

BIRTH REGISTRATION AND THE PROTECTION OF CHILDREN'S RIGHTS IN POST-CONFLICT COUNTRIES

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ABSTRACT

Registration of infants at birth is a fundamental right guaranteed by international human rights law, but around the world states persist in failing to document all children; the issue is particularly severe in many post-conflict countries. Birth registration is critical to protecting the rights of children for several reasons. First, it establishes identity, which is essential to safeguarding the immediate security of the child and the family. Second, a birth certificate is generally accepted as proof of nationality; it therefore leads to assurances for state-provided social services such as education and health care, as well as citizenship privileges such voting rights and social security. Third, birth registration documents age, which is crucial to defending children from exploitation including, among other things, labor, sex, under-age marriage, and military conscription. Finally, several international human rights instruments guarantee birth registration as a right.

This thesis will first look at the existing literature on birth registration. It will then discuss the need for and the legal right to the birth registration of children. Finally, it will examine three post-conflict countries at different stages of implementing birth registration: Southern Sudan, Sierra Leone, and Guatemala. For each country, this thesis will provide a brief history, examine threats to children, look at the ways that the state and non-governmental actors are implementing birth registration, and consider how this registration is making a difference.

Birth Registration and the Protection of Children's Rights in Post-Conflict Countries

I.	<u>Acronyms and Abbreviations</u>	iii
II.	<u>Definitions</u>	iv
III.	<u>Introduction</u>	1
IV.	<u>Literature Review</u>	5
V.	<u>Case Studies</u>	12
	a. <u>South Sudan</u>	13
	b. <u>Sierra Leone</u>	24
	c. <u>Guatemala</u>	36
VI.	<u>Birth Registration and Children's Rights</u>	46
VII.	<u>Legal Basis for Birth Registration and Child Protection</u>	52
	a. <u>Relevant Historical Legal Instruments</u>	53
	b. <u>Current International Legal Instruments</u>	54
	i. <u>United Nations</u>	55
	ii. <u>International Labour Organization</u>	64
	c. <u>Regional Human Rights Systems and Legal Instruments</u>	67
	i. <u>Organization of American States</u>	68
	ii. <u>European Human Rights System</u>	74
	iii. <u>African Union</u>	80
VIII.	<u>Conclusion</u>	84
IX.	<u>Bibliography</u>	85

I. ACRONYMS AND ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights (AU, 1986)
ADRDM	American Declaration on the Rights and Duties of Man (OAS, 1948)
ACS	American Colonization Society (Sierra Leone)
AU	African Union
CRA	Child Rights Act (Sierra Leone)
CE	Council of Europe
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CRC	Convention on the Rights of the Child (UN, 1990)
CPA	Comprehensive Peace Agreement (Sudan, 2005)
CoE	Council of Europe
DRC	Declaration of the Rights of the Child (UN, 1959)
GDRC	League of Nations Geneva Declaration on the Rights of the Child
HDI	Human Development Index
ICCPR	International Covenant on Civil and Political Rights (UN, 1976)
ICESCR	International Covenant on Economic, Social, and Cultural Rights (UN, 1976)
ILO	International Labour Organization
JEM	Justice and Equality Movement
SCIU	International Save the Children Union
MAC	Minimum Age Convention (ILO, 1973)
NPFL	National Patriotic Front of Liberia
NGO	Non-Governmental Organization
OAS	Organization of American States
MDI	Multi-Dimensional Poverty Index
PPP	Purchasing Power Parity
PRC	People's Redemption Council (Sierra Leone)
RUF	Revolutionary United Front (Sierra Leone)
SCIU	International Save the Children Union
SPLA/M	Sudanese People's Liberation Army/Movement (South Sudan)
UN	United Nations
UNGA	United Nations General Assembly
UDHR	Universal Declaration of Human Rights (UN, 1948)

II. DEFINITIONS

Adoption	‘Adoption’ is the formal act by which the form and content of a proposed treaty text are established. Treaties are generally adopted by a resolution of a representative organ of the organization whose membership more or less corresponds to the potential participation in the treaty in question (the United Nations General Assembly, for example). ¹
Article	International legal instruments generally include a Preamble (stating the reasons for and underlying understandings of the drafters and adopters of the instrument) and a series of ‘articles’, which lay out the obligations State parties agreeing to its terms as well as relevant procedural matters. The term ‘provision’ is often used as an alternative when referring to the content of particular articles. ²
Binding International Law	Instruments such as covenants and conventions to which states agree to adhere, generally demonstrated by signature and ratification, are considered binding international law.
Birth Registration	<p>Birth registration is the creation of an official record of a child’s birth by the State that serves as a permanent documentation of a child’s existence. A birth certificate is a personal document the State issues to an individual.</p> <p>Ideally, birth registration is part of a civil registration system that demonstrates the person’s existence before the law, establishes family ties and tracks the major events of an individual’s life, from live birth to marriage and death. Birth registration and other civil registration should be compulsory, universal, permanent, and continuous and should ensure the confidentiality of personal data. It should have two main objectives: legal and statistical. Such a system and its instrumental value in safeguarding human rights contributes to the normal functioning of any society.³</p>
Charter	The term ‘charter’ is used for very formal instruments; for example, the treaty founding an international organization like the United Nations (‘The Charter of the United Nations’). ⁴
Child	From the Convention on the rights of the Child, “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.” ⁵

¹ UNICEF, "Introduction to the Convention on the Rights of the Child: Definition of key terms," *UNICEF*, <http://www.unicef.org/crc/files/Definitions.pdf> (accessed 19 November 2011).

² Ibid.

³ Innocenti Research Center, *Birth Registration and Armed Conflict*, Report (Florence: UNICEF, 2007).

⁴ UNICEF, "Introduction to the Convention on the Rights of the Child: Definition of key terms," *UNICEF*, <http://www.unicef.org/crc/files/Definitions.pdf> (accessed 19 November 2011).

Child Labor	Since 1973, the Minimum Age Convention of the International Labour Organization has defined universal employment standards with regard to age. The minimum age for employment is thirteen for light work that does not interrupt education, fifteen for ordinary, non-hazardous work, and eighteen for engaging in hazardous employment activities. ⁶ Child labor is any employment that falls outside of these parameters.
Convention	A formal agreement between States, the term ‘convention’ is synonymous with the term ‘treaty.’ Conventions are normally open for participation by the international community as a whole or by a large number of States. Usually the instruments negotiated under the auspices of an international organization are entitled conventions (e.g. the Convention on the Rights of the Child). ⁷
Declaration	The term ‘declaration’ is used for various international instruments. In international human rights law, declarations are not legally binding and the term is often deliberately used to indicate that the parties do not intend to create binding obligations but merely want to declare aspirations. Despite being non-binding, declarations are often used to inform the creation of binding law or over time may become customary law. For example, although the 1948 Universal Declaration of Human Rights was not originally intended to have binding force, its provisions have since gained binding character as customary law. ⁸
Entry into Force	Generally a treaty does not automatically enter into force, meaning it is not instantly binding on the signatory states; rather the provisions of the treaty determine the date on which the treaty enters into force. Often entry into force will occur at a specified time following its ratification or accession by a fixed number of states. For example, the Convention on the Rights of the Child entered into force on 2 September 1990—the 30th day following the deposit of the 20th state’s instrument of ratification or accession. ⁹
Exploitation	The term exploitation is used frequently throughout international human rights instruments, particularly with regard to women and children. The Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children states: “exploitation shall include, at a minimum, the exploitation of the prostitution of others or

⁵ Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *Entered into force* 2 September 1990. Available at: <http://www2.ohchr.org/english/law/crc.htm> (accessed 03 December 2010).

⁶ International Labour Organization, "Convention No. C138," <http://www.ilo.org/ilolex/cgi-lex/ratific.pl?C138> (accessed 28 March 2011).

⁷ UNICEF, "Introduction to the Convention on the Rights of the Child: Definition of key terms," *UNICEF*, <http://www.unicef.org/crc/files/Definitions.pdf> (accessed 19 November 2011).

⁸ Ibid.

⁹ Ibid.

other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”¹⁰

Failed State

Term used to describe a state that has failed to meet one or more criteria of being a sovereign state.

Fragile State

Term used by development agencies to describe countries facing particularly severe development challenges: weak institutional capacity, poor governance, and political instability. Such countries often experience ongoing violence as the residue of past severe conflict. Ongoing armed conflicts affect three quarters of identified fragile states.¹¹

International Dollar

The international dollar has the same purchasing power as the Dollar has in the United States. Costs in local currency units are converted to international dollars using purchasing power parity (PPP); the PPP exchange rate is the number of units of a country's currency required to buy the same amounts of goods and services in the domestic market as U.S. dollar would buy in the United States. An international dollar is, therefore, a hypothetical currency that is used as a means of translating and comparing costs from one country to the other using a common reference point, the U.S. dollar.¹²¹³

Optional Protocol

The term ‘protocol’ describes an addition to a treaty. A protocol may be on any topic relevant to the original treaty and is used either to further address something in the original treaty, address a new or emerging concern or add a procedure for the operation and enforcement of the treaty—such as adding an individual complaints procedure. A protocol is ‘optional’ because it is not automatically binding on states that have already ratified the original treaty; states must independently ratify or accede to a protocol. The Optional Protocols to the Convention on the Rights of the Child concern the involvement of children in armed conflict and the sale of children, child prostitution and child pornography.¹⁴

Post Conflict State

A state that has moved past a period of armed conflict, but continues to be defined by its consequences, generally requiring infrastructural

¹⁰ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/55/49 (Vol. I) (2001), *Entered into force* 25 December 2003. Available at <http://www1.umn.edu/humanrts/instree/trafficking.html> (accessed 18 November 2011).

¹¹ Frances Stewart and Graham Brown, *Fragile States*, Working Paper (Oxford: Center for Research on Inequality, Human Security, and Ethnicity, 2009), 1-2.

¹² World Health Organization, "Purchasing Power Parity 2005," *Choosing Interventions that are Cost Effective (WHO-CHOICE)*, 2011, <http://www.who.int/choice/costs/ppp/en/> (accessed 18 December 2011).

¹³ Income Index by world states can be found at: United Nations Development Programme, "Income index (GNI per capita)," *International Human Development Indicators*, 15 May 2011. <http://hdrstats.undp.org/en/indicators/103606.html> (accessed 11 December 2011).

¹⁴ UNICEF, "Introduction to the Convention on the Rights of the Child: Definition of key terms," *UNICEF*, <http://www.unicef.org/crc/files/Definitions.pdf> (accessed 19 November 2011).

rebuilding and economic recovery.¹⁵ Post-conflict states are also generally considered fragile states.

Ratification

When a state ratifies an international instrument, it signifies an agreement to be legally bound by the indicated terms. To ratify a treaty, the state first signs it and then fulfils its own national legislative requirements. Once the appropriate national organ of the country – Parliament, Senate, the Crown, Head of State or Government, or a combination of these – follows domestic constitutional procedures and makes a formal decision to be a party to the treaty, the instrument of ratification (a formal sealed letter referring to the decision and signed by the state's responsible authority) is then prepared and deposited with the United Nations Secretary-General in New York.¹⁶

Purchasing Power Parity (PPP)

See *International Dollar*

Soft Law

Instruments such as declarations, resolutions, or guidelines that may inform international law, but are not binding law.¹⁷

Signature

A 'signature' of a treaty is a preliminary endorsement of the instrument by the state. Signing does not create a binding legal obligation but does demonstrate the State's intent to examine the treaty domestically and consider ratifying it. Signing does not commit a State to ratification, but it does require the State to refrain from acts that undermine the treaty's objective and purpose.¹⁸

State

Also understood to mean sovereign state, the term state was defined in the 1933 Montevideo Convention on the Rights and Duties of States. A state is a person under international law that should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states.¹⁹

State party

A 'State party' to a treaty is a country that has ratified or acceded to that particular treaty and is therefore legally bound by the provisions in the instrument.²⁰

Treaty

A 'treaty' is a formally concluded and ratified agreement between States. The term is used generically to refer to instruments binding at

¹⁵ Lakhdar Brahimi, *State Building in Crisis and Post-Conflict Countries*, Conference Paper (Vienna: United Nations, 2007).

¹⁶ UNICEF, "Introduction to the Convention on the Rights of the Child: Definition of key terms," *UNICEF*, <http://www.unicef.org/crc/files/Definitions.pdf> (accessed November 19, 2011).

¹⁷ Malcolm N. Shaw, *International Law, 5th Edition* (Cambridge: Cambridge University Press, 2003).

¹⁸ UNICEF, "Introduction to the Convention on the Rights of the Child: Definition of key terms," *UNICEF*, <http://www.unicef.org/crc/files/Definitions.pdf> (accessed November 19, 2011).

¹⁹ Montevideo Convention on the Rights and Duties of States, Organization of American States, Entered into Force Dec. 26, 1933. Available at: <http://www.oas.org/juridico/english/sigs/a-40.html> (accessed November 15, 2011)

²⁰ UNICEF, "Introduction to the Convention on the Rights of the Child: Definition of key terms," *UNICEF*, <http://www.unicef.org/crc/files/Definitions.pdf> (accessed 19 November 2011).

international law, concluded between international entities (States or organizations). As established in the Vienna Conventions on the Law of Treaties, a treaty must be 1) a binding instrument, which means that the contracting parties intended to create legal rights and duties; 2) concluded by states or international organizations with treaty-making power; 3) governed by international law and 4) in writing.²¹²²

Trafficking

Defined in the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, trafficking means “the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”²³

²¹ Ibid.

²² Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 8 I.L.M. 679, *entered into force* 27 January 1980.

²³ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, *Entered into force* 25 December, 2003. Available at <http://www1.umn.edu/humanrts/instree/trafficking.html> (accessed 18 November 2011).

III. INTRODUCTION

Birth registration is guaranteed by numerous human rights instruments and is crucial for the protection of human rights, and specifically children's rights. States are obligated to facilitate the fulfillment of the right to birth registration, but a high percentage of the world's children remain undocumented.²⁴ Challenges to universal birth registration are heightened in post-conflict countries, where protections are arguably even more essential.

Birth registration is a key element to securing identity and protecting children, families, and communities. Without documentation, children who are taken from their homes or families are far more difficult to locate; without proof of age, children are at much greater risk of trafficking, exploitation, and, in wartime, military conscription. Unregistered children may also be denied access to basic social services including health care and education. Furthermore, teenagers and adults who were not registered at birth may be denied access to higher education, international travel, and marriage. Birth registration is also a powerful tool for the state; whether part of a comprehensive state registration program (e.g. birth, marriage, death, census, etc.) or used alone, registration allows the state to track demographic information without which it is very difficult to appropriately distribute resources.

The state is responsible for ensuring comprehensive birth registration. Many states require birth registration under domestic child protection legislation. Birth registration is a right guaranteed by international human rights instruments including the International Covenant on Civil and Political Rights (ICCPR)²⁵ and the Convention on the Rights of the Child (CRC)²⁶, to

²⁴ *Nearly 40 Percent of Global Births are Unregistered: WHO*. Reuters. (29 October 2007) Available at: <http://www.reuters.com/article/idUSL2473575620071029> (Accessed 2 December 2010)

²⁵ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* 23 March 1976. Article 24(2).

which nearly all United Nations (UN) members are parties. Many states have also adopted regional or national laws that declare birth registration a right. Birth registration is imperative in itself, but its relationship to the protection of other rights makes it even more essential.

Low rates of birth registration can be attributed to a number of factors including to limited financial and infrastructural resources, lack of political will, and fear or misunderstanding of registration. These issues are worse in post-conflict countries, but the need for registration and understanding of the population is greater. While such shortcomings are common in many countries, this thesis will primarily focus on three countries: South Sudan, Sierra Leone, and Guatemala; each of these countries is coping with serious children's rights issues as they face additional burdens related to recovering from lengthy civil wars. All three countries are working to implement universal birth registration, but are at different stages of the process, essentially reflective of their respective levels of development and time lapsed since the end of civil war.

Structure

This thesis will discuss the intersection between birth registration and the protection of children's rights—particularly in South Sudan, Sierra Leone, and Guatemala—in the following manner. First, this thesis will look at existing literature on human rights, birth registration and child protection; the Literature Review will discuss documents and publications from three sources that carry great weight in debates surrounding the aforementioned topics: historical documents, legal instruments, and academic research. Second, this thesis will examine three post-conflict countries at various stages of implementing birth registration—South Sudan, Sierra Leone, and Guatemala. In the third chapter, this thesis will discuss birth registration, describing

²⁶ Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* 2 September 1990. Article 7.

what it entails and why it is considered a right. In the final chapter, this thesis will look at the international legal instruments that protect children and relate to birth registration.

Methodology

In researching and writing this thesis, I will look to documents and sources that provide reliable information and statistics to construct a complete picture of the relationship between birth registration and children's rights in post-conflict countries.

For the first section, I will review existing literature regarding the historical path that led to the modern understanding of human rights; this will include journalistic sources, primary legal documents, academic writing, and reports of non-governmental and inter-governmental organizations. The three case studies will be constructed from facts and timelines published by reliable historical sources, reports published by NGOs (for example, Human Rights Watch, Amnesty International, Care, and Save the Children) during the period of civil war, and state and NGO-sponsored development analysts. In the case studies I will also look at relevant state legislation and discuss laws that influence children's rights and birth registration.

The section titled *Legal Basis for Birth Registration and Child Protection* will examine the international and regional sources of children's rights, protections, and birth registration by looking at relevant treaties from the UN, the International Labour Organization (ILO), the Organization of American States (OAS), the European human rights system, and the African Union (AU). It will examine articles and reports from international governmental agencies.

By incorporating research, statistics, and analysis from a wide variety of sources and disciplines, the methodology described above will facilitate the creation of a broad but accurate portrayal of the connection between birth registration and children's rights in post-conflict

countries. My research is however, limited. Given sufficient resources, time, and ability to travel, I would have spent time completing interviews with civilians, officials, and practitioners in each case-study country. I have had the good fortune to visit two countries discussed in this thesis (South Sudan and Guatemala); although the travel was unrelated to my research, while writing this thesis I drew from experiences and conversations I had with people on the ground. I hope in the future to continue expanding my research on this topic.

IV. LITERATURE REVIEW

This thesis weaves together many interconnected but distinctive themes. The purpose of this thesis is to unite legal, academic, and field research to demonstrate that birth registration is a critical aspect of protecting children's rights and securing peace in post-conflict countries. Most of the existing research on birth registration comes from non-governmental human rights and development organizations that see registration as an important step toward protecting human rights; constructing this argument requires drawing on research and concepts from several disciplines and fields, including that developed by said non-governmental organizations (NGOs), and uniting it with scholarly research on history, human rights, and post-conflict development.

From the legal perspective this thesis will look at international, regional, and state laws on human rights, and specifically children's rights. In addition to forming the legal framework on human rights and children's rights, international governing agencies contribute significantly to the research and reporting on human rights, children's rights, child protection and progress in post-conflict countries.

From academia, this thesis will draw on existing research from the disciplines of political science, sociology, and peace and conflict transformation to examine human rights, child protection and security. NGOs contribute both field research and theoretical analysis regarding human rights, child protection, security, and post-conflict societies. The following section will examine the existing literature from these sources, and will discuss the significance of the contributions from each.

