



BACKGROUND NOTE ON

# Sex Discrimination in Birth Registration

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COALITION ON EVERY CHILD'S  
RIGHT TO A NATIONALITY



Kingdom of the Netherlands

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# 1. Introduction

Birth registration is a fundamental right and an enabler of other rights as it bestows a legal identity<sup>1</sup> on children for life. If a child is not registered, they do not officially exist and are vulnerable to violence, abuse, neglect and exploitation.

Without birth registration, a child may not be able to go to school, receive medical treatment or benefit from social services. The absence of registration can also lead to statelessness.<sup>2</sup> Yet, despite its importance, the births of millions of children around the world are not registered.<sup>3</sup> A multitude of factors can impede birth registration, including parents' lack of knowledge of its importance, financial considerations and practical barriers to accessing birth registration facilities.<sup>4</sup> Beyond these factors, discrimination impeding women's ability to register the birth of children is also a critical barrier. Such sex discrimination may be codified in national legislation and regulations, or may relate to practices based on cultural norms.

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- 1 According to the UN operational definition : "Legal identity is defined as the basic characteristics of an individual's identity. e.g. name, sex, place and date of birth conferred through registration and the issuance of a certificate by an authorized civil registration authority following the occurrence of birth. In the absence of birth registration, legal identity may be conferred by a legally-recognized identification authority." See <https://unstats.un.org/unsd/statcom/51st-session/documents/2020-15-CRVS-E.pdf>
  - 2 A stateless person is someone who is not considered as a national by any State under the operation of its law, Article 1, 1954 Convention relating to the Status of Stateless Persons.
  - 3 As at May 2021, UNICEF estimates that 166 million children under the age of 5, or 1 in 4 children, remain unregistered. See <https://data.unicef.org/resources/birth-registration-for-every-child-by-2030/>
  - 4 UNICEF, Birth Registration for Every Child by 2030: Are we on track? pg. 25: See <https://data.unicef.org/resources/birth-registration-for-every-child-by-2030/>

Under the umbrella of [The Coalition on Every Child's Right to a Nationality](#), UNICEF and UNHCR have produced this background note to explore the issue of sex discrimination in birth registration.<sup>5</sup> By providing an overview and country specific examples<sup>6</sup> of the kinds of legislative provisions<sup>7</sup> and cultural norms that can negatively affect women's ability to register the birth of their children, it is hoped that it will support advocacy efforts, and action by States, that advance a number of the Coalition's objectives, including:

- **Ensuring that no child is born stateless;**
- **Eliminating laws and practices that deny children nationality on discriminatory grounds; and**
- **Improving birth registration to prevent statelessness.**

Birth registration is defined as “the continuous, permanent, compulsory and universal recording, within the civil registry, of the occurrence and characteristics of birth in accordance with the national legal requirements of a country.”<sup>8</sup> It involves the official recording of the birth of a child and entry in the State's civil registry by an administrative body of the government, which is usually followed by the issuance of a birth certificate. Birth registration, particularly the

issuance of a birth certificate, is vital to establishing legal identity and also in preventing statelessness. A birth certificate contains key information on parentage, date and place of birth which is used as proof of legal identity and evidence of links to a State needed to establish nationality. In countries where nationality is primarily acquired on the grounds of descent (*jus sanguinis*), information about the identity of a child's parents recorded in the birth certificate provides key evidence of eligibility for nationality; in countries where nationality is acquired on the grounds of birth in the territory (*jus soli*), the information on place of birth in the birth certificate provides the evidence of entitlement. The date and time of birth recorded in a birth certificate are also potentially relevant to eligibility for nationality, as this information informs the authorities about the nationality law in force at the time of a person's birth.

In the absence of proof of relevant links to a State, a child can be left at risk of statelessness. The lack of a birth certificate does not on its own render a person stateless, but as noted above the possession of a birth certificate containing relevant information on parentage, place and time of birth helps to establish entitlement to nationality. In certain cases, a birth certificate is a prerequisite for obtaining nationality documentation (such as a national ID card or a passport) or is regarded as proof of nationality.

5 This aligns with UNICEF's pledge to advocate to remove gender discrimination in nationality laws and civil registration laws at the 2019 High Level Segment on Statelessness. UNHCR, High-Level Segment on Statelessness: Results and Highlights, May 2020. See <https://www.refworld.org/docid/5ec3e91b4.html>

6 This paper does not provide a comprehensive listing of, or information about, all countries with legislative and regulatory provisions, and/or cultural norms that can negatively affect women's ability to register the birth of their children. The country examples herein come from a legal analysis into sex discrimination in birth registration laws and practices commissioned by UNICEF and UNHCR in 2020 to support this publication. That legal analysis, which was conducted by independent consultants, was complemented by key informant interviews with UNHCR and UNICEF staff in a number of countries.

7 This paper focuses on sex discrimination in law (i.e., legislation and implementing regulations). The situation may vary considerably in practice, and as a general matter examinations of State practice are outside the scope of this paper.

8 OHCHR, Birth registration and the right of everyone to recognition everywhere as a person before the law, 17 June 2014, para. 4. See <https://ohchr.org/EN/Issues/Children-OHCHR/Pages/ReportBirthRegistration.aspx>

In some countries, national ID cards are only issued at the age of majority, while the issuance of passports may be subject to discriminatory and procedural barriers for various categories of children such as those born to foreign fathers. In these contexts a birth certificate often serves as temporary proof of nationality until the age of majority is reached in order to access education and healthcare.

