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## Ensuring education for all and guaranteeing the child's right to registration

Presented by

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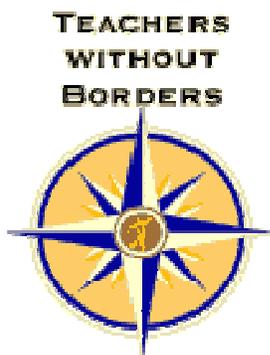
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### Introduction

The Convention on the Rights of the Child (CRC) obliges States to ensure the right to education for all children. To fulfill this obligation, States are encouraged to implement a system of education which is both accessible and universal. While education is generally recognized as necessary for the development of children, the continued access to education during crisis situations can serve a pivotal role in ensuring a degree of stability for affected children and fostering their continued development despite the circumstances.<sup>1</sup> Several measures can be implemented to guarantee the right to education in these emergency situations. The goal of the present submission is to underline the necessity of registering children to protect their identity and subsequently ensure their effective access to education during emergencies. Registration is a universal means by which to guarantee a child's right to their identity, assure their continued development, and protect their basic human right of access to education, without discrimination, in all circumstances.

### 1. Registration as an integral part of the implementation of the right to education

During emergency situations where serious human rights violations occur, education provides children with structure, stability and hope by protecting them from exploitation and mistreatment. *It is well established that undocumented refugee and displaced children often face discrimination given their lack of official identity papers, which further exacerbates their vulnerability and frustrates their access to education.*<sup>2</sup> During the course of prolonged emergencies, an embattled administrative system in a given State usually prioritizes other issues over children's rights to education. In



such a context of crisis, where the survival of individuals is threatened, the civil registration system is often relegated down the list of priorities, making it more difficult for registering and emitting birth certificates.<sup>3</sup> All too often in conflict situations, vital information recorded by a civil birth registration authority is lost or disappears following acts of violence or the occurrence of natural disasters.<sup>4</sup> Also, identity documents are very often confiscated or lost in the confusion and displacement. Obtaining replacement identity documents often proves either difficult or altogether a dangerous undertaking where displaced persons would have to return to areas from which they fled and where their personal security is at risk.

Implementation of children's rights to education in emergencies in accordance with article 28 of the CRC, requires positive preventive measures in advance of the of any humanitarian crisis in order to deal with the effects of such crises' upon their occurrence.<sup>5</sup> Countries where a low rate of birth registration is recorded, and where there is a high risk of being exposed to an emergency situation, must be prioritized accordingly. The prioritization of birth registration in those countries will reduce the risk of further

1 On this matter see the following excerpt from the report *Forum Mondial sur l'Éducation*, Dakar, 2000, available online at [http://www.unesco.org/education/wef/fr-docs/fr\\_findings/fr\\_final%20report.pdf](http://www.unesco.org/education/wef/fr-docs/fr_findings/fr_final%20report.pdf), p. 24 : Assurer une éducation de base dans les situations d'urgence et de crise «Une étude spéciale, commandée dans le cadre du Bilan à l'an 2000, a mis en évidence l'importance du manque de services éducatifs dont souffrent les populations déplacées et celles qui vivent dans un climat d'insécurité chronique. Dans certains cas, une génération entière d'enfants peut être privée d'éducation de base. L'étude souligne la responsabilité de la communauté internationale dans la reconnaissance du droit fondamental à l'éducation - y compris dans les situations d'urgence - et dans l'offre de ressources. Une des recommandations importantes est que l'éducation en situation d'urgence doit être envisagée dès le départ comme faisant partie d'un processus de développement du pays, et non comme un simple effort de 'soulagement'».

2 See *inter alia* Erin Mooney, «L'éducation des déplacés internes : de mauvaises notes», Brookings Institution-University of Bern, Project on Internal Displacement, Forced Migration Review, 22, January 2005, p. 41.

