

Title: Is there a legal obligation under international law to register death, including during extraordinary circumstances?

Doctor of Philosophy
School of Law, University of Reading

Anna Elyse Ressler
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Abstract

Death registration is essential to the protection of individual and collective life. Though birth registration is codified under international law, universal, comprehensive, and compulsory death registration is not an explicit obligation. The official recording of births, deaths and other vital events through civil registration and vital statistics (CRVS) systems is widely recognized as an essential government function and CRVS systems exist in every country in the world, to varying degrees. However, the lack of an explicit international obligation is an obstacle to universal death registration, allowing states to exclude groups of people, intentionally or unintentionally. As such, some persons remain invisible in life as in death, which has deep implications for the rule of law and the development and implementation of law-making and public policy. In extraordinary and crises situations, gaps in death registration can result in impunity for gross violations of human rights, among other things. This thesis seeks to answer the following question: Is death registration an emerging or existing norm under international law? By so doing, it seeks to advance progress in establishing universal, compulsory, comprehensive death registration around the world, to address impunity, advance equality and support socio-economic development, against the backdrop of climate change. My research concludes that there is both an international customary obligation to register the dead, as well as an implicit obligation under international human rights law, particularly to the right to life and the right to effective remedy, applicable to all persons, in all circumstances.

Declaration of Original Authorship

I confirm that this is my own work and the use of all material from other sources has been properly and fully acknowledged.

Anna Elyse Ressler

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Dedication

This thesis would not have been possible without the unwavering support of my husband, Edouard Belloncle, and children, Clara, Mathilde and Camille. My life is better for having each one of you by my side. A million thanks to my father, Everett Ressler, who has always pushed me to ask hard questions; my mother, Phyllis Ressler, who grounds me and gives me courage; and to my sister, Lara Ressler Horst, who has read every word I write. Finally, I am infinitely grateful for the outstanding intelligence and wisdom of my academic advisors, Dr Susan Brea, Dr Aleardo Zanghellini, and Dr. Marie Aronsson-Storrier.

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Acronym list

ACHPR	African Charter on Human and Peoples Rights
ACHR	American Convention on Human Rights
ACHR	Arab Charter on Human Rights
ADRDM	American Declaration of the Rights and Duties of Man
APAI-CRVS	Africa Programme on Accelerated Improvement of Civil Registration and Vital Statistics
CAT	Convention against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CoE-CRVS	Centre of Excellence for Civil Registration and Vital Statistics Systems
COVID	Coronavirus Disease
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CRVS	Civil registration and vital statistics
ECC	Every Casualty Counts
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
EU	European Union
GFF	Global Financing Facility
HRC	Human Rights Council
HRC	
IACHR	Inter-American Convention on Human Rights
IAtCHR	Inter-American Court on Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICL	International Criminal Law
ICL	International Customary Law
ICMP	International Commission on Missing Persons
ICTR	International Criminal Tribunal for Rwanda
ICRC	International Committee of the Red Cross
ICRW	International Convention of the Regulation of Whaling
ICTY	International Criminal Tribunal for the Former Yugoslavia

ICESCR	International Covenant on Economic, Social and Cultural Rights
ID4D	Identification for Development
IHL	International Humanitarian Law
IHRL	International Human Rights Law
iiVRS	International Institute for Vital Registration and Statistics
ILC	International Law Commission
ILA	International Law Association
IOM	International Organization for Migration
OAS	Organization of American States
oPt	Occupied Palestinian Territories
PAHO	Pan American Health Organization
SADC	Southern African Development Community
SDG	Sustainable Development Goal
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNCLOS	United Nations Convention the Law of the Sea
UNDESA	United Nations Department of Economic and Social Affairs
UNDP	United Nations Development Program
UNECOSOC	United Nations Economic and Social Council
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
UN-LIEG	United Nations Legal Identity Expert Group
UN OHCHR	Office of the High Commission for Human Rights
UNRWA	United Nations Relief and Works Agency
UNSD	United Nations Statistic Division
UN SC	United Nations Security Council
UNSG	United Nations Secretary-General
USA	United States of America
VCLT	Vienna Convention on the Law of Treaties
WHO	World Health Organization
WTO	World Trade Organization

Chapter 1 - Introduction

The registration of death is essential to meeting human rights obligations relating to the protection of life. Though the requirement of birth registration is a codified norm under international human rights law (IHRL)¹ and has been the subject of considerable international mobilization,² universal, compulsory death registration is not an explicit obligation under international law.³ In 2014, the World Health Organization (WHO) estimated that two-thirds of 56 million annual deaths go unregistered.⁴ The most widely cited estimate is that 32% of countries and territories had less than the desired 90% death registration coverage in 2015,⁵ as well as in 2023.⁶ In 2015, global death registration completeness stood at 66.87%.⁷ Coverage was lowest in Africa and Asia, which remains true in 2024.⁸

The official recording of births, deaths and other vital events (including marriage) through civil registration and vital statistics (CRVS) systems are widely recognized as essential government functions. Today, CRVS systems exist in every country in the world, to varying degrees, and the registration of births and deaths is compulsory under national law in virtually all countries.⁹ Civil registration has received attention from segments of the international community, including the development of resolutions, guidelines and specific recommendations.¹⁰ However, without a clear normative framework at the international level requiring death registration, states are left free to progress at their own pace, often excluding groups that are already subjected to multiple rights

¹ Convention on the Rights of the Child (entered into force 2 September) UNTS 1577 (CRC), art 24(2); International Covenant on Civil and Political Rights (entered into force 23 March 1976), UNTS 999 (ICCPR) art 7 (ICCPR); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (entered into force 1 July 2003) UN Docs A/RES/45/158 (ICRMW), art 29; Convention on the Rights of Persons with Disabilities (entered into force 13 December 2006) UNTS 2515 (CPRD) art 18; United Nations High Commissioner for Refugees, 'Guiding Principles on Internal Displacement' (22 July 1998) UN Docs ADM 1.1, PRL 12.1, PR00/98/109, Principle 20.

² For developments and related General Comments from Human Rights Treaty Bodies and UN agencies see Chapter 3

³ UN Human Rights Committee, 'Birth Registration and the Right of Everyone to Recognition Everywhere as a Person before the Law' (17 June 2014), UN Doc A/HRC/27/22; For overview of developments in the international arena see UNICEF, 'Birth Registration for Every Child by 2030: Are we on track?' (2019) <<https://data.unicef.org/resources/birth-registration-for-every-child-by-2030/>> accessed 2 March 2024, 11.

⁴ UN World Health Organization, 'Civil Registration: Why Counting Births and Deaths is Important, Factsheet' (2014) <available at: <https://www.who.int/news-room/fact-sheets/detail/civil-registration-why-counting-births-and-deaths-is-important>> accessed 19 January 2024.

⁵ United Nations Statistics Division, 'Demographic and Social Statistics: Civil Registration and Vital Statistics' (2021) <<https://unstats.un.org/unsd/demographic-social/crvs/>> accessed 2 March 2024 (UNSD Demographic and Social Statistics).

⁶ Ibid; UN Department of Economic and Social Affairs, 'World Population Prospects: 2022, Summary of Results' (2022), 25 <https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/wpp2022_summary_of_results.pdf> accessed 19 January 2024.

⁷ World Health Organization, Global Health Observatory Data Repository quoted in The World Bank, 'Completeness of Death Registration with Cause-of-Death Information' <<https://data.worldbank.org/indicator/SP.REG.DTHS.ZS>> accessed 6 April 2024.

⁸ A Bhatia, LZ Ferreira, AJ Barros, and Victoria CG, 'Who and Where are the Uncounted Children? Inequalities in Birth Certificate Coverage among Children under Five Years in 94 countries using Nationally Representative Household Surveys' (2017) International Journal for Equity in Health 16(1), 1–11; R Horton, 'Counting for Health' (2007) Lancet 370, 1526–1526; S Kasasa, D Natukwatsa, E Galiwango, T Nareeba, C Gyezaho, AB Fischer, et al, 'Birth, Stillbirth and Death Registration Data Completeness, Quality and Utility in Population-Based Surveys: In-depth Study' (2021) Population Health Metrics 19(1), 14; PW Setel, SB Macfarlane, S Szreter, L Mikkelsen, P Jha, S Stout, et al, 'A Scandal of Invisibility: Making Everyone Count by Counting Everyone' (2007) The Lancet 370, 1569–1577.

⁹ See Chapter 5

¹⁰ International Institute for Vital Registration and Statistics (iiVRS), 'Technical Papers, Actions for the Improvement of Civil Registration and Vital Statistics' (Dec 1983) Number 27, 1 <https://www.cdc.gov/nchs/data/isp/027_Action_for_the_Improvement_of_Civil_Regist_and_Vital_Stat.pdf> accessed 19 January 2024.

violations,¹¹ such as children under the age of five;¹² migrants, refugees and stateless persons;¹³ persons affected by armed conflict, disasters and emergencies;¹⁴ women;¹⁵ indigenous persons;¹⁶ persons living in rural communities;¹⁷ persons from marginalized minority groups;¹⁸ and impoverished persons.¹⁹ An international norm requiring death registration is a first step to ensure that death registration is implemented within the framework of human rights law more broadly, with emphasis on ensuring that everyone, everywhere is counted.

Without comprehensive and universal death registration, rights violations and vulnerabilities are compounded. For example, without a formal system of death registration which can trigger an investigation into potentially wrongful death, impunity for violations of the right to life has a fertile

¹¹ UN Statistics Division, 'Draft UN Guidelines on the Legislative Framework for Civil Registration, Vital Statistics and Identity Management' (2018) <<https://unstats.un.org/unsd/demographic-social/meetings/2018/crvs-egm-ny/Draft-Guidelines.pdf>> accessed 19 January 2024, 56-58, para 163.

¹² Examples: United Nations Inter-agency Group for Child Mortality Estimation, 'Levels and Trends in Child Mortality: Report 2022' (2023) <<https://data.unicef.org/resources/levels-and-trends-in-child-mortality/>> accessed 19 January 2024; United Nations Children's Fund (UNICEF), 'An Snapshot of Civil Registration in Southeast Asia' (30 May 2014) <available at: <https://www.who.int/news-room/fact-sheets/detail/civil-registration-why-counting-births-and-deaths-is-important>> accessed 19 January 2024, 7; K Al-Rabee and A Alkafajei, 'Evaluation of Child Deaths Registration in a Jordanian Community' (2006) Eastern Mediterranean Health Journal, Volume 12, issue ½; Mariana Muzzi, 'UNICEF Good Practices in Integrating Birth Registration into Health Systems (2000-2009), Case Studies: Bangladesh, Brazil, The Gambia and Delhi, India' (January 2010) <<https://www.unescap.org/sites/default/d8files/knowledge-products/UNICEF-birth-registration-in-health-systems.pdf>> accessed 19 January 2024, iv; United Nations Development Programme (UNDP), 'Human Development Reports' (14 April 2015) <<https://hdr.undp.org/content/why-birth-and-death-registration-really-are-vital-statistics-development>> accessed 19 January 2024 (UNDP Human Development Reports); Michel Garenne, Mark Collinson, Chodziwadiwa Kabudula, F. Xavier Gomez-Olive, Kathleen Kahn, Stephen Tollman, 'Completeness of Birth and Death Registration in a Rural Area of South Africa: the Agincourt Health and Demographic Surveillance, 1992-2014' (2016) Glob Health Action (Completeness of Birth and Death Registration in a Rural Area of South Africa).

¹³ Examples: International Organization for Migration, 'Migration Data Portal' (30 November 2023) <<https://www.migrationdataportal.org/themes/migrant-deaths-and-disappearances>> accessed 19 January 2024; International Committee of the Red Cross (ICRC), 'Counting the Dead: How Registered Deaths of Migrants in the Southern European Sea Border Provide Only a Glimpse of the Issue' (15 December 2022) <<https://reliefweb.int/report/greece/counting-dead-how-registered-deaths-migrants-southern-european-sea-border-provide-only-glimpse-issue>> accessed 19 January 2024; International Organization for Migration, 'Missing Migrants Project: Methodology' <<https://missingmigrants.iom.int/methodology>> accessed 19 January 2024; Completeness of Birth and Death Registration in a Rural Area of South Africa (n 12).

¹⁴ Examples: Carala Abouzahr, Laura Monzon Llamas, Carmen Sant Fructam, and Daniel Cobos Munoz, 'Where There is no CRVS: Counting and Registering Deaths in Conflict, Emergencies, and Fragile Settings' (2021) Centre of Excellence for CRVS Systems <<https://crvssystems.ca/sites/default/files/assets/images/04%20EN%20CRVS%20in%20Conflict%20Emergencies%20C%20and%20Fragile%20Settings%20registering%20deaths%20WEB.pdf>> accessed 19 January 2024.

¹⁵ Examples: T Adair, USH Gamage, Lene Mikkelsen, and Rohina Joshi, 'Are There Sex Differences in Completeness of Death Registration and Quality of Cause of Death Statistics? Results from a Global Analysis' (2021) BMJ Global Health 6(1); Centre of Excellence for Civil Registration and Vital Statistics, 'Knowledge Briefs on Gender and CRVS, The Dangers of Gender Bias in CRVS and Cause of Death Data: the Path to Health Inequality' Brief 3 <https://crvssystems.ca/sites/default/files/assets/files/CRVS_Gender_3.3_COD_e_WEB.pdf> accessed 19 January 2024, para 3; Jayanta Kumar Basu, Tim Adair, 'Have Inequalities in Completeness of Death Registration between States in India Narrowed during Two Decades of Civil Registration Systems Strengthening' (30 August 2021) Int J Equity Health 20(1); UN Sustainable Development Goals, 'Leaving No One Behind: a UNSDG Operational Guide for UN Country Teams, Interim Draft' (1 April 2019) <<https://jointsdgfund.org/Article/leaving-no-one-behind-unsdg-operational-guide-un-country-teams-interim-draft>> accessed 19 January 2024 (UNSDG Leaving No One Behind).

¹⁶ Examples: Janet Smylie and Michelle Firestone, 'Back to the Basics: Identifying and Addressing Underlying Challenges in Achieving High Quality and Relevant Health Statistics for Indigenous Populations in Canada' (2015) Canadian Institutes of Health Research 31(1), 67-87; Jeen Interlandi, 'The Lifesaving Power of ... Paperwork?' New York Times (29 March 2023, New York) <<https://www.nytimes.com/2023/03/29/magazine/birth-death-tally.html>> accessed 19 January 2024; Richard Madden, Meonie Tickle, Lisa Jackson, Ian Ring, 'Estimating Indigenous Life Expectancy: Pitfalls with Consequences' (2012) Journal of Population Research 29(3), 229-247 <<https://ro.uow.edu.au/gsbpapers/190/>> accessed 19 January 2024; Australian Institute of Health and Welfare, 'National Best Practice Guidelines for Collecting Indigenous Status in Health Data Sets' (08 April 2010) <<https://www.aihw.gov.au/reports/indigenous-australians/national-guidelines-collecting-health-data-sets/summary>> accessed 19 January 2024.

¹⁷ Example: Nesma Lotfy, 'Spatial Analysis of Completeness of Death Registration in Egypt' (2020) Journal Egypt Public Health Association 95, 12.

¹⁸ UNSDG Leaving No One Behind (n 15)

¹⁹ UN Statistics Division (n 11) 56-58, para 163; United Nations Development Programme (UNDP), UN Statistics Division, United Nations Children's Fund (UNICEF), 'Implementation of the UN Legal Identity Agenda: UN Country Team Operational Guidelines, Final Draft' <https://unstats.un.org/legal-identity-agenda/documents/UNCT_Guidelines.pdf> accessed 19 January 2024, 28-29, para 115; UNDP Human Development Reports (n 12); Completeness of Birth and Death Registration in a Rural Area of South Africa (n 12)

ground, which in turn may encourage violence or neglect and undercut the rule of law.²⁰ Some have argued that death registration is an inherent component of the right to personhood before the law,²¹ without which legal identity has no end. Without formal recognition of death by central authorities, relatives of the deceased can be exposed to a range of rights violations, including in regard to the right to know what happened to missing relatives.²² The absence of a confirmation of the death of a family members and details regarding how death occurred is understood to cause extreme mental anguish, and has been recognized as a form of torture by the UN Committee Against Torture.²³ Without formal recognition of death, spouses may be unable to remarry, children may be prevented from being adopted and thus denied their right to a family environment, and family members may not be able to claim inheritance and other social protection assistance.²⁴

Vital statistics, widely recognized as an essential component of socio-economic development and good governance, remain inadequate in many parts of the world, deeply affecting a government's ability to protect the lives and well-being of the population.²⁵ Where there are weak civil registration systems states may be prevented from having quality and accurate vital statistics.²⁶ Perhaps most obviously, death registration is a crucial component of a state's realization of the right to health.²⁷ The COVID-19 epidemic was a poignant illustration of the importance of tracking morbidity and mortality at the national and international level to enable the development of public policy capable of preventing death.²⁸ The importance of mortality data in the development of public policy goes far beyond disease surveillance – it is essential to the development of a host of public policy decisions, such as those related to criminal justice, migration, housing regulations,²⁹ transportation,³⁰ health and

²⁰ See Chapter 7

²¹ UN Statistics Division, 'Handbook on Civil Registration and Vital Statistics Systems: Management, Operation and Maintenance, Revision 1' (2018) UN Docs Series F No 72 Rev 1 <<https://unstats.un.org/unsd/demographic-social/Standards-and-Methods/files/Handbooks/crvs/crvs-mgt-E.pdf>> accessed 19 January 2024, para 83-84.

²² UN Commission of Human Rights, 'Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity' (8 February 2005) Sixty-first Session, UN Docs E/CN.4/2005/102/Add.1: Principle 4: "Irrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims' fate" and Principle 5: "States must take appropriate action, including measures necessary to ensure the independent and effective operation of the judiciary, to give effect to the right to know. Appropriate measures to ensure this right may include non-judicial processes that complement the role of the judiciary. Societies that have experienced heinous crimes perpetrated on a massive or systematic basis may benefit from the creation of a truth commission or other commission of inquiry to establish the facts surrounding those violations so that the truth may be ascertained and to prevent the disappearance of evidence. Regardless of whether a State establishes such a body, it must ensure the preservation of, and access to, archives concerning violations of human rights and humanitarian law."

²³ *Guerrero Larez v. Venezuela (Bolivarian Republic of)* (15 May 2015) UN Committee against Torture, UN Docs CAT/C/54/D/456/2011.

²⁴ UN Statistics Division (n 11).

²⁵ International Institute of Vital Registration and Statistics (iiVRS) (n 10), i.

²⁶ *Ibid.*, 1.

²⁷ See Chapter 7

²⁸ UN Legal Identity Agenda Task Force, 'Maintain Civil Registration and Vital Statistics during COVID-19 Pandemic' (9 April 2020) <<https://unstats.un.org/legal-identity-agenda/documents/COVID-19-Guidelines.pdf>> accessed 19 January 2024.

²⁹ Examples: Martina Otavaova, etc, 'Inequalities in Mortality Associated with Housing Conditions in Belgium between 1991 and 2020' (December 2022) BMC Public Health 22(2397); J Peter Clinch and John Healy, 'Housing Standards and Excess Winter Mortality' (September 2000) Journal Epidemiol Community Health 54, 719-720.

³⁰ Examples: European Commission Directorate-General for Mobility and Transport, 'Road Safety in the EU: Fatalities in 2021 Remain well Below Pre-pandemic Level' (28 March 2022) <https://transport.ec.europa.eu/news-events/news/preliminary-2021-eu-road-safety-statistics-2022-03-28_en> accessed 9 January 2024; US Department of Transportation, 'The Roadway Safety Problem' <<https://www.transportation.gov/NRSS/SafetyProblem>> accessed 19 January 2024.

safety standards in schools,³¹ labour regulations and health and safety in the workplace and community,³² food regulation and security,³³ and environmental policies regarding all aspects of land,³⁴ water³⁵ and air.³⁶

Experience shows that when crisis hits, whether in the form of armed conflict, a pandemic or other types of disasters, civil registration systems frequently fail to maintain sufficient registration services. In addition to state actors that may seek to lower the death toll for political reasons, the scale of excess death may simply be too large for weak systems to handle or, in some cases, civil registration infrastructure itself may be impacted by the crisis. Death registration is essential to holding conflict actors accountable to their obligations under international humanitarian law (IHL) and International Criminal Law in domestic and international criminal courts and often figures prominently in transitional justice and peace negotiations. Mortality data is essential to humanitarian response and post-crisis development efforts. As the world turns to face, with growing certainty, the sharp rise in disasters (including armed conflict) resulting from climate change and other issues, these profound gaps in our governance systems will not only allow people to live and die in invisibility, without justice or recognition by the state, but will also hinder governments' ability to develop essential and appropriate response actions to protect lives. In all extraordinary circumstances, death registration is a key element of accountability, justice and peace. Climate change and its far-reaching consequences for the sustainability of human life on earth will only increase the importance of evidence-based policy making, and thus the need for reliable mortality statistics.

This study has a concrete objective: it aims to establish if death registration can be considered an existing obligation under international customary or treaty law. By so doing, it seeks to advance progress in establishing universal, compulsory, comprehensive death registration around the world, to address impunity, advance equality and support socio-economic development, against the backdrop of climate change. This study is founded on the belief that death registration is the responsibility of the state and that framing death registration as an obligation under international law will not only help to advance registration around the world, but it will also ensure that the means by which it is

³¹ Examples: Wei Wang, et al, 'Mortality and Causes of Death in Primary and Secondary School Students – China, 2018' (27 March 2020) China CDC Weekly; Ted Miller and Rebecca Shannon-Socor, 'How Safe are Our Schools?' (April 1998) American Journal of Public Health 88(3), 413-8.

³² Examples: M.A Hermanus, 'Occupational Health and Safety in Mining – Status, New Developments and Concerns' (1 August 2007) Journal of the Southern African Institute of Mining and Metallurgy Vol. 107 No. 8; Randall Lutter and John Morrall III, 'Health-Health Analysis: A New Way to Evaluate Health and Safety Regulation' (1994) Journal of Risk and Uncertainty Vol. 8 No. 1, 43-66 < <https://www.jstor.org/stable/41760715>> accessed 19 January 2024.

³³ Igor Grabovac, et. Al, 'Impact of Austria's 2009 Trans Fatty Acids Regulation on All-Causes, Cardiovascular and Coronary Heart Disease Mortality' (29 October 2018) European Journal of Public Health Vol 28 Issue Suppl 2, 4-9; K Allen, et al., 'Potential of Trans Fats Policies to Reduce Socioeconomic Inequalities in Mortality from Coronary Heart Disease in England: Cost Effectiveness Modelling Study' (15 September 2015) BMJ 351.

³⁴ Robert Hahn, Randall W. Lutter, W. Kip Viscusi, *Do Federal Regulations Reduce Mortality?* (AEI Brookings Joint Center for Regulatory Studies 2000).

³⁵ Tao Lin and Wenhao Qian, 'Water Quality Monitoring and Mortality: Evidence from China' (16 April 2023) Applied Economics.

³⁶ Examples: M Crippa, et al, 'Air Pollutant Emissions from Global Food Systems are Responsible for Environmental Impacts, Crop Losses and Mortality' (14 November 2022) Nature Food 3, 942-956.

implemented and the data generated are used to the benefit of the populations, in line with human rights law. I argue that death registration can be identified as an international customary norm and that death registration is an implicit procedural obligation under international human rights treaty law, particularly in accordance with the right to life³⁷ and the right to effective remedy,³⁸ and that it is applicable during situations of emergency.

I. Defining Death Registration in the Context of Civil Registration and Vital Statistics

What is death registration? Death registration has been practiced in various forms for hundreds, arguably thousands, of years. At its most basic, it is the formal recognition and recording of a person's death by a recognized authority. Death registration usually includes the following: identity of the deceased (depending on the context this could include name, address, profession, age, gender, religion, ethnicity, etc); location of death; date of death; and cause of death.

For the purposes of this thesis, death registration is understood to have the following components: (a) it should be universal: all people's death should be registered; (b) registration should be compulsory; (c) at the least, registration should include identity (name, date of birth), date, location and cause of death; (d) registration records should be legally sanctioned, compiled and held by a recognized authority (state); and (e) the registration mechanism should be impartial and reliable.³⁹

Currently, almost every state in the world has some mechanism or means to assess its demography and to track demographic trends. The most common demographic tools are censuses,⁴⁰ Civil Registration and Vital Statistics (CRVS) systems and population surveys.⁴¹ The quality of demographic data collection reflects the state's institutional capacity to design and implement data collection, as well as social attitudes towards the state and data collection.⁴² Though all demographic tools contribute to monitoring vital statistics, including death, this thesis focuses on death registration in the context of civil registration systems, for the reasons described below.

The most used demographic tool is the population census.⁴³ The United Nations (UN) recommends that a census be held every 10 years at the least.⁴⁴ A census is a complete record of the entire

³⁷ ICCPR, Article 6.

³⁸ Ibid, Article 13.

³⁹ These criteria are informed by the work of Elizabeth Minor who worked with ORG to complete a survey of casualty recording practices during armed conflict. See Elizabeth Minor, 'Paper 1: An Overview of the Field' (October 2012) Oxford Research Group, 7.

⁴⁰ Andrew Hinde, *Demographic Methods* (Routledge 2009).

⁴¹ Civil registration is the process by which the occurrence of vital events is legally documented. Vital events include individual births, marriages and deaths within a state's territory. Further description of these concepts is provided on page 16 and 18

⁴² Colin Newell, *Methods and Models in Demography* (Guilford Press 1988) Chapter 2.

⁴³ Andrew Hinde (n 40)

⁴⁴ United Nations Statistics Division 'Principles and Recommendations for Population and Housing Census' (2017) UN docs. ST/ESA/STAT/SER.M/67/Rev.3; Most countries follow these guidelines, though some hold quinquennial censuses (i.e. Japan, Turkey and Korea) (Colin Newell (n 42), Chapter 2). Almost every state in the world has had at least one census (Andrew Hinde (n 40)). Some countries

population in a well-defined geographic area, implemented within a legal framework.⁴⁵ Censuses provide essential information for governance planning, including basic services and the electoral system.⁴⁶ In some countries, the census includes questions around births and deaths in the family.⁴⁷ However, because censuses are only conducted periodically and are based on self-reporting, they are not sufficient for tracking individual deaths, cause of death or patterns of death. As such, this study does not look at death registration in the context of censuses.

Population surveys are often used to plan specific government programmes or services, including regarding health and welfare. When states are unable to implement a full census, they sometimes undertake surveys instead.⁴⁸ In emergency situations, state and humanitarian actors may undertake a rapid assessment at the early onset of the emergency to evaluate mortality, protection and public health, in addition to other issues. As the emergency unfolds, monitoring systems or periodic surveys are used to track public health (including mortality data) and well-being. This data informs humanitarian response programmes for national and international actors.⁴⁹ Surveys are a useful snapshot of events, including mortality, but as they are punctual and incomplete (only covering a sample of the population), they cannot account for all individual deaths nor provide continuous monitoring of mortality trends. As with censuses, while surveys are recognized for their utility, they fall outside the scope of this study.

This study focuses exclusively on death registration within the context of civil registration and vital statistics. Civil registration is the process by which the occurrence of vital events is legally documented. Vital events include individual births, marriages and deaths within a state's territory.⁵⁰ In some countries, migration⁵¹ is also registered.⁵² A certificate is usually provided upon registration of a vital event. A certificate is a document which contains all or part of the exact information regarding the vital event, as registered in civil registration system. When issued by a registrar, it has the same legal effect as the original record.⁵³ Death registration in the context of civil registration requires the

are unable to hold regular censuses (United Nations Statistics Division (n 44). The countries where censuses are rarely held tend to be countries where demographic information is politically charged, such as in Lebanon (last census was in 1932 according to the Lebanese Information Center, 'The Lebanese Demographic Reality' (14 January 2013) <<https://www.lstatic.org/PDF/demographenglish.pdf>> accessed 19 January 2024), Afghanistan (last census was in 1978 according to World Population Review, 'Afghanistan Population 2024' (2024) <<http://worldpopulationreview.com/countries/afghanistan-population/>> accessed 19 January 2024), and Democratic Uzbekistan (last census carried out by the Soviet Union in 1989 according to UN Population Division, 'World Population Prospects 2022' (2022) <<http://esa.un.org/unpd/wpp/index.htm>> accessed 19 January 2024).

⁴⁵ Colin Newell (n 42), Chapter 2.

⁴⁶ Ibid, Chapter 2.

⁴⁷ Andrew Hinde (n 40).

⁴⁸ There are several types of common demographic surveys, including: (a) census-type enquiries which cover a wide range of questions focused on a particular issue; (b) retrospective surveys which collect information on events that have already happened; (c) serial or prospective surveys in which researchers return to the same location multiple times to evaluate change, against a baseline; and (d) dual-record surveys, now uncommon, which collect data from two independent surveys covering the same population to compare results (Colin Newell (n 42), Chapter 2).

⁴⁹ 'The Sphere Handbook 2018' (6 November 2018) <<https://www.spherestandards.org/handbook-2018/>> accessed 19 January 2024.

⁵⁰ UN Statistics Division (n 21).

⁵¹ e.g. Netherlands, Belgium and Sweden require registration each time there is a change in residence.

⁵² Andrew Hinde (n 40).

⁵³ UN Statistics Division (n 11) 6, para 13.

identification of cause of death, among other things. Almost all countries in the world use the standardized International Classification of Diseases and Related Health Problems,⁵⁴ produced and updated by WHO, in cause of death reporting.⁵⁵ The information recorded in the civil registration system is used by state authorities to calculate vital statistics.⁵⁶ Vital statistics measure the incidence of certain types of vital events in a particular population during a particular period.⁵⁷ Vital statistics provide timely information regarding the population and can provide essential information to policymakers and the public to inform policy decisions.⁵⁸

Civil registration systems are the foundation for a legal identity management system.⁵⁹ Legal identity is established through birth registration and concluded upon death registration. In the absence of birth registration, legal identity can be established by a legally recognized authority.⁶⁰ It is widely recognized by the international community that for the civil registration system to fulfil its legal, statistical and identity management function, registration must be compulsory, universal, continuous and permanent.⁶¹

The steps of civil registration are usually as follows:

- Notification: The informant notifies the civil registrar of a vital event;
- Registration: The civil registrar verifies the details of the vital event and makes an official record of the event in the civil registrar;
- Certification: The civil registrar issues an official copy of the registered event, in the form of a certification.⁶²

Since the 1800s, civil registration systems have become increasingly frequent and formalized around the world, and increasingly recognized as a core state institution. Civil registration systems require extensive infrastructure and regulation to ensure comprehensive engagement from the public and systematic centralization of data. As such, building and maintaining CRVS systems is expensive and requires significant administrative input.⁶³ Where civil registration systems are not yet able to provide comprehensive vital statistics, states often depend on census data for vital information.⁶⁴ Some

⁵⁴ Current iteration: International Classification of Diseases 11th Revision (2022) (adopted 72nd World Health Assembly in 2019; came into force 1 January 2022) <<https://www.who.int/classifications/icd/en/>> accessed 19 January 2024.

⁵⁵ United Nations Development Programme (UNDP), UN Statistics Division, United Nations Children's Fund (UNICEF), 'Implementation of the UN Legal Identity Agenda: UN Country Team Operational Guidelines, Final Draft' <https://unstats.un.org/legal-identity-agenda/documents/UNCT_Guidelines.pdf> accessed 19 January 2024, para 222, 51 (UNDP, UNSD, UNICEF UNCT Guidelines); UN Statistics Division (n 21) para 115.

⁵⁶ UN Statistics Division, 'Principles and Recommendations for a Vital Statistics System Revision 3' (2014) Statistical Papers, UN Docs Series M No. 19/Rev.3, 202.

⁵⁷ Ibid, para 281.

⁵⁸ UN Statistics Division (n 11) para 14, 6.

⁵⁹ Colin Newell (n 42) Chapter 2.

⁶⁰ UN Statistics Division (n 11) 7, para 17-18.

⁶¹ UN Statistics Division (n 11).

⁶² UN Statistics Division (n 11), 6, para 15.

⁶³ Colin Newell (n 42), Chapter 2.

⁶⁴ Andrew Hinde (n 40).

scholars and practitioners suggest a link between the direct and tangible benefits that a population has access to as a result of registration (such as access to social protection, inheritance, etc) and public participation in the registration system; where basic social services and social protection are poor and the rule of law weak, the population may not see the benefit of participating in birth and death registration systems (particularly if payment is required).⁶⁵ Where there are significant gaps in civil registration, they tend to be concentrated in particular groups, usually those that already experience disproportionate rights violations.⁶⁶ Death registration practices, like birth registration and other administrative functions, often reflect the ideological and socio-cultural bias of dominant actors.⁶⁷

In summary, for the purposes of this thesis, death registration is defined as the comprehensive, compulsory and universal registration of the name, date, location and cause of death of an individual, at the least. This information should be recorded in a civil registration system which can be used in the tabulation of vital statistics.

For the sake of clarity, a summary of key definitions is provided below:

- (a) *Death* – the permanent disappearance of all evidence of life, which occurs after birth (foetal deaths are classified separately).⁶⁸
- (b) *Death registration* – the continuous recording of individual death, including name, date, place of death and cause of death.⁶⁹
- (c) *Civil registration* – the continuous, permanent, compulsory and universal recording of the occurrence and characteristics of vital events pertaining to the whole population.⁷⁰
- (d) *Civil registration system* - a government service that establishes, for legal purposes, the occurrence of vital events and provides legal documentation for these events (certificate⁷¹).⁷² Vital events covered by civil registration systems include, at the least, birth, death marriage and other forms of relationships recognized by law.
- (e) *Vital events* – includes foetal death, death, marriage and other forms of relationship established by law, divorce, annulment, separation, adoption, legitimation and recognition.⁷³

⁶⁵ Colin Newell (n 42), Chapter 2.

⁶⁶ Ibid, Chapter 2.

⁶⁷ C.A Bayly 'Forward' in Keith Breckenridge and Simon Szreter (ed), *Registration and Recognition: Documenting the Person in World History* (Oxford University Press 2012), x.

⁶⁸ UN Statistics Division, 'Principles and Recommendations for a Vital Statistics System, Revision 3' (2014) Statistical Papers, UN Docs Series M No. 19/Rev.3, para 2; UNDP, UN Statistics Division, UNICEF, UNCT Guidelines (n 55) para 27.

⁶⁹ UN Statistics Division, 'Handbook on Civil Registration and Vital Statistics Systems, Management, Operation and Maintenance, Revision 1' (2021) Studies in Methods, UN Docs Series F, No. 72, Rev 1, 29 -31.

⁷⁰ Srdjan Mrkic, 'Civil registration: Maintaining International Standards in Emergencies' (5 October 2020) UN Legal Identity Task Force <<https://unstats.un.org/legal-identity-agenda/documents/CR-ER.pdf>> accessed 19 January 2024.

⁷¹ A certificate may be electronic or in paper form. It should contain all or part of the information registered in the formal vital record. It is issued by the registrar and, once issued, has the same effect as the vital record (United States, Department of Health and Human Services, Centers for Disease Control and Prevention, 'Model State Vital Statistics Act and Model State Vital Statistics Regulations' (2011 revision), sect. 2.c.).

⁷² UN Statistics Division (n 11), 6, para 13.

⁷³ UNDP, UNSD, UNICEF, UNCT Guidelines (n 55) para 27.

- (f) *Vital statistics* – the compilation of the statistics of vital events that occur during a lifetime and the characteristics of these events and of persons concerned, as recorded in the civil registration system.⁷⁴ Vital statistics report the incidence (not prevalence) of particular vital events for a specific population during a limited duration. Vital statistics should provide continuous data, essential for informed policy development.⁷⁵
- (g) *Legal identity management* – Legal identity is defined as the basic characteristics of an individual's identity (e.g., name, place and date of birth) bestowed by civil registration authorities because of the registration and issuance of a certificate at birth. Where birth registration is not undertaken, legal identity may be provided by a legally recognized authority linked to the civil registration system. Legal identity is concluded when a death certificate is issued by the civil registration authorities.⁷⁶

II. Methodology and Limitations

This thesis pulls from various academic fields, ranging from legal philosophy and history in the early Chapters, to customary law and treaty law in the later Chapters. Though it is not possible to provide a definitive review of all fields (including legal philosophy, history, political relations, etc), I have attempted to ensure that the issue of death registration was considered within its historical context and in consideration of its ethical and philosophical value, in addition to evaluating it as an existing norm under customary and treaty law. In the section below, I describe the methodology, sources and limitation of my legal research into customary and treaty law, as well as my analytical framework(s).

II.A Death Registration under Customary International Law

To establish whether death registration could be considered an emerging or existing norm under customary international law, I began my research by assessing death registration completion rates (complete registration is classified as <90%⁷⁷) in all countries and territories in the world. Death registration is complete in almost all European countries, as well as in North America.⁷⁸ That the wealthiest nations have been able to establish strong civil registration systems did not seem sufficient to establish a customary norm. As such, I have focused most of my research on regions where death registration is incomplete in an attempt to discern whether there is sufficient evidence of state practice

⁷⁴ UN Statistics Division (n 11), 202.

⁷⁵ UN Statistics Division (n 11) 6, para 14; UN Statistics Division, 'Principles and Recommendations for a Vital Statistics System, Revision 3' (2014), para 1; UNDP, UNSD, UNICEF, UNCT Guidelines (n 55) 11, para 36.

⁷⁶ African Union (African Ministers Responsible for Civil Registration), 'Innovative Civil Registration and Vital Statistics System: Foundation for Legal Identity Management' (14-18 October 2019) CRMC5/2019/23, para 12(a); UN Legal Identity Expert Group (UNLIEG); UNDP, UNSD, UNICEF, UNCT Guidelines (n 55) 9, para 24.

⁷⁷ UN Demographic and Social Statistics (n 5)

⁷⁸ Ibid

and *opinio juris* in these regions to point to a customary norm. I identified that death registration rates were lowest or the least consistent in Africa and Asia,⁷⁹ as well as in parts of Latin America. As such, though I included countries from all regions in my study, I focused predominately on Africa and Asia.

My research draws heavily on the UN Statistics Division's questionnaires on civil registration and vital statistics, completed annually by states around the world, as well as the many in-depth country assessments undertaken by the UN Statistics Division, United Nations Children's Fund (UNICEF), the World Health Organization (WHO) and a few other UN agencies over the last 50 years. It is worth noting that some countries are unable or unwilling to complete the global survey; this data gap may have influenced my findings. Where possible, I verified data by reviewing national legislation. My ability to review national legislation was limited by language; I was only able to read legislation available in English and French, which impacted my sample size.

To frame my analysis of state practice, I used the essential elements of civil registration and vital statistics, as outlined in the *UNICEF Nations Principles and Recommendations for a Vital Statistics System*. I was not able to gather information from every country for each component, though I did gather information for most components for well above the majority of nation states. My sample size varies across my analysis because it was based on information (primary and secondary sources) available in a language that I am able to read. This variance in sample size may have impacted my conclusions to some degree. My analysis of *opinio juris* focuses on state engagement and commitment in international and regional forums and organizations. Again, I focused specifically on Africa and Asia, for the reasons outlined above and to ensure consistency with the analysis of state practice.

To analyse the data, I apply the framework for customary international law that I develop in Chapter 4. This framework considers state practice and the belief that this practice is accepted by law (*opinio juris sive necessitatas*), which are widely recognized as the building blocks of customary international law, as reflected in Article 38 of the Statute of the ICJ. To constitute a customary norm, state practice should be widespread and virtually uniform⁸⁰ for affected states.⁸¹ The duration of practice was taken into consideration to inform the identification of state practice and/or *opinion juris*; however, based on jurisprudence of international courts,⁸² it is understood to have less importance than other elements.⁸³ Where state practice exists on paper but not in practice, it was not considered state practice but as a

⁷⁹ Carla AbouZahr, et al, 'Civil Registration and Vital Statistics: Progress in the Data Revolution for Counting and Accountability' (3 October 2015) *Lancet* 386, 1373-1385; 'Global, Regional, and National Under-5 Mortality, Adult Mortality, Age-Specific Mortality, and Life Expectancy, 1970–2016: a Systematic Analysis for the Global Burden of Disease Study 2016' (16 September 2017) *The Lancet* Vol. 390.

⁸⁰ *Asylum case (Colombia v Peru) (Merits) (Judgement)* [1950] ICJ Rep 176 < <https://www.icj-cij.org/case/7> > accessed 23 January 2024, 266, 276-7; *Fisheries Case (United Kingdom v Norway) (Judgement)*, [1951] ICJ 116; *North Sea Continental Shelf Cases (Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands)* [1969] ICJ Rep 1969, < <https://www.refworld.org/cases/ICJ.50645e9d2.html> > accessed 23 January 2024.

⁸¹ *North Sea Continental Shelf Cases* (n 82) 3.

⁸² See e.g., the *Asylum case* (n 82) 266, 277; *Right Passage over Indian Territory (Merits) (Portugal v India)*, ICJ Reports, 1960, 6, 42-3.

⁸³ Bin Cheng, 'United Nations Resolutions on Outer Space' (1 December 1961) *Current Legal Problems* Vol 14 Issue 1, 247-279

potential contribution to establishing *opinio juris*. Echoing Christian Dahlmann's argument,⁸⁴ I included state engagement in multilateral organizations and international conferences as evidence of *opinio juris*. Regarding the weight afforded to state practice and *opinio juris* in the determination of customary law, I adopted the 'Kirgis scale'⁸⁵ which holds that where state practice is high, there is less need for *opinio juris*, and vis-a-versa. As a counter to concerns that the 'Kirgis scale' approach could open the door to the establishment of customary norms that are not beneficial to society at large (for example – torture, where state practice is high but it is not considered a norm of customary law), I recommend a transparent basic litmus test to determine the ethical value of the customary norm. Ascertaining the ethical implications of law always plays a role in the development of customary international law, though it is often unrecognized. It is therefore preferable to be transparent in acknowledging which ethical framework is being used in this process. To these ends, I argue for the 'life as continuance' framework (developed in Chapter 2) to evaluate the degree to which a particular norm contributes to our individual and collective continuance of life and well-being, as a minimum standard.

II.B Death Registration under Treaty Law

Subsequent to the study of international customary law, I looked at international treaty law to determine if there is an existing obligation to register death. My analysis focuses exclusively on the right to life and the right to effective remedy. I draw predominately from European Court of Human Rights (ECtHR) jurisprudence. Though I also consider jurisprudence from Inter-American Court of Human Rights (IACtHR) and African Commission on Human and Peoples' Rights (ACHPR) case law, it figures less prominently. This is a result of the disproportionate quantity of case law available from the ECtHR. Decisions from treaty bodies, particularly the UN Human Rights Committee (HRC), also inform my interpretation of treaty law.

Based on the framework for treaty interpretation developed in Chapter 6, I adopted a teleological approach to the application of Article 31-32 of the Vienna Convention on the Law of Treaties (VCLT) in my effort to interpret human rights treaties. My approach to treaty interpretation is composed on the following non-hierarchical elements: (a) analysis of text, focused on the natural meaning of words; (b) assessment of context; (c) consideration of the object and purpose of the treaty, including the *principle of effectiveness* and adoption of an evolutionary approach, where appropriate; and (d) consideration of state practice and relevant agreements, as well as relevant case law from international courts and tribunals. Drawing on both the philosophical reflections in Chapter 2 and my framework

⁸⁴ Professor of Law at Lund University.

⁸⁵ Frederic L. Kirgis, 'Custom on a Sliding Scale' (1987) 81 Am. J. Int'l L. 146.

for customary international law described in Chapter 4, I argue for a fifth element of treaty interpretation, the ethical element.

Death registration could have been considered under several human rights Articles, most notably including the right to legal identity and the right to health. As discussed in the literature review in Chapter 3, I chose not to focus on the right to legal identity because its potential scope vis-à-vis death registration would seem to be narrowly limited to ending legal personhood and, as such, would not include cause of death and other vital information. Additionally, though the right to legal personhood may have some obligations regarding death registration under civil registration systems, there seems no logical reason why it would also require the tabulation of mortality statistics. I was unable to explore potential implicit obligations to register death under the right to health due to the word limitation of this thesis. It is, however, an interesting avenue for future study. I focused on the rights to life and effective remedy because they seemed the best suited to provide a holistic and universal implicit obligation to register death, covering all essential components of death registration, including cause of death and the tabulation of mortality statistics.

In Chapter 8, I assess the degree to which an implicit procedural obligation to register death under the right to life and effective remedy extends to emergency situations, including in the context of armed conflict, migration and other natural and man-made disasters. Though there has been significant progress in the establishment of an emerging customary norm under IHL to register civilian casualties during armed conflict, I have restricted my research to international human rights law (IHRL) obligations during emergencies. This is partially due, again, to the limited space of this thesis; however, it is also because the issue of registration of civilian casualties during armed conflict has received considerable attention from the ICRC, scholars and practitioners⁸⁶ already. I preferred to focus on less researched areas, particularly because basing death registration obligations in IHRL allows for a much broader obligation, applicable in all times for all people.

III. Presentation of the Outline

This thesis seeks to answer the following question: Is death registration an emerging or existing norm under international law? To answer this question, death registration is considered under international customary law as well as treaty law, including during extraordinary circumstances. The thesis is structured as follows:

⁸⁶ Every Casualty Counts, 'Casualty Recording in Human rights and Humanitarian Law' (2023); Susan Breau and Rachel Taylor, 'Every Casualty Counts, Update on Discussion Paper: The Legal Obligation to Record Civilian Casualties of Armed Conflict' (June 2022) <<https://everycasualty.org/wp-content/uploads/2022/06/Updated-discussion-paper-on-the-legal-obligation-to-record-casualties-2022-FINAL.pdf>> accessed 19 January 2024; Jean- Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law Volume I: Rules* (Cambridge University Press 2005).

Chapter 2 explores the philosophical importance of death registration as a norm of international law. Acknowledging that registration in general and death registration in particular has historically been used coercively as well as for the benefit of the population, this Chapter seeks to develop a philosophical framework through which the legal benefit of death registration can be considered. This framework is further referenced in Chapter 4 regarding death registration as a customary norm. I will argue that death registration should be framed by human rights law to ensure that it benefits the population.

Chapter 3 summarizes the current literature on death registration. I argue that there are two strands of literature, one produced by the CRVS community of academics and practitioners and the other by the civilian casualty recording community. The former generally sees death registration as a means of achieving the right to legal identity and/or contributing to the realization of the rights to health and other rights focused on reducing mortality. However, death registration is not recognized as an obligation in and of itself by this community. By contrast, the civilian casualty community grounds death registration in international customary law (ICL) and IHL, but only seeks to establish an obligation during exceptional circumstances (armed conflict, natural disasters, etc). My contribution to the field of research is that I establish death registration as a universal obligation under customary and treaty law.

In Chapter 4, a framework for analysing international customary law is put forward. There is significant disagreement among scholars and practitioners regarding the evidential requirements for a norm to constitute emerging or existing customary law. This Chapter seeks to position itself theoretically, to describe the framework that will be used to evaluate death registration as a customary norm in Chapter 5. The framework I develop considers both state practice and *opinio juris*. Using Kirgis's 'sliding scale' I argue that where state practice is high, there is less need for *opinio juris* and vis-versa. To mitigate the risks of using this model, I argue for the overt consideration of the ethical value of the norm, using the 'continuance as life' framework proposed in Chapter 2.

Using the framework developed in Chapter 4, Chapter 5 considers death registration as a norm of international customary law, evaluating global practice and *opinio juris* as well as the ethical value of death registration. It is argued that death registration is a norm under international customary law. Re-occurring exceptions to this customary law (e.g., limited death registration during armed conflict, systematic exclusion of particular groups, etc) are further examined in Chapter 7 and Chapter 8.

In Chapter 6, a framework for treaty interpretation is developed, in line with Article 31-32 of the Vienna Convention on the Law of Treaties (VCLT).⁸⁷ This Chapter explores the dominate approaches to treaty interpretation, positioning the approach adopted in this thesis. Subsequently, the components of this framework for treaty interpretation are described, based on decisions from international judging bodies. I argue for an approach to treaty interpretation which allows the nature of the treaty to inform the weight given to each element. Following jurisprudence from key international human rights judiciary bodies, my interpretation will lean towards a teleological approach, with a particular emphasis on the principle of effectiveness and prioritization of the object and purpose of the treaty.

Chapter 7 assumes the framework for treaty interpretation developed in Chapter 6 and considers the right to life and the right to effective remedy under human rights treaty law to determine if death registration can be considered an existing obligation. Though there is no explicit obligation to universal death registration under IHRL, it is argued that international jurisprudence would suggest that death registration is an implicit procedural obligation under the right to life and the right to effective remedy required by (a) the obligation to investigate all potentially wrongful deaths, and (b) the obligation to prevent wrongful death and protect life.⁸⁸

Chapter 8 seeks to determine if the human rights treaty obligations to register death, established in Chapter 7, apply to extraordinary circumstances (armed conflict, migration, etc) and to particularly vulnerable groups, commonly excluded from civil registration. Notable work on the obligation to register civilian casualties during armed conflict under IHL and ICL has been carried out by the International Committee of the Red Cross (ICRC) and Susan Breau, among others. In this thesis I do not focus on re-establishing this right. Rather, I focus exclusively on the implicit procedural obligations under the right to life and the right to effective remedy under human rights law. To these ends, three issues are considered: (a) the principle of non-discrimination under human rights law and its implication for obligations to register death; (b) jurisdiction issues and the application of the right to life under human rights law; and (c) non-derogability of the right to life and implications for the right to life in exceptional circumstances (e.g., armed conflict, public emergencies, migration). It is argued that the right to life and the right to effective remedy under human rights law are applicable to all persons (including migrants and civilians) within the territorial jurisdiction of a state or areas under their control, in all contexts – including armed conflict, public emergency and migration. As such, the implicit obligation to register death, established in the previous Chapter, is also applicable.

⁸⁷ Vienna Convention on the Law of Treaties (adopted 23 May 1969 and came into force on 27 January 1980), UN TS 1155 <<https://www.refworld.org/docid/3ae6b3a10.html>> accessed 19 January 2024, 331.

⁸⁸ Stefanie Grant, 'Dead and Missing Migrants: The Obligations of European States under International Human Rights Law' (September 2016) IOM, 7-8.

Finally, Chapter 9 summarizes the findings of the thesis regarding the customary obligation to register death as well as the implicit, procedural obligation under human rights treaty law, applicable to all people in all contexts. The Chapter goes on to explore the critical importance of these obligations in the coming years, given the sharp increase in disasters that will almost inevitably result from climate change.

IV. Conclusion

Death registration, within the context of civil registration and vital statistics systems, is of critical importance to our collective ability to protect individual lives, ensure accountability and justice in the case of wrongful death, and develop laws and policies that contribute to protecting our collective existence, both for current and future generations. Though civil registration is a priority for the international community, the lack of a clear obligation under international law has contributed to uneven rollout across the world. Of particular concern is that, without a clear legal framework requiring universal registration, those excluded from death registration systems are often persons and communities that are already vulnerable to multiple rights deprivations. Their invisibility, both in life and death, affects implementation of the rule of law, allows for impunity for crimes against them, and means that their lived experience (including cause of death) is not reflected in law-making and public policy. Like all governance systems, death registration can be coercively used to increase surveillance and other predatory systems. It also has the potential to strengthen states' ability to govern for the protection and well-being of their population. I will argue throughout this thesis that the establishment of an international obligation to register death that is framed by international human rights law will help to ensure that rights are protected during the development and implementation of registration and vital statistics systems, guarding against misuse. During periods of emergency, including armed conflict, migration and other natural disasters, death registration, framed by law, is of critical importance to accountability for violations of IHL and international criminal law, combating impunity, re-establishing the rule of law, and peacebuilding and transitional justice.

Chapter 2 – Philosophical Reflections on Death Registration in Law

Death registration, in various forms, has been practiced since antiquity. The social, political, economic and religious implications of recognizing the dead and recalling family lineage are some of the oldest human traditions.¹ As human society became sedentary and governance structures became more complex, systems to identify individuals and families developed, including formal recognition of birth and death.² Civil registration in general and death registration in particular has been used for the benefit of populations, as it has been used coercively by governing elites.³ As discussed below, history offers us illustrations of both and points to the means by which the benefits of registration can be accentuated and the risks mitigated.

This Chapter will explore the chequered history of death registration practices in Section I and reflect on implications of this history in Section II, including exploration of various theoretical positions regarding the role of registration in society. Recognizing potential risks and safeguard the benefits of registration, in Section III I put forward a framework for evaluating if law, in this case registration, is contributing to well-being. I will argue that death registration should be framed by law, particularly existing international human rights law, to ensure that it is of benefit to the realization of individual human rights. In search of a means by which we can assure that death registration practices when put into law are not misused, I propose a minimum standard framework against which law should be evaluated. Drawing on Mark Olssen's⁴ work, *Politics and the Philosophy of Life: Towards a Normative Framework*,⁵ I have called this framework 'continuance of life'. This framework will also be used in Chapter 5 to evaluate death registration as a customary norm, within the framework of *opinio juris*.

I. Death Registration Practices and their Function throughout History

In most historical accounts "registration appears only indirectly and fleeting."⁶ Though its study has been somewhat limited, the practice of registering birth, marriage and death can be traced into antiquity in many parts of the world.⁷ There is study of death registration across a range of fields

¹ Ian Morris, *Death-Ritual and Social Structure in Classical Antiquity* (Sandford University 1992); Jon Davies, *Death, Burial and Rebirth in the Religions of Antiquity* (Routledge 1999).

² Yuval Noah Harari, *Sapiens: A Brief History of Humankind* (Harper Collins Publishers 2015).

³ Examples: Clare Anderson, *Legible Bodies: Race, Criminality and Colonialism in South Asia* (Berg Publishers 2004); Radhika Singha 'Settle, Mobilize, Verify: Identification Practices in Colonial India' (August 2000) *Studies in History* 16(2), 151-198; Deborah Posel, 'A Mania for Measurement: Statistics and Statecraft in the Transition to Apartheid' in Saul Dubow (ed), *Science and Society in Southern Africa Manchester* (Manchester University Press 2000), 132; Michael Savage, 'The Imposition of Pass Laws on the African Population in South Africa 1916-1984' (1986) *African Affairs* 85 (339), 181-205; Patrick Harries, *Work, Culture and Identity Migrant Labourer's in Mozambique and South Africa c 1860-1910* (Witwatersrand University Press 1994), 18-46.

⁴ Mark Olssen is an Emeritus Professor of Political Theory and Education Policy in the Department of Politics at the University of Surrey.

⁵ Mark Olssen 'Can a Nietzschean Philosophy of Life Contribute to the Establishment of a New Normative Theory of Politics for the Global Age' (2010).

⁶ Simon Szreter and Keith Breckenridge, 'Recognition and Registration: The Infrastructure of Personhood in World History' in Keith Breckenridge and Simon Szreter (ed), *Registration and Recognition: Documenting the Person in World History* (Oxford University Press 2012) 13.

⁷ Ian Morris (n 1).

(history,⁸ anthropology,⁹ archaeology,¹⁰ sociology,¹¹ political science,¹² etc). This literature points to the following categories of death registration practices:

- (a) Informal (non-state) traditional practices:** Almost all cultures have traditional mechanisms for recognizing the dead, including burial rites, oral history, ancestral celebrations, etc.¹³ In traditional communities, informal death registration practices are usually prescribed by culture or religion. They may focus on giving recognition to a person's life, preparing them for the 'afterlife' and committing their existence to the collective memory of the community.¹⁴ Even after formal systems for death registration have been developed, at a local level communities may continue to practice traditional death rituals.¹⁵
- (b) Informal/quasi-formal decentralized systems recognized by the ruling authorities:** Informal and quasi-formal decentralized systems of death registration have been developed at the local level in various places and points of history,¹⁶ with the sanction of the ruling authority. For example, in Europe one of the earliest known registers was established by a parish in Burgundy, France in 1334. Except in France and Italy where parish registers were more systematically established between the 1300s and the 1500s, in most other locations in Europe registration was not regularly practiced. However, by the sixteenth century, parish registers became increasingly common across Europe to monitor the growth of various denominations for political and religious reasons. Across the next several hundred years they were used with increasing frequency to settle legal and property issues, etc.¹⁷ Notably, during this period there was little separation between church and state. In Scandinavia, the church continued to play a central role in the registration of vital events until 1930.¹⁸

⁸ See as examples PG Robb, 'Ancient Rights and Future Comfort: Bihar, the Bengal Tenancy Act of 1885, and British Rule in India' (1997) London Studies on South Asia No. 13; G Yang, J Hu, KQ Rao, et al, 'Mortality Registration and Surveillance in China: History, Current Situation and Challenges' (2005) Popul Health Metrics 3; PG Robb, 'Ancient Rights and Future Comfort: Bihar, the Bengal Tenancy Act of 1885, and British Rule in India' (1997) London Studies on South Asia No. 13; J Newsinger, 'Revolt and Repression in Kenya: The 'Mau Mau' Rebellion, 1952-1960' (1981) Science & Society Vol. 45 No. 2, 159-185; D Luebke and S Milton, 'Locating the Victim: An Overview of Census-Taking, Tabulation Technology and Persecution in Nazi Germany' (1 September) IEEE Annals of the History of Computing.

⁹ Example: Teresa Ann White, 'Constructing Distance, Responsibility, and Memory Management Theories: An Anthropological Approach to Death Notification Interactions' (2019) Graduate Student Thesis, Thesis, and Professional Papers 11471.

¹⁰ Examples: John Pearce and Jake Weekes (eds), *Death as a Process: The Archaeology of the Roman Funeral* (2017) JSTOR, Studies in Funerary Archaeology Vol 11.

¹¹ Example: Gilbert Habassa, 'The Contribution of Social Norms and Religious Practices Towards Low Death Registration in 3 HDSS Sites of Uganda' (2022) BMC Health Serv Res. 22, 1219.

¹² Nomthandazo Malambo and Irina Dincu, 'How Death Registration Supports the Rights of Women and Girls' (29 January 2019) International Development Research Center < <https://idrc-crdi.ca/en/perspectives/how-death-registration-supports-rights-women-and-girls#:~:text=A%20death%20certificate%20issued%20because,a%20surviving%20spouse%20to%20remarry>> accessed 19 January 2024.

¹³ Claudine Dardy, 'From Custom to Civil Status Registration: the Anthropology of Kinship and the Rule of Law' in Ilse About, James Brown and Gayle Lonergan (ed), *Identification and Registration Practices in Transnational Perspective: People, Papers and Practices* (Palgrave Macmillan 2013) 154-155.

¹⁴ Gerdien Jonker, 'Death, Gender, and memory: Remembering Loss and Burial as a Migrant' in David Field, Jenny Hockey and Neil Small (eds), *Death, Gender and Ethnicity* (Routledge 1997).

¹⁵ Glennys Howarth and Oliver Leaman (eds), *Encyclopaedia of Death and Dying* (Routledge 2001) 84-85.

¹⁶ Etienne Van de Walle, 'Population Division, Historical Development of Civil Registration Systems: a European Perspective' (2018) UN Department of Economic and Social Affairs, Technical paper No. 2018/1, 2.

¹⁷ Ibid, 2.

¹⁸ Ibid, 2.

(c) Informal/quasi-formal systems that operate without state sanction: In some cases, death registration is practiced through informal and/or quasi-formal systems that operate without state sanction. As an example, during the many centuries when death registration was predominately undertaken by the church (particularly the Catholic Church¹⁹) persons or communities that did not belong to the church went unregistered, affecting access to inheritance, property ownership/transmission and other rights.²⁰ As a result, other religious groups set up parallel registration systems through their own religious establishments.²¹ In England, for example, Quakers' and other religious minorities' registers were not recognized by the local and central authorities between the late 1600s and 1836, when the Births and Deaths Act was passed;²² though over time they did gain recognition.²³ A contemporary example of this classification of death registration is the registration of civilian casualties undertaken by civil society organizations and religious authorities during times of armed conflict and political violence. These records have been used in national and international court proceedings, as well as for accountability and advocacy purposes.²⁴ They have been essential to grieving families in search of information and closure. However, they are often contested by national authorities. A few of the many examples include the *Nunca Mas* movements in Guatemala and Argentina in the 1980s,²⁵ and the Iraqi Body Count, beginning in 2018.²⁶ These records were of critical importance in transitional justice processes and other international criminal courts hearings.

(d) Formal death registration imbedded in civil registration systems, sanctioned by law: Today, formalized civil registration systems exist in every country in the world, though in practice death registration is limited in most of the global south.²⁷ As an example of the lengthy history of civil registration systems, in England Archbishop Hubert Walter (Richard I's chief justiciar) established the first system of coroners in 1194. Through this system, the crown was able to monitor and record deaths, particularly where property interest was involved. Record keeping at the state level was significantly facilitated by the introduction of the 'feet of fines' in 1195, which

¹⁹ Ibid, 2.

²⁰ Simon Szreter, 'Registration of Identities Amongst the English' in Keith Breckenridge and Simon Szreter (ed) *Registration and Recognition: Documenting the Person in World History* (Oxford University Press 2012) 72 – 73.

²¹ E.A. Wrigley and R.S. Schofield, *The Population History of England 1541 – 1871: A Reconstruction* (Cambridge University Press 1989) 89 – 96.

²² Audrey Collins, 'Early Civil Registration' (7 April 2024) Archives and Archivists Podcast <<https://media.nationalarchives.gov.uk/index.php/early-civil-registration/>> accessed 1 June 2024.

²³ Muriel Nissel, *People Count: A History of the General Register Office, Office of Population Censuses and Surveys* (Crown 1987) 7.

²⁴ Action on Armed Violence and ORG, 'Casualty Recording: Assessing State and United Nations Practices, Joint Summary of Findings and Recommendation' (2014) <<https://reliefweb.int/report/world/casualty-recording-assessing-state-and-united-nations-practices-joint-summary-findings>> accessed 3 March 2024, 3-5.

²⁵ Argentine National Commission on Disappeared, 'Nunca Mas: The Report of the Argentine National Commission on the Disappeared' (1986).

²⁶ Iraq Body Count, 'Database' <<https://www.iraqbodycount.org/database/>> accessed 19 January 2024.

²⁷ Simon Szreter and Keith Breckenridge (n 6) 1-2.

required that a triplicate of death records be produced and stored in the royal treasury.²⁸ Registration of vital events was moved under the responsibility of parishes in 1538, under the authority of the crown.²⁹

Though formal registration systems have been increasingly standardized across the world, the history of formal registration is varied. In some cases, registration systems were forcefully and coercively put into place, such as in parts of colonial Africa,³⁰ whereas in other cases birth and death registration systems have popular support/acceptance.³¹ In some cases, civil registration data has been used to protect the lives and wellbeing of the population within a state³² and at other times it has been used to support the control and oppression of particular segments of society.³³ In recent years, the UN³⁴ and others in the international community have developed guidelines for the management, operation and maintenance of CRVS systems. These clearly articulate the objective of vital statistics (defined by the UN Statistics Division as “a set of data crucial for policymaking”) and their source, the civil registration system, described as “a critical element for establishing the basic human rights and legal identity of individuals”.³⁵

Death registration has served (and continues to serve) a variety of social, political and economic functions:

(a) To give legal or civil status or recognition to the individual, including the establishment of legal personhood, which in turn is the foundation for the realization of many human rights. In more traditional contexts, this includes community recognition of birth and death through storytelling and other naming practices. In the context of formal registration systems, the registration of birth is recognized as the start of legal personhood and death is recognized as its conclusion.³⁶

(b) To establish group identity, e.g., citizenship, religion, etc. This almost always includes a delineation between insiders and outsiders. Registration may be limited to citizens or persons of a

²⁸ Simon Szreter, ‘The Parish Registers in Early Modern History: Registration from above and below’ in Ilse About, James Brown and Gayle Lonergan (ed), *Identification and Registration Practices in Transnational Perspective: People, Papers and Practices* (Palgrave Macmillan 2013) 117.

²⁹ Ibid, 118.

³⁰ Simon Szreter and Keith Breckenridge (n 6) 13 -16.

³¹ Ibid 18 – 24.

³² Examples: International Institute for Vital Registration and Statistics (iiVRS), ‘The National Importance of Civil Registration and the Urgency of Its Adaptation to a Modern Society’ (1983) Technical Papers No 25; B. Guy Peters, ‘Civil Registration and Vital Statistics as a Tool to Improve Public Management’ (2016) Institutions for Development Sector, Discussion Paper No. IDB-DP-473

³³ Examples: Clare Anderson (n 3); Radhika Singha (n 3) 151-198; Deborah Posel, (n 3) 132; Michael Savage (n 3) 181-205; Patrick Harries, *Work, Culture and Identity Migrant Labourers in Mozambique and South Africa c 1860-1910* (Witwatersrand University Press 1994) 18-46.

³⁴ See UN Statistics Division, ‘Handbook on Civil Registration and Vital Statistics Systems, Management, Operation and Maintenance, Revision I’ (2021) UN Docs Series F No. 72 Rev. 1 < <https://unstats.un.org/unsd/demographic-social/Standards-and-Methods/files/Handbooks/crvs/crvs-mgt-E.pdf>> accessed 19 January 2024.

³⁵ Ibid, iii.

³⁶ United Nations Legal Identity Agenda < <https://unstats.un.org/legal-identity-agenda/>> accessed 13 May 2024

particular religious group. Migrants, refugees and stateless persons historically and currently are at a higher risk of being excluded from birth, marriage and death registration.³⁷ In some cases, identity registration (including death registration) has played a strategic role in oppressive and discriminatory state practices against a particular group(s). Examples include the registration of Jews in Nazi Germany (including death registration)³⁸ and the role that registration played in the maintenance of apartheid in South Africa.³⁹

(c) To control population movement and growth. Registration (birth, death and marriage registration) has almost always been linked to population control. Birth and death registration are essential to establishing the population size. As such, registration is the cornerstone of urban planning, housing, etc. At its worst, it can be used coercively to prevent population movement or to forcibly relocate particular communities (e.g., populating the colonies⁴⁰).

(d) To support the functioning of basic governance systems, including property regulation,⁴¹ social protection and re-distribution of resources,⁴² taxation, military conscription,⁴³ electoral systems, and the rule of law (including criminal justice systems and accountability mechanisms for state actors).

(e) To allow for evidence-based planning and basic service delivery, including health systems (e.g. disease control), sanitation systems, urban planning, public safety, etc.⁴⁴ A good example is the manner in which death registration and mortality statistics informed public health/sanitation policy in London during the 19th century, as authorities struggled to stop the spread of epidemics.⁴⁵ Mortality

³⁷ Last Rights, 'Extended Legal Statement and Commentary: The Dead, the Missing and the Bereaved at the World's Border, Statement of the International Legal Obligation of States Together with Commentary (January 2019) < https://www.researchgate.net/publication/346653363_Last_Rights_Extended_Legal_Statement_and_Commentary_1_The_Dead_the_Missing_and_the_Bereaved_at_the_Worlds_Borders_2_Statement_of_the_International_Legal_Obligations_of_States_Together_with_Commentary> accessed 21 January 2024

³⁸ See for example Gareth Stedman Jones, *Outcast London* (Clarendon Press 1971); Edwin Black, *IBM and the Holocaust: The Strategic Alliance between Nazi Germany and America's Most Powerful Corporation* (Dialog Press 2001); D Luebke and S Milton, 'Locating the Victim: An Overview of Census-Taking, Tabulation Technology and Persecution in Nazi Germany' (1 September) *IEEE Annals of the History of Computing*; Valentin Grobner, 'Who are You?: Identification, Deception and Surveillance in Early Modern Europe' (Cambridge 2007).

³⁹ See for example Deborah Posel, 'State, Power, and Gender: Conflict over the Registration of African Customary Marriage in South Africa 1910 – 1970' (1995) *Journal of Historical Sociology* 8 (3), 223-256.

⁴⁰ See for example Ravindran Gopinath, 'Identity Registration in India During and After the Raj' in Keith Breckenridge and Simon Szreter (eds), *Registration and Recognition: Documenting the Person in World History*, Proceedings of the British Academy (online edn, British Academy Scholarship Online, 30 January 2014); Chandak Sengoopta, *Imprint of the Raj: How Fingerprinting was Born in Colonial India* (Pan Macmillan 2003).

⁴¹ Edward Higgs, *Life, Death and Statistics: Civil Registration, Censuses and the Work of the General Register Office, 1836-1952* Local Population Studies (Hertfordshire 2004), 218

⁴² For example see Irina Ivakhnyuk, 'Russian Migration Policy and its Impact on Human Development' (2009) Human Development Research Paper 2009/14, UNDP, 5 and 12

⁴³ Early Chinese history and 1700s France

⁴⁴ See for example, Geoffrey Bowker and Susan Leigh Star, *Sorting Things Out: Classification and its Consequences* (The MIT Press 2000); Jean Drèze and Amartya Sen, *Hunger and Public Action* (Oxford University Press 1991); Jon Agar, *The Government Machine: A Revolutionary History of the Computer* (The MIT Press 2003); Simon Szreter, 'The Right of Registration: Development, Identity Registration, and Social Security – A Historical Perspective' (2007) *World Development* vol 35, issue 1, 67-86.

⁴⁵ Muriel Nissel (n 23) 33; Edward Higgs, *Life, Death and Statistics: Civil registration, Censuses and the Work of the General Register Office, 1836-1952*, Local Population Studies (Hertfordshire 2004), 218.

statistics continue to be used as an early warning system for the outbreak of infectious diseases around the world (e.g. COVID-19).⁴⁶

(f) **To address impunity for violations of IHL**, to support transitional justice (including collective remembrance and grieving), and to contribute to peace negotiations during periods of armed conflict and political violence.

I.A A Brief History of Death Registration

Though space limitations in the thesis prevent me from providing a detailed history of death registration practices, the literature review in this section aims to provide a snapshot into the various ways in which death registration has been practiced and has been interpreted by academics and practitioners.

Many early registers were tied to the management of property, taxation⁴⁷ and military conscription. For example, the medieval chancery registers in England played an essential role in securing property ownership and served as the basis for taxation.⁴⁸ Similarly, registration was linked to taxation and property ownership in pre-colonial India,⁴⁹ the Ottoman Empire (including Egypt),⁵⁰ China under the Ming and the Qing dynasties,⁵¹ as well as family registration practices in Tokugawa Japan,⁵² to name a few.

In early modern history (1600s – 1800s), registration tended to be localized and implemented by non-state or quasi-state actors.⁵³ Simon Szreter and Keith Breckenridge's 2012 collection of essays, *Registration and Recognition: Documenting the Person in World History*, illustrate the role of non-state actors in registration in early modern Europe, including through the Roman Catholic Church in Spain and France, protestant churches in the Netherlands, towns and city councils in colonial countries and North America, and by civil society groups that maintained registers of particular demographic groups (e.g. orphans, civilians killed during combat, minority groups, etc) in different

⁴⁶ See for example William Msemburi, Ariel Karlinsky, Victoria Knutson, Serge Aleshin-Guendel, Somnath Chatterji and Jon Wakefield, 'The WHO Estimates of Excess Mortality Associated with the COVID-19 Pandemic' (2022), *Nature* 613, 130-137

⁴⁷ Etienne van de Wall (n 16) 6-7.

⁴⁸ Simon Szreter and Keith Breckenridge (n 6)

⁴⁹ Ravindran Gopinath (n 40)

⁵⁰ Khaled Fahmy, 'Birth of the 'Secular' Individual: Medical and Legal Methods of Identification in Nineteenth Century Egypt' in Keith Breckenridge and Simon Szreter (ed), *Registration and Recognition: Documenting the Person in World History* (Oxford University Press 2012).

⁵¹ Richard Von Glahn, 'Household Registration, Property Rights, and Social Obligations in Imperial China: Principles and Practices' in Keith Breckenridge and Simon Szreter (ed), *Registration and Recognition: Documenting the Person in World History* (Oxford University Press 2012).

⁵² C.A Bayly, 'Forward' in Keith Breckenridge and Simon Szreter (ed) *Registration and Recognition: Documenting the Person in World History* (Oxford University Press 2012), xi.

⁵³ Ilse About, James Brown and Gayle Lonergan (ed), *Identification and Registration Practices in Transnational Perspective: People, Papers and Practices* (Palgrave Macmillan 2013).

periods and circumstances.⁵⁴ Introduced by Spanish colonizers, Catholic parish registers were established on a local level in parts of South America, as early as the 1600s.⁵⁵ Japanese registration was also implemented on a local level.⁵⁶

In Europe, it was not until around the 19th century that states created civil, criminal and other types of centralized registration systems, predominately on the back of parish registers.⁵⁷ For most of early modern history the church and state in Europe were closely connected; as such, parish registers were often sanctioned by the state and are the direct predecessors of the formal systems. In France a nationwide population register was established through the Catholic church in 1539. In Sweden, a national system for registering vital events was established in 1750, with clergy acting as state agents.⁵⁸ Similar systems were established in Norway and Finland, as a result of the influence of Sweden.⁵⁹ In Denmark, in 1645 a royal decree was issued that required registration of vital events at the parish level, and in 1735 parishes were required to report births and deaths to the central authority.⁶⁰ The interdependence of civil registration and religious institutions has historically been so pronounced that, for example, the USA struggled to establish a country-wide system of civil registration until the early twentieth century, largely because of the multiplicity of religious denominations.⁶¹ As an interesting point of contrast, the modern Japanese registration system has its roots in the Tokugawa state policies which were focused on combating the spread of Christianity.⁶²

In the 1800s, the demand for quantitative information to inform state objectives increased because of challenges resulting from rapid industrial growth and urbanization, such as overcrowded cities, public health crises, and social inequality.⁶³ During this period, the demand for population data and vital statistics drove the establishment of centralized civil registration and vital statistics systems, imbedded in civil bureaucracies. For example, in France civil registration began in 1792 with the French revolution, contributed to the secularization of the state.⁶⁴ Belgium and the Netherlands developed centralized registration systems in the middle of the 1800s. Influenced by colonial authorities, the first centralized civil registration system in East Asia was established in Sri Lanka in 1868. By the end of the century civil registration systems had also been put in place in Japan, Hong Kong, Macau, India

⁵⁴ Simon Szreter and Keith Breckenridge (n 6) 17-18.

⁵⁵ Paula Wasley, 'Moldy Church Records in Latin American Document the Lives of Millions of Slaves' (2017) *Humanities* Vol 38(1) <<https://www.neh.gov/humanities/2017/winter/feature/moldy-church-records-in-latin-america-document-the-lives-millions-slaves>> accessed 1 June 2024.

⁵⁶ Osmu Saito and Masahiro Sato, 'Japan's Civil Registration systems Before and After the Meiji Restoration' in Keith Breckenridge and Simon Szreter (ed), *Registration and Recognition: Documenting the Person in World History* (Oxford University Press 2012).

⁵⁷ Jane Caplan, 'This or That Particular Person': Protocols of Identification in Nineteenth Century Europe' in Jane Caplan and John Torpey (ed), *Documenting Individual Identity: The Development of State Practices in the Modern World* (Princeton University Press 2001), 49 – 66.

⁵⁸ Etienne van de Wall (n 16) 6.

⁵⁹ Ibid, 2-3.

⁶⁰ Ibid, 6-7.

⁶¹ Ibid, 3.

⁶² Osamu Saito and Masahiro Sato (n 56).

⁶³ Simon Szreter, *Health and Wealth: Studies in History and Policy* (University of Rochester Press 2005).

⁶⁴ Etienne van de Wall (n 16) 2-3.

and Bangladesh.⁶⁵ The majority of countries in Latin American put in place civil registration systems after 1870; a few countries established civil registration systems a few decades before including Brazil (1850), Colombia (1865), Dominican Republic (1828), and Mexico (1857).⁶⁶

Certain regions developed complex population registration mechanism much earlier than others, including Europe, Japan, and Egypt.⁶⁷ C.A. Bayly argues that the slow development of centralized registration systems in Africa and North America, for example, is linked to the low population-to-land ratio, which allowed for fluid population movement.⁶⁸ Similarly, Jack Goody found that the more people per square foot, the more likely the state (and public) was to recognize the importance of registration.⁶⁹ China is a notable exception to this trend. Home to 1.3 billion people, China only developed modern civil registration system in the 1950s. China is still unable to tabulate vital statistics for the entire population.⁷⁰ As of 2005, the vital registration system was only present in 41 urban and 85 rural centres, covering roughly 8% of the national population.⁷¹ However, by 2018 overall death registration completeness was estimated at 74.2%.⁷²

In many parts of Africa, formal registration systems were first introduced by colonial authorities. Colonization and registration have a complex history. On one hand, registration systems were administratively and financially burdensome; as such, colonial states were slow to move towards universal registration systems. As an illustration, Ravindran Gopinath argues that the British colonial administration was never able to implement mass registration, regardless of the fact that it was in their interest to do so for the purpose of governance and taxation.⁷³ Berry found that colonial states in Africa, by and large, had limited administrative infrastructure, predominately focused on tax-farming.⁷⁴ On the other hand, Frederick Cooper⁷⁵ and Breckenridge⁷⁶ argue that some colonial powers in Africa intentionally chose not to embark on mass registration, both to avoid the financial burden of

⁶⁵ International Institute on Vital Registration and Statistics (iiVRS), 'Technical Paper No. 28' (October 1986) <https://unstats.un.org/unsd/demographic-social/crvs/documents/IIVRS_papers/IIVRS_paper28.pdf> accessed 19 January 2024.

⁶⁶ Rosemary D. F. Bromley, 'Parish Registers as a Source in Latin American Demographic and Historical Research' (January 1974) *Bulletin of the Society for Latin American Studies*, No. 19, 14-21.

⁶⁷ Simon Szreter and Keith Breckenridge (n 6) 24-26.

⁶⁸ C.A. Bayly (n 52), xi; Simon Szreter and Keith Breckenridge (n 6) 24-26.

⁶⁹ Jack Goody, *The Logic of Writing and the Organization of Society* (Oxford University Press 1986), 47, 63.

⁷⁰ S Liu, X Wu, AD Lopez, L Wang, Y Cai, A Page, P Yin, Y Liu, Y Li, J Liu, J You, M Zhou, 'An Integrated National Mortality Surveillance System for Death Registration and Mortality Surveillance, China' (1 January 2016) *Bull World Health Organ* 94(1), 46-57.

⁷¹ G Yang, J Hu, KQ Rao, et al (n 8) 3.

⁷² Xinying Zeng, Tim Adair, Lijun Wang, Peng Yin, Jinlei Qi, Yunning Liu, Jiangmei Liu, Alan D. Lopez and Maigeng Zhou, 'Measuring the Completeness of Death Registration in 2844 Chinese Counties in 2018' (2020) *BMC Medicine* 18 Article Number 176

⁷³ See Ravindran Gopinath (n 40).

⁷⁴ Tax-farming is a means of financial management of a revenue stream whereby management is assigned by legal contract to a third party. The holder of the revenue stream receives fixed rents from the third-party; S. Berry, *No condition is Permanent: The Social Dynamics of Agrarian Change in Sub-Saharan Africa* (University of Wisconsin Press 1993), 22-42; Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (James Currey 1996), 37 – 61.

⁷⁵ Frederick Cooper, 'Voting, Welfare and Registration: The Strange Fate of the Etat-Civil in French Africa, 1945-1960' in Keith Breckenridge and Simon Szreter (ed), *Registration and Recognition: Documenting the Person in World History* (Oxford University Press, 2012).

⁷⁶ Keith Breckenridge, 'No Will to Know: The Rise and Fall of African Civil Registration in Twentieth-Century South Africa' in Keith Breckenridge and Simon Szreter (ed), *Registration and Recognition: Documenting the Person in World History* (Oxford University Press, 2012).

setting up registration systems but also because it was easier to work only with selected headmen than to recognize individuals.

When registration systems were established, they were sometimes coercive and seen by the population as a tool of submission. For example, some colonial powers relied on brutal forms of body marking to 'register' people, including tattooing and scarification.⁷⁷ South Africa had the most systematic approach to individual registration, put in place by the Native Affairs Department.⁷⁸ Labour registration was at the heart of this system, focused on male migrants working in diamond mines, sugar plantations and the gold industry. From this, the South African registration system developed into a web of national registers, many of which included racial categorizations which allowed for the implementation of apartheid policies.⁷⁹ The system of registration culminated in the national Population Register in the 1950s.⁸⁰ Colonial officials in South Africa justified the heavy registration requirements by arguing that they were indispensable to allow state authorities to identify deceased persons.⁸¹ As a result of colonial policies, many African countries inherited weak registration systems and a legacy of fear related to the practice of registration.⁸² Post-colonial African states were largely built in an information void, plagued by the inability to "track the individual body or understand the dynamics of the social body".⁸³

As another example, in the English-speaking Caribbean, the current vital registration systems can be traced to the system of Slave Registration, which started in 1817 and continued until the end of the slave trade. This registration system was introduced in part to prevent secret movement of slaves between colonies and in part to improve treatment of slaves. It included basic demographic characteristics of each person (age, sex, place of origin), as well as data on births and deaths, though it was incomplete.⁸⁴

'Vital statistics' have a slightly different history. Arguably, it was the bubonic plague in Europe, starting in roughly 1347, that led many regions to keep 'bills of mortality' (weekly lists of persons who had died, including cause of death).⁸⁵ The practice was common across Europe. Italy and

⁷⁷ Clare Anderson (n 3); Rdhika Singha (n 3) 151-198.

⁷⁸ Deborah Posel (n 3) 132.

⁷⁹ Michael Savage (n 3) 181-205; Patrick Harries (n 33) 18-46.

⁸⁰ Michael Savage (n 3) 181-205; Patrick Harries (n 33) 18-46.

⁸¹ Edward Wilson, 'Acting Chief Pass Officer, Native Affairs Department Johannesburg' (1912); Edward Wilson, Chamber of Mines Archive, 'Assaults on European Women by Natives' (1912) Chamber of Mines Archives quoted in Simon Szreter and Keith Breckenridge (n 6).

⁸² Simon Szreter and Keith Breckenridge (n 6) 1-2.

⁸³ Fredrick Cooper, *Decolonization and African Society: The Labour Question in French and British Africa* (Cambridge University Press 1996), 335.

⁸⁴ International Institute of Vital Registration and Statistics (iiVRS), 'Registration of Vital Events in the English-Speaking Caribbean' (1988) Technical Papers, Number 32.

⁸⁵ John Graunt, *Natural and Political Observations Mentioned in a Following Index and Made upon the Bills of Mortality* (Reprint of the 1662 edition in New York, Arno Press 1975).

England are often highlighted for their comprehensive practice.⁸⁶ John Graunt in 1662 used the mortality bills in London, which were started in 1592, to analyse trends.⁸⁷ This led to the publication of his work *Natural and Political Observations Made upon the Bills of Mortality*, which is generally considered the beginning of the discipline of demography.⁸⁸ Another critical step in the development of the field of vital statistics and demography was Edmund Halley's (a German astronomer) production of the first life tables in 1693, based on the bills of mortality from the city of Breslau, Germany.⁸⁹ However, generally these were not permanent systems. When the wave of pandemics passed, the practice was largely abandoned, only to be re-instated for the next pandemic. For example, the outbreak of cholera in England in 1832 resulted in the creation of the Registrar-General's office in the United Kingdom (UK) of Great Britain and Northern Ireland in 1838. William Farr was appointed Compiler of Abstracts. Arguably, he is the great-grandfather of vital statistics today. He was able to use mortality data and characteristics of the deceased (location, cause of death, etc) to determine that the spread of cholera was linked to unclean drinking water; this discovery resulted in significant improvement in public health and sanitation.⁹⁰

Critical to the standardization of registration and vital statistics was the development of a common international framework for registering cause of death. William Farr in England was among the first to highlight the importance of standardization of cause of death reporting, stating: "The advantages of a uniform statistical nomenclature, however imperfect, are so obvious that it is surprising that no attention has been paid to its enforcement in Bills of Mortality."⁹¹ By 1853, Farr and Marc d'Espine (a Swiss doctor) began to work on preparing a classification of cause of death applicable to all countries, at the request of the International Statistical Congress held in Brussels. The current international system of cause of death registration is based on the classification system adopted in 1893 by the International Statistical Institute; it was prepared by Jacques Bertillon and was based on the English, German and Swiss classifications, grounded in the principles put forward by Farr. In 1898, it was agreed that the list be revised every ten years to take into consideration medical progress. The first revision was adopted in 1900. The classification has continued to be revised every ten-years; this process is currently led by the WHO. In 1948, the list was renamed the International Classification of Diseases and is now accompanied by a standard medical certificate for cause of death and rules for selecting the cause of death, all of which are essential for the production of comparable vital statistics

⁸⁶ Ibid

⁸⁷ Henry Connor, 'John Graunt F.R.S (1620-74): The Founding Father of Human Demography, Epidemiology, and Vital Statistics' *Journal of Medical Biography* Volume 32, Issue 1 < <https://journals.sagepub.com/doi/10.1177/09677720221079826>> accessed 10 March 2024.

⁸⁸ John Graunt (n 85)

⁸⁹ Etienne van de Wall (n 16) 2-3.

⁹⁰ International Institute for Vital Registration and Statics (iiVRS), 'Potentials of Records and Statistics from Civil Registration Systems for Health Administration and Research' (September 1982) Technical Papers, Number 19, 1-2.

⁹¹ International Institute for Vital Registration and Statistics (iiVRS) 'Historical Development of Cause of Death Statistics' (September 1993) Technical paper, Number 55 <https://www.cdc.gov/nchs/data/isp/055_Historical_Development_of_Cause_of_Death_Stat.pdf> accessed 19 January 2024, 3-4.

related to mortality reporting.⁹² As of 2022, 35 countries were officially using the latest iteration of the International Classification of Disease (ICD-11)⁹³ and 117 countries were using ICD-10, the previous iteration.⁹⁴

I.B 20th and 21st Century Developments

In the 20th and 21st century there was increased mobilization around the human rights agenda, development and the good governance. This has been matched by an increased focus on evidence generation and evidence-based policy making, as reflected in the 2030 Agenda and the Global Sustainable Development Goals (SDG).⁹⁵ Universal birth registration and nationality are widely recognized as pre-requisites to the realization of other rights and essential to a rights-based approach to development.⁹⁶

Birth registration has been a key priority for the child rights community since the end of the 19th century. In the 1930s, both Save the Children's International Conference on the African Child⁹⁷ and Uruguay's Children's Code were progressive in linking birth registration to name and familial identification.⁹⁸ Birth registration was not included in the 1948 Universal Declaration of Human Rights. However, over a decade later the idea of birth registration appeared in Declaration on the Rights of the Child (1959) (as well as the subsequent Convention on the Rights of the Child (CRC)) and later in the International Covenant on Civil and Political Rights (ICCPR) (1966).⁹⁹ By the time these conventions came into force in 1976, many of the former colonies were no longer using the registration systems that had been left by their colonial predecessors.¹⁰⁰ Unlike birth registration, death registration was never directly discussed in any of the human rights treaties, though the treatment of civilian and military casualties has always been a central concern of humanitarian law, as well as customary law (even ancient customary law).¹⁰¹

⁹² Ibid, 3-4.

⁹³ World Health Organization (WHO) 'Press Release, ICD-11 2022 Release' (2022) <<https://www.who.int/news/item/11-02-2022-icd-11-2022-release>> accessed 19 January 2024.

⁹⁴ World Health Organization (WHO) 'Importance of ICD' <<https://www.who.int/standards/classifications/frequently-asked-questions/importance-of-icd>> accessed 19 January 2024.

⁹⁵ The importance of data was well recognized in The 2030 Agenda for Sustainable Development, which called for "quality, accessible, timely and reliable disaggregated data...to help with the measurement of progress and to ensure that no one is left behind." (UNGA, 'Transforming our World: The 2030 Agenda for Sustainable Development', UN Docs A/RES/70/1, para 74 (g).)

⁹⁶ UNICEF Innocenti, 'Birth Registration: Right from the Start' (March 2002) Innocent Digest No.9, 4 – 7.

⁹⁷ Dominique Marshall, 'Children's Rights in Imperial Political Cultures: Missionary and Humanitarian Contributions to the Conference on the African Child of 1931' (2004) International Journal of Children's Rights 12, 273-318.

⁹⁸ Frederick Cooper (n 75).

⁹⁹ International Covenant on Civil and Political Rights (ICCPR) (adopted 1966, entered into force 23 March 1976) UNTS Vol 999, Article 24 (2).

¹⁰⁰ Simon Szreter and Keith Breckenridge (n 6) 24-26.

¹⁰¹ United Nations Children's Fund (UNICEF), 'Birth Registration for Every Child by 2030: Are we on Track?' (2019) <<https://data.unicef.org/resources/birth-registration-for-every-child-by-2030/>> accessed 10 March 2024.

In 1964, the UN Economic and Social Council called on the UN Secretary-General (UNSG) to lead the World Programme for the Improvement of Vital Statistics (1307(XLIV)), in the belief that civil registration and vital statistics were essential building blocks to social and economic development.¹⁰² In 1974, the UN Programme for the World Population called for action on this point, stating: “It is essential that the lack of demographic statistics in a large part of the world be overcome – and vital registration systems be introduced in all countries of the world.”¹⁰³ Despite the attention, the UNSG’s report to the Statistical Commission of the UN, presented at its 21st regular session (Feb 1981), highlighted that CRVS systems were still unsatisfactory in Africa, Asia and Latin America. In this report, the UNSG proposed a programme to improve CRVS systems. During its 25th and 26th sessions in 1989 and 1991, the Statistical Commission of the UN adopted the International Programme for Accelerating the Improvement of Vital Statistics and Civil Registration Systems, which was designed by the UN Statistical Division, United Nations Population Fund (UNFPA), World Health Organization (WHO) and the International Institute for Vital Registration Statistics.¹⁰⁴ Increasingly, the UN has linked holistic civil registration and vital statistics to identity management.¹⁰⁵

As a result of their focus on statelessness, in 2018 the UNSG’s Executive Committee requested that the UN Deputy SG’s office “convene UN entities to develop, in collaboration with the World Bank Group (Global Financing Facility (GFF)/Identification for Development (ID4D)), a common approach to the broader issues of registration and legal identity.”¹⁰⁶ As a result of this commitment, the UN Legal Identity Agenda Task Force was established in 2018, composed of 13 UN agencies. One of their mandated responsibilities is the development and maintenance of normative work related to the UN Legal Identity Agenda, with United Nations Department of Economic and Social Affairs (UNDESA) leading on this point.¹⁰⁷ The UN Legal Identity Agenda, launched in May 2019 and backed by the Deputy Secretary-General, calls for a holistic approach to civil registration of all vital events, vital statistics, establishment and maintenance of population registers and identity management from birth to death. Implementation of the Agenda requires full interoperability between simultaneous functions. In this context, ‘interoperability’ is defined as “ensuring that systems are using the same set of definitions, classifications and methodology, as well as technologically

¹⁰² United Nations Economic and Social Council, ‘Demographic and Housing Statistics Progress Report on Improvement in Demographic Statistics, Report of the Secretary-General’ (1968) UN Docs E/CN.3/377 < <https://unstats.un.org/unsd/statcom/doc68/1968-377-DemographicStats-E.pdf> > accessed 13 May 2024

¹⁰³ UN Programme for the World Population Year 1974, as quoted in International Institute for Vital Registration and Statistics (iiVRS), ‘Technical Papers, Actions for the Improvement of Civil Registration and Vital Statistics’ (December 1983) Technical Papers, Number 27 < https://www.cdc.gov/nchs/data/isp/027_Action_for_the_Improvement_of_Civil_Regist_and_Vital_Stat.pdf > accessed 19 January 2024, 1.

¹⁰⁴ UN Statistics Division ‘Handbook on Civil Registration and Vital Statistics Systems: Preparation of a Legal Framework’ (1998) UN Docs ST/ESA/STAT/SER.F/71.

¹⁰⁵ Srdjan Mrkic ‘Civil Registration: Maintaining International Standards in Emergencies’ (2020) UN Legal Identity Task Force < <https://unstats.un.org/legal-identity-agenda/documents/CR-ER.pdf> >.

¹⁰⁶ UN Statistics Division, ‘UN Legal Identity Agenda’ < <https://unstats.un.org/legal-identity-agenda/> > accessed 19 January 2024.

¹⁰⁷ Ibid.

compatible platforms allowing for full harmonization of interfaces and access protocols.”¹⁰⁸ All UN member states are called on to adopt and implement the Legal Identity Agenda.¹⁰⁹

Within the UN structure, UN Statistics Division (1953) (under the responsibility of the UNDESA) has a central responsibility vis-à-vis CRVS. It is mandated to (a) develop methodological frameworks, international standards and guidelines regarding civil registration and vital statistics, including identity management; (b) build national capacity to develop CRVS and legal identity systems, including through training; and (c) monitor and coordinate international efforts related to holistic CRVS and identity management. Starting in the 1950s, the UN has issued several international standards and recommendations on the establishment and maintenance of civil registration systems.¹¹⁰ As the UN Statistics Division is not an implementing agency, other UN agencies have been engaged in translating these guidelines into reality.¹¹¹

UNICEF is charged with supporting CRVS in regards to strengthening birth registration systems; it supports death registration processes through its support to building CRVS systems.¹¹² They are the lead UN agency on issues related to child mortality and age assessment. They often work on evaluating the completeness of death registration as part of their database on core indicators. The WHO uses vital statistics to track health indicators and maintains a database of country-level mortality data. They are the lead agency on issues related to cause of death and the International Classification of Diseases.¹¹³ United Nations Population Fund (UNFPA) is home to the Centre of Excellence for Civil Registration and Vital Statistics Systems (CoE-CRVS) (founded in 2015 and transferred to UNFPA in 2021). United Nations Development Program (UNDP) co-chairs the UN Legal Identity Task force with UNDESA and UNICEF and supports capacity development at the national level regarding CRVS and legal identity.¹¹⁴ The World Bank Group’s ID4D programme (established in 2014) provides technical and advisory services for building inclusive identity

¹⁰⁸ See footnote 39 in United Nations Development Programme (UNDP), UN Statistics Division, United Nations Children’s Fund (UNICEF), ‘Implementation of the UN Legal Identity Agenda: UN Country Team Operational Guidelines, Final Draft’ <https://unstats.un.org/legal-identity-agenda/documents/UNCT_Guidelines.pdf> accessed 8 March 2024, 21 (UNDP, UNSD, UNICEF, UNCT Guidelines).

¹⁰⁹ UNDP, UNSD, UNICEF, UNCT Guidelines (n 108)

¹¹⁰ See *Principles for a Vital Statistics System* (1953) and *Manual of Vital Statistics Methods* (1955) as early examples. Other key documents include UN Statistics Division, ‘Principles and Recommendations for a Vital Statistics System Revision 3’ (2014) Statistical Papers, UN docs Series M No. 19/Rev.3; UN Statistics Division (n 33); UN Statistics Division, ‘Draft UN Guidelines on the Legislative Framework for Civil Registration, Vital Statistics and Identity Management’ (November 2018), <<https://unstats.un.org/unsd/demographic-social/meetings/2018/crvs-egm-ny/Draft-Guidelines.pdf>> accessed 19 January 2024; UN Statistical Division, ‘Handbook on Civil Registration and Vital Statistics Systems: Policies and Protocols for the Release and Archiving of Individual Records’ (1998) UN Docs Studies in Methods Series F, No. 70 <https://unstats.un.org/unsd/publication/SeriesF/SeriesF_70E.pdf> accessed 20 January 2024.

¹¹¹ UNDP, UNSD, UNICEF, UNCT Guidelines (n 108) 37, para 154.

¹¹² United Nations Children’s Fund (UNICEF), ‘Synthesis Report: Review of Civil Registration and Vital Statistics Innovations in Eastern and Southern Africa Region: Digitization, processes and strategies’ <<https://www.unicef.org/esa/media/6571/file/Review%20of%20Civil%20Registration%20and%20Vital%20Statistics%20Innovations%20in%20Eastern%20and%20Southern%20Africa.pdf>> accessed 20 January 2024.

¹¹³ UNDP, UNSD, UNICEF, UNCT Guidelines (n 108), 38, para 161-162.

¹¹⁴ United Nations Development Programme (UNDP), ‘Legal Identity’ <<https://www.undp.org/governance/legal-identity>> accessed 19 January 2024.

management systems that are trusted by the populace through three pillars of action: thought leadership, global convening and regional action.¹¹⁵

At the regional level, since the 1950s, states have been actively engaged in reform of CRVS. Africa is a shining example. Following decades of ad hoc and isolated project-based interventions, the first Conference of African Ministers Responsible for Civil Registration, held in Addis Ababa on 13 and 14 August 2010, was a significant step forward in addressing gaps in CRVS services across Africa. The Conference resulted in several actions which have accompanied radical improvements in CRVS in many places in Africa, including the institutionalization of the Conference of African Ministers under the African Union Commission. Building on the progress made through the African Programme on Accelerated Improvement of Civil Registration and Vital Statistics Core Group, the UN¹¹⁶ put in place a Legal Identity Agenda for Africa to provide support to achievement of SDG 16.9 (legal identity for all). Similar commitments have been made in Latin America and in the Asia and Pacific regions, including through the Regional Action Framework on CRVS in Asia and the Pacific.¹¹⁷

The COVID pandemic increased global focus on CRVS systems; seemingly overnight there was a global demand for accurate, almost daily mortality statistics, including cause of death. The global focus spotlighted weak CRVS systems around the world as countries scrambled to produce credible information. Responding to this need, the UN Statistics Division, as the co-chair of the UN Legal Identity Agenda Task Force initiated a survey in 2020 to assess the impact of COVID-19 on the civil registration system. As part of this survey, 87% of the 67 countries that responded identified civil registration as an essential service during the pandemic. Those that did not had closed registration services to protect staff from potential exposure to the virus.¹¹⁸ During the COVID-19 pandemic, almost all countries maintained civil registration but introduced a set of measures to adapt to the constraints of the times, including simplifying procedures for the registration of vital events and focusing on births and deaths as a priority.¹¹⁹ In addition to the global survey, the UN Legal Identity Task Force, the Global CRVS Group and the UN regional commissions for Asia, the Pacific, Africa, and Latin America hosted a series of webinars for civil registration authorities around the world to exchange experience and practices regarding maintenance of CRVS systems during the pandemic. Roughly 50 countries participated.¹²⁰ The findings of both processes highlight the importance of

¹¹⁵ UNDP, UNSD, UNICEF, UNCT Guidelines (n 108), 33, para 136.

¹¹⁶ Guided by Economic Commission for Africa, African Union Commission, African Development Bank, Secretariat of African Symposium on Statistical Development, United Nations Children's Fund (UNICEF), World Health Organization (WHO), United Nations High Commission for Refugees (UNHCR), United Nations Population Fund (UNFPA), INDEPTH Network, Plan International and PARIS21.

¹¹⁷ 'Regional Action Framework on Civil Registration and Vital Statistics in Asia and the Pacific' adopted by the Ministerial Conference on Civil Registration and Vital Statistics in Asia and Pacific (28 November 2014) <

https://getinthepicture.org/sites/default/files/resources/Regional%20Action%20Framework%20on%20Civil%20Registration%20and%20Vital%20Statistics%20in%20Asia%20and%20the%20Pacific_0_0.pdf > accessed 19 January 2024; 'Ministerial Declaration' adopted by the Ministerial Conference on Civil Registration and Vital Statistics in Asia and Pacific (28 November 2014) <

https://getinthepicture.org/sites/default/files/resources/Ministerial.Declaration.English.final__0_0.pdf > accessed 20 January 2024.

¹¹⁸ Srdjan Mrkić (n 36).

¹¹⁹ Ibid.

¹²⁰ Proceedings are available at: <https://unstats.un.org/legal-identity-agenda/events/>

comprehensive contingency plans for instantaneous disasters (earthquakes, tsunamis, flooding, etc) as well as for prolonged disasters (COVID-19, etc). Digitalization of CRVS systems was recognized as a key lessons-learned from the COVID-19 pandemic.¹²¹

As will be discussed in more depth in Chapter 3 as part of the literature review, during periods of armed conflict and other public emergencies, global demands for accurate estimates of civilian casualties often gain momentum. In these circumstances states are often unwilling or unable to produce accurate records. There have been many examples of civil society organizations and religious institutions who step into the information void. For example, Every Casualty Counts runs the casualty Recorders Network which includes 53 organizations engaged in civilian casualty recording in current and past conflicts around the world, such as Yemen, Ukraine, Syria, Somalia, Palestine, Peru, Nigeria, Iraq, Serbia, Kosovo, Guatemala, Haiti, and Iran.¹²² The UN has also been involved in casualty recording.¹²³ Records of civilian casualties documented by non-state actors have played a critical role in transitional justice procedures and peacebuilding.

Despite the evident global interest in and mobilization around CRVS, including during situations of emergency, progress has been slow. Most deaths are still unregistered; the most vulnerable are often the most invisible, during life and in death.¹²⁴ Underlying my research for this thesis is the belief that framing universal death registration as a clear obligation under international law will help to facilitate its rollout around the world.

II. Reflections on the Historical Role of Registration

There are divergent opinions regarding the role that registration has played in history. Some scholars¹²⁵ “assume that registration proceeded from the desire of the elites to monitor the ‘dangerous classes’ ”¹²⁶ or as a tool of discrimination and political oppression.¹²⁷ History shows that when registration systems are coercively used, they may allow for the development of subversive and rent-seeking behaviour that undermine benefits.¹²⁸ Other critics focus on the negative impact of the over

¹²¹ Srdjan Mrkić (n 105).

¹²² List of partners is available here: <https://everycasualty.org/casualty-recording-organisations/>

¹²³ Examples include Afghanistan (since 2007), Iraq, Libya, Somalia, Occupied Palestinian Territories, Ukraine and Yemen.

¹²⁴ United Nations Development Programme (UNDP), ‘Why Birth and Death Registration Really are ‘Vital’ Statistics for Development’ (14 April 2015) Human Development Reports < <https://hdr.undp.org/content/why-birth-and-death-registration-really-are-vital-statistics-development#:~:text=The%20civil%20registration%20records%20of,size%20-%20especially%20for%20small%20areas> > accessed 20 January 2024.

¹²⁵ E.g., Richard Overly, *The Morbid Age: Britain Between the Wars* (Allen Lane 2009).

¹²⁶ C.A. Bayly, ‘Forward’ in Breckenridge, Keith and Simon Szreter (ed), “Registration and Recognition: Documenting the Person in World History (Oxford University Press 2012). P. x

¹²⁷ See for example Gareth Stedman Jones ‘Outcast London’ which chronicles the middle-class interest in registering the urban poor (G.S. Jones, *Outcast London: A Study in the Relationship between the Classes in Victorian Society* (Pantheon 1971), 334-335; Gotz Aly and Karl Heinz Roth (n 38)

¹²⁸ Simon Szreter and Keith Breckenridge (n 6) 10 -12.

bureaucratization of life. As illustrated by Franz Kafka's book, *The Castle*,¹²⁹ registration can simply contribute to inflating the self-given power of bureaucracy, seen as the endless collection of information from the public, sometimes with little point and sometimes to the point of abuse. Other scholars hold that registration is essential to recognition of the individual and their entitlement to rights and benefits, thereby placing registration as the essential foundation for the realization of human rights.¹³⁰ A review of the historical practice of registration suggests that its use is somewhat dependent on the ideological predisposition of the state; registration can be used to benefit a population, as a tool of liberation and equality, or it can be used to oppress, such as in Nazi Europe and communist East Germany.¹³¹

Concerns with the way in which registration systems feed into practices of control and management of populations – in ways that involve abuses and loss of liberty – often make reference to the work of Michel Foucault. Foucault said, “we live in an era of governmentality, first discovered in the eighteenth century.”¹³² He suggested that modern state power in Europe was derived from increasing the well-being of the population, not from the possession of territory. As such, power was no longer an end itself, but a tool for the well-being of the population.¹³³ Because Foucault argues that power-knowledge regimes determine what comes to count as the truth in any given society at any particular time, the ‘well-being’ of the population, which both drives and legitimizes the governmental practices of population management, is not a benign, or normatively neutral concept. Rather, it is an effect of power, and its function is to perpetuate power relations and configurations. In this context, Foucault coined the term ‘biopower’. Akin to disciplinary power (managing the actions of individual bodies), biopower manages births, deaths, reproduction and illness of a population. Foucault provided a historical analysis of the ways in which disciplinary power and bio-power were used to increase the ‘docility’ and social and economic productivity of individuals and populations, leading to their normalization and generally to the detriment of liberty.

Several scholars, following in the tradition of Foucault, have written on the coercive and even genocidal nature of state information systems towards their own citizens.¹³⁴ They described how states can use registration to identify and control minority groups or colonial subjects. There has also been considerable focus on the use of police registers as a tool of marginalization and population control.¹³⁵

¹²⁹ Franz Kafka, *The Castle* (Modern Library 1954).

¹³⁰ Keith Breckenridge and Simon Szreter (ed), *Registration and Recognition: Documenting the Person in World History* (Oxford University Press 2012).

¹³¹ C.A. Bayly (n 52) x.

¹³² Michel Foucault, ‘Governmentality’ in Burchell, Peter, Colin Gordon and Peter Miller (ed), *The Foucault Effect: Studies in Governmentality with Two Lectures by and an Interview with Michel Foucault* (Harvester Wheatsheaf 1991), 103.

¹³³ Ibid, 100.

¹³⁴ James Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition have Failed* (Yale University Press 1998); Peter Burchell, Colin Gordon and Peter Miller (eds), *The Foucault Effect: Studies in Governmentality with Two Lectures by and an Interview with Michel Foucault* (Harvester Wheatsheaf 1991); Giorgio Agamen, *Homo Sacer: Sovereign Power and Bare Life* (University of California Press 1998).

¹³⁵ Jane Caplan and John C. Torpey (n 57)

Valentin Groebner showed that churches and municipalities were using civil registers to record the names and behaviour of suspicious populations (from criminals to migrants) as early as the thirteenth centuries, long before the establishment of the centralized government.¹³⁶ Even Szreter and Breckenridge acknowledge that it is likely that identity registration systems were established in the early modern history of England and Japan to “flush-out and suppress religious unorthodoxy”, though they go on to argue that, once established, the registers contributed substantially to property transfers and the establishment of other rights.¹³⁷ The use of registration in centralizing state power has been included in a number of studies about empires and colonization. For example, Newsinger studied the British use of registration to identify and control dissident villages in the Mau Mau rebellion in Kenya in the 1950s.¹³⁸

Arguing against Foucault’s concept of state control through knowledge and biopower, Szreter and Breckenridge found that the lack of registration can be equally detrimental for those undocumented persons living in a modern economy. Without documentation, their life and death have no practical consequence.¹³⁹ Szreter calls civil registration (defined as the ‘administrative recording of the birth, death and marital status of individual citizens’) the ‘linchpin’ in the web of rights and obligations,¹⁴⁰ arguing that birth registration is recognized in Article 7 of the UN CRC as the ‘foundation for the fulfilment of other rights’.¹⁴¹ Szreter claims that a right to a name and nationality are secondary only the children’s right to life itself.¹⁴²

Szreter and Breckenridge’s argument is that,

unlike census and other enumerative exercises, identity registration systems, including those sponsored and maintained by the state, represent a legal technology and resource which can be empowering and of high economic and social utility to individuals, by enabling their legally-recognized personhoods to pursue their own self-interested purposes, completely independently of the state’s policies and plans.¹⁴³

Independent of state intention, accessible registration systems can support individual autonomy and the ability to self-advocate with the state. Human rights are a critical example. Without an official

¹³⁶ Valentin Groebner, *Who are you? Identification, Deception, and Surveillance in Early Modern Europe* (Zone Books 2007).

¹³⁷ Simon Szreter and Keith Breckenridge (n 6) 20-21.

¹³⁸ John Newsinger (n 8) 159-185.

¹³⁹ Simon Szreter and Keith Breckenridge (n 6) 23-24.

¹⁴⁰ Simon Szreter, *The Right of Registration: Development, Identity Registration, and Social Security: A Historical Perspective* (World Development 2007), 68.

¹⁴¹ United Nations Children’s Fund (UNICEF), ‘Every Child’s Birth Right: Inequities and Trends in Birth Registration’ (12 December 2013) <<https://data.unicef.org/resources/every-childs-birth-right-inequities-and-trends-in-birth-registration/>> accessed 20 January 2024.

¹⁴² Simon Szreter, *The Right of Registration: Development, Identity Registration, and Social Security: A Historical Perspective* (World Development 2007), 68.

¹⁴³ Simon Szreter and Keith Breckenridge (n 6) 21-22.

recognition of a person's existence (or lack thereof, in the case of death) and identity, the legal establishment of personhood and human rights is difficult; "human rights ... mean little in practice if they are not conferred on identified and self-identifiable individuals with recognized membership of a national jurisdiction – this is a practical condition for the individual to enjoy actional legal personhood."¹⁴⁴ Szreter and Breckenridge go so far as to claim that,

States frequently sought to restrict, abandon, or devolve registration, without any direct effect on their authority and power. This is because registration, unlike enumeration, is often more valuable, or at least as useful, to individual citizens, as to the state. It has the potential to provide a legal technology and resource for individuals which strengthens civic society: a strong state which creates a registration system can be legally empowering of its citizens, rather than disempowering; and this diffused power in the hands of citizens does not equate with any particular form of knowledge sought by or useful to the state.¹⁴⁵

The renowned Indian economist and philosopher Amartya Sen put forward a theory, entitled 'human science of development', which is grounded in the idea that poverty can be addressed through political remedies that respond to the recognition of entitlements.¹⁴⁶ Szreter and Breckenridge argue that the ability to claim rights or entitlements (secondary rights) to land, welfare, education and health usually depended on an existing system of civil registration.¹⁴⁷ Currently, states that have the most elaborate and comprehensive systems for lifetime registration and monitoring also have high social equality, such as the Netherlands and the Scandinavian countries.¹⁴⁸ Gopinath found similar trends in India – Indian states with the highest registration were also the states with the strongest basic services (notably education, in this study).¹⁴⁹

Even when registers were developed to control the population or for otherwise coercive ends, there are numerous examples illustrating that once they exist, they can also be used for positive ends. For example, fear of epidemic disease, military conscription and various types of Islamic judicial activity drove mass registration in nineteenth-century Egypt.¹⁵⁰ Though it is not clear that this registration was used to provide welfare for the population, these registration systems were used by Egyptian patriots in the 1890s to compile a range of legal complaints against the British colonial powers (including death registration data).¹⁵¹ Similarly, though registration systems put in place by the British colonial authorities in the mid-19th century in India may not have benefited the Indian population at the time

¹⁴⁴ Ibid 21-22.

¹⁴⁵ Ibid 6-7.

¹⁴⁶ Amartya Sen, *Development as Freedom* (Knopf 1999).

¹⁴⁷ Amartya Sen, 'Elements of a Theory of Human Rights' (2004) *Philosophy and Public Affairs* 32(4), 356.

¹⁴⁸ C.A Bayly (n 52) x.

¹⁴⁹ Ravindran Gopinath (n 40)

¹⁵⁰ Khaled Fahmy (n 50)

¹⁵¹ Ibid

with improved basic welfare services, it was used almost immediately to question the authority the colonial state, including by prominent Indian academics and politicians such as R.C. Dutt and Dababhi Naoroji.¹⁵² This did not go unnoticed by some segments of the Anglo-Indian elite; for example the local landed-class in Bengal resisted British attempts to register tenants in the 1950s because they recalled how registration had been used in the past against their interests.¹⁵³ The racially-driven registration system in apartheid South Africa was reinvented and allowed for the South African Child Support Grant to be distributed, including the black population who had previously experience discrimination.¹⁵⁴ The absence of a universal registration infrastructure in Ireland during the first half of the 1800s posed a serious challenge to the implementation of the ‘Poor Law’ created in 1838. In contrast, the enactment of the Poor Law in England and Wales in 1836 functioned very effectively because a vast system of registration that was already in place.¹⁵⁵ Von Glahn, a professor at UCLA researching the economic and social history of China, illustrated that numerous Chinese dynasties were aware that population registration had military benefits, but also that it was useful to establish and manage social security systems to benefit their population and to ensure internal security.¹⁵⁶

Essential to the functional benefit of registration is both the state’s acceptance of the role as ‘steward’ of the population, as well as the registered population’s trust in the government.¹⁵⁷ Some scholars have argued that registration systems only work when they benefit those being targeted. Otherwise, people simply refuse to engage. In the 1700s in France, registrars struggled to attract full participation from the populace, in contrast to England and Wales. This is arguably because in France welfare rights were never tightly linked to the registration system; whereas in England and Wales registration was essential to the function of the rule of law and specifically to a subject/citizen’s social security and economic rights under law.¹⁵⁸ In contrast, coercive systems (e.g. the Nazi *Volkskartei* system and the *Bewsuburo* system in apartheid South Africa) were constantly fighting subversion and limited participation because the population saw no benefit in participating in the registration system.¹⁵⁹

Foucault’s critique of registration carries weight only to the degree that we accept his suspicions about the concept of ‘well-being’. If, as he and his followers suggest, ‘well-being’ is a construct that facilitates population control, government systems that seek to enhance ‘well-being’ become sinister

¹⁵² Simon Szreter and Keith Breckenridge (n 6).

¹⁵³ PG Robb (n 8) 173.

¹⁵⁴ Francie Lund, ‘Children, Citizenship and Child Support: the Child Support Grant in Post-Apartheid South Africa’ in Keith Breckenridge and Simon Szreter (ed), *Registration and Recognition: Documenting the Person in World History* (Oxford University Press 2012).

¹⁵⁵ Lorie Charlesworth, *Welfare’s Forgotten Past: A Socio-Legal History of the Poor Law* (Routledge 2010), 175-180.

¹⁵⁶ Richard Von Glahn (n 51).

¹⁵⁷ Philip Stel, Sarah Macfarlane, Simon Szreter, Lene Mikkelsen, Prabhat Jha, Susan Stout and Carla AbouZahr, ‘A Scandal of Invisibility: Making Everyone Count by Counting Everyone’ (2007) *The Lancet* 370 (9598), 1575.

¹⁵⁸ Simon Szreter, ‘The Right of Registration: Development, Identify Registration and Social Security: A Historical Perspective’ (2007) *World Development* 35 (1), 67 – 86.

