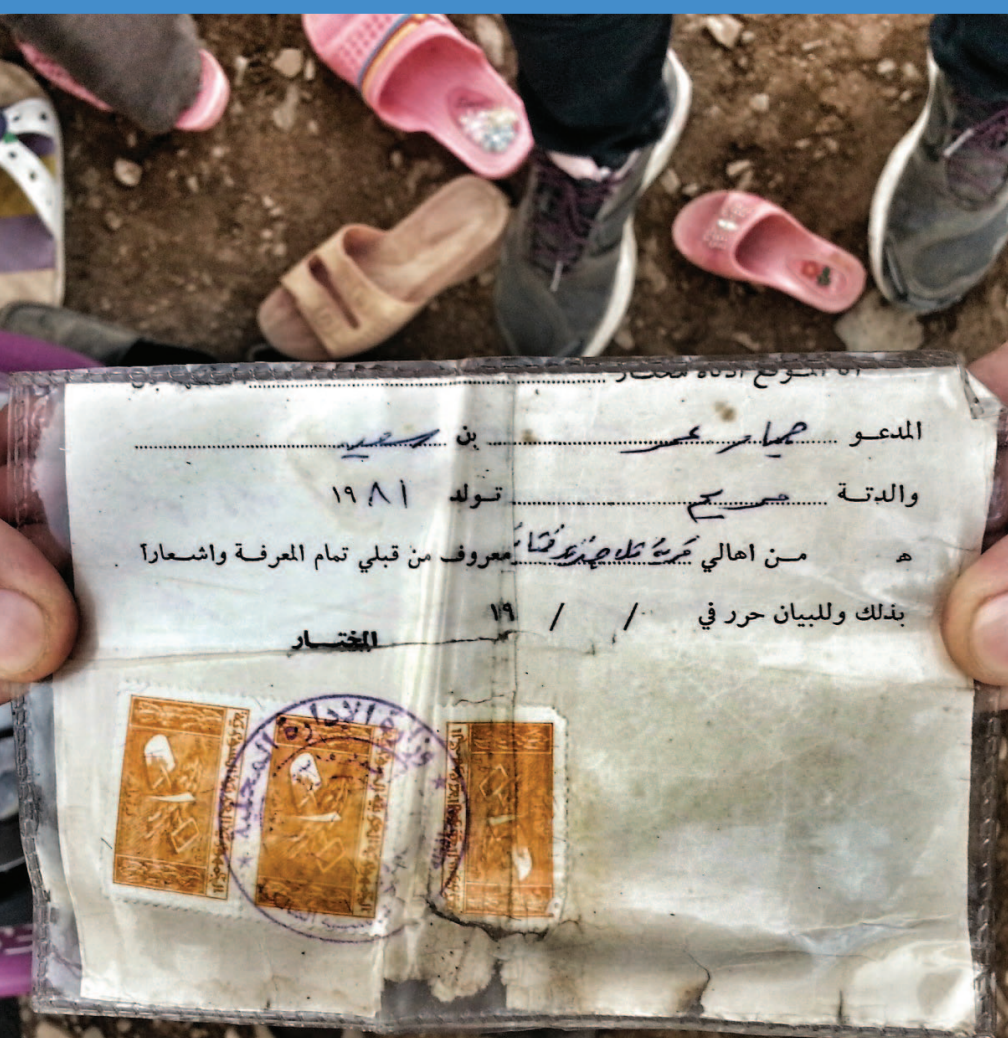


# Identification in the Context of Forced Displacement

## Identification for Development (ID4D)

Bronwen Manby



WORLD BANK GROUP



**Identification in the Context  
of Forced Displacement**  
*Identification for Development (ID4D)*

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1818 H Street NW  
Washington DC 20433  
Telephone: 202-473-1000  
Internet: [www.worldbank.org](http://www.worldbank.org)

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## **Cover Photo**

A Syrian refugee shows UNHCR his “maktoumeen” card issued in Syria. This document, given to unregistered stateless Kurds, confers no rights or status. UNHCR/Amit Sen/November 2013

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## SUMMARY

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Lack of identity documents is an important obstacle to the protection of people forced to leave their homes by conflict, persecution, or natural disaster. At the most basic level, a person lacking identity documents cannot travel through the legal channels. Lack of identification can make people more vulnerable to trafficking, for example by making it more difficult to prove a person's age or family relationships. Those who lack identity documents may face greater difficulties proving their entitlement to nationality or to refugee status.

The absence of fair and effective processes for registration and identification places displaced persons at the risk of exploitation and exclusion. Access to essential public services will be limited. Children are at risk of becoming stateless because of difficulties in accessing birth registration and because the rules and practices in place may prevent them from acquiring the nationality either of (one of) their parents or of the country of birth. Poorly implemented identification systems may even put displaced people at greater risk. If registration and identification procedures are not properly carried out, people who qualify to be recognized as refugees or stateless persons—or as nationals—may be subject to immigration detention and deportation to a country where they are in danger, or to illegal exploitation where they are. Weak identification systems can make it difficult for displaced persons and their children to reunite, to repatriate after crises have ended, and to reclaim land and property that they left behind.

Robust identification and registration systems for displaced people also mitigate the disruptive impacts of rapid influxes of refugees for governments, and assist planning to respond to the needs of the displaced populations.

Lack of identification may be both a consequence and cause of forced displacement. Documents are lost or destroyed as a result of the conflict or disaster that force people to flee their homes, or during arduous journeys to a new country. Lack of identification documents may even be the proximate cause of displacement. Undocumented people are at risk of expulsion by governments as irregular migrants, even if they are entitled to nationality there, or have no meaningful connection or documentation in any other state—including the state to which they are deported. Discriminatory exclusion from access to nationality and associated documents has led to conflict and refugee outflows from countries such as Côte d'Ivoire.

Although the question of identification is conceptually distinct from the question of legal status in a country, it is increasingly inseparable in practice, including for those who are not migrants but are in their country of birth and life-long residence. As requirements to produce identity documents are ever more pervasive, it becomes more important that the legal frameworks and systems to determine a person's eligibility for a particular status and to issue the appropriate documents are fair, inclusive, and efficient, and meet international human rights obligations. Provision of birth registration is the first imperative to ensure that each person has proof of legal identity; but birth registration is only a starting point, and, depending on context, other forms of proof of status will be needed. International law lays down important standards, but there remain gaps. The commitment of the Sustainable Development Goals (SDGs) to "provide legal identity for all, including birth registration," provides an opportunity to address some of these deficits; but the meaning of "legal identity" beyond birth registration still needs further elaboration.

In order to address the weaknesses in existing systems, the international community should work with governments in both sending and receiving countries to strengthen identification and protection of migrants and refugees. Some inter-governmental organizations, particularly UNHCR, IOM, and UNICEF, have long track records in supporting identification and registration processes and providing assistance to the forcibly displaced. However, there is a need for better coordination and a harmonized approach that targets the particular needs of different migrant groups, and that seeks to overcome political as much as logistical barriers.

Within this sphere, there is room for the World Bank to engage. First, given the Bank's expertise and focus on identification, it can play a convening role among international agencies, governments, and civil society partners to discuss the principles to guide interventions in the field of identification. Because the Bank already works directly with governments to strengthen national civil registration and identification systems, it can also help ensure that these systems "leave no one behind," as promised by the SDGs. Finally, the Bank may be able to leverage programs that involve social protection and assistance in the context of forcible displacement to support and incentivize robust identification systems.



# 1. IDENTIFICATION AND PROTECTION

UNHCR estimated that, as of the end of 2014, almost 60 million individuals were forcibly displaced worldwide as a result of persecution, conflict, generalized violence, or human rights violations.<sup>1</sup> These vulnerable populations face considerable physical, economic, and social hardships in the process of moving—or fleeing—to a new country of residence. The problems are compounded for people who lack official documents that establish their identity and nationality.

## 1.1 THE STARTING POINT: BIRTH REGISTRATION

Civil registration is the foundation of state identification systems and is the key to many protection concerns.<sup>2</sup> Birth registration is often required for children to access public services, and it is also evidence of the facts (location of birth and identity of parents) that will enable the child to claim proof of nationality and thus access other rights. Being unregistered or undocumented from birth has severe implications for the civil, political, economic, and social rights of an individual—both as a child and as an adult.

Birth registration may also be needed to establish the rights of displaced persons. In addition to being a foundational identity document showing place of birth and connection to a reference country for the purposes of determining nationality or refugee status, birth certificates also form proof of age, directing applicants into the systems for child protection or into the adult processes.

Formal registration of civil status events (births, adoptions, marriages, divorces, deaths) is, in addition, in many countries necessary for those events to be officially recognized (determining, for example, rights to residence, to support and custody of children, to inheritance, and to nationality). In some countries, the registration of all subsequent life events depends on registration of birth; in others, such as Indonesia, marriage registration is a precondition for birth registration, but may not be accessible to people without a formal legal status in the country. While there may be systems for late registration of such events, it is invariably more expensive and more difficult.

## 1.2 IDENTIFICATION, LEGAL IDENTITY AND NATIONALITY

Depending on the context, there may be little distinction between relative lack of documentation, which applies to people whose births have been registered but who do not possess a legally valid identification document (whether issued by the state of residence or another state) on reaching adulthood; and absolute lack of legal identification, which applies to people whose births were never registered, and who were never able to obtain any official identity documents.<sup>3</sup>

Civil registration is therefore not a complete solution to the question of legal identity, although its importance is recognized by SDG Target 16.9 to “provide legal identity for all, including birth registration.” The other forms of official registration and identification which a person may require or be entitled to vary by context.

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<sup>1</sup>*World at War: Global Trends: Forced Displacement in 2014*, UNHCR, 2015, <http://unhcr.org/556725e69.html>. See the Annex for definitions of terms related to migration, as well as Figure 3.

<sup>2</sup>Civil registration and vital statistics (CRVS) is the continuous, permanent, compulsory and universal recording of the occurrence and characteristics of vital events of the population in accordance with the law.

<sup>3</sup>Mia Harbitz and Bettina Boekle-Giuffrida, *Democratic Governance, Citizenship, and Legal Identity: Linking Theoretical Discussion and Operational Reality*, Inter-American Development Bank, 2009.

### 1.3 INTERNATIONAL STANDARDS FOR THE PROTECTION AND IDENTIFICATION OF MIGRANTS AND REFUGEES

International law historically presumed that a person's rights would be determined and protected by the state of nationality, not only if resident in that country but also if resident abroad, by the means of diplomatic protection. For this system to work, it needed to be clear which state had the right to exercise authority over a person and represent his (*sic*) interests. Thus, long before the international human rights framework was established, statelessness was regarded as an anomaly in international law. The first multilateral international treaty on nationality, adopted in 1930,<sup>4</sup> aimed at establishing common rules to ensure that every person had a nationality, and just one nationality—while leaving states a large degree of sovereign discretion in determining who were their nationals. Gender discrimination was assumed to be the norm.

