

# The child's right to identity in Peru

Factsheet for the Committee on the Rights of the Child  
90<sup>th</sup> pre-session (September 2022) / Common Core Document HRI/CORE/PER/2019

## 1 Creation of identity

• According to UNICEF, between 2000 and 2018, the percentage of children of six to 59 months, who were not registered at the municipality or the National Identification and Civil Status Registry (RENIEC) decreased from 6.8% to 1.7%,<sup>1</sup> therefore resulting in increased compliance with the right to a name and an identity for children in Peru as well as with Article 6 of the New Code of Children and Adolescents (Law 27337), which provides for the right to identity in the following terms: children and adolescents have a right to an identity, which includes the right to have a name, to gain a nationality and, insofar as possible, to know their parents and use their surnames; they also have the right to the full development of their personality.

• The creation of identity remains an important issue of Peru's agenda on children and adolescents, as the most recent National Agenda on Children and Adolescents 2021-2026<sup>2</sup> mentions specifically as outcomes that newborns are registered within one month of their births, that economic obstacles that limit access to identity documents are lifted and that there must be permanent campaigns to close the gaps of undocumented persons.

• The situation of the identity of children born out of wedlock has been raising questions and concerns.<sup>3</sup> Indeed, even though Article 6 of the country's Constitution already established non-discrimination, there remained circumstances in which it still had an impact on the registration of out-of-wedlock parentage: when the father did not recognise the child and the latter could therefore not use his surname; and out-of-wedlock parentage was only legal when the fathers were recognised as such or when there was a legal decision declaring the paternity or maternity (Arts. 386 – 393 of the Civil Code). However, in 2006, the unequal treatment in the right to a name (specifically the surnames of a child born out of wedlock) was amended by Law 28720, which amends Arts. 20 and 21 of the Civil Code).

• On the other hand, Article 361 of the same Civil Code, which establishes the presumption *pater est*, i.e. a child, who is born within a marriage or within 300 days following its dissolution will have the husband as father, was amended in 2018 by adding 'except when the mother explicitly declares the opposite'.<sup>4</sup>

### Potential consideration(s):

- A first issue about the right of identity in Peru, according to one of our contacts, is that it is still considered from the perspective of 'static identity' in relation to elements of identification, rather than as a 'dynamic identity', which acknowledges children and adolescents as social legal subjects.
- Additional and targeted efforts are necessary to ensure universal birth registration in Peru and to ensure that all children and adolescents have access to it without discrimination.
- It is important to assess the potential impact of the COVID-19 pandemic on birth registration.

## 2 Modification of identity

• The above-mentioned Article 6 of the New Code of Children and Adolescents (Law 27337) also establishes that the State has an obligation to sanction those responsible for the modification, replacement or illegal deprivation of the registration and identity of children and adolescents, in accordance with the Criminal Code.

• In this regard, it is worth mentioning that the practice of surrogacy in the country has resulted in questions and concerns, due, in particular, to the absence of a relevant legal framework, except for the General Law on Health (Law 26842), which states that the condition of genetic mother and gestational mother must concentrate in the same person (Art. 7). The Supreme Court of Justice of the Republic has issued opinions on this issue, but the two sentences were actually contradictory and there appears to be no consensus on this issue.<sup>5</sup>

• As for adoption, the administrative resolution, which declares the adoption, once confirmed and firm, must be notified to the Civil Registry of the RENIEC in order for the latter to register the child's birth in line with the administrative adoption resolution, without mentioning the condition of adopted child and leaving the original record without legal effects (Decreto Legislativo No. 1297; Art. 206 of the Regulations of Law No. 1297).

### Potential consideration(s):

- In cases of modification of identity, it must be assessed whether the decision is in the child's best interests.
- With regards to surrogacy, given the absence of a legal framework that regulates this practice, it is important to ensure that any modification of the child's identity is duly justified and registered.
- As for adoption, it is also important that the modifications to the child's identity are registered correctly and comprehensively, in order to reflect the child's family identity and allow for potential searches for origins.

<sup>1</sup> UNICEF (2019). *A 30 años de la Convención sobre los Derechos del Niño: Lo Avanzado y lo pendiente en Perú*. Available at: <https://www.unicef.org/peru/media/6636/file/A%2030%20CDN%20lo%20avanzado%20y%20lo%20pendiente%20Balance%20Peru.pdf>.

<sup>2</sup> Agenda Nacional de la Niñez y Adolescencia 2021-2026. Propuestas para la atención y protección de niñas, niños y adolescentes en el Perú. Available at: <https://www.unicef.org/peru/media/9736/file/Agenda%20por%20la%20niñez%20y%20adolescencia%202021-2026.pdf>.

<sup>3</sup> See, e.g.: Velásquez Rodríguez, T. (2005). ¿Se protege el Derecho a la Identidad del hijo extramatrimonial?. *Derecho & Sociedad*, (25), 378-386. Available at: <https://revistas.pucp.edu.pe/index.php/derechoysociedad/article/view/17068>.

