

Children's rights to identity in Peru

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1 Creation of identity

Birth registration:

- According to UNICEF, between 2000 and 2018, the percentage of children from six to 59 months, who were not registered at municipal level or in the National Identification and Civil Status Registry (RENIEC) decreased from 6.8% to 1.7%,¹ resulting therefore in an increase in the compliance with the right to a name and identity of children in Peru and higher compliance with Article 6 of the new Code on Children and Adolescents, which establishes the right to identity in the following terms: 'the child and adolescent has a right to identity, which includes having a name, gaining a nationality and, whenever possible, know their parents and have their surnames. They also have the right to the full development of their personality'.
- The creation of identity remains an important issue on Peru's agenda for children and adolescents, as reflected in the most-recently proposed *National Agenda on Childhood and Adolescence 2021-2026*.² This Agenda specifically mentions as outcomes that newborns should be registered within the first month of life, that economic obstacles that limit access to identity documents be lifted as well as permanent campaigns to reduce the gaps of undocumentation.
- The identity of children born out of wedlock has raised issues and concerns over the last years.³ Indeed, even though Article 6 of the country's Constitution already enshrined non-discrimination, there are circumstances in which there is still an impact on the registration of parentage outside of marriage: when the father does not recognise the child, he or she cannot have the father's surname, given that parentage out of wedlock may only become legal when both parents are recognised as such or when there is a declaratory sentence of paternity or maternity (Arts. 386-393 of the Civil Code). However, the unequal treatment in the right to a name (surname of a child born out of wedlock) has been amended by Law 28720 (2006), which amends Articles 20 and 21 of the Civil Code.
- On the other hand, Article 361 of the same Civil Code establishes the *pater est* presumption (i.e. if a child is born during marriage or within 300 days following its dissolution, the husband will be the father). This was amended in 2018 to add 'unless the mother explicitly declares the opposite'.⁴
- Prompt and universal birth registration has also been challenged by other factors, such as geographical access, long distances and complex climatic conditions, which limit access to civil registration as well as the documentation of parents.⁵ Some initiatives are trying to address these situations (see *Section 5 below*).

Surrogacy:

- The practice of surrogacy in the country has resulted in questions and concerns, due, in particular, to a lack of a legal framework on this issue, beyond the General Law on Health (Law 26842), which establishes that the condition of genetic mother and gestational mother must be the same person (Art. 7). In fact, the Supreme Court of Justice has already expressed its views on this issue, but with two contradictory sentences. There still appears to be no consensus on this issue.⁶ However, surrogacy cases are increasing despite the lack of legislation on this matter, including in a context of potential falsification of identity, linked to fraud in identity documents of the surrogate, which leads to only the data relating to the latter being recorded at the time of registration of the birth. Another strategy has been the falsification of declarations of children born alive.⁷ These cases may be considered a potential sale of children's identities.

Potential considerations:

- ***According to a local contact, a first issue relating to identity in Peru is that it is still considered from a static – rather than a dynamic – perspective, which would not take children into account as legal social subjects.***
- ***What additional and targeted efforts will be implemented to ensure the universal registration of births in Peru and to ensure access to the latter without any discrimination?***
- ***Despite the lack of a clear legal framework on surrogacy, what measures are being taken to ensure the registration of genetic, gestational and biological origins of children born from such arrangements?***

2 Modification of identity

Adoption:

- With regards to adoption, the administrative resolution that declares the adoption, once agreed and final, must be notified to the Civil Registry at RENIEC in order for the latter to undertake the registration of the child's birth in line with the administrative adoption resolution, without mentioning the adoptive condition of the child, and leaving without effects the original registration, if existent (Legislative Decree No. 1297; Art. 206 of the Regulations of Legislative Decree No. 1297).
- In Peru, 100 children were adopted internationally in 2016, whilst only 25 were adopted internationally between January and August 2023, and 56 had been adopted domestically during the same period.⁹



Particular circumstances:

- A recent report by the National Commission against Discrimination addresses the problem of registration and recognition of parentage of children born abroad to parents of the same sex,¹⁰ which, in addition, 'could constitute a serious affectation of the most basic rights of Peruvian children in this same situation, as they are unable to access a National Identity Document (DNI) that contains the data contained in their birth certificate generated in a foreign country'. This lack of recognition and/or adaptation of foreign documents leads to the invisibility of part of the parentage of children born in these circumstances, of their family origins and therefore of their identity.
- On this issue, there is a ruling of the Constitutional Court of 2023 that has resolved the issue of two children born abroad to a Peruvian father through egg donation and who, because the mother's name was not revealed, was not allowed to register them in the National Identity Register.¹¹

Potential considerations:

- *How is the right to identity being implemented for children in alternative care?*
- *In terms of adoption - both domestic and intercountry - how is it being ensured that all the details of children's original identity prior to their adoption are recorded? This has an impact on their family identity and potential future tracing of origins (see Section 4 below).*

3

Falsification of identity

- The same Article 6 of the Code on Children and Adolescents (Law 27337) also establishes that it is the obligation of the State to sanction those responsible for 'the alteration [of the registration and identity of children and adolescents], substitution or illegal deprivation, in accordance with the Criminal Code'. Thus, this provision intends to sanction any alteration, substitution or illegal deprivation of the registration and identity of children and adolescents, making it clear that any falsification can be sanctioned in accordance with the Criminal Code.