¹⁵⁹ Gotz Aly and Karl Heinz Roth, *The Nazi Census: Identification and Control in the Third Reich* (Temple University 2000), 119-131; Keinath Breckenridge, ‘Verwoerd’s Bureau of Proof: Total Information in the Making of Apartheid’ (2005) *History Workshop Journal* 59, 83 – 109.

and problematic. However, if we can identify a credible or plausible definition of well-being, then analysing the degree to which a government system contributes to a populations' 'well-being' becomes a constructive, even protective, guide. Foucault and his followers reject the objectivity of truth, as they understood it to be an effect of power.¹⁶⁰ As such, their ability to speak to the use of the concept of 'well-being' as a standard of evaluation is seriously handicapped. To some extent, Szreter and Breckenridge's critique of Foucault misses this point – Foucault's critique of registration is not that it doesn't contribute to healthier and more prosperous populations. Rather he is concerned that these types of government systems are based on a constructed understanding of 'well-being' and that they allow for the normalization of population control – which in turn restricts freedom. A more direct response to Foucault's concerns must address the degree to which 'well-being' can be established as an objective reality. For example, Nussbaum¹⁶¹ and Sen¹⁶² argue for a 'capability-based' understanding of the quality of life, which they believe can provide an objective account of well-being, and thus underpin human rights.¹⁶³ As an illustration of this approach, Nussbaum argues that the comparative quality of life is defined by the degree to which people are capable of 'being and doing'.¹⁶⁴ In this context, a 'capability' is understood as the freedom (freedom defined as an opportunity¹⁶⁵) that people have to 'do' or 'be' particular things. I will focus on another approach, namely Ollsen's (the 'continuance of life' framework described below). If we can agree on a basic common standard of 'well-being', then we have no reason to object to government systems in and of themselves. Rather we can focus on the degree to which they contribute to establishing this well-being. To these ends, in the next section, I seek to develop a framework, a litmus test if you will, for 'well-being' and to determine if law (in this case a government system) contributes to increasing it.

III. Framework for Evaluating if Law Contributes to Well-Being

Drawing on Mark Ollsen's¹⁶⁶ work, in this section I will describe my framework for defining 'well-being', called the 'life as continuance' framework. I will apply this framework to death registration, arguing that death registration – as understood in this thesis – contributes to our well-being and, as such, should be a codified under international law. Arguably, the framework will help to differentiate

¹⁶⁰ Michel Foucault, *Power. Essential Works of Foucault 1954-1984, Vol 3* (Penguin 2000), 111-133; Michel Foucault, *Power/Knowledge: Selected Interviews and other Writings* (Pantheon 1980). See also Charles Taylor, 'Foucault on Freedom and Truth' (1984) *Political Theory*, 152-183; Robert Nola, 'Post-Modernism. A French Cultural Chernobyl: Foucault on Power/Knowledge' (1994) *Inquiry* 37, 3-45.

¹⁶¹ Nussbaum M, 'The Central Capabilities' in *Creating Capabilities: The Human Development Approach* (Harvard University Press 2011); Nussbaum M, *Women and Human Development: The Capabilities Approach* (Cambridge University Press 2000).

¹⁶² A Sen, 'Equality of What?' in McMurrin (ed.), *Tanner Lectures on Human Values* (Cambridge University Press 1979), p. 197-220; A Sen, *Inequality Re-examined* (Clarendon Press 1992), 45; See also his theory of development as freedom: A Sen, 'What do We Want from a Theory of Justice', *Journal Philosophy* 103(5), 215-238; A Sen, 'The Idea of Justice', *Journal of Human Development* 9(3), 331-342; A Sen, *The Idea of Justice* (Allen Lane 2009);

¹⁶³ See for example M Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Harvard University Press 2006), 70.

¹⁶⁴ M Nussbaum, *Creating Capabilities* (Harvard Press 2011); See also her writings on her partial capability theory of justice: M Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge University Press 2000).

¹⁶⁵ A Kaufman, 'Capabilities and Freedom' (2006) *Journal of Political Philosophy* 14(3), 289-300; A Sen, 'Well-being, Agency and Freedom: The Dewey Lectures 1984' (1985) *Journal of Philosophy* 82(4), 169-221; A Sen, *Rationality and Freedom* (Harvard University Press 2002), Chapter 20.

¹⁶⁶ Mark Ollsen is a professor of philosophy and education policy at the University of Surrey

applications of death registration that are destructive to human rights and those that contribute to their advancement.

Across the philosophical spectrum, there is a wide consensus that the function of law is to protect life and increase the well-being of its population. According to the conventional view, natural law theory holds, in essence, that civil laws must be just, moral or ethical, often based on religious ethics or ‘natural order’; laws that fail to meet these requirements are not laws at all. (For the sake of contrast, ‘positive law’ theories argue that law is solely a product of human design, defined by statute or common law, and valid laws can thereby be either just or unjust.) Natural law theorists reject the belief that the state and law is an end in itself, beyond which there are no limits or laws.¹⁶⁷ Rather they recognize that there are some fundamental principles that are imposed upon humans, irrespective of their wishes or their consent, simply because they are moral or ‘right’. Naturalists generally argue that when a state ignores this intrinsic law (identified through natural justice or reasonableness¹⁶⁸), its laws are invalidated and can be discarded as tyranny.¹⁶⁹

The evolution of natural law to natural rights can be seen in the political philosophers of the 1600 and 1700s. For example, despite their differences, Thomas Hobbes, John Locke, Jean-Jacques Rousseau and Thomas Paine all describe the essential function of a state in accordance with the pre-existing (inherent) rights of the citizenry. Hobbes, who believed that all beings in nature live in continual fear and danger of death, argued that lawful authority is that which achieves protection of the people within its domain. As such, it is the continuance of life itself -- both *bios* and *zoe*, to use Aristotle’s argument¹⁷⁰ -- that is the essential responsibility of the sovereign.¹⁷¹ The ancient Greeks made a distinction between these two forms of life. *Zoe* was understood as the basic function of living (breathing, bodily heat, etc) whereas *bios* described the social/political aspect of human interaction which is also essential to life. Aristotle described these concepts by distinguishing between ‘life’ (*zoe* or bare life) and the ‘good life’ (*bios*). The sovereign or state has the unique responsibility to judge hindrances to the protection of the population and to determine the correct course of action to preserve ‘peace and security’,¹⁷² including through the development of law.

John Locke similarly held that the state was responsible for the life and well-being of its population. When the state no longer acts to the benefit of the people, it loses its legitimacy.¹⁷³ Locke, Rousseau and Paine were particularly influential in the French and American revolutions of the 1700s, reflected

¹⁶⁷ Charles de Visscher, *Theory and Reality in Public International Law* (translated from French by P.E. Corbett) (Princeton University Press 1968), 10 -16.

¹⁶⁸ Mark Tebbit, *Philosophy of Law: An Introduction* (Routledge 2017), 12 – 13.

¹⁶⁹ *Ibid*, 10 – 11.

¹⁷⁰ Aristotle, *Politics* (trans Jowett, B) (Oxford University Press 1905).

¹⁷¹ Anne Oxford, *International Authority and the Responsibility to Protect* (Cambridge University Press 2011), 57.

¹⁷² Thomas Hobbes, *Leviathan* (Oxford University Press 1996), 118.

¹⁷³ John Locke, *Two Treatises on Government* (R. Butler, etc 1821).

in the Declaration of the Rights of Man and the Citizen and the American Declaration respectively, which proclaim the ‘inherent’ rights of man and obligations of the state.¹⁷⁴ Reflecting their thinking, Thomas Jefferson wrote that the people living in North America were “free people claiming their rights as derived from the laws of nature and not as the gift of their Chief Magistrate.”¹⁷⁵ In this naturalist framework, the state is understood to be a custodian of inherent and pre-existing rights, rather than a supreme legislator with the power to endow the individual with rights.

The recognition that the essence of governance and law should advance the well-being of the population goes beyond the naturalist identification of natural or moral claims. Notable positivists also agree that law should benefit the population. Jeremy Bentham (1748-1832) argued that human knowledge is restricted to what can be observed and recorded,¹⁷⁶ based on the principles of Hume’s Fork.¹⁷⁷ Hume believed that human reason was morally neutral. As such, enquiries or investigations can only prove what is logical or empirical; they cannot prove morality.¹⁷⁸ In 1776, Bentham made a ground-breaking attack on William Blackstone’s *Commentaries of the English Law*, arguing that all laws should be evaluated only on the basis of their utility. A law should be judged, for example, on the degree to which it adds ‘happiness’ to the society (defined by the presence of pleasure and the absence of pain). Reason is used only to calculate a law’s utility, rather than to discern its morality. To allow for the analysis of utility, Bentham developed the ‘separation thesis’, arguing that utility could only be analysed when law and morality were regarded separately.¹⁷⁹ Despite his rejection of morality in law-making, he maintained that the essential function of law should still be the benefit of the public, in this case described by its utility.¹⁸⁰ Indeed, utilitarianism is now understood as one particular approach to or understanding of morality, not as an alternative to it. Like Bentham, Austin, as well as subsequent positivists such as Kelsen, Hart, and Raz, held that the existence of law is not dependent on the merit of the law, yet it is a mistake to imagine that this position equates to indifference about whether or not law should have moral merit. Hart¹⁸¹ and Lyons¹⁸² for example hold to the ‘fallibility thesis’, which argues that “law should be just, but it may not be; it should promote the common good, but sometimes it doesn’t; it should protect moral rights, but it may fail miserably.”¹⁸³

¹⁷⁴ Costas Duzinas, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism* (Routledge 2007), 15 – 26.

¹⁷⁵ Thomas Jefferson to Virginia Delegates to the Continental Congress ‘A Summary of the Rights of British America: Instructions’ (August 1774), 320.

¹⁷⁶ Mark Tebbit (n 168) 23-24.

¹⁷⁷ Hume’s Fork is a theory developed by David Hume which purports that all concepts can be divided into two discreet categories: ‘relations of ideas’ and ‘matters of fact’. He believes that ‘true knowledge’ must be based on the latter.

¹⁷⁸ David Hume, *A Treatise of Human Nature* (Foutana 1972), 157.

¹⁷⁹ Mark Tebbit (n 168) 25-26.

¹⁸⁰ J.H. Burns and H.L.A. Hart (eds), *The Collected Works of Jeremy Bentham: An Introduction to the Principles of Morals and Legislation* (Oxford 1970).

¹⁸¹ H.L.A Hart, *The Concept of Law* (Third edition, Clarendon Press 2012), 185-186.

¹⁸² David Lyons, *Ethics and the Rule of Law* (Cambridge University Press 1984), 63.

¹⁸³ Stanford Encyclopaedia of Philosophy, ‘Legal Positivism’ (first published 3 January 2003; substantive revision 17 December 2019) <<https://plato.stanford.edu/entries/legal-positivism/>> accessed 20 January 2024.

As discussed, across the philosophical spectrum, there is a broad recognition that law should contribute to protecting and facilitating the protection and well-being of the population. The question remains, how do we define well-being?

The concept of wellbeing is understood philosophically to describe a property of life taken as a whole or in relation to a specific period.¹⁸⁴ Arguably, the most common view is that well-being is ‘invariablism’, that the same theory of welfare is true of all persons.¹⁸⁵ Though some argue for a ‘variablism’ understanding of wellbeing, arguing that the characteristics of wellbeing for some groups might be different from other groups.¹⁸⁶ In briefly summarizing the position on wellbeing of several philosophers, I will argue that all of the theories have a common bottom line – namely that wellbeing requires the protection of individual and collective life, in a holistic sense. Though Sen might be considered a ‘light’ invariabilist (as he allows for some culture to give great importance to some characteristics of wellbeing), other philosophers argue that there is something universal and moral at the heart of their definition of wellbeing. For the sake of brevity, I will limit my analysis to identifying a few commonalities across theories. Consider the positions below:

Against the backdrop of his wider natural law theory, Finnis argues that the following ‘basic goods’ are essential for wellbeing: life (health and bodily integrity); the pursuit of knowledge; play, recreation and enjoyment; aesthetic experience; social relationships; practical reasonableness (ability to make logical decisions); and religion (religious or philosophical interaction with the big questions regarding human existence).¹⁸⁷ Finnis identifies practical reasonableness as the corner stone of all of the ‘basic goods’, stressing the essential importance of the ability to deliberately make rational choices.¹⁸⁸ Furthermore, Finnis emphasizes the ‘common good’, arguing that individual wellbeing is inherently linked to the wellbeing of others.¹⁸⁹ As he recognizes these principles as objective and universal, he holds that they are a sound foundation for legal norms.¹⁹⁰

Nussbaum articulated her theory of wellbeing in her wider Capabilities Approach, developed with Sen. In this framework, she argues that wellbeing is defined by the degree to which individuals are able to pursue what they are able to do or to be.¹⁹¹ Nussbaum argues that wellbeing (rooted in dignity) is defined by the following interconnecting ‘capabilities’: life; physical health and integrity; the ability to use the senses, imagination and thought, informed by adequate education; ability to have emotional

¹⁸⁴ Joseph Raz, ‘Role of Well-Being’ (2004) 18 *Phil Persp* 269, 270.

¹⁸⁵ Eden Lin, *Welfare Invariabilism*, (2018) *Ethics* 128(2), 320-345.

¹⁸⁶ See for example Skelton (2015) with regards to children: Anthony Skelton, ‘Children’s Well-being: A Philosophical Analysis’ in Guy Fletcher (ed), *The Routledge Handbook of Philosophy of Well-being* (Routledge 2015), 366-377.

¹⁸⁷ John Finnis, *Natural Law and Natural Rights* (Second Edition, Oxford University Press 2011), 84-92.

¹⁸⁸ *Ibid*, 100-103.

¹⁸⁹ *Ibid*, 154 – 156.

¹⁹⁰ *Ibid*, 92 – 95.

¹⁹¹ A Sen, *Inequality Reexamined* (Harvard University Press 1992), 39

attachments and experience emotions; practical reason (ability to develop an idea of what is ‘good’ and think critically); affiliation with others; ability to live with concern for the natural world (plants, animals, etc); play, laughter, amusement; and the ability to participate in the control over one’s environment.¹⁹² Sen’s version of the Capabilities Approach emphasises that there is no single metric for wellbeing, that different persons or cultures may prioritize different capabilities, allowing for cultural differences.¹⁹³ He moves the focus from economic resources to freedom and opportunity to pursue the life that a given person values.¹⁹⁴ He puts emphasis on public policy and law that allows to achieve their full potential.¹⁹⁵

Finnis, Nussbaum and Sen all start by acknowledging that life itself (in the physical sense) is essential to wellbeing. Subsequently, they expand their definition to describe elements they consider necessary for a ‘good life’. In all cases, social relationships and the interconnection between the individual and the collective is emphasized. Additionally, the follow characteristics are common to all three: the pursuit of knowledge and information, play and recreation, agency (the ability to shape own's own destiny) and the freedom and ability to make logical decisions about one’s own life. They all emphasize that public policy and law have an instrumental role in creating an environment while allows for these characteristics of wellbeing.

Raz does not specifically emphasize life itself, as a corner stone to wellbeing. Raz’s understanding of wellbeing is rooted in his theory of value and the role of autonomy in a ‘good’ life. Raz argues that wellbeing is made up of various values which make life go well, including (but not limited to) relationships, personal achievements, enjoyment, knowledge, and moral integrity. A corner stone of Raz’s understanding of wellbeing is the idea of personal autonomy.¹⁹⁶ He believes that the ability to shape one’s own life, to pursue one’s own goals and values, is essential to a good life.¹⁹⁷ Additionally, Raz holds that social relationships are essential to wellbeing.¹⁹⁸ As such, despite significant differences in approach, like Finnis, Sen and Nussbaum he recognizes agency, knowledge and relationship as components of wellbeing.

Though each of these theories have strengthens (which are beyond the scope of this PhD), I will argue for the adoption of the ‘life as continuance’ framework, proposed by Mark Ollsen. My preference for this framework is that it prioritizes the common building block to wellbeing (the continuance of

¹⁹² M Nussbaum (164); M Nussbaum, ‘Capabilities as Fundamental Entitlements: Sen and Social Justice’ (2003) *Feminist Economics* 9(2-3), 33-59; M Nussbaum, ‘The Central Capabilities’ in *Creating Capabilities: the Human Development Approach* (Harvard University Press 2011), 17-45.

¹⁹³ A Sen (n 162) 197-220.

¹⁹⁴ A Sen, *Inequality Reexamined* (Harvard University Press 1992), 40.

¹⁹⁵ A Sen, *The Idea of Justice* (Harvard University Press 2009), 8.

¹⁹⁶ D McCabe, ‘Joseph Raz and the Contextual Argument for Liberal Perfectionism’ *Ethics* 111(3), 493-522.

¹⁹⁷ J Raz (n 184) 269, 293.

¹⁹⁸ Joseph Raz, ‘The Role of Wellbeing’ (2004) *Ethics* vol 18, 269-294.

individual and collective life) and, as such, has the potential to have broad acceptance. The continuance of life, individual and collective, is logically the flagstone of an objective definition of well-being. The logical next question is what constitutes ‘life’? Is it simply the biological existence of the body? Or does it go beyond that? As Elizabeth Grosz¹⁹⁹ argues, defining life simply as the “struggle for existence aims too low: it aims only for existence, for bare survival, for a mere life itself ... this struggle for self-preservation, for survival, is by definition a losing fight. If survival is the goal of life, life fails in every case”.²⁰⁰ As described above, the Greeks distinguished between *zoe* and *bio*. *Bios* describes the biography of a person, that is the aspects of life that are shaped by human action and the ability to speak and *zoe* described biological life, that the body is physically alive. Georges Vataille, a French philosopher, wrote, “men act in order to be”.²⁰¹ With this, he extended the definition of life beyond the bare survival of the body, translating it to an action verb. Jon York notes that Vataille’s definition “requires continuance and maintenance of being; but more, it involves a striving for well-being. Rather than view such a striving naturalistically, it should be represented as the effect of a will.”²⁰² York builds on Vataille’s argument by stating that “the quest for being is always the quest for well-being ... [life] strives for continuance and the maintenance of well-being.”²⁰³

‘Life’ cannot be defined simply by the mere existence of the body; it must include the maintenance of well-being or quality of life. Olssen argues that because “life must, if it is to remain as life, seek its own continuance and well-being”, it can be used as an essential framework to support a moral and political theory.²⁰⁴ Olssen makes it clear that ‘mere living’ is not ‘natural’, but one of many forms of living and thus located in the political domain;²⁰⁵ “if mere life is always a historical form of life and contains its own normative principle for continuance and well-being, the distinction between *zoe* and *bios* is one of scale, or complexity.”²⁰⁶ This position is supported by Dworkin’s theory of ‘life’s Dominion’, which also draws on the Greek theory of *zoe* (life as a biological process – nature) and *bio* (life as lived – “action, decision, motives, and events that compose what we call a biography”).²⁰⁷

The definition of ‘life’ that we take forward from this brief reflection recognizes two essential inherently linked components of life: the biological existence of the human body (called ‘mere existence’ or *bio*) and the interaction/action of the human in the context of his community and

¹⁹⁹ A philosopher and feminist theorist professor at Duke University

²⁰⁰ Elizabeth Grosz quoted in Mark Olssen, ‘Politics and the Philosophy of Life: Towards a Normative Framework’ (January 2010) <https://www.researchgate.net/publication/290766651_Politics_and_the_philosophy_of_life_Towards_a_normative_framework> accessed 20 January 2024, 45.

²⁰¹ Georges Bataille (1985) quoted in Mark Olssen (n 200) 42 – 44.

²⁰² Ibid, 42 – 44.

²⁰³ Ibid, 42 – 44.

²⁰⁴ Ibid, 42 – 44.

²⁰⁵ Ibid, 42 – 44.

²⁰⁶ Ibid, 42 – 44.

²⁰⁷ Dworkin (1994) quoted in Stephen Smith, *How We Value Life: George Bailey and the Life not Worthy of Being Lived* (Routledge 2010), 110-111.

environment (well-being, action, *zoe*). As such, well-being is comprised both of the physical aspects that ensure individual and collective life in its most basic form (such as food, shelter, water, medicine, protection from physical threats, etc) as well as social, cultural, political and economic of individual and collective interaction.

Drawing on Friedrich Nietzsche's belief that life's continuance is relational and must be understood in the stream of history as illustrated in "Thus Spoke Zarathustra",²⁰⁸ Olssen provides a 'thick' definition of life which includes the continuance of all life forms through survival, maintenance and growth; the concept of well-being or 'flourishing' with the support of conditions, capabilities, institutions and preservation of safety and security (taking into consideration positive and negative rights and obligations).²⁰⁹ Olssen argues, "[L]ife seeks to continue. It continues in terms of practices. Such practices constitute a good toward which societies and humanity aim."²¹⁰ As such, Olssen echoes Aristotle's recognition of both *zoe* and *bios*. On this basis, Olssen proposes the idea of 'life as continuance', a dynamic, constantly evolving process through which we respond to the environment, ward off death and encourage well-being.²¹¹ It is the constant search at the individual and macro level for policies, laws, principles and actions that contribute to a 'good life'. In this sense the concept of 'life as continuance' goes much beyond the natural instinct to survive; rather "it constitutes a relationship to an environment, and a goal, based on a choice, and ultimately, a will. It involves beliefs and deliberations, guess work, foresight knowledge, and anticipation ... The continuance of humanity is, we can say, conditional upon the human will to continue."²¹² As it requires collective action, it is a connection between humanity in its entirety, as well as a link to the past, present and future. Using this framework, well-being must be understood both on the individual and collective level, but also temporally, affecting both the current and future generations.

The theory of 'life as a continuance' requires the development of common conceptions of 'good' to enable coordination and structures. To quote Olssen once again, "[e]ven acknowledging the deep pluralism of our contemporary world, the tasks of life's continuance represent shared goals, and for most are important in promoting the good life."²¹³ All people groups establish more or less unique traditions, values, beliefs, aspirations and modes of planning for the future; it is the sustenance of life itself that establishes legitimate boundaries to each culture and creates a tie between people groups.²¹⁴ History, with its continued ebbs and flows of conflict and peace, can be understood as a continuous

²⁰⁸ Friedrich Nietzsche, *Thus Spoke Zarathustra: A Book for Everyone and No One* (translated Hollingdalte, Penguin Press 2003).

²⁰⁹ Mark Olssen, 'Can a Nietzschean Philosophy of Life Contribute to the Establishment of a New Normative Theory of Politics for the Global Age' (2010), 46-48.

²¹⁰ Ibid, 46-48.

²¹¹ Ibid, 46-48.

²¹² Ibid, 46-48.

²¹³ Ibid, 50-52.

²¹⁴ Ibid, 48-49.

struggle to build systems that allow for both the individual and collective survival of specific groups and the species as a whole.

Olssen claims that the concept of good, in the context of the quest to sustain life, is specific enough to allow for a common definition of well-being, translated into law and policy.²¹⁵ Olssen argues that what is ‘good’ is always good because “it is what enables something to survive, to prosper, to flourish, to continue to live. Just as things may be good for life, so things may be bad for life, or indifferent for life. A list of these three categories – of goods, bads and indifferents – would specify what governments ought to encourage; what ought to be outlawed or discouraged; and what ought to be left to the discretion of individuals and communities free from the constraints of the state.”²¹⁶ Olssen claims,

Even the quest of bare life, or basic survival, although projected onto the world by life itself, and in this sense constructed, constitutes an objective framework of value for all species, and for life itself. The concept of ‘objective’ used here is not intended to deny social relativity, or historical variability, nor initial conditions. Objective in this sense is also not referring to any metaphysical reality. This is to say that it is not there in the world independent or irrespective of humans rather its objectivity is dependent and conditional upon a will to survive. This will to survive must be exercised both individually and collectively. The good is what is objectively necessary if we are to survive. This is to say that, if we are to survive, either as individual or as a species, then certain objective things will follow. Collectively this will include certain moral, political, and social structures, and so on; individually, it will include appropriate nurturance, education, skills, and training. Thus, if we want to survive then certain moral categories and certain institutions would be best established.²¹⁷

We can thus conclude that a reasoned analysis of what is required for individual and collective continuance of the species is essentially ‘good’ and thus essential to our well-being.

Ollseen’s analysis allows us to respond to the critique of bio-power put forward by Foucault and his followers. If we can talk about well-being as ‘continuance of life’ (as defined by Ollsen), then we have a standard against which we can evaluate ‘good’ and ‘bad’ uses of law, including with regarding to civil registration.

²¹⁵ Ibid, 50-52.

²¹⁶ Ibid, 50-52.

²¹⁷ Ibid, 50-52.

Let's consider a few examples. Imagine that mortality statistics indicate that there has been a significant increase in human and plant/animal mortality as a result of particular pesticides used for farming. Regulating the use of pesticides in farming would contribute to our collective and individual life and wellbeing. By protecting the environment, it could also contribute to the collective and individual life and wellbeing of future generations as well, acknowledging that humans cannot exist without the natural world. Consider another example, imagine that a law has been put forward which would largely remove restrictions to purchase weapons (including for persons with mental disabilities or person with a proven record of violence). Statistics indicate that prevalence and circulation of unrestricted weapons are correlated with higher mortality rates. Application of our 'continuance of life' framework would suggest that the proposed law would be in contradiction to our individual and collective life.

Human rights legal obligations are one of the main ways (though not the only) by which we give effect to the imperative to promote well-being, thus understood. To mitigate against the risk of misuse, death registration should be read alongside of other human rights norms. I will look in more depth in subsequent chapters at death registration under human rights law. For illustration's sake, below I will consider how death registration contributes to our collective and individual continuance and well-being, when framed by human rights norms:

(a) *Rights of the individual*: As will be argued in Chapter 7, death registration is an essential trigger to the investigation into a potential wrongful death. Where death registration procedures are weak, particular deaths may not come to the attention of authorities. Often, it is the most vulnerable who fall outside the visibility of the state. Where there is impunity for wrongful death, there is significant risk of increased violence or neglect of particular groups. Where there is no legal consequence for the wrongful death of a person or groups of persons, protection of the right to life no longer exists. As such, in a very concrete sense death registration is critical to the protection of individual and collective life. During armed conflict and other emergency situations, death registration helps to prevent gross violations of IHL and, where they occur, to hold responsible actors to account.

(b) *Rights of the family members of the deceased*: Recalling that our framework for assessing the ethical value of laws goes beyond the protection of life in the mere physical sense, death registration is understood to have a critical impact on the well-being and continued existence of the family members of the deceased. From ensuring that children can be cared for by alternative caretakers (adoption), to supporting subsistence through inheritance of property and social security benefits, death registration has a tangible impact on the well-being and, in some cases, may contribute to ensuring that family members are able to eat and be cared for. Notably, not knowing the fate of a

loved one is recognized as a form of torture, inhuman and degrading treatment²¹⁸ by the Committee against Torture. Death registration can play an instrumental role in family members ability to recover from death in the family.

(c) *State obligation to prevent wrongful death and protect life*: States have a positive obligation to protect life and to prevent the arbitrary deprivation of life.²¹⁹ I will argue throughout this thesis that vital statistics, particularly mortality data, is essential in building national systems that can prevent arbitrary death, preserve life and ensure the well-being of the population, on an individual and collective level. This ranges from allowing them to track emerging health challenges, to health and safety standards in housing, transportation, schools, communities and workplaces, to food security and safety, access to a clean and healthy environment, to protection politics in all settings. Mortality statistics are also a means by which individuals and the public can hold the government accountability to its obligation under human rights law regarding the right to life, as well as IHL and international criminal law during periods of armed conflict. As climate change unfolds at an unprecedented level, the threats facing us will be exponentially more complicated. Rapidly increasing temperatures have already resulted in a spike of heat related deaths around the world. New diseases and pandemics are likely to become increasingly frequent. Pollutants in our air, water and land are rapidly deteriorating the quality of our living environment, which is already resulting in increased cancer rates, asthma and other illness. Natural disasters, from fires to flooding to severe weather events, will result in high levels of death and displacement. Some areas of the earth will soon become uninhabitable because of water shortages, increased temperatures and rising water levels, which will certainly lead to increased migration and population movement. Increased scarcity and population movement will also likely lead to more armed conflict. Governments will be hard pressed to identify priority interventions, to navigate the risks and mitigate those that will result in the highest death. Ensuring accountability of state and non-state actors is essential to the realization of the rule of law and the protection of inherent human rights, during times of peace as well as during armed conflicts. Close monitoring of mortality trends, including cause of death and location, is of critical importance, if we are to survive the coming risks.

IV. Conclusion

In summary, it is only by understanding the risks to our life and well-being that we can develop systems that allow for our individual and collective continuance of life and well-being. Central to this endeavour is the realization of human rights, upholding the rule of law and enforcing state accountability to its population. Incidentally, IHRL and many of the principles of *jus cogens*

²¹⁸ See for example Additional Protocol 1, Art 32; *Velasquez Rodriguez Case*, Inter-American Court of Human Rights, Ser C, No.4 (1988)

²¹⁹ UN Human Rights Committee, 'General Comment No. 36, Article 6 (Right to Life)' (2019) CCPR/C/GC/35, Article 18-31

(sometimes referred to as ‘international morality’) that have developed over the last 70 years are essentially concerned with the continuance of life (both *zoe* and *bios*).²²⁰ As global threats are identified (climate change, pandemic diseases, etc), our individual and collective existence is increasingly dependent on shared/collective functions and the negotiation of shared interest through coordination structures, practices and arrangements, including evidence generation around mortality patterns.

For rational decision-making in the development of law that protects our collective continuance and wellbeing, we must have a dispassionate understanding of the threats (as well as opportunities) before us, particularly those that threaten life. Mortality data is an essential input. Foucault and his followers erroneously focus on the risks of government systems (such as registration), arguing that well-being is a construct, designed by power-holders to pacify and control the population. I have argued that well-being can be objectively defined. Drawing on Olssen, my definition of well-being is based on the continuance of individual and collective life, using a ‘thick’ definition of ‘life’ which includes both physical life as well as an individual’s interaction with community and the state. Civil registration systems, framed by human rights law, can significantly benefit our individual and collective continuance of life. As the threats of climate change intensify, states may be tempted to forgo the protection of the individual (specifically vulnerable individuals) for the benefit of the group. Once again, transparency in mortality data and individual death registration are essential to ensure that the rule of law is upheld and to hold states accountable to their obligations under human rights treaties and humanitarian law.

²²⁰ Mark Olssen, ‘Can a Nietzschean Philosophy of Life Contribute to the Establishment of a New Normative Theory of Politics for the Global Age’ (2010), 46-48.

Chapter 3 – Literature Review

Over the last 50 years, there has been a growing awareness that civil registration and vital statistics are essential to good governance, the international development agenda and the realization of a number of human rights. Though the focus has primarily rested on birth registration (a recognized norm of international human rights law), death registration has received increased attention, both during times of stability as a component of state-building, and during times of emergency, most notably armed conflict. This thesis builds on the foundation that has been laid by scholars and practitioners. As I will show in this Chapter, my contribution to the field is threefold. First, I argue that death registration is an emerging customary norm under international law, during both ordinary and emergency periods. At present, relevant literature is focused primarily on potential customary obligations during armed conflict alone. Secondly, I deepen the legal research into death registration as an implicit treaty law obligation in accordance with the right to life and the right to effective remedy. Thirdly, I bridge two fields of study related to death registration, one focused on Civil Registration and Vital Statistics (CRVS) systems building and the other on civilian casualties in armed conflict. To position my contribution, this Chapter summarizes relevant literature.

There are essentially two relatively isolated streams of literature by scholars and practitioners which address the issue of death registration under international law. One is concerned with CRVS and is focused on systems building. I will call it the CVRS community. The other is concerned with civilian casualties and focuses on recording civilian deaths during armed conflict and other emergencies, including migration. I will call it the civilian casualty community. Of noteworthy importance, there has been a limited amount of scholarly work addressed to this subject area; much of the existing literature is tied to the practitioner community or related advocacy groups.

First, death registration, alongside of birth registration, has been a subject of mobilization for the CRVS community. During the last fifty years, civil registration systems around the world have dramatically improved as a result of common efforts. As the field of CRVS and legal identity emerged, civil registration and vital statistics have been recognized as inherently interdependent, both in theory and practice; yet scholars and practitioners tend to frame them with different human rights norms. Civil registration (birth, marriage and death registration) is commonly linked to the right to legal identity (Article 26 of the ICCPR), with recognition that there are indirect implications for the realization of other rights. In contrast, vital statistics are widely recognized as essential to planning, administration and the evaluation of government programmes and policies related to health,

population growth, and social and economic development.¹ In rights language, vital statistics, derived from civil registry data, are understood as a pre-requisite to the realization of the right to health,² particularly regarding the obligation to reduce infant and child mortality³ and, more broadly, the development agenda (as described in the UN 2030 Development Agenda – the SDGs⁴). Finally, scholars⁵ and practitioners⁶ highlight that without vital statistics, it is impossible to monitor progress towards human rights obligations and other international commitments, most notably the SDGs.

Though the review of literature (below) is shaped by the general trends described above, it is perhaps worth noting that the central reference point of CRVS literature, the *UN Guidelines on the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems* (hereafter called the *UN Guidelines*), adopt a slightly different framework for discussing the legal framework for civil registration. Though the *UN Guidelines* acknowledge that death registration is not an explicit right or obligation under human rights law,⁷ they describe two categories of human rights that are impacted by civil registration, vital statistics and identity management. This first category is rights that require states to “ensure that all vital events are registered, that is, that civil registration is universal and continuous in its function”.⁸ In this regard, the *UN Guidelines* make reference to ICCPR Article 12(2)(1) aimed at reducing still births and infant mortality, obligations regarding the missing and persons presumed dead, and obligations regarding right to life and health, with CRVS as a means of recording progress in this area.⁹ The second category is rights that “may depend on the vital events having been registered”,¹⁰ namely the right to health, standard of living, property and inheritance, and obligations to investigate potentially wrongful death. Furthermore, the *UN Guidelines* argue that CRVS can only contribute to protecting human rights if they are carried out free from discrimination in law and practice.¹¹

¹ International Institute for Vital Registration and Statistics (iiVRS), ‘Technical Papers, Potentials of Records and Statistics from Civil Registration Systems for Health Administration and Research’ (September 1982) Number 19, 1.

² International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 12

³ Convention on the Rights of Child, Article 24(2)

⁴ UN General Assembly, ‘Transforming our World: the 2030 Agenda for Sustainable Development’ (2015) Seventieth session, UN Doc A/RES/70/1.

⁵ See for example Samuel Mills, Jane Kim Lee, and Bahie Mary Rassekh, ‘Benefits of Linking Civil Registration and Vital Statistics with Identity Management Systems for Measuring and Achieving Sustainable Development Goal 3 Indicators’ (2019) *Journal of Health, Population and Nutrition* 38, Article Number 18; Claire E Brolan, ‘Human Rights Practitioners Cannot be Left Behind: Engaging in Civil Registration and Vital Statistics (CRVS) Systems Thinking for County Implementation of the Sustainable Development Goal Agenda’ *Journal of Human Rights Practice* 11(1), 1-30.

⁶ See for example Get Every One in the Picture, ‘Civil Registration and Vital Statistics (CRVS) for Monitoring the Sustainable Development Goals (SDGs)’ < <https://getinthepicture.org/resource/civil-registration-and-vital-statistics-crvs-monitoring-sustainable-development-goals-sdgs> > accessed 10 March 2024; Samuel Lantei Mills, Carla Abouzhr, and Jane Kim, ‘Civil Registration and Vital Statistics (CRVS) for Monitoring the Sustainable Development Goals (SDGs)’ (2017) Working Paper, World Bank Groups < <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/979321495190619598/civil-registration-and-vital-statistics-crvs-for-monitoring-the-sustainable-development-goals-sdgs> > accessed 10 March 2024; UN Statistics Division, ‘CRVS and the Sustainable Development Goals’ < https://unstats.un.org/unsd/demographic/crvs/Global_CRVS_Docs/news/CRVS_and_the_SDGs_2016.pdf > accessed 10 March 2024.

⁷ United Nations Statistics Division, ‘Guidelines on the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems, Studies in Methods’ (2023) Series F No 123, 39.

⁸ *Ibid.*, 39.

⁹ *Ibid.*, 40.

¹⁰ *Ibid.*, para 115, 39.

¹¹ *Ibid.*, para 112, 38.

In the last decade, the CRVS community has begun to turn its attention to the role of CRVS in emergency situations, with lessons learned from the COVID-19 pandemic and various other man-made and natural disasters.¹² Of note, some guidelines have been developed to support CRVS systems during emergencies, including armed conflict.¹³ This will be further discussed in section (c). In this regard, the literature refers to the right to identity, the right to health, the right to life, and the rights of family members.¹⁴ The CRVS community has not attempted to develop a specific legal framework for periods of emergency (including armed conflict); notably, there is little mention of potential IHL or international customary law provisions which may be relevant.

Secondly, there is a movement of scholars and practitioners working towards the development of an international obligation to register civilian casualties in situations of armed conflict and migration. Authors and scholars draw on IHL, customary law and human rights law in their identification of several state obligations towards the dead. As evidence of progress in this area, ICRC has identified death registration (including of civilian casualties recording) as a customary norm of IHL¹⁵ and the UN Human Rights Council (HRC) passed a resolution in 2023 calling for a study on death registration in situations of emergency and armed conflict, led by OHCHR.¹⁶ This body of literature and international debate is characterized by an exclusive focus on death registration in extraordinary circumstances. The civilian casualty recording movement (focused primarily on situations of armed conflict) generally calls for: a) comprehensive, credible, systematic and continuous documentation of individual conflict deaths; b) recording the events surrounding or causes of these deaths; and c) that this information be made public (when it is safe to do so).¹⁷ The civilian casualty community so far has not addressed the question of the logistical and administrative systems which must already be in place for states to undertake registration. Indeed, there is little reference to CRVS systems in the civilian casualty recording literature.

¹² See for example Centre of Excellence for Civil Registration and Vital Statistics, 'Compendium of Good Practices: Harnessing Civil Registration and Vital Statistics Systems in Conflict, Emergencies and Fragile Settings' (2021) < https://crvssystem.ca/sites/default/files/assets/images/CRVS%20in%20Conflict%2C%20Emergencies%20and%20Fragile%20Settings_Full%20Compendium_e_WEB.pdf > accessed 20 January 2024.

¹³ See for example African Programme on Accelerated Improvement of Civil Registration and Vital Statistics (APAI-CRVS), 'Civil Registration in Conflict and Emergency Situations' (2017-2026) African Union < https://au.int/sites/default/files/newsevents/workingdocuments/33070-wd-civil_registration_in_conflict_and_emergency_situations_en.pdf > accessed 10 March 2024; United Nations Children's Fund, 'Civil Registration Humanitarian Contexts, Recommendations and Operational Guidelines for Member States of the African Union' < <https://www.unicef.org/wca/media/8976/file/CRVS%20Humanitarian%20final.pdf> > accessed 10 March 2024; Centre of Excellence for Civil Registration and Vital Statistics Systems (n 12); Srdjan Mrkic 'Civil registration: Maintaining International Standards in Emergencies' (5 October 2020) UN Legal Identity Task Force < <https://unstats.un.org/legal-identity-agenda/documents/CR-ER.pdf> > accessed 19 January 2024.

¹⁴ Srdjan Mrkic (n 13).

¹⁵ Jean-Marie Henckaerts and Louise Doswald-Beck, *Study on Customary Rules under International Humanitarian Law*, International Committee of the Red Cross (ICRC) (Cambridge Press 2005).

¹⁶ UN Human Rights Council, 'Importance of Casualty Recording for the Promotion and Protection of Human Rights' (7 July 2022) Fiftieth Session General Assembly, UN Doc A/HRC/RES/50/11.

¹⁷ Jacob Beswick and Elizabeth Minor, 'Casualty Recording as an Evaluative Capability: Libya and the Protection of Civilians' in Michael Aaronson and Adrian Johnson, *Hitting the Target: How New Capabilities are Shaping International Intervention* (Royal United Services Institute for Defence and Security Studies 2013), 70.

This thesis aims to contribute to efforts that will ensure states are obligated under international law to register death. As such, it extends the existing practice and research in three ways. First, concrete contributions to the field will be made by considering death registration as an international customary obligation. The research for this thesis did not identify any other academic or practitioners arguing that there is an existing or emerging customary obligation for universal death registration (as part of a civil registration system) that extends well beyond armed conflict. In this thesis, I argue that there is such a customary law-based obligation, and that it is universal in Chapter 5. Notably, all customary law-based arguments in the literature focus explicitly and exclusively on death registration during armed conflict.

Secondly, though the CRVS community makes frequent reference to human rights obligations related to civil registration and legal identity (including death registration), in almost all cases civil registration is identified as being essential to the realization of rights, rather than as an obligation in and of itself. CRVS systems are commonly tied to the right to legal identity; death registration, in particular, is most directly linked to a state's obligation to reduce infant, stillborn and child mortality (which is limited by age). A host of other rights, explored below, are referenced as being impacted by registration systems. However, there are very few studies that attempt to develop potential treaty obligations to register death as an implicit procedural obligation under the right to life¹⁸ and the right to effective remedy.¹⁹ The notable exception is the Every Casualty Counts (ECC) report from 2023.²⁰ A few studies (see *UN Guidelines*²¹) acknowledge that the right to life may be impacted by death registration, but they do not go so far as to suggest, let alone argue, that death registration is *required* by these Articles. I make that argument in Chapter 7.

Thirdly, this study seeks to deepen the tie between efforts to strengthen CRVS systems, on one hand, and emerging requirements to register civilian casualties in armed conflict, on the other. In summary, this study is unique in its look at universal death registration as a customary obligation at all times (not only in emergencies as per ICRC's study²²) and in its analysis of death registration as an implicit procedural obligation required by the right to life and the right to effective remedy under IHRL, applicable to all people.

The literature review below is divided into three sections, respectively considering: (a) death registration and the right to a legal identity; and death registration and its impact on other human rights; (b) vital statistics and the right to health and development; and (c) CRVS and emergency

¹⁸ ICCPR Article 6

¹⁹ ICCPR Article 2

²⁰ Every Casualty Counts 'Casualty Recording in Human rights and Humanitarian Law' (2023) < https://everycasualty.org/wp-content/uploads/2023/03/FINAL-FINAL-Advocacy-Report_2023_DPS_48pp.pdf > accessed 21 January 2024.

²¹ UN Statistics Division (n 7).

²² Jean-Marie Henckaerts and Louise Doswald-Beck (n 15).

preparedness and response. Whereas the first two sections draw on literature from the CRVS community exclusively, the third section will look at the literature from the CRVS community as well as the civilian casualty community. In the last section, I also look at recent studies exploring obligations to record deaths during migration.

I. Civil Registration and Vital Statistics and the Legal Identity Agenda

At the international level, interest in civil registration and vital statistics has steadily grown over the last 200 years, as evidenced by the debates in the International Statistical Congress in 1853; the interest of the International Statistical Institute (established in 1885);²³ and in the development of principles, operating manuals and issuing various recommendations, training sessions, seminars and conferences by the Health Division of the League of Nations and subsequent UN organs and agencies.²⁴ This section will consider the primary trends in the CRVS literature regarding the legal foundation for death registration.

IA Civil Registration and Right to Legal Identity

The right to birth registration and the right of everyone to recognition everywhere before the law is recognized by Article 6 of the Universal Declaration of Human Rights (UDHR), Article 24 of the ICCPR, and Article 7 and 8 of the CRC. It is confirmed by the 1951 Convention on the Status of Refugees (Articles 25 and 27), the 1954 Convention on the Status of Stateless Persons (Articles 25 and 27), the 1961 Convention on the Reduction of Statelessness (Articles 1-4), the 1969 International Convention on Elimination of All Forms of Racial Discrimination (ICERD) (Article 5(d)(iii)), the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (including right to a nationality under Article 9, and Article 3, regarding equality before the law), the 1990 International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (Article 29), and the 2006 Convention on the Rights of Persons with Disabilities (CRPD) (Article 18). UN agencies and practitioners most commonly refer to the right to recognition

²³ International Institute for Vital Registration and Statistics, 'Technical Papers, Improving Civil Registration systems in Developing Countries' (October 1982) Number 20 <https://unstats.un.org/unsd/demographic/meetings/wshops/1995_Rabat_CRVS/Docs/Improving_DevelopingCountries.pdf> accessed 20 January 2024, 1.

²⁴ As examples see : iiVRS, 'Technical Papers, Actions for the Improvement of Civil Registration and Vital Statistics' (Dec 1983) Number 27, p. 1 <https://www.cdc.gov/nchs/data/isp/027_Action_for_the_Improvement_of_Civil_Regist_and_Vital_Stat.pdf> accessed 19 January 2024; UN Legal Identity Agenda Task Force 'Maintain Civil Registration and Vital Statistics during COVID-19 Pandemic' (9 April 2020) <<https://unstats.un.org/legal-identity-agenda/documents/COVID-19-Guidelines.pdf>> accessed 19 January 2024; Srdjan Mrkic (n 13); UNDP, UN Statistics Division, UNICEF, 'Implementation of the UN Legal Identity Agenda: UN Country Team Operational Guidelines, Final Draft' <https://unstats.un.org/legal-identity-agenda/documents/UNCT_Guidelines.pdf> accessed 19 January 2024 (UNDP, UNSD, UNICEF, UNCT Guidelines); African Union (African Ministers Responsible for Civil Registration) 'Innovative Civil Registration and Vital Statistics System: Foundation for Legal Identity Management' (14-18 October 2019) CRMCS/2019/23, para 12(a); Operating manuals: UN Statistics Division 'Handbook on Civil Registration and Vital Statistics Systems: Management, Operation and Maintenance, Revision 1' (2018) Series F No 72 Rev 1 <<https://unstats.un.org/unsd/demographic-social/Standards-and-Methods/files/Handbooks/crvs/crvs-mgt-E.pdf>> accessed 19 January 2024; UN Statistics Division (n 7).

before the law (also called the ‘right to a legal identity’) as a reference point for CRVS. As a reminder, ‘legal identity’ is defined as the basic characteristics of a person’s identity, including name and place and date of birth registered with a legally recognized authority and confirmed by the issuance of a certificate. Beginning with birth registration, legal identity is ended through the issuance of a death certificate by a civil authority upon registration of death.

Since its emergence in 2019, the UN Legal Identity Agenda has played a key role in consolidating global efforts to ensure global realization of the right to legal identity. In so doing, it established deep links between the realization of universal legal identity and the establishment and maintenance of civil registration.²⁵ As described in key UN documents, implementation of the UN Legal Identity Agenda requests that member states adopt a holistic approach to civil registration, vital statistics and identity management which guarantees universal recording of vital events, particularly births and deaths.²⁶ Additionally, states are called to establish and maintain a population register which can provide continuous and up-to-date statistical and administrative data (vital statistics), based on the civil registration system.²⁷ The Legal Identity Agenda has been widely endorsed by member states.²⁸

In the same vein, the *UN Guidelines* underline that civil registration is the strongest foundation for national identity management, recognizing birth registration as the entry point and death registration as the conclusion.²⁹ Similarly, the International Organization for Migration (IOM) has tied civil registration to the right to identity, arguing that “[e]very person has the inherent right to be recognized before the law. This right is translated into practice by civil registries or legally recognized authorities by recording vital information and the issuance of proof of legal identity.”³⁰

Though there is clear recognition of the functional interdependence of the right to legal identity and civil registration, it is less obvious that the literature establishes a legal obligation to put in place and maintain civil registration, under the right to legal identity. Of course, this only impacts death registration, as there is a clear, independent obligation to register births described in the CRC and ICCPR, among other human rights instruments. The careful wording in the UN Legal Identity Agenda, *UN Guidelines* and other UN documents would seem to suggest that civil registration (with regard to the death registration component) is only recognized as the *best means* of realizing the right to legal identity. Even SDG 2030 Agenda Target 16.9, which aims to establish “legal identity for all,

²⁵ African Union (n 24) para 5-8.

²⁶ Srdjan Mrkic, ‘Concept Note Developed by the UN Legal Identity Expert Group’ (2019) UN Legal Identity Expert Group, United Nations Strategy for Legal Identity for All, para 23.

²⁷ Ibid, para 24.

²⁸ As an example, the Fifth Conference of African Ministers Responsible for Civil Registration confirmed that all members states of the AU should adopt and implement the Legal Identity Agenda “as a systematic and perpetual mechanism for ensuring legal identity for all.” (African Union (n 24) para 15.

²⁹ UN Statistics Division (n 7)

³⁰ Antonio Vitorino (Director General), ‘Forward’ in International Organization of Migration, ‘IOM Institutional Strategy on Legal Identity’ (2021) <<https://publications.iom.int/books/iom-institutional-strategy-legal-identity>> accessed 20 January 2024.

including birth registration, by 2030”, stops short of requiring civil registration; rather SDG indicator 16.9.1 indicates that civil registration is the ‘gold standard’ for legal identity management, suggesting that there may be other acceptable means of legal identity management. The only document which is forthright in identifying an actual obligation to register death is the *UN Guidelines*; this document draws a distinction between rights that *require* a functional civil registration and those that are *dependent* on a functional civil registration system.³¹ However, in their description of the former, they begin by acknowledging that “[n]either the Universal Declaration of Human Rights nor the other international instruments explicitly reference the right to death registration.”³² The authors of this document identified only one implicit obligation to register death, grounded in Article 12(2) (a) of the ICESCR, which requires state parties to adopt measures to reduce stillbirth and infant mortality.³³ This will be discussed further in section III below.

Consider the *UN Strategy for Legal Identity for All Concept Note*,³⁴ developed by the UN Legal Identity Expert Group; this document identifies civil registration as the means by which the right to recognition before the law is realized. The *Guidelines for Implementation of the UN Legal Identity Agenda*, drafted for UN Country Teams, similarly states that “the UN Legal Identity Agenda... [calls] on all Members States to ensure universal registration of all vital events, translated into regular, reliable and comprehensive vital statistic and resulting in legal identity for all.”³⁵ Once again, it stops short of identifying civil registration as an obligation, but points to its instrumental use in realizing an existing obligation, namely providing for a legal identity for all.

Mrkic, writing on behalf of the UN Legal Identity Task Force, writes that,

[T]he principal reason for the existence of civil registration – its basic purpose and one that must be facilitated by the State – is to serve as an institution capable of disclosing facts relating to civil status based on technical legal principles, through which individuals can be assured of the legitimacy and authenticity of civil status-related facts in order to accredit them to other individuals or the administration itself, by means of public registration documents known as certifications. Consequently, in the contemporary paradigm, civil registration provides both the certification of identity for a new-born child and also critical entry into the identity management system, whether through the stand-alone population register or, in the case where population registers are subsumed by the identity management system, directly

³¹ UN Statistics Division (n 7) 39, para 115.

³² Ibid, para 115.

³³ Ibid, para 115.

³⁴ Srdjan Mrkic (n 26) para 1-3.

³⁵ United Nations Development Programme (UNDP), UN Statistics Division, United Nations Children’s Fund (UNICEF), ‘Implementation of the UN Legal Identity Agenda: UN Country Team Operational Guidelines, Final Draft’ <https://unstats.un.org/legal-identity-agenda/documents/UNCT_Guidelines.pdf> accessed 19 January 2024, 6, para 8.

into it. At the other end of the life cycle, civil registration also plays a critical role in notifying the occurrence of deaths to the population register and the identity management system, so that the records can be amended accordingly, and those identities are withdrawn or marked as ‘deceased’.³⁶

By so doing he clearly argues that there is an inherent and symbiotic relationship between the establishment of legal identity and the civil registration system. However, he stops short of articulating a legal obligation to put in place of civil registration. Note the use of ‘should’ (as opposed to ‘must’) in this final quotation from Mrkic [emphasis added]: “All UN Member States *should* adopt and implement [the UN legal identity] agenda as a systematic and perpetual mechanism for ensuring legal identity for all.”³⁷

As further examples, though the IOM notes that the right to legal identity is best realized through civil registration, they do not recognize an obligation for registration under the right to a legal identity; they argue “[a]lthough the universal right to an identity is not bound to civil documents, the absence of documentary evidence of legal identity is of particular concern for people on the move.”³⁸ As such, seemingly, they do not recognize registration itself as an obligation, but rather as a means to an end. Similarly, though UNFPA’s Centre of Excellence for CRVS (CoE-CRVS) refers to the right to legal identity in the context of civil registration,³⁹ they do not explicitly recognize a human rights obligation for CRVS. Rather, they argue that “CRVS systems advance human rights and strengthen the evidence base for sustainable development ...”⁴⁰

There are several problems with framing death registration by the right to legal identity. First, though management of the right to legal identity inevitably requires a complex civil registration system (including both birth and death), taken in isolation it does not provide a logical requirement for all aspects of death registration. Though termination of legal identity necessitates identification of the deceased, there is no logical requirement for identification and registration of cause of death. As will be explored in subsequent Chapters, grounding death registration obligations in the right to life provides a more holistic obligation that encompasses both issues related to identity as well as cause of death. Secondly, though there is a general recognition across the UN literature that birth and death registration and identity management are best realized through civil registration, it is less clear that they are identifying an existing implicit procedural obligation to establish civil registration under the

³⁶ Srdjan Mrkic (n 13)

³⁷ United Nations Development Programme (UNDP), UN Statistics Division, United Nations Children’s Fund (UNICEF) (n 35) para 83.

³⁸ Antonio Vitorino (Director General) (n 30).

³⁹ Sarah Castle, Elizabeth Ortiz, and Philip Setel, ‘Demand-Side Factors Related to the Registration of Births, Marriages, and Deaths: A Literature Review’ (2020) Centre of Excellence for CRVS Systems, Working Paper Series, Issue 2.

⁴⁰ Centre of Excellence for Civil Registration and Vital Statistics, ‘Centre of Excellence for Civil Registration and Vital Statistics System’ <https://www.unfpa.org/sites/default/files/resource-pdf/UNFPA_CRVS_Brochure_EN_Web_0.pdf> accessed 20 January 2024.

related human rights Articles. By contrast, in subsequent Chapters of this thesis I will make the argument that death registration is in fact an implicit procedural obligation under the right to life. To these ends, this thesis extends the current research by rooting death registration obligations in the right to life.

I.B Civil Registration and Implications for other Human Rights, including the Right to Life

There is an established link between birth registration and the establishment of legal identity and the realization of other human rights, including with regard to voting,⁴¹ marriage,⁴² employment,⁴³ social security,⁴⁴ insurance,⁴⁵ legal identity (nationality and citizenship),⁴⁶ protection related to children in conflict with the law,⁴⁷ protections against early and forced marriage,⁴⁸ protection against human trafficking and the sale of children,⁴⁹ and access to basic services (education,⁵⁰ health,⁵¹ etc). Death registration is also recognized as implicit in a number of human rights, including the right to inherit,⁵² the right to social security,⁵³ the right to food and nutrition,⁵⁴ the right to health,⁵⁵ right to marry,⁵⁶

⁴¹ UN Human Rights Committee, 'Birth Registration and the Right of Everyone to Recognition Everywhere as a Person before the Law' (17 June 2014) 27th Session, UN Docs A/HRC/27/22, 6, para 17 (UNHRC Birth Registration and the Right to Recognition Everywhere as a Person before the Law).

⁴² Ibid, para 17.

⁴³ Ibid, 6, para 17 (see child labour at 8, para 25-26)

⁴⁴ Ibid, para 17.

⁴⁵ Ibid, para 17.

⁴⁶ Ibid, para 23-24.

⁴⁷ Ibid, para 27-28.

⁴⁸ Ibid, para 29.

⁴⁹ Ibid, para 30-32.

⁵⁰ Ibid, para 19.

⁵¹ Ibid, para 21-22.

⁵² Mentioned in the International Convention on the Elimination of Racial Discrimination (ICERD) Article 5(d); "As noted in connection with the birth register, if succession is by law, the first requirement is proof of parental filiation with the deceased person, a proof that can only be established by the legal birth record. But equally important to the right to inherit is the official proof that the person who held the property has, indeed, died. The official death record certifies to the fact of death, as well as to its time and place of occurrence." (International Institute for Vital Registration and Statistics (iVRS), 'Technical Papers, Human Rights and Registration of Vital Events' (March 1980) Number 7, 10)

⁵³ Universal Declaration of Human Rights (UDHR) Article 25(1) and International Covenant on Civil and Political Rights (ICCPR) Article 9 (ICCPR); "The right of a family unit to protection may arise when the breadwinner dies without providing for the continued well-being of the family. In such cases, the family is entitled to such allowances or insurance as may be available from the State or other authority provided proof of the death of the bread winner can be provided. A certified copy of the death record provides the necessary proof. The death certificate is also the proof of death required for establishing beneficiary status in respect of private pensions." (Ibid, 11)

⁵⁴ UDHR Article 25(1) and International Covenant on Economic, Social, and Cultural Rights (ICESCR) Article 11(1); "The register of death plays no direct part in implementing the right to food ... on the other hand, the need for certain kinds of food can be revealed by the incidence of nutritional diseases that cause death, especially those that operate among young children in rural and economically depressed areas. The register of deaths, including a medically certified statement of the cause of death, provides the elements for the calculation of the probable incidence of nutritional deficiencies in various segments of the population, as reflected in the death rates for specific causes, such as avitaminosis. Recognition of such deficiencies can initiate steps to remedy the situation and help promote the exercise of the right to food" (Ibid, 8)

⁵⁵ "The death register provides the number of infant deaths (deaths under one year of age) required for the computation of the infant mortality rate referred to above. Without such a register, computation of this important rate on a continuing basis would be impossible. Registration of death, especially the cause of death; also provides the information required for the statistical determination of maternal mortality rates, as well as of the incidence of various diseases that cause death. These data serve to guide public health authorities in the development of programs designed to protect and improve the health of the population and thus help guarantee everyone the right to health. They are necessary to ensure that, as provided in Article 12(2)(a) and (c) of the International Covenant on Economic, Social and Cultural Rights, States can take the steps necessary for "the healthy development of the child" and "the prevention, treatment and control of epidemic, endemic, occupational and other diseases." Analysis of the official records of the causes of death also provides guidance to fruitful avenues of medical research." (Ibid, 9).

⁵⁶ UDHR Article 16(1) and ICCPR Article 23(2); "In addition to the age and consanguinity constraints, the right to marry assumes that the intending spouses have a personal status that allows them to enter into a marriage, according to the law of each country. In countries where monogamy prevails, this means that they should be unmarried at the time, that is, they may be either "never married," "widowed" or "divorced." In the case of widowhood, the right to marry requires proof of death of the previous spouse. Documents from the official register of death suffice as proof of widowhood." (Ibid, 11.).

rights of spouses to custody of children,⁵⁷ and the rights of spouses to equality.⁵⁸ There is widespread acknowledgment that where there are discriminatory laws or practices in the civil registration and identity management system, certain parts of the population will be unable to exercise their full rights.⁵⁹

This link between civil registration and the realization of a myriad of human rights is confirmed by the UN Country Team guidelines on the implementation of the UN Legal Identity Agenda, acknowledging that states require information on legal identity to realize fundamental, civil and socio-economic rights.⁶⁰ The examples provided are predominately focused on birth registration and the establishment of legal identity. However, a few examples are given regarding death registration, including its impact on inheritance rights by descendants and spouses;⁶¹ terminating all services and financial transfers to an individual;⁶² effectively tracking progress in reducing maternal and child mortality (which will be discussed below); and ensuring widows can claim survivors' benefits.⁶³ Though there is widespread acknowledgment across the literature that these rights *may* be impacted by death registration (in particular), no one has argued that there is an explicit or implicit obligation under any of the listed human rights that would *require* a state to register deaths.

As described above, the one exception is the *UN Guidelines* which differentiate between rights that *require* states to register vital events (suggesting an implicit obligation) and rights that *depend* on vital events.⁶⁴ Though there is a comprehensive list of both related to birth and marriage registration, regarding death registration existing obligations are less clear. As discussed above, the *UN Guidelines* begin by acknowledging that there is no explicit obligation under human rights law to register death. Though they recognize an implicit obligation to register death in accordance with Article 12(2) of the ICESCR (related to reducing stillbirths and infant mortality) and as a means of ascertaining if the state is fulfilling its obligations vis-a-vis the right to health (which will be discussed below), the only other recognized potential implicit obligations are with regard to non-discrimination generally and provisions for registration of death in cases of missing bodies or missing persons presumed dead.⁶⁵ Otherwise, the *UN Guidelines* list the following rights which they suggest *may* depend on death registration:⁶⁶

⁵⁷ ICCPR Article 23(4); "The right of the surviving spouse to custody of the children of the marriage would require proof of the death of the other partner in the marriage of which the children are the off- spring. The death register provides such proof." (Ibid, 12.).

⁵⁸ ICCPR Article 23(4); "Marriages dissolved by death of one spouse require registration of the death in an official register to protect the interests of the surviving spouse as to assets, children, death benefits, the right to remarry and so forth." (Ibid, 12.).

⁵⁹ UN Statistics Division (n 7) 37, para 109.

⁶⁰ UNDP, UNSD, UNICEF, UNCT Guidelines (n 35), 13, para 43.

⁶¹ Ibid, para 48; 15, para 54.

⁶² Ibid, 15, para 54.

⁶³ Ibid, 14, para 48.

⁶⁴ UN Statistics Division (n 7) para 115.

⁶⁵ Ibid, 40, para 118.

⁶⁶ Ibid, 39, para 115.

- (1) **Right to health:** The *UN Guidelines* argue that “it is essential that deaths are registered and causes of death are captured to generate important vital statistics for informed health policies to prevent, treat and control morbidity and mortality in the population”.⁶⁷ As such, they are referring to vital statistics generated by mortality data records in a civil registration system (discussed below in section (III)).
- (2) **Right to adequate standard of living:** Though the *UN Guidelines* do not expressly link death registration to the **right to an adequate standard of living**, they do mention that special protections for infant and maternal health care require “precise and accurate statistics”, seemingly making reference to mortality data.⁶⁸ The *UN Guidelines* go on to describe a state’s obligation to combat child diseases and malnutrition, provision of clean drinking water, and to “recognize the dangers of environmental population”.⁶⁹ Mortality statistics are not referenced as a pre-requisite, but the implication is there.
- (3) **Right to property and inheritance:** The *UN Guidelines* suggest that death registration may trigger inheritance processes and thereby contribute to protecting the **right to property and inheritance**.⁷⁰
- (4) **Right to life:** The *UN Guidelines* tie death registration to the right to have suspicious and unnatural deaths investigated in accordance with the **right to life**. Though the guidelines describe both a state’s obligation not to deprive any person of their life arbitrarily as well as their duty to investigate suspicious and unnatural deaths and hold responsible parties to account, the UN Guidelines do not explicitly recognize death registration as an implicit obligation.⁷¹

In this thesis I seek to ascertain if there is an existing obligation to register death, including under treaty law. As such, I am not particularly concerned with the potential implications of death registration on rights realization. Rather, I am narrowly focused on determining if an obligation itself exists. As shown above, the only explicit obligation to register death referenced in the CRVS literature are the obligations to reduce still-birth and infant mortality and those related to missing persons. Though both clearly require death registration for a particular group (infants on one hand and missing persons on the other) there would seem to be no legal grounds to suggest that an obligation specifically addressed to a finite group should be applicable universally. On which basis could it be argued, for example, that the obligation to register the deaths of missing persons be applied to non-missing persons? Or that the obligation to register infant death towards reduced infant mortality requires death registration for the elderly? As such, though they contribute to establishing death registration obligations, these Articles do not lay a foundation for a *universal* obligation to register the

⁶⁷ Ibid, 43, para 128.

⁶⁸ Ibid, 46, para 137.

⁶⁹ Ibid, 46, para 137.

⁷⁰ Ibid, 48, para 144.

⁷¹ Ibid, 46-47, para 139.

deaths of all people, everywhere. In subsequent chapters, I will argue that the right to life, however, does include an implicit procedural obligation to register all deaths.

II. Vital Statistics in the Context of the Right to Health, the Development Agenda and Good Governance

As discussed above, whereas civil registration is commonly linked to the right to legal identity in the CRVS literature, vital statistics tends to be framed by good governance and the international development agenda more generally and the right to health specifically. The right to health is provided for in the ICESCR⁷²; ICERD⁷³; CEDAW⁷⁴; CRC⁷⁵; International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families⁷⁶; and the CRPD.⁷⁷ It is also recognized in regional instruments.

Continuous registration systems allow for the compilation and the development of vital statistics by a central authority. The diversity of information collected during civil registration (age, location, etc) allows for tabulation of statistics and the production of analytical studies on a wide cross-section of topics over time. The historical perspective of continuous registration is of particular importance to allow for trend analysis. Where systems are well established, mortality data is remarkably consistent across states. Of particular importance, the global standardization of cause of death reporting has greatly facilitated international data comparability.⁷⁸ There are many studies that look at differentials in vital statistics, such as age, sex, occupation, ethnicity, socioeconomic characteristic, to identify patterns and mortality risk factors. A few examples include the study of Tuberculosis determinants;⁷⁹ malaria deaths and the use of DDT/pesticides;⁸⁰ socio-economic factors;⁸¹ correlation between cancer rates (through mortality statistics) and counties where chemical industries are located;⁸² and correlation between lung cancer rates (through mortality statistics) and the location of paper, chemical, petroleum and transportation industries.⁸³

⁷² Article 12

⁷³ Article 5(e)(iv)

⁷⁴ Article 11(1)(f), 12 and 14(2)(b)

⁷⁵ Article 24

⁷⁶ Article 28, 43(c) and 45(c)

⁷⁷ Article 25

⁷⁸ International Institute of Vital Registration and Statistics (iiVRS) (n 1) 8-9.

⁷⁹ See as examples D Poll, D and K Chan, 'Differential Declines in Tuberculosis Mortality' (1969) Vol. II, 1006-1-12. Int. Pop. Conf., IUSSP.

⁸⁰ E. J. Pampana, 'Effect of Malaria Control on Birth and Death Rates' (1954) UN Proceedings of the World Population Conference, Vol. 1, 497-509; S.A. Meegama, 'Malaria Eradication and Its Effect on Mortality Levels' (1967) Pop. Studies 21(1), 207-237.

⁸¹ H Fredriksen, 'Determinants and Consequences of Mortality Trends in Ceylon' (1961) Public Health Reports 72, 543-553.

⁸² R Hoover and J. F. Fraumeni, 'Geographic Patterns of Lung Cancer: Industrial Correlations' (1976) Amer. Jour. Epidemiol. 103(6), 539-550.

⁸³ W.J. Blot and J.F. Fraumeni, 'Cancer Mortality in the U.S. Counties with Chemical Industries' (1975) Environ. Res. 9, 196-207.

The international community has increasingly highlighted the importance of evidence-based planning in good governance.⁸⁴ Notably, the concept of ‘good governance’, as defined by the UN and the World Bank, includes universal registration.⁸⁵ Vital statistics, based on civil registration, are recognized by many as an important source of data.⁸⁶ As an example, a 2014 report from the UN High Commissioner for Human Rights argues that “demographic information provided by a comprehensive civil registration system ... is crucial for government planning and decision-making, as well as for the monitoring of programmes for children, families and the broader community. Accurate information gives the State the ability to not only track, counter and prevent abuse against individuals but also to plan service provision for children and their caregivers and to evaluate the impact of policies ...”⁸⁷ The report goes on to note that this information is particularly important for minority groups, drawing attention to a UNICEF report that found “that, when lack of birth and death registration is concentrated among population groups at high risk (such as minority groups, indigenous populations, and families living in slums), child mortality may be systematically underestimated.”⁸⁸ The report also highlights that electoral roles are often taken from the civil register and, as such, accurate data on births and deaths are essential to ensure democratic governance.⁸⁹

In addition to its contribution to evidence-based policy development and good governance, the UN Legal Identity Agenda,⁹⁰ the International Institute for Vital Registration and Statistics (iiVRS)⁹¹ and the CoE-CRVS,⁹² among many others, call attention to the importance of vital statistics in tracking progress against international development goals. Notably, civil registration is recognized as the catalyst for achieving at least ten SDGs.⁹³ Two SDGs are directly relevant to vital statistics, namely SDG 17.18, which calls for increased availability of high-quality, timely and reliable data (disaggregated by income, gender, age and other characteristics) and SDG 17.9, which is concerned with building statistical capacity at the national level. The latter is monitored by indicator 17.19.2, which reads “proportion of countries that ... have achieved 100 per cent birth registration and 80 per cent death registration.” Additionally, vital statistics are required to track approximately 30% of SDG indicators across 12 of the 17 SDG areas, including SDG target 3.1 regarding reduced global maternal

⁸⁴ UN Statistics Division (n 7)

⁸⁵ African Union (n 24) para 5-8.

⁸⁶ See for example: Ibid.

⁸⁷ UN Human Rights Committee, ‘Birth Registration and the Right of Everyone to Recognition Everywhere as a Person before the Law’ (17 June 2014) 27th Session, UN Docs A/HRC/27/22, 10, para 39 (UNHRC Birth Registration and the Right of Everyone to Recognition Everywhere as a Person before the Law).

⁸⁸ Ibid, para 39; See also United Nations Children’s Fund (UNICEF), ‘A Passport to Protection: A Guide to Birth Registration Programming’ (2013) < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3989367 > accessed 20 January 2024, 22.

⁸⁹ Ibid, 7; UNHRC (n 87), para 43.

⁹⁰ UN Statistics Division ‘UN Legal Identity Agenda’ < <https://unstats.un.org/legal-identity-agenda/> > accessed 20 January 2024.

⁹¹ International Institute for Vital Registration and Statistics (iiVRS) (n 52) 4-5.

⁹² Centre of Excellence for Civil Registration and Vital Statistics, ‘Four Ways CRVS Systems Can Support the UN Sustainable Development Goals’.

⁹³ African Union (n 24) para 5-8; Centre of Excellence for Civil Registration and Vital Statistics, ‘Four Ways CRVS Systems Can Support the UN Sustainable Development Goals’.

mortality⁹⁴ as well as SDG 4, 5, 8, 10, 16 and 18.⁹⁵ It is widely acknowledged that disaggregated vital statistics are critical to fulfilling the Leave No One Behind agenda espoused by the 2030 SDG Agenda.⁹⁶

There is a tendency across the CRVS literature to loosely tie vital statistics to advancing development goals and human rights generally, without mention of specific rights.⁹⁷ Where a specific human rights Article is referenced in connection to mortality statistics, it is usually the right to health which requires diseases surveillance and tracking of morbidity and mortality trends. For example, WHO argues that “when deaths go uncounted and the causes of death are not documented, governments cannot design effective public health policies or measure their impact ... Information on births and deaths by age, sex and cause is the cornerstone of public health planning.”⁹⁸ UN documents and other studies also point to the human rights obligation to reduce still born and infant mortality⁹⁹ and/or the obligation to reduce infant and child mortality,¹⁰⁰ both of which can only be monitored with mortality statistics.¹⁰¹ The iiVRS argues that there is in fact an implied obligation under Article 12(2)(a) of the ICESCR requiring the production of vital statistics:

death registration can provide the number of infant deaths (deaths under one year of age) [which] is the basis for the measurement of infant mortality. Without this number, provided by a death register, and the number of livebirths from the register of births, it would not be feasible to compute the infant mortality rate over time and for various population groups. Hence, it would not be possible to monitor the trend of the rate and to plan for and assess its reduction.¹⁰²

This thesis adds to the current literature by arguing that vital statistics are not only a contributing factor in the realization of human rights (as the CRVS literature seems to argue) but that states have an implicit positive obligation under the right to life requiring the collection of vital statistics. Though it might be possible to make a similar argument around the right to health, due to space limitations in this thesis, I was only able to focus on the right to life. Though ICESCR Article 12(2)(a) (obligation

⁹⁴ Centre of excellence for Civil Registration and Vital Statistics, ‘Four Ways CRVS Systems Can Support the UN Sustainable Development Goals’ <<https://crvssystemsc.ca/blog/four-ways-crvs-systems-can-support-un-sustainable-development-goals>> accessed 21 January 2024.

⁹⁵ United Nations Children’s Fund (UNICEF), ‘CRVS Platforms: Key Findings for Practitioners’ (2020) https://unstats.un.org/legal-identity-agenda/documents/Paper/CRVS_Key%20Findings_for_Practitioners.pdf accessed 21 January 2024.

⁹⁶ Srdjan Mrkic (n 26) para 5.

⁹⁷ As examples see Sarah Castle, Elizabeth Ortiz, and Philip Setel (n 39); Centre of Excellence for Civil Registration and Vital Statistics (n 40).

⁹⁸ World Health Organization, ‘Civil Registration: Why Counting Births and Deaths is Important, Factsheet’ (2014) <<https://www.who.int/news-room/fact-sheets/detail/civil-registration-why-counting-births-and-deaths-is-important>> accessed 21 January 2024.

⁹⁹ International Covenant on Economic, Social and Cultural Rights (ICESCR) (agreed 16 December 1966, entered into force 3 January 1976) UNTS Vol 993, Article 12.

¹⁰⁰ Convention on the Rights of the Child (entered into force 2 September) UNTS 1577 (CRC), Article 24.

¹⁰¹ International Institute for Vital Registration and Statistics (iiVRS), ‘Methods and Problems of Civil Registration Practices and Vital Statistics Collection in Africa’ (July 1981) Technical Papers Number 16, 1.

¹⁰² International Institute for Vital Registration and Statistics (iiVRS) (n 52) 3.

to reduce stillbirths and infant mortality) and CRC Article 24 (obligation to reduce infant and child mortality)¹⁰³ clearly require death registration for specific age groups, there is no apparent reason that these obligations should be extended to other age groups. As such, though they contribute to establishing a universal obligation to register death, taken alone they are far from sufficient. Again, by shifting the legal basis for the obligation to produce vital statistics to the right to life, this thesis extends the legal basis for universal death registration to all age groups.

III. Civil Registration and Vital Statistics in Emergency Situations

Efforts to record civilian casualties during periods of armed conflict and other natural and man-made emergencies can be traced back to antiquity. Michelle Bachelet, the UN High Commissioner for Human Rights, writes,

[c]asualty recording has received increasing recognition as an important and effective means of enhancing the protection of civilians in armed conflict situations and elsewhere. It serves the key purpose of identifying patterns of harm and shedding light on behaviour that has the most adverse effect on civilians and, in some instances, on those responsible. The evidence base generated from casualty recording frequently facilitates engagement with parties to a conflict as well as informs their efforts to better protect civilians and prevent violations of international humanitarian and human rights law. It also serves as a bridge to strengthen dialogue and coordination with other actors involved in protection work, including humanitarians, helping to direct resources to communities with pressing protection needs.¹⁰⁴

There are three discernible trends in the literature addressing death registration during periods of emergencies (including armed conflict): (a) as authors recognize that civil registration (including death registration) is essential to the realization of many human rights, they argue for the protection and continued operation of CRVS systems during periods of emergency to protect the rights of current and future generations;¹⁰⁵ (b) scholars and practitioners recognize the utility of CRVS systems in humanitarian assistance;¹⁰⁶ and (c) scholars and advocates point to the critical importance of death registration in holding state and non-state actors accountable for IHL and ICL obligations, transitional justice, post-conflict reconstruction, ending impunity and re-establishing the rule of law, and post-conflict peacebuilding.¹⁰⁷

¹⁰³ UN Statistics Division (n 7) 40, para 118.

¹⁰⁴ Michelle Bachelet, 'Forward' in UN High Commissioner for Human Rights, 'Guidance on Casualty Recording' (2019).

¹⁰⁵ Srdjan Mrkic (n 13).

¹⁰⁶ Ibid.

¹⁰⁷ See for example Jacob Beswick and Elizabeth Minor (n 17) 70-71.

There are two parallel approaches to the issue of death registration during emergencies, which have remained relatively independent. On the one hand, the CRVS community has recognized the importance of building emergency preparedness capacity at the national level to ensure that CRVS systems are able to continue to operate during periods of emergency, particularly in provision of essential birth and death registration services. In parallel, scholars and practitioners (including the ICRC) have been pushing for a particular set of obligations regarding recording civil casualties during armed conflict. This group of scholars and practitioners hinge their argument on humanitarian law and human rights law obligations, with little reference to CRVS systems. There has been some notable progress regarding the registration of migrant deaths.¹⁰⁸

III.A The CRVS Community: CRVS Systems in Emergencies

Consider the progress within the CRVS field regarding emergency preparedness and response. Practitioners argue that alternative procedures need to be in place to allow for rapid adaptation of CRVS systems during emergencies, including reduced and simplified administrative procedures. There has been some progress in the development of emergency preparedness guidelines to support continued registration services in the last few years. In 2020, the UN Legal Identity Task for issued guidance on maintaining CRVS international standards during emergencies.¹⁰⁹ During COVID-19, these guidelines were accompanied by technical support and best practice sharing between UN members states.¹¹⁰ For illustrative purposes, the principal positions of CoE-CRVS and the UN Legal Identity Team are discussed below.

The OHCHR's *Guidance on Casualty Recording* states that “[c]asualty recording is a form of international human rights law and international humanitarian law monitoring.”¹¹¹ They draw attention to its use in documenting a range of rights violations in “deteriorating, crisis, armed conflict and protracted crisis situation or to establish ‘patterns of harm’ caused to civilians by armed conflict.”¹¹² They specifically recognize that casualty recording can be used to monitor violations of the right to life, personal integrity, health, education and freedom of expression, among others. As

¹⁰⁸ See for example Last Rights ‘Extended Legal Statement and Commentary: The Dead, the Missing and the Bereaved at the World’s Border, Statement of the International Legal Obligation of States Together with Commentary (January 2019) <https://www.researchgate.net/publication/346653363_Last_Rights_Extended_Legal_Statement_and_Commentary_1_The_Dead_the_Missing_and_the_Bereaved_at_the_World%27s_Borders_2_Statement_of_the_International_Legal_Obligations_of_States_Together_with_Comm> accessed 21 January 2024; IOM Global Migration Data Analysis Centre ‘Migration Data Portal’ <<https://www.migrationdataportal.org/about>> accessed 21 January 2024; Stefanie Grant, ‘Dead and Missing Migrants: The Obligations of European States under International Human Rights Law’ (September 2016) Mediterranean Missing; ICRC ‘Counting the Dead: How Registered Deaths of Migrants in the Southern European Sea Border Provide Only a Glimpse of the Issue’ (15 December 2022) <<https://reliefweb.int/report/greece/counting-dead-how-registered-deaths-migrants-southern-european-sea-border-provide-only-glimpse-issue>> accessed 19 January 2024.

¹⁰⁹ Srdjan Mrkic (n 13).

¹¹⁰ See for example Srdjan Mrkic, ‘Impact of COVID-19 on Registered Numbers of Deaths: An Example of Excess Death’ (28 September 2020) UN Statistics Division <https://unstats.un.org/legal-identity-agenda/documents/Excess_deaths.pdf> accessed 21 January 2024, 3.

¹¹¹ UN Office of High Commissioner for Human Rights, ‘Guidance on Casualty Recording’ (2019) <

https://www.ohchr.org/sites/default/files/Documents/Publications/Guidance_on_Casualty_Recording.pdf> accessed 21 January 2024, 4.

¹¹² Ibid, 4.

such, they do not identify a legal obligation to record casualties for state parties but identify the utility of the information for monitoring human rights and humanitarian law. Notably, the casualty recording system described in the manual is specifically for non-state actors; it does not describe a state obligation to record civilian casualties.

AbouZahr, Monzo, Fruchtmann and Munoz (on behalf of the CoE-CRVS) examine the role of CRVS systems during conflict, migration, disasters and health emergencies, with a particular focus on registering death and cause of death. They argue that these services are essential for continued delivery of health care to affected populations, as well with regard to the establishment of legal identity, civil status and family relationships, including with regard to family members surviving a deceased person (reference to the right to inherit, remarriage and social security).¹¹³ The authors not only make reference to the importance of death registration in the context of these rights, they also link death registration to post-conflict reconstruction, transitional justice and peacebuilding, stating: “[e]nsuring that each death is counted and registered and each deceased person is buried with dignity and humanity is essential to help heal societies that are damaged and disrupted during crises.”¹¹⁴

The authors of this paper seemingly base their argument on three ‘rights’ that they refer to as: (a) the right to be counted; (b) the right to be registered; and (c) the right to a burial. There is no effort in the report to describe the legal basis for the first and last ‘right’ (the so-called right to be counted¹¹⁵ and the right to burial¹¹⁶). With regard to the second (the right to be registered), the authors acknowledge that the human rights treaties do not provide for an obligation to register death. However, they argue that death registration is ‘connected’ to human rights, such as the rights of surviving children; the rights of surviving spouses with regard to assets, death benefits, to remarry, etc; social assistance for surviving family members; and custody of children.¹¹⁷ As such, though the authors provide strong examples of the importance of CRVS during emergencies, they do not establish a legal obligation to register death under international law.

In their *Compendium of Good Practice regarding CRVS in Conflict, Emergencies and Fragile Settings*, CoE-CRVS provides robust guidance on how to build resilient and robust civil registration systems that are able to absorb and recover from shocks and stress, with an attention to emergency preparedness, stating: “[w]ell-performing CRVS systems must be at the core of country preparedness and response to future emergencies and chronic crises. Countries will need resilient CRVS systems to

¹¹³ Carla AbouZahr, Laura Monzo Llamas, Carmen Sant Fruchtmann, and Daniel Cobos Munoz, ‘Where There is no CRVS: Counting and Registering Deaths in Conflict, Emergencies and Fragile Settings’ (2021) CoE-CRVS < https://crvssystems.ca/sites/default/files/assets/images/04%20EN%20CRVS%20in%20Conflict%20Emergencies%2C%20and%20Fragile%20Settings_registering%20deaths_WEB.pdf > accessed 21 January 2024, 2.

¹¹⁴ Ibid, 2.

¹¹⁵ Ibid, 9-10.

¹¹⁶ Ibid, 11-14.

¹¹⁷ Ibid, 10-11.

cope with the looming challenges of the 21st century and to meet the changing needs of a dynamic society.”¹¹⁸ All of the Compendium papers make a strong argument for the importance of protecting civil registration systems during emergencies because of later implications for human rights. They argue that resilient CRVS systems contribute to maintaining essential services during crisis and enable governments to make evidence-based decisions, allowing individuals to access rights related to legal identity, civil status and family relationship. The Compendium touches on the possibility that CRVS systems not only impact the realization of human rights in the present, but also the rights of future generations.¹¹⁹ They also stress the importance of data and vital statistics in post-emergency recovery, as well as during emergency response and humanitarian assistance. However, once again the legal basis is not described in more than passing terms. Though they describe the importance of death registration in supporting the realization of human rights during emergencies, they do not seek to establish an obligation to register death under international law.

During the COVID-19 pandemic the UN Legal Identity Agenda Task Force issued recommendations for the civil registration authorities to support continued CRVS services. The recommendations stress that civil registration should be considered an ‘essential service’ during periods of emergency, explaining that the resilience of the civil registration and vital statistics system during an emergency will depend on emergency preparedness actions.¹²⁰ They describe potential modifications to CRVS to ensure continued services during emergencies, stressing that “certain registration processes (such as legitimations) may be put on hold, but registration of births, deaths, foetal deaths and recording of causes of death, should continue as a priority.”¹²¹ The recommendations state: “[a]n individual’s legal identity remains of crucial importance during public health emergencies. Individuals need to be able to prove who they are to access public services such as health care, humanitarian assistance, financial aid and other social services.”¹²² As such, they link civil registration to the right to a legal identity. Though it is left unsaid, this argument seems best suited for birth registration, rather than death registration. Regarding death registration data, they point to its importance in the formulation of evidence-based public health policy development.¹²³ Once again, death registration is described as a contributing means of achieving human rights, not as an obligation in and of itself.

As evidenced in the examples above, the CRVS community’s literature regarding CRVS systems in emergencies does not establish a legal obligation to register death under human rights law; rather it

¹¹⁸ Centre of Excellence for Civil Registration and Vital Statistics (CoE CRVS), ‘Compendium of Good Practice: Harnessing Civil Registration and Vital Statistics (CRVS) Systems in Conflict, Emergencies, and Fragile Settings’ (2021) < https://crvssystems.ca/sites/default/files/assets/images/CRVS%20in%20Conflict%2C%20Emergencies%20and%20Fragile%20Settings_Full%20Compendium_e_WEB.pdf > accessed 21 January 2024, 11-15.

¹¹⁹ Ibid, 11-15.

¹²⁰ UN Legal Identity Agenda Task Force ‘Maintain Civil Registration and Vital Statistics during COVID-19 Pandemic’ (9 April 2020) < <https://unstats.un.org/legal-identity-agenda/documents/COVID-19-Guidelines.pdf> > accessed 19 January 2024.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Ibid.

establishes that civil registration is a contributing factor to the realization of human rights. The CRVS community does not reference IHL.

III.B Civilian Casualty Recording Movement

During the twentieth and twenty-first century there have been numerous examples of state and non-state groups that have gone to extraordinary lengths to record civilian casualties during situations of armed conflict. Examples include the Catholic Church's engagement in recording deaths in Latin America during the 1980s (see Guatemala¹²⁴ and Argentina¹²⁵), civil society movements in Iraq,¹²⁶ among many others. Recent years have seen a growing movement of academics and practitioners calling for an international obligation to register civilian casualties during situation of armed conflict. This movement gained significant momentum with ICRC's identification of an international customary norm to register civil casualties¹²⁷ and, more recently, with the HRC's attention to the issue.¹²⁸ This group of academics and practitioners have argued that there is an existing obligation to register the dead during armed conflict under IHL, IHRL and international customary law. However, they seem to make no attempt to extend this obligation beyond armed conflict and emergencies. This obligation seems to be applicable only during exceptional circumstances (e.g. armed conflict and migration) and, as such, does not provide for a universal obligation to register all deaths in all circumstances.

Of notable importance, the Oxford Group, and their campaign call 'Every Casualty Counts' (ECC), has made significant legal contributions to the study of civilian casualty recording during periods of armed conflict. Susan Breau has been at the forefront of this movement. Based on an extensive study of human rights treaty law¹²⁹ and IHL, Breau and her colleagues at the Oxford Group identified the following obligations regarding the treatment of the dead, including about civilian casualty recording during armed conflict,

¹²⁴ See for example Oficina de Derechos Humanos del Arzobispado de Guatemala, *Guatemala: Nunca Más* (1998).

¹²⁵ See for example Argentina Comisión Nacional sobre la Desaparición de Personas, *Nunca Más: the Report of the Argentine National Commission on the Disappeared* (Farrar, Straus, and Giroux 1986).

¹²⁶ See for example Iraq Body Count < <https://www.iraqbodycount.org> > accessed 10 March 2024.

¹²⁷ Jean-Marie Henckaerts and Louise Doswald-Beck (n 15).

¹²⁸ UN Human Rights Council (n 16).

¹²⁹ Universal Declaration of Human Rights (UNDHR) (adopted 1948) 217 A (III) < <https://www.refworld.org/docid/3ae6b3712c.html> > accessed 21 January 2024: Article 1, 2, 3, 5, 6, 8, 12, 15(1), 16(3), 17(2), 19; ICCPR: Part III, Article 6 – Right to life; Part III, Article 7 – Prohibition on Torture; Part III, Article 23 – Protection of the Family unit; International Covenant on Economic, Social and Cultural Rights (ICESCR) (agreed 16 December 1966, entered into force 3 January 1976) UNTS Vol 993: Article 10, protection of the family; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984) UN TS Vol 1465 < <https://www.refworld.org/docid/3ae6b3a94.html> > accessed 21 January 2024: Article 2 – Prevention of Torture; Article 14 – Redress and compensation for torture; European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14 (adopted 4 November 1950, entered into force 3 September 1953) ETS 5 < <https://www.refworld.org/docid/3ae6b3b04.html> > accessible 21 January 2024: Article 2 – Right to life; Article 3 – Prohibition of Torture; Article 8 – Right to Respect for Private and Family life; Article 15 – Derogation in time of emergency; American Convention on Human Rights: Article 4, right to life; Article 5, right to humane treatment; Article 17, rights of family; African charter: Article 4, right to life; Article 5, prohibition against torture; Article 18, State duty to assist the family.

- (a) Each party to the conflict must take all feasible measures to account for persons reported missing because of armed conflict and must provide their family members with any information it has on their fate.
- (b) Whenever circumstances permit, and particularly after an engagement, each party to the conflict must, without delay, take all possible measures to search for, collect and evacuate the dead without adverse distinction.
- (c) Each party to the conflict must take all possible measures to prevent the dead from being despoiled. Mutilation of dead bodies is prohibited.
- (d) All reasonable steps must be taken to identify the deceased and to determine the cause of death.
- (e) Parties to the conflict must endeavour to facilitate the return of the remains of the deceased upon request of the party to which they belong or upon the request of their next of kin.
- (f) The dead must be disposed of in a respectful manner and their graves respected and properly maintained.
- (g) The dead are to be buried with dignity and in accordance with their religious or cultural beliefs.
- (h) The dead are to be buried individually and not in mass graves.
- (i) With a view to the identification of the dead, each party to the conflict must record all available information prior to disposal and mark the location of the graves.

These international legal obligations taken together constitute a binding international legal obligation upon every party to an armed conflict to record every civilian or military casualty whether in an international or non-international armed conflict.

2. As part and parcel of those obligations identified above:

- (i) Parties to the conflict must return the personal effects of the deceased to their next of kin.
- (ii) Exhumation of dead bodies is only to be permitted in circumstances of public necessity, which will include identifying cause of death;
- (iii) The authorities of the state in which the body is found should provide a death certificate, which as far as possible will identify the cause of death;
- (iv) There should be established in the case of civilian casualties an official graves registration services.¹³⁰

Beswick and Minor use NATO's intervention in Libya¹³¹ as a case study; they argue that tracking civilian casualties (how many, who, why, etc) is essential to the protection of civilians in armed

¹³⁰ Susan Breau and Rachel Taylor, 'Every Casualty Counts: Update on Discussion Paper: The Legal Obligation to Record Civilian Casualties of Armed Conflict' (June 2022) *Every Casualty Counts*, 82-83.

¹³¹ Operation Unified Protector, 2011.

conflict, and required by international humanitarian treaty and customary law.¹³² Casualty recording can be used to better understand and mitigate developing threats to civilian protection and to hold duty-bearers and relevant stakeholders accountable for violations of international humanitarian and human rights law. If systematic, data collection can also begin to influence military decisions and post-attack assessments.¹³³

Kate Hofstra and Elizabeth Minor's research looks at the intersection between casualty recording and the unique challenges and imperatives of remote control warfare.¹³⁴ The authors argue that national and international policies and practice in casualty recording must be developed to meet these emerging challenges. They highlight the need for recording mechanisms that are robust, independent and impartial to withstand the inevitable politicization of data as well as to provide victims and their families with a basis on which they can attempt to access redress mechanisms.¹³⁵

Building on the ground-breaking work of Susan Breau and other colleagues,¹³⁶ in 2023 ECC published a paper exploring the legal framework of casualty recording, entitled *Casualty Recording in Human Rights and Humanitarian Law*. This work is the most comprehensive legal assessment that I encountered. From the outset of the document, the authors limit casualty recording to situations of armed violence, conflict or other situations of gross human rights violations. As such, it can be assumed that their subsequent description of the legal foundations for this obligation are limited to these situations;¹³⁷ they do not attempt to establish a general obligation to register all deaths, in all contexts. Among the obligations that they identify from IHL, ICL and IHRL are five that are relevant to death registration: accounting for missing persons, identifying the deceased and determining their cause of death; recording all possible identifying information before disposing of the dead; informing families of the fate of their relatives; and facilitating future identification and location of the deceased.¹³⁸ The report clearly puts the onus of responsibility for civilian casualty recording on the state, which is a deviation from some of the other authors. The report reads,

[i]n situations of active conflict and widespread violence, individually identifying each person killed may seem an impossible task. However, states' obligations in this field are predominately obligations of effort rather than outcome, and some are subject to specific

¹³² Jacob Beswick and Elizabeth Minor (n 17) 65.

¹³³ Ibid, 70-71.

¹³⁴ Remote control warfare is defined as "strategies and tactics that allow for armed forces to be actioned at a greater distance or with a lighter footprint than conventional military deployments. This includes the use of armed drones; the potential development of lethal autonomous weapons the use of special forces and the contracting of private military and security companies." (Kate Hofstra and Elizabeth Minor 'Losing Sight of the Human Cost: Casualty Recording and Remote Control Warfare' (2014), 1.)

¹³⁵ Ibid, 18.

¹³⁶ For review of existing practices see Elizabeth Minor, 'Paper 2: Definition and Categorization in Casualty Recording' (October 2012) Oxford Research Group < <https://www.everycasualty.org/downloads/ec/cpp2-definitions.pdf> > accessed 21 January 2024; Professor Susan Breau and Rachel Joyce (n 130).

¹³⁷ Every Casualty Counts (n 20) 8.

¹³⁸ Ibid, 7.

limitations for reasons of imperative military or hygienic necessity. The appropriate authorities must take the steps which are feasible or reasonable in the circumstances to comply with their duties. In many situations, these steps are likely to be imperfect.¹³⁹

As I do, the authors of this report ground these obligations in the right to life, the right to remedy and the right to reparation; they also refer to the right to freedom from torture, the right to respect family life, and the right to freedom of information and expression. Regarding IHL, they refer to the Geneva conventions and their protocols as well as the rules of customary international law identified by ICRC¹⁴⁰ and the customary humanitarian law database.¹⁴¹

This study is a substantial contribution to the field. Like my research, this study grounds the obligation to register death primarily in the well-established requirement to investigate potentially wrongful death. My research, however, analyses this set of obligations in more depth, pulling more heavily on jurisprudence from international adjudicating bodies to fully scope the obligation and to argue, in contrast to ECC's paper, that this implicit obligation requires registration of all deaths (not limited to particular circumstances). An additional difference between my study and ECC's work is that I also look at the positive obligations under the right to life to prevent death, arguing that this requires mortality statistics, based on civil registration data. Furthermore, the ECC study does not attempt to develop a customary obligation to register death, outside of the scope of ICRC's customary obligation to register the dead during armed conflict.

In support of establishing an international customary obligation to record casualties, Breau conducted a study in 2012-2013 which looks at state practice in recording civilian casualties in 2012-2013. She found overwhelming evidence that states focus primarily on recording military casualties. However, she did find examples of state practice regarding civilian casualty recording.¹⁴² Similarly, Action on Armed Violence undertook a study on state practice of casualty recording during armed violence, looking at state and civil society practice in 12¹⁴³ countries.¹⁴⁴ The report found that challenges to casualty recording on a systemic level include under-reporting, limited resources, limited scope of casualty recording, reliability of the data, and use of the information.¹⁴⁵ These findings point to the

¹³⁹ Ibid 6.

¹⁴⁰ Jean- Marie Henckaerts and Louise Doswald-Beck (ICRC), *Customary International Humanitarian Law Volume I: Rules* (Cambridge University Press, 2005).

¹⁴¹ International Committee of the Red Cross (ICRC), 'Customary IHL Database' < <https://ihl-databases.icrc.org/en/customary-ihl> > accessed 21 January 2024.

¹⁴² Susan Breau and Rachel Joyce (n 130) 12.

¹⁴³ Their study examined state and civil society practice in Brazil, Burundi, the former Yugoslavia, Guatemala, Iraq, Jamaica, Nigeria, Somalia, Sudan, the UK, the US, and Venezuela.

¹⁴⁴ Mirko Miceli and Serena Olgiati, 'Counting the Cost: Casualty Recording Practices and Realities around the World' (2014) Action on Armed Violence

¹⁴⁵ Ibid, 6 – 9.

clear need for a systems approach to both documentation as well as use of death records at the national level.

In addition to scholarly attention, there have been concrete steps taken in the development of an obligation to register the dead during armed conflict. Confirming the provisions in the Geneva Protocols, a UN General Assembly Resolution was passed in 1974 which calls on states to work together to “[provide] information on the missing and dead in armed conflict.”¹⁴⁶ As will be explored further, ICRC has identified several customary norms under IHL regarding the treatment of the dead, including an obligation of means to identify the dead (Rule 116) and to provide information on their fate to relatives (Rule 117) during international and non-international armed conflict, applicable to civilians and combatants equally.¹⁴⁷ Recently, the HRC passed resolution 50/11 which requested that the High Commissioner for Human Rights,

... prepare, in consultation with all states, relevant United Nations entities, intergovernmental and non-governmental organizations and national human rights institutions, a comprehensive report on the impact of casualty recording on the promotion and protection of human rights, including relevant practices, in particular the role of casualty recording in upholding and fulfilling the rights of victims of armed conflict, post-conflict situations, and gross violations of international human rights law, with a view of making recommendations, as applicable, to states, mechanisms of the Human Rights Council and relevant stakeholders, and to present the report to the Council at the fifty-third session, to be followed by an interactive dialogue.¹⁴⁸

All the above studies and developments in international law point to a growing acknowledgement that there is an obligation to register civilian casualties during armed conflict. This obligation, however, is limited temporally to extraordinary situations and does not establish a universal obligation to register death. Though authors draw on human rights law, none of the studies have made it their specific focus to look systematically at the applicability of relevant human rights Articles during armed conflict. Additionally, though there is significant attention paid (most notably by ICRC and Breau) to establishing a customary obligation to register civilian deaths during armed conflict, this customary obligation is limited to periods of armed conflict. The literature so far has also not addressed the means of undertaking death registration on a national level (though work has been done on UN and civil society casualty recording methods); for example, related studies and documents do not refer to civil registration systems. This is of critical concern; focusing exclusively on an obligation to register

¹⁴⁶ United Nations General Assembly, ‘Assistance and Cooperation in Accounting for Persons who are Missing or Dead in Armed Conflict’ 29th Session (1974-1975) UN Docs A/RES/3220(XXIX) < <https://digitallibrary.un.org/record/190216?ln=fr&v=pdf#files> > accessed 16 May 2024, Preamble.

¹⁴⁷ Jean-Marie Henckaerts and Louise Doswald-Beck (n 15).

¹⁴⁸ UN Human Rights Council (n 16).

casualties during periods of emergency makes a systems-building approach to registration challenging. For state systems to continue to function during an emergency, significant time and effort needs to be put into building effective and resilient systems during peace. Without a holistic approach to death registration during periods of stability, comprehensive death registration during emergency situations is impossible.

In fact, in some cases the onus of responsibility to register the dead is not clearly put on the state, though legal frameworks that are referenced (IHL, IHR, customary law) are predominately focused on describing state obligations (with the exclusion of IHL implications for non-state actors). Though the UN has contributed to recording civilian casualties (e.g. Afghanistan), it does not systematically do so at scale.¹⁴⁹ Norah Niland, the former head of the UN Assistance Mission to Afghanistan's Human Rights Unit, found that the UN's involvement in neutral, impartial and credible recording and reporting of civilian casualties in Afghanistan was tremendously useful in discussions and advocacy with the conflict parties, particularly towards reducing civilian casualties.¹⁵⁰ Minor and Beswick argue that the UN should advance practice and pursue casualty recording as an essential activity.¹⁵¹ Similarly, Breau and Joyce argue that recording casualties is essential to the 'responsibility to protect', particularly as a component of the 'just cause' principle of humanitarian law. As such, they argue that casualty records are a necessary precondition to establishing that there is a 'large-scale loss of life', which is the criteria for robust military response.¹⁵² At present, "the information given to the Security Council is at best educated guesses on civilian casualties".¹⁵³

Yet, there is an argument to be made that placing the onus of responsibility on the UN may underestimate the complexity of death registration, particularly in the context of emergencies, as well as the practical functionality of the UN organs. It arguably also erodes state responsibilities under international law. I will argue throughout this thesis that states have a clear obligation to register death, including during exceptional circumstances. Given the logistical challenges and political complexities of death registration in situations of excess death, states are often unable or unwilling to comply with these obligations. In such cases, there is a clear and urgent need for the UN, in addition to civil society organizations, to take an active role in support casualty recording to ensure accountability to all conflict actors and to contribute to upholding IHL, ICL, and IHRL. However, I argue that it is essential that the primary obligation rests with state actors.

¹⁴⁹ Jacob Beswick and Elizabeth Minor, 'The UN and Casualty Recording: Good Practice and the Need for Action' (16 April 2014) Oxford Research Group < <https://reliefweb.int/report/world/un-and-casualty-recording-good-practice-and-need-action> > accessed 21 January 2024.

¹⁵⁰ Norah Niland, 'Civilian Casualties - What Counts?' (16 April 2014) TransConflict.

¹⁵¹ Jacob Beswick and Elizabeth Minor (n 149).

¹⁵² Susan Breau and Rachel Joyce, 'The Responsibility to Record Civilian Casualties' (2013) Global Responsibility to Protect Volume 5, Issue 1 < https://www.researchgate.net/publication/294282225_The_Responsibility_to_Record_Civilian_Casualties > accessed 21 January 2024, 28 – 55.

¹⁵³ Ibid, 28 – 55.

III.C Civilian Casualties Recording during Migration

The ongoing migration crisis around the world has spurred public debate regarding state obligation in this domain. In contrast to the civilian casualty recording movement, the studies that address obligations to register death during migration seem to assume a universal pre-existing system to register the dead. Their focus is on calling for this system to be extended to migrants, though they do not lay the foundations for the larger obligation.

Among civil society actors, the Last Rights project has been specifically active. In 2017 they published a report arguing that there are existing state obligations under human rights treaties and IHL towards migrants who have died trying to cross the Mediterranean Sea. Though they acknowledge that some provisions, such as burying the dead with dignity and respecting their personal effects, are only found in IHL regarding dead combatants, they argue that these provisions are still part of the broader human rights body of law regarding the dead and the missing. Last Rights recognizes the right to life (as interpreted and applied by the HRC and regional human rights jurisprudence) as the cornerstone of the 12 core obligations they identified, namely,

- (1) To search for all missing persons
- (2) To collect the bodies of the dead
- (3) To respect the bodies of the dead
- (4) To preserve any personal effects of the dead, and to restore them to the next of kin
- (5) To take all responsible steps to identify the deceased and to determine the cause of death
- (6) To issue a death certificate
- (7) To make every effort to locate and notify the relatives of the dead and missing
- (8) To facilitate return of the remains of the dead to their relatives if possible
- (9) Where the remains are not returned to next-of-kin, they should be disposed of in a dignified and respectful manner, appropriate to the religious and cultural traditions of the person and bearing in mind the wishes of the next of kin
- (10) To record the location of burial and to respect and maintain gravesites
- (11) To treat citizens and non-citizens equally in all these actions
- (12) To provide special protection for children.¹⁵⁴

The norms identified by Last Rights project closely overlap with those proposed by Breau regarding armed conflict. Differences include a focus on ensuring that citizens and non-citizens are treated alike, the requirement to issue a death certificate and special protection for children. Breau argues that these

¹⁵⁴ Last Rights (n 108) 4.

provisions are not found in IHL and are outside the scope of her study, which is focused exclusively on the dead and missing in armed conflict.¹⁵⁵

Regarding the recent migration crisis, the ICRC supports identification of deceased migrants (including through support to national authorities) and communication with family members.¹⁵⁶ IOM has also launched the Missing Migrant Project which collects daily information on missing and deceased migrants, managed by the IOM's Global Migrant Data Analysis Centre.¹⁵⁷ Civil society organizations are also engaged in casualty recording. The most notable example is the International Commission on Missing Persons (ICMP), which aims to record all disappeared persons and provides technical assistance to governments in locating, recovering and identifying missing persons.¹⁵⁸ Examples from the Americas include the Strauss Centre for International Security and Law at the University of Texas, which documented 2,655 cases of migrant deaths in South Texas from 1990 and 2020,¹⁵⁹ and the Colibrí Centre for Human Rights, which identifies bodies found along the US-Mexico border and helps to repatriate remains to families.¹⁶⁰

As shown above, there is a growing movement of scholars and organizations that recognizes the importance of death registration during armed conflict and emergency situations as well as in the context of migration. Significant groundwork has been laid, establishing a legal obligation to register death during situations of armed conflict and migration under ICL, IHL and IHR. However, this obligation is limited to situations of emergency and the literature that argues for it is generally isolated from the broader CRVS community. This Thesis will further strengthen emerging obligations to register deaths in extraordinary circumstances by (a) making the argument that there is an emerging customary obligation requiring universal death registration applicable in all circumstances, which complements customary obligations to register civilian casualties during armed conflict (as identified by ICRC); and (b) identifying an obligation to register the dead under treaty law (through the right to life) and establishing that this right extends to situations of armed conflict and migration.

¹⁵⁵ Susan Breau and Rachel Taylor (n 130) 64.

¹⁵⁶ International Committee of the Red Cross, 'Missing Migrants and their Families: the ICRC's Recommendations to Policy-Makers' <https://www.icrc.org/sites/default/files/document/file_list/missing-migrants-and-their-families.pdf> accessed 19 May 2024, 8.

¹⁵⁷ International Organization for Migration, Global Migration Data Analysis Centre, 'Migration Data Portal' <<https://www.migrationdataportal.org/about>> accessed 21 January 2024.

¹⁵⁸ See <https://www.icmp.int/about-us/#:~:text=ICMP%20endeavors%20to%20secure%20the,assist%20them%20in%20doing%20so>.

¹⁵⁹ Stephanie Leutert, Sam Lee and Victoria Rossi, 'Migrant Deaths in South Texas' (The University of Texas at Austin, Strauss Center for International Security and Law 2020) <https://www.strausscenter.org/wp-content/uploads/Migrant_Deaths_South_Texas-1.pdf> accessed 21 January 2024.

¹⁶⁰ Colibrícenter for Human Rights, 'Fact Sheet' <https://nnirr.wpengine.com/wp-content/uploads/2014/07/colibri_fact-sheet_edited-7_17_17.pdf> accessed 21 January 2024.

IV. Conclusion

Over the last fifty years, there has been a growing recognition of the importance of civil registration for the individual and his/her family, to end impunity and hold state and non-state actors accountable for violations to the right to life, war crimes, and other gross violations of human rights, to establish essential vital statistics towards improved governance. As discussed above, two schools of practitioners and scholars have emerged: (a) the CRVS community, largely focused on systems building; and (b) the civilian casualty recording movement, focused on civilian deaths in situations of armed conflict and other emergencies (including migration recently). This study builds on the exciting progress in both fields, reflected in the literature and concrete programmes developed by the UN and civil society organizations, in addition to states.

In this Chapter, I reviewed literature which considers (a) death registration and the right to a legal identity (most common) and to other human rights obligations, including the right to life; (b) vital statistics and the right to health and the international development agents; and (c) death registration during emergencies. The CRVS community has produced literature relevant to all three points, whereas the civilian casualty community was only considered regarding the last point (death registration during emergencies).

My contribution to the field is as follows. First, during my research I did not encounter any other studies that make an argument that death registration is a customary obligation, during all periods for all people. The literature (notably ICRC)¹⁶¹ only considers death registration under customary law in the context of armed conflict. Secondly, in general, though the literature refers to the right to life and other human rights in connection with death registration, by vast majority authors argue that death registration is the best *means* of realizing particular human rights obligations; they do not go so far as to identify an existing, implicit *obligation* to register death. Compared to the only other studies that tie death registration to the right to life and the right to effective remedy (most notably the 2023 study by ECC and the study by Last Rights regarding death in migration), I provide a much more detailed and in-depth analysis of this potential source of an obligation to register death and reach a different conclusion on the scope of this obligation. Not only do I establish an obligation to register death under the right life and the right to effective remedy where there is a potential wrongful death, but I also make an argument for death registration in all circumstances, for all people. Additionally, I look beyond the obligation to investigate potentially wrongful death and make an argument that the obligation to prevent death under the right to life also requires death registration and their tabulation into vital statistics. Thirdly, my research aims to integrate CRVS system strengthening, on the one

¹⁶¹ Jean-Marie Henckaerts and Louise Doswald-Beck (n 15).

hand, and the emerging obligations to register civilian casualties in armed conflict and other emergencies, on the other. I do so by arguing for a customary international norm and human rights treaty norm that is applicable during times of peace, as well as in periods of emergency (armed conflict, migration and others).

Chapter 4 - Framework for Interpretation of Customary Law

In the next Chapter (Chapter 5) I will evaluate whether death registration can be considered an emerging or existing norm under international customary law. To these ends, this Chapter examines the evidential elements required for the identification of a customary norm. The field of international customary law has long been riddled with dissention and disagreement among practitioners, jurisprudence of international courts and tribunals, and scholars (including legal philosophers). It is not my aim to provide an exhaustive analysis of the subject of international customary law nor will I argue for a definitive interpretation. Rather, I will attempt to adopt a consensual framework, with the aim of generating the widest possible support for the conclusions of my research regarding death registration.

In the first section of this Chapter, I will begin by scoping the sources of customary law, in accordance with Article 38(1) of the Statute of the International Court of Justice. In the first section, I will look at the elements of customary law, namely state practice and *opinio juris*. In the second section, I will briefly explore the exceptions, namely persistent and subsequent objectors and regional customary law. In the third section, I explore the evidential sources that are relevant to my research into death registration as an emerging or existing customary norm. I consider both state and international actions. In the next Chapter, I will apply this framework to determine if death registration is an existing norm under customary international law.

I. Framing Customary Law

The term ‘international customary law’ describes customary rules that are formed by a strong majority of states and are binding on the whole community of states.¹ The essential difference between international customary law and treaty law is that customary law is binding on all states, whereas treaty law is binding only on states which have ratified a particular treaty, with the exclusion of regional/special/local customary law and persistent objectors, as discussed below.

Article 38 (1) of the Statute of the International Court of Justice (ICJ),² commonly referenced as authoritative, identifies the following sources of customary law,

¹ E.g., A. Ross, *A Textbook of International Law: General Part* (The Lawbook Exchange, Ltd. 1947), 87: “Customary international law may be either special (comprising only a small number of States) and then binding on these only; it may be general (comprising the great majority of States) and is then binding on all States, on such too, as have both taken part in the process of objectivation, either because there was no occasion to do so or because they have only recently come into existence.”; P. Weil, ‘Towards a Relative Normativity in International Law?’ (1983) 77 AJIL, 433-438.

² United Nations, Statute of the International Court of Justice (18 April 1946) < <https://www.refworld.org/docid/3deb4b9c0.html> > accessed 21 January 2024

- (a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- (b) international custom, as evidence of the general practice accepted as law;
- (c) the general principles of law recognized by civilized nations;
- (d) subject to the provisions of Article 5, judicial decisions and the teaching of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.³

As highlighted in Article 38 (1) (b), it is generally accepted that the determination of customary law is comprised of two elements – material fact or the actual behaviour of states (henceforth referred to as *state practice*) and the psychological or subjective belief that such behaviour is ‘law’ (henceforth referred to as *opinio juris*). This has been confirmed by case law, including *Libya/Malta*,⁴ *North Sea Continental Shelf*,⁵ as well as by the *Draft Conclusions on the Identification of Customary International Law*⁶ provisionally adopted by the ILC Drafting Committee. However, there is much dissension regarding the definition of these categories, the degree to which the elements of state practice (and its components) and *opinion juris* should be understood as discrete categories, and the weight that should be accorded to each.

II. Elements of Customary Law

The ICJ’s judgement of 20 February 1969 in the *North Sea Continental Shelf* case confirmed that determination of customary law requires two elements: (a) state practice and (b) acceptance of that practice as law (*opinio juris sive necessitates*), as described below,

Not only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it. The need for such a belief, i.e., the existence of a subjective element, is implicit in the very notion of the *opinio juris sive necessitatis*. The States concerned must therefore feel that they are conforming to what amounts to a legal obligation. The frequency or even habitual character of the acts is not in itself enough. There are many international acts, e.g., in the field of ceremonial and protocol,

³ United Nations, ‘Statute of the International Court of Justice’ (18 April 1946) < <https://www.refworld.org/docid/3deb4b9c0.html> > accessed 21 January 2024, Article 38.

⁴ *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, (Judgement) [1985] ICJ Reports, 13, para 27

⁵ *North Sea Continental Shelf* (Judgement) [1969] ICJ Reports, 3, para 77. See also *Continental Shelf (Libyan Arab Jamahiriya/Malta)* (n 4) 13, para 27; *Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v US)* (Merits) (Judgement) [1986] ICJ Reports, 14, paras 183 and 207.

⁶ International Law Commission ‘Draft Conclusions on Identification of Customary International Law, with Commentaries’ (adopted by the International Law Commission at the seventieth session, 2018) A/73/10 < https://legal.un.org/ilc/texts/instruments/english/commentaries/1_13_2018.pdf > accessed 23 January 2024

which are performed almost invariably, but which are motivated only by considerations of courtesy, convenience or tradition, and not by any sense of legal duty.⁷

As such, for state practice to amount to customary international law it should meet both objective and subjective conditions; the objective element necessitates that the practice be general and the subjective element that states undertake the practice because they understand it to be obligatory as a legal norm.⁸ Despite the global recognition of these essential building blocks, courts, tribunals, lawmakers, and scholars continue to argue over the following points:

1) Whose practice counts as state practice? What constitutes states practice? What is the required breadth and duration of state practice? How do we ensure an unbiased approach to state practice that includes a diverse array of states, not only the most powerful? How do we define and give priority to ‘specially affected states’? Can the practice of international organizations and conferences contribute to the establishment of state practice? Should state practice be contingent on what a state says it is or should be doing or on what it is actually doing? How many states need to have a given practice? And how long do they need to have had this practice?

2) How much weight should be ascribed to state practice and *opinio juris* respectively, and to which extent can they be defined as discreet evidential categories?

To develop the framework which I will use to identify whether death registration constitutes an existing or emerging international customary norm, I will attempt to position myself in these broader debates, as they have significant impact on the evidential proof necessary for the identification of an emerging or existing rule of customary international law. In the section below, I will argue that the identification of international customary law should be based on two elements: 1) state practice (see Section II.A); 2) the belief that this practice is required by law (*opinio juris sive necessitatas*) (see Section II.B). I will argue that state practice and *opinio juris* are widely recognized as the building blocks of customary international law, including by the Article 38 of the Statute of the ICJ. It is generally accepted that state practice should be widespread and virtually uniform⁹ for affected states.¹⁰ The duration of practice may contribute to the identification of state practice and/or *opinio juris* but is understood to have less importance. For a law or policy to constitute state practice, it should be applied. I will argue that where the law exists in word but not in practice, it will not be considered

⁷ *North Sea Continental Shelf Cases* (n 5) 44.

⁸ Christian Dahlman, ‘The Function of *Opinio Juris* in customary International Law’ (2012) *Nordic Journal of International Law* 81, 329-330.

