



Informing the World Bank's Gender and Identification for Development Initiative

Student Working Paper to World Bank ID4D Initiative

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Table of Contents

Background Note	2
Introduction	4
Section I: Identification in the Kingdom of Tonga	7
Section I.A: Tonga's Current Identification Framework	9
Section I.B: Gender-Based Legal Barriers to Financial Inclusion in Tonga	13
Section I.C: Gender-Based Social Barriers to Financial Inclusion in Tonga	19
Section I.D: Asymmetries in Tonga's Laws, Culture, and Human Rights Commitments	21
Section I.E: Digital Identity in Tonga	27
Section II: Identification in Nigeria	31
Section II.A: Introduction to Nigerian History, Government, Religion, and Culture	31
Section II.B: Foundational Identification and Corruption in Nigeria	34
Section II.C: International Human Rights Law and Nigerian Foundational Identity	35
Section III: Identification in Action – Comparative Case Studies	43
Estonia: Using Digital ID to Spur Entrepreneurship and Civic Participation	43
Pakistan: Using National ID to Empower Women and Upend Gender Norms	44
Indonesia: Using Birth Registration to Combat Child Marriage	46
India: Using Aadhaar to Ensure Social Benefits Reach Intended Recipients	48
Conclusion and Recommendations	51

Background Note

The World Bank Group's Identification for Development (ID4D) initiative, in conjunction with the Gates Foundation, estimates that globally one billion people are unable to prove their identity. The majority of the one billion live in low-income countries (LICs), particularly in sub-Saharan Africa and Asia. Women and the poor are less likely to have an ID than other population groups. The ID4D-Findex survey found that 45% of women in LICs do not have an ID (vs. 30% of men), and 45% of the poorest 20% of the population (vs. 28% of the richest 20%) lack proof of identity.

There is little evidence about what causes the gender gap in possession of officially recognized IDs, however, and how it might vary within countries between, for example, the rich and the poor and different ethnic groups. It is important to address the gender gap because women's lack of access to IDs will constrain progress that can be made in other areas that are critical to poverty reduction – but that require proof of identity — such as financial inclusion, ownership of mobile phones, health services, social protection, and other development goals that are critical for the empowerment of women and girls.

Gender-based barriers that limit at the national level women's access to IDs in comparison to men's access to IDs lie in households, informal institutions (social norms), markets (direct and indirect costs), and formal institutions (legal barriers). Gender differentials in laws circumscribe a woman's right to travel outside the home, get a job or pursue a trade or profession without permission from a husband or male guardian, sign a contract, register a business; be the head of household or head of family; be able to confer citizenship to her children; decide where her child will attend school; open a bank account; choose where to live; have ownership over property; inherit property; act against the wishes of their husband; convey citizenship to a non-national husband; administer marital property; exercise basic guardianship and customary rights over children and more. These laws, regulations, and policies restrict the full capacity of women and constrain a woman's economic choices, including her ability to engage in entrepreneurial and employment activities.

As part of the deep dive into gender-based differences in official forms of identification and how this may impact financial inclusion, access to education and other (e.g. social safety nets), a select group of law students at the University of Pennsylvania, under the supervision of Associate Dean Rangita de Silva de Alwis, analyzed laws in Nigeria and Tonga, including, but not limited to: gender-based legal barriers to birth registration; gender-based legal barriers to obtaining an ID card; gender-based legal barriers to obtaining a passport; and nationality laws in Nigeria and Tonga.

Research Methodology

- Examining the international and regional law frameworks as critical analytical tools, including but not limited to: the state parties' obligations under human rights conventions (ICCPR, ICESCR, CEDAW, CRC, SDGs, SCR 1325 and the Maputo Protocol)
- Analyzing state party reports to the human rights treaty bodies, including the CEDAW/ UPR and other obligations
- Gathering and analyzing gender-based legal restrictions on financial inclusion, access to education, health care, employment (unequal retirement age, pensions, social security etc.), land and property rights, by identifying gender-based legal differences in the legal system which directly or indirectly impact policies that affect women's economic opportunities.
- Mapping gender legal differences in formal and customary laws: husband's permission to freedom of movement; apply for a passport; head of household; choice of residence; confer citizenship to children; husband's permission for a job; travel outside the home; register a business; open a bank account; sign a contract; woman has to prove her identity to enter an employment contract or access finance. Proof of identity is necessary to borrow from banks.
- Analyzing asymmetries in laws and policies against the baseline of constitutional guarantees and international treaty obligations.
- Benchmarking the legal and regulatory environment for women in business and innovation
- Identifying and analyzing cases that address gender discrimination in the laws.
- Collecting (if available) quantitative and qualitative data through field research done over Skype from the law school.
- Examining comparative legal systems and highlighting transnational jurisprudence from these legal systems, including reformist efforts in countries that are being studied by the Bank, including best practices from the region and sub-region.

Introduction

Official proof of identity is essential to an individual's ability to exercise their rights, access financial and social services, and perform many daily activities. Its fundamental importance carries even more weight for women and girls, who face additional barriers to equal participation in economic, political, social, and daily activities. The far-reaching benefits of having an official ID and the detrimental burdens of lacking one cannot be overstated: national ID systems directly and indirectly govern women's ability to secure a range of social and economic services, access equal opportunities in civil, political, economic, social, and cultural activities, and exercise their rights under domestic and international law.

Identification—of lack thereof—is an undeniable element in the fabric of women's subordination, not only because of its contribution to gender-based barriers to women's economic, political, and social participation, but also because of its power to shatter these barriers and advance women's rights more rapidly, comprehensively, and boldly than ever before. Without an official form of identification, unregistered women and girls do not officially exist; their lives are excluded from the data, thereby denying them even a quantitative role in the design and implementation of relevant policies. Data, to a significant extent, captures and distills individual women and girls' experiences, which have historically been silenced by the law, by cultural norms, and by lack of official proof of identity. Data and its analytic potential can harness women's experiences in specific contexts and in the aggregate to refine and shape law and policy, combat harmful social norms, and accelerate development.

By illuminating and recasting the lives of women and girls into operable knowledge, data from ID systems have the transformative potential to explicate the gender-based barriers and gaps in economic opportunities, healthcare, education, technology, politics, and the justice system. A lack of robust and reliable data limits efforts to evaluate gender gaps and measure progress in closing them. Stronger forms of personal identity carry untapped potential in the design, implementation, and evaluation of evidence-based strategies, policies, and programs to advance gender equality. Without adequate data, policies are less likely to be successful, and, consequently, less likely to be changed and improved. In an increasingly digitized world, the ability to access and collect gender-specific data is fundamental to global progress in securing women's rights, ending extreme poverty, and promoting shared prosperity.

Although this paper analyzes official identification generally, it directly applies to the development of digital identification. Digital identity constitutes a powerful catalyst for change in all areas of development. New technologies, ranging from the internet, mobile phones, social media, and digital applications, have experienced rapid development and increased global

reliance. A digital form of identity, then, offers more than a strategic transformation for accelerating development; it will become increasingly necessary in the modern world. A digital identity system offers an effective mechanism for providing universal access to proof of identity while enhancing the benefits of ID possession. Likewise, the rapid growth of and reliance on technology potentially heightens the exclusion of individuals who lack a digital ID—the expansion of digital IDs could further marginalize those who lack proof of official identity, let alone a mobile phone.

Section I critically analyzes the formal and informal gender-based barriers to obtaining official proof of identity and to women’s financial inclusion in Tonga. By surveying Tonga’s current identification coverage and regulatory landscape, including the country’s digital identification potential, this section explores the ways in which legal identity interacts with diverse and interlocking gender-based impediments to financial inclusion, including land and property rights, economic and political participation, education, and healthcare. The asymmetries in Tonga’s laws, culture, and human rights commitments reveal the interstices in Tonga’s frameworks for ensuring substantive equality in women’s access to legal identity and financial inclusion. After an exhaustive investigation of Tonga’s established national identity framework and its pervasive gender-based barriers, this section culminates in an envisioned application of digital identity in transforming Tonga’s natural disaster prevention, response, and recovery efforts.

Section II asserts birth registration as an itinerant, grassroots solution to identification reform in Nigeria. The analysis begins by reviewing the present identification infrastructure within the context of Nigeria’s parallel legal systems, the socioeconomic disparities between the North and South, the current status of gender rights and politics, effects of corruption, and inequalities between rural and more developed regions. It then ends with an argument for birth registration as the means of identification best suited to Nigeria’s sociopolitical landscape, and identifies an entrepreneurial model as a case study for itinerant birth registration mechanisms. Birth registration is a method that is not only well suited for Nigeria’s pluralist society, but can also help prevent corruption within the current identification infrastructure.

Section III presents four country case studies in which identification has been used to ameliorate longstanding gender-based barriers, thereby strengthening the social, economic, and political roles women play. Estonia’s pioneering national identification scheme has created a business environment in which women can participate on near-parity with men, and the country’s entrance into digital identification has raised the number of female voters in national elections. In Pakistan, the inception of subsistence programs that target rural women and

require identification for access have narrowed the gender gap in the unregistered population, a phenomenon that promises to gradually transform traditional legal norms emphasizing male authority in Pakistani households. Indonesia has implemented outreach programs aimed at normalizing registration at birth—an effort that officials believe will weaken the child marriage system that annually forces thousands of girls into wedlock. India launched Aadhaar, a unique identification project for accessing social welfare services; studies recorded a surge in financial inclusion of women in the state of Rajasthan, though roadblocks to accessing services persist.

Considerations and recommendations for the implementation of national identification schemes and digital identification schemes in particular are provided in the **Conclusion** of this Paper.

Section I: Identification in the Kingdom of Tonga

Tonga, a small Pacific island nation with a population of approximately 109,000 people, requires official proof of identity to vote, run for office, obtain a passport and driver's license, purchase a SIM card, and access social welfare programs such as the Social Welfare Scheme,¹ A'uki ai cash assistance,² and Aged-Care Services for the Elderly.³ In the economic sphere, an official ID is necessary to engage in a wide range of services and activities, such as opening a bank account, engaging in mobile banking, receiving remittances, managing civil servants benefits and official legal documents, and registering a business.⁴

Tonga's unregistered population of 3,482—about 3 percent of its total population,⁵ is one of the lowest in the world, and its virtually non-existent gender gap sets it apart from its Pacific Island neighbors and from the majority of countries surveyed by the World Bank's ID4D Dataset.⁶ Of Tonga's unregistered population, 1,750 are male and 1,754 are female. The birth registration rate has a similarly fractional gender gap: of the 93.4 percent of total registered births in Tonga, 93.6 percent are males and 93.1 percent are females.⁷ The most recent data records the birth registration rate for Tongans in the bottom quintile of wealth as 91.8 percent, compared to 96.4 percent for Tongans in the top quintile of wealth.⁸ Interestingly, the birth registration rate is higher in rural areas (93.8 percent) than in urban areas (92 percent).⁹

While there is still work to be done in achieving complete ID coverage for all, before addressing strategies for doing so, it is instructive to explore Tonga's current ID system and regulatory landscape.

¹ Social Welfare Scheme, *Social Protection*, <http://socialprotection.org/programme/social-welfare-scheme> (providing permanent residents of Tonga aged 70 years and older to receive monthly cash benefits). As of 2014, the SWS covered 2,161 women and 1,812 men in Tonga.

² A'uki ai cash assistance (Disability Welfare Scheme), *Social Protection*, <http://socialprotection.org/programme/%E2%80%9999uki-ai-cash-assistance-disability-welfare-scheme> (supporting Tongan citizens with severe disabilities monthly cash benefits, and covering 289 women and 287 men as of 2016).

³ Aged-Care Services for the Elderly, *Social Protection*, <http://socialprotection.org/programme/aged-care-services-elderly> (providing Tongan citizens aged 60 or older, or Tongan citizens under 60 approved by the Social Service Selection Committee, with frequent home visits).

⁴ World Bank, Tonga Digital Government Support Project: Information Document (Jan. 23, 2019), <http://documents.worldbank.org/curated/en/743091548584731239/text/Concept-Project-Information-Document-Integrated-Safeguards-Data-Sheet-Tonga-Digital-Government-Support-Project-P154943.txt>.

⁵ World Bank, ID4D Dataset (Apr. 25, 2018), <https://datacatalog.worldbank.org/dataset/identification-development-global-dataset>.

⁶ *Id.* See also Committee on the Rights of the Child, *Initial Report Submitted by Tonga, due in 1997*, para. 233 (Apr. 5, 2018), CRC/C/TON/1, https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/TON/1&Lang=en (revealing that Tonga has the smallest estimated gender gap in unregistered persons among Fiji, Micronesia, Kiribati, Vanuatu, Tuvalu, Samoa, and the Solomon Islands).

⁷ World Bank, ID4D Dataset (2018).

⁸ *Id.*

⁹ *Id.*



Figure 1: Map of the Kingdom of Tonga

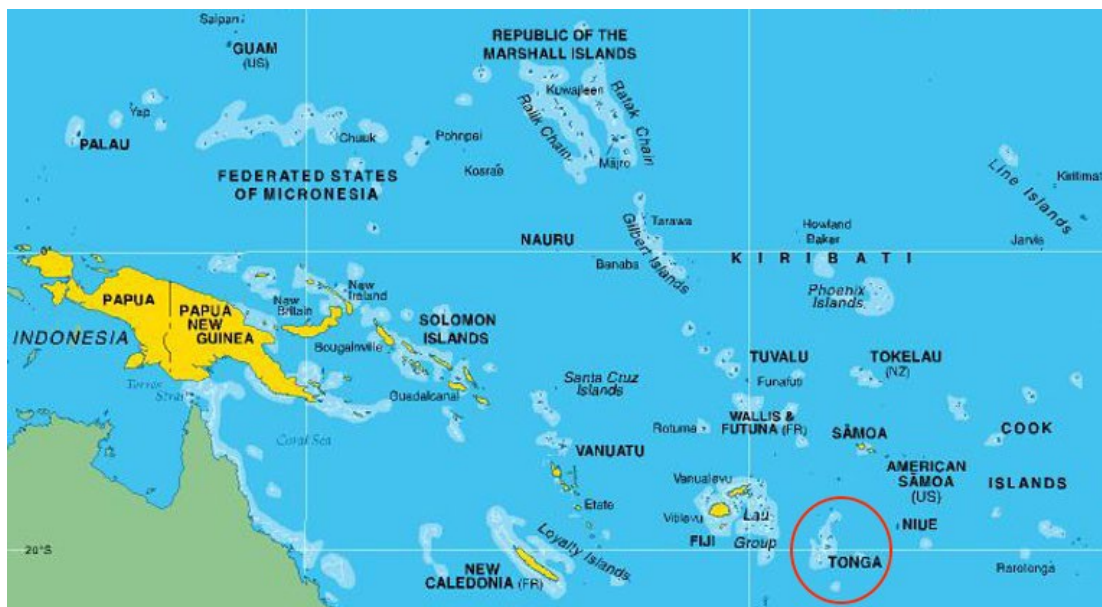


Figure 2: Map of the Pacific Island region, with Tonga circled in red.

Section I.A: Tonga's Current Identification Framework

Tonga's high levels of ID coverage for both females and males are largely attributable to the country's establishment of a mandatory national ID system in 2010. Several government agencies issue official identity documents. There are currently no formal gender-based barriers for women in obtaining any of the standard forms of proof of identity: national identification cards (NIC), passports, driver's licenses, and birth certificates.¹⁰ Each identity document is addressed below.

National Identification Card

While other identity documents serve specific purposes, the National Identification Card provides Tongans with a foundational identity. Pursuant to the National Identity Cards Act, all residents of Tonga aged 14 years or older are required to have a NIC.¹¹ Applying for a NIC (and acquiring subsequent NICs every five years) is free of charge. Tongan residents apply for NICs in person at the National Identity Card Office, allow themselves to be photographed, and fill out a single-page form including their name, address, birth date, nationality, sex, and a supporting document (such as a passport, driver's license, or birth certificate).¹² An applicant may be asked to have their fingerprints and other biometric information recorded, as well as other information that may be reasonably required to verify the contents of the NIC.

The NIC provides Tongans with a foundational identity, whereas the other identity documents are functional, serving a specific purpose in addition to constituting an alternative means to proving one's identity.

