



Committee on the Rights of the Child  
General Comment on children's rights in relation to the digital environment  
[crc@ohchr.org](mailto:crc@ohchr.org)  
15<sup>th</sup> November 2020

Dear Sir/Madam

I am pleased to present our submission to the General Comment on children's rights in relation to the digital environment. As outlined in the subsequent submission, we are a loose grouping of research academics brought together by our work on charters for recordkeeping rights based in broader human rights frameworks.

We would be pleased to comment further or provide more explanation if required.

Yours sincerely

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## 1. About us

The attached recommendations and justification are submitted on behalf of a loose international coalition of academic researchers brought together by our work on charters for recordkeeping rights based in broader human rights frameworks. Our research projects focus on identifying and articulating the role of records as a fundamental pre-requisite to enabling the assertion of human rights for individuals, particularly children, thereby highlighting the obligations of organisations of all kinds (government, private, not-for profit) to attend to recordkeeping obligation and responsibilities for those they affect. Our projects involve extensive involvement and consultation with affected communities.

The Monash University led, [Rights in Records By Design](#) project brings together archival and recordkeeping, social work and early childhood education researchers at Monash University, the University of Melbourne and Federation University . The project conducts extensive collaboration with young people and those affected by poor or non-existent recordkeeping practices. This Australian Research Council supported research seeks to fundamentally redesign and reimagine recordkeeping and archival systems to support responsive and accountable child-centred out-of-home care and as an enabler of historical justice and reconciliation. One project stream is the development of a [Charter of Lifelong Rights in Childhood Recordkeeping in Out-of-Home Care](#). Our project partners include: CREATE Foundation (national peak consumer body representing the voices of children and young people with an out-of-home care experience), Connecting Home (a service for Stolen Generation), Care Leaver Australasia Network (CLAN) and the Child Migrants Trust; and is supported by a reference group of Young Care Leavers. CLAN has developed a [Charter of Rights to Childhood Records](#), informing and supporting the fundamental lifelong role of records for Care experienced people.

The UCLA led [Refugee Rights in Records \(R3\) Initiative](#) works with both current and historical refugee and diasporic populations in a range of projects identifying and making visible the essential role of authoritative records in supporting life-chances for individuals, families and communities in situations of forced migration. Bringing together an [international collaborative team](#) spanning the USA, UK and Australia, the Initiative has conducted consultations with affected communities and organisations in Australia, Sweden, Croatia, USA, UK, Ireland and Hungary. One product of the research is the [Refugee Rights in Records Framework](#).

## 2. Recommendations

- We recommend including a new sentence to Introduction: Para 5. This will provide a contextual link to suggested paragraphs we recommend being incorporated into the report.
- We recommend the insertion of an additional sub-section concerning childhood recordkeeping in section V. General measures of implementation by States.
- We recommend the insertion of specific sentences into paragraphs in section VI: Civil Rights and freedoms where the existence, defensibility and access to records to enable human rights are most critical.

Suggested draft paragraphs for each section have been developed for consideration:

### Suggested text for inclusion [indicated in blue italicised text]

#### ***I. Introduction***

5. The digital environment is becoming increasingly important in many aspects of children's lives as part of normal life and during times of crisis. Yet its short and long term impacts on children's well-being and their rights are uncertain. *What is certain is the need to ensure appropriate authoritative records are made, maintained and accessible by, or on behalf, of children to allow assertion of their human rights in the digital environment, now and into the future.....*

#### ***V. General measures of implementation by States***

New section between existing D (Allocation of resources) and E (Data collection and research):

##### ***Records***

*State and member bodies shall require the design and implementation of rights-based recordkeeping systems and access to existing records to support the human rights of all children, but particularly those in alternative care and forced migration, and to enable life-long accountability to the child for all deliberations and decisions impacting on the autonomy, identity, privacy, safety and well-being of that child.*

#### ***VI. Civil Rights and freedoms***

##### ***A. Access to information***

[New para, insert between 53 and 54] *States should require all public bodies and organisations making or holding information about decisions or actions affecting children: to make and maintain full and accurate records of these decisions; to ensure the child is informed that records are being made and where they are being kept; to participate and consent to what is being recorded; to obtain a copy of the record at the time of its creation; to rectify erroneous information in records created by government and organisational systems; and to be consulted on subsequent use of information in those records. Where children are deprived of their liberty and/or family for whatever reason, organisations responsible for actions taken on their behalf are required to accept lifelong responsibility to the child for their actions. This involves maintaining records that are accessible at no cost to that child for their lifetime. Where such records are held by public bodies such as archives, these bodies have a duty to support lifelong, freely available, digital access to such records by the*

*child. When children or their adult selves seek access to records about themselves maintained by governments and organisations, the rights of the child shall prevail over privacy of third parties except where safety concerns can be legitimately upheld. Children's original materials of personal origin (for example, original birth certificates or educational qualifications) shall be returned to the child (at whatever age) while copies may be retained by the organisation. States should provide children with access to independent expertise in finding, explaining, challenging, annotating and presenting records and enabling redress for recordkeeping that impeded children's human rights in actions impacting their life.*