3. UNICEF, *Birth Registration and Armed Conflicts*, Innocenti Research Centre, 2007, p.15, online at [http://www.unicef.at/fileadmin/medien/pdf/birth\\_registration\\_and\\_armed\\_conflict.pdf](http://www.unicef.at/fileadmin/medien/pdf/birth_registration_and_armed_conflict.pdf)

4. *Ibid* p.10

5. This general principle comes from the Humanitarian Charter and minimal standards to be respected in interventions in case of catastrophies of the Sphère project, 2000.

infringements of the rights of children already exposed to harmful situations and which become even more vulnerable in circumstances of armed conflict. As soon as a crisis arises, local authorities will be able to

### The Convention on the Rights of the Child

With its 193 Member States, the Convention on the Rights of the Child is a one of international law's most important instruments. In accordance with Article 4 of the Convention, States have the obligation to allocate the available economic and human resources, in order to give priority to children<sup>6</sup>. Article 7 of the Convention associates the registration of children to the acquisition of a name, a nationality and the recognition of family lineage. Nevertheless, the obligation to register children also stems from a fundamental and general obligation: that of respecting the identity of the person, as guaranteed by Article 8 of the Convention. This obligation is interpreted as being fundamentally a positive one and, *per se*, in the interest of children.<sup>7</sup> In fact, the Committee has already reaffirmed the inextricable link between the right to identity and the registration of children.<sup>8</sup> The registration of children and the protection of their identity are essential elements in order to reach the general principles provided for in the Convention, i.e. the integration, the well-being, the survival, the protection, the development and the participation of children.

share existing statistical information on the demographics of their child population (under 18) with partner organizations working in education programs on the ground. This will allow for better coordination of their actions and a more efficient response to the educational needs of children in these circumstances.

#### 1.1 Documentation and coordination

To date, inadequate attention has thus far been paid to education in crisis situations even where a high number of children in need of education has been clearly identified.<sup>9</sup> Efforts made to compile statistical information about displaced children on the ground in crisis' lacks coordination and has produced limited results. This was the case in 1996 in Guinea where it was demonstrated that not enough importance is given to information and data analysis needs.<sup>10</sup> However, NGOs and United Nations' agencies recognized that lessons had to be learnt from the successes and failures that countries like Guinea had experienced. This brought about interesting initiatives such as Innovative Strategic Partnerships in Refugee Education (INSPIRE)<sup>11</sup> and the *establishment of minimum standards for education in emergencies, in situations of crisis and of reconstruction by the Inter-Agency Network for Education in Emergencies (INEE)*.<sup>12</sup> These initiatives underline the importance of documentation and coordination to allow for the proper alignment of educational programs with the needs of beneficiaries, such as children, teachers and their communities, in times of crisis as well as at the beginning of any reconstruction phase.

#### 1.2 Needs assessment

In the field of education during emergencies and reconstruction phases, the use of statistics and other data pertaining to children is an essential condition to initial evaluation of the children's educational needs in emergencies. Gathering data on the number of students, their level year and the available educational resources (teachers and supplies) is necessary for the planning, management and evaluation of efficient policies and programs. The *Global Survey*,<sup>13</sup> authored by the Women's Commission for refugee women and children, reveals that data collection on the ground is rarely done systematically and rigorously which, in turn, altogether hinders the implementation and management of effective educational programs during emergencies. Pioneering work done by this organization in the field of data collection pertaining to the overall reach, the geographical scope and the

6. With regards to the obligation to allocate resources for children, see UNICEF, Rebecca, Rios-Kohn, «Protecting the World's Children: Impact of the Convention on the Right of the Child in diverse legal systems», Cambridge, New-York, 2007, p. 72.
7. On this matter, see Sharon Detrick, «A Commentary on the United Nations Convention on the Rights of the Child», Kluwer law, La Haye, 1999, p. 163.
8. In its observations of the application of Article 8 of the Convention in Paraguay in 1994, the Committee linked the registration of children and the existence of identity cards to the protection of identity. See Cynthia Price Cohen, «Jurisprudence on the Rights of the Child», Transnational Publishers, Ardsley, New-York, 2005, p. 841.
9. See *inter alia* Marc Sommers, « L'enseignement pour tous », *Forced Migration Review*, 22, January 2005, p.13.
10. See *inter alia* Atle Hetland, « Documentation et coordination », *Forced Migration Review*, 22, January 2005, p.22.
11. This group includes the High Commissioner for Refugees, the UNESCO and other organizations.
12. INEE, Réseau inter-agences d'éducation d'urgence, «Normes minimales d'éducation en situation d'urgence, de crise et de reconstruction», [http://www.ineesite.org/minimum\\_standards/INEE\\_MSEE\\_Fr.pdf](http://www.ineesite.org/minimum_standards/INEE_MSEE_Fr.pdf)
13. On this matter, see Women's Commission for refugee women and children, *Global Survey on Education in Emergencies*, December 2003.

