

**Migrants, Refugees, Internally Displaced Persons and stateless persons in
civil registration and vital statistic systems in Africa**

Issue paper

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On

***“Accelerating a coordinated improvement of Civil Registration and Vital Statistics (CRVS) for
implementation and monitoring development in Africa: review of progress and the way
forward”***

I- Introduction

Recent years have witnessed a growing recognition of the value of civil registration and vital statistics systems worldwide. Establishing or strengthening the civil registration and vital statistics system has become a priority in an increasing number of African countries where such a system may be non-existent or not effective. Concurrently, support for countries to improve the efficiency and completeness of the systems have also surged in the international community and among development partners, notably at the regional level.

In spite of the clear benefits of civil registration and vital statistics including to populations affected by forced displacement and those that are at the risk of statelessness, over 100 developing countries around the globe do not having well-functioning civil registration and vital statistics systems. Around 40 million births are not registered and 40 million deaths globally (one-third and two-thirds of the world's annual totals respectively) are either not registered or incorrectly certified.¹

During conflicts and natural disasters that are major causes of forced displacement, national and local registration systems often get destroyed or rendered useless. During displacement, civilians may also move far from areas where these systems are available. Among the challenges faced in the implementation of CRVS programmes in Africa is accessibility of civil registration services, including accessibility to remote, hard-to-reach and nomadic populations. Emergencies and displacement also create major challenges for CRVS systems. However, the displaced are among the groups that are most in need of the protective environment that CRVS systems can help create.

This issue paper will focus on the impact of population movements on the implementation of CRVS activities at national level. It will be also examined how CRVS enhances access to services of populations that are affected by forced displacement and those that are at risk of statelessness.

II- Legal and Policy Framework

There is a large range of legal and policy framework on CRVS, birth registration, and documentation, the right to a nationality and statelessness and Migration at international, regional and national levels. Only some of the most important of these are listed below.

Civil Registration and Vital statistics: At the global level, CRVS is governed by the *Principles and Recommendations for a Vital Statistics System* established by the United Nations Department of Economic and Social Affairs Statistics Division. The importance of civil registration and vital statistics systems was recognised in the framework of the Sustainable Development Goals (SDGs), in particular goals 16 (Peace, Justice and Strong Institutions) and 17 (Partnerships of the Goals). Moreover, the ten Principles on Identification for Sustainable Development designed by more than 15 global organizations are fundamental to maximizing the benefits of identification systems for sustainable development. They are important to foster robust and inclusive identification systems that further sustainable development outcomes. Finally the importance of early and effective registration and documentation as a protection tool and to facilitate the provision of humanitarian assistance and the provision of birth registration to all children in their territory has been reiterated by States in the New York Declaration for Refugees and Migrants in paragraphs 32 and 71. Annex I on the Comprehensive Refugee Response Framework, paragraph 5(f) is also to be cited in this regard.

At the regional level, The AU Migration Policy Framework for Africa recommends to implement sound civil registry systems, including birth registration, identity documents and travel documents as part of migration governance. It is also to be noted that the Economic Commission for Africa (ECA), the African Union Commission and the African Development Bank, with support from partner agencies, are spearheading the improvement of CRVS systems in Africa. This has been done through the ***Africa Programme on Accelerated Improvement of Civil Registration and Vital Statistics (APAI-CRVS)***.

¹ Global Annual Summit on CRVS, 18-19 April 2013, Bangkok, Thailand at <http://www.globalsummitoncrvs.org/crvs.html>.

APAI-CRVS brings together various CRVS initiatives on the continent into a common and consolidated policy and advocacy framework with the overall objective to provide management and programmatic guidance to African countries to improve their systems, using methodological materials and guidelines².

In Asia, which has been sharing experience with the African Continent on CRVS, the 2014 Ministerial Declaration '**Get Everyone in the Picture**' and accompanying Regional Action Framework which declared 2015-2024 to be the Asian-Pacific CRVS Decade³ is also an example of a regional initiative to enhance CRVS national systems.

At the country level many countries have their legislation on CRVS.

Birth registration and documentation: The right for a child to be registered at birth without discrimination is recognized by many international instruments such as, the 1966 International Covenant on Civil and Political Rights (article 24 paragraph 2), the 1951 Refugee Convention Relating to the Status of Refugees (articles 25.2, 27 and 28), the Guiding Principles on Internal Displacement (principle 20 and principle 29⁴), the 1990 Convention on the Rights of the Child (article 7), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (article 29).

Goal 16 target 9 of the SDGs on Peace, Justice and Strong Institutions also refers to providing legal identity for all including birth registration by 2030. It is also the case of the UNHCR Global Action Plan (2014–2024) to end statelessness which sets a number of actions to be implemented by States and relevant stakeholders to ensure birth registration as a mean to prevent statelessness.

Finally The New York Declaration for Refugees and Migrants in its paragraphs 32 and 71 refers to States commitments to work to provide for the registration of all births on their territories and to encourage the adoption of measures to facilitate access to civil registration and documentation for refugees. They also recognize in this regard the importance of early and effective registration and documentation, as a protection tool and to facilitate the provision of humanitarian assistance.” In addition, paragraph 5(f) of Annex 1 of the New York Declaration entitled Comprehensive Refugee Response Framework, also refers to refugee receiving States commitment to provide immediate birth registration for all refugee children born on their territory and provide adequate assistance at the earliest opportunity with obtaining other necessary documents, as appropriate, relating to civil status, such as marriage, divorce and death certificates.”

In Africa, the right to birth registration is recognized by article 6 of the 1990 African Charter on the Rights and Welfare of the Child; the 2009 African Union Convention for the Protection and Assistance of IDPs in Africa -Kampala Convention- (Article 13); Aspiration 3 of the Africa's Agenda for Children 2040 and in broad terms by AU Agenda 2063, aspiration 6, paragraphs 46⁵ and 51⁶.