Driver's License

A driver's license, beyond its functional role of legally enabling one to drive, constitutes one of the building blocks of showing official proof of identification. Any person aged 18 years or older who can demonstrate the ability to drive may obtain a driver's license by applying in person at a Land and Traffic Department office, paying the required fee (TOP \$60), and providing proof of identity.¹³ There are no gender-based barriers to obtaining a driver's license, and no reports of whether women face gender-based barriers to acquiring this form of identification in practice. Gender-disaggregated data on the number of Tongans who possess a driver's license are currently unavailable.

¹⁰ However, as I will describe below, there are slight gender-based differences in the process of registering the birth of an illegitimate child, and one requirement in obtaining a passport only applies to married men.

¹¹ National Identity Card Act, CAP 04.52, § 7(1) (2016 revised ed.).

¹² National Identity Card Act, Form 1 Schedule 1.

¹³ Traffic Act (2016 revised ed.), https://ago.gov.to/cms/images/LEGISLATION/PRINCIPAL/1958/1958-0013/TrafficAct_2.pdf.

Nationality

Unlike obtaining a NIC or driver's license, Tongan passports and birth certificates require Tongan nationality. It is therefore important to outline Tonga's nationality laws before addressing the next identity documents. Any person born abroad or in Tonga to a Tongan parent acquires Tongan nationality.¹⁴ The Constitution provides that any foreigner who has resided in Tonga for at least five years may become a naturalized subject by taking the oath of allegiance, provided the King consents (a ceremonial requirement).¹⁵ Additionally, any non-Tongan who marries a Tongan, regardless of gender, may acquire Tongan nationality by lodging a written declaration with the Minister of Foreign Affairs that he or she wishes to assume Tongan nationality, followed by taking the prescribed oath of allegiance.¹⁶ Although the Constitution explicitly states that all naturalized subjects shall have the same rights and privileges as native born subjects of Tonga, the exception that they shall not be entitled to the rights of hereditary tax allotments,¹⁷ combined with the law's exclusion of all Tongan women (both naturalized and native born) from holding hereditary estates, town allotments, or tax allotments, highlights the extent to which Tongan law privileges any man over all women.¹⁸

Passport

Any Tongan national who can provide evidence of his or her Tongan nationality (such as with a certificate of naturalization or birth certificate¹⁹) may apply for and, subject to the following requirements, obtain a Tongan passport: the applicant must (a) have all taxes and financial obligations to the government paid; (b) have no legal action against him or her by any court with jurisdiction in Tonga; (c) be a person of good character; (d) have a valid and proper reason for leaving Tonga; (e) if a married man, make proper provision for his wife and children; and (f) not be the subject of a request by the Government of Tonga or by any other foreign government or authority to refuse this passport request.²⁰ A Tongan must pay TOP \$250 for the first issue of a passport valid for 10 years, TOP \$150 for the first issue of a passport valid for five years, TOP \$100 for a passport issued to a child (under 16 years of age), and TOP \$150 for renewing a five-year passport for an additional five years.²¹

¹⁴ Nationality Act, § 2 (2016 revised ed.).

¹⁵ Constitution of Tonga, Part I § 29.

¹⁶ Nationality Act, Part I § 2.

¹⁷ Constitution of Tonga, Part I § 29.

¹⁸ There are extremely narrow circumstances in which a woman could own an allotment; these circumstances and an analysis of Tonga's land and property laws will be discussed further in Section I.B.

¹⁹ Passport Act, Schedule I (Regulation 3(2)), Form 1: Application for a Tongan Passport.

²⁰ Passport Act, § 13, (revised ed. 2016), https://crownlaw.gov.to/cms/images/LEGISLATION/PRINCIPAL/1964/1964-0010/PassportAct_1.pdf.

²¹ Passport Act, Schedule II (Regulation 8), Fees.

There are no formal gender-based legal barriers for women in obtaining a passport, but gender-based social barriers are nevertheless embedded in the process for obtaining one. The requirement for married men but not married women in obtaining a passport seems to be a formality in the application process—to date, an applicant has never been denied a passport for failing to satisfy the requirement, and there is no data on whether there has ever been an inquiry into whether an applicant met this requirement. Although this provision might initially appear to disadvantage married men in relation to women, in practice it does nothing of the sort—even worse, its inclusion in Tongan law reinforces the harmful perception that women cannot support themselves or their children; they require their husband’s protection.

Birth Certificate

A Tongan national can obtain a copy of her birth certificate by making an in-person request at the Civil Registry office, showing proof of valid identification, and, as of 2010, paying TOP \$10.²² Birth registration and the original birth certificate, however, are free.²³ The registration process consists of filling out a form with the child’s name, place and date of birth, the father’s name and place of birth, and the mother’s name, age, and place of birth.²⁴ Apart from the requirement to include the mother’s age but not the father’s, there is no apparent gender-based difference in the application itself.

Most births in Tonga take place in hospitals, which issue a certificate of live birth that parents are expected to take to the Registrar’s General Office within three weeks.²⁵ Midwives, traditional birth attendants, and district officers are also required to report births to the registrar.²⁶ Remote islands have special provisions, allowing births to be reported to the town officer within 48 hours of the birth, and to the sub-registrar on the reporter’s next visit to the main island.²⁷ Tonga’s government attributes Tonga’s high birth registration rate for both females and males and for both rural and urban births²⁸ to these regulations, as well as government-sponsored informational initiatives on the importance of registering and the widely held perception that birth registration is important to ensure entry to school.²⁹

²² Births, Deaths, and Marriages Registration (Amendment) Act of 2010, § 20.

²³ Births, Deaths and Marriages Act, § 3(2) (2016 revised ed.).

²⁴ Registrar General’s Births, Deaths and Marriages Regulations, Schedule Form V.S.10,

²⁵ Committee on the Rights of the Child, *Initial Report Submitted by Tonga, due in 1997*, para. 231 (Apr. 5, 2018).

²⁶ *Id.*

²⁷ *Id.* at para. 232.

²⁸ See Committee on the Rights of the Child, *infra* note 153 and accompanying text.

²⁹ Committee on the Rights of the Child, *supra* note 25, paras. 233, 235.

Additionally, a parent of a child born in wedlock is required to register the child within three weeks of birth.³⁰ If a child is born out of wedlock, the mother or the parents must register the child within three weeks of birth; the father cannot register the child without the mother under these circumstances.³¹ A married woman may not register her child as illegitimate until a Supreme Court order to this effect has been made.³² Tonga's law preventing a father from registering his illegitimate child while allowing the mother or both parents to register the birth might be based on the common gestational view of parental rights and obligations. On this account, gestation is necessary for parental rights, meaning that the gestational mother automatically acquires parental rights and obligations, while men only acquire such rights and obligations through marriage or through the mother's consent.³³ By requiring only the mother to register her illegitimate child, this feature in Tongan law constitute an attempt to deter women—but not men—from acting on their sexual desires. Regardless of intention, this law in effect holds women more accountable for their reproductive activity out of wedlock. It grants fatherhood, not motherhood, a volitional status, with rights and obligations that a man is free to accept or reject. The significant impact of English common law on Tonga's legal system adds support for this reading of Tonga's regulation of illegitimate birth registration.³⁴

This regulation codifies the long-held English presumption that a child born in wedlock to a married woman is the child of her husband.³⁵ As such, the law prevents a married woman from unilaterally stripping her husband of the parental rights that he otherwise would automatically have by virtue of being the presumptive father. Unlike the previous analysis of Tonga's denial of a father's ability to register his illegitimate child, here both the mother and her husband automatically acquire the rights and the obligations of the child. Moreover, the mother (and not her husband or the father) has the exclusive legal right to register the child as illegitimate.

³⁰ Births, Deaths and Marriages Act, § 3(2) (2016 revised ed.).

³¹ *Id.*

³² Registrar General's Births, Deaths and Marriages Regulations, § 6.

³³ See Michael Austin, "Rights and Obligations of Parents," *Internet Encyclopedia of Philosophy*, <https://www.iep.utm.edu/parentri/> (providing a comprehensive overview of the various schools of thought concerning parental rights and obligations, including the gestational account).

³⁴ See Rose Lesley Kautoke, "The Jury System in Tonga," *Journal of South Pacific Law* 13(1) (2009), <http://www.pacilii.org/journals/fJSPL/vol13no1/pdf/kautoke.pdf> (explaining that Tonga, a former protectorate of Britain and a current member of the Commonwealth, adopted the English common law system); see also Katharine K. Baker, "Bargaining or Biology: The History and Future of Paternity Law and Parental Status," *Cornell Journal of Law and Public Policy* 14(1) (2004), <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1075&context=cjlp> (noting that England's long history of legal paternity, originating in 1576, denied children and unwed mothers of children who were not receiving public assistance any right to support from a biological father until 1844).

³⁵ Blackstone, "Commentaries on the Laws of England," (1825); see also *Knowles v. Knowles* (1962) (holding that there is "undoubtedly a presumption (strong, but capable of being rebutted by satisfactory evidence) that a child born in wedlock to a married woman is the child of her husband").

Voter Registration

To register to vote, a Tongan aged 21 years or older must go to the Tongan Electoral Commission's office in person with their NIC and one supporting document (i.e., a birth certificate, passport, or driver's license).³⁶ Once registered, a Tongan can still vote in an election even if unable to produce any form of proof of identity, provided that their name appears on the Electoral Roll for that constituency and that they sign an oath.³⁷ In the November 2017 election, 51.9 percent of enrolled voters were women and 48.1 percent were men.³⁸ In practice, the vast majority of voters attended the polling station with official proof of identity; an independent observation group reported that when the few Tongans who did not have valid proof of identity arrived at a given polling station, polling officials were able to verify the identity of the voter or facilitate the swearing of an oath.³⁹

Section I.B: Gender-Based Legal Barriers to Financial Inclusion in Tonga

Gender-based discrimination in the laws governing land and property ownership, as well as Tonga's omission of anti-discrimination legislation, constitute *de jure* and *de facto* discrimination against women, violating both formal and substantive equality principles and severely limiting women's participation in all aspects of society. Tongan law does not prohibit discrimination regarding sex, race, color, religion, political opinion, national origin or citizenship, social origin, disability, sexual orientation, gender, age, or language.⁴⁰ As a result, its lack of gender-based legal barriers to financial inclusion and other forms of economic, political, and social participation is rendered ineffective for advancing gender equality.

Land & Property Laws

Land laws and patrilineal inheritance deny women any independent land rights.⁴¹ Under Tonga's 1875 Constitution there is no freehold land; land is largely divided into nobles' estates (*tofi'a*), and men inherit land-use rights, leasing land from the Crown or their noble.⁴² Women cannot legally own estates and rarely own allotments.⁴³ Women can only legally inherit a

³⁶ "Voter Registration," *Tonga Electoral Commission*, <https://www.tongaelections.com/index.php/voter-registration/how-do-i-register>.

³⁷ *Id.*

³⁸ "Kingdom of Tonga National Parliamentary Election," *The Commonwealth* (Nov. 16, 2017), <http://thecommonwealth.org/sites/default/files/inline/Tonga%20COG%20report%20FINAL%20PDF.pdf>.

³⁹ *Id.*

⁴⁰ Bureau of Democracy, Human Rights, and Labor, "Tonga 2016 Human Rights Report," *U.S. Dept. of State* (2016), <https://www.state.gov/documents/organization/265592.pdf>.

⁴¹ "Kingdom of Tonga National Parliamentary Election," 75 (2017).

⁴² Constitution of Tonga, Part III: The Land, §§ 103, 111, (revised ed. 2016).

⁴³ Housing, Land, and Property Law in Tonga, Linklaters, LLP, 1 (Mar. 23, 2018), https://reliefweb.int/sites/reliefweb.int/files/resources/2018_03_23_guidance_hlp_law_in_tonga.pdf.

hereditary estate or own an allotment in two specific circumstances: (1) if an allotment holder dies without leaving any male heir, his unmarried daughter inherits a life estate in the allotment; and (2) if an allotment holder dies, his widow is entitled to a life estate in the allotment.⁴⁴ A widow can legally use her husband's allotment but cannot pass it on to her children, and if she enters another relationship or is found in legal proceedings to have committed adultery against her husband while he was alive, she loses access.⁴⁵ Unlike a male heir, a widow who inherits an allotment cannot mortgage or lease it; she can only generate income from the land by granting less formal and less profitable permits.⁴⁶

It is common practice for women to live on the estates or allotments owned by their husbands or male kin, but without legal entitlement to occupy the land, they must rely on the kindness of their husband or male family member.⁴⁷ Licenses (verbal permission to use or reside on land or buildings for a period of time, or until permission is revoked) are often granted to family members; however, a licensee is unlikely to have enforceable occupancy rights against the landholder due to the uncertainty of such permissions.⁴⁸

The only progress in women's land rights was a 2010 amendment "to allow the oldest female child in situations where there is no male heir to register the family allotment and to pass that on to her oldest male child when he comes of age"⁴⁹—a meager indication of progress. Despite persistent calls from Tongans and international actors for equal inheritance and land rights, there has been no further change.⁵⁰ Women cannot own town allotments, tax allotments, or hereditary estates, which all provide greater land tenure security than their only available options: leases, permits, and licenses.⁵¹ Even so, the number of women leasing land continues to rise, with women now holding around 20 percent of all leases.⁵²

Land constitutes "the basis of most business activity, including the space where most entrepreneurial activities are conducted and which can be used as collateral for the purposes of borrowing money."⁵³ Without the ability to own land, Tonga effectively denies women the

⁴⁴ *Id.* at 14-15.

⁴⁵ *Id.* at 10.

⁴⁶ *Id.*

⁴⁷ *Id.* at 5.

⁴⁸ *Id.* at 9.

⁴⁹ Ministry of Finance and National Planning, "2nd National Millennium Development Goals Report: Tonga; Status and Progress Between 1990-2010," 30 (2010).

⁵⁰ Royal Land Commission, Final Report and Recommendations (Mar. 30, 2012). See also Human Rights Council, "Report of the Working Group on the Universal Period Review: Tonga," *UN General Assembly* (Mar. 21, 2013), (documenting questions posed by various countries regarding women's access to land and recommendations that Tonga amend its laws to grant women equal access to land ownership).

⁵¹ *Id.* at 3.

⁵² Housing, Land, and Property Law in Tonga, 15 (2018).

⁵³ Vijaya Nagarajan, "Obstacles to Growth: Gender, Discrimination, and Development in Tonga," *Pacific Economic Bulletin* 24(3) (Oct. 2009).

chance to achieve equal housing security, access equal opportunities to credit, and establish financial independence. Women are thus disadvantaged at key steps in establishing and operating a business.

Economic Participation

Tonga's economy is largely based on external aid and remittances, followed by more modest contributions from tourism, agriculture, and fisheries.⁵⁴ Tonga's agricultural sector is highly relevant to women's financial inclusion, particularly in rural areas where women perform heavy agricultural work alongside men.⁵⁵ In most rural households, agriculture continues to provide food security and generate income, with women, particularly those in poorer households, engaging in agricultural labor.⁵⁶ Tongan women do not merely engage in agricultural labor for household production; they can and do sell their surplus food products in the local market, although reliable data beyond this fact is absent.⁵⁷

The large role that women play in agriculture and food production is not adequately represented in official statistics because it occurs in the informal economy.⁵⁸ Formal employment opportunities for women in agriculture are severely limited, despite the absence of formal legal barriers to women's employment in any occupation.⁵⁹ Women are more likely than men to engage in subsistence labor; transition from subsistence to more profitable activity is impeded by women's restricted access to credit, business development skills, and business knowledge.⁶⁰

Tongan law also does not prohibit discrimination or sexual harassment, nor does it mandate equal remuneration for work of equal value.⁶¹ The omission of anti-discrimination laws denies women the chance to access legal remedies; as such, it constitutes a gender-based legal barrier to equal economic opportunities and financial inclusion. Furthermore, social programs, such as maternity leave, are only available to public sector employees.⁶² Tonga's

⁵⁴ Tonga Digital Government Support Project: Combined Project Information Documents/Integrated Safeguards Sheet, *The World Bank* (Mar. 13, 2019).

⁵⁵ "Country Gender Profile: The Kingdom of Tonga," *Japan International Cooperation Agency*, 19 (2010).

⁵⁶ Systematic Country Diagnostic for the Eight Small Pacific Island Countries: Priorities for Ending Poverty and Boosting Shared Prosperity (2016).

⁵⁷ "Country Gender Profile: The Kingdom of Tonga," *Japan International Cooperation Agency*, 18-20 (Feb. 2010)

⁵⁸ *Id.*

⁵⁹ *Id.* at 19.

