

## CAPE TOWN OUTCOME DOCUMENT: LEGAL SAFEGUARDS IN BIRTH REGISTRATION LAW FOR THE PREVENTION OF STATELESSNESS

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*These safeguards should serve as reference points for policymakers, lawmakers, and civil registration officials on key elements of civil registration law that can help prevent statelessness. In many countries, gaps in the civil registration law cause statelessness. The principles are informed by the UN guidelines on legislative frameworks for civil registration and an analysis of gaps and best practices in the civil registration laws of various countries. They are not designed to address all aspects of civil registration laws, but rather to raise awareness of essential legal elements and to inform assessments of national laws on the issue of statelessness.*

- 1. A child's right to birth registration:** The law should clearly state that every child has a right to birth registration immediately after birth (Article 7, CRC) by the competent (civil registration) authorities in the country where the birth occurred, regardless of the citizenship, status, background, or other attributes of the child or of either or both parents.
- 2. Free and compulsory birth registration and certification for all:** Birth registration must be compulsory for all births, without imposing sanctions or fees. Sanctions and fees can discourage birth registration, and therefore undermine proof of place of birth and family relations. The first copy of the birth certificate should be issued immediately after birth registration and free of charge.
- 3. Duty and ability to declare the birth of a child:** The law should clearly state who has the *duty* to declare a child's birth to the competent State authorities and who has the ability to declare the child's birth when persons with a primary duty to do so are unavailable or fail to act. Parents who are unable to be present at the birth registration, should be allowed to submit affidavits regarding their relationship to the child, including through frontline community workers. Although parents or others with the best information about the child's birth and family relations should be encouraged to ensure birth registration, the ultimate duty to guarantee that the right to birth registration is realised for all children rests with the State.
- 4. Health sector involvement:** The health sector can play an important role by notifying, declaring, and even registering a birth. As applicable in a country, the role of the health sector, must be explicitly outlined in the law. A notification or declaration of a birth from the health sector, provides a reliable source of data for the child's birth registration as well as information that can be used for outreach by civil registration authorities where birth registration does not follow promptly after birth takes place. Notification or declaration of births by the health sectors can also provide essential evidence for establishing the citizenship status of the child. Other sectors can be involved in notifying or declaring home births, depending on the country's circumstances. Other State authorities should have a legal duty to refer children to civil registration officials for birth registration.
- 5. Evidence for birth registration:** Birth registration should happen as soon as it is reasonably certain that a birth occurred in the country and hasn't been registered before. The absence of some details such as parentage, nationality and/or place of birth of parents shouldn't prevent registration. It is recommended to create a birth record and issue a certificate with available information, noting the reasons for any missing details. While there may be document requirements, they must be reasonable and not obstruct a child's registration. The best approach is to rely on trusted proofs of birth, such as for example documentation from the health sector, in the country and demand further verification only when such evidence is lacking.
- 6. Clear procedures for registering vulnerable children:** The law and implementing policies, and SOPs should include clear mechanisms for birth registration of children of undocumented parents and those who are abandoned, orphaned, adopted, born to refugees or migrants or in other vulnerable circumstances due to the heightened risk of statelessness for these groups of children. The right to birth registration and the best interests of the child should always be the overriding principles.
- 7. Late birth registration:** The legally permissible time period for birth registration should not be unreasonably short and should factor in and reflect a country's context including delay in naming. Instead of an arbitrary deadline after which it is late birth registration, the dividing line should be a functional one based on the point where it is logical and helpful to apply additional evidentiary requirements. Procedures for late birth registration must be explicitly outlined, including documentary requirements or alternative forms of evidence where birth notifications from health facilities or other usually required documents are unavailable. It is acceptable to require additional investigation or verification for delayed registrations, but such requirements should not hinder registration of births that can be reasonably confirmed. The evidence required for late registration should be aimed

only at establishing the facts of the birth. The reasons for the delay in registration should be requested only under unusual circumstances. There should not be any fines for late registration and delayed registration and in extreme cases, they should be rationalized and not become a barrier to the process.

**8. Reporting births of children born to citizens outside the country:** A legal mechanism for the reporting of births of children outside a country to citizens is an essential safeguard given that this ensures that such children, if there is proof of their birth, can rightfully claim citizenship by descent. Reports of births to citizens outside the country should be made at the consular office in the country where the birth occurred, or directly to the civil registration authority of the country of the parent's citizenship or residence. The timeframe for making such reports should be reasonable and flexible.

**9. Right to register one's own birth:** Children of sufficient age and maturity should have the right to register their own births, if this has not been done previously on their behalf. They should similarly be able to report their own births outside the country of their parent's citizenship to the consular office in the country where the birth occurred, or directly to the civil registration authority of the country of their parent's citizenship or residence.

**10. Reconstruction of lost or damaged records:** There should be a legal provision for the retroactive re-creation of a birth record if the original is lost or damaged. This can be particularly important in countries that are prone to natural disasters and those digitalising their records, as this process may bring to light gaps in past record-keeping or record storage.

**11. Amendment of birth records:** Legal provision should allow for amendment of birth records to correct errors or to add missing information such as name of the children where registration is allowed without a name, father's name, etc. This helps promote early birth registration, even in situations where immediate identification of parents or cultural naming traditions causes delays.

**12. Appeal procedures:** The legal framework must provide a simple, efficient, and accessible appeal process for refusal to register a birth, decisions on the record of parentage in a birth registration or, as applicable, any determination of citizenship that is made in connection with the birth registration (such as where different types of birth certificates or different identification number codes are provided to citizens and non-citizens, a practice that should be avoided, in view of its possible discriminatory nature, when possible). Such an appeal mechanism does not necessarily need to involve a court of law in the first instance if internal appeal mechanisms are available and more accessible, but an appeal to a court must always be available.