This right was reaffirmed by the jurisprudence of the African Committee of Experts on the Rights and Welfare of the Child in its Decision No. 002/COM/002/09, *Institute for Human Rights and Development in Africa (IHRDA) and the Open Society Justice Initiative (OSJI) on behalf of children of Nubian descent v. the Republic of Kenya*. In the decision, the African Committee recommended that “*the Government of Kenya should implement its birth registration system in a non-discriminatory manner, and take all*

² Civil Registration and Vital Statistics Systems in Africa Report, Tunisia, Tunis, 8–12 December 2014.

³ The Ministerial Declaration endorses the goal of achieving universal and responsive CRVS systems by 2024 and recognises the role that responsive CRVS systems have in preventing and reducing the risk of statelessness'. It also recognises the need to address disparities in civil registration coverage amongst 'hard-to-reach and marginalized populations', including stateless persons, refugees and undocumented people. For more information See:

<http://getinthepicture.org/sites/default/files/resources/Report%20of%20the%20conference.pdf>.

⁴ This Principle should be interpreted to include ensuring that returnees or resettled IDPs are provided with civil documentation if they have not already been provided.

⁵ “Africa shall be an inclusive continent where no child, woman or man will be left behind or excluded, on the basis of gender, political affiliation, religion, ethnic affiliation, locality, age or other factors”.

⁶ “By 2063, African children and youth shall be empowered with full implementation of the African Charter on the Rights of the Child.”

necessary legislative, administrative, and other measures to ensure that children of Nubian descent are registered immediately after birth.”

Finally, the right to be registered at birth is recognized and compulsory in many African countries according to their national laws⁷. Out of 53 national laws reviewed in 2013, the right to birth registration is mandatory under 45 national laws⁸, mandatory with fees under the law of 3 countries⁹ and not mandatory in 5 countries.

Right to a nationality and statelessness: The right to a nationality is enshrined in a series of international legal instruments, including the Universal Declaration of Human Rights (article 15), the International Convention on the Elimination of All Forms of Racial Discrimination (article 5), the 1966 International Covenant on Civil and Political Rights (article 24), the Convention on the Rights of the Child (article 7), the Convention on the Elimination of All Forms of Discrimination against Women (article 9), the Convention on the Nationality of Married Women, the Convention on the Rights of Persons with Disabilities (article 18) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (article 29). The issue of nationality is also regulated in the 1961 Convention on the Reduction of Statelessness, the 1954 Convention relating to the Status of Stateless Persons.

The UNHCR Global Action Plan (2014–2024) to end statelessness also sets a number of actions to be implemented by states and relevant stakeholders to guarantee the right to a nationality and end statelessness. In paragraph 72 of the New York Declaration for Refugees and Migrants States recognize that statelessness can be a root cause of forced displacement and that forced displacement, in turn, can lead to statelessness and encourage the accession to both the 1954 Convention relating to the Status of Stateless persons and the 1961 Convention on the Reduction of Stateless persons.

At the regional level, although the African Charter on Human and Peoples’ Rights does not explicitly include the right to a nationality, the African Commission on Human and Peoples’ Rights has addressed both general and country-specific issues related to nationality and statelessness in communications and resolutions¹⁰. In its Resolution 234, the Commission affirms that the right to a nationality is implied with the provisions of article 5¹¹ of the African Charter on Human and Peoples’ Rights and is essential to the enjoyment of other fundamental rights and freedoms under the Charter¹². In addition the African Charter on the Rights and Welfare of the Child recognizes the right for every child to be named and registered at birth and the right to a nationality in its article 6. The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) in its Decision No. 002/COM/002/09, *Institute for Human Rights and Development in Africa (IHRDA) and the Open Society Justice Initiative (OSJI) on behalf of children of Nubian descent v. the Republic of Kenya*) later reaffirmed this.

The Maputo Protocol also provides for a woman to have the right to retain her nationality or to acquire the nationality of her husband (Article 6.g). Unlike the African Charter on Human and Peoples’ Rights,

⁷ The African Child Policy Forum at http://www.africanchildforum.org/clr/Harmonisation%20of%20Laws%20in%20Africa/other-documents-harmonisation_17_en.pdf.

⁸ Algeria, Benin, Botswana, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Republic of Congo, Cote d’Ivoire, DRC, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Liberia, Madagascar, Malawi, Mauritania, Mauritius, Morocco, Namibia, Niger, Rwanda, Sao Tome, Senegal, Seychelles, Somalia, Sudan, Swaziland, Tanzania, Zanzibar, Togo, Tunisia, Uganda, Zambia and Zimbabwe.

⁹ Angola, Burkina Faso and South Africa.

¹⁰ Communication No. 97/93, *John K. Modise v. Botswana*; Communication No. 212, *Amnesty International v. Zambia*; Communication No. 159/96, *Union Interafricaine des Droits de l’Homme and Others v. Angola*; Communications Nos. 27/89, 49/91 and 99/93, *Organisation Mondiale Contre la Torture and Others v. Rwanda*; Communication No. 71/92, *Rencontre Africain pour la Défense des Droits de l’Homme v. Zambia*; Communication 211/98, *Legal Resources Foundation v. Zambia*; Communication 292/2004, *Institute for Human Rights and Development in Africa v. Angola*.

¹¹ Art 5: “Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.”

¹² *John K. Modise v. Botswana*, Communication No. 97/93(2000) referring to the right to protection by the law, respect of dignity, freedom of movement, right to leave and return to his own country, right to participate in his government, right to access public services, right to property and right to a family life.

Article 3.2 of the Draft Protocol to the ACHPR on the Specific Aspects of the Right to Nationality and the Eradication of Statelessness in Africa already explicitly provides for every person's right to a nationality.

III-At national level, many countries have adopted laws or codes on nationality which establish criteria for granting, losing or recovering nationality. CRVS and population movements

1. Forced displacement in Africa

In the last few decades the African continent has witnessed large scale forced displacement of people fleeing persecution, armed conflict or human rights violations. At the end of 2016, African countries were hosting 5.2 million refugees¹³ meanwhile during the same period the number of internally displaced persons due to conflict and violence was estimated at 12.4 million persons. There is no similar cumulative figure for disaster related displacement¹⁴. In addition to these, the number of migrants living in Africa was also estimated at 21 million at the end of 2015.¹⁵

Forcibly displaced persons in Africa live in refugee and IDP camps as well as in urban or rural areas, or are trapped in conflict areas increasingly in protracted situations.

