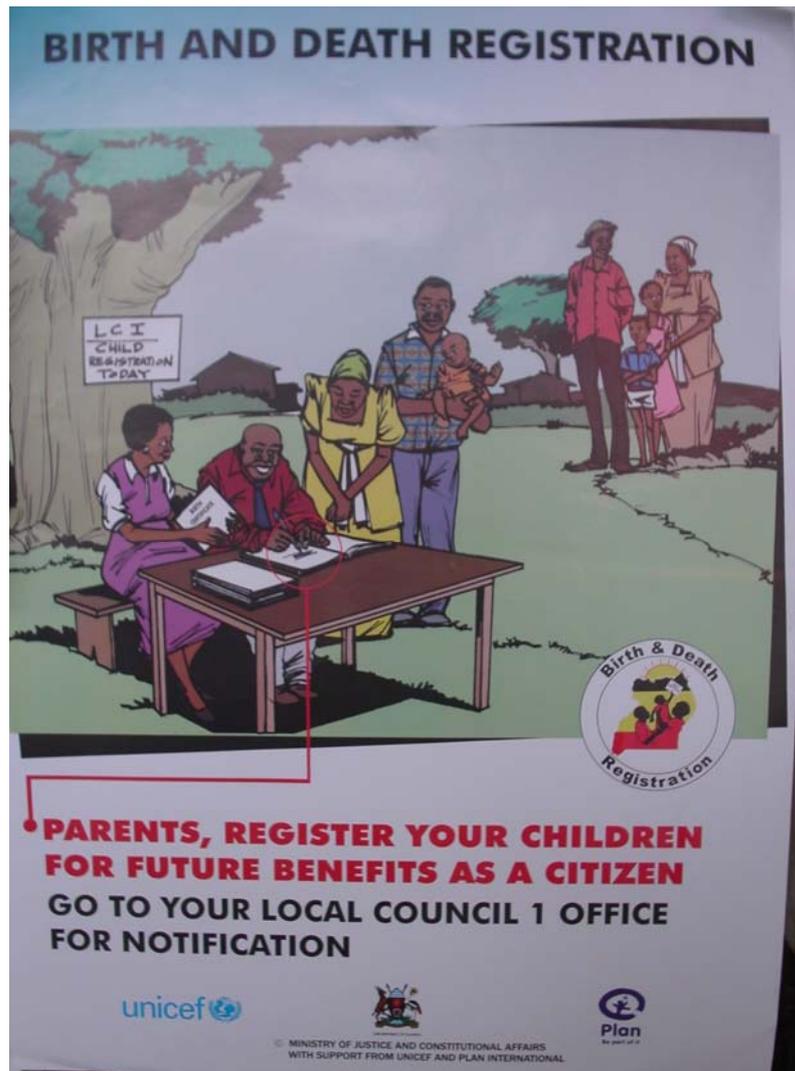


Strategic analysis on civil registration and children in the context of HIV and AIDS



Inter Agency Task Team on Children Affected by AIDS Working Paper

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ii. Executive summary

Civil registration is of utmost importance for both states and individuals affected by HIV and AIDS. In the context of HIV and AIDS, civil registration systems allow states to monitor their population, enabling effective policies to be formulated and implemented, protecting and fulfilling the rights of people living with HIV and communities affected by the pandemic. Simultaneously, civil registration acts as a source of protection for individuals, as such systems provide legal documentation establishing an individual's identity, nationality, and kinship, which are necessary proof for securing property rights, and accessing basic services such as health care and education. While civil registration establishes and provides documentation of births, foetal deaths, marriages, divorce and deaths, in the context of HIV and AIDS, birth and death registration are of particular importance in understanding the impact of the pandemic on children's rights. That said, only reliable statistics and information on birth registration are available. The report hence focuses on the extent to which the HIV pandemic influences accessibility and availability of birth registration systems in Africa, and how Africa's weak birth registration systems impact on the large number of children affected by AIDS. Birth registration is enshrined in the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, as well as other international legal instruments, as a fundamental right for all children, and it places the obligation on states to ensure this right.

The report focuses on all 45 countries in Eastern, Southern, Western and Central Africa, which have the highest number of people living with HIV and the highest number of children orphaned by AIDS in the world. Eastern and Southern Africa has the lowest birth registration rates in the world, and Western and Central has the third lowest rates. The report analyses birth registration rates in accordance with HIV prevalence rates, and a desktop review and responses to a questionnaire designed by the consultants to gather practical information, challenge the assumption that high HIV prevalence rates correspond to the low birth registration rates in sub-Saharan Africa. There is no empirical evidence proving HIV prevalence rates to be a pertinent detrimental factor to the *availability* of birth registration systems. Instead, the report demonstrates that demographics and socio-economic factors, and particularly poverty, do not fail to play key roles in the availability of such systems. Political will and understanding of birth registration as a fundamental human right are also identified to be a key barrier to the availability of effective and sustainable birth registration systems.

The HIV pandemic, as a public health emergency, also does not impede *access* to birth registration mechanisms. However, AIDS, as a full-blown disease impacting on individuals' well-being, does. People living with AIDS do not access birth registration systems. AIDS physically and financially deters ill parents or caregivers from registering children, and ill parents fear that registering children will induce stigma towards HIV positive children and / or children affiliated with HIV positive family members.

Poverty exacerbated by HIV also decreases parents or caregivers opportunities from accessing birth registration systems, as registering children can incur both direct costs (registration fee and birth certificate fee) and certainly indirect costs (transport, unpaid leave from work),

rendering 19.7 million or 66% of children unregistered in sub-Saharan Africa. In addition to access being restricted to birth registration systems as a result of poverty, the immediate benefits of birth registration and birth certificates are not realized, as is shown by responses to the questionnaire. In the context of poverty and HIV and AIDS, already meagre finances would rather be spent on material needs, such as food, antiretroviral treatment, shelter and clothing, which prolong the lives of HIV positive caregivers and / or children, and allow them to live positively.

Lack of understanding on the protection benefits offered to children by being registered and owning a birth certificate is common amongst the general populations, as well as by policymakers, however. While all reviewed National Plans of Action (NPA) in Orphaned and Vulnerable Children (OVC) acknowledge the vulnerability of children affected by AIDS, and the dire impact of poverty on OVC, only Zimbabwe has realized that birth registration is a child's first human right, the fulfilment of which can impact on both a child's access to basic services, and protection from abuse, violence, and exploitation, including in prisons, inheritance loss and property grabbing. Several NPAs on OVC, including those from Cote d'Ivoire, Ethiopia, Lesotho, Rwanda, Nigeria, Swaziland and Zambia do reflect that birth registration is considered an essential service to which all children have the right to access, yet they do not recognize that birth registration enables easier access to other services, such as education and health care. Other NPAs, including those from Kenya and Mozambique, focus solely on the protective legal measures offered by birth registration.

The HIV pandemic has exacerbated the vulnerability of children who are not registered and who do not have a birth certificate. Yet it is children orphaned by AIDS without birth certificates who are the most precarious, as they are highly vulnerable to having their inheritance rights violated, affecting their key source of livelihood. Inheritance loss is an economic as well as human rights issue. Furthermore, orphaned children without a birth certificate are also at increased risk of unaccompanied migration and illegal adoption.

Central to the report are the following key findings:

- Weak birth registration systems in sub-Saharan Africa existed before the HIV pandemic. HIV and AIDS do not seem to hinder the recent and current processes of changing birth registration legislation and systems from discriminatory colonial legislation to ensuring free and universal birth registration. However, while the majority of countries in the study have ratified the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, progress in developing specific legislation on birth registration and effective birth registration mechanisms is slow.
- A strong civil registration system helps policy- and decision-makers meet the challenges of HIV and AIDS by planning the appropriate scale of budget allocations and distribution of health services, as well as keep track of the impact of AIDS in terms of the total number of AIDS-related deaths and the survival rate of those on ARVs. Strengthening civil registrations systems is a government responsibility.

- The HIV pandemic, as a public health emergency, does not affect availability and accessibility of birth registration systems. AIDS does affect accessibility to these systems, as the disease renders it physically and financially difficult for parents/caregivers to register their children. Money would rather be spent on antiretroviral treatment or nutritious food.
- There is a lack of understanding by poor parents/caregivers on the protective measures offered by birth registration and birth certificates. Caregivers do not consider birth registration to address immediate needs, and they will spend money saved by the direct and indirect costs of registering children on material resources, such as food and school fees, in order to ensure children live a decent life.
- Most NPAs identified fees to be the key barrier to children accessing education and health care, and not the lack of birth certificates. This explains why policymakers do not see the link between birth certificates and the ability to access basic services, as it is not considered a prerequisite to access such services in most countries. Instead, the benefits of birth certificates are usually considered essential in protecting children from abuse, violence, exploitation and inheritance loss.
- Weak registration systems do not impact differently on children affected by AIDS compared to other vulnerable children. However, children orphaned by AIDS are particularly affected by weak birth registration systems, as cases of inheritance rights violations attest.
- Children's right to inherit is not established in international or regional child specific laws. Only the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa specifies inheritance as a right. Most countries in the study do not have specific legislation establishing and guaranteeing children's right to inheritance, and such rights are usually governed by customary laws, which are discriminatory against children, particularly those born out of wedlock.

In order to strengthen and scale up birth registration in the context of AIDS in sub-Saharan African countries, there is a general need for:

- Further research in high HIV prevalence countries (above 14 per cent) to generate additional evidence on the impacts of HIV and AIDS on accessibility and availability of birth registration systems. In order to understand birth registration in the context of HIV and AIDS in sub-Saharan Africa, the impacts of customary laws surrounding marriage and divorce should also be looked at, as these factors can influence and determine whether a child is registered or not.
- Campaigns and materials to increase demand amongst stakeholders, including parents, caregivers and children affected by AIDS, for free and universal birth registration and comprehensive and accurate registration of deaths. User friendly materials need to be developed for children and elderly caregivers. The campaigns should further include information on will writing and succession planning.
- Advocacy at a regional, national and local level around birth registration and death registration in the context of HIV and AIDS to ensure that children's rights and child protection mechanisms are addressed and integrated into laws, policies, and action plans pertaining both to HIV and AIDS, children, and poverty reduction strategies.

iii. Acronyms

ACRWC	African Charter on the Rights and Welfare of the Child
ART	Antiretroviral Therapy
CRC	Convention on the Rights of the Child
FAO	United Nations Food and Agriculture Organization
GPF	Global Partners Forum
IATT	Inter Agency Task Team on Children Affected by AIDS
ILO	International Labour Organization
OVC	Orphans and Vulnerable Children
NPA	National Plan of Action
PEPFAR	President's Emergency Plan for AIDS Relief
PMTCT	Preventing Mother-to-Child Transmission of HIV.
RIATT	Regional Inter Agency Task Team on Children Affected by AIDS
SOWC	State of the World's Children
UNGASS	United Nations General Assembly Special Session on HIV/AIDS
UMC	Unaccompanied Migrant Child
UNICEF	United Nations Children's Fund
WHO	World Health Organization
ZAR	South African Rand

iv. Glossary of terms

AIDS	The Acquired Immunodeficiency Syndrome is the final stage of HIV infection. Most HIV positive people will develop AIDS, though increasing numbers will not due to drug therapies.
Birth certificate	A personal document issued to an individual by the state to prove birth registration.
Birth registration	The official recording of the birth of a child by an administrative process of the state and is coordinated by a particular branch of government. It is a permanent and official record of a child's existence, and recognizes the official existence of a person before the law.
Civil registration	The compulsory, universal, permanent and continuous recording of the occurrence and characteristics of vital events (birth, foetal deaths, marriages, divorces, deaths). It establishes and provides legal documentation of such events.
HIV	The Human Immunodeficiency Virus is the virus that causes AIDS. An HIV positive test does not mean a person has AIDS, as there is an interval, ranging between six months to ten years, between the initial infection and the onset of AIDS.

