

## Children's Right to Identity in the Russian Federation

### Factsheet submitted to the UN Committee on the Rights of the Child

94<sup>th</sup> pre-session (February 2023) ■ Combined Sixth and Seventh Periodic Report ■ CRC/C/RUS/6-7

# 1

## Creation of identity

### Birth registration:

- To date, according to several sources, the Russian Federation has a rate of **birth registration completeness of 100%**.<sup>1</sup>
- The procedure for birth registration is established by Federal law No. 143-FZ on the Acts of Civil Status (1997); **birth registration is mandatory** in the Russian Federation.
- Birth registration relies on a document drawn up and issued by the medical institution where the child was born or a physician or witness of birth in the event of a delivery outside a healthcare facility. Following registration, the Civil Records office issues a birth certificate.<sup>2</sup>

### Parentage:

- The **hospital's birth record states the name of the woman, who gave birth to the child**. This document – as well as any statement issued by other medical practitioners or witnesses – determines the child's maternal parentage.
- It is **not possible to give birth anonymously in the Russian Federation, but a special procedure for abandoned children exists**. Indeed, if the mother's identity was not recorded, the healthcare institution where the birth occurred or the guardianship and custody body requests the child's registration. The child's surname, name and patronymic is recorded, but the information about the parents is not specified in the birth certificate and these sections are left blank.<sup>3</sup>
- The **husband of the woman, who gave birth, is presumed to be the child's father**. However, when the mother and father are not married, **paternal parentage may also be established by** a joint father-mother application to the Civil Records office, the father's application with the support of the guardianship and custody body or a judicial court decision. An application may also be submitted by the child once he or she comes of age.<sup>4</sup>
- It is also worth mentioning that, despite the establishment of a number of **baby boxes** in the early 2010s, most recently, there have been debates around their existence and a move towards banning these, as a result of the CRC Committee's previous recommendation on this issue.<sup>5</sup> A draft law on prohibition of baby boxes was registered in the Parliaments's (State Duma) database. However, the law banning baby boxes has still not been adopted. According to recent data, in Russia, in 2020, 'there were 16 baby boxes'.<sup>6</sup>

### Citizenship and statelessness:

- **Russian citizenship is granted by birth**, if at the time, both parents or the single parent have Russian citizenship, or if one of them is Russian and the other is stateless or missing. It appears that a simplified process is available to children, who are foreign citizens or stateless, as well as when their parents become Russian citizens. Likewise, a child may acquire Russian citizenship if he or she has been found on the territory of the Russian Federation and his or her parents do not turn up within six months.<sup>7</sup>
- However, it appears that 'the most vulnerable people in terms of stateless in the former Soviet countries are members of **ethnic minorities**'.
- 'Data from UNHCR global reports show that there were (...) **75,679 [stateless persons] as of early 2019**. There is no doubt that the actual number of stateless persons in Russia is much higher'.<sup>8</sup>
- Concerns have been raised for nearly a decade as the **statelessness of children born in non-government controlled areas of Ukraine** was already a problem prior to the 2022-initiated conflict, as these were registered and issued birth certificates by the local authorities, which were not recognised by the Ukrainian government. Indeed, only 43% of children born in Donetsk and Luhansk oblasts had obtained Ukrainian birth certificates. The remaining 57% were therefore at risk of statelessness.<sup>9</sup> This issue has undoubtedly been exacerbated during 2022 as other areas have been under the control of Russian forces, the humanitarian situation making it very difficult for parents to register their children and for persons already stateless in Ukraine prior to the conflict to be granted due protection.<sup>10</sup>

### Potential considerations:

- What actions are being implemented to try and record both parents' identities' in birth records and to ensure that the child's full identity is recorded, irrespective of the circumstances of birth?
- Has progress been made on the enactment of the legislation prohibiting the operation of baby boxes?
- What is being undertaken to provide children born in areas under Russian control with birth registration and recognised identity documents?