Civil registration systems, which record births, deaths, cause of death, and marriage, provide substantial information for policy and humanitarian planning. However, whether in camps, rural or urban areas, forcibly displaced persons often do not have access to civil registration and are not included in CRVS national systems. For instance many refugees lack Birth Certificates, Marriage and Divorce Certificates, which may render them vulnerable to statelessness and associated protection risks. The lack of Death Certificate is also to be deplored.

a. Refugee and IDPs access to civil registration

Birth registration.

The right for a child to be registered at birth without discrimination is recognized by many international and African regional human rights instruments as well as in several national in Africa.

Notwithstanding this wide recognition, countries continue to face significant hurdles in realizing this right. According to UNICEF, the births of nearly one fourth (1/4) of the global population of children under five have never been registered. The lowest levels of birth registration are found in sub-Saharan Africa (41 per cent). In Eastern and Southern Africa, only 36 % of children are registered by their fifth birthday, while the rate in West and Central Africa is slightly higher, at 45 %.¹⁶

In its observations and recommendations¹⁷ to the African Member States, the African Committee of Experts on the Rights and Welfare of the Child has been concerned about this low rate explained by a number of factors among which the lack of decentralized, effective, well managed and affordable civil registration systems.¹⁸ As a consequence, children cannot exercise other rights such as access to education and become more vulnerable to all sorts of abuses such as recruitment into armed forces, sexual exploitation, child labour, human trafficking, and early marriage.

This birth registration rate is even worse within forced displaced. Most countries hosting a sizeable refugee population have very low rates of birth registration. These include, for instance, Ethiopia (7%), Chad (16%), and the Democratic Republic of the Congo (28%), according to UNICEF.¹⁹

¹³ Excluding North Africa in UNHCR, Global Trends, Forced displacement in 2016, page 14.

¹⁴ IDMC, Africa report on internal displacement, December 2016, page 6.

¹⁵ International Migration Report 2015, p.1

¹⁶ United Nations Children's Fund, Every Child's Birth Right: Inequities and trends in birth registration, UNICEF, New York, 2013, p. 15.

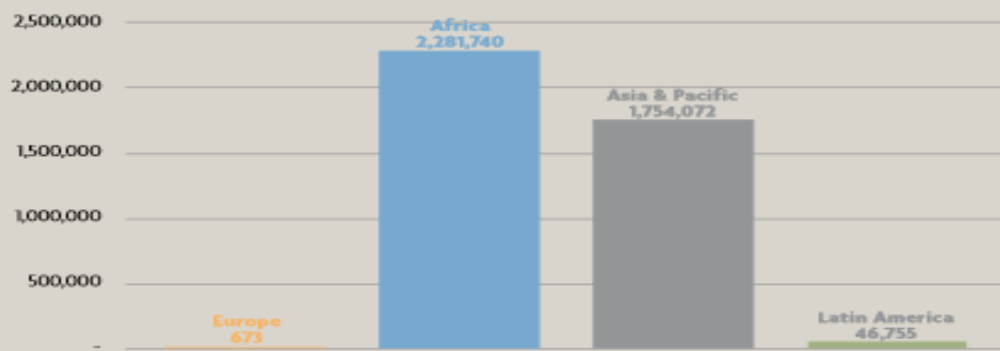
¹⁷ See Recommendations and Observations sent to the Governments of Burkina Faso, Cameroon, Libya, Kenya, Mali, Tanzania and Uganda available at <http://acerwc.org/state-reports/> accessed 3 October 2013.

¹⁸ General Comments on article 6 of the ACRWC, Page 4.

¹⁹ UNHCR statistical Year Book 2014. P.72

Fig. 5.3

Number of refugees who have not been registered at birth, if the proportion is the same as for the population of the country of asylum



Source: UNHCR statistical year book 2014

Despite increasing awareness and efforts to improve birth registration systems, many refugees, IDPs, and persons who are at the risk of statelessness often face significant barriers with respect to registering the birth of their children. These obstacles include the breakdown of infrastructures destroyed or non-functional due to insecurity in times of conflict; physical barriers (lack of services /infrastructure in rural and camp areas); economic barriers (registration fees and cost of travel to towns to register); lack of awareness of the importance of civil registration and procedures for birth registration; legal issues (absence of laws that allow civil registration for non-nationals including refugees and stateless); administrative barriers (presentation of the parent's ID as a precondition for birth registration and documentation of the child); and reluctance to approach civil authorities to register their births, marriages, deaths, etc. due to fear of deportation or detention in case they lack a clear legal status.

In situations of displacement, birth registration is an important protection tool. At a basic level, birth registration establishes a child's identity. However, its importance goes far beyond this, as lack of birth registration can lead to serious barriers for children including:

- Non-recognition as a citizen (statelessness): Without birth registration and documentation, children may have problems proving their links to a State, which puts them at risk of becoming stateless.
- Denial of access to services: Without birth registration, a child's access to education, health care and social security may be hampered. For example, birth registration is sometimes a prerequisite for school enrolment in primary school and for taking national exams. As an adult it is often a prerequisite for eligibility to marry, to enter the labour market, travel, access banking systems, and to register the birth of one's own children.
- Increased risk of violence and abuse: Children without birth registration are more vulnerable to protection risks such as trafficking, child labour, child marriage, illegal adoption, sexual exploitation and recruitment into armed forces and groups.
- Risk of being treated as an adult: Children without birth registration may be unjustly treated as adults in asylum or judicial proceedings.

For the country and other stakeholders, birth registration is important as it enables the States to:

- Obtain information and knowledge about the population within national territory to improve State's administration and governance.

- Obtain indicators for the measurement of progress towards the achievement of the SDGs. The completeness in death and cause of death data including foetal death in combination with birth registration data is important in monitoring the achievement of the SDGs, particularly, the SDG 3 targets relating to maternal and child health amongst refugee and IDP populations.
- Achieve the SDGs through the inclusion of forcibly displaced persons in application of the principle according to which no one should be left behind.
- Determine where to integrate services for host communities and displaced populations to ensure more effective delivery of services and facilitate people's access to basic rights (education, health, employment etc.)
- Facilitate, in the medium and long term, the return of refugee / IDP populations to their areas of origin (e.g. proves family links, may facilitate resolution of land disputes, etc.) and the implementation of other durable solutions.
- Gather information on broader migration issues and seek improved State's management of migratory movements.
- To take appropriate measures to prevent statelessness.

