SYNTHESIS BRIEF
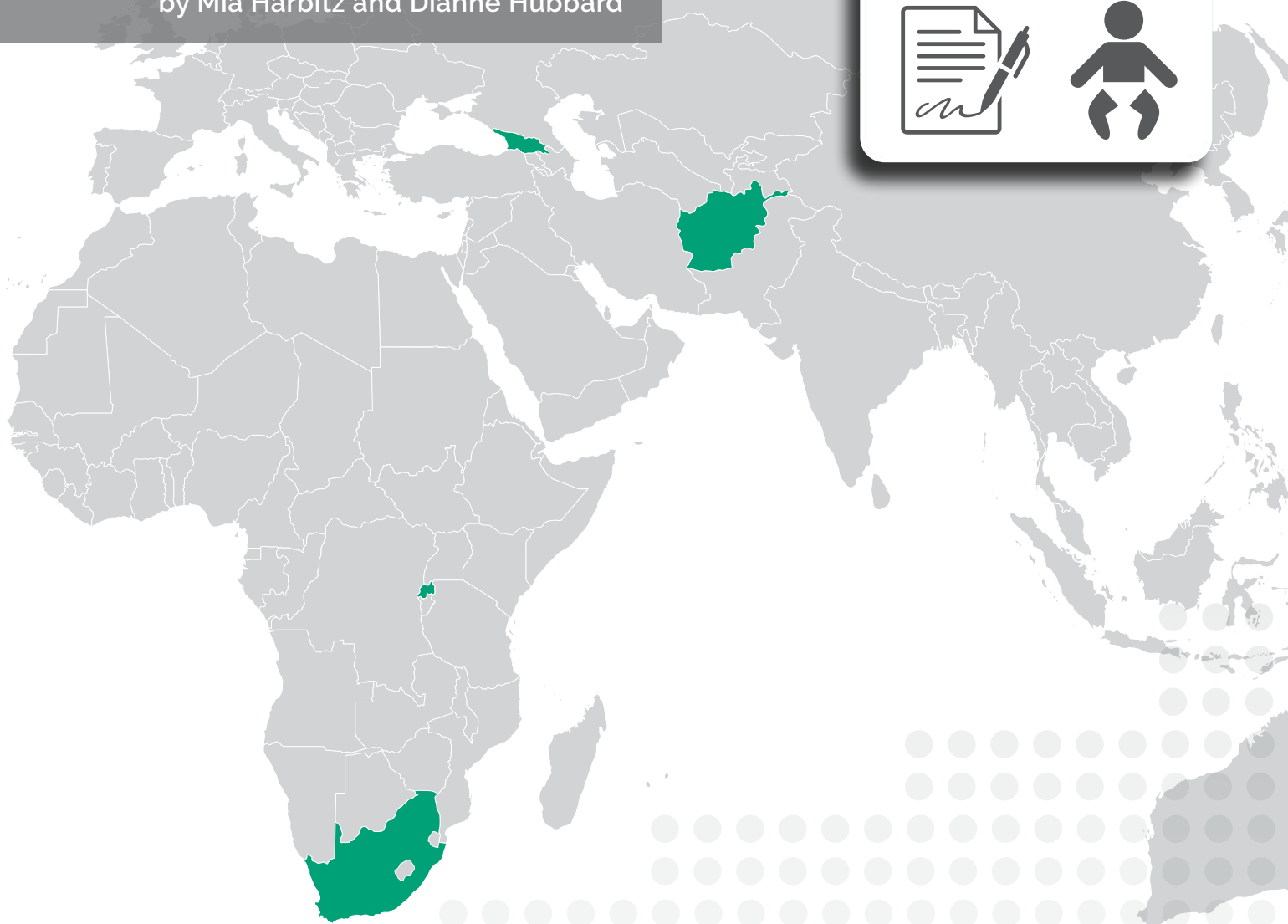
Constructing the Foundations for **Legal Identity in Post-Conflict Settings**

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SDG TARGET 16.9

LEGAL IDENTITY FOR ALL

This paper was authored by Mia Harbitz and Dianne Hubbard. The full research paper, Constructing the Foundations for Legal Identity in Post-Conflict Settings provides more detailed information about each country as well as a discussion of legal identity, based on information available online in English and virtual interviews with experts. The full paper includes references to laws and other information sources: **crvssystems.ca/legalidentity**.

