

## Day of General Discussion – Children without Parental Care

### Birth Registration

Plan International, July 2005

#### Background

This submission is in response to the request to consider:

*What types of legal frameworks are most likely to ensure that the rights of children are safeguarded before, during and after separation from parents?*

Plan argues that establishing and implementing a universal, compulsory, permanent and continuous birth registration system is a prerequisite for recognising a child's legal identity, thereby ensuring that the child is able to enjoy their fundamental rights, including the right to special measures of protection, as set out in legislation.

The Committee is concerned that the absence of systematic birth registration in the state party, thereby preventing an accurate statement of the identity or age of a child, can make it very difficult for the protection afforded to children by domestic legislation or by the Convention to be enforced.<sup>1</sup>

#### Introduction

Birth registration is recognised under Article 7 of the Convention on the Rights of the Child which states:

“The child should be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, to know and be cared for by their parents”

#### Provision

Birth registration provides formal recognition of the child's identity and acts as the starting point of engagement between the state and the individual. With a birth certificate as proof of this legal acknowledgment, the individual is better able to claim and receive the rights and privileges to which they are entitled. These include the right to a name and nationality, the right to be free from all forms of exploitation, the right to education, healthcare and other welfare/social services.

### **Protection**

Without a functioning birth and civil registration system it becomes almost impossible to enforce age-specific legal frameworks relating to juvenile justice, child labour, sexual exploitation and trafficking and to implement sanctions against violators. A birth certificate, when used responsibly, can therefore provide the child with some protection against rights abuses.

### **Participation**

Without immediate registration at birth, the relationship between the state and the child will be delayed and the individual is at risk of exclusion and operating at a disadvantage within social, cultural, economic and political spheres. This is because, as unregistered children grow up, they may be denied the enjoyment of collective privileges that allow them to participate as equal members of society. These consist of economic privileges, like the opportunity to work, to open a bank account, to obtain credit and to inherit; social privileges including the opportunity to travel, get married, obtain welfare benefits, social security and a pension; and political privileges such as the right to vote and otherwise participate in civil and political affairs.

### **Data Collection for Planning and Policy**

Birth registration data, when correctly collected, can play an important role in the planning of a country's development, improving a state's ability to plan, implement, monitor, evaluate and report on its policies.

This is because disaggregated population data can help identify geographic, social, gender and economic disparities within national boundaries.<sup>2</sup>

Accurate civil registration data can also be manipulated to spot trends at yearly, quarterly and even monthly intervals – something that the ten-yearly census fails to do. Based on this knowledge, resources can be allocated to where they are really needed within different geographical areas or different groups in society.

The Committee recommends that special efforts be developed to guarantee an effective system of birth registration, in light of article 7 of the Convention, to ensure the full enjoyment of their fundamental rights by all children. Such a system would serve as a tool in the collection of statistical data, in the assessment of prevailing difficulties and in the promotion of progress in the implementation of the Convention.<sup>3</sup>

Article 7 is particularly relevant to any discussion on children without parental care since the act of registering the birth of a child also formally identifies the child's parent(s). As such, Article 7 should be read in conjunction with Articles:

- 8 – Preservation of identity, including nationality, name and family relations;
- 9 – Separation from parents;
- 10 – Family re-unification; and
- 20 – Continuity in upbringing of children deprived of their family environment.<sup>4</sup>

Without registration at birth and the acknowledged protection of the state, the unregistered child is vulnerable. But the unregistered child without the protection of the state *or* the protection of their parent(s) is particularly vulnerable.

The Committee recommends that the State party take all appropriate measures to ensure that the provisions of article 7, especially the right

of the child to know, as far as possible, his or her parents, be fully enforced<sup>5</sup>

### **Safeguarding Children before Separation from Parents**

Birth registration is instrumental in establishing the child's legal personality, thereby safeguarding their access to rights and establishing a culture of protection. Although the Convention on the Rights of the Child does not specify what details must be registered, the rights to name and nationality, to know parentage, family and identify imply that registration ought, as a minimum, to include:<sup>6</sup>

- The child's name at birth
- The child's sex
- The child's date of birth
- Where the child was born
- The parents' names and addresses
- The parents' nationality status

While the act of birth registration may be perceived as little more than an administrative procedure, it is, in actuality, an important safeguard against the exploitation of children – a practice which thrives on non-registration.