1. Introduction

Civil registration systems are fundamental to safeguarding human rights as such systems establish and provide legal documentation of births, foetal deaths, marriages, divorce and deaths.¹ This documentation acts as a source of protection for individuals, because they establish an individual's identity, nationality, kinship and age, which is key for citizens' legal protection and to attain access to a state's essential services and. Civil registration systems are also critical for states to effectively monitor its citizens, and plan and programme services for their needs. Knowledge of these statistics is also essential to help the country secure development funds and monitor the progress made towards targeting the Millennium Development Goals.² Even though civil registration benefits both individuals and states, the October 2007 World Health Organization (WHO) fact sheet states that a majority of countries have unsatisfactory civil registration systems, with only 31 out of 193 WHO member states having reliable systems.³

Within the framework of a civil registration system, birth and death registration are of particular importance to promoting and protecting the rights of the child. These systems can monitor the number of children born, the under 5 mortality rate, the number of dead parents/caregivers⁴, and consequently the number of orphaned children. Birth and death registration systems place the obligation on the state to ensure that children's rights continue to be protected once a caregiver dies.

In sub-Saharan Africa, HIV and AIDS⁵ heavily impacts on the majority of children, leaving them orphaned and / or vulnerable. Weak registration systems further render these children vulnerable as a lack of a birth certificate restricts their access to basic services and protection mechanisms, increasing their susceptibility to abuse, violence and exposure to HIV. Absence of a caregiver's death certificate increases the violation of a child's human right to inheriting property, which is key for a child's sustainable livelihood and food security.⁶ Even though it is understood by sub-Sahara African states that birth registration systems is a vital mechanism

¹ UN Department of International Economic and Social Affairs Statistics Division (1998). Handbook on civil registration and vital statistics systems. Preparation of a legal framework. New York, United Nations.

² Plan International (2006). Count me in: The global campaign for universal birth registration. Interim campaign report 2005-2006. London, Plan International.

³ World Health Organization (2007). Civil registration: why counting births and deaths is important. Fact sheet No. 324. October. <http://www.who.int/mediacentre/factsheets/fs324/en/index.html>. Accessed on March 20 2008.

⁴ Parents and caregivers will be used interchangeably. The distinction between parents or caregivers will be made only in contexts when a legal distinction is necessary.

⁵ 'HIV' should be understood to also include 'AIDS'. The specific use of 'AIDS' will be made only in contexts where that stage of the disease is considered.

⁶ Rose, L (2006). Children's property and inheritance rights and their livelihoods: the context of HIV and AIDS in Southern and East Africa. FAO.

to respecting children's rights,⁷ most countries are unaware of the importance of death registration systems, and consequently do not have accurate and comprehensive systems recording data on death. As a result, the research will focus on birth registration in the context of HIV in sub-Saharan Africa. UNICEF defines birth registration as an official recording of the child's birth by the administrative level of the state and coordinated by a particular branch of the government, which is a permanent and official record of a child's existence and establishes the child's legal identity.⁸

Only one out of three children is registered in sub-Saharan Africa.⁹ Eastern and Southern Africa has a 24 per cent birth registration rate, and West and Central Africa has a 41 per cent registration rate, which are, respectively, the lowest and third lowest regional rates in the world. In some countries in sub-Saharan Africa, registration levels have declined in the past five years. South Asia has the second lowest birth registration rate, with a total of 36% of children being registered.¹⁰

In addition to having amongst the lowest birth registration rates in the world, these regions also have the highest number of people living with HIV in the world. Eastern and Southern Africa has 17.7 million people living with HIV, and West and Central Africa has 6.9 million people living with HIV. Furthermore, the number of children orphaned by AIDS¹¹ in these regions are the only ones in the world that are projected to keep on increasing.¹²

Accordingly, this research seeks to address the extent to which the HIV pandemic influences accessibility and availability of birth registration systems, and how Africa's weak birth registration systems impact on the large number of children affected by AIDS.

2. Background: the role of the GPF and IATT in civil registration

The third Global Partners Forum (GPF) meeting in 2006 was convened to provide input into the United Nations General Assembly Special Session on HIV/AIDS (UNGASS) review of achieving universal access to prevention, treatment, care and support for children affected by HIV and AIDS. The GPF identified civil, and particularly birth registration to be one of the strategic areas of importance to building a comprehensive response for children affected by HIV and AIDS.¹³

⁷ See Bequele, A. (2005). Universal birth registration: the challenge in Africa. The African Child Policy Forum. Paper presented for the second Eastern and Southern Africa Conference on Universal Birth Registration. Mombasa, Kenya. September 26-30.

⁸ UNICEF (2002). Birth registration: Right from the start. *Innocenti Digest No. 9*. Florence, UNICEF Innocenti Research Centre.

⁹ UNICEF (2007) Progress for children. A world fit for children: statistical review. No 6. New York, UNICEF.

¹⁰ UNICEF (2008). The state of the world's children 2008: child survival. New York, UNICEF.

¹¹ Children orphaned by AIDS refers to a child who has lost either one parent or both parents.

¹² UNICEF (2007).

Preceding the third GPF meeting, a two-day technical consultation was held to provide evidence-based recommendations on the identified areas of strategic importance, including on birth registration. The technical consultation on birth registration highlighted birth registration to be a key child protection measure, and stressed the additional vulnerability of a child who is without birth registration and who is orphaned. Such a child would possibly be discriminated against in terms of their socio-economic rights (lack of access to health care and education) and succession rights (violation of right to inherit parental property).¹⁴

The evidence-based recommendations set forth by the technical consultation on birth registration¹⁵ were presented to the Inter-Agency Technical Team (IATT) on children in the context of HIV and AIDS. Recommendations included the need to “advocate for civil registration”.¹⁶ The IATT is mandated with coordinating the follow up of the recommendations set forth by the GPF, and has set up a working group on civil registration.¹⁷ This working group aims to increase understanding on civil registration systems in Africa, and in particular on the impacts of HIV and AIDS on such systems. Specifically, the working group on civil registration has identified the need to improve its knowledge base on the direct and indirect linkages between civil registration and HIV and AIDS in Africa. Consequently, the Centre for the Study of AIDS at the University of Pretoria was contracted to carry out research to address the IATT’s civil registration working group’s need. In line with the scope of the terms of reference, this focuses on birth registration as one aspect of civil registration. As noted, there is a lack of data and information on death registration, and hence death was not included in the research.

3. The research study

3.1 Need for research on birth registration in the context of HIV

Available literature on birth registration largely concerns itself with advocating the importance of birth registration, identifying and addressing the barriers to birth registration,¹⁸ and designing strategic approaches to establishing effective and efficient birth systems¹⁹. The impacts of non-registration on children have also been documented, and the focus of these cases have primarily been on South Asia or sub-Saharan Africa, as these regions account for the lowest birth registration rates in the world. However, more attention is being given to understanding birth registration within the context of other regions, such as in Central

¹⁴ UNICEF (2006). Report on the third Global Partners Forum on Children Affected by HIV and AIDS: Universal access to prevention, treatment and care. New York, UNICEF.

¹⁵ As above. pp. 7-8.

¹⁶ UNICEF (2006).

¹⁷ Members of this working group include the President’s Emergency Plan for AIDS Relief (PEPFAR), Plan International, UNICEF and World Vision.

¹⁸ See for example, UNICEF (2002).

¹⁹ See for example, Lancet (2007) Series on Vital Statistics, and Akoto, E. (2001) Recording of births in Sub-Saharan Africa: what strategies can be adopted to improve on coverage? Paper prepared for consultation on birth registration. Florence, UNICEF Innocenti Research Centre.

Europe and the Commonwealth of Independent States,²⁰ East Asia and the Pacific,²¹ and Latin America²².

The identified barriers to birth registration are usually reflective of the internal situation of a state, and focus on political will, administrative support, budget, legislation and policy frameworks. External factors, such as HIV and AIDS that influence and impact on a states' capacity to establish and sustain birth registration systems are largely neglected within the research.²³

3.2 Research objectives

The report will specifically address the following questions:

- How does the lack of access to birth and civil registration impact on children affected by AIDS, their families and communities?
- How does the HIV pandemic impact on access to, or availability of birth and other forms of civil registration?

The study covers all 45 countries in Eastern, Southern Africa, Western and Central Africa (See Box 1). As this research aims to understand the impacts on, and relationship between HIV and birth registration, a macro approach to HIV and birth registration within these regions was taken. Country-specific examples will be used to highlight a point, however the focus of the report is not to provide a country specific report on birth registration in African countries or high HIV prevalent countries.²⁴

²⁰ UNICEF (2005). Right at birth: birth registration in the countries of Central and Eastern Europe and the commonwealth of independent states. Geneva, UNICEF regional office for Central and Eastern Europe and the Commonwealth of Independent States.

²¹ Theis, J. (2007) Right to name and identify: birth registration, human rights and economic analysis. Bangkok, UNICEF East Asia Pacific Regional Office.

²² UNICEF (2000). 'Derecho al Nombre y la Nacionalidad: Propuesta de Trabajo para America Latina y el Caribe. Santafé de Bogotá, UNICEF Regional Office for Latin America and the Caribbean.

²³ An exception to ignoring the role of external factors on birth registration systems is the research conducted on the impact of armed conflict on birth registration systems. (UNICEF (2007a). Birth registration and armed conflict. Florence, UNICEF Innocenti Research Centre.)

²⁴ For country specific information on the status of birth registration in African countries, see UNICEF, Plan International and World Vision. Birth Registration Questionnaires Pan African Birth Registration Report Card (2008). Unpublished.

Box 1: Countries covered in the study, by region.

Eastern Africa	Southern Africa	Western Africa	Central Africa
- Burundi	- Angola	- Benin	- Cameroon
- Comoros	- Botswana	- Burkina Faso	- Central African Republic
- Eritrea	- Lesotho	- Cape Verde	- Chad
- Ethiopia	- Madagascar	- Côte d'Ivoire	- Congo (People's Republic of Congo)
- Kenya	- Malawi	- Gambia	- Democratic Republic of Congo
- Rwanda	- Mozambique	- Ghana	- Equatorial Guinea
- Somalia	- Namibia	- Guinea	- Gabon
- Tanzania, United Republic of	- Seychelles	- Guinea-Bissau	- São Tomé and Príncipe
- Uganda	- South Africa	- Liberia	
	- Swaziland	- Mali	
	- Zambia	- Mauritania	
	- Zimbabwe	- Niger	
		- Nigeria	
		- Senegal	
		- Sierra Leone	
		- Togo	

3.3 Research methodology

The research is both desktop and participatory in nature. The desktop research consisted of internal documents from the civil registration working group partners, literature reviews, and relevant data and information, including National Plans of Action (NPAs) on Orphans and Vulnerable Children (OVC) being compiled, reviewed and analyzed. Qualitative field research was also conducted, with key informant's electronically receiving a questionnaire that was designed by the consultants (see Annex 1). The questionnaire aimed to understand what the respondents' perceptions of the relationship between HIV and AIDS and birth registration is. Key informants were identified by the IATT working group on civil registration and by the consultants. Questionnaires were sent to 40 key informants, including from the civil registration working group organizations and its partners, the Eastern and Southern African regional IATT (RIATT) members, NGOs, research institutions, including different research institutes within the University of Pretoria, a representative from a provincial department of civil registration, and a representative from an established network on HIV and AIDS.