# 2

## Modification of identity

### Surrogacy and assisted reproductive technologies:

- **Gestational surrogacy is allowed** in the Russian Federation, provided there are medical indications, as regulated by Article 55 of the Federal Law on the Basics of Protection of Citizens' Health 2011<sup>11</sup> and Clauses 70-76 of Order No. 803H of the Ministry of Healthcare of Russia (31 July 2020).<sup>12</sup>
- The **persons participating in the surrogacy arrangement and having given their consent** in writing to the implantation of an embryo in another woman for the purpose of its bearing, **may be recorded as parents of the child only upon consent of the woman, who has delivered the child** (surrogate mother).<sup>13</sup> Indeed, 'provided the surrogate mother still consents following the birth of the child and that any other conditions of the legislation have been met, the intending parents may be registered as the legal parents of the child directly'.<sup>14</sup>
- Federal Law No. 538-FZ (19 December 2022) **banned international surrogacy**, having required that one of the 'potential parents' (genetic mother or genetic father) or both of them (genetic mother and genetic father), or a single woman shall have Russian citizenship.<sup>15</sup>

### Potential consideration:

- In surrogacy arrangements, what is being undertaken to ensure that children born through this form of assisted reproductive technology, can have access to their origins and to the identities of the persons having contributed to their conception and birth?

# 3

## Falsification of identity

### Alternative care and adoption:

- There have been multiple reports of **children being transferred since the start of the conflict in 2022 from Ukraine to the Russian Federation**, many of them being **imposed Russian citizenship** and being **subsequently adopted**.<sup>16</sup>
- Indeed, Amnesty International reported that 'Russia has taken a number of steps, such as simplifying the process of obtaining Russian citizenship to facilitate the adoption of some Ukrainian orphans and children without parental care, that strongly suggest an organized effort to absorb some members of these groups into Russian society' and that 'Russian and Russian-controlled authorities in the DNR and LNR have transferred Ukrainian children to Russia and facilitated the permanent adoption of some Ukrainian children by Russian families, depriving them of the opportunity to grow up and receive care in their country of origin. Moreover, in the chaos of war and in the absence

of formal relations between Ukraine and Russia, unaccompanied and separated Ukrainian children risk being identified as orphans available for adoption when they are not, possibly preventing reunification with blood relations and guardians'.<sup>17</sup>

- Other reports consider this practice as a **contribution to eradicating the Ukrainian identity of these children, whose estimates vary considerably but may amount to several hundred thousands**. It appears that 'among them are children with parents or legal representatives, unaccompanied children, orphans, children deprived of parental care and children with disabilities. Some of the minors lost their parents through attacks by Russian troops in Ukraine, killed by indiscriminate shelling or by not passing the so-called filtration process. (...) Ukrainian children have been deported to 57 regions of Russia, particularly the Omsk region in southwestern Siberia and Sakhalin island in the far east. Both areas are thousands of kilometers from home for the Ukrainians, forcing them to adjust to significant differences in climate in their new settings. In Russia, the deported children are being forcibly transferred to Russian families. According to the Russian children's ombudsman, Maria Lvova-Belova, as of mid-October 2022, there are 400 such minors, and 386 children who became victims of the forced imposition of Russian citizenship'.<sup>18</sup>
- The **European Parliament has adopted a resolution condemning the forced transfer of Ukrainian children to Russia**,<sup>19</sup> following the previously-mentioned reports that Russian authorities have been separating children from their parents, conducting abductions from Ukrainian orphanages, hospitals and other children's institutions, and putting children up for adoption in Russia.

### Potential considerations:

- How many children have been transferred from Ukraine to Russia and what is the process to record any changes to their identity and citizenship?
- How many Ukrainian children have been adopted in Russia in 2022?