Historical Philosophy and Sources of Human Rights

Contemporary human rights, including children's rights, were established following World War II with the founding of the UN by approval of the UN Charter in 1945 and the adoption of the Universal Declaration of Human Rights (UDHR) in 1948. But evidence abounds that human societies have long believed that ensuring certain standards improved equality and bettered civilization; individual human rights draw on centuries of moral, legal, and political theory.²⁷

Certain judicially focused human rights originate as far back as the 1215 Magna Carta. For example, due process, which describes the steps that governments must take in order to legally arrest, detain, and try citizens, was first specified in the Magna Carta. Clause 29 reads, "[n]o freeman is to be taken or imprisoned or disseised of his free tenement or of his liberties or free customs, or outlawed or exiled or in any way ruined, nor will we go against such a man or send against him save by lawful judgment of his peers or by the law of the land. To no-one will we sell or deny of delay right or justice."²⁸ Due process clauses in international law can be found in Article 9 of the UDHR, which states that "no person shall be subjected to arbitrary arrest, detention, or exile", and Article 10, which grants the right to a fair trial in front of an impartial judiciary.²⁹ Due process is also found in the ICCPR, which expands on the UDHR Article 9 definition of due process by detailing the rights and privileges of detainees.³⁰ In regional human rights instruments, due process can be found in Articles 5 and 6 of the European Convention on

²⁷ Louis Henkin, *The Age of Rights* (New York, NY: Colombia University Press, 1990).

²⁸ "The Magna Carta," *United States National Archives and Records Administration*, 1297, http://www.archives.gov/exhibits/featured_documents/magna_carta/ (accessed 19 November 2011).

²⁹ Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

³⁰ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.

Human Rights (ECHR)³¹, Articles 7 and 8 of the American Convention on Human Rights (ACHR)³², Articles 6 and 7 of the African Charter on Human and People's Rights (ACHPR).³³ Habeas corpus, found in international and regional human rights instruments, was also originally seen in the Magna Carta.³⁴

Like the concept of due process, many of the ideas presented in modern human rights instruments have been derived from other sources. Several of the rights in the UDHR mirror similar ideas in significant historical social and political documents, such as the French Declaration of the Rights of Man and of the Citizen (1789)³⁵ and the United States Declaration of Independence (1776).³⁶ Individual rights are rooted in the older concepts of natural law and natural rights. The ideas expressed in the aforementioned historical documents were also found in the writings of important social and political philosophers such as John Locke and Thomas Paine. In *The Rights of Man*, Paine emphasized the notion that rights were inherent and therefore could not be granted nor taken away.

“The rights of men in society, are neither devisable or transferable, nor annihilable, but are descendable only, and it is not in the power of any generation to intercept finally, and cut off the descent. If the present generation, or any other, are disposed to be slaves, it does not lessen the right of the succeeding generation to be free... It is a perversion of terms to say that a charter gives rights. It operates by a contrary effect — that of taking rights away. Rights are inherently in all the inhabitants.”³⁷

³¹ Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, *entered into force* Sept. 3, 1953, *as amended by* Protocols Nos 3, 5, 8, and 11 *which entered into force* on 21 September 1970, 20 December 1971, 1 January 1990, and 1 November 1998 *respectively*. <http://www1.umn.edu/humanrts/instree/z17euroco.html> (accessed 28 March 2011)

³² Organization of American States, *American Convention on Human Rights*, "Pact of San Jose", Costa Rica, 22 November 1969, available at: <http://www.unhcr.org/refworld/docid/3ae6b36510.html> (accessed 28 March 2011)

³³ African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* 21 October 1986. http://www.africa-union.org/official_documents/treaties_%20conventions_%20protocols/banjul%20charter.pdf (accessed 20 March 2011)

³⁴ *A brief history of habeas corpus*, 09 March 2005, http://news.bbc.co.uk/2/hi/uk_news/magazine/4329839.stm (accessed November 19, 2011).

³⁵ French Declaration on the Rights of Man, Declaration of the Rights of Man and of the Citizen (26 August 1789).

³⁶ United States Declaration of Independence (July 4, 1776).

³⁷ Thomas Paine, *The Rights of Man* (London: J.S. Jordan, 1791).

Most recently, many of the rights enumerated in the UDHR were derived from instruments of its predecessor, the League of Nations. The League of Nations had several documents regarding protection of vulnerable populations including the 1921 International Convention for the Suppression of the Traffic in Women and Children³⁸, the 1924 Declaration on the Rights of the Child³⁹, and the 1926 Slavery Convention.⁴⁰⁴¹

Legal Construction of Human Rights, Children's Rights, and Birth Registration

Among other things, laws exist to frame the means by which society deals with pressing concerns and issues. Laws are created on many levels, from international—through agencies such as the UN—to local—through organizations such as town councils. Human rights are fundamental claims on society that must be enforced by the international community, states, and societies; they are necessary because human values depend on them.⁴² Human rights laws exist on all levels of government, but are fundamentally defined by treaties and documents of international, regional, and state governing bodies.

International human rights law is based on the instruments the UN sets forth and individual member states adopt. The founding document of the UN, the UN Charter, was adopted in 1945 and was the first international instrument to declare that individuals had certain

³⁸ League of Nations, "European Commission," *Fight against Trafficking in Human Beings*, 1921, http://ec.europa.eu/anti-trafficking/download.action;jsessionid=nkxCTQcdGv3FSF1NJQ0JPnF0zWxCVnsxCCfIGPNY0FTGVx2wh8XY!741669820?nodeId=fa0674a6-1b22-4f09-8fb9-35f84524a0c5&fileName=1921+international+convention_en.pdf&fileType=pdf (accessed 13 November 2011).

³⁹ Geneva Declaration of the Rights of the Child of 1924, *adopted* 26 September 1924, League of Nations O.J. Spec. Supp. 21, at 43 (1924).

⁴⁰ League of Nations, "Slavery Convention," *Office of the United Nations High Commissioner for Human Rights*, 1926, <http://www2.ohchr.org/english/law/slavery.htm> (accessed 13 November 2011).

⁴¹ Sharon Detrick, *A Commentary on the United Nations Convention on the Rights of the Child* (The Hague: Martinus Nijhoff Publishers, 1999).

⁴² Sarah H. Cleveland, Laurence R. Helfer, Gerald L. Neuman, Diane F. Orentlicher, and Louis Henkin, *Human Rights* (West Publishing, 2009).

rights by virtue of being human. Chapter I of the Charter set forth the Principles and Purposes of the UN:

To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace; to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.⁴³

Children's rights are found in human rights instruments. Of particular significance are treaties that have been adopted to address the vulnerabilities of children, such as the Convention on the Rights of the Child (CRC) and the Minimum Age Convention (MAC), both of which will be discussed further in this thesis. All human rights are children's rights, but states that support human rights have come to believe that innate vulnerabilities necessitate the designation of special protections for children.

Eglantyne Jebb was one of the earliest proponents of the creation of special protections for children; in the 1920s, he founded the International Save the Children Union (SCIU). Jebb wrote the 1924 Declaration on the Rights of the Child, which was subsequently adopted by the League of Nations, and became the first in a series of documents called the World Child Welfare Charter.⁴⁴ Upon the formation of the United Nations, the ideas behind the World Child Welfare Charter were written into the 1959 Declaration on the Rights of the Child (DRC)⁴⁵, which later

⁴³ United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, available at: <http://www.unhcr.org/refworld/docid/3ae6b3930.html> (accessed 30 May 2011)

⁴⁴ Eglantyne Jebb, "Declaration of the Rights of the Child," *Child Rights International Network*, 1923, <http://www.crin.org/resources/infodetail.asp?ID=1306> (accessed 13 November 2011).

⁴⁵ UNICEF, "Fifty Years for Children," *The States of the World's Children*, 1996, <http://www.unicef.org/sowc96/50years.htm> (accessed 11 March 2011).

informed the CRC. The CRC is perhaps the most important document on the rights of children today, and includes the child's right to name and nationality, and to be registered at birth.⁴⁶

Academic

Many academics, from fields including law, political science, anthropology, and sociology have contributed to the discourse on human rights. Perhaps the most influential academics to have contributed to the philosophical understandings of human rights are Louis Henkin, considered the founder of the field of human right law, and Jack Donnelly, a political scientist.

Before his death in 2011, Louis Henkin wrote extensively on the historical origins of human rights. Henkin drew connections between human rights and foreign policy and was famous for asserting, "[a]lmost all nations observe almost all principles of international law and almost all of their obligations almost all the time."⁴⁷ Henkin's writing on human rights sparked great debate about the reasons that states do and do not obey international human rights law. Henkin was very critical of the United States government for promoting human rights, but failing to ratify many important instruments.

Jack Donnelly, a professor of political science, has been outspoken in the debate about whether human rights should be applied universally, as they were intended, or in a culturally relativist manner; Donnelly argues in favor of a universal approach. This argument has a great deal of relevance to countries that are recovering from conflict as well as those with large indigenous populations. In such cases, the state or individual communities may be more inclined

⁴⁶ Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* 2 September 1990. Article 7.

⁴⁷ Louis Henkin, "The Politics of Law Observance," in *How Nations Behave*, 47 (New York, New York: Columbia University Press, 1968).

to argue that particular rights should not be enforced. Describing the importance of a universal approach to human rights, Donnelly wrote,

Human rights are a special class of rights, the rights that one has simply because one is a human being. They are thus moral rights of the highest order... One claims a human right in the hope of ultimately creating a society in such claims will no longer be necessary. Where human rights are effectively protected, we continue to *have* human rights, but there is no need or occasion to *use* them... Human rights claims thus are essentially extralegal; their principle aim is to challenge or change existing institutions, practices, or norms, especially legal institutions.⁴⁸

Political scientists have used statistical techniques to examine human rights data. For example, in 1999, Poe, Tate, and Keith demonstrated that variables including democracy, civil war, population size, economic development, and past levels of repression all have statistically significant effects on state repression of human rights.⁴⁹ Empirical studies such as this are very relevant to the study of human rights abuses in post-conflict countries. This kind of data analysis can help to explain why, as Henkin said, “almost all nations observe almost all principles of international law and almost all of their obligations almost all the time,” but some do not.

⁴⁸ Donnelly, Jack. *Universal Human Rights in Theory and Practice*. Ithaca, NY. Cornell University Press. 1989. 12-14.

⁴⁹ C. Neal Tate, Linda Camp Keith, and Steven C. Poe, "Repression of the Human Right to Personal Integrity Revisited: A Global Cross-National Study Covering the Years 1976-1993," (International Studies Association) 1999.

V. CASE STUDIES

Millions of children across the globe each year go undocumented, and the problem is particularly acute in post-conflict countries. Post-conflict states face challenges that are much greater than those of countries not recovering from conflict with otherwise similar economic and political conditions. Serious challenges include the restoration of peace and security, and the resettlement of formerly displaced persons and refugees. Most post-conflict countries also face infrastructure deficiencies, including buildings, roads, and utilities. Post-conflict states often have diminished administrative and government capacity and need to create, implement, and train on new procedures. Furthermore, post-conflict states typically suffer severe economic strain, particularly during the process of re-building, which can last decades or longer.⁵⁰ Finally, each post-conflict state endeavors to rebuild in a manner best suited to its particular development needs; recovery and restructuring take resources, education and time.

This section will examine three post-conflict countries at different stages of both reconstruction and of implementing universal birth registration: South Sudan, Sierra Leone, and Guatemala.

⁵⁰ Ohiorhenuan, John F.E. and Stewart, Frances. *Post-Conflict Economic Recovery: Enabling Local Ingenuity*. United Nations Development Program Bureau for Crisis Prevention and Recovery. United Nations Publications. New York, NY (2008)

South Sudan



Map 1: South Sudan⁵¹

In July 2011, after more than a half century of war and related violence, the region of South Sudan officially became the Republic of South Sudan, independent from the Republic of the Sudan. It is important to note that because of the recent transition, information in this section largely reflects Sudan prior to the transition, as a unified country. Poverty, health, mortality, and other wellness indicators are much worse in South Sudan than in the entire unified country of Sudan; therefore it should be assumed that statistics that reflect pre-transition unified Sudan do not reflect the direness of the situation in South Sudan. For the sake of clarity in this section, “Sudan” will refer to the pre-transition unified state, “South Sudan” will, unless otherwise stated,

⁵¹ Google Maps, <http://g.co/maps/uf2ue> (15 November 2011)

refer to the post-transition Republic of South Sudan, and “North Sudan” will, unless otherwise stated, refer to the post-transition Republic of the Sudan.

This thesis will look at South Sudan for two primary reasons: first, because of this researcher’s interest and previous experience with the topic. Second, because South Sudan has extremely low rates of birth registration, even when compared to other fragile and post conflict states. Furthermore, South Sudan continues to cope with challenges that are unique to post-conflict countries. The repercussions of decades of civil war are severe: displacement, economic and structural recovery, and deep social divisions, just to name a few.

Geography and History⁵²

Located on the Northeast edge of the African continent, the unified Republic of Sudan was, from the end of the colonial era until July 2011, geographically the tenth largest country in the world; South Sudan is now the 45th largest country in the world encompassing a total area of 619,745 sq. km.⁵³ Although initial estimates of per capita income in South Sudan appear higher than in neighboring countries, resources are scarce and poorly distributed resulting in extremely low development markers.⁵⁴ This region has been home to innumerable ethnic and cultural groups; archeological evidence suggests that humans have inhabited the area for thousands of years.⁵⁵ Colonial history has colored Sudan’s independence. In the nineteenth century Great

⁵² Much of the following two sections was taken from an earlier paper: Robyn Skrebes, "Self Determination and Contemporary Human Rights Issues in Southern Sudan and East Africa," March 2011.

⁵³ BBC News, "South Sudan Counts Down to Independence," *BBC News Africa*, 8 July 2011, <http://www.bbc.co.uk/news/world-africa-14077511> (accessed December 18, 2011).

⁵⁴ The World Bank, "South Sudan launches its first GDP estimate," *Africa Can End Poverty*, 8 August 2011, <http://blogs.worldbank.org/africacan/south-sudan-launches-its-first-gdp-estimate> (accessed 18 December 2011).

⁵⁵ Professor G.A. Reisner, "Outline of the Ancient History of Sudan," *Sudan Notes and Records* 1 (January 1916): 3-17.

Britain attempted to create a north-south line of colonies from Egypt to South Africa⁵⁶; thus, during most of the period between 1820 and 1956, the British controlled Sudan.⁵⁷

Like much of Africa, Sudan has rich diversity within its population. North and South Sudan are home to 19 major ethnic groups that further distinguish into nearly 600 sub-groups and speak more than 100 languages and dialects.⁵⁸ The unified state of Sudan shared borders with both African and Middle Eastern countries, its geographical and cultural surroundings have dramatically impacted the way that Sudanese people in different regions define themselves and feel about one another. There are religious and cultural differences between those who identify themselves as Northern and Southern Sudanese: Northern Sudanese largely consider themselves Arabic—Arabic is the primary language and a good deal of the population practices Islam; Southern Sudanese generally consider themselves African, speak English as a primary language, and practice Christianity and Animism.⁵⁹

The immensity of the space and the diversity of the population would have made peaceful governance of a unified Sudan difficult even with careful guidance and a shared vision, but such positive influences have never existed. In fact, as was the case in many colonized states, colonial administrators deliberately and recklessly favored particular groups and regions, exacerbating divisions between groups in Sudan. During the colonial era Khartoum, the northern capital city of Sudan, was the center of governance by the British Sudanese Political Service (SPS). North-centric economics and politics, which reflected regional biases and power-struggles, seriously aggravated divisions. The SPS largely ignored the needs of particular areas (including South

⁵⁶ Nye Jr., Joseph S. *Understanding International Conflicts: An Introduction to Theory and History*, 3rd Ed. Addison Wesley Longman, Inc. United States. (2000) 69.

⁵⁷ For further examples of this see: John Richard Bowen, "The Myth of Global Ethnic Conflict," *Journal of Democracy* (The Johns Hopkins University Press) 7, no. 4 (October 1996): 3-14.

⁵⁸ Somali Press, "Cultural, Languages and Ethnic Groups of Sudan," *Somali Press African Guides: Sudan Guide*, 4 August 2008, <http://www.somalipress.com/sudan-overview/cultural-languages-ethnic-groups-sudan-1151.html> (accessed 20 May 2011).

⁵⁹ *2006 Freedom in the World: Sudan*. Freedom House (2006) Available at: <http://www.freedomhouse.org/template.cfm?page=15>.

Sudan and Darfur) to the point of endangering citizens.⁶⁰ Similar problems echoed throughout East Africa, and regional instability has been long and pervasive.

Conflict

More than fifty years of war and underdevelopment in South Sudan, and indeed in much of Africa, can be seen as effects of colonialism. Since 1956 independence, North and South Sudan have suffered innumerable obstacles to peace including both passive state failures—poverty, underdevelopment, lack of investment in rural areas, insufficient positive leadership, power struggles, lack of transparency, ethnic, cultural and religious differences and rivalries, and divided interests—and active state oppression and serious human rights violations. In its 2011 Annual Freedom in the World Report, Freedom House gave Sudan its lowest rating for political and civil rights and stated that its leadership displayed “elements of both radical Islamism and a traditional military junta.”⁶¹

When African colonialism ended in the mid-twentieth century, nearly every East African state including Sudan erupted in conflict. New and imposed borders, limited resources, and power struggles all stood as barriers to peace in the newly independent states.

Africa's demise has many causes. Almost all African countries are artificial states constructed by European governments during the Scramble for Africa at the end of the 19th century... Colonial rule held them together effectively enough. But with independence, older loyalties and ambitions came thrusting to the fore, often exploited by prominent politicians for their own ends, setting one tribe against another, and resulting in a prolonged era of instability. So the actual construction of African states is one cause of the crisis.⁶²

Both the First and Second Sudanese Civil War were, in large part, struggles for regional autonomy between the South and the North. The First Sudanese Civil War began in 1955, just

⁶⁰ Ibid.

⁶¹ *2011 Freedom in the World: Sudan*. Freedom House (2011). Page 4. Available at: http://www.freedomhouse.org/images/File/fiw/FIW_2011_Booklet.pdf.

⁶² Ibid.

months before Sudan became an independent state. Leading up to independence, South Sudan expressed a need for regional self-governance, but North Sudan offered few concessions as independence day neared, thus civil war commenced. The First Sudanese Civil War concluded after nearly two decades with the 1972 signing of the Addis Ababa Agreement, which granted South Sudan greater autonomy, but by 1983 the Sudanese government reversed the Addis Ababa Agreement and fighting reignited. The Second Civil War lasted until 2005, when the Sudanese People's Liberation Army/Movement (SPLA/M) and the Sudanese government signed the Comprehensive Peace Agreement (CPA), which included an option for South Sudan to gain independence after six years of unification.⁶³ In January 2011 the Southern Sudanese finally held a referendum in which they voted overwhelmingly to secede from the North. In July, South Sudan became an independent state, and is now a state party of both the AU and the UN.⁶⁴⁶⁵

Although the CPA drastically decreased fighting, serious conflict has continued in two particular regions: along the border between North and South Sudan—predominantly in the oil-rich Abyei region⁶⁶—and in Darfur. The violence in Darfur is geographically and politically separate from the Civil War, but Sudan was still deeply entrenched in the Second Civil War when attacks on the rural region of Darfur intensified in 2003. Although Sudanese officials—and particularly President Bashir—have continually denied government affiliation with the Janjaweed (the group attacking Darfur)⁶⁷⁶⁸, in fact the government began to arm the Janjaweed

⁶³ *Sudan Peace Agreement Q/A*. CARE International.

http://www.care.org/newsroom/articles/2005/01/20050111_sudan_peace_qa.asp.

⁶⁴ UN News Centre, "UN welcomes South Sudan as 193rd Member State," *UN News Centre*, 14 July 2011, <http://www.un.org/apps/news/story.asp?NewsID=39034&Cr=South+Sudan&Cr1=> (accessed 12 December 2011).