Registration of marriage, divorce and death

The life events of marriage and divorce are part of the group of 10 vital events recommended for civil registration and is the second category of priority vital events that need to be accurately recorded. Registration of death and recording of cause of death is also enshrined and mandatory in many national CRVS laws in Africa.

As do all individuals, refugees and IDPs have the right to have their births, marriages, divorces and deaths recorded in a civil registration system and to be provided with the appropriate documentation and certification. This is a fundamental responsibility of the government in the territory of asylum and is described in international human rights law and conventions. However in many refugee and IDPs camps, a considerable number of deaths are not recorded. The deaths recorded are mostly those which occur in hospitals. Refugees do not report deaths of relatives for various reasons including the fear of having the family size on their ration cards reduced. Even for the deaths that are recorded, no death certificates are issued. To overcome the under-reporting and registration of deaths, some partners acting in refugee or IDP camps use incentive to bring the statistics up-to-date.

Failure to issue death certificates may create legal difficulties including with regard to rights of survivors both in the country of asylum and that of origin which, as a matter of law, depend on proof of death.

Marriages are also registered when reported. Most marriages in camps as is the case in most African countries are solemnised in accordance with the traditions and customs of the refugees. Such marriages are not registered and consequently marriage certificates are not issued. Some refugees undergo church ceremonies and get a certificate of "Christian Marriage" from their churches. However, such certificates are not recognized by law in many countries even if in others, such as in Kenya, refugees obtain from their religious leaders marriage certificates free of charge as Kenyan law recognizes Civil, Hindu, Muslim, Christian and African Customary marriage.²⁰ The situation of registration of divorces is even worse than that of marriages.

Failure to notify and register marriages and divorce has had a number of implications. First, the absence of notification of marriages makes it possible for early and forced marriages to take place unnoticed. It also makes it easier for a person to have more than one spouse, which is illegal under some national laws. It can hinder the birth registration in countries where a marriage certificate of the parents is mandatory for the registration of the birth. Difficulties to exercise inheritance rights or to acquire

²⁰ UNHCR, Analysis of refugee protection capacity in Kenya, Based on research by Danny Turton, UNHCR Consultant Strengthening Protection Capacity Project, April 2005, p.29

nationality through marriage are also some of the implications of non-registration and documentation of marriages. Finally, in cases where marriages and births have taken place in the country of asylum, refugees may encounter obstacles in accessing resettlement procedures as a family unit if they lack civil documents, such as birth or marriage certificates. Lack of divorce certificates denies particularly women the right to inheritance and other benefits including the right to remarry.

With regard to urban refugees and in many countries across Africa, they have access to birth, marriage, divorce and death registration processes but must pay fees applied to foreigners to receive marriage, birth and death certificates and even higher fees.

b. Refugees and IDPs access to documentation

There is a distinction between the civil registration of a vital event and the possession of formal proof that it took place, in the form of legal documentation.

One essential output of the CRVS systems is to provide legal documentation of civil registration to individuals and families for legal and administrative purposes. Legal documentation is strongly linked with a broad range of rights and activities, in particular legal identity.

Due to the circumstances in which they are sometimes forced to leave their home country, refugees are perhaps more likely than other aliens to find themselves without identity documents (documents lost, got burned in the house during conflicts, got lost from an earlier displacement, or the persons never had any). It is also the case of IDPs displaced by conflict. Moreover, while other aliens can turn to the authorities of their country of origin for help in obtaining documents, refugees do not have this option and are therefore depend upon the authorities of the country of asylum or upon UNHCR for assistance in this regard.

Even though the 1951 Geneva Convention Relating to the Status of Refugees puts obligations to contracting States to deliver or cause to be delivered under their supervision to refugees documents as would normally be delivered to aliens by or through their national authorities (article 25.2) as well as the obligation to issue identity papers (article 27) and travel documents (article 28) to any refugees on their territory, this is not always the case. In countries where governments are ready to issue documents to refugees, these documents can be costly and difficult to obtain. Inconsistencies in issuance processes, renewal lengths and eligibility criteria for documentation are amongst the many complications in obtaining basic identity documents as well as with marriage, birth and death certificates.

With regard to IDPs, the UN Guiding Principles on Internal Displacement and the Kampala Convention have specific provisions on registration and documentation of IDPs.²¹

Nevertheless, in situations where refugees and other displaced children vital events such as births are registered, many of them are not issued a birth certificate but rather a birth attestation or birth notification. The reason behind is that some governments equate the issuance of vital documents specially birth certificate to granting of nationality to refugees. Hence for a refugee, the lack of identity documents issued by the country of asylum may be far more than a source of inconvenience. In almost all countries an alien must be able to prove not only his identity but also that his presence in the country is lawful. In some countries aliens without appropriate documentation are subject to detention and sometimes even to summary expulsion. Such measures are particularly serious for a refugee, for whom it could also involve the risk of being returned to his country of origin where he risks persecution or death. Even where the consequences of being without documentation are less drastic, a refugee, in order to benefit from treatment in accordance with internationally accepted standards, need to be able to establish vis-à-vis government officials not only his identity but also his refugee status. Often, the documentation also serves as evidence of the right to reside and work in the country as well as to have access to international protection, basic services and durable solutions.

²¹ Principle 20 of the Guiding Principles and Article 13.2 on Registration and Personal Documentation of the Kampala Convention.

