

“Identity is the Mother of All Rights”

Access to Documentation as a Pathway to Justice for Migrants

Meeting Summary

17 September, 2024



On Wednesday, September 4th an expert-level discussion entitled [Access to Documentation as a Pathway to Justice for Migrants](#) was held at the Permanent Mission of Canada to the UN, and online. The event was co-convened by Pathfinders for Justice at New York University Center on International Cooperation, and Zolberg Institute on Migration and Mobility at The New School as part of the [Justice for Displaced Populations Initiative](#) alongside Migration for Development and Equality (MIDEQ) Hub¹. The event was co-sponsored by the Permanent Mission of Canada to the United Nations, the Permanent Mission of Colombia to the United Nations, the United Nations Development Programme (UNDP), and the UN Refugee Agency (UNHCR).

73 individuals registered to attend the event in-person alongside 51 individuals online. These attendees represented government and civil society organization stakeholders alongside multilateral institutions, funders, and academics. Speakers included representatives from permanent missions to the UN, think tanks, multilateral institutions, and civil society.

Through presentations and panel discussion, this event achieved three key goals:

- 1) Bridge siloes between the humanitarian and justice policy communities to discuss common goals and challenges facing migrants and displaced communities with regards to documentation.
- 2) Explore the gaps in knowledge, challenges in practice, and broader implications of documentation as a pathway to justice for migrants and as an enabler of achieving humanitarian, development, peace, and justice aims alike.
- 3) Exchange best practices and innovative solutions at the international and national levels to addressing the gap of 1.1 billion people who live without proof of identity.

Speakers and panelists covered three key areas in their remarks: **1) Understanding Access to Documentation; 2) Implications of the Legal Identity Gap for Migrants; 3) Recommendations to Address the Legal Identity Gap.** Below, please find key takeaways from the event across these three topic areas.

Understanding Access to Documentation

- **Sustainable Development Goal (SDG) 16.9 is a commitment to provide legal identity for all.** This is a right that prevents statelessness and promotes the protection of human rights, security, access to services, and the ability to fully participate in the economy and society.

¹ The MIDEQ Hub undertakes research and impact intervention across 12 countries in the Global South with the aim of improving access to justice for migrants and other marginalized and/or vulnerable populations.

- **Objective 4 of the Global Compact for Safe, Orderly, and Regular Migration (GCM) also includes a commitment by states** to “ensure that all migrants have proof of legal identity and adequate documentation.”
- **Globally, 1.1 billion people lack documentation**, there are over 50 million newborns who lack registration, and an estimated 237 million children under five still lack a valid identity document.
- **The legal identity gap is a universal issue.** It is not specific to the global south or even specific to migrants.
- **Legal identity is more intense in the global south due to a lack of resources.** The majority of those who are undocumented live in low-income countries within Africa and South Asia and around half are children.
- **Establishing a legal identity and securing documentation can be challenging** due to: lost, damaged, or stolen documents; sometimes-protracted processes for determining an individual’s rights and entitlements; bureaucratic inefficiencies; discriminatory practices or national laws; accessibility issues including limited access to registration offices and costs of access; language barriers; lack of awareness; socioeconomic challenges; legal barriers.
- **Individuals can view documentation as a privilege rather than a right** when they lack of knowledge about rights and fear the government.

Implications of the Legal Identity Gap for Migrants

- **Undocumented individuals are isolated from legal and administrative frameworks that protect their economic, political, and social rights.** They can then be exposed to unfair or exploitative working conditions, abuse and exploitation, and unequal power dynamics when it comes to land and property.
- **Documentation can be used a weapon of persecution** when violence is closely tied to actual or implied allegiance. In such instances, a lack of documentation has been tied to cases of rape and sexual violence.
- **Documentation is a precondition to other rights and benefits.** It provides a pathway to regularization and is ultimately a development issue.
 - **Undocumented individuals face barriers to accessing education, healthcare, social protection, financial services, courts, and police.** When their rights are violated or a dispute arises, they do not have the tools needed to access justice and resolve justice problems.
 - **Lack of documentation can entrench poverty, inequality, and other forms of injustice.**
 - **Documentation is tied to land ownership and inheritance**, particularly for return migrants who cannot provide proof of identity. This can lead to local conflict fueled by ethnic and land disputes for which rule of law mechanisms are ineffective. This is particularly impactful for women who can lose land rights held by their father or husband. Women and children face exploitation and adapt by using dangerous coping strategies.
- **The exploitation of undocumented individuals replicates itself within the legal system.** These individuals cannot access a court room without an ID nor can they access lawyers or legal aid. As a result, undocumented individuals are vulnerable and without legal empowerment to access their full rights.
- **Migrants are used as political tools which also impacts the independence of judges and courts to ensure access to justice.** When populist leaders use migrants as scapegoats, judges take the brunt of that scapegoating which can impact the independence of judges and limit the jurisdiction of courts.

