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**Legal identity for migrants, refugees
and marginalized population groups**

Importance of legal identity systems in ensuring safe and orderly cross-border migration and mobility

I. Introduction

1. Legal identity has numerous implications for migration and mobility. People who lack a legal identity are impeded from effectively accessing the services to which they have a right and cannot migrate safely to most foreign countries, or perhaps not even any. In countries where a large proportion of the population does not have a legal identity, meeting target 10.7 of the Sustainable Development Goals, which calls for countries to “facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies”, is closely linked with closing the legal identity gap. Ultimately, engagement on legal identity at the intersection of targets 16.9 (“by 2030, provide legal identity for all, including birth registration”) and 10.7 of the Sustainable Development Goals provides a framework for achieving all other Goals that deal with migration. Legal identity is therefore an accelerator for attaining the Goals.

2. The Global Compact for Safe, Orderly and Regular Migration further outlines practical means for governments to improve national legal identity systems, specifically under objective 4, which is to “ensure that all migrants have proof of legal identity and adequate documentation”.

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Under this objective, States expressed their commitment “to fulfil the right of all individuals to a legal identity by providing all [their] nationals with proof of nationality and relevant documentation, allowing national and local authorities to ascertain a migrant’s legal identity upon entry, during stay and for return, as well as to ensure effective migration procedures...”. This commitment extends to implementing policies that would ensure that migrants are reached so that they can be issued adequate documentation and civil registry documents such as birth, marriage and death certificates at all stages of their migration, so as to empower them in the effective exercise of their human rights and to prevent or reduce the likelihood of them becoming stateless.

3. It is clear to see how legal identity intersects with cross-border mobility and migration. It is much harder for those without a registered legal identity, or at least proof of the existence of such an identity, to enter another country, since immigration procedures (such as obtaining a permit or visa to stay in the country) become much more difficult. Once in the country, those without the right paperwork will also face obstacles to obtaining residency, which limits their access to employment, family reunification and other rights. Regular and safe migration requires migrants to present documents that are issued by relevant national authorities and that foreign authorities consider to be valid to enter and remain in that territory. Such travel or identity documents must reflect the legal identity of the document holder. A lack of proof of legal identity has a detrimental effect on the protection of the rights of migrants, including their ability to leave and re-enter their country and their ability to integrate into mainstream society in the host country.

4. Several factors contribute to the complexity of legal identity and civil registration for migrant populations. The interplay between legal identity, migration and mobility depends on the legal requirements defined by each country. The relationship between national identity systems and issues such as nationality, regularization, identity verification, digitization, internal displacement, humanitarian assistance, asylum, protection and governance are defined by national contexts, policies and laws, which may expand, restrict or even eliminate a migrant’s access to a recognized legal identity.

5. The ability to address the issue of legal identity comprehensively and cooperatively is therefore a fundamental requirement for responsible and rights-based approaches to ensuring the rights of migrants, orderly and safe global mobility, and good governance of migration.

II. Documentary proof of up-to-date legal identity as an essential enabler of orderly and safe migration

6. Legal identity is a crucial dimension of safe, orderly and regular migration and mobility. It is also an important element to consider when designing and implementing migration management policies. All States have an interest in facilitating the legitimate movement of people and goods while also maintaining secure borders. Each year, tens of millions of people around the world need to present documents proving their legal identity and nationality as a basic precondition to access regular migration pathways, to be considered for admission and stay in the territory of a foreign State and, subsequently, to exercise their right to return to their own State. Those wishing to enter a State or acquire residency must follow admission procedures that may include obtaining a residence permit or visa. Documents are also required for transit through third countries. Successful application for admission and stay therefore depends on credible civil registration and identity management systems, except in the case of persons requesting asylum and international protection

or refugee status.

7. Migrants in foreign countries may experience difficulties in renewing documents from their country of origin or registering vital events across more than one civil registration system – that of their host country and that of their country of origin. Since migrants interact both with their State of nationality and their State of residence, they face the challenge of keeping their legal identity records up-to-date in the administrative systems of both States. When migrants face issues with access to legal identity documentation, including civil status documentation and proof of nationality, they may become stateless as their ties to their country of origin become harder to prove or because they belong to a marginalized minority. Statelessness further complicates every facet of migrants' lives and undermines the enjoyment of their rights. It is therefore essential to devise systematic means of preventing statelessness for at-risk migrants.