⁹ *Asylum case (Colombia v Peru) (Merits) (Judgement)* [1950] ICJ Rep 176 < <https://www.icj-cij.org/case/7> > accessed 23 January 2024, 266, 276-7; *Fisheries Case (United Kingdom v Norway) (Judgement)*, [1951] ICJ 116; *North Sea Continental Shelf Cases* (n 5).

¹⁰ *North Sea Continental Shelf Cases* (n 5) 3.

state practice but may still contribute to establishing *opinio juris*.¹¹ Additionally, I will argue that, as confirmed by the ICJ on several cases as well as Article 38 of the Statute, *opinio juris sive necessitates* is an essential component to the identification of international law.¹² Drawing on Dahlamn's analysis of *opinio juris*,¹³ taking into consideration the increasing importance of multilateral organizations and conferences in the regulation of interstate behaviour and the general decrease in the prominence of a ridged model of state sovereignty, in this study evidence of *opinion juris* will include state engagement in multilateral organizations (e.g., the UN) and international conferences, including resolutions, declarations and statements.

There is considerable contention regarding the weight which should be afforded to state practice and *opinio juris* and the degree to which these elements should be considered discreet categories. Like the International Committee of the Red Cross' (ICRC) study of international customary law in armed conflicts,¹⁴ for the purpose of this thesis, I will apply Kirgis's theory of custom on a sliding scale, known as the 'Kirgis scale'.¹⁵ The 'Kirgis scale', which was written as a general theory of international law, holds that where state practice is high, there is less need for *opinio juris*, and vis-versa. In response to critics of this framework that are concerned that basing international customary law on *opinio juris* (where there is little state practice) potentially allows for manipulation, I propose an additional element --- namely, the ethical value of the norm under consideration. I argue that political and ethical considerations always play a role in the development of international law, though they are not always transparently acknowledged. Pulling on the 'continuance of life' framework in Chapter 2, I argue that overt consideration of the ethical value of a norm can counter concerns regarding the application of the Kirgis scale.

II.A. Practice (Objective/Material)

The essential elements of state practice are discussed in this section. These elements will be considered in the subsequent Chapter in the context of death registration to establish the degree to which current death registration practice meets the threshold necessary to constitute an existing or emerging norm of international customary law.

¹¹ This is particularly relevant to the subject of death registration because implementation remains weak across the global south, despite the existence of laws requiring death registration in almost every country in the world.

¹² *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v United States of America)* (n 5) 107-108.

¹³ Christian Dahlamn (n 25).

¹⁴ Jean-Marie Henckaerts and Louise Doswald-Beck 'Study on Customary Rules under International Humanitarian Law' International Committee of the Red Cross (Cambridge Press 2005).

¹⁵ Frederic L. Kirgis 'Custom on a Sliding Scale' (1987) 81 Am. J. Int'l L. 146 <

<https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?Article=1387&context=wlufac>> accessed 25 January 2024.

In general, it is assumed that state practice can be identified from numerous sources, including administrative acts, legislation, decisions, of domestic courts,¹⁶ and activities on the international stage (such as treaty law¹⁷).¹⁸ All parts of the state can contribute to state practice, including the judiciary, legislature, executive, military, and state officials.¹⁹ It can take the form of diplomatic correspondence, public statements by state officials, executive actions, executive practices, official manuals, legislation, case law, statements/votes in the international arena.²⁰ Where state organs have contradictory practice, the element of custom may be reduced or discounted.²¹ It would also appear that state practice can be determined by both action and reaction, including (in some cases) lack of action.²²

▪ Uniform Practice

The ICJ has repeatedly stated that state practice is determined by consistent or ‘virtually’ uniform,²³ and repeated behaviour,²⁴ though it does not need to be universal.²⁵ Despite the fact that this is generally accepted by jurists, legal experts and scholars, there are no hard and fast rules regarding the required consistency or uniformity of practice. Each case needs to be carefully evaluated in its context. Notably, the ICJ itself has not applied a common standard. The basic rules regarding continuity and repetition of practice appear to be set out in the *Asylum* case, where the ICJ found that a customary rule must be “in accordance with a constant and uniform usage practice by the states in question.”²⁶ In the *Anglo-Norwegian Fisheries* case the Court similarly emphasized that some degree of uniformity of state practice was essential for a rule to be considered customary international law.²⁷ In contrast, in the *Nicaragua* case the ICJ found that state practice did not have to be in ‘rigorous’ conformity, but that “the conduct of states should, in general, be consistent with such rules, and that

¹⁶ See *Jurisdictional Immunities (Germany v Italy: Greece intervening)* [2012] ICGJ 434, ICJ reports 2012, 99, 123 <<https://www.icj-cij.org/case/143>> accessed 23 January 2024 which states that “State practice of particular significance is to be found in the judgements of national courts...”

¹⁷ The International Law Commission stated that “records of the cumulative practice of international organisations may be regarded as evidence of customary international law with reference to states’ relations to the organisations” Yearbook of the ILC [1950] Vol. 11 <https://legal.un.org/ilc/publications/yearbooks/english/ilc_1950_v2.pdf> accessed 23 January 2024, 372; see also Michael Akehurst ‘Custom as a Source’ (1975) British Yearbook of International Law, Vol 47, Issue 1, 12; see also Draft Conclusion 4(2) which states “In certain cases, the practice of international organizations also contributes to the formation, or expression, of rules of customary law.” International Law Commission (n 6) 130.

¹⁸ See *Ibid*, 133.

¹⁹ Anthea Roberts and Sandesh Sivakumaran, ‘The Theory and Reality of the Sources of International Law’ in Malcolm Evans (ed), *International Law* (fifth edition, Oxford University Press 2018), 92 – 97.

²⁰ *Ibid*, 92 – 97.

²¹ International Law Commission (n 6) Conclusion 7, para 62.

²² Anthea Roberts and Sandesh Sivakumaran (n 36) 92 – 97.

²³ Basic principle of ‘uniform action’ established by *Asylum case* (n 26), 266, 276-7; *Fisheries Case* (n 26) 116; *North Sea Continental Shelf Cases* (n 5). However, in *Nicaragua v United States* the Court gave decreased importance of absolute uniform behaviour, requiring only that “the conduct of states should, in general, be consistent with such rules” (*Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v United States of America)* (n 5) para 186).

²⁴ Basic principles established by *Asylum case* (n 26) 266, 276-7. However, ‘instant’ customary law was developed based on *opinio juris* in the context of air space (see Bin Cheng ‘United Nations Resolutions on Outer Space: ‘Instant’ International Customary Law?’ in *Studies in International Space Law* (Oxford 1997)).

²⁵ *North Sea Continental Shelf Cases* (n 5) 42-43.

²⁶ *Asylum case* (n 26) 276-7.

²⁷ *Anglo-Norwegian Fisheries case* (Judge Read Dissenting Opinion) [1951] ICJ Rep 1951, 116, 131, and 138.

instances of state conduct inconsistent with a given rule should generally have been treated as breaches of that rule, not as indications of the recognition of a new rule”.²⁸ In the *North Sea Continental Shelf* case, the ICJ added an additional qualification to the evaluation of practice, emphasizing that the uniformity and generality of practice was particularly important for those states that were *specially affected*.²⁹ This latter principle will not be considered further as it is not relevant to the subject of this thesis, which is concerned with *universal* death registration; no state is specially affected. In the subsequent Chapter, I will assess the degree to which the practice of death registration is uniform, seeking to establish consistency of practice across states.

▪ Duration

Though ‘duration’ of practice is no longer considered a critical element in the identification of international customary law,³⁰ it has long been a central component in the formation of customary law. The ICJ has shown a willingness to allow for the rapid development of customary law where there is significant uniformity of state practice and *opinio juris*. For example, in the *North Sea Continental* case the ICJ stated that “an indispensable requirement would be that within the period in question, short though it might be, state practice, including that of states whose interests are specially affected, should have been both extensive and virtually uniform in the sense of the provision invoked, and should moreover have occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved.”³¹ Examples of international customary laws that developed rapidly include those related to nuclear weapons.³² Arguably, in these cases new technology and new global threats required rapid collective action to maintain global stability and security. Additionally, it has been argued that the availability of information (including on state practice and *opinio juris*) and the increased frequency of state communication have made it easier to discern emerging customary law and thereby reduced the time required for its development.³³ Some legal scholars have even argued that in these cases, repetition of practice is not required at all, making the formation of ‘instant’ custom possible.³⁴ The notion of ‘instant’ custom remains controversial.³⁵

Given the above developments, it would appear that the duration of practice has a reduced importance in the determination of customary law; however, it is still an element worthy of consideration.

²⁸ *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v United States of America)* (n 5) 98.

²⁹ *North Sea Continental Shelf Cases*, (n 5) 43. In this case, the Court was considering the emergence of custom, where there had previously been a treaty law (see also Michael Akehurst (n 34) 21).

³⁰ See Anthony D’Amato, *Concept of Custom in International Law* (Cornell University Press 1971), 56-8; Michael Akehurst (n 34) 15-16; *North Sea Continental Shelf Cases* (n 5) 43.

³¹ *Asylum case* (n 26) 277; *Right of Passage over Indian Territory (Portugal v India) (Merits) (Judgement)* [1960] ICJ Rep 6 < <https://www.icj-cij.org/case/32>> accessed 23 January 2024, 6, 42-43.

³² See for example *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)* (1996) ICJ Reports < <https://www.icj-cij.org/sites/default/files/case-related/95/095-19960708-ADV-01-00-EN.pdf>> accessed 19 May 2024.

³³ Bin Cheng (n 41).

³⁴ *Ibid*

³⁵ Anthea Roberts and Sandesh Sivakumaran (n 36) 92 – 97.

Notably, the issue of ‘duration’ has been central to the development of customary law for hundreds of years. Particularly when the rule under consideration is not a new area of law or related to new technology, the duration of the practice can contribute to the determination of both state practice and the recognition that this practice is required by law (*opinio juris*). As my aim is to develop a consensual framework for the identification of customary law, I will consider the duration of state practice regarding death registration.

II.B. *Opinio Juris* (subjective element)

Though its definition is not without contention (as discussed below), the principle of *opinio juris* can be described as the subjective element, namely the belief that a specific practice is a legal obligation. *Opinio juris* helps to differentiate between a practice that shows mere habit or usage and that which contributes to the formation of customary law. Christian Dehlman argues that *opinio juris* serves an essential function, as “a filter that stops generally unwanted general practice from becoming customary international law.”³⁶ Debate around the meaning and function of *opinio juris* is prominent in legal scholarship.³⁷

In the *North Sea Continental Shelf* case, the ICJ recognized that state practice alone was insufficient to amount to customary international law, stating “the frequency, or even habitual character of the acts is not in itself enough. There are many international acts, e.g., in the field of ceremonial and protocol, which are performed almost invariably, but which are motivated only by considerations of courtesy, convenience or tradition, and not by any sense of legal duty.”³⁸ In the *Nicaragua* decision, the ICJ referred to the *North Sea Continental* case to emphasize that the subjective element (i.e., a belief that an action is required by law) must accompany practice, stating,

[...] for a new customary rule to be formed, not only must the acts concerned ‘amount to a settled practice’, but they must be accompanied by the *opinio juris sive necessitates*. Either the States taking such action or other States in a position to react to it, must have behaved so that their conduct is ‘evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it. The need for such a belief, i.e., the existence of a subjective element, is implicit in the very notion of the *opinio juris sive necessitas*’.³⁹

³⁶ Christian Dahlman (n 25) 328.

³⁷ Ibid, 327.

³⁸ *North Sea Continental Shelf Cases* (n 5) 3, para 77.

³⁹ *North Sea Continental Shelf Cases*, (n 5) 442-3, citing ICJ Reports, 1969, 44

The ICJ's decisions in *Germany v Italy (Greece Intervening)*⁴⁰ and *Guinea v. Democratic Republic of the Congo*⁴¹ further confirm that practice must be accompanied by *opinio juris* for the identification of customary international law.

Evidence of *opinio juris* might include public statements made by the state, official publications, legal opinions, diplomatic correspondence, decisions from national courts, treaty provisions, and conduct regarding international resolutions.⁴² *Opinio juris* can be declarations or individual or collective verbal acts. In most cases, the ICJ has used active or passive reactions to practice or the lack of objection⁴³ as evidence of 'acceptance as law'. In the *Free City of Danzig* case,⁴⁴ and the *Nottebohm* case⁴⁵ *opinio juris* was determined by state practice itself, as well as in the *Asylum* case (though in the latter case the ICJ ultimately found that there was insufficient practice to amount to custom).⁴⁶

There is increasing recognition regarding the role of protest (or lack thereof) as evidence of acceptance of a practice as law (or refusal to accept a practice as law). For example, in the *Asylum* case, the dissenting judge (Judge Badavi Pasha) argued that the absence of objection was sufficient to prove practice.⁴⁷ Similarly, in the *Lotus* case⁴⁸ as well as in the *Chorzow* case⁴⁹ the ICJ considered that the absence of protest sufficiently proved *opinio juris*. The ICJ's judgement in the *Fisheries* case reads,

The court having thus established the existence and the constituent elements of the Norwegian system of delimitation, further finds that this system was consistently applied by Norwegian authorities and it encountered no opposition on the part of other states.... From the standpoint of international law, it is now necessary to consider whether the application of the Norwegian system encountered any opposition from the foreign States.⁵⁰

⁴⁰ *Jurisdictional Immunities (Germany v Italy: Greece intervening)* (n 33) para 55.

⁴¹ *Ahmadou Sadio Diallo (Guinea v. Democratic Republic of the Congo) (Judgement) (Preliminary Objections)* [2007] ICJ GL 103, ICGJ 52, 582, 615.

⁴² Sean D. Murphy, 'Identification of Customary International Law and Other Topics: The Sixty-Seventh Session of the International Law Commission' (2015) American Journal of International Law, Volume 109 Issue <https://scholarship.law.gwu.edu/faculty_publications/1158/> accessed 23 January 2024, 822- 832.

⁴³ See for example *North Sea Continental Shelf Cases* (n 5); *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* [1982] ICJ Reports; *Military and Paramilitary Activities in and against Nicaragua* (n 5).

⁴⁴ *Free City of Danzig and International Labour Organization (Advisory Opinion)* [1930] PCIJ B No 18, ICGJ 285 (PCIJ 1930) <<https://opil.ouplaw.com/display/10.1093/law/icgj/285pcij30.case.1/law-icgj-285pcij30>> accessed 25 January 2024, 12-13.

⁴⁵ "The practice of certain States which refrain from exercising protection in favour of a naturalized person when the latter has in fact, by his prolonged absence, severed his links with what is no longer for him anything but his nominal country, manifests the view of these States that, in order to be capable of being invoked against another State, nationality must correspond with the factual situation. A similar view is manifested in the relevant provisions of the bilateral nationality treaties concluded between the United States since 1868 ..." *Nottebohm Case (Liechtenstein v Guatemala; Second Phase)* [1955] ICJ 155 <https://www.refworld.org/cases/ICJ_3ae6b7248.html> accessed 23 January 2024, 22

⁴⁶ "But even if it could be supposed that such a custom existed between certain Latin-American States only, it could not be invoked against Peru which, far from having by its attitude adhered to it, has, on the contrary, repudiated it by refraining from ratifying the Montevideo Conventions of 1933 and 1939, which were the first to include a rule concerning the qualification of the offence in matters of diplomatic asylum." *Asylum case* (n 26) 277-278.

⁴⁷ *Ibid*, 306.

⁴⁸ *The SS Lotus (France v Turkey) (Judgement)* [1927] Permanent Court of International Justice, Docket XI, Judgement No. 9, 29.

⁴⁹ *Factory at Chorzow (Jurisdiction)* [1927] PCIJ Series A No 9, 29.

⁵⁰ *Fisheries Case* (n 26) 138.

In the subsequent Chapter, I will seek to establish evidence of *opinio juris* regarding death registration. Among other considerations, I will consider the absence or presence of protest as potential evidence of *opinio juris*, depending on the context.

▪ Unpacking *Opinio Juris*

Defining *opinion juris* is an elusive and controversial endeavour. For the purpose of this thesis, I will also consider state behaviour in international organizations, echoing Dahlman's conclusions. A similar position has been adopted by the ICJ in several notable instances.⁵¹

There are two basic approaches to *opinio juris*: 1) the belief-school and 2) the acceptance-school.⁵² The belief-school holds that states act in accordance with custom because a particular norm is already part of international law. The acceptance-school holds that states give their consent or their recognition that a norm is becoming international law through the expression of *opinio juris*.⁵³ Dahlman argues that the *North Sea Continental* case is an example of the belief-school,⁵⁴ and that the ICJ Statute⁵⁵ is an example of the acceptance school.⁵⁶ Acceptance-theory was common among Enlightenment scholars⁵⁷ writing on the subject of 'tacit consent'.⁵⁸ Belief-theory became prominent in the 19th and early 20th century; it was put forward by Friedrich Karl von Savigny, among others.⁵⁹ It was heavily criticized by Kelsen⁶⁰ and other positivists in the middle of the 20th century and never regained popularity. At present, the scholastic debate is predominately between those who endorse the acceptance-theory and those who reject both the acceptance and belief theory.⁶¹ Several current scholars reject *opinio juris* altogether, arguing that a state's attitude towards an emerging norm is superfluous.⁶²

Dahlman draws on Kelsen's critique⁶³ of the belief-school to reiterate the illogicality of its essential proposition – namely that for a norm to be considered customary international law states must believe that it is already customary international law. Dahlman writes, "this gives the impression that, in order

⁵¹ *North Sea Continental Shelf Cases* (n 5); *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v United States of America)* (n 5); *Case Concerning Military and Paramilitary Activities in and against Nicaragua* (n 5).

⁵² Thomas Franck, *The Power of Legitimacy Among Nations* (Oxford University Press 1990).

⁵³ Christian Dahlman (n 25) 330-331.

⁵⁴ *Ibid*, 330-331.

⁵⁵ See Article 38 of the ICJ Statute: "The Court ... shall apply... international custom, as evidence of a general practice accepted as law..."

⁵⁶ Christian Dahlman (n 25) 330-331.

⁵⁷ See for example E. de Vattel, *Preliminaries* (Liberty Fund 2008), 25.

⁵⁸ Christian Dahlman (n 25) 330-331.

⁵⁹ See for example L. Kunz, 'The Nature of Customary International Law' (1953) *American Journal of International Law* Vol 47 No 4, 667.

⁶⁰ See for example Hans Kelsen, *Allgemeine Staatslehre* (Springer 1925).

⁶¹ See for example on one hand I. C. MacGibbon, 'Customary International Law and Acquiescence', *British Yearbook of International Law* (1957), 126, and on the other side L. Kopelmanas, 'Custom as a Means of the Creation of International Law', *British Yearbook of International Law* (1937), 151.

⁶² Christian Dahlman (n 25) 330-331.

⁶³ See for example H. Kelsen, 'Horie du Droit Coutumier' (1939) *Revue Internationale de la Theorie du Droit* (1939), 253.

for a norm to become a part of international law, it must already be a part of international law. For the norm to come into existence, it must already exist. This is obviously impossible.”⁶⁴

The Acceptance-theory (also referred to as ‘voluntarism’) holds that *opinio juris* signals that a state accepts that an emerging norm has become part of international customary law. In critique of the acceptance-theory, Maurice Mendelsen argued it was based on an antiquated version of strong state sovereignty that is no longer applicable in the modern world.⁶⁵ He argues that the acceptance-theory requires that states accept customary law for it to be binding, which is no longer the case. Modern scholars, courts and tribunals have held states to customary rules that they have not consented to. As such, Mendelsen believes that the acceptance-theory does not hold true.⁶⁶ Mendelsen concludes that *opinio juris* does not hold meaning; state belief or acceptance is irrelevant, only practice has significance.⁶⁷

Dahlman rejects Mendelsen’s position. Echoing the ICJ’s position in the *Nicaragua* case,⁶⁸ he notes that there are actions that states take which they do not consider to be part of customary international law. For example, many states throughout history have supported foreign rebel movements to overthrow a foreign government. However, this practice does not signal that they would like this practice to become part of accepted customary international law. In another example, Dahlman highlights the potential dangers of state practice being used as the sole criteria for the establishment of customary international law by looking at state behaviour around nuclear weapons (stockpiling, threatening usage, etc).⁶⁹ Without the subjective element of *opinio juris*, Dahlman argues, this type of practice could make its way into customary law.⁷⁰ These considerations are further discussed below in the context of the tensions between modernists and traditionalists.

Dahlman proposes a weak version of the acceptance-theory. His theory de-emphasizes the role of the individual state and shifts the focus to broader consensus; “The understanding that *opinion juris* stands for general acceptance does not mean that every state must accept the practice. It does not even mean that an individual state must accept it in order to be legally bound by it. It only means that there should be a broad approval among states.”⁷¹

⁶⁴ Christian Dahlman (n 25) 332-333.

⁶⁵ M. Mendelson, ‘The Subjective Element in Customary International Law’ (1995) British Yearbook of International Law Volume 66 Issue 1 < <https://academic.oup.com/bybil/Article-abstract/66/1/177/345769?redirectedFrom=fulltext> > accessed 25 January 2024.

⁶⁶ Ibid.

⁶⁷ Ibid, 207.

⁶⁸ *Case Concerning Military and Paramilitary Activities in and Against Nicaragua* (n 5).

⁶⁹ Christian Dahlman (n 25) 339.

⁷⁰ Ibid, 335-337.

⁷¹ Ibid, 335-337.

Accepting Dahlamn's move away from a purely state-centric understanding of international customary law, there is increased scope for considering the behaviour of international organizations in the identification of customary international law. This approach is like that adopted by the ICJ; notably, on several occasions that ICJ used international declarations passed by international organizations or international conferences as evidence of *opinio juris*,⁷² when it is coupled with established and substantial practice.⁷³

II.C Balancing State Practice, *Opinio Juris* and Ethical Value

Though there is general acknowledgement that the formation of customary law demands both the objective element (state practice) as well as the subjective element (*opinio juris*), the definition and weight of these elements remains contentious. For the purpose of this study, I will use Kirgis's Sliding Scale (described below) as a measuring stick for state practice and *opinio juris*. Responding to concerns about the use of the Kirgis scale, I propose that consideration of the ethical value of the norm be overtly considered, drawing on the 'life as continuance' framework discussed in Chapter 2.

In broad terms, there are two schools of thought, 'a modern approach to custom' and 'a traditional approach to custom'. Traditionalists have prioritized state practice, identified through a process of inductive reasoning.⁷⁴ In contrast, modernists prioritize *opinio juris*, focusing predominately on deductive reasoning.⁷⁵

The traditional approach to custom seeks to identify first if there is general and consistent practice and, subsequently, if this practice is followed by states because they believe there to be a legal obligation to do so. For traditionalists, the development of custom is evolutionary; as such, it must be identified through an inductive process of analysing specific instances of state practice. *Opinio juris* is used to distinguish between practice that is moving towards becoming customary law and practice that is non-legal. The *Lotus case* would appear to follow this approach: the Permanent Court of International Justice (the predecessor to the ICJ) referred to previous instances of state action and acquiescence in the determination of general custom about objective territorial jurisdiction over ships on the high sea.⁷⁶ Traditionalists recognize that international treaties or resolutions can sometimes be starting points in the development of customary law, extending the scope of their influence beyond treaty obligations for signatories of the treaty (ex. there are many scholars and practitioners who argue

⁷² *Case Concerning Military and Paramilitary Activities in and Against Nicaragua* (n 5) para 107.

⁷³ *Ibid*, para 106.

⁷⁴ Rudy Roozbeh, 'Customary International Law: A Reconceptualization' (2016) *Brooklyn Journal of International Law* Volume 41 Issue 2 < <https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?Article=1421&context=bjil> > accessed 25 January 2024.

⁷⁵ *Ibid*

⁷⁶ S.S., '*Lotus*' (1927) Judgement No 9, PCIJ, Ser A, No 10, 18, 29.

that the UDHR has become part of customary law⁷⁷); however, they do not believe that treaties should be understood as generating customary norms. They argue that UN resolutions, for example, are often aspirational, rather than an example of state practice or *opinio juris*.⁷⁸

In contrast, modernists argue that state practice is so varied and imprecise an idea that it is a clumsy tool for the determination of law. Essentially, ‘modern’ custom theorists hold that state practice should be deemphasized, in exchange for an increased focus on *opinio juris*; “in this sense it is more deductive in its logical reasoning where ‘traditional custom’ is more inductive.”⁷⁹ If state practice has any role, it is as a secondary means of establishing general acceptance of a norm, rather than as the expressed will of states.⁸⁰ Key to the modernist argument is that modern treaties, including human rights treaties, may illustrate state acceptance of a set of norms – thus *opinio juris* – and thereby contribute to establishing a customary norm. They argue that “as long as international treaties are, to a certain extent, widely ratified, then the *opinio juris* that this wide ratification represents is enough to seamlessly transform the treaty provisions (binding on the signatories) into customary international law (binding on all).”⁸¹ An example of this approach can be found in the Merits Judgement in the *Nicaragua* case.⁸² Though the ICJ made reference to the traditional test for international customary law, they based their conclusions largely on UN General Assembly resolutions and state reaction to those documents. The ICJ did not seriously consider state practice.⁸³ The modernist reliance on *opinio juris* has allowed for more dynamic and rapid law-making, which stands in stark contrast to the slow process that previously characterized the establishment of customary law.⁸⁴

▪ A Compromise: A Modified Kirgis Scale

A compromise between the modernist and traditionalist approaches, Frederic Kirgis proposed that practice and *opinio juris* should be understood as a single idea, along a ‘sliding scale’. He argued that where state practice is abundant, much less (if any) *opinio juris* would be required to establish a customary norm. Similarly, where state practice is scarce, extensive *opinio juris* may suffice.⁸⁵ The exact equation between state practice and *opinio juris* is dependent on the merits of each case, the importance of the activity under consideration and the reasonableness of the rule.

⁷⁷ See e.g. Louis Henkin. *International Law: Politics and Values* (Martinus Nijhoff Publishers 1995) pp. 167–168.

⁷⁸ Rudy Roozbeh (n 91)

⁷⁹ Ibid

⁸⁰ Ibid

⁸¹ Ibid

⁸² *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v US)* (n 5).

⁸³ *Case Concerning Military and Paramilitary Activities in and Against Nicaragua* (n 5) 14, para 186.

⁸⁴ Rudy Roozbeh (n 91).

⁸⁵ Frederic L. Kirgis (n 32).

Kirgis developed the ‘sliding scale’ for several reasons. First, he recognized that customary international norms were of varying importance or significance and, as a result, may require different thresholds of state practice and *opinio juris*. Secondly, he argued that there needs to be flexibility to allow for a nuanced assessment of state practice and *opinio juris* that is context-specific and appropriate to the gravity of the norm. Thirdly, Kirgis aimed to develop a framework for customary law that could adapt to the changes in state practice and *opinio juris* over time. Finally, Kirgis sought to balance the objective element (state practice) and the subjective element (*opinio juris*).⁸⁶

As an example of this tension, in recent years both the International Law Association (ILA)⁸⁷ and the International Law Commission (ILC)⁸⁸ have sought to provide clarification on the formation of customary international law.⁸⁹ The ILA has tended to prioritize state practice, whereas the ILC has maintained the importance of both practice and *opinio juris*. In 2000, the ILA adopted the *London Statement of Principles Applicable to the Formation of (General) Customary International Law*, which clearly states that “the most important, component of customary international law [is] State practice.”⁹⁰ It goes on to state that, “what seems clear is that, if there is a good deal of State practice, the need (if such there be) also to demonstrate the presence of the subjective element is likely to be dispensed with.”⁹¹ In contrast, in 2016, the ILC adopted 16 draft conclusions on the identification of customary international law.⁹² The *Draft Conclusions* state, “to determine the existence and content of a rule of customary international law, it is necessary to ascertain whether there is a general practice that is accepted as law (*opinio juris*).”⁹³ Though the ICJ’s jurisprudence has not been consistent in this regard, it has frequently used state practice as evidence of *opinio juris* in its decisions. It seems that the ICJ understands there to be a functional link between the evidence of state practice and that of *opinio juris*. In general, the ICJ has not required separate evidentiary proof of state practice and *opinio juris*.⁹⁴

⁸⁶ Fredrick Kirgis, *Custom’s Future: International Law in a Changing World* (Transnational Publishers 1991).

⁸⁷ Established in the 1870s

⁸⁸ Established by the UN GA in 1947

⁸⁹ International Law Association Committee on Formation of Customary (General) International Law, ‘Final Report of Commission on Formation of Customary (General) International Law: Statement of Principles Applicable to the Formation of General Customary International Law’ (2000) < https://www.ila-hq.org/en_GB/documents/conference-report-london-2000-2 > accessed 25 January 2024.

⁹⁰ Ibid, 13; Draft Conclusion 6 defines ‘state practices’ as:

1. Practice may take a wide range of forms. It includes both physical and verbal acts. It may, under certain circumstances, include inaction.
2. Forms of State practice include but are not limited to: diplomatic acts and correspondence; conduct in connection with resolutions adopted by an international organization or at an intergovernmental conference; conduct in connection with treaties; executive conduct, including operational conduct “on the ground”; legislative and administrative acts; and decisions of national courts.
3. There is no predetermined hierarchy among the various forms of practice.

International Law Commission (n 6) 133.

⁹¹ International Law Association Committee on Formation of Customary (General) International Law (n 106) 40

⁹² See for example, International Law Commission (n 6).

⁹³ International Law Commission (n 6) 1.

⁹⁴ Karole Wolfke, *Custom in Present International Law* (Martinus Nijhoff Publishers 1993), 122-137.

The ICRC used Kirgis's 'Sliding Scale' in their study on International Humanitarian Customary law.⁹⁵ To these ends, the ICRC assumed that where state practice was ambiguous or largely dependent on the omission of a certain behaviour, *opinio juris* became more important; and where there was significant state practice, they deemed that there was less needed to establish *opinio juris*. However, they did maintain that even where there was high *opinio juris*, if state practice remained diverse, a customary rule could not be established.⁹⁶

Kirgis's 'Sliding Scale' has been reproached for allowing too much flexibility in the definition of customary law.⁹⁷ For example, Scobbie criticized ICRC's use of the Kirgis's 'Slide Scale', arguing that by allowing significant *opinio juris* to replace state practice, the ICRC was essentially returning to a 'natural law' position. This raises concerns regarding which and whose values will be privileged.⁹⁸ Scobbie's second concern was that the use of the Kirgis 'Sliding Scale' could reduce the required quantity of state practice.⁹⁹ This concern is echoed by Roozbeh, who argues that by closely linking practice and *opinio juris*, the Kirgis 'Sliding Scale' increases opportunities for the manipulation of customary law to reflect the objectives of a few states.¹⁰⁰ For the purpose of this study, I will use Kirgis's 'Sliding Scale'. However, in response to Scobbie and Roozbeh's well-founded critique, I propose that an additional element be introduced to the equation: consideration of the ethical value of an emerging norm. There is always an implicit philosophical consideration that informs which rules become law, both for states and for courts, regardless of whether these underlying frameworks are openly acknowledged or not. Developing and implementing an ethical framework allows for increased transparency in the law-making process.

Prosper Weil argued that the modernist approach is essentially pushing for a content-based focus in the development of international law, which prioritizes particular norms because of what they are. This, he argues, demonstrates a fundamental misunderstanding of the purpose and function of international customary law, traditionally focused on *process* to ensure stability of inter-state relations.¹⁰¹ In full agreement with Weil's understanding of the purpose of international law, I counter his claim that a content focus undermines the objective. In fact, I would go so far as to say that there is an increased need for an ethical framework applied to the identification of customary law to ensure that the content of law continues to ensure its objective of inter-state stability. Genuine stability is only furthered if sound norms govern international relations. The modernist prioritization of *opinio*

⁹⁵ Jean-Marie Henckaerts and Louise Doswald-Beck (n 31) xlviii.

⁹⁶ Louise Doswald Beck 'Developments in Customary International Humanitarian Law' (2005) 15 Swiss. Rev. Int'l and Eur. L. 471, 475-476.

⁹⁷ Bruna Simma and Philip Alston, 'The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles' (1992) Australian Year Book of International Law 12(1), 96.

⁹⁸ Iain Scobbie, 'The Approach to Customary International Law' in Elizabeth Wilmshurst and Susan Breau, *Perspectives on the ICRC Study on Customary International Humanitarian Law* (Cambridge University Press 2007), 27-29.

⁹⁹ Ibid, 27-29.

¹⁰⁰ Rudy Roozbeh (n 91).

¹⁰¹ P. Weil (n 1) 433-438

juris in the development of international law provides opportunities for the development of rapid content-based law. However, without a transparent ethical framework that can be debated in the forum of the international community, it provides opportunities for the manipulation of the law, to benefit the interests of a few.

The concerns raised by both Roozbeh and Weil point to the underlying concern that an over-dependence on *opinio juris* results in a prioritization of rules based on the interests of those making the rules. The concern is that by transparently acknowledging the role in discernment of which rules become international customary law, we are walking dangerously close to confusing law-creation with law-identification. In practice, the line between the creation of law and the identification of law is indeed blurry. That some rules are prioritized over others in the development of international customary law is evident. This prioritization process itself reflects some decision-making framework, transparent or not, ethical or not.

Traditionally, customary law has been closely linked with natural law. As such, there was a philosophical or theological framework that was often applied to its determination.¹⁰² The process of identifying customary law was to some degree linked to the discovery of the natural, ethical, or theological order of the world. There are several stands of thinking that can be identified across natural legal theorists: (a) the belief that moral propositions can be objectively determined to be true or false. Moral objectivism and moral realism, though distinct concepts to some degree, both fall under this broad category; (b) the belief that natural law is, to some extent, derived from or determined by divine will,¹⁰³ the natural world¹⁰⁴ and/or the inherent nature of human beings;¹⁰⁵ (c) the belief that the notion of law cannot be disentangled from the notion of morality. Common across these theories is the belief that, as least for some law, legal authority is not rooted in a ‘pre-existing’ human convention or legal norm but is by virtue of its moral value.¹⁰⁶ With the secularization of law, overt reflections on ethics became less common in the 20th and 21st century. Natural law theories re-emerged in the post-World War II era, most notably with human rights law (the language moved from ‘natural rights’ to ‘human rights’).

Though natural law has widely gone out of fashion with legal scholars, particular bodies of international law continue to be informed by natural law theories, including human rights law, international humanitarian law, and international criminal law. Where there has been rapid

¹⁰² See for example John Finnis, *Natural Law and Natural Rights* (Oxford University Press 1980).

¹⁰³ E.g., John Duns Scotus (1266-1308); William of Ockham (1285-1347/49) Francisco Suarez (1548-1617).

¹⁰⁴ See for example Hugo Grotius (1583-1645) who argued that natural law existed, even if God did not (for a summary see Charles Edwards, ‘The Law of Nature in the Thought of Hugo Grotius’ (1970) *The Journal of Politics*, Vol. 32, No. 4, 784-807); Thomas Hobbes (1588-1689)

¹⁰⁵ Jean-Jacques Rousseau (1712-78) (for summary see Thomas Carbonneau, ‘The Implicit Teaching of Utopian Speculations: Rousseau’s Contribution to the Natural Law Tradition’ (1979) 3 *U. Puget Sound L. Rev.* 123.

¹⁰⁶ See the Overlap Thesis, which holds that law and morality intersect (e.g., work by Thomas Aquinas and William Blackstone)

development of customary law (regarding the use of space or nuclear weapons for example), there was a clear collective need to regulate an emerging technology and to mitigate potential new risks to global security and stability. As such, there was clear ethical or moral consideration in the process that should be transparently acknowledged. Similarly, many of the human rights and humanitarian norms that are recognized as customary international law do not reflect state practice but reflect a common agreement that they benefit our collective well-being. However, as natural law has moved away from its religious roots, there is less transparency now regarding the ethical or moral framework that is applied during the discernment or identification process. Echoing the modern naturalists, such as Lauterpacht¹⁰⁷ and von Savigny,¹⁰⁸ I argue that a recognition of the ethical framework is essential in the identification of international customary law. To increase transparency of this process, I recommend that the ‘continuance of life’ framework (described in Chapter 2) be applied to the identification of customary law – namely answering one essential question: does this norm contribute to our individual and collective continuance of life and well-being?

The ‘continuance of life’ framework has been adopted as a proposed framework because it avoids potential concerns regarding ethical relativism, meaning concerns that different cultures may have different value systems. Potentially, a ‘sliding scale’ approach to the determination of customary law might favour some values over others. It is my conviction that the question of ethics cannot be avoided; indeed, without overt acknowledgement of the role that ethical questions play in guiding our assessment of whether a customary norm exists, there is increased risk of biased value judgements. It is essential that international law commits itself to genuinely universal values, which requires open discussion about common ethical standards and frameworks. It is only through open discussion regarding the inevitably value-laden decisions imbedded in the international law-making process that we can hope to arrive at some degree of true universalism. The development and adoption of ethical tests for developing international law is proposed herein as a means of achieving this end. It is my belief that the ‘continuance of life’ framework comes close to a universal minimum ethical standard. Accordingly, I will use it in the context of my analysis of death registration. This is not to say, of course, that there are no other plausible candidates for the task of orienting our reflections when it comes to establishing the desirability of a certain practice being considered a norm of customary international law. While for reasons of space I cannot develop this point, I would argue that the ‘continuance of life’ framework should not be understood as the ultimate test of normative desirability, rather it should be understood as one of a possible range of heuristic devices that enable us to operationalize our commitment to sound ethical reflection when assessing the obligatory character of international practices.

¹⁰⁷ H. Lauterpacht, ‘General Rules of the Law and Peace’, in *International Law - Collected Papers* (Cambridge University Press, Cambridge, 2009), 239.

¹⁰⁸ F.K. von Savigny, *System des Beutigen Riimischen Recht* (Veit und Comp, Berlin, 1840), 32-34.

III. Exceptions

International customary law is binding on all states. There are, however, two exceptions to this general rule: a) regional/special/local customary law, which is binding only on a particular group of states; and b) states which have persistently objected to the customary rule during (not after) its formation can be considered ‘persistent objectors’, and as such they may be exempt from the rule.

III. A Persistent and Subsequent Objectors

Some states have argued that if they persistently objected to an emerging rule of customary law, they should not be held accountable to the rule when it is formally recognized as law. Over time, this has come to be known as the ‘persistent objector doctrine’ and is widely recognized as the only exception to the otherwise universal application of international customary law.¹⁰⁹ This is relevant to the study of death registration; in the next Chapter, among other aspects I consider if the systematic exclusion of particular groups from registration practices could allow for persistent or subsequent objectors to an international customary norm requiring universal death registration.

The persistent objector doctrine is usually traced back to the ICJ’s ruling in the *Fisheries case* between the UK and Norway. The case concerned the breadth of Norway’s territorial sea rights. Herein, the UK argued that Norway was not acting in accordance with the rule of customary law known as the ‘ten-mile rule’. The ICJ was not sure that such a rule existed, stating “[i]n any event the ten-mile rule would appear to be inapplicable as against Norway inasmuch as she has always opposed any attempt to apply it to the Norwegian coast.”¹¹⁰

It is generally recognized that a state that has consistently refused to join a practice or to accept it as law is not bound by the rule of international customary law. In other words, a state is not legally bound to give consent to a rising question and, consequently, is not obligated to abide by the customary rule when it formally develops. Objection can be full or partial: full objection signifies that the state does not wish to be held to any part of the emerging norm and partial objection occurs when a state objects to part of the custom but accepts some parts or proposes some modification. Full objection results in full exemption once the rule has been developed and partial objection results in partial exemption.¹¹¹

¹⁰⁹ See for example: Ian Brownlie, *Principles of Public International Law* (Clarendon 4th ed 1990); K Wolfke, *Custom in Present International Law* (2d ed Kluwer Academic Publishers 1993); M. Akehurst (n 34) 1.

¹¹⁰ *Fisheries, United Kingdom v Norway* (Judgement) [1951] ICJ Reports 116, 131.

¹¹¹ Vincy Fon and Francesco Parisi ‘Stability and Change in International Customary Law’ (2009) George Mason Law and Economics Research Paper No. 03-21, Supreme Economic Review, 283-286.

There are two criteria that must be met in the application of the persistent objector doctrine. First, states must object from the moment the practice is conceived or from the moment a state learns about it.¹¹² Secondly, the state's objection must be consistent, continuing throughout the development of the international norm and beyond. Two additional principles apply to the persistent objector doctrine: 1) a state cannot invoke the persistent objector doctrine once a rule has become *jus cogens* or imperative law;¹¹³ and 2) a new state (a state that gained independence after a customary norm was established) can obtain exemption from a previously established norm, but only if they express their objection within a reasonable period of time.¹¹⁴ A state can express its dissent to an emerging norm in a number of ways, both direct and indirect. It is easiest to identify a persistent objector when protest has been unequivocal and publicly expressed. Inferring dissent purely from state practice can be inconclusive.

When state practice is not in line with a rule of international customary law and the state is a persistent objector, the state may or may not be developing new customary international law or developing an exception to the new rule.¹¹⁵ Behaviour contrary to an emerging or existing norm contains within itself the seeds of a new rule.¹¹⁶ If the contrary behaviour is endorsed by other states, the customary law may eventually be replaced. Alternatively, the two norms may exist simultaneously until one of them is generally accepted.¹¹⁷

It has been traditionally recognized that states can only object to a customary norm during its development. Once a norm is accepted as customary law, a state cannot claim exemption (called the 'subsequent objector' doctrine). This type of subsequent state exemption would only be possible if other states agreed to it.¹¹⁸ Over time, this strict approach has been slightly modified, providing some flexibility. An example is the application of the principles of *rebus sic stantibus*, which allow states to depart from customary international law if fundamental changes have been made to the state of affairs that resulted in the legal obligation.¹¹⁹ This does not include a modification of national law but must be more fundamental. Depending on how it unfolds, the widespread defection of subsequent objectors from a particular norm could trigger the creation of a new customary norm.

III.B Regional Customary Law

¹¹² Mark Eugen Villier, *Customary International Law and Treaties: A Manual on the Theory and Practice of the Interrelation of Sources* (Martinus Nijhoff Publishers 1997); See also *Fisheries Case* (n 26) 116; *Asylum Case* (n 26) 266.

¹¹³ *Jus cogens principles* are peremptory rules that essential to the international community. They must be obeyed by all states. They cannot be overridden by persistent objector doctrine.

¹¹⁴ The reason that newly independent states are given time to gain the status of a persistent objector is the necessity to support a newly independent state's sovereignty and equality (Vincy Fon and Francesco Parisi (n 128) 16-17.)

¹¹⁵ See Malcom Shaw, *International Law* (7th edition Cambridge University Press 2014), 77-81.

¹¹⁶ Malcom Shaw (n 132) 54-58.

¹¹⁷ See also M Akehurst (n 34) 38-42.

¹¹⁸ Karol Wolfke, *Custom in Present International Law* (Warsaw Scientific Society 1964), 66: "A state may certainly not unilaterally at will refuse the legal consequences of its previous consent to accept a practice as law".

¹¹⁹ Nancy Kontou, *The Termination and Revision of Treaties in the Light of New Customary International Law* (Clarendon Press 1995).

Article 38 of the ICJ Statute appears only to describe general customary law.¹²⁰ In practice, the ICJ has shown a wider interpretation of Article 38.¹²¹ The ICJ's judgement in the *Asylum* case, in particular, recognized a particular custom, using the term 'local custom' for the first time.¹²² In the *Eritrea/Yemen* (Maritime Delimitation) case, the ICJ found that "it is possible for rules to develop which will bind only a set group of states, such as those in Latin American, or indeed just two states."¹²³ This approach was confirmed by the ICJ in subsequent cases, including the *Asylum* case¹²⁴ and the *Right of Passage over Indian Territory* case.¹²⁵ The issue of regional customary law is not applicable to this study as death registration practice has, to a large degree, been standardized across regions. As such, I will not consider whether death registration constitutes a regional customary norm in the subsequent Chapter.

IV. Evidential Sources

The jurisprudence of the ICJ, which is recognized by many parts of the international community for its contribution to establishing the rule of law at the international level,¹²⁶ suggests that in general they are less concerned with limiting or specifying the kinds of evidence that are admissible, than ensuring that the quantity of evidence is sufficient.¹²⁷ Examples of this include the ICJs ruling in the *Nuclear Test* case (*New Zealand v France*).¹²⁸

The ILC, in contrast, advocates for a case by case consideration of the evidence required, writing "the type of evidence consulted (and consideration of its availability or otherwise) depends on the circumstances, and certain forms of practice and certain forms of evidence of acceptance as law (*opinio juris*) may be of particular significance, according to context."¹²⁹

Wolke argues that there are two categories of evidence: 1) what states hold themselves bound by and 2) what others say about state obligations. In the first category are treaties, diplomatic correspondence, unilateral declarations of state organs, and decisions of national courts. In the second category are decisions and opinions of international courts and tribunals, and practice of international organizations and conferences.¹³⁰ The Statute of the ICJ does not recognize a hierarchy between the

¹²⁰ Though this position is not without some criticism, including by Basdevant who argued for a broad interpretation to Article 38. See J. Basdevant 'Regles generales du droit de la paix' Volume 58 in *Collected Courses of the Hague Academy of International Law* (1936), 486.

¹²¹ H. Meijers 'How is International Law Made? – The Stages of Growth of International Law and the Use of its Customary Rules' (December 1978) *Netherlands Yearbook of International Law*, Volume 9, 21.

¹²² *Asylum case* (n 26) 199-200.

¹²³ For example, Honduras's argument in the *El Salvador/Honduras case* [1992] ICJ Reports, 351, 597.

¹²⁴ *Asylum case* (n 26) 276.

¹²⁵ *Right of Passage over Indian Territory (Portugal v India) (Merits) (Judgement)* (n 48) 44.

¹²⁶ H.E. Judge Peter Tomka, President of the International Court of Justice, 'The Rule of Law and the Role of the International Court of Justice in World Affairs' (Speech at the Stockholm Centre for International Law and Justice, 2 December 2013) < <https://www.icj-cij.org/sites/default/files/press-releases/8/17848.pdf> > accessed 25 January 2024.

¹²⁷ Karole Wolfke (n 111) 119-122.

¹²⁸ *Nuclear Tests (New Zealand v France)* (Judgement) [1974] ICJ Reports 457, 463.

¹²⁹ International Law Commission (n 6) 127.

¹³⁰ Karole Wolfke (n 111) 141.

sources or evidence of customary law.¹³¹ Following Wolke's structure, I will examine the evidential sources that will be included in my evaluation of the existence of state practice and *opinio juris* regarding death registration. As sources can contribute to both evidential categories, the discussion below is structured around the sources themselves. In the below section, I will only discuss sources that are directly relevant to my research on death registration, as presented in the next Chapter.

IV.A State Actions

▪ National Legislation and Practice of State Organs

Though national law cannot be binding on other states, national legislation can be a significant factor in the development of international customary law. National legislation is understood to be evidential proof of state practice and may contribute to the formation of international customary law. The ICL and ICJ point to the fact that the acts of all state-organs can be used as evidence of state practice.¹³² The ILC has defined national legislation in the broadest sense possible, stating,

The term legislation is here employed in a comprehensive sense: it embraces the constitutions of States, the enactments of their legislative organs, and the regulations and declarations promulgated by executive and administrative bodies. No form of regulatory disposition affected by a public authority is excluded. Obviously, they serve as an important store house of evidence of State practice....¹³³

States do not always abide by their own laws and policies. Should state practice be determined on what is written (what a state says it should do) or by what is being implemented on the ground? In the field of human rights law specifically, scholars often emphasize intent or acceptance of a norm, rather than implementation because many states have laws and policies in line with human rights norms that they violate in practice. Torture is a common example: though most states have accepted that it is prohibited by international law, many continue to practice it.

Shaw argues that the position which holds that a state must enforce a rule before it can constitute state practice is a minority position.¹³⁴ Of course, the weight of claims may vary according to the circumstances. He argues that as states base their interaction on rules and norms, it makes sense to

¹³¹ Ibid, 157-159.

¹³² See e.g., H. Waldock 'General Course of International Law' (1962) CARDI, Volume 106, 42-43.

¹³³ International Law Commission, 'Report of the International Law Commission to the General Assembly' (1950) UN Doc A/1316, Yearbook of the International Law Commission Volume II, 370, para 60-61.

¹³⁴ Anthony D'Amato (n 47) 88 and 50-1; *Anglo-Norwegian Fisheries case* (n 44) 116, 191; Michael Akehurst (n 34) 2-3; H.W.A Thirlway (n 151) 58; Malcom Shaw (n 132) 58-59.

assume that these are the raw materials out of which international customary law must be formed.¹³⁵ International tribunals have tended to focus on official sources, which were not denied by the state subsequently. However, the distinction between the normative status of a rule and its actual practice was raised by the ICJ in *Nicaragua v USA* case.¹³⁶ The ICRC study on *International Humanitarian Customary Law* predominately relied on practice that was deemed ‘official’, including physical and verbal acts (e.g. military manuals, legislation, and statements made in the international arena). The US critiqued the ICRC study, arguing that the methodology relied too heavily on written materials (as opposed to field practice); this limitation was openly acknowledged by the ICRC.¹³⁷ It should be noted, however, that many other states, international courts, domestic courts and scholars have cited the study with approval and seemingly adopted its findings.¹³⁸

In contrast, Wolke argues, “the role of practice will depend, inter alia, on the degree of law-abidance of the state in question, for it is of course hardly possible to consider as the practice of a state (or its evidence) a law which exists only on paper.”¹³⁹ However, he goes on to acknowledge that it may contribute to *opinio juris* or show that a state accepts a specific provision as law, even if it is not practiced and therefore does not contribute to state practice.¹⁴⁰

For this study, state practice will be based on official sources. Where a rule is reflected in law, policy and other official statements, but is not put into practice, I will consider that it may be evidence of *opinio juris*, if not practice.

▪ **Treaties**

The ICJ has used treaties as evidence of customary law in several cases, including the *SS Wimbledon case*¹⁴¹ (regarding the principles of neutrality of international canals) and the *Free City of Danzig case*¹⁴² (where the ICJ established practice based on the treaties that had been concluded). The ICJ referred to the Hague Conventions of 1899 and 1907 in the *Nottebohm* case (Preliminary

¹³⁵ But see H.W.A Thirlway (n 151) 58-9.

¹³⁶ *Case Concerning Military and Paramilitary Activities in and Against Nicaragua* (n 5) para 206-9 (regarding the principle of non-intervention).

¹³⁷ ‘United States Responds to ICRC Study on Customary International Law’ The American Journal of International Law Volume Number 3, < <http://www.jstor.org/stable/4492942> > accessed 25 January 2024, 639-41.

¹³⁸ E.g. *Prosecutor v Bemba v Bemba-Gombo* (Judgment pursuant to Article 74 of the Statute) [2016] Case no ICC-01/05-01/08, para 152; *Hamdan v Rumsfeld* (Justice Stevens) [2006] 548 US 557; *Public Committee against Torture in Israel and Palestinian Society for the Protection of Human Rights and the Environment v Israel* [2006] HCJ 769/02, para 23; UN Secretary General, ‘Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka’ (31 March 2011) < <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/POC%20Rep%20on%20Account%20in%20Sri%20Lanka.pdf> > accessed 25 January 2025, para 183.

¹³⁹ Karole Wolfke (n 111) 78.

¹⁴⁰ Ibid, 78.

¹⁴¹ *SS ‘Wimbledon’, United Kingdom and ors and Poland (intervening) v Germany (Judgement)* [1923] PCIJ Series A no 1, ICGJ 234, 28.

¹⁴² *Free City of Danzig and International Labour Organization (Advisory Opinion)* (n 61) 12-13.

Objection).¹⁴³ Similarly, in their ruling on the *Fisheries Jurisdiction*, the ICJ referred to bilateral and multilateral international agreements when establishing *opinio juris* regarding preferential fishing rights of coastal states.¹⁴⁴ In its ruling on the *Continental Shelf Case*, the ICJ identified two ways for custom and treaty to interact: 1) treaties can record or define existing customary rules; or 2) treaties can contribute to the development of customary rules. Notably, the ICJ stated, “[i]t is of course axiomatic that the material of custom is to be looked for in the actual practice and *opinio juris* of States, even though multilateral conventions may have an important role to play in recording and defining rules deriving from custom, or indeed in developing them.”¹⁴⁵

The Geneva Conventions might be unique in the role they have played in establishing customary law. First and foremost, they have been universally ratified.¹⁴⁶ The ICJ in the *North Sea Continental Case* suggested that widespread ratification might, in and of itself, be sufficient evidence of customary law; “it might be that, even without the passage of any considerable period, a very widespread and representative participation in convention might suffice of itself, provided it included that of States whose interests were specially affected.”¹⁴⁷

Treaties can contribute to the development of a customary norm in several ways: they can serve as precedent and evidence of an emerging or existing customary norm. They are sometimes evidence that a certain norm has already been accepted as a practice of law, and thereby contribute to *opinio juris*. If an emerging norm is already close to become customary law, a treaty can show that it has in fact been accepted as a customary norm.¹⁴⁸

IV.B International Actions

▪ Judicial Decisions (ICJ and Tribunals)

Article 38 1 (d) of the Statute of the ICJ recognizes the use of judicial decisions as a subsidiary means of determining international law. However, this Article includes the clause, “subject to the provisions of Article 59”. Article 59 reads, “[t]he decisions of the Court have no binding force except between the parties and in respect of that particular case.” As such, although judicial decisions of the ICJ and other courts and tribunals can be considered evidence, the decisions should not be considered a

¹⁴³ “This principle was expressly recognized in Article 48 and 73 of the Hague Convention... to which Guatemala became a party. The Rapporteur of the Convention of 1899 has emphasized the necessity of this principle... This principle has been frequently applied and at times expressly stated.” *Nottebohm, Liechtenstein v Guatemala* [1953] ICJ Report 1953 < <https://jsumundi.com/en/document/decision/en-nottebohm-liechtenstein-v-guatemala-judgment-preliminary-objection-including-the-text-of-the-declaration-of-judge-klaestad-wednesday-18th-november-1953> > accessed 25 January 2024, 119.

¹⁴⁴ *Fisheries Jurisdiction case, United Kingdom of Great Britain and Northern Ireland v Iceland (Merits)* [1974] ICJ Reports, 26.

¹⁴⁵ *Continental Shelf (Libyan Arab Jamahiriya/Malta)* (n 4) 29-30, para 27.

¹⁴⁶ All the Geneva Conventions are available here: < <http://www.icrc.org/ihl> > accessed 25 January 2024.

¹⁴⁷ *North Sea Continental Shelf Cases* (n 5) 42, para 73.

¹⁴⁸ K Wolfke, *Custom in Present International Law* (2d ed Kluwer Academic Publishers 1993), 141 – 144.

precedent for future cases. However, the ICJ itself does appear to refer to its own jurisprudence as evidence of customary rules. Lauterpacht¹⁴⁹ and Hudson,¹⁵⁰ among others, argue that Article 59 was included to ensure that the Court would be free to consider each case on its own merits, as opposed to being limited to its own jurisprudence.

The International Criminal Tribunal on Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Court (ICC) have seemingly contributed to a shifting paradigm by developing an extensive body of jurisprudence. This jurisprudence in some instances appears to be moving towards the establishment of norms of customary international law.¹⁵¹ Though the ICJ itself draws heavily from international tribunals as well as its own jurisprudence,¹⁵² the role of international judicial bodies in law creation is contentious.¹⁵³

In line with the Statute of the ICJ¹⁵⁴ for the purpose of this study, the decisions of international courts and tribunals (including the ICJ) will be treated as a subsidiary means to identify customary international law.¹⁵⁵

▪ International Organizations and Conferences

Resolutions adopted by international organizations, in and of themselves, do not create customary international law; however, they may be evidence or provide clarity on an existing rule or contribute to the development of a rule. It is only when a resolution that has been adopted by an international organization or at an intergovernmental conference corresponds with independently established general practice that is accepted as law that it may reflect a customary rule of international law.¹⁵⁶

The ICJ have cited the practice of international organizations on several occasions, including in the case of *Military and Paramilitary Activities in and against Nicaragua* (Merits) (1986) where the Court considered a non-binding resolution of an international organization as evidence of *opinio juris*.¹⁵⁷ In the *Fisheries Jurisdiction Judgement* (1974), the ICJ ruled that,

¹⁴⁹ Sir Hersch Lauterpacht, *The Development of International Law by the International Court* (Praeger 1958), 19.

¹⁵⁰ "... la Cour ne peut considérer ses décisions antérieures comme faisant loi pour elle dans l'avenir; elle doit conserver la liberté de modifier, les cas échéant, lors de toute affaire ultérieurement soumise à sa décision, le droit ou la règle de droit appliqués dans une affaire antérieure. Le Statut, toutefois, n'exige pas de la Cour qu'elle ne tienne aucun compte de décisions antérieures, et il n'l'empêche pas d'y attacher un grand poids...", Manley O. Hudson, *La Cour Permanente de Justice Internationale* (Pedone 1936), 629.

¹⁵¹ Roozbeh Baker, 'Customary International Law in the 21st Century: Old Challenges and New Debates' (2010) *European Journal of International Law* Volume 21 Issue 1, 173-204.

¹⁵² K. Wolfke (n 165) 72 – 76.

¹⁵³ *Ibid*, 72 – 76.

¹⁵⁴ Article 38 1(d)

¹⁵⁵ Sean D. Murphy (n 59) 822- 832.

¹⁵⁶ *Ibid*, 822- 832.

¹⁵⁷ *Military and Paramilitary Activities in and Against Nicaragua* (n 5) para 99-100.

[t]he 1960 Conference failed by one vote to adopt a text governing the two questions of the breath of the territorial sea... However, after that conference the law evolved through the practice of States based on the debates and near-agreement at the Conference. Two concepts have crystallized as customary law in recent years arising out of the consensus revealed at the Conference.¹⁵⁸

In the *Continental Shelf* case (1982), the ICJ suggested that conclusions from the Third Conference on the Law of the Sea could be evidence of a pre-existing or emerging customary law.¹⁵⁹ In the ICJ's Advisory Opinion on the *Construction of a Wall Case*, the ICJ noted that evidence of rules and principles can be found in resolutions passed by the UN General Assembly and the Security Council.¹⁶⁰

The European Union (EU) is perhaps unique among international organizations because states have assigned to it some of their competences. As such, the EU's action may be equated with state practice.¹⁶¹ In 2014, in the UN General Assembly's Sixth Committee (Legal) the EU stated that, "[i]n areas in which, in accordance with the rules of the European Union treaties, only the Union could act", the Union's practice should "be taken into account with regard to the formation of customary international law alongside the implementation by the member States of European Union legislation."¹⁶² This statement has been corroborated by Spain,¹⁶³ France,¹⁶⁴ Portugal,¹⁶⁵ and Singapore¹⁶⁶ in the Sixth Committee.¹⁶⁷

For the purpose of this study, it is assumed that international organizations can contribute to the identification of customary international law in a number of ways: 1) they may do so by a reflection of state practice; 2) the conduct of international organizations may also act as a catalysis for state practice; and 3) international organizations themselves may directly contribute to the formation of international customary law.¹⁶⁸ However, the use of the action of international organizations as evidence of customary law, particularly non-binding resolutions, should be undertaken with 'all due

¹⁵⁸ *Fisheries Jurisdiction case, United Kingdom of Great Britain and Northern Ireland v Iceland (Merits)* (n 161) 23 and 191-192.

¹⁵⁹ *Case Concerning the Continental Shelf (Tunisia v Libyan Arab Jamahiriya)* [1982] ICJ 17, 38.

¹⁶⁰ See *Construction of a Wall case (Advisory Opinion)* [2004] ICJ Reports 2004, 136, 171.

¹⁶¹ Michael Wood, 'Third Report on Identification of Customary International Law' (2015) UN Docs A/CN.4/682, 53, para. 77.

¹⁶² UN GAOR, 'Agenda Item 78: Report of the International Law Commission on the Work of its Sixty-Sixth Session' (28 November 2014) 69th Session 25th meeting, UN Doc. A/C.6/69/SR.25, < <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/601/00/PDF/N1460100.pdf?OpenElement> > accessed 26 January 2024, 14, para 79.

¹⁶³ UN GAOR, 'Summary Record of the 26th Meeting' (20 November 2014) 69th Session 26th meeting, UN doc. A/C.6/69/SR.26 < https://digitallibrary.un.org/record/788222?ln=zh_CN > accessed 26 January 2024, 18, para 102 (Spain).

¹⁶⁴ UN GAOR 'Summary Record of the 22nd Meeting' (11 November 2014) 69th Session 26nd Meeting, UN Doc. A/C.6/69/SR.22 < <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/594/45/PDF/N1459445.pdf?OpenElement> > accessed 26 January 2024 (France), 7, para 30.

¹⁶⁵ UN GAOR (n 180) 2, para 3 (Portugal).

¹⁶⁶ UN GAOR (n 180) 12, para 65 (Singapore).

¹⁶⁷ Summarized in Sean D. Murphy (n 59) 822- 832.

¹⁶⁸ Ibid, 822- 832.

caution'.¹⁶⁹ Similarly, resolutions from international organizations and conferences may be of evidential value; however, they should be considered only on a case-by-case basis.¹⁷⁰ State action in the international forum may also constitute evidence of *opinio juris*.

V. Conclusion

In the next Chapter, I will evaluate whether death registration can be considered an emerging or existing norm under international customary law. To do so, I will apply the framework that I developed in this Chapter regarding the identification of customary law. In summary, my approach to customary international identification is composed of the following elements:

Grounded in Article 38(1) of the Statute of the International Court of Justice, my framework will consider both state practice and *opinio juris*. I have attempted to describe and position myself amidst some of the dominant cleavages among legal scholars. It is widely recognized that practice be widespread and virtually uniform among affected states to contribute to the development of a customary norm. The duration of state practice (death registration, in this context) will also be considered, though it is given less weight, reflecting the position of the ICJ. I have argued that where a norm is only present in written law or policy but is not implemented, I will not consider it as evidence of state practice. However, I may consider it as evidence of *opinio juris*. With regards to *opinio juris*, I have drawn on Dahlman's work to argue that state action in the international arena, including in multilateral organizations and conferences through resolutions, declaration and statements, can be considered evidence of *opinio juris*.

Navigating the scholastic arguments regarding the weight that should be afforded to state practice and *opinio juris* and the degree to which they should be considered discreet categories, I have adopted Kirgis's 'sliding scale' which holds that where state practice is high, there is less need for *opinio juris* and vis-versa. Responding to critics of this model who argue that it opens the door to manipulation, the overt consideration of the ethical value of the norm under consideration, using the 'continuance as life' framework proposed in Chapter 2.

Finally, recalling that the Statute of the ICJ does not recognize a hierarchy between sources or evidence of customary law, I identified the evidential sources that will be considered in my evaluation of practice and *opinion juris* regarding death registration, namely: (a) national legislation and practice of state organs, based on official sources. Where it is implemented, it can be considered evidence of state practice. Where the law, policy or official statement is not put into practice, it may constitute

¹⁶⁹ Ibid, 822- 832.

¹⁷⁰ K Wolfke (n 165) 151-155.

evidence of *opinio juris*, not practice; (b) treaties, which may be considered a precedent and evidence of an emerging or existing customary norm or they may constitute evidence that a norm has already been accepted as a practice of law (*opinio juris*); (c) in line with the Statute of the ICJ, judicial decisions from international courts and tribunals will be treated as subsidiary sources informing the identification of customary international law; (d) resolutions, declarations, etc of international organizations may reflect state practice or act as a catalysis for state practice. State action in the international arena may also constitute *opinio juris*. Other potential evidence of international customary norm identified by the Statute of the ICJ (e.g., diplomatic correspondence, national judicial decisions/courts, national legal advisors, and opinions of publicists) have not been considered, as they are not required for my evaluation of death registration as a customary norm of international law.

Chapter 5 - Death Registration as a Customary Norm

In this Chapter, I will consider the treatment of death registration around the world to discern if the global *practice*, *opinio juris*, and *ethical value* are sufficient to suggest the existence or emergence of a custom norm under international law. To do so, I will apply the framework for the identification of customary law that I developed in Chapter 4. In Section I of this Chapter, I will use the essential elements of a civil registration system, as described in the *United Nations Principles and Recommendations for a Vital Statistics System*¹ to evaluate state practice around the world, including duration. In Section II, I will evaluate the *opinio juris* element, predominately drawing on state engagement in the international and regional arena. The use of state engagement in the regional and international area to determine *opinio juris* has been explored in the previous Chapter.² Finally, in Section IV I will draw together the elements (state practice, *opinio juris*, and ethical value) and present my conclusions regarding death registration as a customary norm.

Throughout this Chapter, I will argue that death registration (in the context of a civil registration and vital statistics systems) sufficiently meets the required elements to be considered an existing norm of customary law. Reoccurring exceptions (namely groups that are systematically excluded from death registration) will be identified in this chapter and further examined in Chapter 8 to discern if they constitute an exception to the customary rule; these include situations of emergency (including armed conflict) and the exclusion of particular groups (such as children under 5, migrants, refugees, stateless persons, rural communities, and indigenous communities).

I described the research methodology in Chapter 1. However, it is worth recalling a few methodological issues which have a particular bearing on this chapter. First, recognizing that Europe and North America have particularly high death registration completeness,³ I have chosen to focus on regions where death registration is incomplete to better assess global practice and *opinio juris*. As such, though I consider all countries, in my sampling I have focused on areas that have low registration rates, namely in Africa and Asia.⁴

My research draws heavily on the UN Statistics Division's questionnaires on civil registration and vital statistics, completed annually by states around the world, as well as the many in-depth country

¹ UN Statistics Division 'Principles and Recommendations for a Vital Statistics System Revision 3' (2014) Statistical Papers, Series M No. 19/Rev.3

² This is position was upheld in ICJ's ruling in the *Nicaragua case (Merits)* (1986) where they considered a non-binding resolution of an international organization as evidence of *opinio juris* (*Case Concerning Military and Paramilitary Activities In and Against Nicaragua* (n 5) para 99-100)

³ UN Statistics Division, 'Demographic and Social Statistics, Civil Registration and Vital Statistics' <<https://unstats.un.org/unsd/demographic-social/crvs/>> accessed 17 June 2021.

⁴ Carla AbouZahr, Don de Savigny, Lene Mikkelsen, Philip W Stetel, Rafael Lozano, Erin Nicholos, Francis Notzon, Alan D Lopez, 'Civil Registration and Vital Statistics: Progress in the Data Revolution for Counting and Accountability' (2015) *Lancet* <<https://pubmed.ncbi.nlm.nih.gov/25971224/>> accessed 26 January 2024; GBD 2016 Mortality collaborators, 'Global, Regional, and National Under-5 Mortality, Adult Mortality, Age-Specific Mortality, and Life Expectancy, 1970–2016: a Systematic Analysis for the Global Burden of Disease Study' (2016) *The Lancet* <<https://pubmed.ncbi.nlm.nih.gov/28919115/>> accessed 26 January 2024.

assessments undertaken by the UN Statistics Division, UNICEF, WHO and a few other UN agencies over the last 50 years. It is worth noting that some countries are unable or unwilling to complete the UN Statistics Division's questionnaire; this data gap may have influenced my findings. Where possible, I verified data by reviewing national legislation.

To frame my analysis of state practice, I used the essential elements of civil registration and vital statistics, as outline in the *UNICEF Nations Principles and Recommendations for a Vital Statistics System*. When studying different aspects of the practice of death registration, I often used different samples, of varying sizes. In all cases, the samples were selected on the basis of the availability and accessibility of data, with a prioritization of countries where death registration is the most incomplete. I was not able to gather information from every country for each component. Variance in the sample size was partially a result of my own linguistic limitations. I was only able to analyse primary and secondary documents written in English and French (and to some degree Spanish). Additionally, my sample size was also impacted by the availability of documents. I was not able to access laws for all countries in the world (in languages that were accessible) on all of the studied components of death registration. Additionally, my research draws heavily on UN summary and in-depth studies of civil registration since 1950. Though this body of literature is substantial, it does not cover every country of the world for all aspects of death registration studied. The variation in sample size across the chapter may influence findings. However, I believe that my broader conclusions are based on the cumulation of multiple samples and analysis and, as such, remain valid. My analysis of *opinio juris* focuses on state engagement and commitment in international and regional forums and organizations. Again, I focused specifically on Africa and Asia, for the reasons outlined above and to ensure consistency with the analysis of state practice.

I. Death Registration and State Practice

As argued in the previous Chapter, a customary rule must be “in accordance with a constant and uniform usage practiced by the States in question”,⁵ as described in the *Asylum case*. In the *Anglo-Norwegian Fisheries* case the ICJ re-emphasized the importance of uniform practice.⁶ In the *North Sea Continental Shelf* Case, the Court found that in the formation of customary law state practice ‘for affected states’ must be “both extensive and virtually uniform in the sense of the provision invoked”.⁷ With regards to the subject under examination (death registration), the concept of ‘affected states’ is irrelevant as it applies to all states and autonomous territories. However, the other two elements invoked by the Court, namely ‘constant’ and ‘uniform’ practice, will be considered. Though the ICJ

⁵ *Asylum case (Colombia v Peru) (Merits) (Judgement)* [1950] ICJ Rep 176 <<https://www.icj-cij.org/case/7>> accessed 23 January 2024, 276-7.

⁶ *Anglo-Norwegian Fisheries case (United Kingdom v Norway)* (n 44) 116, 131 and 138.

⁷ *North Sea Continental Shelf Cases (Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands)* [1969] ICJ Rep 1969, <https://www.refworld.org/cases/ICJ_50645e9d2.html> accessed 23 January 2024, 3.

has indicated that duration of practice may no longer be an essential element in the determination of customary law,⁸ for the purpose of this study it has still been taken into consideration.

A civil registration and vital statistics (CRVS) system is defined by the *United Nations Principles and Recommendations for a Vital Statistics System* as the “continuous, permanent, compulsory and universal recording of the occurrence and characteristics of vital events pertaining to the population, as provided through decree or regulation in accordance with the legal requirements in each country”.⁹ Based on this definition, I will assess the practice of death registration (consistency and uniformity) against the following criteria: (A) *permanent registration* – determined by the presence of a legal framework and the continuity of civil registration and the production of vital statistics;¹⁰ (B) *continuous registration* – requiring administrative institutions and structures whose systems are not time bound; (C) *compulsory registration* – that there is a legal requirement ensuring mandatory registration, including penalty for failure to comply;¹¹ and (D) *universal registration* – that there is a legal and actual registration system available to all people within the territory.¹²

I.A Permanent Civil Registration and Vital Statistics

As per the international guidelines, CRVS systems should be *permanent*. This requires a clear and effective legal framework and a series of operational regulations to give legal meaning to birth and death registration and to establish the administrative arrangements for registration and the compilation statistics, as well as the parameters for who can access the data/how the data will be used and protected. For this study, the legal framework of 105 countries¹³ was assessed, which is approximately 54% of countries in the world. For a full summary, refer to *Annex 1: National Legislation on civil registration*.

Except for Bhutan, all evaluated countries have a legal framework in place governing death registration, as part of civil registration. Although Bhutan does not have a legal framework in place, it does have a system to register vital events;¹⁴ however, death registration data is not available.¹⁵ While the legal framework for death registration changes from state to state, the essential elements remain the same. In most countries there is a single law specifically dedicated to civil registration and identity

⁸ See the *Asylum case* (n 5) 266, 277; *Right of Passage over Indian Territory (Portugal v India) (Merits) (Judgement)* [1960] ICJ Rep 6 < <https://www.icj-cij.org/case/32>> accessed 23 January 2024, 6, 42-43.

⁹ UN Statistics Division (n 1) 65.

¹⁰ Ibid, 68-69.

¹¹ Refer to UN Statistics Division, ‘UN Statistics Division ‘Draft UN Guidelines on the Legislative Framework for Civil Registration, Vital Statistics and Identity Management’ (November 2018), < <https://unstats.un.org/unsd/demographic-social/meetings/2018/crvs-egm-ny/Draft-Guidelines.pdf>> accessed 19 January 2024, para 28-30.

¹² UN Statistics Division (n 1) 68-69

¹³ 44 countries in Africa, 9 countries in Central Asia, 7 countries in Southeast Asia, 22 countries in the Pacific, 6 countries in the Americas, 11 countries in the Middle East, and 6 countries in Europe

¹⁴ Bhutan does not have a formal legal framework for civil registration. The only related law is the *Bhutan Citizen Act (1977)* which refers to listing and registration of born children.

¹⁵ See death registration reporting as of February 2021 (UN Statistics Division (n 3).

management. In a few countries the relevant legislation falls across several legal instruments, including in Guinea,¹⁶ Liberia,¹⁷ Armenia,¹⁸ Namibia,¹⁹ Kyrgyzstan,²⁰ Peru,²¹ Philippines,²² Solomon Islands,²³ Argentina,²⁴ Colombia,²⁵ and Maldives.²⁶

In almost all cases, CRVS legislation includes a clear definition of births and death, apart from Cameroon.²⁷ Additionally, relevant laws outline what information should be registered, who can inform the CRVS authorities of the event, what documents are required for registration, and when and

¹⁶ The civil registration system in Guinea is governed by the Code Civil de la Republique de Guinee 1998 < https://data.unicef.org/wp-content/uploads/2017/12/guinee_code_civil.pdf > accessed 26 January 2024; Government of Guinea, Ministère Des Affaires Sociales, 'De La Condition Feminine Et De L'enfance, Loi Portant Code De L'enfant (Children's Code)' (2008) < <https://data.unicef.org/wp-content/uploads/2017/12/CODE-DE-LENFANT-guin%C3%A9n.pdf> > accessed 26 January 2024.

¹⁷ Ministry of Health, *Public Health Law* 1976 < <https://data.unicef.org/crvs/liberia/> > accessed 26 January 2024; Ministry of Health, *Executive Law* 1972 < <https://data.unicef.org/crvs/liberia/> > accessed 26 January 2024.

¹⁸ Republic of Armenia, Law on Acts of Civil Status 2004 < <http://parliament.am/legislation.php?sel=show&ID=2212&lang=ru> > accessed 26 January 2024; Republic of Armenia, Law on State Register of the Population 2002 < <https://legislationline.org/documents/id/18791> > accessed 30 July 2022, in particular Article 4 and 6 has been used as the legal basis for connecting the population and civil registers; Identity Management is regulated by the Republic of Armenia, Law of Identification cards 2011 < <http://parliament.am/legislation.php?sel=show&ID=4348&lang=eng> > accessed 26 January 2024; Electronic processing of personal

information is regulated by the Republic of Armenia, Law on Protection of Personal Data 2015 < https://www.arlis.am/Annexes/4/Law_Personal_data_protection_EN.pdf > accessed 26 January 2024.

¹⁹ Relevant legal framework includes the following legislation: Republic of Namibia, Constitution of the Republic of Namibia 1990 (amended in 1998, 2010, 2014) < <https://www.lac.org.na/laws/annoSTAT/Namibian%20Constitution.pdf> > accessed 26 January 2024, in particularly see Article 15 on the right to a name from birth as well as the right to acquire nationality; the Republic of Namibia, Births, Marriages and Deaths Registration Act 81 of 1963 < <https://www.refworld.org/docid/5d023bdb4.html> > accessed 26 January 2024; Republic of Namibia, Identification Act 21 of 1996 < <http://www.lac.org.na/laws/annoSTAT/Identification%20Act%2021%20of%201996.pdf> > accessed 26 January 2024; Republic of Namibia, Aliens Act 1 of 1937 < <http://www.lac.org.na/laws/annoSTAT/Aliens%20Act%201%20of%201937.pdf> > accessed 26 January 2024, which covers change of surname.

²⁰ Kyrgyzstan, Law on Acts of Civil Status 2020 < <https://www.refworld.org/docid/651418d84.html> > accessed 26 January 2024; Kyrgyzstan, About Actors of Civil Status No. 110 2020 < <https://cis-legislation.com/document.fwx?rgn=127033> > accessed 26 January 2024; Kyrgyzstan, The Code of the Kyrgyz Republic about Children No. 100 2012 (as amended in 2020) < <https://cis-legislation.com/document.fwx?rgn=53124#:~:text=This%20Code%20establishes%20basic%20guarantees,development%20of%20children%2C%20protection%20and> > accessed 26 January 2024; Kyrgyzstan, Family Code of the Kyrgyz Republic No. 201 2003 (as amended 2022) < <https://cis-legislation.com/document.fwx?rgn=4088#:~:text=The%20rights%20of%20citizens%20in%20family%20can%20be%20limited%20only,family%20members%20and%20other%20persons> > accessed 26 January 2024.

²¹ Peru, Constitution 1993 (rev. 2009) < https://www.constituteproject.org/constitution/Peru_2009 > accessed 26 January 2024 established the national registration body; Peru, Organic Law 1995 < <https://www.bcrp.gob.pe/en/legal-framework/organic-law.html> > accessed 26 January 2024 established the National Register; Peru, Digital Signatures and Certificates Law (2000); Peru, Law that Regulates the Reconstruction of Births, Marriage and Death Records due to Negligence, Accidents or Criminal Activity (2009); Peru, Personal Data Protection Law 2011 No. 29733 < <https://www.dataguidance.com/notes/peru-data-protection-overview> > accessed 26 January 2024; Peru, Digital Government and Digital Identity Law 2018

²² Philippines, Law in Registry of Civil Status 2012 Act No. 3753 < <https://psa.gov.ph/content/act-no-3753> > accessed 26 January 2024; Philippines, Civil Code of the Philippines Republic Act No. 386 < [https://amslaw.ph/philippine-laws/civil-law/civil-code-of-the-philippines\(1\)](https://amslaw.ph/philippine-laws/civil-law/civil-code-of-the-philippines(1)) > accessed 26 January 2024, Article 407-412; Philippines, Senate Bill No. 1665 17th Congress of the Republic 2018 < <https://issuances-library.senate.gov.ph/subject/death-registration> > accessed 26 January 2024, amending Presidential Decree No. 651 entitled Requiring the Registration of Births and Deaths in the Philippines which Occurred from 1 January 1974 and thereafter, which mandated that registration of all unregistered deaths during 1975 would be free of charge; Philippines, Senate Bill No. 1305, 18th Congress of the Republic 2020, amending section 9 of Presidential Decree No. 651, entitled 'Requiring the Registration of Births and Deaths in the Philippines which occurred from January 1, 1974 and thereafter'; The Local Government Code of the Philippines (1991) < <https://www.officialgazette.gov.ph/downloads/1991/10oct/19911010-RA-7160-CCA.pdf> > accessed 26 January 2024 regarding municipal civil registration; Presidential Decree No. 856 Promulgating the Code on Sanitation of the Philippines 1975 < https://lawphil.net/statutes/presdecs/pd1975/pd_856_1975.html > accessed 26 January 2024, Section 91, related to death certificates

²³ Solomon Islands: Births and Deaths (Registration) Act 1993 < <https://www.refworld.org/docid/606230a14.html> > accessed 26 January 2024; Laws of Solomon Islands, Births, Marriages and Deaths Registration 1978, related to registration of foreigners in the Solomon Islands

²⁴ Argentina, Decreto Ley No 8204/63 1963 < https://www.argentina.gob.ar/normativa/nacional/decreto_lev-8204-1963-145346/normas-modifican > accessed 26 January 2024 : This law made civil registration applicable to the entire country and complementary local regulations have also been passed. Though it has been modified, it still governs civil registration and personal identity; Argentina, Civil and Commercial Code Law No. 26,994.

²⁵ Columbia, Law No. 16 1916, regarding a burial permit; Columbian Constitution 1991, Article 14 provides for a right to personhood before the law, Article 120 establishes the National Civil Registry (RNEC), Article 266 describes the organization of the National Civil Registry; Organic Statute of Civil Status Registration Decree 1260 1970 stipulated that church-issued death certificates were no longer legally recognized proof of civil registration; Decree 2241 1987 formally transferred authority for civil registration to RNEC; Law 392 2010 allows civil registration in any part of the country.

²⁶ Maldives, Law on Birth Registration and Death Registration 1993 provides the legal framework for civil registration; Maldives, Ministry of Health, Regulation No. 2015/R-179 2015 lays out the functional details of civil registration.

²⁷ Cameroon, Civil Status Law No. 2011/011 2011, replacing Ordinance No. 81-02 1981.

where civil registration should be undertaken. Exceptions include Swaziland, where the revised *Birth, Marriages, and Death Registration Law Act No. 5 (1983) Act* does not describe what kind of information should be registered.²⁸ In Botswana, the *Birth and Death Registration Act (revised in 1998)* describes how cause of death should be determined, but it does not include some other details regarding the registration procedure, including which information should be registered and how vital statistics should be prepared. Finally, in almost all cases -- with a few exceptions (e.g. DR Congo²⁹ and Botswana³⁰) -- relevant legislation describes the organization of the CRVS registration system, including responsibilities of civil registers in undertaking death registration, management of records, insurance of certificates, etc. This component is further assessed in section B, below.

To further establish that the legal framework for death registration covers the basic components of our definition of death registration (refer to Chapter 1), I looked in more depth at 33 countries (approximately 17% of countries in the world). For reference, death registration usually includes the following: identity of the deceased (depending on the context this could include name, address, profession, age, gender, religion, ethnicity, etc); location of death; date of death; and cause of death. The table below summarizes the type of information gathered during death registration (as mandated by law) in these countries (full details available in *Annex 2: Data Collected during Death Registration*).³¹ Please note that this summary was taken from state reporting to the UN Statistics Annual Survey; it is strongly believed that the list is not exhaustive.

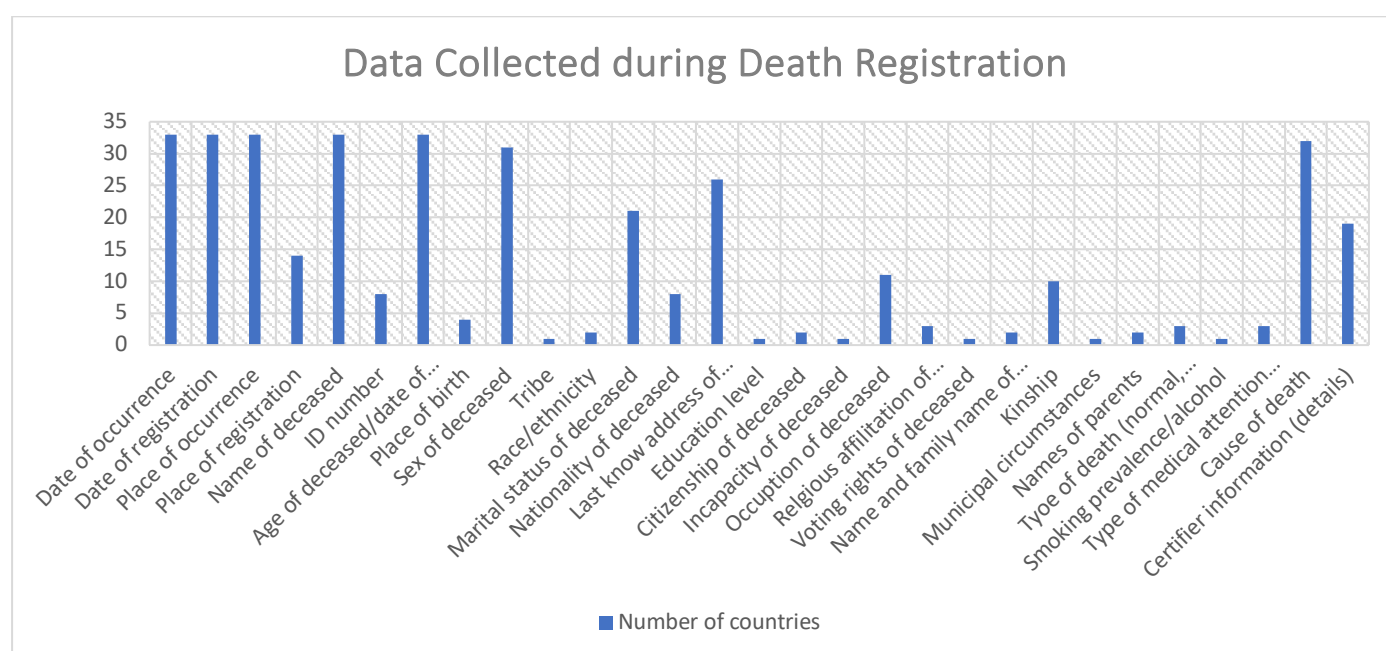
²⁸ UN Statistics Division, 'Status of Civil Registration and Vital Statistics: SADC Region' (2010) CRVS Technical Report Series Vol 2, UN Docs ESA/STAT/2010/10 < https://unstats.un.org/unsd/demographic-social/crvs/documents/Technical_report_SADC_final_v2.pdf > accessed 26 January 2024, 56-61.

²⁹ Democratic Republic of Congo, Family Code, Law No. 16/008 2016 provides the legal framework for the civil registration system, Article 191 provides the legal basis for death registration. However, the law does not cover the compilation and dissemination of vital statistics.

³⁰ UN Statistics Division (n 28) 18-23.

³¹ Sources for the below include: International Institute for Vital Registration and Statistics (iiVRS), 'Status of Civil Registration and Vital Statistics in El Salvador' (1982) Technical Papers Number 17 < https://unstats.un.org/unsd/demographic-social/crvs/documents/IIVRS_papers/IIVRS_paper17.pdf > accessed 26 January 2024, 2; International Institute for Vital Registration and Statistics (iiVRS) 'The Civil Registration System in Denmark' (1996) Technical Papers, Number 66 < https://www.cdc.gov/nchs/data/isp/066_the_civil_registration_system_in_denmark.pdf > accessed 26 January 2024, 3; Centre of Excellence for Civil Registration and Vital Statistics Systems 'Compendium of Good Practices in Linking Civil Registration and Vital Statistics and Identity Management Systems, Case Study 4: Namibia' (2019) < https://crvssystems.ca/sites/default/files/assets/files/CRVS_Compendium_e_WEB.pdf > accessed 26 January 2024, 98-99; United Nations Children's Fund (UNICEF) 'Status of Civil Registration and Vital Statistics in South Asia Countries, 2018' (2019) < <https://www.unicef.org/rosa/media/3121/file/UNICEF%20ROSA%20Status%20of%20Civil%20Registration%20and%20Vital%20Statistics%20in%20South%20Asia%20Countries%202019.pdf> > accessed 26 January 2024; UN Statistics Division 'CRVS Technical Report Series' (2009) CRVS Technical Report Series Vol. 1, UN Docs ESA/STAT/2009/9 < https://unstats.un.org/unsd/demographic-social/crvs/documents/Technical_report_ESCWA_Final.pdf > accessed 26 January 2024; United Nations Children's Fund (UNICEF), 'Status of Civil Registration and Vital Statistics in South Asia Countries 2018' (2019) < <https://reliefweb.int/report/world/status-civil-registration-and-vital-statistics-south-asia-countries-2018> > accessed 26 January 2024; Office of the Registrar General of India, 'Vital Statistics of India Based on the Civil Registration System' (2016); United Nations Statistics Division (n 28) 67-70.

Summary Table: Data Collected during Death Registration



According to the sample of 33 countries, the vast majority of countries identify and include the core elements of death registration. This helps to establish that the legal frameworks mandating death registration are addressed to the same subject.

Based on the 105 surveyed countries, there is overwhelming evidence that the vast majority of countries have a permanent civil registration system in place, as shown through the existence of national legislation describing the obligation to register birth and death, as well as the administrative structures. Furthermore, at least in a sample of 33 countries, I was able to establish that these laws were focused on gathering the same type of data during death registration. In many places the laws are imperfect. These gaps, however, do not counter the fact that the presence of laws indicate the practice of death registration.

I.B Continuous Civil Registration

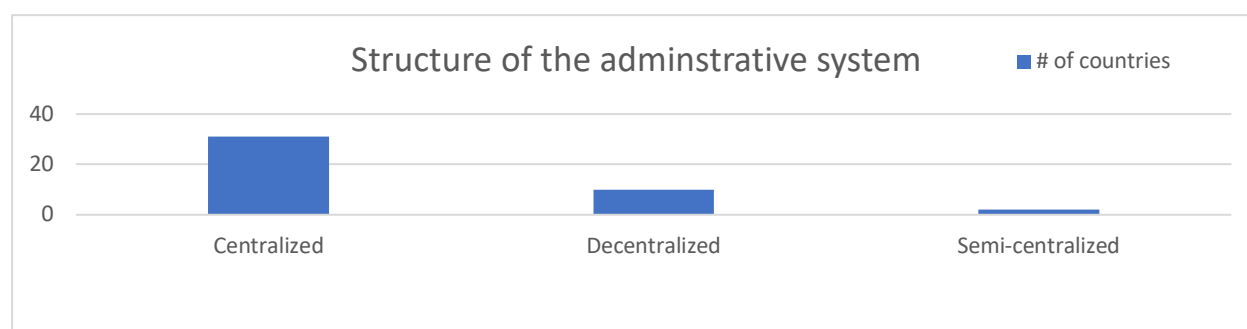
As described in international guidelines,³² a CRVS system should be *continuous*. This requires that there is an institutional, legal and technical system in place that frames the administration of coordinated and standardized death registration. Depending on the political and administrative structure of a country, CRVS systems may be centralized or decentralized. *Centralized systems* are administered by a national agency who is responsible for directing, coordinating and monitoring the

³² UN Statistics Division (n 1) 12.

nationwide civil registration of vital events.³³ They operate a network of local registration offices under the direct line management of a central authority or national government agency.³⁴

Decentralized systems are administered at the level of major civil divisions (e.g., state, province, or department). Decentralized systems are frequently found in states that have a federated political system, a large territory or a large population.³⁵ In some decentralized systems, CRVS laws may also vary from territory to territory, within a single state. Regardless of whether the CRVS system is centralized or decentralized, for the CRVS system to be functional there needs to be an agency at the national level that enforces certain standards.³⁶ Coordination between involved actors as well as accessible CRVS offices are also key characteristics of a functional CRVS system.³⁷

In a sample of 43 countries (22% of the countries in the world), a clear trend towards administrative centralization of the CRVS system was identified, as below (refer to *Annex 3: Administrative Systems for a full breakdown*):



The UN Legal Identity Agenda recommends a holistic and integrated approach to the management of civil registration, vital statistics and identity management, composed of the components shown below. For ease of understanding, a diagram produced by the UN Legal Identify Task Force, in its publication *Civil Registration: Maintaining International Standards in Emergencies*³⁸ is fully reproduced below.

³³ United Nations, 'Handbook on Civil Registration and Vital Statistics System: Management, Operation and Maintenance' (UN1998) < <https://unstats.un.org/unsd/demographic-social/Standards-and-Methods/files/Handbooks/crvs/crvs-mgt-E.pdf> > accessed 26 January 2024, para. 12.

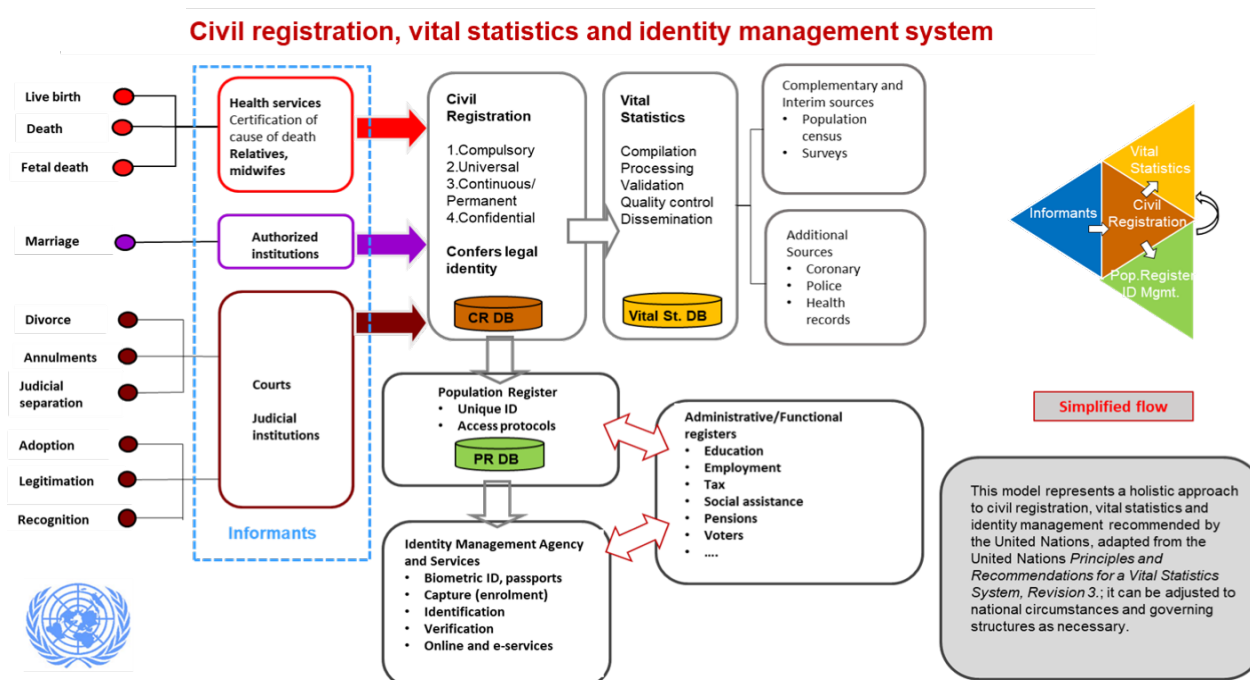
³⁴ International Institute for Vital Registration and Statistics (iiVRS), 'Organization and Status of Civil Registration in Africa and Recommendations for Improvements' (1988) Technical Paper No. 31 presented to United Nations Economic and Social Council, 'African workshop on Strategies for Accelerating the Improvement of Civil Registration and Vital Statistics Systems, Addis Ababa, Ethiopia, 5-9 December 1994 (16 November 1994) AW/CRVS/94/35, 1.

³⁵ UN Statistics Division (n 1) para. 311.

³⁶ UN Statistics Division, 'Status of Civil Registration and Vital Statistics: ESCWA Region' (2009) CRVS Technical Report Series Volume 1, UN Docs ESA/STAT/2009/9 < <https://unstats.un.org/unsd/demographic/crvs/technical%20report%20escwa%20final.pdf> > accessed 26 January 2024.

³⁷ UN Statistics Division, 'Status of Civil Registration and Vital Statistics: African English-speaking Countries' (2016) CRVS Technical Report Series Volume 3, 44.

³⁸ Srdjan Mrkic, 'Civil Registration: Maintaining International Standards in Emergencies' (2020) United Nations Legal Identity Task Force, United Nations Statistics Division < <https://unstats.un.org/legal-identity-agenda/documents/CR-ER.pdf> > accessed 26 January 2026.



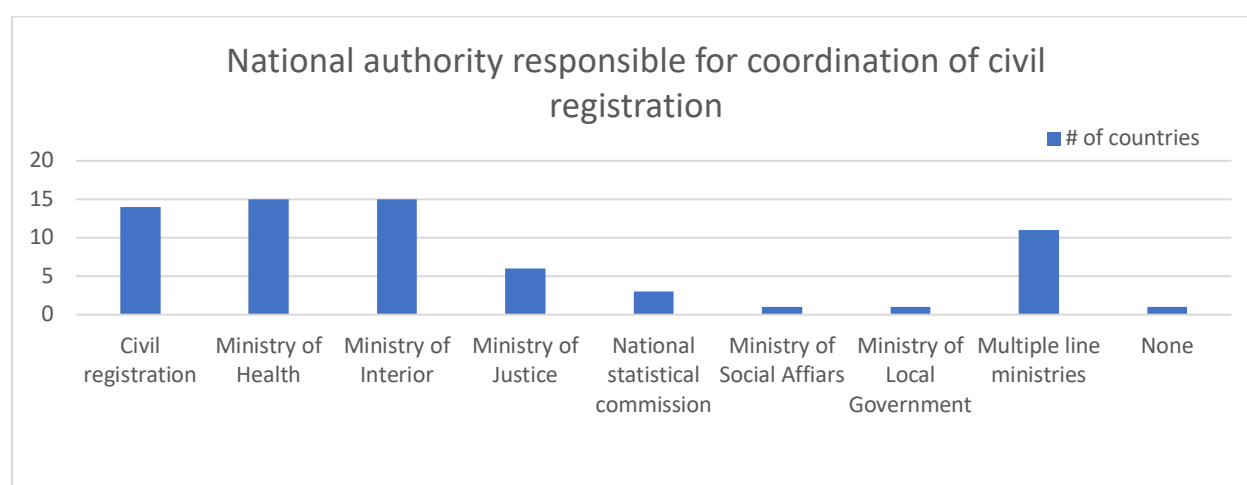
For the purposes of this study, 82 countries (42% of the countries in the world) were assessed to ascertain if administrative systems were in place to facilitate death registration, as part of its formalized CRVS system. The full analysis is available in *Annex 3: Administrative systems*. Apart from Central African Republic, all of the assessed countries had an administrative system in place. Across the world, the church has played a significant role in civil registration in the past (particularly in Europe and Latin America), through parish registers. Today, in all but one of the assessed countries, responsibility for the CRVS system has been moved to national civil authority. A few countries continue to maintain a hybrid system, where parish registration systems are linked to national databases. Finland is an example of this type of system.³⁹

Except for Central African Republic and Somalia,⁴⁰ all the 82 countries studied had a designated central authority responsible for coordination and oversight of the civil registration. However, the responsible line ministry altered significantly from country to country, as below:

³⁹ International Institute for Vital Registration and Statistics (iiVRS), 'General Description of Population Registration in Finland' (1983) Technical Papers Number 24 < https://unstats.un.org/unsd/demographic-social/crvs/documents/IIVRS_papers/IIVRS_paper24.pdf > accessed 26 January 2024, 1.

⁴⁰ International Institute for Vital Registration and Statistics (iiVRS) (n 34) 2.

Summary Table: National authority for civil registration



In the Arab region, roughly half of the CRVS systems are housed in the Ministry of Home Affairs, or the Ministry of Interior and the other half are predominately under the auspices of the Ministry of Health.⁴¹ As of 2016, in more than half of the English-speaking African countries assessed by the UN, death registration is administered by the Ministry of Health. As a result, death registration systems in hospitals and clinics tend to be strong.⁴² However, for events that occur outside the hospital, the registration systems may be less strong. This was identified as a key obstacle to complete death registration in Bahrain,⁴³ Botswana⁴⁴ and Mozambique.⁴⁵

In a few locations, administration of CRVS is complicated by the involvement of multiple line ministries. For example, in Bangladesh, several ministries (Ministry of Local Government, Rural Development and Cooperatives, Ministry of Health and Family Welfare, and Ministry of Planning) participate in the collection of fertility and mortality data. However, there is no agency able to produce reliable and complete vital statistics.⁴⁶ Similarly, more than one line ministry is involved in the administration of CRVS in Botswana, Egypt, Gambia, Ghana, Kenya, Lesotho, Nigeria, and South Africa.⁴⁷

⁴¹ International Institute for Vital Registration and Statistics (iiVRS), 'Organization and Status of Civil Registration and Vital Statistics in the Arab Countries' (1988) Technical Papers, Number 33 < <https://unstats.un.org/wiki/display/CRAVS/Organization+and+status+of+civil+registration+and+vital+statistics+in+the+Arab+countries>> accessed 26 January 2024, 2.

⁴² UN Statistics Division (n 37) 14-15.

⁴³ UN Statistics Division 'Status of Civil Registration and Vital Statistics: ESCWS Region' (2009) CRVS Technical Report Series Vol. 1, UN Docs ESA/STAT/2009/9 < https://unstats.un.org/unsd/demographic-social/crvs/documents/Technical_report_ESCWA_Final.pdf> accessed 26 January 2024.

⁴⁴ UN Statistics Division (n 28)18-23.

⁴⁵ Ibid 38-44.

⁴⁶ UNICEF, 'Status of Civil Registration and Vital Statistics in South Asia Countries, 2018' (2019) < <https://www.unicef.org/rosa/media/3121/file/UNICEF%20ROSA%20Status%20of%20Civil%20Registration%20and%20Vital%20Statistics%20in%20South%20Asia%20Countries%202019.pdf>> accessed 26 January 2024, 45.

⁴⁷ UN Statistics Division (n 37) 14.

Even though there are administrative CRVS systems at the national and local level across the world, CRVS systems in most parts of the world are riddled with limitations. The establishment of a modern CRVS system is expensive and requires well developed governance structures, including coordination between municipal and national authorities. Notably, a recent World Bank study found that there was a \$1.99 billion dollar financing gap per year (excluding domestic funds) to adequately finance necessary reforms to CRVS systems in 73 countries (India and China excluded).⁴⁸ UN surveys shows that there is inadequate national budget allocation for CRVS in many countries, including Kenya,⁴⁹ the Asia and Pacific region,⁵⁰ El Salvador,⁵¹ the English-speaking Caribbean,⁵² Dominica,⁵³ Lesotho,⁵⁴ Swaziland,⁵⁵ Tanzania,⁵⁶ Zimbabwe,⁵⁷ Afghanistan,⁵⁸ and Nepal,⁵⁹ among others.

Another common challenge to the administration of death registration is weak coordination between stakeholders engaged in CRVS, particularly in regards to the process of data centralization at the national level.⁶⁰ UN surveys identify the failure to establish clear roles and responsibilities as a critical obstacle to CRVS in several regions,⁶¹ including Pacific Community,⁶² Southern African Development Community (SADC) region,⁶³ Botswana,⁶⁴ Zambia,⁶⁵ Afghanistan,⁶⁶ Gambia,⁶⁷ Swaziland⁶⁸ and Nepal.⁶⁹ Lack of coordination does not always flow from legislative gaps; in Lesotho, for example, civil registration legislation clearly describes coordination pathways, including

⁴⁸ World Bank Group 'Global Civil Registration and Vital Statistics: Scaling up Investment Plans 2015 – 2024' (2014) < <https://openknowledge.worldbank.org/entities/publication/52a4471f-571a-5a79-b925-748ca3c83307>> accessed 29 January 2024.

⁴⁹ Centre of Excellence for Civil Registration and Vital Statistics Systems, 'Snapshot of Civil Registration and Vital Statistics System of Kenya, International Development Research Centre' (2019) International Development Research Centre < https://apai-crvs.uneca.org/sites/default/files/resourcefiles/CRVS_KenyaSnapshot_e.pdf> accessed 29 January 2024, 11.

⁵⁰ Committee of Asia Experts under the auspices of the IIVRS and the United Nations Economic and Social Commission for Asia and the Pacific, 'Urgently Needed Reforms in Civil Registration in Asian Countries' (1986) International Institute for Vital Registration and Statistics Technical Paper No. 28 < https://unstats.un.org/unsd/demographic-social/crvs/documents/IIVRS_papers/IIVRS_paper28.pdf> accessed 29 January 2024, 92.

⁵¹ International Institute for Vital Registration and Statistics (iiVRS) 'Status of Civil Registration and Vital Statistics in El Salvador' (1982) Technical Papers Number 17 < https://unstats.un.org/unsd/demographic-social/crvs/documents/IIVRS_papers/IIVRS_paper17.pdf> accessed 29 January 2024, 3-4.

⁵² International Institute for Vital Registration and Statistics (iiVRS), 'Registration of Vital Events in the English-speaking Caribbean' (1988) Technical papers Number 32 < https://unstats.un.org/unsd/demographic-social/crvs/documents/IIVRS_papers/IIVRS_paper32.pdf> accessed 29 January 2024, 6.

⁵³ International Institute for Vital Registration and Statistics (iiVRS) (n 52) 7.

⁵⁴ UN Statistics Division (n 28) 25-28.

⁵⁵ Ibid, 56-61.

⁵⁶ Ibid

⁵⁷ Ibid, 71-74.

⁵⁸ UNICEF (n 46).

⁵⁹ Basant R. Gautam, Director General/Registrar, Department of Civil Registration 'Civil Registration and Vital Statistics: Policy and practices in Nepal' (2016) Babermahal, Kathmandu, Nepal; UNICEF (n 46) 115.

⁶⁰ United Nations Statistics Division (n 37) 14.

⁶¹ Committee of Asia Experts under the auspices of the IIVRS and the United Nations Economic and Social Commission for Asia and the Pacific (n 50) 92.

⁶² Pacific Community 'Best Practice Guidelines and Examples of Legislation for Civil Registration and Vital Statistics in the Pacific' (2019) Version 2 < https://getinthepicture.org/sites/default/files/resources/Pacific_Legislation_Best_Practice_Guidelines.pdf> accessed 29 January 2024, 7-8.

⁶³ UN Statistics Division (n 28) 15-17.

⁶⁴ Ibid, 18-23.

⁶⁵ Ibid, 67-70.

⁶⁶ UNICEF (n 46).

⁶⁷ UN Statistics Division (n 37) 14.

⁶⁸ Ibid 14.

⁶⁹ Basant Gautam, Director General/Registrar, Department of Civil Registration 'Civil Registration and Vital Statistics: Policy and Practices in Nepal' (2016) Babermahal, Kathmandu, Nepal; United Nations Children's Fund (UNICEF) (n 46) 115.

how data should be transferred, but it is not always implemented.⁷⁰ In Iraq, though the legal framework remains in place, the civil registration system has fallen into disarray since 1990 as a result of the political crisis and armed conflict; the infrastructure is largely missing, and the registrars lack essential qualifications.⁷¹

Other administrative gaps identified include (a) distance to registration centres, access challenges, and inadequate coverage of civil registration offices (e.g. Kenya,⁷² Ecuador,⁷³ DR Congo,⁷⁴ Lesotho,⁷⁵ Madagascar,⁷⁶ Mozambique,⁷⁷ Zambia,⁷⁸ Zimbabwe,⁷⁹ Afghanistan,⁸⁰ and Nepal⁸¹); (b) gaps in requisite capacity across the administration of civil registration system, from local registers to persons responsible for the calculation of vital statistics (e.g. Kenya,⁸² El Salvador,⁸³ Dominica,⁸⁴ Mexico,⁸⁵ Swaziland,⁸⁶ Tanzania,⁸⁷ Zimbabwe,⁸⁸ and Afghanistan);⁸⁹ (c) gaps in infrastructure or relevant supplies (e.g. El Salvador,⁹⁰ Zimbabwe,⁹¹ and Afghanistan⁹²); (d) weak quality control, monitoring and evaluation systems (e.g. Kenya,⁹³ Ethiopia,⁹⁴ Mexico,⁹⁵ Tanzania,⁹⁶ and Afghanistan⁹⁷); (e) inadequate safe storage and centralization of vital records (e.g. Kenya,⁹⁸ the Asia and Pacific region,⁹⁹ Cameroon,¹⁰⁰ El Salvador,¹⁰¹ Ethiopia,¹⁰² SADC region,¹⁰³ Botswana,¹⁰⁴ Lesotho¹⁰⁵ Madagascar,¹⁰⁶

⁷⁰ UN Statistics Division (n 37) 14.

⁷¹ UN Statistics Division (n 43).

⁷² Centre of Excellence for Civil Registration and Vital Statistics Systems (n 49) 11.

⁷³ UN Statistics Division 'Feasibility Study for Accelerating the Improvement of Vital Statistics and Civil Registration Systems in Ecuador' (1993) < <https://unstats.un.org/unsd/demographic/CRVS/Ecuador.pdf> > accessed 29 January 2024.

⁷⁴ Centre of Excellence, 'Snapshot of Civil Registration and Vital Statistics Systems of Democratic Republic of Congo' (2019), 6.

⁷⁵ UN Statistics Division (n 28) 25-28.

⁷⁶ Ibid, 29-31.

⁷⁷ Ibid, 39-44.

⁷⁸ Ibid, 67-70.

⁷⁹ Ibid, 71-74.

⁸⁰ UNICEF (n 46).

⁸¹ Basant Gautam, Director General/Registrar, Department of Civil Registration (n 69); UNICEF (n 46) 115.

⁸² Centre of Excellence for Civil Registration and Vital Statistics Systems (n 49) 11.

⁸³ International Institute for Vital Registration and Statistics (iiVRS) (n 31) 3-4.

⁸⁴ International Institute for Vital Registration and Statistics (iiVRS) (n 52) 7.

⁸⁵ International Institute for Vital Registration and Statistics (iiVRS) 'Demographic Information from Vital Registration Offices in Mexico' (1982) Technical Papers Number 23 < https://unstats.un.org/unsd/demographic-social/crvs/documents/IIVRS_papers/IIVRS_paper23.pdf > accessed 30 January 2024, 3.

⁸⁶ UN Statistics Division (n 28) 56-61.

⁸⁷ Ibid

⁸⁸ Ibid, 71-74.

⁸⁹ UNICEF (n 46).

⁹⁰ International Institute for Vital Registration and Statistics (iiVRS) (n 51) 3-4.

⁹¹ UN Statistics Division (n 28) 71-74.

⁹² UNICEF (n 46).

⁹³ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 49) 11.

⁹⁴ Centre of Excellence for Civil Registration and Vital Statistics System (n 15) 11.

⁹⁵ International Institute for Vital Registration and Statistics (iiVRS) (n 85) 3.

⁹⁶ UN Statistics Division (n 28).

⁹⁷ United Nations Children's Fund (n 46).

⁹⁸ Centre of Excellence for CRVS Systems (n 49) 11.

⁹⁹ Committee of Asia Experts under the auspices of the IIVRS and the United Nations Economic and Social Commission for Asia and the Pacific (n 50).

¹⁰⁰ Center of Excellence for Civil Registration and Vital Statistics Systems, 'Snapshot of Civil Registration and Vital Statistics Systems of Cameroon' (2019) < https://crvssystems.ca/sites/default/files/assets/files/CRVS_Cameroon_e_WEB.pdf > accessed 30 January 2024.

¹⁰¹ International Institute for Vital Registration and Statistics (iiVRS) (n 51) 3-4.

¹⁰² Centre of Excellence for Civil Registration and Vital Statistics System (n 94) 11.

¹⁰³ UN Statistics Division (n 28) 15-17.

¹⁰⁴ Ibid 18-23.

¹⁰⁵ Ibid, 25-28.

¹⁰⁶ Ibid, 29-31.

Malawi,¹⁰⁷ Mozambique,¹⁰⁸ Swaziland,¹⁰⁹ Tanzania,¹¹⁰ Zambia,¹¹¹ Zimbabwe,¹¹² and Afghanistan,¹¹³ among others.)

In many of the countries with weak administrative death registration systems, reform is underway. In recent years, several countries in Africa and Asia have undertaken a national assessment of their civil registration system and have adopted national Strategic Plans to address gaps. These reform efforts will be further discussed in section D, below. In this section, I will limit my reflections to the move towards digitalization of national civil registration systems in the last twenty years.¹¹⁴ Digitalization is recognized by UN guidelines as essential to improved coordination, coverage and completeness of civil registration, including during times of emergencies.¹¹⁵

For this study, 24 countries were assessed (12% of countries in the world) to better understand the move towards digitalization (full details are available in *Annex 4: Computerization of the Civil Registration System*). Five of the assessed countries still had paper-based death registration systems, namely Afghanistan,¹¹⁶ Albania,¹¹⁷ Cameroon,¹¹⁸ Ethiopia,¹¹⁹ and Malawi.¹²⁰ Seven countries were in the process of digitalizing the death registration systems (as part of the larger CRVS system), including Afghanistan,¹²¹ Senegal,¹²² Sierra Leone,¹²³ Swaziland,¹²⁴ Tanzania,¹²⁵ Mozambique,¹²⁶ and Uganda.¹²⁷ Twelve countries had put in place digitalized death registration systems, including

¹⁰⁷ Ibid, 31-33.

¹⁰⁸ Ibid, 39-44.

¹⁰⁹ Ibid, 56-61.

¹¹⁰ Ibid.

¹¹¹ Ibid, 67-70.

¹¹² Ibid, 71-74.

¹¹³ United Nations Children's Fund (UNICEF) (n 46).

¹¹⁴ Statistics Norway, 'Status Analysis on Civil Registration and Vital Statistics' (2014) UN Statistics Division Migration Assistant, < <https://unstats.un.org/wiki/display/CRAVS/Norway%3A+Status+Analysis+on+Civil+Registration+and+Vital+Statistics>> accessed 30 January 2024, 7-10.

¹¹⁵ UN Statistics Division 'Guidelines on the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems' (2023) Series F No. 123.

¹¹⁶ United Nations Children's Fund (UNICEF) (n 46) 29.

¹¹⁷ Statistics Norway (n 114) 33-34.

¹¹⁸ Center of Excellence for Civil Registration and Vital Statistics Systems (n 100).

¹¹⁹ In Ethiopia, the registration system is still paper-based; (Centre of Excellence for Civil Registration and Vital Statistics System (n 94) 5).

¹²⁰ UN Statistics Division (n 28) 31-33.

¹²¹ United Nations Children's Fund (UNICEF) (n 46) 29.

¹²² Centre of Excellence for Civil Registration and Vital Statistics, 'Snapshot of Civil Registration and Vital Statistics Systems of Senegal' (2019) < https://crvssystems.ca/sites/default/files/assets/files/CRVS_Senegal_e_WEB.pdf> accessed 30 January 2024, 8.

¹²³ Centre of Excellence for Civil Registration and Vital Statistics System 'Snapshot of Civil Registration and Vital Statistics Systems of Sierra Leone' (2019) < https://crvssystems.ca/sites/default/files/assets/files/CRVS_SierraLeone_e_WEB.pdf> accessed 30 January 2024, 7.

¹²⁴ UN Statistics Division (n 28) 56-61.

¹²⁵ Ibid.

¹²⁶ In Mozambique vital events are still registered in a bound booklet, though this is changing as IT systems are being introduced in a phased manner (Centre of Excellence for Civil Registration and Vital Statistics Systems 'Snapshot of Civil Registration and Vital Statistics Systems of Mozambique' (2019) International Development Research Centre < https://apai-crvs.uneca.org/sites/default/files/resourcefiles/CRVS_MozambiqueSnapshot_e.pdf> accessed 30 January 2024, 6.)

¹²⁷ Centre of Excellence for Civil Registration and Vital Statistics Systems 'Snapshot of Civil Registration and Vital Statistics Systems of Uganda' (2019) < https://apai-crvs.uneca.org/sites/default/files/resourcefiles/CRVS_UgandaSnapshot_e.pdf> accessed 30 January 2024, 8.