Fourteen questionnaires were answered and returned, a response rate of 35 per cent, allowing these responses to be incorporated into the report. Specifically, responses were received from Plan and UNICEF headquarters, from Plan and UNICEF's East and Southern Africa Regional office, as well as from several of these organizations' country offices.²⁵ One response was also garnered from a World Vision country office. In addition to responses from the working groups, responses were also received from Save the Children UK, Centre for Child Law, at the University of Pretoria, the Provincial Department of Civil Registration in Zambézia,

²⁵ Specifically, responses were received from Plan Zambia, UNICEF Mozambique, UNICEF Swaziland, and UNICEF Zambia.

Mozambique, and Constella Group²⁶. One interview was conducted with a representative from USAID. All responses, excluding those from Plan and UNICEF headquarters, stemmed from countries in Southern Africa. The interview also focused primarily on Southern Africa. As has been previously confirmed, this is the region with the highest HIV prevalence rate, implying the weight of the respondent's insights and perceptions on HIV and birth registration.

3.4 Limitations of the study

From the literature and internal documents from the working group partners, no information explicitly addressed the impacts of HIV and AIDS on accessibility and availability of birth registration, highlighting the fact that such information is not readily available. Any conclusions stemming from the report should be considered as preliminary findings. Further research is needed to substantiate these findings. The questionnaire was one attempt to do so.

The majority of respondents to the questionnaires were staff from the civil registration working group members who are based in sub-Saharan Africa. All of the respondents had directly worked with birth registration or HIV issues, and usually as two distinct programme or research areas. Even though a response was received from one government authority, additional perspectives from stakeholders, such as civil registrars, traditional birth attendants, midwives, parents and other caregivers, and children, are needed. These informants are vital to garnering a detailed understanding of how HIV influences availability and accessibility to birth registration, and how weak birth registration systems impact on children affected by AIDS.

Another limitation to the study is time. In view of meeting the deadline for the completion of the report, most respondents to the questionnaire considered the time allocated to adequately complete it as too short. Most respondents required additional time to review and answer the questionnaire. Those that did return the questionnaire by the allocated deadline might have had to rush, affecting or impacting on the quality of answers. Those who could not adhere to the deadline provided are excluded from the analysis.

4. Birth registration in Africa

"Birth registration in Africa is an alien concept,"²⁷ and as a result birth registration activity in Africa is just beginning to emerge.²⁸ It is only a recent development in many African countries that a duty is placed on the state to provide birth registration services to all children.

²⁶ Constella Group is a global professional health services company. See <http://www.constellagroup.com/> for more information.

²⁷ Bequele, A. (2005). Universal birth registration: the challenge in Africa. The African Child Policy Forum. Paper prepared for the second Eastern and Southern Africa Conference on Universal Birth Registration. Mombasa, Kenya. September 26-30.

²⁸ Woll, L. (2002). Report on the Anglophone Africa Workshop on Birth Registration. UNICEF.

Birth registration in Africa has its roots in colonial times, as colonial legislative instruments included provisions on birth registration. These provisions, however, made birth registration mandatory only for non-Africans, i.e. Europeans and Asians. Under colonial laws, birth registration for Africans was optional.

As such, the HIV pandemic should not be blamed for Africa's weak birth registration systems. HIV and AIDS have brought to the fore the existing faults in Africa's socio-political systems, and the pandemic has highlighted the urgency to address the critical impacts that these systems have on children.

Even so, after independence, birth registration continued to be optional for Africans, as the development of national legislations largely stemmed from colonial laws. National legislations were mere revisions of colonial laws, and were not newly formulated to acknowledge and incorporate peoples' cultural practices. Provisions pertaining to birth registration in some national legislations continue to disregard peoples' way of life. For example, even though Cameroon has a 70 per cent birth registration rate, children from the nomadic pygmies are not legally recognized, obscuring their access to birth registration.²⁹ Furthermore, birth registration forms are only available in Afrikaans and English, two of the country's 11 official languages, discriminating in particular against those in rural areas.³⁰

Mr. Assefa Bequele of the African Child Policy Forum believes that the impetus to recognize birth registration as a right for all children in Africa stems from the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC). Article 7(1) of the CRC gives every child the right to be registered at birth and places the obligation on the state to ensure this right:

The child shall 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, the right to know and be cared for by his or her parents.

Article 6(2) of the ACRWC also establishes a child's right to be registered: "Every child shall be registered immediately after birth."

As of the time of writing, all countries in the study have ratified the CRC, except Somalia. The ACRWC has been ratified by 39 out of the 47 countries in the study.³¹ Both the CRC and the ACRWC place a legal obligation on state parties to, in accordance with their

²⁹ Plan Australia (2005). "A birth certificate—the first basic human right". 19 February <http://www.plan.org.au/mediacentre/features/828> Accessed on April 15 2008.

³⁰ Birth Registration Questionnaire: South Africa. Pan African Birth Registration Report Card (2008). UNICEF, Plan International and World Vision. Unpublished.

³¹ Countries that have not, as of April 2008, ratified the ACRWC include Central African Republic, Democratic Republic of the Congo, Guinea-Bissau, Liberia, São Tomé and Príncipe, Somalia, Swaziland and Zambia. Out of these countries, only Liberia does not have data on birth registration rates.

constitutional processes, to adopt the legislative measures to give effect to the CRC³² and ACRWC³³. See annex 2 for other relevant international and national legal provisions, policies and plans of action establishing or advocating the right to birth registration, which are applicable for countries in this study. Yet despite the fact that the majority of countries in the research have ratified the CRC and the ACRWC, as well as other relevant international legislations pertaining to birth registration, domestic legislation still needs to be made fully compatible with these human rights instruments in order to make birth registration a reality for all children.³⁴

The Committee on the Rights of the Child raised concerns over the challenges and problems encountered by most African countries in domesticating the necessary legislative measures as stipulated by the CRC in order to provide birth registration to all children.³⁵ For example, the Kenyan delegation to the second Eastern and Southern Africa Conference acknowledged the belief that birth registration and issuing a birth certificate entailed two independent processes.³⁶ In fact, most countries in Africa do not consider birth registration and birth certificates as concurrent issues, and as a result birth registration does not automatically translate into the delivery of a birth certificate. A birth certificate is the “most visible evidence of the government’s legal recognition of the existence of the child as a member of the society”,³⁷ which can only be produced after a child is registered.

To help countries overcome these and other challenges, the Committee on the Rights of the Child agreed on the need to develop essential global guidelines and strategies for all states parties to observe for ensuring the rights of every child to survival, development and accessing quality services. The following guidelines are recommended to all state parties:³⁸

1. Universal birth registration: states parties to ensure compulsory and timely birth registration for all children born within the state with special attention on children born in rural areas. Registration should not discriminate children born to marginalised and most vulnerable groups and facilitate parents to register children born abroad.
2. Free registration: birth registration should be free of cost at all stages including birth certificate.

³² Convention on the Rights of the Child (1989) Article 4.

³³ African Charter on the Rights and Welfare of the Child Article (1990) Article 1(1).

³⁴ Save the Children UK (2006). Legal and policy frameworks to protect the rights of vulnerable children in southern Africa. South Africa, Save the Children UK Southern Africa Programme.

³⁵ Sharp, N. (2006a). Global guidelines and strategies for universal birth registration: An analysis of the Concluding Observations and General Comments of the UN Committee on the Rights of the Child. London, Plan International

³⁶ UNICEF (2005a). The second Eastern and Southern Africa conference on universal birth registration: improving services to protect the rights of children. Nairobi, UNICEF.

³⁷ UNICEF (2002).

³⁸ Sharp, N. (2006a).

3. Accessible birth registration to all: Birth registration should be well-coordinated (decentralised) and equally accessible to all parents in a national territory
4. Late registration: The state to ensure that late registration for older children is facilitated without enforcing late registration fees.
5. Preservation of identity: Ensure that children have the right to preserve their identity, name and family relations, especially those born out of wedlock and measures should be taken against simulation of birth certificates.
6. Equal access to services: children should not be denied access to basic services because they lack birth certificates. Provision should be made to ensure that children without birth certificates are accommodated while steps are taken to facilitated access to birth certificate.

Furthermore, General Comment 7 “Implementing Child Rights in Early Development” identified birth registration as an indicator to assessing the effectiveness of states’ systems in realising the rights for young children.³⁹ It was also noted that birth registration is a requirement for immediate remedial action in response to specific violations of rights.⁴⁰ The Technical Consultation on Indicators Development for Children Orphaned and made Vulnerable by HIV/AIDS also highlighted the need to include birth registration as an indicator for child protection.⁴¹

In recognition of the importance of birth registration and the need to strengthen such systems, countries in Eastern, Southern, Western and Central Africa have noted that birth registration needs to be a higher priority for governments. The second Eastern and Southern Africa Conference of Universal Birth Registration has observed that a “greater understanding of the importance of birth registration for the realisation of child rights is developing in the region.”⁴² Several African countries, in particular Uganda, Kenya, Malawi, Zambia, and Zimbabwe have recently changed, or are in the process of changing, their legislation to enshrine birth registration as an inalienable human right for all newborn children.⁴³ Furthermore, 44 per cent of countries in sub-Saharan Africa have drafted National Plans of Action on Orphaned and Vulnerable Children, wherein either concrete plans or references to birth registration are made.

³⁹ Committee on the Rights of the Child (2005). General comment No. 7 Implementing child rights in early childhood. CRC/C/GC/7. 1 November.

⁴⁰ Early Childhood Indicators Group (2008). A framework of early childhood indicators for general comment 7: implementing child rights in early development.

⁴¹ UNICEF (2003). Technical consultation on indicators development for children orphaned and made vulnerable by HIV/AIDS. Gaborone, Botswana, 2-4 April.

⁴² UNICEF (2005a).

⁴³ Bequele, A. (2005).

4.1 National Plans of Action on Orphaned and Vulnerable Children

Understanding of the multiple benefits offered to children by being registered and owning a birth certificate are not clearly established in the NPAs.⁴⁴ Only Zimbabwe's NPA specifies that birth registration is a human right and it also acknowledges Zimbabwean national legislation that is relevant to this right, reflecting a firm commitment to increasing levels of birth registration.⁴⁵ Swaziland⁴⁶ and Namibia⁴⁷ declare their NPAs as right-based, and Lesotho bases its NPA on the guiding principles set forth by the CRC and ACRWC, yet they do not explicitly state birth registration as a human right.