The international human rights regime established since the second World War presumes that states should respect and protect the rights of all those within their territories, whether nationals or not, and guarantees most rights to “everyone.” Nonetheless, international law still permits important differences between the treatment of nationals and nonnationals, and protection of a state of nationality remains an important guarantee of rights. Thus, the Universal Declaration of Human Rights also provides that “Everyone has the right to a nationality” and the framework of international treaties has since elaborated on that right, including the Convention on the Rights of the Child, to which every UN member state except the USA is a party, and the conventions prohibiting discrimination (see Box 1). However, it is often not entirely clear which state has the obligation to recognize a particular individual as its national. States tend to resist encroachment on their discretion in matters related to the recognition, grant and withdrawal of nationality—though gender discrimination has become increasingly rare, and dual nationality is increasingly permitted.

The international law framework relating to refugees and stateless persons was established in recognition of the fact that a person might be unable to access the protection of his or her state of nationality or residence—or indeed might need protection from that state. However, the status of a refugee or a stateless person is intended to be a temporary one, since the concept is that a person is provided international protection with this status until such time as he or she can go home, is entitled to acquire nationality in the country of refuge, or is resettled in a third country where naturalization is available (the three “durable solutions” proposed by UNHCR). The relevant international conventions call on states to facilitate naturalization of refugees and stateless persons.

The question of identification is conceptually distinct from the question of legal status in a country, but increasingly inseparable in practice. From the outset, the provision of identification documents was built into the legal framework for international protection of refugees and stateless persons, and some common standards of refugee identification have been established by UNHCR. There is no such consensus or legal framework around identification as a national (or access to nationality), and a range of different documents may be accepted as proof of nationality, depending on context. Birth certificates, national identity cards, and passports are often not formal legal proof of nationality, even where they are accepted as such for all usual purposes. On the other hand, theoretical entitlement to a nationality is increasingly not meaningful if a state does not recognize the person as a national through the issue of the relevant documents that enable them to function—which vary by country but usually include birth certificates, national identity cards, and passports.

Thus, UNHCR emphasizes that statelessness is a “mixed question of fact and law”: the key factor in determining if a person is stateless is whether any state is in fact willing to recognize that person as its national.<sup>5</sup> A person may be stateless even if lack of recognition as a national appears to be in violation of a state's own laws or of international law. For example, following the 2011 secession of South Sudan to form a new state, Sudan amended its nationality law so that people of mixed ancestry were no longer recognized as Sudanese—even though the Sudanese constitution provides that the child of a Sudanese father or mother has “an inalienable right to

<sup>4</sup>The Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, 1930.

<sup>5</sup>See *Handbook on Protection of Stateless Persons*, UNHCR, 2014, <http://www.unhcr.org/53b698ab9.html>.

nationality.” The 1982 Myanmar law that did not list the Rohingya, previously regarded as citizens, among those “indigenous” groups given nationality, is in violation of international prohibitions on the deprivation of nationality on racial, ethnic, religious or political grounds.

The legal statuses—paired with official identification documents—that respect the obligations of international law to provide an individual with protection of his or her rights are, therefore:

- Confirmation of the nationality of the person’s “own country” (i.e., the place where they have the strongest connections), or recognition or acquisition of the nationality of another country to which they have connections where that is not available; or
- The status of refugee or stateless person; or
- A temporary status pending confirmation of nationality or refugee/stateless person status (including the status of asylum seeker).

In the context of the identification and protection of those forcibly displaced across international borders, a country receiving such a person should undertake an individual process to (a) determine a person’s nationality or stateless status, (b) establish the reasons for fleeing and whether the person is a refugee, and (c) issue the person with an identification document confirming refugee or stateless status, or, if the person is determined to be an irregular migrant, obtain from the relevant consular authorities confirmation of the nationality of the state to which deportation is intended. Similar processes may be needed as a response to forced displacement within a country’s own borders, with the objective of restoring or providing documentation of nationality or other status.

### **Box 1: RELEVANT INTERNATIONAL STANDARDS**

Recognition as a person before the law: A range of international and regional human rights establish the right of every person to recognition as a person before the law, meant to ensure legal status and capacity to exercise rights and enter into contractual obligations.<sup>6</sup>

Birth registration: The International Covenant on Civil and Political Rights and the Convention on the Rights of the Child provide that it is the right of every child to be registered immediately after birth. This is emphasized by the Migrant Workers Convention.<sup>7</sup>

Identity of children: The Convention on the Rights of the Child requires states to respect the right of the child “to preserve his or her identity (including nationality, name and family relations)” and, “where a child is illegally deprived of some or all of the elements of his or her identity, to provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.”<sup>8</sup>

Identity documents for refugees: The 1951 Refugee Convention requires states to provide every refugee with a means of identifying him or herself: either a valid travel document, or identity papers.<sup>9</sup> Similar obligations apply to stateless persons and the internally displaced.<sup>10</sup>

Destruction of documents: The Migrant Workers Convention prohibits the destruction of identity documents.<sup>11</sup>

*(continued)*

<sup>6</sup>Including the Universal Declaration of Human Rights (UDHR) Article 6; International Covenant on Civil and Political Rights (ICCPR), Article 16, and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers’ Convention), Article 24. See also, Working Group on Enforced or Involuntary Disappearances, General Comment on the right to recognition as a person before the law in the context of enforced disappearances, A/HRC/19/58/Rev.1, 2 March 2012.

<sup>7</sup>ICCPR, Article 24(2); Convention on the Rights of the Child (CRC), Article 7; Migrant Workers’ Convention Article 29. The ICCPR has 168 States Parties and the CRC 196, but the Migrant Workers’ Convention only 48.

<sup>8</sup>CRC, Article 8.

<sup>9</sup>UN Convention relating to the Status of Refugees (Refugee Convention), Articles 27 and 28. The Refugee Convention has 145 State Parties.

<sup>10</sup>Convention relating to the Status of Stateless Persons, Article 27 (86 States Parties); UN Guiding Principles on IDPs, Principle 20; Kampala Convention, Article 13.

<sup>11</sup>Migrant Workers’ Convention, Article 21.

## Box 1: CONTINUED

False documents: The Refugee Convention provides that the fact that a person carries false identification documents or has entered the country illegally is not in itself a reason to refuse that person refugee status or impose any penalties.<sup>12</sup> The Protocol to the Convention Against Transnational Organized Crime on the smuggling of migrants provides that, whereas producing or procuring a fraudulent identity document shall be criminalized, migrants themselves shall not become liable to criminal prosecution for that reason.<sup>13</sup>

“Integrity and security” of documents: Protocols to the UN Convention Against Transnational Organized Crime require States parties to implement measures to ensure the adequacy of the “quality” and “integrity and security” of documents such as passports.<sup>14</sup>

Identification as a national: There is no common format in international law for proof of nationality, although there is an agreement among some (mostly) European states in relation to the provision of a “certificate of nationality” as definitive proof of nationality when supplied to another state.<sup>15</sup>

Nationality: The Universal Declaration of Human Rights states that “Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality” (Article 15).

- The 1961 Convention on the Reduction of Statelessness requires states to grant nationality to a person in some circumstances, notably to a child born in the territory of that state where the child would otherwise be stateless and to a child found in the territory of unknown parents, and also places limits on the deprivation of nationality.<sup>16</sup>
- The Conventions relating to the Status of Refugees and of Stateless Persons create a general obligation to facilitate naturalization “so far as possible.”<sup>17</sup>
- The International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Migrant Workers’ Convention all provide for every child to acquire a nationality.<sup>18</sup>
- The Convention on the Elimination of All Forms of Discrimination Against Women requires states to end discrimination on the basis of sex in transmission of nationality between spouses and from parent to child, and other conventions prohibit different forms of discrimination.<sup>19</sup>
- The UN Human Rights Council has repeatedly affirmed that arbitrary deprivation of nationality is a violation of human rights and fundamental freedoms.<sup>20</sup>
- Regional treaties restate and reinforce these rights.<sup>21</sup>

<sup>12</sup>Article 31(1), Refugee Convention: “The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”

<sup>13</sup>Protocol Against the Smuggling of Migrants, Articles 5 and 6.

<sup>14</sup>Article 12 of both the Protocol against the Smuggling of Migrants and the Protocol to Prevent, Suppress and Punish Trafficking in Persons.

<sup>15</sup>International Commission on Civil Status (ICCS) Convention No. 28 on the issue of a certificate of nationality, 1999. The ICCS is an intergovernmental organization whose aim is to facilitate international cooperation in civil status matters. Most member states are European (Belgium, France, Greece, Luxembourg, Mexico, Netherlands, Poland, Spain, Switzerland and Turkey. States with observer status are Cyprus, Holy See, Lithuania, Moldova, Peru, Romania, Russian Federation, Slovenia and Sweden).

<sup>16</sup>Convention on the Reduction of Statelessness (65 States Parties), especially Articles 1, 8 and 9.

<sup>17</sup>Refugee Convention, Article 34 ; Convention Stateless Persons, Article 32.

<sup>18</sup>CRC, Article 7; ICCPR Article 24(3); Migrant Workers’ Convention Article 29. The CRC is ratified by every state recognized by the UN except for the United States (Somalia and South Sudan became parties in 2015).

<sup>19</sup>Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Article 9; Convention on the Elimination of All Forms of Racial Discrimination (CERD), Articles 1 and 5; Convention on the Rights of Persons with Disabilities, Article 18.

<sup>20</sup>Resolutions and reports available on the website of the Office of the High Commissioner for Human Rights: <http://www.ohchr.org/EN/Issues/Pages/Nationality.aspx>.

<sup>21</sup>The American Convention on Human Rights (Article 10) and the African Charter on the Rights and Welfare of the Child (Article 6) provide for the right to birth registration and a nationality, including for children born in a territory who would otherwise be stateless. The Council of Europe adopted a specific Convention on Nationality that provides more detailed guidance on the content of nationality laws.

