

# Children's right to identity in Georgia\*

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\* This factsheet has not been reviewed by a local contact.

## 1 Creation of identity

### Birth registration:

- The Public Service Development Agency performs the functions of the civil registry which include maintaining a general register of population, registering civil acts, issuing identity documents, carrying out procedures concerning citizenship issues, working on migration issues, apostilling and legalising documents. Given its functions, the Public Service Development Agency is involved in a number of important projects designed to facilitate the development of services of the Agency and other public entities, including to digitise civil acts.<sup>1</sup>
- The notification of a child's birth in Georgia is via an electronic message by the medical facility to a territorial office of the Public Service Development Agency, which registers the legal fact of birth. Accordingly, a parent only needs to apply to any territorial office of the Public Service Development Agency or any branch of the Public Service Hall to pick up the Birth Certificate. In addition, if a child was born outside a medical facility or in another State, a parent of a child may apply to the registration body requesting the registration of the birth. If a child, whose birth is not registered, is under custodianship or guardianship of a custodianship and guardianship body or is a child placed in care, the head of the facility or the custodianship and guardianship body may apply to a registration body requesting the registration of the child's birth.<sup>2</sup>
- Thus, in order to register a birth, a person may apply to any branch of the Public Service Development Agency or Public Service Hall, on the basis of documentation including a medical document certifying the birth of the child or a resolution establishing legally the birth; it is worth mentioning that a single mother may register her child's birth.<sup>3</sup>
- Birth registration and the initial birth certificate is issued free of charge<sup>4</sup> - it appears that to obtain an additional birth certificate, one must submit an electronic application, the price of which depends on the processing time (if issued within five working days, the cost is GEL 5, on the 3rd working day, it is of GEL 15 GEL, and on the 2nd working day, it is of GEL 30).<sup>5</sup>
- Article 1(1) of the Law of Georgia on the Procedures for Registering Citizens of Georgia establishes that the personal number is a unique identification datum of a person. The personal number is assigned to a person when being registered according to the place of residence (including when being registered without indication of the address) or when issuing a Georgian citizenship and/or identity document (an ID card of a citizen of Georgia, a residence card of an alien residing in Georgia, a temporary identification certificate, a neutral ID card, a neutral travel document, a passport of a citizen of Georgia) or in the other cases expressly provided for by law.<sup>6</sup> In accordance with Article 2 of the same Law, citizens of Georgia and aliens residing in Georgia shall be registered to ascertain the data of citizens of Georgia and aliens residing in Georgia, as well as to implement civil rights and obligations of citizens;<sup>7</sup> persons between 14 and 18 years of age shall be registered according to the place of residence, and identity (residence)

cards shall be granted to them based on the application of persons or their legal representative (Art. 3 of the Law).<sup>8</sup>

- It is worth mentioning that the government in Georgia offers a 'neutral identity' card, which refers to identity documents that confirm the identity of a person and his place of residence in the territory of Georgia. Persons living legitimately in the Autonomous Republic of Abkhazia and Tskhinvali region, who have not received a Georgian citizen's ID card or passport, can obtain a neutral identity card.<sup>9</sup>

### Abandonment:

- The Law of Georgia on Adoption and Foster Care offers a definition of abandonment in its Art. 14; the decision to declare a child abandoned is made by a Court based on an application by a local guardianship and custodianship authority.<sup>10</sup>
- In accordance with Article 11 on the Law of Georgia on Adoption and Foster Care, measures for the facilitation of identification of infants in medical institutions include the notification of a guardianship and custodianship authority of the admission of an obstetric patient with no ID card to the said institution, within 24 hours of her admission. The administration of a medical institution shall also notify a local guardianship and custodianship authority and the relevant agency of the Ministry of Internal Affairs of Georgia in cases of abandonment of an infant by an obstetric patient, and on the disappearance of an obstetric patient. The local guardianship and custodianship authority, with the assistance of the Ministry of Internal Affairs of Georgia, shall identify and obtain identification data about the mother of a child, who is at risk of abandonment, and find out the address of her possible place of residence.<sup>11</sup>
- Furthermore, Article 27 of the Code on the Rights of the Child establishes that the State must take appropriate measures to prevent the abandonment or the separation of the child by his or her family, by ensuring that adequate living conditions, healthcare and social protection services, inclusive education, effective mechanisms for the protection against unequal treatment and violence, and the guarantees for the protection of all other rights, are equally accessible to the child. These measures shall be implemented at municipal level with the participation of the family.<sup>12</sup>