Several National Plans of Action on Orphaned and Vulnerable Children, including those from Cote d'Ivoire, Ethiopia, Lesotho, Rwanda, Nigeria, Swaziland and Zambia reflect that birth registration is considered an essential service to which all children have the right to access, yet it is not recognized that birth registration enables easier access to other services, such as education and health care. For example, Ethiopia's NPA (2004-2006) encourages the development of OVC care and support guidelines as part of a strategy to ensure access to basic services.⁴⁸ However, facilitation of birth and death registration falls beyond the scope of these guidelines, as they are not specifically mentioned as a strategy to ensure children's access to basic social services. This could be for two reasons. Firstly, the absence of birth certificates is not considered by the NPA as a barrier to accessing basic services, unlike fees that needed to access education and health care facilities. Secondly, even though Ethiopia has adopted legislation ensuring free and universal birth registration,⁴⁹ no policy makers perceived birth registration as an inalienable human right. In addition, while 87.5 per cent of policy makers did realize that birth registration is proof of identity, birth date, age, nationality, citizenship and personal history, only 25 per cent considered birth registration as a means of protection from abuse and exploitation, maltreatment, child labour, under age military service, trafficking, early marriage, child prostitution, and ensuring juvenile justice.⁵⁰

Rwanda's NPA (2006-2011)⁵¹, however, does acknowledge and stress the importance of birth registration in accessing other services such as shelter, education, nutrition, social protection, and water and sanitation. Even though the NPA aims for all 0 to 4 year olds to be registered

⁴⁴ Out of the 45 countries in the study, 20 have NPAs on OVC. The researchers had access to 11, namely Ethiopia, Cote d'Ivoire, Kenya, Lesotho, Mozambique, Namibia, Nigeria, Rwanda, Swaziland Zambia and Zimbabwe, which were all analysed in light of their birth registration provisions.

⁴⁵ Government of Zimbabwe (2004) National Plan of Action for Orphans and Other Vulnerable Children.

⁴⁶ Kingdom of Swaziland. National Plan of Action for Orphans and Vulnerable Children 2006-2011.

⁴⁷ Government of Namibia (2004). National Plan of Action on Orphans and Vulnerable Children.

⁴⁸ Federal Democratic Republic of Ethiopia. Orphan and Vulnerable Children National Plan of Action 2004-2006.

⁴⁹ UNICEF (2008b). Summary of UNICEF's activities on birth registration in 2007. Unpublished.

⁵⁰ Plan Ethiopia and African Child Policy Forum (2005). A review of birth registration in Addis Ababa and the regions Oromia, Amhara and SNNPR, Ethiopia. Addis Ababa, Plan Ethiopia and African Child Policy Forum.

⁵¹ Government of Republic of Rwanda. National Plan of Action for Orphans and other Vulnerable Children 2006-2011 (Draft).

and have access to social services by 2011, it is important to ensure the registration of older children as well. In the context of HIV, children can take on the role of caregivers to their ill parents and younger siblings. The access to health care facilities, basic education and vocational training, and social protection services are not only the rights of these children, but it may also have a wider consequence for the well-being of younger siblings and other dependent family members if they are registered. Lesotho, which has a 23.2% HIV prevalence rate, does enable retroactive registration, which is integrated into the government's birth and death registration systems.⁵² Such a system in a high HIV prevalent country is key for registering the high number of children orphaned by AIDS, creating the obligation by the state to protect their rights of children after the passing away of their caregivers. Mozambique has also noted the importance of increasing access by orphans to birth certificates, yet its NPA does not specify actions to be taken to do so.⁵³

Some NPAs, including those from Kenya, Swaziland and Zambia consider birth registration only to be a legal protective measure, as it can shield children from abuse, violence, exploitation, child labour and trafficking, as well as inheritance loss and property grabbing. For example, birth registration is recognized as one of the seven guiding principles in the Kenyan NPA and four strategies are outlined to ensure the access of such birth registration mechanisms in both urban and rural areas.⁵⁴ This NPA emphasizes that birth registration is a means to provide stronger policy and legal protection to children who are orphaned and made vulnerable, yet it makes no link to registered children and basic services. Swaziland specifically mentions the importance of birth registration for the protection of property rights, adoption and guardianship arrangements, and for ensuring that siblings are not separated, as this facilitates 'disinheritance' of parental property. Zambia also addresses these issues by aiming to expand and upgrade their Victim Support Unit, which falls under the jurisdiction of the police, that aims to sort out inheritance issues and "other problems related to family death and upheavals".⁵⁵ A potential reason why Zambia's NPA does correlate birth registration to accessing basic service, is because widespread use of alternative documents, such as under 5 clinic cards, are accepted.⁵⁶

Namibia's NPA specifically mentions birth registration in relation to the ability to access various grants, such as the Foster Parent Allowance. Contrary to Namibia, as of 1 June 2008, South Africa's Department of Social Development does not require caregivers to present their own ID and the child's birth certificate to access social grants. As of April 2007, more than eight million South African children under the age of 14 were benefiting from a ZAR 200 (US\$ 30) monthly grant to caregivers earning less than ZAR R800 (US\$ 115) per month.⁵⁷

⁵² Birth Registration Questionnaires: Lesotho. Pan African Birth Registration Report Card (2008). UNICEF, Plan International and World Vision. Unpublished.

⁵³ Republic of Mozambique (2005). National Action Plan for Orphaned and other Vulnerable Children

⁵⁴ Republic of Kenya. National Plan of Action for Orphans and Vulnerable Children 2005/06 – 2009/10.

⁵⁵ Government of Zambia. National Action Plan for Orphaned and other Vulnerable Children. p 12.

⁵⁶ Questionnaire response from UNICEF Zambia.

⁵⁷ Birth Registration Questionnaires: South Africa Pan African Birth Registration Report Card (2008). UNICEF, Plan International and World Vision. Unpublished

However lack of identity documents owned by caregivers, and their inability to access birth registration systems in rural areas, partly due to registration forms only being available in two of the official 11 languages, limited the reach of the grant.⁵⁸ The new policy accordingly allows IDs and birth certificates to be replaced by sworn affidavits, which will be considered legal proof of the identity of the child and the caregiver. Caregivers can obtain affidavits at civil registrar offices, and via traditional leaders, school principals, policemen, and clergymen. This move is estimated to allow another 500,000 to 750,000 children to receive the monthly support grant that they are entitled to.⁵⁹ Even though this addresses South Africa's reality of it having a weak birth registration system,⁶⁰ the new policy can result in corruption, as it becomes easier for individuals to pose as caregivers requesting the support grant, and people can also pose as principals, policemen or clergymen, possibly increasing identity theft. Furthermore, incentives to establish an effective birth registration system could diminish and raising awareness of the importance of birth registration will be futile if birth certificates are not seen as contributing to the access of material resources.

While this new and controversial policy development in South Africa makes it easier for caregivers to access the foster care and child support grant, Uganda's Births and Death Registration Act Uganda permits caregivers, as opposed to only fathers and mothers, to register children.⁶¹ Legislation in most African countries place the responsibility of birth registration on parents, and research indicates that ill parents and the death of parents leaves their orphans vulnerable to unfulfilled rights.⁶² Allowing caregivers to register children increases the likelihood that children will be registered, as the presence, or physical condition, of a parent does not determine whether a child will be registered. This provision is of extreme importance for children orphaned by AIDS, as it does not deprive them of their right to be registered and it can ensure that they continue to be protected after their parents die. While caregivers are able to register a child, extreme caution should be taken to ensure that the caregiver acts out of the best interest of the child. In the era of AIDS and the increasing number of orphaned children, people can view children as a commodity and 'buy' them. After registering the child as their own, caregivers can take the child out of the country. This is particularly dangerous, as it could open the door to illegal adoptions and trafficking of children. Of course one does not want to make it more difficult for people to register babies, but on the other hand, loopholes to allow trafficking must be closed.⁶³

Despite such NPAs, policies and acts aimed at establishing and sustaining effective birth registration systems within countries in sub-Saharan Africa, "progress is slow and countries

⁵⁸ IRIN (2008). South Africa : No Registration, no benefits.

<http://www.irinnews.org/Report.aspx?ReportId=75683> Accessed on 2 June 2008.

⁵⁹ Govender, P. "Fears of social grant fraud". The Times, 1 June 2008.

<http://www.thetimes.co.za/PrintEdition/News/Article.aspx?id=776835> Accessed 2 June 2008.

⁶⁰ See figure 1 to observe that no data is available on birth registration rates in South Africa.

⁶¹ Government of Uganda (2005). Country report for the Eastern and Southern Africa Conference on universal birth registration.

⁶² UNICEF (2005b).

⁶³ Questionnaire response Centre for Child Law, University of Pretoria

have not had enough opportunities to learn from each other and from global experience”.⁶⁴ The Committee on the Rights of the Child has also observed that registering children is a major challenge, but particularly so for Sub-Saharan African countries.⁶⁵

4.2 The regional conferences on birth registration

Since 2002, several regional efforts have been made in both regions to share experiences on birth registration and to identify strategies on how to develop effective systems. Specifically, three conferences have been held within Africa on birth registration. In addition, Western and Central Africa launched a regional campaign on birth registration.

In 2002, Uganda hosted the birth registration workshop for Anglophone countries in Africa,⁶⁶ in 2003 the Western and Central Africa regional campaign for birth registration on the Day of the African Child was launched in Mali, in 2004 the first regional conference on birth registration in West and Central Africa was held in Senegal,⁶⁷ and in 2005 Kenya hosted the second Eastern and Southern Africa conference on universal birth registration⁶⁸. In each of these conferences, there was an overarching awareness that rates of birth registration are extremely low, in particular by those children born and living in rural areas, children who are refugees or internally displaced, children belonging to minority groups, and children born to illiterate parents. It should be noted that no references were made to children infected or affected by HIV and AIDS, and these children were not identified as being vulnerable to not being registered.

Even though these conferences pulled together countries with different socio-economic, political and cultural situations, recommendations stemming from these gatherings raised the same general issues:

- More political will is needed to advance birth registration as a fundamental right of children;
- Increase the level of demand for birth registration, in particular by those living in rural areas and / or already marginalized;
- Mainstream birth registration into existing initiatives, such as into health and education programmes;
- Decentralise birth registration processes so as to allow communities, including traditional leaders and ward councillors, to take on an active and effective role.

It is of importance to note that, while the HIV pandemic’s stronghold lies in sub-Saharan Africa, its influence and effect on civil registration systems at the regional high-level conferences was not discussed. For example, the First West and Central Africa Birth

⁶⁴ UNICEF (2005a).

⁶⁵ Committee on the Rights of the Child (2005).

⁶⁶ Woll, L. (2002).

⁶⁷ Sharp, N. and Heap, S. (2004) First West and Central Africa Birth Registration Conference: Universal birth registration – the way forward. London, Plan International.

⁶⁸ UNICEF (2005a).

Registration Conference in 2004 asked stakeholders to synthesize “hot issues” pertaining to birth registration within their countries. The identified stakeholders, namely children, opinion leaders, media and government, singled out seven “hot issues”.⁶⁹ None of these issues referred to the HIV pandemic. Interestingly, while children in special situations were singled out to be one of the “hot issues”, children affected by AIDS did not fall under this category, unlike children in difficult circumstances, conflict situations, and migratory groups.⁷⁰ A possible reason for HIV not being mentioned or discussed at the conference in West and Central Africa, is because the burden of the pandemic falls elsewhere, namely in southern Africa.⁷¹

However, even the first Eastern and Southern Africa in 2002 conference on birth registration did not incorporate the issue of HIV into its agenda. The pandemic was not identified as a primary barrier to birth registration, unlike political will. Arguably because HIV does not impact on political will, was the pandemic not addressed in the conference. The second Eastern and Southern Africa Conference on Universal Birth Registration in 2005 did refer to birth registration in the context of HIV. The then UNICEF’s Regional Director for Eastern and Southern Africa, Per Engebak, advocated the need for children to own their own birth certificate in a time of HIV and AIDS, since “in a region where many parents are dying of HIV/AIDS...the need for children to own a birth certificate has never been greater”.⁷² In reference to Mr. Engebak’s message, the conference recognized the impact of HIV on the region, but it did not take the step in specifying it as a barrier to establishing and sustaining birth registration systems.