Certain population groups experience more challenges in accessing birth registration than others. Nomadic and border-dwelling populations, for instance, are more likely to experience geographical obstacles when attempting to access birth registration services. Lack of a birth certificate may place them and their children at particular risk of statelessness given that they may be perceived as not fully belonging to the country

or countries in which they reside. Members of minority groups may also find it difficult to access civil registration and documentation on an equal basis with their fellow citizens, which can put them at risk of statelessness. Migrants in an irregular situation, asylum seekers and refugees may not have the information they need about how to register the birth of children or may not want to approach birth registration authorities for fear of detention or deportation. Refugees and Internally Displaced Persons (IDPs) may have lost their own documents in flight, which can make it harder to register their children. They may also experience difficulties in accessing birth registration in the country or place of refuge. Unaccompanied, separated and abandoned children often lack documents establishing their identity, creating a risk of statelessness.

## Birth registration and non-discrimination against women as fundamental human rights

Birth registration is a fundamental right and States have a duty to register all births that occur in their territory irrespective of the legal status of the parents.<sup>9</sup> The Convention on the Rights of the Child provides in Article 7 (1): *'The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.'*

As the fulfilment of the right to be registered is closely linked to the realization of other rights, the obligation on States to register the birth of children is also found in several other widely ratified international human rights treaties. Article 24 of the International Covenant on Civil and Political Rights (ICCPR) requires States to conduct birth registration immediately after birth and without discrimination of any kind.

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<sup>9</sup> UN Human Rights Committee, General Comment 17 on Article 24 (Rights of the Child), April 1989, paras. 7-8. See <http://www.refworld.org/docid/45139b464.html>; OHCHR, Birth registration and the right of everyone to recognition everywhere as a person before the law, 17 June 2014, paras 11 and 85(a); and UNHCR, Conclusion on civil registration No. 111 (LXIV)-2013, 17 October 2013. See <http://www.refworld.org/docid/525f8ba64.html>; UN Committee on the Rights of the Child, General Comment No. 7 (2005): Implementing Child Rights in Early Childhood, 20 September 2006, para. 25. See <http://www.refworld.org/docid/460bc5a62.html>

The right to birth registration is also included in the International Convention on the Protection of Migrant Workers and Their Families,<sup>10</sup> the Convention on the Rights of Persons with Disabilities,<sup>11</sup> and in many regional human rights instruments.

The principle of equality and non-discrimination against women is also well-established in international human rights law.<sup>12</sup> The primary international human rights treaty concerned with the protection and promotion of women's human rights is the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), which has as its object and purpose "to eliminate all forms of discrimination against women with a view to achieving women's de jure and de facto equality with men in the enjoyment of their human rights and fundamental freedoms"<sup>13</sup> Article 2(f) of

CEDAW requires States Parties to "*take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.*"

Article 9(2) of CEDAW states that "*States Parties shall grant women equal rights with men with respect to the nationality of their children.*"

Discrimination against women which prevents them from registering the births of their children can interfere with the fulfilment of States' obligations under Article 9(2) of CEDAW.<sup>14</sup> Other widely ratified human rights treaties also contain obligations relating to the equality of women. For example, the ICCPR in Article 3 requires States to '*undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.*'

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<sup>10</sup> Article 29, International Convention on the Protection of Migrant Workers and Their Families, 1990.

<sup>11</sup> Article 18(2), Convention on the Rights of People with Disabilities, 2007.

<sup>12</sup> Article 2 of the Convention on the Rights of the Child, 1989 (CRC) promotes the principle of non-discrimination in the application of the CRC for all children within a State's jurisdiction.

<sup>13</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures, 2004, para. 4. See <https://www.refworld.org/docid/453882a7e0.html>

<sup>14</sup> CEDAW, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, 14 November 2014, paras 56 – 57. See <https://www.refworld.org/docid/54620fb54.html>

## 2. Discrimination and other issues affecting women's ability to register the births of their children



Children play in the Friendly Space for Childhood located in the Portete shelter, in Esmeraldas, Ecuador  
© UNICEF/Santiago Arco.

## 2.1 Legal barriers affecting women’s ability to register the birth of their children

In many contexts, women face legal barriers that impinge on their ability to register the birth of their children and thus potentially violate the right of their children to birth registration. Provisions found in birth registration laws, civil codes, family laws, marriage laws and even criminal laws may explicitly exclude women from registering births; fail to include women among the listed persons authorized to do so; only allow women to register births in exceptional circumstances; or only allow women to register births when they can prove that the child was born in wedlock.

### Women barred from registering the birth of their children or are not explicitly mentioned in relevant laws

In some countries, women are not allowed to register the births of their children under any circumstances. Children’s births may be registered only by fathers or another male family member, while the mother is explicitly excluded from registering the birth of the child. In other contexts, the primary

For example, under **Djibouti’s** Civil Code,<sup>15</sup> women are not permitted to register the births of their children. In all cases, births may only be registered by the father. If the father is not available, registration can be done by the doctors, midwives, health workers or other persons who attended the birth.

In **Tunisia**, Law No. 1957-3, 1957, Article 24 provides that: “Birth shall be declared by the father, or the doctors, midwives or other persons who attended the birth and, when the mother has given birth outside her home, if possible, by the person with whom she gave birth.” There is no express mention of the mother.

### Women can only register the birth of their children in exceptional circumstances

In many countries, birth registration laws mention the father as the primary person responsible for initiating birth registration and only in exceptional instances is the mother entitled to do so. In these contexts, the mother becomes responsible in case

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