⁶⁰ Tonga: Skills for Inclusive Economic Growth, *Dept. of Foreign Aff.*, 26 (Mar. 2016), <https://dfat.gov.au/about-us/business-opportunities/Documents/investment-design-skills-for-inclusive-economic-growth-tonga.pdf>.

⁶¹ Women, Business and the Law, Tonga (2018), <http://wbl.worldbank.org/en/data/exploreeconomies/tonga/2018>.

⁶² Women and Business in the Pacific, *Asian Development Bank*, 23 (Aug. 2018), <https://www.adb.org/sites/default/files/publication/445821/women-business-pacific.pdf>.

limited social security programs amplify women's disproportionate access to economic opportunities.⁶³

Because of Tongan women's much lower employment rate in the formal sector, they are far less likely to benefit from the available social security scheme. Women still receive some protection through spousal retirement benefits and death benefits if they become widows, although in such cases their protection is predicated on their subordinate relationship to a man.⁶⁴ In any case, the underrepresentation of women in the formal employment sector, and therefore in the state-managed social protection scheme, once again forces women to rely on kin networks, and specifically male kin, as the only source of social welfare—just as they must rely on male kin for land and property access.⁶⁵

Although women can legally acquire permits or leases to land, it is difficult to do so in their own name and without the help of male kin.⁶⁶ Likewise, despite the absence of formal gender-based legal barriers to establishing a business, women face substantial challenges from the lack of antidiscrimination laws; Tonga does not prohibit sex- or gender-based discrimination by creditors in access to credit.⁶⁷ Many women report gendered exclusion from the necessary knowledge and networks to start a business, and that male officials make it difficult to obtain permits and licenses.⁶⁸ Furthermore, women face practical gender-based barriers in accessing credit; even when applying for a loan for household improvements rather than for business, creditors usually demand that women have male kin as signatories.⁶⁹ Women who do acquire credit typically must manage high-interest loan repayments because of their gender.⁷⁰ Many women report that accessing finance on a secured basis (using personal property as collateral, as they have no access to land) was too difficult, due to many banks' requirement of 100 percent cash deposits.⁷¹ For unsecured finance, microfinance institutions are still too costly, charging around 20–28 percent interest per annum.⁷²

⁶³ See Margaret Jolly et al., "Falling Through the Net? Gender and Social Protection in the Pacific," *UN Women Discussion Paper Series*, 30 (Sept. 6, 2015), (citing a Tongan government study admitting it has "no overall strategy for social protection and safety net programmes").

⁶⁴ *Id.* at 30–31.

⁶⁵ *Id.* at 30–32.

⁶⁶ Helen Lee, "CEDAW Smokescreens: Gender Politics in Contemporary Tonga," *The Contemporary Pacific* 29(1), 75 (2017), <https://scholarspace.manoa.hawaii.edu/bitstream/10125/53883/1/v29n1-66-90.pdf>.

⁶⁷ *Id.*

⁶⁸ Sonali Hedditch and Clare Manuel, "Tonga: Gender and Investment Climate Reform Assessment," *International Finance Corporation Advisory Services in East Asia* (2010).

⁶⁹ Robina Nakao, "Roaring Business in Remittances," *Economic Opportunities for Women in the Pacific*, 18–20 (2010); Lee, "CEDAW Smokescreens: Gender Politics in Contemporary Tonga," 76–77 (2017).

⁷⁰ Nakao, "Roaring Business in Remittances," 18–20 (2010); Lee, "CEDAW Smokescreens: Gender Politics in Contemporary Tonga," 76–77 (2017).

⁷¹ Women and Business in the Pacific, *Asian Development Bank*, 39 (2018).

⁷² *Id.*

These challenges have much potential for improvement. Compared to the other Pacific Island countries, Tonga's process for acquiring a business license is considered a best-practice model, since Tonga simplified, streamlined, and digitized its application in 2002.⁷³ Specifically, the digitization created a more women-friendly business environment by removing the requirement to travel to a registration office in person, which had disproportionately affected the vast majority of women who have additional responsibilities in the home.⁷⁴ The electronic company registry is available 24 hours a day, seven days a week, thereby allowing women the flexibility to register their business on their own schedule.⁷⁵ The online interface also serves to mitigate the social barriers to women's involvement in business by replacing the frequently discouraging interactions with male registry employees with neutral, online interactions.⁷⁶

Formally, women have the same rights as men to remarry,⁷⁷ have equal administrative authority over assets during marriage,⁷⁸ and can legally open a bank account, sign a contract, and register a business in the same way as men.⁷⁹ As we have seen, there are no gender-based legal barriers in employment or economic activity, but there are no legal protections to employment or economic activity either.⁸⁰ The lack of gender-based legal barriers provides little comfort without corresponding antidiscrimination laws. This harsh reality applies equally to the lack of gender-based legal barriers to political participation.

Political Participation

There are no formal legal barriers to women's participation in political life—women have equal rights to run for office, equal access to voter registration, and slightly higher rates of voter registration,⁸¹ but institutional and social barriers prevent gender equality in Tongan political life.⁸² Nine seats in Parliament are reserved for men, and the established male domination of local government systems in practice often denies women entry-level positions in politics.⁸³

⁷³ Business Licenses Act, § 3 (2002).

⁷⁴ *Id.* at 30-31.

⁷⁵ *Id.* at 33.

⁷⁶ *Id.* at 30.

⁷⁷ Women, Business and the Law, Tonga (2018).

⁷⁸ Divorce Act, § 15, (2016 revised ed.).

⁷⁹ Business Licenses Act, § 7 (2016 revised ed.); Business Licenses Regulations, Form 1 (2007).

⁸⁰ *Id.*

⁸¹ "Kingdom of Tonga National Parliamentary Election," *The Commonwealth* (Nov. 16, 2017) (reporting that approximately 51.9 percent of enrolled voters in the 2017 election were women, compared to only 48.1 percent of men).

⁸² Bureau of Democracy, Human Rights, and Labor, "Tonga 2016 Human Rights Report," *U.S. Dept. of State* (2016), <https://www.state.gov/documents/organization/265592.pdf>.

⁸³ *Id.*

Social barriers likewise limit women's political participation, including women's reluctance to challenge patriarchal social norms.⁸⁴

As a result of these non-legal barriers, only 15 out of 86 candidates in the November 2017 elections were women.⁸⁵ Two female candidates won, marking the first time two women will be represented in the legislature concurrently.⁸⁶ Despite the high proportion of female voters, women candidates received only 14 percent of votes; excluding the two successful female candidates,⁸⁷ the majority of female candidates received under 20 percent of the total votes of their respective constituencies.⁸⁸ Women therefore remain disadvantaged in participating in politics and in advancing women's financial inclusion through the political process.

Education

Every child in Tonga between the ages of four and 18 is required to attend school.⁸⁹ A birth certificate is normally required, although if no birth certificate is available, the parent may provide a sworn affidavit regarding the child's identity.⁹⁰ Education is free of charge from age six to 14.⁹¹ Education otherwise requires a fee, but information is unavailable as to the precise amount.⁹² There are no gender-based legal barriers to accessing education. Gross enrollment in lower secondary school is 105 percent for girls and 103 percent for boys, compared to a larger gender gap of 71 percent gross enrollment for girls and 59 percent for boys in upper secondary school.⁹³ The literacy rate among the youth population (ages 15-24) is 99 percent for boys and 100 percent for girls.⁹⁴

The success of Tonga's compulsory education system relative to its region and in effectively combatting the gender gap by most indicators⁹⁵ further underscores the importance and efficacy of legislation that simultaneously excludes gender-based barriers while overriding the social barriers that may impede female participation.

⁸⁴ Lee, "CEDAW Smokescreens: Gender Politics in Contemporary Tonga," 74 (2017).

⁸⁵ See "Kingdom of Tonga National Parliamentary Election," at 16 (also reporting that in six constituencies, no women contested the election).

⁸⁶ *Id.*

⁸⁷ These two candidates received 35 and 43 percent of their respective constituency's total votes. *Id.*

⁸⁸ *Id.*

⁸⁹ Education Act, Part XIX, § 98 (2013).

⁹⁰ Education (Schools and General Provisions) Regulations, § 33 (2002).

⁹¹ "Country Gender Profile: The Kingdom of Tonga," *Japan International Cooperation Agency*, 12 (Feb. 2010).

⁹² Education Act, §§ 95-96 (2013).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

Healthcare

Tonga's progress in incorporating gender equality into its national sexual and reproductive health agenda has been mixed. Under a Ministry of Health policy, a woman cannot undergo a tubal ligation (i.e., sterilization) at a public hospital without the consent of her husband or, in his absence, her closest male kin.⁹⁶ Such spousal consent is not required for a man to undergo a vasectomy. In addition to this blatantly discriminatory governmental policy, abortion is also illegal without any exceptions.⁹⁷

Even so, the reproductive and maternal care that women do receive is of high quality.⁹⁸ In fact, the WHO found “no evidence that females have less access to health care,” but recommended that gender-disaggregated data collection should be included to review previously unrecognized gender biases.⁹⁹ Public hospitals and health centers provide free prenatal, obstetric, and postpartum care if these services are offered at all, although they are less available on Tonga's outer islands.¹⁰⁰ The disparity between urban and rural healthcare access cannot be ignored, and better data can promote better services for rural communities. These geographical gaps in healthcare, coupled with the legal restrictions on women's freedom to choose whether or not to start a family, create obstacles for women's productivity and participation in economic activities.

Section I.C: Gender-Based Social Barriers to Financial Inclusion in Tonga

Despite promising gender-disaggregated figures on ID coverage and the absence of gender-based legal barriers to obtaining an ID, there are informal barriers that restrict women's access to fundamental rights and services in Tonga. Unequal gender roles and rights, lack of political participation and representation, and violence against women perpetuate poverty and exacerbate the adversity women face.¹⁰¹ In 2013, the UN Human Rights Council's Universal Periodic Review strongly criticized Tonga's continuing problems of gender inequalities.¹⁰² In 2015, Tonga's commitment to the UN that it would ratify CEDAW—with reservations—was

⁹⁶ “Women & Children,” Tongan Ministry of Information & Communications (June 12, 2010), <http://www.mic.gov.to/gender-policy/women/1494-women-a-children>.

⁹⁷ Criminal Offences, Tonga Consolidated Legislation, §§ 102-105 (1988), www.paclii.org/to/legis/consol_act/co136 (criminalizing the “procurement of a miscarriage” with a maximum penalty of three years).

⁹⁸ The Kingdom of Tonga Health System Review, WHO, *Health Systems in Transition* 5(6) (2015), http://apps.searo.who.int/PDS_DOCS/B5286.pdf.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ “Country Gender Profile: The Kingdom of Tonga,” (Feb. 2010).

¹⁰² Report of the Working Group on the Universal Period Review: Tonga, *UN Human Rights Council* (May 21, 2013), <https://www.refworld.org/docid/51a496454.html>.

immediately met with protests and widespread public opposition.¹⁰³ Tonga's prime minister in 2009, Feleti Sevele, commented that the opposition stemmed from CEDAW's direct conflict with Tonga's customs, traditions, and Christian doctrines, as well as its constitutional and statutory provisions against women's equality in land ownership and inheritance.¹⁰⁴

Gender-based cultural and social barriers in Tonga underlie and strengthen the gender-based legal barriers to women's equal participation and rights in all areas of Tongan life. These informal gender-based barriers solidify unequal gender roles in the family and in larger society, prevent substantive equality for women, and fuel acts of domestic violence. With the capacity to self-regenerate, gender-based cultural inequalities oppress women under the guise of protecting and privileging them, while cultivating opposition to potential tools for promoting women's equality, such as technological development. As such, informal gender-based barriers pose an enormous threat to development efforts in women's rights—in Tonga, in the Pacific Island region, and in the world.

The interaction between an individual's kinship position, gender, and other individual characteristics (such as location, education, occupation, wealth, age, and disability) produces varied outcomes in the experiences of Tongan women.¹⁰⁵ The diversity of Tongan women and their intersectional identities, however, still includes fundamental similarities in unequal gender relations that pervade all areas of Tongan society and are reproduced in formal institutions, industries, and interpersonal relationships.¹⁰⁶

Pea ne fakafaikehekehe'i kitautolu, the hierarchical nature of Tongan culture, has distinct implications for an analysis of Tongan gender relations.¹⁰⁷ Much of the current and historical literature on the cultural perceptions of women in Tonga emphasize the "high status" and "privileged position" of Tongan women, citing the particular relationship between brothers and sisters.¹⁰⁸ However, this narrative masks the far more numerous contexts in which Tongan women are placed at a disadvantage, and falsely conflates "protection" and "honor" with meaningful power, authority, agency, and respect. In effect, the myth of female privilege in

¹⁰³ Lee, "CEDAW Smokescreens: Gender Politics in Contemporary Tonga," 66 (2017).

¹⁰⁴ Lord Feleti Sevele 'o Vailahi, "The Government I Led Opposed CEDAW," *Matangi Tonga Online* (Mar. 17, 2015), <https://matangitonga.to/2015/03/17/lord-sevele-government-i-led-opposed-cedaw>.

¹⁰⁵ Lee, "CEDAW Smokescreens: Gender Politics in Contemporary Tonga," 66, 70 (2017).

¹⁰⁶ *Id.* at 73.

¹⁰⁷ Emeline Afeaki-Mafile'o, "Fofola e fala kae talanoa e kāinga," *Health Research Council of New Zealand* (Mar. 2012), <http://www.pasefikaproud.co.nz/assets/Resources-for-download/PasefikaProudResource-Nga-Vaka-o-Kaiga-Tapu-Pacific-Framework-Tongan.pdf>.

¹⁰⁸ See, e.g., Lee, "CEDAW Smokescreens: Gender Politics in Contemporary Tonga," 72 (2017) (summarizing the representations of Tongan women's "high status" in academic literature); see also "Country Gender Profile: The Kingdom of Tonga," *Japan International Cooperation Agency*, 5 (Feb. 2010) (providing an example of policy research that perpetuates the myth of female privilege in the Tongan social system).

Tonga is invoked to promote acceptance of the current social hierarchy and undermine feminist advocacy for women's rights and against patriarchal cultural norms.¹⁰⁹

Extending as far back as the earliest accounts of Tongan culture, the *fahu* system expects brothers to protect and respect their sisters, particularly the eldest sister.¹¹⁰ According to this tradition, the eldest sister of a male Tongan is the highest ranked in the family structure; only the *mehekitanga* (the father's sister) can supersede the eldest sister.¹¹¹ Regardless of one's kinship position, the father's relatives enjoy a higher status than the mother's.¹¹² The primacy of patrilineal lineage was further codified in Tonga's Constitution, and still persists today in the laws of inheritance and property ownership.¹¹³

Despite the *fahu* system, sisters still face some of the most egregious forms of gender inequality. In one study focusing on Tongan youth attending high schools in Tonga, the female participants all reported gendered expectations as one of the most challenging aspects of life in Tonga; "as sisters upholding their family's honor," they experienced their kinship position as "restrictive and sometimes punitive rather than as an indication of higher status."¹¹⁴ Indeed, Tongan women aged between 15 and 49 years are 40 percent likely to suffer from lifetime physical and sexual violence by a partner, 68 percent likely to have suffered from non-partner physical violence (most often from their fathers or teachers), and 19 percent likely to suffer from current physical and/or sexual violence by a partner.¹¹⁵ The study found that 79 percent of women and girls had experienced physical or sexual violence in their lifetime.¹¹⁶

Although the Tongan government responded to the study by enacting domestic violence legislation, the Family Protection Act in 2013, its definition of domestic violence is narrow. It is limited to an act, omission, or threat that is "beyond the reasonable expectations of family and domestic life" and that causes physical, sexual, or mental abuse, or otherwise harms or endangers the victim's health, safety, or well-being.¹¹⁷ This provision is problematic because in Tongan culture, the *tamai* (the father, who is most likely to commit domestic violence), has *pule* (control) over all important family matters.¹¹⁸ Every family member is expected to *fakaongoongo*

¹⁰⁹ Lee, "CEDAW Smokescreens: Gender Politics in Contemporary Tonga," 73 (2017).

¹¹⁰ *Id.* at 71.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Constitution of Tonga, *supra* note 15.

¹¹⁴ *Id.* at 78 (referencing the author's forthcoming research).