⁶⁵ Voice of America, "South Sudan Becomes African Union's 54th Member," *Voice of America News*, July 12, 2011, <http://www.voanews.com/english/news/africa/east/South-Sudan-Becomes-African-Unions-54th-Member-126320433.html> (accessed December 12, 2011).

⁶⁶ International Peace Institute, "The Future of South Sudan," in *The Future of South Sudan* (New York: International Peace Institute, May 2011).

⁶⁷ *Chad/Sudan: End Government Support to Militias: Hundreds of Villagers Killed in Raids and Communal Violence*. Human Rights Watch. 9 January 2007. <http://hrw.org/english/docs/2007/01/08/chad14982.htm>

as early as the 1990s.⁶⁹ President Bashir, who has held his office since 1989, currently faces indictments by the International Criminal Court for genocide, crimes against humanity, and war crimes.

Threats to Children in South Sudan

Conflict, poverty, and underdevelopment have gravely impacted children and families in South Sudan. According to the 2008 South Sudan Census, more than 50 percent of the population of Sudan is under the age of eighteen⁷⁰, but by nearly every indicator, South Sudan ranks among the worst countries for child welfare. According to the CIA World Factbook, South Sudan is sixth in the world for infant mortality with 102 deaths per 1,000 live births.⁷¹ Unified Sudan is ranked fifteenth in the world for children under the age of five who are underweight⁷² and fourteenth for maternal mortality with 750 deaths per 100,000 live births.⁷³ UNICEF reported in 2008 that one state in South Sudan had a maternal mortality rate of 2,243 deaths per 100,000, believed to be the highest in the world.⁷⁴

Sudan's abysmal statistics can be connected to many historical, geographic, and cultural factors. First, the colonial history of East Africa and Sudan—though it is perhaps not the most effective issue to discuss today as it is in the past and cannot be changed, any discussion of the

⁶⁸ Omar al Bashir, interview by Simon Tisdall, *Omar al Bashir Talks to the Guardian*, (20 April 2011).

⁶⁹ Ibrahim, Fouad. 13.

⁷⁰ UNICEF, "South Sudan, 01 December: UNICEF and partners use radio to call for an end to violence against children," *Eastern and Southern Africa*, 1 December 2011, http://www.unicef.org/esaro/5440_UNICEF_and_partners_use_radio_to_call_an_end_to_child_violence.html (accessed 14 December 2011).

⁷¹ The Central Intelligence Agency, "Country Comparison: Infant Mortality Rate," *The World Factbook*, 2006, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2091rank.html> (accessed 12 December 2011).

⁷² The Central Intelligence Agency, "Country Comparison: Children Under the Age of 5 Years Underweight," *The World Factbook*, 2006, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2224rank.html> (accessed 12 December 2011).

⁷³ The Central Intelligence Agency, "Country Comparison: Maternal Mortality Rate," *The World Factbook*, 2008, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2223rank.html> (accessed 12 December 2011).

⁷⁴ UNICEF, *A Vision for Children: UNICEF in Sudan*, Report (UNICEF, 2006).

current situation in Sudan, or, for that matter, East Africa, would be remiss to ignore the damage that Colonialism caused to the region. Second, a half-century of post-colonial conflict both in Sudan and throughout the region has contributed to population instability (high incidence of refugees and internally displaced people), dire poverty, and underdevelopment. In other words, Sudan has experienced dramatic shortcomings in necessary provisions ranging from basic infrastructure—such as roads and government buildings—to health care. It is important to recognize that conflict has been constant throughout all of East Africa since at least the end of colonialism. Political borders have rarely contained regional violence.⁷⁵

Thirdly, the natural environment of Sudan is extreme and unforgiving. The tropical climate plays host to innumerable diseases and parasites that have either been nearly eradicated or are not even found anywhere else in the world. Sudan has been called “the forgotten front line” of health.⁷⁶ Water is extremely limited, and the soil makes agriculture extremely difficult. All of these factors are linked horizontally as well as vertically, and are dynamic—they are constantly changing based on local, state, and regional politics and circumstances.

In addition to ordinary issues related to war, poverty, and environment, South Sudan has many exceptional problems. As a result of the Second Sudanese Civil War, great numbers of Southern Sudanese were killed or forced from their homes and families. Violence, famine, and disease during the war period resulted in the deaths of 2 million people and the forced displacement of 4.6 million people (internally and in neighboring countries).⁷⁷ Since the signing of the CPA, an estimated 2 million people have returned to their original homes in Southern

⁷⁵ Meredith, Martin, “The Fate of Africa: A Survey of Fifty Years of Independence,” *The Washington Post*, 20 January 2006, <http://www.washingtonpost.com/wp-dyn/content/discussion/2006/01/11/DI2006011101372.html> (accessed 28 May 2011).

⁷⁶ Associated Press, “Sudan A Hotbed Of Exotic Diseases,” *CBS News: Healthwatch*, 11 February 2009, <http://www.cbsnews.com/stories/2004/02/03/health/main597751.shtml> (accessed 12 December 2011).

⁷⁷ United States Department of State, “Background Note: South Sudan,” *U.S. Department of State: Bureau of African Affairs*, 7 December 2011, <http://www.state.gov/r/pa/ei/bgn/171718.htm> (accessed 13 December 2011).

Sudan, but in 2009, conflict in Jonglei, Upper Nile, and Lakes states led to 2,000 deaths and 250,000 displaced persons. Meanwhile, conflicts in neighboring countries have forced refugees into South Sudan, placing further strain on the tenuous peace and scarce resources.⁷⁸

Forced military conscription of children was a very serious problem during the Sudanese Civil Wars, and persists in conflicts along the North-South border and in Darfur. Nearly seven years since the signing of the CPA and the end of the Second Civil War, UNICEF estimates that 1,200 children are still associated with the SPLM/A. Countless Southern Sudanese children have been forced to join the fighting in Uganda as part of the Lord's Resistance Army⁷⁹, and still many more are involved in minor conflicts.⁸⁰ Child abduction also continues to be a serious problem in South Sudan⁸²; children are routinely and systematically abducted from their families and communities. A startling number of groups abduct children for purposes including not only military conscription, but also domestic service, marriage, and childbearing.⁸³

⁷⁸ Ibid.

⁷⁹ Office of the Special Representative of the Secretary General for Children and Armed Conflict, "Developments in Uganda/regional impact of the Lord's Resistance Army on children," *United Nations*, 23 April 2011, <http://www.un.org/children/conflict/english/uganda.html> (accessed 13 December 2011).

⁸⁰ Bonifacio Taban Kuich, "South Sudan army release 53 child soldiers," *Sudan Tribune*, 15 November 2011, <http://www.sudantribune.com/South-Sudan-army-release-53-child,40736> (accessed 12 December 2011).

⁸¹ UNICEF, *Fact Sheet: Children Associated with Armed Groups and Forces Central Africa*, Factsheet (UNICEF, 2009).

⁸² "UNICEF warns of impact on children of ongoing violence in Southern Sudan". UN News Service. 2009. 5 March 2009 <<http://www0.un.org/apps/news/story.asp?NewsID=30696&Cr=Southern+sudan&Cr1=>>

⁸³ United States Department of State, "Sudan," *Bureau of Democracy, Human Rights, and Labor*, 11 March 2008, <http://www.state.gov/g/drl/rls/hrrpt/2007/100506.htm> (accessed 13 December 2011).

⁸⁴ Child Protection International, *Child Abduction in Southern Sudan: The Need for Birth Registration*, Report (Minneapolis: Child Protection International, 2009).

Relevant Domestic Legislation

*CEAWC*⁸⁵

In 1999, six years before the signing of the CPA, the government of Sudan took a stance against abduction, trafficking and exploitation with the establishment of the Committee for the Elimination of Abduction of Women and Children (CEAWC). The CEAWC endeavored to investigate and end abduction, prosecute abductors, and facilitate returns.⁸⁶ Though the Sudanese government was applauded for taking steps to protect women and children with the formation of the CEAWC, after 2006 it ceased funding the effort and it quickly became ineffective.⁸⁷ In 2007, the U.S. Department of State reported that the CEAWC continued to investigate abduction cases, but “ha[d] not engaged in any transport or retrieval missions since early 2006 due to lack of funding.”⁸⁸

*The Child Act*⁸⁹

Since the 2005 CPA, the government of South Sudan has adopted legislative instruments toward improving child and family welfare; in 2008, it enacted the Child Act. The purpose of the Child Act is “to extend, promote and protect the rights of children in Southern Sudan, in accordance with... the Interim Constitution of Southern Sudan... and... the 1989 United Nations Convention on the Rights of the Child and other international instruments... on the protection and welfare of children to which Sudan is signatory”.⁹⁰ Although South Sudan is now an autonomous state, the Child Act still depends on the treaty signatures of Sudan; in time the government of South Sudan

⁸⁵ Child Protection International, *Child Abduction in Southern Sudan: The Need for Birth Registration*, Report (Minneapolis: Child Protection International, 2009).

⁸⁶ International Eminent Persons Group, *Slavery, Abduction and Forced Servitude in Sudan*, Report (United Nations).

⁸⁷ United States Department of State, “Sudan,” *Bureau of Democracy, Human Rights, and Labor*, 11 March 2008, <http://www.state.gov/g/drl/rls/hrrpt/2007/100506.htm> (accessed 13 December 2011).

⁸⁸ Ibid.

⁸⁹ Child Protection International, *Child Abduction in Southern Sudan: The Need for Birth Registration*, Report (Minneapolis: Child Protection International, 2009).

⁹⁰ *Child Act, 2008 (Southern Sudan)* [Sudan], 13 October 2008, available at: <http://www.unhcr.org/refworld/docid/49ed840c2.html> (accessed 14 December 2011).

will undoubtedly develop its own collection of treaty ratifications, but until then it has consented to abide by pre-independence agreements. Wherever possible, the Child Act directly uses or expands definitions and principles from the CRC. This includes, among other things, definitions of *child*, *abduction*, and *trafficking*. The Child Act also defines concepts that are specific to the Sudanese context, for example, *chief*, *female circumcision*, and *work in industrial undertaking*.

The Government of South Sudan was praised for the adoption of Child Act as it demonstrated a commitment to improving protection of the rights of children, but despite including an entire chapter (Chapter VIII) to caring for wrongfully taken children, the Act is weak with regard to punishment and remedy. While the Child Act recognizes child abduction and trafficking as problems, the penalties for both are minor compared to the seriousness of the crimes.⁹¹ The language of the Child Act is also weak with regard to the return of abducted children; the Act states that if the court has reasonable grounds to believe that a child has been unlawfully taken it “may make a recovery order,” but does not require return or outline steps for recovery.⁹²

Birth Registration Effort in South Sudan

In 2008, only thirty three percent of children in Sudan were registered with the state; in rural areas—and the population of South Sudan is predominantly rural—only twenty-two percent of children had state birth records⁹³; but the new government of South Sudan has demonstrated early commitment to improving rates of birth registration and children’s rights. In 2008, in addition to South Sudan’s enactment of the Child Act, UNICEF launched a campaign with the Government of National Unity and the Government of South Sudan to increase birth registration

⁹¹ Ibid. Article 10, Section 119, 123.

⁹² Ibid. Article 10, Section 125 (1).

⁹³ Unite for Children. *Sudan Statistics*. UNICEF. Available at: http://www.unicef.org/infobycountry/sudan_statistics.html (accessed 03 December 2010).

rates by twenty percent by 2012. UNICEF has begun the process of registering children, but these efforts will likely continue for many years.

Despite demonstrating some political will to increase rates of birth registration, South Sudan faces many challenges in this endeavor. South Sudan is impoverished by almost every indicator; it lacks the economic ability and basic infrastructure required to reach much of the population. Furthermore, implementation of birth registration in any systematic manner will require training professionals and volunteers.⁹⁴ Many Southern Sudanese do not know that their children can be registered with the state; even if registration were commonly understood, the state would have to regain the trust of families and communities to ensure participation, a difficult task for a state that has recently committed gross human rights violations against its citizens.

If every child had a birth certificate, it would be easier to ensure that children attended primary school and easier for the state to understand where educational funding and teachers should be disbursed. Birth certificates could be required for military conscription, hazardous labor, and marriage, protecting children from unlawful exploitation.⁹⁵ In the case that a child were to be unlawfully taken from his or her home, a birth certificate would serve as proof of the child's existence and identity. If fully utilized, birth certificates could also help the state to recognize important demographic information for the purpose of distributing resources and understanding needs of the population, particularly in rural areas.

⁹⁴ Stephen Gray, "'Independence' Baby Signals the Birth of a New Nation in South Sudan," *UNICEF*, July 13, 2011, http://www.unicef.org/infobycountry/southsudan_59217.html (accessed December 30, 2011).

⁹⁵ Ibid.

Sierra Leone



Map 2: Sierra Leone⁹⁶

The following section will examine Sierra Leone for two reasons: first, because it shares many relevant qualities with South Sudan- in particular, post-conflict status and a history of serious violations of children's rights including military conscription and exploitation. Sierra Leone, like South Sudan, is still coping with the effects of decades of civil war and violence, but is further in time from the culmination of the war. Secondly, this section will look at Sierra Leone because, with the help of NGOs, the government has launched a birth registration campaign in earnest, which has seen some early promising results.

Geography and History

Located on the west coast of Africa, Sierra Leone is a small country that shares borders with Guinea to the north and east, and Liberia to the south, and has just over 400 kilometers of

⁹⁶ Google Maps, <http://g.co/maps/6aq47> (18 December 2011)

coastline on the South Atlantic Ocean.⁹⁷ Sierra Leone is the eighth poorest country in the world with a per capita gross domestic product (GDP) of only \$900 per year (calculated in *international dollars*). Like many African countries, Sierra Leone has an extremely diverse population; it is home to twenty ethnic groups.⁹⁸

Sierra Leone was one of the earliest points of contact between Europe and West Africa. In the seventeenth century, the first West African slaves were taken from Sierra Leone to be sold in North America where their agricultural skills were exploited on southern American plantations. The capital city of Sierra Leone is Freetown; ironically, Freetown was named for the emancipated slaves who were settled there upon being returned to Africa⁹⁹, before it became one of the first British colonies in West Africa in 1872. Like Sudan, all of Sierra Leone eventually became part of the British Empire, and was governed by British administrators under the auspices of the Sierra Leone Company. The colonial era in Sierra Leone was marked by violence and unrest; indigenous groups attempted to overthrow British rule on several occasions throughout the colonial period.

After a tumultuous nineteenth century, the early to mid-twentieth century in Sierra Leone was relatively peaceful. In the 1950s Sierra Leone prepared for independence, creating a new constitution with guidelines for moving away from colonialism, and in 1961 it became a sovereign state.¹⁰⁰ The region was less tranquil; power struggles and civil war in neighboring Liberia would eventually lead to violence in Sierra Leone.

⁹⁷ United States Central Intelligence Agency, "Field Listing: Coastline," *The World Factbook*, December 2011, <https://www.cia.gov/library/publications/the-world-factbook/fields/2060.html> (accessed 15 December 2011).

⁹⁸ United States Department of State, "Background Note: Sierra Leone," *United States Department of State*, <http://www.state.gov/r/pa/ei/bgn/5475.htm> (accessed 18 December 2011).

⁹⁹ Ibid.

¹⁰⁰ Ibid.

Regional Unrest and the Sierra Leone Civil War

To appreciate the causes of the civil war in Sierra Leone, it is important to understand the preceding related conflict in Liberia, Sierra Leone's neighbor to the south. Like Sierra Leone, Liberia came into being with the resettlement of thousands of former African-American slaves by the American Colonization Society (ACS) in the mid-nineteenth century. The ACS governed the Commonwealth of Liberia from 1820 until it became the independent Republic of Liberia in 1847. The early twentieth century in Liberia was marked with violent competition for power and resources. There was strong American influence—in addition to the fact that many Liberians were former American slaves, the first Liberian President was born and raised in the United States. Furthermore, French and British colonialists continually expanded into Liberian territory, while indigenous Africans, who were initially excluded from the new state, demonstrated violent opposition to both the new inhabitants and governance. From 1847 until 1980, Liberia was a one-state party governed by the True Whig Party, which was based on the American Whig party.

In 1980, Liberian Master Sergeant Samuel K. Doe took power in a coup d'etat, breaking the True Whig Party and installing a military regime called the People's Redemption Council (PRC). The PRC displayed ethnic favoritism and was notorious for human rights abuses and corruption. As a result, tension and violence escalated in Liberia. In 1989, former government minister Charles Taylor invaded Liberia from Cote d'Ivoire with his militia group, the National Patriotic Front of Liberia (NPFL). Liberia broke into a civil war that would span more than a decade, the First Liberian Civil War from 1989-1996, and the Second from 1999-2003.¹⁰¹

¹⁰¹ United States Department of State, "Background Note: Liberia," *United States Department of State*, <http://www.state.gov/r/pa/ei/bgn/6618.htm> (accessed 18 December 2011).

In 1991 the Revolutionary United Front (RUF), a militia group that was heavily supported by Charles Taylor, then President of Liberia, began attacking villages on the Liberian-Sierra Leonean border.¹⁰² Beginning in 1991 the RUF launched a campaign of violence that was notorious for brutalizing civilians; the RUF terrorized Sierra Leoneans into compliance by hacking off limbs with machetes, raping women, and drugging small children to coerce them into fighting.¹⁰³¹⁰⁴ Early in the invasion the RUF took control of diamond mines along the border. RUF soldiers forced Sierra Leoneans to collect diamonds, which were smuggled into Liberia and sold. The profits were used in part to arm the RUF with black-market acquired weapons.¹⁰⁵¹⁰⁶ The invasion of the RUF marked the start of the Sierra Leone Civil War, and the conflict lasted until the 2002 signing of the Lomé Peace Accord between the government and the rebels.¹⁰⁷¹⁰⁸ When the war commenced in 1991, the population of Sierra Leone was 4.1 million¹⁰⁹; at the end of the war, 50,000 people had died and more than half of the population had been displaced.¹¹⁰¹¹¹

Following the conclusion of the war, a Sierra Leonean Truth and Reconciliation Commission (TRC) was established “to create an impartial historical record of violations and

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ UNICEF, "Children as Soldiers," <http://www.unicef.org/sowc96/2csoldrs.htm> (accessed 21 December 2011).

¹⁰⁵ BBC News Africa, "The Charges Against Charles Taylor," *BBC News Africa*, 8 February 2011, <http://www.bbc.co.uk/news/world-africa-12391507> (accessed 20 December 2011).

¹⁰⁶ Aislinn Laing, "'Blood diamond' trial: the case against Charles Taylor," *The Telegraph*, 16 June 2011, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/liberia/8578540/Blood-diamond-trial-the-case-against-Charles-Taylor.html> (accessed December 18, 2011).

¹⁰⁷ UNOMSIL, *Sierra Leone UNOMSIL Background*, 2000, <http://www.un.org/Depts/DPKO/Missions/unomsil/UnomsilB.htm> (accessed 27 December 2011).

¹⁰⁸ Bruno Waterfield, "Naomi Campbell: Sierra Leone War," *The Telegraph*, 6 August 2010, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/sierraleone/7928960/Naomi-Campbell-Sierra-Leone-war.html> (accessed 21 December 2011).

¹⁰⁹ United States Central Intelligence Agency, *1990 CIA World Factbook*, (Washington D.C. : United States Central Intelligence Agency, 1990).