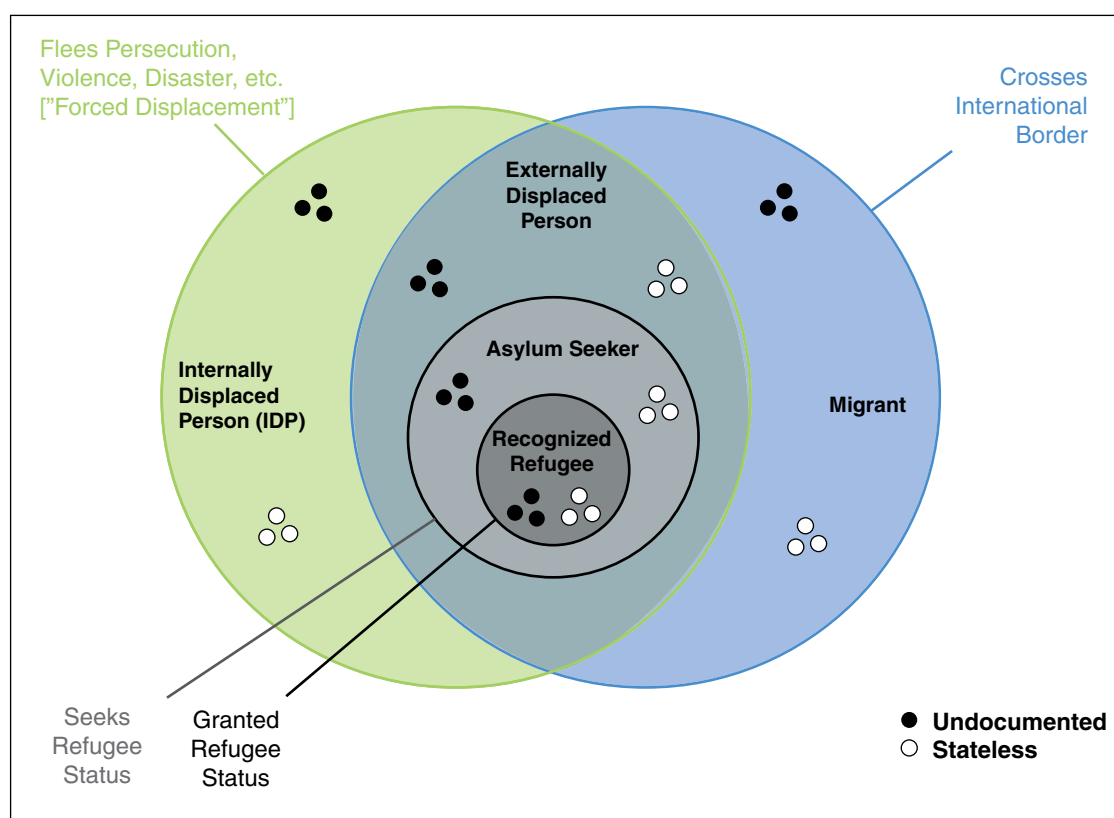
## 2. LACK OF IDENTIFICATION AND FORCED DISPLACEMENT

Lack of identification creates additional vulnerability for those who are displaced, while they are on the road, in their host countries, and on returning home. The absence of effective registration and identification systems also exacerbates the disruptive impacts of forced displacement on governments. Forced displacement is itself both a cause and consequence of lack of identification, and the proportion of forcibly displaced persons who are undocumented may be significant in some contexts. Among these, some are stateless and unable to obtain recognition of nationality in any country with which they are affiliated.

Lack of identification is not confined to those who have been forcibly displaced. The World Bank has an estimate of around 1.5 billion people worldwide lacking official identification.<sup>22</sup> UNHCR states that the number of stateless persons is “at least 10 million,” of whom 3.5 million are in countries with at least some reasonable data on the number.<sup>23</sup> Both of these numbers require further research to increase accuracy, as well as greater detail at regional and country levels. Most people who are undocumented or stateless live in the country of their birth and habitual residence, but they may be at greater risk of displacement.

See Figure 1 for a typology of migration categories, the discussion of migrants and refugees under Section 3.1 below, and the Annex for detailed definitions of the terms.

**FIGURE 1** Typology of Migration Categories



<sup>22</sup>World Bank, *Identification for Development Strategic Framework*, January 2016.

<sup>23</sup>UNHCR, *Global Action Plan to End Statelessness 2014–24*, November 2014.

## 2.1 CONSEQUENCES OF LACK OF IDENTIFICATION FOR MIGRANTS AND REFUGEES

A lack of official documentation—from both the country of origin and/or the country of residence—endangers migrants and refugees (a) during the migration process, (b) once in a new country, and (c) upon return. The importance of identification depends on national context, and the degree to which identity documents are a precondition for access to services and exercise of rights, but see Figure 2 for a summary of key issues.

### During Migration

Lack of identity documents poses serious problems for all types of migrants, and in particular for refugees and others fleeing conflict or disaster. First, it makes regular migration impossible. Identity documents including proof of nationality are needed to cross international borders and internal checkpoints. People who migrate—by choice or by force—and do not hold a valid travel document must use irregular channels, such as smugglers, in order to cross international borders, exposing them to risks of physical harm and exploitation. Undocumented migrants who die in transit remain unidentified and their families are never informed of their fate.

Second, a lack of identification makes it more difficult to obtain refugee status or related protection, or regular migrant status. In the current situation on the borders of the European Union, for example, for most of 2015 those who could show they were of Syrian, Afghan or Iraqi origin were accepted as asylum seekers and permitted to travel further, whereas those of other origins faced additional hurdles. In the absence of documents that prove nationality and identity, the procedure to determine refugee status depends on responses to interview questions and other submitted evidence. Sometimes, however, these determinations rely on unscientific assessments of factors such as accent or family name, carried out by untrained staff, leaving potentially genuine refugees vulnerable to having their asylum applications rejected.

This problem is exacerbated for stateless persons—those not considered as nationals by any state—who become refugees. For example, there was a large population of Kurdish people residing in Syria but not recognized as citizens. Although their rights as refugees are in principle unaffected, their lack of Syrian identity documents may make it more difficult to get recognition of refugee status.

In countries that are not party to the 1951 Convention relating to the Status of Refugees (around 40 in total, mainly in the Middle East and Asia, including Lebanon and Jordan), a person who would elsewhere be accepted as a refugee may be required to obtain entry and residence documentation like any other foreigner—even if the exceptional nature of the situation is recognized and UNHCR is able to provide assistance. Those who lack documentation cannot complete this process and may be considered “illegally” present and subject to arrest and deportation.<sup>24</sup>

### In the Host Country

Once migrants and refugees have arrived in a new country, a lack of legally valid identification documents issued by the host country leads to additional vulnerabilities. First, it can make it difficult or impossible to access basic services such as health care, education for children, and social benefits,<sup>25</sup> or obtain legal employment. Identification as being legally present in the country—whether as a national, a refugee or stateless person, or regular migrant—is often a precondition to access services provided by the state, and may also be a requirement for private providers. Only the most basic services, usually those for (young) children and some emergency responses, are likely to be provided without any questions related to identity and entitlement.

<sup>24</sup>*Legal Status of Refugees from Syria: Challenges and Consequences of Maintaining Legal Stay in Beirut and Mount Lebanon*, International Rescue Committee (IRC) and the Norwegian Refugee Council (NRC), June 2015, [http://www.nrc.no/arch/\\_img/9202281.pdf](http://www.nrc.no/arch/_img/9202281.pdf). See also, *No Escape Civilians in Syria Struggle to Find Safety Across Borders*, IRC and NRC, November 2014, [http://www.nrc.no/arch/img.aspx?file\\_id=9187507](http://www.nrc.no/arch/img.aspx?file_id=9187507). There is a useful summary of the legal status of refugees in four middle eastern countries from the US Library of Congress at <https://www.loc.gov/law/help/refugees/legal-status-refugees.php>.

<sup>25</sup>As outlined in the ID4D project publications, as well as Alan Gelb and Julia Clark, “Identification for Development: The Biometrics Revolution,” *Working Paper* 315, Center for Global Development 28 January 2013 <http://www.cgdev.org/publication/identification-development-biometrics-revolution-working-paper-315>.



**FIGURE 2** Key Risks for Migrants and Refugees Without Official Identity Documents

### During migration

- Unable to migrate legally
- Vulnerable to extortion and trafficking
- Deaths unrecorded and not notified to families
- Difficulty claiming refugee status and risk of deportation

### In the host country

- Limited protection of individual rights, risk of abuse or exploitation
- Limited access to services and benefits
- Inability to document life events (births, marriages, etc.)
- Inability to naturalize on the basis of long-term (legal) residence

### Returning home

- Inability to repatriate, because of difficulty proving nationality, especially for children of migrants
- Difficulty reclaiming property and other rights
- Post-conflict population registries may intentionally or unintentionally exclude groups

Second, it may make it impossible to obtain other documents—such as registration of births, deaths, and marriages—that may be necessary to claim future benefits, to assert rights within the family, or to obtain official proof of identity and nationality in the host country or country of origin.

Thirdly, naturalization based on long-term residence is inaccessible in most cases if there is no proof through official documentation that residence has been legal. Naturalization may be inaccessible even with such documents, depending on national rules and practices, but is put out of reach if they have not been issued.

Finally, a lack of documents can also reduce the protection of human rights. Individuals without the right identity documents may be subject to harassment, labor exploitation, informal “taxation,” arbitrary detention or expulsion, or, in the worst crisis situations, killed. Others may be stranded in transit countries. An identity document was the most immediate need expressed in a survey of 172 migrants by UNHCR and IOM in 2013 in Niger and Togo—60 percent mentioning documentation as a more urgent requirement than transport, food, health care, shelter and other needs.<sup>26</sup>

Separate civil registration systems for refugee populations can have strengths in planning and providing services for refugee populations, but they also risk creating ambiguity about the legal status of the registration documents, and their permanence, if they are not integrated into the regular national systems. For instance, a child born to a registered Afghan refugee in Pakistan will not be issued a birth certificate that shows where the child was born, but rather the name is attached to the refugee registration record of the parents.

<sup>26</sup>Silvère Konan, *Migrants en détresse: Analyse de situation et cadre de protection: Le cas du Niger et du Togo*, UNHCR and IOM, July 2013.



## Returning Home

As conflicts end, former refugees seek to return to their homes. Inadequacies in documentation create a number of obstacles for repatriation. First, returning refugees and migrants and their children may have difficulties re-establishing their nationality in the country of origin. These difficulties will be exaggerated if they do not have the assistance of UNHCR or another agency. This includes individuals who might have qualified as refugees, but chose not to do so; for example within the zone of free movement among the ECOWAS member states in West Africa. Those who have remained outside their country for many years, especially those who were born abroad or who left as children, may be unable to demonstrate the knowledge and other attributes (including language and accent) that will satisfy consular authorities of their nationality if and when they wish to return.

The 1951 Refugee Convention includes “cessation clauses” that apply when a refugee no longer needs international protection.<sup>27</sup> Under certain circumstances, UNHCR may declare that its competence ceases to apply in relation to a particular country situation. When this happens, the usual procedure is for tripartite agreements to be reached among the country from which the refugees originally fled, the various host countries, and UNHCR, in order to assist with voluntary return or local integration<sup>28</sup> of those people.

Problems with this process can arise when procedures to determine nationality leave some unrecognized as nationals, as has been the case in Liberia (see Box 2). Sometimes, the failure to recognize returning nationals

### Box 2: FORMER LIBERIAN REFUGEES IN GUINEA<sup>29</sup>

Maria Gaye was born in 1968, in Grand Gedeh county, Liberia, of two parents also born in Liberia. She fled Liberia in 1990, and spent the next five years in refugee camps in Sierra Leone, then crossed the border to Guinea in 1996, spending a year in Forecariah camp, and travelling to Conakry in 1997. She had no documents in Liberia other than a school enrolment card, which she has lost. In Sierra Leone she had a refugee card from UNHCR and a ration card. In 1997 she received an *attestation de réfugié* from UNHCR and the Guinean *Commission nationale d'éligibilité*. She has four children: two born in Sierra Leone and two born in Guinea, as well as two grandchildren born in Guinea; though all the children and both grandchildren have birth certificates, they have no nationality documentation in any country.