frequency of its collection *should serve as a reference for governmental authorities, NGO's and UN agencies who are mandated to plan and manage education programs in conflict zones.*<sup>14</sup>

### 1.3 Intervention strategy

Where national census data does not account for significant segments of the population, including unregistered children, any political or budgetary decisions taken in times of urgency or during reconstruction phases will produce under-inclusive and adverse impacts on these children. In certain countries, the main obstacle to full child registration is a shortage of available resources, while in other countries, the child registration system is itself responsible for institutionalizing pre-existing discrimination on the basis of ethnic, religious or cultural origin. Notwithstanding reasons why an inadequate civil registration system exists in a given State, the success of any development strategies including those aimed at educational programs, cannot succeed without addressing this pre-existing deficiency<sup>20</sup>. As foreign donor governments provide financial aid for educational programs based on incomplete data, unregistered children are thus not targeted and are at risk of being forgotten and altogether excluded from the benefits of any social development programs. *Therefore,*

*when States do not take into account the most vulnerable populations, these children become totally invisible during political and budgetary decision-making. This, in turn, considerably limits their access to education programs that are put in place whether during an emergency situation or during reconstruction.*

#### The recognition of legal personality

The right to identity is also inter-related to the recognition of the civil and legal personality, as well as to all human rights with stem therefrom.<sup>15</sup> Article 6 of the Universal Declaration of Human Rights,<sup>16</sup> Article 3 of the American Convention on Human Rights,<sup>17</sup> as well as Article 16 of the International Covenant on Civil and Political Rights<sup>18</sup> provides for the fundamental right. For many, these norms contained in the Universal Declaration of Human Rights now constitute norms of international customary law.<sup>19</sup> The right to identity must therefore be viewed as a fundamental human right in public international law. The right to identity being a fundamental norm to be respected by all States, the latter must take the necessary measures in order to ensure its application and durability. For the child, this right translates primarily into the establishment of effective registration mechanisms, which refer to the fundamental components attached to its identity such as its name, its nationality and its family. We will address further below how the establishment of such measures is essential to the effective implementation of the right to education.

### 1.4 Reinforcement of archived data resources

In order to improve the documentation and coordination of educational resources in emergencies situations, particular attention must be given to the preservation of archived data resources. Measures must be implemented to ensure the integrity of registries and archives and prevent loss or destruction of data in the event of instability, armed conflict or natural disasters.<sup>21</sup> All too often, institutional archives and educational records are lost due to high staff turnover and/or a dispersed archival system. Consequently, time and resources required to ascertain accreditation and educational curriculum prolongs coordination efforts between affected ministries of education and aid agencies for months, if not years.<sup>22</sup>

14. On this matter, see Christopher Talbot, «Recherches récentes et actuelles : les lacunes», *Revue Migration Forcée*, 22 February 2005, 5-6.

15. On the matter, see «Nota del Comité Jurídico Interamericano Transmitiendo Resolución» CJI/RES.137 (LXXI-O/07) Y LA «Opinión Sobre el Alcance del derecho a la Identidad», OEA/Ser.G, CP/doc. 4240/07, 30 août 2007.

16. G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

17. O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123.

18. G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171.

19. See *inter alia* Louis B. Sohn, « The New International Law : Protection of the Rights of Individuals Rather than States», 32 *Am. U. L. Rev.* 1, 17, 1982.

20. UNICEF, *L'enregistrement à la naissance : un droit pour commencer*, Innocenti Research Centre, 9, March 2002, 2.

21. UNICEF, *supra* note 3, at p.10

22. On this matter, see Marc Sommers, *supra* note 9, pp. 13-14.

Therefore, it is imperative that all primary educational resources<sup>23</sup> be made available online or on databases to ensure continuity of previous research in programming and planning of educational programs. These measures would aim to protect the information contained in the State's civilian registry in the eventuality where loss or destruction of individual documents may occur as a result of external circumstances.

