A Theoretical Assessment of the Nexus between Universal Child Legal Identity and Universal Principles of Child Protection: A Case Study of Emirates ID

A Theoretical Assessment of the Nexus between Universal Child Legal Identity and Universal Principles of Child Protection: A Case Study of Emirates ID

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Abstract

The legal identity of an individual permeates every aspect of human life. It acts as proof of existence, confirms one’s nationality, and enables one to carry out daily life. It further formalizes the relationship between an individual and the state. Despite its significance, legal identity has no definition in law and is often conflated with identification documents. A child’s legal identity stems from his or her foundational birth certification. Taking this first step toward legal recognition is critical to assuring their legal protection. Conversely, failure to obtain nationality and a lack of legal identity have profound implications for children’s security and safety.

This study reviews scholarly sources to establish theories, debates, and contentions that surround legal identity with respect to children. It generates and tests a novel set of criteria that can inform the typology of legal identity that best intersects with the universal principles of child protection. The criteria are: universality, continuity, confidentiality, provisional identity, timely, security, transparency, independently monitored and human rights based. It rejects criteria that are often cited in practice but which derogate from human rights, namely: compulsory enforcement, permanence, and interoperability. Finally, the study investigates the application and nuances of child legal identity and the typology criteria in a case study of the United Arab Emirate’s ID system. The study recommends areas for further research while offering suggestions to resolve gaps in international law with respect to legal identity.

Dedication

To my beloved husband Aquinas, for mentoring me, believing in my dreams, and helping me achieve them.

To my children for being willing to drop many weekend plans, allowing me time to study and reminding me to sleep.

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Glossary of Acronyms

CRVS	Civil Registration and Vital Statistics
DOJ	Department of Justice (US)
EFQM	European Foundation for Quality Management
EIA	Emirates Identity Authority
FAIC	Federal Authority for Identity and Citizenship
GSM	Global Systems for Mobile Communications
ICA	(UAE Federal) Authority for Identity and Citizenship
ICCPR	Internationall Covenant on Civil and Political Rights
ICMEC	International Center for Missing and Exploited Children
ID4All	Identity for all by 2030
ID4D	Identity for Development
ILO	International Labor Organization
KYC	Know Your Customer
LIA	Legal Identity Agenda
LIEG	Legal Identity Expert Group
NCMEC	National Center for Missing and Exploited Children (US)
NIDS	National ID System
NIMS	National Identity Management System
NOC	No Objection Certificate
PRIMS	Population Registry Identity Management Systems
SDG	Sustainable Development Goal
TCK	Third-Culture Kids

Chapter I

Introduction

> *"Labels are very important to me. They're a way of finding community and a way of community finding you. For me, identity is a kind of mailbox."*
>
> —Nalo Hopkinson

One of the most complex issues in the social sciences is the concept of identity. Attempting to answer the question "Who are you?" elicits introspection using various lenses: philosophy, anatomy, geography, law, psychology, politics, religion, or sociology. A simplistic response would be to state one's legal name. Yet this seemingly banal reply signifies an intricate legal process initiated at birth and primarily conducted on one's behalf by parents and the state. At the culmination of this process, a record detailing one's legal identity is entered into a register, and a document is issued to the individual by an authorized legal authority conferring a name, nationality, and confirming familial lineage. Legal identity (ID) formalizes the relationship between a person and the state.

In international law, legal ID is an important gateway for individuals to claim rights and access public services. Several United Nations conventions emphasize the responsibility of states to confer nationality and provide its nationals with proof of legal ID. Legal ID is a precursor to at least ten goals for global sustainable development by 2030 (known as sustainable development goals (SDGs)) related to improving the human condition (UN General Assembly, 2015). "It establishes the existence of a person in the eyes of law, and lays the foundation for safeguarding civil, political, economic, social and cultural rights. As such, it is a fundamental means of protecting the human rights of the individual" (UNHCR, 2014).

The responsibility to confer nationality and provide legal ID lies with governments of state that are parties to several UN conventions and treaties that touch on identity (UN Declaration of Human Rights, 1948; CRC, 1989; ICCPR, 1966, among others). As a preliminary step, governments register vital statistics within their population in the civil registration and vital statistics (CRVS) system. This is a universal record that includes live births, deaths, marriage, immigration, and emigration. Statistics help governments understand these demographics for purposes of development planning, service delivery, and national security. Governments then issue legal documents to individuals within their jurisdictions as proof of nationality or legal residency. Legal ID enables individuals to gain access to government services and participate fully in society (Harbitz & Tamargo, 2009) by way of travel, work, commercial transactions, proof of matrimonial and family links, ownership, inheritance and transfer of property, or membership within social groups.

Legal ID has profound significance for children. Young children rely primarily on parents or legal guardians for their survival, hence the onus is on parents/guardians to register and apply for birth certification on behalf of children, the precursory step toward securing full legal ID. Yet, more than one billion people around the world do not have formal identity documents—and one-third of them are children (World Bank, 2019). In 2019, UNICEF (2019a) estimated that one in every four children under the age of five did not have any formal identification. This could be attributed to omission, ignorance of parents, illiteracy, or difficulty accessing government services due to marginalization. Other reasons include the loss of family documents due to unexpected or irregular migration, inefficiencies within government CRVS systems, and state-sanctioned injustice and discrimination against select demographics within or outside a state territory.

Lack of identity renders children “rights-less” (Gündogdu, 2014), heightening children’s vulnerability to abuse, trafficking, exploitation, and statelessness, particularly in the event of involuntary separation from their parents or legal guardians (Irwanto & Kusumaningrum, 2014). Lack of identity also makes children “legally invisible” to the state (UNICEF, 2020; Borren, 2008), resulting in inadequate planning, poor service provision, and marginalization.

The global sustainable development agenda (UN General Assembly, 2015) recognizes this problem in SDG 16—Target 9, and attaches priority to the attainment of identity for all by 2030 (ID4All). This ambitious goal aims to push governments to develop robust civil registration systems. The task is particularly difficult for the most under-resourced, conflict-ridden, and politically dysfunctional states where institutions are weakest (UNICEF, 2013).

Innovations in digital and biometric technologies have greatly improved the ability of nations to achieve this obligation, according to the UNDP’s agenda for digital identity (McCann & Zoric, 2017). Identity for Development (ID4D) is a related initiative of the World Bank that aims to harness technology to digitize, centralize and allow multi-use operations for civil and national identity systems.

> The goal of the ID4D is for all people to be able to access services and exercise their rights, enabled by digital identification. This will be achieved by supporting countries to build inclusive and trusted identification systems, including civil registration, using multi-sectoral approaches and appropriately leveraging innovative digital and other solutions. (World Bank, 2021)

Digital innovations for ID, however, attract criticism from policy experts and citizens because of skepticism about the use, sharing, and security of sensitive biometric ID data. The nature of digital ID systems (see forthcoming Background section) means that ever more intrusive biometrics must be captured, particularly if the ID relates to children whose bodies are developing. Therefore, the ID4All agenda encounters legitimate cross-currents with privacy rights and data protection expectations.

On the national level, the United Arab Emirates' Federal Authority for Identity and Citizenship (ICA) (UAE, 2021a), which is the case study under investigation, is tasked to manage identity and citizenship affairs while deploying identity technology with sophisticated biometric and digital features. UAE joins a small group of other countries that offer technologically sophisticated, centralized, and universal legal ID on two levels: (1) in the form of universal birth certification of its citizens, and (2) in the form of universal national ID and mandatory residency ID for all citizens and legal residents respectively, including children. The UAE takes the concept of legal identity for children beyond the first step of birth registration, also offering fixed-term recognition to all inhabitants within its territory, 90% of whom are non-citizens.

My research studies the nexus between access to legal ID for children and the safeguarding of children's human rights. The study establishes comprehensive criteria for best practices on legal ID typologies for children, then designs a logic model to map their association with international principles of child rights. The study tests the framework against a single case sample of the UAE's Emirates ID to identify best practices for legal identity. The study offers a definition of legal identity that best captures the scope and typology of identity that is under investigation. The lessons learned from this study will inform other jurisdictions in their evaluation of the impact of identity systems on children.

Background

The identity question is one of the most prolific topics in the social sciences. For as long as humanity has existed, it has sought to define its *raison d'etre*. Individuals are in an eternal quest for self-awareness and self-determination. This makes identity studies a complex subject, one that strikes at the core of self, forcing introspection from a multidisciplinary lens. It also strikes at the core of the human collective, that is the group identity of citizens within states (Smith, 1991), thereby defining interactions within and among states.

Philosophically speaking, identity is a relativist concept considering that one's holistic identity is generated over time beginning at birth through the dual processes of self-determination or the internal process (Dybbroe, 1996), and societal determination or the external process. The process of formalizing identity through the production of identity documents to prove birth registration and nationality conferment are impacted by, among others:

- the application of traditions and norms, for instance, in passing down family names with cultural meanings;
- the legal provisions of each territory, which aid in the determination or adjudication of eligibility of citizenship *jus soli* or *jus sanguinis*;
- disparities that may arise between parental decisions over their child's biodata such as gender and the child's personal preferences later in life; and
- the fluidity of citizenship based on dual nationality and nationality by naturalization.

Legally speaking, a right to nationality and identity is envisioned as a human right with attendant processes attached to it to formally recognize each individual through registration and production of documentation to prove registration. These processes commence with the universally accepted practice of birth registration, known in policy terms as the civil registration and vital statistics system (CRVS). Thereafter, different formalities have been promulgated by different states to require their nationals and residents to apply for additional documentation to delineate specific rights and responsibilities such as voting, tax paying, health and social security, driving and so forth. For children, some of these additional legal registration modalities could be aiming to facilitate healthcare provision and immunization, education and social security for special groups such as orphans and children living with disability.

Premised on this complex identity matrix, this study will attempt to define and understand legal identity by examining why and how it is engendered, the actors involved, their responsibilities, the optimum typology for children's ID and the outcomes of ID processes on children.

Defining Legal Identity

Legal identity is couched under human rights, the idea that every person has a right to be recognised everywhere as a person before law (UDHR, 1948: A6). This is espoused in international human rights norms codified in the United Nations Declaration of Human Rights (UDHR, 1948) and promulgated in several instruments notably the Internationall Covenant on Civil and Political Rights (ICCPR, 1966), and the Convention on the Rights of the Child (CRC, 1989) among others. Legal identity is therefore regarded as the status of being a person before the law (UDHR, 1948). Not to be conflated with the legal personality of corporate institutions registered under law, in this study legal identity is that of a "natural person" who inherently enjoys rights and freedoms that require safeguards in law, and in like measure, who has responsibility to their human community (InterAction Council, 1997).

The multi-agency taskforce of United Nations institutions, including the UNHCR, UNICEF, UNDP, UNStats, and Plan International, working jointly on legal ID issues in the Asia-Pacific region, define legal ID as “the recognition of a person’s existence before the law, facilitating the realisation of specific rights and corresponding duties.” (UNDP, 2018). This definition is broad enough to encompass variations in the form or type of proof of ID otherwise known as ID documentation. Howeverm, it does not sufficiently identity the duty bearer, neither does it define the process that leads to such recognition. It further fails to articulate the human rights rationale since it merely refers to “specific” rights and obligations.

Other UN bodies under the auspicies of the Legal Identity Agenda (LIA) define legal identity as

> the legal recognition of the basic characteristics of an individual’s identity—e.g. name, sex, place and date of birth, family ties—by an authorized civil registration authority following a major life event (i.e. birth, marriage, divorce, adoption, death). If a person is not registered at birth or given a birth certificate, they may be able to acquire a legal identity by a government issued or legally recognized identification authority, such as the case for some refugees or non-nationals. (UN Legal Identity Agenda, 2019)

It is important to note that this definition is a guide to help operationalize the concept of legal identity under the mandate of LIA. It is not a definition under treaty law or other international code. A universal definition does not exist, hence the understanding of legal identity depends on each party’s priority or mandate.

Human rights, including the right to nationality, apply to children, despite their inability to adequately articulate their wishes or to make critical decisions about their identity during their juvenile existence. How then do we proffer children equal value in the enjoyment of fundamental human rights? The answer lies in the universally accepted principles that aim to mandate an ethical and systematic framework for children's rights (UNICEF, 2019). These are: best interests of the child, non-discrimination, survival and development, and child participation (CRC, 1989). These principles lay the foundation of the scope of this study in its investigation of the theory and application of legal identity to children.

Birth Registration and Nationality

Every country has varying process workflows for the issuance of legal ID. The universal procedural standard for the acknowledgement of existence of the human person is birth registration: "Birth registration is the continuous, permanent and universal recording within the civil registry of the occurrence and characteristics of birth, in accordance with the national legal requirements" (UN Statistics Division, 2001). Generally, notification is raised by a birth attendant, local authority, or specified health professional as soon as a child is born. This record is entered by an authorized civil registrar into the country's civil registration and vital statistics system as soon as possible after the birth of the child. On application, the registration is certified, and a birth certificate is issued, usually in form of an official, serialized, paper-based document matching the records entered into the registration database. In countries where nationality is automatically conferred to all who are born within its territorial borders, known as *jus soli* (Scott, 1930), birth registration and certification are enough to establish proof of nationality. These two steps—the registration of birth and certification—engender *foundational* identity.

In the case where the nationality of one or both parents is passed on to the child, known as *jus sanguinis* states (Scott, 1930), citizenship is conferred by issuance of a nationality ID. On application, the applicant is required to submit biometric information such as a facial image, fingerprints, or other biomarkers to a population register sometimes known in its integrated form as a national identity management system (NIMS to facilitate the production of a national ID document.

Each country has different requirements for age of eligibility, varying modalities and extraction formats of biometric data, and varied typologies of the ensuing legal record. In some countries, the ID takes the form of a unique number (e.g., US Social Security number); in Kenya it takes the form of a laminated photo-identity card; in India, a biometric ID is authenticated by scanning a biological modality; in other countries it takes the form of an electronic, machine-readable card with a magnetic film-strip where data is stored (e.g., UAE), or a microchip embedded into the card with data stored either in offline servers or in online cloud-based servers.

Countries with advanced digital capabilities may integrate NIMS with other governmental or intergovernmental or private institutions (e.g., Estonia and the UAE). This is called the ecosystem approach or interoperability (UNDP, 2018), or ubiquitous ID (Asian Development Bank, 2016). Institutions championing a development mandate such as the UNDP strongly recommend the last step as it eases process interconnectivity, allows one-stop verification, facilitates duplication of entries, and enables smooth workflows for planning and service provision. However, watchguard institutions championing data and digital rights discourage hyper-digitization and interoperability citing risk of data loss and breach of personal privacy that could emanate from free access by multiple authorized users (Beduschi, 2019) which would be counter to the human rights justification for legal identity.

The indicator for SDG target 16:9 prioritizes these workflows at the most basic level of foundational ID engendered through the CVRS. The indicator for target 9 requires states to track the registration of children under five years of age (SDGs, 2015). Without foundational ID, “it would not be possible to obtain legal ID” (Harbitz & Tamargo, 2009, p. 18).

Is foundational ID enough to secure the full rights and protections promised to all children in human rights laws? Does foundational ID operate the same for *jus soli* and *jus sanguinis* territories? Is ID necessary at all for children if they unequivocally enjoy universal protection in all territories based on human rights theory and law?

The UN Legal Identity Expert Group (LIEG) comprising 17 UN agencies, pushing the bar farther by purposing “to establish a unified UN position in reference to the lifecycle approach to legal ID by promoting [a] *holistic model* [emphasis added] of CVRS and identity management both at the normative level and on the ground” (UN LIEG, 2018). Several elements underpin the UN’s holistic approach to legal identity: it must be compulsory, universal, continuous, confidential, and permanent. These recommendations and others are examined more closely in this study, then juxtaposed against the principles of child rights in order to gauge compatibility.

Problems with Legal ID and the Consequences to Children

Identity studies are prominent in academic scholarship. However, legal identity discourse, particularly when approached from a child-rights lens, typically focuses on the right to name and nationality at birth, founded on international law, and espoused within the global development agenda. It is evident that pragmatic expediency to facilitate national development and to support governments’ commitments to provide services has taken precedence and foreshadowed the founding human rights norms of universal recognition of every person. States often take a pragmatic approach to their role in human rights, primarily from a duty to provide social services and security protections to their citizens. Consequently, it is possible that states can use the legal ID process to filter out, or act as watchdog, or retain the right of admission into citizenship based on its assessment of who within or outside its territory deserves social and security protections and who is undeserving, hence excluded. Countries regularly place exclusions on entry visa applications and border admissions of non-citizens. However, as evidenced by the astonishing numbers of millions of stateless individuals, states often alienate potential citizens by imposing disqualifications, or because of bureaucracy and inefficiency in their processes, or by outright rejection or stripping *bonafide* individuals of citizenship:

> Thus, where states are failing—individually or collectively—to ensure that everyone enjoys the bond of citizenship somewhere, the human rights regime's assertion of universality begins to crumble unless special provision is made for those persons who find themselves excluded by the system: the stateless. (Blitz & Lynch, 2009)

The impetus for legal ID for all is driven in part because many nations are striving to meet the global goal of ID4All by 2030. In like measure, swift and exponential advances in the data sciences, biotechnologies, digital security, and blockchain technologies, are driving public and private institutions nationally and internationally toward the identity agenda. Some of the motives for this impetus are genuinely human rights-based and seek to regulate, provide direction, or otherwise facilitate provision of efficient legal ID to all persons. Other motives are ostensibly for commercial or political agenda now or in the future due to the potential of big data to shape the world order. Consequently, a growing list of public and private institutions are deploying all manner of systems (e.g., population registration information management systems (IMS), national IMS, health IMS, education IMS, civil registration and vital statistics systems, population registries, tax and financial IMS, land and property IMS products), as well as technological, digital, or algorithmic innovations, all aiming to provide identity documents to individuals or governments. Many of these identity innovations are conceptualized in opaque boardrooms rather than in participatory policy spaces. They are highly sophisticated in design, adopting ever-morphing internet-based software, biotechnologies, and data-harvesting techniques. The owners of such systems are not always governments as might be expected under international law, yet the myriad number of interested parties remains influential enough to usurp or infiltrate government roles. Moreover, even when governments retain control over legal ID processes, issues of interoperability, integrated use, data-sharing for authentication, and smart ID raise concerns over privacy of personal information and the potential to derogate from the human rights agenda that underpins legal ID (Breckenridge, 2005).

This study hits at the crux of this issue aiming to return to the basic questions that every identity conferring agency must ask: what is the primary purpose of legal ID, to what extent do legal ID systems align with children's human rights, and what are the parameters that have been drawn based on human rights principles, to assure that systems remain true to the purpose?

Although identity as a theory has a bearing in many disciplines of the social sciences, its application is most evident in the legal and political arena. Every country has some form of law operationalising conferment of nationality. Most countries are states parties to at least one multiple international convention touching on identity (most notably the CRC, 1989) which enjoys near universal ratification. Moreover, universal principles of human rights, including the right to bear a name and nationality, apply to all member states of the UN. However, many problems dodge the issue of ratification and implementation of legal recognition of the human person.

Despite the global impetus for ID4All, statistics show that millions of people still do not have legal ID, the majority being children. According to UNICEF, of roughly 508 million children under the age of five who are registered worldwide, about 70 million lack proof of registration in the form of a birth certificate (UNICEF, 2019). The same report indicates that the birth of one in four children is not registered, a majority of whom reside in Africa and Asia. Millions more have no nationality at all. By some estimates, 3.5 million children are stateless (OHCHR, 2021)—a figure that is likely to be a gross underestimation according to the UNHCR (2021). The statelessness problem is compounded by increasing numbers of undocumented persons who have denounced or otherwise been denied their previous or rightful nationality for political, security, economic or other reasons, rendering them effectively stateless. Their undocumented status leaves their children susceptible to falling stateless, exacerbating the cycle of statelessness (UNSG, 2011).

While increased global impetus to guarantee an identity to all persons is laudable, its interpretation in theory and implication in practice raise significant questions about compatibility and concord with principles of children's human rights. The SDG priority to improve and strengthen CRVS assures the first step toward accessing proof of legal identity for all by 2030. Multiple agencies within the UN are taking the goal of ID4All literally to mean access to a record that comprehensively, universally, and permanently represents each individual. The group anticipates that the data collected in the process will guide governments in planning and providing services across sectors in an interoperable manner.

However, these efforts are not sufficiently robust to reach many disenfranchised populations around the world, and this problem is only growing worse. Conflict over resources and territory, and displacement of populations due to adverse climate and natural disasters that are on the rise due to global warming (Dilley, 2005), which could result in loss or destruction of entire physical territories such as low-lying islands, thereby displacing entire communities. Climate disasters and wars over resources could cause the destruction of government infrastructures that include birth registration and identity records, thus disenfranchising large groups of people.