- **Access to documentation is an issue that sits at the nexus of the humanitarian and justice policy sectors**, but these two communities often lack spaces to collaborate with one another, even when their goals are interconnected. Policymakers need to make connections in different sectors to establish links between exclusion and documentation.
- **With documentation, migrants are more likely to know their rights, engage more accurately with their employers, and negotiate wages** as is evident in studies on Temporary Protection Status (EPTV) in Colombia.

Recommendations to Address the Legal Identity Gap

Speakers and panelists provided recommendations at both the international and national levels. They also offered a number of examples of successful policy interventions that peers could draw upon to address challenges in their own contexts. This section includes key inputs along these three topics.

Recommendations at the International Level

- **Policy interventions that support migrants need to be migrant-centered and offer practical solutions**, like providing documentation to enable access to key services.
- **Everyone should have access to a fair justice system regardless of their documentation**, and everyone should have access to documentation.
 - Documentation that proves a refugee's right to remain in the country is the best form of protection a country of origin can offer. It can prevent detention and refoulement.
 - At the global level, when new programs are created, policymakers should ask questions like who is excluded and how can we address issues of civil registration.
- **The success of policy interventions depends on sustained political will, funding, and the combined commitment** of governments, international organizations and civil society.
 - **Diasporas have the power to maintain engagement**, connect policy issues across regions, and represent issues as ambassadors of their causes.
- **Peer exchange and lessons from other national contexts can support policy interventions** around the world and set precedent for advocacy at the national level.
- **Policymakers need to bridge the New York-Geneva divide** and increase discourse between these two groups.
 - **The tone of conversations between New York and Geneva are different.** Countries face competing priorities. However, one way to maintain engagement is to have candid conversations about the positive contributions of migration to development. There needs to be more spaces for this conversation in New York, in Geneva, and in other cities.
- **Coalition building across civil society** can support stronger advocacy efforts.
- **Maintaining continuity in policies allows them to develop, be evaluated, and adjust to needs over time** as is evident in the case of sustained regularization policies in Colombia across a number of presidential administrations.
- **Donors should ask about foundational issues like civil registration and documentation** as part of establishing a new program and setting priorities.
- **Listen to the people directly affected by the problem when determining policy.** Ensure that UN processes are connected to the people they hope to represent so that these people can hold them accountable and advocate.
- **Systemic challenges to accessing documentation must be addressed during transitions to digital identity platforms**, otherwise individuals will be further excluded. People-centered approaches with strong governance structures are key to inform digital systems.

Recommendations at the National Level

- **Simplify documentation processes and increase awareness** about legal documentation
- **Increase access across diverse contexts** by training local registrars, deploying mobile birth and identity registration units, and establishing legal clinics and paralegal support programs
- **Improve inter-agency collaboration.**
- **Incorporate the needs of undocumented groups into laws and policies** such as Instituting laws and policies that allow for late birth registration, document recovery, identity confirmation, card issuance, and other steps needed to bring people back within the systems that lost them while conflict and lack of governance reigned.
- **Ensure refugees' travel documents to repatriate voluntarily are accepted** as foundation documents for national civil registration.
- **Include refugees into national database systems** from the date of their recognition to ensure access to essential services and systems.
- **Put civil registration systems into every development program and provide budgets** to address the needs of those who flee internally, internationally, and who remain at home.
- **Fund mobile courts, legal aid, and other support** to ensure that law and policy can be utilized.
- **Empower marginalized groups to lead in advocacy and work with NGOs** to improve awareness and demand for legal documentation.
- **Utilize legal empowerment and public awareness campaigns** to combat discrimination and ensure individuals can understand and use the law to achieve their rights to documentation.
- **Collect more data on undocumented populations** to support evidence-based policymaking, resource allocation, and impact monitoring.
- **Adopt a human rights approach** to designing initiatives and integrating them with other programs and systems.
- **End vetting processes** that require citizens to apply for identity before panels that scrutinize the legitimacy of their documents and place the burden of proof on applicants.

