

# Children's Right to Identity in Azerbaijan

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

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### 1 Creation of identity

- Article 10 of the [Law of the Azerbaijan Republic "about the Child's Rights"](#) and Article 1 of the [Law of Azerbaijan about Citizenship](#) provide the legal basis for the establishment of citizenship at birth.<sup>1</sup> Collectively, the two provisions ensure that every child is registered at birth in line with national provisions and ruled a valid citizen provided their parents are not both foreigners or stateless.<sup>2</sup> As such, a child born to at least one Azerbaijani parent in the country is a valid citizen.<sup>3</sup> Article 166.1 of the country's Family Code mandates that birth registration must occur at the place of birth. Provisions notwithstanding, it is unclear what information is recorded or 'registered', how it can be accessed and for how long it is held. Registration of the child is undertaken in civil registration offices which sit under the Ministry of Justice.
- Azerbaijan's legislative and policy framework ensures children with disabilities are not disadvantaged in birth registration processes. While there is no accurate data on the number of children with disabilities in the country, UNICEF estimates that a large majority of school-aged children with disabilities are either not in specialised education, permanent education or recognised as being disabled at all.<sup>4</sup> While a significant number of children with registered disabilities are studying in general education facilities, they however, are not provided by inclusive education support as their special needs in education are not recognised.<sup>5</sup>
- 77% of children in the country are not engaged in inclusive education.<sup>6</sup> Without wide registration of children with disabilities, it is difficult to protect and build their individual sense of identity. In response, the country has established its [Law on the Rights of Persons with Disabilities](#) and coupled this with significant social protection reforms.<sup>7</sup>
- Azerbaijan boasts a Paediatrics Institute which sits under the TABIB authority and aims to provide a wide range of specialised healthcare services for children.<sup>8</sup> This includes support to children abandoned at birth. In these instance, Paediatrics Institute staff work as *de facto* social workers, demonstrating the flexibility of their roles. It is unclear from national legislation whether it is illegal to abandon children and what information about the child's abandonment and efforts to locate parent(s) is recorded, which can lead to gaps in identity preservation.
- No law or guideline explicitly discusses the birth registration rights of children born through surrogacy, although it seems to occur as advertised.<sup>9</sup>

#### Potential consideration(s)

- How will the State guarantee access to origins to children placed in baby boxes and prevent anonymous abandonment?
- How will the State guarantee that children born from surrogacy and living in Switzerland with their intending parents will be able to know the names of their surrogate mother and potential donor(s)?

### 2 Modification of identity

- Azerbaijan's guardianship system is governed by the [Family Code of the Republic of Azerbaijan](#), as well as Articles 33-38 and 136-141 of the [Civil Code of the Republic of Azerbaijan](#).<sup>10</sup> Under these provisions, guardianship care is provided to children who do not have the support of parents or a full guardian, instead a temporary guardian is assigned following their appointment from the Juvenile Affairs and Juvenile Rights Protection Commission.<sup>11</sup>
- Azerbaijan's challenges appear to be related to implementation of existing provisions rather than the absence of a comprehensive system of policies and regulations. The country's legal framework is supplemented by a National Plan for Transforming State-run Childcare Institutions, which purports to decentralise the national childcare system and use residential institutions only as a last resort.<sup>12</sup> On paper and at face value, this refreshingly child-centric approach has been supported by the establishment of family support services (physical and psychological) which cater to short, medium and long-term child needs.<sup>13</sup> Azerbaijan claims to be further attempting to implement non-discriminatory approaches across these practices, ensuring that all children without care can benefit from family care and the healthy development of an identity.<sup>14</sup> Although these mechanisms appear rigid, chronic underfunding of relevant agencies undermines Azerbaijan's ability to adequately safeguard the modification of child identity.<sup>15</sup>

- Adoption is legal as per Article 32 of the [Law “about the Child’s Rights”](#) if it is in a child’s best interests and complies with legislative processes.<sup>16</sup> The Azerbaijan’s Ministry of Health used to take sole responsibility for children abandoned up to the age of 3 and intercountry processes. The Ministry’s Department for Adoptions worked with relevant regional authorities to collect information on children without parental care and prospective adoptive parents, before facilitating the ‘matching’ of children who were abandoned to suitable parents.<sup>17</sup> For children aged 4-18, the Ministry of Education’s parallel Department for Adoptions coordinated and oversaw adoption procedures and rulings.<sup>18</sup> However due to its insufficient staffing - departments only host 2 permanent members of staff each - there was a risk that the modification of the child’s identity through adoption led to inappropriate outcomes as there were inadequate resources dedicated to a best interest assessment/determination. In response to these challenges, in 2019, Azerbaijan reformed its adoption process, transferring all competencies to the Ministry of Labour and Social Protection of the Population (MoLSPP). This institution now holds sole responsibility for all adoption processes and is receiving support from UNICEF across its range of tasks: prevention of institutionalisation, placement of children into institutions and reintegration of children into families.<sup>19</sup> The agency is aiming to establish and implement foster care services from the 1<sup>st</sup> of November 2022.<sup>20</sup>