Irregular migration of people from poor countries that lack population registry infrastructure to new lands in search of livelihoods also means that such disenfranchised populations find themselves undocumented in a foreign territory (Uehling, 2004). Economic migrants are unable to access refugee protections, including access to emergency legal identity (Majit, 2018; UNHCR data factsheet, 2018) since they are outside the range of humanitarian laws that cater only to forceful displacement due to the threat of actual harm (Spiegel, 2017). Internal statelessness and non-documentation are other growing concerns. Cases abound of states placing discriminatory restrictions on identity registration procedures targeting historically or politically discriminated ethnic populations, resulting in *de facto* statelessness (Batchelor, 1995).

Finally, the aggressive push for legal ID for development effectiveness and national security, coupled with exponential advances in technologies such as biometric and digital IDs, has been met with skepticism, fear, and pushback due to feature creep, privacy intrusion and hyper-surveillance, data vulnerabilities, loss of autonomy, and coerced consent. These aspects will be discussed in the following chapter.

Such overwhelming statistics and issues point to the following problems:

1. A seeming dysfunction between the theory and practicalities of identity as a human right. In theory, non-discrimination is the founding principle in the recognition of all persons, particularly children (CRC,1989). However, in

practice, statistics show that accessing identity documents is riddled with bureaucratic obstacles, poor infrastructure, digital illiteracy, policy blindness, lack of public information, and in many cases discriminatory institutional practices.

2. The failure or lack of policy preparedness, poor application of change theory, weak or dysfunctional institutions, and poor technological infrastructure to support emerging complexities in identity technologies.
3. They suggest that national identity systems are neither robust enough to withstand political interference and security breaches, nor able to outlast mass and unexpected global migration.
4. A lack of political will to fulfill the promises of ID4All, hence ignoring *de jure* stateless persons (Bhabha, 2014). Also state-sanctioned discrimination leading to *de facto* statelessness in every region of the world. The cycle continues with every new generation born to stateless parents.
5. Feature creep and external interference in the implementation of ID4All, as evidenced by the ever-broadening scope of technology and utility beyond their original design (Zwitter, Gstrein, & Yap, 2020). This could also point to poor or no public involvement.
6. Outright derogation of children's rights (Bhabha, 2014) evidenced not only by the high numbers of stateless, undocumented, and unregistered children, but also by alarming statistics on child trafficking, missing children, and unaccompanied undocumented child migrants.

The incongruity between the human right to unequivocal dignity or universal recognition and the practice of relying on states to confer name and nationality becomes evident in the persistent statistics of statelessness. Additionally, statistics of undocumented or unregistered children and adults also point to inefficiencies and deficiencies in CRVS systems in many parts of the world. In effect, every person's inherent right to "be seen" or to be accorded recognition of their existence everywhere depends on their respective state taking cognizance of their existence and granting them an acknowledgement of this cognizance in a timely manner. This essentially means that the state holds and guards the key to unlock this right, which in law should be automatic yet in reality is burdened in bureaucracy. As a result, the world finds itself with a large demographic that has not yet managed to unlock its own rights, and find themselves living undignified lives. The question therefore begs: how can states be held accountable? To what extent are identity rights enforceable?

The effectiveness of state systems is also called into question. The multiplicity and duplicity of functional ID documents, and the typologies of technologies adopted (analogue, electronic, biometric, digital, etc.), creates numerous disjointed, duplicated, or insecure processes especially where such processes are not backed by rights-based laws and procedures such as data encryption, privacy, and user authentication. The owners of the modalities that make up biometric data on the human person run the risk of losing their biographical or biometric property rights, essentially losing autonomy of their legal persona, while suffering secondary material and special injuries due to data breaches and misuses by nefarious third-party agents, hackers, or unethical governments. These may include identity theft, financial loss, criminal impersonation, and so forth.

Invisibility due to inaccessibility, inefficiencies, and deficiencies in birth registration leads to significant problems for children. With reference to the four core principles of child rights, the next section highlights the problem of birth registration and ID processes in the achievement of children's rights, and how they are potentially deficient, ineffective, manipulated, or counterintuitive. The questions raised are: Is birth registration sufficient to meet the human rights objectives of international law? What are the risks and potential of functional legal ID for children?

Discrimination

Many documented class-action cases and studies show an unfortunate reality of injustice and discrimination by governments against descendants of ethnic or religious minorities who were subjected to systemic discrimination resulting in *de jure* statelessness of entire families (UNHCR, 2010). Under the 1954 Convention Relating to the Status of Stateless Persons, "a stateless person means a person who is not considered as a national by any State under the operation of its law." This status of statelessness is passed on to succeeding generations.

Attempting to establish the true numbers of stateless persons is nearly impossible. Indeed, none of the international human rights agencies have succeeded with such an endeavor. Estimates range between 4.5 million (UNHCR, 2019) and 15 million (ISI, 2020), but UNHCR suggests that these estimates are an understatement and ever-increasing. World Vision estimates about 1.3 million Rohingya refugees and displaced persons form the Rakhine State of Myanmar (Reid, 2021). The Uyghur refugee crisis in China has more than 100 documented refoulements of members of the Uyghur ethnic minority group seeking refugee status due to persecution. According to Human Rights Watch, more than one million Uyghurs are living in arbitrary detention camps built by the Chinese government, facing torture, political indoctrination, and persecution. Another example is the Nubian ethnic minority group in Kenya, where more than 100,000 Nubians have been denied citizenship by the Kenyan government.

States harboring stateless persons, particularly those who are stateless *de jure,* have no incentive to report on numbers as it would spotlight their discriminatory dispositions (ISI, 2020). With no incentives or commitment to report, data on statelessness remains obscure. Hence policy makers and advocates are unable to cater to the needs of these hidden populations. Resultantly, the study of statelessness becomes one of blindfolded advocacy in aid of the invisible. Advocates have raised this invisibility problem for a long time, yet still no real data has been generated. The problem of statelessness is therefore managed in a disjointed fashion in the periphery of broader humanitarian concerns of survival and sustenance.

Jacqueline Bhabha, human rights scholar and advocate, cites the problem differently. She postulates that the problem is not one of obscure data, but rather an "unresolved ambivalence," evident in how states "treat migrant children as 'vulnerable' and 'other', so that the "neglect of child migrants' rights is therefore a strategic compromise" (Bhabha, 2014, p. 11). Compounding this attitude, Bhabha posits, is the unenforceability dilemma of international law, coupled with different states' varying and extensive reservations to select provisions in the CRC. Stateless persons and undocumented migrant children therefore suffer significantly yet silently without access to effective complaint mechanisms to their disposal.

A new international relations impetus is growing to implement preventive measures that avoid the emergence of further stateless populations. Some of thee efforts include António Guterres' personal appeal on reducing and preventing statelessness (UNHCR, 2014); Brazil's "Plan of Action for Eradicating Statelessness" (UNHCR, 2018b); and Staples (2014). However, with every new conflict and failure to hold offending states accountable, the numbers of stateless persons, including children, rise.

Derogation from the Principle of Best Interests of the Child

The spotlight shines on parents and the state to uphold the best interests of a child and to secure legal recognition of children in their earliest days. The staggering statistics of children living without any form of identification are an indication of the dereliction of this duty, or the insurmountable difficulties faced by parents in fulfilling this crucial role. Parents' failure to register their children could be due to ignorance or apprehension about the safety or necessity of the process. For the state, it could be due to poorly designed systems, system failures, compromised systems, data collection inadequacies, system insecurity, fraudulent infiltration, or feature creep. Whatever the reasons, delay or failure to register and secure child legal ID is not in the child's best interests. Questions arise: What are the root causes for non-registration or under-documentation of children? Is it sufficient to prove nationality using foundational ID as per international law? What are the implications of lack of identity for children? Most importantly, how have these challenges been surmounted in the best interests of the child?

Data security and the right to privacy raise the bar for the "best interests" principle. Policy makers and researchers, keen on safeguarding children's rights, must avoid the hasty adoption of seemingly good policy actions without their gauging long-term impacts. The collection of biological biometric data has the potential to reunite lost or unidentified children to their families. However, in the long run, long-term storage of biographic biodata on children can have a life-long impact on the individual. Any manipulation, access, usage, storage, retrieval, and removal of such data must be within strict ethical standards in the best interests of the child.

Furthermore, policies touching on child legal ID must adhere to the highest standard of care to ensure that informed impacts are in children's best interests. This is not always the case. While it is possible to change a name (Pilcher, 2017) or take on an alternative nationality later in life (Bauböck, 1994), biometric data does not change. Data that had been previously collected vis-à-vis an application for initial nationality, and identity data used in legal investigations touching on children, remains in the hands of institutions that potentially no longer serve the interests of the individual.

The issue of enforceability of the dual duties of parents and states is another problem. States often impose fines and penal actions against parents who fail to register birth of a child. However, this often drives the problem of non-registration underground, as parents who failed to register in the first instance, possibly due to illness, poverty, apathy, fear, or ignorance, are unwilling to do so under the threat of penalty. This does not serve the interests of the child. Furthermore, such criminalization is a delegation of responsibility and arguably incoherent with international law which delineates the duty to confer nationality to the state.

On the other hand, and as discussed in the non-discrimination clause, the wide-ranging reservations made by states parties and the lack of effective enforcement mechanisms against states makes it near impossible to hold states to account (Bhabha, 2014). This is not in the best interests of children. For example, the United Arab Emirates retains a reservation on the CRC provision for adoption (CRC, 1989, A21), citing religious norms or *Sharia.* It is also not a party to the Hague Adoption Convention (1995) or the Hague Abduction Convention (1980). While guardianship and fostering are adequately catered to in *Sharia*, the inability to absorb a child as a full-fledged legal or adoptive child within a family leaves an indelible stain on the identity and psyche of such a child who could potentially have been adopted as a full member of a family in a different jurisdiction. Conversely, the same scenario favors the interests of the child as it secures original identity, leaving room for full re-integration into their blood lineage should their families be traced. Hence weighing the best interests principle is a delicate ethical question that requires judicious consideration.

Non-Participation

This is perhaps the least-studied aspect of legal ID for children. Their voices are barely acknowledged in the process of promulgating legal ID, not only because the process is conducted while they are too young to have any agency in the process, but also because decisions about their name, determination of their nationality, the taking of biological information, and confirmation of their familial lineage are pre-determined social functions articulated within legal and cultural norms. Government officials, such as registrars, birth attendants, and parents, ought to exercise care for all the information recorded regarding children. This principle aptly connects with the "best interests" principle insofar as parental and state responsibility for decisions about the child's identity are concerned. Studies that focus on teenage or youth migrants offer the best insights into the participation principle (Bhabha & Abel, 2020) calling for a genuine inclusion of their opinions and aspirations even on questions of citizenship and identity.

How else can child participation manifest in ID? Has it been conceived and attended to in international policy and identity law? Pelowski, et al. (2016) attempt to answer this question after conducting a survey of 12–16-year-old students in an under-registered area in Kenya. The authors suggest that "treating children [students] as stakeholders and important sources of information could lead to intriguing new avenues for future research" (p. 1). Bhabha (2014) discusses the principle of child participation with reference to humanitarian actions, pointing out that children's autonomy is rarely considered in decisions about their protection and welfare. She emphasizes that decisions must be done in partnership with the young migrants themselves.

Curtailed Survival and Development

The most touted rationale for legal ID that commences at birth registration is that it will help governments plan and help children access critical government services like education, health, and so on. But universal and mandatory registration has the potential to stir up disputes between duty bearers. Parents might harbor a fear of authorities if they themselves have never been registered, or they might be daunted by bureaucratic processes. Day laborers who earn hourly wages might not afford to spare time off and might not afford transportation and fees associated with the application process. Others might be simply unaware of, aloof about or illiterate to the importance of the legal ID processes.

The current push for improvement of CRVS processes is a good indicator that governments intend to make every effort to take responsibility for the registration of children. This task is arduous for highly populated states, lesser developed states that do not have sufficient resources or technical infrastructure, states with poor governance and high corruption indices, and states with populations on the move such as nomadic tribes or tribal communities living in remote margins.

Imke Harbers (2019) raises an important aspect of gender disparities in early registration as depicted in an analysis of 80 million birth records in Mexico from 1985 to 2014. She concluded that "parents may delay registration until a situation arises in which documents have concrete use, and this situation might arise sooner for boys than for girls if opportunities outside the household are gendered" (p. 9).

The easy way out for governments has been to criminalize failure to register, or to link registration to other crucial processes or services, or to make registration a mandatory prerequisite for the access to services, effectively locking out unregistered individuals from participation in society. As discussed earlier, criminalization of parental responsibility in identity processes passes on the state's obligations to parents through coerced consent rather than through public education and outreach. Consequently, parents of unregistered children are likely to avoid any contact with public institutions, and keep away their unregistered children from the mainstream, resulting in a reversal in national and global goals in education, health and other development outcomes. This is not only discriminatory to children who are unregistered, but also a clear way to deny them means of survival and rob them of opportunities for development.

The importance of legal ID cannot be over-emphasized. The debates that underlie the formalities and formats of what constitutes sufficient and secure legal ID are on the rise. But the jurisprudence that underpins legal ID, i.e., the right of name and nationality through birth registration, remains a priority. Furthermore, the centrality of human rights in legal ID must be maintained to avoid unintended harm. In the absence of birth registration it is impossible to tell a child's age promptly and with accuracy. The lack of any form of identity heightens the number of vulnerabilities facing children.

Child Labor

Colonial histories show that birth registration originated in colonial Africa as a means of maintaining a supply of laborers. According to Walters:

> Colonial officials wanted to measure births and deaths because they associated fertility and child survival with the economic vitality of the colony. Beginning in 1914, the German administration in Tanganyika sought to increase the birth rate and to monitor infant mortality, with the explicit aim of maintaining or increasing the labor supply. (2016, p. 2)

International law today is unequivocal about the right to protect children from exploitative, hazardous, and forced labor. All the historical contentions about what constitutes childhood and the attendant ambiguities of age determination for purposes of productive work (Clerk, 2011; Lord, 2011; Nordtveit, 2010; Twum-Danso, 2008), and social competency as a determinant of adulthood (Kuyini & Mahama, 2009; Montgomery, 2009) were all resolved by UNCRC, Article 1, which set the defined age of a child at 18 years or below. Furthermore, the International Labor Organization (ILO) has set standards for the employment of children in productive work and apprenticeship, aiming for child development and exposure to opportunities. Strict prohibitions against engaging children in harmful work are contained in the ILO Convention to Protect Children from the Worst Forms of Child Labour, Including Slavery, Prostitution and Trafficking, formerly known as Convention C182 (ILO, 1999). Recommendations for determining the age for apprenticeship and paid work are contained in the Minimum Age Convention No. 138 (1973) which

> sets the general minimum age for admission to employment or work at 15 years, 13 for light work, and the minimum age for hazardous work at 18 or 16 under certain strict conditions. It provides for the possibility of initially setting the general minimum age at 14, 12 for light work, where the economy and educational facilities are insufficiently developed. (ILO, 2021)

This points to the importance of child legal ID and nationality laws that help determine children's ages accurately through their date of birth.

The ILO child labor report of 2017 estimates that over 150 million children are engaged in child labor, half of which is hazardous work. The largest age groups are those 5 to 11 years and 15 to 17 years old. More boys are forced into child labor than girls, although household chores mostly performed by girls are not counted in the data. One-third of child laborers do not attend school, while those who do go to school perform far worse than their non-working peers (ILO, 2017).

In countries where child labor is rife, such as in Sub-Saharan Africa and Asia, birth registration processes are a prerequisite for entering educational institutions. However, many child laborers do not attend school at all, hence a high number of out-of-school child laborers is a good signal that such children lack identity documents. This in turn, makes it difficult to prove their ages; if known, it would help to extract the child laborers from exploitation or to enforce childhood rights. The result is a frustrating boomerang effect. Tying birth registration to education or health or other social services simply drives the problem underground as it disincentivizes birth registration and incentivizes child labor.

Early Marriage

UNICEF defines child marriage as a formal or informal union in which at least one party is under 18 years of age. It estimates upwards of 650 million women are likely to have been married as children. Children married under 15 account for about one-third of this number. Twelve million girls are married each year, representing one in six adolescent girls aged 15 to 19 (Freccero & Whiting, 2018).

Despite the 18-year age of majority set by the UNCRC, many countries set legal exceptions to allow marriage below the age of 18 based on customary law or judicial pronouncements. Foundational ID could help stem arbitrary guesses of age based on customary coming-of-age rituals. The age of 18 is paramount for allowing maximum physical and psychological development or maturity. It also assures that the child has gone through most if not all of their primary and secondary education and can enter into gainful work to support his/her family. Finally, it aligns with the age of consent, allowing the person to freely enter a contractual or marital union. Legal ID serves an important function to retain children in school and to avert early marriages. Furthermore, gender discrimination is evident in age determination in marriage. Girls are more likely to be married off earlier than boys (Allendorf, et al., 2017). Jurisdictions that allow a lower minimum age for marriage rob young girls of opportunities to develop while exposing them to health, sexuality, and psychological dangers associated with child birth, sexual intimacy, and household responsibilities.

Premature Military Enlistment

The minimum age for enlistment into armed forces is 18 years under the UN treaty on the involvement of children in armed conflict. About 16 states still have laws that allow enlistment of children from as low as 16 years (World Vision, 2019). Many more armed groups recruit children forcefully, voluntarily, or by compulsory enlistment. This is widely acknowledged as a pure derogation of children's rights as it inflicts severe and life-long psychological and physical toll due to the gruelling training, exposure to violence, and deployment responsibilities while exposing children to risk of death, maiming, and violence. As the UN puts it: "2018 was the worst year on record for children caught up in armed conflict . . . the highest numbers killed or maimed since the [UN] began monitoring the violation" (UN News, 2019). Violations have occurred in Somalia, Syria, Nigeria, and Mali. The CRVS systems in these countries (except Syria, which is unreported) are mostly done manually, and collated intermittently into a central registry. A paper certificate is issued on application (UNICEF Data, 2021).

The Paris Commitment and the Paris Principles provide comprehensive guidelines for release, rehabilitation, and reintegration of children. It provides that "wherever possible, alternatives to judicial proceedings must be sought, in line with the [CRC] and other international standards for juvenile justice" (UNICEF, 2007). It also recommends child participation in healing and reconciliation with due care to avoid further trauma, and full prosecution and treatment under transitional and justice mechanisms against groups or individuals involved in recruitment of children.

Wide-ranging preventive measures in the Paris Principles include strengthening of birth registration systems within each jurisdiction "including for refugees, internally displaced and returnee children, and [providing] identity documents to all children" (UN, 2007, Clause 6.7.2). It further provides for community awareness about non-conscription below 18 years by requiring a proof of age mechanism before recruitment:

> Where documentary evidence of the recruit's age is not available other means of verification - such as cross checking with other persons and medical screening - may be required; responsibility for establishing the age of the recruit lies with the recruiting party; 6.6.1 Legal and disciplinary measures to sanction those who contravene proof of age requirements. (Clause 6.6.0)

These statistics point to the inadequacy of state and community mechanisms for children's survival and development, chiefly the aspect of birth registration and documentation which would help to ensure that children's ages can be determined accurately and easily. For example, the mandatory conscription of young male Emiratis is strictly 18 years for a maximum period of 16 months (Reuters, 2018).

Juvenile Justice

One of the most necessary justifications for legal ID for children is the protection of child offenders. Birth certificates are used to determine if a child has attained the age of criminal responsibility (14 years under the UNCRC), to allow for a trial against a child suspect. According to the CRC Committee's 2019 report, "a child who does not have a birth certificate should be provided with one promptly and free of charge by the State, whenever it is required to prove age." This points to the likelihood of missing birth records which hinders and delays juvenile justice mechanisms. The report states further:

> If there is no proof of age by birth certificate, the authority should accept all documentation that can prove age, such as notification of birth, extracts from birth registries, baptismal or equivalent documents or school reports. Documents should be considered genuine unless there is proof to the contrary. Authorities should allow for interviews with or testimony by parents regarding age, or for permitting affirmations to be filed by teachers or religious or community leaders who know the age of the child. (UNCRC Committee, 2019).

All offenders and suspects between ages 14 and 18 years must be tried in juvenile courts and rehabilitated as juveniles. Lack of identity is one key reason why some states still derogate from this provision. Other reasons are an absence of community and political will to adopt a mindset that child offenders require rehabilitative support rather than punishment. Children subjected to trial in the mainstream criminal justice system are more likely to commit suicide, suffer psychological and physical harm, and re-offend (Loeber & Farrington, 2000).