### Nationality and statelessness:

- With regards to birth registration and statelessness, it is worth mentioning that the civil registration authority also registers the births of children of stateless parents.<sup>13</sup>
- National citizenship may be acquired by birth by a person, at whose birth one of his/her parents is a Georgian citizen; a person born on the territory of Georgia through extracorporeal fertilization (surrogacy), if the country of citizenship of neither of his/her parents recognises this person as its citizen; a child born in the territory of Georgia to persons having a status of stateless person in Georgia;<sup>14</sup> a person born on the territory of Georgia, one of whose parents has a status of a stateless person in Georgia and the other parent is unknown. A minor who is living in Georgia and whose both parents are unknown shall be deemed to be a Georgian citizen unless proved otherwise.<sup>15</sup>



- Furthermore, in accordance with Article 13 of the Law on Georgian Citizenship, a child who has not acquired Georgian citizenship by birth shall be granted Georgian citizenship under regular procedure if one of his or her parents is a Georgian citizen. A child shall also be granted Georgian citizenship under the regular procedure if he or she is adopted by a Georgian citizen. A child born in the territory of Georgia who has a refugee status or a status of a stateless person in Georgia and has been living in Georgia for five years, shall also be granted Georgian citizenship under the regular procedure without a verification of the grounds provided for in Article 16 of this Law.<sup>16</sup>
- In addition, in order to maintain Georgian citizenship in case of obtaining citizenship of another country, an electronic application and requested documents must be submitted, thereby expressing the will to maintain Georgian.<sup>17</sup>
- Finally, any foreigner who has been granted a residence permit, including a refugee and a holder of humanitarian status, shall obtain a residence card regardless of their age.<sup>18</sup>

#### Humanitarian situation:

- After one year of the conflict in Ukraine, over 180,000 citizens of Ukraine had entered the territory of Georgia. Around 25% of Ukrainians, who remained in Georgia, were children.<sup>19</sup>
- In the event that an unaccompanied child crosses the border, the competent authority, in cooperation with the police, shall coordinate the next steps. Government officials consider a child as “unaccompanied” if they are “alone” when they arrive at the border without lawful status.<sup>20</sup>
- Whilst there is now extensive information on the integration of Ukrainian children in Georgia, in relation to health, educational, and other services, as well as their accommodation,<sup>21</sup> no information has been found on identity-related issues affecting children on the move with their relatives or alone.

#### Potential considerations:

- ***It is welcomed that Georgia has twinned with the health sector to ensure prompt birth registration of all children born in health facilities; what is being undertaken to reach those children that remain most at risk of not being registered?***
- ***Whilst a mechanism has been set in law to prevent child abandonment, what measures has the country taken and what programmes are available to support families and single mothers during pregnancy and to offer psycho-social support to prevent abandonment?***
- ***It is also welcomed that legal provisions ensure the registration of all children and intend to potential circumstances of stateless; how is this applicable to children who migrated from Ukraine?***

## 2 Modification of identity

#### Alternative care and adoption:

- In accordance with Article 26 of the Code on the Rights of the Child, a child may not be separated from his or her parents, except when such separation is necessary in the best interests of the child, including immediately when the life, health or safety of the child is under immediate and direct threat.<sup>22</sup>