During the New York Summit for Refugees and Migrants, States made commitment to enhance refugee protection on their territory through the adoption of measures to facilitate access to civil registration and documentation for refugee including: i) early and effective registration and documentation, as a protection tool and a mean to facilitate the provision of humanitarian assistance, ii) immediate birth registration for all refugee children born on their territory and ii) provision of adequate assistance at the earliest opportunity with obtaining other necessary documents, as appropriate, relating to civil status, such as marriage, divorce and death certificates.²²

c. Vital statistics on refugees and IDPs

Refugees and IDPs access to civil registration has obvious advantages not only for purposes of international protection but also in terms of the planning and implementation of assistance programmes and the promotion of durable solutions. The registration of vital events of all refugees in a country, the documentation of these and the production and dissemination of vital statistics based on civil registration records is primarily the State's responsibility. In many countries this has been left to UNHCR or carried out jointly by the government and UNHCR. However, the poor quality of government vital statistics on refugees in the countries where the government is providing this function solely has been deplored. On the other hand when UNHCR is the provider of these functions, significant backlogs and limited recognition of UNHCR issued documentation are the overriding concerns. It is therefore of paramount importance that governments include refugees in their CRVS systems. It is also important that in carrying out their responsibility to register refugees including their vital events such as birth, marriage, divorce and death and document them, they work in close collaboration with UNHCR to ensure quality civil registration process and data.

Concerning IDPs, the number of reported IDPs population by end 2015 was only related to conflict and violence induced displacement. According to IDMC²³, data on internal displacement linked to slow-onset disasters and development-projects is very often unavailable. Scarcely, any data is currently collected on the numbers of people affected, their situation and their needs. Even for displacement linked to conflict and violence, which has been monitored for longer, there are gaps in the data.

Some of the gaps are due to poor or inconsistent survey methodologies, others to a lack of resources for long-range monitoring, obstacles to access or assumptions about how quickly people are able to go home. Whatever the reason, the result is blind spots on where people and their protection and assistance needs should be, as well as an incomplete basis for governments and international partners to plan a tailored response to IDPs needs. These gaps in the data hamper efforts to provide effective protection and assistance to those displaced.

Reliable data on population movements is vital to ensure a timely and well targeted operational and policy response. Evidence of the multiple causes of displacement and its impact on development priorities such as food security, education, health and the protection of vulnerable groups can inform more holistic action by governments and aid agencies. Therefore, more and better data on internal displacement currently off the radar is needed to bring the 'invisible IDPs' into focus and to ensure they are better protected and lasting solutions are found.

In a nutshell, the exclusion of forcibly displaced persons from national CRVS, making them "invisible" is likely to increase their protection risks and expose them to lack of freedom of movement due to the absence of identification documents, detention and deportation, denial of access to education, health services and employment, prevention from reacquiring property upon return to areas of origin. In addition, failure to prove the age of girls may expose them to early marriages and exploitation. They remain "Invisible to the Law" and may not benefit from the State's protection. In the context of protracted situations, forcibly displaced persons run the risk of losing their connection with their country of origin

²² New York Declaration for Refugees and Migrants, Paragraphs 32 and 71 and Annex I on CRRF, Paragraph 5(f)

²³ IDMC, Africa Report on Internal Displacement 2016, P.31

as well as facing difficulties acquiring documentation, which may result in statelessness, particularly in subsequent generations.

2. CRVS and migrants

In demographic data collection, it is accepted that mobile populations and individuals are poorly represented. Censuses are known to undercount the homeless and migrants, especially undocumented migrants and the highly mobile, although other sub-groups are also difficult to enumerate.²⁴ In Africa, 19 per cent of countries did not have a recent data source on total migrant stock, while 43 per cent and 36 per cent of countries did not have recent data on the age or origin of international migrants, respectively²⁵. For these reasons, migrants and other groups of population are most likely of not having their births and other vital events registered and documented and therefore at heightened risk of violation of their human rights and vulnerable to statelessness.

a. Descendants of historical migrants and contemporary migrants and their children

➤ *Descendants of historical migrants*

Among the populations with greatest difficulties in obtaining documentation of nationality of the country where they are born and reside and at high risk of statelessness are descendants of those who migrated before Independence, for whom the transitional provisions adopted in the laws at independence were not adapted or where early on amended or manipulated to exclude targeted populations from access to nationality and the range of rights attached to citizenship. In some countries, a person with a family name that sounds “foreign” is likely to face consistent difficulties in establishing nationality. However in a number of countries, law reforms have been undertaken to enable such category to acquire the nationality through access to special temporary naturalization procedures.²⁶

➤ *Contemporary migrants and their children*

In a survey conducted by UNHCR and IOM in 2013 in Niger and Togo targeting 172 migrants, 60% mentioned documentation as the most urgent requirement rather than transport, food, health care, shelter and other needs. More than half of these migrants lacked any travel document, many of them having being confiscated by the police in the various countries of transit. Many undocumented have been detained. In most cases however, even though it is possible for these undocumented migrants to re-establish paper work of their home country, this may require the assistance of humanitarian agencies such as IOM which will assist migrants stranded in another country to return home when appropriate.

Not all undocumented migrants transiting through or living and working in a country are stateless. However in some parts of the world, research into immigration detention has found many cases of stateless persons who have spent months incarcerated for the simple reason that they cannot prove their nationality and regularise their immigration status and there is no country to which they can be deported. Similar cases have been identified in African countries.

Children of migrants are most at risk, especially in countries that provide no right to nationality at all based on the birth in the country (*jus soli*) nor the possibility of naturalization even if the person remains resident there until the age of majority and beyond and if children born abroad cannot acquire the nationality according to the legislation of the country of origin of the parents. Where only citizenship by descent (*jus sanguinis*) is provided for, it can be impossible for the descendants of those who have migrated from another country, even if many generations ago, to become recognised as nationals of the country of residence, leaving them excluded from civil registration and as a consequence from the

²⁴ Sara Randall, Where have all the nomads gone? Fifty years of statistical and demographic invisibilities of African mobile pastoralists, *Pastoralism: Research, Policy and Practice*, 2015, P. 3.

²⁵ International Migration Report 2015, p.4

²⁶ Cote d'Ivoire in 2013.

enjoyment of their civil, economic and social rights putting them, in some circumstances²⁷ at risk of statelessness. If in theory they will have access to the nationality of their parents who migrated, in practice establishing that nationality may be quite impossible especially if they don't have resources to assert their claim.