8. Some irregular and forcibly displaced international migrants leave documents behind when they are fleeing. Others lose them or intentionally destroy them during the journey, or have them confiscated by smugglers or officials. Conflict or disaster may result in records being destroyed, thus making it harder for migrants to gain access to their national legal identity registers. As a result of all these factors, migrants may struggle to present documentary proof of their legal identity. Determining legal identity is an important aspect of the processes that affect irregular migrants when they apply for residency, require assistance in detention centres, or apply to return to their countries of origin.

III. Operationalizing legal identity for migrants

9. Although the legal identity information on resident migrants and non-nationals in national legal identity system is generally reflected on the residence cards that they are issued, they may also experience new vital events that affect their legal identity and civil status, such as the birth of children, which need to be reflected in national civil registration records.

10. If migrants have proof of their legal identity, they should have the same access to civil registration services as nationals, in compliance with the principle of non-discrimination. In addition to identity data, for some vital events the authorities may insist that the travel documents issued by the migrant's country of origin contain specific fields that reflect the applicant's nationality. Birth registration may require additional documents. Many States require such documents to be duly legalized to accept them as documentary proof.

11. For resident migrants and non-nationals, the registration of vital events provides them with documentary evidence of changes to their legal identity or civil status, which immigration authorities can then use to update personal information in their records and issue a new residence card with the updated information. When resident migrants register the birth of a child, the registration certificate can be used to process the residence status of the newborn, including the conferral of the nationality of a parent's country of origin or host country, or both, depending on the respective national laws. In cases where the child is granted the nationality of the host country, the child's identity management records are moved from the records for resident non-nationals to the records for nationals.

12. It is important to underline that access to civil registration should not be restricted to nationals and resident foreigners. Temporary visitors should also have the right to register vital events that occur while they are visiting and within the time frame allowed for short-term visits. Access to civil registration should be open to all migrants and non-nationals, regardless of their status, to ensure that the births of children of irregular migrants are also registered, in compliance with the rights set out in the Convention on the Rights of the Child, and, more generally, to prevent the children from being excluded, marginalized, deprived of their access to legal identity and exposed to the risk of statelessness.

13. Resident non-nationals have the option to register their vital events in their country of nationality, which they often do, as they might consider their country of nationality as central to how they organize their lives. Where events are registered in the country of nationality, there is no requirement to repeat the registration in the country of permanent residence (unless the person has citizenship in multiple countries and is also a national of the country of permanent residence). To update their legal identity information in the permanent residency database and on their residence card, migrants need to provide a certificate of registered vital events that is duly legalized.

IV. Issues for discussion

14. The following issues are proposed for discussion:

a. How can Africa contribute to safe and orderly migration around the world by eliminating lack of legal identity and the resulting lack of integration into mainstream society in countries of origin (which is a push factor in irregular migration)?

b. What are the challenges that countries face in registering the vital events of migrants in their territories?

c. What options can countries explore to extend their civil registration services to consular offices abroad?

V. Recommendations

15. National strategies for strengthening civil registration and vital statistics systems should reflect the importance of including marginalized and excluded populations, with an emphasis on migrants, in accordance with the central promise of the 2030 Agenda for Sustainable Development to leave no one behind.

16. States should aim to develop policies to strengthen their capacity to issue civil registration, proof of nationality and travel documents to their nationals abroad. Policies should provide for the implementation of digital civil registration and identity management services that are linked online to the national legal identity system, and, as such, they should support the issuance of civil registration-related certificates and documentary evidence to assist migrants with their immigration-related procedures.

17. States are encouraged to actively explore options to conclude bilateral and multilateral agreements on mutual recognition of certificates of registered vital events and, where appropriate, on the sharing of registered vital event data between authorities in the country of residence and the country of origin, to ensure that such events are reflected in the identity systems of both countries.

18. States should work with other government and non-government entities to promote good practices in facilitating access to legal identity for irregular and forcibly displaced migrants, including those whose legal identity cannot be determined.