Children in Contact with the Law

When children are rescued from harmful situations, their primary point of contact is the police and other state authorities. Such children could be rescued victims of trafficking, abduction, child theft, lost children, unaccompanied child migrants, or returning run-aways. Ordinarily, such children would be presented without any accompanying documentation by well-wishers or on their own accord. The duty to trace family falls on the authorities as required in law. This includes police investigators, child protection officers, judicial officers, community leaders, the media, and other childcare institutions.

A first important step is to establish the name, nationality, and age of the child. If he or she is too young to articulate their identity, the process becomes extremely difficult and expensive process as it entails mobilizing extensive resources and networks. Statistics of children in institutional care are staggering (Desmond, et al., 2020). Millions more are in situations of guardianship and adoptive families, after searches for their families are judged to be permanently unsuccessful. Policies, institutional mechanisms, and a willingness to thoroughly trace children back to their families are extremely limited, disjointed, or bureaucratic. This is a grossly under-researched issue globally. It is therefore nearly impossible to tell how many children who would otherwise be with their biological families are languishing in institutions or have been adopted into new families. A snapshot of estimated statistics that support this problem include: one-quarter of an estimated 21 million victims of trafficking for forced labor are children (ILO, 2015); an estimated 8 million children go missing each year (ICMEC, 2019); children in care homes in the UK have shot up 28% in the last decade (https://www.local.gov.uk/number-children-care-reaches-10-year-high).

Comprehensive studies are needed to gauge what percentage of judicial care orders relates to children whose familial links are unknown in order to obtain a better picture of the need for policy interventions relating to child legal ID. This situation is one of the largest justifications for biometric child legal ID, since it would offer the only unequivocal link to a registry entry.

Online Exploitation

Time spent online by children is ever increasing, fuelled by accessibility to smart phones and other devices, expanding internet reach, an exponential increase in online entertainment content, and the advent of e-learning, all of which require user identity data for functional and commercial reasons. Digital ID or some form of registration is required to access most websites and applications. Child-friendly websites have age declaration protocols built in to filter access by users as appropriate. However, the process of age authentication is often a yes-no question, with the result that the digital footprints of children are growing. Without adult supervision, children can and often do surrender identity information or otherwise use adult log-in information to gain unfettered access to the internet, thereby becoming exposed to adult content, pornography, online violence, and the risk of being abused, recruited, or exploited by online child abusers.

Service providers such as Samsung, Apple, and others spend millions to market safe digital ID credentials to parents for their children, justifying it as a growing threat to children. However, most of these are private entities that operate with little or no regulation, and most only reach a limited market share of users. Digital ID is an under-researched discipline of data and computer sciences that requires interdisciplinary solutions that offer holistic protections including confidential reporting of security breaches, psychological support, victim rehabilitation, prosecution of digital offenders, and most importantly policies that are foresighted rather than reactionary. More studies need to be conducted to gauge how legal ID (age determination) and digital ID connect.

Chapter II

The Foundations of Legal ID

While the jurisprudence of legal ID is rights-based, absolute, and positive, the practical measures of procuring proof of identity are shrouded in complexities. Consider this reality: assuming a dataset of nearly eight billion human beings living on Earth today, the data needs to be organized and objects in the dataset need to be identifiable. Objects in the dataset might be listed chronologically or may be assigned a unique code to make them identifiable. Legal ID acts as verifiable proof of existence of each human being. It facilitates delivery of the promise of rights, a recognizable "flag" that can be waved by an individual to attract the attention of society, an acknowledgement by the government of its duties—the first of which is to afford protections to its citizen. In this chapter, I provide a broad overview of identity, its theoretic and pragmatic assumptions, the consequences for child legal identity, and the scope of this study.

Identity is a Braided Cord

Identity is a complex notion. At its heart is a process undertaken by a human person to distinguish their individuality based on their characteristics, personality, desires, motivations, relationships, experiences, and choices. This internal and private process of self-determination is to be contrasted with, and complemented by, the external or social process of identity conferment. On one hand, it is the person's autonomy to decide on the question "who am I?" by thinking introspectively on one's characteristics and making choices about groups they to which they want or feel they belong. On the other hand is the societal or group prerogative to invite, accept, or admit the same individual into the group based on its decision to approve or ratify the person's self-determined identity or otherwise add or impose aspects of group characteristics upon the person (Fearon, 1999). The latter process, in its formalized sense, is what appeals to this study.

Formalization takes the shape of a policy-informed process governed by authorities who have a legal mandate to confer or bestow a "title" to each person in the form of a unique code, document, or other record, herein referred to as legal identity. This duality—the personal and the social determination of identity—is important because it manifests in all sub-disciplines of identity studies: social, legal, cultural, political, religious, gender identity, and so on. In this premise, since legal identity processes commence in infancy when personal autonomy or agency is impossible, identity determination is an external process carried out by parents and state on behalf of children.

Elasticity of Child Identity

Legal identity is also an elastic concept, expanding and contracting along the dual strands mentioned above. As an individual grows, new perspectives and new choices evolve. This is particularly important when analyzing a child's identity. As seen in Chapter I, at the onset of the process, information about the child that is fed into the government birth registry is primarily provided by a parent or legal guardian, corroborated by the basic information recorded by the birth attendant or an authorized representative within the community where the birth took place.

Since the age of majority under international law is 18 years, a child's ability to exercise personal and legal agency diminishes the younger the child's age. A child's direct contribution to identity processes is limited to being present for the taking of his/her biometrics, such as foot or handprint, or facial imagery. Even that is not an autonomous process, since their presence is facilitated by their parent.

As a child grows, her or his body and features change, hence identity technologies are evolving to facilitate more sophisticated harvesting of biological markers such as iris scans, ten-digit finger printing, vein patterns, or DNA sequencing to obtain a stable frame of reference for extracting irrefutable data (Adeoye, 2010). Likewise, as a child attains greater awareness and autonomy, their opinion about the decisions taken by their guardians could also change. For example, a name may be controverted, and a new name adopted by the child later in life. The biological sex assigned at birth may come into conflict with the child's gender and sexual identity (Gulgoz, et al., 2019) and the identity holder may want to change it.

Parental and State Responsibility Under International Law

A tripartite relationship underpins legal I: the child, his or her parent or legal guardian and the ID-issuing authority. When making decisions about aspects of their identity, parental and administrative responsibility must be exercised in the best interests of the child. The responsibilities of the state and parents or legal guardians are enumerated in several articles of the UN Convention on the Rights of the Child. For instance, "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, the right to know and be cared for by his or her parents" (UNCRC, 1989, A.7(i)).

Different jurisdictions have differing processes for child identity documentation. In the UAE, the parent or guardian is required by law to apply for and obtain an Emirates ID for their infant within 30 days from the date of birth.

Furthermore, at Article 8:

> States 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. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection with a view to speedily re-establishing his or her identity.

States parties are duty bound to stand in to safeguard the child’s right to familial connection. Article 9 stresses non-separation from parents unless it is judged by competent authorities that it is contrary to the child’s best interests. Furthermore, Articles 10 and 11 highlight the importance of preserving the child’s familial identity of both parents in the event of parental separation, and prohibits the illicit transfer and non-return of children abroad. These articles give nations impetus to strengthen identity protocols, issue secure verifiable travel ID for children such as passports, require travel authorizations, and regulate children’s travel. Article 18 gives parents the primary responsibility to provide upbringing and development.

These multiple provisions attest to the legal issues that could potentially derive from child legal ID and the interlinkages between responsibilities of states and parents. The provisions underpin the importance of identity preservation to maintain familial heritage under the presumption that family is the best source of care for a child. The laws also try to mitigate the fluidity of familial relationships including parents’ separation, child adoption, and cross-border movement of children. They also preempt safeguards necessary in situations where family is a source of child abuse, calling for adjudication of separation of the child in its best interests (UNCRC, 1989).

Conversely, enforcement mechanisms for state actions are few or non-existent. The duty of states to confer nationality is primarily understood from an international human rights perspective as discussed before, often ratified into the supreme laws of each country. Few if any provisions exist to enforce administrative actions in the event of administrative failures such as delays in registration, errors in biodata and key information, or the denial of registration. Little wonder then that according to global humanitarian institutions, 1.5 billion people lack any form of ID while millions of people around the world are stateless.

Definition, Characteristics, and Features of Legal ID

There is no universal definition of legal identity. The UN Legal Identity Agenda adopts an operational definition as follows:

> Legal identity is the legal recognition of the basic characteristics of an individual's identity—e.g. name, sex, place and date of birth, family ties—by an authorized civil registration authority following a major life event (i.e. birth, marriage, divorce, adoption, death). If a person is not registered at birth or given a birth certificate, they may be able to acquire a legal identity by a government issued or legally recognized identification authority, such as the case for some refugees or non-nationals. (UNLIA Toolkit, 2019)

This definition will be discussed in greater detail in the next chapter, and the study will suggest a more comprehensive and human rights based definition.

The focus of this study is the legal identity of the natural person, not to be confused or conflated with legal personality, which in legal jurisprudence includes legal entities such as bodies corporate with juridical rights to enter into contracts, institute legal proceedings or be sued (Smith, 1928). Moreover, legal ID in this study encompasses national ID issued to citizens of a country as well as other sanctioned legal ID under international law. For instance, as part of its humanitarian mandate, the UNHCR issues legal ID to refugees and asylum seekers. While the organization does not confer nationality, it aids in legal identification of persons seeking asylum and refuge in foreign countries due to cross-border displacement, noting:

> Every refugee and asylum seeker has a unique identity that should be legally recognized and should grant access to fundamental rights, facilitate protection as well as the delivery of assistance and durable solutions. In that regard, registration is a key process to record and preserve a refugee's identity. (UNHCR, 2019)

Generally, the common features of ID databases and ensuing ID documents include: name, date of birth, place of birth, nationality, residency permit code, unique biological markers (including physiological biometrics, behavioural biometrics, and birth marks), parental name and signature, parental unique ID, date of issue, validity date, issuing authority, and ID title.[1]

Legal identity has justification in a wide range of legal norms. All legal disciplines can trace within them an aspect of legal identity as long as the question of law relates to a human or natural person. Consider all areas of law, and it is possible to trace an aspect of legal identity within each of them. For instance, criminal law depends heavily on irrefutable identity of victim and perpetrator. One requires legal identity to claim civil protections, government services and human rights. Family and succession laws are tied to one's legal identity to confirm lineage. Legal identity is also necessary for individuals to access health services and for governments to enforce public health laws, public law, private law such as tort law, intellectual property rights, labor laws, and many more. Immigration law would not be possible without documentation to prove legal identity of persons on the move. There are a variety of forms of ID, and I discuss each one in the sections below.

[1] The function of the ID will be discernible in the title of the document itself. However, the database within which the information is stored could support a singular, a multiplicity of functions, or integrated functionality to serve multiple uses of the singular document.

Foundational ID

This ID is comprised of a birth notification from the healthcare institution or birth attendant where the child was born, or from the local authorities where the birth occurred at home. It also includes a birth certificate issued after application to competent legal authorities. The biodata keyed into the civil registry and vital statistics system is permanently stored and forms the start of the life cycle of the individual until a death certificate is issued in respect to the same person.

Functional Government-Issued ID

Many legal IDs are designed for specific functions, and are as varied as there are legal jurisdictions and legally authorised ID-issuing authorities. Foremost is citizenship or national ID, currently issued in 171 states around the world in a variety of formats (World Privacy Forum, 2017). Twenty-eight countries and territories do not issue national ID to citizens, instead relying on foundational ID or other functional IDs that relate to specific services such as health (e.g., the United Kingdom) or social security (e.g., United States of America).

Residency ID and refugee ID are also critical functional IDs for persons, including children, who live in a country other than their country of nationality as migrants or refugees. Other types of functional IDs, some of which serve as the primary legal ID for citizens are travel ID such as passports and other travel authorizations, healthcare IDs, service or military ID, educational records, work permits, driving licenses, tax compliance ID, marriage certification, and elector's or voting ID. All these qualify as legitimate forms of legal ID depending on the jurisdiction under investigation, provided they are used for their intended function.

Legal IDs may be stratified resulting in multiple documents relating to one individual, while others intersect. For instance, a work permit may be connected to travel ID and a voting card might link to a citizenship ID. In jurisdictions such as the UAE, the legal ID for both citizens and residents, entitled Emirates ID, is electronic and interoperable. This means that it is a single, multi-purpose document that integrates multiple functions of government. This type of ID is often electronic with centralized secure verification protocols. I will discuss this type of ID in greater detail in succeeding chapters.

Foundational ID heralds all other forms of functional IDs, many of which are obtained upon satisfaction of certain additional qualifications such as age as in voter ID or certain technical abilities as in driver's ID. In countries that confer nationality *jus soli*, foundational ID is sufficient to access citizenship benefits. In other countries, birth certification is coupled with functional IDs such as passports, health-care IDs or educational records, some in electronic form as in Emirates ID, others in analog form.

Electronic ID (eID)

This is a form of identity documentation in which identity information is put into and preserved in an electronic format such as a microchip embedded in a plastic card, a machine-readable zone (MRZ), or a chip and signature card (Naumann & Hogben, 2008). Technological advances are continually transforming eIDs to improve data protection and privacy and reduce vulnerabilities and fraud, which is the single largest source of public criticism against eIDs.

Protection of eIDs takes many different forms as explained by Naumann and Hogben (2008). Modern e-ID cards or personal devices bear minimal information about the person's identity on the face of the card, but once scanned or read by a compatible reading device operated by a service provider, more information is made accessible. E-IDs have varying layers of protection against unauthorised or fraudulent access to data

E-IDs have grown in popularity around the world with 133 countries (World Privacy Forum, 2017) and the UNHCR now using it fully or partially within their population registry identity management systems (PRIMES) for the registration of refugees and asylum seekers (UNHCR, 2019). It offers the ID holder some reassurance that their details are not easily accessible from the face of the physical document and that access to electronically stored data has built-in protections to avert unauthorised use. In the event of a loss or theft of their physical ID card, personal information remains protected and inaccessible to other people. In Estonia[2] and India,[3] the electronic ID is linked to the holder's biometrics and is used to access e-services from both government and authorized private institutions, primarily in the financial and property sectors. Biometric IDs will be discussed in the next segment.

However, there is some skepticism about new eID technologies for legal ID, for example in Kenya[4] (Kenya Law, 2020; BBC, 2020), India (Dipra, et al., 2018),[5] and the UK[6] (Identity Documents Act, 2010). As Juma posited in his book *Innovation and Its Enemies* (2016): "Exponential advances in technology signal both

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[2] See https://www.id.ee/

[3] See https://uidai.gov.in/what-is-aadhaar.html

[4] Human rights agencies including the Nubian Rights Forum representing the ethnically disenfranchised community in Kenya of Nubian descent sued the government of Kenya to stop the implementation of an intrusive biometric eID project dubbed Huduma Namba claiming that it would formalize their exclusion from citizenship and open doors to intrusion into citizens' right to privacy. They contended that data security had not been properly considered in the design of the project. The judges held that collection of GPS and DNA data on applicants derogated the Constitutional rights to privacy, holding that "appropriate and comprehensive regulatory framework on the implementation of NIIMS that is compliant with the applicable constitutional requirements identified in this judgment is first enacted." The full content of the judgment can be read at .http://kenyalaw.org/caselaw/cases/view/189189/

hope and fear, leading to public controversy." He hypothesizes that the root cause of fear is socioeconomic disparities in which the benefits of new technologies accrue disproportionately to the owners of resources. This prediction comes to life in the case of eID, considering apprehension of citizens that so-called "Big Data" could be used by officials, third-party service providers, and their agents to conduct surveillance and encroach on civilian privacy for political or commercial reasons or to institutionalise discrimination against segments of the community (Marr, 2017; 2019). Citizens are also apprehensive about the threat of hacking and data terrorism that could result in loss of entire databases of citizens' information (Lewis, 2002.) Public mistrust in eID is particularly evident where data systems are procured without the participation of citizens, resulting in lack of awareness about its design and features. As Peter May postulates, policy design done with publics or without publics "shapes the resultant politics of implementation" (1991, p. 189).

Another criticism centers on cost. eID technologies are a multibillion-dollar industry. Large amounts of capital are spent on procuring intellectual property, system design, maintenance of systems, human capital costs of experts, training costs for technocrats, administrators, users and policy makers, research and development costs, and many other associated costs. It is estimated that the failed UK national ID system

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[5] Introduced in Parliament as a money Bill, a retired judge sued the government of India to stop the implementation of Aadhar Act on biometric eID on grounds that it infringes on constitutional rights of privacy and that entitlements granted by the mandatory use of the card are themselves fundamental rights with no conditionalities attached. The judges ruled that the Act did not violate any fundamental laws and that it empowers disenfranchised sections of society by providing them better access to fundamental entitlements, such as State subsidies. See https://www.scobserver.in/court-case/constitutionality-of-aadhaar-act

[6] After spending an estimated £5 billion, the UK scrapped its national identity system titled Identity Documents Act of 2010. "Under the terms of the Identity Documents Act 2010, identity cards ceased to be legal documents on 21 January 2011." The act brings into law the cancellation of the UK national identity card, the [permanent] destruction of the national identity register and the registration of EEA nationals. See https://www.gov.uk/guidance/identity-cards-and-new-identity-and-passport-service-suppliers

may have cost upward of £4 billion. Furthermore, approaching ID management systems design with a return on investment focus, forces some states to levy fees for the procurement of ID cards, an aspect that this study argues is a derogation of principles of child rights.

A final and important criticism—one that I believe is the root cause for public controversy about eID—is the lack of political will to ratify international human rights into policy and legislation. The supporting argument suggests that upon taking personal information in a bid to fulfil its obligation to issue a name and nationality, it is incumbent upon the state to hold personal data in trust for and on behalf of the individual while enabling the individual to retain full autonomy over their personal data under all circumstances. As such, the individual, citizen, or minor retains data ownership while the state authorities hold the data in trust. Use of data must be with express authority of the data owner, or their representative as is the case for children, and such use must be limited to declared uses without the risk of feature creep (discussed further in Chapter IV).

The alternative yet significant counter-argument for eID is that unlike analog or paper-based ID that is prone to loss, theft, damage, fraud, or tampering, eID data can be collected, automated, encrypted, stored remotely and securely, and security access layers can be built in to assure protection of rights of the ID holder. From a rights perspective, all legal ID, including eID should be backed by carefully conceived policy and legislation that has been subjected to a consultative, research-based, and participatory process. Smith and Larimer articulate Lasswell's best-practices approach to "the policy sciences of democracy, in which the ultimate goal is the realization of human dignity" (Lasswell, 1951, p. 15) as being problem-oriented, multidisciplinary, methodologically and theoretically sophisticated, and value oriented" (Smith & Larimer, 2016, pp. 8-10). It is no wonder that in 2010, the eight-year long quest for a United Kingdom national ID flopped due to skepticism over human rights protections, resulting in severe pushback from the public (Brophy, 2017).

In 2019, the United Kingdom inaugurated a multiagency Digital Identity Unit to establish

> a trust framework of standards, rules, assurances and governance for the use of digital identity to help agencies that need to authenticate [legal] identity to do so in a trusted and consistent way enabling interoperability, maintaining high levels of privacy and increasing public confidence. (Trendall, 2020).

For instance, if a bank solicits information to gauge the veracity of the account holder's passport, the government authority would only be permitted to respond with a yes or no to confirm validity of the document. Such a framework is couched in the right to privacy of the data owner, placing the individual at the heart of the policy. However, distrust over the UK government's political will to adhere to principles of privacy, transparency, good data governance, and support human rights is still rife (Meadows, 2020).

The UK's current eID outlook contrasts sharply with that of the UAE whose eID is universal and mandatory for citizens and residents. Implemented in 2004, its inaugural Director General acknowledged that biometric eID is "seen by privacy advocates to be a 'massive invasion' of their liberty and freedom rights, and promotes the concept of setting up 'big brother' or 'big government" (Al Khouri, 2009). In dispelling this notion, the Director approached the ID process from an institutional capacity development perspective, advocating for an European Foundation for Quality Management (EFQM) model to gauge management excellence. He pointed out that the UAE has a much smaller population of under 10 million inhabitants compared to other ambitious eID and biometric ID projects. Despite that fact, it

> was important for the organization to develop a social media marketing strategy to better understand community interests by running customer and market surveys within the . . . communities, and promote engagement and social participation into the project value proposition. The second component of the media strategy was related to building visibility about the program through information sharing and interactions. The communication strategy included specific aspects that considered the cultural diversity of the target society (e.g., multiple language communications, information leaflets, etc.). (Al Khouri, 2011)

The greatest challenge facing the Emirates ID rollout, according to Al Khouri, was that despite heavy campaigns and budgets, enrollment rates remained at 20% even after five years. The change process implemented to solve this problem was to reconfigure the process into three layers: (1) the application process is done at over 3,000 typing centers; (2) a backend step for the verification of applicant information; and (3) the biometric data collection process is done at government registration centers in a secure user-friendly manner. This improved the process workflow and reduced the time spent by an applicant from 20-25 minutes to 8-10 minutes. Additionally, the ID authority connected ID registration with visa renewal processes whose timelines were three years. This resulted to a leap in applications to 9,000 to 15,000 transactions daily. By doing this, Emirates ID essentially was rendered mandatory.