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Introduction

Trusted and trustworthy identity credentials that underpin an individual's unique legal identity enhance countries' capacity for development. Post-conflict countries face a variety of challenges that hinder their ability to provide a unique legal identity to the people within their borders.

To understand the issues facing post-conflict countries in establishing legal identity for their citizens and residents, this study analyzed the approaches of four post-conflict countries — *Afghanistan*, *Georgia*, *Rwanda*, and *South Africa*. Despite differences in the duration, severity, and complexity of the conflicts, these countries experienced similar reconciliation and state-rebuilding processes. The context of their past conflicts has shaped their current civil registration and identification systems.

While the conflicts were ongoing, registration of vital events slowed down or stopped in all four countries due to underfunded and under-prioritized institutions, and because people in conflict areas either relocated across borders or were displaced internally. The result in many instances was the lack or the loss of identity documents. A common element among the four countries is that they all considered restructured identity and identification systems to be part of the peace and reconciliation process, and all reformed their legal frameworks and institutional arrangements to facilitate the reconstruction of identities and/or the inclusion of undocumented persons.

The legal systems in the four countries differ in important ways. Afghanistan is a religious state; in Georgia, one religion has a special constitutional role, whereas Rwanda and South Africa are secular countries. The countries have different levels of language and ethnic diversity. They are at different stages of maturity with respect to their identity management systems. Nevertheless, all are interested in increasing the inclusivity and coverage of civil registration and advancing the efficiency and functionality of their national identity management arrangements.

Key issues and trends

Revised institutional structures & legal reform

The four countries have recently enacted new laws or amendments to restructure civil registration and identity management systems that were fragmented or that had deteriorated during conflicts—which has proved to be both a challenge and an opportunity. They have all combined civil registration and identity management under a single agency. In Georgia and South Africa, the same agency manages citizenship issues. The advantage of unifying services pertaining to identity and identification is the potential for consistent, coherent, and seamless management of registration records. It also offers increased security and protection of personal data. Offering registration, enrolment, and record management within one agency may also have budgetary advantages and may reduce fraud and can facilitate reporting of vital and demographic statistics — all factors that can improve governance. Combining these functions also facilitates verification of biographic data and authentication of biometrics for the issuance of identity credentials and can produce substantial savings of time and resources.

Citizenship and legal identity

Citizenship and legal identity should not be conflated. None of the countries studied limited their civil registration and identification systems to citizens alone, yet the rules on citizenship sometimes serve as an obstacle to securing legal identity. Citizenship in these countries is a condition for accessing important benefits and services. Civil registration establishes facts about birth and parentage that are necessary to exercise the right to citizenship, meaning that difficulties in accessing civil registration are a barrier to claims of citizenship. All four countries studied have adopted policies that encourage greater inclusivity, although this does not always translate into equal access to civil registration on the ground.

All four countries make provisions for citizenship for people who would otherwise be stateless. They also make citizenship by naturalisation available to refugees, although practical barriers sometimes exist. In Georgia, for example, language and history tests and national security clearances have excluded some refugees from becoming citizens, while in Rwanda, the requirement that applicants must be engaged in "sustainable activities" is a barrier for some. In South Africa, the naturalisation process for refugees is lengthy and available only when the person in question would otherwise remain a refugee indefinitely.

Linkages with health data

Involving health facilities in birth and death registration is a trend in many countries. It can improve accuracy and increase coverage in post-conflict settings. All four countries studied have taken steps in this direction:

▷ **Afghanistan:** Public and private facilities must report births and deaths, but this is undermined by the fact that about half of all births still take place at home.

◗ **Georgia:** Direct electronic transmission from health facilities to the civil registration agency is in place, with positive impacts on prompt birth and death registration.

◗ **Rwanda:** Recent amendments to the relevant laws on civil registration have changed the focus of birth and death registration to health facilities.