- b.** In addition to the various instruments guaranteeing the right for every child to birth registration, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their families stipulates that each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality (article 29). Going further, the United Nations²⁸ recommends that all people residing in a country, be given the right to register vital events, irrespective of whether they are citizens or not.
- Cross -border populations**

➤ *Nomads and pastoralists*

Nomadism and pastoralism are a lifestyle and means of livelihood for many millions of people across Africa. There is considerable interest in the numbers and population dynamics of mobile African pastoralists alongside a recognition that they are probably undercounted or excluded from many data sources because of the difficulties in enumerating mobile individuals. African mobile pastoralists are not only invisible in a considerable number of statistical sources and indicators, but the nature of their invisibility is often couched in obscurity. Under-enumeration is almost guaranteed even when huge efforts are made to include them in censuses.

In addition to and as a consequence of the fact that they are undercounted and excluded from data sources, nomadic and pastoralist populations continue to face practical and political challenges as many nationality laws are not designed to accommodate them. Whether the Tuaregs, the Fulani/Peul or the Mbororo Fulani most of them do not have identity documents. Even though they can cross borders without any papers while state institutions may barely exist in the remote rural regions, documentation is a critical problem for the pastoralists who often have no proof of identity nor nationality even though they have been resident in a country many years and sometimes generations.

On birth registration, the common problems identified among the nomadic and pastoralists include : lack of awareness of the need for or usefulness of birth registration and other documents such as identity cards; difficulties in obtaining birth certificates, passports and other documents; difficult access to schools or other public facilities to register the births. As a consequence of lack of documentation, some of them have been the target of mass expulsions²⁹, and for the poorest and most marginalized members of such communities they are at high risk of statelessness.

Extensive State's efforts to address issues related to cross-border pastoralism have been made through framework on freedom of movement (ECOWAS), bilateral and multilateral agreements to facilitate cross-border movement, UEMOA policies on the regulation of the free movement of animals among its eight Member States, the 2010 African Union *Policy Framework for Pastoralism in Africa*. However, these documents do not address the issue of CRVS and nationality of the pastoralists themselves and are rather focused on facilitating the conflict-free movement of the livestock than the people concerned³⁰.

²⁷ In case the legislation of the Country of origin of the parents, do not provide children born abroad with a nationality.

²⁸ United Nations Department of Economic and Social Affairs Statistics Division (2001). *Principles and Recommendations for a Vital Statistics System (Revision 2)* New York, United Nations.

²⁹ For example: the expulsion of Fulani's allegedly originated from Guinea by Sierra Leone in 1982; Expulsion of Fulani pastoralists by Ghana in 1988/89; Expulsion of Fulanis by Senegal in 1989.

³⁰ Bronwen Manby, Nationality, Migration and Statelessness in West Africa, A study for UNHCR and IOM , June 2015, P. 85

Although the availability of demographic and statistical data on mobile pastoralists is improving, it is impossible to document with accuracy any transformations in the numbers of these populations over the last half century. During the regional seminar to exchange and discuss best practices on CRVS from Africa and Asia Pacific in June 2016 in Addis Ababa, improving accessibility of civil registration services, including accessibility to remote, hard-to-reach and nomadic populations has been identified as a common challenge in the implementation of CRVS programmes in both regions and various mitigating strategies adopted by countries.

➤ *Ethnic groups divided by international borders and populations affected by transfer of territory*

Populations divided by international borders and those affected by transfer of territory are also vulnerable to statelessness and other violations of their rights as they face difficulties accessing civil registration and lack documentation.

To achieve the Sustainable Development Goals 16 target 9 of the SDGs on Peace, Justice and Strong Institutions which refers to providing legal identity for **All** including birth registration by 2030, it is important to develop appropriate strategies for including mobile pastoralists and other hard-to-reach populations. This will be in accordance with all relevant international, regional and national instruments enshrining the right to birth registration, but also the New York Declaration in which States committed to work to provide for the registration of all births on their territories. (Paragraph 32).

Accurate, consistent and timely data on international migration are essential for assessing current and future needs and for setting policy priorities to promote inclusive and equitable development for all.

3. CRVS and statelessness

First and foremost, having an effective birth registration system in place is an important initial step to ensuring the protection of children. Birth registration does not itself confer nationality upon a child. The process for registering births is distinct from the process whereby individuals acquire nationality, which usually happens automatically at birth. Birth registration is nevertheless important for the prevention of statelessness because it establishes a legal record of where a child was born and who the parents are. This constitutes a key form of proof of whether a person has acquired nationality by birth on territory (*jus soli*) or descent (*jus sanguinis*), which are the most common bases for acquisition of nationality at birth.

According to global statistics, one child is born stateless every 10 minutes in the world and the problem is growing. The main causes, in addition to the above mentioned lack of birth registration, include gaps in nationality laws. The effects of being born stateless are severe:

- In more than 30 countries globally, children need nationality documentation to receive medical care
- In at least 20 countries worldwide, stateless children cannot be legally vaccinated.
- In others, stateless children are not eligible for primary school or must pay a fee to attend school.

Secondly, displaced persons run the risk of losing their connection with their country of origin as well as facing difficulties acquiring documentation, which may result in statelessness, particular in subsequent generations. Refugees for example have particular needs because they have lost the protection of their state of origin. Appropriate laws are necessary to this process, though of course there are challenges that cannot be solved by law reform alone. While the laws of many countries in principle allow for the naturalisation of refugees on the same or similar terms as other foreigners, through the normal procedures, naturalisation can be very difficult to access in practice, leaving some at risk of statelessness. In some countries, refugees are not regarded as being ordinarily resident and thus totally excluded from normal naturalisation procedures.

Thirdly, while there is no automatic right to citizenship of the country in which they reside for people who are themselves migrants, there is an urgent need to ensure that law and practice do not exclude their children from acquiring citizenship in one of the countries to which they have a connection. This is

according to the 1961 Convention on the Reduction of Statelessness which focusing the prevention of statelessness at birth requires States to grant citizenship to children born on their territory, or born to their nationals abroad, who would otherwise be stateless (Article 1(a) and article 4.1). In the same vein, the African Charter on the Rights and Welfare of the Child in its Article 6.4 puts obligation to States Parties to “undertake to ensure that their Constitution legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child’s birth, he is not granted nationality by any other State in accordance with its laws”.