Digital ID

The uptake of internet and digital communication technologies for learning, socializing, and sharing ideas means that identity is morphing from a person's physical personhood to their digital personality based on their online activities, preferences, and interactions. Human society is increasingly conducting business and other interactions digitally through information and communication gadgets such as phones and computers. The sustained use of digital technologies creates a unique footprint of individual users, with many digital platforms formalizing user information into a unique profile or digital ID.

The mobile telephony sector is in the lead to mainstream digital ID by harnessing capabilities of global systems for mobile communications (GSMA) technologies. According to its website, the GSMA network of over 750 mobile telephony operators and 400 companies

> work with governments and the development community to demonstrate the opportunities, address the barriers and highlight the value of mobile as an enabler of digital identification. . . . The ability to prove one's identity is essential to securing both rights and access to a number of life-enhancing services including healthcare, voting, education, financial services, employment and social protections. (GSMA, 2021).

By encouraging mandatory SIM registration, the network assures that "using mobile as a unique and robust digital identity for the underserved can lead to greater social, political and economic inclusion" (GSMA, 2021). Another example is social media identity emanating from computer IP registration, usernames, and profile names of individual users. Digital IDs play a role in children's ID because children are increasingly accessing digital and social media platforms for education or networking. This digital footprint lasts in perpetuity in the world wide web.

Biometric ID

According to the World Bank's ID for Development practitioner's guide, "biometric recognition has rapidly proliferated in modern ID systems [such as eIDs] in part because it is currently the most accurate and efficient technology available . . . to ensure statistical uniqueness . . . with a high level of assurance during authentication." (World Bank, 2019). Researcher O. Adeoye discusses emerging biometric technologies, grouping them into behavioural and physiological biometrics:

> Different types of biometric technologies focus on different physical characteristics. Within the biometric community. These different applications are referred to as "modalities". The emerging biometric modalities include: Hand, Face, Fingerprint, Gait, Signature, Voice, Iris, Retina, Vein, DNA, Body Odor, Ear Pattern, Keystroke and Lip. Generally, biometric modalities can be categorized into four types: Hands, Heads and Face, Other Physical Characteristics, and Behavioral Characteristics (Adeoye, 2010, p. 1).

The developing technological sciences of IDs is particularly impactful on children because children rely on their parents and the state in this life-impacting process as they do not have the legal capacity to consent to the taking of their data, including biometric data. Yet such data is perhaps the only means available to confirm the child's link to his/her biological or legal parent. Young children cannot effectively articulate their identity, residence, and lineage. Infants and toddlers cannot do so at all. In jurisprudence, where a child's identity document is in contest, attestation of the record is possible by verifying the parent's signature or the credentials of the authorized official who registered the birth. If a child is lost or unidentified, a unique birthmark recorded in the registry could be used to match the child to the document. In absence of a document, DNA sequencing can be used to match a child to a biological relative.

Biometric ID stands as a halfway point since one or more biometric modalities recorded at time of registration can be promptly scanned through an electronic database to match a CRVS or PR entry. Hence, using biometric eID, it would be possible to trace an unidentified child who might be lost, trafficked, or a victim of kidnap anywhere in the world, back to her/his family by matching biometric data to an entry in a national identity register.

Biometric ID is touted by the World Bank and government agencies as the most effective means to remove duplicate records within population registers (de-duplication) for the effective distribution of social welfare schemes, for the authentication of individuals, and to weed out fraudulent claims (Kapur, 2011; World Bank, 2019). Other justifications include improving efficiency in Know Your Customer (KYC) processes, such as in financial transactions (Ferreira, 2019), enhancing the speed and efficiency in service delivery, curtailing identity theft, eliminating the need for users to input signatures and passwords for verification, reducing error rates of ownership, reaping a cost benefit in reduction of fraud and improved efficiency in service delivery. Governments and development practitioners hence tout biometric ID as highly effective and much needed. They do recognise, however, the importance of data security, public acceptance, and most crucially, the risk of high implementation costs and low cost-benefit or return on investment. Such recognition has not done enough to alleviate fears of their publics.

Conversely, from the viewpoint of the individual, the vulnerabilities and weaknesses of biometric identity far outweigh the stated corporate benefits. Numerous studies and case examples show that electronic databases containing biometric information and other sensitive biodata are susceptible to hacking, system crashes and fails, leaks by authorized personnel with nefarious motives, infiltration of big data business enterprises into the design and management of government systems, and system insecurity (Kapur, 2011). The core drawback that underpins most of the other criticisms is breach of the human right to privacy that could arise out of data losses, fraudulent use of data, data misuse, commercialisation of user information, and most importantly, government hyper-surveillance into any or all aspects of the life of its citizens.

The largest government-run universal centralised biometric ID database in the world is India's Aadhar biometric ID, serving an estimated 1.2 billion people, which was promulgated in 2009 upon this efficiency and anti-fraud rationale. Having begun as a voluntary scheme, the purposes have shifted dramatically to the chagrin of analysts, activists, and users, most notably through legislation enacted in 2016 to allow authorisation of third parties to access the database for e-KYC needs (Chaturvedi, 2018).

More and more government sectors now demand Aadhar ID before offering services. Parliamentarian and commentator Satpathy articulates in his critique of the Aadhar system (Satpathy, 2017) that the program "is invigorated by *manufactured realities*, packaged neatly with prosaicism, a certain banality, if you must, by the program's inceptors" (pp. 470-471). He rips the Aadhar system by questioning the rationale of promises of massive national savings, the lack of state-level consultation, the visible hand of data entrepreneurs in the program design, and the pedantic enforcement through exclusion of non-registered individuals from accessing government services. *Mission creep*, as he describes it, has shifted the focus of the program from a safe 'yes-no' authentication promise to its current hyper surveillance agenda, terming the entire schematic "evil" (p. 470) and "the biggest violation of an individual's right to privacy that this world has witnessed" (p. 476) involving nearly 1.4 billion people.

Several factors hinder the implementation of biometric eID for children: (1) the instability of a child's biological modality as a permanent point of reference; (2) ethical concerns related to children's human rights, especially the right to privacy, and (3) concerns related to derogation from the principles of child participation and non-discrimination. The impact of these questions to children are significant.

Chapter III

Case Selection: The United Arab Emirates

The confederation of seven Islamic sheikhdoms that make up the United Arab Emirates, encompassing a land area of 32,278 square miles, borders Saudi Arabia to the west and south, Oman to the east and northeast, and the Gulf sea to the north (Britannica, 2021). The country grew from a quiet desert microcosm of Bedouin communities, fishermen, and pearl traders to an oil-exporting economy before it gained independence from the United Kingdom in 1971. Today it is the region's most prolific economic giant.

This transformation also ushered a remarkable demographic shift beginning with the onset of the formalized federation in 1971. The last official census was carried out in 2005. UAE population statistics are *de facto* estimates that include resident non-nationals and are based on projections from various international statistical bodies such as the World Bank and the UN Department of Census and Statistics (UAE, 2021c). Of its roughly 9.9 million population today, only about 10 percent are citizens of the country (Worldometer, 2021b). Expatriate residents from all over the world working or conducting business in the UAE make up the rest of the population, the majority from Arab and South Asian countries.[7] Children 18 years and below total about two million, a relatively small proportion in large part because most

[7] There are no official data on population disaggregated by nationality. A large percentage of the labor force is drawn from Asian countries mainly India (about 40%), Pakistan, Bangladesh, Sri Lanka, Nepal, Philippines and Expatriates from other Arab states like Egypt, Iran, Syria, Lebanon, and Jordan make up the third largest group of residents, about the same as the Emirati population in aggregate numbers. This is according to unofficial media estimates and estimates from think tanks such as Fanack. See https://fanack.com/united-arab-emirates/population/ retrieved 1/18/2021.

low-income laborers and mid-level earners leave their families in their home countries due to the prohibitive cost of living in the UAE.

This rich Gulf country has a sea border on the *Bahr Fāris* or Arabian Gulf, which is also referred to in Persian as *Khalīj-e Fārs* or the Persian Gulf, "a shallow marginal sea of the Indian Ocean that lies between the Arabian Peninsula and southwestern Iran." (Evans, 2020). This is significant because the Gulf region suffers the world's largest humanitarian crisis at present. According to UNHCR (2018), there are 20.4 million refugees and 3.5 million asylum seekers under their mandate, nearly two-thirds of whom are drawn from countries in conflict in the Middle East and Horn of Africa notably Syria, Afghanistan, South Sudan, and Somalia. Half of all these refugees are children (UNHCR, 2018). The same report points out that 2018 estimates of 140,000 unaccompanied and separated child refugees and asylum seekers is a gross underestimation. With such numbers of displaced persons in the region, UAE and its neighbors face pressure to provide safe refuge. With millions of transient populations within and around the UAE, it is a good test case for the application of legal ID for children.

The UAE boasts a highly sophisticated electronic ID system, a comprehensive, universal, and secure CRVS and PR system that has enabled it to achieve 100% birth registration. The technological features of the Emirates ID are in line with ISO standards, hence offering a good case example to better understand the application of emerging technologies in legal ID. The ID card fits the description of integrated eID (smart ID), digital ID, and biometric ID (ICA, 2021). It is a mandatory identity document for all citizens and residents including children.

The UAE's political system is another point of interest. It is described as a constitutional federation with an elected federal monarch selected through a nonpartisan democratic process. The individual federal units or emirates are ruled by Islamic emirs that are bound under the Constitution and federal laws, but free to enact and apply by-laws in their respective jurisdictions (UAE, 2020). UAE law has a mixture of secular and religious laws and governance norms in both public and private law. It makes a good test case to better understand child rights within an atypical political order.

Conceptual Framework

I have two purposes in this study:

1. Establish a best-practice set of criteria for formal identity systems for children. Each best practice criterion will be selected and adopted for this study based on its alignment with the core principles of child protection.
    - To achieve this, I will conduct a review of existing theory, legislation, and recommendations (primary data) to identify expected international norms and practices on formal identity (human-rights based).
    - I will then propose, confirm, and adopt any additional criteria for purposes of this study based on my own analysis. The comprehensive criteria developed for this study will be recommended as a tool for adoption in future studies.
2. Investigate the extent to which Emirates ID is congruent with the pre-determined criteria. If Emirates ID achieves all the criteria, it qualifies as a best practice case for child formal identity.

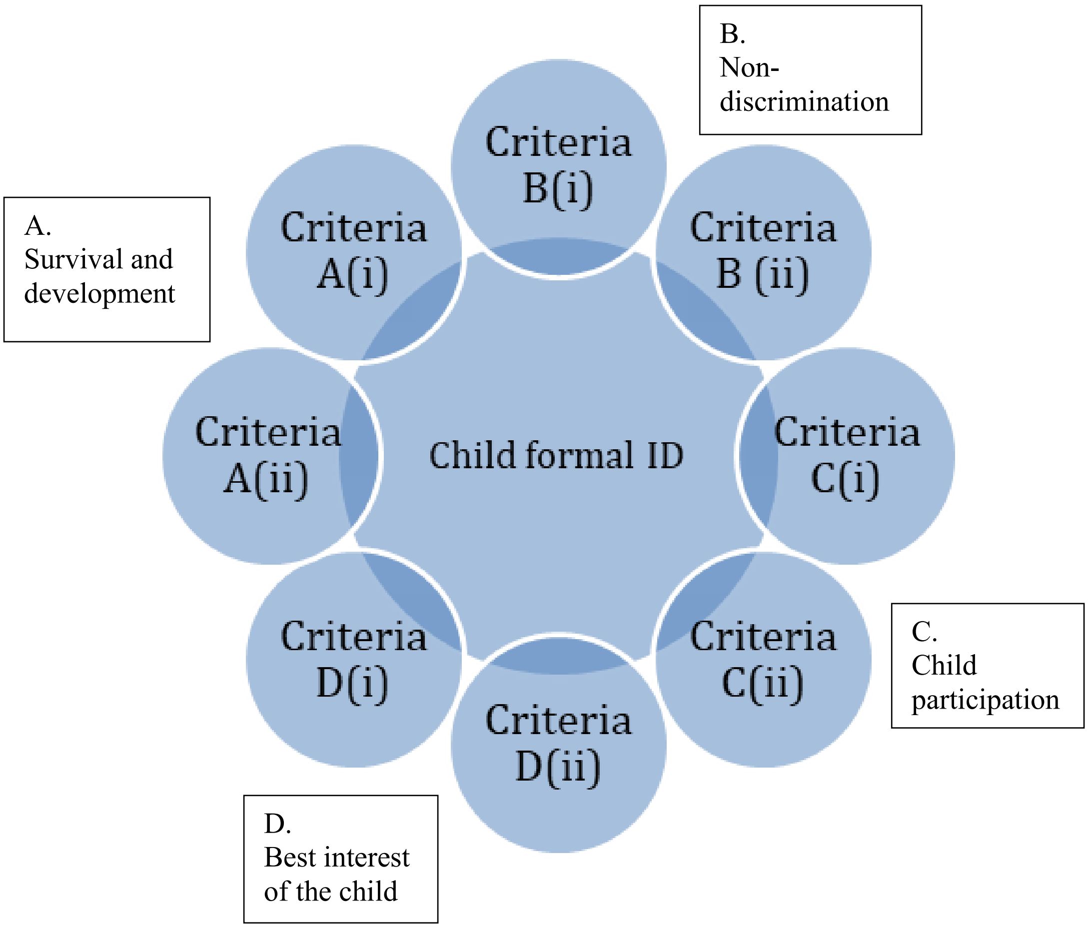

Fig. 1. Components of Child Formal ID.

Source: created by thesis author.

Selection Criteria

The criteria for selection is comprised of all aspects of policy and procedure that together inform a comprehensive child-rights-oriented population registry and identity regime. The typology of identity that emanates from a best practice system is the focus of this study, wherein I will gauge what type of ID system best achieves the aspirations of human rights law.

Research Questions and Hypotheses

This study aims to determine how child rights and principles of child protection are engrained into formal identity systems. Further, the study considers to what extent the UAE's population and national identity system meet the recommended best practice criteria.

Research Question 1

Which theory(ies) underpin(s) child rights, and how do they manifest in formal identity mechanisms?

- What is the human rights approach to legal identity?
- How does identity theory apply to children with respect to the right to a name and nationality?
- What are child rights principles, and how do they intersect with identity theory?

Research Question 2

Which criteria assure comprehensive legal identity for children and also apply standards that align with the principles of children's rights?

- What are the features of a legal identity system?
- How do these features support child protection?
- To what extent do identity systems infringe upon child rights?
- What gaps can identity systems plug to enhance child protection?

Research Question 3

To what extent does the Emirates ID system apply theory and international standards for child legal identity—in policy and in practice?

- What is the underpinning policy and legislative framework for UAE's child ID?

- How is the child ID administered?
- To what extent does Emirates ID meet the criteria under investigation?
- Does it qualify as a model for best practice?

Hypothesis 1

A comprehensive national legal identity system that is universal, integrated (multi-sectoral use), technologically robust, secure, mandatory, verifiable, and deployed in a timely manner significantly improves the welfare and security of a child.

Hypothesis 2

All children residing in the UAE enjoy adequate safeguards by virtue of acquiring Emirates ID, hence UAE qualifies as a best practice since it achieves all the best-practice study criteria.

Chapter IV

Literature Review

An identity would seem to be arrived at by the way in which the person faces and uses his experience.

—James Baldwin

In this chapter, I review the general literature and debates surrounding legal identity. Thereafter I assess child legal identity based upon the universally acknowledged principles of child rights and protection.

During the last half century, identity studies have become one of the most prolific areas of interest in the social sciences. For example, an interesting study by McKinnon and Heise (2010) undertakes a comparative analysis of seven theories of identity and self aiming to establish the extent to which each theory accomplished four aims: (1) Does it take "affect" and "cognition" into account? (2) How does it explain human motivation? (3) Does it incorporate cybernetic and semiotic perspectives? (4) How does it explain the integration and stability of self (p. 1).

The seven theories are the social psychology of Mead (1934), which include three theories exemplifying the structure school within symbolic interactionism (McCall & Simmons, 1966, 1978; Stryker, 1968, 1980; Burke (1980, 1991); two theories representing the process school of symbolic interactionism (Perinbanayagam, 2000; Wiley, 1994; and two identity theories from psychology: social identity theory (e.g., Tajfel 1969, 1970) and self-categorization theory (Turner 1985; Turner et al. 1987). The authors also discuss two additional theories from psychology that focus on self-consistency: Swann's self-verification theory (1983, 1996; Swann, et al. 1987), and Higgins' self-discrepancy theory (1987, 1989). A more extensive discussion of a theory of self-regulation of behavior that is not embedded in an explicit theory of the self (Bandura, 1991) social cognitive theory of self-regulation, is also discussed.

Côté (2006) points out that the "discursive explosion around the concept of identity" calls for an exploration and understanding of the commonalities and cleavages that lie in the multidimensional application of the term in social sciences and offers a framework for this endeavor. Côté believes that in finding a common purpose in the social sciences,

> scholars need to focus not only on what they can recommend to individuals looking for direction in their lives, but also on what practicable frameworks they can provide policy makers who are in positions to ameliorate social and economic conditions that undermine the formation and maintenance of viable ego, personal and social identities. (p. 1)

It remains to be seen if such an endeavor will ever be actualized.

During the timeframe of this thesis study, there was still no common definition of identity. Rather, identity is still discussed in disciplinary silos within social sciences, biological sciences, and increasingly within data sciences. While this could point to a robustness to the question of identity, in certain circumstances it engenders a clash of discipline-specific norms and interests resulting in a tug-of-war over the human form. This clash plays out most evidently between, on one hand, the universal ideal for the recognition of the human person as being unequivocally dignified, and on the other hand by institutional practicalities of transforming the human form into and handling each person as an object of data. The latter aspect of pragmatism is beholden to the will of the practitioner, hence actions, including policy enactments that ought to align strictly with international human rights norms, might instead get manipulated by the whims, biases, or preferences of the actor.

Pointing out that the power that government derives from obtaining troves of personal information on its people could lead to abuses, Richard Sobel (2000) asserts that the risks of misuse of a centralized national identification system (NIDS) outweigh its supposed usefulness. Sobel criticizes the push for federal policies and regulations for NIDS in the United States, postulating that it "contradicts the fundamental principles of personal liberty (and free society), the government's burden of proof, and federalism set forth in the Constitution and is of questionable utility (pp. 37-38). He goes on to state:

> Under such a system, identity no longer inheres in personhood, the natural characteristic that provides for individual rights by presumption and extension as well as for the creation of a political buffer around individuals. Rather, under a NIDS, identity is attained through numbers and cards. Such pseudo identities become commodities in a political economy of surveillance that profoundly undermines the nature of personhood, identity, and privacy in a free society. . . . Hence, a NIDS stands fundamentally opposed to the nature of constitutional governance in a free society and must be halted. (p. 38)

Sobel terms the shift to NIDS *authoritarian*. He posits that constitutions circumscribe state power so that citizens can freely access public services and conduct private activity and be treated respectfully:

> In contrast, the government in autocratic societies bestows, or denies, identities and opportunities through identification …documents. (B)ecause the government has the power to coerce individuals and to control their lives, people confront force when they must follow, or if they disobey, the government's directions" (p. 39)

He finds that it is tantamount to intrusion into individuals' lives and an erosion of all other fundamental human rights. He opines that a loss of the fundamental appreciation for personal and political identity is inevitable if one must prove their personhood through acquiring and presenting identification documents. It throws the burden of proof to the individual, subjugating the individual to the whims of the state.

