APC submission on universal birth registration and the use of digital technologies

August 2024

Profiling and automated decision making can be discriminatory, in particular reinforcing gender inequalities, and can negatively impact the rights of all people to work, to health and to education, among other rights.[1]

APC supports "concerted campaigning for a dignified ID system that respects privacy, inclusion, user value, user control and security."[2]

The Association for Progressive Communications (APC) is a membership-based network of organisations and activists with the mission of strengthening collective organising towards building a transformative movement to ensure that the internet and digital technologies enable social, gender and environmental justice for all people. APC is comprised of 70 organisational members and 41 associates active in 74 countries, primarily in the global South, and also works closely with various partner organisations.

APC welcomes the opportunity to present this submission in response to the call for inputs issued by the United Nations Office of the High Commissioner for Human Rights in order to collect contributions to the office's study on the use of digital technologies to achieve universal birth registration, its best practices, challenges and opportunities, and potential mechanisms to close the gap between the number of children whose births are reported as registered and those who actually have a birth certificate, to be presented at the 58th session of the Human Rights Council in February/March 2025.

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[1] Brown, D. (2017, 21 April). HRC34: Why is it important for internet rights? *APC*. https://www.apc.org/en/blog/hrc34-why-it-important-internet-rights
[2] https://www.apc.org/en/research-and-campaign-grants-2020#unwanted%20witness

Introduction

According to a 2022 United States Agency for International Development (USAID) report, approximately 1.1 billion people lack official identity and are essentially "invisible, discounted, and left behind."[3] Moreover, without a national identity, individuals face barriers including in accessing public services, exercising voting rights, or accessing private services such as bank accounts and telephone cards.

The bi-annual UN resolution on "Birth registration and the right of everyone to recognition everywhere as a person before the law"[4] includes text calling on states to use digital and new technologies as a means to facilitate and universalise access to birth registration by permanently storing and protecting civil registration records and preventing the loss or destruction of records, including in emergency or armed conflict situations.

This briefing paper responds to the UN resolution's call for inputs to contribute to a comprehensive study on the use of digital technologies to achieve universal birth registration, its best practices, challenges and opportunities.

The expansion of digital technologies has the potential to increase birth registration for all. Simultaneously, however, the increased use of digital technology may lead to an "erosion of our personhood",[5] amplifying some of the challenges which have historically been fought, including multiple intersecting forms of discrimination, harassment and inequality.

Personal data (including what is defined as sex or gender on birth certificates) does not only inform about, but also formats our identity as "informational persons" including via social normative processes.[6] Identity-based data is not a simple layer on top of ourselves, but an intrinsic aspect of ourselves. In

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[3] Dutta, N., & Mojtahedi, S. (2024, 26 March). Navigating the Risks and Rewards of Digital ID Systems. *Open Government Partnership*. https://www.opengovpartnership.org/stories/navigating-the-risks-and-rewards-of-digital-id-systems

[4] The resolution adopted in 2023 can be accessed here: https://documents.un.org/doc/undoc/gen/g23/077/58/pdf https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/RES/52/25&Lang=E

[5] Koopman, C. (2019). *How We Became Our Data: A Genealogy of the Informational Person*. University of Chicago Press.

[6] Ibid.

other words, we are constituted by our data and, to certain extent, made by the formats of our data. The categories and formats chosen for personal data (including sex or gender, age, ethnicity, among others) have a fundamental impact: they contribute to the construction of who we are and who we, and the world, believe we can become. The politics of data – "infopolitics"[7] – is not just an issue of what we can and cannot say, or what can or cannot be said about us, but is also a matter of who we can or cannot be(come).[8] They simultaneously enable us to act in some ways and restrict us in many other ways. This dramatically impacts the most structurally oppressed groups and vulnerable communities including women, LGBTQI+ people or ethnic minorities.

Moreover, birth registration via digital technologies forms part of a wider global trend towards mass surveillance[9] "in which the bodies, movements, and choices of citizens and consumers are ever more seamlessly monitored and mined by governments and corporations"[10] with "asymmetric relations between those who collect, store, and mine large quantities of data and those whom data collection targets."[11] Global corporations (such as Google and Facebook) decide what forms part of our personal information, what it means, and construct the world we inhabit in the process. We hold close to no control over who we are algorithmically speaking, and in practice our identities belong not only to us – but mostly to others and to serve their interests. This begins with our data registered at birth. The capitalisation and monetisation of data have proven how the private sector prioritises profit over user privacy and public good.[12]

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[7] Ibid.

[8] Cheney-Lippold, J. (2017). *We Are Data: Algorithms and the Making of Our Digital Selves*. NYU Press.