¹¹⁰ Internal Displacement Monitoring Center, "Sierra Leone: Executive Summary ," 1 October 2004, [http://www.internal-displacement.org/8025708F004CE90B/\(httpCountrySummaries\)/0372C6E093AFEFEB802570C00056B6D0?OpenDocument&count=10000](http://www.internal-displacement.org/8025708F004CE90B/(httpCountrySummaries)/0372C6E093AFEFEB802570C00056B6D0?OpenDocument&count=10000) (accessed 26 December 2011).

¹¹¹ Global Refugee Project and Norwegian Refugee Council, "Profile of Internal Displacement: Sierra Leone," Report (Geneva, 2010). Page 32.

abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the Conflict in 1991 to the signing of the Lomé Peace Agreement; to address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered.”¹¹² The Sierra Leonean TRC concluded that women and children were singled out for “some of the most brutal violations of human rights recorded in any conflict”.¹¹³

Threats to Children in Sierra Leone

Sierra Leone is among the poorest countries in the world in both wealth and development; its children face countless challenges to health and well-being. In 2011, Sierra Leone was ranked 180th of the 187 states for which indicators were included on the Human Development Index (HDI).¹¹⁴ According to the Multidimensional Poverty Index (MPI), 77 percent of Sierra Leoneans live in poverty and at least 53 percent live in severe poverty¹¹⁵, meaning they live on less than \$1.25 (measured by PPP) per day.¹¹⁶ Of every 1,000 Sierra Leonean children born, 192 die before reaching the age of five, and life expectancy at birth is just under 48 years of age—the lowest of any measured country in the world.¹¹⁷ Adult literacy in Sierra Leone is less than 41 percent—lower than nearly every other assessed country (only Chad and Guinea have worse rates of literacy). Adults over the age of 25 have achieved an average of

¹¹² *Truth and Reconciliation Commission Act, 2000* [Sierra Leone], 2 March 2000, available at: <http://www.unhcr.org/refworld/docid/3fbcee4d4.html> (accessed 28 December 2011)

¹¹³ Ibid. See 22.

¹¹⁴ United Nations Development Programme, "Human Development Index Values," *International Human Development Indicators*, 15 May 2011, <http://hdrstats.undp.org/en/indicators/103106.html> (accessed 22 December 2011).

¹¹⁵ Oxford Department of International Development, University of Oxford, "Country Briefing: Sierra Leone-Multidimensional Poverty Index (MPI) at a Glance," *Oxford Poverty and Human Development Initiative (OPHI)*, December 2011, <http://hdr.undp.org/external/mpi/Sierra-Leone-OPHI-CountryBrief-2011.pdf> (accessed 22 December 2011).

¹¹⁶ United Nations Development Programme Human Development Report Office, "Sierra Leone Country Profile: Human Development Indicators," *International Human Development Indicators*, 2011, <http://hdrstats.undp.org/en/countries/profiles/SLE.html> (accessed 21 December 2011).

¹¹⁷ Ibid.

less than three years of school, and although educational expectations have been steadily rising, children who are under seven years of age today can, on average, only expect to complete about seven years of school.

Poverty and underdevelopment have been problematic in Sierra Leone for many years and were severely exacerbated by conflict. The 11-year civil war in Sierra Leone created extraordinary threats for children and, as during the Sudanese civil wars, innumerable children became casualties of war. The RUF specifically recruited children to fight because they were agile, inexpensive, malleable, and fearless. Children as young as six were conscripted and placed in military groups called *small boys units*¹¹⁸; they were also often forced to take drugs to diminish anxiety about fighting and killing.¹¹⁹¹²⁰ By the later years of the war aid workers estimated that as many as half of the 15,000 RUF soldiers might be under 18¹²¹, and after the war ended in 2002, UNICEF and partner organizations demobilized and disarmed 6,850 child soldiers.¹²²¹²³ Children were not only recruited to fight with the RUF; as early as the mid-1980s, the Sierra Leonean Army also recruited and sometimes abducted children to fight.¹²⁴

In addition to children who were forced to fight, thousands of children were victims of other types of abuse during the war. Women and children were abducted for a variety of reasons. Children were used to carry supplies, including weapons, often over great terrain, causing

¹¹⁸ UNICEF, "Children as Soldiers," <http://www.unicef.org/sowc96/2csoldrs.htm> (accessed 21 December 2011).

¹¹⁹ Sierra Leone Truth and Reconciliation Commission, "Volume 2 Report of the Sierra Leone Truth and Reconciliation Commission," Report (Accra, Ghana, 2004).

¹²⁰ BBC News, "Child Soldiers to be Disarmed," May 2000, http://news.bbc.co.uk/2/hi/uk_news/764230.stm (accessed 21 December 2011).

¹²¹ Ibid.

¹²² Ibid.

¹²³ UN Secretary-General on Children and Armed Conflict, *Report of the Secretary-General on Children and Armed Conflict*, (United Nations Security Council, 2002).

¹²⁴ Sierra Leone Truth and Reconciliation Commission, "Volume 2 Report of the Sierra Leone Truth and Reconciliation Commission," Report (Accra, Ghana, 2004). See 438 and 484.

physical harm and psychological strain.¹²⁵ After the war, hundreds of young girls reported to the Sierra Leonean Truth and Reconciliation Commission that they had been victims of sexual violence including rape, exploitation, and forced impregnation and marriage.¹²⁶ Women and children also reported being mutilated, having their limbs taken off with machetes, and being forced to engage in cannibalism.¹²⁷

Commenting on the effect that the conflict had on Sierra Leonean children, UNICEF stated that children were “particularly vulnerable to abuse...as they were violated in deep and lasting ways, some too awful to be adequately described... In some ways, it is as if a new level of cruelty has been attained in this war, setting the bar lower than ever imagined”.¹²⁸

In the years since the culmination of the Civil War, conflict-related damages have stifled peace and growth in Sierra Leone. Many of the children who were abducted, exploited, abused, or otherwise affected by the war have grown into adults with serious residual issues and without the means to address them; examples include physical disabilities, Post-Traumatic Stress Disorder, drug addiction, and limited education. Sexual violence during the war increased the spread of HIV/AIDS and other sexually transmitted diseases, but inadequate health care access and other factors have kept victims from getting necessary treatment.¹²⁹

Legal Challenges and Domestic Legislation

Like in South Sudan, tumult in Sierra Leone—related to both the civil war and the post-conflict recovery—has caused serious challenges and changes regarding creation, implementation, and enforcement of laws. The civil war brought with it many unique issues—

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Ibid. See Chapter 3, 149.

¹²⁸ Sierra Leone Truth and Reconciliation Commission, "Volume 3B Report of the Sierra Leone Truth and Reconciliation Commission," Report (Accra, Ghana, 2004). See Chapter 4, Footnote 2.

¹²⁹ Ibid.

among other things, high displacement and forced expulsion, infrastructural devastation, economic ruin, sexual and other physical violence, child conscription and exploitation, and mass atrocities—to which the government has had to respond. Such issues would be extremely difficult for a functioning and effective government, but Sierra Leone has a relatively young government. Although the government retained much of the legal infrastructure that existed before the war, the post-conflict governance and laws are still being developed. Furthermore, the combination of British Common Law and local customary law has limited the effectiveness of recent legislative efforts.¹³⁰

The civil war took a massive toll on the population. As discussed above, more than one percent of the entire population died as a result of the war, and 50 percent were displaced. The Sierra Leonean legal system is extremely over-taxed.¹³¹ Many professionals died or were displaced (because of the conflict or because of economic hardship) during the war.¹³² Eleven years since the end of the war, economic conditions, combined with a lack of educational opportunities and state investment in institutions, have precluded many professionals from returning to work. Today Sierra Leone has fewer than 200 practicing lawyers.¹³³

Although it has a limited capacity for enforcement, Sierra Leone has ratified many human rights treaties relevant to child protection and birth registration. In 1990, despite being embroiled in a civil war that took an enormous toll on its children, Sierra Leone signed and ratified the

¹³⁰ Guy Thompstone, "Mapping and Analysis of the Child Protection System in Sierra Leone," *UNICEF*, April 2010, http://www.unicef.org/wcaro/english/Child_Protection_Systems_Sierra_Leone_Report.pdf (accessed 25 December 2011).

¹³¹ Amnesty International, "Sierra Leone," *Annual Report 2011*, 2011, <http://www.amnesty.org/en/region/sierra-leone/report-2011#section-124-6> (accessed 26 December 2011).

¹³² Medecins Sans Frontieres, *Sierra Leone: International Activity Report 2001*, (New York: Medecins Sans Frontieres, 2001).

¹³³ Sonkita Conteh Esq, "Expanding Grassroot Justice Services in Sierra Leone," *Center for Accountability and Rule of Law*, 17 December 2010, http://www.carl-sl.org/home/articles/469-expanding-grassroot-justice-services-in-sierra-leone-#_ftn1 (accessed 26 December 2011).

CRC. Though in 1990 the government of Sierra Leone was certainly unable and perhaps unwilling to meet its obligations under the CRC, today it can and should be held accountable. In 1996, Sierra Leone also acceded to the ICCPR. In addition to international treaty obligations, Sierra Leone has enacted national legislation demonstrating political will to bring its laws and actions into compliance with its human rights commitments.

Child Rights Act

Despite serious challenges, the past decade in Sierra Leone has brought legislative steps toward improving the protection of children's rights. Perhaps the most important advancement was the 2007 adoption of the Child Rights Act (CRA). The CRA intended to bring Sierra Leone's laws into harmony with its treaty obligations under the CRC and to ensure "that the short-and long-term best interests of the child shall be a primary consideration in any decision or action that may affect the child or children, as a group."¹³⁴

The CRA effectively brought the definitions of children's rights in Sierra Leonean law into compliance with the CRC; it used the same language to clarify the meaning of child, and retained the standards of the CRC and the MAC (to which Sierra Leone is also a party) regarding minimum age requirements for labor. The CRA also defined protections not included in the CRC that were specific to Sierra Leone. For example, Article 11 called for the elimination of female genital mutilation, which continues to be a major concern for women and girls in Sierra Leone. Notably, like the CRC, the CRA called explicitly for registration of children at birth.¹³⁵

While attempting to bring its laws into compliance with the CRC, Sierra Leone has nonetheless maintained a strong focus on family and individual rights. In a 2011 report, Plan

¹³⁴ *The Child Right Act, 2007* [Sierra Leone], No. 7 of 2007, 3 September 2007, available at: <http://www.unhcr.org/refworld/docid/468a5ed02.html> (accessed 27 December 2011).

¹³⁵ *Ibid.* Article 11(2)(e).

International wrote, “Anglophone countries, in line with their stronger focus on individual rights, have promulgated laws that address children’s rights with a formal recognition of the importance of the family unit.”¹³⁶ Sierra Leone also has a strong focus on community-based justice. For example, with regard to oversight, the CRA called for the use of Bare Gatherings, “traditional forum[s] or gathering[s] presided over by a traditional or community leader, open to all members of the community.”¹³⁷ While the focus on community-based legal enforcement is primarily reflective of the context and values of Sierra Leone, it has been important to ensuring any effectiveness given the scarcity of legal professionals in the country. Lawyers and judges are not allowed to participate in community-based courts; instead local chiefs preside over these courts, and they have “the primary authority for the majority of the population and have the ability to enact traditional by-laws that are sometimes at odds with national law but are nonetheless widely followed.”¹³⁸ However, real results will not be achieved without more effective training.¹³⁹

Connection Between Birth Registration and Domestic Child Protection Issues

Sierra Leone is three years further along in its recovery from civil war and peace efforts than South Sudan; it spent many fewer years in conflict, and has not the additional burden of forming a new state. But the civil war in Sierra Leone was extremely brutal; during the period of conflict much infrastructure was destroyed. Children were perhaps most intensely affected by the war. As discussed above, as many as half of the soldiers fighting the civil war in Sierra Leone

¹³⁶ Plan International, Save the Children International, and UNICEF, *Mapping and Assessing Child Protection Systems: West and Central Africa*, Report (Hong Kong: Child Frontiers Ltd. , 2011).

¹³⁷ *The Child Right Act, 2007* [Sierra Leone], No. 7 of 2007, 3 September 2007, available at: <http://www.unhcr.org/refworld/docid/468a5ed02.html> (accessed 27 December 2011). Article 2.

¹³⁸ Guy Thompstone, "Mapping and Analysis of the Child Protection System in Sierra Leone," *UNICEF*, April 2010, http://www.unicef.org/wcaro/english/Child_Protection_Systems_Sierra_Leone_Report.pdf (accessed 25 December 2011). Page 8.

¹³⁹ Ibid. Page 19.

were children, and many of the children were abducted and given combat names during fighting.¹⁴⁰

At the end of the civil war, thousands of children were demobilized. Although many of the children who fought in the war returned to their homes, thousands of children had no memory of their names or families; the identities of these of the children were simply lost. Had the conscripted children been registered at birth, it might have been possible for their families to locate them after the war, but a lack of universal documentation has made tracing families and homes impossible for those who cannot remember.

Although it may be impossible to re-discover the identities of many of the children who fought in the civil war, implementing birth registration may prevent the same thing from happening in the future. Organizations including UNICEF and Plan International have been instrumental in improving birth registration outcomes in Sierra Leone. In 2005, UNICEF and Plan launched a campaign to register children in Sierra Leone; in 2009, Plan reported that it had helped to facilitate more than 110,000 registrations.¹⁴¹

Bringing birth registration to Sierra Leone has been challenging for many of the same reasons that it will be difficult to implement in South Sudan: lack of infrastructure, poverty, and mistrust of the government, among other things. However, in conjunction with the Sierra Leonean government, Plan and UNICEF have reported some promising practices that may improve birth registration rates in Sierra Leone. For example, Plan, UNICEF, and Sierra Leonean government undertook a wide scale public education campaign to disseminate information about the importance of birth registration.¹⁴² They used the expertise and access of

¹⁴⁰ Innocenti Research Center, *Birth Registration and Armed Conflict*, (UNICEF, 2007).

¹⁴¹ Cody, C. "Count every child: The Right to Birth Registration," Woking, Plan Ltd. 2009.

¹⁴² Ibid. Page 34.

public health workers, training and engaging them in registration efforts, as well as decentralizing the process.¹⁴³ Finally, Plan and its partners reviewed existing domestic legislation in Sierra Leone to bring it into line with best practices.¹⁴⁴

Although it has a way to go, birth registration in Sierra Leone has come far in recent years. The best practices developed in Sierra Leone may serve as a model for state like South Sudan as they endeavor to improve children's rights through birth registration.

¹⁴³ Ibid. Page 41.

¹⁴⁴ Ibid. Page 56.

Guatemala



Map 3: Guatemala¹⁴⁵

Guatemala shares certain relevant qualities with both Sudan and Sierra Leone, including post-conflict status (the Guatemalan Civil War lasted from 1960-1996) and a large rural and indigenous population. However, Guatemala has a more established period of peace and the peace process explicitly included birth registration.¹⁴⁶ By looking at Guatemala, this thesis will draw comparisons and consider ways that the Guatemalan best practices could transfer to other countries, in particular South Sudan and Sierra Leone.

¹⁴⁵ Google Maps, <http://g.co/maps/5vnke> (28 December 2011)

¹⁴⁶ Ibid.

Geography and History

Located in the middle of Central America, the Republic of Guatemala borders Mexico to the north, Belize, Honduras, and El Salvador to the east, and the Pacific Ocean to the south.

Guatemala is the 107th largest country in the world with a land area of 108,890 sq. km.

Guatemala is considerably smaller than South Sudan (roughly one-sixth the size), but is larger than Sierra Leone.¹⁴⁷ The population of Guatemala is 14.7 million people; 2.5 million reside in the southern-central capital, Guatemala City, but the majority of the population still resides in rural areas.

The region that currently constitutes Mexico and Guatemala has a rich cultural history. For more than 2,000 years the Maya people dominated Mesoamerica; they had perhaps more than 40 highly developed cities, as well as large areas of cultivated land across the region that now constitute southern Mexico and Guatemala.¹⁴⁸ By the 16th century though, most of the Maya cities had disappeared and the remaining Maya people lived in agricultural villages.¹⁴⁹ In the early 16th century Spanish Conquistador Hernán Cortés led an expedition to conquer and colonize Central America for Spain. Cortés conquered the Aztec Empire of the region that is now Mexico, between 1519 and 1521. The former Aztec city Tenochtitlan became Mexico City. Through the 1520s, the Conquistadors continued on to take the rest of the region for Spain.¹⁵⁰ In

¹⁴⁷ United States Department of State, "Background Note: Guatemala," U.S. Department of State: Bureau of Western Hemisphere Affairs, 07 December 2011, <http://www.state.gov/r/pa/ei/bgn/171718.htm> (accessed 13 December 2011).

¹⁴⁸ "The Rise and Fall of the Maya Empire," *History.com*, 2011, <http://www.history.com/topics/maya> (accessed 28 December 2011).

¹⁴⁹ Ibid.

¹⁵⁰ United States Department of State, "Background Note: Mexico," U.S. Department of State: Bureau of Western Hemisphere Affairs, 07 December 2011, <http://www.state.gov/r/pa/ei/bgn/35749.htm> (accessed 13 December 2011).

1524, Pedro de Alvarado, one of Cortés' Conquistadors, invaded, conquered, and colonized Guatemala including the remainder of the ancient Maya Empire.¹⁵¹

Central America remained under Spanish governance for nearly three centuries. In 1821, Guatemala briefly gained independence before becoming part of the Mexican Empire and then part of the Federal Republic of Central America in rapid succession.¹⁵² The Federal Republic of Central America dissolved by the 1840s. For more than a century—through the 1980s—Guatemala was colored by a progression of military dictatorships, coups, and insurgencies with only brief periods of representative democracy. At the end of the Civil War, the Guatemalan Truth Commission reported:

The anti-democratic nature of the Guatemalan political tradition has its roots in an economic structure, which is marked by the concentration of productive wealth in the hands of a minority. This established the foundations of a system of multiple exclusions, including elements of racism, which is, in turn, the most profound manifestation of a violent and dehumanising social system. The State gradually evolved as an instrument for the protection of this structure, guaranteeing the continuation of exclusion and injustice.¹⁵³

Conflict

From 1945 to 1951, Guatemala was served by its first elected civilian President, Juan Jose Arevalo. President Arevalo instituted major social reforms including funding social security and public hospitals, encouraging public participation—including indigenous people—in politics, and reversing laws that stifled the press and labor unions.¹⁵⁴ In 1951, Col. Jacobo Arbenz succeeded Juan Jose Arevalo; he won the Presidency on a platform of land redistribution.

¹⁵¹ United States Department of State, "Background Note: Guatemala," U.S. Department of State: Bureau of Western Hemisphere Affairs, 07 December 2011, <http://www.state.gov/r/pa/ei/bgn/171718.htm> (accessed 13 December 2011).

¹⁵² "Central America," *History.com*, 2011, <http://www.history.com/topics/central-america> (accessed 28 December 2011).

¹⁵³ Guatemala Truth Commission, "Guatemala Memory of Silence: Report of the Commission for Historical Clarification Conclusions and Recommendations," 1999, <http://shr.aaas.org/guatemala/ceh/report/english/toc.html> (accessed 28 December 2011).

¹⁵⁴ Tim Golden, "Juan Jose Arevalo is Dead at 86; Guatemala President in Late 40's," *New York Times: Obituaries*, October 8, 1990, <http://www.nytimes.com/1990/10/08/obituaries/juan-jose-arevalo-is-dead-at-86-guatemala-president-in-late-40-s.html> (accessed 28 December 2011).