To further elucidate the burden-of-proof principle in the context of identity, Sobel states:

> The U.S. Supreme Court upheld this principle in *Kolender v. Lawson, 461 U.S. 352*. In a majority opinion by Justice Sandra Day O'Connor, the Court held a California statute requiring persons "who loiter or wander the streets to identify themselves and to account for their presence when requested by a peace officer" unconstitutional because it was "vague on its face within the meaning of the Due Process Clause of the Fourteenth Amendment by failing to clarify what is contemplated by the requirement that a suspect provide a 'credible and reliable' identification." The statute involved an inappropriate demand for identification, as it circumvented the Fourth Amendment's requirement that an officer have probable cause or reasonable suspicion to search or seize a suspect. With this decision the Supreme Court supported the right to go about one's business without the likelihood of being stopped by the police. Credible and reliable identification should depend more on the individual's credibility, such as the ability to answer questions or provide one's name and address, than on the nature or presence of a government-issued ID. Possession of a plastic card should not be the determinative factor of credibility, lest a person's identity be conflated with a mere document. (pp. 38-39)

Citing examples of how civil and administrative motives have led states to introduce and interlink different types of functional IDs, Sobel raises an important point: gradually such systems become a means by which government expands its hold on the freedoms and liberties of individuals. ID systems inherently provide information that can be used to differentiate persons based on their biographical information, familial or geographic ties. Citing examples such the Holocaust, Rwandan genocide, South African apartheid, and the civil rights era in the US, Sobel suggests that government overreach and ID system abuses are often rooted in racist policies, ethnic bias, and other forms of discrimination. ID documents, regardless of their initial noble and/or functional justification, often becoming the means by which to perpetrate administrative overreach for political convenience. Sobel offers that "the low likelihood of similar abuses with (ID) documents in the U.S. (or any other state) does not foreclose the possibility of bureaucratic and discriminatory misuses of identity badges and numbers” (2000, p. 53). And later in the same work: “A NIDS reverses the appropriate relationship from a system based on fundamental rights to one based on bureaucratic requirements (p. 67).

Sobel’s arguments for a free citizen who is not encumbered with the burden of proving their personhood is persuasive as it takes us back to the roots of constitutional freedoms and universal human dignity—the foundation of human rights. However, governments bear responsibility for providing many essential services and implementing laws and regulations for the peaceful coexistence of the community of persons to whom it is beholden. This practical duty requires states to collect data on its demography to help it better understand the numbers and needs of its citizens in a disaggregated manner. This practical aspect is at loggerheads with the libertarian concept of personhood and human identity when the state declines to recognize every person in its jurisdiction or otherwise excludes, withdraws, ostracises, or denies services to certain individuals based on its perceived prerogative to confer nationality.

Nationalism scholars and the realist school of thought of international relations that glorifies state power and state sovereignty would argue that the state must remain the location for identity considering it links closely with other nationalism aspects as ethnicity, socio-cultural norms, and religious exceptionality. One such scholar, Peter Spiro (2011), observes that there is new international impetus to shift citizenship from an identity project to a rights agenda that seeks to limit state power over citizenship admission regulations, seeks to bar gender discrimination and place constraints on state sanctioned termination of citizenship. He states:

> Recent developments point to the emergence of norms that require the extension of territorial birthright citizenship in some cases and that limit discretion concerning naturalization thresholds. International law may also come to protect an individual’s right to maintain multiple nationality. (p. 695)

In his critique of a "rights agenda" for the practice of citizenship, Spiro lays bare and makes a case for the centrality of state actors:

> The emergence of an international law of citizenship has broad implications for the nature of the state. To the extent that an international right to citizenship status helps decouple citizenship from organic forms of community, the new law of citizenship could undermine the solidarities on which state capacities may depend. In other words, the unintended long-term result of situating citizenship practice in the realm of human rights may be to diminish the value of citizenship. As more individuals come to enjoy an entitlement to that status, citizenship may come to be worth less.
>
> This is not to argue against efforts to advance an international law of citizenship. In the short and medium term, a right to citizenship will indirectly advance the protection of a range of other rights on national turf. The right to citizenship may serve a transitional purpose, cementing the protection of other rights through the still-vigorous institutional vehicle of the state. In the longer run, however, the right to citizenship may compound other forces that are eroding state power. This possibility points, in turn, to international law and institutions as the primary location for the protection of rights. Contrary to important recent scholarship, (i.e., Jacobson, 1987), I do not believe that the development of stronger international human rights regimes will reinforce state power, in part because states will be less representative of organic community. (Spiro, 2011, p. 696)

This argument is counterintuitive because states and governments are merely an extension of their composite members regardless of how such composition was, is, or continues to be engendered. In the case of a democratic state, its constituency decides on its governance structures and elects its representatives to carry out its mandate under a citizen-informed constitution. Power therefore vests in the electorate which delegates specific responsibilities to its elected leaders.

Furthermore, organic citizenship is in fact the process of growth that comes with admission of new members into the state community through diverse means including marriage, naturalization, invitation, and so forth. The UAE, for instance, has a special program, by invitation only, for persons of exceptional talent and acumen (business, innovation, research, entrepreneurship) to acquire citizenship.

This thesis assumes that legal identity must be founded upon established human rights norms to ensure each identity holder that adequate safeguards that have been implemented in every step of the legal process to accurately represent their identity, uphold their privacy and data security, and preserve their human rights.

When approached from the lens of child security and safeguarding, it is unequivocal that every child—regardless of their status or formal identity—rrequires maximum protection. This study finds that for children, these safeguards must be in line with established norms of child protection. These are the principles of best interests of the child, child survival and development, child participation and non-discrimination.

Child legal identity cannot be studied independently because it is intricately tied to a family unit and the state, first because the family and state are the social determinants of their lineage and nationality, and second by virtue of their reliance on the actions of a parent/legal guardian and the state to process their legal identity on their behalf. Being under the age of legal consent, parents have immutable and trust-based responsibility for the process of identity determination for their children which calls for a high duty of care.

Identity Theory

J. D. Fearon (1999), quoting numerous scholars' definitions of identity, posits that recognition of the human person is the noticeable commonality in interpretations of identity. Variations in definitions are primarily a function of utility within different disciplines of scholarship, but the underlying value of identity is human dignity and quest for recognition. Fearon (1999) writes:

> Here are some examples, culled mainly but not exclusively from the areas I read most in (i.e., political science, international relations):

1. Identity is “people’s concepts of who they are, of what sort of people they are, and how they relate to others” (Hogg & Abrams 1988, 2).

2. “Identity is used in this book to describe the way individuals and groups define themselves and are defined by others on the basis of race, ethnicity, religion, language, and culture” (Deng 1995, 1).

3. Identity “refers to the ways in which individuals and collectivities are distinguished in their social relations with other individuals and collectivities” (Jenkins 1996, 4).

4. “National identity describes that condition in which a mass of people have made the same identification with national symbols – have internalised the symbols of the nation . . .” (Bloom 1990, 52).

5. Identities are “relatively stable, role-specific understandings and expectations about self” (Wendt 1992, 397). . . . Charles Taylor, after spending several pages of Sources of the Self: The Making of the Modern Identity explaining what he means by “identity,” writes: “But in fact our identity is deeper and more many-sided than any of our possible articulations of it” (Taylor 1989, 29), 4)

6. “Social identities are sets of meanings that an actor attributes to itself while taking the perspective of others, that is, as a social object. . . . [Social identities are] at once cognitive schemas that enable an actor to determine ‘who I am/we are’ in a situation and positions in a social role structure of shared understandings and expectations” (Wendt 1994, 395).

7. “By social identity, I mean the desire for group distinction, dignity, and place within historically specific discourses (or frames of understanding) about the character, structure, and boundaries of the polity and the economy” (Herrigel 1993, 371).

8. “The term [identity] (by convention) references mutually constructed and evolving images of self and other” (Katzenstein 1996, 59).

9. “Identities are . . . prescriptive representations of political actors themselves and of their relationships to each other” (Kowert & Legro 1996, 453).

10. “My identity is defined by the commitments and identifications which provide the frame or horizon within which I can try to determine from case to case what is good, or valuable, or what ought to be done, or what I endorse or oppose” (Taylor 1989, 27).

11. “Yet what if identity is conceived not as a boundary to be maintained but as a nexus of relations and transactions actively engaging a subject?” (Clifford 1988, 344).

12. “Identity is any source of action not explicable from biophysical regularities, and to which observers can attribute meaning” (White 1992, 6).

13. “Indeed, identity is objectively defined as location in a certain world and can be subjectively appropriated only along with that world. . . . [A] coherent identity incorporates within itself all the various internalized roles and attitudes.” (Berger and Luckmann 1966, 132).

> 14. "Identity emerges as a kind of unsettled space, or an unresolved question in that space, between a number of intersecting discourses. . . . [Until recently, we have incorrectly thought that identity is] a kind of fixed point of thought and being, a ground of action . . . the logic of something like a 'true self.' . . . [But] Identity is a process, identity is split. Identity is not a fixed point but an ambivalent point. Identity is also the relationship of the Other to oneself" (Hall 1989). (Fearon, 1999, pp. 4-5).

Consider Bloom's (1990) take on national identity, viewing it from his lens of international relations. Not to be conflated with a national ID-card-in-the-wallet, he considers national identity as the group psychology of nationals of a state sharing a common symbolic patriotism that would band together in the face of external threat. This definition is interesting because, not only does legal ID facilitate conferment of nationality, but also raises the expectation that patriotism is the natural outcome. However, reported cases of radicalization of children of migrants living less than dignified lives in foreign lands shows that Bloom's rule has exceptions (Rosseau, 2019; Rink & Sharma, 2018).

An opposite phenomenon might also occur. With a majority expatriate demography in the UAE, it means that children born and/or raised in the UAE for years as residents may identify more with their affiliation to UAE than to their country of nationality. However, they have no pathway to citizenship. They might conjure up their own cultural identity as a mix of affiliations drawn partly from their parental lineage (which might be different for either parent), their place of continuous residence, and their previous countries of residence. After all, identity is a sum of experiences (Berger & Luckmann, 1966) and home is where the heart is. Third-culture kids (TCK) as they are called (Pollock, et al., 2010), are global citizens at heart and might not sense the filiation to their country of nationality or even have affiliation to it.

This is the key distinction between national identity and legal ID. The ideology of nationhood is inculcated into the psyche of the citizens through common symbols and acts of patriotism. However, the psychological/emotional process of citizenhood is not tangible like actions and symbols. It is internal, informed by histories, experiences, feelings, aspirations, and affiliations distinct from yet complemented by outward pronouncements, such as holding a document of nationality. Politicians, sociologists, globalists, philosophers, and international relations experts might query: What is in a national border if the human mind and body cannot be moulded to stay in one territory? J. F. Helliwell (2000) and K. Ohmae (1995) discuss international economic linkages; R. D. Kaplan (1994) wrote about the breakdown of state control due to environmental degradation, overpopulation, and competition for resources; and W. Robinson and J. Harris (2000) consider the power and global influences of the transnational capital class.

Globalization and the Digital World Order

Globalization provides opportunities for interesting considerations of legal ID for which the primary purpose is to prove nationality. The exponential rise and pervasiveness of internet technologies and artificial intelligence systems have resulted in unprecedented human connectedness in the virtual sphere. Globalization today not only manifests in capital or human movement, but is also generated through communications and information technology in the world wide web (Borcuch, 2010). The internet is not only rapidly closing the rural-urban divide, but also the global north and south, and the entire community of humanity (Schroeder, 2018), making the playing field of interaction less visible but more palpable. The increased use of algorithms, blockchains, internet of things, artificial intelligence, augmented reality, 3D printing, and communications technologies has completely transformed human interconnectedness and transgressed national boundaries (Pticek, et al., 2016; Carretero & Garcia, 2014), making it even easier to spread ideas and products across the globe. E-commerce has completely shifted the way small businesses access global markets (Aydin & Savrul, 2014) with nary one flight taken by the entrepreneur. E-learning is likely to become the new normal format of education for millions of children around the globe (Bonk, 2016), allowing learners to select distant trainers from Asia, Africa, the Americas, and the Caribbean with equal ease through video conferencing and streaming, interactive virtual classrooms, and recorded content.

Mobile telephony and e-commerce offer another incredible technological breakthrough. First developed in Finland in 1991, the global system for mobile communications (GSM) is the term used to describe protocols for second-generation (2G) digital cellular networks used by mobile phone and tablets service providers (Oancea, 2011; Huurdeman, 2003). The GSM platform is a global standard for mobile communications operated in over 193 countries and territories and commanding over 90% market share in cellular technology with tremendous capabilities most notably, applications that can easily be built in to support financial transactions.

A phone number, coupled with a GSM user profile becomes a unique ID that is touted as a robust and real-time digital ID for billions of people. Since the handset itself does not require internet connectivity, its functionality is appealing to governments as it can reach marginalized people in remote areas and nomadic/ transient communities that have no access to the internet.

The drive for digital ID is amplified by a network of private-sector identity-solution corporations under the umbrella Secure Identity Alliance[8] on a mission to support "the provision of legal, trusted identity for all and [drive] the development of inclusive digital services necessary for sustainable, worldwide economic growth and prosperity" (Secure Identity Alliance, 2021). Through public-private partnership with the World Bank Group and governments, GSMA and the SIA aims to "foster international collaboration on Digital ID challenges and the issues of data security, citizen privacy, identity, authentication and more."

In addition, the uptake of mobile money in all parts of the world has enfranchised a previously unbanked population particularly in rural areas into the mainstream of financial sectors. Similarly, mobile applications that do not require internet connectivity because they run through the GSM platform are being promoted to governments as a safe way to deploy CRVS and healthcare protocols, particularly the registration of births and monitoring of vaccination schedules for infants and children. It is no wonder therefore that in a growing number of jurisdictions, governments are regulating MSN operations, requiring them to register users and collect key identity information including biometrics in some instances before issuing a new phone number.

This process attempts to anchor legal ID on mobile network identity protocols or digital ID. Researchers and advocates assessing this nexus opine that this government-to-corporate interlink is what they call "feature creep" as it meshes legal ID with corporate products both coercively and opportunistically without legitimizing the proposition in participatory legislation or public consent. This is most evident in

[8] The founding members are Gemalto, a Thales Group company and Idemia. For a full list of members and their corporate profiles, see https://secureidentityalliance.org/about-secure-identity-alliance/secure-identity-alliance-members/full-members

the practice of national security surveillance conducted through tracing mobile phone activity and user location information without the user's knowledge and with no accompanying policy or legislation.

National security and development conveniences seem to trump users' rights to privacy. A different take is that this is a necessary "evil" in light of policy responses that stem and resolve cases of child abduction, child theft, trafficking, missing or lost children, and other forms of crime as it ensures speedy and efficient resolution in cases of search, rescue, family tracing, and reunification. However, an appropriate, inclusive, and human rights-based framework is lacking at the international or national level to ensure that citizens' rights to privacy and fundamental freedoms will not be curtailed under the guise of national security. Indeed, Human Rights Watch has found that "at least 51 countries had counterterrorism laws prior to the September 11 attacks. In the ensuring 11 years, . . . more than 140 countries enacted or revised one or more counterterrorism laws" (Human Rights Watch, 2012, p.8). However, amendments to security laws are met with significant resistance from human rights experts, civil advocates, and members of the general public due to the potential to undermine basic rights by expanding police powers. Most changes in law have been effected covertly through miscellaneous amendments without public participation.[9]

Putting sensitive identity data of billions of mobile phone users in the hands of corporate entities must be carefully considered against the promises of international human rights and data privacy laws. Furthermore, digital IDs such as that proposed by the GSMA might be effective in accessing previously unreached communities that are

9 For more information about the shifts in counter-terrorism laws post 9/11/2001, see the Human Rights Watch report (2012), and country reports from human rights watchdogs available at https://www.refworld.org/topic/50ffbce5220/50ffbce5226.html

increasingly gaining access to basic mobile phones, but it falls short of the legal mandate placed on governments to confer name and nationality to its citizens.

It is my carefully considered opinion, based on my research for this thesis, that GSM and other forms of digital IDs linked to external service providers do not fit this thesis' definition of legal ID and must not be deployed as a form of child legal ID. Such platforms could be considered when collecting survey data, or other forms of statistical research on a macro level such as numbers of children in school, vaccinated or registered, but not for the collection of private, biometric, or any other personal data on individuals including children.

Chapter V

Methodology

This study utilized a mixed methodology. The study proceeds from two methodological premises based on the dual hypotheses. In the first method, I developed a detailed descriptive and analytical narrative of international policy on child protection, which investigates how legal identity functions to either support of repress the effectiveness of said policy. Additionally, I researched and developed a descriptive and analytical narrative based on a case study of the United Arab Emirates.

The second method is a correlational assessment to test the interplay between the independent variable, i.e., the criteria for sound legal identity that best achieves child rights principles, and the dependent variable, i.e., the case of the UAE's population register and Emirates ID system. The independent variable was carefully identified, selected, and validated based on established theory, international policy, and practice.

Case Study and Policy Analysis

Seminal scholarship on case study methodology by Feagin, Orum & Sjoberg (1991)m and Yin (1981, 1984, 1994, 1999, 2003a, 2003b, 2005) provided backing for the choice of this methodology for this thesis. Feagin, Orum & Sjoberg define case study as an in-depth, multifaceted investigation of a single social phenomenon using qualitative research methods. Yin (2003b) provides a systematic and thorough strategy for the design of a case study and posits that case studies can be applicable in both qualitative and quantitative studies. Components of the strategy are the study questions, the unit(s) of analysis, the theoretical proposition, the logical framework to link data to the propositions, and a set of criteria to interpret findings. In practical terms, he suggests that quality of data collected is dependent on the interviewer's unbiased communication and analytical and adaptability skills.

Yin (2003b) further opines that strategic tools for research should include multiple sources of primary evidence, use of a case study spreadsheet, and upholding data integrity including chain of evidence. He points out that analysis is "one of the least developed and most difficult aspects of doing case studies" (p. 109), and offers three strategies: (1) keep track of theoretical propositions; (2) consider all rival arguments; and (3) provide a descriptive framework for organizing the case.

When reporting results and findings, the researcher may utilize a linear-analytic, comparative, chronological, or unsequenced structure. To avoid the criticism of bias, Yin insists that the researcher must cover all topics in detail, particularly if they choose the unsequenced structure as in a descriptive case study.

Methodologically, Yin offers five techniques for analysis that could be utilized: pattern-matching, time-series analysis, cross-case synthesis, explanation building, and logic models. This study used the logic model, which is defined as a graphic depiction of the relationships between an intervention's components (i.e., the criteria for sound legal identity in this study) and the intended outcomes (i.e., the established principles for child protection in this study) (Kenyon, Palakshappa & Feudtner, 2015).

In his book, *Case Study Research in Public Administration and Public Policy: Standards and Strategies*, Garson (2002) postulates that case-study scholarship "should represent original research, should be analytic, well-written, insightful, systematic, explicitly related to the literature of the field and should cover their issue of focus in-depth. Case study research has received both criticism and accolades as a means to achieve scientific research. Garson posits that case-study research must have some variants in the dependent variable(s) under study. This connotes some type of comparison, such as analyzing the prior effect to the after effect of the variable, for example, policy intervention or examining how a phenomenon operates in public compared to in private. Therefore, it is possible, he asserts, that a case study thesis could take up a longitudinal, cross-sectional, correlational, or other comparative perspective.

In this study, I utilized a correlational perspective by juxtaposing theoretical underpinnings of legal ID against theoretical underpinnings for child protection, thereby making a correlational assessment. In the practical sense, Garson suggests the triangular approach to validation using a multimethod design in which the key processes are traced using more than a single source of information. Hence, a researcher might include a narrative analysis, a network analysis, content analysis, secondary data analysis, phenomenological research, structured interviews, and so forth. This would help address some of the validation problems that are cited as deficient in case study design. This study achieved the suggested validation through multiple methods: case search, policy and legislation, secondary data from government and private news agencies, and national and international reports from agencies such as the World Bank, the United Nations and the Gulf Cooperation Council.

Yin (1994), and older texts on case study research by Goetz and LeCompte (1984), Ragin (1987), Strauss and Corbin (1990) and Morgan (2001), posit that the case study method has proved robust over the last quarter-century, with earliest uses observed in US government agencies such as the US General Accounting Office which "commissioned studies such as that by Evans (1976) and later publishing a manual on case study methodology (US General Accounting Office 1990)" (in Garson, 2002). Garson also gives more examples to illustrate the robustness of case study research such as in classical works by Eckstein (1975) and in other disciplines such as political studies in the 1970s, clinical research (Kazdin, 1982), education (Merriam, 1998), information systems (Lynn, 1989), marketing (Bonoma, 1985) management (Eisenhardt, 1989), and cultural studies (Feagin, et al., 1991).

Criticisms of the case-study methodology, particularly when used in the field of public policy, are that it is intrinsically unscientific for the following reasons:

1. It may not be replicable. Garson (2002) postulates that what makes research replicable is the extent to which it is informed by theory. A research can replicate by selecting cases based on ability to test the same theory.
2. It cannot be generalised. To cure this criticism, Glaser and Strauss (1967) suggest the use of grounded theory as a form of comparative case study, and explanation building related to ethnography to the differences between demographics in a case study.

In the case under analysis in this study, researchers can replicate the study by selecting other countries with differing characteristics to test against the grounded theory of child protection and the standard criteria for sound legal ID for children that has been determined under this study.