<sup>4</sup> See, e.g.: Rivera, K. (2018). La afectación del Principio del Interés Superior del Niño a partir de la presunción *pater is est*. *Derecho & Sociedad*, (50), 235-248. Available at: <https://revistas.pucp.edu.pe/index.php/derechoysociedad/article/view/20390>.

<sup>5</sup> See, e.g.: Ruyap Alcca, L. K. (2019). La maternidad subrogada gestacional altruista en el Perú: problemática y desafíos actuales. *Derecho & Sociedad*, (51), 103-117. Available at: <https://revistas.pucp.edu.pe/index.php/derechoysociedad/article/view/20862>.



## B Falsification of identity

- As previously mentioned, Article 6 of the New Code on Children and Adolescents intends to sanction any modification, replacement or illegal deprivation of the child's registration and identity, therefore establishing that any falsification may be sanctioned in accordance with the Criminal Code.

- There is currently limited information available on potential cases and circumstances of falsification of children's and adolescents' identity in the country.

### *Potential consideration(s):*

- It would be worth investigating the existence of factors that could lead to or entail a falsification of children's identity, such as the sale of children, past political contexts, poor or incomplete legal frameworks, unethical or illicit practices, etc.

- Finally, a recent report by the National Commission against Discrimination addressed the issue of registration and recognition of parentage of children born abroad to same-sex mothers, which could also seriously affect other Peruvian children's basic rights as they cannot access a National Identity Document (DNI) which fully reflects the data recorded on their foreign birth certificate. This lack of recognition and/or adaptation of foreign documents may result in the invisibility of part of the parentage of children born in these circumstances, their family origins and, therefore, their identity.

### *Potential consideration(s):*

- In particular in adoption, the country has undertaken efforts to ensure strengthened preservation of children's identity, by focusing on their family origins and cultural identity.

- It is essential that this preservation of identity, which allows for access to family origins, is also reflected in other areas and in response to other circumstances and issues, such as assisted reproductive methods, surrogacy, migration, etc.

## 4 Preservation of identity and access to origins

- Once again, Article 6 of the New Code on Children and Adolescents clearly establishes the obligation of the State to preserve the registration and the identity of children and adolescents.

- With regards to adoption, Article 215 of the Regulations of Legislative Decree No. 1297 specifically establishes that the adoption authority is responsible for the preservation and the custody of any information it holds about the adoptee's origins, thereby promoting the preservation of all information about their identity.

- Furthermore, Legislative Decree No. 1297 establishes the right of the adoptee to know about their origins; to keep their name even though their surnames are changed; and to maintain their nationality and the rights inherent to the latter. The adoptee has the right to have information about the identity of their biological parents as well as their medical background. In the case of children and adolescents, this may only be refused based on its impact on their best interests. An underage adoptee may request the information relating to their identity without the need to be represented legally. These are regulated in Article 145 of the Decree and this is a recent and very important safeguard, which recognises that adoptees are social subjects in accordance with the law. The adoption authority establishes the necessary protocols to ensure the right to access one's origins and to protect the bond amongst siblings and provides them with due psychological advice and support (Law No. 1297; Regulations of Law No. 1297).<sup>6</sup>

- Furthermore, it is worth mentioning a new and important aspect of the preservation of children's cultural identity and origins as provided for in Article 132 of Decree No. 1297: in adoption matters, the preservation of the children's and adolescents' cultural identity and origins will be given special consideration, except if not in their best interests.

## 5 Restoration of identity

- Finally, Article 6 of the New Code on Children and Adolescents complies with Article 8 of the Convention on the Rights of the Child as it includes provisions relating to the reestablishment of identity. Indeed, in cases of modification, replacement or deprivation of the latter, the State must restore the true identity through the most appropriate mechanisms.

- To date, no information has been located on the measures and actions taken by the government to restore the identity of children and adolescents when there have missing elements relating to their identity.

### *Potential consideration(s):*

- It would be relevant to raise those actions that could be taken by the government to reestablish the identity of children, adolescents and young people when the latter has been unduly modified, has been falsified or not preserved correctly or fully. Any information on efforts undertaken in relation to past practices in a variety of situations and to prevent any future events would be welcome.

<sup>6</sup> See also: Chanduvi, S. (2017). El derecho del adoptado a conocer su origen biológico (Tesis de licenciatura en Derecho). Universidad de Piura. Facultad de Derecho. Programa Académico de Derecho. Piura, Perú. Available at: <https://pirhua.udep.edu.pe/handle/11042/3254>.

<sup>7</sup> Comisión Nacional contra la Discriminación (2019). *Informe sobre el registro y reconocimiento de filiación de niños y niñas nacidos en el extranjero de madres del mismo sexo, en función al Orden Público Internacional*. CONACOD/Sec.Téc./III.2019 - Informe Temático n.º 3. Available at: [https://cdn.www.gob.pe/uploads/document/file/1611418/INFORME\\_Niños-y-niñas-nacidos-en-el-extranjero-de-madres-del-mismo-sexo.pdf.pdf](https://cdn.www.gob.pe/uploads/document/file/1611418/INFORME_Niños-y-niñas-nacidos-en-el-extranjero-de-madres-del-mismo-sexo.pdf.pdf).