Her husband was killed in the attacks against refugees incited by the government of Lansana Conté in 2000–2001. Maria opted for local integration when the conflict in Liberia was declared over and the refugees were given the option to choose between local integration or voluntary repatriation. She completed the application to receive a Liberian passport, on the basis of which she could regularize her status in Guinea. When interviewed in June 2014, the latest renewal of her refugee card was valid from February to June 2013 and had expired; she also had a temporary *carte de séjour* valid for one year—which expired at the end of June 2014. Just a few weeks from the expiry of that card she had not received a passport, though others who had gone through the same process had done so. Without a Liberian passport, Maria Gaye would be stateless and, in the absence of any procedure for recognizing and documenting stateless persons, unable to regularize her status in Guinea.

More than 1,000 people who registered with UNHCR as Liberian refugees in different West African countries were denied recognition as Liberian citizens when the conflict was declared over and UNHCR facilitated the return of refugees to Liberia. Many of those denied Liberian passports in fact wished to naturalize in their current country of residence (including Maria Gaye), but were also unable to access that nationality.

<sup>27</sup>UNHCR, Note on the Cessation Clauses, EC/47/SC/CRP.30, 30 May 1997, <http://www.unhcr.org/3ae68cf610.html>.

<sup>28</sup>“Local integration” does not necessarily require naturalization in the host country (although the Refugee Convention does call for naturalization to be “facilitated”), but, at minimum, confirmation of legal residence.

<sup>29</sup>From Bronwen Manby, *Nationality, Migration and Statelessness in West Africa*, UNHCR and IOM, 2015.

is a deliberate political act, as in Mauritania, where refugees returning from Senegal under a voluntary repatriation program struggled to obtain the Mauritanian identity documents to which they are entitled. These people become stateless if they are not able to acquire another nationality. For those who have been forcibly displaced, it can even be unclear which is the country of nationality. For example, more than 80 percent of those who have fled from Nigeria to Niger to escape Boko Haram have no documents of any kind, but are potentially entitled to nationality in either country. The risk is that, if and when return is possible, both countries will assert that they are in fact nationals of the other. UNHCR in Niger is attempting to forestall this possibility by registering refugees with as much information about their origins as possible, thus creating records that may be useful to reestablish nationality in due course.<sup>30</sup>

Second, foreign civil registration documents may not be accepted as evidence of the facts they state, meaning that they have no legal effect for proof of nationality or other relationships. Depending on the laws and administrative practices of the country of birth, children of refugees may be left stateless. Côte d'Ivoire, for example, does not accept civil registration documents from other countries unless the event was also registered with the Ivorian consular representatives in that country. Some countries, for example in Asia, only record information on civil registration documents in national languages, which are not commonly understood in neighboring countries, including the country of origin of refugees.

Third, identification and re-establishment of nationality and other aspects of identity may be required to be able to reclaim titles to property. This is particularly a concern in countries where land ownership is restricted for foreigners.

Finally, new population registries established in the country of origin may be exclusionary. The implementation of new identification systems, common in post-conflict environments or where sovereignty is transferred, is a notorious point of danger for the creation of stateless populations. In Lebanon, Syria, and the Gulf States, the descendants of those who were not included in the population registries created at the time of independence remain stateless today, even though their ancestors should have been entitled to nationality under the law. Similar problems have arisen in the successor states of the former Yugoslavia and Soviet Union.<sup>31</sup>

## For Governments

From the point of view of governments managing forcibly displaced populations, a rapid and unmanaged influx of undocumented people (whether across a border or from one part of the country to another) has implications for security, crime prevention and detection, the provision of public services, and the economy. Robust identification and registration systems help to mitigate the disruptive impacts of forced displacement; lack of registration increases vulnerabilities. Registering individuals efficiently can also provide immediate information about people seeking protection that may not be available through survey methods. This information can then be used to design interventions to address the needs of the people registered, including by providing adequate resources to affected local governments. Death registration may also be important for identifying and avoiding potential epidemics of communicable diseases.

## 2.2 THE RELATIONSHIP BETWEEN FORCED DISPLACEMENT AND IDENTIFICATION

Some displaced people are undocumented because they never received identification in their countries of origin—this lack of documentation may even have contributed to the need to migrate. Others lose identification documents during their journeys. Displacement may thus be both a cause and consequence of lack of identification. See Figure 3 for a summary.

<sup>30</sup>See for example, "Niger Government launches campaign to issue identity documents to displaced population in Diffa," UNHCR 17 February 2014, <http://unhcrniger.tumblr.com/post/76947731481/niger-government-launches-campaign-to-issue>; "Nigeria crisis: IOM regional assessment findings and recommendations, 23 Jan-06 Feb 2015," IOM, 23 February 2015 <http://reliefweb.int/report/nigeria/nigeria-crisis-iom-regional-assessment-findings-and-recommendations-23-jan-06-feb>.

<sup>31</sup>See, for example, *Report on Statelessness in South Eastern Europe*, UNHCR offices in Bosnia & Herzegovina, Croatia, Former Yugoslav Republic of Macedonia, Montenegro, Serbia (and Kosovo: SCR 1244), 2011. <http://www.refworld.org/pdfid/514d715f2.pdf>.

**FIGURE 3** Relationship Between Forced Displacement and Identification

Forced Displacement → Lack of ID	Lack of ID → Forced Displacement
<ul style="list-style-type: none"><li>• Documents are lost or left behind as people flee</li><li>• Deliberate destruction of documents as part of campaign of ethnic cleansing</li><li>• Documents are confiscated or destroyed by border guards or traffickers</li><li>• Those displaced who fear they may have no claim to refugee status destroy documents themselves</li><li>• Births of migrants are not registered</li><li>• Orphans and children separated from their parents have nobody to attest to their origins</li><li>• Restrictions on transmission of nationality to children born abroad mean that children cannot acquire their mother’s nationality if their fathers are unknown, dead or missing (e.g., Syria)</li><li>• Naturalization processes are hard to access and no protections against statelessness for those born in host country</li></ul>	<ul style="list-style-type: none"><li>• Lack of official identification creates risk of deportation on grounds of illegal presence</li><li>• Exclusion of a particular group from nationality leads to conflict, causing outflows of refugees</li><li>• Mass expulsions of members of a group whose nationality is collectively not recognized</li><li>• Lack of documentation facilitates human trafficking, especially of children</li><li>• General exclusion due to lack of identification can drive people to migrate for better opportunities</li><li>• Refusal of identity documents or rights in first country of refuge may cause refugees to move to third countries</li></ul>

**Forced Displacement as a Cause of Lack of Identification**

Forced displacement may result in a person losing documentation for a number of reasons:

- People fleeing in haste may not be able to collect identity documents before they leave, or may lose documents along dangerous routes to safety; the most fragile and conflict-affected states may have no capacity to issue documentation to begin with.
- Parties to a conflict may be responsible for the systematic destruction of identity documents, as part of a campaign of ethnic cleansing (e.g., it has been reported that “Islamic State” forces have been doing this).
- Soldiers, border guards and (especially) informal militia at roadblocks, as well as smugglers, may confiscate or destroy identity documents, especially if bribes are not forthcoming.
- Conflicts and disasters that drive migration may also destroy national records, making lost or stolen documents impossible to replace; or, where conflict is based on denial of nationality, combatants may deliberately target state archives, such as civil registration offices (e.g., during the Côte d’Ivoire civil war).
- Children who are orphaned or separated from their parents and communities by conflict or disaster may have no documents and be unable to establish their identity to the satisfaction of national authorities.
- Children whose fathers are of unknown or different nationality from their mothers, or who are missing or dead, may not be able to obtain their mother’s nationality (this includes children of Syrian mothers, who have extremely limited rights to confer nationality on their children under Syrian law).
- Children born of rape in wartime and rejected by their families are at particular risk.

Once those displaced have relocated to a new country, their situation may inhibit them from receiving additional forms of official identification:

- While other non-nationals can turn to the consular authorities of their country of origin for help in obtaining documents, refugees do not have this option and are therefore dependent upon the authorities of their country of refuge or upon UNHCR for assistance in this regard.
- Lack of access to civil registration in the host country for the children of refugees (and irregular migrants) may prevent them from existing in any database dependent on identification, as well as from registering other life events (such as marriage), and from establishing entitlement to nationality, whether in that country or in the country of origin.
- Naturalization is often highly discretionary and difficult to access, and contentious where the ratio of immigrants (or those perceived as immigrants, whether forced or not) to citizens is very high, either overall or in a particular region.
  - Naturalization for those with refugee status may be inaccessible in practice unless there are special programs of naturalization facilitated by UNHCR (as has happened over recent years in Tanzania for refugees from Burundi during the 1970s and their descendants). The status of refugee thus becomes a permanent status; but documents may also be progressively harder to renew (and impossible if the cessation clauses have been invoked).
  - In the Middle East and Asia, where many countries are not parties to the 1951 Refugee Convention, the law may not distinguish between refugees and migrants, meaning that those who might qualify as refugees under the treaty definition are forced to live as irregular migrants, and therefore also cannot acquire the period of legal residence to be able to naturalize.

### Lack of Identification as a Cause of Displacement

Lack of documentation can also drive migration and displacement in various ways, and at its most extreme may be the proximate reason that migrants and refugees leave their homes:

- People arbitrarily denied nationality and identification documents may be deported individually or subject to mass expulsion as stateless refugees. Perhaps the most extreme recent cases are the Rohingya Muslims of Myanmar, and persons of Haitian descent in the Dominican Republic. (The state from which they have been expelled or have fled usually asserts that such populations are not stateless, but are nationals of another state, to which they could and should return.)
- States may expel people *en masse* that it asserts are non-nationals working illegally. It may be true that some or most of those expelled do not have regular migration status, but a general lack of documentation and due process means that people who are in fact nationals may also be expelled. For example, Angola has repeatedly expelled alleged Congolese workers, many of whom may have entitlement to Angolan nationality. Alternatively, those who are expelled are indeed all foreigners, but among them are people who have very long-term links to the country, and are only not nationals because of highly restrictive provisions on access to nationality. The lack of a pathway to nationality is thus the foundation for arbitrary action.<sup>32</sup>
- Lack of recognition of the nationality of a large group of people belonging to a single ethnic group or other category has been a significant cause of conflict in some states—for example in Côte d'Ivoire and DR Congo—causing major outflows of refugees.
- Lack of birth registration and identity documentation facilitates trafficking, and child trafficking in particular, since it creates vulnerability in the state of origin, and it is impossible to prove age and to check relationships with the adults who claim custody of the child. See Box 3 for an example.