¹¹⁵ Pacific Leaders Gender Equality Declaration Trend Assessment Report, *Pacific Islands Forum Secretariat* (Aug. 2016).

¹¹⁶ Nofo 'A Kainga, "Ma'a Fafine mo e Famili: National Study on Domestic Violence Against Women in Tonga," (June 2012) <https://pacific.unfpa.org/sites/default/files/pub-pdf/tonga-vaw-report-final-2012.pdf>.

¹¹⁷ Family Protection Act, § 4 (2013).

¹¹⁸ Afeaki-Mafile'o, *supra* note 107, at 10.

(wait and listen for his instructions); as head of the family, he can use corporal punishment as a form of *ako'i* (teaching) his children.¹¹⁹ In fact, abstaining from punishing his children may be seen as a sign of weakness *'ofa vale* (foolish love), *vaivai kovi* (bad weakness), or *ta'e tokanga* (being uncaring) toward his children.¹²⁰ The father's *mafai* (authority) includes a responsibility to inspire the correct understanding and interpretation of culture.¹²¹ Tonga's law criminalizes conduct that is beyond the reasonable expectations of family and domestic life, but its culture grants fathers control over all family members, endorses corporal punishment, and accords fathers the authority to interpret cultural norms—including what constitutes reasonable expectations in family and domestic life. The Family Protection Act largely acts as protection for the patriarchal family structure and the dominance of the father. It imposes a heavy burden on victims, particularly daughters, who needed legal protection the most. Furthermore, FPA implementation has been severely limited, and domestic violence continues to significantly impede women's economic empowerment in Tonga.¹²²

The myth of female privilege based on the *fahu* system is further discredited by the low status of wives in comparison to husbands. The most extensive national study on violence against women in Tonga found that 91 percent of women reported experiencing controlling behavior by their husbands.¹²³ Moreover, 57 percent of women reported needing to ask their husbands' permission to access health care; 87 percent of women had husbands who insisted on knowing their location at all times; and 39 percent of women reported that their husbands prevented them from seeing friends.¹²⁴

The Tongan proverb *koe 'api 'a fafine* (the responsibilities with the home are with the woman) still retains ideological and discursive power in Tongan society.¹²⁵ Preserving Tongan culture and *anga fakatonga* (following Tongan customs and norms; "the Tongan way") carries particular importance.¹²⁶ However, *anga fakatonga* has been cited as one cause of women's low political and economic participation. The "dynamic interplay between traditional cultures, the influence of modernity, and gender relations" appears to contribute to women's reluctance to

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Women and Business in the Pacific, *Asian Development Bank*, 250 (2018).

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Mele'ana Kehaulani 'Ākolo, "A Feminist Interpretation of Women's Work with Koloa in the Tongan Community," Humboldt State University Applied Anthropology Dept. (May 2017).

¹²⁶ *Id.*

support the advancement of women's rights and technological expansion in Tonga.¹²⁷ Both indicators of modern development are often seen as direct threats to traditional Tongan culture.

For many women, traditional Tongan culture has offered a source of power that is inaccessible in other aspects of life, while the erosion of traditional Tongan culture has indeed damaged their cultural importance and economic opportunities. Because women have historically been excluded from political power in Tonga, "it is primarily their roles within kinship hierarchies that enable them to claim any other forms of power."¹²⁸ The urbanization and modernization of Tonga has worked to reduce and undermine the importance of traditional Tongan cultural practices, and, in turn, women's importance and authority in these contexts.¹²⁹ The reduction in the significance of women's roles in weddings and funerals, the decreasing demand for *ko/oa* (traditional wealth produced by women, primarily in the form of decorated bark cloth and woven pandanus mats), and the weakening of the brother-sister relationships in many households threaten women's livelihood and sources of responsibility in Tongan society, particularly in rural areas.¹³⁰ As Tongan women's cultural and economic value has long been intertwined with Tongan traditions, progress in advancing women's rights or technological development has the potential to be viewed as threats to women's status rather than improvements to it. The ID4D Initiative must therefore expertly navigate the local and national Tongan customs that may impact women's participation in a digital ID system.

Section I.D: Asymmetries in Tonga's Laws, Culture, and Human Rights Commitments

Tonga has made several regional and international human rights commitments that apply to this Paper's critical analysis of the intersection between access to official identity documents and women's financial inclusion in Tonga. Although Tonga has excelled in the area of providing legal identity to all—far beyond its international legal obligations—Tonga's cultural and legal gender-based barriers to women's financial inclusion are generally inconsistent with its regional and international commitments to improving women's financial inclusion and economic empowerment.

¹²⁷ Diane Zetlin, "Women in Parliaments in the Pacific Region," *Australian Journal of Political Science* 49(2), 252, 264 (2014).

¹²⁸ Lee, "CEDAW Smokescreens: Gender Politics in Contemporary Tonga," 77 (2017).

¹²⁹ "Country Gender Profile: The Kingdom of Tonga," 6 (2010) (arguing that this shift in the status of women has left with without "any official authority or rights, while men's position has been reinforced and strengthened").

¹³⁰ Lee, "CEDAW Smokescreens: Gender Politics in Contemporary Tonga," 78 (2017).

Table 1: Relevant International Human Rights Commitments in Tonga

Source	Relevant Provisions
<u>Convention on the Rights of the Child (CRC)</u> ¹³¹ Ratified: Nov. 6, 1995 Universal Periodic Review Report: ¹³² May 21, 2013 Initial Report: ¹³³ April 5, 2018	Art. 7(1): 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.
	Art. 7(2): States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.
	Art. 8(1): States Parties 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.
	Art. 8(2): 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.
UN Sustainable Development Goal (SDG) 16.9	Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.
	Target 16.9: By 2030, provide legal identity for all, including birth registration
	Indicator 16.9.1: Proportion of children under 5 years of age whose births have been registered with a civil authority, by age
Beijing Declaration and Platform for Action, UN Fourth World Conference on Women ¹³⁴ Conference: Sept. 4-15, 1995 Internal review of implementation: ¹³⁵ Aug. 14, 2009	58. Actions to be taken by governments: (n) Formulate and implement policies and programmes that enhance the access of women agricultural and fisheries producers (including subsistence farmers and producers, especially in rural areas) to financial, technical, extension and marketing services; provide access to and control of land, appropriate infrastructure and technology in order to increase women's incomes and promote household food security, especially in rural areas and, where appropriate, encourage the development of producer-owned, market-based cooperatives
	166. Actions to be taken by governments: (a) Promote and support women's self-employment and the development of small enterprises, and strengthen women's access to credit and capital on appropriate terms equal to those of men through the scaling-up of institutions dedicated to promoting women's entrepreneurship, including, as appropriate, non-traditional and mutual credit schemes, as well as innovative linkages with financial institutions;
	(c) Enhance, at the national and local levels, rural women's income-generating potential by facilitating their equal access to and control over productive resources, land, credit, capital, property rights, development programmes and cooperative structures; (d) Promote and strengthen micro-enterprises, new small businesses, cooperative enterprises, expanded markets and other employment

¹³¹ Convention on the Rights of the Child (Nov. 20, 1989).

¹³² UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Tonga* (May 21, 2013), A/HRC/23/4, <https://www.refworld.org/docid/51a496454.html>.

¹³³ Committee on the Rights of the Child, *Initial Report Submitted by Tonga, due in 1997*, (Apr. 5, 2018), CRC/C/TON/1.

¹³⁴ United Nations, *Report of the Fourth World Conference on Women* (Sept. 15, 1995).

¹³⁵ UN Questionnaire to Governments on Implementation of the Beijing Declaration and Platform for Action (1995) and the Outcome of the Twenty-Third Special Session of the General Assembly (2000): Tonga, *National Women's Machinery, Women's Affairs, Ministry of Education, Women's Affairs and Culture* (Aug. 14, 2009), <https://www.un.org/womenwatch/daw/beijing15/responses/escap/Tonga.pdf>.

	<p>opportunities and, where appropriate, facilitate the transition from the informal to the formal sector, especially in rural areas;</p> <p>(e) Create and modify programmes and policies that recognize and strengthen women's vital role in food security and provide paid and unpaid women producers, especially those involved in food production, such as farming, fishing and aquaculture, as well as urban enterprises, with equal access to appropriate technologies, transportation, extension services, marketing and credit facilities at the local and community levels;</p>
	<p>167. Actions to be taken by governments and public and private banks:</p> <p>(c) Structure services to reach rural and urban women involved in micro, small and medium-scale enterprises, with special attention to young women, low-income women, those belonging to ethnic and racial minorities, and indigenous women who lack access to capital and assets; and expand women's access to financial markets by identifying and encouraging financial supervisory and regulatory reforms that support financial institutions' direct and indirect efforts to better meet the credit and other financial needs of the micro, small and medium-scale enterprises of women</p>
	<p>173. Actions to be taken by governments in cooperation with NGOs and the private sector:</p> <p>(a) Provide public infrastructure to ensure equal market access for women and men entrepreneurs;</p> <p>(b) Develop programmes that provide training and retraining, particularly in new technologies, and affordable services to women in business management, product development, financing, production and quality control, marketing and the legal aspects of business;</p> <p>(c) Provide outreach programmes to inform low-income and poor women, particularly in rural and remote areas, of opportunities for market and technology access, and provide assistance in taking advantage of such opportunities</p>

Table 2: Relevant Regional Human Rights Commitments in Tonga	
Source	Relevant Commitments
<p>Pacific Platform for Action on Gender Equality and Women's Human Rights: 2018-2030 (PPA)</p> <p>Created: Oct. 5, 2017</p>	<p>Tonga directly supports the implementation of the PPA 2018-2030, which proposes the following objectives:</p> <ul style="list-style-type: none"> • Enhance the generation of knowledge to inform policies and decision-making, build capacities, and support advocacy for gender equality. • Continue to promote the use of sex disaggregated data and gender statistics, including statistics to support better understand of intergenerational, disabilities and other diversity perspectives and improve their accessibility and use by stakeholders. • Ensure research and gender analysis address crosscutting issues and interlinkages between environmental, economic, demographic and social issues. • Support access to inclusive financial services and improve infrastructure and access to markets for women of all diversities. • Adopt measures in disaster risk management and resilience strategies to ensure protection of women's economic assets. • Increase efforts to mainstream gender perspective across all legislation, policies, programmes and services delivered by government, CROP agencies and CSOs.

<p>Pacific Leaders Gender Equality Declaration¹³⁶</p> <p>Created: Aug. 30, 2012</p>	<p>Tonga pledged its committed to:</p> <ul style="list-style-type: none"> • Support the production and use of sex disaggregated data and gender analysis to inform government policies and programs; • Target support to women entrepreneurs in the formal and informal sectors, for example financial services, information and training, and review legislation that limits women's access to finance, assets, land and productive resources; • Strengthen consultative mechanisms with civil society groups, including women's advocacy groups, on key budget and policy issues of national and sub-national governments.
<p>Revised Pacific Platform for Action on Advancement of Women and Gender Equality (RPPA): 2005-2015¹³⁷</p>	<p>Tonga committed to these objectives:</p> <ul style="list-style-type: none"> • Establishing and strengthening national institutions – such as departments responsible for women's affairs also being responsible for coordinating and monitoring efforts toward gender equality; • Developing capacities to produce and use gender statistics, as well as collecting sex disaggregated data on violence against women and its economic costs in order to curb the prevalence of sexual and family violence; • Adopting measures to ensure women's rights to equal opportunity in all fields of employment; • Supporting income-generating activities for women in rural areas and in disadvantaged households.

Commitments Concerning Legal Identity

By ratifying the Convention on the Rights of the Child (CRC) on November 6, 1995, Tonga took on the legal obligation to ensure that every child shall be registered immediately after birth.¹³⁸ Although Tonga was required to submit a report on the measures it adopted to implement the rights recognized in the treaty by 1997 and thereafter every five years,¹³⁹ it only fulfilled this requirement in April 2018.¹⁴⁰ Tonga identified various initiatives to achieve complete birth registration, specifically more training for sub-registrars in the outer islands and greater public education for parents of an illegitimate child or for adoptive parents. Biological or adoptive parents of an illegitimate child may fail to register the birth due to confusion over whose duty it is to register, or due to the legally codified stigma attached to illegitimate births, which not only carries social consequences but also determines rank and inheritance rights.¹⁴¹

However, Tonga omitted the most obvious strategy for combating the stigma surrounding illegitimate births and expanding birth registration coverage: abolishment of

¹³⁶ Forty-Third Pacific Islands Forum Communiqué, *Pacific Islands Forum Secretariat* (Aug. 30, 2012).

¹³⁷ Revised Pacific Platform for Action on Advancement of Women and Gender Equality (RPPA) 2005–2015: A Commitment by All Pacific Island Countries and Territories, *Secretariat of the Pacific Community* (2004), <https://pacificwomen.org/wp-content/uploads/2017/09/web-RPPA-for-CSW1.pdf>.

¹³⁸ Convention on the Rights of the Child, art. 7 (Nov. 20, 1989).

¹³⁹ *Id.* art. 44.

¹⁴⁰ Committee on the Rights of the Child, *Initial Report Submitted by Tonga, due in 1997*, (Apr. 5, 2018), CRC/C/TON/1.

¹⁴¹ *Id.* at para. 234.

legitimacy laws. Similar to its inheritance and land ownership laws, Tonga's legitimacy laws enjoy widespread cultural support and thus are unlikely to be changed without a transformation in cultural values and political mobilization from within Tonga. Even with this glaring blind spot in Tonga's CRC implementation efforts, the country is outperforming other countries in its region in meeting UN Sustainable Development Goal 16: providing legal identity for all, including birth registration.¹⁴²

Beyond birth registration, Tonga has not made any international or regional commitments related to providing legal identities for all. Tonga's domestic commitment to achieving complete official identity coverage—both in policy and in practice—should not be undermined by this fact. This goal is often only implicit in human rights discourse and in international human rights instruments rather than enumerated as a specific human right. An official ID is critically important for accessing fundamental rights, services, and opportunities, but beyond the mandate that all children be registered, none of the core international human rights instruments provide for the right to have official proof of identity.¹⁴³ Formally recognizing the fundamentally important dual role¹⁴⁴ of official identity would enhance state parties' implementation efforts in meeting their international human rights obligations. Currently, no explicit provision in CEDAW and no country reports to the CEDAW Committee from the Pacific Island region (or in any region) made any reference to the importance of official identity documents or barriers to obtaining them, except in the case of travel documents.¹⁴⁵ Yet proof of official identity governs women's substantive equality in economic, social, political, civic, and cultural contexts. Although CEDAW's object and purpose—achieving women's *de jure* and *de facto* equality with men—necessarily includes ensuring that there are no direct or indirect gender-based barriers to obtaining official proof of identity, CEDAW (and other international human rights instruments, for that matter) ought to formally recognize the essential role of official identity in achieving a treaty's human rights goals and meeting its international legal obligations.¹⁴⁶

¹⁴² UN Sustainable Development Goals (SDGs), Target 16.9.

¹⁴³ There are seven core international human rights treaties: the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEAW), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), and the International Convention on Protection of the Rights of All Migrant Workers and Members of Their Families (ICMRW).

¹⁴⁴ See Introduction.

¹⁴⁵ Country Reports, CEDAW Committee, <https://www.un.org/womenwatch/daw/cedaw/reports.htm>.

¹⁴⁶ CEDAW General Recommendation No. 25, on Art. 4(1).

Commitments Concerning Women's Financial Inclusion

Since the mid-1990s Tonga has made commitments to advancing women's rights both at the regional and at the international level. With its refusal to sign or ratify CEDAW, Tonga's international legal obligations in this area have been limited.¹⁴⁷ In 1995, Tonga signed the Beijing Declaration and Platform for Action, which called on governments to take actions for promoting women's economic empowerment.¹⁴⁸ Most strikingly, governments were to improve women's access to financial services by providing "access to and control of land,"¹⁴⁹ and they were to "enhance, at the national and local levels, rural women's income-generating potential by facilitating their equal access to and control over productive resources," including land.¹⁵⁰ Tonga has made no effort to honor these provisions in the Beijing Declaration and Platform; at best, it has merely acknowledged the positive relationship between land access and ownership and financial inclusion. Although none of these provisions are enforceable, soft law has the power to create normative obligations and may help establish a legal foundation for subsequent legal obligations on ensuring women's equal access to land rights.¹⁵¹

Tonga's regional human rights commitments to enhancing women's financial inclusion have likewise seen little implementation. The three main regional instruments, the Revised Pacific Platform for Action on Advancement of Women and Gender Equality (RPPA), the Pacific Leaders Gender Equality Declaration, and the Pacific Platform for Action on Gender Equality and Women's Human Rights (PPA) constitute comprehensive strategies to combating gender-based formal and substantive inequalities in the region. The RPPA commits Tonga to "developing capacities to produce and use gender statistics, as well as collecting sex-disaggregated data on violence against women and its economic costs in order to curb the prevalence of sexual and family violence,"¹⁵² while the Pacific Leaders Gender Equality Declaration requires Tonga to "support the production and use of sex-disaggregated data and gender analysis to inform government policies and programs."¹⁵³ The PPA includes the most

¹⁴⁷ See Lee, *supra* note 103 and accompanying text.