[9] Guerrero, C., & Lara Castro, P. (2023). *Identidad digital en América Latina: Situación actual, tendencias y problemáticas*. Derechos Digitales. https://www.derechosdigitales.org/wp-content/uploads/DD_Reporte_Regional_GIF.pdf

[10] Dow Schüll, N. (2018). Self in the Loop: Bits, Patterns, and Pathways in the Quantified Self. In Z. Papacharissi (Ed.), *A Networked Self and Human Augmentics, Artificial Intelligence, Sentience*. Routledge.

[11] Ibid.

[12] APC et al. (2023). *Joint submission to the Global Digital Compact on gender*. APC. https://www.apc.org/sites/default/files/gdc_joint_submission_on_gender_final.pdf

Before talking about universal birth registration, it is imperative to define mechanisms of data collection, protection and governance. How is this data collected? Who decides the parameters and characteristics of the data? Who has control of this data? How is it secured? How is it used?

APC believes that everyone has the right to the protection of the data that concerns them and to be able to understand, in very simple terms, how that data is processed.[13] No one shall be subjected to arbitrary interference of this right, and any limitation of this right shall be reasonable, necessary, proportionate and justifiable.[14] Moreover, any processing of data shall be fair, lawful and transparent, adhering to data processing principles set out in international norms and standards.[15] It is also important to recognise that there is a gender dimension present in data collection, as it never takes place in a gender-neutral setting. Methods used for activities that are inherently about labelling and categorising individuals are often predicated on existing binary gender norms. Systems developed by such data can be exploited in ways that either perpetuate such norms or limit access for and discriminate against those who do not conform.[16]

If we seek universal birth registration, governments must ensure the right to data privacy and give everyone, including marginalised groups, full control over their personal data and information online at all levels.[17] Having that in mind, a lack of data is detrimental in many ways. Economic, social and public policy require data that is representative of the lived realities of each context. It is harder for governments to design policies that include people if those who lack empowerment are undocumented, as well as to protect their rights and distribute the benefits to which they are entitled.

This briefing note aims to underline some of the key human rights opportunities and challenges in the use of digital technologies for birth registration, from an intersectional gendered perspective. We argue that

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[13] Ibid.
[14] Ibid.
[15] Ibid.
[16] Ibid.
[17] Ibid.

datafication must be carefully regulated with human agency at the core of its "design, protocols, audits and other forms of formats,"[18] including the most marginalised and vulnerable communities. Future versions of Resolution 52/25 must be founded on an intersectional feminist perspective to ensure that the ongoing digital transformation can promote a gender-just world that is affirming to all individuals and their path to self-actualisation.[19] All individuals must be able to take part in the global digital ecosystem, no matter who they are or where they are based, and must have agency over their complex selves, to enjoy equal rights to safety, freedom and dignity. This means equal respect for privacy, identity, self-expression and self-determination as well as equal protection from persecution, discrimination, abuse and surveillance, and equal access to information, opportunity and community.

Background: International legislation and duty to protect

Birth registration is recognised as the fundamental means of conferring legal identity. It is defined by UN standards as the "continuous, permanent, and universal recording within the civil registry of the occurrence and characteristics of birth following the national legal requirements."[20]

The human right of everyone to be recognised everywhere as a person before the law is enshrined in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child (CRC), the Convention on the Rights of Persons with Disabilities, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Protection

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[18] Koopman, C. (2019). Op. cit.
[19] APC et al. (2023). Op. cit.
[20] Razali, R. M., Duraisingam, T. J., & Lee, N. N. X. (2022). Digitalisation of birth registration system in Malaysia: Boon or bane for the hard-to-reach and marginalised? *Journal of Migration and Health, 6*. https://doi.org/10.1016/j.jmh.2022.100137

of the Rights of All Migrant Workers and Members of Their Families, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Reduction of Statelessness.

The right to birth registration is a fundamental right recognised by various international human rights instruments. Article 6 of the UDHR notably underlines the right to be recognised as a person before the law, and Articles 7 and 8 of the CRC guarantee the best interests of the child, non-discrimination, participation, and survival and development, providing the framework for all actions concerning children, including birth registration, as well as the right of children to preserve their identity. Various resolutions adopted by the UN General Assembly and the Human Rights Council call upon states to ensure the registration of all children immediately after birth and without discrimination of any kind, the most recent being Assembly resolution 76/147 and Council resolution 43/5.

Moreover, in 2015, the UN member states pledged to provide "legal identity for all, including birth registration" by 2030 through the adoption of Target 16.9 as part of the 2030 Sustainable Development Agenda, as one means to bridge socioeconomic divides.