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<sup>32</sup>The UN Human Rights Committee has held that the right of a person to return to "his own country" includes "at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien." Committee on Human Rights, *General Comment No. 27: Freedom of movement (Art.12)*, 1999.

- Exclusion from society through lack of national documentation may drive people to migrate in search of better opportunities.
- The impossibility of obtaining a usable identity document (one entitling the person to a reasonable set of rights) in a country of first refuge may also cause refugees to move on to third countries.

### **Box 3: A STATELESS VICTIM OF INTERNAL TRAFFICKING IN CÔTE D’IVOIRE**<sup>33</sup>

Ibrahima was born in 1981 in Abengourou in the east of Côte d’Ivoire. He doesn’t know his parents, but he grew up among the Burkinabè community there and speaks Mooré. At six years old, he was taken away from the family where he was living by an “aunt,” and taken to Bapleu in the west of Côte d’Ivoire. The “aunt” left him with a man who subsequently entrusted him to another man, for whom he worked for seven years on a cocoa plantation, until he was around 14 years old. At that age, he went back to see the first man, an important business person in Bapleu, asking to be reunited with his family; but, instead, he was threatened and worked a further seven years.

In 2012, Ibrahima travelled alone to Abengourou to look for his parents, using as an identity document a Burkinabè consular card lent to him by the father of the deceased young man it had belonged to. He stayed three months in Abengourou, but failed to find his parents, and returned to Bapleu. According to the information he obtained from the chief of the Burkinabè community in Abengourou, it was believed that Ibrahima’s mother was Burkinabè, but nobody knew the real identity of the father, or had any information about the current whereabouts of his mother. The “aunt” who had taken him away had essentially stolen the boy and sold him for his labor; but she has now died.

Ibrahima has recently tried to obtain a genuine Burkinabè consular card, on the basis of the information he had found out about his origins, but the Burkinabè consular authorities refused to give him one because he had no documentary proof of his birth or parentage.

<sup>33</sup>From Manby, *Nationality, Migration and Statelessness in West Africa*.

### 3. ADDRESSING IDENTIFICATION NEEDS

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The provision of identification is a critical step in ensuring the protection of those who have been displaced, and in assisting the management of displaced populations. Re-establishing identification systems is also important to the building of state capacity after conflict. International organizations and donors should work together with national governments to find practical solutions for addressing the particular documentation needs of different migrant groups. However, there are significant challenges to the creation of fair and effective identification systems, and poor implementation risks excluding migrants further, especially if refugee status and nationality determination procedures are not in compliance with international standards.

#### 3.1 KEY ACTORS AND INTERESTS

Addressing these problems requires establishing: (a) the needs of different groups of displaced persons, (b) the needs and constraints of governments in sending, receiving, and transit countries, and (c) potential roles and resources of relevant international actors. This section attempts to distill the needs and roles of some of these actors.

##### Displaced Persons

There is no one solution to the question of identification for those who have been displaced. While civil registration of life events and identification for the purposes of ensuring access to social protection are applicable to all, the other forms of identification a person needs are closely tied to determination of their status and rights in international law.

There is in theory a clear legal distinction between a person who is a refugee (a person fleeing well-founded fear of persecution) and a person who is an (international) migrant (any person who crosses an international border). A migrant may be seeking economic opportunities or subject to forms of forced displacement that do not meet the international refugee definition. In Africa, the regional refugee convention broadens the definition of refugee to include a person fleeing “events seriously disturbing public order.” In practice most people have many reasons to move, a reality captured by the expression mixed migration. Those who flee persecution, violence, or disaster but do not cross an international border are termed internally displaced persons (IDPs). See Annex for definitions.

Within each of these groups, there are people who are (a) undocumented: those who lack legally valid proof of their identity from their country of origin or country of residence (or both), or (b) stateless: those who are not recognized as nationals of any country and whose applications for identification as a national have been or would be rejected in every country to which the person has a connection. In practice, it can be difficult to distinguish quickly between an undocumented person and a stateless person. It is critical for the rights of those concerned that processes of identification keep proof of or access to nationality as a central objective, and not only determination of whether a person is a refugee.

Although those who are recognized as refugees should receive identity documents, and most do so, some might remain undocumented. In Tanzania, for instance, for many years *prima facie* refugees from Burundi and DR Congo had no identification documents, leading to the arrest of refugees who had crossed the authorized perimeter of a camp and who had no means to prove their status.

See Figure 4 for a generalized summary of the particular identification needs of each group, which should be read in the knowledge that the line between undocumented and stateless, and between refugee and other migrants, is not always clear: both will require status determination procedures, which is perhaps the primary requirement for other needs to be met.



**FIGURE 4** Identification Needs by Group

	<b>IDPs</b>	<b>Refugees and Others Forcibly Displaced</b>	<b>Migrants Generally</b>
<b>Undocumented</b>	<ul style="list-style-type: none"> <li>• Registration of births and other life events</li> <li>• Assistance to acquire or replace ID documents</li> <li>• Social protection</li> </ul>	<ul style="list-style-type: none"> <li>• Registration of births and other life events</li> <li>• Assistance to acquire refugee status or other form of temporary protection</li> <li>• Provision of ID documents from country of residence</li> <li>• Social protection</li> </ul>	<ul style="list-style-type: none"> <li>• Registration of births and other life events</li> <li>• Assistance to acquire ID documents from country of residence, where entitled</li> <li>• Assistance to acquire or replace ID documents from country of origin</li> <li>• Social protection</li> </ul>
<b>Stateless</b>	<ul style="list-style-type: none"> <li>• Registration of births and other life events</li> <li>• Assistance to acquire nationality and related ID documents (usually in country of residence) or, if not possible, the status of stateless person</li> <li>• Social protection</li> </ul>	<ul style="list-style-type: none"> <li>• Registration of births and other life events</li> <li>• Assistance to acquire nationality or status of stateless person, and refugee status or other form of temporary protection</li> <li>• Provision of ID documents from country of residence</li> <li>• Social protection</li> </ul>	<ul style="list-style-type: none"> <li>• Registration of births and other life events</li> <li>• Assistance to acquire nationality or status of stateless person</li> <li>• Provision of ID documents from country of residence</li> <li>• Social protection</li> </ul>

## Governments

States have the obligation to ensure that the birth of every child in their territory is registered, including the children of refugees and irregular migrants. States also have the authority to determine the legal status of a person in their territory, whether born there or a migrant, and the obligation to do so on the basis of international standards for protection, including due process. States have a particular obligation under the Convention on the Rights of the Child to assist children to preserve or re-establish their identity, including nationality, name and family relations (see Section 1.3).

Governments tend to hold closely to their sovereign right to issue identification documents to those in their territory. UNHCR and IOM, the principal international agencies responsible for advice on issuing identification documents to migrants, may, however, be involved in supporting registration processes (see below).

Each government has different procedures and standards for issuing identification documents to migrants and refugees; it is difficult to make generalizations about those procedures. The types of documents issued to refugees also vary quite widely, although the Refugee Convention has some basic requirements. There are efforts



to develop common-form identification processes and documents at the level of the EU and some other inter-governmental bodies (including ECOWAS, for example).<sup>34</sup>

## International Organizations

International organizations—including UNHCR, IOM and UNICEF—play a large role in assisting to strengthen systems for documentation of migrants and refugees in receiving countries, and for their return to their countries of origin, where appropriate.<sup>35</sup>

**UNHCR** is the international agency responsible for protection of refugees under the 1951 Refugee Convention and its 1967 Protocol (expanding its reach beyond Europe). UNHCR's mandate for the identification and protection of stateless persons who are not also refugees, and for the prevention and reduction of statelessness, derives from UN General Assembly resolutions adopted in 1995 and 2006.<sup>36</sup> UNHCR also has the lead role in overseeing the protection and shelter needs of IDPs and the coordination and management of camps.<sup>37</sup>

In principle, it is the responsibility of the host government to determine status and issue identity papers to those it considers to be refugees. In practice, both can be either a joint responsibility or delegated completely to UNHCR (often in very weak states such as DR Congo or South Sudan, but also, for example, in Egypt and Turkey, or in countries that are not parties to the 1951 Refugee Convention).<sup>38</sup>

There are three broad scenarios:

- Governments with somewhat robust identification systems and greater resources issue identity cards to refugees, using their own refugee registration data, or registration data gathered and maintained by UNHCR or by UNHCR and the government jointly.
- Refugees are issued ID cards jointly endorsed by UNHCR and the government, based on a UNHCR or joint registration and/or refugee status determination procedure.
- In an emergency situation, refugees may not be issued with individualized IDs, but only entitlement cards and letters attesting to the status of the family or individual. ID card issuance commences after the situation stabilizes and there is a possibility to conduct a verification exercise.

Generally, UNHCR seeks to keep entitlement documents (ration cards, etc.) and refugee identification separate. The agency is beginning to issue identification documents for entitlements based on biometric registration.<sup>39</sup>

In November 2014, UNHCR launched a campaign to end statelessness within 10 years, with a ten point Action Plan for its implementation. Action 7 is to ensure birth registration; Action 8 is to “Issue nationality documentation to those with entitlement to it.” Because nationality law and practice and the documents that are proof of nationality vary by country, while not all countries indeed have a single document that is proof of nationality, Action 8 is one of the more complex ones on which to provide authoritative guidance to states.

**IOM** is “the leading international agency working with governments and civil society to advance the understanding of migration issues, encourage social and economic development through migration, and uphold the human dignity and well-being of migrants.”<sup>40</sup> IOM is not a UN agency and does not have a formal treaty mandate for protection like that of UNHCR, but its entry into the UN system is under discussion. Globally, IOM provides return

<sup>34</sup>EU policies searchable at: [http://ec.europa.eu/dgs/home-affairs/e-library/documents/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/e-library/documents/index_en.htm).

<sup>35</sup>Regional bodies, including the European Union, have their own initiatives. For the EU, see [http://ec.europa.eu/dgs/home-affairs/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/index_en.htm).

<sup>36</sup>See especially “Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons No. 106 (LVII) – 2006”, EXCOM Conclusions, 6 October 2006, <http://www.unhcr.org/453497302.html>.

<sup>37</sup>Outline of UNHCR mandate at <https://emergency.unhcr.org/entry/55601/unhcrs-mandate-for-refugees-stateless-persons-and-idps>.

<sup>38</sup>A UNHCR note dating from 1984 outlines the agency's work in ensuring that identity documents are issued for refugees: UNHCR, Identity Documents for Refugees, EC/SCP/33, 20 July 1984, <http://www.unhcr.org/3ae68cce4.html>.

<sup>39</sup>See Justin Hughes and Andrew Hopkins, “A Global Biometrics Project for Our Times”, 6 November 2015, blog at website of FXB Center for Health & Human Rights, Harvard University, <http://fxb.harvard.edu/a-global-biometrics-project-for-our-times/>.