A possible reason for HIV not being incorporated into the agenda of the birth registration conferences is that states themselves do not recognize the potential link between the two issues. Looking at Namibia, it saw HIV as a separate and independent issue to children’s socio-economic rights. In its report submitted to the Committee on the Rights of the Child, Namibia recognized the challenge of HIV and set out a number of measures that the government had taken to address the pandemic. None of these measures included strengthening birth registration systems. Even though birth registration was mentioned in the report, it was in reference to the child’s right to an identity and citizenship, and not to a child’s protection and access to basic services.⁷³ However, Kenya has taken steps to include

⁶⁹ These seven hot issues are (1) awareness: importance of birth registration; (2) systems: legal frameworks and birth registration mechanisms; (3) institutions: capacity and costs; (4) cooperation and partnership: integration of birth registration with other programmes like health and education; (5) special situations: children in difficult circumstances, conflict situations and migratory groups; (6) gender: gender discrimination; (7) society and culture.

⁷⁰ Sharp, N. and Heap, S. (2004).

⁷¹ UNAIDS / WHO (2007). Sub-Saharan Africa AIDS Epidemic Update Regional Summary. UNAIDS and WHO.

⁷² UNICEF (2005a).

⁷³ Government of Namibia (1992). Committee on the rights of the child. CRC/C/3/Add.12.

birth and death registration into its National HIV/AIDS Strategic Plan, as well as its NPA on OVC.⁷⁴

In the second Eastern and Southern Africa conference explanations have been given concerning why legislative and institutional frameworks have not been developed, and why adequate resources have not been allocated to enforcing birth registration. However, according to Bequele, none of the explanations seemed convincing.⁷⁵ A possible reason is that the challenges posed by HIV on institutional mechanisms and on countries' socio-economic framework, particularly poverty, was not considered.⁷⁶

5. The status of birth registration and HIV and AIDS in sub-Saharan Africa

If indeed there is a statistically significant link between HIV prevalence and birth registration rates, it should be expected that high HIV prevalence countries have low total birth registration rates, rendering in particular children affected by AIDS uncounted. Out of the 11 countries in the sub-region, nine countries have a HIV prevalence rate of 14% or higher.⁷⁷ Nor surprisingly, the number of orphans and other children made vulnerable by AIDS is also the highest in the world. No other sub-region or region in the world can account for such astronomical levels. See figure 1 for data on HIV prevalence and birth registration rates for countries in the study.

Figure 1: HIV prevalence rates and birth registration rates in sub-Saharan Africa

Country ⁷⁸	HIV Prevalence Rate (in %) ⁷⁹	Birth registration rate (in %) ⁸⁰		
		Total	Urban	Rural
Eastern Africa				
Burundi	3.3	60	62	60
Comoros	0.1	83	87	83
Eritrea	2.4	-	-	-
Ethiopia	2.2	7	29	5
Kenya	6.1	48	64	44
Rwanda	3.1	82	79	83
Somalia	0.9	3	6	2

⁷⁴ Republic of Kenya NPA on OVC.

⁷⁵ Bequele, A. (2005).

⁷⁶ The AIDS situation in 2005, i.e. when the second Eastern and Southern Conference on birth registration was convened, was not drastically different to what it is today. In fact, in 2005 southern Africa was already established as the epicentre of the global AIDS epidemic (UNAIDS / WHO (2005). AIDS Epidemic Update. UNAIDS and WHO.)

⁷⁷ These countries are Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia, Zimbabwe.

⁷⁸ These countries are identified as belonging to a certain region, as per UNICEF's categorization. See <http://www.unicef.org/infobycountry/index.html>.

⁷⁹ UNAIDS (2008). Country responses. <http://www.unaids.org/en/CountryResponses/Countries/> Accessed on April 1 2008.

⁸⁰ UNICEF (2008).

Tanzania, United Republic of	6.5	8	22	4
Uganda	6.7	4	11	3
Southern Africa				
Angola	3.7	29	34	19
Botswana	38.5	58	66	52
Lesotho	23.2	26	39	24
Madagascar	0.5	75	87	72
Malawi	14.1	-	-	-
Mozambique	16.1	-	-	-
Namibia	19.6	71	82	64
Seychelles	-	*	*	*
South Africa	18.8	-	-	-
Swaziland	33.4	53	72	50
Zambia	17	10	16	6
Zimbabwe	20.1	42	56	35
West Africa				
Benin	1.8	70	78	66
Burkina Faso	2.0	64	86	58
Cape Verde	-	-	-	-
Côte d'Ivoire	7.1	55	79	41
Gambia	2.4	55	57	54
Ghana	2.3	51	69	42
Guinea	1.5	43	78	33
Guinea-Bissau	3.8	39	53	33
Liberia	-	-	-	-
Mali	1.7	47	84	34
Mauritania	0.7	55	72	42
Niger	1.1	32	71	25
Nigeria	3.9	33	52	25
Senegal	0.9	55	75	44
Sierra Leone	1.6	48	62	44
Togo	3.2	78	93	69
Central Africa				
Cameroon	5.4	70	86	58
Central African Republic	10.7	49	72	36
Chad	3.5	9	36	3
Congo (People's Republic of Congo Brazzaville)	5.3	81	88	75
Democratic Republic of Congo	3.2	34	30	36
Equatorial Guinea	3.2	32	43	24
Gabon	7.9	89	90	87
São Tomé and Príncipe	-	60	70	67

* No information available on country's data in UNICEF (2008).

Looking at figure 1, some statistics would seem to reflect the negative impact and correlation between HIV on birth registration systems. In Eastern Africa, Uganda has the highest HIV prevalence rate (6.7%) and the second lowest total birth registration rate (4%). In the same region, Comoros has the lowest HIV prevalence rate (<0.1 %) and the highest total birth registration rate (83%). In Southern Africa, Madagascar has the highest total birth registration (75%) rate and the lowest HIV prevalence rate (0.5%). In Western Africa, Mauritania has the lowest HIV prevalence rate (0.7%), and has the second highest total birth registration rate (55%). No data on countries in Central Africa seem to imply the existence of an inverse relationship between HIV prevalence rates and total birth registration rates.

However, many statistics within figure 1 do not corroborate with the assumption of the existence of relationship between HIV prevalence rates and total birth registration rates. In Southern Africa, Botswana has the highest HIV prevalence rate (38.5%), however it also happens to have the second highest total birth registration rate (58%). Swaziland, with the second highest HIV prevalence rate (33.4%) also has one of the highest total birth registration rates (53%). In general, despite Southern African countries having the highest HIV prevalence rates, they do not seem to have, on average, much lower birth registration rates. In Central Africa, Chad has a 9% total birth registration rate, even though it has a relatively low HIV prevalence rate of 3.5%.

Factors other than HIV need to be taken into account, so as to be able to understand the discrepancy in birth registration rates, when HIV prevalence rates seem to be relatively constant amongst countries belonging to the same region. Country specific demographic and socio-economic factors should not be overlooked. Factors that largely influence a state's ability to develop and maintain a functioning birth registration system are mainly internal factors and include size of population, administrative efficiency, territorial size, historical and cultural realities, and dependence on foreign aid. For example, it is feasible to attribute the conflict in Chad to its low birth registration rate. Furthermore, the lack of data on birth registration systems in South Africa cannot be blamed on its high HIV prevalence rate, but rather on its historical legacy. Under Apartheid, the administration was highly centralized, it did not have mechanisms allowing for people to be counted, and accordingly it did not establish essential services, such as birth registration, for the majority of its population. Rwanda's birth registration rate (83%) can also be attributed to its political history, which established a highly effective administration that is decentralized⁸¹, as well as to its small territory.

6. The impacts of HIV and AIDS on birth registration systems

6.1 Analysis of literature and internal documents

The particular challenges faced by children affected by AIDS are noted by the United Nations' Committee on the Rights of the Child in its General Comment on HIV/AIDS and the Rights of the Child:

⁸¹ UNICEF (2005a). Country action point, priorities and support needs: Rwanda.

The Committee wishes to emphasize the critical implications of proof of identity for children affected by HIV/AIDS, as it relates to securing recognition of a person before the law. ... In this respect, birth registration is critical to ensuring the rights of the child and is also necessary to minimise the impacts of HIV/AIDS on the lives of affected children.⁸²

This General Comment further highlighted the importance of birth registration in safeguarding the protection of rights such as inheritance, education, health and other social services as well as it making children less vulnerable to abuse and exploitation, especially if separated from their parents. The Committee also noted the link between birth registration and proof of identity as critical to ensuring the rights to survival, development and access to services for all children in its comment on implementing child rights in early childhood.⁸³

However, the literature and the civil registration working group's internal documents to date on the challenges in implementing birth registration systems in Africa have in large part ignored the role that HIV plays. While scant reference to a possible interlinked relationship between HIV and AIDS, birth registration and the denial of other human rights has been made, it has also been acknowledged that there is no precise data on birth registration and HIV and AIDS.⁸⁴ Furthermore, the identification of, and attention paid to a possible connection between HIV and birth registration in the literature has been non-existent. Finally, no documentation was found that evaluated the effects of birth registration on increased protection in the context of HIV.⁸⁵

The relationship between birth and HIV and AIDS is, at best, inferential. Sharp indicates that analysis of year 2000 statistics from countries badly affected by HIV showed low levels of birth registration (Zambia 10%, Tanzania 6% and Uganda 4%), a study which seems to purport a negative relationship or inverse correlation between birth registration and HIV and AIDS,⁸⁶ confirming figures 1 and 2. Other documents reviewed from the civil registration working group indicate that poor communities are the most affected and excluded from birth registration. Various factors as previously noted are suggested as barriers to establishing and sustaining effective birth registration systems, but poverty remains the main threat. Research indicates that most countries affected by the scourge of HIV are low- or low-to middle

⁸² Committee on the Rights of the Child. General Comment No. 3 HIV/AIDS and the rights of the children CRC/GC/2003/3, 17 March 2003.

⁸³ Committee on the Rights of the Child: General comment No. 7 Implementing child rights in early childhood. CRC/C/GC/7. 1 November 2005

⁸⁴ UNICEF (2002).

⁸⁵ USAID, Quality Assurance Project and UNICEF (2008) The Evidence Base for Programming for Children Affected by HIV/AIDS in Low Prevalence and Concentrated Epidemic Countries. Washington: USAID, March.

⁸⁶ Sharp (2006)

income countries, where poor communities and households struggle with ensuring the well-being of children.⁸⁷

A study done in South Africa indicates that poor rural communities register fewer births than richer urban areas,⁸⁸ indicating an inverse correlation or negative relationship between poverty and birth registration. Unregistered children face huge challenges in securing grants.⁸⁹ While the new policy in South Africa, which allows sworn affidavits to be accepted in lieu of ID cards and birth certificates from grant seekers, aims to address this challenge, it is not a viable long-term option.

6.2 Quantitative analysis

In order to generate empirical evidence and explore the relationship between HIV and birth registration systems, the HIV prevalence rates were plotted against the total birth registration rates allowing one to obtain an understanding of how birth registration rates are influenced by HIV prevalence rates. See Figure 2.

