

Policy Brief

“Legal Identity” and Biometric Identification in Africa

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There is near-universal consensus on the importance of “legal identity” as a foundation for economic development and respect for rights. But insufficient attention is paid to the risks attendant on a drive to roll out biometric identification systems in fulfilment of this promise.

“Legal identity” and the Sustainable Development Goals

In September 2015, the UN General Assembly adopted the Sustainable Development Goals (SDGs), an ambitious set of objectives for international development to replace and expand upon the fifteen-year-old Millennium Development Goals (MDGs) adopted in 2000. Goal 16 of the SDGs is one of the broadest: “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”. Each Goal has a set of more detailed targets: Target 16.9 requires that states should, by 2030, “provide legal identity for all, including birth registration”. The consensus in development policy circles on the benefits of stronger identification systems appears now complete—certified by the World Bank’s decision to establish a program on “identification for development”.

This policy agenda is founded on solid scholarship investigating the importance of registration and identification for state consolidation and effectiveness (for example, Caplan and Torpey 2001, Szreter 2007, Breckenridge and Szreter 2012). State consolidation and effectiveness, of course, also has its downsides. Other scholars have emphasized the equal contribution that registers of people and property have made towards the enabling of authoritarian regimes (most influentially, Scott 1999), and the uses of identification for surveillance and control (Torpey 2000, Bennett and Lyon 2008).

There is still much confusion over the exact meaning of the SDG’s commitment; and thus still much at stake in the way it is interpreted. While birth registration is well-understood, and has been the subject of international agreements and technical assistance over some decades, “legal identity” has no definition in international law and there is no clarity on what its delivery would require (Gelb and Manby 2016, Manby 2017).

Perhaps most importantly, there is confusion as to whether the SDGs require the issue of some sort of government-backed national identity card, or if birth registration is

sufficient. While national identity cards are completely routine in many countries in the world, especially those belonging to the civil law tradition (including former French, Spanish and Portuguese territories), they are less likely to exist in countries where the common law heritage is dominant (former British territories—except those where passes were imposed on the “native” population). There remains strong resistance to the idea of such a requirement in the UK itself, as well as in the USA.

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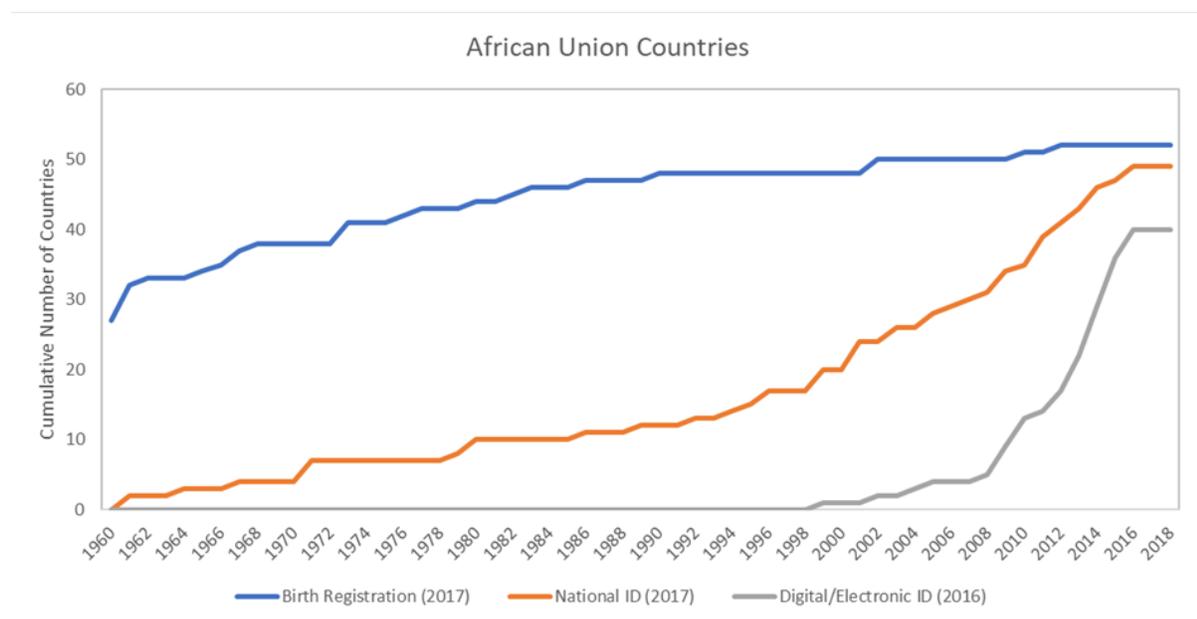
The discussion of these objectives and what they imply has been complicated by the sudden availability of relatively affordable digital and biometric technology, from electronically recorded fingerprints and iris scans, to the mysteries of the “blockchain” and the world of virtual online identities. Biometric features are rapidly being incorporated into government-backed identity cards, while private-sector-led initiatives are attracting public funds for decentralized identification not necessarily linked to government identity documents—such as the ID2020 Alliance (led by the private sector but involving UN agencies) “to empower individuals, enable economic opportunity and advance global development by increasing access to digital identity” (ID2020 Alliance 2017). These developments have fueled a wave of publications on the “identification revolution” and the role of digital identity in “leapfrogging” the legacy of paper-based systems (World Bank 2016; Gelb and Diofasi Metz 2018). The World Bank has led a process of adopting a set of “principles on identification” to serve as standards in order to “maximiz[e] the benefits of identification systems for sustainable development while mitigating many of the risks” (Desai et al. 2017)