<sup>40</sup>From IOM website: <http://www.iom.int/iom-history>.

and reintegration assistance to migrants who wish to return voluntarily to their countries of origin. The Assisted Voluntary Return and Reintegration Programs (AVRR) are implemented on all continents but mainly in two directions: North–South and South–South. As part of this process, IOM assists migrants stranded without documents to obtain travel documents from their country of nationality. Within the EU, IOM currently implements over 40 AVRR projects with 26 EU member states, as well as Norway and Switzerland.<sup>41</sup>

IOM also has an Immigration and Border Management program, which assists states to improve the integrity of their identity documents, especially travel documents. Starting from the border management process, IOM has increasingly engaged on the national “identity management chains,” from the delivery of reliable “breeder documents” such as birth certificates to secure identity and travel documents, as well as document integrity and verification.<sup>42</sup> In late 2013, IOM established a Missing Migrants Project, which tracks deaths of migrants and those who have gone missing along migratory routes worldwide, especially in the Mediterranean, using statistical data from governments and other sources. As part of this project, IOM tries to link those contacting their offices to information about their missing relatives.<sup>43</sup>

**UNICEF**, the UN Children’s Fund, is the principal UN agency responsible for delivering assistance to national governments for birth registration. The agency’s interventions include support for legal and policy reform, strategic planning for civil registration, capacity building and awareness raising, the integration of birth registration into other services (such as education and health), and community-based registration.<sup>44</sup>

The **UN Office on Drugs and Crime (UNODC)** is, among other things, the agency responsible for assistance in implementation of the UN Convention on Transnational Organized Crime (adopted in 2000), and its three Protocols, two of which are relevant for migration: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; and the Protocol against the Smuggling of Migrants by Land, Sea and Air. In this role, it has carried out work on the security and quality of identity documents.<sup>45</sup> The **International Civil Aviation Organization (ICAO)** is a UN agency with the mandate to establish standards, specifications and best practices related to machine readable travel documents and related border control issues.<sup>46</sup>

More generally, the **United Nations Statistics Division** and the **United Nations Population Fund**, as well as **UNDP**, work with developing countries to improve different aspects of civil registration and population statistics; UNDP also assists with electoral registration. The **World Health Organization** focuses on civil registration as a source of information for public health and the tracking of major causes of death. The **World Food Program** registers people for the purpose of distributing food or money for food.

## The Private Sector

Provision of official identification documents, including civil registration and documentation of nationality, is usually regarded as a core government function. With the new affordability of biometric identification systems (although they remain more expensive than other approaches), the private sector already has an important presence in this field, not just as a service provider but often also with a major role in determining the initial terms of reference. While the private sector brings useful new capacity, many states with low coverage of civil registration and other forms of proof of legal identity also lack the capacity to negotiate the contracts for the installation of these new systems.

<sup>41</sup>“Assisted Voluntary Return and Reintegration (AVRR) in the EU”, IOM, nd, [http://publications.iom.int/system/files/pdf/avrr\\_in\\_the\\_eu.pdf](http://publications.iom.int/system/files/pdf/avrr_in_the_eu.pdf); see also <https://www.iom.int/assisted-voluntary-return-and-reintegration>.

<sup>42</sup>Fact sheet on IOM’s Immigration & Border Management Programmes, 2015, <https://www.iom.int/files/live/sites/iom/files/What-We-Do/docs/01-IBM-Fact-Sheet-General-Overview-2015.pdf>.

<sup>43</sup><http://missingmigrants.iom.int/>. See also the Deaths at the Borders Database established by the University of Amsterdam, <http://www.borderdeaths.org/>.

<sup>44</sup>[http://www.unicef.org/protection/57929\\_58010.html](http://www.unicef.org/protection/57929_58010.html); see also UNICEF, *Every Child’s Birth Right: Inequities and Trends in Birth Registration*, December 2013, <http://www.refworld.org/docid/52b2df3e4.html>.

<sup>45</sup>See *Handbook on Identity-related Crime*, United Nations, 2011; *Guide for the Development of Forensic Document Examination Capacity*, United Nations, 2010; and, generally, <http://www.unodc.org/unodc/en/human-trafficking/index.html>.

<sup>46</sup>Information on their programming at <http://www.icao.int/Security/mrtd/Pages/default.aspx>.

#### Box 4: THE LONG-TERM DOCUMENTED STATELESS

In some countries, such as the Baltic states or Lebanon, there are large populations of stateless persons who hold documents giving them legal residence as “non-citizens,” which entitle them to certain basic rights within the state but not the full rights of citizens. The governments of those countries usually do not accept that the populations are stateless, asserting that they are nationals of another country.

In Lebanon, currently host to a potentially destabilizing number of Syrian refugees, there is already a large population of stateless persons. This population was never recognized as holding Lebanese citizenship because their ancestors were not included, or were recorded as foreign, in the population register established in the 1920s following the creation of Lebanon at the break-up of the Ottoman empire. They are not undocumented—they are, paradoxically, registered as “unregistered” (*maktoum al kayd*) or “registration under study” (*kayd al dars*)—and they are recognized as legal residents. However, people with this status have greatly reduced rights in Lebanon compared to full citizens. Although there were efforts to reduce the number of these stateless persons by providing an exceptional route to naturalization in the 1990s, the number remains high and increases because Lebanon provides no access to nationality based on birth and residence in the territory, and a Lebanese woman has no right to transmit her nationality to her child in any circumstances.<sup>47</sup>

The arrival of the new refugees has made the recognition of these long-standing residents as citizens more difficult; any effort to register refugees that aims to provide protection through identification has to bear this context in mind.

## 3.2 CHALLENGES TO IDENTIFICATION OF AND FOR MIGRANTS

The identification needs of refugees and migrants warrant much greater attention and coordination from the international community. However, it is important that any programs adopted by international agencies and donors be done thoughtfully with long-term implications in mind. Hasty implementation may create additional risks for migrants and produce low quality identification systems that result in future identification crises. In addition to technical challenges, there are a number of roadblocks for identifying refugees, including: (1) resistance from governments which seek to restrict access to national documentation for a variety of reasons, (2) resistance from refugees and other migrants who do not want to be identified, and (3) human trafficking and false documentation.

### The Politics of Identification and Nationality

Identification is more than a technical process: the information that is included in an identity document often determines the rights of an individual. This is true both of the distinctions between refugee and (irregular) migrant, and of the line between national and nonnational. Providing recognition of nationality or legal immigration status may also have implications for the balance of power in elections and for demands on public services. Where there are large influxes of forced migrants in a short period, there are obvious challenges to ensure the protection of those who have been forced to move, and at the same time reassure the existing population.

The international legal regime places some constraints on state sovereignty both in relation to acceptance of refugees and in recognizing the right to nationality (see Section 1.3). Even for those states that are not parties to the 1951 Refugee Convention, the prohibition of *refoulement* (return to a country where the person would be in danger) is recognized as part of international customary law. The Refugee Convention, the two statelessness conventions, and other human rights treaties place obligations on states to protect refugees and stateless persons, including by providing identification.

<sup>47</sup>Lebanon does have a provision recognizing nationality of a child born in the territory who is otherwise stateless, but does not respect this rule in practice. Laura van Waas, *A comparative analysis of nationality laws in the MENA region*, Statelessness Programme, Tilburg Law School, 2014, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2493718](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2493718).

However, many national laws relating to citizenship and the protection of refugees do not respect the rules on providing protection, reducing statelessness, ensuring the right to a nationality and ending discrimination, even if the state is party to the relevant treaties. Thus, identification processes are not always welcomed by those who have been forcibly displaced, if they fear that the identification document will be used in a way that restricts rather than protecting their rights. Where efforts are being made to restore or provide identification systems, it is critical to bear in mind these international human rights norms: to ensure basic compliance it may be necessary to reform laws on child protection, civil registration, national identification and nationality. Without such reforms, the risk is that state practices that create statelessness and exclusion will be perpetuated.

One potential work-around, where many are undocumented and resolution of their status is difficult, is to develop government-backed identification systems for undocumented persons that are independent of immigration status, but reach further than a single specific purpose (such as ration cards)—see Box 5 for examples. While such systems can help address immediate needs of migrants (such as access to basic services) they do not fulfill the broader rights to recognition of legal status (whether nationality, or refugee or other status).

### SDG Target 16.9 and “Legal Identity”

The SDG Target 16.9 to “provide legal identity for all, including birth registration” by 2030 is both an opportunity and a challenge. The concept of birth registration is well understood, and there are extensive international guidelines on its implementation.<sup>48</sup> There is, however, no definition of “legal identity,” and there is a great deal of confusion around what it may mean. A range of international human rights standards establish that every person has the right to recognition as a person before the law (enabling that person to assert rights, to enforce contracts, or to defend a case in court), and in that sense already has a legal identity (see Section 1.3). The commitment of the SDGs is therefore understood to refer rather to *proof of* legal identity; but again, there is no consensus on what this may mean in each national and social context, or for any particular individual.

### Birth Registration for the Children of Forced and Irregular Migrants

Civil registration has important purposes unrelated to identification (notably protection of children, public health, and provision of population statistics).<sup>49</sup> This means that it can, depending on national context, be less politically sensitive to ensure birth registration than other forms of identity documentation.

There is, nonetheless, widespread difficulty in ensuring birth registration for the children of forced or irregular migrants.<sup>50</sup> A registration by UNHCR alone has no legal effect, unless specifically agreed between UNHCR and the relevant countries. UNHCR thus endeavors to arrange for official birth and other civil registration for refugees, especially in camps; but some governments resist this process. There has been extensive comment on this problem in the case of Syrian refugees.<sup>51</sup> It can be even more difficult for migrants in irregular status without such assistance. In Libya, for example, a parent must apply to the consular authorities of his or state of nationality, who will then request that the Libyan authorities in the relevant locality issue a birth certificate. This was hard enough even before the breakdown of central authority in Libya. There may be even more challenges in registering births among IDPs in conflict-affected countries, since there is less involvement of international agencies.<sup>52</sup>

There is a lack of agreement on what form of birth registration should be required and what facts should be recorded in the case of the children of migrants and refugees. Although UNICEF and UNHCR both have programming in this field, there is no authoritative guidance on the information and procedures that would work

<sup>48</sup>For example, *A Passport to Protection: A Guide to Birth Registration Programming*, UNICEF, 2013. [http://www.unicef.org/protection/files/UNICEF\\_Birth\\_Registration\\_Handbook.pdf](http://www.unicef.org/protection/files/UNICEF_Birth_Registration_Handbook.pdf).

<sup>49</sup>For a useful analysis of the different roles of civil registration, see “Counting births and deaths,” *The Lancet*, May 2015, <http://www.thelancet.com/series/counting-births-and-deaths>.

<sup>50</sup>See, for example, Katelyn A. Horne, “Navigating Nationality: The Rights to Birth Registration and Nationality in Refugee Magnet States,” *Columbia Journal of Transnational Law*, Vol.53, 2014, pp.114–157; *Birth Registration and Armed Conflict*, UNICEF Innocenti Research Centre, 2007, [http://www.unicef.org/protection/birth\\_registration\\_and\\_armed\\_conflict%281%29.pdf](http://www.unicef.org/protection/birth_registration_and_armed_conflict%281%29.pdf).