Figure 2: Birth registration rates, according to HIV prevalence rates in sub-Saharan Africa.

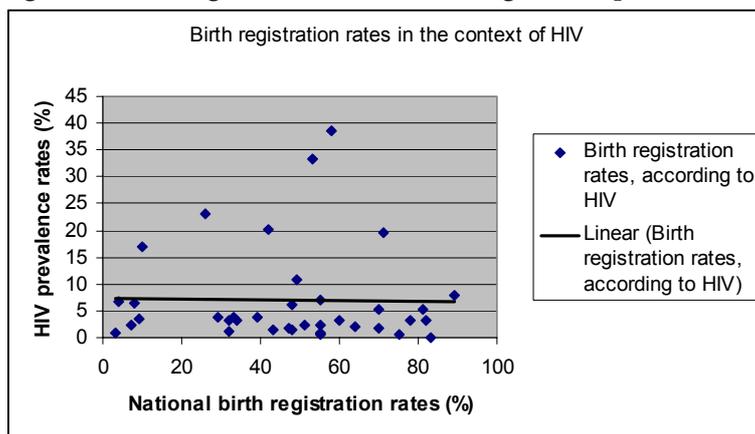


Figure 2 reflects that the relationship between HIV prevalence rates and birth registration rates should not be supposed. Instead, the linear line in the figure clearly reflects that there is no relationship or correlation between the two factors. As noted in figure 1, and what is clearly depicted in figure 2, not all countries in the study have high HIV prevalence rates. In fact, the majority of the countries in the study have an HIV prevalence rate of under 5 per cent.

⁸⁷ UNICEF (2005c) The state of the world's children 2005: Childhood under threat. New York, UNICEF.

⁸⁸ Giese, S. and Smith, L. (2007). Rapid Appraisal of Home Affairs Policy and Practice Affecting Children in South Africa. Cape Town, Alliance for Children's Entitlement to Social Security.

⁸⁹ Maqoko, Z. and Dreyer, Y (2007). Child-headed households because of the trauma surrounding HIV/AIDS. HTS: Theological Studies (63)2, 717-731.

In order to be able to infer whether HIV prevalence rates can indeed influence birth registration, only countries with an HIV prevalence rate of 5 per cent or higher were plotted against their corresponding birth registration rates. See figure 3.

Figure 3: Birth registration rates, according to high HIV prevalence rates in sub-Saharan Africa.

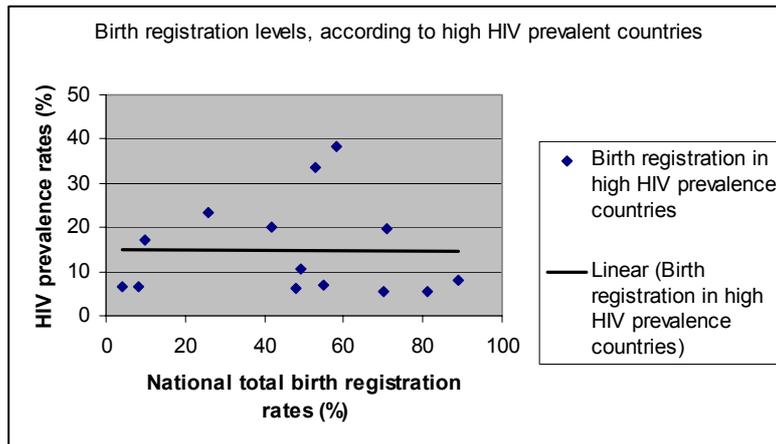


Figure 3 aims to establish a correlation, or relationship, between birth registration rates and HIV prevalence rates of 5 per cent and higher. The figure does not indicate a correlation, inferring that access to or availability of birth registration is not dependent on HIV prevalence rates, even if such rates are above 5 per cent.

As noted, external, or exogenous, factors need to be taken into consideration when discussing birth registration in sub-Saharan Africa, in order to decrease the possibility of falsely linking HIV with birth registration. In addition to the role of demographics, historical and cultural factors, and administrative efficiency, poverty is also a key determinant of establishing and sustaining birth registration systems. The countries in the research are either low income or low- to middle- income countries, yet great disparities in distribution of wealth exist, pushing the majority of the countries' citizens below the poverty line. While low-income countries find it difficult to fulfil the rights of its citizens,⁹⁰ the challenges of poverty compounded by HIV are burdened upon individuals. As the HIV prevalence rate increases, so does the under 5 mortality rate, the number of AIDS related deaths, and the number of orphans. Individuals would rather spend money on prolonging their own and their families' lives and well-being than investing in a legal document that does not provide any immediate material resources.

There are two possible explanations why a relationship between poverty and birth registration can be established, but not with HIV and birth registration. Firstly, poverty is measurable and quantifiable, unlike HIV. It is understood that registering incurs both direct and indirect costs, even though the Pan African Birth Registration Report Cards shows

⁹⁰ The Government of Zambia in its NPA on OVC has acknowledged that money is a key factor to not being able to realize the rights of its citizens.

progress in decreasing or abolishing registration fees.⁹¹ While HIV prevalence rates are measurable within countries, the impact of the pandemic on an individual's life cannot be calculated and an individual does not make a rationale decision to register a child on the basis of the country's HIV prevalence rate. This ties into the second explanation, namely that only when a parent or caregiver has an AIDS related illness, will the decision to register the child be calculated in terms of the parent/caregiver's physical and financial ability to do so. Often, ill parents are unable to take on the physical and financial burden of registering children.⁹²

6.3 Qualitative analysis

The first section of the questionnaire dealt with general information on birth registration (see annex 1). These questions were asked to gain an understanding of the informants' perceptions of birth registration and its barriers. All respondents conveyed what is already known in the literature, namely that key barriers to birth registration include political, administrative, legislative, economic, geographic, and cultural factors.⁹³ None of the respondents offered any hint that HIV could be a potential barrier to birth registration.

The impacts of weak registration systems on children were not considered to be specific to children affected by AIDS. In essence, all children are affected by weak registration systems, and whether children affected by AIDS are more affected, is unclear from the responses. That said, several respondents have identified that children orphaned by AIDS are more vulnerable than other children to having their right to inheritance being violated.

Birth registration campaigns organized by Plan International and UNICEF have been directed at all children, and have not singled out children affected by AIDS as needing more attention. If anything, birth registration campaigns have focused on rural areas, as these are the areas that constitute for the lower birth registration rates, as also noted in the literature. Plan, however, has partnered with the Federation of Women Lawyers in Uganda to provide legal aids and assistance to children orphaned by AIDS.⁹⁴

When specifically asked, HIV prevalence rates and the AIDS disease influence accessibility and availability of birth registration, respondents identified that AIDS negatively impacts on *accessibility* of birth registration, i.e. AIDS was considered to influence an individual's ability to register a child. In addition, stigma surrounding ill parents was also considered to be a factor for non-registration. No respondent focussed on the impact of HIV or AIDS on the *availability* of birth registration systems, i.e. HIV or AIDS was not seen as a detriment to the states' ability to provide such services.⁹⁵ Some of the links between AIDS and accessing birth registration services included:

⁹¹ UNICEF, Plan International and World Vision (2008).

⁹² Save the Children UK and Plan Eastern and Southern Africa Regional Office responses to questionnaire

⁹³ For more information on these barriers see UNICEF (2002).

⁹⁴ Questionnaire from Plan International.

⁹⁵ A possible reason for the lack of comments on the influences of HIV on the availability of birth registration systems, is that no research has been conducted on the impacts of HIV on civil registrars

- Ill parents are physically unable to access registration sites.⁹⁶
- Time is spent seeking care and support for people living with HIV, at the financial expense of registering children.⁹⁷
- Caregivers of children, particularly grandparents or siblings, may not have adequate information, records, or history of the child in order to register him/her.⁹⁸
- Parents with HIV positive children fear that the HIV status of their child will be made publicly available if registered, resulting in stigma against the HIV positive child and parent(s).⁹⁹

The link between HIV and poverty was also identified to impact on access to birth registration¹⁰⁰:

- Parents do not see the importance of birth registration.¹⁰¹ Money is used for the treatment of an ill parent or for a child born with HIV, rather than using the money for registering the child.¹⁰² Treatment of parents and children is immediately beneficial to the protection and well-being of the child, while it is considered that the effects of birth registration on children are not immediate and do not result in material resources.
- A parent, whether ill or not, cannot afford to register or travel to the administrative centre due to the poverty.¹⁰³ Indirect costs often outweigh direct costs, as preliminary findings from the African Union Report Card on Birth Registration indicate that registration costs are either non-existent (free) or minimal.¹⁰⁴
- Poverty exacerbated by HIV can force individuals to migrate. A child born in a foreign country will often not be registered, out of fear that registering them will expose the parent's illegal immigrant status to the authorities.¹⁰⁵

The questionnaire also aimed to establish what respondents' perceptions were on the causes of the general discrepancies in birth registration rates between urban and rural areas, and if

and on the consequences for civil registration systems. Research similar to what has been done assessing the impacts of HIV on teachers and health care workers and the consequences for children's rights to education and health should be conducted.

⁹⁶ Questionnaire response from Save the Children UK, UNICEF Zambia, Plan Eastern and Southern Regional Office.

⁹⁷ Questionnaire response from Plan Zambia and World Vision, Plan International.

⁹⁸ Questionnaire response from Plan Eastern and Southern Africa Regional Office.

⁹⁹ Questionnaire response from Constella Group, Plan Eastern and Southern Africa Regional Office.

¹⁰⁰ For more information on poverty and birth registration see Giese, S. & Smith, L (2007).

¹⁰¹ Questionnaire response from Plan Eastern and Southern Africa Office.

¹⁰² Questionnaire response from Plan Eastern and Southern Regional Office.

¹⁰³ Questionnaire response from Save the Children UK.

¹⁰⁴ UNICEF, Plan International and World Vision. Birth Registration Questionnaires, Pan African Birth Registration Report Card (2008). Unpublished.

¹⁰⁵ As above.

HIV was a factor.¹⁰⁶ The literature and data on birth registration shows that birth registration rates are higher in urban areas, as travel distances to registrars are shorter and opportunity and direct costs are lower. No respondent noted the discrepancy between HIV prevalence rates between urban and rural areas, and the virus's impact on children's access to birth registration systems by children living in urban areas and by children living in rural areas.

Further research shows that HIV prevalence rates in rural and urban areas are country specific: no general conclusion can be drawn whether HIV is more prevalent in rural areas or in urban areas. However, of the countries in the study, Lesotho, South Africa, Zambia, Kenya, Uganda, United Republic of Tanzania, Burkina Faso, Ghana, Guinea, and Senegal all have higher HIV prevalence rates in urban areas than in rural areas.¹⁰⁷ These countries also have higher birth registration rates in urban areas (see box 1).¹⁰⁸ It could be said that HIV does not impact on birth registration, but instead urbanisation positively impacts on birth registration.¹⁰⁹

Despite the fact that HIV prevalence is higher in urban areas for the previously mentioned countries, it does not mean that HIV is non-existent in rural areas. In fact the impacts of HIV on people, in particular children, living in rural areas is greater than on caregivers and children living in urban areas, as poverty is usually greater in rural areas, which hinders access to essential services, including birth registration. Furthermore, unlike in urban areas, reliable systems able to protect children, such as places of safety, are not in place, increasing a child's vulnerability to violence, exploitation and exposure to HIV. In other words, weak birth registration systems exist in both urban and rural areas, but the implications of such systems on children living in poor rural areas are greater than on children living in richer urban areas.

