Inter-Agency Task Team (IATT) on Children and HIV and AIDS

Working Group on Civil Registration

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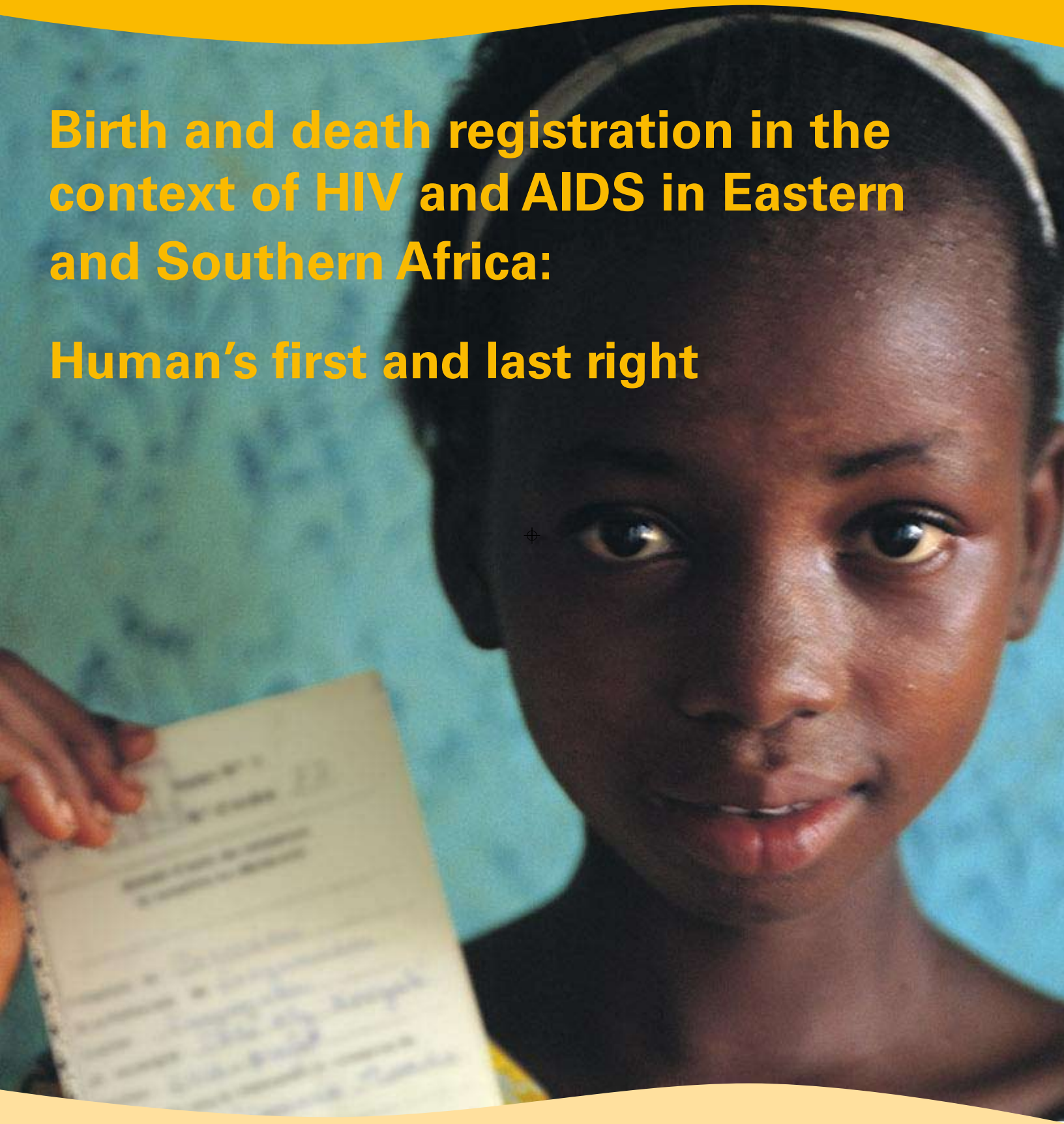

Birth and death registration in the context of HIV and AIDS in Eastern and Southern Africa:

Human's first and last right

This document was produced by the Working Group on Civil Registration for the IATT on Children and HIV and AIDS. It has been produced as a follow up to the recommendations by the Third Global Partners Forum on Children Affected by HIV and AIDS in 2006. The document has not gone through an endorsement process by each individual IATT member and therefore does not necessarily reflect consensus by all IATT members on its content.