- In accordance with Article 29 of the Code on the Rights of the Child, the State must ensure, temporarily or permanently, the special support and protection of a child left without parental care, as well as the special support and protection of a child where staying in the family is against the best interests of the child. If it is necessary to place a child in alternative care, a multidisciplinary group of legal and care professionals shall approve the child’s individual development plan, aimed at protecting the physical and mental health, the harmonious development, the social inclusion and the effective exercise of all the rights and freedoms of the child.<sup>23</sup>
- In line with the same legislation, the placement of the child in alternative care shall be an urgent measure, whose aim is to promote the returning of the child to the family environment, and if returning is not possible, to provide continuous care, including the adoption of the child. These provisions state that if adoption is not in the best interests of the child, the State shall ensure their placement in foster care.<sup>24</sup>
- According to Article 9 on the Law of Georgia on Adoption and Foster Care, a child may be adopted when he or she has been declared adoptable and has been registered on the Registry. This includes any child, a) whose parent(s) was (were) declared missing by a court; b) who is an orphan; c) who is declared an abandoned child by a Court; d) whose parent(s) was (were) deprived of parental rights; e) whose legal representatives all give their consent to his or her adoption. This decision is incumbent on the local guardianship and custodianship authority.<sup>25</sup>
- In accordance with Article 10 on the Law of Georgia on Adoption and Foster Care, if a child is found, his or her identification and registration must be conducted through the administration of the institution carrying out educational activities, who must provide information about the placed child, and any natural and legal person shall immediately provide information to the Social Service Agency with regard to a child found.<sup>26</sup>
- In terms of the quality of care provided and the practices of family separation, Human Rights Watch recalled in 2021 the case of a care home in Ninotsminda for 56 children, including eight with disabilities, run by the Georgian Orthodox Church, which drew media attention after the office of the ombudswoman was twice denied a monitoring visit, and in relation to which criminal investigations were undertaken. This raises the issue of appropriate state monitoring of care facilities. Human Rights Watch also mentioned that UNICEF, Georgian officials and other partners were, in 2021, assisting the government in developing an action plan for deinstitutionalization for children with and without disabilities residing in state and private institutions. Finally, that same year, it appears that a court ruled that forcibly separating children from families due to poverty was illegal, ordering the government to pay GEL 35,000 (US\$11,000) in damages to each of three children who had been forcibly separated from their mothers two years earlier due to poverty, without the state first attempting to provide support to the family.<sup>27</sup>
- In relation to children living and/or working in the streets of Georgia, a recent report suggested that ‘in Georgia, arrangements have been put in place in a manner which allows statutory social workers from the Social Service Agency to provide temporary ID papers, even in cases where a birth certificate is lacking’.<sup>28</sup>



## Surrogacy:

- In Georgia, when a child is born from resorting to a surrogacy arrangement, only the intending parents are recorded on the birth certificate ; indicating a donor or 'a surrogate mother' as a child's parent in a civil birth record shall not be permitted.<sup>29</sup> Indeed, surrogacy in Georgia is regulated by Article N143 of the Law of Georgia on Health Care. According to the latter, 'In vitro fertilisation shall be allowed to treat infertility, if there is a risk of transmitting a genetic disease from the wife or the husband to the child, using the gametes or embryo of the couple or a donor, if a written consent of the couple has been obtained. If a woman does not have an uterus, by transferring the embryo obtained as a result of fertilisation to the uterus of another woman ('surrogate mother') and growing it there; obtaining a written consent of the couple shall be obligatory. Additionally, if a child is born, the couple shall be deemed as parents, with the responsibilities and authorities proceeding from this fact; the donor or the 'surrogate mother' shall not have the right to be recognised as a parent of the born child'. The Public Service Development Agency requests a notarially certified agreement signed between the donor and the parent(s) among other documents in order to register the birth of a child born on the basis of extracorporeal fertilisation. In most cases the identity of the donor is unknown to the parents of the child and it is impossible to present the required document. In such cases the decision on refusal to register the birth of the child is sent to the Social Service Agency.<sup>30</sup>
- As mentioned earlier, national citizenship in Georgia may be acquired by a person born on the territory of Georgia through extracorporeal fertilization (surrogacy), if the country of citizenship of neither of his/her parents recognises this person as its citizen.<sup>31</sup> This would contribute to preventing statelessness when this child would return to a country not recognising the surrogacy arrangement.
- Current surrogacy practices in the country offer little safeguards as to the rights of the children born from such arrangements, in terms of the prevention of the sale of children and the preservation of their identity. Even though legal reforms have been ongoing for several years (see below under 'Restoration of identity'), there is a genuine need to strengthen safeguards, to ensure this does not lead to a sale of children, that intermediaries and financial aspects are adequately controlled and that the identity of these children is fully safeguarded.