As President, Arbenz continued to make dramatic social reforms, including a major agrarian reform law—Decree 900—which aimed to redistribute land to peasants.¹⁵⁵ One of the major targets of land re-distribution was the largest landowner in Guatemala, the United Fruit Company, owned by American businessman Samuel Zemurray, who had financed the overthrow of the Honduran President in 1924.¹⁵⁶ In addition to his commitment to land redistribution, President Arbenz supported free speech and reforms for labor unions.

Like few others high government leaders in the region, President Arbenz stood up for Guatemalan interests against the United States. In 1952, while most of the Western Hemisphere shunned communism under tremendous pressure from the U.S., President Arbenz allowed the communist Guatemalan Labor Party to gain legal status.¹⁵⁷ Samuel Zemurray and the United Fruit Company seized the opportunity to paint President Arbenz as a Soviet Communist sympathizer.¹⁵⁸ Although the U.S. government did not view Guatemala as a Communist threat, it was sympathetic to the supposed damage caused to United Fruit Company by the land seizures.¹⁶⁰ In June 1954, the U.S. Central Intelligence Agency orchestrated a military coup in

¹⁵⁵ Alan Mendelsohn and Nadine Pequenez, *Turning Points of History, A Coup: Made In America*, 2001.

¹⁵⁶ Ibid.

¹⁵⁷ United States Department of State, "Background Note: Mexico," U.S. Department of State: Bureau of Western Hemisphere Affairs, 07 December 2011, <http://www.state.gov/r/pa/ei/bgn/35749.htm> (accessed 13 December 2011).

¹⁵⁸ United States Department of State: Office of Intelligence Research, "Communism in the Free World: Capabilities of the Communist Party, Guatemala," *Mount Holyoke College: Documents Relating to American Foreign Policy, The Cold War*, 01 January 1953, <http://www.mtholyoke.edu/acad/intrel/coldwar/guatemala13.htm> (accessed 28 December 2011).

¹⁵⁹ Mariano Castillo, "Apology Reignites Conversation about Ousted Guatemalan Leader," *CNN*, 24 October 2011, <http://www.cnn.com/2011/10/22/world/americas/guatemala-arbenz/index.html> (accessed 28 December 2011).

¹⁶⁰ Gerald K. Haines, "CIA and Guatemala Assassination Proposals 1952-1954, CIA History Staff Analysis," *National Security Archives, George Washington University*, June 1995, http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB4/cia-guatemala1_1.html (accessed 28 December 2011).

Guatemala¹⁶¹, resulting in the exile of President Arbenz, the installation of Col. Carlos Castillo Armas as President, and nearly four decades of military coups, dictatorships and civil war.¹⁶²

The Guatemala Civil War officially began in 1960, but Guatemala was in a state of turmoil from the time that President Arbenz was exiled in 1954 until the end of the Civil War in 1996. Upon taking the Presidency, Castillo removed voting rights for illiterate Guatemalans, reversed the Agrarian Reform Act, and instituted a Preventative Penal Law against Communism, which allowed for the arbitrary arrest and detention of thousands of people.¹⁶³ President Castillo was assassinated in 1957, and four other military leaders would assume the office before the commencement of the Civil War. All but three of the fifteen Guatemalan Presidents who served during the Civil War were members of the military junta. In addition to violence directly connected to the conflict, during the Civil War the Guatemalan military disappeared some 45,000 civilians¹⁶⁴ who were seen as threats to the government including students, journalists, and human rights activists.¹⁶⁵¹⁶⁶ In 1996 the Guatemalan government and the Guatemalan National Revolutionary Unity signed a peace agreement that ended the Civil War after 34 years.¹⁶⁷

¹⁶¹ United States Central Intelligence Agency, "Memorandum: Selection of Individuals for Disosal by Junta Group," *George Washington University: National Security Archives*, 31 March 1954, http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB4/cia-guatemala3_1.html (accessed 28 December 2011).

¹⁶² Al Jazeera , "Guatemala Leader Apologizes for 1954 Coup," *Al Jazeera: Americas*, 21 October 2011, <http://www.aljazeera.com/news/americas/2011/10/20111021443836184.html> (accessed 28 December 2011).

¹⁶³ María José Calderón, "PBS Frontline World," *Timeline: Guatemala's History of Violence*, 2011, <http://www.pbs.org/frontlineworld/stories/guatemala704/history/timeline.html> (accessed 28 December 2011).

¹⁶⁴ Guatemala Truth Commission, "Guatemala Memory of Silence: Report of the Commission for Historical Clarification Conclusions and Recommendations," 1999, <http://shr.aaas.org/guatemala/ceh/report/english/toc.html> (accessed December 28, 2011).

¹⁶⁵ International Committee of the Red Cross, "Guatemala: the continuing tragedy of the disappeared," *ICRC Resource Center*, February 22, 2010, <http://www.icrc.org/eng/resources/documents/interview/guatemala-interview-220210.htm> (accessed December 28, 2011).

¹⁶⁶ Human Rights Watch, "Guatemala," *World Report 1989*, 1989, <http://www.hrw.org/reports/1989/WR89/Guatemala.htm#TopOfPage> (accessed 28 December, 2011).

¹⁶⁷ Guatemala Truth Commission, "Guatemala Memory of Silence: Report of the Commission for Historical Clarification Conclusions and Recommendations, Conclusions: Peace and Reconciliation," 1999, <http://shr.aaas.org/guatemala/ceh/report/english/conc3.html> (accessed December 28, 2011).

Threats to Children's Rights in Guatemala

Guatemala is the fourth poorest country in Central America and the Caribbean. As in other impoverished post-conflict countries, Guatemala faces both ordinary issues related to poverty, and extraordinary issues related to healing from war and conflict.

Guatemala demonstrates considerably better development indicators than Sudan and Sierra Leone, but nevertheless has serious issues related to poverty. Guatemala is ranked 131 of 187 on the HDI¹⁶⁸, and it has a per capita GDP of approximately \$5,200, the fourth lowest of the 22 Central America and the Caribbean countries (followed by Honduras, Nicaragua, and Haiti).¹⁶⁹¹⁷⁰ The U. S. Department of State reports that Guatemala has one of the most unequal income distributions in the Western Hemisphere, twenty percent of the population owns fifty-one percent of the wealth. According to the MPI, 25 percent of Guatemalans live in poverty and 14 percent live in severe poverty.¹⁷¹ Many Guatemalan children face poverty and under-development; social development indicators including infant mortality, chronic child malnutrition, and illiteracy are among the worst in the Americas.¹⁷²

¹⁶⁸ United Nations Development Programme, "Guatemala Country Profile: Human Development Indicators," *International Human Development Indicators*, May 15, 2011, <http://hdrstats.undp.org/en/countries/profiles/GTM.html> (accessed December 22, 2011).

¹⁶⁹ The Central Intelligence Agency, "Central America and Caribbean: Guatemala," *The World Factbook*, December 9, 2011, <https://www.cia.gov/library/publications/the-world-factbook/geos/gt.html> (accessed December 12, 2011).

¹⁷⁰ The Central Intelligence Agency, "Country Comparison: GDP Per Capita (PPP)," *The World Factbook*, July 1, 2011, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2004rank.html> (accessed December 22, 2011).

¹⁷¹ Oxford Department of International Development, University of Oxford, "Country Briefing: Guatemala-Multidimensional Poverty Index (MPI) at a Glance," *Oxford Poverty and Human Development Initiative (OPHI)*, December 2011, <http://hdr.undp.org/external/mpo/Guatemala-OPHI-CountryBrief-2011.pdf> (accessed December 22, 2011).

¹⁷² United States Department of State, "Background Note: Guatemala," U.S. Department of State: Bureau of Western Hemisphere Affairs, December 7, 2011, <http://www.state.gov/r/pa/ei/bgn/171718.htm> (accessed December 13, 2011).

More than half of Guatemalans are indigenous Maya, and the majority of the population continues to live in rural areas.¹⁷³ As in many other countries, there remain great divides between the indigenous and non-indigenous population. In 2003, the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People reported,

National identity in Guatemala is based to a large extent on the living cultures of its indigenous peoples with their traditions, their community values, their languages and their spirituality. But far from being full and equal partners with the rest of the population, indigenous people have been subjected to political exclusion, cultural discrimination and economic marginalization from society.¹⁷⁴

In 2010, the Rapporteur reported that the rights of indigenous Guatemalans were not being respected, particularly related to land use.¹⁷⁵ Collective land rights issues and rights of indigenous peoples affect the social development indicators of indigenous children.

Organized crime and gang violence pose further serious threats to children in Guatemala. In the 1970s the United States began to see immigration as a serious problem, and in the 1980s and 1990s, the U.S. began deporting undocumented immigrants from South and Central America in large numbers.¹⁷⁶ Many of the youth deported and repatriated came from impoverished families and communities in the United States—particularly in major urban areas like Los Angeles—where they had participated in violent street gangs.¹⁷⁷ As UNICEF explained, “[a]t the end of the eighties and in the nineties, young Guatemalan people began to return from the United

¹⁷³ United States Department of State, "Background Note: Guatemala," U.S. Department of State: Bureau of Western Hemisphere Affairs, 7 December 2011, <http://www.state.gov/r/pa/ei/bgn/171718.htm> (accessed 13 December 2011).

¹⁷⁴ "Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen Submitted in Accordance with Commission Resolution 2001/57," *Official Documents Section of the United Nations*, 24 February 2003, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/111/33/PDF/G0311133.pdf?OpenElement> (accessed 28 December 2011).

¹⁷⁵ "Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, James Anaya," *Official Documents Section of the United Nations*, 24 February 2003, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/149/88/PDF/G1014988.pdf?OpenElement> (accessed 28 December 2011).

¹⁷⁶ Andrew Becker, "Immigration Timeline: A Look at U.S. Policy Toward Immigration and Border Security with Mexico Over the Past 60 Years.," *Frontline World*, 2011, <http://www.pbs.org/frontlineworld/stories/mexico704/history/timeline.html> (accessed 28 December 2011).

¹⁷⁷ Blue Chevigny, "Youths find an alternative to gang violence in Guatemala," *UNICEF: At a Glance: Guatemala*, 7 September 2007, http://www.unicef.org/infobycountry/guatemala_40829.html (accessed 28 December 2011).

States, mainly from Los Angeles, and they organized themselves into what we call ‘maras’—gangs. And these maras imported methods of doing violence that were easily reproduced here, because there’s fertile ground.”¹⁷⁸

Relevant Domestic Legislation

Despite being more than a decade post-civil war, children continue to face many threats in Guatemala, but the state is taking important steps toward improving the protection of children’s rights. The government of Guatemala has ratified important relevant international and regional treaties including the ICCPR and the CRC, as well as OAS treaties such as the American Convention on Human Rights and the Inter-American Convention on the International Return of Children.

In addition to ratifying international treaties, Guatemala has taken steps to integrate the rights and protections into its national laws. In 2003, Guatemala enacted the Law for the Integrated Protection of Childhood and Adolescence. Guatemala enacted the legislation in part to meet obligations regarding the CRC¹⁷⁹; it particularly impacts due process rights for juveniles charged with crimes. This is extremely relevant and important given widespread gang violence involving Guatemalan youth.¹⁸⁰

In 2007, Guatemala enacted the National Law on Adoptions. This law was created to bring Guatemala into compliance with its obligations under the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption. Guatemala has been plagued with allegations of corruption and abuse in its adoption system; trafficking in the region often

¹⁷⁸ Ibid.

¹⁷⁹ UNICEF, *The State of the World's Children: Celebrating 20 Years of the Convention on the Rights of the Child*, Annual Report (New York: UNICEF, 2009).

¹⁸⁰ UNICEF Guatemala, "Adolescencia," *UNICEF Guatemala*, http://www.unicef.org/guatemala/spanish/children_1161.htm (accessed 29 December 2011).

takes the form of abduction of children for the purpose of adoption by families in the United States or other countries.¹⁸¹ This law demonstrated the state's commitment to addressing child trafficking and illegal adoption.¹⁸²

Although Guatemala has taken steps to improve child protection and is the furthest of the three states discussed in the process of implementing birth registration, it has far to go and will require the support of the international community to continue making progress.

Connection Between Birth Registration and Domestic Child Protection Issues

Guatemala is considerably further along in its peace process than either South Sudan or Sierra Leone; moreover, despite its lengthy civil war, Guatemala has a stronger infrastructural and economic foundation than the others. Like South Sudan and Sierra Leone, though, the Guatemalan state committed gross human rights violations during its civil war and people undoubtedly continue to mistrust the government.

Although it is structurally more developed and better situated in some ways to implement birth registration, Guatemala faces its own challenge. In addition to issues that parallel South Sudan and Sierra Leone, Guatemala suffers from extraordinary wealth disparity that particularly affects its large indigenous population. Much of the documentation that did exist in Guatemala was destroyed during the conflict.¹⁸³¹⁸⁴ As discussed above, Guatemala has also faced serious corruption of its birth registration system including the creation of false documents; reports have surfaced of midwives being paid to fabricate birth documents for abducted children for the

¹⁸¹ Child Rights International Network, "Guatemala Children's Rights References in the Universal Periodic Review," *Child Rights International Network*, 05 June 2008, <http://www.crin.org/resources/infodetail.asp?id=17128> (accessed 26 December 2011).

¹⁸² Melissa Long, "Guatemala Passes Domestic Legislation to Implement Hague Adoption Convention; But does it Help the Children?," *Law and Business Review of the Americas* 15 (May 2009): 631-660.

¹⁸³ UNICEF Innocenti Research Centre, *Birth Registration: Right from the Start*, Digest (Florence: United Nations Children's Fund, 2002).

¹⁸⁴ Innocenti Research Center, *Birth Registration and Armed Conflict*, Report (Florence: UNICEF, 2007).

purpose of international adoption.¹⁸⁵ During the civil war, many families deliberately falsified documents to change identities out of fear of the state.¹⁸⁶ Such corruption undermines the earnest efforts of the state to promote birth registration and creates mistrust.

As part of the Peace Agreement in 1996, Guatemala agreed to improve its civil registration mechanisms, which led to a major campaign to improve birth registration, particularly for displaced persons, many of who were indigenous. A coalition of 28 organizations joined together to improve civil registration.¹⁸⁷ The coalition created and implemented two major programs to improve birth registration. First, the coalition created the Act on the Personal Documentation of the Population Uprooted by the Internal Armed Conflict, which aimed to register people who had been displaced by the conflict. The Act succeeded in creating identity documents that allowed displaced persons to access crucial social services. Secondly, the coalition worked to decentralize birth registration to allow public registrants to work directly with communities. As in other states, the organizations working to improve birth registration in Guatemala took steps to ensure best practices that reflected the individual needs of the country.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid. Box 4.1.

VI. BIRTH REGISTRATION AND CHILDREN'S RIGHTS

“The child who is not registered at birth is in danger of being shut out of society – denied the right to an official identity, a recognized name and a nationality.”¹⁸⁸

Birth registration is one of several ways that states account for population and demographics. Other tracking methods include marriage and death records, census taking, and population surveys. Birth registration is particularly important because it provides individual and statistical information necessary for defending children. Children are the foundation of civilization, but are among the members of society most vulnerable to abuse and exploitation. Birth registration is a powerful tool for the state and international allies to ensure the protection of children's rights.

Origins of State Record Collections

Data gathering on populations has taken many forms throughout history. Evidence of census taking has been found as far back at Ancient Egypt where population data was collected to manage land distribution after yearly Nile flooding.¹⁸⁹¹⁹⁰ The Old Testament of the Bible also provides evidence of the taking of census information.¹⁹¹ And for centuries before state records became common, individuals, families, and churches kept information about ancestry, births,

¹⁸⁸ UNICEF Innocenti Research Centre, *Birth Registration: Right from the Start*, Digest (Florence: United Nations Children's Fund, 2002).

¹⁸⁹ United Kingdom National Archives, "Introduction: Why is the Census Taken?," *National Archives: Education*, <http://www.nationalarchives.gov.uk/education/focuson/census/pdfs/why.pdf> (accessed 19 December 2011).

¹⁹⁰ Sir Robert Harry Inglis Palgrave, ed., *Dictionary of Political Economy*, ed. Sir Robert Harry Inglis Palgrave (London: MacMillan and Company, 1894). Page 238.

¹⁹¹ Ibid.

marriages, and deaths.¹⁹² Population data in ancient civilizations was used for many of the same purposes as today, namely to facilitate management of labor and distribution of resources.¹⁹³

Wider collecting of aggregate data by states is a relatively recent concept; modern state record keeping has its origins in the eighteenth century in the United Kingdom. First proposed in the United Kingdom in 1753, the census was quickly dismissed—but in 1801, facing over-population and excessive demand for resources, the state endeavored for the first time to count the population. The 1801 census was considered a success, and the United Kingdom has completed a census nearly every decade since.¹⁹⁴ As mentioned above, churches collected information regarding births, deaths, and marriages for several centuries, but in 1836, the United Kingdom appointed its first Registrar General of Births, Marriages, and Deaths, and shortly after began the process of registering children at birth.¹⁹⁵

The idea that there was a need for comprehensive birth registration began to take root with early international human rights instruments. Although not enacted until 1966, the ICCPR was initially presented to the UN General Assembly in 1954; Article 24 stated the right of the child to be name and nationality and to be registered immediately after birth.¹⁹⁶ The 1959 DRC also asserted the child's right to name and nationality from birth.¹⁹⁷ Serious abuse and exploitation of children has gained notice in recent decades, and the importance of birth registration has become clear.

¹⁹² Ibid.

¹⁹³ United Kingdom Office for National Statistics, "Census-taking in the ancient world," <http://www.ons.gov.uk/ons/guide-method/census/2011/census-history/census-taking-in-the-ancient-world/index.html> (accessed 29 December 2011).

¹⁹⁴ United Kingdom Office for National Statistics, "200 Years of the Census," <http://www.ons.gov.uk/ons/guide-method/census/2011/census-history/200-years-of-the-census/index.html> (accessed December 29, 2011).

¹⁹⁵ Donald Hawes, "Lister, Thomas Henry (1800–1842), Writer and Civil Servant," *Oxford Dictionary of National Biography*, 2011, <http://www.oxforddnb.com/view/printable/16768> (accessed 29 December 2011).

¹⁹⁶ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* 23 March 1976. Article 24.

¹⁹⁷ UN General Assembly, *Declaration of the Rights of the Child*, 20 November 1959, available at: <http://www.unhcr.org/refworld/docid/3ae6b38e3.html> (accessed 28 March 2011). Article 3.

Information Gathered in Birth Registration

The information collected on birth certificates varies by state, but every effective birth certificate should possess a number of vital statistics and pieces of data. First and foremost, the birth certificate should have the complete name of the child. According to international human rights law, every child has the right to a name.¹⁹⁸ The child's name constitutes proof of identity that the child will carry throughout his or her life, and is important for consistency of records and tracking life events. The birth certificate should also bear the name of the child's parents. In case there is a dispute over the identity or guardianship of the child, the birth certificate provides evidence of custody. Along the same lines, the birth certificate should include names of other witnesses including midwives, physicians, or family.

In addition to names, the birth certificate should include the date, time, and place of birth, and should include the nationality of both parents, if possible. Most states determine nationality by *jus soli* or *jus sanguini*, in other words, by where a child is born or by the nationality of the child's parents; thus information about place of birth and parents' nationality is critical for statistical information as well as for demonstrating and securing nationality. The place of birth can also prove critical if the child is ever illegally transported or missing. The birth certificate may also include information such as birth weight, gestational age, and mother's age that the state can use to track critical information about infant and maternal health.¹⁹⁹

¹⁹⁸ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* 23 March 1976. Article 24.