Policy Examples at the National Level

- In **Canada**, the law allows those born on Canadian soil to be Canadian citizens.
- In **Colombia**, policies like Special Stay Permits (PEP) and Temporary Protection Status (ETPV) have built upon one another and supported temporary status for Venezuelan migrants with a transitory mechanism for regularization, and access to healthcare, social services, and the possibility to qualify for benefits. An assessment of EPTV in Colombia demonstrated that with documentation, migrants are more likely to know their rights, engage more accurately with their employers, and negotiate wages. It also found that it is more cost effective to provide preventative healthcare than emergency healthcare for migrants. Colombia has benefited from sustained political will across administrations to institute, evaluate, and evolve their policy.
- Also in **Colombia**, identification documents for migrants are identical to those of Colombians which provides equality and prevents discrimination.
- **Cote D'Ivoire** recognized that lack of civil registration prevented 500,000 people from fully participating in society, including economic life, because they could not certify the land they purchased and worked. This caused tension and conflict. To address this, UNHCR worked with Cote d'Ivoire and other countries around the world to map the risk of statelessness and the risks associated with lack of documentation, address laws that left abandoned children and those born

to single mothers stateless when nationality was paternal, establish short-term provision for late birth registration and for at-distance identity recognition for those born away from their traditional villages, partner with regional bodies to systemically and equitably address national law and policy gaps impacting civil registration of those living/working in border areas, and provide a one-time grant of nationality to communities who have lived for long periods of time in a country without clear status which impacts their access to systems.

- In **Eastern Democratic Republic of the Congo**, UNHCR, UNDP, and UNICEF and the UN Mission have worked together to address the lack of civil registries and provide mobile birth registration units and mobile courts to support the process of demonstrating identity and replacing documents.
- In **Ethiopia**, UNHCR worked with the World Bank and its Identification for Development (ID4D) programme to build a refugee database connected to the civil registration system that supports the issuance of a refugee national identity card by civil registration authorities. Beyond Ethiopia, UNHCR houses 19 million refugees in a database to support government to ensure that refugees are protected and can be connected to essential systems and services.
- In **Kenya**, Namati has worked with partners to create a citizenship program using legal empowerment to ensure equal and full citizenship rights. This approach ensures that ordinary people can know, use, and shape the law. Namati trains community-based paralegals from local communities to support this program. They have assisted over 11,200 individuals using civic education, coursework, legal assistance, and follow-up with government officials. They also combat corruption. They utilize outreach, radio programs, and community forums to increase legal awareness. Meanwhile, data and evidence are key to undergird their efforts by tracking empirical evidence on government practices and client experiences, including their justice journeys. Ultimately, they mobilize undocumented Kenyan citizens from marginalized communities to understand legal provisions that allow for citizenship and nationality rights.
- In **Mali and parts of Latin America**, UNHCR supported birth registration via mobile phones and the certification of midwives. Through this, refugees were included into a database system that connected migrants to their consulates in regions that attracted migrant labor and connected them to their countries of asylum rather than their home countries.
- In the **United States of America**, a broad coalition of civil society representatives from the Venezuelan and Ukrainian diaspora across the country successfully advocated for humanitarian parole for Venezuelans in 2022 which provided over one hundred thousand Venezuelans with a private sponsored pathway with legal means to stay in the country. A congress of Venezuelan organizations also successfully advocated to extend the validity of expired Venezuelan passports from five to ten years. Their advocacy strategy was supported using international precedent set in Colombia. They translated Colombian legal documentation to bolster their petition and used it as a framework for discussions with U.S. policymakers.
- **Globally**, UNHCR is working with the International Civil Aviation Organization (ICAO) and countries around the world to create machine readable, multi-use travel documents available to refugees that are acceptable to visa officers.

This even was part of a series of meetings held by the Justice for Displaced Populations Initiative (J4DP). J4DP serves as a knowledge hub and a convener between the global justice and humanitarian policy communities: two communities which do not often interact within formal channels but have much to discuss and could maximize their impact with enhanced collaboration. The initiative aims to strengthen knowledge and practice around solutions to justice problems faced by refugees, other migrants, and internally displaced populations. Our goal is to improve the way key actors collaborate to jointly understand, resolve, and prevent displaced populations' justice problems. If you have any

questions about this event or would like to know more about J4DP, please reach out to Nate Edwards (nate.edwards@nyu.edu).

Additional Resources

- ["NO IDENTITY, NO PROTECTION: How lack of documentation drives modern slavery"](#)
- ["No papers, no rights": Access to documentation as a pathway to justice for migrants in the Global South](#)
- [A Community-Based Practitioner's Guide: Documenting Citizenship and Other Forms of Legal Identity](#)
- [Colombia's Support for Venezuelan Migrants and Refugees](#)
- [Compendium of Good Practices in Enabling Access to Legal Identity for Undocumented Migrants](#)
- [Enhancing Access to Legal Identity for Migrants: IOM's Commitment to 'Legal Identity for All'](#)
- [Identification in the Context of Forced Displacement](#)
- [Justice for All: Report of the Task Force on Justice](#)
- [Shrinking the Justice Gap: Rethinking Access to Justice for Migrants in the Global South](#)
- [Using Justice Chain Analysis to unlock access to justice for migrants in the Global South](#)