

Children's right to identity in Argentina

Factsheet submitted to the Committee on the Rights of the Child 98th pre-session (May 2024) ■ Seventh Periodic Report ■ CRC/C/ARG/7

Creation of identity

Birth registration:

- A study published in 2018 by the Directorate of Health Statistics and Information (DEIS) of the National Ministry of Health (MSAL) and UNICEF, revealed that, in 2014, in all jurisdictions - with the exception of Chaco over 95% of live births were registered within the legal deadline and between 41 and 89 days after their occurrence.1 It should be noted that Argentinean law sets a 40-day deadline for the prompt registration of births,² which is the responsibility of the National Registry of Persons (RENAPER). This is the national body responsible for the registration and identification of all natural persons on the Argentine territory or in Argentine jurisdiction and of all Argentines regardless of their place of residence, keeping a permanent and updated record of vital events and acts from birth to death.3 The mission of the provincial Civil Registries is to safeguard the right to identity of all persons through the registration of the vital acts and facts of citizens.4
- The National Identity Card (DNI) is the document that exclusively certifies the identity of persons on the basis of the database managed by the National Registry of Persons. The DNI is the only instrument that accredits the identity of a person from birth.⁵

Abandonment:

- According to UNICEF, in 2021, about 9% of births were to adolescent mothers aged 10-19. In this context, UNICEF developed protocols to reduce adolescent pregnancy and early unions in Chaco, Jujuy, Salta and Santa Fe, and provided assistance to implement health policies aimed at adolescents with an intercultural approach.⁶
- In the survey conducted by the National Secretariat for Children, Adolescents and the Family (SENAF) and UNICEF in 2020 on the situation of children and adolescents without parental care, abandonment was generally not the main cause of family separation.⁷
- It should be noted that Law 27.610 of 2021, which is mandatory throughout the country, expanded the rights linked to termination of pregnancy. It regulates access to voluntary and legal termination of pregnancy and post-abortion care for all persons with the capacity to gestate. ⁸

Assisted reproductive technologies and surrogacy:

- The Civil and Commercial Code (2015)9 incorporated provisions relating to parentage in cases of resort to assisted human reproduction techniques (Book II, Title 5, Arts. 563 and 564). In particular, Article 563 establishes that the information relating to the fact that the person was born through the resort to assisted human reproduction techniques with gametes from a third party must be included in the corresponding basic file for the registration of the birth. Likewise, raticle 564 makes it clear that 'at the request of persons born through assisted human reproduction techniques, the following may be obtained from the intervening health centre: a) information regarding the donor's medical data, when relevant to health; b) the identity of the donor may be revealed, on duly-founded grounds, as evaluated by the judicial authority through the shortest procedure provided for by local law. However, it appears that there are still gaps in terms of the regulation of health centres and the preservation of such data.
- Case law has also emerged in this area. Chamber V of the Federal Administrative Court of Appeal called for preserving donor information and addressing issues of access to information. Following a case in Buenos Aires in 2017, the local Civil Registry took such an approach (Disposición no. 93/DGRC/17 of 13 October 2017, supplemented by Disposiciones nos. 103/2017 (DGRC) and 122/2020 (DGRC)) to allow the registration of a child when the gestating woman did not express any intention to procreate and established that the information on the gestating woman would be preserved in the respective file.¹⁰
- To date, in Argentina there has also been a case of recognition of a third parent.¹¹

Migration, nationality and statelessness:

- All persons born on the national territory automatically acquire Argentine nationality and consequently have the right to receive their first DNI completely free of charge.¹²
- In 2019, Argentina passed the Law on the Recognition and Protection of Stateless Persons in Argentina.¹³
- However, it has been reported that some children and adolescents, particularly those of Venezuelan origin, have difficulty accessing identity documentation in Argentina,¹⁴ as well as administrative obstacles to their protection.¹⁵



Considerations:

- What is the government undertaking to ensure that children at risk of non-registration are actually registered, particularly in provinces with the highest rates of underregistration?
- While abandonment does not appear to be a major factor in family separation, what actions are being taken to reduce early pregnancy rates?
- With the rapid development and increasing resort to assisted reproductive technologies, as well as surrogacy, what is being undertaken to safeguard the genetic, gestational and biological identity of children conceived through these techniques and to address gaps in this area?
- What actions are planned to ensure that no child or adolescent in Argentine territory remains in a situation of statelessness?