In order to increase the overall efficiency of civil registry systems, measures must be taken to register all children. One means by which to accomplish this objective would be to create an obligation for those who are responsible for children, such as parents, tutors or educators, which would make the registration of children compulsory.<sup>24</sup> Such a compulsory registration requirement would first have to be widely publicized, and subject to sanctions for those who fail or omit to comply with such a requirement. For example, in France, the attribution of status is considered to be a non-derogable obligation of public order.<sup>25</sup> Similarly, in Burkina Faso, maternities are obliged to maintain a registry, organized by date, of all births which occur within its facilities.<sup>26</sup> Binding legislation entrenches the responsibility of all those who are responsible for the well-being and education of children, and thus increases the trustworthiness and reliability of the registration system in the eventuality where widespread emergencies may arise.

### The observations of the Committee

In its report following the September 2004 Day of General Discussions, the UN Committee on the Rights of the Child recommended that States take all necessary measures to ensure the registration of children in civil registries as of their birth.<sup>27</sup> The Committee also recommended that States permit and encourage the late registration of children and their access to social, health and education services regardless of official registration. The implementation of a system of registration of children forms part of the measures which can guarantee the right to identity and the respect of all other rights linked to it, including the right to education.<sup>28</sup> The Committee also reaffirmed the importance for States to take all necessary measures to ensure the universal registration of children notwithstanding obstacles or difficulties which can be encountered.<sup>29</sup> The implementation of such measures can prevent and reduce obstacles which can be encountered while providing for educative services in emergency situations.

## 2. Best practices in respect of civil registration

### 2.1 Free service and mobile registry units

There are many political, administrative, geographic and economic obstacles to universal registration. However, such structural impediments may be overcome by innovative strategies which have proven effective. Some American<sup>30</sup> and African countries have succeeded in either reducing or altogether eliminating any costs associated with civil registration thus precluding situations where certain persons would be prevented from accessing their right of registration because of costs associated therewith.<sup>31</sup>

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23. These primary sources of educative action are mainly unpublished documents, assessments and reports from funders.
  24. *Ibid*, at p. 740, where the Committee raises its concerns regarding the lack of public knowledge regarding the obligation of registering children in Bangladesh.
  25. In France, it is compulsory to declare all births. A civil-registry service, placed under the supervision of the judiciary, is overseen by municipal authorities, French embassies and French consulates abroad.
  26. Article 108 of the *Code des Personnes et de la Famille*, LOI N° 2002-007.
  27. See United Nations Committee on the Rights of the Child, Day of Discussion: Implementing Child Rights in Early Childhood, 17 September 2004 - Palais Wilson, on line at <http://www2.ohchr.org/english/bodies/crc/docs/discussion/earlychildhood.pdf>.
  28. See *supra* note 8, p. 757. In its observations on the implementation of the right to identity and to registration in the Dominican Republic in 2001, the Committee noted the following: «While the Committee takes note of the State party's efforts in the area of birth registration, it remains concerned that a large percentage of children are not registered and are not provided with Identity cards, thus preventing them from enjoying their rights fully».
  29. *Ibid*, p. 814, where reference is made to the observations of the Committee with regards to Vietnam and to the importance of registering children who live in remote areas.
  30. Among other Brazil, Bolivia, Colombia, Chile, Honduras, Nicaragua and Peru.
  31. On this matter, see: Inter-American Development Bank, "Reaching the Majority: Promising Steps, Future Actions" <http://www.iadb.org/news/articledetail.cfm?language=EN&parid=4&arttype=WS&artID=2866>

Other initiatives have also been adopted to circumvent geographical obstacles that make it difficult for residents of rural or poorly accessible areas to become registered. For example, Chile has apparently succeeded in registering 99% of its citizens. Regular visits from civil registry officials equipped with satellite linked computers gave residents in isolated communities the opportunity to register themselves in national databases.<sup>32</sup>



Mobile registry units seem to be particularly efficient in regions affected by conflicts. In Colombia for example, a mobile registry program that was provided with the requisite technological tools to reach remote communities was put in place by governmental agencies, UNICEF and support from the European Commission's Humanitarian Office (ECHO).<sup>33</sup> Between August and September 1998, the Colombian government enacted strategies aiming at stabilizing the status of residents living along the border with Ecuador. Many registration sites were established on both sides of the border to allow Ecuadorians and Colombians to register their children.<sup>34</sup> Similarly, in Sri Lanka, mobile units provided identification documents to the internally displaced in the North and East of the country.