In the absence of a formal identification system there is nothing to protect identity and prevent impersonation. As such, fake identification documents can be made and sold. Against this backdrop, networks are emerging that take advantage of the weaknesses in systems for identifying individuals. These include sophisticated networks for the illegal adoption, abduction and trafficking of children away from their parents.

Although further research is needed on unregistered children and those who are trafficked, it is thought that a child who has no official identity or proven nationality is a more attractive prospect to a trafficker.<sup>7</sup> It is certainly the case that the lack of a legal status can impose a sense of powerlessness on an individual since, without reliable proof of the age and identity of a child, it is very difficult for

authorities to pursue and punish those who exploit children in a court of law.<sup>8</sup>

### **Safeguarding Children during Separation from Parents**

Official proof of identity might not seem important in times of stability when an individual is well known to the surrounding community, yet the information contained within registration records can prove invaluable. In the case of mass displacement, for example, traditional methods of family counting and tracing – the knowledge of who was born, who has died and who is related to whom – are lost.<sup>9</sup>

Furthermore, informal identification documents including horoscopes, baptismal certificates, immunisation certificates and certificates of primary education may be destroyed or else may not be accepted as legitimate by the authorities. This is because, as mentioned earlier, informal systems of identification are open to abuse with the information contained in them neither verified nor retrievable.

The absence of birth records can pose difficulties in identifying children who are separated from their parent(s). Children may be afraid to tell officials who they are or may not provide them with the correct information. Some children may not know the basic information needed to help trace their parents because they are too young. In extreme cases, a child's identity may even have been forgotten because they were separated from their parent as a baby or at an early age and have no memories of their early life.<sup>10</sup>

Another danger is that the authorities have nothing against which to authenticate claims from traffickers or recruiters of child labour that they are related to children who have become orphaned or separated from their parents.<sup>11</sup> Indeed, without the information needed to reunite a child with their legal parents, siblings or extended family, the child is at increased risk of exploitation whether that is under-age recruitment into the military or sex work.

In the light of article 7 of the Convention, the Committee recommends that the State party continue its measures to ensure the immediate registration of the birth of all children. Special emphasis should be placed on the registration of children belonging to the most vulnerable groups, including children living in areas affected by armed conflict and in camps for internally displaced groups”<sup>12</sup>

Alternatively, the unregistered child may be placed into an institution or foster care, forcibly evacuated, relocated, adopted across borders or could even end up living on the street.<sup>13</sup>

### **Safeguarding Children after Separation from Parents**

Lacking neither the protection of the state nor the protection of their parent(s), the unregistered child is particularly vulnerable to rights abuses. For instance, unknown numbers of HIV/AIDS orphans are being denied their right to inherit parental property because they do not have a birth certificate providing legal proof of their identity and family ties. This makes enforcing their right to parental property in a court of law very difficult.

The Committee wishes to emphasise the critical implications of proof of identity for children affected by HIV/AIDS as it relates to securing recognition as a person before the law, safeguarding the protection of rights, in particular to inheritance, education, health and other social services, as well as making children less vulnerable to abuse and exploitation, especially if separated from their parents due to illness or death.<sup>14</sup>

Although the unregistered child can apply for late registration, it may be the case, as in some countries, that the child will be required to produce identity documents relating to their parents for birth registration purposes. If these are not available then this can contribute to an intergenerational cycle of non-registration.<sup>15</sup>

Alternatively, the child may be able to obtain a legal certificate of probable age through medical examination. However, establishing a

child's exact date of birth is extremely problematic since this method can only come up with an estimate – for example, between 17 and 18 years of age. For a child who needs to prove their status as a minor, this can delay adoption for example, or lead to prosecution as an adult.

## **Plan's Work with Children without Parental Care**

### **Plan Ethiopia**

Plan worked with the Africa Child Policy Forum to analyse the situation of birth registration in Ethiopia. The study reported that there were cases where children who had been orphaned due to AIDS were given the opportunity for adoption abroad. Yet because the deadline for adoption was short, they were unable to obtain birth certificates quickly enough. Since the children's parents were not known to the neighbourhood, there was no one who knew the children well enough to testify to their age in front of the local social court. As a result, the orphans lost the opportunity of a better future.