The relationship between birth registration and HIV lacks empirical evidence, however a triangular relationship between HIV, birth registration and poverty does exist.

¹⁰⁶ In his response to the questionnaire, Dr. Heap, Plan International, questioned what the definition of a rural and urban area is, since birth registration systems are national systems and as a result do not 'recognize this artificial division'. However, in many countries in the research, urban and rural areas can be defined, namely along demographic and socio-economic lines. Disaggregating birth registration rates into urban and rural areas is important for understanding birth registration within the context of HIV. The discrepancy between urban and rural birth registration rates are predominantly due to differences in household income, access to transport, and efficient and quality infrastructure, factors which also impact on accessing HIV treatment, care and support. Seeing that a large part of birth registration systems within the countries in the study are still centralized, the gap between urban and rural birth registration rates is exacerbated, as those with access to birth registration services (i.e. urban), do access it, and those that have limited access (i.e. rural).

¹⁰⁷ UNAIDS (2005). HIV prevalence (%) by gender and urban/rural residence selected sub-Saharan countries, 2001-2005.

¹⁰⁸ Except for South Africa, which does not have any available data on birth registration rates.

¹⁰⁹ Questionnaire response from Plan International.

7. Impacts of lack of birth registration on children affected by AIDS.

Birth registration is crucial in the implementation of national policies and legislation respecting, promoting and fulfilling the rights of children, including by establishing minimum ages for work, conscription and marriage. Furthermore, birth registration provides a basis for tracing separated and unaccompanied children during emergencies.¹¹⁰ However, laws protecting the rights of children are only applicable to children who can prove that their age is 18 or below, which is usually done by a birth certificate stating the date of birth of the child.

The literature and responses to the questionnaire have made clear that the impacts of weak birth registration systems do no impact differently on children affected by AIDS compared to other vulnerable children. Weak registration systems do, however, specifically impact on children orphaned by AIDS, in particular on orphans that have lost both parents. The right to inherit has been referenced as a key violation for those orphaned children who are unable to show proof of age and family rights due to the absence of a birth certificate.

For programming purposes, children orphaned by AIDS should not be distinguished from other children affected or made vulnerable by AIDS. For monitoring purposes, however, it is feasible to single out orphaned children, as their characterization as orphans increases understanding of these children's specific experiences in the context of HIV and, in this case, without being registered and owning a birth certificate. For this reason, this section will present the impacts of lack of birth registration specifically on children orphaned by AIDS. This is not to belittle the impacts of lack of birth registration on children affected by AIDS in general, as issues of juvenile justice, child labour, child trafficking and illegal adoption are issues of equal concern to the issues faced specifically by children orphaned by AIDS.

7.1 Education

A key indicator assessing the situation of children orphaned by AIDS in accessing education is the orphan school attendance ratio.¹¹¹ The orphan school attendance ratio compares school attendance of children aged 10-14 years old who have lost both parents, with those of children whose parents are both still alive and who live with one or both parents. It is feasible to assume that a country's low birth registration rate would reflect a low orphan school attendance rate, as low birth registration rates can imply that unregistered children are not present in schools¹¹² and are hence uncounted.¹¹³ It could also be assumed that a country's high HIV prevalence rate would impact on a low orphan school attendance rate, as orphaned children will take on the responsibility of looking after their siblings or finding paid work. For example Kenya, a high HIV prevalent country, has more than a quarter of its 6 to 15 year olds working.¹¹⁴

¹¹⁰ UNICEF (2007).

¹¹¹ UNICEF (2008a).

¹¹² Assuming that birth certificates are a prerequisite to attend school.

¹¹³ UNICEF (2002).

¹¹⁴ As above.

However, when the orphan school attendance ratio is looked at in comparison to HIV prevalence rates and birth registration rates, no general trend is seen. For example, countries with a high HIV prevalence rate do not necessarily have low orphan school attendance ratios and countries with low birth registration rates do not always have low orphan school attendance ratios. See Figure 4.

Figure 4: Orphan school attendance ratio, HIV prevalence rate, and birth registration rates.

Country ¹¹⁵	HIV Prevalence Rate (in %) ¹¹⁶	Total birth registration rate (in %) ¹¹⁷	Orphan school attendance ratio ¹¹⁸
Eastern Africa			
Burundi	3.3	60	0.86
Kenya	6.1	48	0.95
Rwanda	3.1	82	0.82
Somalia	0.9	3	0.87
Tanzania, United Republic of	6.5	8	1.02
Uganda	6.7	4	0.94
Southern Africa			
Lesotho	23.2	26	0.95
Madagascar	0.5	75	0.75
Malawi	14.1	-	0.97
Mozambique	16.1	-	0.80
Zambia	17	10	1.03
Zimbabwe	20.1	42	0.95
West Africa			
Burkina Faso	2.0	64	0.71
Côte d'Ivoire	7.1	55	0.79
Gambia	2.4	55	0.87
Guinea	1.5	43	0.73
Guinea-Bissau	3.8	39	0.97
Senegal	0.9	55	0.83
Sierra Leone	1.6	48	0.83
Togo	3.2	78	0.94
Central Africa			
Cameroon	5.4	70	0.89
Central African	10.7	49	0.96

¹¹⁵ These countries are identified as belonging to a certain region, as per UNICEF's categorization. See <http://www.unicef.org/infobycountry/index.html>.

¹¹⁶ UNAIDS (2008). Country responses. <http://www.unaids.org/en/CountryResponses/Countries/>

¹¹⁷ UNICEF (2008).

¹¹⁸ UNICEF (2008a).

Republic			
Chad	3.5	9	1.05

A 1.0 ratio means that the percentage of orphans attending school and non-orphans attending school are equal. A ratio of less than 1.0 means that the percentage of orphans attending school is less than the percentage of non-orphans attending school. In Chad, Tanzania, and Zambia more orphans attend school than non-orphans, despite the fact that these countries have different birth registration and HIV prevalence rates. Furthermore, Uganda has one of the lowest birth registration rates (4%), yet it has one of the higher orphan attendance ratios (0.94).

This rates shows two positive implications: (1) the legal requirement to produce a birth certificate for enrolment in public schools is either not being enforced or has been abolished in some countries¹¹⁹, and (2) children made orphaned by AIDS attending school can be monitored and included into OVC programming, as they are not invisible from the state anymore.

7.2 Inheritance

Children orphaned by AIDS who are not registered and who do not have a birth certificate proving their identity, are the most vulnerable children to having their property rights violated, by having their property confiscated and evicted. In order for a child to prove to the state that they are related to the deceased, the child needs to present a birth certificate, which identifies the child's relation to the deceased. This document, in addition to the death certificate of the deceased and often the child's parent's marriage certificate, are key to verifying land or property rights.¹²⁰ As a result of AIDS and urbanisation, the social safety net once offered by extended families has weakened, leaving orphans to fend for themselves. Inheriting property, therefore, can be a means of providing the child with a livelihood, as property enables the child access to land, livestock and other agrarian resources. Violating children's rights to inheritance and property leaves them more vulnerable to mortality, illness and exploitation.¹²¹ Inheritance rights in the context of HIV constitutes an extremely important economic and human rights issues for orphans.

Unlike the right to education, children's right to inheritance is not established by international or regional child specific codified laws: the CRC nor the ACRWC contain any provisions relating to inheritance rights. However, Article 21 of the Protocol to the African

¹¹⁹ In other countries, such as in Tanzania, a birth certificate is necessary for entering secondary school and enrolling in university. In Togo, children can attend primary school without a birth certificate, but proof of age is needed to register for exams, which is a requirement for advancing to secondary education, As has been reflected by some NPAs on OVC, including from Lesotho, Swaziland and Zambia, often the key barrier to accessing education is not lack of birth certificates, but fees.

¹²⁰ Rose, L (2007). Children's property and inheritance rights HIV and AIDS, and social protection in Southern and Eastern Africa. FAO.

¹²¹ Ubomba-Jaswa, P. (2001). Reflection on HIV/AIDS infection and some implications for birth registration. (Unpublished).

Charter on Human and Peoples' Rights on the Rights of Women in Africa (Women's Protocol), does identify inheritance as a human right. Even though the Women's Protocol does not specifically address the rights of children, it does make it explicit that both men and women have the right to inherit their parents' properties. The provision's reference to parents implies that those inheriting the property can also be children, in the legal sense of the term. Furthermore, the UNGASS Declaration of Commitment on HIV/AIDS does have a specific goal to "protect orphans and vulnerable children...from loss of inheritance".¹²²

Many countries in sub-Saharan Africa do not have specific legislations establishing and guaranteeing children their right to inheritance. It is only recent, however, that African countries have begun to consider the land and property rights of children. However, inheritance rights are usually governed by customary laws and practice. There are several laws and policies that incorporate provisions relating to inheritance and property. For example, South Africa's Domestic Violence Act of December 1999 does not specifically protect children's property rights, but the Act does provide an open-ended definition of 'abuse', allowing for property confiscation and damage to be covered. Furthermore, some marriage and succession laws, and land laws also provide for the rights to inheritance by children. For example, Rwanda's Civil Law on Property, N° 2/99, "Law on Matrimonial Regimes, Liberalities and Successions" stipulates women's and girls' right to property within their families of birth.¹²³

In addition to these laws, several countries have included inheritance into their NPAs on OVCs. Zimbabwe's NPA refers to its Constitution that guarantees an orphan's right to inheritance. Accordingly, while the NPA does not spell out an orphan's right to property, it does refer to inheritance rights in the context of birth registration.¹²⁴ Namibia and Swaziland both admit in their NPAs that certain legislations are still needed with regard to inheritance in order to protect the property of orphans, and they are aware that preventive measures to protect orphans from property dispossession need be developed. While the above NPAs focus on the socio-economic protection of orphans, not enough is done to establish a legal framework to ensure that orphans' right to inheritance is protected under statutory laws and to guarantee that orphans can find recourse in the law if their right is violated, i.e. the need to establish corrective measures or sanctions against property grabbers.

Even though the aforementioned national laws and NPAs attempt to incorporate children's rights to inheritance, many prove to be discriminatory in practice. Some laws do not guarantee property and inheritance rights to children born out of wedlock, as is the case in Swaziland, where children born out of wedlock are not seen as legitimate heirs to their

¹²² United Nations General Assembly Special Session on HIV/AIDS (2001). Declaration of Commitment on HIV/AIDS. 25-27 June, p. 29, paragraph 65.

¹²³ For more information on the different laws and policies in Eastern and Southern Africa including children's rights to property see Rose, L (2006). Children's property and inheritance rights and their livelihoods: the context of HIV and AIDS in Southern and East Africa. FAO.