## Potential considerations:

- *In practice, how do gatekeeping mechanisms aimed at preventing family separation and alternative care implemented?*
- *When children are indeed placed in care on the basis of a formal decision, how is their identity safeguarded? Is any information about their family relations duly registered, traced and promoted?*
- *Likewise, when a child enters a process of adoption, how are his or her identity and family relations preserved?*
- *What is the current status of efforts aimed at strengthening the quality of alternative care in Georgia and at deinstitutionalising children?*
- *Does the law reform on surrogacy address the right of children born from surrogacy arrangement to their genetic, gestational and biological origins, including the use and preservation of gametes?*
- *Current commercial surrogacy practices in Georgia could amount or lead to the sale of children; what is being foreseen in the draft legislation on the practice to prevent any form of sale of children? How would intermediaries and financial aspects be adequately controlled?*

## Falsification of identity

### Child marriage:

- Since the amendment to Article 1108 of the Civil Code in 2017, the legal minimum age of marriage is 18, with no exceptions (prior to this, girls between the ages of 16-17 could marry with parental or judicial consent).<sup>32</sup> Furthermore, under Article 140 of the Criminal Code, cohabitation with a child under the age of 16 (age of consent) is punishable for up to three years imprisonment. In 2014, amendments to the Criminal Code criminalised forced marriage of a child below the age of 18 years by two to four years imprisonment.<sup>33</sup>
- In addition, in accordance with the Constitutional Treaty, marriages conducted by the Georgian Orthodox Church should be legally recognised; however, only civil marriages that take place at the Civil Registry of Georgia are legally recognised.<sup>34</sup>
- Despite these legal reforms, a survey that was conducted by the Government of Georgia indicated that 14% of girls in Georgia were married before their 18th birthday and 1% of boys married before the age of 18.<sup>35</sup> Georgia has one of the highest rates of child marriage in Eastern Europe. Child marriages in Georgia are particularly prevalent among religious minorities in the mountainous areas of Adjara, and ethnic minorities (Azerbaijani, Georgian and Armenian) in the region of Kvemo Kartli, and in the Lagodekhi region.<sup>36</sup> Indeed, child marriage rates are higher in rural areas of Georgia with 24% of women between the ages of 20-49 who are married before the age of 18 and 14% in urban areas. The regions of Georgia with the highest child marriage rates of women between the ages of 20-49 that are married before the age of 18 are Tbilisi (12%), Shida Kartli (24%), Kvemo Kartli (25%), Adjara A.R (20%), Guria (23%), Imereti, Racha-Lechkhumi and Kvemo Svaneti (17%) and Kakheti (24%).<sup>37</sup>
- Child marriages in Georgia are difficult to track because families often circumvent the law and do not officially register the marriage until a girl is old enough. Sometimes weddings are held in rural churches or mosques and couples are considered culturally or religiously married rather than by law.<sup>38</sup>
- Child marriage in Georgia appears to be driven by:
  - *Level of education:* School dropout rates remain high in Georgia. Low value is placed on the education of girls in Georgia.<sup>39</sup>
  - *Poverty:* Arranging an early child marriage is a desirable option for families living in poverty. These families believe that early marriage for their daughter means that they will be financially secure. A 2017 study found that economic challenges, aggravated by the high levels of unemployment, led many families to consider early marriages as the only suitable financial option available to girls. In 2018, the MICS survey indicated that 27% of women between the ages of 20-49 who were married before the age of 18 are in the poorest index quintile, 22% in the second poorest quintile and 17% in the middle quintile.<sup>40</sup>
  - *Gender inequality:* The issue of child marriage in Georgia is strongly gendered. Among women between the ages of 20-24, 14% were married before the age of 18. In comparison to 0.5% of men married before the age of 18.<sup>41</sup>
  - *Pre-marital sex:* Georgian society places high value on virginity. Child marriage is sometimes used to control female sexuality and to legalise intimate relationships.<sup>42</sup>