This document was written by Isabel de Bruin Cardoso of the Centre for the Study of AIDS at the University of Pretoria on behalf of the Working Group on Civil Registration for the IATT on Children and HIV and AIDS. The content of the paper had the full participation of many Working Group members. The document has not gone through an endorsement process by each individual IATT member and therefore does not necessarily reflect consensus by all IATT members on its content. The cover picture is of a child with her birth certificate © Caroline Irby for Plan international.

Strong civil registration systems are vital to protecting the rights of children affected by AIDS.

Birth and death registration (BDR) is an inalienable human right for everyone, yet it is of particular importance to protecting the rights of children affected by HIV and AIDS. BDR is a significant statistical and legal tool as it:

- Establishes the child's legal existence before the State, providing them with a name, age, nationality, and heritage. In a court of law, a birth certificate is the primary tool to incriminate perpetrators against children's physical and sexual abuse and exploitation, early marriage, child labour, trafficking, early recruitment into armed forces, and juvenile justice. A birth certificate is vital to protecting children's human rights, and to decreasing their vulnerability to contracting HIV.
- Helps policy and decision-makers meet the challenges of HIV and AIDS by monitoring the number of AIDS related deaths, HIV infected adults and children, and the number of orphaned and other children made vulnerable by HIV and AIDS. This helps States and donors to design, plan and programme for effective interventions, including allocating appropriate funds and effectively distributing prevention, treatment, care and support services for both adults and children. The data compiled by birth and death registration further provides the foundation for achieving the Millennium Development Goals, such as MDG 4, reducing child mortality, and MDG 6, combating HIV and AIDS.

A child with a birth certificate "has so many chances…it will be very good for that child" (Focus Group Discussion with HIV positive parents, Mukujju Health Centre, Uganda, August 2008).

Yet in 2006, 51 million children born have not had their births registered, 36% of whom are in sub-Saharan Africa.

Only 24% of children in East and Southern Africa are registered, the lowest rate in the world.[1] In addition, East and Southern Africa have 17.7 million people living with HIV, the highest number in the world.[2]

The Committee of United Nations Convention on the Rights of the Child (2003) General Comment No. 3: HIV/AIDS and the Rights of the Child noted the distinct value of birth registration for children affected by HIV and AIDS:

> "The Committee wishes to emphasise the critical implications of proof of identity for children affected by HIV/AIDS…birth registration is…necessary to minimise the impact of HIV/AIDS on the lives of affected children"

"The importance of BDR in a country with AIDS never dies, as people continue to be born, but more people continue to die" (Focus Group Discussion with civil registrars, Uganda, August 2008).

[1] UNICEF (2008). The state of the world's children 2008: child survival. New York, UNICEF.
[2] UNICEF (2007). Progress for children. A world fit for children: statistical review. No. 6. New York, UNICEF.

Strengthening civil registration systems is a *government responsibility*: birth registration is a child's human right.

International Policy Commitments on Civil Registration

- Article 15 of the Universal Declaration of Human Rights grants everyone the right to a nationality.
- Articles 7 and 8 of the Convention on the Rights of the Child gives every child the right to be registered at birth by the State, including the right to a nationality, name and family relations, within whose jurisdiction the child is born.
- Article 6 of the African Charter on the Rights and Welfare of the Child gives every child to the right to a name from birth and nationality.
- The 2002 World Fit for Children reaffirms governments' commitment to ensure the birth registration of all children.
- The 2004 *Global Framework for the Protection, Care and Support of Orphans and Vulnerable Children Living in a World with HIV and AIDS* calls for access for orphans and vulnerable children to essential services, including birth registration, to be ensured.
- The 2006 and 2008 Global Partners Forum identified and reaffirmed civil registration to be one of the strategic areas of importance to building a comprehensive response for children affected by HIV and AIDS.
- The *Call for Accelerated Action on the Implementation of the Plan of Action towards Africa fit for Children 2008-2012* demands for all States to ensure universal birth registration through comprehensive measures including campaigns and appropriately resourced systems.

All countries in East and Southern Africa, except for Somalia, have ratified the *Convention on the Rights of the Child*, and only Swaziland and Zambia have not ratified (though they have signed) the *African Charter on the Rights and Welfare of the Child.*

Most National Plans of Action (NPAs) on Orphans and Vulnerable Children do not explicitly acknowledge that birth registration is a fundamental and inalienable human right. In addition, no NPA has recognized the value of death registration in protecting children from property and inheritance loss, which is a human rights and livelihoods issue.