¹⁹⁹ UNICEF Innocenti Research Centre, *Birth Registration: Right from the Start*, Digest (Florence: United Nations Children's Fund, 2002).

If a child is not registered at birth, s/he may have difficulty asserting basic rights including name and nationality.²⁰⁰ Children who are not registered may have difficulty accessing basic social services such as education and health care. In some states, a birth certificate is required to attend primary school.²⁰¹ Exclusion from educational opportunities can be severely detrimental to both the child and society over the course of a lifetime, and the effects, such as poverty and illiteracy, can span generations. Failure to collect information can also limit the state's ability to adequately meet critical needs. A state that does not have accurate demographic information will be limited in its ability to understand the requirements of communities, and will have a more difficult time assessing problems and solutions. In addition to ordinary issues such as poverty, food security, and access to basic infrastructure, children who are not registered at birth are more vulnerable to serious abuses. If an unregistered child is abducted, for example, demonstrating proof of the child's existence may slow recovery efforts. Children without birth certificates are also more vulnerable to exploitative labor and military conscription.

Challenges to Implementation of Birth Registration

Despite the importance of such record keeping, many states still do not have comprehensive birth registration and barriers to implementation are numerous. Creating a comprehensive system of state records is expensive. It can be difficult to reach children, particularly in rural areas where children are more likely to be born at home than in a hospital. Many states do not have the resources to effectively implement birth registration, especially post-conflict countries. When the burden of providing materials to collect information and the infrastructure to store it in an effective manner falls to the state, it may not seem a necessary

²⁰⁰ Plan International, "Stateless Children Deprived of Their Basic Rights," *Plan International; Count Every Child*, August 2011, <http://plan-international.org/birthregistration/resources/stories/stateless-children-deprived-of-their-basic-rights> (accessed 30 December 2011).

²⁰¹ Ibid.

expenditure. While the state could opt to place some of the cost burden on the families, that would prove impossible for many families, particularly those most vulnerable to the negative consequences of non-registration. Making use of the information gathered is an additional burden.²⁰²

Efforts to educate communities about the importance of birth registration and how guardians register children can also be difficult. Many children who are most at risk of not being registered live in rural areas and are born without state involvement. UNICEF has reported:

Birth registration is highest among children in urban areas who have strong links to the mainstream mechanisms of society, such as health services. It is generally low among children who, for one reason or another, live on the margins of society. Children born into rural communities are less likely to be registered than their urban counterparts, just as children born to illiterate parents... are less likely to have a birth certificate than those born to literate parents.²⁰³

History, cultural practices, and beliefs can also preclude birth registration efforts. In countries that have committed human rights abuses against civilians, security concerns may prevent parents from disclosing information about their children to the state. This, of course, is a legitimate concern and must be considered when attempting to achieve birth registration.

Roles of State and Non-State Actors in Implementing Birth Registration

While the state is the primary body responsible for implementing human rights including birth registration, in many developing and post-conflict countries, inter-governmental organizations and NGOs have taken the first steps crucial toward implementing birth registration. Major NGOs and inter-governmental organizations including UNICEF are endeavoring to register children in every country in the world.

²⁰² Ibid. Page 12.

²⁰³ Ibid. Page 10.

One of the biggest and most effective campaigns for birth registration was undertaken in 2005 by Plan International, an NGO that works in 66 countries.²⁰⁴ Along with partner organizations, Plan has made free birth registration available to more than 150,000,000 children.²⁰⁵

²⁰⁴ Cody, C. "Count every child: The Right to Birth Registration," Woking, Plan Ltd. 2009.

²⁰⁵ Ibid. Appendix 1.

VII. LEGAL BASIS FOR CHILD PROTECTION AND BIRTH REGISTRATION

Children are innately more vulnerable to exploitation and rights-infringements than other groups; they lack world-savvy as well as political or economic power; furthermore they are legally dependent either on their parents or guardians or on the state. To counter this inherent powerlessness, special protections have been established for children through international legal instruments.²⁰⁶ Several international and regional human rights instruments have declared that each child has the right to a name, identity, nationality, and family. Women are the primary caregivers of children for both biologic and cultural reasons, thus children's rights and protections are often closely tied to those of women. It is important, therefore, to also examine protections for women and families as they relate to children in international law.

States that have signed or ratified the instruments that will be discussed in this section are obligated to protect children's rights. Furthermore, states that have ratified several key instruments are required to register children at birth, as per the enumerated obligations.²⁰⁷ The ICCPR and the CRC both have provisions specifically addressing the right to birth registration. Birth registration is key to ensuring that other children's rights are respected. This section will examine international and regional human rights instruments that address children's rights as well as those that provide specific provisions for birth registration, and will then explore the connection between birth registration and the protection of other rights.

²⁰⁶ Law Library of Congress, "International Laws: Children's Rights," *Law Library of Congress*, 2007, <http://www.loc.gov/law/help/child-rights/pdfs/Children's%20Rights-International%20Laws.pdf> (accessed 01 March 2011).

²⁰⁷ Child Protection International. *Memo to Dr. Sima Samar, United Nations Special Rapporteur on the Situation of Human Rights in Sudan Regarding Child Abductions in South Sudan and the Need for Birth Registration* (July 2009)

International Legal Instruments

*Relevant Historical Legal Instruments - League of Nations*²⁰⁸²⁰⁹

Global states first recognized the need to construct special rights and protections for children during World War I.²¹⁰ In 1921, the League of Nations established a special committee to examine protections for women and children, which led to the adoption of the 1921 International Convention for the Suppression of the Traffic in Women and Children²¹¹ and the 1926 Slavery Convention.²¹²²¹³ In 1923, SCIU adopted the first Declaration on the Rights of the Child,²¹⁴

... Men and women of all nations, recognizing that mankind owes to the Child the best that it has to give, declare and accept it as their duty that... The child must be given the means requisite for its normal development, both materially and spiritually; ... The child must be the first to receive relief in times of distress; The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation; The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men.²¹⁵

²⁰⁸ League of Nations, "Gathering a body of global agreements," *UN Documents*, 26 September 1924, <http://www.un-documents.net/gdrc1924.htm> (accessed 20 March 2011).

²⁰⁹ Charles Howard Ellis, *The origin, structure and working of the League of Nations* (Clark, New Jersey: The Lawbook Exchange Ltd. , 2004).

²¹⁰ UNICEF, "Fifty Years for Children," *The States of the World's Children*, 1996, <http://www.unicef.org/sowc96/50years.htm> (accessed 11 March 2011).

²¹¹ League of Nations, "European Commission ," *Fight against Trafficking in Human Beings*, 1921, http://ec.europa.eu/anti-trafficking/download.action;jsessionid=nkxCTQcdGv3FSF1NJQ0JPnF0zWxCVnsxCCflGPNY0FTGVx2wh8XY!741669820?nodeId=fa0674a6-1b22-4f09-8fb9-35f84524a0c5&fileName=1921+international+ convention_en.pdf&fileType=pdf (accessed 13 November 2011).

²¹² League of Nations, "Slavery Convention," *Office of the United Nations High Commissioner for Human Rights*, 1926, <http://www2.ohchr.org/english/law/slavery.htm> (accessed November 13, 2011).

²¹³ Sharon Detrick, *A Commentary on the United Nations Convention on the Rights of the Child* (The Hague: Martinus Nijhoff Publishers, 1999).

²¹⁴ Eglantyne Jebb, "Declaration of the Rights of the Child," *Child Rights International Network*, 1923, <http://www.crin.org/resources/infodetail.asp?ID=1306> (accessed November 13, 2011).

²¹⁵ Sharon Detrick, *A Commentary on the United Nations Convention on the Rights of the Child* (The Hague: Martinus Nijhoff Publishers, 1999).

In 1924 the League of Nations adopted the Declaration on the Rights of the Child from SCIU and called it the Geneva Declaration on the Rights of the Child (GDRC).²¹⁶ The GDRC was non-binding, but was significant for a number of reasons. First, the GDRC was the first instrument to enumerate general protections for children and to recognize children as a unique and vulnerable population. Second, though it was less detailed than its later counter-parts, the GDRC informed the creation of other international child protection laws. Finally, the GCRC became the first in the series of instruments known as the World Child Welfare Charter.²¹⁷ Although the League of Nations dissolved during World War II nullifying its legal applicability, the instruments adopted by the League of Nations including the GDRC directly influenced the later adoption of children's rights instruments by the UN.

Current International Legal Instruments

United Nations

The UN has adopted many international human rights instruments that either include provisions, or were specifically written to protect the rights of children. The UDHR, the ICCPR, and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) are perhaps the most important human rights instruments in international law. Together these three documents make up the International Bill of Human Rights and they define universal human rights—rights to which all individuals are entitled by virtue of being human. These instruments are written to include all people, with certain provisions dedicated to children.

²¹⁶ League of Nations, "Geneva Declaration of the Rights of the Child," *UN Documents: Gathering a Body of Global Agreements*, September 26, 1924, <http://www.un-documents.net/gdrc1924.htm> (accessed November 17, 2011).

²¹⁷ UNICEF, "The State of the World's Children- 1996," *UNICEF*, 1996, <http://www.unicef.org/sowc96/50years.htm> (accessed November 13, 2011).

In addition to the instruments of the International Bill of Rights, a number of UN instruments address the unique vulnerabilities of women and children, including the CRC (and its predecessor the Declaration on the Rights of the Child), the CEDAW, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children.

Universal Declaration of Human Rights 1948

The United Nations adopted the UDHR in 1948 and it is one of the three instruments that constitute the International Bill of Human Rights. The UDHR includes a Preamble and 30 articles, which form the basis for current global thinking on human rights. Most of the rights enumerated in the UDHR are granted to everyone; in other words, the rights established in the UDHR automatically apply to children and other vulnerable populations. Additionally, in Articles 16 (3), 25 (2), and 26 (3), the UDHR established special protections for women, children, and families. Perhaps the most notable of these for children is Article 25 (2), which states “motherhood and childhood are entitled to special care and assistance.”²¹⁸²¹⁹

*International Covenant on Civil and Political Rights 1976*²²⁰

The ICCPR has special provisions regarding the rights of parents, family, and children. Articles 10 and 14 distinguish juveniles from adults in legal proceedings.²²¹ Articles 18 and 23 protect the rights of parents and families with regard to child development. The crux of Article 18 is the right to freedom of thought, conscience, and religion; it furthermore calls on states to protect the parents’ right to confer upon their children the moral and religious education of their

²¹⁸ United Nations, "The Universal Declaration of Human Rights," *United Nations*, December 10, 1948, <http://www.un.org/en/documents/udhr/index.shtml> (accessed 28 March 2011).

²¹⁹ Howard Zinn, *UDHR: Article 25*, prod. Carr Center for Human Rights Policy (2009). <http://www.youtube.com/watch?v=dmCoeEyxYnM> (accessed 28 March 2011).

²²⁰ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* 23 March 1976. <http://www1.umn.edu/humanrts/instree/b3ccpr.htm> (accessed 28 March 2011).

²²¹ *Ibid* (Articles 10, 14)

choosing.²²² Article 23 of the ICCPR relates to the protection of families, stating “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State,” and “the right of men and women of marriageable age to marry and to found a family shall be recognized.”²²³ Article 24 specifically relates to the rights of children; Section 1 states that children’s rights are to be applied without regard to “race, colour, sex, language, religion, national or social origin, property or birth,”²²⁴ and entitles children to special protections from the state. While the first Section leaves the nature of such protections to the discretion of the state (within the meaning of the Covenant and the UN Charter)²²⁵, Sections 2 and 3 enumerate clear nationality and identification rights.

ICCPR Article 24, Sections 2 and 3 read, “[e]very child shall be registered immediately after birth and shall have a name,” and “[e]very child has the right to acquire a nationality.”²²⁶²²⁷ At its core, Article 24 ensures children’s rights and protections, and Sections 2 and 3 demonstrate that the authors plainly recognized the connections between birth registration and nationality and the protection of human rights. Taken together, the three sections of Article 24 construct rights that are specific to children and corresponding state obligations.

*International Covenant on Economic, Social and Cultural Rights 1976*²²⁸

The ICESCR, entered into force in 1976, established universal economic, social, and cultural rights. The ICESCR includes provisions specifically related to the rights of children and

²²² Ibid (Articles 18 (4))

²²³ Ibid (Articles 23 (1, 2))

²²⁴ Ibid (Article 24(1))

²²⁵ Ibid (Articles 5 and 46)

²²⁶ Ibid (Article 24(2))

²²⁷ Ibid (Article 24(3))

²²⁸ International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976. <http://www2.ohchr.org/english/law/cescr.htm> (accessed 28 March 2011).

the protection of families. Like the ICCPR²²⁹, the ICESCR recognizes the family as essential to the wellbeing and development of the state: “[t]he widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society.”²³⁰ The ICESCR enumerates the right of children to be protected from abuse and exploitation, and calls on states to establish age restrictions for employment, although it falls short of expressly indicating ages for such limitations.²³¹ In addition to its recognition of special protections for children, the ICESCR acknowledges the right of women to maternity benefits and prenatal care: “[s]pecial protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.”²³²

*Declaration on the Rights of the Child 1959*²³³

In 1959 the UN General Assembly adopted the DRC. The DRC expanded upon the 1924 GDRC and was written to bring the GDRC’s core ideas to the United Nations. Though still non-binding, the DRC was more comprehensive than the GDRC. The DRC included a preamble and ten Principles. In the Preamble, the Declaration referenced both the GDRC and the UDHR and stated that children, “by reason of... physical and mental immaturity, need[ed] special safeguards

²²⁹ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* 23 March 1976.
<http://www1.umn.edu/humanrts/instree/b3ccpr.htm> (accessed 28 March 2011). Article 24.

²³⁰ International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* 3 January 1976.
<http://www2.ohchr.org/english/law/cescr.htm> (accessed 28 March 2011). Article 10.

²³¹ *Ibid* (Article 10(3))

²³² *Ibid* (Article 10(2))

²³³ UN General Assembly, *Declaration of the Rights of the Child*, 20 November 1959, available at: <http://www.unhcr.org/refworld/docid/3ae6b38e3.html> (accessed 28 March 2011).

and care, including appropriate legal protection, before as well as after birth,” and that “mankind owe[d] to the child the best it ha[d] to give.”²³⁴

In its ten Principles, the DRC elaborated three types of rights. First, the DRC provided material entitlements, including rights to education²³⁵, recreation, social security, housing, medical care²³⁶, guardianship by parents, and relief. Secondly, the DRC stipulated special protections regarding hazardous circumstances including neglect, cruelty, exploitation, trafficking, employment²³⁷, and discrimination based on disabilities²³⁸ or other defining traits.²³⁹ Thirdly, the DRC entitled children to intangible rights including personal development, freedom, dignity²⁴⁰, affection, and love.²⁴¹

The DRC was notably the first international human rights instrument to declare a child’s right to have a name and a nationality from birth.²⁴² Principle 3 stated, “The child shall be entitled from his birth to a name and a nationality.”²⁴³ This was the first international instrument to clearly draw a connection between identity and human rights.

*Convention on the Rights of the Child 1990*²⁴⁴

The CRC is one of seven documents that make up the ‘core international human rights instruments’.²⁴⁵ Each of the core instruments has a corresponding committee to monitor state

²³⁴ Ibid (Preamble)

²³⁵ Ibid (Principle 7)

²³⁶ Ibid (Principle 4)

²³⁷ Ibid (Principle 9)

²³⁸ Ibid (Principle 5)

²³⁹ Ibid (Principle 10)

²⁴⁰ Ibid (Principle 2)

²⁴¹ Ibid (Principle 6)

²⁴² Ibid (Principle 3)

²⁴³ Ibid

²⁴⁴ Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* 2 September 1990. <http://www1.umn.edu/humanrts/instrtree/k2crc.htm> (accessed 28 March 2011).

compliance with obligations. All UN members except two-- the United States and Somalia-- have signed and/or ratified the Convention on the Rights of the Child.

The UN General Assembly adopted and opened the CRC for signature on 20 November 1989, the thirtieth anniversary of the adoption of its predecessor, the DRC; it came into force in 1990. The CRC includes a Preamble and 54 articles. Like most UN Conventions, the CRC is divided into parts. In the CRC, Part I, including Articles 1-41, specifies rights; Parts II and III, which include Articles 42-54, address the organization and administration of the Convention.

The CRC draws a great deal from the DRC, but is more comprehensive and the CRC constitutes binding international law. Among the most important advancements, the CRC defines the term “child” to mean, in most circumstances, any person under the age of eighteen.²⁴⁶ The CRC incorporates and expands many of the protections from the DRC. For example, the DRC required free and compulsory elementary education; the CRC maintains that requirement and calls on states to make secondary and vocational education accessible to all. Furthermore, the CRC specifically called on states to ensure that public educational efforts are directed to furthering the development of the child, respecting the role of parents, and promoting human rights and the purposes of the United Nations.²⁴⁷ The CRC also recognizes the right of the child to leisure and recreation and prohibits children from hazardous employment. Like the DRC, the CRC calls on states to implement minimum ages for employment.²⁴⁸ Like the DRC, the CRC enumerates protections from neglect, abuse²⁴⁹, exploitation²⁵⁰, and discrimination.²⁵¹ The CRC

²⁴⁵ United Nations Population Fund, *Core International Human Rights Instruments*. <http://www.unfpa.org/rights/instruments.htm> (accessed December 03, 2010).

²⁴⁶ Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2 1990. <http://www1.umn.edu/humanrts/instreet/k2crc.htm> (accessed 28 March 2011) Article 1.

²⁴⁷ Ibid (Articles 28 and 29)

²⁴⁸ Ibid (Articles 31 and 32)

²⁴⁹ Ibid (Article 19)

also specifically elaborates protections from physical and mental violence²⁵², torture, inhumane or degrading treatment.²⁵³

The CRC also draws on rights and protections previously enumerated in other UN human rights instruments, particularly with regard to rights of and protections for mothers and families; specifically, the CRC includes provisions that mirror the ICCPR, ICESCR, and CEDAW. The Preamble, for example, states that family is “the fundamental group of society and... should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.”²⁵⁴ Article 24, which regarded the child’s right to health called on the state to “ensure appropriate pre-natal and post-natal health care for mothers.”²⁵⁵

The CRC recognizes the child’s right to name and nationality, and to birth registration.²⁵⁶ The right to birth registration in the CRC is situated with the right to nationality and the protection of the relationship between children and their parents. Article 7 asserts “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, and the right to know and be cared for by his or her parents.”²⁵⁷ Article 8 goes further by saying the state shall “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.”²⁵⁸ That the CRC defines these rights together unambiguously establishes their inter-relatedness and the fact that they depend on one another.

²⁵⁰ Ibid (Article 36)

²⁵¹ Ibid (Article 2)

²⁵² Ibid (Article 19)

²⁵³ Ibid (Article 37)

²⁵⁴ Ibid (Preamble)

²⁵⁵ Ibid (Article 24 (d))

²⁵⁶ Ibid (Articles 7 and 8)

²⁵⁷ Ibid (Article 7(1)).

²⁵⁸ Ibid (Article 8).