Armenia,¹²⁸ Ecuador,¹²⁹ Ireland,¹³⁰ Jordan,¹³¹ Kyrgyzstan,¹³² Korea,¹³³ Mauritius,¹³⁴ Namibia,¹³⁵ Netherlands,¹³⁶ New Zealand,¹³⁷ Norway,¹³⁸ and Peru.¹³⁹

As an example, in Kyrgyzstan until 2014 vital events were manually recorded in a registration book in one of the 60 CRVS offices or 519 governor offices. A copy of the registration was carried by hand to the central civil register in the capital and subsequently to the central statistics authority for tabulation of vital statistics.¹⁴⁰ In 2014 the civil register was digitalized; 58 civil registration offices were computerized and an additional 363 information kiosks were established at post offices in addition to 11 local authorities.¹⁴¹

As part of this trend towards digitalization and in line with UN guidelines, an increasing number of countries are integrating CRVS systems through a central, digitalized data base linked to unique identification numbers (UIN), assigned to each person. In the Netherlands, for example, the *Civil Code* gives the Ministry of Justice and Security the responsibility for coordinating and creating policies for civil registration at the national level, though municipalities are still responsible for registration of vital events and maintaining records. Municipalities have been connected using a national data transfer infrastructure. In accordance with the provisions of the *Basic Registration of Persons Act*, the Ministry of Interior maintains the Central Population Register, which centralizes all data from the municipal authorities as well as the non-residents' population register.¹⁴² All data regarding an individual is centralized and assigned a citizen's unique identification number, known as a Citizen Service Number.¹⁴³ Namibia is also an example; it has a fully integrated register and up-to-

¹²⁸ Zoran Dokoric, 'Compendium of Good Practice in Linking Civil Registration and Vital Statistics and Identity Management Systems: Armenia' (2019) Centre of Excellence for Civil Registration and Vital Statistics Systems, Global Partnership for Sustainable Development Data < https://crvssystems.ca/sites/default/files/assets/files/CRVS_Armenia_e_WEB.pdf > accessed 30 January 2024, 13.

¹²⁹ Veronica Alvarez 'Compendium of Good Practice in Linking Civil Registration and Vital Statistics and Identity Management Systems: Ecuador' (2019) Centre of Excellence for Civil Registration and Vital Statistics Systems, Global Partnership for Sustainable Development Data < https://www.data4sdgs.org/sites/default/files/2019-12/CRVS_Ecuador_e_WEB.pdf > accessed 30 January 2024, 9.

¹³⁰ Elizabeth Farries 'The Irish PSC: Enforced Digital Identities for Social Protection Services and Beyond, Draft' (2019) Irish Council for Civil Liberties < <https://www.ohchr.org/sites/default/files/Documents/Issues/Poverty/DigitalTechnology/IrishCouncilCivilLiberties.pdf> > accessed 30 January 2024, 1.

¹³¹ UN Statistics Division (n 36)

¹³² Centre of Excellence for Civil Registration and Vital Statistics Systems, 'Compendium of Good Practices in Linking Civil Registration and Vital Statistics and Identity Management Systems, 2019, Case Study 3: Kyrgyzstan' Global Partnership for Sustainable Development Data < https://crvssystems.ca/sites/default/files/assets/files/CRVS_Compendium_e_WEB.pdf > accessed 30 January 2024, 74.

¹³³ Minah Kang, Green Bae, Heeun Kim, Seung Yeon Hong, Samuel Mills, 'Korean Resident Registration System for Universal Health Coverage, Discussion Paper' (2019) World Bank Group < <https://openknowledge.worldbank.org/server/api/core/bitstreams/45d41e8b-02cf-560a-981c-6b4390314251/content> > accessed 30 January 2024, 4.

¹³⁴ UN Statistics Division, (n 28) 33-38.

¹³⁵ Centre of Excellence for Civil Registration and Vital Statistics Systems, 'Compendium of Good Practices in Linking Civil Registration and Vital Statistics and Identity Management Systems, Case Study 4: Namibia' 92-93.

¹³⁶ Zoran Dokoric (n 128) 22.

¹³⁷ Pacific Community (n 62) 46.

¹³⁸ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 135) 94-95.

¹³⁹ Centre of Excellence for Civil Registration and Vital Statistics Systems, 'Compendium of Good Practices in Linking Civil Registration and Vital Statistics and Identity Management Systems, Case Study 6: Peru' (2019) < https://www.data4sdgs.org/sites/default/files/2019-12/CRVS_Peru_e_WEB.pdf > accessed 30 January 2024, 147.

¹⁴⁰ Zoran Dokoric (n 128) 11.

¹⁴¹ Ibid, 11.

¹⁴² Centre of Excellence for Civil Registration and Vital Statistics Systems, 'Compendium of Good Practices in Linking Civil Registration and Vital Statistics and Identity Management Systems, Case Study 5: The Netherlands' (2019) < https://www.data4sdgs.org/sites/default/files/2019-12/CRVS_Netherlands_e_WEB.pdf > accessed 30 January 2024, 115-116.

¹⁴³ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 42) 111.

date identity information for citizens, permanent residents, and refugees. All identity information is centralized in one database, the National Population Registration System (NPRS). When the NPRS was established, it compiled information from various existing databases under a Unique Identification Number. Births and deaths are registered through e-birth and e-death notification platforms, available in health facilities, police mortuaries, and civil registration offices.¹⁴⁴

With almost no exceptions, states have put in place administrative infrastructure to enable birth and death registration. Though states around the world, particularly developing nations, face exceptional administrative challenges with the rollout of modern CRVS systems, there is consistent evidence of national reform efforts and investment in the modernization of CRVS systems. As such, there is evidence that state practice in this regard is constant, meaning that there is a formal system in place to ensure that it continues; where there are gaps, states are actively engaged in identifying corrective action, in many cases. However, as I will explore at the end of this Chapter and in later Chapters, there may be exceptions to the consistency of state practice that warrant additional research, including during emergencies and for particularly vulnerable communities.

I.C Compulsory Civil Registration

In accordance with UN guidelines, CRVS systems should be *compulsory*. At the least, death registration should be mandatory by law and failure to comply should carry a penalty and/or compliance should be rewarded by an individual incentive.¹⁴⁵

In the vast majority of assessed countries, death registration is mandatory by law, though this is not systematically enforced. As an example, the following countries have legal provisions that require compulsory death registration: Afghanistan,¹⁴⁶ Argentina,¹⁴⁷ Armenia,¹⁴⁸ Bangladesh,¹⁴⁹ Benin,¹⁵⁰

¹⁴⁴ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 135) 3-4.

¹⁴⁵ Refer to UN Statistics Division (n 115) para 28-30.

¹⁴⁶ United Nations Children's Fund (UNICEF) (n 46).

¹⁴⁷ International Institute for Vital Registration and Statistics (iiVRS), 'Civil Registration in the Republic of Argentina' (1979) IIVRS Technical Papers, Number 5 < https://www.cdc.gov/nchs/data/isp/005_civil_registration_in_the_republic_of_argentina.pdf > accessed 30 January 2024, 1-2.

¹⁴⁸ Zoran Dokoric (n 128).

¹⁴⁹ United Nations Children's Fund (UNICEF) (n 46).

¹⁵⁰ UN Statistics Division (n 28) 18-23.

Botswana,¹⁵¹ China,¹⁵² Colombia,¹⁵³ DRC,¹⁵⁴ Cameroon,¹⁵⁵ Denmark,¹⁵⁶ England,¹⁵⁷ Egypt,¹⁵⁸ Ecuador,¹⁵⁹ Ethiopia,¹⁶⁰ Finland,¹⁶¹ Ghana,¹⁶² Hong Kong,¹⁶³ India,¹⁶⁴ Iraq,¹⁶⁵ Japan,¹⁶⁶ Jordan,¹⁶⁷ Kenya,¹⁶⁸ Korea,¹⁶⁹ Kuwait,¹⁷⁰ Libya,¹⁷¹ Lesotho,¹⁷² Madagascar,¹⁷³ Malawi,¹⁷⁴ Maldives,¹⁷⁵ Mauritius,¹⁷⁶ Morocco,¹⁷⁷ Mozambique,¹⁷⁸ Namibia,¹⁷⁹ Nepal,¹⁸⁰ Netherlands,¹⁸¹ Nigeria,¹⁸² Oman,¹⁸³

¹⁵¹ Ibid, 18-23.

¹⁵² Shiwei Liu, Xiaoling Wu, Alan D Lopez, Lijun Wang, Yue Cai, Andrew Page, Peng Yin, Yunning Liu, Yichong Li, Jiangmei Liu, Jinling You, Maigeng Zhou, 'An Integrated National Mortality Surveillance System for Death Registration and Mortality Surveillance, China' (2016) Bull World Health Organization Bulletin 94(1), 46-57.

¹⁵³ UN Statistic Division Migration Assistant 'Death Registration and Mortality Statistics in Colombia' (1993) iiVRS Technical Papers, Number 54 < <https://unstats.un.org/wiki/display/CRAVS/Death+registration+and+mortality+statistics+in+Colombia> > accessed 30 January 2024.

¹⁵⁴ International Institute for Vital Registration and Statistics (iiVRS), 'Estimating the Completeness of Under-5 Death Registration in Egypt' (1997) iiVRS Technical Papers, Number 71 < https://unstats.un.org/unsd/demographic-social/crvs/documents/IIVRS_papers/IIVRS_paper71.pdf > accessed 30 January 2024.

¹⁵⁵ Cameroon 'Civil Status Law' No. 2011/011.

¹⁵⁶ International Institute for Vital Registration and Statistics (iiVRS), 'The Civil Registration System in Denmark' (1996) Technical Papers, Number 66 < https://www.cdc.gov/nchs/data/isp/066_the_civil_registration_system_in_denmark.pdf >, 3.

¹⁵⁷ International Institute for Vital Registration and Statistics (iiVRS), 'Vital Registration and Marriage in England and Wales' (1979) iiVRS Technical Papers, Number 4 < https://www.cdc.gov/nchs/data/isp/4_vital-registration-and-marriage-in-englandwales_02-2.pdf > accessed 30 January 2024, 3.

¹⁵⁸ International Institute for Vital Registration and Statistics (iiVRS) (n 154).

¹⁵⁹ Veronica Alvarez (n 129) 9.

¹⁶⁰ Ethiopia Proclamation on the Registration of Vital Events and National Identity Card (Proc No. 760/2012) August 2012 < <https://www.refworld.org/docid/5ec7f94d4.html> > accessed 30 January 2024; Ethiopia, Proclamation No. 1049/2017 Vital Events Registration and National Identity Card Proclamation (2017) < <https://www.refworld.org/docid/609f25b74.html> > accessed 30 January 2024

¹⁶¹ International Institute for Vital Registration and Statistics (iiVRS) (n 39) 1.

¹⁶² Ghana Act 301 of 1965, amended by N L.C Decree 285 of 1968, Registration of Births and Deaths Act < <https://www.refworld.org/docid/548edaf74.html> > accessed 30 January 2024.

¹⁶³ International Institute for Vital Registration and Statistics (iiVRS), 'Vital Statistics Data Collection and Compilation System: Hong Kong' (1981) Technical Papers, Number 14 < https://unstats.un.org/unsd/demographic-social/crvs/documents/IIVRS_papers/IIVRS_paper14.pdf > accessed 30 January 2024, 3-4.

¹⁶⁴ International Institute for Vital Registration and Statistics (iiVRS), 'Organization of Civil Registration and Vital Statistics System in India' (1980) Technical Papers, Number 9, < https://unstats.un.org/unsd/demographic-social/crvs/documents/IIVRS_papers/IIVRS_paper9.pdf > accessed 30 January 2024, 2.

¹⁶⁵ UN Statistics Division (n 43).

¹⁶⁶ International Institute for Vital Registration and Statistics (iiVRS), 'Vital Statistics System of Japan' (1979) Technical Papers, Number 2 < https://unstats.un.org/unsd/demographic-social/crvs/documents/IIVRS_papers/IIVRS_paper2.pdf > accessed 30 January 2024; Takashi Nomura, 'The Vital Statistics System and Family Registration in Japan' Vital Statistics Division, Ministry of Health and Welfare, Japan < https://unstats.un.org/unsd/demographic-meetings/wsshops/1993_China_CRVS/docs/1993_Doc.15_Japan.pdf > accessed 30 January 2024.

¹⁶⁷ UN Statistics Division (n 43).

¹⁶⁸ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 49) 4.

¹⁶⁹ Minah Kang, Green Bae, Heeun Kim, Seung Yeon Hong, Samuel Mills (n 133).

¹⁷⁰ Nasra Shah, Ali Mohammad Al-Sayed, Makhdoom Shah, 'Completeness and Reliability of Birth and Death Notification in Kuwait' (1992) iiVRS Technical Papers, Number 49, 1.

¹⁷¹ Libya, Law No. 36 of 1968 on Civil Status (made available online by DCAF) < https://security-legislation.ly/wp-content/uploads/2021/07/26-Law-No.36-of-1968_EN.pdf > accessed 30 January 2024.

¹⁷² Lesotho, Registration of Births and Deaths Act of 1973, Act No. 22, section 3 (made available online by Citizenship Rights Africa) < <https://citizenshiprightsafrica.org/wp-content/uploads/2020/05/Lesotho-Births-and-Deaths-Registration-Act-1973.pdf> > accessed 30 January 2024.

¹⁷³ UN Statistics Division (n 28) 29-31.

¹⁷⁴ Malawi, National Registration Act, No. 13 of 2010 < <https://data.unicef.org/wp-content/uploads/2017/12/Malawi-NATIONAL-REGISTRATION-ACT.pdf> > accessed 30 January 2024.

¹⁷⁵ Available at <https://www.reniec.gob.pe/portal/html/institucional/institucional.html>

¹⁷⁶ UN Statistics Division (n 28) 33-38.

¹⁷⁷ Violeta Gonzales-Diaz, International Institute for Vital Registration and Statistics (iiVRS), 'Reforms in the Civil Registration and Vital Statistics Systems of Morocco' (1991) iiVRS Technical Papers, Number 44, 1.

¹⁷⁸ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 126).

¹⁷⁹ South Africa, Births, Marriages and Death Registration Act 41, 1986 < https://www.gov.za/sites/default/files/gcis_document/201503/act-41-1986.pdf > accessed 30 January 2024; Births, Marriages, and Death Registration Act 81 of 1963 < https://data.unicef.org/wp-content/uploads/2017/12/namibia_birthreg_1963_en-1.pdf > accessed 30 January 2024.

¹⁸⁰ United Nations Children's Fund (UNICEF) (n 46).

¹⁸¹ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 142) 115-116.

¹⁸² Compulsory Registration of Births and Deaths Act 69 of 1992 (put online by Citizenship Rights Africa) < <https://citizenshiprightsafrica.org/wp-content/uploads/1992/12/Nigeria-Births-Deaths-etc-Compulsory-Registration-Act-1992.pdf> > accessed 30 January 2024.

¹⁸³ Civil Status Law (2004), as referenced in United Nations Statistics Division (n 36).

Pakistan,¹⁸⁴ oPt,¹⁸⁵ Papua New Guinea,¹⁸⁶ Peru,¹⁸⁷ Philippines,¹⁸⁸ Qatar,¹⁸⁹ Sierra Leone,¹⁹⁰ Senegal,¹⁹¹ Sri Lanka,¹⁹² South Africa,¹⁹³ South Pacific Island,¹⁹⁴ Swaziland,¹⁹⁵ Syria,¹⁹⁶ Tanzania,¹⁹⁷ Uganda,¹⁹⁸ Zambia,¹⁹⁹ and Zimbabwe. Bhutan was the only assessed country that did not require mandatory death registration.²⁰⁰

In all of the assessed countries, CRVS laws and regulations establish a timeframe during which registration must occur after death, except for the Maldives.²⁰¹ Across the assessed twenty-two countries (11% of countries in the world),²⁰² the time frame varied significantly (full breakdown available in *Annex 5: Time Frame for Death Registration*).



¹⁸⁴ United Nations Children's Fund (UNICEF) (n 46) .

¹⁸⁵ UN Statistics Division (n 43).

¹⁸⁶ ML Bakker, 'The Status of Civil Registration and the Collection of Vital Statistics through Alternative Sources in Papua New Guinea' (1987) iiVRS Technical Papers, Number 30, 2.

¹⁸⁷ *New Constitution* (1993); National Register was established in 1995 with *Peru's Organic Law*

¹⁸⁸ UN Department for Economic and Social Information and Policy Analysis Statistical Division, International Programme for Accelerating the Improvement of Vital Statistics and Civil Registration Systems, 'Feasibility Study on Accelerating the Improvement of Civil Registration and Vital Statistics Systems of the Philippines' (1995) UN docs ST/ESA/STAT/110 < <https://unstats.un.org/unsd/demographic-social/crvs/documents/compressfeasibility%20Phillipines.pdf> > accessed 30 January 2024.

¹⁸⁹ Law No 5, as quoted in UN Statistics Division (n 36).

¹⁹⁰ National Civil Registration Act (2016), as referenced in Centre of Excellence for CRVS System (n 123) 4; National Civil Registration Act – 2016.

¹⁹¹ Centre of Excellence for Civil Registration and Vital Statistics (n 122) 6.

¹⁹² United Nations Children's Fund (UNICEF) (n 46).

¹⁹³ South Africa, Birth and Death Registration Act 51 of 1992 < <https://www.gov.za/documents/births-and-deaths-registration-act> > accessed 31 January 2024.

¹⁹⁴ UN Department for Economic and Social Information and Policy Analysis Statistical Division, International Programme for Accelerating the Improvement of Vital Statistics and Civil Registration Systems (n 188).

¹⁹⁵ UN Statistics Division (n 28) 56-61.

¹⁹⁶ UN Statistics Division (n 36).

¹⁹⁷ UN Statistics Division (n 28).

¹⁹⁸ Uganda, Registration of Persons Act 2015 (repealing previous law) < <https://www.parliament.go.ug/cmris/views/059330e5-12e4-4ca1-a08f-6b81fbfb4b60%253B1.0> > accessed 31 January 2024.

¹⁹⁹ UN Statistics Division (n 28) 67-70.

²⁰⁰ United Nations Children's Fund (UNICEF) (n 46).

²⁰¹ United Nations Children's Fund (UNICEF) (n 46) 19.

²⁰² 7 Africa; 2 Asia; 5 Central Asia; 5 Middle East; 1 Europe; Pacific Islands; 1 Americas

The law includes a penalty (a fine) for late registration of death in the majority of countries studied, including Jordan,²⁰³ Botswana,²⁰⁴ Nigeria,²⁰⁵ Libya,²⁰⁶ Syria,²⁰⁷ Mauritius,²⁰⁸ Bangladesh,²⁰⁹ Zambia,²¹⁰ Sri Lanka,²¹¹ Pakistan,²¹² Vanuatu,²¹³ Nepal,²¹⁴ Bahrain,²¹⁵ Netherlands (fine as high as 325 Euro),²¹⁶ and the Philippines.²¹⁷ In contrast, in India²¹⁸ and Afghanistan²¹⁹ there are no fines for late registration. In application, the imposition of a fine for late registration can become an obstacle to full coverage of death registration. For example, one of the problematic components of the CRVS law in Philippines is that it requires payment of registration fee; criminalizing non-registration on one hand, but requiring payment on the other, which puts undue pressure on economically challenged families and does not encourage people to come forward to register vital events that have gone unregistered.²²⁰ There is a similar issue in Tanzania, where the law requires both a fee for death registration (approximately \$1.5 USD), as well as a penalty fee for late registration.

Incentives for death registration link registration to the receipt of services. For example, in Bangladesh death registration is required prior to the distribution of the property of the deceased and receipt of the family pension.²²¹ Arguably, high birth and death registration rates in Namibia are in part due to the link between registration and access to social grants, including N\$1,500 (US\$104) for the death of a pensioner and insurance.²²² Similarly, access to the socioeconomic infrastructure in Kuwait requires registration of vital events.²²³ In many countries, death registration is a required prerequisite for receipt of a burial or cremation permit.²²⁴

²⁰³ UN Statistics Division (n 43).

²⁰⁴ UN Statistics Division (n 28) 18-23.

²⁰⁵ Centre of Excellence for Civil Registration and Vital Statistics Systems 'Snapshot of Civil Registration and Vital Statistics Systems of Nigeria' (2019) < https://crvssystemsc.org/sites/default/files/assets/files/CRVS_Nigeria_e_WEB.pdf > accessed 31 January 2024, 4.

²⁰⁶ International Institute for Vital Registration and Statistics (iiVRS), 'The Vital Registration and Statistics System in Libya and its Improvement' (1991) Technical Papers, Number 47 < https://unstats.un.org/unsd/demographic-social/crvs/documents/IIVRS_papers/IIVRS_paper47.pdf > accessed 31 January 2024.

²⁰⁷ UN Statistics Division (n 43).

²⁰⁸ UN Statistics Division (n 28) 33-38.

²⁰⁹ United Nations Children's Fund (UNICEF) (n 46).

²¹⁰ UN Statistics Division (n 28) 67-70.

²¹¹ United Nations Children's Fund (n 46).

²¹² United Nations Children's Fund (UNICEF) (n 46).

²¹³ *Civil Status (registration)* 1970 (amended in 2018)

²¹⁴ United Nations Children's Fund (UNICEF) (n 46).

²¹⁵ *Decree No. 17 (1998)*

²¹⁶ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 142) 118-119.

²¹⁷ Philippines, *Act No. 3753* of 2012, section 17 < <https://psa.gov.ph/content/act-no-3753#:~:text=Section%2017.&text=E2%80%93Any%20person%20whose%20duty%20is,nor%20more%20than%20two%20hundred> > accessed 31 January 2024: "Section 17. Failure to report – other violations – any person where duty is to report any fact concerning the civil status of persons and who knowingly fails to perform such duty, and any person convicted of having violated any of the provisions of this act, shall be punished by a fine of not less than ten nor more than two hundred persons."

²¹⁸ United Nations Children's Fund (UNICEF) (n 46).

²¹⁹ United Nations Children's Fund (UNICEF) (n 46).

²²⁰ UN Department for Economic and Social Information and Policy Analysis Statistical Division, International Programme for Accelerating the Improvement of Vital Statistics and Civil Registration Systems (n 188) 23.

²²¹ United Nations Children's Fund (UNICEF) (n 46).

²²² Centre of Excellence for Civil Registration and Vital Statistics Systems, *Compendium of Good Practices in Linking Civil Registration and Vital Statistics and Identity Management Systems* (n 135).

²²³ Nasra Shah, Ali Mohammad Al-Sayed, Makhdoom Shah (n 170) 1-2.

²²⁴ Example: Mauritius (UN Statistics Division (n 28) 33-38.)

Though the practice of ‘compulsory’ death registration is slightly less consistent than for the previous two categories (*permanency* and *continuity* of death registration), in the vast majority of studied countries death registration is mandatory by law, though the laws are not systematically applied everywhere. As will be discussed later, seemingly the failure to fully implement laws at the national level is not indicative of a counter-practice; state engagement and commitments in regional and international forums, including through resolutions and declarations which confirm the principle of mandatory death registration, would seem to suggest that they are working towards this objective. In general, gaps in implementation are predominately a result of administrative weakness, budget challenges, low public awareness, among other factors.

I.D Universal Civil Registration

In accordance with UN guidelines, civil registration should be *universal*, ensuring that there is a legal and actual registration system available to all people within the territory, including extra-ordinary measures to reach potentially excluded communities.²²⁵ To assess the universality of death registration systems, I will consider the following components (a) the legal framework requiring universal death registration; (b) the completeness of death registration around the world (global standard ‘complete’ registration is above 90%), including cause of death data; (c) the completeness of vital statistics, based on civil registration data where possible; and (d) national reform agendas (including assessments and action plans) that aim for universal death registration. The last point is of particular importance. Civil registration systems require substantial financial and human resource investment, as well as strong coordination vertically and horizontally. The public must be both aware of and accept to participate in the civil registration system. States may face considerable obstacles in rolling out universal civil registration, despite their commitment. Where there is sustained action to move towards universal registration, it should be taken into consideration in the assessment of state practice.

▪ Legal Framework Requiring Universal Death Registration

The history of civil registration will be discussed in greater detail later in the chapter; however, in this section, a few general reflections regarding the growth of ‘universality’ will help to put current practice into perspective. For much of history, registration was generally limited to persons with social, economic or political power and influence in their society. There has been a trend over the last two hundred years first to extend civil registration to all citizens and subsequently (in many cases) to all persons residing within the territory, including migrants and refugees. For example, in the Federal Democratic Republic of Ethiopia the Registration of Vital Events and National Identity Card

²²⁵ UN Statistics Division (n 1) 68-69.

Proclamation No. 760/2012²²⁶ (which came into force in 2016) made registration of vital events compulsory. However, the law initially applied only to Ethiopian nationals; this was amended by Proclamation No 1049/2017²²⁷ which expanded civil registration to asylum seekers, refugees and non-nationals residing in Ethiopia.²²⁸

In many parts of the world, birth and death registration practices prioritized males (to support property ownership, taxation and military conscription). This is no longer the case. Since the establishment of modern civil registration systems (around the turn of the century) women have been systematically included in civil registers everywhere.

As described in Chapter 1, in Europe and Latin America in particular birth, death, and marriage registration were often managed by the Catholic church (with some level of sanction from the governing authorities). As such, it was based on religious affiliation and participation in key church rituals (baptism, marriage in the church and church burial). With the spread of Protestantism, other churches set up parallel registration systems, some of which were state sanctioned. Persons who were not part of any recognized religious community fell outside of the civil registration system. As secular state power was consolidated across Europe, CRVS systems were slowly moved under state authority and expanded to include all citizens.

In colonial Africa, CRVS systems were predominately established by colonial authorities and focused on persons of European descent, and sometimes extended to particular groups or geographical areas. With independence, all of the studied African countries moved rapidly to expand civil registration to all citizens of their young countries, at the least. In recent years there has been a move to register all people living within national borders, including foreign nationals. For example, civil registration in Malawi under the *Death Registration Act* (Chapter 24:01 of *Laws of Malawi*) (1904) provided for registration for white and Asian communities only; registration for indigenous Africans was optional. However, the *National Registration Act (2009)*, which repealed the *Birth and Death Registration Act of 1904*, established mandatory birth and death registration for all.²²⁹

As of 2021, a significant majority of assessed countries had legal frameworks that require both compulsory and universal death registration, applying to all persons residing within their territory.

²²⁶ See United Nations Children's Fund (UNICEF), 'Country Profiles' < <https://data.unicef.org/country/eth/> > accessed 31 January 2024.

²²⁷ Ibid.

²²⁸ Centre of Excellence for Civil Registration and Vital Statistics System (n 94) 4.

²²⁹ UN Statistics Division (n 28) 31-33.

Examples include Argentina,²³⁰ Armenia,²³¹ Benin,²³² Cameroon,²³³ China,²³⁴ Colombia,²³⁵ Denmark,²³⁶ DRC,²³⁷ Ethiopia,²³⁸ England,²³⁹ Finland,²⁴⁰ Ghana,²⁴¹ Japan,²⁴² Jordan (foreigners and nationals are registered in separated data bases),²⁴³ Kenya,²⁴⁴ Korea,²⁴⁵ Kuwait,²⁴⁶ Libya,²⁴⁷ Malawi,²⁴⁸ Maldives,²⁴⁹ Morocco,²⁵⁰ Mozambique,²⁵¹ Netherlands,²⁵² Nepal,²⁵³ Nigeria (specific reference to refugees),²⁵⁴ Oman,²⁵⁵ Peru,²⁵⁶ Philippines,²⁵⁷ Qatar,²⁵⁸ Senegal (national and refugees mentioned),²⁵⁹ Sierra Leone,²⁶⁰ Swaziland,²⁶¹ Syria,²⁶² Tanzania,²⁶³ Uganda,²⁶⁴ and Zambia.²⁶⁵

Though most of the assessed countries require universal death registration by law, in practice groups may be excluded for a variety of political, administrative, economic, and social reasons. I will explore these exceptions further at the end of this Chapter and in Chapter 8. To further establish the degree to

²³⁰ International Institute for Vital Registration and Statistics (iiVRS) (n 147) 1-2.

²³¹ Zoran Dokoric (n 128).

²³² UN Statistics Division (n 28) 18-23.

²³³ Cameroon 'Civil Status Law' No. 2011/011

²³⁴ Shiwei Liu, Xiaoling Wu, Alan D Lopez, Lijun Wang, Yue Cai, Andrew Page, Peng Yin, Yunning Liu, Yichong Li, Jiangmei Liu, Jinling You and Maigeng Zhou (n 152) 46-57.

²³⁵ UN Statistic Division Migration Assistant (n 153).

²³⁶ International Institute for Vital Registration and Statistics (iiVRS) (n 156) 3.

²³⁷ International Institute for Vital Registration and Statistics (iiVRS) (n 154).

²³⁸ Ethiopia, Proclamation No. 1049/2017 Vital Events Registration and National Identity Card Proclamation (2017) < <https://www.refworld.org/docid/609f25b74.html>> accessed 30 January 2024.

²³⁹ International Institute for Vital Registration and Statistics (iiVRS) (n 157) 3.

²⁴⁰ International Institute for Vital Registration and Statistics (iiVRS) (n 39) 1.

²⁴¹ Ghana Act 301 of 1965, amended by N L.C Decree 285 of 1968, Registration of Births and Deaths Act < <https://www.refworld.org/docid/548edaf74.html>> accessed 30 January 2024.

²⁴² International Institute for Vital Registration and Statistics (iiVRS) (n 166).

²⁴³ UN Statistics Division (n 71).

²⁴⁴ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 49) 4.

²⁴⁵ Minah Kang, Green Bae, Heeun Kim, Seung Yeon Hong, Samuel Mills (n 133).

²⁴⁶ Nasra Shah, Ali Mohammad Al-Sayed, Makhdoom Shah (n 170) 1.

²⁴⁷ Libya, Law No. 36 of 1968 on Civil Status (published by DCAF) < https://security-legislation.ly/wp-content/uploads/2021/07/26-Law-No.36-of-1968_EN.pdf> accessed 30 January 2024.

²⁴⁸ Malawi, National Registration Act, No. 13 of 2010 < <https://data.unicef.org/wp-content/uploads/2017/12/Malawi-NATIONAL-REGISTRATION-ACT.pdf>> accessed 30 January 2024.

²⁴⁹ Available at <https://www.reniec.gob.pe/portal/html/institucional/institucionalHistoria.html>

²⁵⁰ Violeta Gonzales-Diaz, International Institute for Vital Registration and Statistics (n 177) 1.

²⁵¹ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 126).

²⁵² Centre of Excellence for Civil Registration and Vital Statistics Systems (n 142) 115-116.

²⁵³ United Nations Children's Fund (UNICEF) (n 46).

²⁵⁴ Nigeria, Compulsory Registration of Births and Deaths Act 69 of 1992 as referenced in Centre of Excellence for CVRS Systems (n 205) 4.

²⁵⁵ Oman, Civil Status Law of 2004 as referenced in UN Statistics Division (n 43).

²⁵⁶ Peru *New Constitution* (1993); National Register was established in 1995 with *Peru's Organic Law*

²⁵⁷ UN Department for Economic and Social Information and Policy Analysis Statistical Division, International Programme for Accelerating the Improvement of Vital Statistics and Civil Registration Systems (n 188).

²⁵⁸ Qatar Law No 5 as referenced in UN Statistics Division (n 43).

²⁵⁹ Centre of Excellence for Civil Registration and Vital Statistics (n 122) 6.

²⁶⁰ Sierra Leone, National Civil Registration Act of 2016 as referenced in Centre of Excellence for CRVS System (n 123) 4; Sierra Leone National Civil Registration Act No.14 of 2016 (put online by Citizenship Rights in Africa Initiative) < <https://citizenshiprights-africa.org/sierra-leone-national-civil-registration-act-no-14-of-2016/#:~:text=Being%20an%20Act%20to%20provide,Registration%20Authority%20responsible%20for%20the>> accessed 31 January 2024.

²⁶¹ Swaziland Birth, Marriages and Death Registration Law Act No. 5 of 1983 (as put online by UNICEF) < <https://data.unicef.org/wp-content/uploads/2018/01/SwazilandBirthDeathAct1983.pdf>> accessed 31 January 2024.

²⁶² UN Statistics Division (n 43).

²⁶³ UN Statistics Division (n 28).

²⁶⁴ Uganda, Registration of Persons Act 2015 (repealing previous law) < <https://www.parliament.go.ug/cms/views/059330e5-12e4-4ca1-a08f-6b81fbfb4b60%253B1.0>> accessed 31 January 2024.

²⁶⁵ UN Statistics Division (n 28) 67-70.

which death registration is universal, I will now look at the completeness of death registration in all countries and autonomous (or semi-autonomous) territories around the world.

- **Completeness of Death Registration, including Cause of Death**

The United Nations has documented that approximately 50% of countries and autonomous territories have complete and universal CRVS systems,²⁶⁶ providing all persons in their territory with legal documentation and registration of birth and death. However, only 25% of the global population lives in countries that have complete birth and death registration; most of these are high-income countries.²⁶⁷ The UN's Report on progress against the Sustainable Development Goals (SDGs) in 2019, reported that approximately 73% of births were registered globally. However, less than half (46%) of the children who are under the age of 5 in sub-Saharan Africa had their births registered. There has been steady, but slow progress in death registration across the world;²⁶⁸ between 1970 and 2013 global death registration increased by 17%.²⁶⁹ In 2017, UNICEF found that an estimated 60 countries (approximately 1/3 of countries) had good quality death registration data from their civil registration systems.²⁷⁰ In general, death registration is most incomplete in low and middle-income countries in Africa, Asia, and parts of Latin America.²⁷¹

The Summary Table below is based on the results of the most recent Global Survey, compiled by UN Statistics. I have triangulated results against other sources as possible. A full report of all countries and territories is available in *Annex 6: UN Statistics, Birth and Death, including cause of death, completeness* (updated in February 2021).

²⁶⁶ See the information on the coverage of civil registration at: UN Statistics Division, 'Demographic and Social Statistics: Civil Registration and Vital Statistics' < <https://unstats.un.org/unsd/demographic-social/crvs/> > accessed 31 January 2024.

²⁶⁷ United Nations, 'The Sustainable Development Goals Report 2019' < <https://unstats.un.org/sdgs/report/2019/The-Sustainable-Development-Goals-Report-2019.pdf> > accessed 31 January 2024.

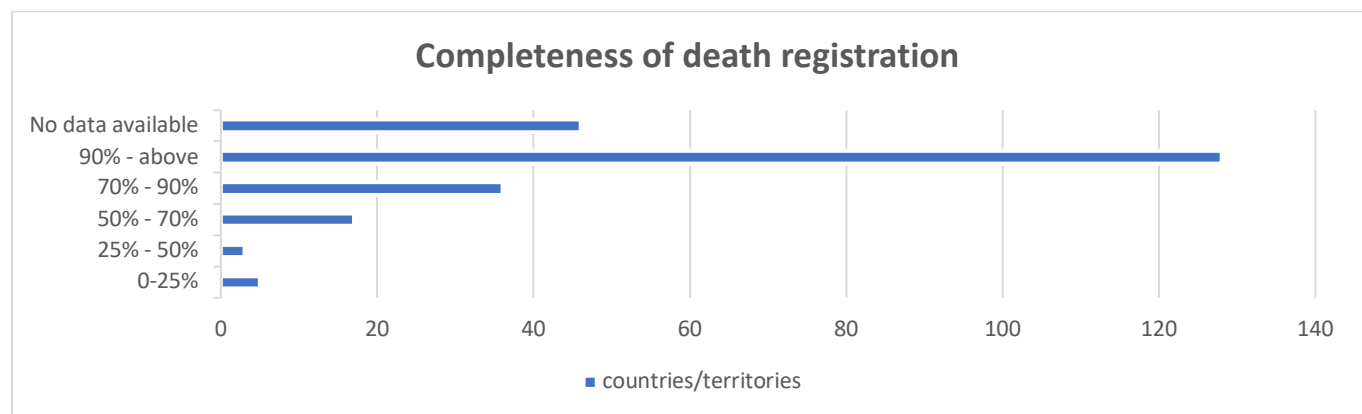
²⁶⁸ Ibid.

²⁶⁹ Carla AbouZahr, et al (n 4) 1373-1385; GBD 2016 Mortality Collaborators (n 4).

²⁷⁰ United Nations Children's Fund (UNICEF), 'A Snapshot of Civil Registration in Sub-Saharan Africa' (2017) < <https://data.unicef.org/wp-content/uploads/2018/01/Civil-Registration-English-Web-Final.pdf> > accessed 31 January 2024, 6.

²⁷¹ Carla AbouZahr, et al (n 4) 1373-1385; GBD 2016 Mortality Collaborators (n 269)

Summary Table: UN Statistics, Birth and Death Completeness²⁷² (updated in February 2021²⁷³)



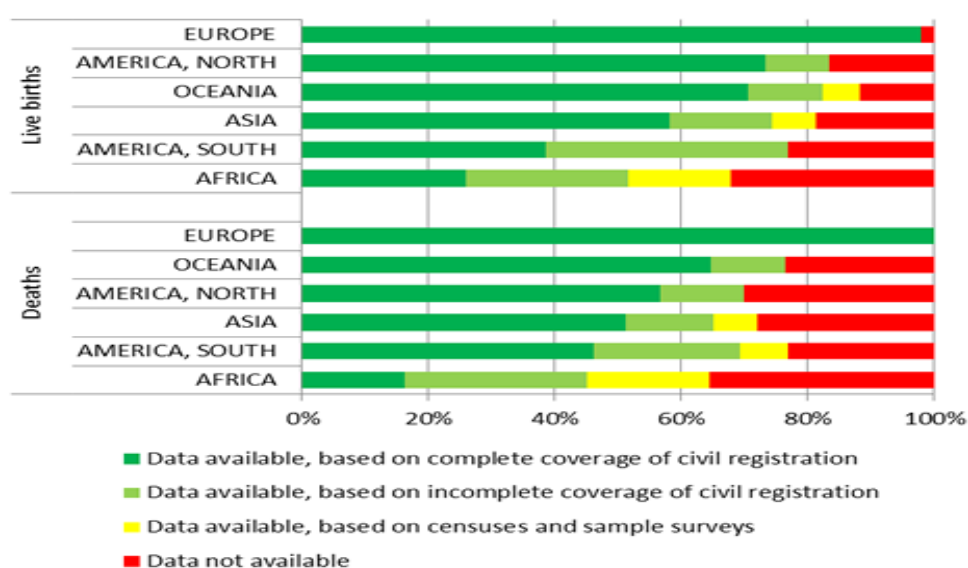
Of the 235 countries and territories analysed, 128 had ‘complete’ death registration and 164 had death registration above 70%. Only 8 countries and territories had death registration data below 50%. However, 46 countries were unable to provide death registration data, which most likely indicates weak CRVS systems.

The table below, though based on slightly out of date data, shows the geographical variance of complete death registration. Africa, Asia, and Latin America continue to have the lowest death registration. Notably, during the last decade in these three regions there have been significant reform initiatives launched and considerable state engagement to improve civil registration (discussed below). As the raw data for this period could not be access, the chart below, produced by the UN Statistics Division, has been copied in full.

²⁷² UN considers that above 90% civil registration is considered ‘complete’ (See UN Statistics Division (n 3)).

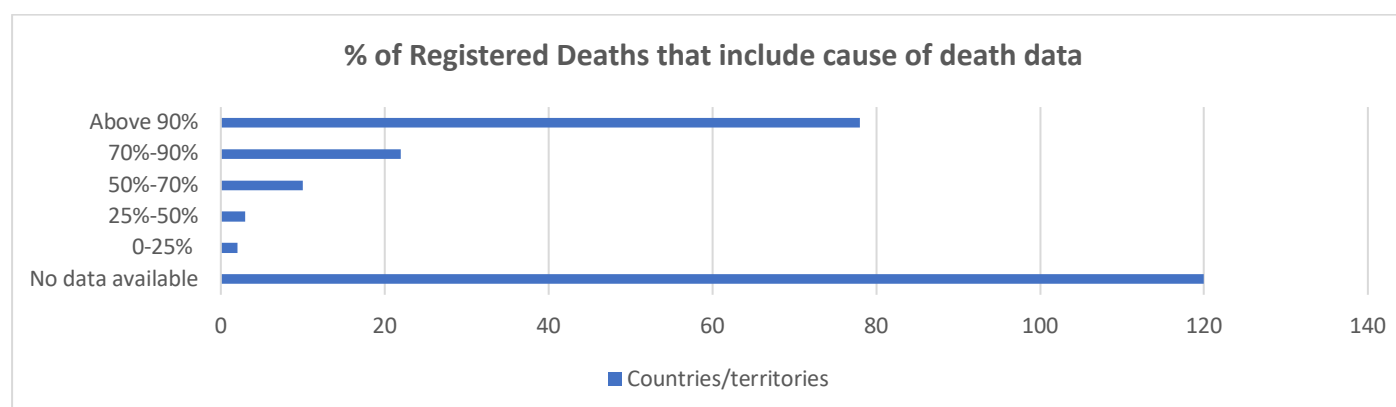
²⁷³ Ibid.

Summary Table: completeness and data source of the total number of births and deaths for in the period 2009 - 2013²⁷⁴



In the table below, the cause of death' estimates are drawn from the WHO global statistical database. The database provides information on 115 countries and territories, out of 234 countries and territories. The full details are available in *Annex 6: UN Statistics, Birth and Death, including cause of death, completeness* (updated in February 2021).

Summary Table: % of Registered Deaths that include cause of death data²⁷⁵



For the purposes of this research, I looked at cause of death registration in 93 countries (47% of countries in the world). Of these, only two states do not require cause of death in death registration by

²⁷⁴ UN Statistics Division (n 3).

²⁷⁵ World Health Organization, The Global Health Observatory 'Completeness of Cause-of-Death Data' <<https://www.who.int/data/gho/data/indicators/indicator-details/GHO/completeness-of-cause-of-death-data>> accessed 31 January 2024.

law, namely Senegal²⁷⁶ and Guinea.²⁷⁷ However, in several countries (particularly in Africa²⁷⁸), though the law requires the collection of cause of death data, implementation is weak. Examples include Cameroon,²⁷⁹ Afghanistan,²⁸⁰ Swaziland,²⁸¹ and Sierra Leone.²⁸² Determining the cause of death, particularly for very young children, is difficult in all countries.²⁸³

Of the 93 countries studied, I looked closely at 22 countries (11% of countries in the world) to ascertain if the International Cause of Death Standards were being used in cause of death reporting. In Cameroon the International Cause of Death Standards are not used at all.²⁸⁴ In several locations, the International Cause of Death Standards are only partially applied, often limited to deaths that occur in hospital. Where verbal autopsy procedures are used, including in many remote parts of Africa, it may be difficult to fully meet the International Standards. Countries with verbal autopsy procedures include DRC,²⁸⁵ Liberia,²⁸⁶ Mozambique,²⁸⁷ and Nigeria.²⁸⁸ The Liberia Strategic Plan for improving CRVS includes provisions for moving Liberia towards the use of the International Cause of Death Standards.²⁸⁹ In Kuwait, cause of death registration uses the broad categories outlined in the International Cause of Death Standards, but the sub-categories are used to a lesser degree.²⁹⁰

In consideration of the uniformity of state practice, roughly 50% of countries have complete death registration. Not all of these countries regularly collect cause of death data. There are a host of contributing factors which result in the low coverage rates in many parts of the world. As mentioned elsewhere, weak governance systems, insufficient budget allocation, low public awareness are among the core issues. During periods of emergency (e.g., armed conflict) states may not have territorial control or may simply be too weak to continue core functions (for example in Iraq, Yemen, and Somalia). In some cases, there are political, economic, or social reasons why some groups are excluded from death registration (to be explored at the end of this Chapter and in Chapter 8). However, these cases are the exception. In most cases, gaps in death registration are a result of administrative and governance challenges. As I have argued previously, states (particularly those that have poor death registration completeness) have shown commitment to reform and improve

²⁷⁶ Centre of Excellence for Civil Registration and Vital Statistics (n 122) 7.

²⁷⁷ Centre of Excellence for Civil Registration and Vital Statistics, 'Snapshot of Civil Registration and Vital Statistics Systems of Guinea' (2019) International Development Research Centre < https://apaj-crvs.uneca.org/sites/default/files/resourcefiles/CRVS_GuineeSnapshot_e.pdf > accessed 31 January 2024, 7.

²⁷⁸ United Nations Children's Fund (UNICEF) (n 270) 6.

²⁷⁹ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 100) 5.

²⁸⁰ United Nations Children's Fund (UNICEF) (n 46) 29.

²⁸¹ UN Statistics Division (n 28) 56-61.

²⁸² Centre of Excellence for Civil Registration and Vital Statistics System (n 123) 6.

²⁸³ United Nations Children's Fund (UNICEF) (n 270) 6.

²⁸⁴ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 100) 5.

²⁸⁵ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 74).

²⁸⁶ Centre of Excellence for Civil Registration and Vital Statistics, 'Snapshot of Civil Registration and Vital Statistics Systems of Liberia' (2019) < https://crvssystemsa.org/sites/default/files/assets/files/CRVS_Liberia_e_WEB.pdf > accessed 31 January 2024, 5.

²⁸⁷ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 126) 7.

²⁸⁸ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 205) 7-8.

²⁸⁹ Centre of Excellence for Civil Registration and Vital Statistics (n 286) 5.

²⁹⁰ Nasra Shah, Ali Mohammad Al-Sayed, Makhdoom Shah (n 170) 6.

registration systems in regional and international forums, moving towards completeness. This has been coupled with significant national action in recent years, including through the establishment of inter-ministerial committees and the adoption of national action plans, as will be discussed below.

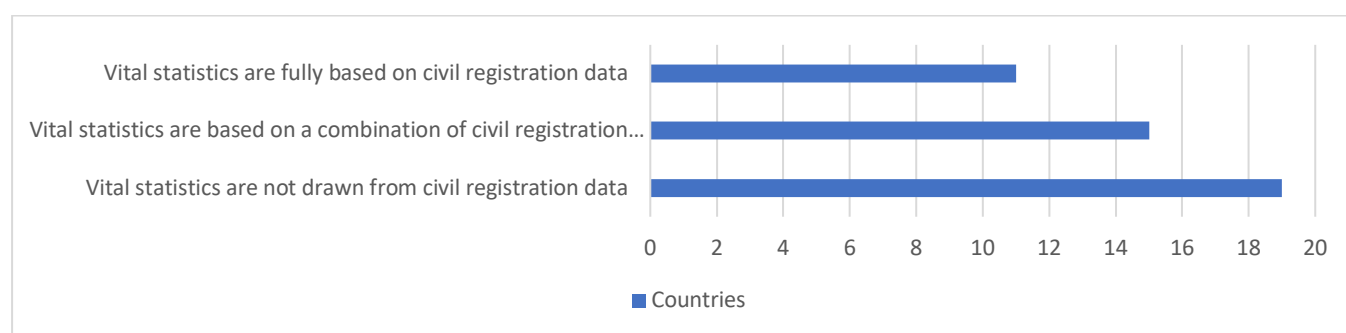
▪ **Completeness of Vital Statistics**

A vital statistics system (a) collects information through civil registration or enumeration regarding the frequency of clearly defined vital events, as well as the characteristics of the events and persons concerned; and (b) compiles, processes, analyses, evaluates, presents, and disseminates this data. Concerned vital events include live births, adoptions, legitimations, recognitions; deaths and foetal deaths; and marriages, divorces, separations and annulments of marriage.²⁹¹ Vital statistics are increasingly recognized as the essential building blocks for human development and a prerequisite to socioeconomic planning.²⁹²

Vital statistics should be drawn from civil registration, which is the continuous gathering of information on relevant vital events. Population census, households sample surveys, vital records from sample health records, etc are also used to calculate vital statistics, particularly in countries where civil registration does not have adequate coverage.²⁹³ These other data sources are limited in their contribution to monitoring vital statistics by their infrequency and other issues, as described in Chapter 1.

Of the 197 countries studied, in 98% of countries I was able to identify a national agency responsible for compiling and distributing national statistics. In 45 countries, I looked more closely at the data source of vital statistics. The results are shown below (Full details are available in *Annex 7: Vital Statistics Agency and Source of Data*).

Summary Table: Vital Statistics, Source of Data



²⁹¹ UN Statistics Division (n 1) para. 13.

²⁹² Ibid

²⁹³ Ibid

The scope, depth, accuracy, and frequency of the production of vital statistics varies significantly.²⁹⁴ Reflecting the gaps in the completeness of death registration data, it follows that a minority of countries can produce vital statistics based on civil registration. Although almost every country studied (193 out of 197 countries) had a national body legally mandated to collect and produce vital statistics (*See Annex 7: Vital Statistics Agency and Source of Data*), in most cases they produce vital statistics based on censuses or sample surveys, or they use a combination of civil registration data, census data and sample surveys. The inability to produce vital statistics from civil registration data is evidence of governance and administrative gaps, rather than contrary practice. This is evidenced by the above-mentioned state commitment on the international and regional level as well as national reform initiatives, which, taken together, suggest a commitment to building national CRVS systems capable of producing accurate birth and death vital statistics, including cause of death.

▪ Impact of COVID on Civil Registration

With the advent of the COVID-19 pandemic, states around the world overtly based radical policy decisions, with far reaching socioeconomic and public health implications, on daily/weekly changes in death rates, largely calculated through health and civil registration systems. The COVID-19 pandemic simultaneously increased global attention to and scrutiny of the world's death registration systems (including cause of death). The public became concerned about the accuracy of national vital statistics – particularly death rates. At the same time, health systems and civil registrations across the world were deeply impacted by the pandemic and the restrictions put in place to control the pandemic. Many countries were already struggling to produce accurate death statistics, even before the added pressures of COVID. One study found that only a minority of 66 countries were able to maintain the continuity of civil registration services during the pandemic. In most countries, birth and death registration significantly declined.²⁹⁵ As a result, there has been increased awareness that civil registration and vital statistics (based on civil registration data) must be strengthened to prevent and respond to public health emergencies, at the least.²⁹⁶

The UN Legal Identity Agenda Task Force published recommendations for civil registration authorities during COVID-19 which underscore that legal identity remains crucially important, even during emergencies. They highlight that the resilience of the civil registration and vital statistics systems during emergencies depends on the nature and scale of emergency and the strength and

²⁹⁴ Statistics Norway (n 114) 7-10.

²⁹⁵ Carla AbouZahr, et al, 'The COVID-19 Pandemic: Effects on Civil Registration of Births and Deaths and on Availability and Utility of Vital Events Data' (2021) American Journal of Public Health < <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2021.306203>> accessed 31 January 2024.

²⁹⁶ World Health Organization, 'Civil Registration and Vital Statistics' (2024) < <https://www.who.int/news-room/fact-sheets/detail/civil-registration-and-vital-statistics>> accessed 1 June 2024

capacity of the existing systems, with an emphasis on the system's ability to adapt to changing circumstances, the type of system (paper-based, online, offline), capacities of human resources, and the legal framework.²⁹⁷

The UN Legal Identity Agenda Task Force undertook a survey in April-May 2020 to assess the impact of COVID-19 on the civil registration systems globally. The survey sought to ascertain whether (a) civil registration systems were considered essential service in each country during the pandemic; (b) how COVID-19 had impacted registration of vital events and the functionality of the civil registration service; (c) if extraordinary measures had been put in place to ensure continuity of services; and (d) national recommendations to ensure registration of births, deaths and marriages during pandemic.²⁹⁸ Of 67 countries surveyed, 87% country respondents reported that civil registration was considered an essential service during the pandemic, though services were still impacted by COVID-19 related restrictions (lockdowns, limitations of public transport, popular reluctant to visit public places, etc). The 13% of countries that did not consider civil registration services as 'essential services' argued that reduction or suspension of civil registration services minimized the risk of exposure to the virus. However, even in these countries (e.g. Malawi, Uganda, Samoa) there was clear recognition that functional civil registration services were essential to monitoring the impact of COVID-19 and efforts were being made to accommodate for the needs of the population in regards to registration of vital events.²⁹⁹ To ensure continued services during the pandemic, many countries adopted extraordinary strategies, including issuing temporary documentation to ease bureaucratic requirements (e.g. Panama);³⁰⁰ operating rotational shifts and distance working arrangements (including remote civil registration services) (e.g. Argentina); reduction of civil registration services (birth and death only) (e.g. Armenia);³⁰¹ and relaxation of reporting time requirements and suspension of late reporting penalties (e.g. Iran). COVID-19 was a catalyst for several countries to prioritize the introduction or strengthening online applications for civil registration (e.g., Rwanda, Costa Rica, Georgia, Bahrain, New Zealand, Korea),³⁰² which is in line with global recommendations.³⁰³

Several global webinars were organized by the UN Legal Identity Task Force, the Global CRVS Group and the UN Regional Commissions (covering Asia and the Pacific, Africa and Latin America). Approximately 50 countries participated in the webinars to exchange best practice and experience in civil registration during the pandemic. As a result of these exchanges, two trends were identified:

²⁹⁷ UN Legal Identity Task Force, 'Maintaining Civil Registration and Vital Statistics During the COVID-19 Pandemic' (2020) <<https://unstats.un.org/legal-identity-agenda/documents/COVID-19-Guidelines.pdf>> accessed 31 January 2024.

²⁹⁸ Srdjan Mrkic (n 38).

²⁹⁹ COVID Survey, as summarized in Srdjan Mrkic (n 38).

³⁰⁰ Srdjan Mrkic (n 38).

³⁰¹ Ibid.

³⁰² Ibid.

³⁰³ Ibid.

- (1) there was a reduction in the registration of vital events in civil registration systems in most countries. This was due to: (a) lockdowns, popular concern about going to public places, and other difficulties in reaching the civil registration office (including reduced working hours, etc); (b) links between the health institutions and civil registration system, functional prior to the pandemic, being weakened or completely disrupted as a result of the overburdened systems; and
- (2) those countries that were able to maintain a functional civil registration service during the pandemic reported a significant increase in ‘excess deaths’, which required further investigation post-pandemic.³⁰⁴

The COVID pandemic, as was the case during previous epidemics (e.g. the bubonic plague in Europe, discussed in previous chapters), spurred interest and commitment to civil registration. State effort to maintain and increase civil registration system suggests practice, even in crisis situations. In Chapter 8, I will further explore the degree to which a customary obligation to register death extends to extraordinary situations.

▪ **National Reform Strategies**

In the section above, I have referred to a wave of reform initiatives that have been launched over the last decades. In this section, I will look at a selection of countries, most of whom have gaps in completeness of death registration and weak administrative structures to consider the degree to which practice can still be established. Many states have been unable to develop national civil registration that was capable of complete death registration as a result of weak governance systems rather than a lack of intent. This section should be read in parallel to my later discussion (under *opinio juris*) which describes state commitment at the regional and international level to improve civil registration, suggesting *opinio juris*, even where there is incomplete practice.

In the last 20 years, states around the world, particularly those with the weakest civil registration systems, have taken action to strengthen their civil registration systems, in almost all cases aiming to bring the civil registration system in line with international guidelines which require universal, continuous, permanent, and mandatory civil registration. Examples are described below:

With support from the UN Economic Commission for Africa, in the framework of the African Programme on Accelerated Improvement of Civil Registration and Vital Statistics (APAI-CRVS), most African countries have assessed their civil registration and vital statistics systems. As of 2016, this included Botswana, Egypt, Ethiopia, Kenya, Mozambique, Namibia, Nigeria, South Africa,

³⁰⁴ Srdjan Mrkic (n 38).

Tanzania, Zambia, Uganda, Swaziland and Lesotho,³⁰⁵ among others. Following the initial assessment of their civil registration and vital statistics systems, most countries have developed national improvement plans.³⁰⁶

Similarly, many South Asia countries have completed a comprehensive assessment and are engaged in or have developed national strategic plans, often with assistance from UNICEF and/or WHO.³⁰⁷ Across the strategic plans in South Asia, the following elements are reoccurring themes: legal reform, establishment of a central agency charged with management of the civil registration system, strengthening local registrars, raising public awareness, and the computerization of civil registration.³⁰⁸

Some extraordinary measures have been taken to facilitate registration of communities that have been historically excluded. For example, in Peru, the National Registry has put in place proactive measures to improve civil registration services for indigenous communities and to establish mobile registration units to reach out to vulnerable communities. In addition to deploying civil registration units to rural communities, the state has also ensured that civil registration services are available in 10 of the 48 Indigenous languages spoken by 16% of the population.³⁰⁹

Examples of reform initiatives are shown below:

Table: Sample of National Reform Action

Country	Civil registration Reform Action
Afghanistan	The <i>Strategic Plan for 2016-2024</i> was adopted. The Strategic Plan outlines three goals: (a) universal civil registration of births, deaths, and other vital events; (b) ensuring that all individuals are provided with legal documentation of civil registration of births, deaths, and other vital events to allow them to claim identity, civil status, and rights; and (c) allowing for the production and dissemination of accurate, complete and timely vital statistics, including with regards to cause of death, on the basis of civil registration records. ³¹⁰
Albania	Rollout pilot test of computerization of civil registration system in 2014. ³¹¹

³⁰⁵ UN Statistics Division (n 37) 43.

³⁰⁶ Ibid, 43.

³⁰⁷ United Nations Children's Fund (UNICEF) (n 46).

³⁰⁸ United Nations Children's Fund (UNICEF) (n 46) 17.

³⁰⁹ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 139) 158.

³¹⁰ United Nations Children's Fund (UNICEF) (n 46).

³¹¹ Statistics Norway (n 114) 33-34.

Bangladesh	In 2014, a Steering Committee ³¹² was established to improve coordination and implementation of CRVS reform. A CRVS strategic Action Plan was adopted. ³¹³
Cameroon	A National Coordination Committee (called Steering Committee ³¹⁴) was established to reform the civil registration system in February 2015. ³¹⁵ The civil registration system evaluated in 2016. Subsequently, the national <i>Strategic Plan for the Rehabilitation of Civil Registration</i> (2018-2022) was adopted, which includes the following objectives (a) alignment of the legal framework with international standards; (b) increased availability/quality of civil registration; (c) improved civil registration process; (d) improved registration of vital events; (e) improved public outreach; (f) move towards digitization of a centralized civil registration system; and (g) improve quality and regularity of the production of vital statistics. ³¹⁶
Colombia	A system-wide modernization of the civil registration system was undertaken in 2005, including computerization of the system allowing, among other things, health professionals to directly certify death registration online. ³¹⁷
DR Congo	Establishment of a National Coordination Committee for CRVS in 2009, supported by three technical working groups. ³¹⁸ The civil registration system was evaluated in 2012. ³¹⁹ A <i>National Strategic Plan</i> was adopted for 2013-2018. ³²⁰
Ecuador	The government declared that the civil registration system ³²¹ was in a state of emergency in 2008. The <i>Action Plan to Improve Civil Registration System</i> was adopted in 2010. The implementation of the Action Plan required significant political and financial investment and took a decade to implement but it resulted in radical improvement of national civil registration, including moving the civil registration system from a paper-based system to a computer-based system ³²² and establishment of three essential databases for live birth and death certification, civil registration and identification, respectively connected through a Unique Identification Number. ³²³

³¹² Cabinet Secretary and members of 22 agencies, including the Finance Division, Ministry of Home Affairs, Economic Relations Division, Ministry of Primary and Mass Education, Ministry of Health and Family Welfare, Prime Minister's Office, Ministry of Education, Post and Telecommunications Division, Election commission of Planning Division, Cabinet Division, ICT Division, Implementation, Monitoring and Evaluation Division, Local Government Division, Statistics and Informatics Division, Law and Justice Division, Bangladesh Bureau of Statistics (BBS), Directorate General of Health Services (DGHS), and the ORG

³¹³ United Nations Children's Fund (UNICEF) (n 46).

³¹⁴ Chaired by the Minister of Decentralization and Local Development; members include, Presidency of the Republic, Prime Minister's office, Ministry of Decentralization and Local Development, Ministry of Justice, Ministry of Public Health, Ministry of External Relations, Ministry of Finance, Ministry of Economic, Planning, and Spatial planning, Ministry of Social Affairs, Ministry of Basic Education, Ministry of the Promotion of women and the Family, National Institute of Statistics, National Bureau of Civil Registration, General Delegation for the National Security, Directorate General of External Research, State Secretariat for Defence in Chart of the National Gendarmerie, Special Fund of Equipment and Intermunicipal Intervention

³¹⁵ Established under *Order No 019/CAB/PM* on 24 February 2015, as quoted in Centre of Excellence for Civil Registration and Vital Statistics System, 'Snapshot of Civil Registration and Vital Statistics System of Cameroon' (2019) <https://crvssystems.ca/sites/default/files/assets/files/CRVS_Cameroon_e_WEB.pdf> accessed 31 January 2024.

³¹⁶ Ibid, 8.

³¹⁷ The University of Melbourne, 'Civil Registration and Vital Statistics Country Report, Colombia: A Strategy to Improve the Registration and Certification of Vital Events in Rural and Ethnic Communities' (2018).

³¹⁸ Centre of Excellence for Civil Registration and Vital Statistics System (p 74) 6; Civil Registration and Vital Statistics Steering Committee, Civil Registration and Vital Statistics Technical Committee, and the Civil Registration and Vital Statistics Technical Working Group.

³¹⁹ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 74).

³²⁰ Ibid.

³²¹ Managed by Direcccion General de Registro Civil, Identificacio y Cedulaion (DIGERCIC)

³²² Veronica Alvarez (n 129) 6.

³²³ Ibid, 3.

Hong Kong	A review of the civil registration system was conducted in 1975, resulting in a reformed system in place since January 1976. ³²⁴
Kenya	Two national strategic plans were adopted: the National 5-year Strategic Plan (2013-2017) and the 5-year Strategic Plan (2018-2022). ³²⁵
Kyrgyzstan	The paper-based system was replaced by a digital system in 2014. ³²⁶
Liberia	In 2015, a <i>Strategic Plan</i> was adopted (2016-2020) to strengthen the civil registration system, including establishment of a national interagency mechanism to improve coordination at that national level, expansion of number of civil registration centres to improve footprint of civil registration services, moving towards use of international cause of death standards (ICD10), and rollout of village level verbal autopsy programme to improve coverage. ³²⁷
Madagascar	Since 2004, the government has engaged in several initiatives to improve registration. ³²⁸
Morocco	In 1986 the government assessed the civil registration system, to evaluate reform progress. ³²⁹
Mozambique	The Inter-institutional Working Group for Improving Information in Civil Registration and Vital Statistics (GITEBV) was established in 2013 to coordinate comprehensive system assessment and develop a Strategic Plan for improving CRVS system. ³³⁰ In the 2000s several reforms were undertaken, including the rollout of Unique Identification Numbers (used throughout the lifespan) and linking National Statistical Institute (INE) to the National Civil Registry to improve vital statistics. ³³¹ In 2006, Ministry of Health passed legislation requiring the use of ICD-10 (international cause of death standards). In 2008, mortality registers were put in place and mortality registration systems reformed. ³³² In 2009, death certificates and digitalized software was introduced to allow for individual-based data management (including cause of death). ³³³
Namibia	Following its independence from South Africa in 1990, Namibia invested heavily in establishing the human capital and institutional infrastructure, including with regards to the civil registration system, notably through the establishment of the Unique Identity Management System. ³³⁴ The five year <i>Civil Registration and Vital Statistics Strategic Plan</i> ³³⁵ and <i>National Investment Plan</i> were adopted in 2014, following an assessment ³³⁶ and the Ministry of Home Affairs and Immigration implemented a 'Turn

³²⁴ International Institute for Vital Registration and Statistics (iiVRS) (n 163) 3-4.

³²⁵ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 49) 11.

³²⁶ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 132) 3.

³²⁷ Centre of Excellence for Civil Registration and Vital Statistics (n 286) 4.

³²⁸ UN Statistics Division (n 28) 29-31.

³²⁹ Violeta Gonzales-Diaz, International Institute for Vital Registration and Statistics (iiVRS) (n 177) 1-2.

³³⁰ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 126) 5.

³³¹ Statistics Norway (n 114) 37-38.

³³² Ibid, 37-38.

³³³ Called National Population Registration System; Statistics Norway, 'Status Analysis on Civil Registration and Vital Statistics' (2014) UN Statistics Division Migration Assistant, <

<https://unstats.un.org/wiki/display/CRAVS/Norway%3A+Status+Analysis+on+Civil+Registration+and+Vital+Statistics>> accessed 30 January 2024, 37-38.

³³⁴ World Bank, 'Identity Management System Analysis: Namibia' (April 2016) <

<https://documents1.worldbank.org/curated/en/184451466711154296/Namibia-Identity-Management-System-Analysis-Report.pdf>> accessed 1 June 2024.

³³⁵ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 135) 12.

³³⁶ Statistics Norway (n 114) 37-38.

	<i>around Strategy</i> ’ in 2015 which contributed to improved civil registration and identity management, ³³⁷ resulting in significant improvement in civil registration, which in turn allowed for the production of vital statistics from civil registration data by 2016. ³³⁸
Nepal	An assessment of the CRVS was conducted in 2013. ³³⁹
Nigeria	A <i>National Strategic Plan</i> was adopted, with a focus on improving the administrative management of the system. ³⁴⁰
Pakistan	A Comprehensive assessment was conducted. ³⁴¹ In 2014, the National Steering and Coordination Committee on CRVS was established. ³⁴² Technical Support Unit for CRVS was established in 2017 to oversee and facilitate the CRVS development process. ³⁴³
Peru	Following a period of political violence, Peru put in place exceptional measures to respond to significant gaps in registration, including the Integral Reparations Programme (2005) which supported people who had been affected by the political violence, and documentation of victims as a modality for reparation and human rights restitution. The requirements for civil registration were temporarily lowered and the Civil Registry and Electoral Offices were open to reapplication for missing or non-existent documentation. More than 82,710 people were registered through the program’s Victims Unique Registry (RUV) by 2014. Between 2005 and 2009, the government began implementing the <i>National Plan for the Restitution of Identification: Document Undocumented Persons</i> , which had a major impact on the number of undocumented Peruvians. ³⁴⁴
Philippines	The Bureau of the Census and Statistics was established. ³⁴⁵ The <i>Civil Code</i> of the Philippines was amended ³⁴⁶ to require that all unregistered birth and death to be registered by 1975 free of charge. ³⁴⁷ The <i>Local Government Code</i> (1983) was replaced by the <i>Local Government Code</i> (1991), resulting in the institution of municipal civil registers. A legal framework was established for death certification and local death registration (where medical attendant is absent). ³⁴⁸
Senegal	Senegal is in a process of revising its legal framework for civil registration and related regulations to support the implementation of the computerization of the civil registration system, ³⁴⁹ based on a comprehensive assessment (2019). ³⁵⁰

³³⁷ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 135) 4.

³³⁸ Ibid, 12.

³³⁹ Basant R. Gautam, Director General/Registrar, Department of Civil Registration (n 69).

³⁴⁰ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 205) 6.

³⁴¹ United Nations Children’s Fund (UNICEF) (n 46) 126-127.

³⁴² United Nations Children’s Fund (UNICEF) (n 46).

³⁴³ United Nations Children’s Fund (UNICEF) (n 46).

³⁴⁴ William Reuban and Flavia Carbonari ‘Identification as a National Priority: The Unique Case of Peru’ (2017) Center for Global Development, Working Paper 454 < <https://www.exemplars.health/-/media/files/egh/resources/stunting/peru/identification-as-a-national-priority.pdf> > accessed 31 January 2024, 13.

³⁴⁵ Philippines Commonwealth Act No. 591 of 1940 < <https://unstats.un.org/unsd/dnss/docViewer.aspx?docID=1716> > accessed 31 January 2024.

³⁴⁶ Philippines, Law in Registry of Civil Status 2012 Act No. 3753 < <https://psa.gov.ph/content/act-no-3753> > accessed 26 January 2024.

³⁴⁷ Presidential Decree No. 651 entitled Requiring the Registration of Births and Deaths in the Philippines which Occurred from 1 January 1974).

³⁴⁸ Presidential Decree No. 856 Promulgating the Code on Sanitation of the Philippines 1975 < https://lawphil.net/statutes/presdecs/pd1975/pd_856_1975.html > accessed 26 January 2024.

³⁴⁹ Centre of Excellence for Civil Registration and Vital Statistics (n 122) 8.

³⁵⁰ Ibid, 9.

Sierra Leone	Sierra Leone has established inter-ministerial committees and taskforces to facilitate the CRVS system improvement process. ³⁵¹ A 5-year strategic plan for the development of the CRVS systems was adopted in 2017, covering the period of 2018-2022. As part of this plan, the NCRA conducted a <i>Comprehensive Country CRVS systems Assessment</i> in 2019, with support from the United Nations Economic Commission for Africa. ³⁵²
South Africa	Since the early 1990s, South Africa has had several initiatives aimed at improving death registration. ³⁵³
Tanzania	An Inter-ministerial High Level Coordination Forum was established. A comprehensive assessment of the civil registration system was conducted in 2013. A Strategic Plan (2015-2021) was adopted. ³⁵⁴
Uganda	A National Task Force ³⁵⁵ has been established to improve coordination of the civil registration system. ³⁵⁶

These initiatives, and many others like them, are important to consider in our assessment of the uniformity of state practice. In practical terms, many states have simply been unable to develop a system of national civil registration that is capable of complete death registration. There seems to be significant evidence that this does not reflect a lack of intention, but rather weak governance systems. A holistic assessment of the first requirement of customary law (uniform practice) in respect of death registration must consider that significant global commitment, demonstrated through action, to improve civil registration counterbalances gaps in death registration completeness.

I.E Duration of Practice

For centuries, the duration of state practice has been central to the determination of customary law. In municipal law, most countries still consider time/duration to be critical to establishing the emergence of a customary norm. However, the definition of ‘duration’ varies significantly, from ‘time immemorial’ in English common law (dating back to 1189) to less than 50 years in some countries in continental Europe.³⁵⁷ In contrast, during the last century the ICJ has ruled that where there is significant uniformity of state practice and *opinio juris*, duration may not be essential.³⁵⁸ Though the essence of custom under international law no longer appears rooted in the question of duration,³⁵⁹ to contribute to my argument that the practice of death registration does in fact suggest the emergence of a customary norm, I have included a brief overview of the duration of the practice of death

³⁵¹ Centre of Excellence for Civil Registration and Vital Statistics System (n 123) 4.

³⁵² Ibid, 8.

³⁵³ M Prinsloo, D Bradshaw, J Joubert, R Matzopoulos, P Groenewald, ‘South Africa’s Vital Statistics are Currently not Suitable for Monitoring Progress towards Injury and Violence Sustainable Development Goals’ (2017) South African Medical Journal, Vol. 107, No. 6, 470.

³⁵⁴ Ibid.

³⁵⁵ Uganda Registration Services Bureau (URSB); Ministry of Justice and Constitutional Affairs; Ministry of Health; Ministry of Local Government; Ministry of Education and sports; Ministry of Gender and Labour and Social Development; National Planning Authority; Electoral Commission; Population Secretariat; and Development partners: United Nations Children’s Fund (UNICEF); World Health Organization (WHO); United Nations Population Fund (UNFPA); UNHCR; World Vision; and Plan International

³⁵⁶ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 127) 4.

³⁵⁷ Malcolm Shaw, *International Law* (eight edition, Cambridge University Press 2017), 56.

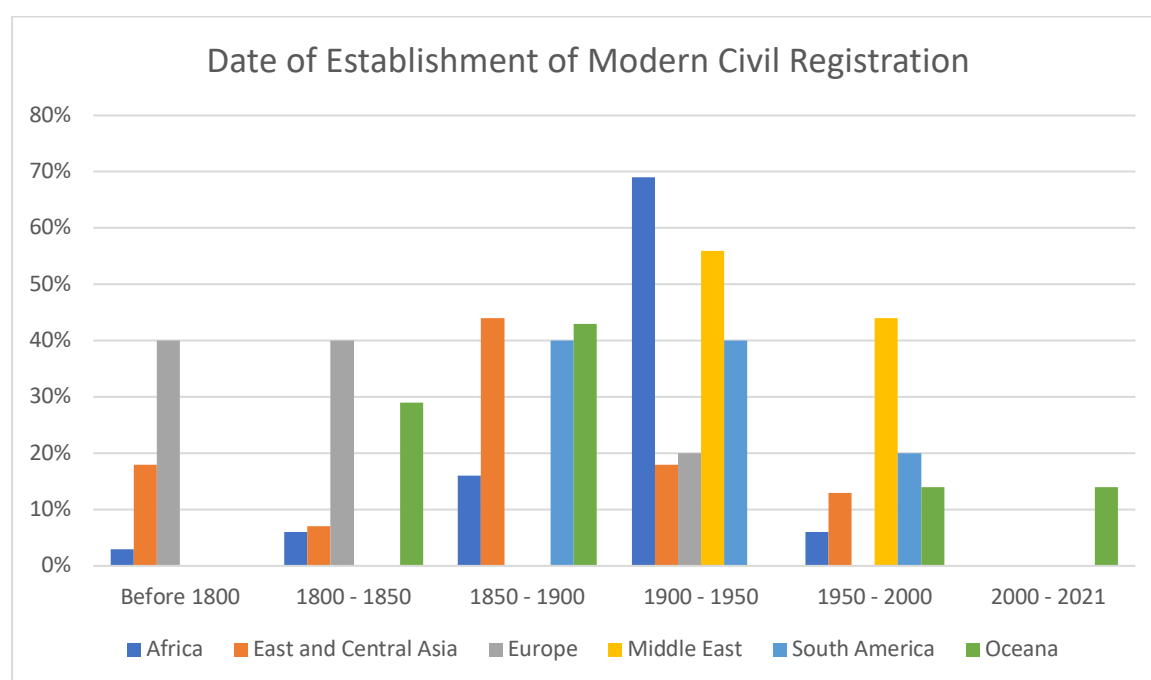
³⁵⁸ See *Asylum Case* (n 5) 266, 277; *Right of Passage over Indian Territory (Portugal v India) (Merits) (Judgement)* (n 8).

³⁵⁹ See Anthony D’Amato, *Concept of Custom in International Law* (Cornell University Press 1971), 56-8; Michael Akehurst ‘Custom as a Source’ (1975) British Yearbook of International Law, Vol 47, Issue 1, 15-16; Malcolm Shaw (n 357) 56.

registration (through civil registration systems), in its modern form. Though there are recent examples where instant custom appears to have developed, there seems no logical reason that death registration would require such an exception to the long-held rule. As historical evidence is bountiful, I will assess historical trends, in addition to presenting deeper analysis of case studies.

At its most basic, formal rituals to publicly determine and acknowledge an individual's place in society are common across historical, social, cultural, and political divides. Throughout history, registration has been used to establish an individual/family's existence before the law or governing authority. The history of civil registration, including its colourful past, has been described in Chapter 2. For the purposes of this Chapter, my analysis of the duration of practice will be focused on modern history. I looked at a sample of 77 countries to determine when modern civil registration systems were formally put in place.³⁶⁰ The full results are available in *Annex 8: Date of Establishment of Modern Civil Registration System* and are summarized in the chart below. Note that to allow comparability, the chart below is calculated as a percentage of the studied countries.

Summary Table: Date of Establishment of Modern Civil Registration System



As illustrated in the above chart, approximately 80% of the sampled CRVS systems in Europe and 70% in Oceania were established before the 1900s; and more than 70% of countries in African countries, 80% of east and central Asian countries, and 55% of Middle Eastern countries had

³⁶⁰ 39 countries in Africa, 14 countries in central and east Asia, 5 countries in Europe, 10 countries in the Middle East, 4 countries in Latin America, and 5 countries in Oceania region

established CRVS systems by the 1950s. As such, a significant majority of states have had national CRVS systems for more than 70 years.

Some examples of regional trends and case studies are presented below:

- **Africa**

Though, by and large, modern universal registration systems were established upon independence and remain weak, there are a few African states that have had death registration systems in place for over 100 years. In these countries, death registration is almost complete, including Mauritius where the first vital registration was put in place in April 1667 through Royal Ordinance and Madagascar whose registration system was established in 1878.

Example A: *In Egypt, the first registration system is believed to have been put in place in 1250 B.C., under King Ramses II. The registration system likely only included some elite groups.³⁶¹ The modern civil registration system, which covers both urban and rural areas, was put in place in 1839. Registration of vital events was made obligatory at the end of the century. However, it took almost 70 years for civil registration to reach 91% coverage. The 1839 civil registration system was reformed three times by Decree No. 23 (1912), 130 (1946), and 260 (1960), respectively.³⁶² The current civil registration system was established in March 1965 by Decree No. 11, which was modified by Decree No. 260, 1969.³⁶³*

In Africa, many of the modern civil registration systems were introduced by colonizing powers, generally during the 19th or early 20th century³⁶⁴ and were largely limited to certain groups of people (along racial lines³⁶⁵) or locations.³⁶⁶ In almost all cases, immediately following independence, states established national universal, mandatory registration laws, extending registration to all persons in their newly established countries. Examples include Namibia,³⁶⁷ Kenya,³⁶⁸ Swaziland,³⁶⁹ Malawi,³⁷⁰ and Mozambique.³⁷¹ Geographic coverage was a key challenge for the newly establish states, many of

³⁶¹ Gamal Askar, 'The Development of the Vital Statistics System in Egypt' (1981) iiVRS Technical Papers, Number 13.

³⁶² Ibid.

³⁶³ Ibid.

³⁶⁴ International Institute for Vital Registration and Statistics (iiVRS) (n 34) 1.

³⁶⁵ Ibid, 1.

³⁶⁶ Ibid, 1.

³⁶⁷ In Namibia, the Ministry of Home Affairs and Immigrations was established shortly after independence and was charged with civil registration and identity management functions. In 1996, the *Identification Act 21* (1996) was passed (repealing the Identity Document in Southwest Africa Act (1970), the *Identification of Persons Act* (1979) and the *Identification of Persons Amendment Act* (1980), harmonized with the *Births, Marriages, and Deaths Registration Act 81* of 1963.

³⁶⁸ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 49) 4.

³⁶⁹ UN Statistics Division (n 28) 56-61.

³⁷⁰ Ibid, 31-33.

³⁷¹ In Mozambique, civil registration system was put in place in 1930. However, the registration system only covered the Portuguese population; it did not cover the indigenous population. In 1961 (revised in 1976), the system was expanded to cover the rest of the population and mandatory registration was instituted. (UN Statistics Division (n 28) 39-44.)

which had very rural communities, nomadic peoples, and limited infrastructure (including roads). Several countries implemented a phased rollout of the civil registration (e.g., Kenya,³⁷² Botswana³⁷³ and Ghana³⁷⁴).

▪ East and Central Asia

In 1847, Sri Lanka was one of the first countries to develop a modern civil registration system in Asia.³⁷⁵ By the end of the 1800s, civil registration system had been established in Afghanistan,³⁷⁶ Armenia,³⁷⁷ Japan,³⁷⁸ Hong Kong, Macau, India (though in a decentralized manner),³⁷⁹ Philippines,³⁸⁰ and Bangladesh (with very low coverage).³⁸¹ At present, almost every country in East Asia has legal provisions for the registration of vital events, including specific agencies mandated to undertake civil registration and produce national vital statistics.³⁸² Bhutan is the notable exception; birth registration is required by law, but death registration is not.³⁸³

Example B: *The first known effort to establish a register of vital events and a population census in Japan occurred in 86 BC. Under Emperor Kotoku in 645 AD a system of*

³⁷² Compulsory registration for all areas and people was implemented in phases (starting with Nairobi and Nyeri) in 1963. The phase rollout of civil registration systems was complete in 1971 (*Births And Deaths Registration Act Subsidiary Legislation, Towns, Districts And Areas In Which Registration Of Births And Deaths Is Declared To Be Compulsory Under Sections 9(2) And 15(2); Births And Deaths Registration Rules, 1966 Births And Deaths (Late Registration) Rules of 1971* [Laws are available here: <http://www.kenyalaw.org/lex/sublegview.xql?subleg=CAP.%20149>])

³⁷³ Botswana began with limited rollout in towns and cities in 1966; only the most recent legislative reform in 1998 required universal mandatory registration, though registration rates remain low (UN Statistics Division (n 28) 18-23).

³⁷⁴ In Ghana, early registration laws (1888) only covered burial on the Gold Coast Colony Cemeteries (*Ordinance 1888*). In 1891, the *Cemeteries Ordinance* was amended to expand the provisions, but the focus on the regulation of burials remained unchanged. The *Births, Deaths and Burials Ordinances* of 1912 and 1926 remained focused primarily on established birth and death registration services to urban areas. It was not until 1965 (*Registration of Births and Deaths Act* in 1965) that registration was extended nationally (International Institute for Vital Registration and Statistics 'A Programme for Measurement of Life and Death in Ghana' (1979) Technical Papers, Number 1).

³⁷⁵ In Sri Lanka, the first civil registration system in Sri Lanka was established by the *Regulation No. 7* of 1815, the year it claimed independence. It was subsequently reformed by *Regulation No. 9* (1822). Both early pieces of legislation were predominately focused on marriage and births. *Ordinance No. 6* (1847) was the first real attempt to develop a registration system, which was application to all births, deaths and marriages (not include Kandyan Sinhalese and the Muslims). This ordinance has subsequently been replaced several times (including 1867, 1877, 1892 and 1895) (International Institute for Vital Registration and Statistics 'The Development and Organization of Civil Registration in Sri Lanka' (1990) Technical Papers, Number 41 <https://unstats.un.org/unsd/demographic-social/crvs/documents/IIVRS_papers/IIVRS_paper41.pdf> accessed 1 February 2024); United Nations Children's Fund (UNICEF) (n 46).

³⁷⁶ Registration of vital events began in Kabul at the beginning of the 19th century and was extended to all parts of the country, in accordance with the *Registration of Births, Deaths and Marriages Act* (1875).

³⁷⁷ Zoran Dokoric (n 128).

³⁷⁸ International Institute for Vital Registration and Statistics (iiVRS) (n 166).

³⁷⁹ International Institute for Vital Registration and Statistics (iiVRS) (n 164) 1-2.

³⁸⁰ The civil registration system in the Philippines was established in 1898, shortly after the revolution against Spain which resulted, among other things, in the separation of Church and State. Shortly after independence, a Decree was released on 18 June 1898 to recognize the towns it controlled. This Decree required the election of a delegate of Justice and Civil Registration responsible for launching court proceedings and preparing recording books of births, deaths, marriages and the census. The Philippine Commission (1901) passed *Act No. 82* (the municipal law), which required municipal secretaries to establish civil registers (section 20). *Act No. 273* of 21 October 1901 established the Bureau of Archives. The function of the Bureau of Archives was updated by the *Administrative Code of 1916 (Act No. 2659)*, and subsequently the *Revised Administrative Code of 1917 (Act No 2711)*). The Civil Registry system was reformed in 1930 with *Civil Registry Law* of the Philippines (*Act No. 3753*, 26 November 1930). (UN Department for Economic and Social Information and Policy Analysis Statistical Division, International Programme for Accelerating the Improvement of Vital Statistics and Civil Registration Systems (n 188).)

³⁸¹ United Nations Children's Fund (UNICEF) (n 46).

³⁸² Kendra Gregson, Tanja Sejersn, and Daniel Swaisgood 'Civil Registration in South Asia: Regulations, Relationships and the Role of ICT' (2020) UNESCAP and UNICEF <https://getthepicture.org/sites/default/files/resources/CIVIL%20REGISTRATION%20IN%20SOUTH%20ASIA_Regulations%2C%20relationships%20and%20the%20role%20of%20ICT.pdf> accessed 1 February 2024, 6.

³⁸³ Kendra Gregson, Tanja Sejersn, and Daniel Swaisgood (n 382) 12.

registration was established to track births, deaths, and marriages. These early registration systems collected fragmented data and had limited population coverage. During the medieval period, there were several attempts to establish a registration system; again, registration was limited by the socioeconomic hierarchy of the time.³⁸⁴ The changing nature of social and economic systems in the 19th century globally increased an interest in statistical data and vital event registration.³⁸⁵ Under the Meiji Restoration in 1868, a major reorganization of the government was undertaken. As part of this process, in 1871 the family registration (IKOSEKII) system was put in place.³⁸⁶ The family registration system structured civil registration around the family unit, which was defined as a husband, wife and unmarried children. Since 1871, multiple rounds of reform have occurred.³⁸⁷ The WWII air raids deeply impacted the vital statistics system, destroying many records. After the war (1946), local administrative offices were required to reported daily and monthly to the Bureau of Statistics.³⁸⁸ An Imperial Ordinance was passed in 1946 to establish a new legal framework for civil registration and vital statistics, including procedures and regulation around registration.³⁸⁹

In several countries in southeast and central Asia, the modern civil registration systems were first established around the 1950s (including Nepal,³⁹⁰ China,³⁹¹ and Pakistan³⁹²) or after (Korea,³⁹³ Nepal³⁹⁴). Though most countries in south Asia have had civil registration systems in place for more than 50 years, many still face significant gaps in implementation, reflected in less than adequate registration completeness (defined as less than 90%).³⁹⁵

Example C: China developed a vital events registration system in the 1950s to collect death data in 13 cities. By 2012, this system had expanded to 22 provinces, covering an estimated population of 230 million people.³⁹⁶ In 2013, China created a national mortality surveillance system, with the aim of expanding registration to the entire population of China. In 2013, the mortality surveillance system covered an estimated 323.8 million people (roughly 24.3% of the population).³⁹⁷

³⁸⁴ International Institute for Vital Registration and Statistics (iiVRS) (n 166).

³⁸⁵ Ibid.

³⁸⁶ Ibid.

³⁸⁷ Ibid.

³⁸⁸ Ibid.

³⁸⁹ Ibid.

³⁹⁰ Civil registration was started in 1950 in Nepal, through the *Municipal Act* of 1950 and the *Village Panchayat Act* of 1961.

³⁹¹ S Liu, X Wu, AD Lopez, L Wang, Y Cai, A Page, P Yin, Y Liu, Y Li, J Liu, J You, M Zhou (n 152) 46-57.

³⁹² United Nations Children's Fund (UNICEF) (n 46).

³⁹³ Minah Kang, Green Bae, Heeun Kim, Seung Yeon Hong, Samuel Mills (n 133).

³⁹⁴ United Nations Children's Fund (UNICEF) (n 46).

³⁹⁵ Committee of Asia Experts under the Auspices of the IIVRS and the United Nations Economic and Social Commission for Asia and the Pacific (n 50) 90.

³⁹⁶ S Liu, X Wu, AD Lopez, L Wang, Y Cai, A Page, P Yin, Y Liu, Y Li, J Liu, J You, M Zhou (n 152) 46-57.

³⁹⁷ Ibid, 46-57.

Countries in Asia that were once part of the Soviet Union tend to have strong civil registration systems that are integrated with identity management. This is a legacy of the centralized systems put in place by Russian authorities. Examples include Armenia³⁹⁸ and Kyrgyzstan.³⁹⁹

Examples D: *Armenia's civil registration system has its roots in the church registry, where birth and deaths were registered prior to the turn of the 1900s. These civil registration functions were institutionalized under the authority of the Ministry of Justice in early 1900s.⁴⁰⁰ During Soviet rule, the civil registration system was tied to the issuance of identification papers in the form of an internal passport which was used as an ID document as well as a residency permit.⁴⁰¹ Independence in 1991 brought changes to the state's management of identity information. The internal passport was replaced by a national identity card in 1992.⁴⁰²*

▪ Middle East

There are two clear trends in the Middle East: (a) states which adopted civil registration systems shortly after the turn of the century, predominately located in the Levant (e.g., Iraq,⁴⁰³ Syria,⁴⁰⁴ Jordan,⁴⁰⁵ Lebanon⁴⁰⁶). The Occupied Palestinian Territories (oPt) is an exception because of its unique political context;⁴⁰⁷ and (b) the Gulf states that developed CRVS systems at the end of the last century (e.g., Qatar,⁴⁰⁸ Oman,⁴⁰⁹ Yemen,⁴¹⁰ and Kuwait⁴¹¹). However, Saudi Arabia established CRVS in 1930.

Example F: *In Syria, the civil registration was put in place in 1914 during the Ottoman Empire. The first civil registration law was passed in 1914. It formalized the registration that was already in place and established regulations and organizational procedures regarding the registration of vital events and the preparation of certificates, among other things. Following the cessation of Ottoman rule, a full population census was undertaken in 1921. Subsequently, a population law was issued in 1923 which included revised procedures for the registration of vital events (birth, death, marriage and divorce). In 1926 and 1931, subsequent laws related to civil registration were passed, including specific provisions for handling births and death in hospitals and other*

³⁹⁸ Zoran Dokoric (n 128).

³⁹⁹ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 132) 70.

⁴⁰⁰ Zoran Dokoric (n 128).

⁴⁰¹ Ibid.

⁴⁰² Ibid.

⁴⁰³ In Iraq, the modern civil registration system was established in 1921 at their independence. A national law was passed in 1924 requiring registration of all vital events for Iraqi citizens. A subsequent law was passed in 1947, amended in 1971, gave the responsibility of civil registration to the Ministry of Health (UN Statistics Division (n 43)).

⁴⁰⁴ Ibid.

⁴⁰⁵ Ibid.

⁴⁰⁶ Ibid.

⁴⁰⁷ Ibid.

⁴⁰⁸ Ibid.

⁴⁰⁹ Ibid.

⁴¹⁰ Ibid.

⁴¹¹ Nasra Shah, Ali Mohammad Al-Sayed, Makhdoom Shah (n 170) 1.

*institutions. In 1957, Civil Status Code No. 376 annulled all subsequent decrees related to civil registration. Though it has been amended, this law remains in place and has established the legal and administrative foundation of the CRVS system in Syria.*⁴¹²

▪ Latin Americas

In general, Latin American countries put in place national CRVS systems at the turn of the century, largely built on parish registers.

Example G: *The Incas of Peru (1.200 to 1.527 A.C) were the first group in South America to record vital events. As they did not have a written culture, they used intertwined coloured ribbons and knots to record information. Registration was called Quipus. The registration was completed by the Quipucamayoc for the purpose of taxation to the Inca. Registration included the number of people who went to war, those who died in war, as well as births and deaths each month.*⁴¹³ *Under the colonial rule, vital event registration was undertaken by the Catholic Church through parishes, under Canon Law. In 1749, the Spanish colonial government required parishes to produce monthly statements of vital events. The CRVS system was not developed until after independence, under the first Peruvian Civil Code.*⁴¹⁴ *In 1856, mayors were given the responsibility for civil registration through a largely decentralized system that did not include a national agency governing or regulating registration across Peru. A separate system was developed by the Peruvian Electoral Registry in 1931 when identification documents were issued to Peruvian adult males (the only contingent of the population that was able to vote). Electoral identification cards were widely used as proof of legal identity through the second half of the 20th century. Because it was tied to voting, minors were not included in the registration system, resulting in many irregularities. During the intense conflict that ravaged Peru between 1980 and 2000, more than 69,000 people died or disappeared and many local government documents were destroyed, including civil registration records. By the end of the conflict, thousands of Peruvians were undocumented, particularly indigenous and rural communities, and displaced persons. A significant group of people changed their names for protection reasons or to avoid military service. During the conflict, the Peruvian government approved a new Constitution (1993), which established the national registration body that is still in place today, responsible for civil registration and identification nationally. The National Register was officially established in 1995, with Peru's Organic Law.*⁴¹⁵ *In addition to issuing Unique*

⁴¹² UN Statistics Division (n 43).

⁴¹³ William Reuban and Flavia Carbonari (n 344) 5.

⁴¹⁴ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 139) 137; William Reuban and Flavia Carbonari (n 344) 5.

⁴¹⁵ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 139) 137.

*Identification Numbers and national ID cards, the National Register manages the integrated civil registration system. This digital system is an online platform which allows civil registrars to register vital events, as well as a digital archive for current and historical records.*⁴¹⁶

In the English-speaking Caribbean, the Slave Registration system (1817) was established by the British colonial government to regulate the slave regime, partly to improve conditions for slaves and partly to regulate movement of slaves between colonies. Under this legal regime, every three years or every year (depending on the colony) all slaves were counted. This included a recording of basic demographic information. Established long before the formal civil registration system, the legal regime provided some indication of fertility and mortality trends. However, because it was completed on a three-year cycle in most places, it is likely that there was substantial undercounting of both births and deaths.⁴¹⁷ The first comprehensive assessment of morbidity and mortality in the West Indies was undertaken in 1838 by Tulloch and Marshal, at the request of the British Government. The study aimed to understand the extent and causes of sickness and mortality among the troops stationed there.⁴¹⁸ Laws establishing CRVS systems were passed as early as the 19th century, focused on the ecclesiastical proceedings. English Registrar General, Graham, issued a memorandum to Secretary of State Grey in 1848 requesting the establishment of formal census procedures throughout the colonies. The memorandum contained a recommendation that a mechanism for birth and death registration be introduced. A further memorandum was issued by the English Registrar General in March 1868, specifically regarding civil registration in the colonies. Civil registration improved across the English-speak Caribbean towards the end of the 1800s.

There is no prescribed rule as to the required duration of practice in the determination of customary law. De Visscher compares the growth of custom to the gradual formation of a road across an empty lot. Following an initial period of uncertainty, the majority of people will begin to follow the same path. Over time this path will slowly merge into a single path, and then into the only accepted road.⁴¹⁹ This description matches the development of death registration around the world. There are a few countries and societies that have practiced death registration in some form since antiquity around the world, including in South America, Asia, and Europe. By the 1800s, death registration systems appear with more frequency throughout the world; however, registration was often limited to certain groups. By the mid-1900s universal death registration had been established in almost all countries around the

⁴¹⁶ Ibid, 139-140.

⁴¹⁷ International Institute for Vital Registration and Statistics (iiVRS) (n 52) 2.

⁴¹⁸ Ibid, 2.

⁴¹⁹ Charles De Visscher, *Theory and Reality* (Princeton Legacy Library 2016), 149; See also Hersch Lauterpacht, *Development of International Law* (Cambridge University Press), 368; P. Cobbett, *Leading Cases on International Law* (4th edn, Sweet and Maxwell 1922), 5; Michael Akehurst (n 359) 22-3.

world. As such, it would seem that the duration of practice can be considered evidence of an existing customary law.

I.F Conclusions regarding State Practice of Death Registration

I looked specifically at the uniformity, consistency, and duration of state practice, using the elements described in *United Nations Principles and Recommendations for a Vital Statistics System* as a framework, namely that civil registration should be permanent, continuous, universal, and compulsory.

There is overwhelming evidence that almost every country in the world has put in place *permanent and continuous* death registration systems (as part of civil registration), as illustrated by the (a) existence of national laws describing the obligation to register death, and (b) the administrative systems that translate that law into practice. In the vast majority of cases, laws require *mandatory* and *universal* registration.

However, only about 50% of countries have complete death registration. Arguably, the gaps in civil registration are largely a result of administrative weakness, budget challenges, low public awareness, among other factors. Many of the countries with the weakest civil registration systems have taken steps to reform and improve their systems, in line with global principles. Gaps in the completeness of death registration should be considered alongside of state action to address gaps. Furthermore, there is sufficient evidence of both uniform and consistent practice for more than 100 years in many parts of the world and over 50 years in almost all countries. In almost all of the countries studied there has been a steady move towards increased universal, continuous, permanent and compulsory death registration.

However, there are a few exceptions to uniformity of state practice that warrant further study, including (a) the exclusion of certain minority groups (including migrants, rural communities, and indigenous peoples); and (b) partial suspension during emergency (e.g., armed conflict, COVID-19, etc). In a later Chapter of this thesis, I will explore if an existing customary norm regarding death registration applies to these exceptional circumstances or if divergence of practice in these cases is best understood as an exception to the rule.

II. Opinio Juris

The establishment of *opinio juris* requires that practice be implemented with a sense of legal right or obligation. The ICJ confirmed on several occasions that state practice alone was insufficient to

amount to customary international law, including in the *North Sea Continental Shelf* case.⁴²⁰ The subjective element, *opinio juris*, can be discerned through public statements made by the state, official publications, legal opinions, diplomatic correspondence, treaty provisions, and conduct regarding international resolutions, among other means.⁴²¹

As described in the previous Chapter, I have adopted Kirgis's 'sliding scale' in the evaluation of practice and *opinio juris*; as argued by the ICRC in their study on Humanitarian Customary International Law, where state practice is significant, less weight needs to be ascribed to *opinio juris*.⁴²² As such, where state practice of death registration is almost complete, in Europe for example, I have made no further attempt to identify the *opinio juris* element. In the section below, I will focus on regions where state practice of death registration remains incomplete (particularly with regards to gaps in the application of law). In these regions, I will evaluate the *opinio juris* element by drawing from state engagement in the international and regional arena. This approach to *opinio juris* has been defended in the previous Chapter and is in line with the ICJ's approach in the case of *Military and Paramilitary activities in and against Nicaragua (Merits)* (1986), where it considered a non-binding resolution of an international organization as evidence of *opinio juris*,⁴²³ as well as in the *Continental Shelf Case* (1982) where conclusions from the Third Conference on the Law of the Sea were considered evidence of a pre-existing or emerging rule of customary law.⁴²⁴

It is broadly accepted that state action (e.g. adoption of resolutions) in international organizations and at international conferences may contribute to the formation of customary law, in certain circumstances.⁴²⁵ For the purposes of this study, the term international organization is understood to mean 'inter-governmental organization', as per the *Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character*.⁴²⁶ In Cassese's words, "it stands to reason that the unique opportunity afforded by the UN for practically all members of the world community to get together and exchange their views cannot fail to have had a strong impact on the emergence or reshaping of customary rules."⁴²⁷ Resolutions of the UN General Assembly have received particular attention from legal experts,⁴²⁸ and in a few cases they have come to be considered

⁴²⁰ *North Sea Continental Shelf Cases*, (n 7) 3, para 77.

⁴²¹ Sean D. Murphy, 'Identification of Customary International Law and Other Topics: The Sixty-Seventh Session of the International Law Commission' (2015) 109 Am. J. Int'l L. 822 (2015), 822-832.

⁴²² Louise Doswald Beck, 'Developments in Customary International Humanitarian Law' (2005) 15 Swiss. Rev. Int'l and Eur. L. 471, 475-476.

⁴²³ *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v US)* (Merits) (Judgement) [1986] ICJ Reports, 99-100.

⁴²⁴ *Case Concerning the Continent Self (Tunisia/Libyan Arab Jamahiriya)* (Judgement) [1982] ICJ Reports < <https://www.icj-cij.org/sites/default/files/case-related/63/063-19820224-JUD-01-00-EN.pdf> > accessed 1 February 2024, 38.

⁴²⁵ UN General Assembly, 'Third Report on the Identification of Customary International Law by Michael Wood (Special Rapporteur)' International Law Commission, Sixty-Seventh Session, UN doc A/CN.4/682 (27 March 2015), 31, para 45.

⁴²⁶ Vienna Convention on the Representation of States in their Regulations with International Organizations of a Universal Character (adopted 14 March 1975, not yet in force) UN Doc A.CONF.67/16 < https://legal.un.org/ilc/texts/instruments/english/conventions/5_1_1975.pdf > accessed 1 February 2024, Art. 1.1(1)

⁴²⁷ Antonia Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge University Press 1995), 193.

⁴²⁸ G. Cahin, *La coutume internationale et les organisations internationales* (Pedone 2001); J. Castañeda, *Legal Effects of United Nations Resolutions* (Columbia University Press 1970); J. Castañeda 'Valeur Juridique des Résolutions des Nations Unies' (1970) Collected Courses

customary law⁴²⁹ (e.g. *Resolution 95(1)* of 11 December 1946, which affirmed unanimously the principles of international law recognized by the *Charter of the Nuremberg International Military Tribunal* and its judgement⁴³⁰). However, other inter-governmental meetings and conferences can also contribute to the development of custom,⁴³¹ in addition to organs of international organizations. As a case in point, the Appeals Chamber of the International Tribunal for the Former Yugoslavia found “of great relevance to the formation of *opinio juris* to the effect that violations of general international humanitarian law governing internal armed conflicts entail the criminal responsibility of those committing or ordering those violations are certain resolutions unanimously adopted by the Security Council.”⁴³² Though General Assembly resolutions and resolutions from other international organizations are not legally binding, they may have ‘normative value’ in illustrating the existence of a customary norm, as described by the ICJ in *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, where the Court concluded, “[t]he Court notes that General Assembly resolutions, even if they are not binding, may sometimes have normative value. They can, in certain circumstances, provide evidence important for establishing the existence of a rule or the emergence of an *opinio juris*.”⁴³³

To these ends, I will look at (a) the history of the CRVS agenda in the UN forums and organs, including the 2030 agenda and the Sustainable Development Goals; and (b) regional inter-state organizations, particularly in Africa and Latin America. In each of these international and regional forums I will show that the consistent and growing state engagement and commitment to building CRVS systems illustrate their belief that universal death registration is a required obligation. As such, I will argue in this section that there is sufficient evidence of *opinion juris* with regards to death registration.

I have not considered human rights and humanitarian treaty law in this Chapter, though treaties can contribute to the development of *opinio juris*. The reason for this omission is that death registration under treaty law will be addressed comprehensively in Chapter 7 and 8. In these Chapters I will argue that death registration is an implicit obligation under the right to life⁴³⁴ in addition to other treaty

of the Hague Academy of International Law Volume 129, 205; M. Forteau, ‘Organisations Internationales et Sources du Droit’, in E. Lagrange, J.-M. Sorel (eds.) *Traité de Droit des Organisations Internationales* (L.G.D.J. 2013), 257.

⁴²⁹ See Boyle and Chinkin, *International Law-making Processes* (Oxford 2007).

⁴³⁰ Anthony Aust, *Handbook of International Law* (Second edition, Cambridge University Press 2010).

⁴³¹ E.g., The ICJ referred to the Helsinki Final Act of 1975 in *Case Concerning Military and Paramilitary Activities In and Against Nicaragua* (n 435) para 204.

⁴³² *Prosecutor v Tadic* (Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction) ICTY-94-1 (2 October 1995), para 133.

⁴³³ *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion), ICJ Reports (8 July 1996), 254-255, para 70.

⁴³⁴ Right to life is described by Article 6 of the International Covenant on Civil and Political Rights (entered into force 23 March 1976), UNTS 999 (ICCPR); Article 4 of Organization of African Unity, ‘African Charter on Human and Peoples’ rights (‘Banjul Charter’) (1982) CAB/LEG/67/3 rev 5, I.L.M 58; Article 3 of the Universal Declaration of Human Rights (1948) UN Doc A/RES/3/217; International Convention for the Protection of all Persons from Enforced Disappearance (entered into force 2010) UNTS Vol. 2716; Article 6 of the Convention on the Rights of the Child (CRC) (entered into force 2 September) UNTS 1577; Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos 11 and 14 (adopted 4 November 1950, entered into force 3 September 1953) ETS 5; Inter-American Convention on Forced Disappearance of Persons (entered into force 1996) OAS E/CN.4/2003/WG.22/Misc.1; Article 1 of Inter-American Commissions on Human Rights (ASCHR), American Declaration of the Rights and Duties of Man (adopted on 1948), E/CN.4/122.

provisions in human rights.⁴³⁵ Although, for the sake of brevity, I was not able to consider treaty obligations here; my finding in subsequent chapters that there is an existing treaty obligation to register death, applicable to all people, in all times, further confirms the existence of *opinion juris*.

II.A The United Nations

The League of Nations developed a series of recommendations regarding the registration of births (live births and still births) and deaths in 1925. Death was defined as the disappearance of any sign of life following a live birth.⁴³⁶ There were questions regarding the classification of ‘late’ foetal death and still birth.⁴³⁷ The League of Nations convened a Statistical Conference of Governments in 1928, resulting in the *International Convention relating to Economic Statistics*, which obligated member states to publish data on external trade, occupation, agriculture, livestock, forestry and fisheries, mining and metallurgy, industry, and index numbers of prices.⁴³⁸ The Committee of Statistical Experts of the League of Nations developed the technical means of implementing the Convention between 1931-1939. With the establishment of the United Nations, a new Terms of Reference was developed for the new Statistical Commission and the Statistical Office of the UN (as early as 1946) to continue the work begun by the League of Nations. Since it was first developed, the UN has played a key role in promoting national information management systems (including CRVS) as well as coordinating data compilation. Over the last 70 years, the Expert Group on International Economic and Social Classifications (with the UN Statistics Division acting as secretariat) has developed numerous tools

⁴³⁵ For example, with regards to the realization of a state’s obligation to protect an individual’s right to life and health (Universal Declaration of Human Rights (1948) UN doc A/RES/3/217; ICCPR, Article 12, as well as to the rights of surviving family members regarding inheritance of property or right to remarry. Some of human rights norms would seem to implicitly necessitate death registration, including Article 12(2)(a) of the International Covenant on Economic, Social and Cultural Rights, which requires that state parties adopt measures to reduce still births (International Covenant on Economic, Social and Cultural Rights (ICESCR) (agreed 16 December 1966, entered into force 3 January 1976) UNTS Vol 993, Article 12(2)(a)) and infant mortality which can only be monitored through death registration; as well as states’ obligation to protect and realized the right to health (Universal Declaration of Human Rights (1948) UN doc A/RES/3/217, Article 16; International Covenant on Economic, Social and Cultural Rights (ICESCR) (agreed 16 December 1966, entered into force 3 January 1976) UNTS Vol 993, Article 23(1); and ICCPR, Article 10(1) and 12(1)). The right to the protection of family environment (Universal Declaration of Human Rights (1948) UN doc A/RES/3/217, Art 16(3); ICCPR, Article 23(1)) may also require a civil registration system as the means by which states legally recognize certain familial relationships. The protection of the inherent right to life (ICCPR, Article 6) may also require that systems are in place to document unnatural, wrongful death, as well as other trends, again requiring a system to register death, particularly cause of death, triggering the criminal justice system. Arguably, international human rights instruments that are specifically addressed to reducing discrimination, including discrimination related to race (including preventing discrimination related the right to life and protection from unnatural death) (International Convention on the Elimination of all forms of Racial Discrimination (adopted 1965 and entered into force 1969) UNTS vol 660, Article 1(1) and (c) and Article 2(1) (c)); gender (Convention on the Elimination of All Forms of Discrimination against Women (adopted 1979, came into force 1981) UNTS Volume 1249, Article 2(f)); religion (UN Commission on Human Rights ‘Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief’ (19 April 2005) UN doc E/CN.4/RES/2005/40, paras. 4); ability (Convention on Rights of Persons with Disabilities (adopted 2007) UN Doc A/RES/61/106, Art 23(1)); refugee status (Convention relating to the Status of Refugees (adopted 1951, came into force 1954) UNTS Vol 189 requires that vital events of refugees residing within the territory should be registered without discrimination). These treaty obligations, among others, will be explored further in subsequent Chapters.

⁴³⁶ International Institute for Vital Registration and Statistics (iiVRS) ‘Are Live and Stillbirths Comparable All over Europe? Legal Definitions and Vital Registration Data Processing’ (1994) Technical Papers, Number 58, < https://unstats.un.org/unsd/demographic-social/crvs/documents/IIVRS_papers/IIVRS_paper58.pdf> accessed 1 February 2024, 21.

⁴³⁷ Ibid, 21.

⁴³⁸ Katherine Wallman and Suzann Evinger, ‘International Standards for Compilation of Statistics: the Gap between Standards Adoption and Standards Implementation’ (2008) Statistical Journal of the IAOS Vol 25, No 1-2.

and guidelines to strengthen national statistics and to guide the development of ‘international statistics’.⁴³⁹

Since 1950, each year the United Nations Statistics Division has collected vital statistics from National statistical offices and compiled the data in an annual Demographic Yearbook.⁴⁴⁰ Data is gathered through two questionnaires: (a) the Vital Statistics Questionnaire; and (b) Population Census General Characteristics Questionnaire. The former collects annual data on births, deaths, foetal deaths, marriages and divorces (among other things), largely drawn from civil registration systems.⁴⁴¹ The latter questionnaire is largely based on the data gathered in national population censuses. The degree to which a country is able to respond to the first questionnaire is a good indication of the strength of its CRVS system.⁴⁴²

In August 1953, the Statistical Office of the United Nations, Department of Economic Affairs released the *Principles for a Vital Statistics System: Recommendations for the Improvement and Standardization of Vital Statistics*, which was based on a survey of CRVS systems in 58 countries as well as technical input from 41 governments, the Population Commission and the Statistical Commission (6th and 7th session),⁴⁴³ the Expert Committee on Health Statistics of the WHO, and the individual experts from North and South America, south-east Asia, the Middle East, and the western Pacific region. The *Principles* were subsequently adopted by the UN Economic and Social Council in April 1953. The Commission highlighted that the *Principles* did not have limited applicability, but that they should be adopted by all countries, to improve the quality and allow for comparability of statistics.⁴⁴⁴

The UN Statistics Division was charged with coordinating the International Programme for Accelerating the Improvement of Vital Statistics and Civil Registration Systems. The *Principles and Recommendations for a Vital Statistics System* were published in 1973 and have subsequently been updated several times. The *UN Principles and Recommendations for a Vital Statistics System* have been widely accepted as the standard for civil registration and vital statistics, as evidenced by the frequent reference in national action plans and the general alignment of national systems. Among other things, they require the establishment of universal, compulsory, permanent, and continuous death registration. Their emphasis on universal and compulsory registration would seem to point to a

⁴³⁹ Katherine Wallman and Suzann Evinger (n 450)

⁴⁴⁰ Questionnaires and published issues of Demographic Yearbook are published by the UN Statistics Division see UN Statistics Division, ‘Demographic Yearbook’ < <http://unstats.un.org/unsd/demographic/products/dyb/default.htm> > accessed 1 February 2024.

⁴⁴¹ The only exception is that when a country does not have a functioning civil registration, indicators from sample surveys are also covered in the Demographic Yearbook data collection. The exception does not apply to the countries discussed in the report.

⁴⁴² UN Statistics Division (n 28) 11-12.

⁴⁴³ Statistical Office of the United Nations, ‘Principles for a Vital Statistics System, Recommendations for the Improvement and Standardization of Vital Statistics’ (1953) Statistical Papers Series M No. 19 < https://unstats.un.org/unsd/demographic-social/Standards-and-Methods/files/Principles_and_Recommendations/CRVS/Series_M19-E.pdf > accessed 1 February 2024.

⁴⁴⁴ Ibid, ii.

recognition that states have a mandatory requirement to rollout global death registration. In 1998, the United Nations Statistics Division published the ‘*Handbook on Civil Registration and Vital Statistics Systems: Preparation of a Legal Framework*’. In 2002, the *Handbook on Training in Civil Registration and Vital Statistics Systems* was published to develop national capacity to operate and maintain CRVS systems. This has been updated, most recently in 2018.⁴⁴⁵ A few of the additional standards and guidelines that have been recently released by the UN include the *UN Guidelines on the Legislative Framework for Civil Registration, Vital Statistics and Identity Management* (2019); *United Nations Personal Data Protection and Privacy Principles* (2018);⁴⁴⁶ and the *Guidelines for the National Strategy for Development of Statistics* (NSDS) (2013).⁴⁴⁷

The importance of producing comparable statistics at the international level was recognized at the International Statistical Conference in 1853 (Brussels, Belgium). The primary focus was on developing a standard system to classify cause of death. This was undertaken first by the International Statistical Institute in 1891 and subsequently by the World Health Organization in 1946.⁴⁴⁸ The World Health Organization has recognized for several decades that strong civil registration systems, particularly death registration (including cause of death data), are essential to developing health systems.⁴⁴⁹ The UN Statistics Division expressly found that death registration was essential to the realization of the progressive right to health under the International Covenant on Economic, Social and Cultural rights, stating “to protect the right to health, it is essential that deaths are registered and causes of death are captured to generate important vital statistics for informed health policies to prevent, treat and control morbidity and mortality in the population.”⁴⁵⁰ The *International Classification for Diseases* was developed by WHO in 1975 and are still used today.⁴⁵¹ The WHO regularly updates the *International Statistical Classification of Diseases and Health-related Problems*. This document is widely used across the world to allow for international standardization, comparability and aggregation of cause of death data and to improve cause of death identification. The WHO and key partners have developed several tools to improve cause of death reporting and registration, including to support rapid and comprehensive assessments.⁴⁵²

Since 2000, there has been an increase of international action around CRVS.⁴⁵³ The UN Secretary General’s office established a Commission on Information and Accountability (CoIA). The CoIA was

⁴⁴⁵ Handbooks on Civil Registration and Vital Statistics Systems, 5-volume set by UN Statistics Division, New York (Jan 2018)

⁴⁴⁶ UN High-Level Committee on Management, Personal Data Protection and Privacy Principles (adopted 11 October 2018) 36th Meeting < <https://www.unsystem.org/personal-data-protection-and-privacy-principles>> accessed 16 March 2024.

⁴⁴⁷ Statistics Norway (n 114) 23.

⁴⁴⁸ International Institute for Vital Registration and Statistics (iiVRS) (n 448) 21.

⁴⁴⁹ Statistics Norway (n 114) 19-20.

⁴⁵⁰ United Nations Statistics Division (n 11) para 132.

⁴⁵¹ International Institute for Vital Registration and Statistics (iiVRS) (n 448) 21.

⁴⁵² World Health Organization, ‘Improving the Quality and Use of Birth, Death, and Cause-of-Death Information: Guidance for a Standard Based Review of Country Practices’ (2010) < https://iris.who.int/bitstream/handle/10665/44274/9789241547970_eng.pdf?sequence=1 > accessed 2 February 2024.

⁴⁵³ Statistics Norway (n 114) 19.

co-chaired by the Prime Minister of Canada and the President of Tanzania. In recent years, it has received more political attention, including support from the UN Regional Commissions. The first recommendation of the Commission was to ensure that all countries build and improve their CRVS systems, with particular attention to birth, death and cause of data registration.