Modification of identity

Alternative care:

- According to the latest survey of 2020, elaborated with information from all the jurisdictions of the country, in Argentina there were 9,154 children and adolescents as well as 600 young people over the age of 18, who had an exceptional protection measure for the restitution of their rights and were placed in formal residential or family care arrangements. This survey incorporated information on 6,400 children and adolescents, who were subject to exceptional measures with their extended families. Of the total number of children and adolescents with exceptional measures, 58.5% were in residential or family care arrangements and 41 % lived with their extended family or a community reference person. 16
- In this context, SENAF has worked together with UNICEF on various initiatives to survey the conditions of accommodation and care of children and adolescents in order to have substantive information that will allow for transformative actions that promote and safeguard the human rights of children and adolescents, in particular the implementation of a Census of Institutional Care Facilities that includes homes, residences, group homes, public, private or mixed management institutions.¹⁷
- Likewise, Law 26.061, in force in Argentina since late 2005, implements at the national level what it calls the System for the Comprehensive Protection of the Rights of Children and Adolescents (SPPD), and promotes the development of tools for the management and systematisation of child protection interventions. In this regard, UNICEF has supported the country in the development of the Registro Único Nominal (RUN), a system for the management, registration and production of information based on nominality and the organisation of the single digital file of children and adolescents, which aims to systematise the interventions of the comprehensive protection system. The information uploaded in each of the files of the children and adolescents addressed by the protection system feeds a database, which allows other operators or persons in charge of the agency to later access all the interventions and measures.

taken by protective services and their programmatic resources. Through the RUN, information is available in digital format, that can be downloaded into a paper file and can be analysed simultaneously by several people. Among many other elements, the RUN includes information on the identity of the child or adolescent: surname and first names, date of birth, type of identity document, nationality, as well as data on the identity of the child's father, mother and/or referents, in addition to his or her comprehensive protection measures, exceptional protection measures and strategic plans for rights restitution. 18 The project is implemented in partnership with SENAF and the provincial governments, which are in charge of managing the protection systems. The Federal Council for Childhood, Adolescence and Family (COFENAF) approved the implementation of the RUN and created two working commissions to advance the implementation in all provinces of the country. Thus, the RUN emerged from a UNICEF initiative that has now become a public policy, with a federal scope.¹⁹

- Finally, in 2023, in order to promote the deinstitutionalisation of children and adolescents without parental care, UNICEF and RELAF have collaborated in the assessment and technical assistance in the provinces of Jujuy, Salta and Santa Fe,²⁰ among other actions, to promote and develop foster care. ²¹
- In addition, UNICEF has supported the generation of research, the promotion of quality standards for care that respects children's rights, the strengthening of programmes to accompany children leaving care and the promotion of the participation of children and adolescents, as established in the UNCRC.²² Indeed, the role of care leavers has been particularly notable in recent years. The organisation DONCEL has been very active in this area, ²³ advocating for and achieving the Law on Leaving Care²⁴ as well as the dissemination of a course/guide for leaving care²⁵ and, more broadly, of a Guide of indicators for alternative care for children and adolescents in residential care.²⁶ It has also been the driving force behind the Latin American Network of Care Leavers.²⁷

Adoption:

- Adoption procedures in Argentina are carried out through the Single Registry of Applicants for Adoptive Placement, under the responsibility of the Ministry of Justice, as the administrator of the national database of Applicants for Adoptive Placement throughout the country.²⁸ By the end of 2023, there were 1,732 applicant files. ²⁹
- It should be noted that, in Argentina, adoption can be full or simple, according to what the judge considers most convenient for the child or adolescent. The judge decides which bonds are maintained or extinguished with respect to the family of origin, both in full and simple adoption. ³⁰
- Given the country's past, it should be recalled that Argentina does not carry out any intercountry adoptions and is not a party to the 1993 Intercountry Adoption Convention.³¹



Considerations:

- What actions is the country undertaking to ensure the preservation of family relationships and identity of children and adolescents in alternative care and to provide them with appropriate care and family reintegration or leaving care options?
- What is being undertaken to ensure that adopted children and adolescents are ensured the preservation of information about their identity of origin and full knowledge of their family relationships?



Adoption:

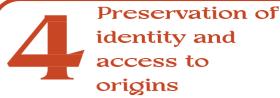
- Article 611 of the Civil and Commercial Code states that 'the direct placement of children and adolescents by means of a public deed or administrative act is expressly prohibited, as well as the direct placement granted by any of the parents or other relatives of the child (...)'.
- In addition, in recent years, there have been bills seeking to incorporate the buying and selling of children and illegal adoption into the Criminal Code, although they have so far failed.³²

Child marriage:

• According to the Fundación para el Estudio y la Investigación de la Mujer (FEIM), in 2020-2021, almost 5% of Argentinean girls under the age of 18 were married or living with men mostly between 10 and 15 years older than themselves. According to the same source, child marriage or unions is considered to belong to the family and private sphere. The cultural and ancestral mandates that still exist in many provinces and the stereotyped gender roles contribute to the persistence and naturalisation of these marriages or unions at an early age in society. The provinces of Misiones, Chaco and Formosa lead in the number of girls and adolescent mothers living in marriages or unions.³³

Considerations:

- Has there been progress in legislation to prevent illegal adoptions, such as private adoptions or the sale of children?
- Given the significant rate of early unions and early marriages in the country, what actions is the country undertaking to prevent and respond to these situations?



Adoption:

In accordance with Article 596 of the Civil and Commercial Code, the adoptee of sufficient age and maturity has the right to know the data relating to his or her origin and may have access, upon request, to the judicial and administrative file, in which his or her adoption was processed and to other information contained in judicial or administrative records. If the person is underage, the judge may order the intervention of the technical team of the Court, of the protection agency or of the Register of adoptive parents to collaborate. The adoptive family may seek advice from the same bodies. The judicial and administrative file should contain as much information as possible on the identity of the child and his or her family of origin, including information on communicable diseases. The adopters should expressly undertake to make their origins known to the adoptee and this declaration should be recorded in the file. In addition to the right of access to the files, the adolescent adoptee is entitled to initiate an autonomous action for the purpose of finding out his or her origins. In this case, he must be assisted by a lawyer.34

Consideration:

• What is being undertaken to ensure that adopted children and adolescents are ensured the preservation of information about their identity of origin and full knowledge of their family relationships?



Identity restoration in cases of past appropriation and adoptions:

- The right to identity is very important in Argentina, a country that promoted this right in the UNCRC. Since 2004, the National Congress has instituted 22 October as the **National Day on the Right to Identity**. This day commemorates the work carried out by the Grandmothers of Plaza de Mayo, who promoted the recognition of this right through their struggle to recover their grandchildren illegally appropriated by the repressive forces during the civil-military dictatorship in the country.³⁵ It is a day in the school calendar that encourages reflection.
- The country also has a **National Commission for the Right to Identity** (CONADI) which operates within the Human Rights Secretariat of the Ministry of Justice, and which was created by Law 25.457 of 2001.³⁶ Its purpose has been a) to contribute to the fulfilment of the commitment assumed when ratifying the UNCRC with regard to the right to identity;