*Potential Consideration(s):*

- *What proactive steps is Azerbaijan taking to discourage child abandonment and ensure that adoptions only occur when truly in the child’s best interests?*
- *How and in what ways is Azerbaijan working to ensure children without parental care have their culture, language and social heritage protected?*

## 3

### Falsification of identity

- Azerbaijan has been criticised for failing to meet international minimum standards for the elimination of human trafficking.<sup>21</sup> Trafficking in and through the country is primarily driven by conflict and organised crime. In relation to the former, military aggression between Armenia and Azerbaijan in the 1990s forced hundreds of thousands citizens to leave their native homes, while thousands of others were held hostage in occupied settlements during military operations.<sup>22</sup> Organised criminality also drives trafficking in persons from Azerbaijan, with traffickers forcing men and boys towards Eastern Europe and the Middle East to work as child labourers.<sup>23</sup>

There is a grave danger that children who are trafficked will have their identity altered significantly by being forced away from their families and origins. Noting this risk, the government has taken several measures to support trafficked children to regain their identity. Under the overarching 2020-2030 Child Strategy, child protection systems across the country are being harmonised with international legal provisions and guidelines.<sup>24</sup> This strategy is bolstered by the 2020-2024 National Action Plan to Combat Trafficking in Human Beings which includes components on the prevention of child marriage, child absenteeism from school and vulnerable trafficked children.<sup>25</sup> The government has shown progress in this regard, including through the provision of social support to child victims including the creation and handover of identity documents.<sup>26</sup> However, despite this progress, victim identification processes are still too hasty, often failing to properly question and investigate children to reveal their origins which can leave children vulnerable to further harm.<sup>27</sup>

- Large numbers of children in Azerbaijan are subjected to worst forms of child labour including child sexual exploitation, agricultural work and forced begging.<sup>28</sup> Weak legal frameworks enable this situation combined with socioeconomic factors. Articles 42 and 249 of Azerbaijan’s [Labour Code](#) sets the minimum age for work at 15 years.<sup>29</sup> This, combined with high rates of poverty and limited resources within government institutions such as the Committee on Family, Women and Children’s Affairs creates an enabling environment for child labour.<sup>30</sup>
- In relation to child marriage, there is little to no recent research (within the last decade) on the prevalence and nature of child marriage in the country. Throughout the region, many children conceived by illegal child marriages are registered as extramarital or ‘illegitimate’.<sup>31</sup> Child brides themselves are often forced to undergo changes to their identity to mask their true age and subvert national marriage regulations. Efforts must be made to conduct more detailed research into child marriage in the country given the large number of trafficking networks operating in the region.

*Potential Consideration(s):*

- *What concrete steps is Azerbaijan taking to eliminate child and early forced marriage, worst forms of child labour and child trafficking – which result in the “falsification” / “improper” modification of the child’s identity?*