◗ **South Africa:** Health facilities are not yet formally incorporated into the civil registration law, but there is information-sharing to combat fraud, and birth registration points in health facilities are being set up.

Comparative birth registration rates

The table below provides a snapshot of the evolution of birth registration rates over time.

Figure 1: Comparison of birth registration rates.
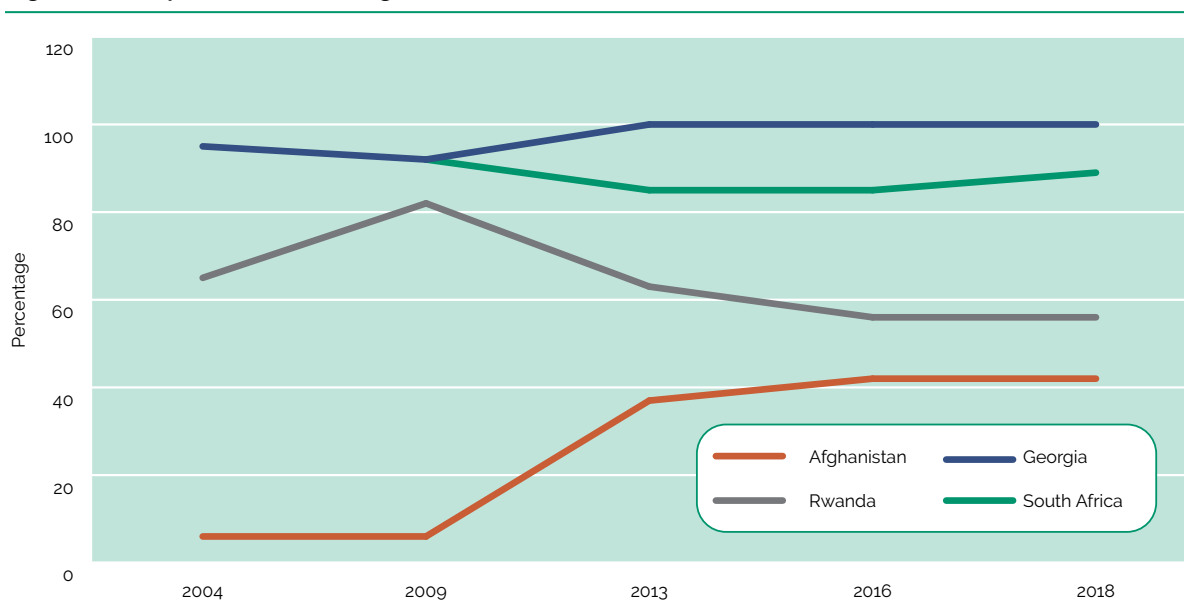
Source: UNICEF, State of the World's Children (1999–2018).

These figures need to be viewed with some caution, however. National statistics can also disguise local differences. For instance, birth registration of Afghan children under age 5 was almost 70 percent in urban areas, compared to about 22 percent in rural areas and about 10 percent in respect of *Kuchi* (nomad) children. These statistical discrepancies show the difficulty of accurately measuring birth registration rates. Moreover, the impact of COVID-19 is likely to further complicate the statistical measurement, particularly in respect of data on timely birth registrations.

Rwanda reports that it has arrested the downward trend evident in Figure 1 through legal reform and public awareness campaigns. South Africa may have had lower past rates of birth registration and more dramatic increases in recent years.

More attention to birth than death

◗ Death registration often lags behind birth registration and is often less thoroughly analyzed. Death registration is however equally important for accurate civil registration and vital statistics systems. In Afghanistan, death registration is not common, and in Rwanda, less than a third of deaths were registered as of 2019. Georgia achieved prompt death registration for most deaths (91%) by 2019 due to the introduction of an online death registration system combined with legal reforms to improve registration procedures. South Africa's death registration is also high (96% in 2016) because registration is required for burial and is carried out in practice by undertakers.

Positive practices noted in respect to death registration in general include:

◗ clear legal obligations to register deaths, involvement of medical institutions,

◗ links between death registration and burial or other disposal of the body, and

◗ accessible legal mechanisms for declaring missing persons dead after an appropriate time period.