Garson (2002) offers practical solutions to aid in analysis of a case study based on grounded theory by suggesting the preparation of a tabular schedule of coded variables that are tracked in the study. This could be a simple check-box method indicating that certain case selection relates to a given variable, thus creating a meta-analysis that enables the researcher to assess the relationship and make theoretical generalisations. Weighting a variable is another way to counter lack of generalization and replication. In this case study, the weighted method and logic model are used. Considering that there are no standardized scales, the study created its own meta-analytical framework based on grounded theory.

I gathered primary data in form of academic literature, peer-reviewed journal articles, legislative and policy documents, databases of countries, and global level datasets from institutions such as the World Bank, the UN census and statistics organisation, and other relevant spreadsheets. I sought and received credentials from the relevant government departments to gain access to national data through the centralized law reporting portal of the UAE. Validation of information accessed through the portal was done through cross-referencing with multiple sources within the portal and offline where possible to establish similarity of information provided. Secondary information was sourced from retrieved articles, news reports, expert analyses from independent think tanks within and outside the UAE.

A rigorous process was followed in sourcing documents, reports, and data sets. I sought and obtained access credentials to the UAE's official legal resources portal which contains all promulgated and updated legislation, case law, and policies on Emirati law. A comprehensive bibliography and reference tabulation using referencing and citation software application Zotero® aided in tracking documents. A manual spreadsheet also aided in confirming citations.

Quantitative Analysis

I designed a logic framework with pre-selected criteria to create a new best-practice criterion for testing hypotheses relating to the achievement of child protection. The next step was to match the criteria to universally accepted pillars of child protection as provided in the UNCRC. Then I analyzed the application of each criterion in the case of Emirates ID, assigning an index score ranging from 1 to 5 for the application of each criteria. 5 is the highest score, 3 the median, and 1 the lowest score. Finally, I conducted statistical mapping to gauge the performance of the test case.

Limitation

Criteria selection was not validated with an expert group. This will be proposed as a recommendation for future research.

Chapter VI

Findings and Discussion

This chapter inspects the reality of legal ID for children in the United Arab Emirates. I will discuss this on seven levels:

1. UAE law, institutions, and practice regarding legal ID and children's rights.
2. International principles of child protection and their application to child legal ID.
3. General findings on legal ID and consequences to children.
4. A discussion on existing criteria for types of legal ID
5. Optimum criteria adopted by this study
6. A matrix and logic model for child protection.
7. The outlook for UAE's Emirates ID based on the adopted criteria.

UAE's Legal Framework for Identity Law

Every individual in the UAE is mandated to apply for and acquire a national or residence Emirates ID card for nationals and non-nationals, respectively. Citizenship and passport laws are codified under Federal law no. 17 of 1972 and its attendant Cabinet Resolution on Executive Regulation. This law has been amended several times in Federal law no. 10 of 1975 and more recently in Federal Decree no. 16 of 2016 (UAE 2020). Under these laws, there are several ways by which nationality is automatically conferred or legally granted in the UAE; by virtue of law, citizenship, or naturalization.

A national by-law is "Every Arab individual [male or female] who was residing in one of the seven Emirates in 1925 or before and who continued to reside therein until the effective date of the law no. 17 of 1972; ancestors' residence shall be deemed complementary to descendants' residence." Children born of fathers in this category of citizens by law also gain citizenship by law; those born to mothers in this category gain citizenship if their mother's affiliation to the child's father is unverified, or the father holds no citizenship anywhere, or if his citizenship is unknown. According to this statute, foundlings, that is babies born or found abandoned or unidentified in the UAE, acquire citizenship by law if their parents or families cannot be traced hence facing the risk of falling into statelessness.

Jus Soli Citizenship

Birthright citizenship is *jus soli* for persons whose parents were born and living in the area before the discovery of oil in 1925 until 1972 when the citizenship law became operational. Since 1972, citizenship can be acquired *jus sanguinis* based on patrilineality, acquired automatically if the child is born of an Emirati male, regardless of the country where the child is born.

Jus Sanguinis Citizenship and the Gender Question

Emirati men can also pass citizenship to their wife or wives who are non-nationals on the condition that they remain married and live together for seven years and have at least one child. If they do not have a child, a foreign wife can acquire nationality after ten years living together. According to Human Rights Watch:

> If the husband dies or the couple is divorced before the expiry of the period referred to, and if the wife has one or more children of said husband, she may be granted nationality after the lapse of that period, as long as she remains a widow or a divorcee or got married to a

> (UAE) national after her husband's death or divorce and maintains residence in the UAE. (2012)

She should also not resume her earlier nationality or acquire new nationality.

Conversely, single Emirati women or those married to non-nationals cannot pass citizenship to their children until they attain 18 years nor to their husbands. "Emirati mothers can apply for citizenship for their children provided their child has lived in the UAE for six years. However, . . . the application process is not straightforward, and responses could take years (Human Rights Watch, 2012).

The inability of Emirati women to pass citizenship to their children or husbands has been the subject of much debate and criticism from international human rights watchdogs and women's rights advocates. This is particularly problematic for Emirati mothers who give birth while unmarried because *Sharia* law does not consider sexual relations outside of a marriage setting. Unmarried or single mothers who hold a foreign nationality but have a UAE residency visa may sponsor their child upon production of additional documentation for application of residency permits for their child. These include a No Objection Certificate (NOC) from the biological father of the child, a divorce order in the instance of divorce, or a death certificate in the instance of death of the spouse. They also must meet a pre-set minimum salary level.

Citizenship by Naturalization

Upon application, nationality by naturalization is granted to people of Arab ethnicity mainly those from Oman, Qatar, and Bahrain, or other Arabs who emigrated through displacement into the UAE. The applicant must have resided lawfully and continuously in the UAE for three years prior to application. Also, persons of Arab ethnicity (other than those listed above) of full legal capacity may apply if they have lived continuously in UAE for seven years. All other persons of full legal capacity who have legally and continuously resided after independence in 1940 and 1972 or within a period of 30 years of which at least 20 years were after the effective date of law no 17 of 1972, may also apply.

Persons of exceptional talent or achievement, such as athletes and scientists, or who have provided outstanding services without regard to residency periods can also apply for naturalization. Conditions precedent for application include that the person is of good reputation and conduct, has not been convicted of any offence or breach of honor or trust, must be proficient in Arabic language, has a lawful source of income, and holds an educational qualification. Such persons would also need to obtain security clearance and swear allegiance to the UAE. Children can also apply for naturalization under the following circumstances:

> Children of an Emirati woman, who got married to a foreign man after the lapse of a period of not less than six years from the date of their birth; provided that the mother holds the UAE nationality at the time of birth until the date of application for nationality, in accordance with the regulations determined in the Executive Regulations. (Also), a daughter of (an Emirati) woman and foreign father and who is married to a foreigner, in accordance with the Executive Regulations of the present Decree-Law" may apply for naturalization. The wife of a national by naturalization shall be considered as national by naturalization if she renounces her nationality of origin. Minor children of a national by naturalization shall also be considered nationals by naturalization, and they may decide to choose their nationality of origin during the year following their achieving majority. (Human Rights Watch, 2012)

Finally, the President of the UAE retains the power to confer nationality by operation of law or by naturalization regardless of the conditions set forth under the law and its attendant regulations.

Deprivation or Withdrawal of Nationality and Penalty for Fraud

Nationality can be deprived or withdrawn from any person for the following reasons:

- upon conviction of offences related to terrorism
- upon conviction for attempting to threaten the security of the UAE
- if a person persists in engaging in military service for a foreign country without permission from the UAE
- if a person acts for the benefit of a hostile nation, or willingly becomes a naturalized national of a foreign state
- breach of conditions or by commission of fraud
- failure to reside continuously in the UAE for two years.

Should one lose nationality for the above reasons, their dependents also lose their naturalization. Children may apply to recover such lost nationality upon attaining the age of 18 years.

The law also provides for stripping of citizenship and a penalty of up to 15 years and a fine of up to 50,000 dirhams for providing fraudulent information or using fraudulent nationality documents. It is also unlawful to fraudulently claim to be of a tribe that one is not for purposes of obtaining nationality, impersonating, tampering, or using a nationality document that has been reported to be lost.

Citizenship Privileges

To appreciate that citizenship is more than just an identity, all UAE citizens enjoy a host of privileges that influence their global opportunities, mobility, and quality of life. Most notable is the fact that as of 2019, the UAE passport was profiled by the real-time interactive passport index as the world's most powerful passport with a global mobility score of 178. This means that in 2019, the UAE passport received favorable visa requirements (mostly visa-free or visa on arrival) from 178 countries, or about 90% of the world (the covid pandemic in 2020 negatively affected this score due to additional health related restrictions).

Citizens also enjoy free and universal high-quality healthcare, free education until tertiary level within or outside the UAE, residential land allocations, interest-free loans to build a home, tax-free income, and many subsidies for vital commodities such as gasoline, electricity, and water. In political terms, persons holding *khulasat al-qaid,* the certificate proving citizenship by operation of law (ancestry prior to 1925), can offer themselves or vote to elect leaders for public office such as the Federal National Council and the electoral college.[10]

Legal and Institutional Framework

On an international level, the UAE was the first Gulf nation to sign and assent to the 1989 Convention of the Rights of Children in 1997. The law has been substantially domesticated by the Child Rights Federal Law No. 3 of 2016, commonly referred to as *Wadeema* Law. With respect to legal identity, UAE federal law approaches child identity as a fundamental right and an aspect of family protection as follows:

> *Article 8*: The child shall have the right, since birth, to have a name that does not involve humiliation or denigration of his/her dignity or that is contrary to religious beliefs and customs.

[10] The UAE designates itself as a constitutional federation. It is run by a President as Head of State (conventionally the Emir of Abu Dhabi) and his vice as Head of Government (conventionally the Emir of Dubai), A Supreme Council (SC) consisting of the 7 Emirs from each Emirate led by an elected chair and vice chair for 5-year terms. The SC also partially appoints and partially elects a 40-member Federal National Council (FNC) as its council of ministers, led by the head of government. Notable reforms in 2006 promulgated an electoral college consisting of members selected by Emirs totaling 100 times the number of FNC members held by each Emirate. The electoral college elects half of the cabinet, while the other half are appointed directly by the Emirs. Since 2019, 20% of ministers in the FNC are women with a next-cycle target based on a Presidential resolution no 1 of 2019 of 50% women's representation. The independent legislative arm has a Federal Supreme Court as its highest judicial organ.

> *Article 9*: The child shall be registered in the birth register immediately after his/her birth according to the legal system prescribed in this regard.
> *Article 10*: The child shall have the right to nationality according to the provisions of the laws in force at the State.
> *Article 11*-1: The child shall have the right to parentage by his legal parents according to the laws in force at the State. -2- Each of the child's parents or whoever having legal authority thereon shall procure the issuance of the documents proving his birth, nationality and all other documents according to the laws in force at the State.
> *Article 16*: Taking in consideration the applicable Law, the child shall have the right to meet his/her natural parents and family and receive their care and to maintain personal relationships and direct contact with both of them.
> *Article 24*: Without prejudice to the Laws on Personal Status and on the Children of Unknown Parentage, the child who is deprived of his natural family in a permanent or temporary manner shall have the right to alternative care through: (1) the foster family, and (2) public or private social welfare institutions in case the foster family is not available. (UAE, 2016)

Sharia Law on Identity: Reservation on Adoption

Legal jurisprudence in the UAE is still significantly beholden to religious dictates known as Islamic *Sharia*. Parallel jurisprudence seems to be in operation in most laws.[11] With respect to identity and nationality, the UAE recorded its reservations to Article 21 of the UNCRC citing its commitment to Islamic law that does not permit the adoption of children. According to Jamal Nasir (1990), parentage can only be established in a natural father and mother. In all other instances where guardianship is taken for a child with no known parentage, the relationship is one of "acknowledgment." This *Sharia* law is derived from rulings in the Quran, specifically: ". . . nor has He made those whom you adopt as sons your own sons. These are only words that you utter with your mouths. . . . If you do not know their true fathers, then regard them as your brethren in faith and as allies." (*Quran*,

[11] For example, finance and banking institutions provide options for Western banking or *Sharia*-compliant products. Penal laws also have secular aspects and *Sharia* aspects, particularly in delineating certain crimes against morality and corporal punishment.

Surah AlAhzab, 33:6-8). This *Sharia* doctrine precludes Muslim children from eligibility for adoption and stops Muslim parents from adoptive parenting. Fostering a destitute Muslim child is permissible as an alternative. This law does not affect residents holding foreign nationality. A legal resident of foreign nationality may adopt and sponsor the residency of their adoptive child in the UAE provided they meet all adoption requirements from the adoption jurisdiction they choose to use.

Similarly, Federal Law No. 1 of 2012 concerning the custody of children of unknown parentage provides comprehensive guidelines for the protection of foundlings and children of unknown parentage. The words "custodial family" are used in place of the conventional statutory reference of "adoptive family," confirming the stance under *Sharia* law. Regarding name and nationality, the law elucidates detailed procedures for custody of a child of unknown parentage. A foundling must be immediately presented to the police in the clothes they were found in. On application by police and child protection service officers, courts of competent jurisdiction place the child in foster care. Articles 5 and 6 of the federal identity law provide for naming and identity documentation:

> (5) The Home shall choose a full name for the child and in all cases, it shall not refer, in any way, to the fact that the child is of unknown parentage, whether in the birth certificate or any other identification papers.
> (6) The Home shall take necessary actions to register the child in the official papers according to the laws and regulations in force at the State in coordination with the Ministry of Interior.

The statute further provides for the establishment of Custodial Families Committees in each Emirate to make determinations about suitability of interested custodial applicants. By law, they must:

1. Be Muslim, Emirati and residing in the State.
2. Consist of a couple not younger than 25 years old.
3. Never convicted of a crime involving moral turpitude or dishonesty.

4. Be proved free of infectious diseases or psychological and mental disorders that may affect the child's health and safety, through a report issued by an official medical authority.
5. Be able to support its members and the adopted child financially.
6. Undertake to treat the child well and raise him/her in a good manner, taking care of his/her health, education, protection and growth.

If natural parentage is proven in the course of the child's life, his name will be re-registered accordingly. Custodial families are also mandated to provide the child with full disclosure as to their lineage in accordance with the regulations.

Article 15 offers the presumption of voluntary care or charity in this relationship by prohibiting the levying of fees or claims of reimbursement by the custodial family for providing care to the child. This contrasts with other *Sharia* jurisdictions that provide for nursing wages to mothers (Nasir, 1990, p.172). The penalty for breach of conditions under the statute results in a fine of 10 to and 100,000 dirhams, and double that amount for repeat offenders.

Institutional Framework

It is mandatory that every UAE national will be issued a birth certificate at birth on application. Soon thereafter a passport is issued, followed by an Emirates ID.

Nationality laws were first promulgated in 1972 in Federal Law no. 17 of 1972 as discussed earlier in this chapter. In 2004, the Emirates Identity Authority (EIA) was established under Federal Law no. 2. The EIA inaugurated a population register, an electronic database to store personal and vital information for all population within the State; also the Emirates ID card program, the universal legal identity card for citizens and residents. The rationale for digitizating the population information was to enable the integration of government processes. Over time, the program has undergone several transformations, including the expansion of the EIA's mandate, process improvements to ease application and issuance procedures, and reforms regarding aspects of data security and privacy.

Federal Law number 3 of 2017 transformed the EIA into a standalone institution independent of any parent ministry, re-named it the Federal Authority for Identity and Citizenship (FAIC), and transferred the powers and terms of reference previously assigned to the Ministry of Interior to FAIC. These powers include management of the population register, issuance of passports, naturalization procedures, and visas for residents. The FAIC's leadership structure was also transformed with the appointment of an oversight board consisting of inter-ministerial representatives, which paved the way for a centralized and interoperable population register.

The FAIC's vision statement depicts an ethical and efficiency ethos to provide "trusted identity and leading services." The objectives of the FAIC are broad: centralization of the population register, provision of biometric electronic ID to assure authenticity of holder and secure their identity, and to interlink and integrate various government and semi-government bodies. The FAIC further aims to generate statistical information for planning and decision making under the e-government project and to ease access and timeliness of governmental services and to stop forgery. Laws and policies that guide the FAIC are not easily accessible to the public, however. Possession of an Emirates ID is mandatory, and lack of such ID is considered criminal. Therefore residents and citizens of the UAE have no choice but to subscribe to all requirements.

Procedures for birth registration and issuance of child legal identity are detailed in the ministerial regulations relating to nationality law of 1972 and its amendments. Newborns, including those born to non-nationals must be registered immediately at the hospital of birth or through local authorities if the birth occurs outside of a hospital. To aid in immediate digitization of data, and to assure ease of access, electronic registration has been made available in the UAE through a mobile platform or application dubbed *Mabrouk Ma Yak.* The parent user is required to key in pertinent information to aid in the birth registration, including names of the child, a photo image in prescribed format, and information about the parents including attested marriage certificate, parents' residency permissions, and passport details.

For purposes of the application, the newborn's nationality is presumed to be *jus sanguinis* and patrilineal. It is hence recorded as the father's nationality. The presumption of nationality could potentially raise a problem if the father's country is a *jus sanguinis* jurisdiction, particularly if the father only holds a birth certificate with no supplementary national ID, or if the father's identity is contested or unknown, or if both parents are stateless. This problem will be discussed in more detail in the next chapter.

If the newborn's father is outside the country, the following documents are required: a marriage certificate plus a declaration from the wife confirming continuity of the marriage, a certified copy of the husband's passport, or a letter from the embassy stating the father's nationality, or a declaration from the husband attested by his country's embassy establishing his parental relationship with the child. If the above documents are not available, the matter will be referred to the Newborn Committee.

The parent(s) of non-national newborns are required to apply for a birth certificate. Thereafter, a parent is required to apply for and obtain a passport for the newborn from their respective consulates or embassies or have the child's identity endorsed in the parent's passport. Next, an application for a residency visa must be made to the FAIC, followed by the issuance of an Emirates ID with a validity corresponding with the life of the visa. All this documentation must be obtained no more than 120 days from birth. Failure to comply results in a daily fine for every day of breach.

The statutory Newborn Committee is tasked with adjudicating on matters related to identity for newborns under extraneous cases such as foundlings, children born to parents of unknown nationality, and children born with ambiguous genitalia or gender dysphoria (Kuttab, 2016; Bibbo, 2003).

All the above procedures ensure mandatory, universal, and digitized procedures for child identity. Relying heavily on the parents' compliance, the FAIC makes the services accessible to expatriates and nationals alike through digital innovations under the banner of smart government.

Technological Features of Emirates ID

The Emirates ID system includes a set of factors that make it an ideal test model for this study: it uses advanced technology and automation in ID systems (biometrics, chip-based, consistent time progression imagery), and is supported by top-level data security protocols.

The UAE Population Registry Identity Management Systems (PRIMS) is founded on legislation and policy, and is managed by a federal ministry solely responsible for ID and nationality issues. Other countries may have their ID and nationality departments placed inside a department for internal security or immigration dockets. The Emirates PRIMS is opaque to the public, but a description of its features is provided in the official Emirates ID website.

Key biodata about each applicant is keyed into the ICA system. For all citizens, including children and newborns, this includes name, date and place of birth, family book number, and population register (birth certificate) number. Documents required are the father's passport and ID, a photograph in the required format, an original birth certificate, the original family book, and an application fee of 100 dirhams. A family book is a document that links an individual to the patrilineal lineage of their family. Wives and children are added into a father's family book. In Emirati norms, this document is considered to be the true proof of citizenship (Qassemi, 2010). It has the effect of discriminating against children born of mothers who married foreign nationals since she is not eligible to obtain a family book as it does not apply to the maternal line.

Children of legal residents also obtain an Emirates ID. Information and documents required include the parents' passports (one parent is the visa sponsor of the child), valid visas and entry permits, and Emirates ID cards of the parents, original certified birth certificate, parents' original certified marriage certificate or a no objection certificate (NOC) from the absent parent, a passport photo, an application form, and application fees. Adult applicants are required to present themselves to the authorized official to have their photo and ten-digit fingerprints taken. Children must also appear in person to have their image taken. No fingerprints or other biometric modalities are collected for children. However, the child's file is connected to the sponsoring parent's file.

The technological features of the Emirates ID are the following:

- a unique 15-digit number for each applicant, which remains their permanent unique identity number.

- an electronic chip embedded into a hard plastic portable card about the size and shape of a credit card. The chip holds the biodata of the holder including their fingerprint biodata.
- the card is a “smart card” that contains accurate letters and digits, ultraviolet ink, and line drawing. It also contains nine hidden security features.[12]
- The chip is secured with public key infrastructure which comprises a digital signature and authentication certificates.