In 2014, the Global Civil Registration and Vital Statistics Group was established by members of the international community to coordinate efforts, with the aim of (a) converging strategic priorities and mandates towards a holistic approach to CRVS and building an enabling environment; (b) exchange of information to support regional and national momentum towards improved national CRVS systems; and (c) advocating for the importance of CRVS as a development imperative.⁴⁵⁴ Also in 2014, the World Bank worked with a cross-section of experts to develop an investment plan for 2015-2024 to scale up CRVS across the globe, aiming at universal registration of births, deaths (including cause of death), marriages, and other vital events and access to legal proof of registration for all people by 2030.⁴⁵⁵

Recognizing the critical importance of legal identity in the ‘Leave No One Behind’ agenda the UN Deputy Secretary-General established the United Nations Legal Identity Expert Group (UN-LIEG) in September 2018. It is co-chaired by the UN Department of Economic and Social Affairs (Statistical Division), the United Nations Development Programme and UNICEF.⁴⁵⁶ From a normative perspective, the UN Legal Identity Expert Group (UN-LIEG) seeks to expand the international framework on CRVS to support the integration of identity management into one system that ensures legal identity for all persons, from birth to death,⁴⁵⁷ with the specific recognition that marginalized and exceptionally vulnerable communities should not be left out of civil registration as per the principles of universal civil registration espoused in international standards.⁴⁵⁸ During the global COVID-19 pandemic, they recommended that civil registration services be considered ‘essential services’ to avoid significant disruption, arguing that during emergencies the registration of birth, death, foetal death and recording of cause of death should be treated as a priority.⁴⁵⁹

The UN Legal Identity Agenda, launched in May 2019, builds on the progress accomplished under the International Programme for Accelerating the Improvement of Vital Statistics and Civil Registration Systems. It promotes a holistic approach to civil registration, vital statistics production and identity management. Critically, the UN Legal Identity Agenda recognizes that civil registration is a critical

⁴⁵⁴ Global Civil Registration and Vital Statistics Group ‘Terms of Reference’ (2014)

<https://unstats.un.org/unsd/demographic/crvs/Global_CRVS_Docs/TOR_2014_Final.pdf> accessed 2 February 2024.

⁴⁵⁵ Statistics Norway (n 114) 24.

⁴⁵⁶ African Ministers Responsible for Civil Registration, ‘United Nations Legal Identity Agenda: Fulfilling the Promise to Leave No one Behind’ (Fifth Conference of African Ministers Responsible for Civil Registration, Lusaka, 14-18 October 2019) CRMC5/2019/23 <<https://libguides.northampton.ac.uk/oscolaguide/conferencepapers>> accessed 2 February 2024, 2.

⁴⁵⁷ Ibid, 2-3.

⁴⁵⁸ Ibid, 4.

⁴⁵⁹ UN Legal Identity Agenda Task Force (n 297).

means by which countries establish the existence of personhood before the law, with emphasis on the importance of continued civil registration during periods of emergency, most importantly birth and death registration (including cause of death). Suspension or disruption of civil registration services during emergencies risks violation of individual rights as well as affecting the state's ability to respond to emergency needs (to fulfil rights obligations). The UN has called on all Member States to adopt and implement this agenda as a systemic and perpetual mechanism for ensuring legal identity for all.⁴⁶⁰

The 2030 Development Agenda includes a notable emphasis on the importance of civil registration and national information systems. Civil registration is recognized as a foundation for the establishment of legal identity and, as such, is instrumental to the protection and realization of human rights norms.⁴⁶¹ Vital statistics are referred to multiple times throughout the SDGs, as a foundation for the development and monitoring of social and economic policy development.

Most notably, indicator 17.19.2. calls on states to (a) have conducted at least one population and housing census in the last 10 years, and (b) have achieved 100 per cent birth registration and 80 per cent death registration.⁴⁶² SDG 16 (peace and justice) calls for the development of effective, accountable and inclusive institutions at all levels. Legal identity is recognized as a fundamental cornerstone of this objective. SDG target 16.9 requires “legal identity for all, including birth registration by 2030.”⁴⁶³ It is a foundation of the ‘leave no one behind’ agenda.⁴⁶⁴ There is increasing recognition that legal identity and civil registration systems should be linked. The advent of the Sustainable Development Goal Target 16.9 (‘legal identity for all, including birth registration, by 2030’) confirmed this holistic approach. To these ends, birth registration is recognized as basis for the establishment of legal identity and death registration should trigger the formal ‘closure’ of legal identity.⁴⁶⁵

The SDG include indicators that directly monitor improvement in CRVS. Several indicators use mortality and cause-of-death data. An overview is shown below.

Table: SDG indicators

⁴⁶⁰ United Nations Development Programme (UNDP), UN Statistics Division, United Nations Children's Fund (UNICEF), ‘Implementation of the UN Legal Identity Agenda: UN Country Team Operational Guidelines, Final Draft’ <https://unstats.un.org/legal-identity-agenda/documents/UNCT_Guidelines.pdf> accessed 19 January 2024, para 83.

⁴⁶¹ Pacific Community (n 62) 46.

⁴⁶² United Nations Children's Fund (UNICEF) (n 46).

⁴⁶³ United Nations Children's Fund (UNICEF) (n 46).

⁴⁶⁴ Centre of Excellence for CRVS Systems ‘Compendium of Good Practices in Linking Civil Registration and Vital Statistics and Identity Management Systems’ (2019) <https://crvssystemsa.ca/sites/default/files/assets/files/CRVS_Compndium_e_WEB.pdf> accessed 2 February 2024, 1.

⁴⁶⁵ Pacific Community (n 62) 3-4.

SDG targets		Indicators for Monitoring Progress	
3.1	By 2030, reduce the global maternal mortality ratio to less than 70 per 100,000 live births	3.1.1	Maternal deaths per 100,000 live births
3.2	By 2030, end preventable deaths of new-borns and children under 5 years of age, with all countries aiming to reduce neonatal mortality to at least as low as 12 per 1,000 live births and under-5 mortality to at least as low as 25 per 1,000 live births	3.2.1	Under-5 mortality rate (deaths per 1,000 live births)
		3.2.2	Neonatal mortality rate (deaths per 1,000 live births)
3.3	By 2030, end the epidemics of AIDs, Tuberculosis, malaria, and neglected tropical diseases and combat hepatitis, waterborne diseases, and other communicable diseases		
3.4	By 2030, reduce premature mortality from non-communicable diseases by one-third through prevention and treatment and promote mental health and well-being	3.4.1	Mortality of cardiovascular disease, cancer, diabetes or chronic respiratory disease
		3.4.2	Suicide mortality rate
3.6	By 2020, halve the number of global deaths and injuries from road traffic accidents		
3.9	By 2030, substantially reduce the number of deaths and illnesses from hazardous chemicals and air, water, and soil pollution and contamination	3.6.1	Number of road traffic fatal injury deaths within 30 days, per 100,000 population (age-standardized)
11.5	By 2030, significantly reduce the number of deaths and the number of people affected and substantially decrease the direct economic losses relative to global gross domestic product caused by disasters, including water-related disasters, with a focus on protecting the poor and people in vulnerable situations		
16.1	Significantly reduce all forms of violence and related death rates everywhere	16.1.1	Number of victims of intentional homicide per 100,000 population, by age group and sex
16.9	By 2030, provide legal identity for all, including birth registration	16.19.1	Proportion of children under 5 years whose births have been registered with a civil authority, by age
17.18	By 2030...increase significantly the availability of high-quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts	17.18.1	Proportion of sustainable development indicators produced at the national level with full disaggregation when relevant to the target, in accordance with the Fundamental Principles of Official Statistics
17.19	By 2030...support statistical capacity building in countries	17.19.2	Proportion of countries that have conducted at least one population and housing census in the last 10 years and have achieved 100 percent birth registration and 80 percent death registration

Indicators linked to Goal 4 (quality education) and Goal 5 (gender equality) can only be calculated if population figures are accurate (requiring vital statistics). Across the development indicators, without accurate, regular and complete population figures, it is difficult to track progress.

For over 50 years, the United Nations has recognized the importance of death registration, both as an essential tool to good governance and the realization of human rights, but also as essential to our collective wellbeing. The World Bank's Investment Plan for 2015-2024 recognizes that death registration 'provides legal rights to the family', critical information for health and development planning, and is an essential tool to ensure that 'no one is left behind'.⁴⁶⁶ The UN's emphasis on universal and compulsory civil registration implies that death registration, in the context of civil registration, goes beyond 'best practice'. The UN Legal Identity Agenda is the manifestation of a growing global recognition that registration (birth and death) establishes the parameters of legal identity and personhood before the law. Civil registration provides individuals with the documentary evidence vital to secure acknowledgment of legal identity, family, nationality and to access associated rights, including social protection and inheritance. The UN has recognized that the importance of civil registration and vital statistics will continue to grow as the world works towards collective health targets, recognizing the acute need to monitor and response to cause of death (including under the progressive right to health under the International Covenant of Economic, Social, and Cultural Rights which was ratified by 171 countries⁴⁶⁷), among other threats. Attention has also been given to the critical role that civil registration and vital statistics play in ensuring that no one is left behind, a keystone of the 2030 Agenda and the Sustainable Development Goals. Unregistered persons and groups frequently suffer multiple rights deprivations. As recognized by the UN General Assembly in 2013, civil registration and vital statistics become even more important during emergencies, conflict, and disasters. Humanitarian assistance, as well as upholding obligations vis-à-vis humanitarian law (including with regards to protection of civilians during armed conflict) are contingent on real time accurate mortality data. This global consensus regarding the intrinsic value of CRVS systems and prioritization of acts to strengthen systems strongly suggests *opinion juris*.

II.B Regional Initiatives

As described above, it is generally recognized that state action in international organizations can contribute to the identification of an existing customary norm. This general recognition is, however, qualified by the importance of discerning if state action in the international arena is political posturing or if it carries actual intent of implementation; "[a]s with any declaration by a state, it is always

⁴⁶⁶ World Bank Group (n 48) xi.

⁴⁶⁷ See International Covenant on Economic, Social and Cultural Rights (ICESCR) (agreed 16 December 1966, entered into force 3 January 1976) UNTS Vol 993,

necessary to consider what states actually mean when they vote for or against certain resolutions in international fora”.⁴⁶⁸ The discussion below should be read alongside the conclusions in section III.D (above), which describe the countries that have conducted assessments and developed National Action Plans, steps towards implementation of their regional commitments.

▪ Africa

Though civil registration systems in many parts of Africa remain weak, Africa has shown an exceptional political commitment in the last decades to improve civil registration and vital statistics systems on the national level, including through concerted regional action. The first African seminar on vital statistics was organized by the Economic Commission for Africa in Addis Ababa, Ethiopia in 1964.

Initial commitments to reform CRVS systems were made at the first Conference of African Ministers Responsible for Civil Registration, held in Addis Ababa in August 2010. Member states agreed during the 1st conference to establish a standing regional platform to accelerate civil registration and vital statistics reform.⁴⁶⁹ These efforts were supported by a regional call for resource mobilization and political commitment.⁴⁷⁰ Regional development banks have been particularly active in supporting CRVS, including AfDB, the ADB, and IADB.⁴⁷¹ Notably, the United Nations Economic and Social Commission for Africa and the African Development Bank developed a mid-term plan (2010-2015), which was endorsed by the Ministers in 2010.⁴⁷² During the 2nd Conference of African Ministries (2012) a regional initiative was launched to accelerate the reform of civil registration and vital statistics systems, called *African Programme on Accelerated Improvement of Civil Registration and Vital Statistics* (APAI-CRVS).⁴⁷³ APAI-CRVS was developed to merge numerous CRVS initiatives in Africa into one framework. The APAI-CRVS has been widely embraced by African Ministers responsible for CRVS. The Ministerial Conference is now a permanent body under the African Union, convening every other year.⁴⁷⁴

During the 4th Conference (2017) AU Member states passed the Nouakchott Declaration. Among other things, the Declaration (a) reconfirms AU member states’ commitment to strengthening civil registration and vital statistics as part of their commitments under the AU Agenda 2063 and the global 2030 Agenda for Sustainable Development; (b) “(r)eiterates the obligation of African Union member States to improve mortality statistics and the recording of causes of death and the linkages between

⁴⁶⁸ G. Boas, *Public International Law: Contemporary Principles and Perspectives* (Edward Elgar 2012), 88.

⁴⁶⁹ UN Statistics Division (n 37) 3.

⁴⁷⁰ African Ministers Responsible for Civil Registration (n 468) 1.

⁴⁷¹ Statistics Norway (n 114) 24.

⁴⁷² Ibid, 21-22.

⁴⁷³ UN Statistics Division (n 37) 3.

⁴⁷⁴ Statistics Norway (n 114) 21-22.

the health sector and civil registration and vital statistics systems in Africa...”; (c) supports implementation of APAI-CRVS monitoring of national CRVS, implementation of the Strategic Plan (2017-2021) by members of the AU, and capacity building initiatives; (d) requests that “African Union member states .. implement the decision to allocate 0.15% of the national budget to promote effective statistical systems in Africa, including civil registration and vital statistics”, and confirms the AU and African Development commitment to provide resources to support CRVS capacity building and to strengthening national CRVS systems; (e) “invites African Union member States to put in place appropriate legal frameworks to promote civil registration and vital statistics systems”.⁴⁷⁵ As a result of the Nouakchott Declaration, the CRVS Systems Improvement Framework was adopted in April 2021. The Framework recognizes that civil registration is essential to the realization of many of the Sustainable Development Goals and the African Union Agenda 2063: The Africa We Want.⁴⁷⁶

The 5th Conference (2019) was addressed to the UN Legal Identity Agenda and its linkage with the civil registration system. It was confirmed that “(m)ember States have the responsibility to recognize every individual present on their territory as a person before the law, without prejudice to nationality (or lack thereof), legal status, gender or duration of stay.”⁴⁷⁷ During the conference it was recognized the UN Legal Agenda supports SDG 17, target 17.19 on statistical capacity-building in Africa.⁴⁷⁸ The member states recognized high-quality statistics on cause of death as fundamental to evidence-based policymaking, and programme planning and monitoring.⁴⁷⁹

As a result of the UN initiatives, with support from international organizations (including the World Bank, the African Development Bank, UNDP, UNICEF, among others) and action under the APAI-CRVS, many of the countries have conducted assessments of their CRVS, and subsequently established multi-sector and high-level Steering committees as well as long-term investment plans focused on strengthening the CRVS systems.

▪ Asia

The UN Economic and Social Commission for Asia and the Pacific (UN ESCAP) Resolution 69/15 establishes a framework for action on civil registration and vital statistics systems in Asia and the

⁴⁷⁵ African Ministers Responsible for Civil Registration ‘Nouakchott Declaration’ (Fourth Conference of African Ministers Responsible for Civil Registration, 26 May 2021).

⁴⁷⁶ APAI-CRVS, ECA, Pacific Community, Get Every One in the Picture, UN ESCAP, Centre of Excellence for CRVS, Vital Strategies, Bloomberg Philanthropies, Data for Health Initiative ‘*CRVS Systems Improvement Framework*’ (2021) <<https://getinthepicture.org/resource/crvs-systems-improvement-framework#:~:text=The%20CRVS%20System%20Improvement%20Framework,performance%20of%20the%20CRVS%20system.>> accessed 2 February 2024, 7.

⁴⁷⁷ African Ministers Responsible for Civil Registration (n 468) 4.

⁴⁷⁸ African Ministers Responsible for Civil Registration ‘Report of the Meeting of Experts, Conference Theme: Innovative Civil Registration and Vital Statistics Systems, Foundation for Legal Identity Management’ (Meeting of Experts for the Fifth Conference of African Ministers Responsible for Civil Registration, Lusaka, 14-16 October 2019) CRM5/EXP/2019/29/Rev.1, 3.

⁴⁷⁹ Ibid, 3.

Pacific, providing a road map for member states to take collaborative action at local, provincial, national and international levels.⁴⁸⁰

In 1986, the Committee of Asian Experts, under the auspices of the IIVRS and the United Economic and Social Commission for Asia and the Pacific, stated,

there has been, for many years, universal recognition of the importance and need for the registration of vital events, namely births, deaths, marriages, and divorces. Virtually every country in the world has promulgated laws for establishing a national civil registration system for documenting juridical facts about vital events and to use these data for the compilation of vital statistics.⁴⁸¹

Arguably, by emphasizing ‘need’ in this context they are demonstrating their belief that death registration is a required action, evidence of *opinio juris*. The Committee found that civil registration and vital statistics play an essential role in many developed countries.⁴⁸²

In 2012, in Asia and the Pacific, the United Nations Economic and Social Commission for Asia and the Pacific, UNICEF, UNDP, UNFPA, UNHCR, WHO, the Asian Development Bank and Plan International began work on a regional strategic plan to support accelerated improvement in civil registration and vital statistics systems. As of 2014, most of the countries in the region had carried out assessments of their CRVS system and many had begun to work on detailed plans for strengthening their system.⁴⁸³ Also in 2014, the first Ministerial Conference in the Asia and Pacific Region on CRVS was held in Bangkok, under the theme ‘Get Everyone in the Picture’ and as part of the ‘Asian and Pacific CRVS Decade’ for 2015-2024’.⁴⁸⁴ During this initial meeting, a Ministerial Declaration was adopted, wherein the governments of the Asia and Pacific region committed to ensuring that all people in the region would have access to a universal and responsive CRVS system by 2024.⁴⁸⁵ Subsequently, the UN ESCAP adopted Resolution 71/14, addressed to the Asia and Pacific Civil registration and Vital Statistics Decade (2015-2024).⁴⁸⁶ The second ministerial conference in Asia was held in November 2021.

As a result of the UN initiatives, support from international organizations (including the World Bank, UNDP, UNICEF, among others) and action by the APAI-CRVS, many countries have conducted

⁴⁸⁰ United Nations Children’s Fund (UNICEF) (n 46).

⁴⁸¹ Committee of Asia Experts under the auspices of the IIVRS and the United Nations Economic and Social Commission for Asia and the Pacific (n 50).

⁴⁸² Ibid.

⁴⁸³ Statistics Norway (n 114) 21-22.

⁴⁸⁴ Ibid, 21-22.

⁴⁸⁵ United Nations Children’s Fund (n 46).

⁴⁸⁶ United Nations Children’s Fund, (n 46) 8 -10.

assessments of their CRVS, established multi-sector and high-level Steering committees, and developed long-term investment plans focus on strengthening their CRVS systems.

II.C Conclusion regarding *Opinio Juris* and Death Registration

As described in the previous Chapter, I have adopted a sliding scale approach to the determination of practice and *opinio juris*, meaning where state practice is uniform, less importance is ascribed to proving *opinio juris*. On several occasions, the ICJ itself maintained *opinio juris* was determined by state practice itself, including the *Free City of Danzig* case,⁴⁸⁷ *Nottebohm* case,⁴⁸⁸ and the *Asylum* case.⁴⁸⁹ As shown in Section II, there is extensive evidence of state practice. However, as a result of the gap between the uniform existence of death registration legislation and administrative infrastructure and the practice of uniform death registration, it is important to evaluate *opinio juris* to determine if gaps in practice are because states do not believe they are obligated to implement death registration (despite their own laws), or if the issue lies elsewhere. To these ends, I focused my study of *opinio juris* predominately in regions that have low completeness of death registration, namely Africa and Asia. I found significant evidence of state engagement and commitment at the regional and international level to strengthen CRVS systems. As such, I conclude that there is ample evidence that states believe that they should be implementing death registration (*opinio juris*), though they may have constraints in operationalization.

III. ‘Life as Continuance’ applied to Death Registration under Customary Law

Opinio juris is sometimes seen as a filter for state practice in the identification of customary law, and vice-versa. The argument goes, without both elements, undesirable actions could become customary norms. In reality, even this (that is, establishing that both criteria are satisfied) does not in itself guarantee that the relevant norm will be ethically defensible. As I discussed in Chapter 2, it is my assertion that the ethical value of the norm should be taken into consideration, particularly through the application of the continuance of life framework. It stands to reason that law, which governs our very existence, should be scrutinized for its ethical value. To these ends, in the section below I will briefly evaluate the ethical value of death registration, evaluating the degree to which it contributes to our individual and collective existence and wellbeing. Acknowledging that it can be misused by states, I will argue that death registration is critical to our individual and collective existence and wellbeing. Furthermore, I argue that to ensure that the application of death registration meets these objectives

⁴⁸⁷ *Free City of Danzig and International Labour Organization (Advisory Opinion)* [1930] PCIJ B No 18, ICGJ 285 (PCIJ 1930) < <https://opil.ouplaw.com/display/10.1093/law/icgj/285pcij30.case.1/law/icgj-285pcij30> > accessed 25 January 2024, 12-13.

⁴⁸⁸ *Nottebohm, Liechtenstein v Guatemala* [1953] ICJ Report 1953, < <https://jsumundi.com/en/document/decision/en-nottebohm-liechtenstein-v-guatemala-judgment-preliminary-objection-including-the-text-of-the-declaration-of-judge-klaestad-wednesday-18th-november-1953> > accessed 25 January 2024, 40.

⁴⁸⁹ *Asylum case* (n 5) 277-278.

and to safeguard against abuse, death registration needs to be implemented within a framework of other human rights and humanitarian laws.

There are divergent opinions regarding the role that registration has played in history, discussed at length in Chapter 2 and thus not repeated here. Some scholars⁴⁹⁰ “assume that registration proceeded from the desire of the elites to monitor the ‘dangerous classes’.”⁴⁹¹ Other scholars hold that registration is essential to recognition, and thus to entitlement; thereby placing registration as the essential foundation for the realization of rights.⁴⁹²

It is my assertion that it is only by understanding the risks to our individual and collective life and well-being that we can ensure our individual and collective continuance. Central to this endeavour is the realization of human rights, protection of the rule of law and reinforcing the state’s accountability to its population. Incidentally, international human rights law and many of the principles of *jus cogens* (sometimes refer to as ‘international morality’) are addressed to ensuring that continuation of life.⁴⁹³ Gross violations of the right to life have resulted in the emergence of many principles in *jus cogen* customary law, e.g., regarding genocide, crimes against humanity, etc.⁴⁹⁴ As global threats are increasingly identified (climate change, pandemic diseases, etc), our collective existence is progressively dependent on shared/collective functions and the negotiation of shared interest through coordination structures, practices, and arrangements, including evidence generation around mortality patterns. For rational decision-making in the development of law that protects our collective continuance and wellbeing we must have a dispassionate understanding of the threats and opportunities before us. Mortality data is an essential input. However, this utilitarian need for data must be tempered with a respect for the individual. History reminds us that civil registration (including death registration) can for used for destructive ends, as it can be used to protect life. The risks of registration must be tempered by a philosophical and legal framework that affirms and protects life’s continuance on an individual level as well as a collective level. A customary norm regarding death registration must not be defined in a vacuum but should be read against the remarkable web of human rights and humanitarian laws that have been developed. By so doing, the potential risks of registration will be mitigated with the existing well-defined obligations and rights designed to protect individuals from unjustifiable intrusion, discriminatory treatment, etc.

⁴⁹⁰ E.g., Richard Overly, *The Morbid Age: Britain Between the Wars* (Allen Lane 2009).

⁴⁹¹ C.A Bayly, ‘Forward’ in Keith Breckenridge and Simon Szreter (ed), *Registration and Recognition: Documenting the Person in World History* (Oxford University Press 2012), x.

⁴⁹² Keith Breckenridge and Simon Szreter (ed), *Registration and Recognition: Documenting the Person in World History* (Oxford University Press 2012).

⁴⁹³ See for example International Law Commission, ‘Draft Conclusions on Peremptory Norms of General International Law (Jus Cogens) (2022)’ – Conclusion 3(a) states that jus cogens norms protect “the fundamental values of the international community,” which includes norms essential to the protection of human life, such as the prohibitions of genocide, torture, and crimes against humanity.

⁴⁹⁴ Mark Olssen, ‘Politics and the Philosophy of Life: Towards a Normative Framework’ (2010) <

https://www.researchgate.net/publication/290766651_Politics_and_the_philosophy_of_life_Towards_a_normative_framework> accessed 2 February 2024, 46-48.

IV. Conclusion

I have argued in this Chapter that death registration is a norm under international customary law. Using the essential elements of an ideal civil registration and vital statistics system (permanent, continuous, mandatory, and compulsory registration) as described in United Nations *Principles and Recommendations for a Vital Statistics System*, I assessed state practice. I found that almost without exception states have a legal system in place, as well as an administrative infrastructure to allow for the registration of death. By law, death registration is mandatory in almost all countries, though at least 50% of countries have less than complete death registration. Though many countries have legislation requiring universal death registration, certain groups often fall outside of the system. Though there may be some pattern to these exceptions (which will be explored below), assessments seem to indicate that in most cases gaps in registration are a result of weak governance, legal gaps, limited budget allocation, capacity and infrastructure gaps, and lack of public awareness. I was able to confirm that death registration has been practiced for over 100 years in many countries and at least 50 years in most countries, with a steady progression towards universal and compulsory registration, as well as regular improvement in the completeness of death registration around the world.

Subsequently, I assessed the existence of *opinio juris*. At the national level, I found that many of the states with gaps in death registration completeness had undertaken reform efforts, including undertaking assessments, establishing dedicated inter-ministerial committees to follow the reform agenda, and launching national Action Plans, in line with international guidelines. The national reform agendas were often a result of regional and international agreements and initiatives focused on improving CRVS globally, in line with the SDG agenda. Death registration is increasingly recognized in regional and international forums as an essential cornerstone to human rights, including the recognition of personhood before the law, as well as achievement of a host of development goals. Finally, I briefly considered the ethical value of death registration, considering the degree to which it contributes to our individual and collective continuance of life and wellbeing. Referring to arguments laid out in Chapter 2, I argue that death registration is essential to continued life and wellbeing. However, to mitigate the risk of potential abuse, I recommended that death registration be implemented within the framework of existing human rights and humanitarian law.

Based on the above research, my conclusion is that there is strong evidence that a death registration is a customary norm. However, during my research for this Chapter I found a pattern of exceptions; certain groups and certain contexts where death registration often falters and even fails altogether. Historically as in modern times, the most vulnerable in our society are the first to disappear from written records, resulting in compounded or further rights violations.⁴⁹⁵ Do these patterns of

⁴⁹⁵UNICEF (n 46) ii.

exceptions draw the outer boundary of the norm? Do they signify the emergence of an alternative norm?

A few examples have been selected to illustrate these trends:

Children under 1: There are gaps in foetal death registration around the world, even in countries with complete registration. To name a few examples, a study in Egypt in 1997 found that even when global death registration was approximately 90%, neonatal deaths (under 1 year) were registered in approximately 35% of cases.⁴⁹⁶ A 2009 study found that infant mortality information was missing from the civil registration and vital statistics produced by Jordan, Lebanon, Syria, and Yemen.⁴⁹⁷ In Mexico infant birth has also been recognized as a potentially significant gap in unregistered deaths, particularly in rural communities.⁴⁹⁸

Non-nationals (particularly migrants/foreign workers/people on the move): Universal registration laws have only recently become common. In many countries, civil registration was limited to citizens or particular groups of citizens until recently. Migrants and other people on the move often fall outside of national systems, particularly when they have irregular status. This trend can be seen across migration routes in the Americas as well as in Europe, Africa, the Middle East and South Asia.

Emergency situations: Frequently, death registration decreases during emergency situations, particularly cause of death. The COVID-19 pandemic was a case in point. In some contexts, states may feel that it is in their interest to manipulate or prevent death registration during emergency situations. In others, the systems themselves are impacted by the situation and unable to function to their full capacity. The events may also prevent or decrease public willingness to use national civil registration systems.

Undocumented persons or persons without their documentation: Where birth registration has not been undertaken, death registration is unlikely. Undocumented persons or persons who do not have access to their documentation often fall outside of the system entirely, from birth to death.⁴⁹⁹ In some cases, particular documentation is required to obtain a death certificate and/or to register a death. This requirement can result in the exclusion of particular groups, including undocumented persons and/or persons who do not have access to their legal papers (including internally displaced persons, refugees, migrants, etc).

⁴⁹⁶ International Institute for Vital Registration and Statistics (iiVRS) (n 154) 332-333.

⁴⁹⁷ UN Statistics Division (n 43).

⁴⁹⁸ International Institute for Vital Registration and Statistics (iiVRS) (n 85) 3.

⁴⁹⁹ United Nations Children's Fund (UNICEF) (n 46).

Rural and/or indigenous communities: Rural communities may face exceptional challenges to access civil registration services, related to access, awareness, benefits of registration, education, among other aspects. Where death registration is directly linked to or completed through the health system, rural communities or persons without access to the health system can be excluded. Indigenous communities have often been partially or totally excluded from civil registration system, or they may be extremely wary of engaging in registration system because of abuse suffered in the past.

Political discrimination: In several countries, particular groups have less access to civil registration systems. Often these groups have complicated political or social relations with the government and face multiple layers of discrimination. In these cases, states use civil registration (or the lack thereof) intentionally to control the community.

In Chapter 8, I will explore these exceptions further to establish if they are a challenge to a customary norm.

Chapter 6 – Framework for Treaty Interpretation

In previous Chapters, I have explored death registration as a norm under customary international law. In this Chapter I will establish my approach to treaty interpretation. In the next chapter, I will analyse treaty law to establish if there is an existing implicit obligation to register death, assuming the tenants of treaty interpretation identified in this chapter. In this chapter, I will describe my approach to treaty interpretation, adopting a teleological approach to human rights treaty interpretation. In the next chapter, my discussion of relevant human rights provisions -- which I will argue include an implicit obligation to register death -- relies on a combination of (a) authoritative interpretations of those provisions based on the interpretive approach discussed this chapter and (b) my own interpretation which is equally informed by this approach.

Treaty interpretation is not without its challenges. “Treaties represent negotiated compromises reconciling often wide differences;”¹ Aust goes on to say, “the greater the number of negotiating States, the greater the need for imaginative and subtle drafting to bridge the gap between opposing interest.”² A treaty is a bridge between states to reach a common objective, built through compromise and negotiations. The application of a treaty may continue for decades, even centuries, after it was originally drafted; the social, political and economic context around a treaty inevitably changes with time, including language itself, adding layers of complication to interpretation. One of the underlying tensions regarding treaty interpretation is find a balance between the importance of maintaining the integrity of law by ensuring that what was agreed is applied and, on the other hand, allowing the interpretation of treaties to evolve to ensure that they remain relevant to their context.

Until the Vienna Convention on the Law of Treaties (VCLT) was adopted in 1969, scholars and jurists struggled for centuries to identify the ‘holy grail’ of interpretation.³ Judges are expected to read, understand, and implement law, not to create law. In reality the distinction between the creation of law and the implementation of law is hazy.⁴ The person responsible for interpretation wields immense power.⁵ The global recognition that treaty interpretation should seek to clarify the meaning of the text according to the intention of the state parties, not change or add to it,⁶ is in tension with the acknowledgment that interpretation often adds (if not modifies) treaty provisions. Human rights law, for one, has been liberally interpreted in many contexts, by many actors.

¹ Anthony Aust, *Handbook of International Law* (second edition, Cambridge University Press 2010), 82-83.

² Ibid.

³ Michael Wailbel, ‘Demystifying the Art of Interpretation’ (May 2011) *European Journal of International Law*, Vol. 22, No. 2, 571-588.

⁴ Chang-fa Lo, *Treaty Interpretation Under the Vienna Convention on the Law of Treaties: A New Round of Codification* (Springer 2017), 14.

⁵ Roger Cotterell, *The Politics of Jurisprudence: a Critical Introduction to Legal Philosophy* (Butterworths 1989), 179-80.

⁶ See e.g., the *Laguna del Desierto* case, 113 ILR, pp. 1, 44.

When the VCLT entered into force in 1980 it provided a much-needed common framework for treaty interpretation. Among other things, it increased the unification of international law, which is notable against the constant pull towards fragmentation.⁷ It did not, however, solve all the disagreements. Itself, the VCLT is a compromise between the competing priorities which confronted the drafters. Allott writes that the VCLT simply reduced the disagreements to writing, meaning that it does not favour a particular approach but includes elements of several approaches.⁸

Articles 31-2 of the VCLT, which are widely accepted as customary law,⁹ are now the globally recognized cornerstone for treaty interpretation. Article 31 focuses primarily on the means of interpretation. In broad terms it emphasizes the importance of (a) conventional language, read in ‘good faith’, (b) interpreted in its context, and (c) read in consideration of the treaty’s object and purpose. Article 32 adds that, when necessary, reference should be made to supplementary means of interpretation, including *travaux préparatoires* and the circumstances of the treaty’s conclusion. Though Article 31 does not give weight or priority to these provisions. Article 32 more clearly describes elements of interpretation which should be considered ‘supplementary’, and thus applied at the interpreter’s discretion.

I will assume that the structural framework of Articles 31-32 (without hierarchy of its provisions) provides a sufficient framework to facilitate the act of interpretation, arguing that the weight attributed to these elements will be influenced by the nature of the treaty itself and left to the logic of the interpreter.¹⁰ Given the unique nature of human rights treaties, I will argue that in this context prioritization of object and purpose is necessary (leaning towards the teleological approach). In Section I, I will defend my adoption of a teleological approach to treaty interpretation with a focus on the *principle of effectiveness*, as applied in the subsequent Chapter. In Section II, I will develop the

⁷ Alexander Orakhelashvili, *The Interpretation of Acts and Rules in Public International Law* (Oxford University Press 2008), 307.

⁸ Philip Allott, *The Health of Nations: Society and Law beyond the State* (University of Cambridge 2002), 305.

⁹ Richard Gardiner, *Treaty Interpretation* (Second Edition, The Oxford International Law Library 2015), 15 – 16; In 1991 the ICJ was hesitant in its assertion, “[the] principles are reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties, which may in many respects be considered as a codification of existing customary international law on the point” [*Guinea-Bissau v Senegal, Arbitral Award of 31 July 1989* (Judgement) [1991] ICJ Reports 53, 70, para 48]. By 2004 the ICJ was asserting the customary nature of Article 31 and 32 of the VCLT without hesitancy, see in *Mexico v USA* where they concluded that “this phrase therefore requires interpretation according to the customary rules of treaty interpretation reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties.” [*Avena and Other Mexican Nationals (Mexico v United States of America)* [2004] ICJ Reports 37-38, para 83]; the ICJ applied Article 31 and 32 of the VCLT in *Kasikili/Sedudu Island (Botswana v. Namibia)* to a treaty between Germany and the UK signed in 1890, long before the VCLT was adopted [*Kasikili/Sedudu Island (Botswana v Namibia)* [1999] ICJ Reports, para 18]; in the *Golder* case, the ECtHR recognized Articles 31 as the framework for interpretation, despite the fact that the treaty had yet to enter into force, because it found that the principles contained therein were generally accepted to be principals of customary law. The ECtHR found that, “[i]n the way in which it is presented in the ‘general rule’ in Article 31 of the Vienna Convention, the process of interpretation of a treaty is a unity, a single combined operation; this rule, closely integrated, places on the same footing the various elements enumerated in the four paragraphs of the Article.” [*Golder v United Kingdom* (Judgement) [1979-80] 1 ECHR 524, para. 30]. Even the US, which is not party to the VCLT, has drawn on the Vienna rules in international proceedings (See, for example award of *Arbitral Tribunal for the Agreement on German External Debt, Belgium, France, Switzerland, UK and USA v Federal Republic of Germany*) [1980] 59 ILR 495, 529, para 16).

⁹ International Law Commission, ‘Draft Articles on the Law of Treaties with Commentaries’ 8th session (1966), 219-20 (Art 27, comment 8).

¹⁰ Ulf Linderfalk ‘Is Treaty Interpretation an Art or a Science? International Law and Rational Decision Making’ (2015) The European Journal of International Law Vol. 26, No. 1, 188-189.

components of my framework, drawing on case law from international judging bodies. Section III briefly summarizes my conclusions.

I. Dominant Approaches to Treaty Interpretation

Broadly speaking, there are three approaches to treaty interpretation that have dominated the 20th and 21st century:¹¹ (a) the objective approach or the textual approach which is focused on the text of the agreement, with an emphasis on the specific and natural meaning of the words;¹² (b) the subjective approach or the historical approach attempts to base interpretation on drafters' intent at the time of drafting;¹³ and (c) the teleological approach puts heavy emphasis on the object and purpose of the treaty.¹⁴ Illustrating the evident lack of a single 'right answer', in practice treaty interpretation usually requires some consideration of all of these components,¹⁵ though courts and tribunals may lean towards one approach or another during particular cases. I will argue that the nature of the treaty itself should shape the approach to interpretation. As my subsequent analysis (see Chapter 7) is focused on human rights law, my approach to treaty interpretation will be aligned to the approach generally adopted by international courts and tribunals and, as such, will lean towards a teleological approach.

I.A An Objective Approach to Interpretation

The objective or textual approach focuses on the natural meaning of the text,¹⁶ emphasizing Article 31(1) of the VCLT. The International Law Commission's (ILC) final set of recommendations confirm that the text of the treaty is the best means of determining the agreed intent of the state parties.¹⁷ The prime importance of text-based interpretation has been widely confirmed by international courts and tribunals¹⁸ by their repeated reminder that an interpretation should not be accepted if it does not emerge from the text, regardless of relevance to the situation under consideration, unless failure to do so would lead to an absurd or unreasonable result.¹⁹

¹¹ This classification is endorsed by e.g. Francis Jacobs 'Varieties of Approach to Treaty Interpretation: With Special Reference to the Draft Convention on the Law of Treaties before the Vienna Diplomatic Conference' (1969) *The International and Comparative Law Quarterly*, Vol. 18, No.2, 318; MN Shaw, *International Law* (9th edn, CUP, 2021); M Fitzmaurice and P Merkouris, 'Canons of Treaty Interpretation: Selected case studies from the World Trade Organization and the North American Free Trade Agreement' in M Fitzmaurice, O Elias, and P Merkouris (eds), *Treaty Interpretation and the Vienna Convention on the Law of Treaties: 30 Years On* (Martinus Nijhoff, 2010), 153, 155; Max Sorensen, *Les Sources du Droit International: Etude sur la Jurisprudence de la Court Permanente de Justice Internationale* (Binar Munksgaard 1946), 210-36.

¹² See Gerald Fitzmaurice, *Law and Procedure of the International Court of Justice, Vol I and II* (Grotius Publications Limited, 1986), 204-7.

¹³ See for example H. Lauterpacht, *De l'Interpretation des Traites: Rapport et Projet de Resolutions* (La Tribune de Geneve 1950), 366.

¹⁴ See for example Sir Gerald Fitzmaurice 'The Law and Procedure of the International Court of Justice 1951-4: Treaty Interpretation and Other Treaty Points', 207-9.

¹⁵ Malcolm Shaw (n 13).

¹⁶ See Sir Gerald Fitzmaurice (n 16) 204-7.

¹⁷ Richard Gardiner 'Part II Interpretation Applying with Vienna Convention on the Law of Treaties, the General Rule: the Treaty, its Terms, and their Ordinary Meaning' in *Treaty Interpretation* (2nd Edition, Oxford Scholarly Authorities on International Law 2015), 4.

¹⁸ See for example Roger Cotterell (n 5) 179-80.

¹⁹ See for example Richard Gardiner (n 11); RH Berglin, 'Treaty Interpretation and the Impact of Contractual Choice of Forum Clauses on the Jurisdiction of International Tribunals: the Iranian forum Clauses Decisions of the Iran-United States Claims Tribunals' (1986) *Texas International Law Journal* 39, 44.

The textual approach is not without its limitations. Considering the evolution of language and the fact that many of the issues under consideration by courts and tribunals were not foreseen by the negotiators or are only treated in general terms by the treaty, some element of subjectivity in interpretation seems inevitable.²⁰ The function of the textual approach is that it helps to eliminate approaches to treaty interpretation that are inconsistent with the text; however, it is not sufficient, by itself, to address all the complexities of interpretation.

Recognizing these limitations, the VCLT does not limit interpretation to the text alone.²¹ The context of the words and the object and purpose of the treaty are essential for an accurate determination of the meaning of words.²² In some cases, looking towards existing practice may also provide additional insight.²³

I.B A Subjective Approach to Interpretation

The second approach to treaty interpretation is often referred to as the ‘subjective approach’. This approach puts emphasis on the intention of treaty-parties. It prioritizes Article 32 of the VCLT and encourages reference to such documents as the *travaux préparatoires*.²⁴ The driving force behind the subjective approach is the fear of judicial creativity and concern for maintaining the democratic legitimacy of law-making. To curtail any expansion of treaty provisions, subjective theorists seek to determine what the drafters originally intended when the treaty was drafted.²⁵ Though unusual, there are instances where the ECtHR has upheld a subjective approach.²⁶

²⁰ L Crema, ‘Subsequent Agreements and Subsequent Practice Within and Outside the Vienna Convention’ in G Nolte (ed), *Treaties and Subsequent Practice* (OUP, 2013) 13, 23; J Arato, ‘Treaty Interpretation and Constitutional Transformation: Informal Change in International Organizations’ (2013) 38 Yale JIL 289, 307; Vaughan Lowe, ‘The Law of Treaties; or Should this Book Exist?’ in Christian J. Tams, Antonios Tzanakopoulos and Andreas Zimmermann, *Research Handbook on the Law of Treaties* (Elgar 2014), 6-12.

²¹ Richard Gardiner (n 11) 26-30.

²² Edward Slavko Yambrusic, *Treaty Interpretation: Theory and Reality* (University Press of America 1987), 243.

²³ *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria: Equatorial Ginea intervening)* (Preliminary Objections) (Judgement) [1998], ICJ reports 275, para 67; *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion of 20 July 1962* [1962] ICJ Reports 1962, 158 (broad interpretation of expenses), 164 (narrow interpretation of action).

²⁴ See for example Michael J Perry, ‘Interpretivism, Freedom of Expression and Equal Protection’ (1981) Ohio State Law Journal 42, 261.

²⁵ See Robert H Bork, *The Tempting of America* (Free Press 1989), 143-60; Antonin Scalia, ‘Originalism: The Lesser Evil’ (1989) University of Cincinnati Law Review 57, 849-65; Antonin Scalia, ‘Common Law Courts in a Civil Law system’, in Antonin Scalia and Amy Gutmann, *A Matter of Interpretation* (Princeton University Press 1997), 3-47.

Letsas identifies two types of subjective interpretation (also called originalism): (a) **textualism** – the position that legal text must be read as it was intended at the time of drafting. According to this approach, it is argued that a judge must understand the social values at the time of drafting to be able to accurately interpret text (Paul Brest, ‘The Misconceived Quest for the Original Understanding’ (1980) Boston University Law Review 60 (204), 208); and (b) **intentionalism** – the position that legal text should apply to issues as originally intended by the drafters. As such, it is argued that a judge should ask ‘did the drafters intended this provision to apply to this context?’ Intentionalists tend to put particular emphasis on the drafting history and *travaux préparatoires* (George Letsas, ‘Intentionalism and the Interpretation of the ECHR’ in Fitzmaurice Malgosia, Olufemi Elias, Panos Merkouris (ed), *Treaty Interpretation and the Vienna Convention on the Law of Treaties: 30 Years On* (Martinus Nijhoff Publishers 2010), 258).

²⁶ Consider the *Bankovic* case regarding NATO’s bombing campaign in the former Yugoslavia where the Court relied on the *travaux préparatoires*, wholly avoiding the ‘evolutive’ interpretation model that they have used elsewhere. In its conclusion, the ECtHR endorsed a position which it has rejected elsewhere, stating “had the drafters of the Convention wished to ensure jurisdiction as extensive as that advocated by the applicants, they could have adopted a text the same as or similar to the contemporaneous Articles 1 of the four Geneva Conventions of 1949.” As such, they seem to suggest that interpretation should be strictly limited to the text and omissions in the text should be understood as intentional limits imposed by the drafters.

The risk of the subjective approach is that it forces law to remain static, despite the dynamic waves of human history. By doing so, law can quickly become outdated and ineffectual or worse, it can become a constraining force against the tides of social, political, and economic development. Take, for example, the incredible leaps that technology continues to make every year, much of which was unimaginable when core human rights treaties were developed in the 1970s and 80s. Many of the international treaties currently in existence were drafted before the racial underpinnings that drove colonialism had been fully rejected by the international community, before women were considered equal citizens worthy of equal rights in many parts of the world, before the global community became keenly aware of and concerned about climate change and environmental justice, etc. Additionally, it is almost impossible to reliably reconstruct the intent of the drafters, particularly where laws are developed by collective bodies.

These concerns, among others, explain why a third element was added to Article 31 of the VCLT, namely the importance of considering the ‘object and purpose’ of a treaty during the interpretation process. A key part of this consideration is the *principle of effectiveness*, discussed in section II.C.

I.C A Teleological Approach to Interpretation

The third approach is called the ‘teleological’ or ‘purposive’ method.²⁷ It places an emphasis on the object and purpose of the treaty during interpretation, thus prioritizing Article 31 (1) of the VCLT. Proponents of this method often argue that all the interpretative means outlined in Articles 31 and 32 must be taken into consideration to arrive at an accurate interpretation.²⁸ This approach to treaty interpretation has been increasingly used by international courts and tribunals,²⁹ and is particularly favoured by courts and scholars interpreting human rights treaties.³⁰

As per Article 31(1),³¹ an interpretation that prioritizes the object and purpose of the treaty is naturally limited by the ‘ordinary meaning’ of the treaty terms, in accordance with the *good faith principle*. The *principle of effectiveness* (*‘ut res magis valeat quam pereat’*³²) is essential to a good faith interpretation of the teleological method. Basically, this principle holds that a treaty should be

²⁷ Though some scholars distinguish between these two. See for example Richard Gardiner (n 11) and George Letsas, *A Theory of Interpretation of the European Convention on Human Rights* (Oxford University Press 2007).

²⁸ Malcom Shaw (n 13) 932-3.

²⁹ Irina Buga, *Modification of Treaties by Subsequent Practice* (Oxford University Press 2018), 81-83.

³⁰ See e.g., *Proposed Amendments to the Naturalization Provisions of the Continuation of Costa Rica* (Advisory Opinion OC-4/84 of 19 January 1984), Inter-American Court of Human Rights Series A No 4, para 24; *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) (1996) ICJ, para 18.

³¹ ‘A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.’

³² Gerald Fitzmaurice (n 16) 211-12.

interpreted so that it gives effect to its provisions.³³ The *principle of effectiveness* is at the heart of my interpretation of human rights law in the next chapter.

The ECtHR has developed a unique approach to treaty interpretation which is a frequently cited example of the teleological approach. The components of their approach were first laid out in *Golder v UK*³⁴ (1975) and subsequently in *Tyrer*³⁵ (1978), where the Court described the Convention as a ‘living instrument’ which at times requires evolutive interpretation in line with the object and purpose of the treaty; and *Airey* (1978)³⁶ where the Court developed their approach to the protection of ‘practical and effective rights’ to ensure that treaty application results in the realization of rights in practice.

The danger with the teleological approach is that interpreters’ understanding of a treaty’s object and purpose can differ significantly, and that the object and purpose can be stated at different levels of generality.³⁷ An additional challenge is that one treaty might have multiple objectives, which may be at odds with each other.³⁸ Critiques of the teleological approach are often rooted in a concern that it borders law-making. Where teleological interpretation moves towards evolutive interpretation, concerns become critical.

I.D Adopting an Approach Adapted to Human Rights Treaty Interpretation

In this section I will argue that the adopted approach to interpretation should reflect the nature of the treaty itself. As I will be focused heavily on human rights treaties in the subsequent chapter, my approach to treaty interpretation will lean towards a teleological approach.

Prior to the VCLT, general and divergent principles of interpretation were put forward by scholars, such as Grotius,³⁹ Vattel,⁴⁰ and more recently Prudhomme.⁴¹ The drafting of the VCLT was a

³³ ‘Draft Articles on the Law of Treaties with Commentaries’ (1966) Yearbook of the International Law Commission Vol. II, 219, para 6. See further D Rauschnig, *The Vienna Convention on the Law of Treaties: Travaux Préparatoires* (Metzner, 1978), 251.

³⁴ *Golder v United Kingdom* (n 11) 524, 574.

³⁵ *Case of Tyrer v United Kingdom* (Judgement) [1978], EHRR App No 5856/72, 1.

³⁶ *Affair Airey v Ireland*, European Court of Human Rights [1979] Application No. 6289/73.

³⁷ An example of this conundrum can be found in the *Banković v Belgium and others case*, where the applicants argued that the ECHR’s object and purpose was to ensure maximum human rights protection and thus state parties should be responsible for human rights violation they commit, even outside their territory. The Respondent States (NATO) argued that as a regional instrument, the object and purpose of the ECHR was to apply rights within member state territories (*Banković and Others v Belgium and Others* (Admissibility Decision) European Court of Human Rights [2001] Application No. 52207/99).

³⁸ Crooft argues, for example, that because of these risks it is necessary to secure the agreement of state parties in the interpretation of object and purpose before it can be used as an argument [Rebecca Crooft, ‘Change without Consent: How Customary International Law Modifies Treaties’ (2016) *Tale Journal of International Law*, 41 *Yale J. Int’l L*, 237].

³⁹ See Hugo Grotius, *On the Law of War and Peace* (Clarendon Press 1925), Book II, Chapter XVI, 417.

⁴⁰ Full quote: “since the sole object of the lawful interpretation of a deed ought to be the discovery of the thoughts of the author or authors of that deed – whenever we meet with any obscurity in it, we are to consider what probably were the ideas of those who drew up the deed, and to interpret it accordingly. This is the general rule for all interpretation.” [Emmerich de Vattel, *The Law of Nations*]

⁴¹ A. Prudhomme, ‘La Loi Territoriale et les Traités Diplomatiques devant les Juridictions des États Contractants; Essai sur l’Interprétation des Traités’ (Paris 1920).

significant development in the establishment of a common approach to treaty interpretation. When drafting its Commentary on the draft text of Article 31 and 32,⁴² the ILC rejected the position that one approach or another should take precedence in the process of interpretation.⁴³ The ILC stated that "... the Commission confined itself to trying to isolate and codify the comparatively few general principles which appear to constitute general rules for the interpretation of treaties."⁴⁴ Article 31-32 of the VCLT were initially put forward as principles to guide interpretation, the elements of which should be given varying degrees of weight depending on their relevance to the context of a specific treaty and/or legal question.⁴⁵ Echoing this approach and in agreement with Gardiner⁴⁶ and Linderfalk,⁴⁷ I will assume that the provisions in Articles 31-32 are non-hierarchical; the weight given to the various elements will be determined by the nature of the treaty itself.⁴⁸

The diversity of treaties makes a standard approach to interpretation seem impossible; the approach to treaty interpretation should be determined by the nature of the treaty itself.⁴⁹ Kolb argues that the more a treaty is understood to protect internationally recognized 'utilitas publica' (public good),⁵⁰ the more likely it will be interpreted effectively, evolutionarily, and teleologically.⁵¹ Bjorge finds that the key distinction is between 'traits-lois' (law-making treaties) and 'traits contrats' (contractual treaties).⁵² traits-lois were traditionally used to develop rules governing international society, and are more suited to purposive methods of interpretation,⁵³ whereas 'traits contrats' tend to be contractual or reciprocal in nature and thus require a more strictly textual interpretation.⁵⁴ Human rights treaties, which will figure prominently in my study, fall into the 'utilitas publica' category described by Kolb as well as the 'traits-lois' category put forward by Bjorge. As such, it can be argued that human rights treaties call for an interpretive approach that favours teleological/purposive considerations.

⁴² See International Law Commission (n 36) Article 27 and 28.

⁴³ Richard Gardiner (n 11) 7.

⁴⁴ International Law Commission, *Yearbook of the International Law Commission Vol II* (1966) <https://legal.un.org/ilc/publications/yearbooks/english/ilc_1966_v2.pdf> accessed 2 February 2024, 218-219, para 4-5.

⁴⁵ G Letsas 'Strasbourg's Interpretive Ethic: Lessons for the International Lawyer' (2010) 21 EJIL 509, 512, 538-41. Also, C Brolmann, 'Specialized Rules to Treaty Interpretation: International Organizations' in D Hollis (ed), *Oxford Guide to Treaties* (Oxford University Press 2012), 507-12.

⁴⁶ Richard Gardiner (n 11).

⁴⁷ Ulf Linderfalk (n 12) 169.

⁴⁸ Ibid, 188-189.

⁴⁹ Example Vaughan Lowe (n 22) 6-12.

⁵⁰ See JHH Weiler, 'The geology of International Law – Governance, Democracy and Legitimacy' (2005) 64 ZaoRV 547, 556, where the same idea is expressed using instead of Kolb's term 'common assets': "materially, the hallmark of community may, in my view, be found in the appropriation or definition of common assets. The common assets could be material such as the deep seabed of the high sea, or territorial such as certain areas of space. They can be functional such as certain aspects of collective security and they can even be spiritual: Internationally defined Human Rights or ecological norms represent common spiritual asset where states can no more assert their exclusive sovereignty, even within their territory, than they could over areas of space which extend about their airspace". Also see A Clapham, *Brierly's Law of Nationals: an Introduction to the Role of International Law in International Relations* (7th edn, Oxford University Press, 2012), 112-14.

⁵¹ Robert Kolb, *Interpretation et Creation du Droit International – Esquisses d'une Herméneutique Juridique Modern pour le Droit International Public* (Université de Bruxelles 2006), 202-3.

⁵² P Reuter, *Introduction to the Law of Treaties* (Paul Kegan International 1995), 26-7. Also, on the principle of synallagmaticity: R Cassin, *De l'Exception Tiree de l'Inexécution dans les Rapports Synallagmatiques: Exemption Non Adimpleti Contractus* (Sirey, 1914), i-vi.

⁵³ C Rousseau, *Droit International Public* (5th edn, Dalloz 1970), 292-305.

⁵⁴ Erik Bjorge, *The Evolutionary Interpretation of Treaties* (Oxford University Press 2014), 33-34.

Consistent with this proposal, in their treatment of human rights treaties, there is a discernible tendency among international courts and tribunals to prioritize ‘object and purpose’, the *principle of effectiveness*, state practice and to more frequently allow for ‘evolutionary interpretation’ of treaty provisions (these will be discussed in turn in section II), where it is understood to be within the object and purpose of the treaty.⁵⁵ Indeed, human rights treaties are said to fundamentally differ from other treaties and to require a distinct approach to interpretation, for the following reasons. First, as Kalin and Kunzli argue, human rights are generally formulated as principles rather than rules, which require specification/concretization before they can be applied, and such specification cannot be based purely on textual considerations.⁵⁶ In other words, a purely textual approach may prove impossible and undermine human rights obligations. Secondly, primarily intentionalist and originalist approaches to interpretation are not suitable because of how treaty-based human rights obligation come into being for state-parties. For many state parties, human rights treaties are not ‘a negotiated consensus’; rather states chose to accede or not to text drafted by others. Modification is almost impossible.⁵⁷ The intentions of the state party which has joined the treaty cannot control the interpretation of its provisions. But neither would it be appropriate or desirable to give effect to the intention of the original state parties. As Brilmayer argues, human rights treaties differ from other treaties because they do not establish a reciprocal exchange of promises between states (‘analogous to synallagmatic contracts’) but are pledges of individual state parties to uphold provisions laid out in the treaty.⁵⁸ Thirdly, as Letsas puts it, “the purpose of human rights treaties, unlike that of many other international treaties, is to protect the autonomy of individuals against the majoritarian will of their states, rather than give effect to that will.”⁵⁹ This is significant because if the point of human rights treaties is the protection of rights holders, this calls for a progressive or evolutive interpretation that is responsive to changes in circumstances.⁶⁰ Without such responsiveness, the protection offered by the treaty may become ineffective, undermining the point of the treaty. Thus, in the context of human rights treaties, the *principle of effectiveness* (‘effect utile’) is considered of paramount importance.⁶¹

My interpretation of treaty law in the next chapter assumes the position generally adopted by human rights courts and tribunals, reflecting their tendency to favour a teleological approach which takes in consideration all elements of Article 31-32 of the VCLT but gives specific attention to the ‘object and purpose’ element, including a focus on the ‘principle of effectiveness’.

⁵⁵ For example see *Projet Gabčíkovo-Nagymaros (Hongrie/Slovaquie)* [1993] International Court of Justice, Application No. 93/17, para 112; Erik Bjorge (n 66) 33-36; Irina Buga (n 32) 96.

⁵⁶ Walter Kalin and Jorg Kunzli, *The Law of International Human Rights Protection* (Second edition, Oxford University Press 2019), 34-35.

⁵⁷ Vaughan Lowe (n 22) 6-12.

⁵⁸ See L Brilmayer ‘From ‘Contract’ to ‘Pledge’: the Structure of International Human Rights Agreements’ (2007) 77 BYIL 163.

⁵⁹ George Letsas (n 28) 272.

⁶⁰ *Iron Rhine (Belgium v Netherlands)* (Award) [2005] ICGJ 373, 65; *Territorial Dispute between Libya and Chad* [1994] ICJ Rep 6, 25-6 and 52; *LaGrand (Germany v United States of America)* (Judgement) [2001] ICJ Rep 466, 501-3 at 99 – 104; *Oil platforms (Islamic Republic of Iran v United States of America)* (Preliminary Objection) (Judgement) [1996] ICJ Rep 803, 820, para 52; *South-west Africa cases (Ethiopia and Liberia v South Africa)* (Preliminary Objection) [1962] ICJ Rep 319, 335-6.

⁶¹ Walter Kalin and Jorg Kunzli (68) 34-35.

II. Unpacking the Elements of Treaty Interpretation

In this section I will look in more depth at the components of my espoused approach to treaty interpretation. The approach described here in will be assumed in the next chapter as the intellectual framework for my approach to the interpretation of international human rights treaty law, though I do not consider (for brevity's sake) each component in turn. In this section, adopting a largely teleological approach, I will explore the elements laid out in Article 31-32 of the VCLT, namely: (a) text, (b) context, (c) object and purpose, and (d) subsequent agreements, state practice, and relevant rules of law.

II.A Text and Ordinary Meaning (Article 31(1))

- **Text**

Although my overarching interpretive methodology is teleological, there is a general recognition that the text itself must be at the basis of any interpretation. Even those who argue that intention should be the focus of interpretation recognize that interpretation must begin with the text itself.⁶² Jurisprudence and the VCLT would suggest that consideration of object and purpose cannot take the interpretation beyond the text.⁶³

- **Ordinary meaning**

In accordance with the general rules of legal interpretation (included in Article 31(1)), interpretation should be based on the 'ordinary' meaning of the terms of the treaty,⁶⁴ unless it results in a manifestly absurd or unreasonable conclusion.⁶⁵ However, the ordinary meaning of text cannot be discerned in

⁶² The ILC argued that text was in fact the best representation of the real intention of the parties (International Law Commission (n 47) 220). The International Law Commission's Commentary (which accompanied the draft Articles of the VCLT at the 1968-69 Vienna conference) stated that "the text must be presumed to be an authentic expression of the intention of the parties; ... in consequence, the starting point of interpretation is the elucidation of the meaning of the text, not an investigation ab initio into the intention of the parties" ('Dispute Regarding Navigational and Related Rights (Costa Rica v Nicaragua) [2009] ICJ Reports 214, at 237, para 48). See also *Dispute Regarding Navigational and Related Rights (Costa Rica v Nicaragua)* (Judgement) (Merits) [2009] ICGJ 421.

⁶³ See for example, the US-Iran Claims Tribunal argument that, "[e]ven when one is dealing with the object and purpose of a treaty, which is the most important part of the treaty's context, the object and purpose does not constitute an element independent of that context. The object and purpose are not to be considered in isolation from the terms of the treaty; it is intrinsic to its text. It follows that, under Article 31 of the Vienna Convention, a treaty's object and purpose is to be used only to clarify the text, not to provide independent sources of meaning that contradict the clear text." (quoted in Richard Gardiner (n 19) 43.)

⁶⁴ As an example, in the *Johnston case* the ECtHR found that the ordinary meaning of the term 'right to marry' did not include a right to divorce (*Johnston v Ireland* (Judgement) [1986] Series A, no. 112).

⁶⁵ Aust uses the example that when the Union of Soviet Socialist Republic changed its name to the Russian Federation in 1991, no one suggested that the UN Charter would need to be amended before the Russian Federation could occupy the seat of the USSR, though the Charter specifically references the former name (see Article 23(1) of the UN Charter) (Anthony Aust, *Handbook of International Law* (Second edition, Cambridge University Press 2010), 83-84).

isolation.⁶⁶ Words must be understood in the context of the treaty⁶⁷ and in consideration of its object and purpose.⁶⁸

My interpretation of human rights treaty law in the next chapter will assume the ordinary meaning of text as the starting point.⁶⁹ However, as necessary, the context and object and purpose of the treaty will be taken into consideration.

II.B Context (Article 31(1)(2))

There is a broad recognition that words should be understood in their context,⁷⁰ In the VCLT, Article 31(2) defines ‘context’ as the entirety of the treaty (including title, preamble, annexes).⁷¹ Additionally, Article 31(2) specifies that in addition to the preamble and the annexes, the context includes any agreement or instrument relating to the treaty made by parties in connection to the conclusion of the treaty.⁷² Gardiner argues that the VCLT envisions two ways in which context is considered during treaty interpretation: first, as an immediate qualification of the ‘ordinary meaning’ of the treaty terms and secondly as forming the larger context in which the text should be understood, namely the whole treaty.⁷³ In latter sense, the study of context acts as a bridge to the final element of Article 31, that is the consideration of ‘the object and purpose’,⁷⁴ as the object and purpose is usually described in (or at least inferred from) the text of the treaty.⁷⁵

My interpretation of treaty law will assume that the immediate context of the words (sentence or Article) will clarify and qualify the ‘ordinary meaning’ of the treaty terms and that the treaty should be read as a whole, including the preamble and annexes, to ensure that interpretation of the text is in “harmony with the logic of the Convention”, including the object and purpose of the treaty.⁷⁶

II.C Object and Purpose (Article 31(1))

⁶⁶ For example, US Judge Han wrote in *Helvering v Gregory Revenue*, “the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes, and no degree of particularity can ever obviate recourse to the setting in which all appear, and which all collectively create.” (Judge Learned Han in *Helvering v Gregory Revenue* (US Court of Appeals, 2nd Circuit) [1934] 69 F 2d 809, 810-11).

⁶⁷ International Law Commission (n 47) para 12.

⁶⁸ Richard Gardiner (n 19)16.

⁶⁹ Though Gardner recognizes that the “ordinary meaning of treaty terms is immediately and intimately linked with context, and then to be taken in conjunction with all other relevant elements of the Vienna rules” (Richard Gardiner (n 19) 14). He concludes that text (in its ordinary meaning), as the first element mentioned in Article 31, is a logical starting point to interpretation, as one must begin somewhere. (Richard Gardiner (n 19) 14.)

⁷⁰ Recalling that “[n]o one has ever made an ‘acontextual’ statement. There is always some context to utterance, however meagre” (Lord Hoffmann in *Kirin-Amgen Inc v Hoechst Marion Rousel Ltd* [2004] UKHL 46, para 64).

⁷¹ As a note of clarity, colloquially, the term context is used to describe general circumstances surrounding something. This general understanding of ‘context’ does not fall within the scope of Article 31.

⁷² Article 31(2). See also the *US Nationals in Morocco Case* [1952] ICJ Reports, 176, 196; the *Beagle Channel case* [1977] HMSO, 12; *Young Loan Arbitration*, 59 ILR, 495, 530; Walter Kalin and Jorg Kunzli (n 68) 676-677; Malcolm Shaw (n 13).

⁷³ Richard Gardiner (n 19) 26.

⁷⁴ Ibid, 26.

⁷⁵ Richard Gardiner (n 19) 27.

⁷⁶ *Leader v Sweden* (Judgement) [1987] Series A, No, 116, para 78.

The VCLT requires that a treaty be interpreted “in light of its object and purpose” but does not provide a clear definition on how these should be determined.⁷⁷ A review of judgements from international courts and tribunals does not elicit a clear distinction between ‘object’ and ‘purpose’. In general, these two terms are not considered separately,⁷⁸ though some judgements suggest that it might be possible in the future.⁷⁹

Illustrating the link between ‘context’ (above) and ‘object and purpose’, the object and purpose are often laid out in the text of the treaty itself, frequently in the preamble and thus should be taken into consideration as part of the ‘context’ of article interpretation.⁸⁰ Some treaties include substantive descriptions of their object and purpose (e.g., Article 1 and 2 of the United Nations Charter⁸¹). Others do not. The nature of the treaty itself should have a significant impact on how the components of ‘object and purpose’ are approached in interpretation. This approach was taken by the Arbitral Tribunal in *La Bretagne*, who argued that “the emphasis placed by any interpreter on the purpose of the treaty is extremely variable and must depend to a large extent on the nature of the treaty in question.”⁸²

My treaty interpretation in the subsequent chapter will assume that the nature of the treaty under consideration will determine the role of object and purpose and its substance in relation to the text under consideration, bearing in mind that the object and purpose cannot be inconsistent with the text of the treaty.

▪ Principle of Effectiveness

The *principle of effectiveness* is often linked to consideration of ‘object and purpose’ as it can be assumed that the essential objective of a treaty is to put into effect or realize a specific outcome or set of outcomes. *Ut res magis valeat quam pereat*, which roughly translates to “preference for an interpretation which gives a term some meaning rather than none”,⁸³ is central to the *principle of effectiveness*.⁸⁴ As argued by Orakhelashvili, it would appear to be “definitionally impossible for the parties to have agreed on rendering the treaty not fully effective”.⁸⁵

⁷⁷ Malcolm Evans (ed), *International Law* (Oxford University Press 2018), 157.

⁷⁸ Richard Gardiner (n 19) 40.

⁷⁹ See for example, in the *Oil Platforms* case, though the ICJ discusses ‘object and purpose’ together, it also considers ‘object’ and ‘spirit’ separately. (*Oil platforms (Islamic Republic of Iran v United States of America)* (Preliminary Objection) (Judgement) [1996] ICJ Rep 803, paras 27, 28, 31, 52, and 36, respectively.)

⁸⁰ Richard Gardiner (n 19) 39.

⁸¹ United Nations, Charter of the United Nations [1945] 1 UNTS XVI

⁸² *Filleting within the Gulf of St Lawrence (La Bretagne) (Canada/France)* [1986] 82 ILR 591, 615.

⁸³ Richard Gardiner (n 19) 46.

⁸⁴ Isabelle Van Damme, *Treaty Interpretation by the WTO Appellate Body* (Oxford University Press 2009), 397.

⁸⁵ Alexander Orakhelashvili (n 7) 387.

Though this principle is not specifically mentioned in Article 31 and 32 of the VCLT, it was described in some detail in the *Commentary to the final ILC Draft Articles on the Law of Treaties*. The Commission explained that it was not included in the Convention because “[w]hen a treaty is open to two interpretations one of which does and the other does not enable the treaty to have appropriate effects, good faith and the object and purposes of the treaty demand that the former interpretation should be adopted.”⁸⁶ Thus, it can be understood that the *principle of effectiveness* was not included in the text of the VCLT because it was understood to be implicit in Article 31.

The *principle of effectiveness* has been referenced by the ICJ and other international courts and tribunals on a number of occasions.⁸⁷ An example is the ICJ’s remarks in the *South West Africa* case where it found that “it may be argued that the Court is entitled to engage in a process of ‘filling in the gaps’, in the application of a teleological principle of interpretation, according to which instruments must be given their *maximum effect* in order to ensure the achievement of their underlying purposes” (emphasis added).⁸⁸ By so doing, they suggest that the Court is required to interpret text to give effect to its object and purpose, bearing in mind that the ‘effectiveness principle’ does not allow for an interpretation that goes beyond “what is expressed or necessary to be implied in the terms of the treaty.”⁸⁹ Similarly, the World Trade Organization (WTO) has found that “[i]n light of the interpretive principle of effectiveness, it is the duty of any treaty interpreter to ‘read all applicable provisions of a treaty in a way that gives meaning to all of them, harmoniously.’” An important corollary of this principle is that a treaty should be interpreted as a whole, and, in particular, its sections and parts should be read as a whole.”⁹⁰ Other examples can be found in the *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*;⁹¹ the *Lighthouses case between France and Greece*;⁹² *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*;⁹³ and *Aegean Sea Continental Shelf*.⁹⁴

Despite its use by adjudicating bodies, several theorists have expressed concern about adopting an expansive use of this principle for fear that it could amount to law creation. Schreuer described two ways in which the *principle of effectiveness* is applied: (a) it is applied to avoid an interpretation that

⁸⁶ International Law Commission (n 47) para 6.

⁸⁷ See e.g., *Fisheries Jurisdiction (Spain v Canada)* (Jurisdiction) (Judgement) [1998] ICJ Reports 432, 455; *Iron Rhine Railway Arbitration (Belgium v Netherlands)* (Award) (n 72) paras 49, 84; *Case of Soering v United Kingdom* [1989] ECtHR App no 14038/88, 34; *Territorial Dispute (Libyan Arab Jamahiriya/Chad)* (n 72).

⁸⁸ *Southwest Africa (Ethiopia v South Africa; Liberia v South Africa)* (Second Phase) (Judgement) [1966] ICJ Reports 6 [Southwest Africa], para 91.

⁸⁹ International Law Commission (n 47) 219 para 6; See further D Rauschning (n 36) 251.

⁹⁰ *Korea-Diary (Definitive Safeguard Measure on Imports of Certain Dairy Products)* (Report of the Appellate Body) (1999) World Trade Organization WT/DS98/AB/R, 24, paras 80-81.

⁹¹ *Territorial Dispute (Libyan Arab Jamahiriya/Chad)* (Merits) (n 72) para 47.

⁹² *Lighthouses Case between France and Greece (France v Greece)* (Judgement) [1934] PCIJ Series A/B. No 62, 27.

⁹³ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (Southwest Africa) notwithstanding Security Council Resolution 276 (1970)* [1971] ICJ Reports 1971, 35, para 66.

⁹⁴ *Aegean Sea Continental Shelf (Greece v Turkey)* [1978] ICJ Reports 1978, 22, para 52.

deprives a provision of meaning; and (b) it can be applied expansively to ensure that the provision gives a ‘maximum effect’.⁹⁵ Schreuer, echoing a concern voiced by special Rapporteur Waldock decades before,⁹⁶ expressed concern about the latter approach.⁹⁷ Though Waibel found that a narrow application of the *principle of effectiveness* (the first possibility identified by Schreuer) is a useful tool for interpretation, he warned against a broad use of the principle (Schreuer’s second possibility), arguing that “no doubt, the limited version of effectiveness is a useful tool in the interpretive armoury of international lawyers. The expansive version, however, risks a drift into a slippery slope of double standards and inconsistency. Resurrecting effectiveness as a central interpretive tenet is backward-looking. The supposed need for a broad principle of effectiveness would signal the underdevelopment of the international legal system whereas a limited role indicates the system maturity and rapprochement with national law.”⁹⁸ Van Damme also identifies the constructive use of a narrowly defined *principle of effectiveness* in WTO jurisprudence; however, she also recognizes the risks of an expansive use of the *principle of effectiveness*, arguing that it could give the interpreter the space to become a “progressive developer of WTO law, or as a judicial legislator”.⁹⁹

The principle of effectiveness figures centrally in my analysis of death registration under international law in the next Chapter. As my aim is to build a consensus around death registration in international law, I will adopt a ‘narrow’ definition of the principle of effectiveness to reduce potential criticism. As such, I will consider the *principle of effectiveness* in my interpretation of relevant human rights law by asking the question ‘what concrete actions need to be taken to ensure the protection and realization of rights’? In some instances, I will refer to state practice, where necessary, to confirm that my interpretation reflects the state parties’ understanding of treaty provisions.

▪ **Evolutionary Interpretation**

As discussed above, there is a constant tension between ensuring that treaties remain relevant in a rapidly changing world and respecting the integrity of the text. The static text of treaties cannot always take into consideration the evolution of events, customs, and norms. Additionally, the number of state parties that have ratified multilateral treaties (particularly human rights treaties) makes modification of treaty provisions challenging. To respond to this challenge, some judicating bodies, particularly those addressing human rights related issues, have adopted an ‘evolutionary approach’ to

⁹⁵ Schreuer, ‘Comments’, in R. Hoffman and C. Tams (eds), *International Investment Law and General International Law: From Clinical Isolation to Systemic Integration?* (Nomos 2011), 2.

⁹⁶ Sir Humphrey Waldock, ‘Third Report of the Special Rapporteur’, Sixteenth Session of the ILC, Doc. A/CN.4/167 and Add.1-3. ILC Yb, (1964) II.5, 60-61.

⁹⁷ Schreuer, ‘Comments’, in R. Hoffman and C. Tams (eds) (n 112) 2.

⁹⁸ Michael Waibel (n 3) 583.

⁹⁹ Isabelle Van Damme, *Treaty Interpretation by the WTO Appellate Body* (Oxford University Press 2009), 281.

interpretation.¹⁰⁰ Evolutionary interpretation is a dynamic approach rooted in a purposive method of interpretation, drawn primarily from Article 31(1) (object and purpose) and Article 31(3) (other ‘relevant rules of international law’).¹⁰¹ Evolutionary interpretation “enables the interpreter to account for important legal developments – including subsequent and new customary law – without having recourse to treaty modification.”¹⁰² By so doing it can enable a treaty’s survival and adaptation to contemporary priorities.¹⁰³

Echoing the findings of the *Final Report* of the ILC Study Group on the Fragmentation of International Law,¹⁰⁴ Buga highlights three examples of when evolutionary interpretation should be used:

(a) to identify ‘evolutionary intent’ from special terminology included in the treaty. In other words, when concepts are used that imply that subsequent developments should be considered. To illustrate this approach, Buga gives the example of ICJ’s position in the *Namibia Advisory Opinion* in which the Court considered that the terms ‘strenuous conditions of modern world’, ‘well-being and development of the peoples concern’ and ‘sacred trust of civilization’ in the context of the right of self-determination¹⁰⁵ to be “by definition, evolutionary”.¹⁰⁶ Similarly, in the *Iron Rhine Railway Arbitration* case the Court ruled that the terms of the treaty should be understood to allow for “technical developments relating to the operation and capacity of the railway”, in line with the *principle of effectiveness*;¹⁰⁷ and

(b) when ‘evolutionary intent’ can be derived from the treaty’s object and purpose.¹⁰⁸ Human rights treaties are a prime example; it is widely acknowledged that their fundamental object (i.e. to protect fundamental rights of individuals to contribute to our collective well-being) and ‘quasi-constitutional’ nature require some degree of evolutionary interpretation.¹⁰⁹ Buga uses the example of the ICJ’s

¹⁰⁰ See for example *Case of Tyrer v United Kingdom* (Judgement) (n 38) para 31; *Loizidou v Turkey* (Preliminary Objections) European Court of Human Rights, Application No 15318/89, para 71; *Case of Feldbrugge v the Netherlands* (Joint Dissenting Opinion), European Court of Human Rights, Application No. 8562/79 [1986], para 23-4; *Lopez-Ostra v Spain*, European Court of Human Rights, Application No 16798/90 [1994], para 51, 58; *Ireland v United Kingdom*, European Court of Human Rights, Application No 5310/71 [1978], para 220.

¹⁰¹ Martti Koskenniemi, ‘Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law’ (2006) Report of the Study Group of the International Law, C A/CN.4/L.682 and Add.1, para 478(a).

¹⁰² Irina Buga (n 32) 91-3

¹⁰³ P-M Dupuy, ‘Evolutionary Interpretation of Treaties: Between Memory and Prophecy’ in E Cannizzaro (ed), *The Law of Treaties Beyond the Vienna Convention* (OUP 2011) 123, 125.

¹⁰⁴ Martti Koskenniemi (n 118) para 478 (a) – (b), citing the exceptions in GATT Art XX

¹⁰⁵ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (Southwest Africa) notwithstanding Security Council Resolution 276 (1970)* (n 110) paras 52-3.

¹⁰⁶ *Ibid.*, paras 53.

¹⁰⁷ *Iron Rhine Arbitration (Belgium/Netherlands)* (Award) (n 71), para 80 (“in the present case it is not a conceptual or generic term that is in issues, but rather new technical developments relating to the operation and capacity of the railway”). See also e.g., the specific terms discussed in *Gabcikovo-Nagymaros Project (Hungary v Slovakia)* (Judgement) (Merit) [1997] ICJ Rep, para 112.

¹⁰⁸ Martti Koskenniemi (n 118) para 478(a) citing *Gabcikovo-Nagymaros Project (Hungary v Slovakia)* (Judgement) (n 124) paras 132-47.

¹⁰⁹ See e.g. *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion* [1951] ICJ Reports 15, 23; Martti Koskenniemi (n 118) para 387; Rosalyn Higgins, *Problems and Process* (Clarendon 1995), 75; F. Pocar ‘Some Remarks on the Continuity of Human Rights and International Humanitarian Law Treaties’ in E Cannizzaro (ed), *The Law of Treaties Beyond the Vienna Convention* (OUP 2011) 279, 282, 292; D Moeckli and others (eds), *International Human Rights Law* (2nd edn, OUP 2014), 99-101.

ruling in the *Gabcikovo-Nagymaros Project* case, where it found that by referencing “new environmental norms” in the treaty, “the parties recognized the potential necessity to adapt the project... Consequently, the Treaty is not static, and is open to adaption to emerging norms of international law.”¹¹⁰

There is a clear precedent across the jurisprudence of international courts and tribunals regarding their adoption of evolutionary interpretation, usually based on the object and purpose of the treaty.¹¹¹

Human rights courts and tribunals have shown a tendency towards evolutionary interpretation, rooted in core objective of human rights treaties – namely, advancing the protection and realization of individual human rights. The Inter-American Court argued that “human rights treaties are living instruments whose interpretation must adapt to the evolution of the times and, specifically, to current living conditions.”¹¹² In the *Licensing of Journalists* case, the Inter-American Court of Human Rights adopted an evolutionary approach to interpretation based on the position that the “rule most favourable to the individual must prevail.”¹¹³ In the case *Involving Endorois*, the African Commission on Human and Peoples’ Rights used a ‘living document’ approach to argue that the term ‘peoples’ should extend to indigenous groups.¹¹⁴ In the case *Judge v Canada*, the UN Human Rights Committee found that the International Covenant on Civil and Political Rights¹¹⁵ “should be interpreted as a living instrument and the rights protected under it should be applied in context and in the light of present-day conditions.”¹¹⁶ In *Hagan v Australia* the UN Committee on the Elimination of Racial Discrimination found that the International Convention on the Elimination of All Forms of Racial Discrimination¹¹⁷ was “a living instrument, [and] must be interpreted and applied taking into [account] the circumstances of contemporary society.”¹¹⁸

The ECtHR has shown a particular preference for an evolutionary approach to interpretation. A few notable examples include the rulings in *Tyrer v UK*¹¹⁹ and *Loizidou v Turkey*;¹²⁰ in both cases the Court used an evolutionary approach to interpretation that takes into consideration current affairs,

¹¹⁰ *Gabcikovo-Nagymaros Project (Hungary v Slovakia)* (Judgement) (Merit) (n 124) para 112.

¹¹¹ See for example the *Whaling in the Antarctic* case, the ICJ considered the evolutive nature of the International Convention of the Regulation of Whaling (ICRW). Australia applied an evolutionary approach to interpretation to the Preamble of the ICRW, arguing that the term ‘safeguard’, ‘protection’, and ‘common interest’ should be interpreted in the current context as implying the preservation of all whales. The Court concluded that though the object and purpose of the Convention could not evolve, the regulatory framework through which it realizes these objectives could (*Whaling in the Antarctic (Australia v Japan: New Zealand Intervening)* (Judgement) [2014] ICJ Reports 2014, 226, para 56 and 45.).

¹¹² *Case of the Mayagna (Sumo) Awas Tingni Community v Nicaragua* (Judgement) (Merits) [2008] 136 ILR 73, 192, para 146 – 148, 146; *Bamaca Velasquez v Guatemala* (Judgement) [2000] Series C No 70, 158; *Case of the Gomez Paquityauri Brothers* (Judgement) [2004] Series C No 110, 165; *Case of the Street Children (Villagran Morales et al)* (Judgement) [2004] Series C No 63, 193

¹¹³ *Advisory Opinion of the Inter-American Court of Human Rights* [1985] 75 ILR, 30, 47-8.

¹¹⁴ *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on Behalf of Endorois Welfare Council v Kenya* [2010] Communication 276/2003.

¹¹⁵ International Covenant on Civil and Political Rights (entered into force 23 March 1976), UNTS 999 (ICCPR).

¹¹⁶ *Judge v Canada (Merits)* [2003] Communication No 829/1998, UN Doc CCPR/C/78/D/829/1998, 10.3.

¹¹⁷ International Convention on the Elimination of all forms of Racial Discrimination (adopted 1965 and entered into force 1969) UNTS vol 660, 195.

¹¹⁸ *Hagan v Australia* [2003] Communication No 26/2002, UN Doc CERD/C/62/D/26/2002, para 7.3.

¹¹⁹ *Case of Tyrer v UK* (Judgement) (n 38) para 31.

¹²⁰ *Loizidou v Turkey* (Preliminary Objections) (n 117) para 71.

while noting that evolutionary interpretation could not result in a modification of the treaty itself. In *Lopez-Ostra v Spain*, the ECtHR used evolutionary interpretation to argue for an expanded right to private and family life which includes freedom from environmental pollution.¹²¹

The most cited example is the *Golder case*. In this case, a prisoner argued for the right to consult a solicitor to commence libel proceedings against a prison guard. The UK, the responding state, argued that the ECHR requires a fair trial when a person is in court, but did not confer a right to access courts, as it was not specifically referenced in Article 6. The UK held that the fact that the drafters omitted to mention ‘access’ in Article 6 (whereas it is specifically mentioned in Article 5(4) and Article 13) clearly illustrated that it was their intention to omit the question of access from Article 6. The ECtHR first reviewed the text and found that it could be read in both senses.¹²² Subsequently, the Court considered the ‘object and purpose’ of the Convention, drawing on the preamble, and found that the principle of the rule of law necessarily requires access to courts.¹²³ By so doing, the Court rejected the respondent’s narrow reading of the text. The majority found that the objective of treaty interpretation was to advance the effectivity of the Convention and to protect individual human rights (the stated object and purpose of the Convention), arguing that “the interests served by the protection of the human rights and fundamental freedoms guaranteed by the Convention... extended beyond individual interests of the parties concerned.”¹²⁴

The ECtHR’s approach is criticized by Fitzmaurice¹²⁵ among others, as overstepping the state parties’ consent to be bound to the Convention and introducing a lack of clarity in the scope of treaty provisions (or how they will be interpreted). For example, the minority opinion in the *Golder case*, led by Judge Fitzmaurice, was based on the argument of legal certainty in international law, according to which states must know and understand the obligations that they are signing up to when they ratify a Convention.¹²⁶ Fitzmaurice argues that because the Convention deeply impacted national law, a restrictive definition should be adopted.¹²⁷

¹²¹ *Case of Lopez-Ostra v Spain* (Judgement) (n 117) paras 51, 58; See also *Guerra and others v Italy* (Judgement) [1998] Case no 116/1996/753/932; see also the *Wemhoff case* where the ECtHR conclude that its objective in treaty interpretation was “to seek the interpretation that is most appropriate in order to realize the aim and achieve the object of the treaty, not that which would restrict to the greatest possible degree the obligations undertaken by the parties” (*Case of Wemhoff v. Germany* (Judgement) [1968] Series A, No. 7). The ECtHR has adopted this approach on the premise that the Convention is a ‘living’ instrument. For example, in *Mathew v UK* the Court found that the fact “that the Convention is a living instrument which must be interpreted in the light of present-day conditions is firmly rooted in the Court’s case law... the mere fact that a body was not envisaged by the drafters of the convention cannot prevent that body from falling within the scope of the Convention.” (*Case of Matthews v the United Kingdom* (Judgement) [1999] Application No. 24833/94, para 39).

¹²² *Case of Golder v United Kingdom* (n 11).

¹²³ *Ibid.*

¹²⁴ *Ibid* quoted in Malcolm D Evans, *International Law* (4th edn, Oxford University Press 2003), 183.

¹²⁵ Gerald Fitzmaurice (n 16) 225.

¹²⁶ *Case of Golder v United Kingdom* (Judgement) (n 11), Separate Opinion of Judge Sir Gerald Fitzmaurice, para 39.

¹²⁷ *Case of Golder v United Kingdom* (Judgement) (n 11) para 39.

To frame evolutionary interpretation to some degree, the ECtHR has established a margin of appreciation, essentially the outer limits of protection under the Convention.¹²⁸ Accordingly, the ECHR will avoid interference with state action for issues that fall within the margin of appreciation. For example, in the *Brannigan* case¹²⁹ the Court found that states were better placed to determine the presence of an emergency threatening the life of the national and the appropriate mitigation measures. As such, the Court found that it was appropriate to give the involved state parties a “wide margin of appreciation” in that case.¹³⁰

Following the approach adopted by the ECtHR and other human rights bodies, as appropriate and relevant, my interpretation of treaty law will assume an evolutionary approach to interpretation where it is aligned with the object and purpose of the Convention. Any use of an evolutionary approach to interpretation will not be used to justify conclusions that clearly go beyond the scope of the treaty itself. As an example, my analysis in Chapter 7 draws heavily from the ECtHR’s interpretation of the right to life, which is overtly and repeatedly described as evolutionary.

II.D Subsequent Practice, Subsequent Agreements and Relevant Rules (Article 31 (3))

Article 31(3) of the VCLT requires that in addition to context, the following elements be taken into consideration: subsequent agreements between the parties regarding the treaty or its application, subsequent practice in the application of the treaty which establishes agreement of the parties regarding interpretation, and relevant rules of international law.

▪ Subsequent Agreements

Article 31(3)(a) requires consideration of “any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions.” Subsequent agreement seems to require a significant degree of formality. For example, a formal written agreement between the parties would most likely fall under Article 31(3)(a), whereas independent actions of state parties which appear to signify agreement regarding treaty implementation would most likely fall under Article 31(3)(b).¹³¹ As an example, Aust refers to Article 1 of the Refugee Convention¹³² which stipulates that a person is not entitled to refugee status if there are serious reasons for considering that a person is guilty of acts that are contrary to the object and purpose of the UN. Subsequently, the UN General Assembly adopted a Declaration which found terrorism to be contrary to the purpose and principles of

¹²⁸ R. Macdonald ‘The Margin of Appreciation’ in R. Macdonald, and JG Merrills, *The Development of International Law by the European Court of Human Rights* (Manchester 1993), Ch. 7.

¹²⁹ *Brannigan and McBride v United Kingdom* (Judgement) [1993] Series A, No. 258-B.

¹³⁰ *Ibid*, para. 43, affirming *Ireland v United Kingdom* (Judgement) [1978] Series A, No. 25, para 207 .

the UN. Aust argues that this Declaration can be understood as a subsequent agreement regarding the interpretation of the UN Charter and consequently the Refugee Convention.¹³³ In some cases, it may be necessary to not only consider international law at the time the treaty was concluded (the ‘inter-temporal rule’) but also more recent law.¹³⁴ For example, Aust notes that it would be difficult to consider a reference to the 1961 continental shelf without taking into consideration both the Geneva Convention on the Continental Shelf of 1958, as well as more recent treaties on the same issue in UN Convention on the Law of the Sea.¹³⁵

▪ Subsequent Practice

Article 31(3)(b) stipulates that interpretation should take into consideration “any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.” Review of subsequent practice is an established tool for treaty interpretation,¹³⁶ given that it is in line with the object and purpose of the treaty.¹³⁷ Assuming that interpretation is a prerequisite to treaty application,¹³⁸ logically the evaluation of state practice or treaty application will shed light on how state parties interpret a treaty, particularly where practice is largely uniform.

‘Practice’ can include a variety of positive actions, including reference to a treaty provision to support a particular action,¹³⁹ passing legislation,¹⁴⁰ enforcement of a particular provision,¹⁴¹ or omission from action (depending on the context).¹⁴² State practice can emanate from all organs of the state, including the legislative, executive and judicial branches, as long as it is directly related to the implementation of a treaty.¹⁴³ Jurisprudence from national courts are also considered a valid source of state practice.¹⁴⁴

¹³⁶ See e.g., J-P Cot, ‘La Conduite Subsequente des Parties a un Traite’ (1966) 70 RGDIP 632, 663; AD McNair, *The Law of Treaties* (Clarendon Press, 1961), 424.

¹³⁷ Malcolm Shaw (n 13) 32.

¹³⁸ See for example Separate Opinion of Judge Shahabuddin in *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947* (Advisory Opinion) [1988] ICJ Reports 57, 59; However, the term ‘application’ appears in the VCLT, without definition or explanation. The PCIJ defined the term ‘application’ as “determining the consequences which [a] rule attaches to the occurrence of a given fact” and as “the action of bringing about the consequences which, according to a rule, should follow a fact” [*Factory at Chorzow* (Jurisdiction) [1927] PCIJ Series A No 9, 39, Dissenting Opinion of Judge Ehrlich].

¹³⁹ *The Chamizal Case (Mexico/United States)* [1911] Award by the International Boundary Commission, 11 RIAA 309, 328; Karol Wolfke, ‘Treaties and Custom: Aspects of Interrelation’ in J. Klabbbers and R. Lefebvre (eds) *Essays on the Law of Treaties* (Kluwer Law International 1998), 34-5.

¹⁴⁰ *Anglo-Iranian Oil (United Kingdom v Iran)* (Judgement) [1952] Arret du 22 Juillet 1952, 107; *Maritime Dispute (Peru v Chile)* (Judgement) [2014] General List No 137, paras 119.

¹⁴¹ *Maritime Dispute (Peru v Chile)* (Judgement) (n 158) paras 126.

¹⁴² U Linderfalk, *On the Interpretation of Treaties: The Modern International Law as Expressed in the 1969 Vienna Convention on the Law of Treaties* (Springer, 2007), 165.

¹⁴³ ILC ‘Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties, Draft Conclusions Provisionally adopted by the Drafting Committee on First Reading’ (2016) UN Doc A/CN.4/L.874, 2, para; ILC ‘Draft Conclusions on Subsequent Agreements and Subsequent Practice’ (2016) (adopted by the International Law Commissions at its Seventieth Session (2018), 121, para 1.

¹⁴⁴ See e.g. Georg Nolte ‘Fourth Report on Subsequent Practice in Relation to the Interpretation of Treaties’ (2016) A/CN.4/694 <https://digitallibrary.un.org/record/829483?ln=zh_CN> accessed 3 February 2024, para 112; *Prosecutor v Lupreskic and others (TC)* (Judgement) [2000] Case No IT-95-16-T, para 541; *Prosecutor v Akayesu (TC)* (Judgement) [1998] Case No ICTR-96-4-T, paras 503, 542; ICJ; I Venzke, *How Interpretation Makes International Law: On Semantic Change and Normative Twists* (OUP 2012) 238.

State practice is not limited to high-ranking officials, but can include lower state authorities responsible for applying the treaty,¹⁴⁵ as long as they act with the consent of higher authorities.¹⁴⁶

Over the last decades, the UN and other international bodies have become a forum for the expression of State views. UN General Assembly resolutions have been recognized as a “source of law in the form of state practice.”¹⁴⁷ Based on international jurisprudence, it would seem that subsequent practice is not limited to states, but can also include international organizations,¹⁴⁸ including international dispute settlement institutions¹⁴⁹ (e.g. ICJ ruling in the case of *Legality of the Use by a State of Nuclear Weapons*¹⁵⁰). The ICJ has often used organizational practice (including from the Security Council) as a ‘proxy’ for state practice.¹⁵¹ In a number of cases, the ICJ has equated the behaviour of an international organization with that of a state, including in *Competence of the General Assembly for the Admission of a State to the United Nations*,¹⁵² the *Advisory Opinion on the Privileges and Immunities of the United Nations* (mixed practice of the organs of an international organization with that of the United Nations),¹⁵³ and in the *Namibia Advisory Opinion* (relied on subsequent practice of the Security Council).¹⁵⁴ In the *Israeli Wall Advisory Opinion*, the ICJ allowed that the UN political organs could influence the interpretation of treaty provisions, in this case Article 12 of the UN Charter.¹⁵⁵ In this ruling, the Court also seems to recognize that subsequent practice might not require the agreement of all parties to the treaty, referencing acts undertaken by an international organization despite opposition of some member states.¹⁵⁶ Suffice to say that in the strict sense it is not the nature of the practice that is important but that it establishes “agreement of the parties regarding [the treaty’s] interpretation”, in accordance with Article 31(3)(b).¹⁵⁷

¹⁴⁵ E.g., *The Question Whether the Re-Evaluation of the German Mark in 1961 and 1969 constitutes a Case for Application of the Clause in Article 26 of Annex I A of the 1953 Agreement on German External Debts* [1980] Volume XIX, 19 RIAA 67, para 31; *Question of the Tax Regime Governing Pensions Paid to Retired UNESCO Officials Residing in France* (Award) [2003] 25RIAA 231, paras 66, 74.

¹⁴⁶ See Georg Nolte, *Treaties and Subsequent Practice* (Oxford 2013), 199.

¹⁴⁷ Rosalyn Higgins, *Themes and Theories: Selected Essays, Speeches, and Writings in International Law* (Oxford University Press 2009), 62; M Bos, *A Methodology of International Law* (North-Holland 1984), 86.

¹⁴⁸ See e.g. H Thirlway, ‘The Law and Procedure of the International Court of Justice: 1960-1989, Part Three’ (1991) 62 BYBIL 1, 49; Ress, ‘The Interpretation of the Chart’ in B Simma (ed), *The Charter of the United Nations: A Commentary*, vol I (4th edition, OUP, 2024); Richard Gardiner (n 11) 247-8; Irina Buga (n 32) 26.

¹⁴⁹ H Thirlway (n 166) 1; Ulf Linderfalk (n 160) 166; Richard Gardiner (n 11) 247-8.

¹⁵⁰ *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion), ICJ Reports (8 July 1996), paras 19-27. See also P-M Dupuy ‘Le Droit des Nations Unies et sa Pratique dans la Jurisprudence de la Cour Internationale de Justice’ in SFDI (ed), *La Pratique et le Droit International* (Pedone 2004), 139, 144-5.

¹⁵¹ Julian Arato, ‘Treaty Interpretation and constitutional Transformation: Informal Change in International Organizations’, *Yale Journal of International Law*, Vol 38 <
https://openyls.law.yale.edu/bitstream/handle/20.500.13051/6656/12_38YaleJIntlL289_2013.pdf?sequence=2&isAllowed=y> accessed 3 February 2024, 328.

¹⁵² *Competence of the General Assembly for the Admission of a State to the United Nations*, Advisory Opinion (1950) ICJ Reports 4, 9.

¹⁵³ United Nations Economic and Social Council, *Advisory Opinion on the Applicability of the Convention on the Privileges and Immunities of the United Nations in the Case of Rapporteurs and Special Rapporteurs of the Sub-Commission on Prevention of Discrimination and Protection of Minorities* (1990) 1st Session, UN docs E/RES/1990/43, para 48.

¹⁵⁴ *Legal Consequences for States of the Continued Presence of South Africa in Namibia, notwithstanding Security Council Resolution 276 (1970)* (n 122) 22.

¹⁵⁵ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Israeli Wall Advisory Opinion)* (2004) General List No. 131, para 27, referring to the adoption of UNGA Res 1600 (XV) of 15 April 1961, UN Doc A/RES/1600 (1961) and UNGA Res 1913 (XVIII) of 13 December 1963, UN Doc A/RES/1913.

¹⁵⁶ Ibid.

¹⁵⁷ Irina Buga (n 32) 25.

The VCLT identifies two key elements that should be taken into consideration in the consideration of practice, namely:

- (a) that the subsequent practice must occur ‘in the application of the treaty’;¹⁵⁸ and
- (b) that it must establish the ‘agreement of the parties’.¹⁵⁹

Subsequent practice has received increasing attention in recent years.¹⁶⁰ Subsequent practice can be difficult to pinpoint; it can be “diffuse, ambiguous, and inconsistent – many instances of practice never even become visible to the public eye or the international community, whether due to the nature of the practice or confidentiality.”¹⁶¹ Buga,¹⁶² one of the few scholars who have considered the subject in depth, argues that international courts and tribunals have different approaches to the treatment of ‘subsequent practice’, summarized as follows:

(a) those who follow *the conventional approach*, such as the ICJ and the Iran-US Claims Tribunal, may refer to subsequent practice alongside other interpretive means,¹⁶³ usually accompanied by a justification for the reference thereto.¹⁶⁴ The ICJ, for example, has a varied approach to use and consideration of subsequent practice.¹⁶⁵ In some cases, it has adopted a narrow textual reading of Article 31(3)(b)¹⁶⁶ and in other case it has adopted a broad definition of subsequent practice, at times with little attention to proving that practice amounts to an agreement between the parties;¹⁶⁷

¹⁵⁸ It can be difficult to identify what constitutes subsequent practice (and thus falls under Article 31(3)(b)) and what constitutes subsequent developments (and thus falls under either Article 31(3)(c) or Article 32) (Irina Buga (n 32) 56-57). Buga quotes Nolte when arguing that “the more specifically an agreement or a practice is related to a treaty, the more probative or interpretative value it can acquire under Articles 31(a) and (b) and 32”. For practice to fall under Article 31(3)(b), and thus be accorded significant interpretative weight, it must be ‘in application of the treaty’, capable of establishing the agreement of all parties, and there must be some degree of awareness or intentionality (Irina Buga (n 32) 75). When subsequent practice does not include these elements, it may still be used to inform interpretation as ‘relevant practice’, as defined by Article 32 but it does not amount to ‘state practice’ (Irina Buga (n 32) 24). As such, practice requires some degree of intentionality or awareness that it is being implemented in accordance with the treaty (*Kasikili/Sedudu Island (Botswana v Namibia)* (Judgement) [1999] ICJ Rep 1045, para 74). This component of state practice overlaps with the ‘*opinio juris*’ element required for customary international law (Irina Buga (n 32) 61-62).

¹⁵⁹ Article 31(3)(b) stipulates that consistency of practice across state parties (or at least where it is expressly or tacitly accepted) (See *Case Concerning the Air Service Agreement of 27 March 1946 Between the United States of America and France* (1978) Volume XVIII) is critical to accurately reflect the parties’ intention in treaty application. For example, in the *Whaling in the Antarctic* case, Australia argued that resolutions adopted by the International Whaling Commission should be taken into consideration because they constituted a “subsequent agreement between the parties regarding the interpretation of the treaty” (*Whaling in the Antarctic (Australia v Japan: New Zealand Intervening)* (Judgement) [2014] ICJ Reports, 226.) They also argued that “subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation” (*Whaling in the Antarctic (Australia v Japan: New Zealand Intervening)* (Judgement) [2014] ICJ Reports, 226). The ICJ rejected this argument because the resolutions were not adopted by consensus. This narrow interpretation is unusual for the ICJ, which has elsewhere accepted a less rigorous conformity of practice between all parties (See e.g. J Arato, ‘Subsequent Practice in the Whaling Case, and What the ICJ Implies about Treaty Interpretation in International Organizations’ (2014) EJIL: Talk < <https://www.ejiltalk.org/subsequent-practice-in-the-whaling-case-and-what-the-icj-implies-about-treaty-interpretation-in-international-organizations/>> accessed 3 February 2024).

¹⁶⁰ See also the more recently Georg Nolte (Special Rapporteur) (n 162).

¹⁶¹ Irina Buga (n 32) 4-5; *Iran-US Claims Tribunal, US and Iran* [1984] Award No 108-A-16/582/591-FT, 71; *M/V Saiga Case (no 2) (Saint Vincent and the Grenadines v Guinea)* (Judgement) [1999] ITLOS Case No 2, paras 155-6; *Loizidou v Turkey* (n 117); *Bankovic and others v Belgium and Others* [2001] App no 52207/99; *Ocalan v Turkey* (Grand Chamber Judgement) [2005] App no 46221/9; *Prosecutor v Dushko Tadic* (Appeal Judgement) [1999] ICTY IT-94-1-A, para 165.

¹⁶² Irina Buga (n 32) 87.

¹⁶³ Santiago Torres Bernárdez, ‘Interpretation of Treaties by the International Court of Justice Following the Adoption of the 1969 Vienna Convention on the Law of Treaties’ 733.

¹⁶⁴ Julian Arato, ‘Treaty Interpretation and constitutional Transformation: Informal Change in International Organizations’, *Yale Journal of International Law*, Vol 38 < https://openyls.law.yale.edu/bitstream/handle/20.500.13051/6656/12_38YaleJIntlL289_2013.pdf?sequence=2&isAllowed=y> accessed 3 February 2024, 306.

¹⁶⁵ See e.g., AM Weisburd, ‘The International Court of Justice and the Concept of State Practice’ (2009) 31 U Peen J Intl L, 295.

¹⁶⁶ See e.g., *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua Intervening)* (Judgement) [1992] ICJ Reports 350, para 380.

¹⁶⁷ See *Kasikili/Sedudu Island (Botswana v Namibia)* (n 176) paras 79-80.

(b) the ‘*textual*’ approach to subsequent practice seems to be preferred by the WTO Appellate Body. According to this approach, a strict and literal reading of Article 31(3)(b) requires “concordant, common and consistent” practice that can be used to establish a “discernible pattern implying the agreement of the parties;”¹⁶⁸ and

(c) the *purposive approach*, adopted frequently by the ECtHR¹⁶⁹ and the ICC (sometimes with no reference to Article 31 or 32¹⁷⁰), is based on a broad definition of subsequent practice which is often read alongside of references to other subsequent developments (i.e. changing conditions in society, etc).¹⁷¹ For example, the ECtHR has acknowledged that unanimous practice may not be necessary as long as practice is supported by a ‘vast majority’ of parties.¹⁷²

▪ Relevant Rules

Article 31(3)(c) requires that “any relevant rules of international law applicable in the relations between the parties” be taken into consideration during interpretation, together with context. For example, in a controversial decision in *Oil Platforms (Merits)*,¹⁷³ the ICJ based its argument regarding the use of force on subparagraph (c). In addition to familiar legal techniques, which are usually based on common-sense or rules of grammar, there are other principles that can be used, many of which have their roots in domestic law, including Roman Law.¹⁷⁴ Arguably, this provision was originally included in the VCLT to encourage inter-temporality between treaty provisions, ensuring that developments in international law are taken into consideration during interpretation and application.¹⁷⁵ This provision allows for the integration of general international law into process of interpretation, in addition to any other binding relevant and applicable special legal obligations. Tzevelekos writes that “Article 31(3)(c) functions as ‘a ‘master key’ to the house of international law’ and renders possible the inclusion of sources external but relevant to the norm under interpretation, thus allowing the judge to take into account the broader normative environment.”¹⁷⁶ This is in accordance with the principle of harmonization, which holds that when the same subject is under scrutiny, interpretation should always

¹⁶⁸ Japan – Alcoholic Beverages II (1996), WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, 12-13; see also Eric Canal-Forgues, ‘Sur l’Interpretation dans le Droit de l’OMC’ (2001), 21.

¹⁶⁹ See e.g., *Engel and others v the Netherlands* [1976] App no 5101/71, 5101/71, 5102/71, 5354/72, 5370/72, para 72; *Marckx v Belgium* [1979] App no 6833/74, paras 41; *Rasmussen v Denmark* [1984] App no 8777/79, paras 40-1; *Inze V Austria* [1987] App no 8695/79, para 41.

¹⁷⁰ See examples Georg Nolte (Special Rapporteur) (n 162) 295.

¹⁷¹ See H Nottage and T Sebastiona ‘Giving Legal Effect to the Results of WHO Trade Negotiations: an Analysis of the Methods of Changing WTO Law’ (2006) 9 J Intl Econ L 989, 994

¹⁷² See e.g., *Singurdur A Sigurjonsson v Iceland* (Judgement) [1993] Application No. 16130/90, para 35; *Loizidou v Turkey* [1995] App no 15318/89, paras 79-80; *Ocalan v Turkey* (Grand Chamber Judgement) [2005] App no 46221/9, para 163; *Al-Saadoon and Mufdhi v UK* [2010] App no 61498/08, para 120

¹⁷³ *Oil Platforms (Islamic Republic of Iran v United States of America)* (Judgement) (Merits) [2003] ICJ Rep 161.

¹⁷⁴ Anthony Aust, *Handbook of International Law* (Second edition, Cambridge University Press 2010), 88.

¹⁷⁵ See D Rauschnig (n 36) 244-49; Richard K. Gardiner, Richard Gardiner (n 11) 251-56.

¹⁷⁶ Martti Koskeniemi (n 118) quoted in Vassilis P. Tzevelekos, ‘The Use of Article 31(3)(C) of the VCLT in the Case Law of the ECtHR: An Effective Anti-Fragmentation Tool or a Selective Loophole for the Reinforcement of Human Rights Teleology?’ (2010) 31 MICH. J. INT’L L. 621, 631.

seek to harmonize interpretation.¹⁷⁷ Moving beyond the question of temporality, the ILC has since argued that Article 31(3)(c) introduces an ‘autonomous method of interpretation’, called systemic integration.¹⁷⁸ Systemic integration is a theory of interpretation that holds that “each *instrument* of international law must be interpreted and applied in a manner that safeguards harmony within the broader normative environment – that is, the international legal order.”¹⁷⁹ It has been promoted by the ILC as a means of countering fragmentation in international law.

In the subsequent chapter, when interpreting human rights treaties I will assume relevant any subsequent agreements between parties related to the treaty or regarding the application of its provisions, prioritizing formal written agreements between the states. In the next chapter, I consider both the relevant human rights treaties as well as subsequent agreements by the international community that inform interpretation and the evolution of understanding by State Parties. In line with jurisprudence from international courts and tribunals working on human rights law, I will only consider practice that is (a) in the application of the treaty and (b) consistent across state parties (or tacitly accepted). In particular, I will consider the extensive practice of death registration (as described in previous chapters) to illustrate that States Parties understand death registration to be implicit in their application of the right to life. I will refer to relevant principles of international law, both to respect the principle of inter-temporality as well as to contribute to harmonization in international law. As for mentioned, the *principle of effectiveness* is particularly important in my analysis of treaty law in Chapter 7.

III. Conclusion

In this Chapter I have described my approach to treaty interpretation. I have argued for an approach to treaty interpretation which allows the nature of the treaty to the approach to interpretation.

Considering the nature of human rights treaties, which are my principal subject of study in the next Chapter, I will adopt a teleological approach. However, I will consider the following elements: (a) text, with a focus on the natural meaning of words; (b) context, both the immediate context of the words as well as consideration of the larger context of the text within the treaty (e.g. the title, annexes and subsequent agreements related to the treaty); (c) object and purpose of the treaty, including consideration of the *principle of effectiveness* and adoption of an evolutionary approach to treaty interpretation, where it is clearly necessary to realize the stated objective and purpose of the treaty (relevant to several human rights treaties); and (d) state practice and relevant agreements, as well as

¹⁷⁷ See for example Nele Matz-Luck, ‘Harmonization, Systemic Integration, and ‘Mutual Supportiveness’ as Conflict-Solution Techniques: Different Modes of Interpretation as a Challenge to Negative effects of Fragmentation’ (2006) FINNISH Y.B. Int’l, 37, 45-47.

¹⁷⁸ Vassilis P. Tzevelekos, ‘The Use of Article 31(3)(C) of the VCLT in the Case Law of the ECtHR: An Effective Anti-Fragmentation Tool or a Selective Loophole for the Reinforcement of Human Rights Teleology?’ (2010) 31 MICH. J. INT’L L, 624.

¹⁷⁹ Ibid, 621.

respect for general rules of law, including consideration of relevant case law from international courts and tribunals. In the next Chapter, my interpretation of international treaty law will assume the approach to treaty law described in this chapter, though I will not specifically consider each element in turn for reasons of brevity.

Chapter 7 - Death Registration under International Treaty Law

In previous Chapters I assessed the degree to which death registration could be considered a customary international norm, looking specifically at death registration as part of civil registration. Based on international guidelines, I argued that death registration should be part of a formal civil registration system that is : (a) permanent, with a clear and effective legal framework and operational regulations; (b) continuous, with institutional, legal and technical systems in place to ensure continuous registration; (c) compulsory, mandatory by law including provisions that make failure to comply illegal; and (d) universal, meaning that under law and in practice all deaths are registered. Recall that in the context of this thesis death registration is understood to be comprised of two components: (a) identification of the deceased person; and (b) identification of the cause of death. In Chapter 5, my research found sufficient evidence of both practice and *opinio juris* to suggest that death registration (as part of civil registration) is a customary norm under international law. Almost without exception, I found that states have a legal system in place, as well as administrative infrastructure to facilitate death registration. By law, death registration is mandatory in almost all countries, though at least 50% of countries have less than complete death registration. Even where they are the weakest, states are taking concrete steps to improve and strengthen systems, suggesting *opinio juris*. Though many countries have legislation requiring universal death registration, certain groups are systematically excluded including children under 1, non-nationals (particularly migrants, foreign workers, people on the move), people in emergency situations, undocumented persons or persons without their documentation, rural and/or indigenous communities, and groups subject to political, social, or religious discrimination. In this Chapter, I will look at international human rights treaty law to examine whether death registration is an implicit treaty obligation.

There are no explicit references to death registration in international human rights law, with the notable exception of provisions related to enforced disappearance.¹ However, it will be argued in this Chapter that human rights law does impose implicit procedural obligations on state parties in relation to the registration of death. In particular, I will argue that international case law confirms that states parties can be held responsible to register the dead under the right to life² and the right to an effective remedy (read alongside of the right to life)³ as codified by the Universal Declaration of Human Rights

¹ *Bousroual v. Algeria*, Human Rights Committee, UN Docs CCPR/C/86/D/992/2001 [2006], para. 9(2); *Katwal v. Nepal*, Human Rights Committee, Communication No. 2000/2010, UN Docs. CCPR/C/113/D/2000/2010 [2015], para. 11(3).

² See for example Article 6(1) of the International Covenant on Civil and Political Rights (entered into force 23 March 1976), UNTS 999 (ICCPR); Article 2(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14 (adopted 4 November 1950, entered into force 3 September 1953); Article 4(1) of the African Charter on Human and Peoples' Rights (entered into force 21 October 1986).

³ See for example Article 8 of the Universal Declaration of Human Rights (1948) UN doc A/RES/3/217; Article 2(3) of the ICCPR; Article 6 International Convention on the Elimination of all forms of Racial Discrimination (adopted 1965 and entered into force 1969) UNTS vol 660.

(UDHR), International Convention on Civil and Political Rights (ICCPR), Convention against Torture (CAT), International Convention for the Protection of all Persons from Enforced Disappearance (ICPED), as well as regional treaties, such as the European Convention on Human Rights (ECHR), American Convention on Human Rights (ACHR) and the African Convention on Human and People's Rights (ACHPR).⁴ Though there are several bodies of international law and rights applicable to this subject, due to space limitations I have chosen to focus primarily on the right to life and the right to effective remedy under international human rights law.

I will argue in this Chapter that international case law explicitly identifies an obligation to identify the dead and the cause of death as part of positive and procedural obligations under the right to life. International judicial bodies (including the European Court of Human Rights (ECtHR), Inter-American Court on Human Rights (IACtHR), African Commission on Human Rights (ACHR), and the UN Human Rights Committee (HRC)) have found certain positive obligations implicit in the right to life, specifically (a) the obligation to investigate alleged breaches of the right to life and (b) the positive obligation to protect life and prevent wrongful death.⁵ I will argue that effective implementation of these obligations requires a death registration system, both to trigger investigation in individual cases as well as to provide essential data to inform the development of public policies capable of responding to emerging threats and protecting life. In the next Chapter, I will look at particularly vulnerable groups, as identified in previous Chapters, to explore whether implicit procedural obligations to register death under international human rights law extends to them, with a particular focus on discrimination, jurisdiction and extraordinary situations (e.g., armed conflict and migration).

In the previous Chapter, I explored my approach to treaty interpretation. Though I will not consider each element individually (in the interest of brevity), the following elements of treaty interpretation are assumed as a basis for my analysis in this chapter: (a) analysis of text, with a focus on the natural meaning of words; (b) assessment of context, both the immediate context of the words as well as consideration of the larger context of the text within the treaty (e.g. the title, annexes and subsequent agreements related to the treaty); (c) consideration of the object and purpose of the treaty, including the *principle of effectiveness* and adoption of an evolutionary approach to treaty interpretation where it is clearly necessary to realize the stated objective and purpose of the treaty; and (d) consideration of state practice and relevant agreements. Given my focus on international human rights law, the treaties themselves require a prioritization of object and purpose, in line with the teleological approach, as argued in the previous Chapter. Chapter 6 underpins the analysis in this chapter. Though I will not

⁴ ICRC 'Humanity after Life: Respecting and Protecting the Dead' (2020) Advisory Service on International Humanitarian Law <<https://www.icrc.org/en/document/humanity-after-life-respect-and-protection-dead>> accessed 12 February 2024.

⁵ Stefanie Grant, 'Dead and Missing Migrants: The Obligations of European States under International Human Rights Law' (September 2016) IOM, 7-8.

explicitly apply each element, the authoritative interpretation that I rely on assumes and is vindicated by this interpretive approach. My analysis particularly draws on the object and purpose of the convention in line with the teleological approach, as well as the *principle of effectiveness*.

In section I of this chapter I will explore the components of the right to life broadly recognized by international human rights adjudicating bodies, namely the obligation to protect and fulfil the right to life. The second section of this chapter looks at the procedural obligation to investigate and ensure effective remedy, making the argument that death registration is an implicit obligation therein. The third section of this chapter looks at the substantive obligation to protect life and prevent wrongful death in the context of structural risks. In this section I argue that effective realization of these obligations requires morbidity and mortality surveillance (among other things), based on continuous death registration. Finally, I conclude by presenting my findings that death registration is an implicit procedural obligation under the right to life.

A brief note on methodology – In this chapter I focus on death registration and the right to life to establish *lex generalis*. In the next chapter, I look at the outer limits of this right to establish if there is any legitimate limitation, any occasion where the established *lex generalis* would not apply. I focus on non-derogability, jurisdiction and the principle of non-discrimination. These areas have been selected as a focus because they directly respond to current gaps in death registration in global practice and the justifications most commonly put forward by governments. Though this chapter is not focused on exceptional circumstances, some of the cases referenced occur in such circumstances, for example the landmark cases of *McCann and others v UK* occurred in the context of conflict in northern Ireland, *Al-Skeini and others v the UK* occurred during the UK incursion in Iraq, and *Ergi v Turkey* occurred in the context of the Kurdish armed struggle in Turkey.