Dealing with the past

In Rwanda and South Africa, racial or ethnic designations listed on identification documents in the past served as a basis for discrimination and are no longer recorded. In contrast, in Afghanistan, past associations between the term "Afghan" and a specific ethnic group led to public demand for both ethnicity and nationality to appear on the face of the identity card. In Georgia, the government has taken measures to avoid disadvantaging individuals affected by larger political conflicts, by accepting documentation from entities that were not otherwise officially recognised in its occupied territories. These examples point to the need for sensitivity to context in formulating approaches to civil registration and identification.
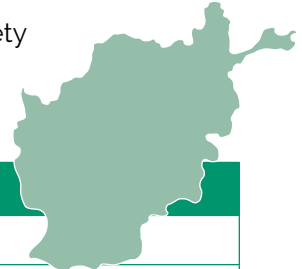
Civil registration during a pandemic

The COVID-19 pandemic complicated the work of civil registration authorities around the world. However, Georgia, Rwanda, and South Africa all considered some civil registration activities to be essential public services and provided special procedures during the COVID-19 pandemic, with skeleton services continuing even during national lockdowns. Information on Afghanistan's approach was not available. Georgia enacted an order that facilitated online booking for in-person appointments, made provision for sending documents by mail, and provided certain services electronically where it was possible to make direct visual contact with applicants and to confirm their identity in the government's electronic database. An interesting innovation was a procedure for bringing certain services to the customer, employing an initial telephone consultation on a hotline number followed by outreach to an address specified by the applicant, where the applicant was elderly or had constrained mobility due to health issues. These varied approaches to providing services during the pandemic appear to have been an attempt to keep as many services running as possible without compromising public safety, to prevent backlogs, and to minimize inconvenience to the public.

Against this background of general trends, we will highlight a few specific challenges and innovations in each of the four countries examined. The full report provides a more comprehensive description of the situation in each country.

Afghanistan

Conflicts that began in the 1970s continue to hinder Afghanistan's ability to govern itself. Of the four countries investigated, Afghanistan is the most fragile. State and institution building are a particular challenge for a tribal and hierarchical society in a geographically complicated area with no common national language and limited formal institutional structures.

Afghanistan at a glance	
Estimated population (2019)	38 million
Population growth rate (2019)	2.3%
Internally displaced population (2019)	2.5 million
Per capita GDP (2019)	US$507
Poverty index (2018)	55.9%
Ranking in the 2019 Human Development Index	170 out of 189
Number of recognized ethnic groups	14
Official languages	Pashto and Dari; in some areas, most people speak Uzbeki, Turkmani, Pachaie, Nuristani, Baluchi, or Pamiri
Ranking in the 2020 Fragile States Index	102.9 (High alert)
Birth registration (2017)	30%
Death registration	No statistical data could be located in English
Special registration initiatives	• Provisions for civil registration for displaced Afghans outside the country • Special provisions for providing tazkera to nomads (Kochi)
Key challenges	Large gender gaps in civil registration and for *tazkera*

Afghanistan's civil register fell into disarray during the protracted wars of the 1980s and 1990s, with no systematic birth registration during that period. The government now faces the challenge of strengthening civil registration and identity processes as it attempts to transition to a digital system.

It is the family's responsibility to approach the local population records office to ensure that vital events are recorded, and the person who requests the registration must have an identity card (*tazkera*) themselves. The *tazkera* is issued immediately after birth registration, with a renewal required when the child reaches age 7 and again at age 18. Children need a *tazkera* for school enrolment. It has been reported that the registration of civil events is not widely practiced. The Afghanistan Civil Registration and Vital Statistics Country Strategic Plan 2016 to 2020 suggests that low literacy rates contribute to a lack of public knowledge about civil registration.