¹⁴⁸ United Nations, Report of the Fourth World Conference on Women (Sept. 15, 1995), <https://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf>.

¹⁴⁹ *Id.* art. 58(n).

¹⁵⁰ *Id.* art. 166(c).

¹⁵¹ See Dinah Shelton, "Soft Law," *Handbook of International Law* (2008), https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2048&context=faculty_publications (describing soft law and its relationship to treaties and custom); see also "Commitment and Compliance: What Role for International Soft Law?" *Carnegie Endowment for International Peace* (Nov. 22, 1999), <https://carnegieendowment.org/1999/11/22/commitment-and-compliance-what-role-for-international-soft-law-event-47> (explaining the purpose of the effectiveness of soft law mechanisms).

¹⁵² Revised Pacific Platform for Action on Advancement of Women and Gender Equality (RPPA) 2005–2015: A Commitment by All Pacific Island Countries and Territories, *Secretariat of the Pacific Community* (2004), <https://pacificwomen.org/wp-content/uploads/2017/09/web-RPPA-for-CSW1.pdf>.

¹⁵³ Forty-Third Pacific Islands Forum Communiqué, *Pacific Islands Forum Secretariat* (Aug. 30, 2012).

robust provisions on the power of sex-aggregated data and intersectional gender analyses to mainstream gender perspective across all legislation, policies, programs, and services delivered by the government.¹⁵⁴

All are relatively new (the most recent instrument, the PPA, was created in October 2017), which makes it difficult to conclusively judge Tonga's implementation efforts. However, their newness, coupled with their explicit reference to sex-disaggregated data and gender statistics, highlights their relevance and potential for harnessing the transformative power of digital ID in Tonga and in the Pacific Island region.

Section I.E: Digital Identity in Tonga

To achieve women's equal access rights, services, and opportunities in Tonga, Tonga's gender-based legal and cultural barriers for women's equality and financial inclusion must be demolished. Although there is no clear path—and certainly no single path—to razing these barriers, a robust digital ID system will be critical, particularly in the context of women's economic empowerment.

Inadequate information and data collection systems have been cited as major challenges to gender equality in Tonga.¹⁵⁵ The extent to which services accurately target demographic groups and high-risk populations is limited due to insufficient aggregation of data. Moreover, Tonga's remote location, small size, and dispersed outer islands impede Tonga's ability to provide efficient public service delivery and avoid high transaction costs. Incorporating digital identification into mobile phones will improve government efficiency, increase the accuracy and efficacy of social safety nets for disadvantaged populations, and revolutionize the extent and degree to which services are delivered.

Specifically, a digital ID system could accelerate financial inclusion through increased efficiency and security in digital banking, payment, and cash transfers, including remittances. It can empower women in Tonga's agriculture sector with improved access to these economic services, as well as increased gender-specific visibility on farmers' locations, economic participation, and needs. By including unique, evidence-based farmer profiles, the digital ID

¹⁵⁴ See Tonga's Launch of the New Pacific Partnership to End Violence Against Women and Girls, Press Release, *Delegation of the European Union for the Pacific* (June 12, 2018), (noting that Tonga's Pacific Partnership program directly supports the implementation of the PPA 2018-2030); see also Tonga's Launch of the New Pacific Partnership to End Violence Against Women and Girls, Press Release, *UN Women: Asia and the Pacific* (Dec. 5, 2018), <http://asiapacific.unwomen.org/en/news-and-events/stories/2018/12/tongas-launch-of-the-new-pacific-partnership> (remarking that directly supporting the implementation of the PPA 2018-2030 is central to the Pacific Partnership program).

¹⁵⁵ Pacific Leaders Gender Equality Declaration Trend Report, *Pacific Islands Forum Secretariat* (Aug. 2016), https://www.aidsdatahub.org/sites/default/files/publication/Pacific_Leaders_Gender_Equality_Declaration_2016.pdf.

system can enable women to demonstrate economic activity when required to show creditworthiness for a loan, among other financial goods and services.¹⁵⁶

Technology infrastructure and mobile phone usage in Tonga continues to grow.¹⁵⁷ Among all the Pacific Island countries, Tonga has experienced the highest uptake of mobile phones by Tongan women, as 90 percent of women have access to one.¹⁵⁸ The widespread increased use of mobile devices, coupled with significant price decrease in biometrics technology, paves the way for a digital form of identity. As digital ID requires high-speed internet connectivity for enrollment and identity verification, this technology will face significant obstacles in Tonga, particularly in the outer islands. As of 2018, 53 percent of Tonga's population regularly used the Internet.¹⁵⁹ Ninety-nine percent of its population had mobile connections, but only 21 percent of these connections included broadband (3G or 4G).¹⁶⁰ Around 90 percent of Tongan adults own a SIM card, and despite the prevalence of mobile connections, less than 80 percent of Tongan adults own a mobile phone.¹⁶¹

Even if they gain access to a mobile phone, it is likely that Tongan women may not be equally represented in digital ID systems due to pervasive social norms.¹⁶² For example, the high frequency of Tongan women who reported that their husbands became angry when they spoke to another man suggests that women may be less likely to enroll in a digital identification system if it involves interacting with men outside their family (for example, male staff at enrollment centers). The social stigma surrounding new forms of technology and concerns over privacy may also hamper digital ID coverage for women.

Women living in rural communities or on the outer islands may be even less likely to have access to a mobile phone and thus access to a digital ID. The double-edged sword of many human rights initiatives is particularly exemplified here: an initiative intending to empower marginalized groups with greater access to rights and services may ultimately further distance the most marginalized individuals from accessing these same rights and services. Women living in rural communities or on the outer islands will generally face greater barriers to digital identification due to asymmetries in technological literacy and quality of technological

¹⁵⁶ "The Role of Digital Identification in Agriculture: Emerging Applications," *World Bank* (Dec. 19, 2018) <http://documents.worldbank.org/curated/en/6555951545382527665/pdf/Digital-ID-Agriculture-Web12192018.pdf>.

¹⁵⁷ See Tonga Digital Government Support Project, The World Bank (Mar. 13, 2019) (summarizing the recent investments in improved digital connectivity in Tonga).

¹⁵⁸ Women and Business in the Pacific, *Asian Development Bank*, 38 (2018).

¹⁵⁹ "Digital 2018: Tonga," *Hootsuite* (Oct. 12, 2018), <https://www.slideshare.net/DataReportal/digital-2018-tonga-january-2018>.

¹⁶⁰ *Id.*

¹⁶¹ Financial Services Demand Side Survey: Tonga," *Pacific Financial Inclusion Programme* (Aug. 2017), <http://www.pfip.org/wp-content/uploads/2017/08/TONGA-DSS-REPORT-LOWRES-FINAL.pdf>.

¹⁶² See Lee, *supra* note 103 and accompanying text.

infrastructure in these areas; rural areas are less likely to have reliable mobile and Internet connectivity required for digital ID systems, and rural households are less likely to possess the technological literacy needed to navigate digital ID systems and monitor use of their personal data.¹⁶³

Establishing a digital ID in Tonga, then, must carefully address the intersectional identities of Tongan women and ensure equal access—both formally and in practice—to obtaining and using a digital ID.

Application: Digital ID and Natural Disaster Prevention, Response, and Recovery

Natural disasters impact a country's economic, social, and physical environment and damage its long-term development agenda; disaster resilience is therefore a critical component of sustainable development. The lasting consequences of natural disasters contribute to a greater number of people being affected by future natural disasters.¹⁶⁴ Likewise, when disaster strikes, isolated communities often become even more isolated when terrestrial pathways become less accessible. Unfortunately, Tonga, which has the second-highest disaster risk in the world, is particularly vulnerable to natural disasters; climate change projections suggest that it will face even more severe weather and climate-related hazard events in the near future.¹⁶⁵ Because Tonga's population is predominantly in low-lying coastal areas and spread over small, isolated islands, prevention and response efforts face serious challenges.¹⁶⁶ Its most recent disaster, Tropical Cyclone Gita, hit Tonga in early 2018, costing 38 percent of its annual GDP.¹⁶⁷ TC Gita affected approximately 74,611 people, or 74 percent of Tonga's total population.¹⁶⁸

A digital ID system would significantly enhance Tonga's disaster resilience in a number of ways. First, its data collection benefits, discussed above, would directly strengthen Tonga's disaster warning, preparedness, and response. By improving Tonga's institutional knowledge and evidence-based decision-making capacity, Tonga's disaster risk management policies, developments, and public investments (including infrastructure plans, land use plans, and

¹⁶³ "The Role of Digital Identification in Agriculture: Emerging Applications," *The World Bank* (Dec. 19, 2018), <http://documents.worldbank.org/curated/en/655951545382527665/pdf/Digital-ID-Agriculture-Web12192018.pdf>.

¹⁶⁴ Pacific Resilience Program (PREP): Regional, Environmental, and Social Management Framework, Secretariat of the Pacific Island Community (May 10, 2018).

¹⁶⁵ World Risk Report 2018, Institute for International Law of Peace and Armed Conflict (IFHV), <https://reliefweb.int/sites/reliefweb.int/files/resources/WorldRiskReport-2018.pdf>.

¹⁶⁶ Pacific Resilience Program (PREP): Regional, Environmental, and Social Management Framework, *supra* note 179, at 34.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

sector-specific plans such as in agriculture, healthcare, and fisheries) will be more geographically and categorically inclusive and targeted. Currently, gender is not explicitly included in Tonga's disaster management.¹⁶⁹ However, such a facially neutral policy has adverse affects on women, who face unique risks in natural disasters and play a critical role in disaster preparation and response. Natural disasters exacerbate gender-based discrimination and adversity; likewise, gender-based social and economic inequalities contribute to women's lesser visibility in disasters. Globally, women and children are 14 times more likely than men to be injured or killed in disasters, and following a disaster, women face increased rates of gender-based or sexual violence, as well as unequal access to humanitarian assistance, greater loss of economic opportunities, and increased workloads compared to men.¹⁷⁰

Women and girls face greater adverse impacts yet are often excluded from disaster preparedness and response activities.¹⁷¹ Recovery efforts have historically issued farming support for only male farmers, even though a large percentage of Tongan women rely on farming indigenous crops for food and making handicrafts to sell. Just as women's roles in the agricultural and subsistence sectors have been missing from official records, women's needs have largely gone unnoticed in the aftermath of natural disasters.¹⁷² Tongan women have consistently led recovery efforts that prioritize supporting more vulnerable groups in the face of increasingly severe natural disasters. For instance, after TC Gita, women supported the Ministry of Internal Affairs to identify gaps in government- and NGO-led responses.¹⁷³ Tongan women identified gaps in providing (1) adequate hygiene and sanitation products for women and girls, (2) assistive devices for individuals with disabilities, (3) food distribution for women, youth, children, and individuals with disabilities, and (4) direct support to organizations for survivors of gender-based violence.¹⁷⁴

Digital ID provides a mechanism to collect consistent data disaggregated by sex, age, disability, and a range of other intersectional identities, thereby making the unique protection needs of different groups visible. A robust digital ID system can ensure ongoing, inclusive, and proactive consultation throughout the development, implementation, and assessment phases of natural disaster initiatives by linking digital IDs to official surveys. Response and recovery efforts will likewise benefit from increased awareness of impacted individuals on the outer islands and

¹⁶⁹ "Country Gender Profile: The Kingdom of Tonga," *Japan International Cooperation Agency*, 26 (2010).

¹⁷⁰ Gender and Protection in Humanitarian Action, UN Women: Asia and the Pacific (Nov. 21, 2018).

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ "Women at the Helm of Cyclone Recovery Efforts in Tonga," UN Women Report (Aug. 23, 2018), <https://reliefweb.int/report/tonga/women-helm-cyclone-recovery-efforts-tonga>.

¹⁷⁴ *Id.*

other remote locations, as well as greater knowledge of population-specific vulnerability assessments.¹⁷⁵ In the event of a natural disaster, a nationwide digital ID system would improve the government's ability to deliver resources quickly and effectively. Providing easy-to-access, actionable, and geographically specific warning information will enable people to make informed decisions about how to best protect themselves from hazards and their indirect consequences and help emergency services target limited resources to where they are most needed, thereby maximizing the response efforts' impacts.¹⁷⁶ After the disaster ends, a digital ID system will be critical in providing immediate access to remittances or government compensation. Digital IDs can also enable an unprecedented level of precision in tracking impacts on affected individuals, including inventory of losses and basic socioeconomic information.¹⁷⁷

Regardless of the country, a digital ID system has the transformative potential to accelerate financial inclusion, gender equality, and other indicators of sustainable development in Tonga. Indeed, given its expansive geography with many remote communities, its established national identity system, and its burgeoning technological infrastructure, implementing a nationwide digital ID system is perhaps the single most effective mechanism for promoting inclusive, intersectional, and sustainable development.

Section II: Identification in Nigeria

Section II.A: Introduction to Nigerian History, Government, Religion, and Culture

As previously established by the World Bank's ID4D Country Diagnostic on Nigeria, a government must be able to efficiently identify and distinguish individuals.¹⁷⁸ "Identity comes in two varieties: foundational or a national identity; and functional, or a use-specific identity."¹⁷⁹ Foundational identity tells the government "who you are," while functional identity communicates "whether you are eligible for a specific service."¹⁸⁰ Both foundational and functional identity are necessary for governments to be able to effectively develop, offer, provide, and distribute social and public services to the general population. This section will focus on foundational identity, since it is the necessary basis for functional identity, and the ways it can be improved to repair Nigeria's identity landscape. The problems with identity infrastructure in Nigeria cannot be

¹⁷⁵ Pacific Resilience Program (PREP): Regional, Environmental, and Social Management Framework, *supra* note 179, at 22.

¹⁷⁶ *Id.* at 15.

¹⁷⁷ *Id.* at 55.

¹⁷⁸ World Bank Group [WBG], ID4D Country Diagnostic: Nigeria, vii.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

properly understood or addressed without an understanding of the country's sociopolitical history and current legal system. This paper will clarify the context in which the present identification crisis in Nigeria developed, before presenting a number of solutions informed by the nation's unique framework.

One author writes that Nigeria's legal system is defined by pluralism,¹⁸¹ which takes three distinct and complex forms: the first is its tripartite legal structure, the second is derived from Nigeria's federal system, and the third is connected to the country's national history.¹⁸² The third form of pluralism owes itself to the country's political history, particularly as it pertains to divisions between Northern and Southern Nigeria.¹⁸³ During the colonial era, the North and the South were governed as separate and distinct from one another: Islam prevailed in the North, while Christianity and indigenous religions dominated the South.¹⁸⁴ The end of explicit colonialism brought the forced union of two distinct cultures that developed largely separate from, though parallel to, one another for centuries before foreign intrusion.¹⁸⁵

Beyond these cultural complexities, the individual parties to a given dispute also bear consideration: the ethnicity and religion of each party can have determinative bearing on which law will be controlling. Even when parties do not exercise their choice between available legal systems, in practice the law still has a "differential" effect on individuals depending on the region and the social institutions relevant to the dispute.¹⁸⁶ "In litigation between Nigerians and non-Nigerians, the general rule is that English law applies. In matters between Nigerians, the general rule is that customary law applied. One exception is that customary law is not applied where the parties have expressly or implicitly agreed to be bound by other laws."¹⁸⁷

Simply put, the merger of Northern and Southern Nigeria was not enough to erase the deep rooted cultural, religious, and social patterns each region developed wholly separated from

¹⁸¹ "A state of society in which members of diverse ethnic, racial, religious, or social groups maintain and develop their traditional culture or special interest within the confines of a common civilization." MERRIAM-WEBSTER ONLINE DICTIONARY, <https://www.merriam-webster.com/dictionary/pluralism>.