Birth registration is also the foundation of a person's civil, political, economic, social and cultural rights, including the right to vote, to obtain a passport, for accessing protections under the law, property rights or entitlements, public services, and a large part of the economy. The lack thereof holds many risks, including that of exploitation from criminal enterprises, or vulnerability as refugees before host country authorities. Marginalised communities including single mothers, pregnant women refugees, LGBTQI+ immigrants or ethnic minorities are only rendered more vulnerable in the case of missing personal information, including correct and appropriate birth registration.

Benefits

- How can digital technologies enable and enhance birth registration processes? Specific examples.

Given the rapid development of technology and the growing reliance on the digital economy, digitalisation – websites or mobile applications – is seen today as the best way forward in terms of easing access to birth registration. Not only is it seen as an appropriate measure to permanently store and protect civil registration records, but it can also prevent the loss or destruction of records, including in cases of emergency and armed conflicts. In addition, digitalising birth registration processes can help reach the most remote and isolated communities by expanding the reach of registration, streamline procedures, and improve data quality, overcoming both geographic and administrative obstacles.[21]

Digital technology can also create savings for citizens by reducing transaction costs, increasing efficiency and driving innovation in service delivery. Digital identity systems can also improve governance, reduce gender inequalities by empowering women and girls, and increase access to health services and social safety nets for the most marginalised and vulnerable.[22]

Data can thus be liberating and empowering if built as a tool for self-agency and self-actualisation, as it "allows you to imagine new types of self and move in new directions [...] and potentially, for resisting, repurposing, and rendering uncertain the normative proxies, behavioral categories, and governing logics that would seek to drive their conduct down certain pathways."[23] Taking the example of the trans community, some individuals in Canada have been advocating for a non-binary category to be added as an option for birth certificates, which they say would better reflect their identity. This has been added in several provinces across the country – as well as the option of removing any reference to gender on this official document – and has been

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[21] Ibid.
[22] Alston, P. (2019). *Report of the Special Rapporteur on extreme poverty and human rights.* https://documents.un.org/doc/undoc/gen/n19/312/13/pdf/n1931213.pdf
[23] Ibid.

hailed as a victory by trans individuals, allowing for a better reflection of their gender identity and reflecting society's ever-expanding and ever-broadening understanding of gender categories.[24] In Mexico, individuals can opt to register as non-binary.[25] Today, there are at least 16 countries which include a third-gender marker on their passports.[26]

Main human rights challenges when using digital technologies

- What are the main gaps and challenges to ensuring universal birth registration in law, policy and practice in your country and the impacts on the rights of the child? Please consider the specific situation of marginalised children and those in vulnerable situations in your response.
- What are the main human rights challenges and opportunities concerning the use of digital technology to ensure universal birth registration in law, policy and practice in your country? Please consider the specific situation of marginalised children and those in vulnerable situations in your response.

In this section, we identify the key contexts that risk excluding marginalised and vulnerable communities. These include the policy framework regarding birth registration, immigration services, health sector patient privacy and confidentiality, access to key resources including technology, and individual respondents' capabilities and motivations in accessing the birth registration.

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[24] Cecco, L. (2018, 8 May). Transgender rights: Ontario issues first non-binary birth certificate. *The Guardian.* https://www.theguardian.com/world/2018/may/07/ontario-non-binary-birth-certificate-canada-transgender

[25] Secretaría de Relaciones Exteriores. (2023, 17 May). Foreign Secretary Marcelo Ebrard issues first non-binary passports in Mexico and abroad. https://www.gob.mx/sre/en/articulos/foreign-secretary-marcelo-ebrard-issues-first-non-binary-passports-in-mexico-and-abroad-334216

[26] For potential risks, see: Quinan, C. L. (2022, 17 August). Rise of X: Governments Eye New Approaches for Trans and Nonbinary Travelers. *Migration Policy Institute.* https://www.migrationpolicy.org/article/x-marker-trans-nonbinary-travelers.

Reinforcing socially and policy-based discrimination:

- This is linked to offline structural discrimination and violence that characterises societies, too often worsened by technological tools with "gender-neutral" practices and policies. Digital technologies are biased and can thereby replicate gender stereotypes and amplify disparities and inequalities, including in contexts, for example, where gender-discrimination laws impose criminal penalties on single women (unmarried parents) or where social stigma is high for children born out of wedlock or for adolescent mothers.