Afghanistan faces particular challenges regarding gender. As of 2017, Afghanistan had the largest gender gap of any country with respect to identity card possession; 94 percent of men had an identity card, compared to only 48 percent of women. Women reportedly face particular difficulties in accessing identity documents, according to a 2017 World Bank survey. Many women indicated in this survey that they have no need for an identity document, which is likely a manifestation of the constrained role of women in Afghan society. **Women's reluctance to obtain a *tazkera* is exacerbated by the widespread belief that it is unacceptable for a woman's name to be revealed in public instead of referring to her in terms of her relationship to a man. The lack of a *tazkera* can be an obstacle to school attendance for girls, thereby perpetuating existing gender disadvantages.**

Until recently, such gender distinctions were reinforced by the fact that the *tazkera* listed a person's father and grandfather but no female relatives, while birth certificates also omitted the mother's name. However, this is set to change following intense public campaigns around this issue, such as #WhereIsMyName, led by some outspoken Afghan women. In 2020, the government agreed to amend the law to include mothers' and fathers' names on birth certificates and *tazkera*. This is an important step, as it acknowledges a person's mother as being part of that person's identity. However, while many welcomed the announcement, some also feared that it might discourage women in conservative rural areas from registering for national identity cards. It remains to be seen if this increased visibility for women in civil registration and identity credentials will play a positive role in closing Afghanistan's gender gap in this area.

Georgia

Georgia is a former Soviet republic. Leading up to and following the Soviet Union's collapse in 1991, Georgia underwent a series of struggles that are relevant to the status of civil registration and identification today. Georgia has made steady progress in recent years in improving legal and regulatory frameworks, including many reforms to the laws pertaining to citizenship and identity. The country is on a positive trajectory with respect to the level of governance fragility.

Georgia at a glance	
Population (2019)	4 million
Per capita GDP (2019)	US$4,786
Internally displaced people (2019)	301,000
Classification in the 2019 Human Development Index	70 out of 189 countries
Percentage of the population below the national poverty line in 2018	20%
Number of ethnic groups	10
Official languages	Georgian and Abkhazian; Russian is also widely spoken
Ranking in the 2020 Fragile States Index	71.2 (Elevated warning)
Birth Registration	93.6%
Death registration	91.4%
Special initiatives to improve registration	• One-stop shop for all registration services • Special provisions for citizenship and civil registration for persons from former autonomous areas • Distance services, including sign-language interpreters for the hearing impaired
Key challenges	Minority Roma community still experiencing barriers to civil registration

When the Soviet Union absorbed Georgia, the registration of its population and its vital events fell under the Soviet umbrella. Only a limited amount of population data collected by the Soviet Union was made public, with much of it kept secret for internal government use. After the fall of the Soviet Union, Georgia's civil registration system deteriorated. However, in the last two decades, Georgia has made progress in improving coverage, primarily due to increased linkages with medical facilities and the use of community-based nodes for government service provision.

The integration of medical facilities into civil registration began with a 2003 Presidential Decree requiring medical institutions to provide information on births and deaths directly to the State Department of Statistics to supplement the civil acts reported by family members. The next reform required medical institutions to register births and deaths directly with the

civil registration agency, with family members required to register only those births and deaths that took place outside a medical institution. In 2011 paper-based medical notifications were replaced with electronic ones. Further changes introduced in 2017 improved the quality of civil registration data by giving the National Center for Disease Control and Public Health additional responsibilities for confirming the facts in medical certificates of birth and death.
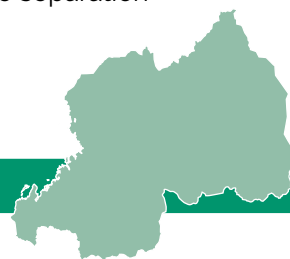
There have been efforts to increase public access to government services, including civil registration. The civil registration authority is currently part of the Public Services Development Agency, which has set up local community centres where residents can access more than 200 public and private services, including civil registration. The government reported that 74 community centres were operational throughout the country as of December 2019, including in regions with national and ethnic minorities. These innovative centres have evolved from public service halls designed to combine various governmental services at a single location, and improved approaches to civil registration at such centres now serve as a model for other government services. **Recent innovations include drive-through windows, on-site cafés, special areas for services for foreigners, a new-baby kit for all low-income parents of newborns, and social and farming services. The Civil Registry Agency also runs a special program for distance services and offers sign-language interpreters for hearing-impaired people at specified hours.** The Agency's website indicates that it provides an Electronic Register of Applications that allows applicants to monitor applications for civil registration certificates electronically.