- *Adolescent pregnancy*: Limited information on sexual and reproductive health contributes to adolescent pregnancies in Georgia. According to a 2017 study, pregnant girls are more likely to marry to legitimise their pregnancies and avoid social disapproval. In 2018, 6% of child births were born to adolescent mothers between the ages of 15-19. <sup>43</sup>
- *Ethnicity*: Child marriage is reportedly common among national minorities, who sometimes get married between the ages of 14 and 15. Some girls from ethnic and religious minorities that do not speak Georgian struggle to integrate, and see marriage as an “unavoidable destiny”. In 2018, 16% of women between the ages of 20-49 who were married before the age of 18 were of Georgian ethnicity, 41% are Azerbaijani and 17% Armenian. <sup>44</sup>
- *Bride kidnapping*: Between January and September 2020, the Ministry of Interior registered 34 cases of bride kidnapping. <sup>45</sup>
- *Social pressure*: Some girls reportedly decide to marry in order to conform to certain expectations or because they fear social stigma regarding adolescent relationships and premarital sex. <sup>46</sup>
- *Political context*: Child marriage rates increased in the 1990s after the breakup of the Soviet Union, when unemployment and socio-economic hardship were common. <sup>47</sup>
- In this context, Georgia has committed to eliminate child, early and forced marriage by 2030 in line with target 5.3 of the Sustainable Development Goals. The Georgian government submitted a 2020 Voluntary National Review at a High Level Political Forum, which identified early school dropouts are one of the main reasons for early child marriage, <sup>48</sup> and committed to the 2021 Human Rights Council resolution on Child, Early and Forced Marriage in times of crisis, including the COVID-19 pandemic. <sup>49</sup>

- Recent commitments and efforts undertaken by Georgia also include the participation of the Ministry of Human Rights Protection and Investigation Quality Monitoring department in various activities to eliminate child marriage, to raise awareness on the issue and to provide timely police reports, <sup>50</sup> and the National Action Plan on Human Rights 2018-2020, which included eliminating harmful practices such as child marriage. <sup>51</sup>

- Earlier efforts included the review of national school curricula to include topics such as gender equality, HIV/AIDS, puberty and reproductive health rights and harmful practices (2013), <sup>52</sup> plans to establish a task force involving parents, education specialists, and psychologists to discuss the topic of child marriage, as well as to disseminate information about the impact of child marriage, including a mapping of the government’s Strategies and Action Plans and policy recommendations that were integrated in the Governmental Human Rights Action Plan for 2016-2017. <sup>53</sup>

- However, the Public Defender’s Office noted that the social service response to ending child marriage was fragmented and superficial. <sup>54</sup>

- Finally, the Council of Europe Convention on preventing and combating violence against women and domestic violence (known as the Istanbul Convention), entered into force in the country in 2017. <sup>55</sup>

#### **Potential consideration:**

- *Whilst the setting of a minimum age of 18 years for marriage is an important step forward, what does the country foresee to address the factors that contribute to perpetuating the practice of child marriage in the country?*

## 4

### Preservation of identity and access to origins

#### **Adoption:**

- In cases of adoption, Article 64 of the Law of Georgia on Adoption and Foster Care states that the authorised bodies of Georgia shall ensure the preservation of information on adoption in line with domestic legislation. The following article reiterates the principle of confidentiality of adoption.
- However, it is worth mentioning that Article 65 of the same Law clearly states that the Agency shall ensure that an adoptive parent receives information on the personal data of the child, including information about the identity of the child’s parents. In Georgia, an adoptee may obtain information on the identity of his or her biological parents with the consent of the adoptive parents and the biological parents. Likewise, an adoptee may obtain information on his or her personal data available prior to the adoption, including his or her original identity.
- The Agency is responsible for filing an application with the relevant authorities, based on an application by the adoptee, to determine the identity and whereabouts of the latter’s biological parents (Art. 65(6)). This is also possible when biological parents are searching for their child (Art. 65(7)). If the child has already been adopted, this procedure is suspended. Finally, if the biological parents express their wish not to share their identification details with the child, such data cannot be provided to the child (Art. 65(8)).