<sup>51</sup>For example: Sarnata Reynolds and Tori Duoos, Refugees International, “A Generation of Syrians Born in Exile Risk a Future of Statelessness,” European Network on Statelessness, 15 July 2015, <http://www.statelessness.eu/blog/generation-syrians-born-exile-risk-future-statelessness>.

<sup>52</sup>*Getting on the list: the registration of children born to IDPs*, Internal Displacement Monitoring Centre, 15 May 2015, <http://www.internal-displacement.org/publications/2015/getting-on-the-list-the-registration-of-children-born-to-idps>.

## **Box 5: DECOUPLING IDENTIFICATION FROM LEGAL STATUS: THE AADHAAR PROGRAM IN INDIA AND MUNICIPAL ID CARDS IN THE US**

The Aadhaar (“foundation”) program in India, established in 2009, issues a 12-digit unique identity number to any resident of India, based on their biometric data and basic other information, for the purpose of verifying identity irrespective of nationality or migration status. As of mid-2016, over a billion people had an Aadhaar number. The program is implemented by the Unique Identification Authority of India (UIDAI), a central government agency.<sup>53</sup> Enrollment in Aadhaar is voluntary and does not guarantee any other rights, but it qualifies as a valid identification for various public and private sector services. The Supreme Court has ruled in several cases that the government may not require the individual to have an Aadhaar number to receive a government service; legislation adopted in March 2016 to provide greater legal authority to the program states that, while the government may require a person to enroll for an Aadhaar number in order to receive “a subsidy, benefit or service,” the person shall be offered alternative means to prove identity.<sup>54</sup> There is ongoing litigation about the requirements of the act.

A dozen US cities now have a municipal residents’ card, of which by far the largest program is in New York City (more than 700,000 enrolled by the end of 2015).<sup>55</sup> No questions are asked about immigration status, only proof of residence in the city. The arguments advanced in favor of such cards by the city itself are that it makes it easier for those previously without identification to approach and be monitored by the city authorities (important for crime reporting and prevention, as well as immunization and other programs for children, and public health more generally), and for those previously unable to access financial services to open a bank account and thus contribute to the formal economy and to the city government through taxation. Those with the card, however, do not for that reason have the rights of a person who is a recognized citizen, refugee or stateless person, or who is a foreigner with a temporary or permanent residence permit: if they do not separately have such status, they are still subject to deportation if they come to the attention of the immigration authorities.

Despite their important differences, the NYC and other municipal ID cards are, in a way, a local version of the Indian Aadhaar program: rather than trying to address the complex questions about legal status and nationality, they simply sidestep those issues, on the basis that an ID is useful in itself both for those holding them and for the authorities. Perhaps in due course a person who has held such an ID for a period of time might be eligible (subject to other conditions such as a clean criminal record) for regularization of status. However, there is no guarantee that this will be the case. The new legislation that provides legal underpinning to the program in India does not envisage, for example, that Aadhaar registration for a certain period of time will provide a presumption of nationality or count as evidence of residence enabling naturalization in due course.

While neither the municipal ID cards nor the Aadhaar number are conceived of as responses to forced displacement, some of those able to obtain such unique identification will be persons with a claim to refugee status or former refugees and their descendants; or they may be stateless persons. Ultimately, their status will need to be resolved by other means.

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<sup>53</sup><https://uidai.gov.in/>.

<sup>54</sup>The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, No. 18 of 2016.

<sup>55</sup><http://www1.nyc.gov/site/idnyc/index.page>.



best to assure not only the record of a child's birth but also that the information contained in this record protects the child's other rights, including the right to a nationality. Since births are usually registered by low-ranking civil servants with no knowledge of nationality law, and in some countries civil registration is delegated to provincial or local government, there may be a lack of consistency. It is common for the presumed nationality of the parents to be registered without seeing proof, and the nationality of the child to be recorded without any way of knowing the accuracy of that statement.

A regional initiative which may provide some useful lessons is the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, covering countries from the Asia-Pacific and Middle East. The Regional Support Office of the Bali Process is currently developing a toolkit for states to conduct self-assessments of how their civil registries handle birth, death and marriage registration and documentation for refugees, stateless persons, and persons of undetermined nationality, in order to address root causes of irregular migration and increase protection of these vulnerable groups. The goal is to produce an assessment methodology by October 2016.<sup>56</sup>

### Identification Where Documents Are Missing or False

There are always challenges in establishing identity in the context of forced displacement, even where a person carries documents, but especially where identity is simply declared or if documents appear to be false. The European Commission has conducted comparative research on national practices in relation to identification for protection. Among the recommendations of the synthesis report are: "The development of common guidelines on how to establish identity (in specific cases) when valid identity documents are missing."<sup>57</sup>

While the Refugee Convention and UN agreements on people smuggling and human trafficking provide that use of false documents shall not be criminalized—though the suppliers of false documents should be—these rules are not always respected. If not identified as such, asylum seekers and trafficked people may face detention in immigration facilities and deportation, rather than receiving the assistance to which they are entitled under domestic and international law.<sup>58</sup>

### Refugee and Migrant Resistance to Identification

Some refugees may resist identification because they fear further persecution either in their host country or from agents of the country from which they have fled. Others may do so because they do not want to be kept in or returned to the first country of refuge, especially under the EU Dublin Regulation under which most asylum seekers must apply for refugee status in the first EU country in which they arrive,<sup>59</sup> but to be able to travel further to join family or other community members in third countries. Migrants who do not qualify as refugees and who have not accessed a country through regular immigration procedures of course may also resist identification if the process of acquiring identity papers will expose them to the risk of deportation.

### Travel Documents for the Return of Irregular Migrants

If it is determined that a person is not a refugee or stateless person, and has no legal right to be in a country, that person may be deported. The state wishing to deport a person must obtain recognition of his or her nationality, and a valid travel document, from the country to which the person is to be deported: international

<sup>56</sup>The Bali Process comprises 45 member states from the Asia-Pacific and the Middle East as well as UNHCR, IOM and UNODC as member agencies, with other states and international agencies participating as observers, including the World Bank. For information on the toolkit see <http://www.baliprocess.net/news/2016/2/2141745035/concept-note-bali-process-civil-registration-assessment-toolkit>.

<sup>57</sup>*Establishing Identity for International Protection: Challenges and Practices*, European Migration Network, February 2013, [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/establishing-identity/0\\_emn\\_id\\_study\\_synthesis\\_migr280\\_finalversion\\_2002013\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/establishing-identity/0_emn_id_study_synthesis_migr280_finalversion_2002013_en.pdf).

<sup>58</sup>*Protocol for Identification and Assistance to Trafficked Persons and Training Kit*, Anti-Slavery International, 2005.

<sup>59</sup>The Dublin Regulation establishes the EU Member State responsible for the examination of an asylum application. [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/examination-of-applicants/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/examination-of-applicants/index_en.htm). It was temporarily suspended by Germany.

agreements provide for states to supply the documentation needed to enable a person who is a national to re-enter their territory.<sup>60</sup>

There is widespread concern among EU member states about the lack of valid travel documents as an obstacle to the return of “third country nationals” in irregular immigration status. Since 1994, there has been a model for a standard travel document used for the expulsion of third-country nationals, recognized in 15 out of 17 EU “re-admission agreements,”<sup>61</sup> however its usage is low and is regarded by member states as inadequate to ensure the necessary security standards. In December 2015, the European Commission issued a proposal for a new common form travel document to be issued by EU member states, valid for a single journey only.<sup>62</sup> Questions remain around the basis on which EU member states can determine a person’s nationality in another country.

## Privacy and Data Protection

There is also widespread concern around the lack of attention to privacy and data protection in the context of identification. International and regional rights conventions establish a right to privacy, and this right is widely incorporated into national constitutions, while more than 100 countries have data protection laws. Yet too rarely is privacy considered within the design and implementation of identity systems. Identity systems often hold sensitive information in insecure ways, placing people at risk. Data protection laws and the application of other safeguards, including technical security measures, are essential safeguards, as well as rules on sharing of data with government by UN agencies and others registering displaced persons for different reasons, or among government agencies themselves.

## Multiple Identities

There is a proliferation of identification initiatives globally. These systems are often enrolling the same people into multiple databases. Different international agencies are supporting different government departments, with little coordination on principles or on areas of responsibility. The merger of databases, however, also creates risks: if all official identity databases are linked, with a single card unlocking access to many rights, the barriers to entry become ever more significant, and the underlying legal frameworks more important.

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<sup>60</sup>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Article 8; Protocol on Smuggling of Migrants, Article 18.

<sup>61</sup>Council Recommendation of 30 November 1994 concerning the adoption of a standard travel document for the expulsion of third-country nationals.

<sup>62</sup>See press release at [http://europa.eu/rapid/press-release\\_MEMO-15-6332\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-6332_en.htm), and formal proposal for a Regulation of the European Parliament and of the Council on a European travel document for the return of illegally staying third-country nationals, December 2015 at [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/securing-eu-borders/legal-documents/docs/european\\_travel\\_document\\_for\\_the\\_return\\_of\\_illegally\\_staying\\_third-country\\_nationals\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/securing-eu-borders/legal-documents/docs/european_travel_document_for_the_return_of_illegally_staying_third-country_nationals_en.pdf).



## 4. A ROLE FOR THE WORLD BANK

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There are three areas where the Bank may have a comparative advantage: (1) convening international organizations and donors working on this issue to develop some common principles on support for identification processes, (2) prioritizing finance and technical assistance for the development of robust, accessible and non-discriminatory national identification systems, and (3) incorporating identification-strengthening components, especially related to civil registration, into social protection programs and other assistance targeted at migrants and refugees.

### Convening and Coordination

Identification is central to managing migration, providing protection to refugees, and responding appropriately to crises of forced displacement, but the best way to provide it in particular contexts is not always clear. Even where international systems and standards are in place, international agencies face a lack of resources and a lack of coordinated response. The UN agencies lead in this field, and should continue to do so. However, through the ID4D initiative, the World Bank could play a role in convening partner organizations to establish common principles for engagement with governments in support of identification systems, both within and without the context of forced displacement.

Among those included in the development of such principles should be the relevant human rights agencies, including the Office of the UN High Commissioner for Human Rights (and regional bodies such as the EU Agency for Fundamental Rights), as well as the most important NGOs working on identification in relation to protection of forced migrants and refugees,<sup>63</sup> representatives of the private sector, and independent legal advice. Ultimately, there could be the ambition to develop global standards relating to the implementation of the SDG target on legal identity.

### Support for National Identification Systems

The Bank can also play a role in influencing governments' readiness to prioritize investments in civil registration and other identification systems—including for refugees and internally displaced persons as well as those who are stateless or undocumented—in national development planning. The issues highlighted in this report should be integrated within the Bank's assessments of national identification systems and raised in the context of the country dialogs based on these assessments and its pre-existing projects that finance and support these systems.