# 4

## Preservation of identity and access to origins

- Azerbaijan's educational legislation inadvertently disadvantages some children and prevents them from accessing education. Article 5 of the [Law of the Republic of Azerbaijan "about education"](#) does not guarantee free education for undocumented children, excluding up to 40% of the country's children in shelters.<sup>32</sup> Court proceedings to secure identity documents can take up to two years to generate during which time children are barred from attending school and are left without a tangible identity.<sup>33</sup>
- Article 115.5 of the [Family Code](#) enables the Juvenile Rights Protection Commission to maintain centralised records on children without parental care and work with guardianship agencies to realise their protections.<sup>34</sup>
- In relation to surrogacy and assisted reproductive technology (ART), Article 29 of the [Law on Protection of People's Health Care](#) enables all women – single or married with the consent of their husband – to undergo artificial insemination and embryo implantation.<sup>35</sup> These procedures and the identity of the women undergoing them is confidential information tied to the medical oath of secrecy.<sup>36</sup> Women are, however, permitted to receive information relating to sperm donors' nationality and physical appearance although it is not clear how this information is later passed on to the children.<sup>37</sup> Azerbaijan's legislative provisions do not permit surrogacy or enshrine specific protection mechanisms for children born from surrogacy agreements.<sup>38</sup> Instead, surrogacy 'law' in the country is derived from a series of separate provisions which collectively permit ART.<sup>39</sup> Paradoxically, Article 46.4 of the [Family Code of the Republic of Azerbaijan](#) allows married, consenting parents to be registered as the parents of a child born through a surrogacy agreement where the latter has provided explicit consent. This provision is restricted to heterosexual couples.<sup>40</sup> Despite this piece of legislation, surrogacy itself remains illegal in the country, suggesting a married couple can only become parents to a surrogate child if the surrogacy occurs outside Azerbaijan.<sup>41</sup> Without clear legislation and guidance, there is a serious risk that children are born without access to their origins and a fragmented identity. The absence of official rules further risks children failing to gain access to valid nationality and scope for sale of children.

### Potential Consideration(s):

- *How does Azerbaijan intend to ensure that children under guardianship can access information about their origins?*
- *How does Azerbaijan intend to ensure that children born through anonymous ART and/or surrogacy have access to their origins?*

# 5

## Restoration of identity

- Following the Nagorno-Karabagh conflict in late 2020, large numbers of Azerbaijani children have been forced to flee to neighbouring Armenia as refugees, with many separated from their parents during this journey.<sup>42</sup> There is an urgent need to ensure displaced children are reconnected with their families to restore their identity.<sup>43</sup> While the government's position is that all displaced persons living in the territories of Azerbaijan are valid citizens, these individuals are yet to receive identification cards or be presented with an opportunity to formally accept Azerbaijani citizenship.<sup>44</sup>
- Regarding internally displaced children, the Guardianship and Trusteeship Authority is responsible for determining whether children are 'unaccompanied'.<sup>45</sup> According to Azerbaijani legislation, internally displaced persons are those displaced within the territory of Azerbaijan as a result of the Nagorno-Karabakh conflict in the 1990s.<sup>46</sup> In the interim period between a child's discovery and their onward placement, children are held by social services; in the eyes of the law, unaccompanied children are treated the same as children who have been deprived of parental care.<sup>47</sup> While this approach aims to protect all children indiscriminately, there is a risk that it fails to explore opportunities to restore children's identity.<sup>48</sup> Greater efforts should be made to ensure all avenues have been explored to trace internally displaced children's origins.
- The presence of children living on Azerbaijani streets has been described as an 'expected' outcome of the country's socioeconomic challenges.<sup>49</sup> Azerbaijan hosts a Department of Prevention and Prophylaxis of Adolescents – situated within the Ministry of the Interior – which is responsible for collecting and monitoring data related to street child prevalence in the country.<sup>50</sup> Over 500 cases of street children are registered each year in the country's capital, Baku.<sup>51</sup> The country has only two NGO-led alternative care options for street children known as 'The Place of Hope' and 'The House of Light'.<sup>53</sup> The country's Ministry of Internal Affairs also runs an Identification Documentation Program to provide identification documents to undocumented minors. Unfortunately, outside of these institutions children's interactions with the state are typically limited to law enforcement, who make little effort to trace their origins and will often place them in residential institutions.<sup>54</sup> This process effectively confines children to an inescapable loop, in which they are apprehended and placed in residential institutions before escaping and finding themselves on the street again.<sup>55</sup> These children seldom have access to enough information and opportunity to regain their lost identities.



*Potential Consideration(s):*

- *What mechanisms is Azerbaijan implementing to ensure the reintegration of internally displaced children and refugee children – noting the differences in their identification status?*
- *What mechanisms is Azerbaijan implementing to ensure children living on the street have a legal identity?*

<sup>1</sup> \*Prepared by Vanessa Cezarita Cordeiro

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<sup>2</sup>Op Cit

<sup>3</sup>Op Cit

<sup>4</sup>United Nations Children's Fund, (2018), Knowledge, Attitudes and Practices towards Children with Disabilities in Azerbaijan. Retrieved May 2, 2022, <file:///C:/Users/Mark%20Williams/Documents/Vanessa's%20work/KAP%20AZ%20Summary%20Report.pdf>.