Emirates ID adopts smart-card technology aiming for maximum interoperability, versatility, and to act as the single source of all functions that require proof of identity for provision of government services and authorized private entities. The ID is already deployed as a travel document under the smart ID scheme, which allows citizens and legal residents to use only their Emirates ID at self-service kiosks at UAE airports. In 2021, the UAE government expects to replace the smart ID to replace bank cards:

> To simplify the usage of the Emirates ID card and its certificates, ICA has set up a Validation Gateway (VG). VG will enable governments, organizations as well as individuals to make use of the Emirates ID card in an online scenario.
> The VG is a service available online that offers a wide variety of digital functionality related to the Emirates ID card. Users and organizations can (after approval from ICA) without any programming knowledge and without being a cryptographic expert connect to the VG and benefit from its many functionalities to perform online services where the Emirates ID cards are used for authentication and signing. The Emirates ID as the single ID, both physically and digitally, will enhance and secure services online. (ICA, 2021).

[12] See the official Emirates ID website at https://u.ae/en/information-and-services/visa-and-emirates-id/emirates-id

The VG is the UAE's interoperable module that meets the UNDP's recommended ID profile. It promises convenience, unitary ID, and de-duplication of personal information from numerous functional ID platforms. It also promises the user sophisticated security protocols including that authorized users obtain only limited functionality to gain validation of identity without accessing biodata linked to the user.

The smart ID is, however, susceptible to "function creep" because it has morphed over the years to integrate more and more public and private function. This means means that the human rights agenda is on the back burner as more and more players join the VG. However, Emirates ID has remained robust and grown in its usage and functions with at least three major upgrades and re-launches in the last decade. Due to its mandatory nature, residents and citizens are at the periphery of decision making and remain passive participants of the system.

The UAE's citizenship and identity regime is highly advanced in its use of electronic or smart-card technology akin. In April 2021, UAE commenced trials for a Covid-19 Travel Pass that uses decentralized blockchain technology to aid with sharing accurate information on passengers' Covid-19 health status (IATA website, 2021). The Pass will ultimately become a component of Emirates ID's interoperability agenda.

On the other hand, UAE citizenship policy remains patriarchal in nature hence it has the potential to lock out some demographics from acquiring Emirati citizenship, mainly women, children, and persons who have historically been excluded from the family book privilege, such as the nomadic Bedoin community. Furthermore, laws and identity policy are constantly amended with little participation from the general public, although resources are shared on public government websites for those interested or able to keep up. Public information shared through media channels pays lip service to information security and privacy. For instance, mobile sim registration is mandatory and is linked with the Emirates ID.

Crime data shows that cyber crime is the highest type of fraud perpetrated through email, mobile phishing, and online hacking (KPMG, 2021). If scammers obtain access to Emirates ID data, they can then access bank accounts or masquerade digitally as the user to commit further fraud. Linkages between such electronic fraud and the digitization and interoperability of smart ID cannot be denied. Susceptibility to such fraud is mainly caused by the ignorance and gullibility of ID holders who might unwittingly disclose a minor detail such as a birth date to a fraudster, opening up entryways to access a user's profile.

Holders of Emirates ID who can meet and maintain the eligibility and cost of obtaining and renewing their Emirates ID can easily participate in daily life. However, loss or expiration of the ID can lead to immediate curtailment of freedoms and hefty fines. Any person living long term in the UAE without an Emirates ID is considered a criminal, becomes invisible, and is severely limited in their enjoyment of human rights. For children, lack of ID completely removes them from meaningful development and survival, since all public services are conditional on presenting a valid Emirates ID.

Privileging passports based on their purported "strengths" often anchored in colonial underpinnings has a psychological effect on the collective psyche of institutions, communities, and the individual. Caste and ethnicity-based socialization begins at childhood. In the philosophical works of Frantz Fanon (1963), the inferiority complex of the black diaspora of formerly colonized French-Carribean societies was acquired through a process of economic emasculation coupled with internalization of norms of inferiority. He arrives at this thesis by psychoanalyzing the experience of colonized societies, finding that “colonialism instils the inferiority complex in the psyche of colonized communities” (Jean-Marie, 2017). In a highly stratified society like UAE, therefore, the aesthetics of nationality inscribed into passports could and often do have a bearing on perceptions of the beholder. If everyone were to wave a passport in order to access services, institutions, and social spaces, it could follow that the politics of nationality would play out in almost every single interaction.

The Emirates ID card, universal in design and deployment, intrinsically equalizes the majority expatriate societies that make up the UAE, at least aesthetically. It takes a closer inspection or enquiry to establish nationality, unlike in jurisdictions where work permits and residency permissions are inscribed only in the passport, hence requiring the bearer to carry it around as their legal identity.

Anti-discrimination laws in the UAE codified in Federal Law no. 2 of 2015 prohibits discrimination, with penalty of a five-year jail term or a maximum of one million dirhams. In its first article, the law defines discrimination as “any distinction, restriction, exclusion or preference among individuals or groups based on the ground of religion, creed, doctrine, sect, caste, race, colour or ethnic origin.”

Child Rights, Theory and the Effect of Child Legal Identity

Child identity cannot be separated from the political debates surrounding national identity and citizenship. The most efficient way to understand child legal ID is to approach it through the four principles of children’s rights: Best Interests of the Child, Child Participation, Non-Discrimination, and Survival and Development. These are discussed in more detail below.

Principle #1: Best Interests of the Child

Article 3 of the UNCRC articulates the principle of best interests of the child as follows:

> In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

The UNCRC provides further guidance for the best interests principle via General Comment no. 14 of 2013 as follows: “The right of the child to preserve his or her identity is guaranteed by the Convention (Art. 8) and must be respected and taken into consideration in the assessment of the child’s best interests” (UNCRC, para. 55). Also: “Citizenship or nationality are forms of identity, especially legal identity. It is therefore in every child’s best interests to have, and be able to preserve, his or her nationality” (UN Committee on CRC/C/GC/14).

The selection of a child’s name by their parent or guardian and the collection of data on a child by state registries calls for application of the “best interests” principle. To illustrate this, the principle can be invoked to determine the suitability of names. In a child’s best interests, their name should not elicit ridicule or dishonor. In patrilineal cultures such as the UAE’s, the father’s name is adopted as the family name, therefore, in these societies, a child’s surname is indicative of their paternal lineage. This is also the case in the event of marriage or remarriage of the mother and in adoption. The principle is often invoked in case law in proceedings under family law, aiming to protect the child’s right to paternal familial connection, secure material support, and potentially inherit from their father’s estate.

Breen (2002) and Freeman (2007) opine that the “best interests” principle is ambiguous because it does not proffer a guideline in decision making. In taking this stance, they confirm Elster’s (1989) argument that decision makers are expected to use their discretion in weighing varied considerations presented to them, raising doubts as to whether the resulting decision is based on rationality or on subjective presumptions (Piper, 2000; Dunn, et al., 2007). In a famous New Zealand case, the court place a child named *Talula Does the Hula from Hawaii* in protective wardship of the court until her name could be formally changed. The child sued to request a name change on grounds that she feared being mocked and teased. In making the order, the family court judge said, "The court is profoundly concerned about the very poor judgement that this child's parents have shown in choosing this name. It makes a fool of the child and sets her up with a social disability and handicap, unnecessarily." (*Sydney Morning Herald*, 2008). Civil registrars in many jurisdictions around the world have the prerogative to accept or reject a proposed name based on regulatory exceptions. (Moscarello, 2015; Larson, 2012). This points to a subjective best-interests consideration on a case-by-case assessment.

In child custody cases where paternity is in contest, DNA evidence is required to establish proof of paternity to a degree of 99.95 percentage points (Peterson, 1982). In the UAE, surnames are ordinarily deemed appropriate through long-term usage, having been passed down from generation to generation. The name bears the status of the larger family, hence one can presume that the "best interests" principle secures the reputation of a new member of the family or enhances their status in a socially stratified and tribal society. Conversely, a surname from a lowly rank or a denigrated clan—perhaps due to historical misdemeanor or the infamy of its ancestors—would not serve the best interests of a child born into such a family. It would be conceivable therefore to use the "best interests" principle for a decision to choose an alternative surname (e.g., from Hitler or Bin Laden or such other infamous personalities). In the latter example, a child bearing a last name of Bin Laden would face lifetime difficulties when attempting international interactions or travel, as they would automatically attract additional security scrutiny or denial of opportunities to which they would otherwise be entitled.

The “best interests” principle applied to the conferment of nationality is complex. Children who are born or who emigrate undocumented to a country other than the country of either of their parents’ nationality are at a high risk of becoming stateless. Forced displacement might occur when fleeing conflict, natural disasters, or due to human trafficking. In these incidents, international humanitarian law governs the treatment of undocumented children, requiring states to extend refugee protections including identity documents (UNHCR, 1950).

Another example is child migrants fleeing poverty, who may arrive in a foreign country in the company of adult guardians who are seeking improved livelihoods through irregular means such as smuggling. These persons are not governed under humanitarian law, and thus fall within the purview of local legislation, especially immigration law, which often criminalizes their unlawful residence. A good example of applying the “best interests” principles is the US Deferred Action for Childhood Arrivals (DACA) program, which aims to provide a path to naturalization of persons brought into the United States in their childhood by immigrant parents who chose to remain unlawfully in the United States (Estin, 2018). In 2012, the UNCRC Committee “welcomed these developments, but also recommended that the U.S. take further steps, including “the incorporation of a ‘best interests determination’ for unaccompanied children in all decisions throughout immigration-related procedures” (UNCRC Committee, 2013).

Some 30 countries around the world confer birthright citizenship. *Jus soli*, the guarantee of nationality to all born in the territory regardless of parents’ nationality, aligns with the "best interests" principle in that every child born in the land automatically obtains nationality as soon as their birth is registered. Having some form of *jus soli* citizenship norms in nationality laws is the most expedient means to guarantee the best interests of children who would otherwise be stateless (UNICEF, 2018). Most other jurisdictions, including the UAE, confer nationality *jus sanguinis* or by descent, with *jus soli* provisions applied on case by case basis for children of unknown nationality found within the territory who would otherwise be stateless.

Principle #2: Child Participation

Logically related to the "best interests" principle is the principle that a child's opinion matters when making decisions that affect them. Article 12:1 of the UNCRC states: "States parties shall assure to the child who is capable of forming his or her own views the rights to express those views freely in all matters affecting the child, the view of the child being given due weight in accordance with the age and maturity of the child" (CRC, 1989, A12). The UNCRC mentions this in its general comment number 12 of 2009 as follows: "Attention is needed to ensure that stateless children are included in decision-making processes within the territories where they reside." (UNCRC/C/GC/12, para. 124).

Scholarship about child participation is typically approached from psychological and clinical studies when exploring the issue of informed consent. Electronic and biometric IDs for children require taking a child's biodata—arguably an intrusive process. The "best interest" principle bridges the risk of non-participation by delegating the responsibility to parents. I believe that the legal duty of care ensues, meaning that the information collected must be held in trust for the child, to be transferred in totality when said child attains the age of consent. At that point, data such as given name, gender, and any other subjective data may be amended, validated, or otherwise re-engineered by the new adult. In this premise, it is my opinion that aspects of child ID that touch on private determination discussed in the first chapter should be presumed as rebuttable and temporary, pending validation at a later age.

That said, aspects of child ID that are factual and determined under a public lens, such as date of birth, place of birth, and nationality, remain incontrovertible. Data gathered from the CVRS should therefore aid in provision of public goods. Legal identity, on the other hand, ought to respect the opinion of a child premised on a foundation of human rights. The practicalities and modalities of achieving such an ideal are beyond the scope of this study but well suited for future research.

Principle #3: Non-Discrimination

The obligation to provide equal opportunities to children is expressed in UNCRC Article 2:

> States parties shall respect and ensure the rights set forth in the present convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's parents or legal guardian, race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, poverty, disability, birth or other status.

There are several ways in which legal ID helps to ensure that all children are treated the same under the law. In humanitarian law, gaining state protections for unaccompanied child migrants and asylum seekers depends on age determination. This affects older children in their teens whose age might be in question.

In a comprehensive UK study, Bhabha and Finch (2006) found that institutions use different methods to determine age, some which are ineffective, inaccurate, discriminatory, and contravene children's rights. They recommend a holistic approach in line with international law, as follows:

> Paragraph 31 of the Committee on the Rights of the Child's General Comment No. 6 (2005) states that age assessments should not only take into account the physical appearance of the individual, but also his or her psychological maturity. The assessment must be conducted in a scientific, safe, child- and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child; giving due respect to human dignity; and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, s/he should be treated as such. (Bhabha & Finch, 2006, quoting CRC Committee, 2005)

The researchers recommended that children whose age is in dispute must be treated as a child, without discrimination, including legal guardianship, pending determination of age using a holistic approach, a right to appeal in country, and "the return of all original documents to the child or his or her legal representatives" (Bhabha & Finch, 2006, p. 64). The authors further recommended that the process should be conducted by independent panels, and that continuous all authorized agencies and persons "who may come into contact with unaccompanied or separated or age disputed children should undergo comprehensive training in the need for a holistic assessment of age by an independent panel of experts" (p. 64.). Holding legal ID would greatly ease the process of age determination, as it is an inexact science with degrees of error, in which case, the authors recommended that children must be given the benefit of doubt.

In practice, withholding services to children due to lack of foundational legal ID, levying fees for application, denying mothers of a right to pass their nationality to their children jus sanguinis, and rejecting applications for legal ID to *bona fide* citizens, both adults and their children, on arbitrary grounds is discriminatory. Yet many countries have these discriminatory aspects embedded into their laws. Persons affected by these discriminatory practices often have little or no recourse in national law and little access to international justice mechanisms.

Non-documentation of millions of individuals is the loudest piece of evidence that brings to the fore the quagmire of human rights law on nationality and identity, which on the one hand recognizes all persons equally everywhere, while on the other relies on states' benevolence in acknowledging human existence so as to offer not just sanctuary but also full attendant services, protections, opportunities, and rights to all persons it acknowledges. Bhabha (2017) idealizes that "in a world where the principle of non-discrimination was fully realised, nationality would not matter." Furthermore, the UN Human Rights Council 31st session report states: "Where a child is precluded from obtaining a nationality on discriminatory grounds, this amounts to arbitrary deprivation of nationality." (para. 8). Such deprivation is a violation of the CRC non-discrimination principles.

Statelessness, in and of itself, is discriminatory, perpetuated by every state, not just the state in which the majority of stateless people reside, since the universality of the underlying human status calls for universality in resolving the crisis. The persistence of child statelessness is a misnomer and egregious discrimination, something that can be tackled quite promptly through the integration of *jus soli* norms in national laws of all countries to the effect that nationality is conferred by presence on the land, regardless of place of birth, to all children who are or at risk of being stateless.

Principle #4: Survival and Development

Article 6:2 of the UNCRC states that: "States parties shall ensure to the maximum extent possible the survival and development of the child." The duty bearers in legal ID for children—state and parent—are central to the survival and development of children. Just as statelessness robs children of essential basic needs for their survival and development provided by states, child separation from parents curtails their very survival. A combination of both statelessness and separation spells catastrophe for the child.

Foundational ID therefore serves many purposes for the survival and development of children. CRVS statistics help governments plan and distribute services. In turn, the conferment of citizenship rights through legal ID help children to access public services including free primary and secondary education, childhood immunizations, healthcare, social and economic benefits or opportunities. Without accurate population data, children would be robbed of infrastructure that supports their survival and development like playgrounds, safe walkways, libraries, and other infrastructural provisions. ID also helps children to demand safeguards in national laws against activities that would put their lives at risk such as recruitment into armed combat and radicalization (Borum, 2011), harmful and exploitative labor, early marriage, and treatment as adult offenders in the event they are suspected of committing a crime, as seen in the section on significance of the problem.

On the private sphere, legal ID secures children's private rights to inheritance and property held in trust for them, reputation and kinship and most importantly, the safety of family care, which not only supports their physical needs but also their psychological and emotional development. The primacy of family is recognized in the CRC (1989) preamble as "the fundamental group in society and the natural environment for the growth and well-being of all its members, and particularly children."

A growing area of research in legal ID for children is to aid in reunification of children who have involuntarily separated from their families through child theft, abductions, straying, running away or any other way. Child or family separation is often studied in humanitarian law as the forceful or involuntary separation during or following the occurrence of migration, repatriation, deportation and resettlement of migrant persons such as refugees. The CRC also makes provisions for tracing and reunification of such children (CRC, 1989, A. 22.2).

However, an ever-increasing concern is the under-researched area of situations where children become separated from their families in the short term or long term due to criminal acts, or through negligent or accidentally. Children who involuntarily separate from their parents, guardians or caregivers stand a higher risk of death, injury, exploitation, radicalization, and abuse.

There are no reliable global statistics on this issue. However, the International Center for Missing and Exploited Children (ICMEC) is a network of about 16 non-profit agencies looking into the issue of missing and lost children (ICMEC, 2021b). Among national statistics in the few jurisdictions that do report, there are indications of this phenomenon. The US National Centre for Missing and Exploited Children (NCMEC) is the world's longest-running non-profit and quasi-governmental institution tackling the issue of missing and lost children. It runs the AMBER alert emergency response system, named after a long-standing, still-open case of a missing child named Amber. NCMEC works closely with the US Department of Justice (DOJ) to report crime statistics and respond to missing child reports. In 2019, the DOJ reported that over 400,000 missing children cases had been reported. ICMEC estimates that 8 million children go missing each year. Although most of these cases are successfully resolved, they require considerable resources for hunting and tracing families.

UNICEF reports that over 2.7 million children are living in alternative care. *The Lancet* places the figure at 3.18 to 9.42 million children in 2015 (Desmond, et al., 2020). It is not known how many of these children have legal ID that could help trace them back to family care. Indeed, in many instances, children are placed in institutional care where judicial proceedings have judged that their families are unsuitable or incapable of providing them with care. The UNCRC and the UN Guidelines for the Alternative Care of Children (2009) encourage efforts to maintain children with their families where possible. When this is not in the child's best interest, the state is responsible for protecting the rights of the child and ensuring appropriate alternative care: kinship care, foster care, other forms of family-based or family-like care, residential care, or supervised independent living arrangements. Recourse to alternative care should only be made when necessary, and in forms appropriate to promote the child's wellbeing, aiming to find a stable and safe long-term response, including, where possible, reuniting the child with his or her family.

However, in instances where the children are missing from their homes involuntarily, their families face an arduous task of tracing them, especially in the event of their being trafficked outside their locality or country. Biometric ID proponents point to this problem to advocate for the use of biological biometric modalities in the production of child legal ID that would aid in tracing unidentified or unaccompanied children back to their families by matching their modalities to existing registers or databases. This would shorten the time needed to return missing children to their families, thereby reducing their vulnerability to harm. It would also provide families of missing children with much-desired comfort that their children can be traced in the event they go missing.

Much more research and analysis need to be put into the potential of biological modalities such as iris scans, DNA samples, or hair follicle imagery that provide irrefutable data on children. I opine that for this purpose, such data must be held solely by parents or legal guardians as a critical component of the packet of foundational ID of their children. In the event of the unexpected loss of a child, only then would parents present the biological biodata to law enforcement authorities to be used to match against the secure database of unidentified children. Research in this area would be beneficial to speed up tracing efforts and contribute to resolving complex cases of child trafficking, abduction, smuggling and other crimes relating to migration which remove a child from their immediate familial and familiar environment.

General Findings on Legal ID

The core challenge in administering legal ID is the lack of a uniform definition in international law. As discussed in Chapter VI, legal definitions are subjectively determined based on functionality and the priorities of implementing institutions, primarily based on the global development agenda.

One mission of this study is to suggest a definition that is grounded firmly on human rights, human autonomy, privacy, and dignity. Premised on this, I offer the following definition:

> Legal ID is a traceable record documenting a natural person's name, date and place of birth recorded and stored in a secure manner that is primarily accessible to the subject individual who then consents to the access to their data by a statutory public entity authorized by law to confer such unique identity and nationality status. The data is used only for purposes delineated through a legal process based on

> international human rights standards, which explicitly recognizes the person's inherent rights and social responsibilities within a specific territory.

A comprehensive definition such as this one avoids ambiguities about the human rights foundations of legal identity theory. It also permits data sovereignty to vest in the person not the entity of registration. It further places duty of care and access rights upon a competent statutory entity through the explicit consent of the data owner, to avert possibility of the entity delegating access privileges to other legal corporations such as banks, mobile service providers, or commercial entities whether private or public, that have not been subjected to a legislative process, nationally or internationally, or received the overt consent of the data owner. This definition also broadens the types and formats of records that could form legal ID, physical or electronic, foundational or functional and potentially digital and biometric, as long as the data are traceable, and their use clarified in law. It further caters to all persons, whether citizens or non-citizens. Most importantly, this definition affirms and anchors legal ID on the inherent rights of a natural person, which distinguishes them from a body corporate.