- b) promote the search for the children of disappeared persons and of persons born during the captivity of their mothers, in an attempt to determine their whereabouts and identity; and c) intervene in any situation in which the right to identity of a child is violated.
- CONADI is also in charge of coordinating and centralising public policies aimed at protecting and safeguarding the right to identity, in particular the National Programme on the Right to Biological Identity since 2021.37 The Programme is aimed at persons born in Argentina, who are seeking their biological origin, regardless of their date of birth, and at mothers and/or biological relatives seeking children born in Argentina, who were separated from their families at birth, regardless of the dates or circumstances of birth. This procedure is free of charge. It should be noted that the accumulated experience and systematised work on the right to identity over 30 years now allows CONADI to broaden its scope, taking on the task of addressing the problem of the search for identity and biological origins in cases not linked to crimes against humanity, and to propose public policies aimed at safeguarding the full exercise of this right throughout the national territory.38
- In addition, in 2012, 39 a Specialised Unit for cases of child appropriation during State terrorism (UFICANTE) was created, 40 which includes among its functions: to take the necessary measures for the implementation of the Protocol of Action for cases of appropriation of children during State terrorism; to keep a complete and updated register of the cases of appropriation of children during State terrorism; to elaborate a database on cases of appropriation of children, including the modality of commission and the persons involved in each event, with the aim of detecting common patterns in the different cases that can be used to guide other investigations; to design investigation strategies for the clarification of acts of child abduction; to advise the prosecutors' offices and provide the necessary collaboration for the investigation of cases of abduction and the appropriate treatment of the victims of these crimes; to carry out a permanent follow-up and study of national and international jurisprudence that may have an impact on the processing of these cases; to carry out preliminary investigations into alleged acts of child abduction and make the corresponding complaints; to liaise with the Executive in the application of Law 26.538 to cases of child abduction; to prepare periodic reports on the status of the proceedings, progress and difficulties observed; and to arrange the necessary interinstitutional actions to improve the investigation and prosecution of cases of child abduction during the State Terrorism.41
- The country also operates a National Genetic Database (BNDG), as a public and systematic archive of genetic material and biological samples of relatives of people abducted and disappeared during the Argentine military dictatorship.⁴²
- For its part, the **National Ombudsman**⁴³ carries out administrative investigations in order to help anyone, who has doubts about their biological origins to search for, locate and obtain information that will enable them to identify their parents or other relatives, seeking to find or reunite them with their origins. It has an action protocol for finding or reuniting biological origins.⁴⁴

- The Ministry of Foreign Affairs, International Trade and Worship, with the accompaniment of CONADI and Abuelas de Plaza de Mayo also launched a campaign to reach out to people abroad. The International Campaign for the Right to Identity #ArgentinaTeBusca aims to reach out to victims of enforced disappearances during the dictatorship (1976-1983), which included the abduction of around 500 babies and children, who were separated from their families and appropriated under another identity. 45
- Finally, the **Network for the Right to Identity** was created. It trains and informs citizens about the right to identity through talks, seminars and exhibitions, joint activities with members of the Grandmothers of Plaza de Mayo; it guides and accompanies people with doubts about their biological origin, and articulates with governmental and non-governmental organisations and civil associations the dissemination of the right to identity throughout the national territory, Uruguay, Spain and Italy. The Network currently operates in all provinces and is made up of governmental and non-governmental organisations, institutions and civil associations, professionals and all those who want to collaborate in the struggle to find the grandchildren and to defend the right to identity, which is still being violated today.⁴⁶
- There have also been **efforts from the Judiciary**, as shown by the notification by the National Court in Federal Administrative Litigation No. 10 to all victims of identity substitution of the universality of access to the Genetic Database, and which requested the National Executive to implement a management plan for victims of substitution to find their biological identity, as well as for anyone who has suffered harm from being affected by trafficking. ⁴⁷

Consideration:

• Argentina offers promising practices and a wide range of initiatives to ensure the restoration of the right to identity; what additional actions are you proposing beyond responses to systematic practices of the past?

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