Where there is some contention around the application of human rights law in situations of armed conflict, the inverse is essentially uncontested. Meaning, that where human rights law has been applied to extraordinary circumstances (e.g. armed conflict, times of natural disasters, etc) as *lex generalis*, there is no indication from the courts that the jurisprudence would be any less relevant to other situations. In the context of Northern Ireland conflict (in the *McCann* case), for example, the Court did not make the argument that exceptional rights were being invoked because of the circumstance (e.g. armed conflict/terrorism), but rather that human rights continue to apply despite the circumstance, suggesting the jurisprudence from this and other similar cases contributes to *lex generalis*.

It is worth noting that Article 4 of the ICCPR and Article 15 of the ECHR considers the state of war as a condition that could justify derogations from some treaty obligations. The right to life is not one

of the articles that can be suspended. However, as determined by the International Court of Justice in the *Nuclear Weapons Advisory Opinion*, in the context of the right to life the relationship between human rights law and humanitarian law can be determined as the relationship between *lex generalis* and *lex specialis*. In the cases considered in this chapter, human rights law remains the primary point of reference and thus, we can assume that *lex specialis* has not been applied and that the conclusions from these cases can be understood as contributing to the establishment of *lex generalis*.

I. The Right to Life

The UDHR (Article 3)⁶ and the American Declaration on the Rights and Duties of Man (Article 1),⁷ both drafted in 1948, were the first documents to clearly identify a right to life. The ECHR,⁸ drafted a few years later in 1953, first attempted to afford protection to this right in the form of a human rights obligation. Article 2 of the ECHR reads,

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection.⁹

The ICCPR was drafted in 1954 (though it was not adopted by the GA until 1966); it contains a similar protection of the right to life, guaranteed in Article 6.¹⁰ Other regional instruments have followed suit: the African Charter for Human Rights protects the right to life in Article 4,¹¹ the ACHR in Article 4, and the Arab Charter on Human Rights in Article 5.¹²

⁶ Universal Declaration of Human Rights (1948) UN doc A/RES/3/217.

⁷ American Declaration of the Rights and Duties of Man (1948) OAS Res 30, OEA/Ser.L.V/II 6 rev.1.

⁸ Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No.11 and No. 14 (1950), ETS 5.

⁹ Article 2 of European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14 (adopted 4 November 1950, entered into force 3 September 1953) ETS 5 <<https://www.refworld.org/docid/3ae6b3b04.html>> accessible 21 January 2024.

¹⁰ Article 6 of the International Covenant on Civil and Political Rights (entered into force 23 March 1976), UNTS 999.

¹¹ Organization of African Unity 'African Charter on Human and Peoples' Rights ('Banjul Charter') (1982) CAB/LEG/67/3 rev 5, I.L.M 58. Article 4 reads: "Human being are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."

¹² League of Arab States 'Arab Charter on Human Rights' (1994). Article 5 reads: "1. Every human being has the inherent right to life; 2. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

The ECtHR published the *Guide on Article 2 of the European Convention on Human Rights: Right to Life* on 31 August 2022, which provides essential insight into their interpretation of the right to life.¹³ The HRC adopted *General Comment 36*¹⁴ regarding the right to life in October 2018.¹⁵ The HRC is a quasi-judicial body, rather than an international court. As such, its rulings and its General Comments are not legally binding but are considered authoritative interpretations of the ICCPR.¹⁶

Additionally, there is a range of guidelines related to the implementation of the right to life that have been developed by the UN which can be considered soft law, including *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (1990);¹⁷ the *UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* (1989),¹⁸ revised by the *Minnesota Protocol on the Investigation of Potentially Unlawful Death* (2016);¹⁹ and the UN Economic and Social Council's *Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty* (1984).²⁰ The International Committee of the Red Cross (ICRC) plays a key role in advising, supporting and training local authorities and forensic professionals to recover, manage, analyse and identify the dead in humanitarian situations, including armed conflict, emergencies, and migration.²¹ In this capacity, the ICRC has published: the *Management of Death Bodies after Disasters: a Field Manual* (2016);²² *Forensic Identification of Human Remains*;²³ *Operational Best Practices Regarding the Management of Human Remains and Information on the Dead by Non-Specialists*;²⁴ *Guidelines for Investigating Deaths in Custody*;²⁵ and *Missing people, DNA Analysis and Identification of Human Remains: a Guide to Best Practice in Armed Conflicts and Other Situations of Armed Violence*.²⁶ In this Chapter, I predominately refer to international cases, as well as HRC's *General Comment 36* and the ECtHR's *Guidelines on the right to life*. Due to the frequent reference throughout international jurisprudence, I will also reference the *Minnesota Protocol*.

¹³ European Court of Human Rights, 'Guide on Article 2 of the European Convention on Human Rights: Right to Life' (2022) <https://www.echr.coe.int/documents/d/echr/Guide_Art_2_ENG> accessed 12 February 2024.

¹⁴ UN Human Rights Committee, 'General Comment No. 36, Article 6 (Right to Life)' (2019) CCPR/C/GC/35.

¹⁵ UN Human Rights Committee (n 15) updates and replaces two earlier General Comments that were addressed to the right to life, namely General Comment 6 of 1982 and General Comment 14 of 1984. General Comment 36 is significantly more comprehensive as it builds on jurisprudence from the early 1980s regarding the right to life.

¹⁶ Gerald L. Neuman, 'Giving Meaning and Effect to Human Rights: The Contributions of Human Rights Committee Members' (draft book Chapter) <https://hrp.law.harvard.edu/wp-content/uploads/2022/10/Gerald-L-Neuman_HRP-16_002.pdf> accessed 17 March 2024.

¹⁷ 'Basic Principles on the Use of Force and Firearms by Law Enforcement Officials' (1990), adopted by the eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

¹⁸ UN Economic and Social Council, 'Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions' (1989) Resolution 1989/65 <<https://www.ohchr.org/sites/default/files/executions.pdf>> accessed 17 March 2024.

¹⁹ United Nations Human Rights Office of the High Commissioner 'The Minnesota Protocol on the Investigation of Potentially Unlawful Death' (2017) <<https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol.pdf>> accessed 12 February 2024.

²⁰ UN Economic and Social Council, 'Safeguards guaranteeing Protection of the Rights of those Facing the Death Penalty' (1984) Resolution 1984/50 <<https://www.ohchr.org/sites/default/files/protection.pdf>> accessed 17 March 2024.

²¹ ICRC (n 5).

²² International Committee of the Red Cross, 'Management of Dead Bodies after Disasters: A Field Manual for First Responders' (2020) <<https://www.icrc.org/en/publication/0880-management-dead-bodies-after-disasters-field-manual-first-responders>> accessed 17 March 2024.

²³ International Committee of the Red Cross, 'Forensic Identification of Human Remains' (2020).

²⁴ International Committee of the Red Cross, 'Operational Best Practices regarding the Management of Human Remains and Information on the Dead by Non-Specialists' (2020).

²⁵ International Committee of the Red Cross, 'Guidelines for Investigating Deaths in Custody' (2020).

²⁶ International Committee of the Red Cross, 'Missing People, DNA Analysis and Identification of Human Remains: A Guide to Best Practice in Armed Conflicts and Other Situations of Armed Violence' (2020).

The right to life has been described as a ‘supreme human right’,²⁷ ‘inalienable’, ‘absolute’, and ‘fundamental.’²⁸ It is the only right that was given the declaratory adjective ‘inherent’ in the final draft of the ICCPR²⁹ and it uses the declaratory present tense (‘has’ instead of ‘shall have’),³⁰ underlining its importance as well as its natural law origins.³¹ If it is not protected, other rights are devoid of meaning.³² The right to life is “a foundational and universally recognized right, applicable at all times and in all circumstances.”³³ The ECtHR’s guidance on Article 2 confirms that Article 2 and Article 3 are the cornerstones of the democratic societies making up the Council of Europe³⁴ and, as such, should be strictly construed.³⁵ The right to life has been considered customary international law³⁶ and even *jus cogens* on some occasions,³⁷ as confirmed by the Minnesota Protocol, which states, “[t]he right to life is a norm of *jus cogens* and is protected by international and regional treaties, customary international law and domestic legal systems.”³⁸ It has also been considered a “peremptory norm of international law” by the HRC.³⁹

As laid out in the last Chapter, the right to life must be understood within the context of the treaty and in consideration to the object and purpose of the treaty. The ICCPR,⁴⁰ ECHR,⁴¹ ACHR,⁴² and IACHR⁴³ have all been described by adjudicating bodies as ‘living instruments’, evolving to ensure their continued effectiveness and relevance (see Chapter 6). Adjudicating bodies have emphasized interpretation that ensures conventions can be effectively implemented, in accordance with the *principle of effectiveness*. As a result of this approach, international cases from human rights

²⁷ As early as during the drafting of the Covenant, it was stressed in the HR Committee that the right to life was ‘the most fundamental of all rights’ (UN General Assembly ‘Draft International Covenants on Human Rights’ (1995) A/2929. The Committee has consistently held the right to life to be the ‘supreme right’ (see for example UN Human Rights Committee, ‘CCPR General Comment No. 6: Article 6 (Right to Life)’ (1982), para 2; B.G. Ramcharan ‘The Right to Life’ (1983) NILR 297, Vol 30, Issues 03, 298, 307.)

²⁸ See for example UN Human Rights Committee (n 28); Hugo Bedau ‘The Right to Life’ (1968) *The Monist* 52(4), 553; OAS ‘Annual Report of the Inter-American Commission on Human Rights, 1986-1987’, OAS Doc OEA/Ser.L/V/II.71.doc.9 rev.1, 271.

²⁹ Article 6 of the text enacted by the UN Commission on Human Rights ‘Report of the Tenth Session’ (1954) E/2573, 66; Manfred Nowark, *UN Covenant on Civil and Political Rights: CCPR Commentary* (2nd revised edition, N.P. Engel, 2005), 122.

³⁰ Manfred Nowark (n 30) 121-122.

³¹ E.g., the French delegate in ‘Universal Declaration of Human Rights, Drafting History’ (1948) A/C.3/SR.810, 10.

³² Manfred Nowark (n 30) 121.

³³ United Nations Human Rights Office of the High Commissioner (n 20) 3-4.

³⁴ Citing *Giuliani and Gaggio v Italy* (Judgement) 23458/02 [March 2011], para 174; also, *Soering v the United Kingdom* (Judgement) Application No. 14038/88, 34, para 88.

³⁵ European Court of Human Rights (n 14) 147.

³⁶ Nigel Rodley, ‘Chapter 9: Integrity of the Person’ in Moeckli, Daniel, Sangeeta Shah, and Sandesh Sivakumaran (ed.), *International Human Rights Laws* (Third Edition, Oxford University Press, 2014).

³⁷ B.G. Ramcharan (n 28) 307, 308, 311; Rosalyn Higgins ‘Derogations under Human Rights Treaties’ (1976) BYBIL Vol 48, Issues 1, 282; *Case of the ‘Street Children’ (Villagran-Morales et al.) v Guatemala* (Judgement) (Merits) Inter-American Court of Human Rights (ser. C) No. 77, P 21 [May 26, 2001], 309.

³⁸ United Nations Human Rights Office of the High Commissioner ‘(n 20) 3-4.

³⁹ UN Human Rights Committee (n 15).

⁴⁰ In *Judge v Canada (Merits)* UN Doc CCPR/C/78/D/829/1998 [2003], the HRC stressed that that ICCPR was a ‘living instrument’ and that “there may be exceptional situations in which a review of the scope of application of the rights protected in the Covenant is required, such as where an alleged violation involves the most fundamental of rights – the right to life – and in particular if there have been notable factual and legal developments and changes in international opinion in respect of the issue raised.” (*Judge v Canada*, para 10.3)

⁴¹ The ECtHR views the Convention as “a living instrument which must be interpreted in light of present-day conditions.” The ECHR has emphasized that it is intended to “guarantee not rights that are theoretical or illusory but rights that are practical and effective”. For overview of jurisprudence on both these principles, see A. Mowbray ‘The Creativity of the European Court of Human rights’, (2005) 5 *Hum. Rts. L. Rev.* 57, 57-79.

⁴² See for example *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria*, African Commission on Human Rights and Peoples’ Rights, Communication No 155/96 [2001].

⁴³ See for example *Yakye Axa Indigenous Community v Paraguay* (Judgement) No. 125 [2005], para 137.

judicating bodies has considerably expanded the scope of the right to life in recent years.⁴⁴ For example, the ECtHR and the HRC have repeatedly stressed that the right to life must not be interpreted narrowly.⁴⁵ Drawing on the findings of the landmark case *McCann and others v the UK*,⁴⁶ the ECtHR's guidance on Article 2 confirms that "the Court's approach to the interpretation of Article 2 must be guided by the fact that the object and purpose of the Convention as an instrument for the protection of individual human beings requires that its provisions must be interpreted and applied so as to make its safeguards practical and effective."⁴⁷

The formulation of the right to life is slightly different across the treaties, most notably in the ICCPR and the ECHR. The ECHR's right to life provision is more prescriptive than the ICCPR provision. The ICCPR states that "no one shall be arbitrarily deprived of his life;"⁴⁸ in contrast, Article 2(2) of the ECHR reads that "everyone's right to life shall be protected by law". To these ends, the use of force that deprives someone of their life for reasons of public orders must be "no more than absolutely necessary" for it to be considered lawful.⁴⁹ The ICCPR also does not describe what amounts to an arbitrary deprivation of life; in contrast, the ECHR describes the exceptions to the right to life in detail.⁵⁰ That said, like the HRC, the ECtHR have described the substantive and procedural components of the right to life through international jurisprudence. The right to life in the ICCPR is a non-derogable right (as per Article 4(2)), and as such cannot be suspended, even in the event of an emergency threatening the nation, armed conflict or another public emergency.⁵¹ Article 15(2) of the ECHR establishes that Article 2 is non-derogable "except in respect of deaths resulting from lawful acts of war".⁵²

During the drafting of the ICCPR there was considerable discussion about the wording on the right to life, particularly the meaning of 'arbitrarily'. Some states argued that the ICCPR should use the ECHR as a reference point and include the term 'intentional deprivation of life'. Despite criticism that the term 'arbitrarily' was too vague, the Committee opted to include it and focus additional attention

⁴⁴ James Griffin, *On Human Rights* (Oxford UP, 2008), 212-213.

⁴⁵ See for example UN Human Rights Committee (n 15), para 3; European Court of Human Rights (n 14) para 2.

⁴⁶ *Case of McCann and Others v the UK* (Judgement) Application No. 18984/91 [1995], 146.

⁴⁷ European Court of Human Rights (n 14) 6.

⁴⁸ International Covenant on Civil and Political Rights (entered into force 23 March 1976), UNTS 999, Article 6(1).

⁴⁹ Ian Park, *The Right to Life in Armed Conflict* (Oxford University Press, 2018), 35.

⁵⁰ Council of Europe, 'European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, ETS 5 [1950], Article 2(2).

⁵¹ See International Covenant on Civil and Political Rights (entered into force 23 March 1976), UNTS 999, Article 4(2) ICCPR; UN Human Rights Committee (n 15); UN Human Rights Committee (HRC) 'CCPR General Comment No. 14 : Article 6 (Right to Life) Nuclear Weapons and the Rights to Life' 23rd Session, 09/11/84 [1984], para 1 ; United Nations Human Rights Office of the High Commissioner (n 20) 3-4; Under Article 15 ECHR in time of war or other public emergency threatening the life of the nation, States Parties may derogate from full observance of the right to life (Article 2) for lawful acts of war only and to the extent strictly required by the exigencies of the situation, provided that any measures are not inconsistent with their other obligations under international law (Council of Europe, 'European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, ETS 5 [1950], Article 15).

⁵² Nigel Rodley 'Chapter 9: Integrity of the Person' in D Moeckli and others (eds) (n 37).

⁵² Council of Europe, European 'Guide on Article 15 of the European Convention on Human Rights: Derogation in Time of Emergency', (updated on 31 August 2022) < https://www.echr.coe.int/documents/d/echr/guide_art_15_eng > accessed 13 February 2024, para 35.

on providing guidance on the right to life itself.⁵³ It is important to note that the term ‘arbitrary deprivation of life’ is defined by international law, not by national law.⁵⁴ The HRC has explored the term ‘arbitrary’ in individual cases and state reports at length. At first glance, the ICCPR’s inclusion of the term ‘arbitrary’ seems to make the right narrower. However, the HRC’s interpretation of the right to life has brought it closer to the formulation of the ECHR.⁵⁵

Currently, there is a broad recognition among adjudicating bodies, scholars and practitioners that merely abstaining from unlawful killing is not sufficient to realize the right to life.⁵⁶ Courts, tribunals and treaty bodies recognize that the duty to protect life and prevent wrongful death includes a procedural obligation to conduct an investigation, punish (as appropriate) perpetrators, ensure redress for victims, and put in place preventative measures.⁵⁷ Ebert, Christian and Sijniensky argue that “the challenge is, hence, to define the State's positive obligations in a way that - while ensuring legal certainty - is attuned to the relevant scenario and strikes a fair balance between the interests of the individual and those of the society at large, also given the potentially far-reaching consequences for policy-making and public budgets.”⁵⁸

Broadly speaking, human rights adjudicating bodies have read two obligations into the right to life:⁵⁹

(1) Obligation to respect the right to life: to prohibit the wrongful deprivation of the right to life, except in limited circumstances laid out by law (as described in Article 2 of the ICCPR).⁶⁰ To these ends, state parties must ‘regulate the protection of life’⁶¹ and put in place laws and mechanisms that prohibit the arbitrary deprivation of life by agents of the state or persons whose conduct is attributable to the state;⁶²

(2) Obligation to protect and fulfil the right to life: a positive obligation to “take appropriate steps to safeguard the lives of those within their jurisdiction.”⁶³ Case law from ECtHR, the HRC and other

⁵³ Manfred Nowark (n 30) 128.

⁵⁴ Roland Otto, *Targeted Killings and International Law: With Special Regard to Human Rights and International Humanitarian Law* (Springer 2010), 61.

⁵⁵ See, *Suarez de Guerrero v Colombia* (Judgement) Human Rights Committee, CCPR/C/15/D/45/1979 [1982]; UN Human Rights Committee (n 28).

⁵⁶ See J McBride, J. ‘Protecting Life: Positive Obligation to Help’, (1999) *European Law Review* 43, 56; James Griffin (n 45) 212-4.

⁵⁷ Sheri Rosenberg, ‘Responsibility to Protect: A Framework for Prevention’ (2009) *Global Responsibility to Protect* 1, 450-9.

⁵⁸ Franz Christian Ebert and Romina Sijniensky ‘Preventing Violations of the right to Life in the European and the Inter-American Human Rights Systems: From the Osman Test to a Coherent Doctrine on Risk Prevention?’ (2015) *Human Rights Law Review*, 15, 344.

⁵⁹ Two obligations are confirmed in a plethora of cases in regional human rights courts and the HRC, including *Velásquez Rodríguez case* (Judgement) Inter-Am.Ct. H.R. (Ser. C) No. 4 (1988), para 154; Dominic McGoldrick, *The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights* (Clarendon Press 1994), 329.

⁶⁰ *Boso v. Italy* (Judgement) European Court of Human Rights 50490/99 [2002] .

⁶¹ Ilias Bantekas and Lutz Oette, *International Human Rights: Law and Practice* (Second edition, Cambridge University Press 2016).

⁶² See on the beginning of life, left open in the *Revisiting Baby Boy v United States case*, Inter-American Court of Human Rights [1981], paras 18-31; *Case of Artavia Murillo et al v Costa Rica* (Judgement) (Merits) Inter-American Court of Human Rights [2012], paras 185-264; *Vo v France* (Judgement) European Court of Human Rights 53924/00 [2004], paras 74-95, and conversely on the end of life, rejected in *Pretty v UK* (Judgement) European Court of Human Rights 2346/02 [2002], para 39; United Nations Human Rights Office of the High Commissioner (n 20) 3-4.

⁶³ *LCB v UK* (Judgement) European Court of Human Rights 23413/94 [1998]

international judicial bodies describes two distinct but complementary components of this obligation:⁶⁴

(2)(a) *the procedural obligation to investigate potential wrongful death*, backed up by law-enforcement machinery for the prevention, suppression and sanctioning of violations.⁶⁵ As described the UN special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, the duty to investigate is understood as essential to deter future violations, to ensure effective remedy, and to uphold the rule of law.⁶⁶ Adjudicating bodies have developed extensive guidelines on the elements of an effective investigation.⁶⁷ The requirement to undertake an investigation extends to all suspicious deaths and is not limited to incidents that involve state agents, as will be shown below.⁶⁸

(2)(b) *the substantive obligation to prevent death, promote life, proactively minimize risks and hazards that may be lethal*⁶⁹ (e.g., reducing infant mortality, providing healthcare services,⁷⁰ etc), and to take effective steps to protect the life of concerned individuals, including from state agents,⁷¹ non-state actors and other natural and man-made threats. This is particularly true where state officials have precise information about threats against one or more persons or where there is a pattern of killings, especially if the victims are linked by political affiliation,⁷² sex,⁷³ sexual

⁶⁴ David Harris, Michael O'Boyle, Ed Bates, Carla Bucklet, Paul Harvey, Kresimir Kamber, Michelle Lafferty, Peter Cumper, Heather Green, *Law of the European Convention on Human Rights* (Fourth edition, Oxford University Press 2018), 205-206.

⁶⁵ *Case of Osman v UK* (Judgment) 29 EHRR 245 [2000], para 115. On the facts of the case, the European Court did not find a violation of Article 2. The first and the second applicant, Mrs Mulkie Osman and her son Ahmet Osman were complaining of the failure of the UK authorities for their failure to act on warning signals that Paul Paget-Lewis posed to the physical safety of Mr. Osman and his family. After having formed an attachment with Mr. Ahmet Osman in 1986, Paget Lewis had stalked and harassed Ahmet Osman and members of his family. On 7 March 1988, Paget Lewis shot and killed Mr. Ali Osman and seriously wounded Mr Ahmet Osman. The Court by a 17-3 majority held that there had been non violation of Articles 2 or 8. The Court however did find a violation of a violation of Article 6(1). The two applicants were awarded compensation of 10,000 pounds each in accordance with Article 50. In relation to Article 2, the majority took the view that having regard to circumstances the police could not be criticized for attaching weight to the presumption of innocence or failing to use powers of arrest, search and seizure. The applicants had not been able to point to any decisive stage in the sequence of events when it could be said that the police knew or ought to have known that the lives of the Osman family were at real and immediate risk from Paget-Lewis; see also *Case of Osman v UK* (Judgment) 29 EHRR 245 [1998], para 115. See also *Velasquez Rodriguez Case* (Judgment) Inter-Am.Ct.H.R. (Ser. C) No. 4 [1988], paras 170-172.

⁶⁶ UN GA, 'Extrajudicial, Summary or Arbitrary Executions, Note by the Secretary-General' Seventy-Fourth session, UN Doc A/74/318; UN Human Rights Office of the High Commission, 'Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' (2005) Resolution 60/147.

⁶⁷ e.g., *Gul v Switzerland*, Council of Europe, Application No. 23218/94 [1996] on scope of autopsies; *Edwards v the United Kingdom* (Judgment), Europe Court of Human Rights Application No. 13071/87 [1992] on involvement of victims' families, etc.

⁶⁸ *Case of Erfi v Turkey* (Judgment) European Court of Human Rights, Application No. 23016/04 [2001] 32 EHRR 18; the applicant alleged the killing of his sister by security services followed by ineffective investigation. Though the Court found that there was inconclusive evidence to prove that she was killed by security services, the State's failure to conduct an effective investigation resulted in a violation of Article 2. See also *Case of McCann and others v. UK* (n 47); *Case of Mahmut Kaya v Turkey* (Judgment) 28 EHRR 1 [1999] – failure on the part of the Turkish authorities to carry out an effective investigation into the circumstances surrounding the death of the applicant's brother, Mr. Abdulmenaf Kaya, accordingly resulted in a violation of Article 2.

⁶⁹ See e.g., *Case of Albekov and others v Russia* (Judgment), European Court of Human Rights, Application No. 68216/01 [2008], para 88; *Öneryildiz v. Turkey* (Judgment) (Grand Chamber) European Court of Human Rights, Application No. 48939/99 [2004], para 90.

⁷⁰ E.g., The ECtHR has also begun to describe the emerging obligation to provide medical services under Article 2 (see *Case of Cyprus v Turkey* (Judgment) European Court of Human Rights, Application No. 25781/94 [2001], para 219).

⁷¹ See e.g., *Case of Opuz v Turkey* (Judgment), European Court of Human Rights, Application No. 33401/02 [2009]; *Case of Akkoc v Turkey* (Judgment) European Court of Human Rights, Application Nos 22947/93 and 22948/93 [2000].

⁷² *Krasovskaya v. Belarus* (Views), Human Rights Committee, Comm. No. 1820/2008 [2012].

⁷³ *González and others ("Cotton Field") v. Mexico* (Judgment), Inter-American Court of Human Rights (IACtHR) [2009], para. 455; Rashida Manjoo 'Report of the Special Rapporteur on Violence against Women, its Causes and Consequences' (2013) UN Human Rights Council UN doc. A/HRC/23/49, para. 73.

orientation⁷⁴ or gender identity,⁷⁵ religion,⁷⁶ race or ethnicity,⁷⁷ caste,⁷⁸ or social status.⁷⁹ This obligation can be further divided into an obligation to protect individuals from threats (as the threat becomes known to state parties) and a larger obligation to respond to structural and systematic risks to society writ large and/or a group of people.

In the sections below, it will be argued that the implicit procedural obligation to register death is part of the obligation to conduct an effective investigation into wrongful death (2(a)), as well as the obligation to put in place measures to prevent death, promote life and minimize lethal risks and hazards (2(b)), particularly structural risks.

II. Procedural Obligation to Conduct an Investigation and Ensure Effective Remedy

In this section, I will look at the procedural obligation to investigate and to ensure an effective remedy, under the right to life. To establish whether death registration can be considered an implicit requirement to the effective realization of this obligation, I will answer the following questions: (a) Is there a procedural obligation to investigate under the right to life? (b) To which extent is death registration a requirement in triggering the obligation to investigate? (c) Is death registration an essential component of an effective investigation? and (d) Is the obligation to investigate (and by implication death registration) applicable to a broad scope of deaths? In answering these questions, I will argue that universal death registration is an implicit requirement in the procedural obligation to conduct investigations under the right to life.

II.A Establishing a Procedural Obligation to Investigate

Article 6(1), ICCPR Article 2(1) ECHR, and Article 4(1) ACHR stipulate that the right to life ‘shall be protected by law’, suggesting a positive obligation. The HRC’s *General comment No. 36* (4) reads,

⁷⁴ African Commission on Human and Peoples’ Rights, Resolution 275 on ‘Resolution 275 on Protection against Violence and other Human Rights Violations against Persons on the Basis of their Real or Imputed Sexual Orientation or Gender Identity’ (2014) 55th Ordinary Session.

⁷⁵ Office of the UN High Commissioner for Human Rights ‘Discrimination and Violence against Individuals based on their Sexual Orientation and Gender Identity’ (2015) UN doc. A/HRC/29/23; see also UN High Commissioner for Human Rights ‘Discriminatory Laws and Practices and Acts of Violence against Individuals based on their Sexual Orientation and Gender Identity’ (2011) UN Docs A/HRC/19/41.

⁷⁶ See, e.g., Special Rapporteur on Minority Issues and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, ‘Urgent appeal to the Government of Pakistan sent by the Special Rapporteur on Freedom of Religion or Belief’ (2014) UN doc. A/HRC/28/85, 104 (concerning the murder of two members of the Ahmadiyya Muslim community in Pakistan).

⁷⁷ *Case of Nachova and others v. Bulgaria* (Judgment) European Court of Human Rights, Applications Nos 43577/98 and 43579/98 [2005], paras. 162–68; see also *Case of B.S. v. Spain* (Judgment) European Court of Human Rights, Application No. 47159/08 [2012], paras. 58–59; *X v. Turkey* (Judgment) European Court of Human Rights, Application No. 24626/09 [2012], para. 62.

⁷⁸ See, e.g., Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns on his mission to India in 2012 (2015) UN doc. A/HRC/29/37/Add.3, para. 47.

⁷⁹ United Nations Human Rights Office of the High Commissioner (n 20) 3–4. See also, e.g., Philip Alston, ‘Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development’ (2009) Human Rights Council, UN doc. A/HRC/11/2, paras. 43–59, which concerns the killing of alleged ‘witches’; see Report of the Special Rapporteur on Extrajudicial, Summary or arbitrary Executions, Philip Alston, ‘Mission to Guatemala’ (2007) Human Rights Council, UN Doc A/HRC/4/20/Add.2 on ‘social cleansing’; see *Villagrán-Morales and others v. Guatemala* (Judgment) (n 38) on effective investigation into the killing of ‘street children’.

[p]aragraph 1 of Article 6 of the Covenant provides that no one shall be arbitrarily deprived of life and that this right shall be protected by law. It lays the foundation for the obligation of States parties to respect and ensure the right to life, to give effect to it through legislative and other measures, and to provide effective remedies and reparation to all victims of violations of the right to life.⁸⁰

Similarly, the ECtHR has repeatedly stressed that the right to life not only requires full protection in national legislation,⁸¹ but a state must also guarantee that there is the “framework of a system of adequate and effective safeguards against arbitrariness and abuse of force.”⁸²

The right to life is sometimes read in conjunction with the right to effective remedy. The ECtHR,⁸³ HRC⁸⁴ and the IACtHR have all determined that the right to life, when read with the right to effective remedy, requires that states undertake an effective investigation when an individual is killed. For example, the ECtHR found that the state’s substantive duty to investigate has been described as an “ancillary or adjectival duty implied from Article 2 read in conjunction with Article 1.”⁸⁵ Similarly, the HRC found that the procedural element of the right to life “arises both from the general duty to ensure the rights recognized in the covenant, which is articulated in Article 2, paragraph 1, when read in conjunction with Article 6, and from the duty to provide an effective remedy to victims of human rights violations and their families, which is articulated in Article 2, paragraph 3 of the Covenant, when read in conjunction with Article 6, paragraph 1.”⁸⁶

⁸⁰ UN Human Rights Committee (n 15).

⁸¹ *Case of Kilic v Turkey (Judgement)*, European Court of Human Rights, Application No. 22492/93, 62; *Makaratzis v Greece (Judgement)* European Court of Human Rights, Application No. 50385/99, 56-71; *LCB v UK (Judgement)* (n 64) para 36; regarding positive obligations under Article, the ECtHR found that states have a positive obligation to take “appropriate steps to safeguard the lives of those within their jurisdiction” which imposes “... a primary duty on the state to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life” (*Case of Oneryildiz v Turkey*, European Court of Human Rights, Application No. 48939/99 [2004], para 89)

⁸² *Makaratzis v Greece (Judgement)* (n 82); *Hilda Hafsteinsdottir v Iceland (Judgment)*, European Court of Human Rights, Application no 40905/98 [2004], 56

⁸³ See for example *Case of Brecknell v the United Kingdom (Judgement)*, European Court of Human Rights, Application No. 32457/04 [2007]; *Cummins and others v UK (Judgement)*, European Court of Human Rights, Application No 27306/05 [2005] (if a suspect has fled to any other state party, they must cooperate with the state conducting the inquiry); *Case of Guzelyurtku and others v Cyprus and Turkey (Judgement)*, European Court of Human Rights, Application No. 36925/07 [2017] (both states conducted an investigations of cross-border killings but failed to cooperate, resulting in violation by both); See also *Calvelli and Ciglio v. Italy (Judgement)*, European Court of Human Rights, Application No. 32967/96, para 51.

⁸⁴ UN Human Rights Committee (n 15) para 27; UN Human Rights Committee, ‘General Comment No. 31, The Nature of the General Legal Obligation imposed on States Parties to the Covenant’ (2004) UN Docs CCPR/C/21/Rev.1/Add.13, para 15 and 19; *Pestaño v. Philippines*, Human Rights Committee, Communication No. 1619/2007, UN Docs CCPR/C/98/D/1619/2007 [2010], para. 7.2; *González v. Argentina* (Minister of Employment and Immigration (F.C.A) (CCPR/C/101/D/1458/2006), para. 9.4; CCPR/C/JAM/CO/3, para. 16.

⁸⁵ *Al-Saadoon and others v Secretary of State for Defence*, EWHC 182 [2015].

⁸⁶ UN Human Rights Committee (n 15) para 29; See also UN Human Rights Committee (n 85) para 15 and 18; *Pestaño v. Philippines* (n 85); *Calvelli and Ciglio v. Italy (Judgement)* (n 84) para 12 (in some case of medical negligence civil proceedings may be appropriate); Human Rights Committee, ‘Concluding Observations of the Human Rights Committee: Israel’ (2010) UN Docs. CCPR/C/ISR/CO/3, para 12;

International jurisprudence confirms that both a legislative and administrative framework are required to provide effective deterrence against threats to the right of life.⁸⁷ Human rights adjudicating bodies have uniformly found a procedural element to the right to life,⁸⁸ stressing that protection of the right to life is ineffective if a procedure for reviewing the legality of the use of lethal force by state and private actors is not in place.⁸⁹ The ECtHR first considered the merits of Article 2, including with regards to the obligation to investigate, in *McCann and others v UK* (1995). Subsequently, in the *Osman v UK* (a landmark case in the ECtHR's exploration of the substantive obligations) the ECtHR found that states are obligated to put in place (a) effective criminal law measures;⁹⁰ (b) policing and criminal justice systems that can effectively enforce the criminal law measures; and (c) operational measures to respond to a 'real and immediate' risk to the life of a particular individual from a criminal act of another person (this latter component will be explored separately).⁹¹ In *Al-Skeini and others v the UK* the ECtHR found that "the general legal prohibition of arbitrary killing by agents of the state would be ineffective in practice if there existed no procedure for reviewing the lawfulness of the use of lethal force by state authorities."⁹² As an illustration of the importance given to this implicit obligation, between 1995 and 2016 the ECHR decided 708 cases (298 against Russia and 133 against Turkey) by considering the obligation to investigate.⁹³ In the case of *Zhumbaeva v Kyrgyzstan*,⁹⁴ the HRC had similar conclusions.⁹⁵

What does the obligation to investigate and to an effective remedy look like in practice? In the *Velasquez Rodriguez* case, the IACtHR noted that it was not feasible to list all the potential legal, political, administrative, and cultural measures that might be required.⁹⁶ At the least, effective law

⁸⁷ See *Öneryildiz v. Turkey (Judgment)* (Grand Chamber) (n 70) 89; *Case of Budayeva and Others v. Russia* (Judgement), European Court of Human Rights, Application No. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02 [2008], para 129; *Case of Kolyadenko and Others v. Russia* (Judgement), European Court of Human Rights, Application Nos. 17423/05, 20534/05, 20678/05, 24283/05 and 35673/05 [2012], para 157; *Case of Fernandes de Oliveira v Portugal (Judgement)*, European Court of Human Rights, Application No. 78103/14 [2019], para 103, 105 and 107.

⁸⁸ *Al-Skeini and Others v the United Kingdom* (Judgement), European Court of Human Rights, Application No 55721/07 [2011]; *Jaloud v the Netherlands* (Judgement), European Court of Human Rights, Application No 47708/08 [2014].

⁸⁹ Ian Park (n 50) 16-17.

⁹⁰ *Case of Osman v the United Kingdom* (Judgement) (n 66); See also *Powell v the United Kingdom* (Judgement), European Court of Human Rights, Application No. 45305/99 [2000].

⁹¹ Alastair Mowbray, *Cases, Materials, and Commentary on the European Convention on Human Rights* (Oxford University Press 2014), 120-122.

⁹² *Al-Skeini and Others v the United Kingdom* (Judgement) (n 89) para 163.

⁹³ David Harris, Michael O'Boyle, Ed Bates, Carla Bucklet, Paul Harvey, Kresimir Kamber, Michelle Lafferty, Peter Cumper, Heather Green (n 65); *Ergi v Turkey (Judgement)*, European Court of Human Rights, Application Nos 66/1997/850/1057 [1998] and *Case of McCann and Others v the United Kingdom* (Judgement) (n 47) are key reference points. In the case *Ergi v Turkey*, the Court was not able to establish if the bullet was fired by a state agent. However, the Court still considered the effectiveness of the investigation (para 79), stating that given the "particular weight to the procedural requirement implicit in Article 2 of the Convention... requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, inter alia, agents of the State" (para 82). This was confirmed in other caselaw, including *Kelly and Others v UK (Judgement)*, European Court of Human Rights, Application No. 30054/96 [2001], para 94, stating that "the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see *Case of McCann and Others v the United Kingdom* (Judgement) (n 47) 49, para 161.)

⁹⁴ *Zhumbaeva v Kyrgyzstan*, Human Rights Committee, Communication No 1756/2008, UN Doc CCPR/C/102/D/1756/2008 [2011].

⁹⁵ State party failed in its procedural obligation to properly investigate the victim's death and allegations of torture, and to take appropriate investigative and remedial measures measures, the Committee recalls its constant jurisprudence that criminal investigation and consequential prosecution are necessary remedies for violations of human rights such as those projected by articles 6, paragraph 1 and 7, of the Covenant (*Zhumbaeva v Kyrgyzstan* (n 95) para 8(10).)

⁹⁶ *Velasquez Rodriguez v Honduras* (Judgment) (n 60) para 175

enforcement includes “... some form of effective official investigation when there is reason to believe that an individual has died in suspicious circumstances.”⁹⁷ The obligation to undertake effective investigations into killings has both institutional elements (e.g. persons engaged in the investigation must be independent from persons alleged to have participated in the killing) and procedural duties (use of forensic tests, interviews, etc). Depending on the context of the death, a wide range of state agents may be implicated, ranging from law enforcement to criminal justice to hospitals. The scope of an effective investigation has been explored at length by adjudicating bodies and will be further discussed in the section below. It is worth noting that all countries have developed a system for investigating the cause of death where the circumstances are unusual or suspicious. These procedures help to ensure that perpetrators are tried by a competent court. In some countries, however, these systems are misused or inadequate, including where the death has been caused by state agents.⁹⁸

Investigations should aim to “secure the effective implementation of the domestic laws safeguarding the right to life”, including holding violators to account,⁹⁹ and to ensure that “the facts ... become known to the public and, in those case involving state agents or bodies, in particular to the relatives of any victims”.¹⁰⁰

In this section I established that there is a procedural obligation to investigate death in suspicious circumstances under the right to life. In the next section, I will look at the how this obligation is triggered, arguing that the principle of effectiveness requires that a comprehensive death registration system is in place to ensure that states can become aware of suspicious death in a timely manner and trigger the required criminal investigation.

II.B Triggering and Burden of Proof for the Obligation to Investigate

A procedural duty to investigate emerges when there is “reason to believe that there has been, or may have been, a violation of the substantive right.”¹⁰¹ The ECtHR has made it clear that the right to life includes a procedural obligation to conduct an effective official investigation, where there has been a

⁹⁷ *Ergi v Turkey (Judgement)* (n 94) 82

⁹⁸ United Nations ‘Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions’ (1991) <https://www.theadvocatesforhumanrights.org/Res/minnesota_protocol.pdf> accessed 14 February 2024, 13-14.

⁹⁹ *Case of Nachova and others v Bulgaria* (Judgement) (n 78) para 100; *Ramsahai and Others v Netherlands* (Judgement), European Court of Human Rights, Application No. 52391/99 [2007]; See also *Kalender v Turkey* (Judgement), European Court of Human Rights, Application No. 4314/02 [2009] (not all offenders prosecuted: violations).

¹⁰⁰ *Sieminksa v Poland* (Decision as to the admissibility), European Court of Human Rights, Application No 37602/97 [2001]. In regards to the emergence of a ‘right to truth’ in the Court’s jurisprudence, see Philip Leach, Rachel Murray and Clara Sandoval, ‘The Duty to Investigate Right to Life Violations across Three Regional Systems: Harmonisation or Fragmentation of International Human Rights Law?’ in Carla Buckley, Alice Donald, and Philip Leach, *Towards Convergence in International Human Rights Law: Approaches of Regional and International Systems* (Brill Nijhoff 2016), 56-8; See also A.R. Mowbray, *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights* (Portland Oregon 2004), 40.

¹⁰¹ *Al-Saadoon and Mufdhi v the United Kingdom* (Judgement) (n 86), para 282; *R (Middleton) v West Somerset Coroner*, UK House of Lords, UKHL 10 [2004], para 3.

killing or a suspicious death.¹⁰² This obligation extends to situations where a person has gone missing, even where state agents are not involved.¹⁰³ Additionally, the duty to investigate arises where there is a significant risk of the deprivation of life, even where the risk has yet to materialize.¹⁰⁴

A state's duty to investigate is triggered where it should have known or does know of a potential or alleged violation to the right to life (or unlawful death).¹⁰⁵ This was confirmed in several cases, including *Ergi*,¹⁰⁶ where the ECtHR extended the obligations described in *McCann*, as well as in *Kelly and others v UK*, where the court stated "whatever mode is employed, the authorities must act of their own motion, once the matter has come to their attention."¹⁰⁷ Once the state becomes aware of an alleged violation of Article 2, a state must commence, conduct and complete an investigation into the incident, with "promptness and reasonable expedition";¹⁰⁸ an investigation should not be dependent on a formal complaint by the next of kin.¹⁰⁹ There is one exception: in the case of hospital deaths the obligation to investigate only arises if the deceased's relatives request that the process be initiated.¹¹⁰ Effectively, hospital deaths are presumed not to be suspicious, but the presumption can be displaced by the relatives' request. To ensure that the obligation to investigate is effectively implemented without discrimination, the state must put in place an appropriate means by which all potentially wrongful death can be rapidly identified.¹¹¹

As will be discussed in more detail, states are obliged to investigate where state agents were involved, as well as instances where death occurred because of a third party or negligence. This was confirmed in *Yasa v Turkey*, where the ECtHR held that "the obligation [to investigate] is not confined to cases where it has been established that the killing was caused by the agent of the State. Nor is the issue of whether members of the deceased's family or others have lodged a formal complaint about the killing with the competent investigatory authorities decisive."¹¹²

Case law suggests that the burden of proof may rest with states. Conventionally, the burden of proof applies to the applicant, requiring the applicant to demonstrate that the state has failed in their duty in

¹⁰² *Case of McCann and Others v the United Kingdom* (Judgement) (n 47); *Case of Osman v the United Kingdom* (Judgement) (n 66).

¹⁰³ *Case of Varnava and Others v Turkey* (Judgement), European Court of Human Rights, Application No. 16064/90, 16065/90, 16066/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90 [2009], para 87.

¹⁰⁴ UN Human Rights Committee (n 15), para 27.

¹⁰⁵ *Ergi v Turkey* (Judgement) (n 94) para 82; *Isayeva, Yusopva and Bazayeva v. Russia* (Judgment), European Court of Human Rights, Application No. 57947/00, 57948/00 and 57949/00 [2005], paras 208–09; *Montero Aranguren et al. (Detention Center of Catia) and others v. Venezuela* (Judgment) Inter-American Court of Human Rights [2006], para 79.

¹⁰⁶ *Ergi v Turkey* (Judgement) (n 94) 82.

¹⁰⁷ *Kelly and Others v UK* (Judgement) (n 94) para 94.

¹⁰⁸ *Al-Skeini and Others v the United Kingdom* (Judgement) (n 89) 167

¹⁰⁹ "They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures" (*Kelly and Others v UK* (Judgement) (n 94) para 94); The Minnesota Protocol confirms that "[t]he duty to investigate does not apply only where the State is in receipt of a formal complaint (see Nelson Mandela Rules, Rule 71(1))." (United Nations Human Rights Office of the High Commissioner (n 20) 4-5, para 15).

¹¹⁰ *Lopes de Sousa Fernandes v Portugal* (Judgement), European Court of Human Rights, Application No. 56080/13 [2017], para 22.

¹¹¹ "Each State should ensure that an appropriate avenue is available for allegations of potentially unlawful death to be made and for relevant information to be provided" (see United Nations Human Rights Office of the High Commissioner (n 20) 4-5, para 19).

¹¹² *Yasa v Turkey* (Judgement), European Court of Human Rights, Application No. 22495/93 [1998], para 100.

some way. However, the ECtHR¹¹³ and the HRC¹¹⁴ have asserted several times that a ‘reverse’ burden of proof may be required when examining states’ allege violation of the right to life – meaning that it will be assumed that there has been a violation of the right to life (including procedural aspects) if there is no effective explanation from the state party.¹¹⁵ In some circumstances, the burden of proof may lay exclusively with the state party, e.g. for persons being held in state custody,¹¹⁶ officially summoned by military or police and not seen since,¹¹⁷ or persons found injured, dead or disappeared in areas exclusively controlled by a state during an armed conflict.¹¹⁸

The ECtHR has repeatedly stated that where the right to life is concerned, the standard of proof is “beyond reasonable doubt.”¹¹⁹ The Court holds that the “conduct of the parties when evidence is being obtained has to be taken into account.”¹²⁰ Where the disclosure of relevant materials is incomplete or where the state is not fully cooperative during the proceedings (particularly where death has occurred with the ‘exclusive knowledge of the authorities’), the Court is likely to find a violation of the right to life.¹²¹ In fact, “the Court has underlined that, in all cases where it is unable to establish the exact circumstances of a case for reasons objectively attributable to the state authorities, it is for the respondent Government to explain, in a satisfactory and convincing manner, the sequence of events and to exhibit solid evidence that can refute the applicant’s allegations.”¹²²

As shown above, international jurisprudence indicates that states have a primary responsibility to undertake an investigation in all cases of suspicious death, regardless of whether a complaint has been made. Furthermore, in many cases (including where it was alleged that there has been an inadequate

¹¹³ *Case of McKerr v the United Kingdom* (Judgement), European Court of Human Rights, Application No 28883/95 [2000]; *Case of Ribitsch v Austria* (Judgement), European Court of Human Rights, Application No 18896/91 [1995], para 32; *Case of Avsar v Turkey* (Judgement) European Court of Human Rights, Application No 25657/94 [2001].

¹¹⁴ *Bleier Lewenhoff and Valino de Bleier (on behalf of Bleier) V Uruguay (Merits)*, Human Rights Committee, Communication No 30/1978, UN Doc CCPR/C/15/D/30/1978 [1982]: “With regard to the burden of proof, this cannot rest alone on the author of the communication, especially considering that the author and the state party do not always have equal access to the evidence and that frequently the state party alone has access to relevant information. It is implicit in Article 4 (2) of the Optional protocol that the state party has the duty to investigate in good faith all allegations of violation of the covenant made against it and its authorities, especially when such allegations are corroborated by evidence submitted by the author of the communication, and to furnish to the committee the information available to it.”

¹¹⁵ E.g., in *Bleier Lewenhoff and Valino de Bleier (on behalf of Bleier) V Uruguay (Merits)* (n 115) para 13.3 the HRC found that “in cases where the author has submitted to the Committee allegations supported by substantial witness testimony, as in this case, and where further clarification of the case depends on information exclusively in the hands of the state party, the Committee may consider such allegations as substantiated in the absence of satisfactory evidence and explanations to the contrary submitted by the state party”. They went on to find that “the failure of the state party to address in substance the serious allegations brought against it and corroborated by unrefuted information, cannot but lead to the conclusion that Eduardo Bleier is either still detained, incommunicado, by the Uruguayan authorities or has died while in custody at the hands of the Uruguayan authorities... there are serious reasons to believe that the ultimate violation of Article 6 has been perpetrated by the Uruguayan authorities” (para 15).

¹¹⁶ *Case of Salman v Turkey* (Judgement), European Court of Human Rights, Application Number 21986/93 [2000], para 100.

¹¹⁷ *Case of Tanis and others v Turkey* (Judgement), European Court of Human Rights, Application Number 65899/01 [2005], para 160.

¹¹⁸ *Akkum and Others v Turkey* (Judgement), European Court of Human rights, Application Number 21894/93 [2005], para 211; *Case of Aslakhanova and others v Russia* (Judgement), European Court of Human Rights, Application Number 2944/06, 8300/07, 50184/07, 332/08, 42509/10 [2012], para 97.

¹¹⁹ *Case of Bazorkina v Russia* (Judgement), European Court of Human Rights, Application Number 69481/01 [2006], para 106; *Case of Avsar v Turkey* (Judgement) (n 114) para 391.

¹²⁰ *Ireland v the United Kingdom* (Judgement), European Court of Human Rights, Series A no 25 [1978], para 161; *Case of Bazorkina v Russia* (Judgement) (n 120) para 106.

¹²¹ Ian Park (n 50) 33-34.

¹²² European Court of Human Rights, ‘Guidelines on Article 2 of the European Convention on Human rights, Right to Life’ (2022) <https://www.echr.coe.int/documents/d/echr/Guide_Art_2_ENG> accessed 1 March 2024, para 89; see also *Affaire Mansuroglu v Turquie* (Judgement), European Court of Human Rights, Application No. 43443/98 [2008], para 80; *Case of Carter v Russia* (Judgement), European Court of Human Rights, Application No. 20914/07 [2021], para 152.

investigation) the burden of proof rests on the state. As we will see in the next section, in accordance with the Minnesota Protocol, this obligation can only be effectively realized if there is a mechanism in place capable of identifying all cases of potentially wrongful death. Ensuring that this system is comprehensive (monitors all death) is fundamental to ensuring the realization of the right to life for all persons on a territory, in accordance with the object and purpose of the core human rights treaties.

II.C Elements of the Obligation to Investigate

To better evaluate the degree to which the obligation to investigate requires a death registration system, in this section I will look at the required components of an investigation. I will focus on the primary elements of death registration addressed in this thesis, namely the identification of the deceased person and registration of cause of death. It will be argued that although case law does not specifically discuss the obligation to register death, it is implicit in the required components of an investigation, which are clearly articulated by human rights adjudicating bodies.

Extensive jurisprudence on the positive obligation to conduct an investigation has clarified the basic requirements of an investigation, though some discretion is still dependent on the particularities of the case, domestic system and the adjudicating bodies' evaluation of the effectiveness of the investigation in an individual case.¹²³ International adjudicating bodies make frequent reference to the Minnesota Protocol during their deliberations regarding whether an investigation should be considered sufficient under the procedural obligations of the right to life (see for example the IACHR's deliberation in *Case of the Pueblo Bello Massacre v Colombia*¹²⁴ and HRC's deliberation in *Magomadova v Russian Federation*¹²⁵). Though case law does not dictate a specific form of investigation,¹²⁶ it requires that at the least it is 'effective'.¹²⁷ For an investigation to be effective, the IACHR,¹²⁸ HRC,¹²⁹ and the ECHR¹³⁰ have identified the following elements:

¹²³ A.R Mowbray (n 101) 40.

¹²⁴ *Case of the Pueblo Bello Massacre v Colombia*, Inter-American Court of Human Rights [2006].

¹²⁵ Human Rights Committee, 'Views adopted by the Committee under Article 5(4) of the Optional Protocol, concerning Communication No. 2524/2015', UN Doc. CCPR/C/125/D/2524/2015, regarding *Madina Magomadova v. Russian Federation* [2019], para 7(3).

¹²⁶ In *McCann* the Court found that "it is not necessary in the present case for the Court to decide what form such an investigation should take and under what conditions it should be conducted." (*Case of McCann and Others v the UK* (Judgement) (n 47) 162).

¹²⁷ *Case of Hugh Jordan v the United Kingdom* (Judgement), European Court of Human Rights, Application No. 24746/94 [2001]; *Velikova v Bulgaria* (Judgement), European Court of Human Rights, Application No. 41488/98 [2000].

¹²⁸ *Case of the Pueblo Bello Massacre v Colombia* (n 125); *Case of González et al. ('Cotton Field') v Mexico* (Judgement) (n 74).

¹²⁹ UN Human Rights Committee (n 15); Human Rights Committee, 'Views adopted by the Committee under Article 5(4) of the Optional Protocol, concerning Communication No. 2524/2015', UN Doc. CCPR/C/125/D/2524/2015, regarding *Madina Magomadova v. Russian Federation* (n 126) para 7(3).

¹³⁰ The basic institutional and procedural requirements of an effective investigation were described in *Kelly and Others v UK* (Judgement) (n 94) para 94-98, later confirmed in *Case of Hugh Jordan v the United Kingdom* (Judgement) (n 128) para 105-9, *Case of McKerr v the United Kingdom* (Judgement) (n 114) para 111-115; *Case of Shanaghan v the United Kingdom*, (Judgement), European Court of Human Rights Application No. 37715/97 [2001], para 88-92. See also *Case of M. and Others v Italy and Bulgaria* (Judgement), European Court of Human Rights, Application No. 40020/03 [2012], para 100; *Paul and Audrey Edwards v the United Kingdom* (Judgement) (n 67) para 69-73; *Rowe and Davis v the United Kingdom* (Judgement), European Court of Human Rights, Application No. 28901/95 [2000], para 60; *IJJ and others v the UK* (Judgement), European Court of Human Rights, Application nos 29522/95, 30056/96, and 30574/96, para 112; *Dowsett v the UK* (Judgement), European Court of Human Rights, Application no 39482/98 [2003], para 41.

- **Independent,¹³¹ impartial¹³²:** the investigation must be conducted by persons who are independent from events¹³³ (e.g. see *Ergi v Turkey*¹³⁴) and impartial.¹³⁵ This requires that investigations have hierarchical, institutional and practical independence.¹³⁶ For example, in *Al-Skeini* the ECtHR argued that “if any investigation into acts allegedly committed by British soldiers was to be effective, it was particularly important that the investigating authority was, and were seen to be, operationally independent of the military chain of command;”¹³⁷
- **Adequate, thorough,¹³⁸ effective,¹³⁹ credible¹⁴⁰:** the investigation must be capable of establishing the facts, determining if force was justified, and punishing those responsible, as appropriate.¹⁴¹ The ECtHR guidelines emphasize that “the investigation’s conclusions must be based on a thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation’s ability to establish the circumstances of the case and the identity of those responsible.”¹⁴² Furthermore, the guidelines hold that “the authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, inter alia, eyewitness testimony, forensic evidence and where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of the clinical findings, including cause of death.”¹⁴³

¹³¹ Human Rights Committee, ‘Concluding Observation of the Human Rights Committee: Cameroon’ (2010) UN docs CCPR/C/CMR/CO/4, para.15; Regarding institutional independence of investigators see *Case of Gulec v Turkey* (Judgment), European Court of Human Rights, Application No. 54/1997/838/1044 [1998]: the Court found that there had been a violation because the two gendarmerie officers appointed to investigate the killing of the applicant’s son during the suppression of demonstrations reported to the same persons and those gendarmes under investigation. Similarly, in *Orhan v Turkey* (Judgement), European Court of Human Rights, Application No. 25656/94 [2002] the court found a similar violation of Article based on the lack of institutional independence of the investigation.

¹³² Human Rights Committee, ‘Concluding Observation on the Third Periodic Report of the Plurinational State of Bolivia’ (2013) UN docs. CCPR/C/BOL/CO/3, para 15.

¹³³ *Case of Armani da Silva v UK* (Judgement), Europe Court of Human Rights, Application No. 5878/08 [2016], para 232; see also *Case of Mastafa Tunc and Fecire Tunc v Turkey* (Judgement), European Court of Human Rights, Application No. 24014/05 [2015], para 254 (regarding the ‘specific conduct’ of those who undertook the investigation overcame their lack of ‘full statutory independence’); *Case of Hugh Jordan v the United Kingdom* (Judgement) (n 128) (the obligation is both subjective and objective, and extending to state obligation to investigation of alleged killings by private persons).

¹³⁴ *Ergi v Turkey* (Judgement) (n 94) para 95; See also *Kolevi v Bulgaria* (Judgement), European Court of Human Rights, Application No. 1108/02 [2009]; *Case of the Rio Negro Massacres v. Guatemala* (Judgement) Inter-American Court of Human Rights [2009], para 217.

¹³⁵ *Case of Armani da Silva v UK* (Judgement) (n 134) para 234.

¹³⁶ For example, *Al-Skeini and Others v the United Kingdom* (Judgement) (n 89) 161-68; *Jaloud v the Netherlands* (Judgement) (n 89) 226.

¹³⁷ *Al-Skeini and Others v the United Kingdom* (Judgement) (n 89) 169.

¹³⁸ Human Rights Committee, ‘Concluding Observations on the Initial Report of Mauritania’ (2013) UN Docs. CCPR/C/MRT/CO/1, para. 13.

¹³⁹ Human Rights Committee, ‘Concluding Observation on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland’ (2015) UN Docs. CCPR/C/GBR/CO/7, para. 8.

¹⁴⁰ UN Human Rights Committee (n 87) para. 9.

¹⁴¹ Regarding imperative to identify and punish state agents responsible for violation as essential to the investigatory process, see *Edwards v the UK* (Judgement), European Court of Human Rights, Application No. 13071/87 [1992], para 36; *Rowe and Davis v the United Kingdom* (Judgement) (n 131) para 60; *IJL and others v the UK* (Judgement) (n 131) para 112; *Dowsett v the UK* (Judgement) (n 131) para 41. Within the context of armed conflict see *Al-Skeini and Others v the United Kingdom* (Judgement) (n 89) para 175; *Jaloud v the Netherlands* (Judgement) (n 89) para 224; *Case of Armani da Silva v UK* (Judgement) (n 134) para 233.

¹⁴² European Court of Human Rights (n 14) 36, para 164; see also *Case of Nachova and others v. Bulgaria* (Judgment) (n 78) para 113; *Ramsahai and Others v Netherlands* (Judgement) (n 100) para 113 (no forensic tests or reconstruction of incident, inadequate questioning of police officers); *Ataykaya v Turkey* (Judgement), European Court of Human Rights, Application No. 50275/08 [2014] (failure to identify who fired lethal weapon, lack of expert evidence, risk of collusion, general delay); *Case of Belenko v Russia* (Judgement), European Court of Human Rights, Application No. 25432/06 [2014] (investigation interrupted; evidence lost); and *Case of Tikhonova v Russia* (Judgement), European Court of Human Rights, Application No. 13596/05 [2014] (investigation of soldier’s suicide inadequate); see also *Case of Mastafa Tunc and Fecire Tunc v Turkey* (Judgement) (n 134) para 175.

¹⁴³ European Court of Human Rights (n 14) 36, para 164; See for example *Case of Armani da Silva v UK* (Judgement) (n 134) para 233.

The *Minnesota Protocol* states that for an investigation to be considered ‘effective and thorough’, the states must meet the following minimum requirements: ¹⁴⁴

- (a) to identify the victim;
- (b) to recover and preserve evidentiary material related to the death to aid in any potential prosecution of those responsible;
- (c) to identify possible witnesses and obtain statements from them concerning the death;
- (d) to determine the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death¹⁴⁵;
- (e) to distinguish between natural death, accidental death, suicide and homicide;
- (f) to identify and apprehend the person(s) involved in the death;
- (g) to bring the suspected perpetrator(s) before a competent court established by law.

Similarly, *General Comment 36* of the HRC states that, as far possible, investigations should include: an autopsy;¹⁴⁶ other means to establish events that resulted in deprivation of life;¹⁴⁷ identification of the deceased;¹⁴⁸ measures that ensure relevant details regarding the investigation are made available to next of kin;¹⁴⁹ and publicity of conclusions.¹⁵⁰

- **Prompt¹⁵¹:** the investigation must be promptly initiated and undertaken with ‘reasonable expedition’¹⁵² (e.g., *McCaughey and other v UK*¹⁵³). In the body of cases related to Chechnya, for example, the ECtHR has been systematically critical of the Russian government for delays in investigating alleged violations of Article 2, as well as the unwillingness to disclose important

¹⁴⁴ United Nations Human Rights Office of the High Commissioner (n 20); (Model protocol for a legal investigation of extra-legal, arbitrary and summary executions, contained in the UN Manual on the Effective Prevention and Investigation of Extra-legal, arbitrary and summary executions, Section B on the purpose of an inquiry)

¹⁴⁵ *Véliz Franco and others v. Guatemala*, Inter-American Court of Human Rights [2011], para 191.

¹⁴⁶ United Nations Human Rights Office of the High Commissioner (n 20) para. 25; *Kawas-Fernández v. Honduras* (Judgment), Inter-American Court of Human Rights [2009], para 102.

¹⁴⁷ Philip Alston, ‘Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: Study on Targeted Killings’ (2010) UN Docs A/HRC/14/24/Add.6, para. 93.

¹⁴⁸ UN Human Rights Council, ‘Report of the Working Group on Enforced or Involuntary Disappearances’ (2012) UN Docs. A/HRC/19/58/Rev.1, para. 59.

¹⁴⁹ United Nations Human Rights Office of the High Commissioner (n 20) para. 35.

¹⁵⁰ *Ramsahai and Others v Netherlands* (Judgement) (n 100) para 353 (requiring sufficient public scrutiny of inquiry proceedings).

¹⁵¹ UN Human Rights Committee, Communication No. 1556/2007, concerning *Novaković v. Serbia*, UN Docs CCPR/C/100/D/1556/2007 [2010], para. 7(3); Human Rights Committee, ‘Concluding Observations of the Human Rights Committee: Russian Federation’ (2009) UN Docs CCPR/C/RUS/CO/6 and Corr.1, para 14; *Case of Silih v Slovenia* (Judgement), European Court of Human Rights, Application No. 71463/01 [2009], para 196; *Case of Cavit Tinarlioglu v Turkey* (Judgement), European Court of Human Rights, Application No. 3648/04 [2016], para 115; *Case of Ferbec v Croatia* (Judgement), European Court Human Rights, Application No. 68516/14, para 38; *Case of Anna Todorova v Bulgaria* (Judgement), European Court of Human Rights, Application No. 23302/03 [2011], para 83; *Case of Igor Shevchenko v Ukraine* (Judgement), European Court of Human Rights, Application No. 22737/04 [2012], para 61; *Case of Starcevic v Croatia* (Judgement), European Court of Human Rights, Application No. 80909/12 [2014], para 67; In the *Case of Tikhonova v Russia* (Judgement) (n 143) the Court found that “it is crucial in cases of deaths in contentious situations for the investigation to be prompt. The passage of time will inevitably erode the amount and quality of the evidence available and the appearance of a lack of diligence will cast doubt on the good faith of the investigative efforts, as well as drag out the ordeal for the members of the family” (para 83).

¹⁵² *Case of Hugh Jordan v the United Kingdom* (Judgement) (n 128) para 108

¹⁵³ See also *Case of Collette and Michael Hemsworth v UK* (Judgement), European Court of Human Rights, Application No. 58559/09 [2013]; *Sandru and others v Romania* (Judgement), European Court of Human Rights, Application No. 22465/03 [2009]; and *Case of M Ozel and others v Turkey* (Judgement), European Court of Human Rights, Application Nos. 14350/05, 15245/05 and 16051/05 [2015].

information.¹⁵⁴ The ECtHR has confirmed repeatedly that Article 2 requires a prompt investigation within a reasonable time frame.¹⁵⁵ The ECtHR guidelines state that “the Court accepts that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, but it considers that a prompt response by the authorities in investigating a use of lethal force, may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.”;¹⁵⁶ and

- **Transparent¹⁵⁷:** There must be a “sufficient element a public scrutiny of the investigation or its results to secure accountability in practice as well as in theory.”¹⁵⁸ The next of kin must be kept regularly informed during an investigation.¹⁵⁹ The ECtHR guidelines state though some level of public scrutiny is required.¹⁶⁰

Where a violation of the right to life is found, full reparation must be paid to the family, dependent on the specific context of the case¹⁶¹ and steps must be taken to prevent a reoccurrence of the event.¹⁶² This latter component will be explored under the obligation to protect, below.

In theory, the obligation to investigate can be carried out without a death registration system. In practice, it is difficult to imagine how it could be isolated from such a system. In our current context, the establishment of a functional death registration system is an implicit obligation in the components discussed above. Consider each in turn:

¹⁵⁴ *Case of Esmukhambetov and others v Russia* (Judgement), European Court of Human Rights, Application No 23445/03 [2011], para 119.

¹⁵⁵ *Case of Aramani de Silva v the UK* (Judgement), European Court of Human Rights, Application No. 5878/08 [2016], para 237; *Giuliani and Gaggio v Italy* (Judgement) (n 35) para 305).

¹⁵⁶ European Court of Human Rights (n 14) 37, para 168; see also *Al-Skeini and Others v the United Kingdom* (Judgement) (n 89) para 167; *Case of Tahsin Acar v Turkey* (Judgement), European Court of Human Rights, Application No. 26307/95 [2004], para 224; *Case of Armani da Silva v UK* (Judgement) (n 134) para 237.

¹⁵⁷ UN Human Rights Committee (n 140) para. 8; Regarding family involvement and public scrutiny see *Case of Gulec v Turkey* (n 132) and *Kelly and Others v UK* (Judgement) (n 94).

¹⁵⁸ *Case of McKerr v the United Kingdom* (Judgement), European Court of Human Rights, Application No 28883/95 [2000], paras 114-115.

¹⁵⁹ *Case of Mocanu and others v Romania*, European Court of Human Rights, Application No. 18213/16 and ten others [2014], paras 349; See also *Case of Gulec v Turkey* (Judgment) (n 132) (victim’s father not informed of decision not to prosecute); *Case of Seidova and others v Bulgaria* (Judgement), European Court of Human Rights, Application No. 310/04 [2010] (family excluded from investigation); and *Case of Rantsev v Cyprus and Russia* (Judgement), European Court of Human Rights, Application No. 25965/04 [2010]; Regarding the fact that there is no obligation to search for the next of kin see *Gray v Germany and United Kingdom* (Judgement), European Court of Human Rights, Application No. 49278/09 [2012], para 88. See also African Union, ‘General Comment No. 3 on the African Charter on Human and Peoples’ Rights: the Right to Life (Article 4)’ (2015), para 7.

¹⁶⁰ “This requirement does not, however, go so far as to require all aspects of all proceedings following an inquiry into a violent death to be public as disclosure or for example, publication of police reports and investigative materials may involve sensitive issues with possible prejudicial effects on private individuals or other investigations and, therefore, cannot be regarded as an automatic requirement under Article 2 of the convention. The degree of public scrutiny required may vary from case to case... However, in all cases, the victim’s next-of-kind must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests. This does not mean that the investigating authorities have to satisfy every request for a particular investigative measure made by a relative in the course of the investigation. Moreover, the lack of public scrutiny of police investigations may be compensated by providing the requisite access of the public or the victim’s relatives during other stages of the procedure.” (European Court of Human Rights (n 14) 38, para 172-173; see also *Ramsahai and Others v Netherlands* (Judgement) (n 100) para 348, 353; *Giuliani and Gaggio v Italy* (Judgement) (n 35) para 304; *Giuliani; Case of Hugh Jordan v the United Kingdom* (Judgement) (n 128) para 121.)

¹⁶¹ United Nations Human Rights Office of the High Commissioner (n 20) para 10.

¹⁶² *Camargo v. Colombia*, Human Rights Committee, Communication No. 45/1979, UN docs CCPR/C/OP/1 [1985], para 15; UN Human Rights Committee (n 15) para 29; *Al-Skeini and Others v the United Kingdom* (Judgement) (n 89) para 167.

(a) **Independence:** Essential to the realization of the object and purpose of human rights law is that rights are equally available to all persons.¹⁶³ As has been discussed elsewhere in this thesis, social and political agendas often give value to some lives, over others. This is reflected in whose death is investigated, and whose goes unnoticed. Establishing an independent comprehensive death registration system – with its requirement to note the cause of death -- that is above political and social agendas is essential to ensuring that the right to life, including the procedural obligation to investigate wrongful death, is realized for all persons, without discrimination. In the absence of such a system, it is almost inevitable that the wrongful death of the most vulnerable will go unnoticed, which in turn sends the signal to potential perpetrators that some lives can be wrongfully terminated with little consequence, undermining the rule of law. Only universal death registration, which records and captures cause of death for all persons can accurately enable all suspicious death to be investigated without discrimination (i.e. through the impartiality of the system). As such, the independence and impartiality of the death registration system is critical to ensuring the universality of the right to investigation, in line with the right to non-discrimination.

(b) **Effective:** As per international case law, effective criminal investigation and prosecution requires, at the least, that basic information regarding the deceased is available, including identification and cause of death, as described by the *Minnesota Protocol*. As argued in previous Chapters, these are fundamental characteristics of a death registration system. As such, an established functional death registration system works in partnership with an investigation to ensure effective realization of the procedural obligation under the right to life.

(c) **Prompt:** The obligation to undertake a prompt investigation implicitly requires that there is a system that immediately triggers investigation where there is the possibility of wrongful death. Again, this seems to require a comprehensive death registration system, capable of referral to criminal investigation procedures in a timely manner. In the absence of such a comprehensive system, ensuring prompt investigation in all cases would be challenging, if not impossible.

(d) **Transparent:** The obligation to coordinate with families and inform the public, as far possible, is clearly articulated across the case law. Ensuring that relatives have full access to documentation regarding the identity of the deceased and cause of death is a fundamental function of a death registration system, usually in the form of a death certificate.

¹⁶³ Universal Declaration of Human Rights (1948) UN doc A/RES/3/217, Article 2; Council of Europe, 'European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, ETS 5 [1950], Article 14 ; Organization of African Unity 'African Charter on Human and Peoples' Rights ('Banjul Charter') (1982) CAB/LEG/67/3 rev 5, I.L.M 58, Article 2; Organization of American States, American Convention on Human Rights (Pact of San Jose, Costa Rica) (1969), Article 1.

To further explore the relationship between death registration and the obligation to investigate, international jurisprudence and authoritative commentary regarding the two components of death registration (identity and cause of death) is explored below:

▪ Identification of Dead Bodies

The ECHR jurisprudence confirms the obligation to identify the deceased and the cause of death, as part of the procedural obligation to investigate death under the right to life.¹⁶⁴ As an example, an essential element of the investigation processes is the establishment of the identity of the deceased; “[t]he authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, inter alia, eyewitness testimony, forensic evidence, and where appropriate an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including cause of death.”¹⁶⁵

The African Commission’s *General Comment 4* links the identification of deceased persons and the determination of the cause of death to the right to life as well as to humane treatment for the next of kin.¹⁶⁶ Underscoring the essential importance of identification, case law has not only recognized this as a critical component of an effective investigation, it is also understood to be fundamental to the protection of the rights of the relatives of the deceased; lack of “due diligence in determining the identity of the remains and determining the cause of death, perpetuates the families’ anguish about the fate of their loved one, prevents them from closing the mourning process and obstructs their search for the truth. The same irregularities thus violating the obligation to investigate under Article 4 ACHR (right to life) may also violate Article 5 ACHR (right to humane treatment) in respect of the next of kin.”¹⁶⁷

The *Minnesota Protocol* defines identification as “the allocation of the correct name/identity to human remains.”¹⁶⁸ It goes on to underline the social, cultural and legal importance of identification, stating: “[i]n any death investigation, the identification of the body or bodies is a major priority. It also meets humanitarian, human rights, and other social and cultural needs.”¹⁶⁹ It specifies that identification

¹⁶⁴ *Case of Cyprus v Turkey* (Judgement) (n 71); *Case of McCann and Others v the United Kingdom* (Judgement) (n 47) para 161; *Case of Mahmut Kaya v Turkey* (Judgement) (n 69) para 86; The procedural obligation in investigation is also included in Article 3 (prohibition of inhuman and degrading treatment) and Article 4 (slavery, forced and compulsory labour). It has been broadly interpreted by the Court as covering trafficking in persons (*Siliadin v France* (Judgement), European Court of Human Rights, Application No. 73316/01 [2005]). The obligation to investigate potential trafficking is much greater where there has been a death.

¹⁶⁵ *Mikayil Mammadov v Azerbaijan* (Judgement), European Court of Human Rights, Application No. 4762/05 [2009], para 223.

¹⁶⁶ African Commission on Human and Peoples’ Rights, ‘General Comment 4: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5)’ (2017) < <https://achpr.au.int/index.php/en/node/893> > accessed 18 February 2024

¹⁶⁷ Last Rights ‘Extended Legal Statement and Commentary: The Dead, the Missing and the Bereaved at the World’s Border, Statement of the International Legal Obligation of States Together with Commentary’ Version 1 (2019), 23.

¹⁶⁸ United Nations Human Rights Office of the High Commissioner (n 20) para 115.

¹⁶⁹ *Ibid*, 21-24.

requires ante-mortem and post-mortem data, compared for validity.¹⁷⁰ This may include visual recognition of the dead body by family or friends (with careful parameters put in place to minimize the risk of false positive or negative identification and trauma for friends/family) or through scientific methods, including fingerprints, dental examination and DNA analysis. Where the remains are skeletonized, physical or forensic anthropologists may be required.”¹⁷¹ Where multiple dead bodies require identification simultaneously, visual recognition alone is insufficient as emotional distress is likely to impact recognition; in such cases the Minnesota Protocol¹⁷² refers to the standardized protocol put in place by Interpol,¹⁷³ as well as guidelines published by the Pan American Health Organization, the World Health Organization and ICRC.¹⁷⁴ Regardless of the method adopted, identification should be compared with known ante-mortem records or data. The Minnesota Protocol requires that relevant findings regarding identity should be compiled in a final report. It also confirms that families of the deceased should be fully informed about the identification process.¹⁷⁵ As such, case law and international guidelines underline the fundamental importance of identification in the investigation process; death registration is the functional means by which identification is formally recorded and made official.

▪ Cause of Death

The requirement to ascertain the cause of death is well established under international jurisprudence on the right to life.¹⁷⁶ For illustration sake, the ECtHR has confirmed that states must take “the reasonable steps available to them to secure the evidence concerning the incident,”¹⁷⁷ including securing eye witness interviews,¹⁷⁸ forensic evidence,¹⁷⁹ full autopsy.¹⁸⁰ As an example, based on the logic the ECtHR developed in *McCann*, in their deliberation of *Kaya v Turkey* (1998) the Commission found insufficient evidence to prove that the applicant’s brother had been deliberately killed by Turkish soldiers, as alleged by his brother. However, the Commission found a breach of the right to life (Article 2) because the autopsy was found insufficient to determine cause of death.¹⁸¹ Emphasizing its importance, the ECtHR even suggested that insecurity in the area (due to armed conflict) may have called for the body to be moved to a safer location to allow for a more detailed

¹⁷⁰ Ibid, 21-24.

¹⁷¹ Ibid, 21-24.

¹⁷² Ibid, 21-24.

¹⁷³ See Interpol ‘Disaster Victim Identification Guide’ (2014) <http://www.interpol.int/INTERPOL-expertise/Forensics/DVI-Pages/DVI-guide> accessed 15 February 2024.

¹⁷⁴ M. Tidball-Binz and D. van Alphen (eds.), *Management of Dead Bodies after Disasters: A Field Manual for First Responders* (2016) <www.paho.org/disasters> accessed 15 February 2024.

¹⁷⁵ United Nations Human Rights Office of the High Commissioner (n 20) 21-24.

¹⁷⁶ See for example European Court of Human Rights (n 14) para 56 (persons under care of the state), para 163 (as obligation for an effective protection of right to life), and para 206 and 213 (in the context of health care).

¹⁷⁷ See for example *Case of Denis Vasilyev v Russia* (Judgement), European Court of Human Rights, Application No. 32704/04, para 100.

¹⁷⁸ *Case of Gulec v Turkey* (Judgment) (n 132) para 82; *Velikova v Bulgaria* (Judgement) (n 128) para 79.

¹⁷⁹ *Case of Mahmut Kaya v Turkey* (Judgement) (n 69); *Case of Gulec v Turkey* (Judgment) (n 132).

¹⁸⁰ *Kelly and Others v UK* (Judgement) (n 94); *Case of Mahmut Kaya v Turkey* (Judgement) (n 69).

¹⁸¹ *Case of Mahmut Kaya v Turkey* (Judgement) (n 69) para 89.

analysis of the body and the bullet wounds. The HRC has found a violation of the right to life's procedural obligation to investigate where an autopsy or other medical procedure did not confirm cause of death on the death certificate.¹⁸² Furthermore the HRC found a violation of a family's right to truth and closure (as a violation of prohibition of inhuman or degrading treatment) where the state failed to indicate the correct cause of death on the death certificate.¹⁸³

The *Minnesota Protocol* holds that a clear conclusion regarding cause of death and identification of the deceased "is a fundamental responsibility of the prosecutor".¹⁸⁴ The Protocol goes on to note that cause of death often requires intervention from a forensic doctor or judicial officers; autopsy alone may not be sufficient.¹⁸⁵ The WHO has developed a format for recording cause of death that has been widely adopted across the world.¹⁸⁶ In accordance with the WHO format, the *Minnesota Protocol* underlines that the following considerations should be taken into consideration during the identification of cause of death,

- (a) Underlying cause of death – defined as the disease or injury that initiated the train of morbid events leading directly to death or the circumstances of the accident or violence that led to the fatal injury
- (b) Contributory cause(s) of death – other significant diseases or conditions that contributed to the death but not to the disease(s) or condition(s)...
- (c) A common error is to list the mode of death, such as cardio-respiratory arrest, respiratory failure or coma as the immediate cause of death
- (d) If there is only one cause of death (e.g., Gunshot wound to the head; where death has apparently occurred rapidly at the scene) this should be listed as I(a). In the terminology above, this is both the immediate and the underlying cause of the death
- (e) If the cause of death is unknown even after all investigations have been completed, then it is correct to record it as "unknown" or "unascertained".¹⁸⁷

As such, international jurisprudence and international guidelines confirm that identification and recording of cause of death is essential to the obligation to investigation. This aligns exactly with good practice regarding death registration. Death registration is how cause of death is formally recorded and made official. Recall, for example, that the HRC found a violation when cause of death

¹⁸² *Khadzhiyev and Muradova v Turkmenistan*, Human Rights Committee, Communication no 2252/203, UN Docs CCPR/C/122/D/2252/2013 [2018], para 7(3).

¹⁸³ *Cifuentes Elgueta v Chile*, Human Rights Committee, Communication No 1536/2006, UN Docs. CCPR/C/96/1536/2006, para 8(5); *Mariam Sankara et al v Burkina Faso*, Communication no. 1159/2003, UN Docs CCPR/C/86/D/1159/2003 [2006], para 12(2).

¹⁸⁴ United Nations Human Rights Office of the High Commissioner (n 20) 45, para 265.

¹⁸⁵ *Ibid*, 45, para 265.

¹⁸⁶ World Health Organization 'The International Form of Medical Certificate of Cause of Death' <

<https://www.who.int/standards/classifications/classification-of-diseases/cause-of-death>> accessed 15 February 2024.

¹⁸⁷ United Nations Human Rights Office of the High Commissioner (n 20) 45, 267.

did not appear on the *death certificate*,¹⁸⁸ which indicates that the adjudicating bodies assumed the existence of a death registration system as the way to operationalise the duty to investigate. In the world as we know it, it is difficult to imagine how it could be otherwise.

▪ Informing Relatives and the Public: Death Certificate

As described above, international jurisprudence clearly requires that relatives are involved and kept informed throughout an investigation. As far as possible, information regarding the results of an investigation into wrongful death should be made public. These are well established and documented principles of an effective investigation (see HRC,¹⁸⁹ IACHR,¹⁹⁰ ECtHR,¹⁹¹ African Commission¹⁹²). In addition to this broad obligation, the provision of a death certificate to relatives has been recognized as an essential component of this pursuit.

A death certificate serves as an official recognition of death which regulates the legal status of the deceased and can be essential to family, next-of-kin and others (for example vis-à-vis marriage, guardianship of children, parental rights, social allowances, property management and inheritance, etc). Last Rights argues that “[t]he issue of a death certificate is an obligation that derives from the right to equal recognition before the law, as it settles the legal status of the victim and allows the families to regularize their legal status in relation to the deceased person.”¹⁹³ Last Rights goes on to argue that the issuance of death certificates is an essential component of an effective and transparent investigation of death, as per the right to life.¹⁹⁴

The IACtHR has found that the principle of due diligence is violated where a death certificate is not issued in the event of a suspicious death. In the *Case of Landaeta Mejias Brothers et al. v. Venezuela*, a violation of the right to life was found on the basis of the fact that neither the death certificate nor the autopsy report indicated when the death occurred.¹⁹⁵ The African Commission has also confirmed that states have an obligation to issue a complete death certificate to the family of a deceased person

¹⁸⁸ *Khadzhiyev and Muradova v Turkmenistan*, Human Rights Committee, Communication no 2252/203, UN Docs CCPR/C/122/D/2252/2013 [2018], para 7(3).

¹⁸⁹ See for example *Baboeram et al v Suriname*, United Nations Human Rights Committee, Communication No. 154/1983, 148/1983, 146/1983, UN Docs CCPR/C/24/D/146/1983 [1983]; *Mojica v Dominican Republic*, United Nations Human Rights Committee, Communication No. 449/1991, UN Docs CCPR/C/51/D/449/1991 [1994].

¹⁹⁰ See for example *Velásquez Rodríguez case* (Judgement) (n 60); *González and others (“Cotton Field”) v. Mexico* (Judgement) (n 74).

¹⁹¹ See for example *Kurt v Turkey* (Judgement), European Court of Human Rights, Application No. 15/1997/799/1002 [1998]; *Paul and Audrey Edwards v the United Kingdom* (Judgement) (n 131).

¹⁹² See for example *Anuak Justice Council v Ethiopia*, African Commission on Human and Peoples’ Rights, Communication 299/2005 [2006].

¹⁹³ Last Rights (n 168) 23.

¹⁹⁴ *Ibid.*, 24.

¹⁹⁵ *Case of the Landaeta Mejias et al v Venezuela* (Judgement), Inter-American Court of Human Rights (2014).

in a timely manner.¹⁹⁶ The *Minnesota Protocol* explicitly states that “[t]he state is under the obligation to provide all relevant documentation to the family of the deceased, including the death certificate.”¹⁹⁷

Once again, this aligns with best practice in death registration. Death registration is the formal means by which death certificates are issued. Additionally, civil registration facilitates the identification of relatives, thereby enabling the realization of the rights of relatives.

In this section, I have argued that international jurisprudence has laid bare the requirements of an effective investigation, requiring at the least that investigations be independent, effective, prompt and transparent. Though international jurisprudence does not explicitly refer to death registration, the obligation to conduct an effective investigation includes an implicit procedural obligation to establish a comprehensive death registration system, including systematic identification of deceased, formal registration of cause of death, and a system to ensure that death certificates are issued to relatives.

II.D Scope of the Obligation to Investigate

Above, I have established that there is a procedural obligation under the right to life to investigate wrongful death and I have examined the requirements of an effective investigation. In this section, I will examine further the degree to which this obligation is relevant for all deaths. I will argue that international jurisprudence indicates that the obligation to investigate wrongful death covers a broad range of types of death, including instances where state agents are directly involved in killing, wrongful death at the hands of a third party or other citizen, and death as a result of negligence. Yorke argues that “[w]hen death occurs the analysis of the right to life requires that the relationship of the government with the deceased individual is placed under scrutiny;”¹⁹⁸ it is only in the examination of a given case that one can establish if the right to life has been violated. This summary will help to illustrate that the duty to investigate (and thus any implicit obligations to register death and cause of death) is not narrowly limited to particular types of death. The motivation for this detailed assessment is to establish that the obligation to investigate wrongful death is indeed so wide-ranging an obligation that the establishment of a comprehensive, universal system to register death is paramount, ensuring that all relevant cases are referred for a timely, independent and impartial investigation.

▪ Death perpetrated by State agents

¹⁹⁶ See for example *Amnesty International v Zambia*, African Commission on Human and Peoples’ Rights, Communication 212/98 [2000].

¹⁹⁷ United Nations Human Rights Office of the High Commissioner (n 20) para 17.

¹⁹⁸ Jon Yorke ‘Introduction: The Right to Life and the Value of Life: Orientations in Law, Politics and Ethics’ in Jon Yorke (ed) *The Right to Life and the Value of Life: Orientations in Law, Politics and Ethics* (Routledge 2010), 6.

The procedural obligation of the State to investigate potentially wrongful death was first formulated in the context of lethal force used by state agents. Though the HRC has confirmed that states have an obligation to investigate all killings, they have stressed that states have a specific procedural obligation when killing is allegedly perpetrated by state agents; in this context, a failure to investigate or an inadequate investigation will be considered a breach of Article 2(3) (right to a remedy) in conjunction with Article 6 (right to life).¹⁹⁹ The ECtHR found that without a procedure for reviewing the lawfulness of the use of force by state agents, the general prohibition against arbitrary killing would be ineffective.²⁰⁰ The ECtHR has held that the state must be held publicly responsible and accountable for unlawful actions of its agents,²⁰¹ stressing that accountability must exist in “practice as well as theory.”²⁰² The *Minnesota Protocol* also confirms the duty to “investigate any potentially unlawful deaths...[including] where the State has caused a death or where it is alleged or suspected that the state caused a death.”²⁰³ It goes on to underline that this obligation exists in all circumstances (including armed conflict), regardless of whether it is alleged that the death is unlawful.²⁰⁴

The ECtHR has described the procedural element of the right to life in some detail, as regards accountability of state agents.²⁰⁵ For example, in both *Al-Skeini*²⁰⁶ (1st, 2nd, 3rd, 4th and 5th applicants’ relatives were allegedly killed by UK soldiers during their patrols in Basra, Iraq) and *Others and Jaloud v the Netherlands*²⁰⁷ (where a car approached a checkpoint at speed, hit several barrels and continued to advance after which the Army Lieutenant opened fire, killing the applicant’s son) the court found that the state party was in violation because they had not conducted an effective investigation into the deaths caused by the state actors, though they may have been within their rights to use lethal force.

The state is obligated to put in place an appropriate legal and administrative framework which defines the limited circumstances when state agents may legitimately use of force, in accordance with

¹⁹⁹ *Baboeram et al v Suriname*, Human Rights Committee, Communication No. 154/1983, 148/1983, 146/1983, UN Docs CCPR/C/24/D/146/1983 [1983]; In *Chongwe v Zambia*, Human Rights Committee, Communication No 821/1998, UN Docs CCPR/C/70/D/821/1998, para 8.15, the duty to investigate under Article 6 was extended to attempted assassinations; In the *Herrera Rubio v Colombia*, Human Rights Committee, Communication No 161/1983, UN Docs CCPR/C/31/D/161/1983 [1983] it was found that the state had not conducted an effective investigation, in accordance with Article 2.

²⁰⁰ European Court of Human Rights (n 14); In *McCann* the Court found, in general, that a prohibition of killing by the agents of the state would be ineffective in practice without a procedure to review the lawfulness of the use of lethal force by state agents. As such, Article 2, read with Article 1 (‘secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention’) required by implication an effective official investigation when the use of force by a state agent has resulted in the loss of life. Though in the *McCann* case the Court did not consider that there had been shortcomings in the inquest proceedings. The ECHR subsequently extended the breadth of this obligation (*Case of McCann and Others v the UK* (n 47); In *Ergi v Turkey*, for example, the ECHR found Turkey in violation of this provision even though the Court could not confirm beyond a reasonable doubt that the victim had in fact been shot by a state agents during their counter-terrorist operation (*Ergi v Turkey (Judgement)* (n 94); This topic has also been examined in A Nowbray, ‘Duties of Investigation under the European Convention on Human rights’ (2002) 51 International and Comparative Law Quarterly 435.

²⁰¹ *Case of Esmukhambetov and others v Russia* (Judgement) (n 155) para 118.

²⁰² *Ibid*, para 118.

²⁰³ United Nations Human Rights Office of the High Commissioner (n 20).

²⁰⁴ *Ibid*, 4-5, para 16.

²⁰⁵ Ian Park (n 50) 48.

²⁰⁶ *Al-Skeini and Others v the United Kingdom* (Judgement) (n 89) para 163.

²⁰⁷ *Jaloud v the Netherlands* (Judgement) (n 89) para 163.

international standards.²⁰⁸ As described in the third sentence of Article 6(1) of the ICCPR and international jurisprudence, the State is required to protect against arbitrary deprivation of life.²⁰⁹ The ECtHR has also explained that Article 2(2) goes beyond intentional killing to include the use of force which may result in the deprivation of life, with or without intent. The exceptions laid out in sub-paragraphs (a) – (c) require that the use of force be no more than necessary²¹⁰ and it must be strictly proportionate to the achievement of the goals set out in sub-paragraphs 2(2)(a)-(c). To these ends, the Court must “subject deprivations of life to the most careful scrutiny, particularly where deliberate lethal force is used, taking into consideration not only the actions of the agents of the State who actually administer the force but also all the surrounding circumstances including such matters as the planning and control of the actions under examination.”²¹¹ Paragraph 2 of Article 2 does not describe situations where it is permissible to kill an individual; rather, it describes situations where the use of force which may result in death may be used. However, the use of force must be ‘absolutely necessary’ to achieve one of the objectives described in sub-paragraphs (a-c).²¹² Essential to ascertaining if state action was admissible is the balance between the aim pursued and the means employed to achieve it.²¹³

Where persons die outside the exceptions described in human rights treaty law (e.g. ECHR Article 2(2)) and where the death was caused by state agents or with the acquiescence of state agents, the court will find a violation of Article 2.²¹⁴ Even where it cannot be proved that the state agent was

²⁰⁸ *Giuliani and Gaggio v Italy* (Judgement) (n 35) para 209; *Makaratzis v Greece* (Judgement) (n 82) para 57-59; the policing system must include adequate and effective safeguards against arbitrary use of force (*Giuliani and Gaggio v Italy* (Judgement) (n 35) para 209; *Makaratzis v Greece* (Judgement) (n 82) para 58); a state must strictly control and limit circumstances where a persons may be killed by a member of the state party (see *Baboeram-Adhin et al v Suriname*, Human Rights Committee, Communication No. 154/1983, 148/1983, 146/1983, UN Docs CCPR/C/24/D/146/1983 [1983]; Human Rights Committee ‘Concluding Comments: USA’ (1995) UN Doc CCPR/C/79/Add.50; Human Rights Committee, ‘Concluding Observations: Cyprus’ (1995) UN Docs CCPR/C/79/Add.39).

²⁰⁹ The pre-emptive use of force may be justified, depending on the nature of the attack and subject to the proportionality (United Nations Congress on the Prevention of Crime and Treatment of Offenders (n 18) Principle 9); a state must prove that resorting to lethal force was justified and proportional (Case of Nachova and others v Bulgaria (n 78) para 108); examples where the court found that the use of force was not strictly proportionate or absolutely necessary for one of the aims described in Article 2(2) (*Case of Gulec v Turkey* (Judgment) (n 132) (son killed during a demonstration by security forces)); state agents can only use force when it is proportionate to the risk and within the bounds of the law (*Case of McCann and Others v the UK* (n 47); the use of lethal force has been evaluated by the HRC against subjective and objective criteria (see *Guerrero V. Colombia*, Human Rights Committee, Communication No. 45/1979, UN docs CCPR/C/15/D/45/1979 [1982]); appropriate safeguards to civilian life must be put in place (see *Isayeva v Russia* (Judgement), European Court of Human Rights, Application No. 57950/00 [2005]); all measures must be used to affect arrest or prevent an escape from a lawful detention and in strictly limited situations (see *Cangoz and others, v Turkey* (Judgement) European Court of Human Rights, Application No. 7469/06 [2017], para 106); to quell a riot of insurrection (*Stewart v. UK*, European Court of Human Rights, Application No. 25185/02 [2003], para 30); ‘targeted killings’ cannot be used as a deterrent or punishment (UN Human Rights Committee, Concluding Observations: Israel’ (n 87)). Humanitarian international law recognizes further exceptions were killing is lawful.

²¹⁰ See *Stewart v UK*, European Court of Human Rights, Application No. 10044/82 [1984], 169-71.

²¹¹ Alastair Mowbray (n 92) 84-87.

²¹² See *Case of McCann and Others v the UK* (n 47) para 148; *Case of Yüksel Erdogan and others v Turkey* (Judgement), European Court of Human Rights, Application No. 57049/00 [2007], para 86; *Ramsahai and Others v Netherlands* (Judgement) (n 100) para 286; *Giuliani and Gaggio v Italy* (Judgement) (n 35) para 17.

²¹³ *Case of Gulec v Turkey* (Judgment) (n 132) para 71.

²¹⁴ See *Case of Avsar v Turkey* (Judgement) (n 114) para 413-416; *Khashiyev and Akayeva v Russia* (Judgement), European Court of Human Rights, Application No. 57942/00 [2005], para 147; *Estamirov and others v Russia* (Judgement), European Court of Human Rights, Application No. 60272/00 [2006], para 114; *Musayeva and others v Russia*, European Court of Human Rights, Application No 74239/01 [2006], para 155; *Amuyeva and others v Russia* (Judgement), European Court of Human Rights, Application No. 17321/06 [2010], para 83-84.

involved in the killing, the court sometimes finds that the state was in violation of Article 2 for not using the means available to them to protect the right to life.²¹⁵

As such, it is clear from the text of relevant human rights treaties as well as from international jurisprudence that there is a clear obligation to investigate death, where a state agent has allegedly been involved (directly or indirectly).

▪ **Enforced Disappearances Perpetrated by State Agents**

Enforced disappearances are understood to be uniquely painful for family and friends, to the extent that it has been recognized as a violation of the prohibition against inhuman and degrading treatment.²¹⁶ The gravity of this crime, for both the victim and their relatives, has resulted in the development of a strict obligation on states to undertake investigations, with particular attention to identification, cause of death and providing information to relatives about the fate of the disappeared person. *General Comment No. 36* of the HRC recognizes ‘enforced disappearances’ as “a unique and integrated series of acts and omissions representing a grave threat to life”,²¹⁷ as the person is deprived of liberty in such a way that they are effectively outside of the protection of the law and at serious and constant risk, “for which the state is accountable.”²¹⁸ Forced disappearances can result in a violation of both the rights of the person concerned as well as family, relatives, and friends of the victim.²¹⁹ As such, the HRC, ECtHR, ACHR, and the IACtHR found that enforced disappearances violated a host of rights, including the right to life,²²⁰ prohibition of torture or cruel, inhuman or degrading treatment

²¹⁵ See *Mahmut Kaya v Turkey* (n 69) para 87 and 101; *Kilic v Turkey* (Judgement) (n 82) para 64 and 77; *Gongadze v Ukraine* (Judgement), European Court of Human Rights, Application No. 34056/02 [2005], para 170-171.

²¹⁶ See *Maria del Carmen Almeida de Quinteros et al. V. Uruguay*, Human Rights Committee, Communication No. 107/1981, UN doc. CCPR/C/OP/2 [1990], para 138; *S. Jegatheeswara Sarma v. Sri Lanka*, Human Rights Committee, Communication No. 950/2000, UN Doc. CCPR/C/78/D/950/2000 [2003]; *Olimzhon Eshonov v. Uzbekistan*, Human Rights Committee, Communication No. 1225/2003, UN Docs CCPR/C/99/D/1225/2003 [2010], para 9(10); *Mojica v Dominican Republic* (n 190); *Sarma v Sri Lanka*, Human Rights Committee, UN Docs CCPR/C/78/D/950/2000 [2003].

²¹⁷ *El Boathi v. Algeria*, Human Rights Committee, Communication No. 3125/2018, UN Docs CCPR/C/119/D/2259/2013, para. 7.5; see also *Bousroual v. Algeria*, Human Rights Committee, UN Docs CCPR/C/86/D/992/2001 [2006], para. 9(2); *Katwal v. Nepal* (n 1) para. 11(3).

²¹⁸ *El Boathi v. Algeria* (n 218) para. 7.5.

²¹⁹ Office of the United Nations High Commissioner for Human Rights, ‘Enforced or Involuntary Disappearances’ Fact Sheet No.6/Rev.3 < <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet6Rev3.pdf> > accessed 20 March 2024, 3.

²²⁰ *Bousroual (on behalf of Saker) v Algeria*, Human Rights Committee, Communication No. 992/2001, UN Doc CCPR/C/86/D/992/2001 [2016] (992/01); in *Mojica v Dominican Republic* (n 190) the HRC found that there had been a violation of Article 6 in the case of disappeared persons, even when the death of the disappeared person was not confirmed. In other cases, the HRC has been a little more hesitant (*Koku v Turkey*, European Court of Human Rights, Application No. 27305/95 [1995], para 132.)

or punishment (for relatives),²²¹ right to a family life (for relatives),²²² liberty and security of person²²³ and the right to recognition as a person before the law.²²⁴ This issue has been addressed by the development of specific treaty law, General Comments of various treaty bodies, UN resolutions, in addition to case law.²²⁵

Emphasizing the importance given to this issue, the preamble to the *Convention on Enforced Disappearances* recalls that enforced disappearances can constitute a crime against humanity (as per the Rome Statute), noting that victims and their families have the right to know the truth about the fate of their loved ones.²²⁶ Article 1 states that “no one shall be subject to enforced disappearances”; Rehman argues that the firm language used in Article 1 is a “declaratory statement of customary

²²¹ International Covenant on Civil and Political Rights (entered into force 23 March 1976), UNTS 999, Article 7; see *Maria del Carmen Almeida de Quinteros et al. v. Uruguay* (n 217) para 138; *S. Jegatheeswara Sarma v. Sri Lanka* (n 217); *Olimzhon Eshonov v. Uzbekistan* (n 217) para 9(10); *Mojica v Dominican Republic* (n 190); *Sarma v Sri Lanka* (n 217); The ECHR has found that the failure to inform a victim’s family of death or disappearance may be considered a violation of the prohibition on inhuman and degrading treatment for the family members (see *Cyprus v. Turkey* (Judgement) (n 71); *Orhan v. Turkey* (Judgement), European Court of Human Rights, Application No. 25656/94 [2002]; *Pitsayeva and Others v. Russia* (Judgement), European Court of Human Rights, Application Nos. 53036/08, 61785/08, 8594/09, 24708/09, 30327/09, 36965/09, 61258/09, 63608/09, 67322/09, 4334/10, 4345/10, 11873/10, 25515/10, 30592/10, 32797/10, 33944/10, 36141/10, 52446/10, 62244/10 and 66420/10 (2014); *Case of Bamaca Velasquez v Guatemala* (Merits) (Judgement), Inter-American Court of Human Rights [2000]; *Case of Valle Jaramillo et al v Colombia* (Judgement), Inter-American Court of Human Rights [2005], para 146; *Case of the Ituango Massacres v Colombia* (Merits) (Reparation and Costs) (Judgement), Inter-American Court of Human Rights [2005], para 146, 262; *Case of Blake v Guatemala* (Merits) (Judgement), Inter-American Court of Human Rights [1998], para 114; *Case of Heliodoro Portugal v Panama* (Merits) (Reparation and Costs) (Judgement), Inter-American Court of Human Rights [2008], para 174 and 175; *Orhan v Turkey* (n 132); *ER and others v Turkey*, European Court of Human Rights, Application No. 23016/04 [2012]; *Meryem Celik and others v Turkey*, European Court of Human Rights, Application No. 3598/03 [2013]; *Pitsayeva and others v Russia*, European Court of Human Rights, Application Nos. 53036/08, 61785/08, 8594/09, 24708/09, 30327/09, 36965/09, 61258/09, 63608/09, 67322/09, 4334/10, 4345/10, 11873/10, 30592/10, 32797/10, 33944/10, 36141/10, 62244/10, and 66420/10; African Commission on Human and Peoples’ Rights, ‘General Comment 4: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5)’ (2017) <<https://achpr.au.int/index.php/en/node/893>> accessed 18 February 2024; *Malawi African Association and Others v. Mauritania*, African Commission on Human and Peoples’ Rights, Communication Nos 54/91, 61/91, 98/93, 164/97 to 196/97 and 210/98 [2000].

²²² Relatives may also invoke their right to private and family life when they are denied the possibility of visiting their relative’s grave, participating in the burial ceremony, having the body returned to them without excessive delay, or given on information on the location of the grave (International Covenant on Civil and Political Rights (entered into force 23 March 1976), UNTS 999, Article 17; Organization of African Unity ‘African Charter on Human and Peoples’ Rights (‘Banjul Charter’) (1982) CAB/LEG/67/3 rev 5, I.L.M 58, Article 11; Council of Europe, ‘European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, ETS 5 [1950], Article 8 ; *Sabanchiyeva et al v. Russia*, European Court on Human Rights, Application No. 38450/05 [2013], para 138; see also European Court of Human Rights, ‘Guide on Article 8 of the European Convention on Human Rights: Right to Respect for Private and Family Life’ (2018) <https://www.echr.coe.int/documents/d/echr/guide_art_8_eng> accessed 18 February 2024, paras 99–104; ICRC (n 5).

²²³ International Covenant on Civil and Political Rights (entered into force 23 March 1976), UNTS 999, Article 9.

²²⁴ Office of the United Nations High Commissioner for Human Rights (n 220) 3.

²²⁵ The UN GA adopted an International Convention on Enforced Disappearances, as did OAS (Inter-American Convention on Forced Disappearances of Persons) (International Covenant on Civil and Political Rights (entered into force 23 March 1976), UNTS 999, Article 16); the Statute of the ICC considers enforced disappearances of persons as a crime against humanity (UNGA ‘Rome Statute of the International Criminal Court (last amended 2010)’ (adopted 17 July 1998, in force 1 July 2002) UN TS vol. 2187, No. 38544 <<https://www.refworld.org/docid/3ae6b3a84.html>> accessed 23 September 2019, Article 7(1)(i) and Article 7(2)(i)). The Rome Statute defines enforced disappearance as “(i) the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time;” Additionally, the HRC established a working group on Enforced and Involuntary Disappearances (Commission on Human Rights, ‘Question on Missing and Disappeared Persons’ (adopted at 1563rd meeting, 29 February 1980), Resolution 20 (XXXVI); in reference to enforced disappearances, the HRC has requested that State parties comply with relevant international standards, including the United Nations Congress on the Prevention of Crime and the Treatment of Offenders, ‘UN Minimum Standard Rules for the Treatment of Prisoners (Adopted in 1955 and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977) and the UN GA, ‘The UN Code of Conduct for Law Enforcement Officials’ (1979) General Assembly Resolution 34/169 and the UN GA, ‘United Nations Standard Minimum Rules for the Administration of Juvenile Justice (‘the Beijing rules’))’ (adopted by General Assembly in 1985), Resolution 40/33.

²²⁶ UNGA ‘Rome Statute of the International Criminal Court (last amended 2010)’ (adopted 17 July 1998, in force 1 July 2002) UN TS vol. 2187, No. 38544 <<https://www.refworld.org/docid/3ae6b3a84.html>> accessed 23 September 2019, Preamble.

international law”.²²⁷ Similarly, the General Assembly of the Organization of American States (OAS) identified enforced disappearances as a crime against humanity in 1982 and 1983.²²⁸

States have a clear procedural obligation to conduct an effective, independent and rapid investigation to establish the fate and whereabouts of persons who may have been subjected to an enforced disappearance,²²⁹ usually within the remit of the ordinary criminal justice system. *General Comment 6* of the ICCPR states that “States should establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life.”²³⁰ The ECtHR’s guidance on the right to life states that the “procedural obligation will, potentially, persist as long as the fate of the person is unaccounted for; the ongoing failure to provide the requisite investigation will be regarded as a continuing violation. This is so, even where death may, eventually, be presumed.”²³¹ The ECtHR has argued that investigations into disappeared persons is vital to the families of the victims, other victims and the general public.²³² In the *Velasquez Rodriguez* case²³³ the IACtHR stated that “[t]he State has a legal duty to take reasonable steps to prevent human rights violations to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.”²³⁴

In case of enforced disappearances, the HRC²³⁵, ECtHR²³⁶ and the IACtHR²³⁷ have found a violation of the procedural obligation under Article 6 when the states party failed to conduct an effective and impartial investigation. Enforced disappearances have been a subject of particular concern in Latin American. The IACtHR has found a violation of Article 5 (inhuman treatment) where the state failed

²²⁷ Javid Rehman, *International Human Rights Law* (second edition, Pearson 2010), 863-865.

²²⁸ OAS (n 29) para 4.

²²⁹ *Herrera Rubio v Colombia* (n 200) para 10(3); Human Rights Committee (n 28) para 4.

²³⁰ Human Rights Committee (n 28) para 4.

²³¹ European Court of Human Rights (n 14) 34, para 151; see also *Varnava and others v Turkey* (Judgement) (n 104) para 148.

²³² see *El-Masri v. the former Yugoslav Republic of Macedonia* (Judgement), European Court of Human Rights, Application No. 39630/09 [2012], para 191.

²³³ *Velasquez Rodríguez v Honduras* (n 60).

²³⁴ *Ibid*, para 174.

²³⁵ *Herrera Rubio v Colombia* (n 200) para 10 (3); *Bautista v Colombia*, Human Rights Committee, Communication No. 563/1993, UN Docs CCPR/C/55/D/563/1993 [1995]; *Arhuaco v Colombia, Villafane Chaparro and ors (on behalf of Torres Crespo and ors) v Colombia* (Merits) Communication No 612/1995, UN Docs CCPR/C/60/D/612/1995 [2003], para 8(2) and 8(8) where the HRC found that the state party had an obligation “to investigate thoroughly alleged violations of human rights, particularly enforced disappearances and violations of the right to life, and to criminally prosecute, try and punish those responsible for such violations. This duty applies a fortiori in cases in which the perpetrators of such violations have been identified”.

²³⁶ *Case of Kurt v Turkey* (Judgement), European Court of Human Rights, Application No. 15/1997/799/1002 [1998], para 48; *Varnava and others v Turkey* (Judgement) (n 104) para 136; *Osmanoglu v Turkey* (Judgement), European Court of Human Rights, Application No. 48804/99 [2008], para 87; *Case of Gongadze v Ukraine* (Judgement) (n 216) para 170; *Case of Cyprus v Turkey* (Judgement) (n 71), where the ECtHR found that there was a duty to undertake an effective investigation, even where it has not been conclusively established that a person had been killed.

²³⁷ See *Case of Velasquez Rodriguez v Honduras* (Judgement) (Merits) (n 66); *Case of Godinez-Cruz v Honduras* (Judgement) (Merits), Inter-American Court of Human Rights [1989]; *Case of Caballero-Delgado and Santana v Colombia* (Judgement)(Merits), Inter-American Court of Human Rights [1995]; *Lissardi and Rossi v. Guatemala, Case 10.508, Report No. 25/94*, Inter-American Court of Human Rights, OEA/Ser.L/V/II.88 re.1 Doc.9 at 51 [1995]; Note that The Inter-American Commission and Court have considered enforced disappearances as constituting acts of torture or cruel, inhuman or degrading punishment or treatment. The Inter-American Commission (unlike the ECHR) has not distinguished between torture, inhuman and degrading treatment (Scott Davidson ‘The Civil and Political Rights Protected in the Inter-American Human Rights System’ in David J Harris and Stephen Livingstone (eds), *The Inter-American System of Human Rights* (Oxford 1998), 230.)

to investigate missing persons, on sea or land, because of the suffering to family members and loved ones.²³⁸

Though the definition of ‘enforced disappearances’ is primarily concerned with cases where the state is directly or indirectly complicit,²³⁹ Article 3 of the Convention on Enforced Disappearances requires that State parties investigate acts of enforced disappearances even when these are committed by “persons or groups of persons acting without the authorization, support or acquiescence of the state...”²⁴⁰ As such, though they fall outside of the definition articulated in Article 2, the Convention still requires that the state investigate such action and bring perpetrators to justice. Article 6 further requires that the state hold all those individuals who commit, order, solicit, or induce the commission of, attempt to commit, or are an accomplice in the crime of enforced disappearances, criminally responsible.²⁴¹ State parties are required to provide victims with effective remedy in such instances.²⁴² Article 24 of the Convention on Enforced Disappearances describes the rights of relatives to know the truth regarding the circumstances of enforced disappearance,²⁴³ the progress and result of investigation and the fate of disappeared persons.²⁴⁴

The breadth of treaty law guidelines and jurisprudence regarding the obligation to investigate in the instance of enforced disappearances underlines the severity of scrutiny expected in such cases, including with regards to the establishment of identity, cause of death and ensuring that relatives and the public are informed about the fate of the disappeared person.

▪ Death in Custody and in Other State Institutions

Case law confirms that states have an exceptional obligation to protect persons within their custody in accordance with the right to life.²⁴⁵ In the case of *Paul and Audrey Edwards v UK* (2002) the Chamber

²³⁸ *González and others (“Cotton Field”) v. Mexico (Judgement)* (n 74) para 424; see also *Case of Velasquez Rodriguez v Honduras* (Judgement) (Merits) (n 66) para 155-157 and 194; Juan E. Mendez and Jose Miguel Vivanco ‘Disappearances and the Inter-American Court: Reflections on a Litigation Experience’ (1990) 13 *Hamline Law Review*.

²³⁹ See International Convention for the Protection of All Persons from Enforced Disappearance (entered into force 2010) UNTS Vol. 2716; Inter-American Convention on Forced Disappearance of Persons (entered into force 1996) OAS E/CN.4/2003/WG.22/Misc.1, Article 2 states that “[f]or the purposes of this convention, forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees”; UNGA ‘Rome Statute of the International Criminal Court (last amended 2010)’ (adopted 17 July 1998, in force 1 July 2002) UN TS vol. 2187, No. 38544 <<https://www.refworld.org/docid/3ae6b3a84.html>> accessed 23 September 2019, Article 7(2)(i).

²⁴⁰ United Nations, International Convention for the Protection of All Persons from Enforced Disappearance (entered into force 2010) UNTS Vol. 2716, Article 3.

²⁴¹ *Ibid.*, Article 6(1)(a).

²⁴² *Ibid.*, Article 8(2).

²⁴³ *Ibid.*, Article 24(2).

²⁴⁴ *Ibid.*, Article 24(3).

²⁴⁵ See *Case of Anguelova v Bulgaria*, European Court of Human Rights, Application No. 38361/97 [2002], para 121; *Kismir v Turkey*, European Court of Human Rights, Application No. 27306/95 [1995], para 105; *Aktas v Turkey*, European Court of Human Rights, Application No. 24351/94 [2003], para 294; *Khayrullina v Russia* (Judgement), European Court of Human Rights, Application No. 29729/09 [2017], para 84-85.

of the ECtHR unanimously found that there had been a violation of the state's positive obligation to protect because of their failure to protect Edwards while in custody. The ECtHR held that "[i]n the context of prisoners, the Court has had previous occasion to emphasize that persons in custody are in a vulnerable position and that the authorities are under a duty to protect them."²⁴⁶ Similarly, the HRC²⁴⁷ has asserted that,

states parties also have a heightened obligation to take effective measures to protect the lives of individuals incarcerated by the State, since by arresting, detaining and imprisoning individuals States parties assume the responsibility to care for their life and they may not rely on lack of financial resources or other logistical problems to reduce this responsibility.²⁴⁸

The HRC has made it clear that the state's right to life obligations include persons held in 'military camps'²⁴⁹ and 'refugee and internally displaced persons camps'.²⁵⁰ *General Comment No. 36* states that a death in custody, in unnatural circumstance, results in the presumption that there has been a violation of the right to life.²⁵¹ This can only be refuted through an effective investigation (in accordance with international norms).²⁵²

International guidelines have also confirmed the obligation to report and investigate deaths in custody. Rule 71(1) of the *UN Minimum Standards for the Treatment of Prisoners* (known as the *Nelson Mandela Rules*)²⁵³ requires the prison director to rapidly report a death, disappearance or serious injury in custody to a judicial or other competent authority, independent from the administration of the prison and mandated to conduct effective investigations into the circumstances and cause of death. Prison authorities are required to fully cooperate with investigations, including by ensuring that evidence is available. Rule 72 requires that deceased persons be treated with respect and that mortal remains be returned to relatives. Similarly, the *Minnesota Protocol* confirms that where a person has died in custody, the death must be reported, without delay, to a judicial or other competent and independent authorities.²⁵⁴ It goes on to clarify that "this responsibility extends to persons detained in

²⁴⁶ *Paul and Audrey Edwards v the United Kingdom* (Judgement) (n 131) para 56.

²⁴⁷ UN Human Rights Committee (n 15) para 27; see also *Barbato et al v Uruguay*, Human Rights Committee, Communication No. 84/1981, UN Doc. CCPR/C/OP/2 at 112 [1990]; *Lantsov v. Russian Federation*, Human Rights Committee, Communication No. 763/1997, UN Doc CCPR/C/74/D/763/1997 [2002].

²⁴⁸ *Lantsov v. Russian Federation* (n 248) 2; see also *Zhumbaeva v Kyrgyzstan* (n 95) para 8; see also *Burrell v Jamaica*, Human Rights Committee, Communication No. 546/1993, UN doc CCPR/C/53/D/546/1993 [1996], para 9(5).

²⁴⁹ Human Rights Committee, 'Concluding Observations: Armenia' (2012) UN Doc CCPR/C.ARM/CO/2, para 15.

²⁵⁰ UN Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: International Covenant on Civil and Political Rights: Concluding Observation of the Human Rights Committee: Kosovo (Serbia) (2006), UN Docs CCPR/C/UNK/CO/1, 14.

²⁵¹ UN Human Rights Committee (n 15) para 29.

²⁵² *Eshonov v. Uzbekistan* (n 217) para. 9(2); *Zhumbaeva v. Kyrgyzstan* (n 95) para. 8(8); Committee on the Elimination of Discrimination against Women 'Joint General Recommendation No. 31' /Committee on the Rights Child 'General Comment No. 18' UN Docs CEDAW/C/GC/31/REV.1 – CRC/C/GC/18/Rev.1 [2019], para 56; *Khadzhiyev v. Turkmenistan*, Human Rights Committee, Communication No. 2252/2013, UN Docs CCPR/C/122/D/2252/2013, para. 7(3).

²⁵³ UNGA, 'United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)' (2016) UN Docs. A/RES/70/175.

²⁵⁴ UN GA, 'Note by the Secretary-General: Extrajudicial, Summary or Arbitrary Executions' (2006) UN Docs A/61/31, para 49–54.

prisons, in other places of detention (official or otherwise) and to persons in other facilities where the State exercises heightened control over their life.”²⁵⁵ Due to the control exercised by the State in such locations, “there is a general presumption of state responsibility in such cases.”²⁵⁶ The *Minnesota Protocol* clearly states that “the State is under the obligation to provide all relevant documentation to the family of the deceased, including the death certificate, medical report and reports on the investigation held into the circumstances surrounding the death.”²⁵⁷

Case law suggests that the procedural obligation to investigate extends to other types of state-run institutions, in addition to prisons and detention centres. In cases where the court has taken custodial care of someone, there is a heightened duty to exercise due diligence in protecting the right to life of those who are physically under its control (e.g. putting in place measures against violence from state agents, providing medical assistance,²⁵⁸ protecting against self-harm and other persons;²⁵⁹ as an example see *Edwards*).²⁶⁰ Consider *Dodov v Bulgaria*: the applicant’s mother suffered from Alzheimer and was housed in a state-run nursing home. While a resident in the nursing home, she was left unattended in the courtyard, disappeared and was never found. The applicant initiated criminal proceedings against the nursing home which were eventually terminated for being time-barred. The ECtHR unanimously found a violation of Article 2 for the failure to investigate and bring responsible actors to account for their negligence.