<sup>5</sup>Local source, child protection specialist Institute of Democratic Initiatives, (2018), Situation of Inclusive Education in Azerbaijan Research Paper. Retrieved December 3, 2021, [https://idi-aze.org/file/pic/xeber/2018-04/1523018128\\_inclusive-education\\_idi.pdf?1523018098](https://idi-aze.org/file/pic/xeber/2018-04/1523018128_inclusive-education_idi.pdf?1523018098)

<sup>6</sup>Independent Living Centre for People with Disability of Azerbaijan, (2020), Implementation in Azerbaijan of the United Nations Convention on the Rights of Persons with Disabilities, Shadow Reporting to the UN Committee on the Rights of Persons with Disabilities. Retrieved December 6, 2021,

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<sup>7</sup>Local source, children's health and nutrition specialist <https://ovu.com/azerbaijan/baku>

<sup>8</sup>Op Cit

<sup>9</sup>Op Cit

<sup>10</sup>Op Cit

<sup>11</sup>Op Cit

<sup>12</sup>Op Cit

<sup>13</sup>United Nations Children's Fund, (n.d), The Child Protection System in Azerbaijan: Situational Analysis. Retrieved December 6, 2021, <https://bettercarenetwork.org/sites/default/files/The%20Child%20Protection%20System%20in%20Azerbaijan%20-%20A%20Situation%20Analysis.pdf>

<sup>14</sup>Op Cit

<sup>15</sup>Op Cit

<sup>16</sup>Op Cit

<sup>17</sup>Local source, children's health and nutrition specialist Local source, children's health and nutrition specialist US Department of State, (2021), 2021 Trafficking in Persons Report: Azerbaijan. Retrieved December 6, 2021, <https://www.state.gov/reports/2021-trafficking-in-persons-report/azerbaijan/>

<sup>18</sup>Republic of Azerbaijan, (2021), Third Voluntary National Review. Retrieved December 6, 2021, [https://sustainabledevelopment.un.org/content/documents/279452021\\_VNR\\_Report\\_Azerbaijan.pdf](https://sustainabledevelopment.un.org/content/documents/279452021_VNR_Report_Azerbaijan.pdf)

<sup>19</sup>Op Cit

<sup>20</sup>Op Cit

<sup>21</sup>Op Cit

<sup>22</sup>US Department of State, (2021), 2021 Trafficking in Persons Report: Azerbaijan. Retrieved December 6, 2021, <https://www.state.gov/reports/2021-trafficking-in-persons-report/azerbaijan/>

<sup>23</sup>Op Cit

<sup>24</sup>United States Bureau of International Labour Affairs, (2021), Minimal Advancement – Efforts made but continued law that delayed advancement. Retrieved December 6, 2021,

[https://www.dol.gov/sites/dolgov/files/ILAB/child\\_labor\\_reports/tda2020/Azerbaijan.pdf](https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2020/Azerbaijan.pdf)

<sup>25</sup>Op Cit.

<sup>26</sup>Op Cit.

<sup>27</sup>United Nations Children's Fund, (2020, December 14), Country programme Document Azerbaijan. Retrieved December 6, 2021, [https://www.unicef.org/executiveboard/media/3226/file/2021-PL5-Azerbaijan\\_CPD-EN-ODS.pdf](https://www.unicef.org/executiveboard/media/3226/file/2021-PL5-Azerbaijan_CPD-EN-ODS.pdf)

<sup>28</sup>United States Bureau of International Labour Affairs, (2021), Minimal Advancement – Efforts made but continued law that delayed advancement. Retrieved December 6, 2021,

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<sup>29</sup>Republic of Azerbaijan, (2021), Third Voluntary National Review. Retrieved December 6, 2021, [https://sustainabledevelopment.un.org/content/documents/279452021\\_VNR\\_Report\\_Azerbaijan.pdf](https://sustainabledevelopment.un.org/content/documents/279452021_VNR_Report_Azerbaijan.pdf)

<sup>30</sup>Op Cit

<sup>31</sup>Op Cit

<sup>32</sup>Op Cit

<sup>33</sup>US Department of State, (2021), 2021 Trafficking in Persons Report: Azerbaijan. Retrieved December 6, 2021, <https://www.state.gov/reports/2021-trafficking-in-persons-report/azerbaijan/>

<sup>34</sup>Op Cit

<sup>35</sup>United States Bureau of International Labour Affairs, (2021), Minimal Advancement – Efforts made but continued law that delayed advancement. Retrieved December 6, 2021,

[https://www.dol.gov/sites/dolgov/files/ILAB/child\\_labor\\_reports/tda2020/Azerbaijan.pdf](https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2020/Azerbaijan.pdf)

<sup>36</sup>Op Cit.