Here, the aim should be to improve identification systems in a way that facilitates proof of nationality or another legal status in the country for the most marginalized groups, and ensures that identification systems rebuilt after crises do not exclude returning refugees. In order to integrate the needs of the displaced into support for national ID systems, the Bank could consider:

- Including components to support identification and registration of refugee and stateless populations within the country's borders, in cooperation with UNHCR.
- Raising awareness of standards on statelessness adopted by international and regional bodies.
- Providing technical assistance to remove legal and administrative barriers to identification processes, and conditioning support for identification initiatives on removal of such barriers. There may be some countries where the Bank would not want to be associated with any initiative to strengthen the ID system.

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<sup>63</sup>These would include, for example, Plan International, Save the Children, Norwegian Refugee Council, Refugees International, Internal Displacement Monitoring Centre.

## Assistance to Displaced Persons

Where the Bank is already financing activities that may be called upon to respond to forced displacement—e.g., in the form of social protection programs or emergency assistance—it can help to ensure that these programs take refugee identification seriously. As part of these programs, documentation of identity and often immigration status may be necessary for beneficiaries to access program benefits, thus the Bank should work with UNHCR and others to engage the authorities in order to ensure that these processes work fairly and effectively to provide the support needed.

There is potential for such programs to be instrumental in strengthening national identity systems. Although there may be circumstances where it is appropriate to create one-off documents that are program-specific, the Bank can work to integrate programmatic needs with broader identification concerns within the country where applicable. In some cases, financing cash transfers, in-kind benefits, or social programs for refugees may be an effective carrot to induce countries to register and recognize these groups when they are otherwise reluctant to do so for political or fiscal reasons.

## ANNEX: DEFINITIONS

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### Migrant

There is no definition of a migrant in international law. International datasets on migration use different definitions, including persons living outside the country of their birth, or outside the country of their nationality. There is a UN working definition of “international migrant,” as “any person who changes his or her country of usual residence.” A “long-term” international migrant is a person who moves to a new country for a period of at least a year, “so that the country of destination effectively becomes his or her new country of usual residence.”<sup>64</sup>

IOM defines a migrant for its mandate as “any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person’s legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is.”

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 1990) defines “migrant worker” as “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.” For the purposes of the Convention, migrant workers “are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party” and are considered as non-documented or in an irregular situation if that is not the case. (References to “illegal migrants,” common in reporting of migration flows, are avoided by the UN agencies and by IOM.) The Convention establishes some basic human rights protections for migrant workers, whether documented or undocumented. Ratification of the Migrant Workers’ Convention is low (only 47 states parties, all migrant-sending countries).

The expression “undocumented migrant” is commonly used both in the sense that the person does not have the documents showing legal residence where he or she now is, and in the sense that the person does not have any documents at all (including from the country of origin). Even a person with no documents at all is not, however, necessarily stateless (though the risk of statelessness is increased: see below).

### Refugee

A “refugee” is defined by the 1951 Convention relating to the Status of Refugees as a person who has fled his or her country “owing to well-founded fear of being persecuted” on various grounds.<sup>65</sup> The 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa has a broader definition: it repeats the UN definition and then adds to the reasons for flight, “external aggression, occupation, foreign domination or events seriously disturbing public order.”<sup>66</sup> The member states of the AU thus recognize as refugees people forced to move even if they are not directly targeted for “persecution”; in practice, those fleeing war are often recognized as refugees under the UNHCR Refugee Convention, though ambiguities remain.<sup>67</sup> In both conventions, it is key that the person has crossed an international border: the idea of the conventions is to provide international protection to the persons affected. There are exclusions for persons who have committed various crimes over which there is international jurisdiction, as well as “serious non-political crimes.” Ratification of the 1951 Refugee Convention is relatively high, but around 40 states are not parties (mostly in Asia and the Middle East).

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<sup>64</sup>UN Stats Recommendations on Statistics of International Migration (Rev.1), 1998.

<sup>65</sup>Article 1: “For the purposes of this Convention, the term ‘refugee’ shall apply to any person who: [ . . . ] owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

<sup>66</sup>Article 1(2): “The term ‘refugee’ shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.”

<sup>67</sup>UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, Reissued December 2011, available at <http://www.unhcr.org/3d58e13b4.html>; Andrew I. Schoenholtz, “The New Refugees and the Old Treaty: Persecutors and Persecuted in the Twenty-First Century” *Chicago Journal of International Law*, Vol. 16: No. 1, 2015, available at: <http://chicagounbound.uchicago.edu/cjil/vol16/iss1/5>.

## Asylum Seeker

Article 14 of the 1948 Universal Declaration of Human Rights recognizes the right to seek asylum from persecution in other countries. However, the term “asylum seeker” does not have a definition in a treaty: it is understood to mean a person who has fled to another country and claims to fill the definition of refugee, but has not yet been recognized as a refugee. A “failed asylum seeker” is a person who has made such a claim and been rejected by the national authorities of the country of refuge. Some countries will in some circumstances provide such a person with a limited protection status (some form of temporary leave to remain—each country uses its own terminology) based on an assessment that the person is not a refugee, but it is nonetheless not safe to return them to the country of origin.

## Internally Displaced Person (IDP)

The UN adopted Guiding Principles on Internal Displacement in 2001; the African Union adopted a Convention for the Protection and Assistance of Internally Displaced Persons in Africa in 2009 (known as the Kampala Convention). Both documents give the same definition of internally displaced persons: “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”

Thus, if a person who otherwise fulfills the definition of refugee has not crossed an international border, he or she is an internally displaced person. However, a person who has been forced to leave his or her home for other reasons, not falling within the definition of the 1951 Convention or the 1969 African Convention, is also an IDP. The same distinction is not made based on the reason for moving as for those who are in another country than that of their usual residence.

## Forced Displacement

There is no treaty definition of forced displacement for those who have moved from their country of habitual residence (nor of the term forced migration, also sometimes used<sup>68</sup>), but, in addition to those who fulfill the UN or African definition of refugee, the phrase would include people displaced outside their countries for the reasons described in the Guiding Principles on Internal Displacement; thus including violent crime, as in the case of Central America (some of whom may also be refugees), as well as the increasing category of persons sometimes referred to as “climate refugees.”

There is an international legal gap with regard to cross-border forced displacement of people who do not fit the UN definition of refugee, and there is “a bottom-up, state-led consultative process with multi-stakeholder involvement” known as the Nansen Initiative that is discussing the appropriate response.<sup>69</sup>

## Mixed Migration

“Mixed migration” is the expression used to refer to population movements where it is difficult to distinguish between the different causes for migration or displacement.<sup>70</sup> In reality, almost all migration flows are mixed in character, and include people who are moving for a variety of reasons.

## Trafficking and Smuggling of Migrants

Migrants of whatever type may also be “trafficked” or “smuggled,” both terms defined in protocols to the UN Convention against Transnational Organized Crime. “Trafficking in persons” is “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of

<sup>68</sup>The International Association for the Study of Forced Migration describes forced migration as “a general term that refers to the movements of refugees and internally displaced people (those displaced by conflicts) as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine, or development projects.” Mission of the International Association for the Study of Forced Migration at <http://www.efms.uni-bamberg.de/iasfm/>.

<sup>69</sup><https://www.nanseninitiative.org/>.

<sup>70</sup>See for example, the website of the North Africa Mixed Migration Task Force, a group of agencies working on (or with an interest in) mixed migration in North Africa, <http://www.mixedmigrationhub.org/about/what-mixed-migration-is/>.

abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”<sup>71</sup> “Smuggling of migrants” is “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”.<sup>72</sup>

## Stateless Person

A “stateless person” is defined by the 1954 UN Convention relating to the Status of Stateless Persons as a person who is “not considered as a national by any state under the operation of its law.”<sup>73</sup> The same exclusions from protection of those who have committed international crimes apply as to the 1951 Refugee Convention. The 1961 Convention on the Reduction of Statelessness also relies on this definition. Ratifications of the two statelessness conventions have been low but have increased significantly in recent years, with more than 80 states now party to the Convention relating to the Status of Stateless Persons and more than 60 to the Convention on the Reduction of Statelessness.

The definition of stateless person has been much debated, but has been greatly elucidated by a series of Guidelines on Statelessness adopted by UNHCR since 2012 and compiled into a *Handbook on Protection of Stateless Persons*.<sup>74</sup> UNHCR emphasizes the common sense position that the key factor in determining if a person is stateless is whether any state in fact recognizes that person as its national, even if lack of recognition appears to be in violation of a state’s own laws. Thus, statelessness is a “mixed question of fact and law”: the agency warns against using a distinction between *de facto* and *de jure* statelessness, which may prevent people from receiving the protection they need. Many people who are undocumented may be of “undetermined nationality”;<sup>75</sup> they will be “at risk of statelessness” if in addition they fall within one of a number of vulnerable groups who face specific difficulties in obtaining recognition of nationality based on the usual forms of discrimination in that country (for example, certain ethnic, religious, border-dwelling or nomadic groups).

Both the UN and African Refugee Convention definitions of a refugee cover persons who, “not having a nationality,” are outside the country of former habitual residence. Although a refugee may (and in principle should) be additionally recorded as stateless if that is the case, this is often not done, primarily because states lack dedicated statelessness determination procedures; the number of stateless persons in the context of refugee flows is therefore often hidden. Most stateless persons, however, are not refugees or migrants, but are living in their country of birth and habitual residence.

## Citizenship and Nationality

The terms “citizenship” and “nationality” are used interchangeably in international law to refer to the legal relationship between an individual and a state, in which the state recognizes and guarantees the individual certain rights. What those precise rights are varies according to the state concerned; as do the grounds on which nationality is recognized. Scholars use the terms differently in different contexts; the words used in national languages for the same concepts and based on the same etymologies (deriving from “city” or “nation”) are also not consistent (for example, most former colonies of France have a *code de la nationalité*; most former colonies of Britain have a citizenship act that covers the same ground). It is not therefore possible to provide a consistent definition. However, it is as well to be aware of the connotations of the terms in different contexts: citizenship often incorporates a general idea of participation in society, and nationality often references a sense of common cultural or ethnic heritage.<sup>76</sup>

<sup>71</sup>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. It goes on to state that “Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

<sup>72</sup>Protocol against the Smuggling of Migrants by Land, Sea and Air.

<sup>73</sup>Article 1(1) “For the purpose of this Convention, the term “stateless person” means a person who is not considered as a national by any State under the operation of its law.”

<sup>74</sup>*Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons*, UNHCR, 2014. See also, *UNHCR Action to Address Statelessness: A Strategy Note*, March 2010.

<sup>75</sup>A term used in the UNHCR ExCom Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons, No. 106 (LVII) – 2006.

<sup>76</sup>See EUDO Citizenship Observatory glossary for an exploration of the terms in around 40 European languages: <http://eudo-citizenship.eu/databases/citizenship-glossary/terminology>.