Only Zimbabwe's NPA specifies that birth registration is a human right. Swaziland and Namibia declare their NPAs as rights-based, and Lesotho bases its NPA on the guiding principles set forth by the CRC and ACRWC, yet they do not explicitly state birth registration as a human right.[3]

Several NPAs, including those of Ethiopia and Lesotho, reflect that birth registration is considered an essential service to which all children have the right to access, yet they do not realise the linkages of birth registration to accessing basic services, such as education, health care and legal protection. For example, while 87.5% of Ethiopian policy-makers realized that a

[3] See 'de Bruin Cardoso, I & Mampane, R (2008). "Strategic analysis on civil registration and children in the context of HIV and AIDS". PEPFAR, Plan International, UNICEF and World Vision' for more information on birth registration in NPAs on OVC.

birth certificate is vital for proving one's age, name, and citizenship, only 25% considered a birth certificate to be a child protection tool.[4]

The legal value of a birth certificate is key for child protection, regardless whether a birth certificate is needed to access basic services or not. In both Uganda and Zambia, where child sexual abuse, defilement, and early marriage is common, birth certificates were seen as a means of decreasing children's, and particularly girls, risk to these human rights violations, decreasing also their susceptibility to contracting HIV. A birth certificate can "save us from child abuse…help tell our age to policemen" (Focus Group Discussion with children and school head teachers at Kisoko Girls and Boys, Uganda, August 2008).

The lack of a birth certificate is not seen as an impediment to assessing health care services in both countries. A birth certificate is required to sit for school exams and to enter a university course in Uganda.

A birth certificate alone does not protect orphaned children from property grabbing and violation of inheritance rights. A parent's death certificate is critical to ensuring children's right to inheritance is upheld. A combination of a birth- and a parent's death certificate enables orphaned children in Uganda to be registered for sponsorships by NGOs and FBOs, and in addition by local private companies who can provide orphaned children with university loans: "It is important for us that our orphans are part of scholarships…It helps us to look after them better" (Focus Group Discussion with Early Childhood Care Development caregivers, Uganda, August 2008).

HIV and AIDS impacts on, but does not cripple, civil registration systems

HIV and AIDS impacts on the availability and effectiveness of civil registration systems at the national and district levels because, as civil registrars are career civil servants or politically appointed individuals. It requires additional financial and human resources to replace an ill or deceased civil servant by recruiting and training a new employee. However, HIV and AIDS does not impact on the availability of civil registration systems at the community level when volunteer community members record and notify births and deaths within their community. In Uganda, volunteer community members are routinely trained on a rights based approach to data collection. The impact of an ill or deceased duty bearer on collecting data is mitigated due to the availability of other trained and motivated volunteers within the community.

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

Registration officer. © Plan International

It is vital to conduct an assessment of the in-country status and processes of BDR, disaggregated by local governments and hospitals in rural and urban areas to guide donors in funding particular technical aspects of the BDR system or particular geographic or demographic areas. Some donors "overlook urban areas as they perceive poorer [rural] areas as needing more aid" (hospital administrator, Mulago National Referral Hospital, Uganda, August 2008).

Photos by Isabel de Bruin Cardoso in Mulago Hospital's file storage room, August 2008.

For example, Mulago Hospital's non-automated registration system impacts on its storage space being extremely overcrowded with paper files, making if ineffective, inefficient, and at times impossible to find and update patients birth and health records.

HIV and AIDS does not hinder accessibility to civil registration systems, when a community-based, or decentralized, approach is in place.
Such an approach nullifies indirect costs associated with registering and obtaining certificates. The only cost is in acquiring a birth certificate, which is a legal requirement in both Uganda and Zambia. It allows families affected by AIDS to exert no physical and less financial strain to register and receive certificates. It also addresses the disparity in registration rates between urban and rural areas. In Tororo District in Uganda, the total birth *and* death registration rate is approximately 97%, of which 98% of the registered population has a birth certificate. Due to the lack of such an approach in Kawempe Division, an estimated birth registration rate of 0.02% and an estimated 124/300,659 death registration rate has been calculated.[5]

Impacts of weak BDR systems on children affected by AIDS
Weak registration systems specifically impact on children orphaned by AIDS, and in particular on orphaned children that have lost both parents, rendering orphaned children more vulnerable than other children affected by AIDS.

A birth certificate, in addition to a parent's death certificate, is key to verifying land and property rights. As a result of AIDS and urbanisation, the social safety net once offered by extended families has weakened, leaving orphaned children to fend for themselves. Inheriting property is a means of providing a child with a livelihood. Violating children's rights to inheritance and property leaves them more vulnerable to exploitation, abuse and illness. Unlike in the rural area where caregivers provide a support system to orphaned children, orphaned children in the urban area tend to take to the streets, especially after their property is stolen, rendering them more vulnerable to drug, physical and sexual abuse, and therefore to contraction of the HI virus.