The children received identification papers allowing them to go to school and giving them access to other social services.<sup>35</sup> In Angola, registration campaigns aimed at the displaced have also allowed the establishment of a decentralized system built on partnerships with civil society organizations. These campaigns were aided by legislative changes and by the implementation of free procedures. Over 3.8 Angolan children were thereby registered between August 2002 and December 2003. In turn, these massive registration campaigns reunited families, gave children the possibility of proving their age as minors (thus avoiding enrolment in the armed forces), and guaranteed them access to the schools in the displaced peoples' camps.<sup>36</sup>

## 2.2 Role of regional organizations

States are increasingly aware of the need to establish a registry system in order to plan and coordinate regional and national programs. In Sub-Saharan Africa, more than half of all births remain unregistered. As part of the Day of the African Child held June 16<sup>th</sup> 2003, a regional campaign was organized to promote mandatory, free and accessible birth registration for Central and West Africa. Many partners joined forces for the event. These included 24 national governments, international organizations such as UNICEF, the United Nations Population Fund (UNFPA), Plan International, representatives of the population and representatives of local media.<sup>37</sup>

Furthermore, members of the Organization of American States have recently commenced an ambitious project that should ensure access to a universal birth registry by 2015.<sup>38</sup> The Committee on Juridical and Political Affairs of the Permanent Council has created a working group in charge of preparing an Inter-American Program for a Universal Civil Registry and "the Right to Identity". In this program, special attention is given to the most vulnerable. Specific sub-programs will therefore be put in place to reach the people that are most vulnerable (Native people, the poverty stricken or the displaced for example). Public awareness campaigns will highlight the importance of birth registration as a means protecting and ensuring fundamental rights and freedoms. These initiatives will primarily be targeted towards parents and legal guardians.

## 2.3 Role of cooperative efforts between international organizations

Repeatedly, international organizations have underlined the crucial importance of child registration when it comes to giving children access to emergency care as well as when it comes to pursuing their

32. *Idem.*

33. See : Oficina en Colombia del Alto Comisionado de Naciones Unidas para los refugiados - ACNUR, [Programa de apoyo al trabajo de documentación de la población desplazada por la violencia.](http://acnur.org/crisis/colombia/programa.html)

34. *Supra* note 3, p. 26.

35. *Ibid.*

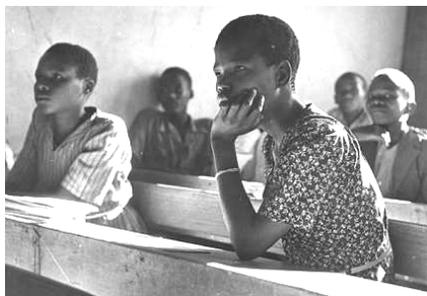
36. *Ibid*, p. 30.

37. *Ibid*, p. 26.

38. See *inter alia* Proyecto de Programa Interamericano para el Registro Civil Universal y Derecho a la Identidad CAJP/GT/DI-2/07 rev. 7, <http://www.oas.org/consejo/sp/cajp/Universal%20Registro.asp>

education.<sup>39</sup> The UN High Commissioner for Refugees has specially noted that displaced children, that do not have their identification documents, are often denied their right to go to school.<sup>40</sup>

Furthermore, recent Inter-American initiatives stress the necessity of establishing cooperative efforts between international organizations as well as between States in this area. In 2006, a Memorandum of Understanding was signed by the Organization of American States (OAS), the Inter-American Development Bank (IDB) and UNICEF to facilitate future joint initiatives.<sup>41</sup>



The World Bank has recently supported consolidation of the child registry system in the Dominican Republic. In September 2007, a loan of more than 19 million USD was accorded to Dominican authorities to increase education and job opportunities and access to social services for 400 000 marginalized Dominicans that did not have access to identification documents.<sup>42</sup> Thousands of children are still denied full access to their right to identity in the Dominican Republic, mostly because of their, true or perceived, Haitian origins. This *de facto* discrimination prevents many from having access to education.<sup>43</sup> Even though the circumstances of “under-registration” in the Dominican Republic might not be

considered to be an emergency, it demonstrates similar problems which arise from major population migrations, which can occur in the case of armed conflict or natural disasters where there is no efficient civil registry system in place.