#### **E. Right to privacy**

70. .... Such practices may lead to arbitrary or unlawful interference with children's right to privacy; they are rarely transparent to children or their parents or caregivers, and may have adverse consequences to children, which may extend to later stages of their lives. *Records should be created and kept to indicate actions and decisions relating to recordkeeping that might have a negative impact on the human rights of the child. This would include, but not be limited to what data and whose data is used in such practices, individual consent to reuse such data, design of data collection and processing systems, intent and outcomes of algorithms used for decision-making using such data, and actions affecting individual children based on such data. Such records should be available for access by the child for the lifetime of the child.*

#### **F. Birth registration and right to identity**

80. ....Lack of birth registration facilitates the violations of children's rights under the Convention and its Optional Protocols. *States shall create records of birth registration that shall be maintained in perpetuity, accessible without cost to the individual who is registered, and at low cost to family members. Biometric and DNA identification data shall not be shared beyond this initial registration context without the explicit, informed consent of the individual from whom it was obtained....*

81. States shall respect the right of every child to preserve his or her identity, *family, cultural and community connections, including children in situations of displacement and migration, children separated from family and community, and others who are in public care....*

### 3. Justification for recommendations

An analysis of the draft General Comment on Children’s Rights in Relation to the Digital Environment (CRC/C/GC/25) identified more than 60 provisions where recordkeeping implicitly underpin the statements and where inclusion of records or recordkeeping rights would strengthen the General Comment. Our recommended additions focus only on the most critical areas which require the inclusion of records to enable, instantiate and empower children in the digital environment. Throughout the document however records are implicit, but not the focus of attention to the detriment of children and the assertion of their lifelong, inalienable human rights. For example, implicit references to records are contained in provisions as diverse as requiring authoritative records required to assert, prove, maintain and preserve identity, to ensure adequate documentation of services such as health services, to provide documentation to support claims for remediation, redress or other remedies for children, or to hold organisational or institutional actors to account for actions and decisions.

Yet nowhere in the document is the requirement for records stated. The word ‘record’ appears only once in the document and that is about prohibiting inference being recorded (para 42). Perhaps this is a reflection of a social assumption that such records will be created as a matter of course. However, as the digital environment evolves, records are no longer created as a matter of course and thus need to be explicitly identified as a key requirement. Records, as authoritative evidence of actions, are essential to the exercise of human rights for all people, but are threatened in the digital environment by the overemphasis in the discourse on data. Data are a component of records, but records are more than just data, requiring attention to context, safekeeping environments to ensure their integrity and longevity for access over time as well as to how and why data was collected, and where and how it has been maintained. Our projects<sup>1</sup> have focussed on millions of children and adults around the globe who are, or have experienced, circumstances in which being able to prove identity, maintain cultural, community and family connectivity, and challenge decisions made by those in authority, are life critical. For such communities, human rights frameworks provide particularly important protections and inalienable rights that overarch those of specific jurisdictions. Not all children will be faced with extreme circumstances, but these examples vividly illustrate the importance of records to enable all children to instantiate their rights in the digital environment.

#### **The foundational importance of records**

Records made and kept by governments, institutions, service providers and other organisations about children for their administrative purposes often fail to meet their information, evidence and accountability needs. Without rights to know what records are maintained or where they are, to exercise any control over how such records are created, managed and accessed, or to have access to expert assistance in so doing, children are caught up in a disenfranchising power imbalance and are at risk of records being weaponised against their best interests.

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<sup>1</sup> Monash University, Digital Equity and Digital Transformation, Rights in Records by Design, <https://rights-records.it.monash.edu/research-development-agenda/rights-in-records-by-design/>  
UCLA, Center for Information as Evidence, Refugee Rights in Records R3) Initiative, <https://informationasevidence.org/refugee-rights-in-records>

Authoritative records are persistent representation of events that shape human activity. They are instruments integral to identity, memory and cultural heritage as well as to safety, security, wellbeing and accountability. When individuals or collectives cannot control or access records by or about themselves, it is impossible to actualise or assert inalienable human rights included in the *Convention on the Rights of the Child* and its covenants as well as in the *Universal Declaration on Human Rights*.

Records come in all forms. They can encompass data, photographs, CTV video footage or bio-based identity data, and can be recorded in multiple forms of inscription and media. They can be passed down orally as part of dance, ceremony and story. In the case of refugee children, a potent example is DNA-as-record. Increasingly used as a key identity document, DNA encoding is inherently unique to the individual, but also implicates other relatives, past, present and future in its remit. When linked to biometric identification systems, a DNA encoding can be shared without explicit consent to transnational systems in ways that are beyond an individual's, or community's, capacity to control. For children enmeshed in systems of heightened surveillance, the consequences of such non-consensual sharing of such records mean that inherently personal identity information spirals into potential nightmarish scenarios of social control.