<sup>37</sup>Op Cit.





<sup>38</sup>United Nations Children’s Fund, (2020, December 14), Country programme Document Azerbaijan. Retrieved December 6, 2021, [https://www.unicef.org/executiveboard/media/3226/file/2021-PL5-Azerbaijan\\_CPD-EN-ODS.pdf](https://www.unicef.org/executiveboard/media/3226/file/2021-PL5-Azerbaijan_CPD-EN-ODS.pdf)

<sup>39</sup>United States Bureau of International Labour Affairs, (2021), Minimal Advancement – Efforts made but continued law that delayed advancement. Retrieved December 6, 2021, [https://www.dol.gov/sites/dolgov/files/ILAB/child\\_labor\\_reports/tda2020/Azerbaijan.pdf](https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2020/Azerbaijan.pdf)

<sup>40</sup>Op Cit.

<sup>41</sup>The State Statistical Committee of the Republic of Azerbaijan, (n.d), Alternative Care of Children in the Republic of Azerbaijan. Retrieved December 6, 2021, [https://bettercarenetwork.org/sites/default/files/Azerbaijan\\_CAR\\_2014.pdf](https://bettercarenetwork.org/sites/default/files/Azerbaijan_CAR_2014.pdf)

<sup>42</sup>Permanent Mission of the Republic of Azerbaijan to the UN Office and other International Organizations, (2017, December 19), Information submitted by the Government of the Republic of Azerbaijan due to the inquiry of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material on safeguards for the protection of the rights of children born from surrogacy agreements. Retrieved December 6, 2021, <https://www.ohchr.org/Documents/Issues/Children/SR/Surrogacy/States/Azerbaijan.pdf>

<sup>43</sup>Op Cit

<sup>44</sup>Op Cit

<sup>45</sup>Op Cit

<sup>46</sup>Council of Europe, (2020), Replies by the Member States to the questionnaire on access to medically assisted procreation (MAP), on the right to know about their origin for children born after MAP and on surrogacy. Retrieved December 6, 2021, <https://rm.coe.int/inf-2016-4-map-2020-replies-e-2751-2043-9041-v-1/1680a2648c>

<sup>47</sup>Permanent Mission of the Republic of Azerbaijan to the UN Office and other International Organizations, (2017, December 19), Information submitted by the Government of the Republic of Azerbaijan due to the inquiry of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material on safeguards for the protection of the rights of children born from surrogacy agreements. Retrieved December 6, 2021, <https://www.ohchr.org/Documents/Issues/Children/SR/Surrogacy/States/Azerbaijan.pdf>

<sup>48</sup>Council of Europe, (2020), Replies by the Member States to the questionnaire on access to medically assisted procreation (MAP), on the right to know about their origin for children born after MAP and on surrogacy. Retrieved December 6, 2021, <https://rm.coe.int/inf-2016-4-map-2020-replies-e-2751-2043-9041-v-1/1680a2648c>

<sup>49</sup>Op Cit

<sup>50</sup>Internally displaced children that fled their home during the Nagorno-Karabakh war Save the Children, (2021), “Is it safe here?” Separated Children Fleeing the Nagorno-Karabakh Conflict Seek Refuge in Armenia. Retrieved December 3, 2021, <https://www.savethechildren.org/us/charity-stories/nagorno-karabakh-conflict-azerbaijan-armenia>

<sup>51</sup>Op Cit.

<sup>52</sup>Local source, children’s health and nutrition specialist. State Migration Service of the Republic of Azerbaijan, (n.d), Questionnaire of the Special Rapporteur on the Human Rights of Migrants: Pushback practices and their impact on the human rights of migrants. Retrieved December 3, 2021, <https://www.ohchr.org/Documents/Issues/Migration/pushback/AzerbaijanSubmission.pdf>

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<sup>54</sup>Op Cit.

<sup>55</sup>United Nations Children’s Fund, (n.d), The Child Protection System in Azerbaijan: Situational Analysis. Retrieved December 6, 2021, <https://bettercarenetwork.org/sites/default/files/The%20Child%20Protection%20System%20in%20Azerbaijan%20-%20A%20Situation%20Analysis.pdf>

<sup>56</sup>Op Cit.

<sup>57</sup>Op Cit.

<sup>58</sup>Op Cit.

<sup>59</sup>Op Cit.

<sup>60</sup>Op Cit.