The research study also reported the example of a street child, who was seeking to apply for a provisional identity card in order to gain access to the public health service. However, he was required to present three witnesses to the local social court who had known him for at least three months.

Such requirements are problematic for a number of reasons. Firstly, few people know street children well given their high levels of mobility. Secondly, few people would act as a witness given the negative attitude of the community towards street children. Finally, even the children themselves can only guess their age:

*"I think I am 11 years old now. I came to know my age because I was this little [showing the researchers by his gesture how short he was] when I joined the street. I don't know where my parents are – maybe somewhere in the rural areas?"<sup>16</sup>*

### **Plan Uganda**

In Uganda, women and young children have traditionally not owned property. Instead it is distributed posthumously by clan leaders or is 'grabbed' by other family members. This practice is having a negative impact on orphans of AIDS since they have no legal right to inherit the land of their parents.

Plan is working in partnership with the Federation of Women Lawyers (FIDA) to provide legal aid and assistance to widows and AIDS orphans as part of the *Support to AIDS Orphans* program. Plan and FIDA work to reduce incidences of property grabbing and increase levels of birth registration by conducting legal awareness seminars and improving understanding of laws related to inheritance, marriage and property among men, women and children. Community volunteers support these efforts by attending training sessions and conducting further awareness raising activities in the community.<sup>17</sup>

## Recommendations

- States should establish and implement a birth registration system that enables universal, compulsory, permanent and continuous registration as a matter of priority.
- States should ensure immediate access to basic services such as health and education to children without birth registration until a universal, compulsory, permanent and continuous registration system is in place.
- States should pay particular attention to vulnerable groups of children such as refugees, immigrants, street children and children of ethnic and religious groups.

- States should simplify the process for late-registration.
- States should develop and maintain safe and confidential storage of birth records.
- States should raise awareness of the importance of and need for birth registration among public officials.
- States should raise awareness on the importance of and the need for birth registration among families and communities.

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- <sup>1</sup> UN Committee on the Rights of the Child (2000), Concluding Observations of the Committee on the Rights of the Child: Sierra Leone, CRC/C/15/Add.116,42
- <sup>2</sup> UNICEF, Office of Strategic Information Management (2004) 'The 'Rights' Start to Life: A Statistical Analysis of Birth Registration'
- <sup>3</sup> UN Committee on the Rights of the Child (1997), Concluding Observations of the Committee on the Rights of the Child: Ethiopia, CRC/C/15/Add.67,29
- <sup>4</sup> UNICEF (2002) 'Implementation Handbook for the Rights of the Child'
- <sup>5</sup> UN Committee on the Rights of the Child (2004), Concluding Observations of the Committee on the Rights of the Child: France, CRC/C/15/Add.240,23
- <sup>6</sup> UNICEF (2002) 'Implementation Handbook for the Rights of the Child'
- <sup>7</sup> UNICEF (2002) 'Birth Registration: Right from the Start'
- <sup>8</sup> ILO (2004) 'Helping Hands or Shackled Lives? Understanding child domestic labour and responses to it'
- <sup>9</sup> UNICEF (2004) 'Birth Registration and Armed Conflict', draft
- <sup>10</sup> UNICEF (2004) 'Birth Registration and Armed Conflict', draft
- <sup>11</sup> Plan (2005) 'Birth Registration and Disasters'
- <sup>12</sup> UN Committee on the Rights of the Child (2000), Concluding Observations of the Committee on the Rights of the Child: Colombia, CRC/C/15/Add.137,37
- <sup>13</sup> UNICEF (2004) 'Birth Registration and Armed Conflict', draft
- <sup>14</sup> UN Committee on the Rights of the Child (2003) General Comment No.3
- <sup>15</sup> UNICEF (2004) 'Birth Registration and Armed Conflict', draft
- <sup>16</sup> Africa Child Policy Forum and Plan Ethiopia (2005) 'Report of Survey and State of the Art Review on Perception and Practice of Birth Registration in Addis Ababa and the Regional States of Oromia, Amhara and SNNPR'
- <sup>17</sup> Plan (2005) 'Universal Birth Registration: A Universal Responsibility'