According to the national statistics office, in 2018 over 93 percent of newborns were registered in the same month of their birth. Linking civil registration to social benefits contributed to the high level of timely birth registration, along with the possibility of separating birth registration and paternity establishment. Prompt death registration is similarly high since it is difficult to bury a deceased person without death registration. Recent reforms providing for temporary identification numbers for homeless children who lack documents have also increased civil registration coverage. A 2018 study noted that while members of the minority Roma community experience particular barriers with respect to civil registration, coverage of this group is improving due to targeted efforts.

Rwanda

The history of Rwanda is marked by severe challenges, including colonization, genocide, and civil war. In the post-genocide era, Rwanda has a unitary presidential system with centralized power, which has facilitated the creation of a centralized identity management system.

From 1931 to 1961, while the country was still under Belgian colonial rule, all Rwandans over the age of 18 were issued an identity booklet that included ethnic or clan affiliation. These designations were used by the colonial authorities to solidify the separation of the country's Hutu, Tutsi, and Twa populations. Many civil registration records were lost during the genocide; efforts to restart civil registration in the country resumed in 1998.

Rwanda at a glance	
Population (2019)	12.6 million
Population growth rate (2014)	2.6%
Number of internally displaced persons (2019)	12,000
Per capita GDP (2019)	US$801
Percentage of the population living below the income poverty line (2017)	55.5%
Ranking in the 2019 Human Development Report	157 out of 189 countries
Official languages	Kinyarwanda, English, and French
Ethnic groups	Hutu, Tutsi, and Twa
Ranking on the 2020 Fragile States Index	86 (High warning)
Birth Registration (2015)	55.4%
Death registration (2019)	31.4%
Special initiatives to improve registration	• Comprehensive assessment of civil registration system by a multi-sectoral team led to amendments to relevant laws • Decentralized civil registration services throughout the country
Key challenges	Getting birth registration back up to previous levels

Today, the entity responsible for civil registration and civil identification is the National Identification Agency, which administers decentralized civil registration services. In the wake of Rwanda's bloody conflicts between Hutu and Tutsi, any mention of ethnicity in official and public records is forbidden. Coverage has been enhanced by the removal of the previous requirement that two witnesses must confirm the registration of any civil event. Another noteworthy reform is a new procedure for reconstructing or recording data that has gone missing or was never recorded.

Rwanda hosts about 150,000 refugees from over 60 countries. The United Nations High Commissioner for Refugees has praised it for having one of the most generous asylum policies in the world. Persons granted refugee status, along with their spouses, minor children, and dependents, are issued refugee identity cards. **Rwanda has instituted a system to register births of children born in Rwandan refugee camps. Citizenship by naturalization is open to refugees, although the requirement that applicants must be engaged in "sustainable activities" in Rwanda may be a practical barrier for many.**

In 2018, Rwanda introduced a digitally readable passport for refugees. These passports, valid for five years, enable refugees to cross borders to increase their access to business and study opportunities as well as medical treatment or reunification with relatives.

Refugee IDs are generally required to open bank accounts, register SIM cards, register immovable property, or marry. One problem cited is that refugees living in camps risk arrest and detention if they leave the camp without a refugee ID or proof of registration, as well as a letter granting them permission to leave the camp, which can take time to obtain. In January 2020, the UN Committee on the Rights of the Child expressed concern about practical problems with the registration of refugees in refugee centers and camps and noted reports of the disappearance of girls from refugee camps.

South Africa

South Africa has a vibrant and active civil society and a respected independent judiciary. Still, poverty, inequality, and unemployment remain intractable challenges, along with racial disparities. According to the World Bank, South Africa has one of the highest inequality rates in the world.