As shown above, case law confirms a strict obligation to investigation death in custody or in other state institutions.

▪ **Wrongful Death Committed by a Third Party**

Based on the obligation to protect under the right to life, human rights adjudicating bodies have confirmed that states have a procedural obligation to investigate death, even where state actors were not involved in the wrongful death and death was allegedly a result the action of a third party. The obligation to protect people from death from third parties is an obligation of means, not results. As such, the state must exercise ‘due diligence’ where there is a threat against a person’s or people’s life. For example, in *Delgado Paez v Colombia*, the HRC found a violation of Article 6 because the state

²⁵⁵ United Nations Human Rights Office of the High Commissioner (n 20) 4-5, para 17.

²⁵⁶ *Barbato v. Uruguay* (Views), Human Rights Committee, Communication, No. 84/1981, UN doc. CCPR/C/OP/2 [1990], para. 9(2).

²⁵⁷ United Nations Human Rights Office of the High Commissioner (n 20) 4-5, para 17; see also *Barbato v. Uruguay* (Views) (n 257) para 9(2).

²⁵⁸ As stipulated in UNGA (n 254); *Ximenes-Lopes v Brazil* (Judgement) Inter-American Court of Human Rights [2006], paras 101-11 and 120-50.

²⁵⁹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, ‘The CPT Standards’ (2002) CPT/Inf/E (2002) 1 – Rev. 2010, 21, para 27.

²⁶⁰ *Salman v Turkey* (Judgement) (n 117) para 99; *Anguelova v Bulgaria* (Judgement) (n 246) para 110.

failed to give protection to a person receiving death threats.²⁶¹ Rooting the obligation to protect in Article 2(1) of the ICCPR, the *General Comment No. 36* reads,

[s]tates parties are thus under a due diligence obligation to take reasonable, positive measures that do not impose disproportionate burdens on them in response to reasonably foreseeable threats to life originating from private persons and entities whose conduct is not attributable to the State. Hence, States parties are obliged to take adequate preventive measures in order to protect individuals against reasonably foreseen threats of being murdered or killed by criminals and organized crime or militia groups, including armed or terrorist groups.²⁶²

Across its jurisprudence, the ECtHR usually finds a violation of the right to life in cases of death at the hands of a third party where there was a real and immediate risk²⁶³ and where the state should have known about the risk²⁶⁴ and they still failed to prevent the death. In *Osman v UK* the ECtHR first described the state's obligation to take 'practical measures' to safeguard the right to life from criminal acts of third parties,²⁶⁵ where "the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and... failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk."²⁶⁶ In this case, a schoolmaster stalked a former student and killed him; though the ECtHR did not find a violation in this specific case, they made it clear that if there had been evidence of impending harm and the state had failed to act, the state would have been in violation of Article 2 of the ECHR.²⁶⁷

The 'Osman test' has been used as an analysis framework for subsequent cases, including cases considered by the IACHR and the HRC. The obligation to protect individual life from criminal acts by private persons,²⁶⁸ and even from self-harm,²⁶⁹ has been explored in several cases since the ECtHR first described it in *Osman*. The ECtHR has found the state in violation of the obligation to protect individuals from death at the hands of a third party in a variety of circumstances, including the murder

²⁶¹ Compare with *Delgado Paez v Colombia*, Human Rights Committee, Communication No. 195/1985, UN Docs CCPR/C/39/D/195/1985 [1990], paras 5.5, 5.6, 6.

²⁶² UN Human Rights Committee (n 15) para 21; see also *Sawhoyamaya Indigenous Community v. Paraguay*, Inter-American Court of Human Rights [2006], para 155; *Peiris et al. v. Sri Lanka* (Merits) Human Rights Committee, UN Docs CCPR/C/103/D/1862/2009, para 7.2; UN Human Rights Committee (n 87) para 17.

²⁶³ See for example *Makaratzis v Greece* (n 82) para 71.

²⁶⁴ See *Case of Osman v the United Kingdom* (Judgement) (n 66) para 121; *Kilip v Turkey* (Judgement), European Court of Human Rights, Application No. 22492/93 [2000], para 66; *Case of Oneryildiz v Turkey* (n 82) para 87. For more recent examples, see *Leonidis v Greece* (Judgement), European Court of Human rights, Application No. 43326/05 [2009], para 66; *Mikayil Mammadov v Azerbaijan* (n 166) para 113; *González and others ("Cotton Field") v. Mexico* (Judgement) (n 74) paras 282-283.

²⁶⁵ *Case of Osman v the United Kingdom* (Judgement) (n 66) para 115.

²⁶⁶ *Ibid*, para 166.

²⁶⁷ *Ibid*, para 116.

²⁶⁸ See e.g., *Dink v Turkey*, European Court of Human Rights, Application Nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09 [2010]; *Van Colle v UK* (Judgement), European Court of Human Rights, Application No. 7678/09 [2012].

²⁶⁹ See *Mikayil Mammadov v Azerbaijan* (Judgement) (n 166).

of a prisoner,²⁷⁰ domestic violence,²⁷¹ protection of witnesses in criminal proceedings,²⁷² killing of civilians in conflict zones,²⁷³ killing of a conscript during military service,²⁷⁴ and kidnapping.²⁷⁵

The IACtHR further developed the state's duty to prevent in the *Pueblo Bello Massacre v Colombia*.²⁷⁶ In this case, a paramilitary group committed a massacre which resulted in widespread death in the targeted village. The facts of the case pointed to no direct state involvement in the massacre, confirmed by the fact that there was no "connection between the members of the Army and the paramilitary groups or a delegation of public functions [to] such groups."²⁷⁷ In this case, the court applied the 'Osman test' to evaluate the state's responsibility²⁷⁸ and found,

the nature *ergo omnes* of the treaty-based guarantee obligations of the states does not imply their unlimited responsibility for all acts or deed of individuals, because its obligations to adopt prevention and protection measures and protection measures for individuals in their relationships with each other are conditioned by the awareness of a situation of real and imminent danger for a specific individual or group of individuals and to the reasonable possibilities of preventing or avoiding that danger.²⁷⁹

The Court found that the state had violated its duty to prevent the unlawful killings because it had not taken the steps necessary to protect the local population from paramilitaries.²⁸⁰

Treaty law has confirmed an obligation to conduct an investigation in cases where wrongful death was committed by a third party. As illustration, the ECHR's guidance on the right to life states that,

[t]his stems from Article 2 which imposes a duty on that State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. This obligation requires by implication that there should be some form of effective official investigation when there is reason to believe that an

²⁷⁰ *Paul and Audrey Edwards v the United Kingdom* (Judgement) (n 131) 57.

²⁷¹ *Branko Tomašić and others v Croatia* (Judgement), European Court of Human Rights, Application No. 46598/06 [2009], para 52-53; *Case of Opuz v Turkey* (Judgement) (n 72) para 129; *Case of Tkheldze v Georgia* (Judgement), European Court of Human Rights, Application No. 33056/17 [2021], para 57; *Case of A and B v Georgia* (Judgment), European Court of Human Rights, Application No. 73975/16 [2022], para 49.

²⁷² *Van Colle v the UK* (Judgement) European Court of Human Rights, Application No. 7678/09 [2012]; *A and B v. Romania* (Judgement), European Court of Human Rights, Application No. 48442/16 and 48831/16 [2000], para 118.

²⁷³ *Case of Kilic v Turkey* (n 82) para 63; *Mahmut Kaya v Turkey* (n 69) para 88.

²⁷⁴ *Yabansu and others v Turkey* (Judgement), European Court of Human Rights, Application No. 43903/09 [2012], para 91.

²⁷⁵ *Olewnik-Cieplińska and Olewnik v Poland* (Judgement), European Court of Human Rights, Application No. 20147/15 [2019], para 125.

²⁷⁶ *Case of the Pueblo Bello Massacre v Colombia* (n 125).

²⁷⁷ *Ibid*, para 140.

²⁷⁸ The Court included paragraphs from ECtHR's Kilip decision (see *Kilip v Turkey* (Judgement), European Court of Human Rights, Application No. 22492/93 [2000], 62-63).

²⁷⁹ *Case of the Pueblo Bello Massacre v Colombia* (n 125) para 123.

²⁸⁰ *Ibid*, para 140.

individual has sustained life-threatening injuries in suspicious circumstances, even where the presumed perpetrator of the fatal attack is not a state agent.²⁸¹

Similarly, in *Yasa v Turkey* the ECtHR held that states are required to conduct investigations into death, even where the death was not caused by an agent of the State and/or there was no formal complaint.²⁸² The Court came to similar conclusions in *Rod v Croatia*²⁸³ and *Ergi*.²⁸⁴

The HRC has also found an obligation to investigate, regardless of the state parties involvement in the alleged wrongful death. In *General Comment No. 36* the HRC argues that “[s]tates parties must further take adequate measures of protection, including continuous supervision, in order to prevent, investigate, punish and remedy arbitrary deprivation of life by private entities, such as private transportation companies, private hospitals and private security firms.”²⁸⁵ Consider the case *Marcellana and Gumanoy v Philippines*,²⁸⁶ where two persons were detained by armed individuals and were found dead the next day (killed by gunshot wounds). The HRC determined that there was insufficient evidence to determine whether the responsible actors were state agents. However, they found that there had been a violation of Article 6 in conjunction with Article 2(3) of the ICCPR as a result of the inadequate investigation, arguing, “the absence of investigations to establish responsibility for the kidnapping and murder of the victims amounted to a denial of justice.”²⁸⁷ In the same vein, in *Amirov v Russian Federation*²⁸⁸ the HRC found insufficient evidence that state agents had perpetrated the relevant killing; however, they found a violation of Article 6, read in conjunction with Article 2(3) for the failure to properly investigate a death. The HRC conclusions in *Pestaño v Philippines*²⁸⁹ and *Telitsin v Russian Federation*²⁹⁰ were similar.

The Inter-American human rights system and the ECtHR have considered several cases of disappeared persons and killings by unknown perpetrators under Article 2, with particular attention to the failure to investigate.²⁹¹ In the IAtCHR’s consideration of the *Velasquez Rodriguez* case the Court found that states have a duty to investigate alleged violations of life, regardless of the identity of the

²⁸¹ European Court of Human Rights (n 14); see also *Mustafa Tunc and Fecire Tunc v Turkey* (n 134) para 171.

²⁸² *Yasa v Turkey* (Judgement) (n 113) para 100.

²⁸³ *Rod v Croatia* (Judgement), European Court of Human Rights, Application No. 47024/06 [2008].

²⁸⁴ The state argued that the Court could only scrutinize a death if it was a result of the use of force by a state agent (as in the case of McCann) (*Ergi v Turkey* (Judgement) (n 94) para 75). The ECtHR firmly refused this argument, finding that the obligation “is not confined to cases where it has been established that the killing was caused by an agent of the State” (*Ergi v Turkey* (Judgement) (n 94) para 82).

²⁸⁵ UN Human Rights Committee (n 15) para 21; see also *Case of Ximenes-Lopes v. Brazil* (Judgement) (n 259) para 96; *Da Silva Pimentel v. Brazil*, Committee on the Elimination of Discrimination against Women, UN Docs CEDAW/C/49/D/17/2008 [2011], para. 7(5); *Nitecki v. Poland Decision*, European Court of Human Rights, Application No. 65653/01 [2002]; *Calvelli and Ciglio v. Italy* (Judgement) (n 84) para 49.

²⁸⁶ *Marcellana and Gumanoy v Philippines*, Human Rights Committee, Communication No 1560/07 [2008].

²⁸⁷ *Ibid.*

²⁸⁸ *Amirov v Russian Federation*, Human Rights Committee, Application No. 1447/06, UN Docs CCPR/C/95/D/1447/2006 [2009].

²⁸⁹ *Pestaño v Philippines*, Human Rights Committee, Communication No. 1619/07, UN doc CCPR/C/98/D/1619/2007 [2010].

²⁹⁰ *Telitsin v Russian Federation*, Human Rights Committee, Communication No. 888/99, UN doc CCPR/C/80/D/888/1999 [2004].

²⁹¹ David Harris, Michael O’Boyle, Ed Bates, Carla Bucklet, Paul Harvey, Kresimir Kamber, Michelle Lafferty, Peter Cumper, Heather Green (n 65).

perpetrators.²⁹² As such, a state can still be held responsible for a procedural failure even if there has been no substantive violation established. This obligation is contingent on the establishment of appropriate administrative and criminal laws and procedures, including with regards to ensuring that there is an effective, prompt and impartial investigation where there is credible information regarding an alleged or potential violation of the right to life.²⁹³

As such, international jurisprudence defines the procedural obligation to investigate death even where wrongful death was perpetrated by a third party and no state agents were involved.

▪ Negligence Resulting in a Wrongful Death

International jurisprudence confirms that there is a procedural obligation to investigate death when death is caused by negligence, either because of state action (or lack thereof) or third parties.

It is increasingly recognized that the phrase “no one shall be deprived of this life intentionally”, includes negligence as well as intentional deprivation of life by state agents.²⁹⁴ The ECtHR’s guidelines on the right to life explain that the Court has extended the scope of the right to life “to circumstances where an individual has sustained life-threatening injuries or where lives have been lost in circumstances potentially engaging the responsibility of the state due to alleged negligence.”²⁹⁵ The *Guidelines* go on to confirm that the ECtHR have imposed the general principles regarding the duty to investigate (minimum required standards).²⁹⁶ In *McCann*, the ECtHR found that “the Court considers that the exceptions delineated in paragraph 2 (art. 2-2) indicate that this provision (art 2.2) extends to, but is not concerned exclusively with, intentional killing.”²⁹⁷

The ECtHR Guidelines on the right to life also explore the state’s procedural obligations where death resulted from negligence due to the actions of a private individual. The ECtHR finds that in these cases, “the state’s duty to take appropriate steps to safeguard the lives of those within its jurisdiction includes an obligation to have in place an effective independent judicial system securing the availability of legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress to the victim.”²⁹⁸ Even where there has been a non-intentional infringement on the right to life, an effective criminal investigation may still be required to satisfy the

²⁹² *Case of Velasquez Rodriguez v Honduras* (Judgement) (Merits) (n 66) paras 172-7.

²⁹³ See *Case of the ‘Mapiripan Massacre’ v Colombia* (Judgment), Inter-American Court of Human Rights [2005], para 219; *Case of Hugh Jordan v the United Kingdom* (Judgement) (n 128) paras 105-8.

²⁹⁴ Otto Roland, *Targeted Killings and International Law* (Springer 2010), 151-53.

²⁹⁵ European Court of Human Rights (n 14) para 142.

²⁹⁶ *Ibid*, para 142.

²⁹⁷ *Case of McCann and Others v the UK* (n 47) para 148.

²⁹⁸ European Court of Human Rights (n 14) para 205; see also *Anna Todorova v Bulgaria* (n 152) para 72; *Ilbeyi Kemaloglu and Meriye Kemaloglu v Turkey*, European Court of Human Rights, Application No. 19986/06 [2012], para 38; *Kotelnikov v Russia*, European Court of Human Rights, Application No. 45104/05 [2015], para 99-101.

procedural elements of the right to life.²⁹⁹ The ECtHR has ruled on multiple occasions that negligence led to an infringement of the right to life (e.g. the negligence went beyond mere error of judgement or carelessness), including in the context of industrial activities,³⁰⁰ denial of healthcare,³⁰¹ military activities,³⁰² transportation of dangerous goods,³⁰³ road safety,³⁰⁴ and domestic violence.³⁰⁵

The ECtHR found that even where it is not immediately clear whether death resulted from an accident or another unintentional action but there is a possibility of wrongful death, state parties are required to conduct an effective investigation to clarify the circumstances of the death. This is an obligation of means and exists regardless of the outcome of the investigation (i.e. even if the investigation finds that death resulted from an accident).³⁰⁶ This point was extensively considered in *Nicolae Virgiliu Tanase v Romania*.³⁰⁷ States are also required to conduct an investigation where death has been caused by an unsafe context, particularly where state agents know or should have known that there was a threat to life. Examples include dangerous industrial activities and natural disasters (particularly regarding preventive action).³⁰⁸

Given the unique vulnerability of patients in healthcare facilities, human rights adjudicating bodies have paid particular attention to establishing a procedural obligation to protect life and investigate wrongful death in this context, including with regards to negligence. For example, the ECtHR requires the establishment of an independent system to determine cause of death for patients in care of a medical professional. In the case *Erikson v Italy*³⁰⁹ the applicant asserted that the Italian legal system had failed to undertake an effective investigation following the death of his mother after she had undergone some medical examinations. The court confirmed that states are obligated not only to refrain from causing death, but also to take adequate measures to protect life. As such, the court held that Article 2 was applicable because “the deprivation of life was not the result of the use of lethal force by agents of the State, but where agents of the State potentially bear responsibility for loss of life.”³¹⁰ In this decision, the ECtHR confirmed that the right to an effective investigation applies regardless of whether the death was as a result of lethal force, particularly in hospitals.³¹¹

²⁹⁹ *Cevrioglu v Turkey*, European Court of Human Rights, Application No. 69546/12 [2016], para 54; *Lopes de Sousa Fernandes v Portugal* (Judgement) (n 111) para 215.

³⁰⁰ *Case of Oneryildiz v Turkey* (n 82) para 71.

³⁰¹ *Asiye Genc v Turkey*, European Court of Human Rights, Application No. 24109/07 [2015], para 73.

³⁰² *Oruk v Turkey*, European Court of Human Rights, Application No. 33647/04 [2014], para 50 and 65.

³⁰³ *Sinim v Turkey* (Judgements), European Court of Human Rights, Application No. 9441/10 [2017], para 62-64.

³⁰⁴ *Smiljanic v Croatia* (Judgement), European Court of Human Rights, Application No. 35983/14 [2021], para 93.

³⁰⁵ European Court of Human Rights (n 14) para 210; see also *Tkheldze v Georgia* (n 272) para 59-60; *Penati v Italy*, European Court of Human Rights, Application No. 44166/15 [2021], para 158-162.

³⁰⁶ *Mustafa Tunc and Fecire Tunc v Turkey* (n 134) para 133; *Case of Zinatullin v Russia*, European Court of Human Rights, Application No. 10551/01, para 35; European Court of Human Rights (n 14) para 211.

³⁰⁷ *Nicolae Virgiliu Tanase v Romania*, European Court of Human Rights, Application No. 41720/13, para 160-164.

³⁰⁸ *Case of Oneryildiz v Turkey* (n 82) 93-94; *Case of Budayeva and Others v. Russia* (Judgement) (n 88) para 142.

³⁰⁹ *Erikson v Italy* (Judgement), European Court of Human Rights, Application No. 37900/97 [19990].

³¹⁰ *Ibid.*, 7.

³¹¹ *Ibid.*, 7.

International jurisprudence confirms that there is an obligation to investigate even where death is a result of negligence, rather than intent. In this subsection, I looked at case law confirming the procedural obligation to investigate in the context of state negligence, negligence by third parties, negligence in healthcare, cases where the facts are unclear and accidental death unconfirmed, and where the context is unsafe.

II.E Conclusions on the Procedural Obligation to Investigate

Based on the review of international jurisprudence, there is clear evidence that death registration is an implicit requirement of the obligation to conduct an effective investigation under the right to life. Methodologically, this analysis draws heavily on the principles of effectiveness, as defined in Chapter 6. In this section, I have explored the procedural obligation to investigate wrongful death, including through the establishment of administrative and other systems, arguably including death registration. I discussed how the obligation to investigate is triggered and the required burden and proof, finding that in almost all cases the state is under an obligation to trigger an investigation as soon as they become aware of a case of possible wrongful death. I proved that this responsibility exists in all cases, not only where the state is responsible. As such, I argued that it is only by establishing a national system that universally registers all death, with a referral mechanism to the criminal justice system, that it is possible to trigger an investigation, without discrimination, in accordance with principle of effectiveness and considering the object and purpose of human rights treaties. Subsequently, I looked at the components of an investigation, as defined by international jurisprudence, to evaluate the degree to which death registration can be considered an implicit obligation as part of an effective investigation. Though case law does not directly refer to death registration, it requires the essential components of a well-functioning death registration system, namely identification of the deceased, cause of death, and provision of a death certificate to relatives. It is difficult to imagine in the current context how effective investigations could be conducted into all potentially wrongful deaths without a death registration system that systematically identifies the dead and cause of death. Finally, I assessed the degree to which the duty to investigate applies to a broad range of deaths and found clear international jurisprudence indicating that state parties are obligated to investigate death where state agents are involved, where death occurred at the hands of a private actor, and where deaths resulted from negligent behaviour from a range of actors. This broad spectrum of responsibility again seems to require a universal death registration system to ensure that criminal investigations can be triggered as necessary. As such, there seems to be a clear implicit obligation under the right to life and effective remedy to set-up and administer universal death registration to ensure effective realization of the obligation to investigate potential wrongful death.

In the next section, I will consider the second component of the positive obligation under the right to life, namely states' duty to prevent wrongful death and protect life.

III. Substantive Obligation to Protect Life and Prevent Wrongful Death in the Context of Structural Risks

It has been well established by human rights adjudicating bodies that the right to life includes positive obligations to prevent wrongful death and protect life. In the section above, I explored components of this obligation related to an effective criminal law system backed by law-enforcement machinery that allows for the sanction of breaches, including the procedural obligation to effectively investigate all suspicious deaths and hold perpetrators to account.³¹² However, the state's substantive obligation to protect goes beyond criminalization of wrongful death. In this section I will explore the state's positive obligation under the right to life to protect life and to prevent wrongful death. I will argue that case law points to an obligation to put in place regulations and policies to proactively counter threats to life, as they become known to the state. Taking into consideration the varied situations in which this has been applied, I argue that effective realization of this obligation requires, among other information, morbidity and mortality surveillance, enabling states to develop data-driven, up-to-date and risk-informed regulations and policies that are accurately able to counter threats.

There is emerging jurisprudence describing the positive obligation to protect life. This seems a logical progression considering that the greatest threats to human life (even in the so-call geopolitical 'West') are things such as poverty, starvation, lack of medical care and quality housing, rather than killing by the state.³¹³

My analysis of the obligation to protect reflects the teleological interpretation approach described the previous Chapter and as such is focused on the objective and purpose of the treaty. This approach is aligned to the general position of human rights courts and tribunals, as described in Chapter 6. In particular, it draws on the principle of effectiveness and it reflects the evolutionary approach to treaty interpretation adopted by international human rights adjudicating bodies.

Highlighting the object and purpose of the conventions, ECtHR has also confirmed that in addition to a procedural element to ensure some form of effective official investigation where there is a killing, Article 2 of the ECHR "enjoins the state... to take appropriate steps to safeguard the lives of those

³¹² *Case of McCann and Others v the United Kingdom* (Judgement) (n 47); *Case of Mahmut Kaya v Turkey* (Judgement) (n 69).

³¹³ Elizabeth Wicks, 'The Meaning of 'Life': Dignity and the Right to Life in International Human Rights Treaties' (2012) *Human Rights Law Review* 12(2), 206-7.

within its jurisdiction.”³¹⁴ This position was reiterated in *LCB v UK* (1998)³¹⁵ and *Powell v. United Kingdom*.³¹⁶ The ECtHR has described this obligation in multiple settings, including detention, dangerous industrial activities and other environmental threats,³¹⁷ hospitals,³¹⁸ and in the context of natural disasters (including an early-warning system or necessary infrastructure).³¹⁹

Adopting a similar ‘evolutionary’ approach to treaty interpretation, the HRC has also confirmed through its communication with states³²⁰ that the right to life cannot be understood in a restrictive manner, but that it requires a State to adopt positive measures such as the prevention of wars, reducing infant mortality,³²¹ eliminating malnutrition and epidemics, addressing shorter life expectancy of women,³²² access to antiretroviral medication,³²³ inadequate sexual education in light of the HIV/AIDS crisis,³²⁴ etc.³²⁵ *General comment No. 36* states that “[t]he duty to protect the right to life by law also includes an obligation for States parties to adopt any appropriate laws or other measures in order to protect life from all reasonably foreseeable threats, including from threats emanating from private persons and entities.”³²⁶ It goes on to say, “[t]he duty to take positive measures to protect the right to life derives from the general duty to ensure the rights recognized in the Covenant, which is articulated in Article 2 (1) when read in conjunction with Article 6, as well as from the specific duty to protect the right to life by law, which is articulated in the second sentence of Article 6.”³²⁷ *General Comment No. 36* explains that the state’s obligation to protect life implies that state parties should “take appropriate measures to address the general conditions in society that may give rise to direct threats to life and prevent individuals from enjoying their right to life with dignity.”³²⁸ Cases where the HRC has considered the obligation to protect were, for example, in reference to high levels of criminal and gun violence,³²⁹ pervasive traffic and industrial accidents,³³⁰ degradation of the

³¹⁴ *Case of Osman v the United Kingdom* (Judgement) (n 66) para 115; also see *Case of Oneryildiz v Turkey* (n 82); *Case of Budayeva and Others v. Russia* (Judgement) (n 88).

³¹⁵ *Case of Guerra v Italy* (Judgement), European Court of Human Rights, Application No. 116/1996/735/932 [1998], 227.

³¹⁶ *Powell v the United Kingdom* (n 91).

³¹⁷ In *Case of Oneryildiz v Turkey* (n 82) Court emphasized the state’s duty to have regulations, security, operations, and supervision of dangerous activity, including public’s right to information.

³¹⁸ In *Erikson v Italy* (n 310) states are required to ensure that hospitals have regulations to protect patients’ lives and to have an effective judicial system that can establish cause of death, as needed.

³¹⁹ *Case of Budayeva and Others v. Russia* (Judgement) (n 88)147-160.

³²⁰ see e.g., Human Rights Committee, ‘Concluding Comments on Brazil’ (1996) UN docs CCPR/C/79/Add.66.

³²¹ Human Rights Committee, ‘Comments on Romania’ (1994) UN docs CCPR/C/79/Add. 30, para 11; see also Human Rights Committee, ‘Concluding Observations: Brazil’ (1996) UN doc CCPR/C/79/Add.66, para 23.

³²² Human Rights Committee, ‘Comments on Nepal’ (1995) UN doc CCPR/C/79/Add.42, para 8.

³²³ Human Rights Committee, ‘Concluding Observations of the Human Rights Committee: Uganda’ (2004) UN docs CCPR/CO/80/UGA, para 14; see also Human Rights Committee, ‘Concluding Observations on Kenya’ (2005) UN doc CCPR/CO/83/KEN, para 15.

³²⁴ Human Rights Committee, ‘Concluding Observations: Namibia’ (2004) UN doc CCPR/CO/81/NAM, para 10.

³²⁵ See for example, UN Human Rights Committee (n 28) para 5.

³²⁶ UN Human Rights Committee (n 15) para 18.

³²⁷ *Ibid*, para 21.

³²⁸ *Ibid*, para 26.

³²⁹ Human Rights Committee, ‘Concluding Observations on the Fourth Periodic Report of the USA’ (2014) UN Doc CCPR/C/USA/CO/4, para 10.

³³⁰ *Öneryildiz v. Turkey*, European Court of Human Rights, Application No. 48939/00 [2004], para 71.

environment,³³¹ deprivation of indigenous peoples' land, territories and resources,³³² the prevalence of life-threatening diseases, such as AIDS, tuberculosis and malaria,³³³ extensive substance abuse, widespread hunger and malnutrition and extreme poverty and homelessness.³³⁴ The HRC has called on state parties to put in place adequate conditions for protecting the right to life, including,

essential goods and services such as food, water, shelter, health care, electricity and sanitation, and other measures designed to promote and facilitate adequate general conditions, such as the bolstering of effective emergency health services, emergency response operations (including firefighters, ambulance services and police forces) and social housing programmes.³³⁵

Like the ECtHR, the IACtHR has also increasingly adopted a broad approach to the right to life based on the objective and purpose of the Convention. The IACtHR ruled that Article 4(1) read in conjunction with Article 1(1) of the ACHR "implied an obligation on the part of the States Parties to take reasonable steps to prevent situations that could result in the violation of that right [to life]."³³⁶ In *Villagran Morales v Guatemala* the IACtHR held that the right to life included "not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence".³³⁷

A similar approach can be identified in the ACHPR which states that "[h]uman beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right." The focus on 'dignity' in the African Charter is further confirmed in Article 5, which reads that every person has a "right to the respect of the dignity inherent in a human being." The African Commission has found that Article 4 of the African Charter obligates state parties to prevent arbitrary deprivations of life caused by state agents as well as other individuals or private entities. This not only requires the adoption of legislation and effective enforcement, but also that state parties put in place positive measures to protect the individual against injurious acts by third parties (duty to intervene to protect).³³⁸ The African Commission has even ruled that the duty to protect lives extends to situations where deaths occur in the thousands and are not caused by state

³³¹ *African Commission on Human and Peoples' Rights, Social and Economic Rights Centre (SERAC) and Centre for Economic and Social Rights (CESR) v. Nigeria*, African commission on Human and People's Rights, Communication No. 155/96 (2001), para 67.

³³² Inter-Agency Support Group on Indigenous Peoples' Issues 'Lands, Territories and Resources' (22–23 September 2014) Thematic Paper towards the Preparation of the 2014 World Conference on Indigenous Peoples, 4.

³³³ Human Rights Committee 'Concluding Observations adopted by the Human Rights Committee at its 105th session: Kenya' (2012) UN Doc CCPR/C/KEN/CO/3, para 9.

³³⁴ Human Rights Committee (n 15) para 26, para 5; Human Rights Committee, 'Concluding Observations of the Human Rights Committee: Canada' (1999) UN Docs CCPR/C/79/Add.105, para 12.

³³⁵ UN Human Rights Committee (n 15) para 26.

³³⁶ *Fairin-Garbiand Solis-Corales v Honduras*, Inter-American Court of Human Rights [1989], para 152.

³³⁷ 'Street Children' *Villagran Morales et al. v. Guatemala* (n 38) 144 and 191.

³³⁸ *Commission Nationale des Droits de l'homme et des libertes v Chad*, African Commission on Human and Peoples' Rights, Communication No. 74/92 [1995], 25.

agents.³³⁹ Where the state is aware of a life threatening situation but does not act fast enough, the African Commission has also found a violation of Article 1 of the African Charter (effective protection of human rights in the territory).³⁴⁰ This broad approach to the right to life and positive state obligation was confirmed by the African Commission on Human and Peoples' Rights in their decision in the case *Social and Economic rights Action Centre and the Centre for Economic and Social Rights v Nigeria*,³⁴¹ where the Commission found that the state not only had a positive obligation to move towards implementation of protective measures, including providing direct support to respond to basic needs, such as provision of food.

The *Minnesota Protocol* also describes the state's obligation to protect life, explaining that there has been a violation of the substantive right to life "where a state fails to exercise due diligence to protect an individual or individuals from foreseeable external threats or violence by non-State actors."³⁴²

Drawing on the contribution of Ebert, Christian and Sijniensky in their analysis of IACtHR's case law, there are two broad categories of case law that can be identified from international judiciary bodies with regards to the obligation to protect:

(a) cases where the obligation to protect arises from the imminent actions of a specific individual or set of individuals: examples include, *Pueblo Belloc* case, *Valle Jaramillo et al v Colombia*³⁴³ (where human rights defenders were killed by paramilitary groups), *Mahmut Kaya v Turkey*³⁴⁴ (where ECtHR found that the general rumours and reported killings of alleged supporters of the PKK by non-state actors were sufficient to require that state to have taken preventative action to protect the right to life). The state's substantive positive obligation includes a duty to,

take preventive action where there are, inter alia, foreseeable threats to life originating not only from state authorities but also from private persons. The state must take 'adequate preventive measures in order to protect individuals from being murdered or killed by criminals and organized crime'. The obligation also arises where loss of life results from a life-threatening activity or situation of which the authorities knew or ought to have known. In certain circumstances, states must also protect individuals from risks to their lives which

³³⁹ *Amnesty International and Others v Sudan*, African Commission on Human and Peoples' Rights, Communication No. 48/90, 50/91, 52/91, 89/93 [1999], para 50.

³⁴⁰ *Association of Victims of Post Electoral Violence and Interrights v Cameroon*, African Commission on Human and Peoples' Rights, Communication No 272/03 [2009].

³⁴¹ African Commission on Human and Peoples' Rights, '15th Annual Activity Report of the ACHPR' (2002) 155/1996, paras 44-47.

³⁴² United Nations Human Rights Office of the High Commissioner (n 20) 1; See e.g., UN Human Rights Committee (n 85) para 8.

³⁴³ *Case of Valle Jaramillo et al. v Colombia*, Inter-American Court of Human Rights [2008], paras 80 and 92.

³⁴⁴ *Case of Mahmut Kaya v Turkey* (Judgement) (n 69).

result from their own actions; this means that states should not argue an exception in the case of migrants who pay smugglers to take them on dangerous journeys.³⁴⁵

(b) **cases where violations to the right to life take place in the context of a structural risk:** such as *Gonzdelz et al. V Mexico*³⁴⁶ (cotton field case) (regarding enforced disappearances and feminicide); *Sawhoyamaya Indigenous Community v Paraguay*³⁴⁷ (regarding an indigenous community that could not access lands and lived in abject poverty); and *Xdkmok Kdsek Indigenous Community v Paraguay*³⁴⁸ (regarding a failure to prevent death of indigenous communities living in precarious conditions).³⁴⁹

For the purposes of this thesis, I am primarily concerned with the second component. Drawing on the teleological approach to treaty interpretation defined in the last chapter (particularly the principle of effective realization and the importance of object and purpose), I will argue that effective realization of this emerging obligation is contingent on the development of national data, including mortality statistics, which requires a universal death registration system.

III.A Sample Jurisprudence on the Scope of the Obligation to Protect Life and Prevent Wrongful Death

There is a growing body of jurisprudence describing the positive obligation to protect life and prevent wrongful death. The potential breadth of this obligation is staggering and yet the external boundaries remain unclear. As such, in this section I will look at a few examples that have been considered by courts to confirm growing recognition of this obligation. Subsequently, I will consider the degree to which death registration is an implicit requirement in effective realization of the positive obligation to protect.

■ Socioeconomic Conditions

Consider the recent jurisprudence linking the right to life to a state's obligation to provide adequate socioeconomic conditions for a 'dignified life'. Wicks argues that the IACHR has led the way in recognizing a state obligation to "create the conditions required to guarantee a dignified existence. In

³⁴⁵ Stefanie Grant (n 6) 10; see also UN Human Rights Committee (n 15) para 25; *Case of Oneryildiz v Turkey* (n 82) para 71; *Furdik v Slovakia*, European Court of Human Rights, Application No 42994/05 [2008].

³⁴⁶ *González and others ("Cotton Field") v. Mexico (Judgement)* (n 74).

³⁴⁷ See *Case of the Sawhoyamaya Indigenous Community v Paraguay (Judgement)* (n 263) para 155; *Case of the Yakye Axa Indigenous Community v Paraguay* (n 44) para 178.

³⁴⁸ *Case of the Xakmok Kasek Indigenous Community v Paraguay (Judgement)*, Inter-American Court of Human Rights [2010], paras 188, 230 and 234.

³⁴⁹ Franz Christian Ebert and Romina Sijniensky (n 59) 353-355

this way a broad range of economic and social rights can be incorporated into a state obligation to protect human life.”³⁵⁰ For example, in *Mapiripan Massacre v Colombia* it found that the dismal living conditions of displaced persons contributed to the state’s violation of the right to life.³⁵¹ *General Comment 36* of the HRC not only describes the obligation to prevent death but also to ensure a “life with dignity”;³⁵² “[s]tates parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity”.³⁵³ Although the HRC uses recommendatory language, it lists a number of ‘general conditions’ that states should address to ensure a life with dignity, including gun violence, traffic and industrial accidents, life-threatening diseases, emergency response operation, social housing conditions, etc. In several Concluding Observations, the HRC has pointed to a potential link between socio-economic conditions and the right to life. For example, in its 1999 Concluding Observations addressed to Canada, the HRC found that “[t]he committee is concerned that homelessness has led to serious health problems and even to death. The committee recommends that the state party take positive measures required by Article 6 to address this serious problem.”³⁵⁴ The ECtHR, however, has been more conservative; the degree to which a state is liable for poor housing, lack of food, lack of medical attention, environmental pollution, road safety and workplace safety, etc under the positive obligations under the Article 2 remains unclear.³⁵⁵ In *X v UK* (in which the parents of a child with serious disabilities argued that there had been a violation of the positive obligations under the right to life because their child had not been allowed to have free medical treatment³⁵⁶) this question was considered but left unanswered.³⁵⁷ However, in *Kutepov and Anikeyenko v Russia*, the ECtHR considered that an inadequate pension which resulted in a “real and immediate risk” to a person’s life potentially could “warrant the application of Article 2.”³⁵⁸

▪ **Environmental Degradation**

Grounded in the international human rights adjudicating bodies’ tendency to see human rights instruments as ‘living instruments’ that require evolutionary interpretation (as described in Chapter 6), recent case law illustrates their growing interest in the link between environmental protection, climate change, and the right to life, particularly regarding the state’s obligation to protect life. *General Comment 36* of the HRC suggests that Article 6 requires that states “preserve the environment and

³⁵⁰ Elizabeth Wicks, ‘The Meaning of ‘Life’: Dignity and the Right to Life in International Human Rights Treaties’ (2012) Human Rights Law Review 12(2), 206-7.

³⁵¹ *Case of the ‘Mapiripan Massacre’ v Colombia* (Judgment) (n 294) para 186.

³⁵² UN Human Rights Committee (n 15) para 26.

³⁵³ *Ibid*, para 26.

³⁵⁴ Human Rights Committee (n 335) para 12.

³⁵⁵ *Javaid Rehman* (n 228) 139-40.

³⁵⁶ *X v Ireland*, European Court of Human Rights, Application No. 6839/74 [1976]; *X v. United Kingdom*, European Court of Human Rights, Application No. 7154/75 [1978].

³⁵⁷ *Javaid Rehman* (n 228) 139-40.

³⁵⁸ *Case of Kutepov and Anikeyenko v Russia* (Judgment), European Court of Human Rights, Application no. 680291/01 [2005].

protect it against harm, pollution and climate change caused by public and private actors.”³⁵⁹ By so doing, *General Comment 36* highlights the important interplay between the obligations in Article 6 and the obligations contained in the ICESCR, in consideration of conditions that threaten life. It goes on to state that,

[e]nvironmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. The obligations of States parties under international environmental law should thus inform the content of Article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law. Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors. States parties should therefore ensure sustainable use of natural resources, develop and implement substantive environmental standards, conduct environmental impact assessments and consult with relevant States about activities likely to have a significant impact on the environment, provide notification to other States concerned about natural disasters and emergencies and cooperate with them, provide appropriate access to information on environmental hazards and pay due regard to the precautionary approach.³⁶⁰

Examples of case law in which the state was found to have violated the right to life as a result of their failure to protect people from environmental disasters include *Oneryildiz v Turkey* (2004) where the Grand Chamber of the ECtHR ruled that there was a breach of the state’s positive obligation under Article 2 to protect people from a deadly explosion at a hazardous waste site.³⁶¹ Among other things,

³⁵⁹ UN Human Rights Committee (n 15) 62.

³⁶⁰ Ibid, para 62; see also UN General Assembly, ‘Rio Declaration on Environment and Development’ (adopted 3-14 June 1992), UN Docs A/CONF.151/26 (Vol.I), Principles 1-2, 11, 15, and 17-18; Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25 June 1998) < <https://unece.org/DAM/env/pp/documents/cep43e.pdf> > accessed 20 March 2024; see also Declaration of the United Nations Conference on the Human Environment, UN Doc. A/RES/2994(XXVII), adopted by the United Nations Conference on the Human Environment (1972), para 1; Rio Declaration on Environment and Development, UN Docs A/CONF. 151/26/Rev.1 (Vol. I), adopted at the United Nations Conference on Environment and Development (1992), principle 1; United Nations Framework Convention on Climate Change (adopted 1994) UNTS Vol. 1771, preamble; Paris Agreement, adopted at the UN Climate Change Conference (COP21) in Paris (2015) < <https://unfccc.int/documents/184656> > accessed 21 February 2024, preamble.

³⁶¹ In *Case of Oneryildiz v Turkey* (n 82), the applicant’s house was located near a municipal rubbish tip. In 1991 a court appointed panel of experts reviewed the rubbish tip to assess its compliance with national environmental regulation. They found that the report was not in compliance and posed a major health risk to local inhabitants, including identifying a serious risk of an explosion occurring. Despite a recommendation from the national Environmental Office in June 1991 to take immediate action to remedy the problems identify in the report, no concrete action was taken. In 1993 there was a methane explosion at the tip which resulted in an eruption of waste and a landslide which destroyed 10 dwellings, including the applicants. Thirty-nine persons died. In its decision, the Grand Chamber held that “[t]he positive obligation to take all appropriate steps to safeguard life for the purposes of Article 2 entails above all a primary duty on the state to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life...” (para 89). The Grand Chamber particularly emphasized that among the preventive measures required was “the public’s right to information, as established in the case-law of the Convention institutions” (para 90). They argued that this right, which was already established under Article 8 (see *Guerra and others v Italy* (Judgment) [1998] Case no 116/1996/753/932) may also apply to Article 2 (see para 90). In this case, the Court found a substantive violation of Article 2 (para 110).

the ruling in this case required states to take reasonable preventive measures to protect the lives of people from known environmental risks.³⁶² In the case *Kolyadenko and others v Russia*, the ECtHR found a violation of Article 2 in regards to environmental disasters.³⁶³ In *EHP v Canada* (67/80), the plaintiff argued to the HRC that the government's inaction in dealing with the radio-active waste deposited near Port Hope by the Eldorado Nuclear Ltd threatened the life of current and future generations. The case was dismissed because national remedy had not been exhausted. However, in its conclusion, the HRC found that the authors could legitimately claim to be victims of potential breaches of Article 6, stating that "the present communication raise[d] serious issues, with regard to the obligation of States parties to protect human life."³⁶⁴ In the *Ogoniland case* the ACHPR found that the environmental degradation, pollution and destruction of land and farms in Ogoni Nigeria had violated the right to life.³⁶⁵

In this section, I have examined a few examples (concerning socioeconomic conditions, climate change and environmental threats) of international jurisprudence regarding the positive obligation to prevent death in situations of structural violence, where the threat to life is broad and the result of complex circumstances. There is evidence of an emerging recognition of such an obligation in this regard, though the external boundaries of this obligation are, as yet, unclear. In the next section, I will look at the implications of this obligation, arguing that effective realization requires, among other things, mortality data gathered through a universal death registration system.

III.B Implicit Obligations and Effective Realization of the Obligation to Protect Life and Prevent Wrongful Death

As presented above, international jurisprudence across human rights adjudicating bodies commonly recognizes a positive obligation to prevent death from foreseeable threats, both on an individual level and at a collective level. Jurisprudence indicates that this obligation cannot be interpreted in a manner that places an undue burden on the state. The state's responsibility to respond seems to hinge on the 'foreseeability' of the life-threatening incident or context. For instance, in *LCB v UK* (1998-III), the Court found that the increase in cancer among veterans of the Royal Air Force who were present during the four atmospheric nuclear bomb tests conducted at Christmas Island in 1957-8 did not constitute a breach in Article 2 because they considered that the state could not have known in 1957 the possible health implications of the action to unborn children.³⁶⁶ As such, the scope of this obligation seems contingent on a state's ability to accurately predict emerging threats.

³⁶² Alasair Mowbray (n 92) 126-130.

³⁶³ *Case of Kolyadenko and Others v. Russia* (Judgement) (n 88) para 155.

³⁶⁴ *EHP v Canada*, Human Rights Committee, Communication No. 67/80, UN Doc CCPR/C/17/D/67/1980, para 8.

³⁶⁵ *Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria*, African Commission on Human and Peoples' Rights, Communication Number 155/96 [2001].

³⁶⁶ *LCB v UK* (Judgement) (n 64) para 39-41.

Courts and treaty monitoring bodies have developed various legal tools with the aim of delineating the state's duty to prevent violations of the right to life. One of the legal tools most commonly used by the ECtHR³⁶⁷ and the IACtHR is the afore-mentioned 'Osman Test',³⁶⁸ composed of the following criteria,

(A) the existence of a risk for the right to life that additionally must be (B) 'real' and (C) 'immediate'. The risk must concern (D) the life of one or more 'identified individual[s]', that is, a specific definable individual or group. Also, it must be shown (E) that the State had knowledge of the risk at hand or could, given the circumstances of the case, be expected to have such knowledge.³⁶⁹

Applying its evolutionary approach to interpretation, the ECtHR has used the *Osman* test to extend a state's protective obligations to include risks to the public at large when faced with life-threatening situations.³⁷⁰ For example, in *Bljakaj and others v Croatia*³⁷¹ the ECtHR found that states parties have an obligation to afford the general public protection against potentially violent actions of an apparently mentally disturbed person. The ECtHR emphasized that the state's positive obligation must be interpreted and applied "so as to make its safeguards practical and effective."³⁷² What type of administrative systems are required to protect life? The IACtHR noted that it was not feasible to list all the potential legal, political, administrative, and cultural measures that might be required.³⁷³

General Comment No. 36 states that,

[t]he duty to protect by law the right to life also requires States parties to organize all State organs and governance structures through which public authority is exercised in a manner consistent with the need to respect and ensure the right to life,³⁷⁴ including establishing by law adequate institutions and procedures for preventing deprivation of life....³⁷⁵

³⁶⁷ See Frédéric Vanneste, *General International Law Before Human Rights Courts: Assessing the Speciality Claims of International Human Rights Law* (Intersentia 2010), 193-4.

³⁶⁸ *Case of Osman v the United Kingdom* (Judgement) (n 66).

³⁶⁹ Franz Ebert, Christian and Romina Sijniensky (n 59) 345-348.

³⁷⁰ *Mastromatteo v Italy*, European Court of Human Rights, Application No. 37703/97 [2022] (no violation); *Maiorano and others v Italy*, European Court of Human Rights, Application No. 28634/06 [2009], para 107 (violation); *Bromiley v UK*, European Court of Human Rights Communication No 33747/96 [1999].

³⁷¹ *Case of Bljakaj and others v Croatia* (Judgement), European Court of Human Rights, Application No. 74448/12.

³⁷² *Case of McCann and Others v the UK* (n 47) 97, para 146; *Case of Oneryildiz v Turkey* (n 82).

³⁷³ *Case of Velasquez Rodriguez v Honduras* (Judgement) (Merits) (n 66) para 175.

³⁷⁴ *González and others ("Cotton Field") v. Mexico* (Judgement) (n 74) para 236.

³⁷⁵ UN Human Rights Committee (n 15) para 19.

To trigger the obligation to undertake protective action, States authorities must have known “or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals...”³⁷⁶ The ECtHR *Guidelines* further develop this point by stating that,

the assessment of the nature and level of risk constitutes an integral part of the duty to take preventive operational measures where the presence of a risk so requires. Thus, an examination of the state’s compliance with this duty under Article 2 must comprise an analysis of both the adequacy of the assessment of risk conducted by the domestic authorities and, where a relevant risk triggering the duty to act was or ought to have been identified, the adequacy of the preventative measures taken.³⁷⁷

Based on the risk-assessment, case law would suggest that states have an obligation to put in place informed regulatory frameworks. For example, in the *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, the ECtHR found that the substantive obligation to protect lives was composed of two aspects: (a) obligation to put in place a regulatory framework; and (b) obligation to undertake preventive operational measures.³⁷⁸ Both aspects are applicable in public and private activities within its jurisdiction.³⁷⁹ The ECtHR has applied this logic to cases in a variety of settings, including healthcare,³⁸⁰ industrial activities and environmental disasters,³⁸¹ incidents on ship³⁸² and trains,³⁸³ construction sites,³⁸⁴ on a playground,³⁸⁵ at school,³⁸⁶ related to road safety,³⁸⁷ related to emergency services,³⁸⁸ deep sea diving,³⁸⁹ medical care to institutionalized persons,³⁹⁰ and in areas containing mines (military area)³⁹¹ or unexploded ordnance (military firing range)³⁹² in public places.

³⁷⁶ European Court of Human Rights (n 14) 9, para 19; see also *Mastromatteo v Italy* (n 375) para 68; *Paul and Audrey Edwards v the United Kingdom* (Judgement) (n 131) 55.

³⁷⁷ European Court of Human Rights (n 14) 9, para 20; see also *Kurt v Austria* (Judgement), European Court of Human Rights, Application no. 62903/15 [2019], 160.

³⁷⁸ *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* (Judgement), European Court of Human Rights, Application no. 47848/08 [2014], para 130.

³⁷⁹ *Ibid*, para 130.

³⁸⁰ *Calvelli and Ciglio v. Italy* (Judgement) (n 84); *Vo v. France* (Judgement), European Court of Human Rights, Application No. 53924/00 [2004].

³⁸¹ *Case of Oneryildiz v Turkey* (n 82); *Case of Budayeva and Others v. Russia* (Judgement) (n 88); *Case of Kolyadenko and Others v. Russia* (n 88); *Brincat and Others v. Malta* (Judgement), European Court of Human Rights, Applications Nos 60908/11, 62110/11, 62129/11, 62312/11 and 62338/11 [2014]; *Case of M Ozel and others v Turkey* (Judgement) (n 154).

³⁸² *Leray and Others v. France* (Judgement), European Court of Human Rights, Application No. 44617/98 [2001].

³⁸³ *Kalender v. Turkey* (Judgement) (n 100).

³⁸⁴ *Pereira Henriques v. Luxembourg* (Judgement), European Court of Human Rights, Application No. 60255/00 [2006].

³⁸⁵ *Koceski v. the former Yugoslav Republic of Macedonia*, European Court of Human Rights, Application No. 36309/10 [2010].

³⁸⁶ *Ilbeyi Kemaloğlu and Meriye Kemaloğlu v. Turkey* (n 299).

³⁸⁷ *Case of Anna Todorova v. Bulgaria* (n 152).

³⁸⁸ *Furdík v. Slovakia*, European Court of Human Rights, Application No. 42994/05 [2008].

³⁸⁹ *Vilnes and Others v. Norway*, European Court of Human Rights, Application No. 52806/09 and 22703/10 [2013].

³⁹⁰ *Nencheva and Others v. Bulgaria*, European Court of Human Rights, Application No. 48609/06 [2013]; *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* (Judgement) (n 383); *Dumpe v. Latvia*, European Court of Human Rights, Application No. 71506/13, para 201.

³⁹¹ *Paşa and Erkan Erol v. Turkey*, European Court of Human Rights, Application No. 51358/99 [2006]; *Case of Albekov and Others v. Russia* (Judgement) (n 70).

³⁹² *Oruk v. Turkey* (Judgement) (n 303).

General Comment 36 also links the positive obligation to protect life and prevent death to risk-informed, strategic planning, including with regards to sexually transmitted diseases,³⁹³ promotion of non-violence education, campaigns around gender-based violence³⁹⁴ and other harmful practice,³⁹⁵ improve health care to reduce maternal and infant mortality.³⁹⁶ Additionally, *General Comment 36* recommends that states develop contingency and disaster management plans for disasters which could negatively impact the right to life (e.g. hurricanes, tsunamis, earthquakes, radioactive accidents, massive cyberattacks resulting in a breakdown in basic services, etc).³⁹⁷

Above, I have established that there is an emerging recognition of a positive obligation under the right to life to develop policies that protect and prevent wrongful death. Vital statistics are an important cornerstone of data-informed policy development, including the development of social and economic programmes. As the *UN Principles and Recommendations for a Vital Statistics System* state,

[v]ital statistics are also invaluable for planning, monitoring and evaluating various programmes such as those dealing with primary health care, social security, family planning, maternal and child health, nutrition, education, public housing and so forth. Among the demographic uses of vital statistics are the preparation of population estimates and projections, studies of mortality... and the construction of life tables.³⁹⁸

As discussed in the first part of this Thesis, civil registration, including death registration, is the best source of vital statistics.

In addition to risk-informed policymaking, case law would suggest that there is an implicit obligation to monitor how effectively regulations and policies are at protecting life. Among other things, this requires a monitoring system capable of identifying mortality and morbidity data, including through a civil registration system. Consider, for example *Ciechońska v Poland* and *Banel v Lithuania* where the ECtHR required that the state not only put in place regulations to ensure people's safety in public spaces but also to take steps to ensure that the regulation framework was functioning effectively.³⁹⁹ This point is confirmed by the *UN Principles and Recommendations for a Vital Statistics System* which state that "[v]ital statistics, either by themselves or through linkage with other sources, provide information for use in planning, monitoring and evaluating government programmes on public health

³⁹³ Human Rights Committee, 'Concluding Observations of the Human Rights Committee: Jamaica' (2011) UN Docs CCPR/C/JAM/CO/3, para 9.

³⁹⁴ Human rights Committee, 'Concluding Observations of the Human Rights Committee: Uzbekistan' (2001) UN docs. CCPR/CO/71/UZB, para 19.

³⁹⁵ Committee on the Elimination of Discrimination against Women (n 253) para 56.

³⁹⁶ UN Human Rights Committee (n 28) para. 5; Human Rights Committee, Concluding Observations of the Human Rights Committee: Democratic Republic of Congo' (2006) UN Docs CCPR/C/COD/CO/3, para 14.

³⁹⁷ UN Human Rights Committee (n 15) para 30.

³⁹⁸ UN Statistics Division (n 403) 4-5.

³⁹⁹ *Ciechońska v Poland* (Judgement), European Court of Human Rights, Application No. 19776/04 [2011], para 69; *Banel v Lithuania* (Judgement), European Court of Human Rights, Application No. 14326/11 [2013], para 68.

and on improvement of maternal and child health and other government programmes...⁴⁰⁰ The guidelines go on to list examples of where vital statistics (particularly mortality data) are invaluable to early identification of threats to the public and monitoring of government programmes, to enable preventative action and better intervention, including trends in disease prevalence and patterns, maternal care and child health care, foetal deaths, socioeconomic development, social security, among other things.⁴⁰¹ To the extent that civil registration (including death registration) is a component of any effective vital statistics system, and that the latter is required to operationalize the protection of life and the prevention against wrongful death, this offers another reason for arguing that the obligation to register death is implicit in treaty-based guarantees to the right to life.

IV. A Litmus Test: Applying the Continuance of Life Framework

In Chapter 2, I laid out my argument that law should, as a minimum contribute to our individual and collective continuance of life and wellbeing. In the context of the treaty obligation to register death, as described above, let us briefly consider the degree to which it meets the litmus test. Recall that for the purpose of this thesis, life is understood not only in the purely biological sense, but includes wellbeing. To which degree does death registration, define within the context of the positive procedural obligations under the right to life, support or individual and collective continuance of life? I have essentially argued throughout this chapter that life itself can not be protected without the rule of law and mechanisms to hold persons accountable for wrongful death. Death registration is an essential trigger to investigation into potential wrongful death. Where impunity for wrongful death exists, there is a significant risk of increased violations for the right to life. Arguably, where there is no consequence for taking a life, the protection of the right to life functionally no longer exists. Furthermore, I have argued that without mechanisms (namely mortality data) that allows us to track and identify patterns of death and its cause, it is impossible to develop systems that are able to adequately protect life. Vital statistics are essential to building national systems that can prevent arbitrary death, preserve life and ensure the wellbeing of the population. As such, death registration is a lynch pin in the continuance of life and wellbeing.

V. Conclusion

There are no explicit references to death registration in international human rights law.⁴⁰² However, in this Chapter I have argued that the right to life and effective remedy do impose positive procedural obligations on a state party that require universal death registration. These obligations are implicit to

⁴⁰⁰ UN Statistics Division (n 403) 6.

⁴⁰¹ UN Statistics Division (n 403) 6-8.

⁴⁰² Excluding narrow provisions related to enforced disappearances

the positive obligation to (a) investigate alleged breaches of the right to life and (b) to protect life and prevent wrongful death, both of which are recognized by international judicial bodies as part of the right to life. My analysis of treaty law has drawn on the teleological approach, as described in Chapter 6, reflecting the tendency of human rights adjudicating bodies to adopt an evolutionary approach to treaty interpretation and to prioritize the principle of effectiveness.

With regards to the former, I have argued in this Chapter that universal death registration is a prerequisite to ensuring that timely and impartial investigations can be triggered in all cases of potentially wrongful death, without discrimination. To these ends, I examined (a) the procedural obligation to investigate wrongful death, including establishment of administrative systems; (b) how the duty to investigate is triggered: I argue that the obligation to investigate can only be met if there is a comprehensive and universal death registration system that can trigger investigation where there is suspicion of wrongful death; (c) the components of an investigation: I establish that universal death registration can be considered an implicit obligation as part of an effective investigation, as defined by case law and international guidelines, with an emphasis on the importance of universal registration to ensure the impartiality of investigations; and (d) scope of the duty to investigate: I assess the types of death to which the duty to investigate applies. Based on case law, I was able to establish that state parties are obligated to investigate death where state agents are involved, as well as in cases related to third parties and/or negligence. As such, I conclude that it is only by establishing universal death registration that investigation can be triggered in all the necessary cases, without discrimination.

With regards to the latter, I have argued that vital statistics, including mortality data, are a cornerstone to evidence-based policy development that is able to prevent and respond to threats against the lives of persons within a given territory. I found that international jurisprudence points to an emerging recognition of the obligation to put in place regulations and policies to proactively counter threats to life, as they become known to the state. I argue that effective realization of this obligation requires, among other things, vital statistics (and hence death registration) to enable the development of evidence-based policies that can counter emerging threats. Much of the argument in this Chapter relies on the abundant authoritative interpretation of relevant treaty provisions, found in the jurisprudence of human rights adjudicating bodies. This authoritative interpretation, in turn, relies on the approach to treaty interpretation defended in the previous Chapter.

Finally, I applied the ‘Continuance of Life Framework’, developed in Chapter 2, arguing that the procedural obligation to register death implicit to the right to life is essential to protecting individual and collective life and ensuring wellbeing.

In the next Chapter, I will look at particularly vulnerable groups and extraordinary situations to explore whether the obligations identified herein extend to these circumstances. I will particularly focus on the principle of non-discrimination, jurisdiction, and extraordinary situations (e.g., armed conflict and migration).

Chapter 8 - Exploring the Outer limit of a Treaty Obligation: Exceptional Circumstances, Non-discrimination, and Jurisdiction

As discussed in earlier Chapters, death registration is widely practiced around the world and almost universally institutionalized in the form of a civil registration system. However, there are systematic gaps in application. Some groups are left outside the system and, as such, their death does not trigger an investigation and effective remedy for the family and is not taken into consideration during policy discussions aimed at protecting life. The gaps were summarized at the end of Chapter 5. They include situations of armed conflict and natural disaster, migrants and non-citizens, and particular minority groups. In the previous Chapter, I established an implicit procedural obligation under human rights treaty law (particularly related to the right to life and the right to effective remedy) for universal death registration, as a principle of *lex generalis*. In this Chapter, I look at the most frequent gaps in death registration to ascertain if there is any legitimate basis for limiting *lex generalis*. I seek to answer the question: are the implicit procedural treaty obligations related to death registration established in chapter 7 limited to certain groups? Or certain territories? Or certain times?

In Chapter 2 I developed my 'Continuance of Life' framework, arguing that it was an essential means by which law should be evaluated to ensure that it is of benefit to the population. I argued that law should, as a minimum, contribute to our individual and collective existence and wellbeing. In practice, where there are gaps in death registration, it often reflects gaps in the application of the right to life. Consider for example the groups of people most frequently excluded from death registration systems around the world – non-citizens, migrations, children under 1, vulnerable minorities, rural and economically disadvantaged communities, people during armed conflict and natural disasters, among others. When excluded from death registration systems, practically it becomes difficult to ensure that wrongful death is investigated and that perpetrators are held accountable. Where impunity exists, life becomes cheap. The same is true for protective measures put in place by the government – if the government is not tracking mortality statistics for particularly groups, risks to life and wellbeing rarely receive adequate prioritization.

In this chapter, I will argue that law should not violate the continuance of individual and collective life and wellbeing, for all people, without distinction. To make this point, I will seek to address what I understand to be the most common arguments put forward in support of excluding particularly groups of people (refer to the end of Chapter 5 for the description) – namely that (a) some people fall outside the scope of legal protections because of their legal status, gender, religious/political/ethnic status, age, etc; (b) some people fall outside the scope of obligations because of the limits of jurisdiction – such as deaths at sea, etc; and (c) that state obligations to register death do not or can not extend to exceptional circumstances, such as periods of armed conflict, natural disasters, political unrest, etc.

To address these argument, I will look at three issues: (a) the principle of non-discrimination under human rights law and implications for death registration (responding to the argument that some persons fall outside the scope of law); (b) jurisdiction and the application of the right to life under human rights law, with a particular focus on migration (responding to the argument that some persons fall outside the scope of law as a result of jurisdiction); and (c) non-derogability of the right to life and implications for the right to life in exceptional circumstances, namely armed conflict and natural disasters (responding to the argument that there are time when the obligation to register death could be suspended due to exceptional circumstances). I will argue that there is every confirmation that the right to life, including implicit positive and procedural obligations (including death registration, as established in the previous Chapter), are applicable to all persons (regardless of citizenship and civilian status) within the territorial jurisdiction of a state or areas under their control in all contexts, including armed conflict, public emergency and migration.

As discussed in Chapter 2, death registration in the context of armed conflict under international humanitarian law has received growing attention in recent years from scholars, governments and practitioners, particularly regarding civilian casualties. Critically, the obligation to register civilian casualties under humanitarian customary law has been explored (and established) by the International Committee of the Red Cross (ICRC).¹ Scholars and practitioners have predominately focused on establishing this obligation under international humanitarian customary law and international humanitarian law.² To avoid unnecessary duplication, I will not focus on civilian casualties under

¹ International Committee of the Red Cross, 'Customary International Humanitarian Law Database' < <https://ihl-databases.icrc.org/en/customary-ihl> > accessed 21 January 2024; International Committee of the Red Cross, 'Forensic Identification of Human Remains' (2020); International Committee of the Red Cross 'Humanity after Life: Respecting and Protecting the Dead' (2020) Advisory Service on International Humanitarian Law < <https://www.icrc.org/en/document/humanity-after-life-respect-and-protection-dead> > accessed 12 February 2024; International Committee of the Red Cross, 'Management of Dead Bodies after Disasters: A Field Manual for First Responders' (2020) < <https://www.icrc.org/en/publication/0880-management-dead-bodies-after-disasters-field-manual-first-responders> > accessed 17 March 2024; International Committee of the Red Cross, 'Missing People, DNA Analysis and Identification of Human Remains: A Guide to Best Practice in Armed Conflicts and Other Situations of Armed Violence' (2020); International Committee on the Red Cross, 'Missing Persons and Their Families' (2015) Advisory Service on International Humanitarian Law < https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjms8Ob7MmEAXVb1gIHHeyNAEwQFnoECBsQAQ&url=https%3A%2F%2Fwww.icrc.org%2Fen%2Fdownload%2Ffile%2F17255%2Fmissing_persons_and_their_families.pdf&usq=AOvVaw2HUxc8yuekfC2tC7hZO-G2&opi=89978449 > accessed 26 February 2024; International Committee of the Red Cross, 'Operational Best Practices regarding the Management of Human Remains and Information on the Dead by Non-Specialists' (2020).

² R Otto, *Targeted Killings and International Law: With Special Regard to Human Rights and International Humanitarian Law* (Springer 2010); A Oxford, *International Authority and the Responsibility to Protect* (Cambridge University Press 2011); I Park, *The Right to Life in Armed Conflict* (Oxford University Press, 2018); O Roland, *Targeted Killings and International Law* (Springer 2010); Action on Armed Violence and ORG, 'Casualty Recording: Assessing State and United Nations Practices, Joint Summary of Findings and Recommendation' (2014); Argentine National Commission on Disappeared 'Nunca Mas: The Report of the Argentine National Commission on the Disappeared' (1986); J Beswick and E Minor, 'The UN and Casualty Recording: Good Practice and the Need for Action' (16 April 2014) Oxford Research Group < <https://reliefweb.int/report/world/un-and-casualty-recording-good-practice-and-need-action> > accessed 21 January 2024; S Breau, and R Joyce 'Discussion Paper: The Legal Obligation to Record Civilian Casualties of Armed Conflict' (June 2011) Oxford Research Group < <https://www.everycasualty.org/downloads/ec/pdf/legal-obligation-to-record-casualties.pdf> > accessed 21 January 2024; S Breau and R Taylor 'Every Casualty Counts, Update on Discussion Paper: The Legal Obligation to Record Civilian Casualties of Armed Conflict' (June 2022) < <https://everycasualty.org/wp-content/uploads/2022/06/Updated-discussion-paper-on-the-legal-obligation-to-record-casualties-2022-FINAL.pdf> > accessed 19 January 2024; S Breau, and R Joyce 'The Responsibility to Record Civilian Casualties' (2013) Global Responsibility to Protect Volume 5, Issue 1 < https://www.researchgate.net/publication/294282225_The_Responsibility_to_Record_Civilian_Casualties > accessed 21 January 2024; S Breau and R Taylor, 'Update on Discussion Paper: The Legal Obligation to Record Civilian Casualties of Armed Conflict' (June 2022) Every Casualty Counts; Every Casualty Counts 'Casualty Recording in Human rights and Humanitarian Law' (2023) < https://everycasualty.org/wp-content/uploads/2023/03/FINAL-FINAL-Advocacy-Report_2023_DPS_48pp.pdf > accessed 21 January 2024; Iraq Body Count, 'Database' < <https://www.iraqbodycount.org/database/> > accessed 19 January 2024

international humanitarian law or international humanitarian customary law. Rather, I will focus on my consideration on whether the implicit obligation under international human rights law (discussed in the previous Chapter) extends to all persons, in all circumstances.

I. Principle of Non-discrimination and Implication for Death Registration

In this section, I briefly examine the principle of non-discrimination under international human rights law to determine whether there is any justification for limiting procedural obligations (namely death registration) under the right to life, to the exclusion of particular groups. I will argue that both auxiliary and independent norms related to non-discrimination confirm the obligation for universal death registration (registration of all persons, without discrimination).

The principle of non-discrimination is a core obligation of human rights law, as evident in the text and case law of the ICCPR, ECHR, IACHR, AFCHR, CEDAW, CERD, and CRPD. The prohibition on discrimination described in Article 2(1) of the ICCPR requires that states do not differentiate among the people within their jurisdiction based on certain personal qualities, relevant to the legislative³ and executive branches of government. In Article 4, the ICCPR explicitly prohibits discrimination based on race, colour sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁴ The ECHR and the ACHPR add additional categories: Article 14 of the ECHR includes national minorities and Article 13 of the ACHPR mentions ethnic groups. The jurisprudence of the HRC and the *travaux préparatoires* of the ICCPR indicate that some other characteristics that were not explicitly stated in Article 2, including disability, ethnic origin, educational attainment, age, and sexual orientation, are covered under the larger category entitled ‘national or social origin’ or ‘other status’.⁵ Additional convention affirm that all persons are equal before the law: CEDAW, in its protection of the legal rights of women; CERD, in its focus on eliminating racial discrimination in all forms; and CRPD, in its affirmation that all persons are equal before the law regardless of their abilities.

Last Rights , ‘Extended Legal Statement and Commentary: The Dead, the Missing and the Bereaved at the World’s Border, Statement of the International Legal Obligation of States Together with Commentary’ (January 2019) < https://www.researchgate.net/publication/346653363_Last_Rights_Extended_Legal_Statement_and_Commentary_1_The_Dead_the_Missing_and_the_Bereaved_at_the_World%27s_Borders_2_Statement_of_the_International_Legal_Obligations_of_States_Together_with_Commentary > accessed 21 January 2024; M Miceli and S Olgiati, ‘Counting the Cost: Casualty Recording Practices and Realities around the World’ (2014) Action on Armed Violence < <https://reliefweb.int/report/world/counting-cost-casualty-recording-practices-and-realities-around-world> > accessed 21 January 2024; E Minor, ‘Paper 1: An Overview of the Field’ (October 2012) Oxford Research Group; E Minor, ‘Paper 2: Definition and Categorization in Casualty Recording’ (October 2012) Oxford Research Group < <https://www.everycasualty.org/downloads/ec/ecpp2-definitions.pdf> > accessed 21 January 2024; N Niland, ‘Civilian Casualties - What Counts?’ (16 April 2014) TransConflict; M Tidball-Binz and D Van Alphen (eds.), ‘Management of Dead Bodies after Disasters: A Field Manual for First Responders’ (2016) < www.paho.org/disasters > accessed 15 February 2024; ‘The Sphere Handbook 2018’ (6 November 2018) < <https://www.spherestandards.org/handbook-2018/> > accessed 19 January 2024; Oficina de Derechos Humanos del Arzobispado de Guatemala, *Guatemala: Nunca Más* (1998).

³ International Covenant on Civil and Political Rights (entered into force 23 March 1976), UNTS 999, Article 2(1).

⁴ Ibid, Article 4.

⁵ In *Toonen v Australia*, Human Rights Committee, Communication No. 488/1992, UN Docs, para 8(7), the Committee noted that the reference to ‘sex’ is to be taken as including sexual orientation; in *Gueye et al v France*, Human Rights Committee, Communication No. 196/1985, UN doc CCPR/C/35/D/196/1985 [1989] the Committee regarded nationality as falling within the reference of ‘other status.’

International jurisprudence confirms that the right to life must be applied in a non-discriminatory manner. Where the state is found to have discriminated against a particular group regarding the right to life, human rights courts and tribunals have systematically applied strict scrutiny and found a violation.⁶ Where life-threatening situations or violations of the right to life are potentially driven by discrimination (including where state agents are not involved), there is an added obligation to pursue the investigation with vigour and impartiality.⁷ Failure to subject human rights violations that are potentially driven by discriminatory motives to exceptional scrutiny could result in a violation of Article 14 of the ECHR, when read in conjunction with Article 2.⁸ The ECtHR *Guidelines on the Right to Life* state, “[t]reating violence with a discriminatory intent on an equal footing with violence having no such overtones is tantamount to turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights.”⁹ The principle of non-discrimination is confirmed by the *Minnesota Protocol*.¹⁰

Ultimately, the principle of non-discrimination is inherent to the logic of ‘human’ rights, and thus central to the very object and purpose of the human rights treaties. However, it is described in human rights treaties in two ways: (1) as an parasitic obligation - the principle of non-discrimination, as described in Article 2 of the ICCPR and Article 14 of the ECHR, is dependant other treaty rights to be realized;¹¹ and (2) as an independent obligation¹² - similar to the approach adopted by CEDAW and CERD - Article 26 of the ICCPR stipulates that (a) describes that all persons are born equal before the law; (b) requires that law prohibit discrimination; and (c) stipulates that law must ensure effective protection against discrimination. CCPR General comment No. 18 adopts the second approach, stating, “[i]n the view of the Committee, article 26 does not merely duplicate the guarantee already provided for in article 2 but provides in itself an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Article 26 is therefore concerned with the obligations imposed on States parties regarding their legislation and the application thereof. Thus, when legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory.”¹³

⁶ See as example *Nachova and others v Bulgaria* (Judgement) European Court of Human Rights, Applications Nos. 43577/98 and 43579/98 [2005] para 160; *Angelova and Illiev v Bulgaria* (Judgement), European Court of Human Rights, Application No. 55523/00 [2007]; *Case of Opuz v Turkey* (Judgement), European Court of Human Rights, Application No. 33401/02 [2009].

⁷ *Nachova and others v Bulgaria* (Judgement) (n 6) para 160.

⁸ *Ibid*, para 160.

⁹ European Court of Human Rights ‘Guide on Article 2 of the European Convention on Human Rights: Right to Life’ (2022) <https://www.echr.coe.int/documents/d/echr/Guide_Art_2_ENG> accessed 12 February 2024, 41, para 190; see also *Case of Stoyanova v. Bulgaria* (judgement), European Court of Human Rights, Applications Nos. 56070/18 [2022], para 64.

¹⁰ United Nations Human Rights Office of the High Commissioner, ‘The Minnesota Protocol on the Investigation of Potentially Unlawful Death’, para 8(b).

¹¹ European Court of Human Rights, ‘Guide on Article 14 of the European Convention on Human Rights and on Article 1 of Protocol No. 12 to the Convention: Prohibition of Discrimination’ (31 August 2022) <https://www.echr.coe.int/documents/d/echr/Guide_Art_14_Art_1_Protocol_12_ENG> accessed 5 June 2024, para 3.

¹² United Nations Human Rights Committee, ‘CCPR General Comment No. 18: Non-Discrimination’ (1989) 37th Session, UN doc HRI/GEN/1/Rev.1, para 12.

¹³ *Ibid*, para 12.

Let us first consider the latter obligation (as described in Article 5(a) of CERD, Article 15(1) of CEDAW, and Article 26 of the ICCPR). Let's consider Article 26 in-depth; death registration seems to be implicit to the realization of this Article. Consider the first aspect of Article 26 (that all people are born equal before the law). Equality before the law seems to require recognition of personhood before the law, otherwise how would it be possible to ensure the effective realization of this right? Death registration is recognized as a key component of the right to legal identity (see Chapter 2). Logically, if all persons must be equal before the law (from birth) this would extend to recognition of the end of their legal personhood.

With regards to the second component of Article 26 of the ICCPR (that state parties are obligated to put in place law and policy that prevent discrimination) (echoed in Article 2(b) of CEDAW, Article 2(1) of the CERD, and Article 4(1) of the CRPD), death registration also seems an implicit obligation to this component. Assuming that my conclusions in the previous chapter are correct, universal death registration is key to ensuring that all potentially wrongful deaths (without discrimination) trigger an effective investigation, to prevent impunity, ensure effective remedy and ensure that the rule of law is upheld. Where some deaths go unrecognized by the state (formally or informally), it is difficult to imagine how the rule of law can be applied without discrimination. The impact of which is that some lives are effectively given more value (as they are subjected to scrutiny, investigation and effective remedy, if necessary) than others. In the context of our current systems, it is almost impossible to imagine how law could prevent discrimination without a formal system to recognize life and death.

Finally, let us consider the last aspect of Article 26 of the ICCPR (that law must protect against discrimination) (echoed in Article 2 of CEDAW, Article 2(1)-(2) of CERD, and Article 4(1) and 5(2) of the CRPD). Once again, assuming that my arguments in the previous chapter are correct, comprehensive mortality statistics are required to ensure that the state develops laws and policies that comprehensively protect the lives of all persons (without discrimination) within their jurisdiction or areas under their control. Can law protect against discrimination if basic statistics are not available to discern patterns of discrimination? Again, in our current systems law-making it is difficult to imagine how a state could ensure that laws protect against direct or indirect¹⁴ discrimination without a permanent system capable of providing statistics on the situation and wellbeing of the population. Mortality statistics (particularly cause of death data) are key to identifying these patterns, including with regards to access to healthcare; maternal and infant well-being; rights related to safety and protection in the workplace, home, and school; access to clean water and food; rights related to clean and safe environment; as well as the right to life itself.

¹⁴ European Court of Human Rights (n 11) para 28-36.

Turning now to consider the former way in which non-discrimination appears in human rights treaties (as a parasitic norm) consider the argument posed by Article 14 of the ECHR. The effect of Article 14 is that even if they are not strictly required by a substantive right (such as the right to life and the right to effective remedy), certain measures a State may choose to adopt must be taken without discrimination if they ‘fall within the ambit’ of the substantive right – that is, if they can be construed as a case of a State going over and beyond in its commitment to the substantive right.¹⁵ This interpretation of Article 14 of the ECHR is confirmed by the ECtHR in the *Guide on Article 14 of the European Convention on Human Rights and on Article 1 of Protocol No. 12 to the Convention: Prohibition of Discrimination*.¹⁶ Thus, if a government goes beyond the obligations strictly required by a particular right, it must do so without discrimination. This argument was particularly useful before Protocol 12,¹⁷ which describes the general prohibition of discrimination, came into force. In the context of death registration, I have argued that death registration is implicit to the realization of positive procedural obligations of the right to life. Suppose for the sake of argument, that I overstated my case in previous chapters and that death registration contributes to the realization of the right to life, but is not strictly required by the right. Death registration would still ‘fall within the ambit’ of the right to life as it is still being implemented in all countries in the world. Thus, the principle of non-discrimination (understood as an auxiliary norm) would still require that death registration be implemented without discrimination, thus be universal in nature.

The ECHR has argued that a difference in treatment will be considered discriminatory if it “has no objective and reasonable justification” or if it does not pursue a ‘legitimate aim’.¹⁸ Nowak argues that “[w]hether a distinction among various persons or groups of persons is permissible or discriminatory depends on whether the parties are in a comparable situation, whether unequal treatment is based on reasonable and objective criteria and whether the distinction is proportional in a given case.”¹⁹ Is there any ‘reasonable’ or ‘objective criteria’ that justifies the denial of the procedural right to life for children under 1? For women? For indigenous groups? For rural communities? For religious, political or social minorities? Discounting situations of armed conflict (which is considered below) I have not encountered substantive arguments put forward by state parties in defense of these exclusions. Even where political agendas drive exclusions of particular groups (e.g. where demographics and vital statistics are politically sensitive, such as in Lebanon²⁰), by vast majority states do not proactively

¹⁵ Robert Wintemute, ‘Within the Ambit’: How Big Is the ‘Gap’ in Article 14 European Convention on Human Rights?’ (2004) E.H.R.L.R. 366.

¹⁶ European Court of Human Rights (n 11) para 10 – 13.

¹⁷ Council of Europe, ‘Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms’, ETS 177 (2000).

¹⁸ *Molla Sali v. Greece* [GC], European Court of Human Rights, Application Number 20452/14 [2018], para 135; *Fábián v. Hungary* [GC], European Court of Human Rights, Application No. 78117/13 [2017], para 113; *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, European Court of Human Rights, Application No. 9214/80; 9473/81, 9474/81 [1985], para 72.

¹⁹ Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (2nd revised edition, N.P. Engel, 2005), 46-47.

²⁰ M Faour, ‘Religion, demography, and politics in Lebanon’ (2007) *Middle Eastern Studies*, 43(6), 909-921.

defend policies of exclusion. Rather, it is simply described as an administrative gap or a result of weak infrastructure, etc.²¹ Recall that “where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation.”²² Death registration, a government system, falls within this category.

II. Jurisdiction and the Application of the Right to Life in the context of non-nationals

In this section, I will look at other groups that are frequently left outside registration procedures, namely non-citizens (migrants, people on the move, undocumented persons, refugees). To these ends, I will consider jurisdiction in the application of the right to life, with a focus on migration. I will argue that case law confirms that the right to life applies to all persons within the states’ jurisdiction (including at sea), regardless of nationality, and thus the obligation to register death extends to non-nationals.

Human rights law requires states to respect and fulfil the rights of everyone within their territory and subject to their jurisdiction,²³ where the Article is not expressly limited to citizens (e.g. voting rights²⁴). There is some controversy regarding whether the term ‘national origin’ in Article 2 of the International Covenant on Civil and Political Rights (ICCPR) includes distinctions between nationals and aliens. Whereas Article 1(2) of the Convention on the Elimination of Racial Discrimination (CERD) explicitly states “[t]his Convention shall not apply to distinctions, exclusions, restrictions, or references made by a State Party to this Convention between citizens and non-citizens”,²⁵ the ICCPR does not have a similar statement. However, the HRC has expressly stated that,

²¹ See for example UN Statistics Division, ‘Status of Civil Registration and Vital Statistics: African English-speaking Countries’ (2016) CRVS Technical Report Series Volume 3; United Nations Children’s Fund (UNICEF), ‘Status of Civil Registration and Vital Statistics in South Asia Countries’ (2019) < <https://www.unicef.org/rosa/media/3121/file/UNICEF%20ROSA%20Status%20of%20Civil%20Registration%20and%20Vital%20Statistics%20in%20South%20Asia%20Countries%202019.pdf> > accessed 29 January 2024; Centre of Excellence for Civil Registration and Vital Statistics Systems ‘Compendium of Good Practices in Linking Civil Registration and Vital Statistics and Identity Management Systems, Case Study 6: Peru’ (2019) < https://www.data4sdgs.org/sites/default/files/2019-12/CRVS_Peru_e_WEB.pdf > accessed 30 January 2024; Centre of Excellence for Civil Registration and Vital Statistics System, ‘Snapshot of Civil Registration and Vital Statistics System of Cameroon’ (2019) < https://crvssystems.ca/sites/default/files/assets/files/CRVS_Cameroon_e_WEB.pdf > accessed 31 January 2024; Centre of Excellence for Civil Registration and Vital Statistics Systems, ‘Country Profiles: Democratic Republic of Congo’ (2019) < <https://crvssystems.ca/country-profile/democratic-republic-congo#:~:text=the%20United%20Nations.-,Country%20profile,Burundi%2C%20Uganda%2C%20and%20Rwanda,> > accessed 31 January 2024; Centre of Excellence for Civil Registration and Vital Statistics, ‘Snapshot of Civil Registration and Vital Statistics Systems of Liberia’ (2019) < https://crvssystems.ca/sites/default/files/assets/files/CRVS_Liberia_e_WEB.pdf > accessed 31 January 2024; UN Statistics Division, ‘Status of Civil Registration and Vital Statistics: SADC region’ (2010) CRVS Technical Report Series Vol 2, UN Docs ESA/STAT/2010/10, < https://unstats.un.org/unsd/demographic-social/crvs/documents/Technical_report_SADC_final_v2.pdf > accessed 26 January 2024

²² European Court of Human Rights (n 11) para 80.

²³ See European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14 (adopted 4 November 1950, entered into force 3 September 1953) ETS 5 < <https://www.refworld.org/docid/3ae6b3b04.html> > accessible 21 January 2024, Article 1; United Nations, International Covenant on Civil and Political Rights (entered into force 23 March 1976), UNTS 999, Article 2.

²⁴ United Nations, International Covenant on Civil and Political Rights (entered into force 23 March 1976), UNTS 999, Article 25.

²⁵ United Nations, International Convention on the Elimination of all forms of Racial Discrimination (adopted 1965 and entered into force 1969) UNTS Vol 660, Article 1(2).

the enjoyment of the Covenant rights is not limited to citizens of States Parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other person who find themselves in the territory or subject to the jurisdiction of the State Party. This principle also applies to those within the power or effective control of the forces of a state party acting outside its territory.²⁶

Given the fact that the majority of rights in the Covenant are overtly due to all human beings (as per Article 2(1)), there is no logical ground to imagine that unequal treatment of non-citizens in the application of the right to life would be permissible.²⁷

Case law confirms that the components of the right to life examined in this thesis (as below) are applicable to everyone in a state's jurisdiction or areas under their control, regardless of citizenship:

(a) **Procedural obligation to conduct an investigation:** Judicating human rights bodies have confirmed that the procedural obligation to conduct an investigation is applicable to all persons within a territory. For example, consider the European Court of Human Rights's (ECtHR) ruling in *Ulku Ekinici v Turkey* where they state that "the obligation to protect the right to life under Article 2, read in conjunction with the State's general duty under Article 1 to 'secure to *everyone within [its] jurisdiction* the rights and freedoms defined in [the] Convention' (emphasis added), requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force."²⁸

(b) **Positive obligation to protect life and prevent wrongful death:** International jurisprudence confirms that states have an obligation to protect the lives of all persons within their jurisdiction, including in *LCB v UK*,²⁹ *Powell v. United Kingdom*,³⁰ and *Jimenez Vaca v Colombia*.³¹

And what of bodies that are found washed up on shore? Or deaths at sea? Human rights obligations begin when a state becomes aware of a dead body or a death in a territory under its jurisdiction or

²⁶ Human Rights Committee, 'General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant' (2004) UN Doc CCPR/C/21/Rev.1/Add. 13, para 10.

²⁷ Manfred Nowark (n 19) 46-47.

²⁸ *Case of Ulku Ekinici v Turkey* (Judgement), European Court of Human Rights, Application No. 27602/95 [2002], para 144.

²⁹ The ECtHR found that states have an obligation to "take appropriate steps to safeguard the lives of *those within their jurisdiction*" (emphasis added) (*LCB v UK* (Judgement) European Court of Human Rights 23413/94 [1998], para 36).

³⁰ The ECtHR confirmed that the "first sentence of Article 2 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of *those within its jurisdiction*" (emphasis added) (*Powell v the United Kingdom* (Judgement), European Court of Human Rights, Application No. 45305/99 [2000]).

³¹ The HRC found that the state had a positive obligation "to protect the right to life of *every person within its territory and under its jurisdiction*" (emphasis added). They found a violation of the right to life and personal security (Article 6 and 9) because the Colombian authorities did not carry out criminal investigations (*Jiménez Vaca v. Colombia*, UN Human Rights Committee, Communication No. 859/1999, para 7.1-7.3).

control, including at sea.³² As argued by Last Rights, the obligation to investigate is triggered when the state becomes aware of the death, regardless of where the death took place; “the fact of finding the body is tantamount to bringing it within the control of the state; from this, legal obligations towards the dead person and the family or next-of-kin may also arise.”³³ Drawing on the ECtHR’s decision in *Rantsev v Cyprus and Russia*, Last Rights goes on to argue that,

[a] State’s obligation to conduct an effective investigation, including identifying the dead and determining the cause of death, does not end at its borders: states must take all necessary and available steps to secure relevant evidence including from other states. This obligation is particularly relevant in the context of migrant deaths, the vast majority of which have transboundary implications. Although primary responsibility for investigating a death lies with the state where the victim has died, or the body has been found, all States Parties to the European Convention on Mutual Assistance in Criminal Matters are under a corollary obligation to render assistance to the investigating state where a legal request has been sought by that state not least when evidence is located within its jurisdiction.³⁴

This approach has been confirmed by the HRC, where they argued that Article 6 (the right to life) applies to all persons within a state’s territory or under their effective control, including persons in distress at sea.³⁵ There are comparable obligations “when there are reasonable grounds to believe that the body of a dead person is within the territory of the State, even if it has not yet been found.”³⁶

Though the obligation to investigate falls primarily on the state where the body is found, some cases require cooperation between states, as described by the *Minnesota Protocol*.³⁷ Similarly, Article 15 of the Convention on Enforced Disappearances³⁸ requires that state parties provide maximum cooperation to each other to assist victims of enforced disappearances and their families “in searching for, locating and releasing disappeared person, and in the event of death, in exhuming and identifying them and returning their remains”.³⁹

³² Stefanie Grant, ‘Dead and Missing Migrants: The Obligations of European States under International Human Rights Law’ (September 2016) Mediterranean Missing, 11.

³³ Last Rights ‘Extended Legal Statement and Commentary: The Dead, the Missing and the Bereaved at the World’s Border, Statement of the International Legal Obligation of States Together with Commentary (January 2019) <https://www.researchgate.net/publication/346653363_Last_Rights_Extended_Legal_Statement_and_Commentary_1_The_Dead_the_Missing_and_the_Bereaved_at_the_World%27s_Borders_2_Statement_of_the_International_Legal_Obligations_of_States_Together_with_Commentary> accessed 21 January 2024, 3.

³⁴ Ibid, 21; see also *Rantsev v. Cyprus and Russia* (Judgement), European Court of Human Rights, Application No. 25965/04 [2010], para 241, 245; European Convention on Mutual Assistance in Criminal Matters (adopted 20 May 1959, entry into force 12 June) (1962) Council of Europe Treaty Series (CETS) No 30.

³⁵ UN Human Rights Committee, ‘General Comment No. 36, Article 6 (Right to Life) (2019) UN Docs. CCPR/C/GC/35, para 63.

³⁶ Last Rights (n 33) 3.

³⁷ United Nations Human Rights Office of the High Commissioner (n 10) 3-4; see also *La Cantuta v. Peru* (Judgment) Inter-American Court of Human Rights [2006], para 160.

³⁸ United Nations, International Convention for the Protection of All Persons from Enforced Disappearance (entered into force 2010) UNTS Vol. 2716, Article 15.

³⁹ International Convention for the Protection of All Persons from Enforced Disappearance (entered into force 2010) UNTS Vol. 2716, Article 15.

Some practical steps have been taken towards strengthening the framework around death registration in the context of migration. Rooted in IHL, the ICRC has developed guidelines regarding the protection and processing of data related to missing persons, including migrants that are believed to have died on the migration route.⁴⁰ In the context of an international conference attended by global experts (including the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions), the *Declaration for the Dignified Treatment of all Missing and Deceased Persons and their Families as a Consequence of Migrant Journeys* (the Mytilini Declaration) was adopted. This *Declaration* calls for states to, “(7) Take all reasonable steps to identify the deceased and to determine the cause and manner of death;” “(11) Provide all necessary assistance to families of identified deceased migrants for the issuance of a death certificate...”; and (13) Make every effort to locate and notify the family of the dead and missing.”⁴¹ These non-legal declarations are evidence to a growing public recognition of states’ obligations towards migrants, at the least.

International jurisprudence clearly confirms that obligations under the right to life are applicable to all persons under a state’s jurisdiction or control. It is safe to assume that implicit procedural obligations to register death also apply to all persons within the territory of the state or under the state’s control. Although human rights law should apply equally to migrants (including asylum seekers and refugees), in practice there is an uneven application of laws regarding death registration.⁴² States frequently refer to national law (rather than international law) when responding to migrant death (see for example the migratory route through the Mediterranean and in Central America⁴³). There have been very few cases regarding death during migration that have been taken before the ECtHR, and other human rights adjudicating bodies; as such, jurisprudence on the subject is limited. This is likely due to practical, legal and financial obstacles, as well as the fact that family members themselves may be irregular and unwilling to approach authorities. It is important to recall here that by ignoring obligations towards migrants, states may well be in violation of the right to non-discrimination (in conjunction with the right to life), as there is no jurisdictional reason that these persons would be excluded.⁴⁴

III. The Right to Life in Extra-Ordinary Situations (e.g. Armed Conflict, disasters)

As discussed in the Chapter 2, there is a growing movement of scholars, practitioners and international bodies arguing for the obligation to register civilian casualties during situation of armed

⁴⁰ ICRC (n 1).

⁴¹ Last rights Project, ‘Declaration for the Dignified Treatment of all Missing and Deceased Persons and their Families as a Consequence of Migrant Journeys (The Mytilini Declaration)’ (2018) < <https://missingpersons.icrc.org/library/mytilini-declaration-dignified-treatment-all-missing-and-deceased-persons-and-their> > 26 February 2024.

⁴² Stefanie Grant (n 32) 4.

⁴³ Ibid 4.

⁴⁴ Last Rights (n 33) 32.

conflict. In this section, I will add to this growing body of literature, affirming the applicability of the right to life (particularly the implicit procedural obligation to register death) during situations of armed conflict as well as other public emergencies, under the framework of international human rights law. I will not explore death registration under international humanitarian law and international customary humanitarian law, as it is well covered by others, whose work is summarized in Chapter 2.

Human rights adjudicating bodies have confirmed that the right to life is non-derogable and applicable during times of armed conflict and other public emergencies. In the ICCPR, the right to life (Article 6) is included in the list of non-derogable rights in Article 4(2).⁴⁵ The HRC confirmed in *General Comment No. 36* that “[l]ike the rest of the Covenant, Article 6 continues to apply also in situations of armed conflict to which the rules of international humanitarian law are applicable, including to the conduct of hostilities.”⁴⁶ However, the HRC has noted that the “nature of the public emergency that threatens the life of the nation may... be relevant to determination of whether a particular act or omission leading to deprivation of life is arbitrary and to a determination of the scope of positive measures that States parties must take.”⁴⁷ In the ECHR, the right to life is protected under Article 2 and is non-derogable, even during war and public emergency.⁴⁸ The African Commission has even ruled that the duty to protect lives extends to situations where deaths occur in the thousands and are not caused by state agents.⁴⁹

The ECtHR,⁵⁰ HRC,⁵¹ IACHR,⁵² and ACHPR⁵³ have all applied the right to life to situations of armed conflict, using the same criteria they applied to non-conflict situations. Turning to look more closely at the components of the right to life related to death registration (as argued above), the human rights adjudicating bodies confirm that the procedural obligations to investigate death as well as the

⁴⁵ Human Rights Committee, ‘General Comment No. 29, States of Emergency (Article 4): International Covenant on Civil and Political Rights’ (2001) UN docs CCPR/C/21/Rev.1/Add.11, para 7; UN Human Rights Committee (n 35) para 67.

⁴⁶ UN Human Rights Committee (n 35) para 64; see also Human Rights Committee, ‘General Comments No. 31 (80), The Nature of the General Legal Obligation Imposed on States Parties to the Covenant: International Covenant on Civil and Political Rights’ (2004) UN docs CCPR/C/21/Rev.1/Add.13, para. 11, and Human Rights Committee (n 45) para 3 on derogations from provisions of the Covenant during a state of emergency.

⁴⁷ UN Human Rights Committee (n 35) para 64.

⁴⁸ Derogations are permissible in circumstances provided by Article 15(2). Article 15(2) provides that derogations from the Article are permissible ‘in respect of deaths resulting from lawful acts of war’.

⁴⁹ *Amnesty International and Others v Sudan*, African Commission on Human and Peoples’ Rights, Communication No. 48/90, 50/91, 52/91, 89/93 [1999], para 50.

⁵⁰ See for example *Hanan v Germany* (Grand Chamber), European Court of Human Rights, Application No. 4871/16, para 204; *Case of Georgia v Russia (II)* (Grand Chamber) (Merits), European Court of Human Rights, Application No. 38263/08, para 326-27.

⁵¹ See for example UN Human Rights Committee (n 35) para 67; UN Human Rights Committee, ‘General Comment No. 31, The Nature of the General Legal Obligation imposed on States Parties to the Covenant’ (2004) UN Docs CCPR/C/21/Rev.1/Add.13, para 11; Human Rights Committee (n 45) para 3.

⁵² See for example Inter-American Commission on Human Rights, ‘Report on the Situation of Human Rights in Nicaragua’ (1978) OEA/Ser.L/V/II.45 < <https://www.cidh.org/countryrep/Nicaragua78eng/intro.htm> > accessed 20 March 2024, Chapter II; Inter-American Commission on Human Rights, ‘Report on the Situation of Human Rights in Argentina’ (1980) OEA/Ser.L/V/II.49 < <https://www.cidh.org/countryrep/Argentina80eng/toc.htm> > accessed 20 March 2024.

⁵³ See for example African Commission on Human and Peoples’ Rights, ‘General Comment No. 3 on the African Charter on Human and Peoples’ Rights: The Right to Life’ (adopted 2015) < <https://policehumanrightsresources.org/content/uploads/2015/01/General-Comment-3-On-The-African-Charter-On-Human-And-Peoples-Rights-The-Right-To-Life-Article-4.pdf?x96812> > accessed 20 March 2024, 11.

obligation to protect life remain in place during armed conflict and in other emergency situations. Consider the following:

- **Procedural Obligation to Investigate Death**

During emergencies situations, human rights bodies have confirmed that the obligation to investigate deaths remains applicable.⁵⁴ In *General Comment No 36*, the HRC notes that,

[a]lthough some Covenant rights other than the right to life may be subject to derogation, derogable rights that support the application of Article 6 must not be diminished by measures of derogation. Such rights include procedural guarantees, such as the right to fair trial in death penalty cases, and accessible and effective measures to vindicate rights, such as the duty to take appropriate measures to *investigate, prosecute, punish and remedy violations of the right to life (emphasis added)*.⁵⁵

Similarly, without reference to IHL, the ECtHR's review of states' substantive obligations under the right to life⁵⁶ have found that procedural obligations⁵⁷ continue to apply during emergencies (including armed conflict specifically).⁵⁸ Examples include cases regarding armed conflict in Northern Cyprus during the military operations by Turkey (1974),⁵⁹ fighting between the Kurdish freedom fighters (PKK) and the Turkish armed forces,⁶⁰ as well as the armed conflict in Chechnya,⁶¹ Bosnia and Herzegovina,⁶² Iraq,⁶³ and Georgia-Russia.⁶⁴

⁵⁴ Last Rights (n 33) 19.

⁵⁵ UN Human Rights Committee (n 35) para 64.

⁵⁶ See for example, *Isayeva v Russia*, European Court of Human Rights, Application no 57950/00 [2005]; *Isayeva, Yusupova and Bazayeva v Russia*, European Court of Human Rights, Application nos 57947-49/00 [2005].

⁵⁷ *Al-Skeini and Others v the United Kingdom*, European Court of Human Rights, Application no 55721/07 [2011]; *Jaloud v the Netherlands*, European Court of Human Rights, Application no 47708/08 [2014].

⁵⁸ In *Isayeva* the ECtHR did not explicitly described the circumstances as an armed conflict, but it can be argued that it was; Other examples include *Gulec v Turkey*, European Court of Human Rights, Application No 21593/93 [1998]; *Ergi v Turkey*, European Court of Human Rights, Application No 238189/94 [1988], para 79 and 82; *Ahmet Ozkan and Others v Turkey*, European Court of Human Rights, Application No 21689/93 [2004], 85-90, 309-20 and 326-30.

⁵⁹ See for example *Cyprus v Turkey*, European Court of Human Rights, Application No 25781/94 [2001].

⁶⁰ See for example *Case of Öcalan v Turkey* (Judgement) (Grand Chamber) European Court of Human Rights, Application No. 46221/99 [2005];

⁶¹ As of 2014, the European Court of Human Rights had passed more than 230 judgements finding a violation of the convention with the armed conflict in the Chechen Republic of the Russian Federation. 350 cases were pending. About 60 per cent of the applications concern enforced disappearances; other issues include killing and injuries to civilians, destruction of homes and property, indiscriminate use of force, use of landmines, illegal detention, torture, and inhuman conditions of detention (European Court of Human Rights, 'Statistics and Factsheet' (2014)).

⁶² For example, *Palic v Bosnia and Herzegovina*, European Court of Human Rights, Application no 4704/04 [2011].

⁶³ For example, *Al-Skeini and Others v the United Kingdom* (Judgement) (n 57); *Pritchard v the UK*, European Court of Human Rights, Application no 1573/11 [2014] (strike-out decision); *Case of Hassan v the UK*, European Court of Human Rights, Application No. 29750/09 [2014]; *Case of Jaloud v the Netherlands* (n 57).

⁶⁴ See for example *Case of Georgia v Russia (II)* (Grand Chamber) (Merits) (n 50)

Consider a few examples of ECtHR case law: in the case of *Abuyeva and others v Russia*⁶⁵ the ECtHR found that the Russian authorities had failed to undertake an effective investigation into the civilian deaths as,

no independent study of the proportionality and necessity of the use of lethal force has been carried out, nor has there been any attribution of individual responsibility for the aspects of the operation which had caused loss of life and the evaluation of such aspects by an independent body, preferably of a judicial nature.⁶⁶

As such, the Chamber found that the procedural and substantive elements of Article 2 had been violated. In *Tagayeva and others v Russia*⁶⁷ more than 1,000 people (mostly children) were taken hostage by Chechen rebels in a school in North Ossetia and more than 330 were killed as a result of the fighting between the rebels and the military. In this case, the ECtHR found a violation of Article 2 in part because the investigation into the loss of life was ineffective⁶⁸ (as well as other elements). Similarly, in *Isayeva, Yurupova and Bazayeva v Russia*⁶⁹ and *Isayeva v Russia*⁷⁰ the ECtHR found a breach of Article 2 because an effective investigation had not been undertaken, which diminished public confidence in the rule of law and the state's ability to prevent unlawful acts.⁷¹

As discussed in the previous chapter, case law requires that the investigation be effective and independent in the event of a potential wrongful death, including during armed conflict and other public emergencies.⁷² This includes gathering physical evidence;⁷³ documentary evidence⁷⁴ and eyewitness testimony⁷⁵ (where there is no collusion between witnesses);⁷⁶ forensic evidence;⁷⁷ and, as necessary, an autopsy⁷⁸ which provides a complete and accurate record of cause of injury and death.⁷⁹ As described in Chapter 7, it is hard to imagine how this could be universally ensured without a global death registration system, capable of triggering investigation in cases of potential wrongful death.

⁶⁵ *Abuyeva and others v Russia* (Judgement), European Court of Human Rights, Application No. 27065/05 [2010].

⁶⁶ *Ibid*, para 242.

⁶⁷ *Case of Tagayeva and others v Russia* (Judgement), European Court of Human Rights, Application No. 26562/07 [2017].

⁶⁸ *Ibid*, para 619.

⁶⁹ *Case of Isayeva, Yusupova and Bazayeva v Russia* (n 56).

⁷⁰ Where it was alleged that the Russian military carried out a sustained aerial bombing of a village in Chechnya which resulted in heavy civilian casualties, after rebel fights had unexpectedly entered the village. Allegedly, planes bombed civilians as they attempted to escape the village.

⁷¹ *Case of Isayeva, Yusupova and Bazayeva v Russia* (n 56) para 178.

⁷² See *Mahmut Kaya v Turkey*, European Court of Human Rights, Application No. 22535/93, para 86-92; *Ergi v Turkey*, European Court of Human Rights, Application No. 23818/94, para 82-85; *Tanrikulu v Turkey*, European Court of Human Rights, Application No. 23763/94 [1999], para 101-10; *Khashiyev and Akayeva v Russia*, European Court of Human Rights, Application No. 57942/00 and 57945/00 [2005], para 156-66; *Isayeva* 215-24; *Musayev and Others v Russia*, European Court of Human Rights, Application No. 57941/00, 58699/00 and 60403/00 [2007], para 158-65; *Jaloud v the Netherlands* (n 57) para 164.

⁷³ *Jaloud v the Netherlands* (n 57) para 227.

⁷⁴ *Ibid*, para 227.

⁷⁵ *Tanrikulu v Turkey* (n 73) para 109.

⁷⁶ *Jaloud v the Netherlands* (n 57) para 227.

⁷⁷ *Gul and others v Turkey*, European Court of Human Rights, Application No. 44715/98, para 89.

⁷⁸ *Case of Salman v Turkey* (Judgement), European Court of Human Rights, Application Number 21986/93 [2000], para 106; *Jaloud v the Netherlands* (n 57).

⁷⁹ *Esmukhambetov and others v Russia*, European Court of Human Rights, Application No. 23445/03, para 116.

Though I will not focus on IHL in this Chapter, it is worth noting that the HRC has confirmed that human rights law and international humanitarian law are complementary during armed conflict, with the later applying as *lex specialis* where the two bodies of law conflict.⁸⁰ The HRC found that killings that are in line with the IHL are not considered ‘arbitrary’ and thus do not constitute a breach of Article 6.⁸¹ Where killing is considered to be in violation of IHL, it should also be a violation of Article 6.⁸² Confirming the obligation to investigate suspected incidents of wrongful death during armed conflict, in *General Comment No. 36* the HRC confirms states,

[w]hile rules of international humanitarian law may be relevant for the interpretation and application of Article 6 when the situation calls for their application, both spheres of law are complementary, not mutually exclusive. Use of lethal force consistent with international humanitarian law and other applicable international law norms is, in general, not arbitrary. By contrast, practices inconsistent with international humanitarian law, entailing a risk to the lives of civilians and other persons protected by international humanitarian law, including the targeting of civilians, civilian objects and objects indispensable to the survival of the civilian population, indiscriminate attacks, failure to apply the principles of precaution and proportionality, and the use of human shields would also violate Article 6 of the Covenant. They must also *investigate alleged or suspected violations of Article 6* in situations of armed conflict in accordance with the relevant international standards [including the Minnesota Protocol]. (emphasis added).⁸³

Jurisprudence from the IACtHR and ECtHR confirms that state parties have a general duty in cases of gross human rights violations to conduct criminal investigations and to bring perpetrators to justice, derived from the right to effective remedy. For example, in the case of the *Massacres of El Mozote and Nearby Places v El Salvador*, the Inter-American Court found that “conducting an effective investigation is a fundamental and determinant element for the protection of certain rights that are violated or annulled by such situations.”⁸⁴ In their *Concluding Observation on Serbia and Montenegro*, the HRC indicated that the exhumation of mass graves was insufficient, if not accompanied by an effective investigation; “[w]hile noting the effective work regarding exhumations

⁸⁰ United Nations Human Rights Committee, ‘General Comment No 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life’ (30 October 2018) UN Doc CCPR/C/GC/36, para 64.

⁸¹ UN Human Rights Committee (n 35) para 64.

⁸² Ibid, para 64.

⁸³ Ibid, para 64; see also United Nations Human Rights Office of the High Commissioner (n 10), para 20–22.

⁸⁴ *Case of the Massacres of El Mozote and Nearby Places v. El Salvador*, Inter-American Court of Human Rights, para 197.

and autopsies of some 700 bodies from mass graves in *Batajnica*, the Committee is concerned at the lack of progress in investigations and prosecutions of the perpetrators of those crimes (arts. 2,6).”⁸⁵

As directed by Resolution 50/11 of the HRC, the United Nations High Commissioner for Human Rights (OHCHR) recently prepared a report on the impact of casualty recording on the promotion and protection of human rights.⁸⁶ The report recognizes that “casualty recording is an important and effective means of delivering on a range of fundamental human rights... Impacts are realized in the rights to life, health, education and an effective remedy, among others.”⁸⁷ Though the report stops short of identifying an obligation to record death under the positive obligation to investigate potential wrongful death, it does recognize that casualty records “...assist States in fulfilling their obligation to investigate allegations of international human rights and humanitarian law violations and abuses by pointing to incidents in which a violation may have taken place.”⁸⁸

The *Minnesota Protocol* confirms that during armed conflict state parties are obligated to account for persons missing as a result of the conflict and to provide relatives with information.⁸⁹ The Protocol holds that,

all parties must use all means at their disposal to identify the dead, including by recording all available information prior to the disposal of the body and marking the location of the graves; and in a situation of international armed conflict they must at least endeavour to facilitate the return of the remains of the deceased at the request of, inter alia, the next of kin.⁹⁰

The *Protocol*⁹¹ also requires that parties to an international armed conflict put in place an information bureau to centralize information regarding “the death of protected persons”,⁹² among other things.

⁸⁵ Human Rights Committee, ‘Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee: Serbia and Montenegro’, (2004) UN doc CCPR/CO/81/SEMO, para 10.

⁸⁶ Human Rights Commission, ‘Impact of Casualty Recording on the Promotion and Protection of Human Rights’, Report on the United Nations High Commissioner for Human Rights (2023) UN Docs A.HRC/53/48.

⁸⁷ Ibid, para 4.

⁸⁸ Ibid, para 35.

⁸⁹ Additional Protocol to the 1949 Geneva Conventions, Relating to the Protection of Victims of International Armed Conflicts (1977 Additional Protocol I) (1977), Arts. 32, 33; Jean-Marie Henckaerts and Louise Doswald-Beck ‘Study on Customary Rules under International Humanitarian Law’ ICRC (Cambridge Press 2005), Rule 117.

⁹⁰ United Nations Human Rights Office of the High Commissioner (n 10) 4-5; see also Jean-Marie Henckaerts and Louise Doswald-Beck (n 90) Rules 116 and 114; Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (first Geneva Convention, (entered into force 21 October 1949) International Committee of the Red Cross, Article 16 and 17; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention) (entered into force 21 October 1950), International Committee of the Red Cross, Article 19 and 20; Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949 (third Geneva Convention) (entered into force 21 October 1950) International Committee of the Red Cross, Article 129, 130; Additional Protocol to the 1949 Geneva Conventions, Relating to the Protection of Victims of International Armed Conflicts (1977 Additional Protocol I) (1977), Article 34.

⁹¹ United Nations Human Rights Office of the High Commissioner (n 10) 4-5.

⁹² Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (first Geneva Convention, (entered into force 21 October 1949) International Committee of the Red Cross, Article 16; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention) (entered into force 21 October 1950), International Committee of the Red Cross, Article 19; Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949 (third Geneva Convention) (entered into force 21 October 1950) International Committee of the Red Cross, Article 120 and 122; Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)

Furthermore, the *Minnesota Protocol* states that “[t]he duty to investigate a potentially unlawful death – promptly, effectively and thoroughly, with independence, impartiality and transparency – applies generally during peacetime, situations of internal disturbances and tensions, and armed conflict.”⁹³ It recognizes, however, that armed conflict may pose practical challenges to the realization of an effective investigation, particularly “with regard to the obligation on a State, as opposed to another actor, to investigate deaths linked to armed conflict when they occur on territory the State does not control.”⁹⁴ It concludes by stating that “[w]here context-specific constraints prevent compliance with any part of the guidance in this Protocol, the constraints and reasons for non-compliance should be recorded and publicly explained.”⁹⁵

The ECtHR also acknowledges the potential challenge of undertaking an investigation in difficult security conditions but still confirms the obligation, stating,

it is clear that where the death to be investigated under Article 2 occurs in circumstances of generalized violence, armed conflict or insurgency, obstacles may be placed in the way of investigators and concrete constraints may compel the use of less effective measures of investigation or may cause an investigation to be delayed. Nonetheless, the obligation under Article 2 entails that an effective, independent investigation is conducted into alleged breaches of the right to life.⁹⁶

As such, although the ECtHR has acknowledged the challenges of conducting an investigation where there is “generalized violence, armed conflict or insurgency”, they still require that the authorities take “all reasonable steps”, as possible in the circumstances.⁹⁷ Consider *Aslakhoanova and others v Russia*,⁹⁸ where the Court noted that the state party had a systemic failure to investigate, recalling that there were more than 120 cases of violations of Article 2 resulting from disappearances in Chechnya. A few years later, in *Abakarova v Russia* the Court found that there had been no improvement, stating “the inadequacy of the investigation into the deaths and injuries of dozens of civilians... was not the result of objective difficulties that can be attributed to the passage of time or the loss of evidence, but

(entry into force 21 October 1950) International Red Cross, Article 136 (where relevant, this duty applies, mutatis mutandis, to enforced disappearance).

⁹³ United Nations Human Rights Office of the High Commissioner (n 10) 5-6, para 20.

⁹⁴ Ibid, 5-6, para 20.

⁹⁵ Ibid, 5-6, para 20.

⁹⁶ European Court of Human Rights, ‘Guide on Article 2 of the ECHR: Right to life, Updated on 31 August 2022’ (available at: https://www.echr.coe.int/Documents/Guide_Art_2_ENG.pdf), 43, para 201; see also *Georgia v Russia* (Grand Chamber), European Court of Human Rights, Application No. 38263/08 [2021], para 326.

⁹⁷ *Al-Skeini and Others v the United Kingdom* (Judgement) (n 57) para 164; *Jaloud v the Netherlands* (Judgement) (n 57) para 226.

⁹⁸ See also *Case of Gakayeva and others v Russia*, European Court of Human Rights, Application No. 51534/08, 4401/10, 25518/10, 28779/10, 33175/10, 47393/10, 54753/10, 58131/10, 62207/10 and 73784/10 [2013]; *Pitsayeva and others v Russia*, European Court of Human Rights, Application No. 53036/08, 61785/08, 8594/09, 24708/09, 30327/09, 36965/09, 61258/09, 63608/09, 67322/09, 4334/10, 4345/10, 11873/10, 25515/10, 30592/10, 32797/10, 33944/10, 36141/10, 52446/10, 62244/10 and 66420/10 [2014]. 232; *Fazlic and others v Bosnia and Herzegovina*, European Court of Human Rights, Application No. 66758/09 [2014].

rather the result of the investigating authorities' sheer unwillingness to establish the truth and punish those responsible."⁹⁹

As discussed in Chapter 7, the obligation to undertake effective investigations, without discrimination, is seemingly impossible without a universal death registration system capable of triggering investigation where death may be wrongful. In armed conflict and other public emergencies this is admittedly complicated by the dynamics of the situation as well as stresses on civil registration systems. Regardless of the difficulties, the obligation to ensure universal death registration is critically important during these periods as it is one of the gatekeepers of the rule of law. Where wrongful death goes unrecognized, and subsequently unpunished, impunity has fertile ground. It is for this reason that attention to building strong, flexible civil registration systems during periods of 'calm', including contingency systems and emergency preparedness, is essential to ensuring that death registration services remain in place, allowing for the subsequent investigation into all potentially wrongful death.

- **Positive obligation to protect life and prevent wrongful death**

According to Article 6(1) of the ICCPR, 'Every human being has the inherent right to life.'¹⁰⁰ The term 'inherent' has been understood to require broad positive obligations. *General Comment 6* affirms that actions designed to avert armed conflict (particularly nuclear war) and strengthen international peace and security are among the most important measures to protect the right to life.¹⁰¹ The HRC has, for example, expressed concern about the proliferation of weapons of mass destruction (particularly nuclear weapons), describing them as grave threats to the right to life.¹⁰² Though these provisions relate more directly to prevention of armed conflict, they confirm that obligations to put in place measures to protect life extend to the prevention of death within the context of armed conflict.

As I have discussed in the previous Chapter, death registration is an essential means of monitoring adherence to the positive obligation to protect life and prevent wrongful death and to developing protective measures and policies. Let us consider the example of cluster munitions: Cluster munitions are a type of explosive weapon that release or eject smaller submunitions. Because cluster munitions can release submunitions over a wide area, they cause high civilian death. Official and unofficial civilian casualty statistics were instrumental in establishing the disproportionate risk of this type of

⁹⁹ *Abakarova v Russia*, European Court of Human Rights, Application No. 16664/07 [2015], para 98. See also *Case of Musayev and others v Russia* (n 73) para 164; *Turkish Case of Benzer and others v Turkey*, European Court of Human Rights, Application No. 23502/06 [2013], para 197.

¹⁰⁰ United Nations, International Covenant on Civil and Political Rights (entered into force 23 March 1976), UNTS 999, Article 6(1).

¹⁰¹ UN Human Rights Committee (n 35) para 12, 70, 71.

¹⁰² See International Covenant on Civil and Political Rights (entered into force 23 March 1976), UNTS 999, Article 4(2); UN Human Rights Committee, 'CCPR General Comment No. 6: Article 6 (Right to Life)' (1982) UN Doc CCPR/C/21/Add.1; UN Human Rights Committee, 'General Comment No. 14, Nuclear Weapons and the Right to Life (Article 6)' (1984), para 2.

munition to civilians.¹⁰³ Subsequently, the Convention on Cluster Munitions¹⁰⁴ was adopted in 2008 and came into force in 2010. Without mortality statistics (including cause of death), it would have been difficult to establish that the prohibition of cluster munitions was necessary to protect civilian life.