While most recent economic migrants will not themselves be stateless, a failure to act to integrate them, and especially their children, creates the risk of multi-generational statelessness of whole communities who have no connection with any other country and yet are not fully integrated in the country where they live. For these “settled” migrants, it is particularly important that the State where they are resident takes measures for their naturalisation; and in addition that the law provides for the right to nationality for persons born in the country who would otherwise be stateless; and finally that the State respects these provisions through the issuance of documents in practice. Without this minimum right, there is a risk of creating a class of persons who are excluded from citizenship, even if they are living in the only country they have ever known and to which they have by far the strongest connections.³¹ On this point, the 1954 Convention relating to the Status of Stateless Persons to which 25 African countries are parties puts obligations on Contracting States to provide administrative assistance to stateless persons in their territory in obtaining documents. They also have the obligation to deliver or cause to be delivered under their supervision to stateless persons documents as would normally be delivered to aliens by or through their national authorities (article 25). Furthermore, Contracting States shall issue identity papers to stateless person in their territory (article 27) as well as travel documents for the purpose of travelling outside their territory (article 28).

The 1961 Convention on the Reduction of Statelessness acceded by 19 African States, also puts obligation on Contracting States to grant citizenship to children born on their territory, or born to their nationals abroad, who would otherwise be stateless as a mean to prevent statelessness.

Finally, another angle to link CRVS with statelessness is the lack of data on statelessness in many countries in Africa and in the world. In fact, the exact number of stateless people globally is unknown. However, UNHCR estimates that there are at least 10 million people globally – of which approximately 1/3 are children.

In 2016, statistical information on stateless persons were reported in 75 States totalling some 3.2 million individuals worldwide.³² In sub-Saharan Africa, UNHCR reported over 715,089 stateless persons in 2016, with 974 in Central Africa and the Great Lakes, 20,000 in East and Horn of Africa and 694,115 people in West Africa with a bulk being in Cote d’Ivoire (694,000)³³.

In addition to reported statistics, there are six countries in Africa where UNHCR has identified statelessness to be a significant problem but is unable to report any data.³⁴ The reason is that statelessness is often referred to as an invisible problem because stateless people often remain unseen and unheard. Measuring statelessness therefore remains complicated since stateless persons often live in precarious situations, on the margins of society. Frequently stateless persons are not only undocumented but also ignored by the authorities and uncounted in national administrative registries and databases. Most often they also go uncounted in population censuses due to the insufficient level of priority to, attention for and knowledge on statelessness in many countries, the dearth of good

³¹ Action 6 of the UNHCR Global Action Plan 2014-2024 to end statelessness encourages States to grant protection status to stateless migrants and facilitate their naturalization.

³² UNHCR Global trends, Forced displacement in 2016, P.48.

³³ UNHCR Global trends, Forced displacement in 2016, P.64.

³⁴ Democratic Rep. Congo, Eritrea, Ethiopia, Madagascar, South Africa, Zimbabwe in Institute on Statelessness and inclusion, The world’s stateless, December 2014, P.60.

systems for effectively identifying individuals affected and as they don't come out as stateless voluntarily. Only a minority of countries have procedures in place for their identification, registration, and documentation in Africa.³⁵

Even if studies containing qualitative and some quantitative information have been completed in some countries³⁶ the persistent large gap between the number of stateless persons reported by UNHCR, the lead agency on statelessness, and the total estimated number of stateless persons remains a cause for concern. The identification of stateless persons is key to addressing difficulties they face to enabling governments and other relevant stakeholders to prevent and reduce statelessness.

In this view, greater collective efforts are needed to identify all stateless persons and provide them with protection and a pathway to a solution. Quantitative data and qualitative analysis, which includes an assessment of the scale of the situation in terms of magnitude and geographical spread; the profile of affected population (including its demographic composition with data disaggregated by sex and age); and analysis of the causes and impacts of statelessness amongst others are essential for states to adequately respond to statelessness³⁷. The role of civil registration and vital statistics here is critical.

In conclusion, there is a clear link between civil registration and vital statistics, population movement and statelessness. Weak civil registration systems failing to cover and integrate displaced populations whether forced or voluntary can render these or expose them to heightened risk of statelessness.

IV- Lessons learnt and best practices

In Uganda in late 2012 and following advocacy by the Refugee Law Project, the Attorney General of Uganda exercised his powers under section 24 of the Births and Deaths Registration Act and has waived the registration fees payable by refugees in order to register a birth or death. Previously, refugees were treated as foreigners and were therefore required to pay \$40 in order to obtain a birth or death certificate.

In 2013 in Tahoua, Niger, mobile courts hearing for nomadic communities visited villages in northern Niger. The hearings, during which officials visited remote areas, brought birth registration to communities where such services were often out of reach. In addition, some villages have been made into auxiliary birth registration centres. This has made birth registration easier and saved long, costly journeys for local people.

Côte d'Ivoire carried out a profiling exercise of IDPs in 2014, which serves as an example of how governments can call on international support when necessary to gather the data they need to inform national action to resolve displacement. The exercise was carried out by the Ministry of Planning and Development of Cote d'Ivoire, the National Institute of Statistics and UNHCR with technical support from the Joint IDP Profiling Service (JIPS). The government used the information collected on needs and obstacles as the basis for drawing up a new durable solutions strategy. In the same country, studies containing qualitative and some quantitative information have been completed. In the same vein, a special procedure in place from 2014 to 2016 allowed 123,810 individuals to apply for Ivorian nationality by declaration. As of the end of 2016, approximately 11,800 persons had received nationality certificates, roughly half of whom were previously stateless.

Cameroon and Sudan are the two African countries out of 7 in the world to have included refugees in their national poverty surveys in 2015. This was the finding of the most recent internationally comparable poverty surveys carried out in 20 countries hosting the largest number of refugees in the world.³⁸ This shows the importance of including refugees in CRVS systems to facilitate the planning of appropriate interventions to alleviate poverty.

³⁵ Liberia for example

³⁶ Cote d' Ivoire and Nigeria, for example.