#### 2.4 Child participation

It is clear that universal registration will only be achieved where governments, the international community and civil society combine their efforts, particularly with the assistance of local affected communities. Direct active child participation should remain one of the main objectives. Not far from El Alto in Bolivia, public education activities undertaken by local adolescents have encouraged children to publicly claim their right to civil registration<sup>44</sup> in order to guarantee their other civil and socio-economic rights. Similarly, during the West and Central Africa Birth Registration Conference held in Dakar in 2004, children’s delegations from fourteen countries presented a report and a plan of action, recommending training for registry officials, registration of births in hospitals and computerized registration throughout the region.<sup>45</sup>

There are still many endeavours that must be undertaken for education in emergencies to become one of the principal pillars of humanitarian responses, and a priority during the first phases of reconstruction; particularly for stateless children without official documentation. Initiatives of the international community, of governments dealing with any crisis, of civil society groups, and of the general population, confirm that granting a mere document proving an individual’s identity is the first step towards full recognition of one’s civil, political and social rights. This is especially true with regards to the right of every child to receive an adequate education. In order to enhance coordination between local governments and partner organisations working on education programs, particular attention must be paid to preventive measures prior to the occurrence of any humanitarian crisis. This will reduce the aftermath of emergencies when they occur and, consequently, increase the protection of the most vulnerable, that is to say, the children affected.

39. See *inter alia*, *supra* note 3

40. See *inter alia* Derecho a la personalidad, documentacion y desplazamiento, Oficina en Colombia del Alto Comisionado de Naciones Unidas para los refugiados - ACNUR, <http://acnur.org/biblioteca/pdf/1532.pdf>

41. Banco Interamericano de Desarrollo, “BID, UNICEF y OEA crean alianza para promover registro ciudadano en América Latina y el Caribe”, 02 agosto, 2006, en ligne : <http://www.iadb.org/NEWS/articledetail.cfm?language=Spanish&ARTID=3216>

42. Form more details and precisions , see The Dominican Republic and the World Bank Sign Loan Agreement for Social Protection Programs, <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/DOMINICANEXTN/0,,contentMDK:21477082-pagePK:1497618-piPK:217854-theSitePK:337769,00.html>

43. See, for example, Inter-American Court of Human Rights, Case of the Yean and Bosico Children v. the Dominican Republic, Judgment of September 8, 2005, <http://rsq.oxfordjournals.org/cgi/reprint/25/3/92.pdf>

44. Form more details and precisions , see Department for International Development (DFID), “Right to Identity: Turning schoolchildren into citizens”, <http://www.dfid.gov.uk/casestudies/files/south-america/bolivia/bolivia-identity-new.asp>

45. See *supra* note 3, p.26

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3) Page 7 :

<http://www.worldrevolution.org/guide/education>

\*Translation: Steven Roy Cullen

## Annexe « A »

### Recommendations

1. That States, along with international organisations, and in coordination with civil society organizations, ensure the collection, dissemination and the analysis of information relating to the identity of children in accessible formats, while guaranteeing the protection of confidential data and that they allocate the necessary resources in order to build their capacity to carry out this process.
2. That States, along with international organisations, and in coordination with civil society organizations, ensure the capacity building of the personnel assigned to maintaining civil registers, in the fields of documentation, analysis and continuing education in order to promote the protection of education services.
3. That States, along with international organisations, and in coordination with civil society organizations, remedy the present shortcomings with regards to the mechanisms of systematic collection and data sharing, as well as to the procedures for documentation, sharing and the use of best practices, by building on regional and international cooperation among other things.
4. That States, along with international organisations, and in coordination with civil society organizations, encourage and facilitate the efforts of civil society organizations that see to monitoring of governments, in order for the States of origin and those receiving migrating populations assume their responsibilities in registration matters and data collection in order to facilitate the education of displaced children.
5. That the Committee on the Rights of the Child integrate in its reports and other initiatives dealing with the implementation of the Convention, a recommendation requesting that States present statistics related to the registration rate of their citizens, specifically among its more vulnerable population groups, and that they create an index rendering available statistics on the percentage of stateless populations in each country.