¹⁸² Abdulmumini A. Oba, *Religious and Customary Laws in Nigeria* 881, 882. For the first source of legal pluralism, the tripartite legal system, customary law lends the most complexity—each of the ethnic groups in Nigeria have their own distinct body of customary law, to which individuals belonging to that ethnic group can choose to be bound. For example, Islamic law has governed as state law in the Sokoto Caliphate and Kanem-Bornu for centuries, while the common law was inherited from the British after colonialism. The second form of pluralism is derived from the federal structure of Nigeria. State and federal legislative power is complicated when it comes to laws that govern individuals and their participation in existing social institutions: while federal law governs statutory marriages—colloquially known as "white weddings"—state law governs Islamic and customary law marriages—colloquially known as "traditional weddings."

¹⁸³ *Id.* at 883.

¹⁸⁴ *Id.* at 882.

¹⁸⁵ *Id.* at 882. Colonialism also merged formerly independent regions within both the North and the South.

¹⁸⁶ E.g. A.N. Allot, *The Common Law of Nigeria*, 10 Int'l & Comp. L.Q. Supp. Pub. 31, 45 (1964) (asserting that "although the federal law obviously applied throughout the country, the matters on which the central legislature may make laws do not include many of those fields which most substantially and intimately affect the individual").

¹⁸⁷ Abdulmumini, *supra* note 182, at 891.

one another before colonial influence. While pluralism has a complicating effect on the enforcement of federal legislation, the social, cultural, religious and legal divisions between the North and South make sweeping legislative reform a challenging and complex endeavor. While the South “boasts far better socioeconomic indicators than the North,” the North is far more populous and poorer “with some of the world’s worst health and economic statistics.”¹⁸⁸ Due to unique challenges faced by each region, along with competing legal systems, the legislative processes in Nigeria do not always provide the most effective means of development.

The most efficient and impactful steps toward reform in Nigeria tend occur thorough extralegal, grassroots efforts. This is particularly true for the issues that are most immediately pressing in the lives of women and girls. Women in Nigeria face unique challenges due to their position in society in society. Women make up a staggering 76 percent of the population of rural areas in Nigeria, where poverty is the most severe and social services are the least accessible.¹⁸⁹ “Nigerian rural poor share a number of characteristics in common—limited assets, environmental vulnerability, and the lack of access to public services and amenities such as education, medical care, fuel, shelter, and security...rural women...are worse off than their male counterparts.”¹⁹⁰ As a result, women and girls are the most at risk for pressing dangers such as human trafficking, child marriage, and lack of access to education, health care, and other government subsidized programs.¹⁹¹ Improving the identity landscape in Nigeria will require a combination of legislative reform and extralegal grassroots efforts to improve birth registration as a form of foundational identification, unique for its accessibility to children from birth.

¹⁸⁸ John Campbell, *Why Nigeria’s North and South Distinction is Important*, HUFFINGTON POST (Mar. 20, 2019, 4:00 PM), https://www.huffingtonpost.com/amb-john-campbell/why-nigerias-north-south-_b_817734.html.

¹⁸⁹ Nigeria CEDAW NGO Coalition Shadow Report, The United Nations Committee on the Elimination of All Forms of Discrimination Against Women, June 30 – July 18, 2008, xiii.

¹⁹⁰ C.O. Izugbara and J.K. Ukwai, *Conceptual Issues in Nigeria’s Gender Specific Rural Poverty Alleviation Strategy*, 12 *Development in Practice* 81, 82 (2002).

¹⁹¹ Nigeria CEDAW NGO Coalition Shadow Report, *supra* note 189, at 66.



Map showing Nigeria's geographical orientation in Africa and the states that comprise its federal political framework.¹⁹²

Section II.B: Foundational Identification and Corruption in Nigeria

Corruption presents an undeniable challenge in Nigeria, at every level of society—both civil and private.¹⁹³ Corruption in Nigeria takes many forms: it “pervades all strata of the society. From the highest level of the political and business elites to the ordinary person in the village,” it manifests in “fraud and falsification of accounts in the public service,” bribery and “perversion of justice among the police, the Judiciary and other organs for administering justice,” and “various heinous crimes against the state in business and industrial sectors of our economy, in collusion with multinational companies such as over-invoicing of goods, foreign exchange swindling, hoarding and smuggling.”¹⁹⁴ At the village level, “corruption manifests itself in such forms as

¹⁹² Map of Nigeria, <https://www.un.org/Depts/Cartographic/map/profile/nigeria.pdf>.

¹⁹³ “Corruption is pervasive and widespread in Nigerian society. It has permeated all facets of life, and every segment of society is involved.” Osita Nnamani Ogbu, *Combating Corruption in Nigeria: A Critical Appraisal of the Laws, Institutions, and the Political Will*, 14 ANN. SURV. INT’L & COMP. L. 99, 99.

¹⁹⁴ *Id.*

adulteration of market goods or denting of measures to reduce their contents with a view to giving advantage to the seller.”¹⁹⁵

Despite high citizen demand, access to and efficiency of enrollment is impeded by high rates of corruption, identity fraud, and data leakages.¹⁹⁶ Corruption acts as a powerful impediment to high identity enrollment and accessibility. The Nigerian government has acknowledged the potential utility of improved identity mechanisms to address corruption in government programs.¹⁹⁷ Successful reform of Nigeria’s identification infrastructure will require reform at every level of Nigerian government and society: solutions must include targeted and aggressive anti-corruption measures to protect new infrastructure from the effects of corruption.

Birth registration is a solution to the identification issues in Nigeria that can effectively respond to the risks associated with corruption. The UN defines civil registration as the “universal, continuous, permanent and compulsory recording of vital events provided through decree or regulation in accordance with the legal requirements in a country.”¹⁹⁸ The birth of a child is one of the types of events typically recorded in a Civil Registration System, and birth registration is the established mechanism for recording such events.¹⁹⁹ The advantage presented by birth registration is that it establishes documentation of identity from birth, so that the first encounter an individual has with the government is not for a registration card.

Section II.C: International Human Rights Law and Nigerian Foundational Identity

Adequate foundational identity is a human right provided by international law, treaty, and convention. Further, Nigeria has ratified a number of treaties that affirmatively require it to protect the interests of women and girls and enable them to enjoy all the benefits of citizenship enjoyed by their male counterparts. “The Federal Government of Nigeria has long recognized the need to have a single national identity system for all citizens in order to carry out its mandate—law enforcement, intelligence, social and economic development, and political development.”²⁰⁰ In 2007, the Nigerian government enacted the National Identity Management Commission (NIMC) Act No. 23 to meet this duty.²⁰¹ It is mandatory for all citizens older than the

¹⁹⁵ *Id.*

¹⁹⁶ World Bank Group, *supra* note 178, at 8.

¹⁹⁷ *Id.*

¹⁹⁸ Olusean Ayodeji Makinde, Bolanle Olapeju, Osondu Ogbuoji, and Stella Babalola, *Trends in the Completeness of Birth Registration in Nigeria*, 35 Dem. Res. 315, 316.

¹⁹⁹ *Id.*

²⁰⁰ In 2005, the Nigerian government highlighted the need for a national identity database and established a “Harmonization Committee” to meet this need. World Bank Group, *supra* note 178, at 8.

²⁰¹ *Id.* at 8-9. Through this Act, the NIMC was established as the chief government agency responsible for identification in Nigeria. The predecessor for the NIMC Act, the National Civic Registration Act of 1978, had three

age of 16 to obtain a national identification card. In addition to authentication services, the NIMC provides a National Identification Number (NIN) and a multi-purpose identity card.²⁰² Enrollment under the NIMC requires the collection of biometric data, which is then subject to a de-duplication check: children can be enrolled, but biometric information cannot be de-duplicated before the age of maturity.²⁰³ The current system in Nigeria is functional, but not adequate to meet the identification needs of the most populous country in Africa.

Table 3: Relevant International Human Rights Commitments in Nigeria		
Source	Date of Ratification	Date Last Reported
International Covenant on Civil and Political Rights (ICCPR)	07/29/1993	
International Convention on Economic, Social and Cultural Rights (ICESCR)	07/29/1993	04/29/1998-05/01/1998
Convention on the Rights of the Child (CRC)	04/19/1991	06/26/2010
2030 Sustainable Development Goals (SDG)	09/25/2015	2018
UN Security Council Resolution 1325 (UNSCR 1325)	10/13/2015	
Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)	06/13/1985	07/14/2017
Maputo Protocol	12/16/2004	

The present identification processes are inadequate because they fail to effectively enroll the most vulnerable members of any society: women and girls. “A citizen is required to bring any of the following as proof of identity for enrollment: old national ID card, valid driver’s license, valid international passport, voter’s ID card, government staff ID card, state of origin certificate, or birth certificate/declaration of age.”²⁰⁴ The documentation required for enrollment in the identification database is likely not accessible to the most disadvantaged members of Nigerian society—women and children. Nigeria has an estimated population of 190.9 million people, and this number is projected to reach 392 million in 2050.²⁰⁵ Children under the age of 15 make up 47 percent of the Nigerian population.²⁰⁶ Of the total population, the NIMC had enrolled 6.1 million citizens and issued 418,000 national identity cards. There is much ground to

main objectives: to register all citizens age 18 and older, to issue all registrants an ID card, and to collate and produce collected information as needed.

²⁰² “The national identification number is an 11-digit, randomized number assigned to an individual upon successful enrollment,” the multi-purpose identity card is a microprocessor chip-based card designed to facilitate identity verification and authorization, as well as payment functionality. *Id.* at 19.

²⁰³ *Id.* at 21.

²⁰⁴ *Id.*

²⁰⁵ NIGERIA COUNTRY PROFILE, <https://data.worldbank.org/country/nigeria> (last visited Mar. 20, 2019).

²⁰⁶ R.C. Chhangani and Maxwell Gidado, *The Child’s Rights To Name and Nationality Under Nigerian Law*, 42 J. of Int’l L. 99, 99.

cover before Nigeria's identity infrastructure will be able to serve its cast population, and it is important to make sure that women and girls are not forgotten. The country is affirmatively bound by treaty to protect the interests of women—not just in adulthood, but from birth.

The Convention on the Rights of the Child (CRC), to which Nigeria is a signatory, provides for the civil, political, economic, social, health, and cultural rights of children.²⁰⁷ The CRC provides a detailed list of rights to which children are entitled to from birth, but the one most relevant to foundational identification is the establishment of the child's nationality and legal identity.²⁰⁸ "The registration of the child's birth entitles [him or her] to birth certification, which provides the child to acquire the first right to legal identity, benefits, and protection under the UN Convention."²⁰⁹ As of 2016, the birth rate is around 39 per 1000 people—this translates to about 7.4 million births a year. It is estimated that out of the total number of births in Nigeria, "5 million births a year go *unregistered*" (emphasis added).²¹⁰ Failure to register children presents many of the same dangers and vulnerabilities as the lack of identification.

Beyond the immediate dangers posed by such a high proportion of unregistered births, birth registration is one of the few means of identification readily available to children from birth.²¹¹ Further, improving birth registration alone "will have several cascading effects on population health and social outcomes."²¹² When birth registration is improved, a high proportion of children can receive and use a birth certificate as identification before the age of maturity when the biometric data collected for identification is more reliable. However, it is important to note the demographic indicators for successful birth registration rates. Children over a year old had better odds of being registered than those under one year.²¹³ Higher household wealth is positively associated with birth registration.²¹⁴ Children in the Southern part of Nigeria, as well as in urban areas, were more likely to be registered than children born in the North and rural

²⁰⁷ United Nations Convention on the Rights of the Child, GA Res. 44/25 (Nov. 20, 1989).

²⁰⁸ *Id.* "The child shall be registered immediately after birth and shall have the right from birth to a name [and] the right to acquire nationality."

²⁰⁹ "One of the most important rights of the child is to have his or her legal identity...in the absence of it the child becomes a *non-legal* person at the national level and *stateless* at the international level...the denial or refusal of this right prevents the child's growth and development." *Id.*

²¹⁰ Chhangani, at 103.

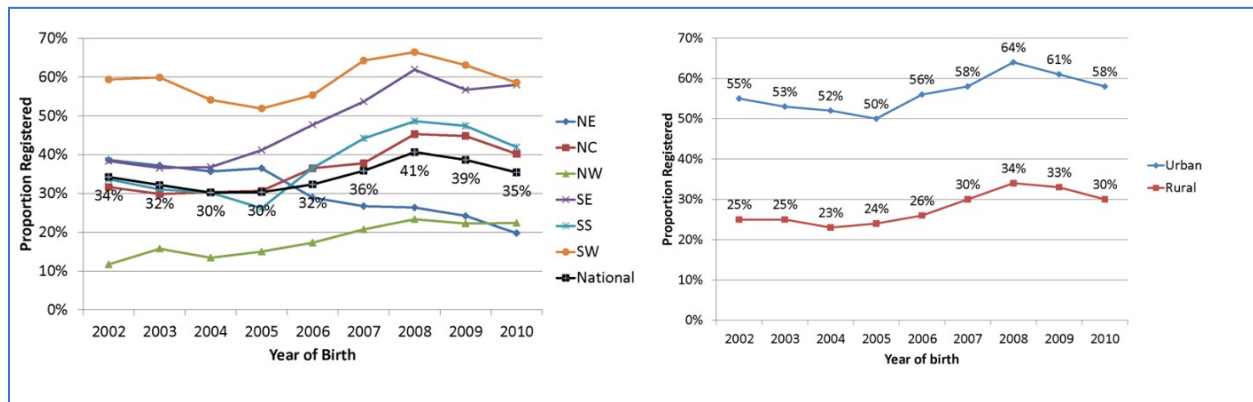
²¹¹ "Birth statistics are a significant data source in the measurement of health in populations...used to measure the quality of health care in a country and the level of access to health care in the population...furthermore, birth registration is an important source of data for planning for social services such as schools, housing, and security." *Id.* at 317.

²¹² *Id.* The piece of documentation required for identification through the NIMC that is most readily accessible to children under the age of 18 is a birth certificate. World Bank Group *supra* note 178, at 21.

²¹³ Makinde, at 325.

²¹⁴ *Id.* at 330.

regions.²¹⁵ Age and education level of the mother, her religion and her socioeconomic status also played a significant role odds of birth registration.²¹⁶ Gender of the child continues to be a significant determinant of whether or not he or she is registered: girls are disproportionately at risk for lack of registration.²¹⁷ Finally, birth registration odds were notably higher among children of mothers who received prenatal care and utilized modern health care facilities.²¹⁸



The Table on the left shows birth registration completeness by geopolitical zone, and the table on the right shows birth registration completeness comparison between urban and rural areas.²¹⁹

A number of solutions may help to combat and respond to the disparity of birth registration that young girls experience. One author recommends three potential means of improving the rate of birth registration in Nigeria. The first suggestion is to provide additional incentives for parents to register female children, as birth registration is a responsibility that parents bear and girls are less likely to be registered than their male counterparts.²²⁰ The second recommendation is to relax the fine for late registration in order to discourage

²¹⁵ "Location influences the chances of registration, as children in the southern part of the country had higher registration chances. Also, urban children had significantly higher registration chances than their rural counterparts." *Id.* at 331.

²¹⁶ "Birth registration odds were highest for children of mothers who were 30-39 years of age, educated to secondary level or above, and from the highest-income households. However, registration was lower in Muslim households and those of other religions compared to Christian households. Birth registration was also noted to be higher among children of mothers who had received antenatal care (ANC) previously at a health facility." *Id.* at 326.

²¹⁷ "Child-level predictors of registration include age and gender, as female children had a lower chance of birth registration than their male counterparts." *Id.* at 325, 331.

²¹⁸ "The utilization of modern health care facilities by women is a major predictor for birth registration. This is possibly because those who utilize these services are educated, were provided with information on the benefits of birth registration, and were subsequently linked to the registration centers after delivery." *Id.* at 328

²¹⁹ *Id.* at 322-323. "Gender continues to have a significant effect on whether the birth of a child is registered," Trends in the Completeness of Birth Registration in Nigeria 2002-2010, 330. "Birth registration completeness rates by birth cohorts between 2002 and 2010 ranged from 30% to 41%...The South West zone had the highest rates for all years, maintain levels above 60 percent from 2007 to 2009. The South East zone showed the most progress, as it rose from 38 to 62 percent from 2002 to 2008." *Id.* at 321.