While the CRC and the ACRWC do not contain any provisions relating to inheritance rights, the Charter on Human and Peoples' Rights on the Rights of Women in Africa (Women's Protocol), does identify inheritance as a human right in Article 21. Even though the Women's Protocol does not specifically address the rights of children, it does make it explicit that both men and women have the right to inherent their parents' properties. The provision's reference to parents implies that those inheriting the property can also be children, in the legal sense of the term. Furthermore, the UNGASS Declaration of Commitment on HIV/AIDS does have a specific goal to "protect orphans and vulnerable children…from loss of inheritance".[6]

[5] de Bruin Cardoso, I. & Samuri, R. (2008). Strategic analysis on civil registration in the context of HIV and AIDS: experiences from Uganda and Zambia. Plan International, UNICEF, World Vision.
[6] United Nations General Assembly Special Session on HIV and AIDS (2001). Declaration of Commitment on HIV and AIDS. 25-27 June, p.29, paragraph 65.

Key general recommendations

For government

- Strengthen relations between the Ministry of Health and the relevant ministry mandated with BDR (such as the Ministry of Justice or the Ministry of Home Affairs) to integrate and streamline BDR into national HIV strategies, in conjunction with HIV programmes at antenatal and post natal centres, including in preventing mother to child transmission (PMTCT) programmes, hospitals/clinics, immunization and voluntary and counselling testing facilities, and life skills programmes at schools.
- Automate the BDR system to guarantee regular updates of birth and death statistics at the national level. This allows for the proper monitoring of the impact of HIV and AIDS on the population, and ensures the effective planning and programming for universal access to treatment, prevention, care and support for both adults and children.
- Standardize BDR data collection tools to increase effectiveness and ease of data capturing and analysis at the national, district, and community levels. These tools should be user friendly for volunteer data collectors as well as for civil registrars, as well as be compatible to an automated BDR system.
- Commission an assessment of the in-country status and processes of BDR, disaggregated by local governments and hospitals in rural and urban areas and evaluate the impacts of the current registration system on progress relating to the Millennium Development Goals, in particular MDG 4 (reducing child mortality) and MDG 6 (combating HIV and AIDS, malaria and other diseases), and to achieving the UNGASS goals. In addition, the recommendations from the assessment will guide donors in funding particular technical aspects of the BDR system or particular geographic or demographic areas.
- Subsidize fees birth and death certificate for child and older carers in countries where fees are charged to obtain them. Ideally, such certificates should be free at point of use. Child and older carers bear the brunt of the impact of the pandemic by providing physical and financial care for sick parents or other relatives, as well as for healthy members within the household.

For civil society

- In cooperation with the government, increase and expand the reach of HIV prevention campaigns targeting children on the link between human rights violations, including defilement and rape, and susceptibility of HIV. The value of a birth certificate in deterring these risks should be highlighted.
- In cooperation with the government, increase and expand the reach on the awareness of the value of a birth certificate in a court of law, aiming to deter perpetrators from violating and abusing children's rights.
- Emphasize the importance of death registration as a legal and statistical tool in BDR advocacy, as death registration enables the State to monitor the total number of AIDS-related deaths and to plan for the appropriate scale of health services, including HIV prevention and treatment services for adults and children.
- Conduct awareness campaigns and trainings on succession planning and will writing, in particularly in countries where customary laws dictate norms relating to property and inheritance rights.

- Advocate for property and inheritance to be identified as a human right in national legislations relating to HIV and AIDS, children, and civil registration. most countries in sub-Saharan Africa do not have specific legislations establishing and guaranteeing children's right to inheritance and property. Article 21 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa does identify inheritance as a human right, and the UNGASS Declaration of Commitment on HIV and AIDS specifies the need in paragraph 65 for the "protection of orphans and vulnerable children…from loss of inheritance".

For donors

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

Key resources

The following documents are available now or will be soon at the following internet address: http://www.unicef.org/aids/index_iatt.html

Africa Birth Registration Report Card (2008). UNICEF, Plan International, World Vision.

De Bruin Cardoso, I & Mampane, R (2008). "Strategic analysis on civil registration and children in the context of HIV and AIDS". PEPFAR, Plan International, UNICEF and World Vision.

De Bruin Cardoso, I. & Samuri, R. (2008). Strategic analysis on civil registration in the context of HIV and AIDS: experiences from Uganda and Zambia. Plan International, UNICEF, World Vision.