# 4 Restoration of identity

## Adoption:

- For years, there have been reports of **flawed adoption proceedings** in the Russian Federation.<sup>20</sup>
- Furthermore, the Russian Federation has still **not become a full Contracting State to the 1993 Convention on Intercountry Adoption**, which it signed in 2000.<sup>21</sup>
- In terms of domestic adoption, the country has also been subject to criticism due to the deficiencies identified in some cases, such as in the case of *Uzbyakov v Russia* (2020) examined by the European Court of Human Rights. In the latter, the applicant complained about his daughter being adopted by another family. The Court found deficiencies in the proceedings for the daughter's adoption and the applicant's subsequent paternity claim. Overall, the courts had failed to carry out an in-depth examination of the relevant factors and fairly balance the rights of all the individuals involved with due regard to the circumstances of the case.<sup>22</sup>
- In general, the law on adoption has not been amended in recent years. According to Article 139 of the Russian Family Code, the **secrecy of child adoption is protected by law**; judges, who issue a decision on adoption, or officials, who perform the state registration of adoption, as well as persons, who are otherwise informed about the adoption, are obliged to keep the secret of child adoption; persons, who have disclosed the secret of child adoption against the will of the adopters, shall be held liable in accordance with the law. Under Article 135 of the Family Code, the court, **in order to ensure the secrecy of adoption, may allow the adoptive parents to change the day of child's birth (if the child is below one year old) and the place of birth.**
- The **registration body may not provide any information on adoption if the adoptive parents do not agree** (as it would conflict with the secrecy of adoption). Indeed, in accordance with Article 47 of the Federal Law on the Acts of Civil Status 1997 (as amended), 'the civil registration body may not, without the consent of the adoptive parents (adopter), disclose any information about the adoption or issue documents which show that the adoptive parents (adopter) are not the parents (parent) of the adopted child'.
- However, Constitutional Court decree No. 15-П) was issued on 16 June 2015 and **established that an adopted child has the right to know the origin of his or her parents, if there is a substantial interest for this, which may be established by a court.** However, importantly, the Constitutional Court formulated this position solely in cases where the biological parents had already died, and their descendants had no knowledge of the origin of their deceased parents.

- Furthermore, the ruling of the Supreme Court No. 59-АПГ18-6 of 23 August 2018, held that, given that the purpose of filing an administrative lawsuit by the applicant (already an adult) was to obtain information about his or her biological mother in connection with the need to establish the presence or absence of genetically determined diseases, to establish a genetic family history and identify biological relationships, to obtain the ability to diagnose hereditary diseases, **the Judicial Board for Administrative Cases of the Supreme Court concluded that the challenged judicial acts were illegal (the courts' decisions that rejected the claims on getting access to information).**

## Surrogacy and assisted reproductive technologies:

- In the Russian Federation, **the name of the surrogate mother, genetic or not, does not appear on the birth certificate, only those of the intending parents.** Indeed, the name of **the surrogate mother does not appear on the birth certificate, but it is reflected in the birth registry book** and is available when the child reaches 18.<sup>23</sup>
- However, if the surrogate refuses to transfer a child and is registered as the child's legal mother, the child will never be able to find the truth about his or her origin unless the surrogate informs him or her herself, as there will be no information about ART/surrogacy reflected in the birth entry.

## Potential considerations:

- Whilst there has been no change in law with regards to the secrecy of adoption, the Judiciary has issued rulings addressing adoptees' right to access their origins and their medical background in certain circumstances. Are any legal reforms foreseen on this issue?
- What actions are being implemented to ensure that the above-mentioned right of adoptees is safeguarded, including when they are still children/underage or when their adoptive parents do not support their access to their origins?
- As mentioned above, in surrogacy arrangements, what is being undertaken to ensure that children born through this method, can access their origins and the identity of the persons having contributed to their conception and birth?



# 5

## Restoration of identity

### Statelessness:

● The **Law on the Legal Status of Foreign Citizens was amended in 2021**, among others following the European Court of Human Rights' decision in the case of *Kim v. Russia* (2014) and an appeal before the Russian Constitutional Court in the case of *Mskhiladze* (2017).<sup>24</sup> Experts suggest that whilst this is an important step forward, as documentation has now been introduced for stateless persons – a temporary identity card issued to a stateless person to confirm his or her identity and temporary stay in the Russian Federation<sup>25</sup> (even if the issuance of a stateless ID can be denied or revoked on grounds of providing false or forged personal information), another aspect of these cases remains unsolved: judicial control over the legality and duration of the detention.