³⁷ Global Action Plan to End Statelessness (2014-2024), UNHCR, pp. 24 and 25.

³⁸ Forced Displacement, Poverty and Financing, 2016, p. 8.

In Kenya, in application of a Directive issued by the President of the Republic in 2016, the provisions of Citizenship and Immigration Act of 2011 that give stateless persons resident in the country since independence in 1963 and their descendants the right to be registered as Kenyan nationals has been implemented. As a result the Makonde, an ethnic minority with origins in northern Mozambique who arrived in Kenya prior to independence, has been recognized as Kenyan nationals.

In May 2017, following the Abidjan Declaration on the eradication of statelessness, the ECOWAS Member States validated the “Banjul Plan of Action on the eradication of statelessness in West Africa” which sets out concrete measures to end statelessness by 2024 and is legally binding on all the Member States. The Banjul Plan of Action seeks among others to: i) strengthen data management systems for effective response to the challenges of statelessness, ii) to guarantee access to proof of nationality through the reinforcement of civil registration mechanisms and through ensuring accessible and affordable birth registration on an equal basis. The ECOWAS States are the first to adopt a regional plan of action to end Statelessness.

In June 2017, a circular was issued by the Kenyan Cabinet Secretary, Ministry of the Interior and Coordination of National Government for collaboration between the Civil Registration Services Department and the Ministry of Education to register births and issue birth certificates for school children from June 6 to October 6, 2017. In the circular, head teachers are required to make birth certificate applications on behalf of their students. Under the circular instructions, late fees for registration of births have been waived. In the same country, refugees can have their marriages registered and obtain marriage certificates as Kenyan law recognizes Civil, Hindu, Muslim, Christian and African Customary marriages. Religious leaders issue marriage certificates for free.

As a historic first and a ground-breaking development for refugee protection, Ethiopia launched the civil registration for refugees in October 2017. All refugees in the country will be able to register their vital life events, including birth, death, marriage and divorce, directly with national authorities and free of charge. Civil registration for refugees has been made possible following an amendment to an existing legislation. As a result, more than 70,000 refugee children born in Ethiopia over the last decade whom have not had their births registered will soon be issued with birth certificates. Children born before the new law came into force will also obtain a birth certificate retroactively. Civil registration offices have also been established in each of the 26 refugee camps, as well as in the seven locations with a high concentration of refugees.

V- Conclusions and recommendations

Ensuring that all individuals are included in CRVS systems can be a huge challenge particularly for remote and rural residents, the forcibly displaced, stateless persons and other marginalized groups. In many countries, national legislation still does not clearly specify which groups are covered by CRVS systems, and whether or not certain categories of people, such as foreigners, refugees and displaced persons, temporary migrants, nomadic populations and citizens, temporarily living abroad are excluded. Addressing these challenges is critical to ensure that legal identification systems are effective and available to all individuals. This requires coordinated, sustained efforts by key stakeholders involved in the provision and use of identification systems namely individuals, governments, private sector, international organizations, NGOs and development partners. A shared vision across these stakeholders aligned with the principles of identification will help foster robust and inclusive identification systems that will prevent statelessness and enable economic opportunities and sustainable development outcomes for all.

Therefore the following are recommended:

- 1- Assess gaps in laws, policies and practices that create barriers for birth registration including all forms of discrimination (gender, nationality, ethnicity, racial ...). Adopt laws and policies, strengthen existing institutions responsible for CRVS to ensure timely, compulsory and free birth registration for all children, including refugee, migrants, IDP, stateless children and children at risk of statelessness, within the

national territory regardless of nationality, migration status and documentation status of their parents; Accede to, domesticate and implement the 1954 Convention Relating to the Status of Stateless Persons, the 1961 Convention on the reduction of statelessness, the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and implement the Global Action Plan to end statelessness(2014-2024); Implement the provisions of the 1951 Convention on the Status of Refugees and the OAU 1969 Convention particularly their relevant provisions on administrative assistance (article 25), Identity papers(article 27) and travel documents for refugees(article 28).

2- Put in place an effective birth registration system that is flexible and responsive to the specific circumstances of families in situations of displacement. This could include decentralized civil registration to make sure that there is complete coverage of a country's population, including rural and marginalized people as well as nomadic populations. This would mean establishing civil registration offices and service centres in districts, townships, villages and refugee camps, and using mobile registration teams. Taking into account the specific challenge of displacement, this may require setting up mobile civil registration systems.

3- Introduce late registration procedures for those who were not registered immediately at birth including to older children and adults, in particular through flexible requirements of proof and without additional fees.

4- Harmonize information to be recorded on the birth certificate. It is not desirable that birth certificates include information about the child's nationality, because civil registration authorities will not always be competent to determine the child's nationality at birth (in particular where one or both parents are foreigners). In cases where birth certificates include such information, the field should be left blank where the child's nationality is unclear.

5- Improve both quantitative and qualitative data on stateless populations by including questions related to nationality in national censuses and surveys, conducting studies on stateless populations in partnership with relevant stakeholders and establishing statelessness determination procedures.

6- Improve data on IDPs by bringing unseen displacement into focus. More and better data on IDPs is needed to meet African governments' commitments to the Kampala Convention, the Sendai Framework for Disaster Risk Reduction, and the UN's Agenda for Humanity, the Africa Regional Strategy for Disaster Reduction and the Sustainable Development Goals.

7- In countries of asylum where UNHCR and other organizations carry out the registration of refugees' vital events, put in place a system that allows for the transfer of data recorded by UNHCR into a national setting. This could further lead to including refugees in the national CRVs systems and development programs.

8- Dedicate more financial, human and technical resources to CRVS activities. Resource mobilization can be done through partnerships with other relevant stakeholders the private sector, development partners.

9- Work with international partners and relevant bodies to ensure administrative personnel, judicial and security actors and healthcare professionals (including birth attendants) are trained and aware of birth registration procedures for refugees, migrants, IDPs, persons at the risk of staleness, and all other children born in the country.

10- Undertake continuous awareness raising on the importance of civil registration in both urban and rural areas, including hard-to reach and marginalized populations as well as forcibly displaced persons and stateless persons or at risk of statelessness.