- Moreover, the adoption of digital identity systems has been shown to be an enabler for the proliferation of biometric technologies, some of them in particularly critical areas, such as public security, access to social security services and migration control. Digital registration may indeed play a part in state-led human rights restrictions via enhanced immigration surveillance, as in the case of Colombia, Paraguay and Peru.[27]

Limits of binary systems: Digital technologies also face the risk of amplifying discrimination against LGBTQI+ communities and/or diverse families, including in the case of:

- *Intersex children*: The legal requirement for intersex babies, in a majority of countries around the world, is that an intersex person needs a medical assessment of their sex characteristics to qualify for legal recognition as neither male nor female. Many intersex babies undergo surgery to bring the appearance and function of their genitalia into line with that expected of males or females, which research reveals can lead to a lifetime of psychological damages.

- *Trans children, same-sex couples and diverse family models:* Birth registration tools rely on gendered and heteronormative assumptions about sex and gender including of children (including in the case of trans

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[27] Guerrero, C., & Lara Castro, P. (2023). Op. cit.

children) and their parents (including their marital status). As a result, birth registration can be the source of extreme suffering for many individuals around the world, including trans children, who are not able to be identified as their true selves. This discrimination, from a very early age, reinforces gender-based discrimination and violence, leading to difficulties in health, education, employment, social networking and many other aspects of an individual's life.

Data breach and targeted discrimination:

- Discrimination:
  - ○ Women and LGBTQI+ people in particular can suffer stigmatisation, marginalisation and violence following the exposure of private information related to their sexuality and/or gender identity. In the case of Venezuela, for example, biometric systems have been implemented to control the acquisition of basic necessities – including health products – resulting in several reports of discrimination against trans people.[28]
  - ○ Following from the point above, it is crucial to protect all individuals from discrimination when determining the information included in a birth certificate, such as details concerning origin, race, ethnicity, religion and parents' marital status.
- Privacy, security/surveillance:
  - ○ The possibility of increased violations of privacy and surveillance is immense with government databases often hacked or even abused by government officials themselves, or flaws in the design of systems opening the doors to protection risks. This increases the risks of identity theft, diversion of funds, privacy violations, targeted oppression of marginalised

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[28] Ibid.

groups based on personal characteristics, exploitation by registration agents, and exclusion from the benefits of birth registration.[29]

○ There have been cases of digital ID systems being used beyond their original purpose. This is only worsened by the fact that private companies which develop digital identification systems are often the same ones developing surveillance systems, and have shown a lack of respect for human rights and their potential violations. Here we can give the examples of AnyVision, Hikvision, Dahua, Cellebrite, Huawei, ZTE, NEC, Idemia and Verint.[30]

○ The prospect of digital ID-facilitated surveillance or misuse may discourage the public – especially the most vulnerable – from expressing their views, or sharing important information including about government initiatives, leading to a highly controlled population.

○ For example, in India, the national ID system, Aadhaar, has been criticised for collecting biometric information unnecessarily, severe shortcomings in legislative oversight, function creep, facilitating surveillance and other intrusions into privacy, exacerbating cybersecurity issues and creating barriers to accessing a range of social rights including for the most marginalised and vulnerable communities.[31] Similar criticisms have been voiced against Kenya's system, Huduma Namba, and Venezuela's, Sistema Patria.[32]

○ Moreover, many countries have been introducing these systems without sufficient transparency and/or legal frameworks and

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[29] Plan International. (2015, 26 May). With great technology comes great responsibility: Doing digital birth registration the right way. *ReliefWeb.* https://reliefweb.int/report/world/great-technology-comes-great-responsibility-doing-digital-birth-registration-right-way
[30] Ibid.
[31] Alston, P. (2019). Op. cit.
[32] Guerrero, C., & Lara Castro, P. (2023). Op. cit.

human rights risk assessments. For example, in Argentina, Brazil and Colombia, although data protection laws are in place, the introduction of biometrics has not been precisely delineated by the law, thus defying the principle of legality.[33]

These impacts are not restricted exclusively to privacy and personal data protection, but also to a broad spectrum of rights connected to the services that digital identity systems seek to enable or restrict. In 2019, a man was arrested in Argentina because of an error in a facial recognition system and spent six days in jail before the error was discovered.[34]

Limited access and reinforced exclusion:

- Digital technologies risk continuing to invisibilise and exclude the most marginalised, including women and minorities, such as in the case of:

    ○ Minorities (including Indigenous people) living in remote areas or with refugee status or also in conflict areas, with little connectivity.

    ○ Individuals with limited access to technology, including adequate and appropriate digital devices, which may amplify existing barriers for groups such as refugee/asylum seekers or women facing domestic abuse.

    ○ Already vulnerable people, including pregnant women among refugee/asylum seekers, who might fear the consequences of digitalising any personal data when giving birth and thereby not register their children.

