopted child, with appropriate guidance and counseling.\(^\text{21}\)

- **Vietnam** adopted legislation on inter-country adoption in 1993 and 1994, but these laws fail to address the right of adopted children to information about their biological parents.\(^\text{22}\)

**India** is one of several countries around the world where the law governing adoption varies according to the religious or ethnic community to which the concerned parties belong. The Hindu Adoption and Maintenance Act dates to 1956; the Guardians and Wards Act, adopted in 1890, applies to most other religious communities, including Muslims, Christians and Parsees.\(^\text{23}\) As its name suggests, it does not allow adoption, but only guardianship, a form of alternative care that does not affect the identity of the

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\(^{17}\) Law No.23 of 2002, Art.5, 7 and 27-29.
\(^{18}\) Art.39
\(^{19}\) Art.40
\(^{20}\) R.A. 8043 Section 9 g.
\(^{21}\) Section 54 and 53(a), respectively. Website of the Inter-Country Adoption Board <www.gov.ph/faqs/icab/page4.htm>
\(^{23}\) Second Report of India to the Committee on the Rights of the Child, 2001, UN doc. CRC/C/93/Add.5, para.386-389 (The Hindu Act also governs adoptions by Buddhists, although Buddhist adoption customs are actually different from Hindu ones; and Christian adoption practices are very different from the Islamic precepts on the care of orphans and abandoned children.)
child. There is no legislation on inter-country adoption, but regulations and procedures were established after 1984 Supreme Court decision on the subject and a statutory agency has been established to monitor the work of private adoption agencies. Present regulations contain no guidance on the adopted child’s right to identity in general, nor on the right to information about the identity of the child’s biological parents.

In short, while some progress has been made in Asia in recognizing the right of adopted children to information about their origins, much remains to be done.

The right to name and nationality

As mentioned above, the right to identity also includes the right to a name and to acquire a nationality. Also in this regard, there have been some interesting developments.

a) In Latin America some of the national laws recognize a limited right of adopted children to their birth name.

- The Paraguayan law (mentioned above) recognizes the right of adopted children to retain at least one of their given names.
- The Venezuelan code provides that adopted children shall bear the family name(s) of their adoptive parents, but that the given name may be changed only by court order, and only after hearing the views of the child.
- Similarly, the Colombian code provides that an adopted child shall take the family names of his adoptive parents, but his or her given name(s) shall not be changed unless the child is under three years of age or gives consent, or if the court finds sufficient reason to authorize the change.
- Legislation adopted by some Latin American countries also provides that children adopted by foreigners keep their nationality, even if they acquire the nationality of their adoptive parents. The new Bolivian children’s code is one example.

b) In Central and Eastern Europe, the law of most countries of the region presumes that adoptive parents have the right to change the name of adopted children. The Civil Code of Georgia, which provides that adoptive parents may give their name to an adopted child but may not change the

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24 Ibid, para. 392-401 and 405-408
25 Ibid, para. 404 and 405
26 Ibid, Art.5.2
27 Art.430 and 431, respectively. (If the adopted child is over the age of 12, his or her consent is required for a change of given name.) See also Art.507.
28 Art.97
29 See e.g. Art.92 of the Bolivian code of 1999.
given name of the child over the age of 10, unless the child agrees, appears to be an exception.\textsuperscript{30}

At the same time, the law of some countries recognizes the right of children adopted by foreigners to retain their nationality.

- **Ukrainian** children adopted by foreigners retain Ukrainian nationality until they reach the age of 18, at which time they can make an informed choice as to whether to keep that nationality.\textsuperscript{31}
- The Child Rights Act of **Belarus** also recognizes this right.

### Conclusions

The brief overview shared with you today reflects a wide process of law reform and a growing attention given to the safeguard of children’s rights in the context of adoption. They witness an overall concern by countries of origin to ensure that when alternative family care solutions are envisaged the history of the child is preserved and the links with the child’s background are given due consideration.

At the same time, much remains to be done. As the Committee on the Rights of the Child has often indicated, the right of the child to an identity is not expressly protected by law in a still wide number of countries; in an even wider number of cases no effective remedy has been foreseen to ensure the safeguard of this right; similarly, the legislation is often silent in relation to the guarantees established for the adoption of children without a birth certificate – yet the potential implications are quite high with the 50 million or so children who every year fail to be registered at birth.

Although progress has been made, the legislation reviewed also illustrates the insufficient attention given to the effective implementation of the general principles of the Convention on the Rights of the Child. As an illustration, reference could be made to the insufficient consideration given to the protection from discrimination on all grounds of the adopted child, including on the basis of the child’s ethnic, cultural and religious background or disability; the same could be said in relation to the still incipient involvement of the child in relevant decision-making processes in the context of adoption.

We are confident that the positive examples included in this overview\textsuperscript{32} will constitute a reference for further reflections in this regard and to advance the cause of children's rights.


\textsuperscript{31} Second Report of the Ukraine to the Committee on the Rights of the Child, 1999, CRC/C/70/Add.11, UN doc. para.233 and 409

\textsuperscript{32} The Family Code adopted by the Russian Federation and the Civil Code adopted by Georgia in 1997 require the consent of children over the age of 10 in matters affecting their legal personality, such as adoption or change of name. In Poland, consent of children aged 13 is also required for such purposes.