During the apartheid era, birth registration and identification documents were used as instruments of racial classification and control. South Africa's centralized population register was born out of a desire to construct a legal hierarchy on the basis of race and was essential to the establishment of the apartheid state. Black South Africans were required to carry a passbook that was used to limit the areas where the holder could live and work. These passes inspired numerous public protests. South Africa transitioned away from race-based population registration only in 1986. The democratic government that came to power in 1994 was faced with civil registration records from a patchwork of actors who had maintained separate registries and documents for the White, Indian, Coloured, and African populations; these had to be transformed into a single unified population register, which entailed a challenging de-duplication process.
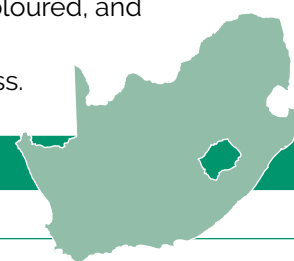
South Africa at a glance	
Population (2020)	59.6 million
Number of internally displaced persons in the country (2019)	250
Population growth rate (2019)	1.4%
GDP per capita (2019)	US$6,001
Poverty index (2014)	55%
Ranking on the Human Development Index (2019)	114 out of 189 countries
Major ethnic groups	Zulu, Xhosa, Bapedi, Tswana, South Ndebele, Basotho, Venda, Tsonga, and Swazi, in addition to White, Coloured
Official languages	Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa, and isiZulu
Ranking in the 2020 Fragile States Index	70.1 (Elevated warning)
Birth Registration (2019)	88.6%
Death registration (2019)	96%
Special initiatives to improve registration	Linkage with social grants
Key challenges	Addressing various problems of implementation of civil registration laws

Identity cards are mandatory for citizens and permanent residents starting at age 16, and refugees are required to apply for similar ID cards. The cards contain information about citizenship as well as other personal information. There is no indication of race, nor is such information encoded in the ID number.

One recent debate in South Africa illustrates a tension experienced in many countries regarding the role of birth certificates. Although birth registration is intended to be a record of the facts regarding an individual's birth, birth certificates are often presented in practice as proof of citizenship. This can lead to a reluctance to issue birth certificates to non-citizens. The birth certificate does not state the citizenship of the bearer, but identity numbers provided on birth certificates are encoded in different formats for children born to South African citizens, permanent residents, and refugees.

In 2018, the Department of Home Affairs proposed new regulations that would have required children born to non-South African parents to be issued with a "confirmation of birth" that could then be presented to the relevant embassy so that these children could obtain a birth certificate from their country of nationality. Many civil society organizations objected to this proposal, and it was dropped. However, it seems to indicate a misunderstanding that South African birth certificates function primarily as evidence of South African citizenship, as opposed to a record of the facts pertaining to an individual's birth.

The law on citizenship has been amended several times since 1994. The government recently acknowledged that the Department of Home Affairs is embroiled in some 8,000-10,000 court cases pertaining to citizenship, with some 150 new cases being opened each week. The Constitutional Court has held that discrimination on the basis of citizenship can be unconstitutional in some circumstances, even though citizenship is not listed as one of the prohibited grounds for discrimination in the Constitution's equality clause.

Until recently, South Africa's regulations required that the notice of birth for a child born outside of marriage must be provided by the child's mother, with the father requiring the mother's consent to be included on the child's birth certificate. This aspect of the law was ruled unconstitutional in May 2020 on the grounds that it discriminated against the fathers of children born outside of marriage and effectively barred unmarried fathers from giving notice of the child's birth in the mother's absence. The court held that an unmarried father must be permitted to register the birth of his child if he acknowledges paternity in writing under oath.

Despite these challenges, South Africa has made positive strides in the coverage of its birth and death registration processes, with effective incentives for both birth and death registration.

Conclusion

A well-functioning civil registration and identity management system that is capable of universally registering all vital events and providing reliable identity credentials must be based on a comprehensive legal framework, strong institutions to provide services and safeguard records, and dependable and secure technology that is appropriate for the purpose and environment. While the four countries studied have made significant progress in improving their regulatory frameworks to enhance registration and promote inclusion, they continue to face challenges to fully implement modernization efforts. All four countries examined have been reorganising their civil registration and identity management systems and updating their laws to put their civil registration systems on a stronger and more stable footing.

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