#### **Potential consideration:**

- *Legal provisions offer an opportunity of adoptees to know about their background and identity, but what is being undertaken to implement the right of adoptees to access information about their origins? What psychosocial support is being provided?*

## 5

### Restoration of identity

#### **Surrogacy:**

- The Georgian government has been working on a draft law that intends to tighten the rules and access to the practice of surrogacy for several years. Georgia is one of the few countries in the world where commercial surrogacy remains legal, allowing a woman to be paid to carry someone else’s genetic child through IVF and embryo-transfer, which could therefore amount to a sale of children. The draft bill aims to ban commercial surrogacy, allowing it only on the ‘principle of altruism’ and exclusively for Georgian couples. The text under discussion foresees compensation only for ‘inconveniences’ related to the process, such as costs related to medical examinations or labour. If approved, the bill, which will also prohibit adverts for surrogacy services, will enter into force on 1 January 2024. According to the Minister of Health, Labour and Social Affairs Zurab Azarashvili, the current legislative framework is vague, allowing ‘unethical and bad practices’.



He also stated that surrogate births had doubled in the last five years, reaching about 2,000 per year. In 2020, the Ministry indicated that 98 per cent of all prospective parents were foreigners. Access and price are key drivers. In Georgia, the cost of having a child via a surrogate ranges from between USD 25,000 to 50,000.<sup>56</sup> It is also worth mentioning that the new law would set out criminal offences, with babies born through illegal arrangements potentially being prevented from leaving Georgia.<sup>57</sup>

● Whilst this law has not been approved yet, it is urgent to address those factors that could amount to a sale of children in surrogacy arrangements, including strengthening safeguards as to the rights of the children born from such arrangements, in terms of the prevention of the sale of children and the preservation of their genetic, gestational and biological identity, with solid control of intermediaries and financial aspects.

#### Potential considerations:

- *As mentioned above, does the law being developed on surrogacy foresee the right of children born from surrogacy arrangement to their genetic, gestational and biological origins, including the use and preservation of gametes?*
- *As current commercial surrogacy practices in Georgia could amount or lead to the sale of children; what is being foreseen in the draft legislation on the practice to prevent any form of sale of children? How would intermediaries and financial aspects be adequately controlled?*

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<sup>22</sup> The Law of Georgia on the Code on the Rights of the Child. *Supra* 12.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> Law of Georgia on Adoption and Foster Care. *Supra* 10.

<sup>26</sup> *Ibid.*

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<sup>48</sup> Institute for War and Peace Reporting (2015). Georgia tightens up on early marriage. <https://iwpr.net/global-voices/georgia-tightens-early-marriage>.

<sup>49</sup> MICS. *Supra* 34.

<sup>50</sup> Girls Not Brides. *Supra* 31.

<sup>51</sup> Human Rights Council. Universal Periodic Review - Georgia. 2021. <https://www.ohchr.org/en/hr-bodies/upr/ge-index>.

<sup>52</sup> Girls Not Brides. UN General Assembly adopts 2013 resolution on "child, early, and forced marriage".

<https://www.girlsnotbrides.org/articles/united-nations-general-assembly-adopts-resolution-on-child-early-and-forced-marriage/>.

<sup>53</sup> MICS. *Supra* 37.

<sup>54</sup> Girls Not Brides. *Supra* 31.

<sup>55</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence. Chart of signatures and ratifications of Treaty 210. <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=210>.

<sup>56</sup> Institute for War and Peace Reporting (2023). Georgia sets to ban commercial surrogacy. <https://iwpr.net/global-voices/georgia-set-ban-commercial-surrogacy>.

<sup>57</sup> U.S Embassy in Georgia (2023). New law banning surrogacy planned in Georgia. <https://ge.usembassy.gov/message-for-u-s-citizens-new-law-banning-surrogacy-planned-in-georgia/>.