²²⁰ *Id.* at 330. "Every child must be registered with his or her name immediately after birth making it obligatory on part of parents to register the birth of the child." Chhangani, at 102.

registration fraud,²²¹ which is often committed to avoid paying fines, while encouraging the registration of all children under the age of five.²²² Finally, raise awareness by encouraging more women to give birth in modern health care facilities—in the United States, increasing the utilization of health facilities for deliveries played a significant role in increasing birth registration completeness. The measures recommended by this author may help encourage birth registration for families already well situated to participate, but they do not do enough to reach those who are not as well situated—the children most at-risk in Nigeria’s population.

Mobilization is the key to increasing birth registration, and in turn providing more a reliable form of identification, to children in populations for which both are least accessible. A power case study perfectly illuminates why this is the case. *Mother Delivery Kits*, founded by Adepaju Jaiyeboa, provides safe and sterile birthing equipment to rural communities in Nigeria. “Mother’s Delivery Kits connects birthing attendants with affordable, lifesaving supplies needed at childbirth and trains birthing attendants in safer delivery methods. Each delivery kit, which costs an average of...\$5 dollars, comes equipped with a birthing pad, sterilized delivery tools, and misoprostol, a medication [used] to control hemorrhagic bleeding.”²²³ The United States African Development Foundation describes Adepaju’s invention as a “start-up enterprise working at the grassroots,” and it has reached over half a million mothers with safe delivery equipment.²²⁴ The same model of mobilization can be used to improve the rate of identification for children by increasing the accessibility of birth registration. A study in South Africa, completed in 1993, demonstrated that the involvement of health workers in birth registration could increase birth registration rates from 19 to 60 percent.²²⁵ Adopting a similar model to that used by Mother Delivery Kits would provide a powerful solution to Nigeria’s birth registration problem, and in turn help create viable means identification for girls from birth.

Itinerant registrars have already been implemented, and have proven effective in the registration of children born outside health care facilities.²²⁶ Women in Nigerian society are uniquely positioned to partner with the identification project by bringing birth registration to the most remote and disadvantaged populations. The success of Adepaju’s start up is no doubt due

²²¹ “[The fee for late registration] can also lead to falsification of dates of birth if people know they will be charged when their children are being registered late.” *Id* at 318.

²²² *Id* at 318.

²²³ Q&A with Mother’s Delivery Kits Founder & CEO Adepaju Jaiyeboa, *A Business Solution to Deliver Life-Saving Services for Mothers in Nigeria*, US African Development Foundation (Mar. 28, 2019, 4:30 PM), <https://www.usadf.gov/blog/2018/9/12/a-business-solution-to-deliver-life-saving-services-for-mothers-in-nigeria>.

²²⁴ *Id*.

²²⁵ Makinde, *supra* note 20, at 329.

²²⁶ “For a child to be registered...the parents had to visit a birth registration center or see an itinerant registrar during a community visit.” *Id* at 318.

in large part to her harnessing of existing practices in Nigerian custom to deliver and implement her solution. These birth attendants are trusted members of Nigerian society, and as such hold valuable insight that will only bolster identification efforts.²²⁷ The way Adepaju partners with the birth attendants—by educating them on the importance of birth registration and teaching them to use a digital to register births—will go a long way to reaching a significant portion of Nigeria's population in short amount of time, and this model should be emulated when partnering with travelling birth registrars. Increasing the number of itinerant registrars, paired with the digitization of birth registration, can help to make registration more accessible and provide interim identification for children from birth.

The mobilization of birth registration, through the use of itinerant registrars and the implementation of a digital birth registry database, would vastly increase the number of children registered at birth by increasing accessibility to mothers who deliver outside modern health care facilities. "ID systems based on a unique number with strong links to civil registration (CR), which are interoperable with sectoral systems (e.g., social protection, health, education, financial services, population, or travel)...can quickly scale to achieve full coverage and provide broad access to services."²²⁸ Presently, most of the Nigerian population lacks the required documents for enrollment in the 16 state and federal agencies that offer ID services in Nigeria.²²⁹ "Digital identification systems can generate significant benefits across the public and private sectors...Moreover, such systems can generate reliable and continuous data for policymakers to measure development progress."²³⁰ Less than half of the population have any sort of identification, and less than nine percent of the population have an NIMC issued National Identity Number (NIN)—a significant portion of Nigerians either say that obtaining an ID is too difficult or that they lack the required documents.²³¹

Currently, the National Identity Management Commission (NIMC) is upgrading the national identification to an electronic biometric identification card.²³² In collaboration with MasterCard, the NIMC has added a payment element to the new electronic ID card, with the aim that millions of Nigerians who do not have bank accounts would be able to access financial

²²⁷ "The tendency to give priority to professional perspectives and views is a characteristic problem in development planning...a top-down approach to planning usually leads to an incorrect assessment of critical issues, which only compounds existing social problems and concerns." Izugbra, at 84.

²²⁸ *Project Information Document/Integrated Safeguards Data Sheet (PID/ISDS)*, THE WORLD BANK [WBG] NIGERIA DIGITAL IDENTIFICATION FOR DEVELOPMENT PROJECT 1, 4.

²²⁹ Thirteen government agencies and three state agencies. *Id.* at 5.

²³⁰ *Id.* at 4.

²³¹ "Less than 50 percent of residents have any ID card at all, whilst only 9 percent of individuals have a national ID number (NIN). Based on the Global Findex Survey results of 2018, 33 percent of those who do not have ID cite that it is too difficult to obtain, whilst approximately 20 percent cite a lack of supporting documentation." *Id.* at 3.

²³² "Nigeria launches national electronic ID cards," BBC, <http://www.bbc.co.uk/news/world-africa-28970411>.

services.²³³ Eventually, the government intends for all citizens to use the National identification card for all transactions that are based on identity.²³⁴

The Nigerian Communications Commission (NCC) enforced biometric SIM registration in 2011.²³⁵ When one registers for a SIM, he/she must present proof of identification and have their fingerprints and facial image taken by the mobile operator(s).²³⁶ There are seven forms of identification that are acceptable including the national ID card and a letter by a traditional ruler or community leader.²³⁷ If one is not a Nigerian citizen, he/she must show his/her passport to register for a SIM card.²³⁸ Unlike other countries that implement biometric SIM registration, the Nigerian government does not have a central database that mobile network operators can use to confirm customers' biometric information. Instead, mobile network operators must capture and send customers' biometric information, name, gender, date of birth, address, and occupation, to the NCC for storage.²³⁹ Mobile network operators can only store data they have received during registration, not biometric data. Currently, the Nigerian government is in the process of integrating existing identification databases into a National Identity Database.²⁴⁰

Nigeria's unique sociopolitical landscape requires a novel approach to tackling the current identity landscape. The current identification protocol is inadequate to meet the needs of such a populous and diverse country: prerequisite documents are inaccessible to the vast majority of the population, and children remain largely anonymous due to the use of biometric information for verification purposes. Due to international human rights law, in the form of treaties and convention, Nigeria is obligated to make identification equally accessible to woman and girls.²⁴¹ Since a staggering 66% of women give birth outside of health care facilities, where birth registration is infinitely more common to occur, Nigeria will need to make the solution mobile.

²³³ Nigeria National Identity Management Commission, *About the e-ID Card*, <https://www.nimc.gov.ng/the-e-id-card/>.

²³⁴ Nigerian National Identity Management Commission, *NIMC DG Advises Nigerians on Importance of National Identification Number (NIN)*.

²³⁵ GSMA, *Access to Mobile Services and Proof-of-Identity: Global Policy Trends, Dependencies and Risks*.

²³⁶ Nigerian Communications Commission, Federal Republic of Nigeria Official Gazette, <https://www.ncc.gov.ng/docman-main/legal-regulatory/regulations/201-regulations-on-the-registration-of-telecoms-subscribers/file>.

²³⁷ SIM Registration Centers, <https://mtnonline.com/simregistration>

²³⁸ O. Osemwota & D.A Tonwe, *Traditional Rulers and Local Government in Nigeria: A Pathway to Resolving the Challenge* (2013)

²³⁹ Nigerian Communications Commission, Federal Republic of Nigeria Official Gazette, <https://www.ncc.gov.ng/docman-main/legal-regulatory/regulations/201-regulations-on-the-registration-of-telecoms-subscribers/file>.

²⁴⁰ Idoko-Abuja, Clement, *FG to Merge BVN, Driver's Licence, National Identity Card*, Nigerian Tribune, <http://www.tribuneonline.ng/fg-merge-bvn-drivers-licence-national-identity-card/>.

²⁴¹ Equal rights and protections are afforded to women and girls by the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), as well as the Maputo Protocol.

Improving Nigeria's Identification infrastructure can help address the most pressing dangers Nigerian women face, both prophylactically and after the fact—and birth registration is a necessary first step.²⁴² An effective and lasting solution will require a balance of tradition and innovation: a grassroots approach to mobilize birth registration will be most effective under Nigeria's pluralist regime. The Nigerian government is presently tasked with creating an identification mechanism that can adequately meet the needs of nearly 200 million inhabitants, from over at least 250 distinct ethnic groups, in a federal nation ruled by three parallel and distinct legal systems, where religion, culture and history create a seemingly insurmountable divide between North and South. Nigerian women and girls are the most at risk for the very social ills most preventable by adequate identification, and are the least likely to receive the social benefits that identification is so instrumental to obtaining. The mobilization of birth registration, and creation of a digital database to harness said registration as a means of identification, would significantly improve the identification landscape currently faced by the Federal Government of Nigeria.

²⁴² Human traffickers understand the power of identification to protect women and girls from their criminal enterprise: "traffickers often destroy victims identification documents, [and] provide them with false identification" when they are abducted and relocated. This makes it difficult for victims to ever be found and rescued. Rasheed Olaniyi, *No Way Out: The Trafficking of Women in Nigeria*, Agenda: Empowering Women for Gender Equity 45, 49.

Section III: Identification in Action – Comparative Case Studies

Estonia: Using Digital ID to Spur Entrepreneurship and Civic Participation

An Eastern-European country of just over 1.3 million residents, Estonia has proven an unlikely pioneer in the realm of national identification schemes. Since its inception in 2002, the Estonian Digital Identity card has become an integral part of public and private services in the country.²⁴³ Every Estonian above the age of 15 and every European citizen residing in Estonia must acquire the Digital Identity card, and it grants access to over 99 percent of public services online.²⁴⁴ Banking, healthcare, taxes, prescriptions, and even voting have all been incorporated into the Digital Identity platform, and adoption among Estonian residents exceeds 98 percent.²⁴⁵ 67 percent of Estonians report using their Digital Identity card regularly, a testament to the essential role it serves in everyday life in the country.²⁴⁶

In 2011, the Government of Estonia joined forces with mobile network operators to provide a mobile version of its national identification card, part of a concerted effort to harness the ubiquity of mobile devices in the modern age.²⁴⁷ As the number of mobile telephone subscriptions in the country exceeds the population by almost 50 percent,²⁴⁸ Estonia's implementation of Mobile-ID not only generated efficiency gains in the provision of public and private services but also presumably eased citizens' interactions with these services. It also showcased the potential of public-private partnerships in digital identification: whereas users purchase the Mobile-ID SIM card from a host of national mobile operators, the cards themselves are issued by the Estonian Certification Authority, which retains control over users' personal information and other sensitive data.²⁴⁹ Tapping into existing telecom infrastructure, Mobile-ID has dramatically expanded wireless access to e-government services.

The Digital Identity architecture in Estonia has lowered gender disparities in several key social, economic, and political areas. Parliamentary elections in 2019 saw a 45 percent jump in the number of female voters who voted online, and 54 percent of the total number of ballots cast

²⁴³ World Bank, Digital Identity: Towards Shared Principles for Public and Private Sector Cooperation (Jul. 2016), <http://documents.worldbank.org/curated/en/600821469220400272/pdf/107201-WP-PUBLIC-WB-GSMA-SIADigitalIdentity-WEB.pdf> (over 940 private organizations public and private sector institutions have connected to Estonia's e-ID).

²⁴⁴ See World Bank, Privacy by Design: Current Practices in Estonia, India, and Austria (2018), <http://documents.worldbank.org/curated/en/546691543847931842/pdf/132633-PrivacByDesign-02282019final.pdf>.

²⁴⁵ *e-Identity*, e-Estonia, <https://e-estonia.com/solutions/e-identity/id-card/>.

²⁴⁶ *Id.*

²⁴⁷ World Bank, *supra* note 243.

²⁴⁸ International Telecommunication Union, Mobile-Cellular Telephone Subscriptions (2017), <https://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx>.

²⁴⁹ World Bank, *supra* note 243.

online were from women.²⁵⁰ Additionally, the World Bank's "Women, Business, and the Law" report, a longitudinal study that analyzes the economic obstacles facing women around the world, assigned perfect scores to Estonia in such categories as "Accessing Institutions" and "Using Property".²⁵¹ Lower but comparatively impressive scores on women's ability to access credit and obtain a job in the country were also recorded.

Estonia's success in national digital identity derives partly from its willingness to embrace technological change and view technology as an essential component of mobility and parity in the twenty-first century. Indeed, in 2000, Estonia became the first country to formally assign Internet access as a human right, and, as a result, Estonia now enjoys one of the highest Internet penetration rates in the world.²⁵² Of course, along with this establishment of a truly contemporary digital identity system have come the common pitfalls of new technology, notably threats to personal privacy. A security gap discovered in 2017 left nearly 750,000 Estonian Digital Identity cards vulnerable to identity theft, though directors of the Digital Identity program assured that no cases of e-identity theft actually occurred.²⁵³ In response, the Government issued a call to private providers of e-services to strengthen their security protocols, sparking the design of a more sophisticated Digital Identification with advanced security features.²⁵⁴

Pakistan: Using National ID to Empower Women and Upend Gender Norms

Sustainable Development Goal 5.A tasks signatories with "[undertaking] reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources..." Just as national digital identification schemes can be used to streamline the provision of public and private services, they can also offer a sense of independence to women in countries where male-driven legal barriers restrain their financial autonomy. This is particularly important in low-income countries, where the gender gap of the unregistered population tilts strongly against women.²⁵⁵ Already women's power in these places is circumscribed by the historical grip of

²⁵⁰ *Statistics about Internet Voting in Estonia*, <https://www.valimised.ee/en/archive/statistics-about-internet-voting-estonia>. See CEDAW art. 7(a) (Sep. 3, 1981) ("States Parties...shall ensure to women, on equal terms with men, the right...to vote in all elections and public referenda").

²⁵¹ World Bank, *Women, Business, and the Law* (2018)

²⁵² According to the World Bank, 88 percent of individuals in Estonia—including 88.3 percent of females and 87.9 percent of males—use the Internet. World Bank, *Individuals Using the Internet*, https://data.worldbank.org/indicator/IT.NET.USER.ZS?year_high_desc=true.

²⁵³ Kalev Aasmae, *Estonia's ID Card Fiasco: 'We've No Intention of Letting a Good Crisis Go to Waste'*, ZDNet (Jan. 24, 2018), <https://www.zdnet.com/article/estonias-id-card-fiasco-weve-no-intention-of-letting-a-good-crisis-go-to-waste>.

²⁵⁴ *Estonia's First New ID Cards to Be Issued This Week*, ERR News (Dec. 11, 2018), <https://news.err.ee/883962/estonia-s-first-new-id-cards-to-be-issued-this-week>.

²⁵⁵ See ID4DINDEXNote. In low-income countries, 45 percent of women lack ID compared to 30 percent of men.

gender discrimination and pervasive violence against women; yet though these issues restrain women's access to identification in the first place, those in possession of it have used it to assert their independence with the government

In Pakistan, the Computerized National Identity Card (CNIC), overseen by the National Database and Registration Authority (NADRA), provides a 13-digit identification number to individuals over the age of 18; the CNIC is required to open a bank account, apply for a passport, purchase a SIM card, access government benefits, and obtain a driver's license.²⁵⁶ The CNIC represents the recent formulation of a national goal that began in 1973 under Zulfikar Ali Bhutto: pursuant to Article 30 of the Second Amendment to the Constitution of Pakistan, the government must perform identification and maintain a statistical database of the citizens of Pakistan.²⁵⁷ However, because the CNIC is not mandated, and because of legal restrictions surrounding the enrollment of women in the national identity scheme,²⁵⁸ registration before 2008 remained frustratingly low, with a mere 54 million people entered into the database.