The CRC also has two Optional Protocols: the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography and the Optional Protocol on the Involvement of Children in Armed Conflict. The Optional Protocol on the Sale of Children, which came into force in 2002, reflects Articles 34 and 35 of the CRC, and details specific requirements to guide state parties of the CRC toward ending child trafficking and exploitation.²⁵⁹ The Protocol defines the offenses of ‘sale of children’, ‘child prostitution’ and ‘child pornography’, and calls on governments to criminalize and punish the activities related to these offences.²⁶⁰ The Optional Protocol on the Involvement of Children in Armed Conflict, which came into force in 2002, reflects Article 38 of the CRC. The Protocol was created to draw attention to the 300,000 children that are engaged in conflict worldwide, and to provide guidelines for states to keep children out of war.²⁶¹

Birth registration has a great deal of relevance to the children’s rights and protections, and particularly when it comes to children who are most vulnerable to trafficking and exploitation. When children are registered with the state, the state is more likely to recognize their existence and work to protect them. Birth registration is necessary to demonstrate age, and states that have universal birth registration can more effectively protect children from participating in illegal, exploitative, or hazardous employment.

²⁵⁹ UNICEF, "Optional Protocol on the sale of children, child prostitution and child pornography," *Convention on the Rights of the Child*, June 02, 2011, http://www.unicef.org/crc/index_30204.html (accessed November 19, 2011).

²⁶⁰ Ibid.

²⁶¹ UNICEF, "Optional Protocol on the involvement of children in armed conflict," *Convention on the Rights of the Child*, June 02, 2011, http://www.unicef.org/crc/index_30203.html (accessed November 19, 2011).

*Convention on the Elimination of all Forms of Discrimination against Women 1979*²⁶²

In 1979, more than thirty years of research on the global conditions of women by the UN Commission on the Status of Women culminated with the UN General Assembly's adoption of the CEDAW.²⁶³ CEDAW draws on the rights established in the UDHR by affirming that "that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms... without distinction of any kind, including distinction based on sex," and that "States Parties... have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights."²⁶⁴ In its Preamble, CEDAW declares that discrimination against women violates human dignity and equality, hinders societal and familial growth and development, and is detrimental to international peace and security.²⁶⁵

At its core, CEDAW is a convention dedicated to the rights of women. But the lines drawn from women and children to economic and social disparity to human rights infringements are incontrovertible. For example, the responsibilities of child rearing should fall on both parents²⁶⁶, but it will always be the case that women are connected to prenatal and infant care in a way that men are not and often cannot be. Women not only take greater responsibility for prenatal and infant care, but carry the lion's share of maintaining the complete welfare of the family; nevertheless, the significance of this role is continually undervalued.²⁶⁷ Women, and children by extension, are disproportionately affected by poverty. Thus globally, society continues to blame women for social and economic conditions that are stacked against them, and

²⁶² Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981.
<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> (accessed 28 March 2011)

²⁶³ Ibid (Introduction)

²⁶⁴ Ibid (Preamble)

²⁶⁵ Ibid

²⁶⁶ Ibid

²⁶⁷ Ibid

fails to take action to improve conditions for women and children. The result is that the rights of women and children are consistently infringed upon, or blatantly violated. CEDAW is important for children because it supports the rights of women, and thus improves the life conditions of children

*Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 2003*²⁶⁸

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children came into force in 2003 and is one of the three protocols of the UN Convention Against Transnational Organized Crime (also known as the Palermo Protocols).²⁶⁹ In a forward to the Trafficking Protocol, Former UN Secretary General Kofi Anon wrote,

The trafficking of persons, particularly women and children, for forced and exploitative labour... is rooted in social and economic conditions in the countries from which the victims come, facilitated by practices that discriminate against women and driven by cruel indifference to human suffering on the part of those who exploit the services that the victims are forced to provide.²⁷⁰

The Trafficking Protocol states its purpose in Article 2: “to prevent and combat trafficking in persons, paying particular attention to women and children”.²⁷¹ Article 3(a) defines trafficking in persons; notably the definition of trafficking in persons requires that the means of trafficking include “threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of

²⁶⁸ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/55/49 (Vol. I) (2001), *entered into force* 25 December 2003.

²⁶⁹ United Nations Office on Drugs and Crime, *United Nations Convention against Transnational Organized Crime and its Protocols*, 2011, <http://www.unodc.org/unodc/en/treaties/CTOC/index.html> (accessed 19 November 2011).

²⁷⁰ Ibid. (Forward).

²⁷¹ Ibid. (Article 2 (a)).

payments or benefits to achieve the consent of a person having control over another person,”²⁷² except when the victim is a child. Article 3(c) establishes that the “recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation” is considered trafficking regardless of whether the defined means were used.²⁷³ In other words, a person who moves a child with the intent of exploitation is guilty of trafficking whether the child knowingly consents.

In the next section, the connection between birth registration and the protection of human rights will be explored in greater depth, but it is worth noting that birth registration has particular significance in the fight against trafficking in persons and the measures set forth in the Trafficking Protocol. Child trafficking is a serious global human rights problem. When children are not registered at birth, they are far more vulnerable to trafficking and exploitation and far more difficult to find, identify, and restore to their homes. When children are not registered, they do not have legal identity, therefore it becomes considerably more difficult to prove that they exist at all, let alone to leverage state assistance to aid in their recovery.

International Labour Organization

In addition to UN Conventions, other international governing agencies have adopted instruments for child protection. ILO has adopted the MAC and the Worst Forms of Child Labour Convention.

*Minimum Age Convention 1973*²⁷⁴

When the DRC was adopted in 1959, acceptable ages for employment were left to the discretion of individual states, but in 1973, the ILO adopted the MAC. The MAC established

²⁷² Ibid. (Article 3 (a)).

²⁷³ Ibid. Article 3(c)).

²⁷⁴ International Labour Organization (ILO), *Minimum Age Convention, C138*, 26 June 1973, C138, available at: <http://www.unhcr.org/refworld/docid/421216a34.html> (accessed 28 March 2011).

universal standards for ages of employment: 13 for light work, not to interfere with educational pursuits, 15 for non-hazardous ordinary employment, and 18 for hazardous employment.²⁷⁵ The MAC is significant in that it is a binding treaty that furthered the purposes of the DRC with regard to child labor; it has been ratified by 158 states.²⁷⁶

Child labor can take many forms; in fact, 80 percent of child laborers work for family businesses (60 percent in agriculture), while only 20 percent work for other employers.²⁷⁷ Nevertheless, child labor in any form or venue can have serious repercussions. When children are allowed to participate in the labor market they are far less likely continue school, and in the long run, less able to contribute to society in meaningful ways. Child labor drives down wages, making it more difficult for adults to find work and more difficult for families to survive on parents' salaries alone. Children, not being equal to adults either physically or socially, have greater difficulty acting as advocates for themselves and are far more likely to be taken advantage of by employers. Finally, children tend to be drawn most often into hazardous employment perhaps because such employment requires little skill, or perhaps because children are malleable and willing. Children are still too often found in situations such as exploitative factories, sex work, and military service.

Despite an overall decline in global child labor, the ILO still estimates that 215 million children are employed, and 110 million are employed in hazardous conditions.²⁷⁸ The importance of eliminating child labor toward the prevention of trafficking, exploitation, and abuse and

²⁷⁵ International Programme on the Elimination of Child Labour, *Children in hazardous work: What we know What we need to do*, (Geneva: International Labour Organization, 2011).

²⁷⁶ International Labour Organization, "Convention No. C138," <http://www.ilo.org/ilolex/cgi-lex/ratific.pl?C138> (accessed March 28, 2011).

²⁷⁷ International Labour Organization, "Facts on Child Labour 2010," *International Programme on the Elimination of Child Labour*, April 2010, <http://www.ilo.org/ipecinfo/product/viewProduct.do?productId=17075> (accessed November 19, 2011).

²⁷⁸ Ibid.

toward the advancement of universal children's rights cannot be overstated. As discussed in the section on the UN Trafficking Protocol, birth registration is also closely connected to the fight against trafficking and child labor. Simply put, a state that knows its populace is better equipped to protect it. Without registration, children that disappear to be trafficked and exploited are significantly harder to find and recover. Moreover, without universal proof of age, it is far more difficult for the state to enforce laws that protect children from hazardous labor. Child labor is a serious global issue, and the MAC is an important tool in the fight against it.

Worst Forms of Child Labour Convention, 1999

In 1999, the ILO adopted the Worst Forms of Child Labour Convention. The Convention is closely tied to the MAC, but was written to address the most dangerous forms of child labor. The Worst Forms of Child Labour Convention includes many specific provisions that relate to child protection. First, as is the case in other international instruments, Article 2 defines the term "child" as "all persons under the age of 18".²⁷⁹ Article 3 defines the "worst forms of child labor":

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.²⁸⁰

When the Convention came into force in November 2000, the ILO estimated that 250 million children aged five to fourteen were involved in labor, and that many of those children

²⁷⁹ Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (ILO No. 182), 2133 U.N.T.S.161, *entered into force* Nov. 19, 2000. Article 2.

²⁸⁰ Ibid. Article 3.

were involved in the "worst forms of child labor"²⁸¹; 175 UN member states immediately signed on to the Convention, demonstrating global commitment to the fight against child labor. Since 2000, the number of children in labor has declined significantly; nevertheless, child labor continues to be a grave problem—215 million children remain engaged in labor activities, and more than half of those (fifty-three percent) are engaged in the worst forms of child labor.²⁸² The Worst Forms of Child Labour Convention has made an impact on the fight against child labor, but concerns about the worst forms of child labor are particularly serious in developing and fragile states where desperation is more acute and protections are harder to enforce.

Regional Human Rights Systems and Legal Instruments

In addition to the instruments of the UN and the ILO, the regional systems—the OAS, the Council of Europe (CoE), and the AU—all have their own treaties that protect human rights and specifically address children. The section below will address the instruments in each of the regional systems most relevant to children's rights and birth registration.

The OAS has enacted the American Convention on Human Rights (Pact of San José, Costa Rica), the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, the Inter-American Convention on the International Return of Children, and the Inter-American Convention on International Traffic in Minors. The CoE has adopted the European Convention on Human Rights 1950²⁸³, European Convention on

²⁸¹ International Labour Organization, *ILO worst forms of child labour Convention comes into force*, November 17, 2000, http://www.ilo.org/global/about-the-ilo/press-and-media-centre/news/lang--en/WCMS_007917 (accessed November 13, 2011).

²⁸² International Programme on the Elimination of Child Labour, *Children in hazardous work: What we know What we need to do*, (Geneva: International Labour Organization, 2011).

²⁸³ Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, *entered into force* Sept. 3, 1953, *as amended by* Protocols Nos 3, 5, 8, and 11 *which entered into force* on 21 September 1970, 20 December 1971, 1 January 1990, and 1 November 1998 *respectively*. <http://www1.umn.edu/humanrts/instr/z17euroco.html> (accessed 28 March 2011)

the Exercise of Children's Rights 1996²⁸⁴, and the Council of Europe Convention on Action against Trafficking in Human Beings. The AU has enacted the ACHPR and Protocol²⁸⁵ and the African Charter on the Rights and Welfare of the Child.²⁸⁶

Organization of American States

The OAS was founded in 1948 with a Charter that came into force in 1951, and is the oldest of the prevailing regional governing bodies; it has 35 member states, all of which are geographically located in North and South America and the Caribbean.²⁸⁷ The OAS grew out of a series of conferences known as the Pan-American Conferences, which were primarily dedicated to improving trade relations in the Americas, but also sought ways to demonstrate and improve common values throughout the region. The OAS, which formed out of the Ninth Pan-American Conference in Bogotá, Colombia, was created to advance relations in the regions and to halt the spread of Soviet-style communism.²⁸⁸ The OAS Charter explains the purpose of the organization: "to achieve an order of peace and justice, to promote their solidarity, to strengthen

²⁸⁴ European Convention on the Exercise of Children's Rights, (ETS No. 160), *entered into force* 7 January 2000. <http://www1.umn.edu/humanrts/euro/ets160.html> (accessed 28 March 2011)

²⁸⁵ African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986. http://www.africa-union.org/official_documents/treaties_%20conventions_%20protocols/banjul%20charter.pdf (accessed 20 March 2011)

²⁸⁶ African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), *entered into force* Nov. 29, 1999. http://www.africa-union.org/official_documents/Treaties_%20Conventions_%20Protocols/a.%20C.%20ON%20THE%20RIGHT%20AND%20WELF%20OF%20CHILD.pdf (accessed 20 March 2011)

²⁸⁷ Organization of American States, *About the OAS: Who We Are*, http://www.oas.org/en/about/who_we_are.asp (accessed November 28, 2011).

²⁸⁸ Roger R. Trask, "The Impact of the Cold War on U.S.- Latin American Relations, 1945-1949," in *Neighborly Adversaries: Readings in U.S.-Latin American Relations*, ed. Michael LaRosa and Frank O. Mora, 113-122 (Oxford: Rowman and Littlefield Publishers, 2006).

their collaboration, and to defend their sovereignty, their territorial integrity, and their independence.”²⁸⁹

*American Declaration of the Rights and Duties of Man*²⁹⁰

The OAS was the first international governing organization to demonstrate commitment to human rights. Although pre-dating the acceptance of the Charter, the Ninth Pan-American Conference was important both because it was there that the OAS was conceived, and also because American States represented at the Conference adopted the American Declaration of the Rights and Duties of Man (American Declaration).²⁹¹

Though not binding international law, the American Declaration was significant because it was the first general international human rights instrument. The American Declaration differs from contemporary human rights instruments in that it includes not only rights, but also corresponding individual duties. The Preamble explains the purpose of pairing rights with duties: “All men are born free and equal, in dignity and in rights, and, being endowed by nature with reason and conscience, they should conduct themselves as brothers one to another...The fulfillment of duty by each individual is a prerequisite to the rights of all. Rights and duties are interrelated...while rights exalt individual liberty, duties express the dignity of that liberty.”²⁹² Some of the rights and duties outlined in the American Declaration are particularly relevant to children are reflective of other international human rights documents, including education, family, and health.

²⁸⁹ Charter of the Organization of American States, 119 U.N.T.S. 3, *entered into force* December 13, 1951; amended by Protocol of Buenos Aires, 721 U.N.T.S. 324, O.A.S. Treaty Series, No. 1-A, *entered into force* Feb. 27, 1970. Chapter I, Article 1.

²⁹⁰ American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992).

²⁹¹ American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992).

²⁹² *Ibid.* Preamble.

In addition to adopting the American Declaration, members of the Ninth Pan-American Conference wrote the OAS Charter. Through its Charter, the OAS established the first regional human rights commission, the Inter-American Commission on Human Rights²⁹³, and paved the way for the American Convention on Human Rights (Pact of San José, Costa Rica) as well as later regional human rights instruments.²⁹⁴

*American Convention on Human Rights (Pact of San José, Costa Rica), 1978*²⁹⁵

The American Convention on Human Rights (ACHR) was completed in 1969 and came into force in 1978; to date, it has been ratified by eleven OAS states and has 24 state parties. The ACHR is a general human rights document that echoes many of the principles of other international human rights documents. The Preamble reflects on related instruments: “Considering that these principles have been set forth in the Charter of the [OAS], in the American Declaration of the Rights and Duties of Man, and in the [UDHR], and that they have been reaffirmed and refined in other international instruments.”

The ACHR includes protections specific to children and families. Article 19 states: “Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.”²⁹⁶ Though not specifying a right to registration, Article 18 of the American Declaration affirms the right of each person to assume

²⁹³ Ibid. Chapter XV.

²⁹⁴ Organization of American States, *American Convention on Human Rights, "Pact of San Jose", Costa Rica*, 22 November 1969, available at: <http://www.unhcr.org/refworld/docid/3ae6b36510.html> (accessed 28 March 2011)

²⁹⁵ American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, *entered into force* July 18, 1978, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992).

²⁹⁶ Ibid. Article 19.

the surname of his or her parents and Article 20 asserts the right of each person to a nationality.²⁹⁷

The ACHR also has a protocol—the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights—which further details rights and protections that affect children and families.

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, 1988

In 1988, the OAS adopted the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.²⁹⁸ The Additional Protocol has several sections that expressly relate to rights for children and families. Section 3 of Article 9—the Right to Social Security—entitles women to paid maternity leave before and after childbirth²⁹⁹; such allowances have demonstratively positive impacts early childhood development, the wellbeing of the family unit, and later educational and employment outcomes.³⁰⁰

Article 13 concerns the right to education; it states that everyone has the right to education that is “directed towards the full development of the human personality and human dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and peace.” While Article 13 does not require states to address educational

²⁹⁷ Ibid. Articles 18 and 20.

²⁹⁸ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador," O.A.S. Treaty Series No. 69 (1988), *entered into force* 16 November 1999, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 67 (1992).

²⁹⁹ Ibid. Article 9, Section 3.

³⁰⁰ Katrine V. Løken, Kjell G. Salvanes, and Pedro Carneiro, "A Flying Start? Maternity Leave Benefits and Long Run Outcomes of Children," *Institute for the Study of Labor*, June 2011, <http://ftp.iza.org/dp5793.pdf> (accessed 2 December 2011).

outcomes in a particular manner, it suggests guidelines: that primary education should be free and compulsory, and that secondary and higher education should be accessible.³⁰¹

Article 15—the Right to the Formation and the Protection of Families—declares that “[t]he family is the natural and fundamental element of society and ought to be protected by the State.”³⁰² Article 15 states that every person has the right to form a family, and reiterates the right to maternity leave and the importance of supporting children and their families.

Article 16 of the Additional Protocol is simply entitled Rights of Children, and specifically regards children. Article 16 declares, “[e]very child, whatever his parentage, has the right to the protection that his status as a minor requires from his family, society and the State. Every child has the right to grow under the protection and responsibility of his parents.”³⁰³ This Article also reiterates states’ obligations to provide free and compulsory primary education.³⁰⁴ *Inter-American Convention on the International Return of Children, 1994*³⁰⁵ and *Inter-American Convention on International Traffic in Minors, 1997*³⁰⁶

Children are inherently more vulnerable to poor social and economic conditions than adults—they have little control or ability to change their circumstances, they lack political power, and they are, generally speaking, physically and intellectually less developed than adults. Because of these vulnerabilities, international human right bodies have created special protections such as those discussed above. In addition to normal day-to-day challenges and

³⁰¹ Ibid. Article 13.

³⁰² Ibid. Article 15, Section 1.

³⁰³ Ibid. Article 16.

³⁰⁴ Ibid.

³⁰⁵ Organization of American States, *Inter-American Convention on the International Return of Children*, 15 July 1989, OAS, Treaty Series, No. 70, available at: <http://www.unhcr.org/refworld/docid/3de4b8754.html> [accessed 3 December 2011]

³⁰⁶ Organization of American States, *Inter-American Convention on International Traffic in Minors*, 18 March 1994, OAS, Treaty Series, No. 79, available at: <http://www.unhcr.org/refworld/docid/3de4ba054.html> [accessed 3 December 2011]

struggles, children are also highly susceptible to trafficking and exploitation, which can lead to them being placed in exceptionally dangerous situations over which they may have little control or be unable to escape. Children become victims of trafficking nearly every day, in nearly every country in the world. Like the UN, the OAS has taken steps to combat child trafficking through specialized instruments. The OAS has enacted both the Inter-American Convention on the International Return of Children (IACIRC) and the Inter-American Convention on International Traffic in Minors (IACITM).