    ○ Individuals with poor digital skills or language skills. Digital apps are often set in one language, hard to use, with rigid algorithmic decision-making processes: systems can be set to fail easily in

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[33] Ibid.
[34] Ibid.

order to save costs and many who are turned down will not appeal when they are rejected,[35] including individuals from ethnic minority backgrounds or whose first language is not that of the app (often English) or individuals with mental health issues.

- ○ Marginalised communities unable to present standard identification documents to register SIM cards or the birth itself. Indeed, individuals who cannot access other identification documents may also be locked out of digital ID services.

    - An example from Uganda: With support from APC, Unwanted Witness published a report entitled *Uganda's Digital ID system: A cocktail of discrimination*, which highlights that while the ID system is meant to empower citizens and enhance government transparency, it was found to be excluding, as it makes it mandatory for all citizens to present an ID before accessing public and private services as well as risking data privacy linked to an insufficient regulatory framework.[36]

    - In Chile, Costa Rica, Ecuador and El Salvador, it has been shown that these systems have facilitated access to online government services for a group of the population with existing privileges (good connectivity, good services), reinforcing exclusion of the most marginalised.[37]

[35] Souter, D. (2020, 25 May). Inside the Digital Society: What's digital about welfare? *APC*. https://www.apc.org/en/blog/inside-digital-society-whats-digital-about-welfare

[36] Unwanted Witness. (2019). *Uganda's Digital ID system: A cocktail of discrimination*. https://www.unwantedwitness.org/download/uploads/UgandaE28099s-Digital-ID-System.pdf

[37] Guerrero, C., & Lara Castro, P. (2023). Op. cit.

Recommendations

As discussed above, technology cannot and should not be presented as a way to solve systemic problems and advance inclusion policies, such as those related to the fact that some populations have been historically excluded from access to rights. Digital technologies can help efforts to address low rates of birth registration, but fundamentally, they must be used with the aim to address discrimination and violence remaining at the core of today's societies. The key determinant is for digital progress to be accompanied by political will, with governments using technology to support their policies while minimising risks. Much more remains to be done to ensure that digital ID systems are adopted and implemented in a way that prioritises public participation, inclusion, transparency, protection of privacy rights, and opportunities for redress where rights and requisite procedures are violated.[38] We must keep supporting a human rights-based approach to the digitalisation of birth registration, responding to the risks highlighted in this briefing paper:

- In terms of LGBTQI+ individuals, there is a need to have the option of delaying registration of sex characteristics until the intersex child (or teenager or adult) makes a self-determined decision, or of having a third, non-binary category (valid for all individuals, including intersex and trans children).[39]
- It should be made compulsory to record only minimum information, such as the child's name, date and place of birth, when available, parents' names, citizenship and addresses (and possibly gender with three categories).
- Any information obtained through birth registration processes that may lead to discrimination against an individual should be kept confidential as much as possible.

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[38] Dutta, N., & Mojtahedi, S. (2024, 26 March). Op. cit.

[39] Anarte, E., & Savage, R. (2020, 16 July). Austria issues first intersex birth certificate after four-year battle. *Thomson Reuters Foundation.* https://www.reuters.com/article/world/austria-issues-first-intersex-birth-certificate-after-four-year-battle-idUSKCN24H33L

- As seen above, digital exclusion is not necessarily a matter of access to technology, but an issue of a lack of engagement with these tools. Marginalised and vulnerable groups must be integral stakeholders and participants in the planning and implementation of digital strategies, to ensure no one is left behind.
- Governments must develop and implement legal frameworks, through public processes of consultation with all relevant stakeholders, to govern the use, operation and safety of and access to digital ID systems and databases.
- Governments must invest resources in programmes to promote access by marginalised and vulnerable populations to digital ID systems, and continue to allow individuals to prove their identity using conventional identification. This includes stopping discrimination due to fees or differences in the availability of ICTs.
- It is fundamental to have a robust human rights impact assessment prior to designing or adopting a digital ID framework, which includes risk mitigation measures to ensure that the data of citizens and residents is protected and stored safely without the risk of unauthorised access, including by government officials or private actors. The assessment should be transparently shared and open to feedback from the public. Access to the data should be strictly limited, and law enforcement access should be predicated on a warrant issued by an independent judicial authority.
- Public authorities need to promote transparency and checks on digital technologies also by mandating public disclosure of contracts and public-private partnerships to develop and implement digital ID systems, including in local, rural settings, as well as information about uses and storage of, and access by public and private actors to, information collected through these systems.
- Legal frameworks should establish independent oversight mechanisms, and include accessible grievance and redressal mechanisms to address violations of requirements and protected rights.