The lifelong impacts of lack of rights in records are most clearly demonstrated in extreme cases. Illustrated dramatically by children who are placed in alternative care and situations of forced migration as refugees, the lack of records can be demonstrated to have a lifelong effect on an individual's identity, autonomy, wellbeing and safety. In such situations, children are subjected to heightened surveillance of their life by third parties. The records about them accumulate in multiple systems, often without their knowledge, let alone their informed (age-appropriate) consent. Options to opt out are impossible to assert. All children, and all individuals, are affected by the existence or non-existence of records. While in the control of multiple agencies involved with administering their particular activities, children are rendered powerless to know what is recorded about them, where it is, or how to challenge assumptions or to access them to seek redress for actions, particularly when the record is controlled by the perpetrator. The privacy rights of third parties are commonly privileged by default over the identity and accountability rights of the 'subject' of the record when access is sought through multiple relevant systems needing to be navigated to even know what records exist to support the exercise of lifelong, inalienable, human rights.

Current examples include the case of children or parents in family units separated at the US border. The US government has found it very difficult to locate the family unit when order to do so by the courts because adequate information was not recorded when the separation occurred of where each party was being sent, or because different government databases were involved where data could not be matched. Similarly in related circumstances, even babies are expected to represent themselves in asylum cases at the US border with no right to legal representation of the expertise necessary to find and produce records, or challenge government-acquired records. In Australia the experience of the Stolen Generation, children deliberately removed from family and culture without consent by state-endorsed policies, reverberates through generations. In forced relocation situations faced by child migrants, children have been told that parents were dead. For children placed in alternative care situations questions of identity, belonging and security are impacted by defensively maintained, bureaucratically focussed recordkeeping.

## **Data approaches are insufficiently precise to allow exercise of rights**

The General Comment addresses many aspects and issues faced by children when engaging in the digital environment. However it adopts the language and orientation of digital technology emphasising data, focussing on dangers inherent in data collection and surveillance, datafication of children and exposure to risks in that environment. This approach fails to prioritise the creation, maintenance and continued preservation of records that are required to facilitate the operationalisation of rights in the digital environment. Data are disaggregated components of records and information sets, extracted from the context of their creation to be reused, linked, analysed and interpreted. Records are authoritative evidence of actions taken. Data is usually most valuable when up-to-date and reflecting a point in time. Records cumulate to provide evidence of activity over time, enabling chains of actions and their consequences to be available. Reflecting actions taken, records relevant to individuals can be located in as many organisations and services that they individually interact with. Knowing that records exist, in which organisations, where and what they are, and the ability to assert controls over what is recorded and who can access information about individuals are key to instantiating inalienable human rights. Without records to create an appropriate foundation, to act as proof of actions taken by or on behalf of children, accountability for actions cannot be asserted.

## **A complaints/reporting mechanism is insufficient**

Complaint mechanisms are essential to rectify actions and are fundamentally dependent upon authoritative records. With no rights to ensure that authoritative records exist and no control in mechanisms that ensure the appropriate management and control of records, complaint mechanisms are inherently biased towards those who possess the record.

Reporting approaches as monitoring techniques are similarly not sufficient to enable instantiation of rights. Reporting focusses on data, disaggregated from the context of its creation, often focussed on specific problem areas. Such data-oriented approaches, even where nominally deidentified, are specifically linked to a point in time, and do not provide appropriate accountability for authoritative information about individuals across time. At the same time, accurate reporting itself is dependent on evidence provided by authoritative records. Complaints mechanisms and reporting strategies do not replace or adequately address needs for authoritative records.

## **A rights based approach to records**

Establishing a rights framework for records based in broader human rights is an emerging mechanism to reposition recordkeeping to empower individuals to instantiate their human rights. Rights frameworks for records seek to empower individuals to know about and exercise rights to participate, access and control records relating to themselves. Current projects are defining Charters of Rights to Records to assert the relationships of records to broader human rights for specific communities and realign organisational recordkeeping. Such Charters can then be used in the design of recordkeeping rights into digital systems. A shift away from organisation-centric records of control and surveillance towards child-centred recordkeeping would enable children to exercise their rights under the *United Nations Convention on the Rights of the Child* 1990. For children in alternative care, child-centred rights-based recordkeeping systems would enable age-appropriate participation of children in both organisational and personal recordkeeping that documents their lives, develops

their sense of identity and belonging, keeps them connected with family and community, and addresses their questions about who they are, where they come from, and why they are in care.

The Rights to Records Charters are based on rigorous analysis of instrumental and testimonial warrant. Developed in conjunction with members of affected communities, the Charters specifically address the lifelong records requirements for children who experience alternative care environments<sup>2</sup>, and for refugees<sup>3</sup>. These frameworks are fundamentally based in the notion of enabling autonomy for children. Adoption of such frameworks will impact active recordkeeping systems as well as archives of business, government and not-for-profit organisations and will involve fundamental reconfiguring of the design, implementation and access to systems that record personal information. Such reconceptualised systems and approaches place the individual and authorised communities at the centre of actions, as active empowered participants rather than as passive 'subjects' of systems of data collection. Such mechanisms will enable individuals to assume controls, exercise autonomy and assert rights over information that at present are stored in multiple, disconnected, distributed and often closed or inaccessible systems and repositories.

## Bibliography

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<sup>3</sup> UCLA Center for Information as Evidence, Refugee Rights in Records Framework, July 2020, <https://informationasevidence.org/framework>