The IACIRC was written in 1989 came into force in 1994. Though it was primarily dedicated to coping with children who had been unlawfully separated from their families through, for example, adoption or a non-custodial parent, it certainly has bearing on the ability of a state to protect and recover children who have been illegally removed regardless of the reason.³⁰⁷ In preparation for writing the IACIRC, the authors “sought to harmonize the internationally accepted principles and procedures reflected in the San José draft, the 1980 Hague Convention on the Civil Aspects of International Child Abduction, and the national characteristics of the participating States.”³⁰⁸ Echoing the purpose of the IACIRC, the IACITM came into force in 1997. Article 1 describes the intent of the Convention: “The purpose of the present Convention, with a view to protection of the fundamental rights of minors and their best interests, is the prevention and punishment of the international traffic in minors as well as the regulation of its civil and penal aspects.”³⁰⁹

³⁰⁷ Heidi V. Jiménez, “Inter-American Convention on the International Return of Children,” *International Legal Materials* (American Society of International Law) 29, no. 1 (January 1990): 63-72.

³⁰⁸ Ibid.

³⁰⁹ Organization of American States, *Inter-American Convention on International Traffic in Minors*, 18 March 1994, OAS, Treaty Series, No. 79, available at: <http://www.unhcr.org/refworld/docid/3de4ba054.html> (accessed 3 December 2011)

The IACIRC and the IACITM are very relevant to the protection of children's rights. Together they support the child's right to remain with his or her family, or to be returned in the case that he or she is removed from the family. These documents also reflect the contention of other international human rights instruments that the family is an integral part of society that must be protected. Neither the IACIRC nor the IACITM specifically calls for registration, but it is indisputable that states will be better able to protect children who are registered with their country of nationality. Article 9 of the IACIRC states that a petition to have a child returned should include: "[a]n account of the removal or retention and sufficient information to identify the applicant, the removed or retained child and, where possible, the person alleged to have removed or retained the child".³¹⁰ Registration provides a record of the existence and identity of the child that can be a crucial element in recovery.

European Human Rights System

The CoE is the main inter-governmental body responsible for the creation and implementation of human rights law in Europe. Established in 1949, the COE currently has 47 member states—every European country except Belarus—that together endeavor “to create a common democratic and legal area throughout the whole of the continent, ensuring respect for its fundamental values: human rights, democracy and the rule of law.”³¹¹ The COE has enacted human rights documents that help to protect children in Europe, in particular the 1950 European Convention on Human Rights (ECHR), the European Convention on the Exercise of Children's Rights, and the Convention on Action against Trafficking in Human Beings.

³¹⁰ Organization of American States, *Inter-American Convention on the International Return of Children*, 15 July 1989, OAS, Treaty Series, No. 70, available at: <http://www.unhcr.org/refworld/docid/3de4b8754.html> (accessed 3 December 2011) Article 9.

³¹¹ Council of Europe, *Our Objectives*, <http://www.coe.int/aboutCoe/index.asp?page=nosObjectifs&l=en> (accessed December 3, 2011).

European Convention on Human Rights, 1950³¹² and the European Social Charter, 1961³¹³

The ECHR was drafted by the CoE in 1950 and came into force in 1953. Article 1 of the ECHR declares, “the High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.” Most of the rights set forth in the Convention apply to all of the people within the jurisdiction of states bound by the treaty. The ECHR addresses civil and political rights. It was the first general human rights document that constituted binding international law; furthermore, Article 13 states that those to whom the ECHR applies should have the ability to access effective remedy within the state for presumed violations.

The ECHR also established the European Court of Human Rights (ECtHR).³¹⁴ Composed of judges from each of the member states of the CoE, the ECtHR is charged with hearing violations brought by state parties or by individuals when effective remedy cannot be found within the state, or when an official of the state is responsible for the violation.³¹⁵ Unlike many other international instruments, the right of individuals to lodge complaints is not optional for state parties, but is built into the Convention.

The ECHR does not address child protections specifically; most of the enumerated rights apply to everyone within the jurisdiction of CoE states. Nevertheless, it is worth noting that many of the rights in the ECHR echo those specified for children in other documents. For

³¹² Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, *entered into force* Sept. 3, 1953, *as amended by* Protocols Nos 3, 5, 8, and 11 *which entered into force* on 21 September 1970, 20 December 1971, 1 January 1990, and 1 November 1998 *respectively*. <http://www1.umn.edu/humanrts/instrtree/z17euroco.html> (accessed 28 March 2011)

³¹³ Council of Europe, *European Social Charter*, http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/AboutCharter_en.asp# (accessed 3 December 2011).

³¹⁴ Ibid. Article 19(2).

³¹⁵ Ibid. Article 38.

example, Article 2 guarantees the right to education, Articles 8 and 12 reflect the rights of families, and Article 4 prohibits forced or compulsory labor.

The European Social Charter (ESC) was written in 1961 and revised in 1996; the 1996 revised Charter is gradually replacing the original document.³¹⁶ The ESC is a companion document to the ECHR that addresses social and economic rights. The ESC deals with rights on topics such as housing, health, education, employment, legal and social protection, free movement, and non-discrimination.³¹⁷

Unlike the ECHR, in which nearly all of the provisions apply to all people within the jurisdiction of the CoE, the ESC has several provisions specific to vulnerable groups; several articles address children. In Part I, the ESC states that the family, as “a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.”³¹⁸ The ESC acknowledges that children have a right to “special protection[s] against the physical and moral hazards,” and to “appropriate social, legal and economic protection.”³¹⁹ In Part II, the ESC further details the meaning of “special protections;” it has provisions related to ordinary measures such as minimum ages of employment and compulsory education³²⁰, as well as protections for exceptional circumstances such as exploitation.³²¹

³¹⁶ Council of Europe, *European Social Charter*, http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/AboutCharter_en.asp# (accessed December 3, 2011).

³¹⁷ Council of Europe, *The European Social Charter*, http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/AboutCharter_en.asp# (accessed December 3, 2011).

³¹⁸ Ibid. Article 16.

³¹⁹ Ibid. Article 7, 17.

³²⁰ Ibid. Article 7, 9.

³²¹ Ibid. Article 17(1)(b).

*European Convention on the Exercise of Children's Rights, 1996*³²²

The European Convention on the Exercise of Children's Rights (ECECR) was written in 1996 and came into force in 2000. As explained in the Preamble, Coe created the ECECR to fulfill the CRC Article 4 obligation to "undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the... Convention."³²³³²⁴

Thus, the ECECR does not outline new general protections or rights for children, rather it relies on the rights outlined in CRC and elaborates procedural and implementation measures to ensure that COE states can legally comply with the CRC. Perhaps the most notable feature of the ECECR is that it enumerates procedural rights for children including the right to choose representation, the right to receive information about proceedings, and the right to express thoughts and opinions.³²⁵

*Convention on Action against Trafficking in Human Beings, 2008*³²⁶

The Convention on Action against Trafficking in Human Beings (CATHB) was created in 2005 and came into force in 2008. It has been signed by 43 CoE states and ratified by 34.³²⁷

As stated in the Preamble and in Article 39, the CATHB seeks to enhance the rights and

³²² European Convention on the Exercise of Children's Rights, (ETS No. 160), *entered into force* January 7, 2000. <http://www1.umn.edu/humanrts/euro/ets160.html> (accessed 28 March 2011).

³²³ Council of Europe, *European Convention on the Exercise of Children's Rights*, Explanatory Report (Council of Europe).

³²⁴ Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2 1990. <http://www1.umn.edu/humanrts/instree/k2crc.htm> (accessed 28 March 2011).

³²⁵ European Convention on the Exercise of Children's Rights, (ETS No. 160), *entered into force* January 7, 2000. <http://www1.umn.edu/humanrts/euro/ets160.html> (accessed 4 December 2011).

³²⁶ Council of Europe, *Council of Europe Convention on Action Against Trafficking in Human Beings*, 16 May 2005, CETS 197, available at: <http://www.unhcr.org/refworld/docid/43fded544.html> (accessed 4 December 2011)

³²⁷ Council of Europe, "Council of Europe Convention on Action against Trafficking in Human Beings: Chart of Signatures and Ratifications," *Council of Europe*, April 12, 2011, <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=1&DF=&CL=ENG> (accessed December 4, 2011).

protections of the UN Trafficking Protocol.³²⁸ The CATHB mirrors the Trafficking Protocol in many ways. For example, the CATHB defines Trafficking in Human Beings in Article 4³²⁹; the definition is nearly identical to that given in Article 3 of the Trafficking Protocol.³³⁰ The CATHB echoes many of the other provisions of the Trafficking Protocol.

In the Preamble, the CATHB explicitly refers to the vulnerability of children with regard to trafficking: “[c]onsidering that all actions or initiatives against trafficking in human beings must...take... a child-rights approach”.³³¹ Throughout the document, the CATHB goes further than the Trafficking Protocol in paying heed to the needs and vulnerabilities of children. For example, Article 8 of the Trafficking Protocol enumerates the state’s responsibility to return trafficked persons to their state of nationality or residence; the CATHB has similar provisions, but addresses the vulnerabilities of children separately stating, “[c]hild victims shall not be returned to a State, if there is indication, following a risk and security assessment, that such return would not be in the best interests of the child”.³³²

The CATHB also goes further than the Trafficking Protocol with regard to punishment for trafficking. Article 5(1) of the Trafficking Protocol simply says that states “shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.”³³³ Article 18 of the CATHB

³²⁸ Ibid. Preamble and Article 39.

³²⁹ Ibid. Article 4.

³³⁰ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/55/49 (Vol. I) (2001), *entered into force* 25 December 2003.

³³¹ Council of Europe, *Council of Europe Convention on Action Against Trafficking in Human Beings*, 16 May 2005, CETS 197, available at: <http://www.unhcr.org/refworld/docid/43fded544.html> (accessed 4 December 2011)

³³² Ibid. Article 16(7).

³³³ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 25, annex II,

is almost identical to Article 5(1) of the Trafficking Protocol, but the CATHB elaborates on liability. Article 23 of the CATHB details which actors should be criminally liable in the case of trafficking, and how the state should act to halt trafficking operations. Article 24 describes aggravating circumstances, in other words particular situations in which the punishment for trafficking should be greater, including when the victim is a child.³³⁴

Like the UN Trafficking Protocol, the CATHB has great relevance to both child protection and birth registration. As discussed in the section on the Trafficking Protocol, birth registration is extremely important for the fight against trafficking. Globally, universal factors contribute to vulnerabilities to human rights violations including trafficking and exploitation. Low rates of birth registration is both a problem and an indicator—a problem because it leaves children more susceptible to rights violations, and an indicator because it strongly correlates to other risk factors including poverty, underdevelopment, and systematic neglect.

In the jurisdiction of the CoE, correlations between low registration rates and other risk factors and hazards are demonstrated in the Roma population.

*Charter of Fundamental Rights of the European Union, 2000*³³⁵

While the COE is the primary body responsible for creating human rights law in Europe, other bodies in Europe also play significant roles in human rights protection. In addition to the COE instruments discussed above, the European Union has adopted the Charter of Fundamental Rights of the European Union; the Charter is binding on the 27 member states of the European Union, all of which are also members of the Council of Europe.

U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/55/49 (Vol. I) (2001), *entered into force* 25 December 2003.

³³⁴ Council of Europe, *Council of Europe Convention on Action Against Trafficking in Human Beings*, 16 May 2005, CETS 197, available at: <http://www.unhcr.org/refworld/docid/43fded544.html> (accessed 4 December 2011)

³³⁵ Charter of Fundamental Rights of the European Union, 2000 O.J. (C 364) 1 (Dec. 7, 2000).

The Charter brings together human rights laws from the Council of Europe conventions and case law from the European Court of Justice in a to essentially make them part of EU constitutional law. With regard to children, the Charter echoes the rights established in the UDHR and the COE conventions. For example, the Charter states that children have the right to free compulsory education that reflects the values and desires of the child's parents and it prohibits child labor.³³⁶ The Charter declares that children have the right to special protections necessary for their well-being, and the right to express feeling and thoughts freely.³³⁷ The Charter also protects families and declares the right of mothers to take maternity leave upon the birth or adoption of a child.³³⁸

African Union

The AU was created in 2002, a replacement for the now defunct Organization of African Unity (OAU). The purpose of the OAU was to “promote unity and solidarity of the African States”, and to “eradicate all forms of colonialism from Africa”.³³⁹

By at least the 1970s the OAU recognized the need to delineate special protections for children that were specific to the African context. In 1979, the OAU adopted the Declaration on the Rights and Welfare of the African Child.³⁴⁰ The African Declaration recalled the Declaration on the Rights of the Child (1959)³⁴¹; it recognized “that the welfare of the African Child [was] inextricably bound up with that of its parents and other members of its family, especially the

³³⁶ Ibid. Article 14, Article 32.

³³⁷ Ibid. Article 24.

³³⁸ Ibid. Article 33.

³³⁹ Charter of the Organization of African Unity, 479 U.N.T.S. 39, *entered into force* Sept. 13, 1963.

³⁴⁰ Declaration on the Rights and Welfare of the African Child, AHG/ST. 4 (XVI) Rev., *adopted* 20 July 1979. <http://www.africa-union.org/root/au/Documents/Decisions/hog/pHoGAssembly1979.pdf> (accessed 28 December 2011)

³⁴¹ Ibid. Preamble.

mother,”³⁴² and encouraged member states to “pay particular attention to the unequal status of female children in some parts of Africa.”³⁴³ The African Declaration called on OAU member states to improve children’s access to necessary services, particularly health care and education, and to implement employment requirements consistent with the MAC.³⁴⁴

With the advent of the African Union, the continent shifted its focus from moving past colonialism and apartheid to solidarity with regard to human rights and economic and social development.³⁴⁵ The African Union has 54 member states and includes every state on the African continent except Morocco.³⁴⁶ The African Union has adopted two documents that are particularly relevant to child protection: the 1981 ACHPR and the 1999 African Charter on the Rights and Welfare of the Child.

*African Charter on Human and People’s Rights (Banjul Charter) and Protocol, 1981*³⁴⁷

The Banjul Charter was written in 1979 and came into force in 1981 under the OAU; when the OAU transitioned into the AU, the Charter was written into the Constitutive Act of the African Union and thus became part of AU human rights law.³⁴⁸³⁴⁹ The Banjul Charter is different from the other general human rights instruments for several reasons: it includes categories of rights that are generally separated from one another- civil and political and economic, social, and cultural. The Banjul Charter also uses the “claw-back clause” frequently,

³⁴² Ibid.

³⁴³ Ibid. Article 2.

³⁴⁴ Ibid. Articles 6, 7, and 9.

³⁴⁵ African Union, *AU in a Nutshell*, <http://www.au.int/en/about/nutshell> (accessed December 04, 2011).

³⁴⁶ African Union, *Member States*, <http://www.africa-union.org/root/au/memberstates/map.htm> (accessed December 04, 2011).

³⁴⁷ African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986. http://www.africa-union.org/official_documents/treaties_%20conventions_%20protocols/banjul%20charter.pdf (accessed 20 March 2011)

³⁴⁸ Ibid. Article 3(h).

³⁴⁹ Constitutive Act of the African Union, OAU Doc. CAB/LEG/23.15, *entered into force* May 26, 2001.

essentially making it possible for states to determine when to apply rights of the Charter. The meanings of provisions of the Banjul Charter are not always clear. And more than any similar instruments, the Banjul Charter is reflective of the unique circumstances of African states and people.³⁵⁰

Despite its controversy among human rights practitioners, the Banjul Charter displays a fairly comprehensive list of human rights, and throughout the document makes reference to its regard to international conventions. The Banjul Charter noted children as a special population in Article 18(3): states shall “ensure the protection of the rights of the woman and the child as stipulated in international declarations”.³⁵¹ Further regard for the unique vulnerabilities of children is given in the African Charter on the Rights and Welfare of the Child.

*The African Charter on the Rights and Welfare of the Child. 1999*³⁵²

The OAU drafted the African Charter on the Rights and Welfare of the Child (ACRWC) in 1990 and it came into force in 1999; the Charter became an AU treaty when the AU replaced the OAU in 2002. Like the Banjul Charter, the ACRWC addresses children’s rights in a manner that is specific to the African context. The ACRWC recalled the Declaration on the Rights and Welfare of the African Child.³⁵³, and expanded on the rights enumerated in the CRC.³⁵⁴³⁵⁵

³⁵⁰ Malcolm David Evans, *The African Charter on Human and Peoples' Rights: The System in Practice 1986-2000*, Second Edition (Cambridge: Cambridge University Press, 2008).

³⁵¹ African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986. http://www.africa-union.org/official_documents/treaties_%20conventions_%20protocols/banjul%20charter.pdf (accessed 04 December 2011)

³⁵² African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), *entered into force* Nov. 29, 1999. http://www.africaunion.org/official_documents/Treaties_%20Conventions_%20Protocols/a.%20C.%20ON%20THE%20RIGHT%20AND%20WELF%20OF%20CHILD.pdf (accessed 20 March 2011)

³⁵³ Declaration on the Rights and Welfare of the African Child, AHG/ST. 4 (XVI) Rev., *adopted* 20 July 1979. <http://www.africa-union.org/root/au/Documents/Decisions/hog/pHoGAssembly1979.pdf> (accessed 28 December 2011)

³⁵⁴ Ibid. Preamble.

The CRC addresses the right to nationality in Article 7, but does not include any guidance for how nationality is to be assured, or which state is responsible for providing nationality.³⁵⁶ The ACRWC, on the other hand, addresses the question of nationality directly in Article 6, stating “[e]very child has the right to acquire a nationality” and “States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State”.³⁵⁷ As it is in the International Covenant on Civil and Political Rights, the right to birth registration is also enumerated alongside the right to acquire a nationality in the ACRWC; Article 6(2) states “every child shall be registered immediately after birth.”. In addition to the stipulations on nationality and birth registration, the ACRWC also expands on the enumerated rights of the CRC with regard to education, health, child labor, and harmful social and cultural practices among other things.³⁵⁸

³⁵⁵ Amanda Lloyd, "The African Regional System for the Protection of Children's Rights," in *Children's rights in Africa: A Legal Perspective*, ed. Julia Sloth-Nielsen, 33-52 (Burlington, Vermont: Ashgate Publishing, 2008).

³⁵⁶ Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* 2 September 1990.

³⁵⁷ African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), *entered into force* Nov. 29, 1999. http://www.africaunion.org/official_documents/Treaties_%20Conventions_%20Protocols/a.%20C.%20ON%20THE%20RIGHT%20AND%20WELF%20OF%20CHILD.pdf (accessed 05 December 2011)

³⁵⁸ Amanda Lloyd, "The African Regional System for the Protection of Children's Rights," in *Children's rights in Africa: A Legal Perspective*, ed. Julia Sloth-Nielsen, 33-52 (Burlington, Vermont: Ashgate Publishing, 2008).

CONCLUSION

Birth registration is crucial to the protection of children's rights; nowhere is this truer than in post-conflict countries, where children are most vulnerable to gross human rights violations including abduction, trafficking, and exploitation. Birth registration helps states protect human rights; it is key to ensuring other essential rights including name and nationality, as well as to facilitating access to vital social services such as health care and education.

Birth registration is enumerated as a right in several major international human rights documents, and is recognized by many international actors as a crucial piece of child protection, millions of children around the world remain undocumented. Challenges to implementing universal birth registration are numerous; factors such as economic capacity, infrastructure, and education can prove obstacles to campaigns to register children. Nevertheless, recognizing the importance of registration, states and non-governmental are making great strides toward universal implementation. Many states have taken steps to incorporate treaty obligations into national law, and indeed many states are working with non-governmental organizations and inter-governmental organizations to make universal registration a reality.

Developing, fragile, and post-conflict countries will benefit from continuing to work to make comprehensive birth registration common practice. As more children are registered, protecting the rights of children will become easier and more effective. It is imperative that the international community support states that are working to implement birth registration; with cooperation it will be possible to improve children's rights around the world.

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