● In addition, it appears that other related pieces of legislation important for stateless people have not yet been amended – for instance, the Law on Acts of Civil Status, in order for stateless people to be able to marry, be legal parents of their children, etc. – and that there are still insufficient by-laws and administrative regulations in place by the Ministry of Internal Affairs to consistently protect stateless people. To date, it appears that judicial decisions are still being issued to expulse stateless persons and to order their detention.<sup>26</sup>

### Potential considerations:

■ What proactive measures are being implemented to ensure that stateless persons have access to an identity in the Russian Federation and to prevent them from remaining stateless, in addition to issuing them with a stateless ID?

■ How are the legal amendments to the Law on the Legal Status of Foreign Citizens (amended in 2021) ensuring the protection of all foreign children, including those, who are stateless and/or whose parents are stateless?

<sup>1</sup> World Bank (2017). [Completeness of birth registration \(%\) – Russian Federation](#); World Economics (n.d.). [Russia's registration of births](#); UNICEF (2020). [UNICEF Data Warehouse. Indicator: Percentage of children under age 5 whose births are registered](#).

<sup>2</sup> [Questionnaire on the Private International Law issues surrounding the status of children, including issues arising from international surrogacy arrangements: Russian Federation](#). April 2013. Hague Conference on Private International Law.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> 'Russia plans to ban 'baby boxes' for unwanted infants'. *BBC News*. 29 September 2016; 'Russia's 'Baby Box' Initiative Under Fire'. *Radio Free Europe / Radio Liberty*. 12 December 2016; 'Boxing In Unwanted Children: Controversial Scheme Divides Russia'. *The Moscow Times*. 31 March 2016.

<sup>6</sup> 'Ксения Мишонова: судьба законопроекта о бэби-боксах решится в ноябре'. 15 October 2020.

<sup>7</sup> *Supra* 2.

<sup>8</sup> ADC Anti-Discrimination Center & Right to Protection in partnership with HIAS (2019). [Statelessness in Russia and Ukraine: Possible ways to overcome the problem](#).

<sup>9</sup> *Ibid.*

<sup>10</sup> Institute on Statelessness and Inclusion (2022). [Challenges facing stateless people displaced by the war in Ukraine](#).

<sup>11</sup> As amended by the [Federal Law of 19.12.2022 No. 538-FZ](#).

<sup>12</sup> See:

<http://publication.pravo.gov.ru/Document/View/0001202010190041>.

<sup>13</sup> *Supra* 2.

<sup>14</sup> Hague Conference on Private International Law (2014). [A study of legal parentage and the issues arising from international surrogacy arrangements](#).

<sup>15</sup> Article 4 of Federal Law No. 538-FZ of 19.12.2022.

<sup>16</sup> El Deeb, S., Shvets, A. and Tilna, E. 'How Moscow grabs Ukrainian kids and makes them Russian'. *AP News*. 13 October 2022.

<sup>17</sup> Amnesty International (2022). ["Like a prison convoy", Russia's unlawful transfer and abuse of civilians in Ukraine during 'filtration'](#).

<sup>18</sup> Rashevskaya, K. 'How Russia Is Destroying the Identity of Ukrainian Children'. *PassBlue – Independent coverage of the UN*. 26 December 2022.

<sup>19</sup> European Parliament. [European Parliament resolution of 15 September 2022 on human rights violations in the context of the forced deportation of Ukrainian civilians to and the forced adoption of Ukrainian children in Russia \(2022/2825\(RSP\)\)](#).

<sup>20</sup> See, e.g. Smolin, D. (2011). 'Experts respond to the «Baby Business»'. *The Schuster Institute for Investigative Journalism*.

<sup>21</sup> Hague Conference on Private International Law. [Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption. Status table](#).

<sup>22</sup> European Court of Human Rights. [Press release: Rejection of biological father's paternity claim and refusal to revoke an adoption order violated the Convention](#). ECHR 122 (2020) 05.05.2020.

<sup>23</sup> Baglietto, C., Bordier, L., Dambach, M. and Jeannin C. (2022). [Preserving "family relations": an essential feature of the child's right to identity](#). Geneva, Switzerland: Child Identity Protection.

<sup>24</sup> Abramenko, O. 'Stateless people gain access to documentation in Russia'. *European Network on Statelessness*. 27 January 2022.

<sup>25</sup> UNHCR (n.d.). [Help Russia - Assistance to Stateless Persons](#).

<sup>26</sup> *Supra* 24.