Spurring enrollment required the government to innovate new means of reaching citizens in rural areas, as well as new methods of attracting women—and, due to legal requirements, their husbands—to the service. The agency started by opening an office in every district and dispersing mobile vans, motorcycles, and even skiers across the country to register applicants in isolated areas; noting the “culture of male chauvinism,” the government staffed several of these registration units with all-female personnel.²⁵⁹ Most importantly, the government made allocation of new subsistence grants to female heads of households—part of the broader Benazir Income Support Program (BISP) that aimed to promote the financial inclusion of women—contingent upon proof of a registration with NADRA.²⁶⁰ In its marketing effort, the government emphasized that government allowances offered in the wake of national disasters would only be made available to those in possession of a national identity, an effective forcing mechanism in light of the 2005 Kashmir earthquake that ravaged part of the country.

²⁵⁶ NADRA, National Identity Card, <https://www.nadra.gov.pk/identity/identity-cnic/>

²⁵⁷ Tariq Malik, *Technology in the Service of Development: The NADRA Story*, Center for Global Development (Nov. 7, 2014), <https://www.cgdev.org/publication/ft/technology-service-development-nadra-story>.

²⁵⁸ See World Bank, *supra* note 233. Women cannot apply for a business or apply for a passport in the same way as men – when renewing her national ID card, married woman must provide her marriage contract and her husband's ID card or an electronic confirmation by her husband.

²⁵⁹ Malik, *supra* note 239. See CEDAW art. 5(a) (Sep. 3, 1981) (“States Parties shall take all appropriate measures...to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”).

²⁶⁰ Malik, *supra* note 239.

The strategy yielded exceptional results: by 2014, 98 million people had enrolled in CNIC, an 80 percent increase in overall registration.²⁶¹ While registration of men rose 65 percent in this time, registration for women expanded an astounding 104 percent.²⁶² According to BISP Impact Evaluation Surveys, those women with CNICs, now eligible to vote and responsible for the financial security of their families, “felt a stronger sense of identity.”²⁶³ Additionally, because most women who received the BISP cash transfers directed how it was spent, expenditures on nutrition, health, and reproductive services grew, highlighting the relationship between digital identification, financial empowerment, and other sustainable development goals.²⁶⁴

Indonesia: Using Birth Registration to Combat Child Marriage

The registration process involved in national identification schemes can fill data voids that currently exists in many parts of the world. Barring privacy concerns, the information-gathering that forms the crux of national identification schemes can account for people who would otherwise remain on the periphery, their issues unknown to the formal mechanisms responsible for addressing them. This transformative aspect of national identification has the potential to curb child marriage in a country such as Indonesia.

Roughly 20 percent of girls in the world are married before they turn 18; as a result, it is estimated that nearly 650 million women alive today were married as children.²⁶⁵ As part of its Sustainable Development agenda, the UN has committed to “[eliminating] all harmful practices, such as child, early, and forced marriage...” by 2030, recognizing that the practice detracts from the larger goal of achieving parity between men and women; indeed, child marriage restricts girls’ educational, economic, and social opportunities at an early age, with acute effects on girls from poor communities.²⁶⁶ Child marriage represents a pernicious strain of discrimination

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ World Bank, *Pakistan: Building Equality for Women on a Foundation of Identity*, <https://id4d.worldbank.org/country-action/pakistan-building-equality-women-foundation-identity>.

²⁶⁴ *Id.* The effort could also be seen as an extension of Pakistan’s obligations under CEDAW art. 14(2)(c) to “ensure... [rural women] the right...to benefit directly from social security programmes.”

²⁶⁵ Girls Not Brides, *Child Marriage around the World*, <https://www.girlsnotbrides.org/where-does-it-happen/>. See United Nations Convention on the Rights of the Child, GA Res. 44/25, art. 1 (Nov. 20, 1989) (defining a “child” as “every human being below the age of eighteen years”).

²⁶⁶ Girls Not Brides, *What Is the Impact of Child Marriage on Sustainable Development Goals*, <https://www.girlsnotbrides.org/themes/sustainable-development-goals-sdgs/>.

against women, hence the CEDAW's explicit call for an end to the formal recognition of these involuntary unions.²⁶⁷

Indonesia's 1974 Marriage Law, which established the minimum marriageable age as 16 for girls and 19 for boys, has frustrated the realization of gender equality in the country.²⁶⁸ Sustainable Development Goal 5.3: Eliminate all harmful practices, such as child, early, and forced marriage..." The legislation engrained child marriage as an accepted practice, and though the country faced criticism from human rights groups at the international level, the bill enabled Indonesia's current reality wherein 14 percent of girls are married before age 18.²⁶⁹

Spurred on by the UN, Indonesia has recently committed to tackling child marriages,²⁷⁰ and birth registration has become a crucial part of this effort. Seventy-five million Indonesians lacked birth certificates as of 2017.²⁷¹ For those unregistered citizens who find themselves in need of official documentation, bribes have usually sufficed.²⁷² Studies suggest Indonesian parents consider the registration process "too complicated" and thus forego it altogether, a decision that later limits economic and legal protections for the child.²⁷³ Furthermore, because marriage registration requires official documentation, and because of the expensive aforementioned corruption scheme, half of married couples in the poorest regions of Indonesia do not register their marriages.²⁷⁴ Accordingly, studies indicate a strong correlation between birth registration and the likelihood of child marriage.²⁷⁵

To promote registration and identification among Indonesians—and thus to combat the child marriage problem—Indonesia enacted reforms that lower administrative and economic obstacles. The government eliminated registration fees within the first 60 days of a birth, and unmarried couples are now allowed to register their children, an act previously prohibited as a tacit acceptance of premarital sex.²⁷⁶ Moreover, the country has attempted to decentralize the

²⁶⁷ See Convention on the Elimination of All Forms of Discrimination against Women, art. 16(2) ("The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory").

²⁶⁸ Hoko Horii, *Child Marriage, Not All Alike*, Inside Indonesia (Dec. 2018), <https://www.insideindonesia.org/child-marriage-not-all-alike>.

²⁶⁹ Girls Not Brides, Indonesia, <https://www.girlsnotbrides.org/child-marriage/indonesia/>.

²⁷⁰ *Id.* In its 2017 Universal Periodic Review, the Indonesian government announced it would "take all measures necessary to end child marriage" in order to promote women's health. These steps at the executive level contrast the Indonesia Constitutional Court's rejection of a petition to end child marriage in 2015.

²⁷¹ Marcel Thee, *'Invisible' Indonesians Nudged to Get Birth Certificates*, Nikkei Asian Review (Mar. 19, 2017), <https://asia.nikkei.com/Economy/Invisible-Indonesians-nudged-to-get-birth-certificates>.

²⁷² *Id.*

²⁷³ GSMA, Understanding the Identity Gender Gap (Aug. 2017), <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2017/08/Understanding-the-Identity-Gender-Gap.pdf>.

²⁷⁴ World Bank, The Role of Identification in Ending Child Marriage (Jul. 2016), <http://documents.worldbank.org/curated/en/130281472492551732/pdf/107932-WP-P156810-OUO-9-Child-Marriage.pdf>.

²⁷⁵ *Id.*

²⁷⁶ Thee, *supra* note 271.

registration process, placing more power in the hands of village authorities and establishing legal identity services at child and maternal health centers.²⁷⁷ At Integrated Service Centers in local schools and community centers, parents can register both their marriage and their child's birth, and these gains in access increased marriage registration by 330 percent between 2009 and 2015.²⁷⁸ For those couples who participated in an unregistered "religious marriage," the parents need only sign a Statutory Declaration affirming the marriage in order to obtain a birth certificate for their child.²⁷⁹

The Indonesian government's promotion of birth registration brings it closer in line with Article 7 of the Convention on the Rights of the Child, which calls for "immediate registration after birth."²⁸⁰ Fulfilling its international treaty obligations in this case advantages the millions of young girls now forced into child marriage and involuntarily precluded from social, economic, and political opportunities as a result.

India: Using Aadhaar to Ensure Social Benefits Reach Intended Recipients

India requires many different IDs for the various social services to which residents have access. In 2009, the Government of India embarked on the Aadhaar project to provide the 1.3 billion people of India²⁸¹ with a unique identity and a digital authentication platform.²⁸² Aadhaar is a 12-digit number linked to an individual's iris, fingerprints, and facial features. More than 1.2 billion Aadhaar numbers have been generated to date, with an overall saturation of 90 percent of the population.²⁸³ Although the government stated the Aadhaar number was not meant to serve as an ID, it evolved to serve that purpose and now controls access to many services, including bank accounts and SIM cards.²⁸⁴ Other IDs exist and continue to be used.²⁸⁵

As India remains a predominantly patriarchal country, access to IDs—and the public services associated with these IDs—is limited by various laws and cultural perceptions. The

²⁷⁷ World Bank, *supra* note 256.

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ See Convention on the Rights of the Child, art. 7 ("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").

²⁸¹ See India - World Bank Open Data – World Bank Group - <https://data.worldbank.org/country/india>

²⁸² See Unique Identification Authority of India: Vision & Mission - <https://uidai.gov.in/about-uidai/unique-identification-authority-of-india/vision-mission.html>

²⁸³ See Unique Identification Authority of India: State-wise Aadhar Saturation - <https://uidai.gov.in/images/state-wise-aadhaar-saturation.pdf>, a break-up of the data by sex/gender is not available at this moment.

²⁸⁴ Press Trust of India, *Aadhar is a number, not an ID card: Montek Singh Ahluwalia*, NDTV (Feb. 2, 2013), <https://www.ndtv.com/india-news/aadhaar-is-a-number-not-an-id-card-montek-singh-ahluwalia-512202>

²⁸⁵ *Id.*

Aadhaar Act of 2016 outlines the process for obtaining an Aadhaar number.²⁸⁶ The Act further states that Aadhaar numbers may be accepted as proof of identity of the Aadhaar number holder for any purpose, subject to authentication and other conditions.²⁸⁷ The Aadhaar enrollment form requests details of either the father, mother, guardian, husband, or wife, though adults can opt to withhold this information.²⁸⁸ The form also allows applicants to choose between male, female, and transgender options. Individuals lacking formal identity documents may apply through the head of the family.

In practice, the linking of Aadhaar to public welfare schemes and benefits has primarily disadvantaged poorer populations.²⁸⁹ Pregnant women and those seeking abortions have been denied access to public healthcare facilities due to a lack of an Aadhaar number.²⁹⁰ Unmarried women seeking abortions often turn to private or other healthcare options in order to avoid having to connect their request for an abortion with their government identity. Similarly, HIV positive people regularly forego treatment due to privacy concerns associated with Aadhaar.²⁹¹

Despite these legitimate privacy concerns, Aadhaar is helping empower women and driving increased usage of banking services by mandating welfare payments to female heads of households.²⁹² A study by MicroSave surveyed 633 households in rural and urban areas of Rajasthan and found the requirement that the family head be female drove a massive increase in banking use: 66 percent of the female heads of family opened bank accounts upon registering with Aadhaar. However, men did remain the main controllers of access to mobile devices.²⁹³ The study also uncovered bottlenecks in the system, as 25 percent of registrants required three to four attempts to authenticate. Four percent claimed they were unable to authenticate in time to access the services and benefits.²⁹⁴

Citing privacy concerns, the Aadhaar project was recently challenged as being unconstitutional before the Supreme Court of India. The Court upheld its validity, noting the

²⁸⁶ The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 Section 3: (“Every resident shall be entitled to obtain an Aadhaar number by submitting his demographic information and biometric information by undergoing the process of enrolment”).

²⁸⁷ See The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 Section 4

²⁸⁸ See Aadhaar Enrolment/Correction form under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 Section 3.

²⁸⁹ Tavleen Singh, *Fifth Column: Aadhaar An Idea Gone Very Wrong*, INDIAN EXPRESS (Jan. 14, 2018), <https://indianexpress.com/article/opinion/columns/fifth-column-aadhaar-an-idea-gone-very-wrong-5023463/>

²⁹⁰ See Indian Journal of Medical Ethics - Public Statement: Gross violation of human rights due to mandatory linking of Aadhaar to health and allied social security schemes, <https://ijme.in/announcements/public-statement-gross-violation-of-human-rights-due-to-the-mandatory-linking-of-aadhaar-to-health-and-allied-social-security-schemes/>.

²⁹¹ Menaka Rao, *India's Intrusive Biometric ID is Forcing HIV Patients to Forgo Treatment*, QUARTZ (Nov. 20, 2017), <https://qz.com/india/1133527/aadhaar-indias-intrusive-biometric-id-is-forcing-hiv-patients-to-forgo-treatment/>

²⁹² Saritha Rai, *How Aadhaar is Helping Empower Indian Women*, LIVE MINT (Dec. 12, 2017), <https://www.livemint.com/Politics/uXQ0txJ6R0ucZPYqr0GMPL/How-Aadhaar-is-helping-empower-Indian-women.html>

²⁹³ *Id.*

²⁹⁴ *Id.*

Government's representation that no deserving person would be denied the benefit of a scheme upon failure to authenticate.²⁹⁵ The dissenting judgment, however, noted that the absence of an Aadhaar number would render a resident non-existent in the eyes of the State, and highlighted myriad examples of exclusion that disproportionately impacted on the lives of the marginalized and poor.²⁹⁶ The dissent also pointed towards dangers of racial and other profiling.²⁹⁷ Thus, while the project has its limitations, it has been somewhat successful in increasing women's financial inclusion, which speaks to its greater potential.

²⁹⁵ Justice K.S. Puttaswamy and Ors. v. Union of India (UOI) and Ors. 2018 (12) SCALE 1, Para 447(2)(j).

²⁹⁶ *Id.* paras. 695,701

²⁹⁷ *Id.* para. 700

Conclusion and Recommendations

Some 1.5 billion people in the developing world lack proof of legal identity.²⁹⁸ The World Bank has recognized that “this identification gap poses a serious obstacle to participation in political, economic and social life.”²⁹⁹ Lack of access to secure and trustworthy IDs impacts access to vital public and private services, impeding the realization of universal human rights guaranteed under national and international laws, covenants, and treaties. Moreover, women and vulnerable demographics often experience disproportionate effects. Identification programs have been recognized as viable solutions towards gender parity and important factors in the achievement of the UN’s Sustainable Development Goals.

As this Paper indicates, Tonga, Nigeria and various other countries such as Estonia, Pakistan, Indonesia, and India have all made forays into the world of digital IDs. While gender-based legal barriers and prominent socio-cultural barriers continue to hamper full implementation, “Digital identification systems can generate significant benefits across the public and private sectors...Moreover, such systems can generate reliable and continuous data for policymakers to measure development progress.”³⁰⁰ Sustained efforts to address identification gaps globally are thus required to achieve inclusive development.³⁰¹

This Paper recommends and proposes the following strategies towards this end:

- Establishing a comprehensive and trustworthy form of identification, with ease of access.
- Ensuring the removal of all gender-based legal barriers to IDs. This can be achieved through national legislation and increased reporting and compliance with international obligations. This is particularly true for Tonga: as there are no formal gender-based legal barriers to employment or economic activity, the lack of anti-discrimination laws and the prevalence of harmful social norms result in the exclusion of women from full participation in the various facets of Tongan life.
- Removing barriers in accessing information and technology—particularly in Tonga where women are unable to access information on business and start-ups due to patriarchal family structures that inhibit financial inclusion.
- Tackling institutional and social barriers towards economic and political participation of women by adopting intersectional and culturally inclusive

²⁹⁸ World Bank ID4D dataset 2016

²⁹⁹ Principles on Identification for Sustainable Development: Toward the Digital Age, *The World Bank* (Feb. 02, 2018), *The World Bank*

³⁰⁰ Supra note 219

³⁰¹ Supra note 281

(including navigating local and regional customary law) approaches towards access to IDs and consequent services.

- Collection of gender-disaggregated data to study the impact of policies and address loopholes, which holds potential to strengthen project implementation.
- Protecting the privacy of enrolled participants to ensure the programs are used and benefit their intended recipients.
- Recognition by treaty bodies and the international community of the essential role of official identity in achieving a treaty's human rights goals and meeting its international legal obligations.
- Identification and analysis of foundational identity documents and the role they play in access to functional identity documents.
- Exploring extra-legal (such as providing incentives) and grassroots efforts through mobilizing citizens towards enrolment in ID projects.