The legal nature of the entities that facilitate the person to obtain legal ID is important because it attempts to stay true to international legal mandate bestowed specifically upon states to confer name and nationality to all persons immediately at or soon after birth (CRC,1989; UDHR, 1948; ICCPR, 1966; CERD, 1965; CEDAW, 1979; CRPD, 2006; Statelessness Conventions, 1954, 1961).

Considering that the community of states is in confluence over the fact that human beings enjoy inherent dignity and desire freedom and recognition as elaborated under the UDHR and international norms, legal ID in this context is therefore that record that purposes to show that a certain state has formally recognized all individuals within its territory. If an individual within the territory of a state does not meet the legal criteria to be made a citizen, then the state must still recognize the non-citizen's presence and lawful residency within its borders by granting temporary, long-term, renewable or permanent permissions to stay. Logically, this assures that no matter where any individual is in the globalized community of nations, their existence and presence in any given locality has been acknowledged by at least one state. The purpose of this is to assure the individual of legal visibility. Furthermore, each person would know the attending rights due to them and their responsibilities to the specific state or states that have acknowledged their existence. In this logic, an individual's quest or status of dual or multiple nationality is one that merely serves his/her interests to choose the privileges that multiple states can offer them. On the other hand, an individual with no nationality, or with doubtful nationality due to imminent or actual collapse of her/his state of nationality, has the assurance that they will receive (at least some) basic protections under humanitarian law from the state that has acknowledged their residency within its borders.

Questions arise: Why would a citizen wish to voluntarily consent to the access of their data? What would incentivize them to do so? What about those who are in conflict with the law or intent on nefarious activity in the guise of privacy? These pertinent questions could be answered in the same breath as the consent to being governed. The human person is a social being who functions optimally in a collective with a common purpose. Hence, each submits to lawful and constitutional decisions taken on their behalf by elected representatives. While the suggestion that data sovereignty ought to vest in the individual might be termed philosophical and idealistic, it holds persuasive in liberal thinking.

The importance of nationality and proof of legal identity cannot be overstated. It brings about positive public outcomes as it enables effective government service provision, national security, and forward public planning. On an individual level, it allows one to access services, claim protections and engage meaningfully in social life politically, economically, and socially. The concerns over personal privacy and personal sovereignty over data has not been anti-development. On the contrary, public services and goods are an entitlement under human rights as they facilitate an individual to reach their full potential and enjoy their freedoms.

The question has always been how to fetter government power over the individual. Would this suggestion be an adequate answer to that question? Future research might shed light to what a rights based ID entails.

Chapter VII

Framework for a Typology of Legal ID

Proof of nationality in the form of incontrovertible legal identity documents differ from country to country. The differences lie in the typology and functionality of identity systems around the world. These differences are engendered by the lack of uniformity in the interpretation of legal ID. As a result, legal identity policies are not uniformly designed to fit the priorities and objectives of issuing authorities. These priorities might be developmental, financial such as tax collection, functional under the auspices of service provision, commercial and rent seeking, or aimed at mere conformity with the demands of the global community under the SDG agenda. The distinction depends upon the legal regime applied for conferring nationality, i.e., *jus soli* or *jus sanguinis*. In the former case, the foundational identity document suffices to prove nationality. In the latter case, additional documentation such as a citizen's identity card is required to prove nationality. This is the case in the United Arab Emirates.

The distinction further depends upon state sovereignty in determining the extent of biometric information it intends to or is authorized to harvest, methods of collection, means of verification, and capability for interlinked uses of the data. Herein lies the distinctions between identity systems across the world: some countries having integrated or singular identity in respect of each individual, with data being shared across service providers within state and at times with private entities; others provide their nationals with multiple documents, each pegged on functional usage of data by different service providers within or outside state.

The problem of lack of uniformity in typology can be traced to various factors, each of which touch on a lacuna in international law. First, there is no universal definition of legal identity. Second, while nationality is a normative concept, it does not enjoy a universal legal framework that could help place parameters on definition and application. Hence, many unusual scenarios lead to the exclusion of certain individuals as evidenced by high numbers of statelessness, not least of which is state-sanctioned discrimination that is institutionalized in policies that assert sovereignty over determination of *jus sanguinis* citizenship and requirements or regulations for naturalization.

A universal definition and framework would bridge the chasm between a rights-based approach and the impetus for development. It would, for instance, affirm the ownership of data, delineate user functionality and access to data, provide a framework for an optimum typology that recognizes the primacy of the person as the *bona fide* owner of data, and most importantly, create an independent monitoring system to keep states in check. Such a monitoring system could comprise individuals elected or selected to represent the widest range of global voices accompanied by a robust framework for research and development, accountability, and justice. The rationale for such a mission is the undeniable primacy of legal ID and its confluence with human rights and development.

Criteria of Typology

In this section, I will analyze diverse propositions for the criteria of typology as presented by different international actors. Increasingly, international organizations, particularly bilateral agencies like the World Bank and UN agencies, are leading efforts for identity for all. Several other collaborative networks comprised of development agencies and private institutions are also spearheading regional or national efforts to increase uptake in birth registration. Many solutions are being deployed to speed up CRVS processes whilst aiming to make data collection, storage and retrieval more effective. Some of these large-scale initiatives include:

- #IBelong Campaign to End Statelessness by 2024 and Global Action Plan to End Statelessness: 2014–2024, spearheaded by UNHCR
- Global Campaign for Equal Nationality Rights
- "ID4D" platform by the World Bank
- 2014 Brazil Declaration and Plan of Action
- 2015 Abidjan Declaration of Ministers of ECOWAS Member States on Eradication of Statelessness and the Banjul Action Plan
- 2017 Declaration of International Conference on the Great Lakes Region (ICGLR) Member States on the Eradication of Statelessness and associated Action Plan
- 2018 League of Arab States Ministerial Declaration on Belonging and Legal Identity
- The Africa Programme on Accelerated Improvement of Civil Registration and Vital Statistics
- Regional Strategic Plan for the Improvement of Civil Registration and Vital Statistics in Asia and the Pacific
- 2015 EU Council Conclusions on Statelessness.

Each of these have developed sets of criteria and a framework for operations. This thesis study mined the most common criteria, enabling me to now discuss each of them to justify their adoption or rejection as criteria to be used in this study.

Universality

The ID4All verbiage of SDG 16:9 refers to "universal legal identity" as an important cross-cutting goal that is key to achieving many other SDGs. Universality means that all persons regardless of differences, and respecting their uniqueness, deserve the same treatment with respect to legal ID protocols. Universality of legal ID (Brownword, 2009) ties to universality of human rights. The overall SDG ambition echoes this concept in its "no one left behind" mantra (McArthur & Rasmussen, 2019). There is no debate that the right to nationality and identity is universal, particularly with respect to children whose birth should be registered in the earliest possible days of their lives. It fits well with the "best interest" principle, and facilitates all children to gain services and goods for their survival and development. *This criterion is adopted for this study.*

Compulsory or Mandatory

Universality is distinguished from a mandatory requirement. No righteous agenda should be coercive even if it harbors the best of intentions. Not only does it elicit a power imbalance, but it also engenders suspicion, fear, and apathy hence countering its presumed ambition of universality. As explained earlier, penalizing, criminalizing or otherwise placing any form of material or psychological sanction merely leads "offending" parents underground to the detriment of their children.

Other illustrations of resistance to compulsory legal ID are the prominent instances where ambitious and costly ID projects have been halted due to public pressure based on skepticism of the utility of the process, security of data, and concerns over potential breach of privacy (ACLU, 2021).

An alternative to making legal ID processes mandatory is the purposeful denial of public services to persons, including children, who fail to produce legal ID. While it is prudent for state institutions to maintain law and order, a state is not justified in denying crucial services to any person based on the respect for the dignity of the person. *This criterion is therefore not accepted.*

Continuous

CRVS and PR systems are organic systems that monitor the cycle of human life from live birth to death. They track a human person through their key milestones to facilitate evidence-based planning, and appropriate or disaggregated service provision. The onset of registration ought to be as early in life as possible. Continuous registration, unlike censuses that are deployed at least once a decade, provides robust and real-time data that enables prompt and accurate projections. *This criterion is therefore adopted.*

Confidential

This is perhaps the most meaningful criterion as it resides at the heart of the human rights presumption of personal privacy and sovereignty over one's own data. Confidentiality and data security must be legislated in order to delineate the boundaries of access. Therefore, a robust system will include tight protocols for security, multi-layer or two-step verification for access, and active participation of the data owner who ultimately decides how their information may be used and who may use it. Confidentiality is directly aligned to the right to privacy. *This criterion is therefore adopted.*

Permanent

As explained earlier, children deserve a chance to provide input into decisions about their identity. Yet, legal identity processes that affect them most drastically offer the least apparent opportunities to incorporate children's opinion. If legal identity and all aspects of subjectively determined decisions like name and gender were rendered permanent, child participation would be forever curtailed. Additionally, should the record contain any errors that would impact the individual's future, a permanent record would prevent prompt or efficient corrections.

The consequences of permanence, even for portions of data such as the unique number, can best be illustrated when dealing with a case of juvenile justice. A child in conflict with the law could be judged capable of crime and rehabilitated under law. However, the record of the transgression and punishment would follow the individual for the rest of their lives because their legal ID remains permanent. In the best interests of a child, juvenile offences need not punctuate their entire livelihood and lifestyle based on their former transgression. *Therefore, the permanence criterion fails to meet the threshold for adoption in this study.* In the alternative, foundational ID should be presumed to be provisional, pending attainment of age of majority.

Timely

The earlier a child can be made visible to the state, the better. Crucial life-impacting services, such as immunization, education, and healthcare, would be negatively impacted by the lack of proof of identity. Timely deployment fits well with the best interestes and survival and development principles of child protection. *It is therefore accepted as a criterion under this study.*

Centralization, Interoperability, and Integration

This criteria sits at loggerheads with the confidentiality criterion. Centralized data runs the risk of loss, destruction, or tampering. Most countries boast of utilizing the best security technologies, yet cyber and identity fraud continue, pointing to deficiencies in the systems' security measures.

Interoperability and integration raise criticisms based on the risk of feature creep. The delegation and sharing of data with third parties by authorized state agents, even if done under the authority of law, means that data mining is fair game in legal identity. *This criterion is therefore not adopted.*

Secure or Robust Systems

A robust system is able to preempt and reposition or respond promptly to system threats and weaknesses. This sounds noble, but in fact it requires keeping up with technological shifts to counter emerging and morphing threats and challenges. The continual shifts to enact new regulations mean that the state entity mandated to handle legal ID must harness all resources within and outside the government to keep up with ever-changing challenges. This negates the holistic goal of secure ID since it is often done outside the purview of the populace and with the participation of external parties. Despite all this, a secure legal ID is the aspiration of individuals since the benefits of convenience, data security and speed of service are very persuasive. Nevertheless, the question remains: what other ways can data be secured? One answer might lie in the earlier proposal on data sovereignty. *This criterion is adopted.*

Transparent

This criterion is crucial to policy making. Transparency is achieved through public participation; sharing of information that could shape policy; and answering doubts in a timely, comprehensive and truthful manner. Transparency also demands that data owners are kept informed about who, when, and why data is shared and third parties involved. *This criterion is adopted.*

Human Rights Basis

This criterion is unequivocal. It should be explicit in policy, in communication materials and, most importantly, in practice. Derogation from this obligation is the first signal that legal ID is no longer serving its intended goal. However, for this to be effective, a proper understanding of the human rights context and nuance is required —a task that is not easy to achieve in the face of pressing operational priorities.

Another way to approach legal ID from a human rights lens is to tap into its potential to rationalize the necessity of legal ID. Rather than coercion, messaging surrounding legal ID for children needs to be couched, genuinely so, under an agenda that benefits them directly in the short and longer term. *This criterion is adopted.*

Independent Monitoring and Reporting

This novel proposition that would guard against excesses of state in the use of data is linked to the human rights underpinnings of legal ID. Akin to the mandate of the International Atomic Energy Agency (IAEA), such a cooperative venture would seek to promote, guide, and monitor the deployment of safe, secure and human rights based identity protocols. Such an agency would be comprised of distinguished experts and members of the global community selected through a democratic process. Its mandate would backstop with the global community of persons. An independent monitoring mechanism would be particularly meaningful to children and would integrate their voices and active meaningful participation in its deliberations and actions. *This suggestion is adopted.*

Chapter VIII

Results and Conclusion

Guided by sound analysis, theory, literature, and observations, the following logic model (see Table 1) illustrates the utility, typology, and effectiveness of legal identity as it pertains to children.

Table 1. Logic Model for Typology of Legal ID for Children

Criteria selection	Child protection principles (coded)	Means of verification	Assumptions (external factors)	Effect on children
Universality	ND, S&D	• Statistics of birth registration • Statistics of stateless, persons of unknown identity and foundlings	• parental choice against registration. • barriers of entry caused by bias.	All children are registered at birth
Continuous	S&D, CP	• Timings of registration centers • Regulations for updating information	• children are not on the move and are still resident in the UAE. • peace and security in the region	Improved S&D due to foresighted planning
Confidential	B	• Key user info held by data owner or parent. • Encrypted data • System design does not allow sharing of residency, biometrics and biodata with external parties.	• capacity of users/clients or data owners to safely handle ID information and access keys.	Child safeguards against loss of data
Timely	BI, S&D	• Numbers of children below 5 years that are registered.	• parental cooperation	No child left behind

Criteria selection	Child protection principles (coded)	Means of verification	Assumptions (external factors)	Effect on children
Provisional	BI, CP	• Amendment of data permitted	• corresponding law on methodology for amendment.	Guarantee of child participation at the appropriate age.
Secure/robust system	BI	• Few or no data breaches 90% reduction in identity fraud	• Cost-effective solutions are available.	Child safeguarding due to proactive planning.
Transparent	BI, CP	• Public education about typology and function of emirates ID	• An engaged public	Secure future of ID
Human rights based	BI, CP, ND, S&D	• HR expressly defined in policy • Continuous analysis of standards.	• Willing participants (government and public)	Stays true to HR agenda, hence respectful of all principles of child rights.
Independent monitoring	BI, CP	• Inaugural committee with broad membership	• Global consensus	Watchdogging for the benefit of children.

Legend:
BI: Best Interests of the child principle
CP: Child Participation
ND: Non-Discrimination
S&D: Survival & Development

Source: developed by thesis author.

Emirates ID: Outlook for Childrens' Rights

Adopting a framework that is acceptable and applicable globally in order to facilitate identifying criteria that conceptualize or design the typology of legal ID and also can apply to children, would be a worthwhile venture. This thesis study has established criteria, analysed them, and linked them to child protection principles. As a result, it is evident that child legal ID can be promulgated from a human rights perspective under careful consideration, including the novel idea of an independent monitoring and reporting framework, as suggested in Figure 2.

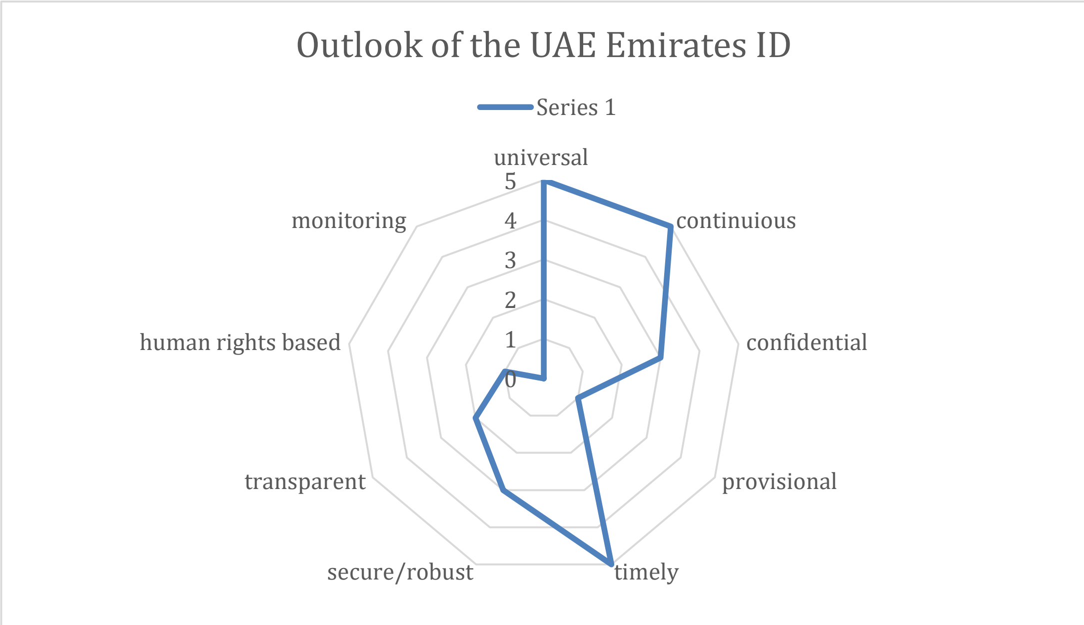

Fig. 2. Outlook of Emirates ID and Child Protection.

The criteria that have been selected are largely well recognized and already in use, but they are not fully understood or applied deliberately within the context of child protection. This study has attempted to make such a linkage, drawing conclusions about the effectiveness and potential harm that certain criteria could pose to child protection.

Additionally, the novel idea to investigate the possibility of personal sovereignty over one's own data is another aspect that this study has brought out. The suggestion aims to counter the excesses of governments or other entities that might inadvertently or opportunistically misuse data and expand institutional mandates for the use of data for purposes outside of those that have been clearly defined in law.

Ultimately, the importance of big data and the growing field of machine learning and other computational sciences means that the human rights sector—especially those subsectors looking at legal identity—needs to stay a step ahead to understand the implications of big data on human rights and child protection. This is particularly so because the type of data collected for legal ID comprises intrusive modalities such as iris scans, photo imagery, and digital fingerprinting, all aspects that are inextricable from legal ID as a sub-discipline.

The lack of a uniform definition of legal identity stands out as one aspect that must be questioned and further pursued by scholars and practitioners. A uniform definition would curtail feature creep and other excesses that emanate from entities seeking to interpret legal ID for their own expediency. This thesis suggests a defintiton that encompasses all aspects of theoretical foundation of human rights, responsibility delineation, ownership determination, utility, and typology.

The included UAE case study presented a unique opportunity to test some of these ideas in practical terms. Close inspection was made of the legal and institutional framework, norms, and attitudes toward legal identity on a broad scale, with special emphasis on childrens' ID. The study found that UAE law risks accusations of arbitrary deprivation of nationality to children who are born to mothers who are married to non-nationals, or who are otherwise single since women are not permitted by law to pass on their nationality *jus sanguinis*. Therefore relying on patrilineal structures for nationality deetermination subjects a small yet important group of children to the risk of statelessness. Gender-based discrtiminatieon is specifically prohibited by law in CEDAW, CRC, CCPR and other conventions of which the UAE is signatory.

Costs imposed on the acquisition of mandatory ID and consequential criminalization of persons who fail to obtain Emirates ID are also factors that hinder universal access to legal ID in the UAE. Penalties for non-complaincce have the effect of pushing away certain demographics who otherwise might not afford to obtain Emirates ID or are fearful of presenting themselves to the system based on ethnic marginalization. Communities such as the Bedoin are a case in point.

A unique norm in *Sharia* law, and UAE law in particular, that became evident in this study and should be the subject of further research, is the *Quran*'s rationale for non-adoption and fostering of foundlings and children of unknown nationality. The UNCRC noted situations where children could be involuntarity separated from their parents through means such as criminal abduction, straying, or other ways. It requires that states must make every effort to trace the origin and parentage and family of the child before deciding on placing the child for adoption or otherwise assigning it a new name and identity. *Sharia* law deepens this jurisprudence by rejecting the idea of providing a permanent identity within a new family name so as to provide ample opportunity for tracing and reunification of the child, should their parents ultimately be found.

This study leaps from this argument to suggest the introduction of collection of biometric information that is held in custody by parents as a right and as prudential practice to aid in tracing of their lost chidlren in the unlikely event of such separation. This idea would bolster the provision of tracing which currently is a manual process that is highly ineffective, particularly for children of young age who are unable to articulate their circumstances. Emirati law that presumes that foundlings and children of unknown heritage or parentage might have a chance throughout the course of their lives to be reunited and to reaffirm their original or genuine identity is in my opinion a noble thought.

In conclusion, legal identity and identity as a whole are subjects that permeate every facet of human existence, and can be approached from multiple lenses. These are fascinating subjects to explore deeper and to steer them right back into the human rights agenda, which includes a global development aspect but ought not preclude the autonomy and sovereignty of an individual over their own identity, particularly of data collected in respect of their identity.

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