Trends in identification systems in Africa

Many, if not most, Africans do not currently hold any state-issued document that is official proof of their existence, or of their citizenship of the state to which they “belong”. An average of 56 percent of sub-Saharan African children under five years old did not have birth registration as of 2013 (85 million children), a critical step for the access of those children to many government services as well as the establishment of their rights as adults. In at least eight countries (Chad, Eritrea, Ethiopia, Liberia, Malawi, Somalia, Tanzania and Zambia), less than 20 percent of children had been registered (UNICEF 2013).

In line with the SDG agenda, a central part of recent efforts to strengthen state capacity in Africa has thus been to strengthen identification systems, including both civil registration of births and deaths (and significant civil status events in between: marriages, divorces, adoptions) and population registries backed by the issue of a national

identity card (as well as voter registration). Whereas only a minority of the 54 African states (55, including the Sahrawi Arab Democratic Republic) had in place a national identity card system at independence, this number has rapidly increased in recent years. At the same time, identity cards are being rolled out where they did not previously exist, and paper-based systems are being upgraded. Today, almost all countries in Africa have in place a formal requirement for national ID to complement a civil registration agency, and more than half of national ID cards are based on biometric technologies.



Countries with laws and institutions establishing requirements for birth registration and identification in Africa, 1960-2015

Source: World Bank Identification for Development Dataset, available at <http://data.worldbank.org/data-catalog/id4d-dataset>.

There have been some efforts to highlight the potential dangers posed by these new technologies in the absence of legal frameworks for data protection and privacy—even if the roll-out of new technologies largely proceeds regardless (see, for example, Privacy International 2018; World Bank 2017; for a listing of those countries with laws in place, see the Identification for Development (ID4D) Global Dataset 2018).

Less remarked, however, is the assumption underlying these initiatives that the effort to roll out a universal national identification system is mainly a technical one, dependent on resources, administrative effectiveness, and a regulatory framework to guide questions such as access to and interoperability of databases. Yet identification of citizens is above all a legal and political process, unrelated to the technology used; and the history of Africa creates particular reason to be cautious.

Who belongs where?

The African continent's famously arbitrary borders, and history and current reality of migration, coupled with the weak administrative capacity that is equally the legacy of the colonial state, have made the management of "who belongs where" particularly challenging, even by comparison with other post-colonial regions of the world (see, for example, Bayart and Geschiere 2001, Geschiere and Jackson 2006, Dorman, Hammett, and Nugent 2007, Geschiere 2009, Bøås and Dunn 2013).

In this context, a push to upgrade and insist on the universal application of identification systems that definitively distinguishes citizens from foreigners—between those whose identity card gives them access to rights and those denied such documents—carries serious risks as well as possible rewards.

Whereas previously in Tanzania or Uganda, for example, access to health care or to schooling for children did not depend on official proof of identity, since 2016 a national ID card is needed for these and other purposes (Manby 2018a). Yet, thanks to citizenship laws that are interpreted to provide no rights based on birth in the territory but rather to be based on ethnicity, boxes of applications remain unprocessed, with no means of resolving doubts over entitlement—even if the applicants have no effective connection to any other state. In the absence of the civil law apparatus of court oversight of such decisions, legislation has established no effective mechanism to resolve these cases, leaving those affected likely in indefinite limbo. In other countries, such as Mauritania or Sudan, governments are deliberately using the introduction of new population registers—touted as major steps towards modernization and inclusion—as tools to denationalize those whose membership of the polity is unwelcome (Manby 2018b).

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Those at risk of greater exclusion by the drive to identification encompass, in the African context, pre-independence and other long-term migrants and their descendants; members of ethnic groups living in border regions and found in more than one country, including nomads; vulnerable children in different categories, especially those separated from their parents; and other marginalized minorities that exist in any society.

We end up with a paradox: documentation of “legal identity” is supported as a route to economic empowerment and inclusion, framed almost as an additional public service that the state must deliver. Yet this process of providing official documentation is dependent on existing legal and institutional frameworks governing citizenship and im-

migration status. If these underlying frameworks are not adapted to a context where most people have never had proof of their right to live in a country, the drive to provide and require identification documents can greatly exacerbate the exclusion of some even as it increases inclusion for others. Even if some of the hyped identification initiatives are delinked from such frameworks, no virtual identity validated through decentralized digital means can substitute for government-issued proof of rights in the country where a person lives (Manby 2016).

There is increasing awareness of the dangers of surveillance and misuse of data in our digital world, but even less capacity to mitigate these risks in Africa than elsewhere. An equal focus is needed from scholars as well as policy-makers on the underlying laws and procedures that establish rights both to citizenship itself, and to fair adjudication where citizenship is in doubt. This need is not created by the use of biometric or digital records, but made more urgent by the seduction and power of the new technologies. While it has been common to argue that citizenship and immigration law has had limited influence on identity politics in Africa, the drive to create universal identification systems will greatly increase its force—for good or for ill.

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