Child marriage:

- In Peru, 5,000 child marriages have been registered by the National Registry of Identification and Civil Status (RENIEC). RENIEC has registered the marriages of girls aged as young as 11, 12 and 13 years old.¹²

Potential considerations:

- *What measures are being taken to prevent child marriages and early unions, which have an impact on family relations as well as other rights?*

4

Preservation of, and access to, origins

Access to personal information:

- Again, Article 6 of the New Code on Children and Adolescents clearly establishes the obligation of the State to preserve the registration and identity of children.
- In Peru, in accordance with Article 4 of the Regulation on Registrations of the National Registry of Identification and Civil Status, approved by Supreme Decree No. 015-98-PCM, any person may request certificates of the registrations made and of the filed documents that supported such registration, as well as the Personal Files. The information subject to confidentiality contained in these documents will only be given to the holder or their representative by means of a special power of attorney, to the legal representative in cases of underage persons, or to whoever is authorised by a firm court order.¹³

Adoption:

- In the field of adoption, Article 215 of the Regulations of Legislative Decree no. 1297 specifically establishes that the adoption authority 'is responsible for the conservation and safeguarding of the information it holds concerning the origins of the adoptee', thus promoting the preservation of all the information on his or her identity.
- Legislative Decree No. 1297 also establishes the right of the adopted person to know about their origins; to keep their name even if their surname changes; and to keep their nationality and the rights inherent to it. The adoptee has the right to know the information referring to the identity of their biological parents, as well as their medical history. In the case of children and adolescents, the refusal can only be based on a prejudice to their best interests. An underage adoptee can request information regarding their identity, without the need for legal representation (Art. 145). The adoption authority establishes the necessary protocols that safeguard the right of the child or adolescent to know their origins and preserve the fraternal bond, and provides them with the necessary psychological counselling and support.¹⁴
- Furthermore, an important aspect in relation to the preservation of cultural identity and origins in adoption is the provisions of Article 132 of Legislative Decree No. 1297: 'In adoption, special consideration is given to the preservation of the cultural identity and origins of children and adolescents, unless their best interests are affected'.
- Peru is committed to supporting adoptees in their searches and has set up a specific programme.¹⁵

Potential consideration:

- *In addition to the promising initiatives implemented for adoptees to have access to their origins, what additional measures is the country taking to ensure that this right can also be exercised by persons whose identity is incomplete due to other circumstances, such as the resort to assisted reproductive technologies, surrogacy, migration, child marriage or labour exploitation?*



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Restoration of identity

- Finally, Article 6 of the Code on Children and Adolescents complies with Article 8 of the Convention on the Rights of the Child by including provisions relating to the restoration of identity. Indeed, 'in the event of such alteration, substitution or deprivation, the State shall restore the true identity through the most suitable mechanisms'.

Birth registration:

- Peru has established differentiated periods, depending on whether the birth takes place in urban or rural areas or whether it takes place in a hospital or not.¹⁶
- Peru has also launched initiatives to promote the establishment of civil registry offices in hospitals and other health centres as part of interoperability with health sector systems.¹⁷
- Peru has concluded inter-institutional cooperation agreements with the civil registry authorities of neighbouring countries, which have developed initiatives to provide documents to indigenous communities located in border areas through mobile units.¹⁸

Migration:

- Peru has allowed children entering the country from Venezuela for family reunification to do so with a birth certificate, but there have been reports of an emerging problem of statelessness, as Venezuelans in an irregular situation avoid registering births for fear of alerting the authorities to their situation.¹⁹
- Peru, as a neighbouring country of Venezuela, has established sub-regional initiatives to address these issues.²⁰

Potential considerations:

- What have been the results of the various initiatives to encourage and facilitate prompt and universal birth registration?
- What additional measures are being taken to prevent the statelessness of migrant children and adolescents, including those from Venezuela?

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⁸ Arts. 26, 44, 58.b and 72 of Legislative Decree No. 1297, <https://busquedas.elperuano.pe/normaslegales/decreto-legislativo-para-la-proteccion-de-ninas-ninos-y-ado-decreto-legislativo-n-1297-1468962-4/>.

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