¹²⁴ Government of Zimbabwe (2004) NPA on OVC

parent's property.¹²⁵ However, even in countries where children born both in and out of wedlock are legally entitled to inherit their parent's property, customary practices prevent children born out of wedlock from accessing this right. Specifically, Malawi's Wills and Inheritance Act (1967) stipulates three different alternatives to property sharing. These three forms are dependant on how the marriage between the deceased man and spouse had been contracted, including weddings through customary means or through statutory means. This Act allows for all children of the deceased man to inherit from their deceased father's property. However, research by Save the Children in Malawi showed that particularly girls born out of wedlock are subjected to discrimination in relation to their inheritance rights.¹²⁶

Even though the codified laws contain provisions protecting children's right to property and inheritance, customary laws enable the guardians of orphans the right to determine how the property inherited by the orphan should be used so as to maximize the orphan's best interests. Under customary law, the guardian is able to take the property belonging to the child and to sell it off, in order to enable the orphan to go to school, have clothes and food, and shelter, making it difficult to attest when a children's inheritance rights have been violated.¹²⁷ "In some countries highly affected by HIV and AIDS, the premature death of a male head of the household can mean that surviving widows and children are at risk of losing their land, houses and other assets as family members 'grab' property. Forced off the land – often their only income and livelihood – women and children are at risk of becoming homeless, [and they face] acute food insecurity and poverty".¹²⁸ In Namibia, 44 per cent of widows and orphans lost cattle, 30 per cent lost livestock, and 39 per cent lost farm equipment.¹²⁹ Further, research by Save the Children UK in Mozambique showed that upon the death of a father or both parents, the family of the deceased took assets from children who were heading households. Without the necessary documents, children are unable to start a complaint process at court, since a birth certificate is vital to backing up their case.¹³⁰

7.5 Movement of children across borders

Children who move across borders are not always trafficked or coerced to do so.¹³¹ Instead, children move across borders unaccompanied and on their own volition. They are usually 'undocumented' and referred to as undocumented migrant children, or UMC. Care should accordingly be taken not to respond to UMC in the framework of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) as that UMC are not trafficked children.

¹²⁵ Swaziland Interstate Succession Act No. 3 of 1953 and the Administration of Estates Act No. 28 of 1902.

¹²⁶ Save the Children UK (2006a). "Overcome or overcoming? Children's vulnerability and the law in Southern Africa" (unpublished).

¹²⁷ Rose (2006).

¹²⁸ As above

¹²⁹ As above

¹³⁰ Rose, L (2007).

¹³¹ Save the Children UK (2007). Children on the move: Protecting unaccompanied migrant children in South Africa and the region. South Africa, Save the Children.

Poverty and orphanhood are key reasons cited for children migrating from Mozambique, Swaziland Zimbabwe into South Africa. Children from countries that do not border South Africa, such as from Rwanda, also identified orphanhood and poverty as reasons from migrating to South Africa.¹³²

The phenomenon of UMC is extremely gendered, as boys and girls find themselves in different parts of the informal sector: girls often become sex workers. Access to sexual and reproductive health services, including information on HIV prevention, is restricted as they are not able to access a state's services without a birth certificate, exposing these girls to early pregnancy, susceptibility of HIV, exploitation and violence.¹³³ A lack of a birth certificate leaves the child helpless, as they are unable to report the incident or seek assistance of any sort.

Children born to undocumented migrants are also rendered extremely vulnerable. Parents do not possess birth certificates, IDs or passports, without which they cannot register their child. Even though the child is born in South Africa, the parents would still need identity documents in order to register the newborn. These children will be denied access to school and health care services.¹³⁴ The new policy in South Africa allowing sworn affidavits to take the place of identity documents, however, would make it easier for undocumented migration parents to register their children born on South African soil.

8. Recommendations

Multiple actors are responsible for ensuring that children in countries affected by HIV and AIDS are registered. These recommendations aim to address the different roles that governments, potential donors and civil society, can play in establishing and sustaining effective birth registration systems for children affected by AIDS. As recommendations have already been made on strengthening birth registration systems in other reports, such as the UNICEF report on birth registration and armed conflict, these recommendations will focus on how birth registration systems can be supported in the context of HIV and poverty, and will advocate for the need for comprehensive and accurate registration of deaths.

For countries affected by HIV and AIDS

In order to increase political will, policymakers need to be trained on the importance of civil registration systems and the benefits it offers both the state and individuals. The training can include basic information on the relevance of birth and death registration, and birth and death certificates in the context of HIV, an explanation of children's rights, including the right to inherit, information on the linkages between registration and certificates, the importance of birth certificates as a protective measure as well as a tool for accessing the state's social services, and how birth and death registration can be incorporated and

¹³² Save the Children UK (2007).

¹³³ As above.

¹³⁴ As above.

integrated into national HIV laws, policies, and strategies. The training can use the toolkit, as referred to under the potential donor section.

National legislations should be reformed to create a legal framework for free and universal birth registration for all children, and for comprehensive and accurate death registration. Reform measures can include acknowledgement of a country's different cultural practices, increasing the number of civil registrar offices or mobile registration offices in rural areas in order to decrease the opportunity costs imposed on caregivers when accessing such services, and abolishing discriminatory customary laws in relation to children born out of wedlock. Such legislations should be streamlined into national strategies relating to HIV, OVC, and poverty reduction.

Campaigns, including child-friendly materials on birth registration in the context of HIV need to be distributed and organized, in order for awareness on the protective measures offered by birth registration to be understood amongst both parents/caregivers and children affected by AIDS. This will encourage children affected by AIDS to increasingly demand from their parents/caregivers and the state to have their right to birth registration fulfilled. Birth registration can be linked to activities commemorating e.g. World AIDS Day, Women's Day, Human Rights Day.

Birth registration should be incorporated into all programming related to HIV. Linking birth registration to universal access to treatment, prevention, care and support programmes will ensure cost-effective and comprehensive coverage. Specific interventions can include HIV testing and counselling, PMTCT and ante- and post-natal programmes, and lifeskills or health courses at schools.

For civil society

Increase advocacy efforts on birth registration at the regional, national and levels to highlight the urgency of registering children in countries impacted by AIDS. Key actors to include in advocacy include the West and Central Africa and East and Southern Africa RIATs, regional economic communities, such as the Southern Africa Development Community and the East African Community, school principals, clergymen and traditional leaders, as well as

Conduct trainings on will writing and succession planning, and laws related to inheritance, property, marriage and children in particular in countries where customary laws dictate norms contrary to statutory law provisions relating to property and inheritance rights.

For potential donors

A mapping exercise on the status of civil registration in high HIV prevalent countries, for example those in Southern Africa, needs to be commissioned in order to further investigate a possible empirical relationship between HIV and AIDS, and birth registration. In addition to birth registration processes and rates being analyzed, death should also be included in the research. AIDS impacts on death rates, decreasing the chances of children being registered by their parents. This mapping exercise shall provide specific information on the socio-economic

and cultural issues surrounding accessibility and availability of birth registration in the context of HIV and AIDS in sub-Saharan Africa. In-depth interviews and focus groups with relevant government officials, civil registrars, midwives, traditional birth attendants, health care workers, religious authorities, NGOs, RIATT members, primary and secondary caregivers, and children affected by AIDS will provide substantial information on the impacts of HIV and AIDS on birth registration. Part of the mapping exercise shall include looking at best practices, to garner practical understanding of how birth registration systems can be effective and sustainable in high HIV prevalence countries.

A set of tools need to be developed for change agents that act as a guide to shape civil registration frameworks, policies, planning and programming, in the context of HIV. International law should be used to shape national laws in responding to the urgent need to achieve universal and free birth registration, and comprehensive and accurate registration of deaths. Tools can include (1) a checklist of human rights obligations that address birth and death registration, children's rights, and HIV and AIDS, (2) a guide that can provide background information on children's rights, the legal and statistical values of birth and death registration, the importance of such registration in the era of AIDS, and an analysis of international human rights obligations pertaining to children, civil registration, and HIV and AIDS on states; (3) a power point presentation that can be used as a model to inform, advocate, and sensitise different target audiences on the importance of demanding and supplying birth registration (4) a brochure on best practices of states that are increasing efforts to provide access to universal and free birth registration and accurate death registration in HIV prevalent countries.

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Annex 1: Birth registration in the context of HIV and AIDS Questionnaire

Thank you for taking the time to complete our questionnaire. The University of Pretoria is researching on how the lack of access to birth registration impacts on children affected by AIDS, and how the HIV pandemic impacts on access to, and availability of birth registration systems. This research stems from the need to advocate for civil registration systems, a recommendation set forth by the Global Partners Forum (GPF) on children and HIV and AIDS. Accordingly, the Inter Agency Task Team on Children Affected by AIDS (IATT), which is responsible for coordinating the GPF's recommendation, has set up a working group on civil registration. Members of the working group include the President's Emergency Plan for AIDS Relief (PEPFAR), Plan International, UNICEF and World Vision. The University of Pretoria has been contracted as a consultant to assist the IATT in improving its knowledge base on civil registration and HIV and AIDS in Africa.

If you have any questions, please do not hesitate to contact us at:

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Name

Organization

Position

Birth registration: general

1. Why do births go unregistered? Is there a discrepancy between urban and rural areas? What are the causes for this?
2. What directly impacts on the access to, and availability of birth registration systems in Africa?
3. What would be the best steps to ensure all children are registered and what kind of systems could be put in place?
4. How does the failure to register children affect the ways in which governments respond to the CRC, in particular its provisions on identity and citizenship?

Birth registration: impacts of HIV

5. Do you think HIV influences accessibility and availability of birth registration? Does a relationship between HIV and birth registration exist? If so, how do you see this relationship?
6. Does HIV/AIDS weaken birth registration systems? If so, how? Do you see HIV as a detriment to birth registration?

7. How do failures in civil registration systems impinge on children affected by HIV and AIDS?
8. Are these impacts different than for other orphans and vulnerable children? Why(not)?
9. In your work on birth registration, is HIV/AIDS a direct focus? If so, in which programme areas? If not, why?

Annex 2: Relevant international and regional legal provisions, policies and plans of action on birth registration in Africa

Universal Declaration on Human Rights (1949)

Article 15: Everyone has a right to a nationality

Convention relating to the Status of Stateless Persons (1954)

Article 24(1)(b): Social security (legal provisions in respect of...family obligations...which, according to national laws or regulations, is covered by a social security scheme...

Article 27: The Contracting States shall issue identity papers to any stateless person in their territory...

Convention on the Reduction of Statelessness (1961)

Article 1: A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless.

International Covenant on Civil and Political Rights (1966)

Article 24: Every child shall be registered immediately after birth and shall have a name. ...Every child has the right to acquire a nationality.

Convention on the Rights of the Child (1989)

Article 7(2): States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8(1): States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

Article 8(2): Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity

African Charter on the Rights and Welfare of the Child (1990)

6(1): Every child shall have the right from his birth to a name.

6(3): Every child has the right to acquire a nationality

6(4): State parties to the present Charter shall undertake to ensure that their constitutional legislations recognize the principles according to which he or she has been born if, at the time of the child's birth, he or she is not granted nationality by any other state in accordance with its laws.

International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990)

Article 29: Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality.

Optional Protocol to the Convention of the Rights of the Child on the Involvement in Armed Conflicts (2000)

Article 3(3)(d): State parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that ... such persons provide reliable proof of age prior to acceptance into national military service.

Optional Protocol on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000)

Article 8(2): State Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

United Nations' General Assembly Resolution, A World Fit for Children

Article 44(1): Develop systems to ensure the registration of every child at, or shortly after birth, and fulfil his or right to a name and nationality.

Global Framework for the Protection, Care and Support of Orphans and Vulnerable Children in a World with HIV and AIDS (2004)

Strategy number 3: Ensure access for orphans and vulnerable children to essential services, including education, health care, birth registration and others.

Plan of Action towards Africa fit for Children (2008-2012)

III(7)(a): Ensure universal birth registration through comprehensive measures including campaigns and appropriately resourced systems.