Confirming this approach, the ECtHR guidelines on the right to life establish that during armed conflict (particularly international armed conflict in the quote below) states are under an obligation to protect the lives of those not (or no longer) engaged in hostilities. Referring to the obligation to protect life under the right to life, the ECtHR guidelines go on to note that the safeguards of the Convention, under Article 2, continue to apply during armed conflict, read alongside of international humanitarian law. Consider the quotation below,

the ECtHR has further underlined that Article 2 must be interpreted in so far as possible in light of the general principles of international law, including the rules of international humanitarian law which play an indispensable and universally accepted role in mitigating the savagery and inhumanity of armed conflict. In a zone of international conflict contracting states are under an obligation to protect the lives of those not, or no longer, engaged in hostilities. This would also extend to the provision of medical assistance to the wounded; where combatants have died, or succumbed to wounds, the need for accountability would necessitate proper disposal of remains and require the authorities to collect and *provide information about the identity and fate of those concerned*, or permit bodies such as the ICRC to do so. Therefore, even in situations of international armed conflict, *the safeguards under the Convention continue to apply*, albeit interpreted against the background of the provisions of international humanitarian law (*emphasis added*).¹⁰⁵

The OHCHR report on civilian casualties recognizes the importance of death registration both in individual human rights protection as well as decision making.¹⁰⁶ The report highlights that casualty recording is essential in the realization of protective obligations under the right to life, stating,

The following examples illustrate how casualty recording fosters prevention and protection across contexts and at multiple levels. Identified spikes in casualties, for instance, have been used as an early warning “alarm signal” to trigger action to protect those affected and most at

¹⁰³ See for example the Cluster Munition Monitor < <http://the-monitor.org/index.php/LM/Our-Research-Products/Cluster-Munition-Monitor> > accessed 4 June 2024.

¹⁰⁴ Convention on Cluster Munitions (entered into force 1 August 2010), UN TS Vol. 2688.

¹⁰⁵ *Hassan v The UK* [GC] (n 63) para 104 quoted in European Court of Human Rights, ‘Guidelines on Article 2 of the European Convention on Human rights, Right to Life’ (2022) < https://www.echr.coe.int/documents/d/echr/Guide_Art_2_ENG > accessed 1 March 2024, 29, para 124.

¹⁰⁶ Human Rights Committee (n 87) para 5

risk. Such action is primarily aimed at responding to emergency needs at the field level, having a positive effect on multiple human rights, in particular on the right to life.¹⁰⁷

The report lists examples where casualty recording facilitated subsequent interventions by the international community and government to protect life.¹⁰⁸

Case law suggests that there may be also be a positive obligation to prevent and prepare for a disaster under the right to life. In the case *Budayeva and others v Russia* (2008), the applicants lived in an area that was subject to regular mudslides which were aggravated by the disrepair of a dam and mud collection facility and the absence of an early warning system. No action was taken despite experts' warning to local authorities. In 2000 there was a major mudslide which killed and severely injured numerous people. Though the Chamber unanimously found that the State should be afforded a wide margin in the event of natural disasters,¹⁰⁹ in this case the Chamber ruled that the failure of authorities to repair the dam and/or establish an early warning system resulted in a breach of Article 2, arguing that "the positive obligation to establish a legislative and administrative framework designed to provide effective deterrence against threats to the right to life [is] required by Article 2 of the Convention."¹¹⁰ In *Furdik v Slovakia*¹¹¹ the ECtHR applied the Osman test and found that there is a state obligation to provide "emergency services where it has been brought to the notice of the authorities that the life or health of an individual is at risk".¹¹²

We can confirm that the human rights provisions that confer an obligation to register death remain applicable during times of armed conflict and public emergencies. In particular, the right to life is considered non-derogable and case law has confirmed that both the procedural obligation to investigate and the obligation to protect and prevent wrongful death remain applicable during periods of armed conflict and public emergencies. As established in the previous Chapter, the obligation to register death is implicit to both obligations and required to ensure effective realization of the right to life. As such, even during these extraordinary circumstances, the obligation to register death must remain.

IV. Conclusion

Though death registration is practiced around the world, certain groups are left uncounted and invisible. In this Chapter I sought to determine if there is a legal justification for this gap, which

¹⁰⁷ Human Rights Committee (n 87) para 16.

¹⁰⁸ *Ibid*, para 17-24.

¹⁰⁹ *Case of Budayeva and Others v. Russia* (Judgement) (n 88) para 135.

¹¹⁰ *Ibid*, para 159.

¹¹¹ *Ilbeyi Kemaloglu and Meriye Kemaloglu v Turkey* (n 299).

¹¹² *Furdik v Slovakia* (Admissibility) European Court of Human Rights, Application No. 42994/05 [2008], 13.

allows for a limitation of the implicit obligation to register death under the right to life (as described in Chapter 7). To these ends, I looked at three issues: (a) the principle of non-discrimination under human rights law and its implications for death registration; (b) issues related to jurisdiction under human rights law, seeking to determine the boundaries of states' obligation to register death; and (c) the non-derogability of the right to life, evaluating the applicability of implicit procedural obligation to investigate potentially wrongful death and to protection life under the right to life during extraordinary circumstances (e.g. armed conflict). My research confirms that the right to life, including positive procedural obligations to investigate potential wrongful death and to protect life, remain applicable in extraordinary circumstances, including migration, public emergencies and armed conflict. As such, there is every reason to believe that the implicit obligation to register death, established in Chapter 7, also apply to these circumstances.

Chapter 9 – Conclusion

Death registration is essential to the protection of individual and collective life. Though birth registration is a clearly codified norm under international law, universal, compulsory death registration is not an explicit obligation. Recall that as of 2023 roughly 1/3rd of the countries and territories in the world register less than 90% of deaths.¹

The lack of an explicit international obligation (as a part of civil registration) is an obstacle to ensuring universal death registration at the national level, which in turn allows states to exclude groups of people (often people who are already vulnerable to multiple rights violations). As such, some persons remain invisible in life as in death, which has deep implications for the rule of law and the development and implementation of law-making and public policy. Without a clear registration of the deceased's identity and cause of death, investigation into potentially wrongful death is difficult (if not impossible); impunity allows less value to be given to some lives and increases the protection risks for vulnerable groups. Increasingly, death registration is recognized as a critical component of the right to personhood before the law and legal identity, as well as a to the protection and realization of the rights of family members (e.g. right to know, right to remarriage, right to a family environment, rights related to inheritance and social protection). Additionally, if mortality statistics, one of the building blocks of policy development, are incomplete, it directly impacts the degree to which the state prioritizes protective action for these groups, including in regard to health, criminal justice, migration, safety in work and schools, housing, transportation, food regulations, environmental protection, and many more.

During crisis situations, death registration often comes under increased scrutiny. Frequently, the physical, administrative and political context of the crisis itself, coupled with pre-existing gaps in the civil registration system, negatively impacts death registration. The impact can be far reaching, encouraging impunity during armed conflict, increasing the suffering of families during disasters, and limiting effective humanitarian response, among other things. The climate crisis and current international dynamics point to a sharp increase in disasters in the coming decades, only adding to the strain on civil registration systems as well as their importance.

Civil registration has received attention from the international community in recent decades. There is a growing awareness that civil registration and vital statistics are essential to good governance, the

¹ 'Demographic and Social Statistics: Civil Registration and Vital Statistics' <<https://unstats.un.org/unsd/demographic-social/crvs/>> accessed 6 April 24; UN Department of Economic and Social Affairs, 'World Population Prospected: 2022, Summary of Results' (2022), 25 <https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/wpp2022_summary_of_results.pdf> accessed 19 January 2024.

international development agenda (including the SDGs) and to the realization of a number of human rights. However, without a clear normative framework, states are not obligated to progress.

This thesis was addressed to the following question: Is death registration an emerging or existing norm under international law? The implicit assumption that led me to ask this question was that universal, compulsory, comprehensive death registration undertaken by the state, within the framework of existing human right obligations, can improve the realization of fundamental rights (particularly the right to life and effective remedy) and enhance basic protections. To answer my thesis question, I considered death registration under international customary law as well as international treaty law, including during extraordinary circumstances. My research clearly indicates that death registration is a customary norm, as well as an implicit norm under international treaty law, applicable to all people, in all circumstances.

I. Overview of Key Findings

In Chapter 1 and 2 I explored the concept of death registration, including its historical usage. Death registration can be coercively used by governments to increase surveillance and other predatory state systems, as it can be used to strengthen states' ability to protect and increase their populations wellbeing. Bearing this in mind, throughout my thesis I argue for an international obligation to register death that is framed by international human rights law, to guard against misuse. As a further assurance, in Chapter 2 I propose a framework against which law should be evaluated, based on Mark Olssen's work, which I call the 'continuance of life' framework. I argue that, at the least, law should not violate our individual and collective existence. Ideally, law should contribute to protecting and ensuring the continuance of life. Death registration protects against impunity for violations of the right to life on the individual level and provides essential data to ensure that governments are able to develop systems and laws that allow for our individual and collective continuance of life and wellbeing. As we collectively face the existentially threat of climate change, monitoring emerging trends in mortality has never been more important.

There is a growing interest in death registration. As discussed in Chapter 3, it has received particular attention from two groups of academics and practitioners: those focused on civil registration as a state system and those focused exclusively on registration in the context of emergencies (e.g. civilian casualties in armed conflict, natural disasters, migration, pandemics, etc). In the case of the former, death registration (alongside of birth and marriage registration) is predominately framed by the right to legal identity, the right to health and articles directly related to mortality (e.g. reduction of infant mortality). However, this community does not recognize a stand-alone obligation to register death. The latter group of academics and practitioners, those focused on civilian casualties during armed

conflict and in other exceptional circumstances, predominately ground death registration obligations in international customary law related to armed conflict and international humanitarian law. However, they do not extend this obligation beyond the emergency context.

My thesis contributes to the literature in three ways: (a) I argue that death registration is a customary norm under international law, applicable at all times and to all people. At present, customary arguments have been almost exclusively focused on armed conflict; (b) I have extended the legal research into death registration as an implicit obligation to the right to life and effective remedy. Though other scholars have touched on the right to life as a potential source, the legal analysis has remained limited. My thesis established the implicit obligation to universal death register as inherent to the obligation to investigate potentially wrongful death and to realize positive obligations to protect the population; and (c) I sought to bridge the literature focused on strengthening CRVS systems, on one hand, and the emerging requirements to register civilian casualties in armed conflict, on the other. In summary, my thesis stands out from the literature for its unique focus on universal death registration as a customary obligation at all times (not only in emergencies) and its analysis of death registration as an implicit procedural obligation under the right to life and the right to effective remedy under treaty law, applicable to all people.

▪ **Death Registration under Customary Law**

In Chapter 4, I examined the evidential elements required for the identification of a customary norm and put forward my attempt at a consensual framework for analysing international customary law, with the aim of generating the widest possible support for the conclusions of my research. Taking into consideration the numerous debates in this field, I propose a framework for international customary law that takes into consideration both state practice and *opinio juris*. Attempting to position myself among the dominant points of disagreement among legal scholars, I recognize that practice should be widespread and virtually uniform among affected states to contribute to the development of a customary norm. I take into consideration the duration of state practice, though recognize that it has recently been given less weight by the ICJ and others. I recognize that where state practice exists in law only, but is not implemented, it does not contribute to the establishment of practice, though it may suggest *opinio juris*. With regards to *opinio juris*, I conclude that state action in the international arena can contribute to the establishment of *opinio juris*, drawing on the arguments of Dahlman's work, in addition to more classical sources of evidence.

Responding to the various arguments of legal scholars regarding the weight which should be afforded to state practice and *opinio juris* and the degree to which they should be considered discrete categories, I adopted the Kirigis Sliding Scale, like the International Committee for the Red Cross. As

such, I propose that where state practice is widespread, there may be less need for *opinio juris* and vis-versa. Countering potential critics that argue that this approach opens the door to the potential manipulation of international customary law, I propose that an overt consideration of the ethical value of a norm (using the ‘continuance of life’ framework developed in Chapter 2) can act as a counter protection (e.g. consider the practice of torture – many states practice it but no one thinks it should be considered customary law).

Echoing the ICJ’s confirmation that there is no hierarchy between the sources of evidence of customary law, I identified the sources of customary law that I take into consideration which included national legislation and practice of state organs; international treaties; judicial decisions from international courts and tribunals (as subsidiary sources); and resolutions, declarations, etc of international organisations.

Subsequently, in Chapter 5, I applied my framework for establishing customary law to death registration to determine if the treatment of death registration suggests the existence of a customary norm. Using the essential components of a civil registration system described in the *United Nations Principles and Recommendations for a Vital Statistics System* (namely permanent, continuous, mandatory and universal registration), I considered the uniformity, consistency and duration of state practice. I found overwhelming evidence that:

- (a) Almost every country in the world has established a permanent and continuous death registration system within the framework of a civil registration system, as evidenced by the existence of national laws and policies that require death registration and administrative systems that translate this law into practice. In the majority of countries, the law requires mandatory and universal registration.
- (b) Despite widespread institutional and legal death registration requirements, many countries do not have complete death registration (above 90%). Gaps are predominately due to administrative weaknesses, budget challenges, public engagement, among other factors. There is a widespread and seemingly sustained effort to improve civil registration systems where there are gaps. Notably, there is significant evidence of both uniform and consistent practice dating back more than 100 years in many parts of the world and at least 50 years in almost all countries, with a steady progress towards permanent, compulsory and universal death registration.
- (c) However, I identified reoccurring exceptions to state practice, including during armed conflict and for particular minority groups (e.g. children under 5, migrants, refugees, stateless persons, rural communities, and indigenous communities). In Chapter 8, I examined whether these reoccurring exceptions represent a limitation to a norm, concluding that they do not (discussed further below).

Based on my research, I concluded that there is sufficient evidence of uniformity, consistency and duration of state practice.

To evaluate *opinio juris*, I primarily drew on state engagement in the regional and international arena. Using the Kirgis Sliding Scale, where death registration is almost complete (e.g. Europe), I made no further attempt to identify *opinio juris*. Rather, I focused on regions where death registration was incomplete. I found significant evidence of state engagement and commitment at the regional and international level. At the national level, I found that many of the states with gaps in death registration completeness have undertaken reform initiatives, including assessments, the establishment of inter-ministerial committees, national Action Plans, etc. National reform initiatives are often in line with and/or supported by regional and international agreements and programmes which aim to improve civil registration globally. In the international arena, death registration is increasingly recognized as a cornerstone to the realization of human rights, including recognition of personhood before the law, and to the achievement of development goals. As such, I found that there is ample evidence that states believe that they are obligated to conduct death registration, even where they have gaps in implementation, thus constituting *opinio juris*.

Referring to the ‘continuance of life’ framework described in Chapter 2, I considered the ethical value of death registration. I argued that it is ethically valuable and worthy of codification under customary international law. However, to mitigate against potential abuse, I recommended that death registration be implemented within the framework of international human rights and humanitarian law.

In conclusion, I found that death registration is a customary norm. Potential exceptions are explored and rejected in Chapter 8.

▪ **Death Registration under Treaty Law**

Subsequently, I looked at death registration under existing treaty law, particularly human rights law. In Chapter 6, I defined my framework for treaty interpretation. Reflecting the position of adjudicating human rights bodies, I prioritized a teleological approach to treaty interpretation based on Article 31-32 of the Vienna Convention on the Law of Treaties. Arguing that the nature of the treaty under consideration should play a key role in defining the approach to treaty interpretation, I suggested that human rights treaties require an emphasis on object and purpose (including at times an evolutionary approach to interpretation) and an application of the *principle of effectiveness*. As such, my approach to treaty interpretation considered the following elements: (a) text; (b) context; (c) object and purpose, including a reflection on the principle of effectiveness and use of an evolutionary approach to treaty interpretation where it is necessary to realize the stated object and purpose of the treaty; and (d) state

practice, relevant agreements and respect of the general rules of law, including consideration of relevant case law from international courts and tribunals.

In Chapter 7 I adopted the approach to treaty interpretation defended in Chapter 6 to explore death registration under international human rights treaty law. Though there is no overt obligation requiring states to undertake universal death registration, I argue that jurisprudence from international adjudicating bodies suggests that death registration is an implicit procedural obligation under the right to life and effective remedy. I contend that death registration is required by:

(a) ***The obligation to investigate all potentially wrongful deaths (without discrimination)***: I argued that universal death registration is a prerequisite to ensure that timely and impartial investigations can be triggered in all cases of potentially wrongful death, without discrimination. I considered international jurisprudence regarding:

- The procedural obligation to investigate wrongful death, including the establishment of administrative systems;
- How the duty to investigate is triggered, arguing the death registration is necessary to ensure universal realization of this right;
- The components of the investigation, contending that death registration is an implicit obligation to the requirement to undertake an *effective, impartial* investigation; and
- The scope of the duty to investigate, illustrating that it extends to many types of death and thus requires a universal death registration system to trigger an investigation in all necessary cases.

(b) ***The obligation to protect life and prevent wrongful death***: My research confirmed that international jurisprudence increasingly recognizes that states have an obligation to put in place regulations and policies that proactively counter threats to life, as soon as they become known by the state. I argued that mortality data (as part of vital statistics) is an essential part of evidence-based policy development aimed at preventing and responding to threats against the lives of persons within a given territory.

I thereby concluded that death registration is an implicit obligation under the right to life and the right to effective remedy under international human rights law, both with regards to the obligation to investigate potentially wrongful death as well as the obligation to prevent wrongful death and protect life.

- **Death Registration in Exceptional Circumstances**

My research confirms that every country in the world registers some people's death and, with very limited exception, has institutionalized death registration within the civil registration system. However, many countries exclude some groups from registration, intentionally or unintentionally. In some cases, it is a particular minority group, in other cases it is children under the age of 1, rural communities or non-citizens (e.g. migrants, stateless persons, refugees). Without death registration, criminal investigation into potentially wrongful death may not be triggered, preventing the realization of effective remedy. Without an effective remedy, the rule of law is undermined. As a result, certain persons seem to be given less value, as killing them results in little consequence. This includes civilians killed in armed conflict and other disasters. At the same time, their lives and deaths are not reflected in vital statistics which are used by states to prioritize and develop policies, thereby further undermining their protection.

In Chapter 8, I sought to establish if the gaps in death registration (as laid out in Chapter 5) represent a legitimate limitation to a customary or a treaty obligation to register death. Death registration in the context of international humanitarian law and international humanitarian customary law has received considerable attention in recent years from scholars and practitioners. To avoid duplication, I focused on the implicit obligation under international human rights law, which has received less attention. I ask the question, are the obligations to investigate wrongful death or positive obligations to protect life limited to certain groups, territories or times? I argued that the right to life, including positive and procedural obligations, are applicable to all persons (regardless of citizenship and civilian status) within the territorial jurisdiction of a state or areas under their control, in all contexts (including armed conflict, public emergency and migration). In support of this position, I considered three aspects (a) the principle of non-discrimination under human rights law and its implications for the obligation to register death; (b) jurisdiction and the application of right to life under human rights law; and (c) the non-derogability of the right to life and implication for the right to life in exceptional circumstances. I conclude by establishing that the right to life is applicable to all persons within the territorial jurisdiction of a state or areas under their control, in all contexts. Therefore, the obligation to register death, under both treaty law and customary law, applies to extraordinary circumstances and to all persons under the jurisdiction of the state.

Throughout my thesis, I have used the 'continuance of life' framework as a litmus test, based on my argument that at the least law should not violate our individual and collective existence and that it should contribute to our wellbeing. I have argued that death registration is essential to ensuring our individual and collective existence by ensuring that violations of the right to life are not met with impunity and by requiring that threats to life are identify and adequately address by the government, as per right to life obligations.

II. Implications of the Findings for the Future and the Implications of Climate Change

The world around us is changing quickly. Our inability or unwillingness to limit overconsumption, overproduction, unsustainable economic growth, resource depletion and to protect our biodiversity is a frightening indication that we will not be able to curb carbon emissions in time to stop the domino effect of climate change, which is already challenging human life around the globe. Climate change poses a real and tangible threat to continued human life on earth, both immediately and for the generations to come.² Early identification of patterns in mortality (knowing who is dying and why) has never been more important as we face the new emerging threats in front of us. Our individual and collective existence is increasingly dependent on shared/collective response mechanisms, which are in turn dependant on a shared understanding of the issues threatening humanity. Mortality trends, including cause of death data, is critical to our ability to adapt and survive in our new environment.

As the threats of climate change intensify, states and groups of people may well be tempted to forgo the protection of some individuals or groups, in favour of others. Already we see that the most vulnerable people and countries, often those with weak governance structures and systems are the first to see climate related mortality increase.³ The 3.6 billion people living in areas that are particularly vulnerable to climate change in Africa, South Asia, South and Central American and Small Island Developing States, are also those with the weakest civil registration systems,⁴ those that are the least able to monitor mortality trends and ensure that all lives are protected. Transparency in mortality data and a criminal justice system that investigates *all* potentially wrongful death – triggered by a universal death registration system – are critical to ensuring that the rule of law is upheld and that states remain accountable to their obligations under human rights treaties and humanitarian law.

The EU warns that climate change will increase heat-related mortality, mortality from extreme weather events, increase diseases (vector, rodent, water, food-born) and change the distribution of viruses,⁵ pests and other diseases,⁶ increase risks related to air quality, and increased food insecurity and water scarcity.⁷ The Intergovernmental Panel on Climate Change and the World Health Organization estimate that there will be an additional 250,000 climate-related deaths per year

² NASA, 'The Effects of Climate Change' < <https://science.nasa.gov/climate-change/effects/> > accessed 1 June 2024.

³ European Union, 'Consequences of Climate Change' < https://climate.ec.europa.eu/climate-change/consequences-climate-change_en > accessed 1 June 2024.

⁴ United Nations Framework Convention on Climate Change Secretariat, 'Conflict and Climate' (12 July 2022) < <https://unfccc.int/news/conflict-and-climate> > accessed 1 June 2024.

⁵ J Fox-Skelly, 'There are diseases hidden in ice, and they are waking up. (4 May 2017) BBC' < <http://www.bbc.com/earth/story/20170504-there-are-diseases-hidden-in-ice-and-they-are-waking-up> > 1 June 2024.

⁶ Durr E Shehvaar, Wardah Idris and Mubashira Ahmed, 'Climate Change the Surge for Pandemics' (30 May 2020) Journal of Sustainable Development Vol 13 (3), < https://www.researchgate.net/publication/341768626_Climate_Change_and_the_Surge_for_Pandemics > accessed 1 June 2024, 139.

⁷ European Union (n 3).

resulting from undernutrition, malaria, diarrhoea and heat stress alone between 2030-2050.⁸ Climate change will increase water scarcity, water contamination and increase food scarcity.⁹ In 2020, 770 million people faced hunger, predominately in Africa and Asia¹⁰ and 98 million more people were food insecure than 10 years previously.¹¹

Though academics continue to debate the degree to which climate change will increase the likelihood of armed conflict, there is a growing consensus that climate change is already shaping and will continue to shape trends in armed conflict in the future (though the relationship is not linear¹²).¹³ It is widely repeated that climate change will result in a 10-20% increase in the risk of armed conflict associated with every half degree increase in local temperatures;¹⁴ the International Crisis Group finds that this may be a conservative estimate.¹⁵

As of 2023, there were 281 million international migrants.¹⁶ Though people move for a vast number of reasons, evidence shows that climate change is playing an important role in adding pressure to existing systems and communities and is a contributing factor to high migration rates.¹⁷ As climate change continues to increase water scarcity, heat waves, food scarcity, wild fires, other extreme weather and, potentially, armed conflict, migration will likely increase exponentially. For example, the UN estimates that as many as 700 million people are at-risk of displacement by 2030, as a result of water scarcity and drought.¹⁸ Already, migrants are more likely to be excluded from civil registration systems, including death registration. States and the international community urgently need to take action to build state systems that can ensure full registration, within the framework of human rights law. In the case of migration, registration is often complicated by the illegality of residency and migrants' fear of interacting with the state. Further research should be dedicated to understanding how civil registration systems can be built, perhaps even transnationally, to ensure proactive, rights-based registration.

Artificial intelligence is already playing a role in e-governance and poses both risks and opportunities for ensuring civil registration in the future. On one hand, it presents interesting opportunities to further develop technologies that can support civil registration transnationally and supranationally. It will also

⁸ World Health Organization, 'Climate Change' < <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health> > accessed 1 June 2024

⁹ Ibid,

¹⁰ Ibid.

¹¹ Ibid..

¹² Robert Malley (Former President and CEO of the International Crisis Group), 'Climate Change is Shaping the Future of Conflict' (05 May 2020) Speech addressed to the UN's Security Council's Virtual Arria Session on Climate and Security Risks on 22 April 2020 < <https://www.crisisgroup.org/global/climate-change-shaping-future-conflict> > accessed 31 May 2024.

¹³ United Nations Framework Convention on Climate Change Secretariat (n 4).

¹⁴ Robert Malley (Former President and CEO of the International Crisis Group) (n 12).

¹⁵ Ibid.

¹⁶ International Organization on Migration, 'World Migration Report 2024' < https://publications.iom.int/system/files/pdf/pub2023-047-l-world-migration-report-2024_1.pdf > accessed 1 June 2024.

¹⁷ United Nations Framework Convention on Climate Change Secretariat (n 4).

¹⁸ World Health Organization, 'Drought' < https://www.who.int/health-topics/drought#tab=tab_1 > accessed 1 June 2024.

allow governments and intergovernmental bodies to data mine vital statistics in new and interesting ways to better understand and evaluate emerging threats. Artificial intelligence also increases the risks around data privacy and surveillance, among other risks. This is an area that should be studied further.

If we are able to anticipate the emerging threats, with sufficient political will, we can mitigate some of the worst consequences of climate change on human life and wellbeing. To date, we are not working fast enough. The term ‘knowledge is power’ was first used by philosophers in the 16th century.¹⁹

Establishing a universal obligation to register death and tabulate mortality statistics can help to provide us with the power to stem the human catastrophe that is on our shores, providing us with key insights into emerging threats and ensuring that the rule of law remains strong despite the rising chaos that is predicted to accompany the future.

¹⁹ Francis Bacon, *Meditationes Sacre* (Excusum Impensis Humfredi Hooper 1597).

Annex 1: National Legislation Governing Civil Registration

This summary of the legal framework is several years out of date. There has been progress in many parts of the world that is not captured below. However, this summary still provides a sufficient overview of existing legal framework. Uncaptured progress only supports the confirmation that civil registration legal frameworks exist in almost every country.

Country	Legal framework	
Africa		
Algeria	Yes ²⁰	
Benin	Yes ²¹	
Botswana	Yes	In Botswana, the Birth and Death Registration Act (revised in 1998) provides the legal framework for civil registration of live births, still-birth and death. It details who can register each event, the timeframe for registration (including provisions for late registration and penalties for non-compliance), and the responsibility of District Registers in the process. ²²
Burkina Faso	Yes ²³	In Burkina Faso, since 2015, a centralized CRVS (<u>civil registration and vital statistics</u>) system is being implemented by the non-governmental organization iCivil Africa. ²⁴
Burundi	Yes ²⁵	
Cameroon	Yes	The Civil Status Law (No. 2011/011) was enacted on 6 May 2011, replacing Ordinance No. 81-02 of 29 June 198. ²⁶ Birth and death registration are not defined by the civil registration law, as recommended by UN guidelines.
Central African Republic	Yes ²⁷	
Chad	Yes ²⁸	
Comoros	Yes	
DR Congo	Yes	Law No. N*87-010 on the Code of the Family (1987) was updated by Family Code, Law No. 16/008. The revised law, which became effective in July 2016, provided the basis for the civil registration system. It establishes the legal framework for registration of births, deaths and foetal deaths, marriage, separation, divorce, annulment, adoption, legitimation and recognition. Registration of vital events is mandatory. Article 191 of the Family Code of 2016 provides the legal framework for the registration of death. ²⁹ However, the law does not include specific provisions regarding the compilation and dissemination of vital statistics from civil registers. ³⁰
Egypt	Yes	The civil registration has gone through several rounds of legislative reforms. The modern civil registration system in Egypt was originally governed by Law No. 260 (1960), which was amended by Act No. 11 (1965) and Act No. 158 (1980). The legal framework addresses registration of vital events, time allowed for registration, data entry rules, data transmission from Central Civil Registration Offices through field and local offices. The Executive List Decision No. 120 (1965) established the notification forms required for collecting vital statistics. ³¹

²⁰ 1882 (International Institute for Vital Registration and Statistics (iiVRS) 'Methods and Problems of Civil Registration Practices and Vital Statistics Collection in Africa' (July 1981) Technical Papers Number 16, 15-16).

²¹ 1933 (International Institute for Vital Registration and Statistics (iiVRS) (n 1) 15-16).

²² UN Statistics Division, 'Status of Civil Registration and Vital Statistics: SADC Region' (2010) CRVS Technical Report Series Vol 2, ESA/STAT/2010/10, < https://unstats.un.org/unsd/demographic-social/crvs/documents/Technical_report_SADC_final_v2.pdf> accessed 26 January 2024, 18-23.

²³ 1933 (International Institute for Vital Registration and Statistics (iiVRS) (n 1) 15-16).

²⁴ Sophie Morlin-Yron, 'New Technology Could Help 230 Million 'Ghost' Children' *CNN* (7 December 2017) < <https://edition.cnn.com/2016/12/01/africa/birth-registration-system-burkina-faso/index.html>> accessed 29 April 2024.

²⁵ 1922 (International Institute for Vital Registration and Statistics (iiVRS) (n 1) 15-16).

²⁶ Center of Excellence for Civil Registration and Vital Statistics Systems 'Snapshot of Civil Registration and Vital Statistics Systems of Cameroon' (2019) < https://crvssystems.ca/sites/default/files/assets/files/CRVS_Cameroon_e_WEB.pdf> accessed 30 January 2024.

²⁷ 1940 (International Institute for Vital Registration and Statistics (iiVRS) (n 1) 15-16).

²⁸ 1961 (United Nations Statistical Office, 'Handbook of Vital Statistics Systems and Methods, Volume 1: Legal, Organizational and Technical Aspects', Series F No. 35 (1985) ST/ESA/STAT/SER.F/35 < <https://digitallibrary.un.org/record/137198?ln=fr&v=pdf>> accessed 29 April 2024, 43).

²⁹ Center of Excellence for Civil Registration and Vital Statistics Systems 'Snapshot of Civil Registration and Vital Statistics Systems of Democratic Republic of Congo' (2019), 8.

³⁰ Ibid. 5.

³¹ United Nations Statistics Division 'Status of Civil Registration and Vital Statistics: ESCWA Region' (2009) CRVS Technical Report Series Vol. 1, UN Doc ESA/STAT/2009/9 < https://unstats.un.org/unsd/demographic-social/crvs/documents/Technical_report_ESCWA_Final.pdf> accessed 26 January 2024.

Ethiopia	Yes	The Federal Democratic Republic of Ethiopia passed the Registration of Vital Events and National Identity Card Proclamation No. 760/2012 ³² in August 2012 (which came into force in 2016). This law made the registration of vital events compulsory, including birth, death, marriage, divorce, adoption, recognition and legitimation. Death registration includes cause of death, for both natural and unnatural death. Initially, the law only applied to Ethiopian nationals; however, this was amended by Proclamation No 1049/2017 ³³ which expanded civil registration to asylum seekers, refugees and non-nationals residing in Ethiopia. ³⁴
Gabon	Yes ³⁵	
Gambia	Yes	
Guinea	Yes	The civil registration system in Guinea is governed by the Civil code of 1998, the Children's Code of 2008, and the Communities Code. The Civil Code describes the registration procedures for vital events and civil status registrations. The Code of Local Government recognizes an individual's civil status as an entitlement of the community and it describes the function of registrar of civil status. The Children's Code establishes the right to birth registration as a fundamental right. ³⁶
Guinea Bissau	Yes ³⁷	
Ghana	Yes	
Ivory Coast	Yes ³⁸	
Kenya	Yes	The Births and Deaths Registration Act was amended in 1972 to require mandatory registration for all births and deaths that occur in Kenya, regardless of nationality. A National Registration and Identification Bill was introduced to the Senate in 2014 and has been subsequently modified by the Huduma Bill (2019) which harmonizes and consolidates registration laws, establishes an Integrated Identity Management platform and system, provides each person with a unique identification number, and simplifies civil registration mechanisms. ³⁹
Lesotho	Yes	The Registration of Births and Deaths Act of 1973 (section 3) requires compulsory registration of births (including still-born) and deaths. ⁴⁰
Liberia	Yes	The registration of births and deaths is governed by the Public Health Law (1976) and the Executive Law (1972). ⁴¹
Libya	Yes	Civil Registration Act, b. No. 36 (1968) ⁴²
Madagascar	Yes	In Madagascar, civil registration is regulated by law No. 61-025 (9 October 1961, revised in 1990). This law outlines the responsibilities of the civil status officer, procedures for completing and storing vital records, procedures for registration, details on who can inform on vital events, etc. ⁴³
Mali	Yes ⁴⁴	
Malawi	Yes	Civil registration in Malawi was not compulsory until recently, as per the Death Registration Act (Chapter 24:01 of Laws of Malawi) (1904). The law requires registration for white and Asian communities. However, registration for indigenous Africans was optional. The National Registration Act (2009), which repealed the Birth and Death Registration Act of 1904, made birth and death registration mandatory for all. ⁴⁵
Morocco	Yes ⁴⁶	

³² United Nations Children's Fund, 'Ethiopia' < <https://data.unicef.org/crvs/ethiopia/> > accessed 29 April 2024.

³³ Ibid.

³⁴ Centre of Excellence for Civil Registration and Vital Statistics System 'Snapshot of Civil Registration and Vital Statistics Systems of Ethiopia' (2019) International Development Research Centre < https://crvssystems.ca/sites/default/files/assets/files/CRVS_EthiopiaSnapshot_e.pdf > accessed 30 January 2024, 4.

³⁵ 1940 (International Institute for Vital Registration and Statistics (iiVRS) (n 1) 15-16).

³⁶ Centre of Excellence for Civil Registration and Vital Statistics, 'Snapshot of Civil Registration and Vital Statistics Systems of Guinea' (2019) International Development Research Centre < https://apai-crvs.uneca.org/sites/default/files/resourcefiles/CRVS_GuineaSnapshot_e.pdf > accessed 31 January 2024, 4.

³⁷ 1976 (United Nations Statistical Office (n 9) 43.)

³⁸ 1933 (United Nations Statistical Office (n 9) 43.)

³⁹ Centre of Excellence for Civil Registration and Vital Statistics Systems 'Snapshot of Civil Registration and Vital Statistics System of Kenya' (2019) < https://apai-crvs.uneca.org/sites/default/files/resourcefiles/CRVS_KenyaSnapshot_e.pdf > accessed 29 January 2024, 4.

⁴⁰ UN Statistics Division (n 3) 25-28.

⁴¹ Centre of Excellence for Civil Registration and Vital Statistics, 'Snapshot of Civil Registration and Vital Statistics Systems of Liberia' (2019) < https://crvssystems.ca/sites/default/files/assets/files/CRVS_Liberia_e_WEB.pdf > accessed 31 January 2024, 4.

⁴² International Institute for Vital Registration and Statistics (iiVRS) 'The Vital Registration and Statistics System in Libya and its Improvement' (1991) Technical Papers, Number 47 < https://unstats.un.org/unsd/demographic-social/crvs/documents/IIVRS_papers/IIVRS_paper47.pdf > accessed 31 January 2024.

⁴³ UN Statistics Division (n 3) 29-31.

⁴⁴ 1933 (International Institute for Vital Registration and Statistics (iiVRS) (n 1) 15-16.

⁴⁵ UN Statistics Division (n 3) 31-33.

⁴⁶ 1950 (International Institute for Vital Registration and Statistics (iiVRS) (n 1) 15-16.)

Mozambique	Yes	In Mozambique, the Portuguese colonial government established a system of issuing identification documents and registering the population. Following its independence in 1975, public resistance to the civil registration and identity management systems was high. However, most of the system remained intact, following some changes. ⁴⁷ The Civil Registration Code was issued on 4 December 2018, thereby establishing a legislative framework for the registration of births, marriages, divorces, deaths and adoption. Under the revised legislation, civil registration is now mandatory and universal, covering all parts and groups in the country, including refugees and stateless persons. ⁴⁸
Mauritius	Yes	Birth, death and marriage registration are regulated by the Civil Status Act of 1981. This Act describes the responsibilities of civil registrars, management of vital records, issuance of certificates, timelines for registration, informants and required documentation for registration. ⁴⁹
Namibia	Yes	The Ministry of Home Affairs and Immigrations was established shortly after independence and was charged with civil registration and identity management functions. In 1996, the Identification Act 21 (1996) was passed, repealing the Identity Document in Southwest Africa Act (1970), the Identification of Persons Act (1979) and the Identification of Persons Amendment Act (1980). It was specifically designed to be in harmony with the Births, Marriages, and Deaths Registration Act 81 of 1963. ⁵⁰
Niger	Yes ⁵¹	
Nigeria	Yes	Compulsory Registration of Births and Deaths, etc Act 69 (1992) requires that all deaths be registered.
Rwanda	Yes ⁵²	
Senegal	Yes	The civil registration framework in Senegal is governed by Law No. 72-61 (12 June 1972) of the Family Code. ⁵³
Seychelles	Yes	
Sierra Leon	Yes	The National Civil Registration Act was adopted in 2016 (covering civil registration and identity management). ⁵⁴
Somalia	Yes ⁵⁵	
South Africa	Yes	The civil registration framework in South Africa is regulated by the following laws: the Births and Deaths Registration Act (Act 51 of 1992), the Marriage Act (Act 25 of 1961), the Recognition of Customary Marriages Act (Act 120 of 1998), the Civil Union (Act 17 of 2006) and the Divorce Act (Act 70 of 1979). The Births and Deaths Registration Act was amended in 2003. The revised Act describes how registrar should be appointed, the informant for each event, required registration period, responsibilities of registrars, etc. However, it does not include details related to registration, including information to be registered, production of vital statistics, etc. ⁵⁶
Swaziland	Yes	The Birth, Marriages and Death registration Act No. 5 (1983) replaced the Act No. 22 (1927). ⁵⁷
Tanzania	Yes	In Tanzania, civil registration of births and deaths is regulated by the Births and Deaths Registration Act (Chapter 108, last revised in 2002). This act includes procedures for compulsory reporting and registration of death. ⁵⁸ In Zanzibar, civil registration is regulated through the Births and Death Registration Act (Act No. 10 of 2006). It also describes the procedures for registration. ⁵⁹
Togo	Yes ⁶⁰	
Tunisia	Yes ⁶¹	
Uganda	Yes	Registration of Persons Act (2015, repealing previous law).

⁴⁷ Statistics Norway 'Status Analysis on Civil Registration and Vital Statistics' (2014) UN Statistics Division Migration Assistant, <<https://unstats.un.org/wiki/display/CRAVS/Norway%3A+Status+Analysis+on+Civil+Registration+and+Vital+Statistics>> accessed 30 January 2024, 37-38.

⁴⁸ Centre of Excellence for Civil Registration and Vital Statistics Systems 'Snapshot of Civil Registration and Vital Statistics Systems of Mozambique' (2019) International Development Research Centre <https://apai-crvs.uneca.org/sites/default/files/resourcefiles/CRVS_MozambiqueSnapshot_e.pdf> accessed 30 January 2024.

⁴⁹ UN Statistics Division (n 21) 33-38.

⁵⁰ Centre of Excellence for Civil Registration and Vital Statistics Systems, 'Compendium of Good Practices in Linking Civil Registration and Vital Statistics and Identity Management Systems, 'Case Study 4: Namibia' (2019) <https://crvssystems.ca/sites/default/files/assets/files/CRVS_Compndium_e_WEB.pdf> accessed 26 January 2024, 94-95.

⁵¹ 1933 (International Institute for Vital Registration and Statistics (iiVRS) (n 1) 15-16.)

⁵² 1922 (Ibid. 15-16.)

⁵³ Centre of Excellence for Civil Registration and Vital Statistics, 'Snapshot of Civil Registration and Vital Statistics Systems of Senegal' (2019) <https://crvssystems.ca/sites/default/files/assets/files/CRVS_Senegal_e_WEB.pdf> accessed 30 January 2024, 6.

⁵⁴ Centre of Excellence for Civil Registration and Vital Statistics System 'Snapshot of Civil Registration and Vital Statistics Systems of Sierra Leone' (2019) <https://crvssystems.ca/sites/default/files/assets/files/CRVS_SierraLeone_e_WEB.pdf> accessed 30 January 2024, 4.

⁵⁵ 1904 (International Institute for Vital Registration and Statistics (iiVRS) (n 1) 15-16.)

⁵⁶ UN Statistics Division (n 3) 48-56.

⁵⁷ Ibid, 56-61.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ 1923 (International Institute for Vital Registration and Statistics (iiVRS) (n 1) 15-16.)

⁶¹ 1918 (United Nations Statistical Office (n 9) 43).

Zambia	Yes	In Zambia, civil registration is governed by the Births and Death Registration Act (chapter 51), which came into force in 1973 and was amended in 1994 (Act No 13). ⁶²
Zimbabwe	Yes	The legislative framework for civil registration in Zimbabwe is composed of Births and Deaths Registration Act (updated 2005), the Marriage Act (2004), the Customary Marriage Act (2004), and the Matrimonial Causes Act (2000). ⁶³
Central Asia		
Afghanistan	Yes	With the fall of the Taliban regime in 2001, the civil registration system was reformed, including through a series of legal reforms of the legal framework for CRVS in 2014 and 2017. ⁶⁴ The legal framework for civil registration in Afghanistan is governed by Law 2014 on the Registration of Population Records (revised in 2017). ⁶⁵
Armenia	Yes	The Law on Acts of Civil Status (2004) and Law on State Register of the Population (2002), in particular Article 4 and 6, has been used as the legal basis for connecting the population and civil registers. ⁶⁶ Identity Management is regulated by the law of Identification cards (2011). Electronic processing of personal information is regulated by the Law on Protection of Personal Data (2015).
Bangladesh	Yes	The legal framework for civil registration in Bangladesh is the Births and Deaths Registration Act (2004, amended in 2013 and reformulated in 2018). ⁶⁷
Bhutan	No	Bhutan does not have a formal legal framework for civil registration. The only related law is the Bhutan Citizen Act (1977) which refers to listing and registering born children. ⁶⁸
Kyrgyzstan	Yes	Kyrgyzstan has a well-developed legal infrastructure around civil registration, primarily governed by the Law on Act of Civil Status, the Rules and Procedures for Civil Status Acts Registration, Codes on Children and the Family Code of the Kyrgyz Republic. Additional relevant regulations include the Status of National Passports of the Citizens of the Kyrgyz Republic, Decree on National Passports on the Citizens of the Kyrgyz Republic, Instruction on the Procedure for Receiving Documents, Registration, Fabrication (personification), Accounting, Issuance, and Destruction of the Identification Card Passport of a Citizen of the Kyrgyz Republic of 2017 form, Common Citizen's Passport 2006 Kyrgyz Citizen, and Law on Internal Migration. ⁶⁹
India	Yes	The Registration of Births and Deaths Act (1969) (Act No. 18 of 1969) ⁷⁰ replaced subsequent laws and unified the registration system, including by requiring compulsory registration of births and deaths. The Act included various provisions that detailed the form of registration, reporting and compilation of vital event statistics. ⁷¹
Nepal	Yes	In Nepal, civil registration is framed by the Birth, Death and other Personal Events Registration Act (1976). The Act was put in place in a phased manner, which took almost 15 years to be fully rolled out. ⁷²
Pakistan	Yes	In Pakistan, civil registration is framed by the National Database Authority Ordinance 2000, Provincial Government, Ordinances 2001 and the Cantonments Ordinance (2002). ⁷³ Additionally, the Local Government Acts (Punjab/KP/Sindh LG Acts 2013, Balochistan LG Act 2010, and Gilgit Baltistan LG Act 2014). ⁷⁴
Sri Lanka	Yes	In Sri Lanka, civil registration is framed by the Births and Deaths Registration Act No. 17 (1951, amended 2008). ⁷⁵
South east Asia		

⁶² UN Statistics Division (n 3) 67-70.

⁶³ Ibid, 71-74.

⁶⁴ United Nations Children's Fund, 'Status of Civil Registration and Vital Statistics in South Asia Countries, 2018' (2019) <<https://www.unicef.org/rosa/media/3121/file/UNICEF%20ROSA%20Status%20of%20Civil%20Registration%20and%20Vital%20Statistics%20in%20South%20Asia%20Countries%202019.pdf>> accessed 26 January 2024, 29.

⁶⁵ Ibid.

⁶⁶ Zoran Dokoric 'Compendium of Good Practice in Linking Civil Registration and Vital Statistics and Identity Management Systems: Armenia' (2019) Centre of Excellence for Civil Registration and Vital Statistics Systems, Global Partnership for Sustainable Development Data <https://crvssystems.ca/sites/default/files/assets/files/CRVS_Armenia_e_WEB.pdf> accessed 30 January 2024, 8.

⁶⁷ United Nations Children's Fund (n 45).

⁶⁸ Ibid, 63.

⁶⁹ Zoran Dokoric 'Compendium of Good Practice in Linking Civil Registration and Vital Statistics and Identity Management Systems: Kyrgyzstan' (2019) Centre of Excellence for Civil Registration and Vital Statistics Systems, Global Partnership for Sustainable Development Data <https://crvssystems.ca/sites/default/files/assets/files/CRVS_Armenia_e_WEB.pdf> accessed 30 January 2024, 7.

⁷⁰ United Nations Children's Fund (n 45).

⁷¹ International Institute for Vital Registration and Statistics (iiVRS) 'Organization of Civil Registration and Vital Statistics System in India' (1980) Technical Papers, Number 9, <https://unstats.un.org/unsd/demographic-social/crvs/documents/IIVRS_papers/IIVRS_paper9.pdf> accessed 30 January 2024, 2.

⁷² United Nations Children's Fund (n 45).

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid.

China	Yes ⁷⁶	
Japan	Yes	KOSEKI system is guided by the revised KOSEKI Law which was enacted in 1948. A primary change was that the reformed system focused on the immediate family unit, no longer registering 2 or 3 generations in the family registration book. ⁷⁷
Hong Kong	Yes ⁷⁸	
Korea	Yes	Although civil registration systems date back to the Japanese colonial ear, the current system was established in 1962 with the Resident Registration Act. The Act requires all residents to register their name, sex date of birth, relationship to their household, pace of family registration and address. Originally, the mayor, town manager or village headman were responsible for registration. Citizens were issued RR numbers and cards. ⁷⁹
Macau	Yes ⁸⁰	
Malaysia	Yes	Births and Deaths Registration Action 1957
Philippines	Yes	Civil Registry system was reformed in 1930 with the promulgation of Civil Registry Law of the Philippines (Act No. 3753, 26 November 1930) and Civil Code of the Philippines (Article 407-412). ⁸¹ The creation of the Bureau of the Census and Statistics (now, National Statistics Office) was established under Commonwealth Act No. 591; (b) the Civil Code of the Philippines (Republic Act No. 386), Title XVI, Book I amended the basic civil registration law of the Philippines – Act No. 3753; (c) due to underreporting on birth and death registration (25-50%), presidential decree No. 651 (which was amended by Presidential Decree No. 766) mandated that all unregistered birth and death registered during the year (1975) would be free of charge; (d) the Local Government Code (1983) move the civil registration function from city and municipal treasures to the city/municipal planning and development coordinators and areas with high populations density were assigned a full time civil registrar; (e) the Local Government Code (1983) was replaced by Local Government Code (1991) required that an full-time and regular civil registrar be appoint in all cities and municipalities; ⁸² (f) Presidential Decree No. 856 (known as the Health and Sanitation Code) provided the framework for the certification of deaths and its registration with the local registry office, in the absence of medical attendance. ⁸³
Pacific		
Australia	Yes	Births, Deaths and Marriages Registration Act 1996
Palau	Yes	Palau National Code (PNC), Title 34 (Public Health, Safety and Welfare), Division 5 (Vital Statistics - Population and Residence Reports), Chapters 40-41 (1966, amended, unknown date)
Tuvalu	Yes	Births, Deaths and Marriages Registration Act (1968); Births, Deaths and Marriages (Prescription of Forms and Seal) Regulations (1968)
Tokelau	Yes	Births and Deaths Registration Rules (1969)
Guam	Yes	Guam Administrative Rules and Regulations (GAR), Title 26. Public Health and Social Services, Division1, Chapter 2: Vital Statistics (1972)
Cook Islands	Yes	Births and Deaths Registration Act (1973); Marriage Act (1973) (as amended through Marriage Amendment Act 1998, 2000 and 2007); Births and Deaths (Amendment) Act (2007) (repealing provision re: registration of children born out of Cook Islands); Births and Deaths Registrations Fees 2015.
Fiji Islands	Yes	Births, Deaths and Marriages Registration Act (1975, amended 1978); Births, Deaths and Marriages Registration (Amendment) Decree 2014 (No. 18 of 2014) (Allows Minister to waive fees);

⁷⁶ S Liu, X Wu, AD Lopez, L Wang, Y Cai, A Page, P Yin, Y Liu, Y Li, J Liu, J You, M Zhou 'An Integrated National Mortality Surveillance System for Death Registration and Mortality Surveillance, China' (1 January 2016) Bull World Health Organ 94(1), 46-57.

⁷⁷ International Institute for Vital Registration and Statistics (iIvRS), 'Vital Statistics System of Japan' (1979) Technical Papers, Number 2.

⁷⁸ Committee of Asia Experts under the auspices of the IIVRS and the United Nations Economic and Social Commission for Asia and the Pacific, 'Urgently Needed Reforms in Civil Registration in Asian Countries' (1986) IIVRS Technical Paper No. 28 < https://unstats.un.org/unsd/demographic-social/crvs/documents/IIVRS_papers/IIVRS_paper28.pdf> accessed 29 January 2024, 90.

⁷⁹ Minah Kang, Green Bae, Heeun Kim, Seung Yeon Hong, Samuel Mills 'Korean Resident Registration System for Universal Health Coverage, Discussion Paper' (2019) World Bank Group < <https://openknowledge.worldbank.org/server/api/core/bitstreams/45d41e8b-02cf-560a-981c-6b4390314251/content>> accessed 30 January 2024.

⁸⁰ Committee of Asia Experts under the auspices of the IIVRS and the United Nations Economic and Social Commission for Asia and the Pacific (n 59) 90.

⁸¹ United Nations Department for Economic and Social Information and Policy Analysis Statistical Division, International Programme for Accelerating the Improvement of Vital Statistics and Civil Registration Systems 'Feasibility Study on Accelerating the Improvement of Civil Registration and Vital Statistics Systems of the Philippines' (1995) ST/ESA/STAT/110 < <https://unstats.un.org/unsd/demographic-social/crvs/documents/compressfeasibility%20Phillippines.pdf>> accessed 30 January 2024.

⁸² Section 479

⁸³ United Nations Department for Economic and Social Information and Policy Analysis Statistical Division, International Programme for Accelerating the Improvement of Vital Statistics and Civil Registration Systems (n 62) 10.

		Births Deaths and Marriages Registration Regulations 1976 (available at: https://laws.gov.fj/Acts/DisplayAct/914#).
Federated States of Micronesia	Yes	Code of the Federated States of Micronesia, Title 41. Public Health, Safety and Welfare, Chapter 1. Health Services Administration, § 105 (1980)
Niue	Yes	Births and Deaths Registration Regulations (1984)
Solomon Islands	Yes	Births and Deaths (Registration) Act (1988); Births, Marriages and Deaths Registration Act (1978) (applies only to foreigners in the Solomon Islands).
American Samoa	Yes	American Samoa Code, Title 13, Chapter 5 Vital Statistics (1962) (amended 1968, 1979, 1990)
Samoa	Yes	Births, Deaths and Marriages Registration Act (2002)
Northern Marianas	Yes	Vital Statistics Act of 2006 (2007)
Kiribati	Yes	Births, Deaths and Marriages Registration Ordinance (1968); Births, Deaths and Marriages Registration (Amendment) Act (1997) (allowing registration of children born outside Kiribati); Births, Deaths and Marriages Registration (Amendment) Act (2007).
Marshall Islands	Yes	Births, Deaths and Marriages Registration Act (1988) (amended 2009, 2016 re: marriage); Births, Deaths and Marriages (and Missing Persons Amendment) Act (2007) Births, Deaths and Marriage Registration (Amendment) Act 2016 (changing the age of marriage from 16 to 18).
Tonga	Yes	Births, Deaths and Marriages Registration Act (1926) (amended in 1927, 1929, 1933, 1935, 1936, 1976, 1979, 1989, 1991, 2010, 2012).
Papua New Guinea	Yes	Civil Registration Act (1963); Civil registration (amendment) ACT 2014 (establish national ID system); Civil Registration (Amendment) Act 2016 (repealed RG's power to prescribe fees) Civil and Identity Registration Bill 2019.
Nauru	Yes	Births, Deaths and Marriages Registration Act 2017.
Vanatu	Yes	Civil Status (Registration) Act (1970), (amended 1975, 1981); Civil Status (Time for Making Declarations) (1975); Burials Act (1988); Civil Status (Registration) (Amendment) Act 2009 (regarding appointment of RG and staff); Registration of Civil Status (Fees) (Amendment) Order No. 156 of 2013; Civil Status (Registration) (Amendment) Act 2018 (regarding amending name).
New Zealand	Yes	Births, Deaths, and Marriages Registration Act, 1996 (No 16), amended by Act 2000 (No 54), Act 2001 (No 56), Act 2002 (No 59), and Act 2003 (No 61).
Maldives	Yes	The Law on Birth Registration and Death Registration (enacted in 1993) serves as the legal framework for civil registration. ⁸⁴ In 2015, the Ministry of Health issued Regulation No. 2015/R-179 to provide detailed instructions for birth and death registration. ⁸⁵
CNMI	Yes	Vital Statistics Act 2006
Americas		
Argentina	Yes	Statute No 8204/63 (October 1963) (applied to the entire country as of 1 January 1964); Law No 16478 (1963) (with some subsequent modifications, this law still governs civil registration and personal identity). The Civil Code and some other national legislation relate to specific aspects of registration, including Decree no 18248 (addressed to names) and Decree No 18327 (establishing a microfilm system for registration). Local regulations have also been passed to complement the National Civil registration Law. ⁸⁶
Colombia	Yes	Law No. 16 (1916) (required burial permit). ⁸⁷ The right to an identity is established by Article 14 of the Colombian Constitution (1991), which reads “every person has the right to recognition as a person before the law”. The National Civil Registry (Registraduría Nacional del Estado Civil – RNEC) is established by Article 120 of the Constitution and Article 266 describes the functions of the RNEC with regards to the organization and management of the civil registration system and the identification

⁸⁴ United Nations Children’s Fund (n 45) 19.

⁸⁵ Ibid, 101.

⁸⁶ International Institute for Vital Registration and Statistics (iiVRS) ‘Civil Registration in the Republic of Argentina’ (1979) iiVRS Technical Papers, Number 5 < https://www.cdc.gov/nchs/data/isp/005_civil_registration_in_the_republic_of_argentina.pdf> accessed 30 January 2024, 2.

⁸⁷ UN Statistic Division Migration Assistant ‘Death Registration and Mortality Statistics in Colombia’ (1993) iiVRS Technical Papers, Number 54 < <https://unstats.un.org/wiki/display/CRAVS/Death+registration+and+mortality+statistics+in+Colombia>> accessed 30 January 2024.

		of persons. ⁸⁸ The Organic Statute of Civil Status Registration (Decree 1260, 1970) defined the management structure of registration offices and stipulated that church-issued certificates were no longer recognized evidence of civil registration. ⁸⁹ The RNEC formally took over the function of civil registration in 1987, under Decree 2241. ⁹⁰ A number of decrees were put in place to facilitate registration and improve coverage, including Resolution 802 of 2020 which extended civil registration services in hospitals and clinics and Law 395 of 2010 which allowed civil registration in any part of the country (regardless of residence or place of birth). ⁹¹
El Salvador	Yes	Election and Personal Identity Card Law ⁹²
Ecuador	Yes	Ecuador adopted a new Constitution in 2008, which includes various provisions related to civil registration including, (a) the right of every child and adolescent to an identity, name and nationality (article 45); (b) the right to individual and collective identity, including a name that has been freely chosen and registered (Article 66); and (c) specifies that the central government has sole authority for registration, nationalization and control of migration. As such, Ecuador's constitution establishes that the right to a name and registration are fundamental rights. ⁹³ The Organization Law provides for a Unique Personal Register (Article 73). ⁹⁴
Peru	Yes	During the conflict, the Peruvian government approved a new Constitution (1993) which established the national registration body that is still in place today, responsible for civil registration and identification nationally. The Constitution provides for the fundamental right to identity (Article 2). The National Register was officially established in 1995, with Peru's Organic Law. Additional laws governing civil registration include (a) the Digital Signatures and Certificates Law (2000); (b) the Law that Regulates the Reconstruction of Births, Marriage and Death Records due to Negligence, Accidents or Criminal Activity (2009); (c) the Personal Data Protection Law (2011); and (d) the Digital Government and Digital Identity Law (2018). ⁹⁵
United States of America	Yes	
Middle East		
Bahrain	Yes	Civil registration in Bahrain is regulated by Decree No. 6 (1970), amended by Decree No. 17 (1998). This Decree provides specific regulations for what is to be registered and the form of registration. Additionally, it identifies the administrative responsibilities for civil registration, namely the Ministry of Health for births, foetal deaths and death and the Ministry of Justice and Islamic Affairs for marriage and divorce. ⁹⁶
Iraqi	Yes ⁹⁷	
Jordan	Yes ⁹⁸	
Kuwait	Yes ⁹⁹	
Lebanon	Yes ¹⁰⁰	
Oman	Yes	The Civil Status Law (2004) requires mandatory registration of all vital events for both Omani citizens and foreigners, namely birth, death, marriage and divorce. ¹⁰¹

⁸⁸ Roa, Juan Pablo Toro, Roberto F. Inues, Samuel Mills (August 2019), 'Achieving health outcomes in Colombia: Civil registration and vital statistics system, unique personal identification number, and unified beneficiary registry system for births and deaths', World Bank group, Discussion paper. P. 1

⁸⁹ DANE and RNEC 2000

⁹⁰ Juan Pablo Toro Roa, Roberto F. Inues, Samuel Mills (n 69) ; UN Statistic Division Migration Assistant (n 68).

⁹¹ Juan Pablo Toro Roa, Roberto F. Inues, Samuel Mills (n 69).

⁹² International Institute for Vital Registration and Statistics (iiVRS) 'Status of Civil Registration and Vital Statistics in El Salvador' (1982) Technical Papers Number 17 < https://unstats.un.org/unsd/demographic-social/crvs/documents/IIVRS_papers/IIVRS_paper17.pdf > accessed 29 January 2024, 1.

⁹³ Veronica Alvarez 'Compendium of Good Practice in Linking Civil Registration and Vital Statistics and Identity Management Systems: Ecuador' (2019) Centre of Excellence for Civil Registration and Vital Statistics Systems, Global Partnership for Sustainable Development Data < https://www.data4sdgs.org/sites/default/files/2019-12/CRVS_Ecuador_e_WEB.pdf > accessed 30 January 2024, 8.

⁹⁴ Ibid.

⁹⁵ Centre of Excellence for Civil Registration and Vital Statistics Systems 'Compendium of Good Practices in Linking Civil Registration and Vital Statistics and Identity Management Systems, Case Study 6: Peru' (2019) < https://www.data4sdgs.org/sites/default/files/2019-12/CRVS_Peru_e_WEB.pdf > accessed 30 January 2024, 137-143.

⁹⁶ United Nations Statistics Division (n 12).

⁹⁷ International Institute for Vital Registration and Statistics (iiVRS), 'Organization and Status of Civil Registration and Vital Statistics in the Arab Countries' (1988) Technical Papers, Number 33 < <https://unstats.un.org/wiki/display/CRAVS/Organization+and+status+of+civil+registration+and+vital+statistics+in+the+Arab+countries> > accessed 26 January 2024.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ United Nations Statistics Division (n 12).

Qatar	Yes	Law No. 5 requires that births and deaths of all Qatar citizens and foreign residents be registered within one year of the event. ¹⁰²
Saudi Arabia	Yes ¹⁰³	
Syria	Yes ¹⁰⁴	
United Arab Emirates	Yes ¹⁰⁵	
Yemen	Yes	The Yemeni government established the legal basis for a unified civil registration system (1991 law), procedures for birth and death registration, and the design of vital events forms and content. A foundation was laid for the future digitalization of the civil registration system. ¹⁰⁶
Europe		
Denmark and Greenland	Yes	The National Registration Act (10 June 1968) ¹⁰⁷ was extended to Greenland, which is a Danish province, in 1972. ¹⁰⁸ The National Registration Act was modified by the Registers Act and the National Registration Act (both 1978), specifically with regards to data protection, supervisions of civil registration at the parish level, as well as procedural guidance for individual registers. ¹⁰⁹
England	Yes	As per the Births and Deaths Registration Act of 1953 (1 & 2 Eliz 2 c 20), death registration should include the date and place of death, name and sex of the deceased, date and place of birth of the deceased, occupation and usual address, and cause of death. ¹¹⁰ Additional legislation includes the Registration of Births, Deaths and Marriages (Special Provisions) Act 1957 (5 & 6 Eliz 2 c 58).
Ireland	Yes	Registration of Births and Deaths Act (1936), replaced by Vital Statistics and Births, Deaths and Marriages Registration Act (1956), replaced by Births, Deaths, and Marriages Registration Act (1972), most recently Registration of Births Act (1996).
Netherlands	Yes	Death registration, as birth registration, are regulated by the Civil Code, ¹¹¹ as well as by the Basic Registration of Persons Act, which governs the registration and storage/use of personal information entered into population registers. There are additional regulations that have been developed at the ministerial level, which describe how the Basic Registration of Persons Act is applied at the municipal level. ¹¹²
Portugal	Yes	Civil registry in Portugal was established by the 'Civil Registry Code' (18 February 1911). The Law of Separation of the Church and State (20 April 1911) transferred the responsibility of civil registration from the parish to the newly established Civil Registry Offices. ¹¹³
Scotland	Yes	Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c 49).

¹⁰² Ibid.

¹⁰³ International Institute for Vital Registration and Statistics (iiVRS) (n 78).

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ United Nations Statistics Division (n 12).

¹⁰⁷ International Institute for Vital Registration and Statistics (iiVRS) 'The Civil Registration System in Denmark' (1996) Technical Papers, Number 66 < https://www.cdc.gov/nchs/data/isp/066_the_civil_registration_system_in_denmark.pdf > accessed 26 January 2024, 1-2.

¹⁰⁸ Ibid, 1-2.

¹⁰⁹ Ibid, 1-2

¹¹⁰ International Institute for Vital Registration and Statistics (iiVRS) 'Vital Registration and Marriage in England and Wales' (1979) Technical Papers, Number 4 < https://www.cdc.gov/nchs/data/isp/4_vital-registration-and-marriage-in-englandwales_02-2.pdf > accessed 30 January 2024, 3-5.

¹¹¹ Centre of Excellence for Civil Registration and Vital Statistics Systems, 'Compendium of Good Practices in Linking Civil Registration and Vital Statistics and Identity Management Systems, Case Study 5: The Netherlands' (2019) < https://www.data4sdgs.org/sites/default/files/2019-12/CRVS_Netherlands_e_WEB.pdf > accessed 30 January 2024, 117.

¹¹² Ibid, 7.

¹¹³ Maria Lúcia de Brito Moura, *A "Guerra religiosa" na I República* (Universidade Católica Portuguesa 2010).

Annex 2: Data Collected during Death Registration

Element	Countries
Date of occurrence	Botswana, Egypt, Gambia, Ghana, Kenya, Lesotho, Mozambique, Namibia, Nigeria, Seychelles, Swaziland, Uganda, Zambia, Zimbabwe, Sri Lanka, Nepal, Maldives, India, Bhutan, Bangladesh, Afghanistan, Zambia, Tanzania; South Africa; Namibia, Mauritius, Malawi, Madagascar, UAE
Date of registration	Botswana, Egypt, Gambia, Ghana, Kenya, Lesotho, Mozambique, Namibia, Nigeria, Seychelles, Swaziland, Uganda, Zambia, Zimbabwe, Namibia, Sri Lanka, India, Madagascar
Place of occurrence	Botswana, Egypt, Gambia, Ghana, Kenya, Lesotho, Mozambique, Namibia, Nigeria, Seychelles, Swaziland, Uganda, Zambia, Zimbabwe, Sri Lanka (type of place of occurrence), Maldives, Bhutan, Afghanistan, Zambia, Tanzania; south Africa; Namibia, Mauritius, Malawi, Madagascar
Place of registration	Botswana, Egypt, Gambia, Kenya, Lesotho, Mozambique, Nigeria, Swaziland, Uganda, Zambia, Zimbabwe, Namibia, Sri Lanka, India
Name of deceased	El Salvador, Denmark, Namibia, Sri Lanka, Bahrain, Pakistan, Oman, Nepal, Maldives, India, Bhutan, Bangladesh, Afghanistan, Tanzania; South Africa; Namibia, Malawi, Madagascar
ID number	Namibia, Maldives, India, Bhutan, Bangladesh, Afghanistan, Zambia; Namibia
Age of decease/date of birth	El Salvador, Denmark, Botswana, Egypt, Gambia, Ghana, Kenya, Lesotho, Mozambique, Namibia, Nigeria, Swaziland, Uganda, Zambia, Zimbabwe, Namibia, Sri Lanka, Pakistan, Oman, Nepal, Maldives, India, Bhutan, Bangladesh, Afghanistan, Zambia; Tanzania; south Africa; Namibia, Mauritius, Malawi, Madagascar, UAE
Place of birth	Namibia, Oman, Nepal; Namibia
Sex of deceased	El Salvador, Botswana, Egypt, Gambia, Ghana, Kenya, Lesotho, Mozambique, Namibia, Seychelles, Swaziland, Uganda, Zambia, Zimbabwe, Sri Lanka, Pakistan, Oman, India, Bhutan, Bangladesh, Afghanistan, Maldives, Nepal, Zambia, Tanzania; South Africa; Namibia, Mauritius, Malawi, Madagascar, UAE
Tribe	Oman
Race/ethnicity	Sri Lanka, Nepal
Marital status of deceased (name of spouse)	El Salvador, Denmark, Botswana, Egypt, Ghana, Lesotho, Namibia, Nigeria, Seychelles, Swaziland, Zimbabwe, Pakistan, Nepal, Maldives, India, Bhutan, Afghanistan; south Africa; Namibia, Mauritius, Madagascar
Nationality of deceased	El Salvador, Sri Lanka, Oman, Maldives, Afghanistan, Zambia, Tanzania, Malawi
Last known address of the deceased	El Salvador, Denmark, Botswana, Egypt, Gambia, Ghana, Kenya, Lesotho, Mozambique, Namibia, Nigeria, Seychelles, Swaziland, Uganda, Zimbabwe, Sri Lanka, Oman, Nepal, Maldives, India, Bangladesh, Afghanistan, Tanzania; Namibia, Malawi, Madagascar
Education level	Nepal
Citizenship of deceased	Denmark, Nepal, Bhutan
Incapacity of deceased	Denmark
Occupation of deceased	Sri Lanka, Oman, Maldives, India, Bhutan, Afghanistan, Zambia, Tanzania, Malawi, Madagascar, UAE
Religious affiliation of deceased	Denmark (specifically with regards to membership to Lutheran church of Denmark), Oman, Mauritius
Voting rights of deceased	Demark
Name and family name of spouse	El Salvador, Denmark
Kinship (parents, children, etc)	El Salvador, Denmark, Sri Lanka, Oman, Nepal, Maldives, Inida, Bhutan, Afghanistan, Madagascar
Municipal circumstance	Denmark
Names of legitimate parents/illegitimate mother	Denmark

Type of death (normal, sudden, etc)	Sri Lanka, Pakistan, India
Smoking prevalence/alcohol	India
Type of medical attention at death/attendant at death	India, Bhutan, Namibia
Cause of death	El Salvador, Botswana, Egypt, Gambia, Ghana, Kenya, Lesotho, Mozambique, Namibia, Nigeria, Swaziland, Uganda, Zambia, Zimbabwe, Namibia, Sri Lanka, Bahrain, Pakistan, Nepal, Maldives, India, Bhutan, Bangladesh, Afghanistan, Zambia, Tanzania; south Africa; Namibia, Mauritius, Malawi, UAE
Certifier/informant (details)	Egypt, Ghana, Kenya, Mozambique, Namibia, Nigeria, Swaziland, Zimbabwe, Namibia, Sri Lanka, Bahrain, Pakistan, Oman, Nepal, Maldives, Bhutan, Bangladesh, Malawi, Madagascar

Annex 3: Administrative Systems

Country	Organizational arrangements	National oversight	Primary/local registration units
Afghanistan	Centralized ¹¹⁴	Afghanistan Central Civil Registration Authority ¹¹⁵	Office of Registration of Population Records in the provinces, districts, municipality districts, border ports and airports; ¹¹⁶ national and subnational levels, following certification of village heads or local authorities; ¹¹⁷ civil registration offices in 364 (out of 410) districts. ¹¹⁸
Algeria		Bureau des Statistiques d'Etat Civil, Minsitry de la Planification l'Amengement de Terrirotie	
Angola		Direccao Nacional dos Registros Notariado e Identificacao, Ministerio de Justica	Registo civil
Argentina	Decentralized ¹¹⁹		
Armenia		Civil Status Acts Registration Agency ¹²⁰	CSARA office ¹²¹
Bangladesh	Decentralized ¹²²	Ministry of Local Government, Rural Development and Cooperatives, Ministry of Health and Family Welfare, and Ministry of Planning ¹²³	Office of the Registrar General, 5,029 registration offices ¹²⁴
Bahrain		Birth and Deaths Registration Office, Ministry of Health ¹²⁵	Births and deaths registration office; Deaths that occur in hospital are directly reported by the hospital to the Birth and Death Registration Office, where a death certificate is issued. Deaths that occur outside of the hospital must be registered by relatives at the Birth and Death Registration Office. ¹²⁶
Benin		Ministere de l'Interieur	Townhall
Bhutan	Centralized ¹²⁷	Ministry of Home and Cultural Affairs, Department of Civil Registration and Census; Community Centre, Dzongkhag Civil Registration and Census Office, Thromde Civil Registration and Census Office, DCRC, Ministry of Home and Cultural Affairs ¹²⁸	
Botswana	Centralized ¹²⁹	Ministry of Health and Dept of Civil and National Registration; Registration Section Ministry of Home Affairs	Health offices and population registers; District administration
Burkina Faso ¹³⁰		Ministere de l'Interieur	Centres d'etat civil

¹¹⁴ United Nations Children's Fund (n 45).

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Afghanistan Civil Registration and Vital Statistics Country Strategic Plan 2016-2020 (December 2015); United Nations Children's Fund (n 64).

¹¹⁹ International Institute for Vital Registration and Statistics (iiVRS) (n 67) 1-2.

¹²⁰ Zoran Dokoric (n 66) 9.

¹²¹ Ibid, 10-11.

¹²² United Nations Children's Fund (n 45).

¹²³ Ibid, 45.

¹²⁴ Ibid.

¹²⁵ Decree No. 6 (1970), amended by Decree No. 17 (1998).

¹²⁶ United Nations Statistics Division (n 12).

¹²⁷ United Nations Children's Fund (n 45).

¹²⁸ Ibid.

¹²⁹ United Nations Statistics Division, 'Status of Civil Registration and Vital Statistics: African English-speaking Countries' (2016) CRVS Technical Report Series Volume 3, < <https://unstats.un.org/unsd/demographic-social/crvs/documents/Technical-report-CRVS-in-English-speaking-African-countries3.pdf> > accessed 26 January 2024, 8.

¹³⁰ United Nations Statistical Office (n 9) 51.

Cameroon	Semi-decentralized ¹³¹	Service d'Etat Civil Administration Territorial	Les centres d'état civil dans les communes (as of 2019, there were 2,724 civil status centres nationally (374 urban, 2,350 rural) ¹³²
Cape Verde		Direccao Geral dos Registos e Notariado, Ministerio la Justica	Secretariado administrativos
CAR		None	Les centres d'état-civil
Chad ¹³³		Ministere de l'Interieur	Centres d'état civil
Congo ¹³⁴ (not DR)		Direction Nationale de l'Etat Civil; Department de l'Adminstration du Territoire	Bureau d'Etat Civil (de chaque zone)
Colombia		The Colombian civil registration system is comprised of 4 institutions, (a) the Registraduria Nacional del Estado Civil is responsible for civil registration, national identification and electoral tools; (b) the Instituto Nacional de Medicina Legal y Ciencias Forenses is responsible for medical certification of death; (c) the Departamento Administrativo Nactional de Estadistica processes and produces vital statistics data; and (d) the Ministerio de Salud y Proteccion Social provides quality control of the health sector's medical certification of vital events. Coordination between these agencies to under the responsibility of the national Comision Intersectoral de Gestion de las Esadisticas Vitales, established by Presidential Decree in 2002. ¹³⁵	In exceptional cases, police inspectors and political administrators authorized by RNEC can undertake civil registration procedures. ¹³⁶
Denmark			Parishes, transferred to national registration offices ¹³⁷
DR Congo	Centralized ¹³⁸	Ministry of Home Affairs ¹³⁹	979 local civil registration offices (each with a civil registrar) at the Chiefdom/sector administrative level; ¹⁴⁰ La Commune urbaine or rurle, chefferie ou secteur. ¹⁴¹
El Salvador			El Salvador is administratively divided into 14 Departments and 261 Municipal Districts. Each municipality is governed by a locally elected government. Each municipality has a civil registration office, responsible for maintaining vital registers. ¹⁴²
England			As of 1979, there were 500 superintendent registrars and 1,250 registrars in England and Wales. ¹⁴³

¹³¹ Center of Excellence for Civil Registration and Vital Statistics Systems (n 26) 5.

¹³² Ibid, 5.

¹³³ United Nations Statistical Office (n 9) 51.

¹³⁴ Ibid, 51.

¹³⁵ 'CRVS Country Report, Colombia: A Strategy to Improve the Registration and Certification of Vital Events in Rural Ethnic Communities' (University of Melbourne 2018).

¹³⁶ Juan Pablo Toro Roa, Roberto F Inues, Samuel Mills (n 69) 12-

13.

¹³⁷ International Institute for Vital Registration and Statistics (iiVRS) (n 88)

¹³⁸ Center of Excellence for Civil Registration and Vital Statistics Systems (n 10) 6.

¹³⁹ UN Statistics Division, 'Status of Civil Registration and Vital Statistics: SADC region' (2010) CRVS Technical Report Series Vol 2, ESA/STAT/2010/10, < https://unstats.un.org/unsd/demographic-social/crvs/documents/Technical_report_SADC_final_v2.pdf> accessed 26 January 2024, 18-23.

¹⁴⁰ Center of Excellence for Civil Registration and Vital Statistics Systems (n 10) 6.

¹⁴¹ UN Statistics Division (n 120) 23-25.

¹⁴² International Institute for Vital Registration and Statistics (iiVRS) (n 73) 1.

¹⁴³ International Institute for Vital Registration and Statistics (iiVRS) (n 91) 2.

Egypt	Centralized ¹⁴⁴	Ministry of Health and Population; Central Agency for Public Mobilization and Statistics (CAPMAS); ¹⁴⁵ Civil Registration dept.; Ministry of Interior	Health offices and court offices; local health bureaus; ¹⁴⁶ 4,417 local health units across the country are charged with registering births, deaths and foetal deaths; ¹⁴⁷ there are approximately 18,000 registration. ¹⁴⁸
Ethiopia	Decentralized ¹⁴⁹	Vital events registration agency; Ministry of Interior (rural areas); Ministry of Housing and Urban Development (urban areas)	
Ecuador		General Directorate of the Civil Registration and Identification (DGRIC) ¹⁵⁰	900 civil registration offices across Ecuador, divided at the provincial, canton and parish level. Some offices may not be functional and this may affect the completeness of registration. ¹⁵¹
Equatorial Guinea		Juzgado de Distrito Ministerio de Justicia Culto y Registro Civil	District courts of justice
Finland		Population registers have existed in Finland for roughly 400 years, both under the authorities of the church and the secular governing authorities. Both systems continue to exist. The degree of harmonization between the two systems has varied over history. Since 1971, there has been a strong coordination between ecclesiastic and secular authorities with regards to the registration of vital events. ¹⁵²	
Gabon		Ministries of the Interior and Justice	Centres principaux et secondaires
Gambia	Centralized ¹⁵³	Ministry of Health and Social Welfare	Health offices, Court offices and mosques and churches
Ghana	Centralized	Births and Deaths Registry; Birth and Death Registry, Ministry of Local Government	Municipal offices, health offices, court offices, parishes or temples and population registers
Guinea	Decentralized ¹⁵⁴	Intersectoral Coordination for the Reform and Modernization of Civil Status (CIRMEC) ¹⁵⁵	348 civil registration centres
Guinea-Bissau		Registro Civil, Comissariado de Estado de Justicia	Delegacoes de registro civil (sector regional)
Hong Kong			
India	Decentralized ¹⁵⁶	Registrar General, Ministry of Home Affairs ¹⁵⁷	Local Registrar is responsible for birth and death registration in the locality under this charge ¹⁵⁸

¹⁴⁴ United Nations Statistics Division (n 110) 8.

¹⁴⁵ International Institute for Vital Registration and Statistics 'Estimating the Completeness of Under-5 Death Registration in Egypt' (1997) iiVRS Technical Papers, Number 71 < https://unstats.un.org/unsd/demographic-social/crvs/documents/IIVRS_papers/IIVRS_paper71.pdf> accessed 30 January 2024.

¹⁴⁶ Ibid.

¹⁴⁷ United Nations Statistics Division (n 12).

¹⁴⁸ Centre of Excellence for Civil Registration and Vital Statistics System (n 34) 7.

¹⁴⁹ United Nations Statistics Division (n 110) 8.

¹⁵⁰ United Nations Statistics Division 'Feasibility Study for Accelerating the Improvement of Vital Statistics and Civil Registration Systems in Ecuador' (1993) < <https://unstats.un.org/unsd/demographic/CrVS/Ecuador.pdf> > accessed 29 January 2024.

¹⁵¹ Ibid.

¹⁵² International Institute for Vital Registration and Statistics (iiVRS) 'General Description of Population Registration in Finland' (1983) Technical Papers Number 24 < https://unstats.un.org/unsd/demographic-social/crvs/documents/IIVRS_papers/IIVRS_paper24.pdf> accessed 26 January 2024, 1.

¹⁵³ United Nations Statistics Division (n 110) 8.

¹⁵⁴ Centre of Excellence for Civil Registration and Vital Statistics (n 17) 4.

¹⁵⁵ Plateforme de coordination de haut niveau appelée Coordination intersectorielle pour la réforme et la modernisation de l'état civil (CIRMEC), 2017/1335/PRIMATURE/CAB/2017.

¹⁵⁶ United Nations Children's Fund (n 64).

¹⁵⁷ Registration of Births and Death Act (1969)

¹⁵⁸ International Institute for Vital Registration and Statistics (iiVRS) (n 71) 3.

Iraq ¹⁵⁹	Centralized ¹⁶⁰	Directorate of Vital and Health Statistics; Ministry of health	Chief medical office (governorato)
Ireland		Department of Employment Affairs and Social Protection	
Ivory Coast		Ministere de l'Interieur	Les mairies et sous-prefectures
Japan		KOSEKI system is under the jurisdiction of the Ministry of Justice ¹⁶¹	Declarations can be made orally or in writing to the local administrative office or to the city, ward, town or village office. ¹⁶²
Kenya	Centralized ¹⁶³	Civil Registration Department was replaced by the Civil Registration Services (CRS) in 2013 ¹⁶⁴	Health offices, parishes or temples and government administrative unit; 10,666 sub-locations (manned by Assistant Chiefs) and 10,465 health facilities which register vital events. ¹⁶⁵
Korea			
Kuwait ¹⁶⁶	Centralized ¹⁶⁷	Department of Central Civil Registration, Ministry of Health	Civil registration units, department of courts
Kyrgyzstan		State Registration Service, ¹⁶⁸ Ministry of Justice ¹⁶⁹	60 civil registration offices and 519 local government authorities ¹⁷⁰
Lebanon		Ministry of Interior and Municipalities, General Directorate of Civil Affairs ¹⁷¹	52 local registration offices, spread across the 6 provinces ¹⁷²
Lesotho	Cenalized ¹⁷³	Office of the Registrar of Births and Deaths (under the Ministry of Local Government) ¹⁷⁴	Court offices, parishes or temples and district headquarters
Liberia		Bureau of Health and Vital Statistics, Ministry of Health and Social Welfare; ¹⁷⁵ Civil registration is not under the charge of one specific ministry; rather, several ministries are responsible for various components of civil registration. ¹⁷⁶	Country registrars
Libya		Civil Registration Section, Secretariat of Utilities	Civil Registration Office
Madagascar	Centralized ¹⁷⁷	Ministry of Interior is responsible for registration of births, deaths and marriages, through the mayor in municipal offices and, as a secondary level, hospitals. ¹⁷⁸	Communes
Malawi		Department of Registrar General (under the Ministry of Justice). A new office	National registration coordinated regional registration offices but did not have a 'supervisory' rule. ¹⁸⁰

¹⁵⁹ United Nations Statistical Office (n 9) 51.

¹⁶⁰ International Institute for Vital Registration and Statistics (iiVRS) (n 97) 1.

¹⁶¹ International Institute for Vital Registration and Statistics (iiVRS) (n 77).

¹⁶² International Institute for Vital Registration and Statistics (iiVRS) (n 77).

¹⁶³ United Nations Statistics Division (n 110) 8.

¹⁶⁴ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 20) 4.

¹⁶⁵ Ibid, 7.

¹⁶⁶ United Nations Statistical Office (n 9) 51.

¹⁶⁷ International Institute for Vital Registration and Statistics (iiVRS) (n 78) 1.

¹⁶⁸ Kyrgyzstan, Resolution No. 708

¹⁶⁹ Zoran Dokoric 'Compendium of Good Practice in Linking Civil Registration and Vital Statistics and Identity Management Systems: Kyrgyzstan' (2019) Centre of Excellence for Civil Registration and Vital Statistics Systems, Global Partnership for Sustainable Development Data, 7.

¹⁷⁰ Ibid, 74.

¹⁷¹ Lebanon, Decree 6042 (2000)

¹⁷² United Nations Statistics Division (n 12).

¹⁷³ United Nations Statistics Division (n 110) 8.

¹⁷⁴ UN Statistics Division (n 120) 25-28.

¹⁷⁵ Centre of Excellence for Civil Registration and Vital Statistics (n 22) 3.

¹⁷⁶ Ibid, 4.

¹⁷⁷ UN Statistics Division (n 120) 29-31.

¹⁷⁸ Ibid, 29-31.

¹⁸⁰ International Institute for Vital Registration and Statistics (iiVRS) 'Organization and Status of Civil Registration in Africa and Recommendations for Improvements' (April 1988) Technical Paper No. 31 presented to United Nations Economic and Social Council, 'African workshop on Strategies for Accelerating the Improvement of Civil Registration and Vital Statistics Systems, Addis Ababa, Ethiopia, 5-9 December 1994 (16 November 1994) AW/CRVS/94/35, 2.

		has subsequently been developed to strengthen the civil registration system, called the National Registration Bureau (under the Office of the President and Cabinet). As of 2010, a new civil registration law was being drafted by the National Registration Bureau. ¹⁷⁹	
Maldives ¹⁸¹	Centralized ¹⁸²	Ministry of Health, Department of National Registration ¹⁸³	2 hospitals, 6 regional hospitals, 13 Atoll hospitals, 168 health centres, 189 Island councils, 19 Atoll Councils ¹⁸⁴
Mali		Direction Nationale de l'Interieur et de Collectivite Territorial, Ministere de l'Interieur	Centres l'Etat Civil
Mauritius	Centralized	Central Civil Status Office	There are 12 main registration offices (for 9 districts and 3 dependencies) and 36 sub-offices. ¹⁸⁵
Morocco		Division d'Etat Civil Ministere de l'Interieur	Bureau Locaux d'Etat Civil
Mozambique	Centralized ¹⁸⁶ /decentralized ¹⁸⁷	National Directorate of Registries and Notary (DNRN), Ministry of Justice	Health offices and civil registration offices; 164 in urban areas and 345 in rural areas.
Namibia	Centralized ¹⁸⁸	Department of Civil Affairs, Ministry of Home Affairs and Immigration	Hospital-based offices were opened from 2008 to 2012 to make it easier for people to register births in a timely way. The Department regularly runs outreach programs to connect with hard-to-reach communities.
Nepal	Decentralized ¹⁸⁹	Ministry of Federal Affairs and General Administration, Department of Civil Registration ¹⁹⁰	Municipal ward offices and ward secretaries, designated as the local registrars; ¹⁹¹ 6,239 local registrars and 3,082 wards in 217 municipalities. ¹⁹²
Netherlands	Decentralized ¹⁹³	Ministry of Justice and Security ¹⁹⁴	Registrar of Births, Death, Marriages and Registered Partnerships ensure death registration at the municipal level; ¹⁹⁵ vital event data is completed and stored in the municipality where the event occurred. In each of the Netherlands' 355 municipalities, there is a Registrar of Births, Deaths, Marriages and Registered Partnerships, responsible for creating, processing, and retaining vital event registrations. ¹⁹⁶
Nigeria	Centralized ¹⁹⁷	National Population Commission ¹⁹⁸	Registrar-General and his/her Deputy, mandated with the global management of the civil registration system, as well as 36 Chief Registrars/State Directors, 774 Deputy chief Registrars/Comptrollers, and 4,000+ registrars and sub-registrars ¹⁹⁹
Norway			

¹⁷⁹ Ibid, 31-33.

¹⁸¹ United Nations Children's Fund (n 45).

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ UN Statistics Division (n 120) 33-38.

¹⁸⁶ United Nations Statistics Division (n 110) 8.

¹⁸⁷ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 48) 5.

¹⁸⁸ United Nations Statistics Division (n110) 8.

¹⁸⁹ United Nations Children's Fund (n 45).

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

¹⁹² Ibid.

¹⁹³ Netherlands, Civil Code

¹⁹⁴ Netherlands, Civil Code

¹⁹⁵ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 92) 117.

¹⁹⁶ Ibid, 7.

¹⁹⁷ United Nations Statistics Division (n 110) 8.

¹⁹⁸ Commission is mandated by the amended Constitution (1999) – section 153; its mandate has been reinforced by section 24 of the 3rd schedule of the 1999 Constitution

¹⁹⁹ Nigeria, Birth, Death, Marriages, etc (Registration) Regulations (1996)

Oman	Centralized ²⁰⁰	Directorate General of Civil Status, under the Royal Oman Police ²⁰¹	
OPT		Ministry of Interior and the Ministry of Health ²⁰²	Municipal offices, health offices, and population register ²⁰³
Pakistan	Decentralized ²⁰⁴	National Data base authority ²⁰⁵	Local Union Council ²⁰⁶
Peru	Decentralized ²⁰⁷	National Registry of Identity and Civil State ²⁰⁸	Registries of the Civil State. ²⁰⁹
Philippines		Civil Registrar General ²¹⁰	
Qatar	Centralized	Ministry of Interior, in coordination with Ministry of Health; ²¹¹ The National Health Authority ²¹² is responsible for registration of births and deaths, issuing birth and death certificates and burial permits, storing and archiving records, and producing and disseminating the statistical report; ²¹³ Preventive Health Depot, Ministry of Public Health	Health centers
Rwanda		Direction General des Affaires Politiques et Administrative, Ministere de l'Interieur et du Development Communal	Bureaux Communaux d'Etat Civil
Saudi Arabia	Centralized ²¹⁴	The Department of Civil status (under the Ministry of Interior) is responsible for the administration of the civil registration system, though actual registration of births and deaths is conducted by the Ministry of Health.	Deaths must be registered in government hospitals, regardless of where the death occurred ²¹⁵
Sierra Leone		Office of Chief Registrar, Ministry of Health National Civil Registration Authority ²¹⁶	Births and Deaths Office, Ministry of Health; 2,946 Local Civil Registrars across Sierra Leone. In rural areas, 2,600 health workers (operating in 1,300 health facilities) support civil registration. ²¹⁷
Senegal	Decentralized ²¹⁸	Civil Registration Steering Committee ²¹⁹ 220	Health workers by law are required to provide notification of birth and death. Health centres in three regions are recording vital event and transmitting information, with support from UNICEF. ²²¹ There are 587 civil registration centres in Senegal, spread across all of the municipalities. The municipal Mayor acts as the Chief Civil Registration Officer. In addition, there

²⁰⁰ International Institute for Vital Registration and Statistics (iiVRS) (n 78) 1.

²⁰¹ Oman, Decree 66/99 (1999); United Nations Statistics Division (n 12).

²⁰² OPT, Civil Registration law (1966, amended in 2001).

²⁰³ United Nations Statistics Division (n 12).

²⁰⁴ United Nations Children's Fund (n 45).

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 76) 139-140.

²⁰⁸ Peru, Constitution 1993 (revision 2009)

²⁰⁹ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 76) 139-140.

²¹⁰ Philippines, Administrative Code of 1917 (amended by Act No. 3022); United Nations Department for Economic and Social Information and Policy Analysis Statistical Division, International Programme for Accelerating the Improvement of Vital Statistics and Civil Registration Systems (n 81).

²¹¹ United Nations Statistics Division (n 12).

²¹² Qatar, Law No. 5

²¹³ United Nations Statistics Division (n 12).

²¹⁴ International Institute for Vital Registration and Statistics (iiVRS) (n 78) 1.

²¹⁵ United Nations Statistics Division (n 12).

²¹⁶ Sierra Leone, National Civil Registration, Act No. 14 of 2016

²¹⁷ Centre of Excellence for Civil Registration and Vital Statistics System (n 54) 5.

²¹⁸ Senegal, Law No. 72-61 of the Family Code

²¹⁹ Chaired by the Prime Minister, which is constituted by representatives from the Ministry of Territorial Governance, Development and Territorial Planning; Ministry of Justice; Ministry of Health; National Agency for Statistics and Demography; Ministry of National Education; Ministry of Good Governance and Child Protection; and National Agency of Early Childhood

²²⁰ Centre of Excellence for Civil Registration and Vital Statistics (n 53) 6.

²²¹ Ibid, 6.

			are roughly 1,520 local registrars in communes and rural districts. Village chiefs or a district delegate act as civil registration auxiliary, as necessary. ²²²
Seychelles	Centralized ²²³	Department of Immigration and Civil Status	Civil Status Offices
South Africa	Centralized ²²⁴	Department of Home Affairs	Department of home affairs offices
Sri Lanka ²²⁵	Centralized ²²⁶	Registrar General's Department ²²⁷	District Registrar's Division ²²⁸
St. Lucia		Statistical Department ²²⁹	Local Registration Offices ²³⁰
Sudan		Ministry of Health	Hospitals, dispensaries, dressing stations
Swaziland	Centralized ²³¹	Registrar General (Ministry of Justice and Constitutional Affairs, to be transferred to the Ministry of Home Affairs) ²³²	Municipal offices, health offices, court offices and parishes or temples
Syria	Centralized ²³³	Civil Registration Office of the Ministry of Interior ²³⁴ (copy sent to Ministry of Foreign Affairs) ²³⁵	Local registration offices ²³⁶ (14 offices in governorate capitals, 48 mintaga offices, 166 nahiya offices, and 34 nahiya offices ²³⁷)
Tanzania	Centralized ²³⁸	Registration, Insolvency and Trusteeship Agency and Ministry of Health and Welfare	Health offices, court offices, parishes or temples and district headquarters
Togo		Division des Affaires Politiques et Administratives, Minister de l'Interieur	Centres d'Etat Civil
Tunisia ²³⁹	Centralized ²⁴⁰	Ministere de l'Interieur	Centres d'Etat Civil (commune)
Uganda	Centralized ²⁴¹	Uganda Registration Services Bureau	Municipal offices, health offices, court offices and parishes or temples; District Civil Registry; Local civil registration offices are available in all of the 116 districts. Presently there are 152 births and deaths registration offices.
United Arab Emirates	Centralized ²⁴²	United Arab Emirates the Department of Preventive Medicine (Ministry of Health) is responsible for registration of births and deaths ²⁴³	Health centres, who in turn refer the information to the Ministry of Health for registration in the central database ²⁴⁴
Yemen	Centralized ²⁴⁵	Ministry of Health; ²⁴⁶ Registration data is then transferred to the Department of Civil Status (Ministry of Interior) ²⁴⁷	23 regional registration offices in Yemen, which are directly linked to the Department of Civil Status ²⁴⁸

²²² Ibid, 6.

²²³ United Nations Statistics Division (n 110) 8.

²²⁴ Ibid.

²²⁵ United Nations Children's Fund (n 45).

²²⁶ Ibid.

²²⁷ Ibid.

²²⁸ Ibid.

²²⁹ International Institute for Vital Registration and Statistics (iiVRS) 'Registration of vital events in the English-speaking Caribbean' (1988) Technical papers Number 32 < https://unstats.un.org/unsd/demographic-social/crvs/documents/IIVRS_papers/IIVRS_paper32.pdf> accessed 29 January 2024, 7.

²³⁰ Ibid. 7.

²³¹ United Nations Statistics Division (n 110) 8.

²³² UN Statistics Division (n 120) 56-61.

²³³ International Institute for Vital Registration and Statistics (iiVRS) (n 78) 1.

²³⁴ United Nations Statistics Division (n 12).

²³⁵ Ibid.

²³⁶ Ibid.

²³⁷ Ibid.

²³⁸ United Nations Statistics Division (n 110) 8.

²³⁹ United Nations Statistical Office (n 9) 51.

²⁴⁰ International Institute for Vital Registration and Statistics (iiVRS) (n 78) 1.

²⁴¹ United Nations Statistics Division (n 110) 8.

²⁴² International Institute for Vital Registration and Statistics (iiVRS) (n 78) 1.

²⁴³ United Nations Statistics Division (n 12).

²⁴⁴ Ibid.

²⁴⁵ Ibid.

²⁴⁶ Ibid.

²⁴⁷ Ibid.

²⁴⁸ Ibid.

Zambia	Centralized ²⁴⁹	Department of National Registration, passport and citizenship, Ministry of Home Affairs ²⁵⁰	Provincial, district and subcenters (schools, health centers and local courts)
Zimbabwe	Centralized ²⁵¹	Registrar General's Department; Central Registry, Ministry of Home Affairs ²⁵²	Health Offices and Population Registers; Provincial and district registries

²⁴⁹ United Nations Statistics Division (n 110) 8.

²⁵⁰ UN Statistics Division (n 120) 67-70.

²⁵¹ United Nations Statistics Division (n 110) 8.

²⁵² UN Statistics Division (n 120) 71-74.

Annex 4: Computerization of Civil Registration Systems

Country	Computerization of the Civil Registration system
Afghanistan	Largely a paper-based civil registration system. The roll out of a digitalized system for national identity cards is underway. ²⁵³
Albania	As of 2014, the government of Albania (Ministry of Local Government and Decentralization) had taken the decision to update the civil registration to pilot test the computerization of the civil registration system in a number of local offices, with the aim of long-term national scale-up. ²⁵⁴
Armenia	Civil registration system was digitalized. Death certificates or court documents from outside the territory need to be entered manually. ²⁵⁵
Cameroon	Recent legislation emphasizes privacy of data and security of civil registration records, but it does not address the digitalization of the civil registration system. ²⁵⁶
Ecuador	Civil registration is now fully electronic and can be accessed online. ²⁵⁷
Ethiopia	The registration system is still paper-based. As per the civil registration law, vital events are recorded with 4 carbon copies. One copy remains in the local offices and the other copies are sent to the regional office, FVERA and the Central Statistical Agency, respectively. ²⁵⁸
Ireland	Ireland is rolling out a digital identity scheme, called the Public Services Card under the auspice of the Department of Employment Affairs and Social Protection, which manages matters related to individual identity. This card also allows a person to access a wide range of social protection systems, including as related to civil registration. ²⁵⁹
Jordan	Civil registration is completed online at computer terminals across the country. The system generates birth and death certificates and allows for direct extraction of vital statistics. ²⁶⁰
Kyrgyzstan	Since 2014, the civil registration system is digital. It has been recognized as a fundamental step in developing a unified population register. ²⁶¹
Korea	Citizens can access civil registration services by using their RR numbers online, including obtaining certificates. ²⁶²
Malawi	Malawi's civil registration is still paper based. Statistics are not generated from civil registration data. ²⁶³
Mauritius	The civil registration system has operating electronically since 2001. ²⁶⁴
Mozambique	Conservatories still register vital events in a bound booklet, though this is changing as IT system are introduced in a phased manner. ²⁶⁵ In 2008, mortality registers were put in place and the mortality registration systems was reformed, including the introduction of the death certificate in 2009 and of the Sistema de Infomacao de Saude – Registo Obitoais Hospitalares, a digitalized software to enable individual-based data management, including data on hospitalization and cause of death. ²⁶⁶
Namibia	All identity information is centralized in one database, the National Population Registration System (NPRS). When the NPRS was established, it compiled information from various existing data base under a unique identification number (UIN). ²⁶⁷ The E-birth and e-death notification platform is available at health facilities, police mortuaries and civil registration offices which facilitate birth and death registration. ²⁶⁸
Netherlands	The system is digitalized. ²⁶⁹
New Zealand	The system is digitalized. ²⁷⁰

²⁵³ United Nations Children's Fund (n 45) 29.

²⁵⁴ Statistics Norway (n 28) 33-34.

²⁵⁵ Zoran Dokoric (n 66) 13.

²⁵⁶ Center of Excellence for Civil Registration and Vital Statistics Systems (n 26).

²⁵⁷ Veronica Alvarez (n 74) 9.

²⁵⁸ Centre of Excellence for Civil Registration and Vital Statistics System (n 34) 5.

²⁵⁹ Elizabeth Farries 'The Irish PSC: Enforced Digital Identities for Social Protection Services and Beyond, Draft' (2019) Irish Council for Civil Liberties <<https://www.ohchr.org/sites/default/files/Documents/Issues/Poverty/DigitalTechnology/IrishCouncilCivilLiberties.pdf>> accessed 30 January 2024, 1.

²⁶⁰ United Nations Statistics Division (n 12).

²⁶¹ Zoran Dokoric (n 150) 74.

²⁶² Minwon 24 (www.minwon.go.kr) is an on-line system for civil service. As of 2018, the system is combined into Gov24(www.gov.kr), which is a comprehensive system which operates as an on-line portal and provides various on-line government and civil services to citizens as well as foreigners; Minah Kang, Green Bae, Heeun Kim, Seung Yeon Hong, Samuel Mills (n 60) 4.

²⁶³ UN Statistics Division (n 120) 31-33.

²⁶⁴ Ibid, 33-38.

²⁶⁵ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 48) 6.

²⁶⁶ Statistics Norway (n 28) 37-38.

²⁶⁷ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 50) 3-4.

²⁶⁸ Ibid, 92-93.

²⁶⁹ Zoran Dokoric (92) 22.

²⁷⁰ Pacific Community 'Best Practice Guidelines and Examples of Legislation for Civil Registration and Vital Statistics in the Pacific' (2019) Version 2 <https://getinthepicture.org/sites/default/files/resources/Pacific_Legislation_Best_Practice_Guidelines.pdf> accessed 29 January 2024, 46.

Norway	Individuals' identity and registration information is centralized under a full PIN. ²⁷¹ Between 2016 and 2018, a system of e-births and e-deaths was developed and launched and as of 2019 the police mortuaries, and public and private health facilities use an electronic system to register births and deaths. ²⁷²
Peru	Over the last 25 years the National Registry has developed standard processes and guidelines, put in place digital technology and digitalized civil registration and identification records. ²⁷³ The operationalization of the online system of computerized death certificates in 2015 significantly improved the accuracy of death reporting. ²⁷⁴
Senegal	As of 2019, Senegal was revising the legal framework for civil registration, and related regulatory frameworks, to support the implementation of the computerization of the civil registration system. ²⁷⁵
Sierra Leone	The National Civil Registration Act (2016) has a provision for the eventual establishment of an electronic registration system. ²⁷⁶ At present, the civil registration system is only computerized in urban centres, though there are plans to expand the use of computers to all levels of the registration system. ²⁷⁷
Swaziland	The system is in the process of shifting to computerization and, at present, can be retrieved manually as well as through computers. ²⁷⁸
Tanzania	Computerization of birth and death registration was underway between 2005 and 2007. ²⁷⁹
Uganda	The civil registration system is paper based in the local registration centres. The data is computerized at the regional level. ²⁸⁰
Zambia	Civil registration remains manual and, as such, vital statistics cannot be derived from the system. ²⁸¹

²⁷¹ Statistics Norway (n 28) 7-10.

²⁷² Centre of Excellence for Civil Registration and Vital Statistics Systems (n 50) 94-95.

²⁷³ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 76) 135-136.

²⁷⁴ Ibid, 147.

²⁷⁵ Centre of Excellence for Civil Registration and Vital Statistics (n 53) 8.

²⁷⁶ Ibid, 7.

²⁷⁷ Centre of Excellence for Civil Registration and Vital Statistics System (n 54) 7.

²⁷⁸ UN Statistics Division (n 120) 56-61.

²⁷⁹ Ibid

²⁸⁰ Centre of Excellence for Civil Registration and Vital Statistics Systems 'Snapshot of Civil Registration and Vital Statistics Systems of Uganda' (2019) <https://apai-crvs.uneca.org/sites/default/files/resourcefiles/CRVS_UgandaSnapshot_e.pdf> accessed 30 January 2024, 8.

²⁸¹ UN Statistics Division (n 120) 67-70.

Annex 5: Time Frame for Death Registration

Country	Time frame for death registration	Cost for death registration
Egypt	24 hours ²⁸²	
Mauritius	24 hours of the event, except for Muslims where early burial (before the death certificate) is required ²⁸³²⁸⁴	
Zambia	24 hours ²⁸⁵	Free of charge ²⁸⁶
Philippines	24 hours ²⁸⁷	Requires payment of registration fees ²⁸⁸
South pacific islands	Approximately 3 days ²⁸⁹	
Nigeria	48 hours ²⁹⁰	
England	5 days ²⁹¹	
Jordan	7 days ²⁹²	
Oman	7 days ²⁹³	
Japan	7 days, unless there is a good reason for delay which is described in declaration ²⁹⁴	
Tanzania	7 days ²⁹⁵	Approximately \$1.5
Madagascar	12 days ²⁹⁶	
Iraq	30 days ²⁹⁷	
Syria	30 days ²⁹⁸	
India	30 days ²⁹⁹	Technically should be free, but some states charge ³⁰⁰
Botswana	30 days ³⁰¹	
Nepal	35 days ³⁰²	Free of charge ³⁰³
Bangladesh	45 days ³⁰⁴	Free of charge ³⁰⁵
Pakistan	60 days ³⁰⁶	Free of charge ³⁰⁷
Sri lanka	3 months ³⁰⁸	Free of charge
Afghanistan	3 months ³⁰⁹	Free of charge ³¹⁰

²⁸² Gamal Askar, 'The Development of the Vital Statistics System in Egypt' (1981) International Institute for Vital Registration and Statistics (iiVRS) Technical Papers, Number 13.

²⁸³ UN Statistics Division (n 120) 33-38.

²⁸⁴ Ibid, 33-38.

²⁸⁵ Ibid, 67-70.

²⁸⁶ Ibid, 67-70.

²⁸⁷ United Nations Department for Economic and Social Information and Policy Analysis Statistical Division, International Programme for Accelerating the Improvement of Vital Statistics and Civil Registration Systems (n 62) 21.

²⁸⁸ Ibid, 23.

²⁸⁹ Pacific Community (n 251) 46.

²⁹⁰ Centre of Excellence for Civil Registration and Vital Statistics Systems 'Snapshot of Civil Registration and Vital Statistics Systems of Nigeria' (2019) < https://crvssystems.ca/sites/default/files/assets/files/CRVS_Nigeria_e_WEB.pdf > accessed 31 January 2024, 4.

²⁹¹ International Institute for Vital Registration and Statistics (iiVRS) (n 91) 3.

²⁹² United Nations Statistics Division (n 12).

²⁹³ Ibid.

²⁹⁴ International Institute for Vital Registration and Statistics (iiVRS) (n 77).

²⁹⁵ UN Statistics Division (n 120)

²⁹⁶ Ibid, 29-31.

²⁹⁷ United Nations Statistics Division (n 12).

²⁹⁸ Ibid.

²⁹⁹ United Nations Children's Fund (n 64).

³⁰⁰ Ibid.

³⁰¹ UN Statistics Division (n 120) 18-23.

³⁰² United Nations Children's Fund (n 45).

³⁰³ Ibid.

³⁰⁴ Ibid.

³⁰⁵ Ibid.

³⁰⁶ Ibid.

³⁰⁷ Ibid.

³⁰⁸ Ibid.

³⁰⁹ Ibid.

³¹⁰ Ibid.

Ecuador	Between 3 – 90 days; ³¹¹ The civil registration law (article 19) requires that all officials must notify DIGERCIC of vital events with 30 days, or risk losing their job ³¹²	

³¹¹ Veronica Alvarez (n 74) 9.

³¹² Ibid, 9.

Annex 6: UN Statistics, Births and Deaths, including cause of death,³¹³ completeness (updated in February 2021³¹⁴)

Coverage of Birth and Death Registration - 2021									
	Birth			Death			Other Death data	Cause of death	Use of International Cause of death standards
Country or Area	Coverage	Year	Source	Coverage	Year	Source			
Sub-Saharan Africa									
Angola	25%	2015-2016	DHS						
Benin	86%	2017-2018	DHS						
Botswana	100%	2018	UNSD	70-79%	2018	UNSD	75% (2016) ³¹⁵	yes ³¹⁶	
Burkina Faso	77%	2010	DHS						
Burundi	84%	2016-2017	DHS						
Cameroon	62%	2018	DHS					Cause of death is not regularly collected at registration. ³¹⁷	no ³¹⁸
Cape Verde	90% or more	2010-2015	UNSD	75% or more	2010-2015	UNSD(3)	Above 90% (1994) ³¹⁹	92.5% (2012) ³²⁰	
Central African Republic	45%	2018-2019	MICS						
Chad	26%	2019	MICS						
Comoros	87%	2012	MICS						
Congo	96%	2015-2016	MICS	less than 75%	2010-2015	UNSD			
Côte d'Ivoire	72%	2016	MICS						
Democratic Republic of the Congo	40%	2017-2018	MICS						In some case, it is not certain that the standard WHO form is used. Verbal autopsy continued to be used in some places. ³²¹
Djibouti	92%	2006	MICS	less than 90%	2010-2015	UNSD			
Equatorial Guinea	53%	2011	DHS						

³¹³ World Health Organization, 'The Global Health Observatory: Completeness of Cause-of-Death Data' <<https://www.who.int/data/gho/data/indicators/indicator-details/GHO/completeness-of-cause-of-death-data>> accessed 20 May 2021.

³¹⁴ United Nations Statistics Division, 'Demographic and Social Statistics, Birth and Death Registration Completeness' <<https://unstats.un.org/unsd/demographic-social/crvs/#coverage>> Accessed 18 May 2021.

³¹⁵ United Nations Statistics Division (n 110) 31.

³¹⁶ UN Statistics Division (n 120) 18-23.

³¹⁷ Center of Excellence for Civil Registration and Vital Statistics Systems (n 26) 5.

³¹⁸ Center of Excellence for Civil Registration and Vital Statistics Systems (n 26) 5.

³¹⁹ International Institute for Vital Registration and Statistics (iiVRS) (n 161) 6.

³²⁰ World Health Organization (n 294).

³²¹ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 10).

Eritrea									
Ethiopia	3%	2016	DHS						
Eswatini	54%	2014	MICS	less than 75%	2010-2015	UNSD			
Gabon	90%	2012	DHS						
Gambia	58%	2018	MICS					yes	
Ghana	71%	2017-2018	MICS	25%	2014	UNSD	23% (2013) ³²²	yes ³²³	yes ³²⁴
Guinea	31%	2018	UNSD	2.1%	2018	UNSD		no ³²⁵	
Guinea-Bissau	46%	2018-2019	MICS						
Kenya	74%	2018	UNSD	38.90%	2018	UNSD	45% (2013) ³²⁶	yes ³²⁷	yes ³²⁸
Lesotho	45%	2018	MICS	less than 75%	2010-2015	UNSD		yes	
Liberia	25%	2013	DHS						Yes (recent rollout). ³²⁹ The Strategic Plan includes provisions for moving Liberia towards use of the international cause of death standards, including using ICD10 in real time. Additionally, the Strategic Plan includes a village level verbal autopsy programme to help increase coverage. ³³⁰
Madagascar	79%	2018	MICS	less than 50%	2008	UNSD	50% (1990) ³³¹		
Malawi	67%	2015-2016	DHS	less than 50%	2008	UNSD			
Mali	87%	2018	DHS						
Mauritania	66%	2015	MICS				Above 90% ³³²		
Mauritius	90% or more	2013	UNSD	90% or more	2013	UNSD	100%	100% (2017) ³³³	
Mozambique	55%	2015	DHS					yes ³³⁴	Yes. Case of death data is collected for deaths occurring in health facilities and is coded according to the International Classification of

³²² United Nations Statistics Division (n 110) 31.

³²³ International Institute for Vital Registration and Statistics (iiVRS) 'A Programme for Measurement of Life and Death in Ghana' (1979) Technical Papers, Number 1, 8.

³²⁴ Ibid, 8.

³²⁵ Centre of Excellence for Civil Registration and Vital Statistics (n 17) 7.

³²⁶ United Nations Statistics Division (n 110) 31.

³²⁷ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 20) 7.

³²⁸ Ibid, 7.

³²⁹ Centre of Excellence for Civil Registration and Vital Statistics (n 22) 5.

³³⁰ Ibid, 5.

³³¹ Michel Francois 'Some observations on civil registration in French-speaking Africa' (1990) International Institute for Vital Registration and Statistics (iiVRS) Technical Paper No. 39, 74-75.

³³² International Institute for Vital Registration and Statistics (iiVRS) (n 161) 6.

³³³ World Health Organization (n 294).

³³⁴ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 48) 7.

									Diseases 10 (ICD10). At the community level, verbal autopsies are used for death that do not occur in hospital (this programme is being scale up). In the event of unnatural deaths, forensic medicine is used to collect cause of death information. ³³⁵
Namibia	64%	2013	DHS	70%	2008	UNSD	71% (2001) ³³⁶ ; 88% (2016); ³³⁷ 93.5% (2019); ³³⁸ 70% (2010) ³³⁹	yes	
Niger	28%	2018	UNSD	3.50%	2018	UNSD			
Nigeria	47%	2016-2017	MICS					Yes ³⁴⁰	(also includes verbal autopsy for deaths outside hospital) ³⁴¹
Réunion	90% or more	2004	UNSD	90% or more	2004	UNSD	Complete		
Rwanda	56%	2014-2015	DHS	less than 75%	2010-2015	UNSD	5%		
Saint Helena	90% or more	2001	UNSD	90% or more	2001	UNSD			
Sao Tomé and Príncipe	99%	2019	MICS	75% or more	2010-2015	UNSD	Complete		
Senegal	79%	2019	DHS					no ³⁴²	
Seychelles	90% or more	2012	UNSD	90% or more	2012	UNSD	100%; Above 90% (1994); ³⁴³ 100% ³⁴⁴	90.6% (2015) ³⁴⁵	
Sierra Leone	90%	2019	DHS	less than 75%	2010-2015	UNSD		yes ³⁴⁶	As of 2019, cause of death is rarely recorded in accordance with the International Classification of Diseases. ³⁴⁷
Somalia									

³³⁵ Ibid, 7.

³³⁶ UN Statistics Division (n 120) 6-8.

³³⁷ United Nations Statistics Division (n 110) 31.

³³⁸ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 50) 10 -11.

³³⁹ UN Statistics Division (n 120) 44-48.

³⁴⁰ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 271) 7-8.

³⁴¹ Ibid, 7-8.

³⁴² Centre of Excellence for Civil Registration and Vital Statistics (n 53) 7.

³⁴³ International Institute for Vital Registration and Statistics (iiVRS) (n 161) 6.

³⁴⁴ United Nations Statistics Division (n 110) 31.

³⁴⁵ World Health Organization (n 294).

³⁴⁶ Centre of Excellence for Civil Registration and Vital Statistics System (n 54) 5.

³⁴⁷ Ibid, 6.

South Africa	98%	2014	UNSD	75-89%	2008	UNSD	83% (2006), ³⁴⁸ above 90% ³⁴⁹	92.5% (2015) ³⁵⁰	
South Sudan	35%	2010	MICS						
Sudan							5%		
Swaziland							26% (1985) ³⁵¹	yes ³⁵²	When cause of death has not been certified by a Medical Practitioner, cause of death must be selected from a short mortality list. ³⁵³
Togo	83%	2017	MICS				15%		
Uganda	32%	2016	DHS				24.2% (2016) ³⁵⁴	yes ³⁵⁵	yes ³⁵⁶
United Republic of Tanzania	26%	2015-2016	DHS	less than 75%	2010-2015	UNSD	50% (1996) ³⁵⁷	yes ³⁵⁸	yes ³⁵⁹
Zambia	14%	2018	DHS					yes ³⁶⁰	
Zimbabwe	49%	2019	MICS				20% (1981) ³⁶¹		yes ³⁶²
Western Asia and Northern Africa									
Algeria	100%	2018-2019	MICS	less than 90%	2001	UNSD			
Armenia	99%	2015-2016	DHS	97%	2011	UNSD		100% (2016) ³⁶³	yes ³⁶⁴
Azerbaijan	94%	2006	DHS	90% or more	2001	UNSD			
Bahrain	90% or more	2015	UNSD	90% or more	2015	UNSD	Estimated 99% (2006) ³⁶⁵	96.4% (2014) ³⁶⁶	yes ³⁶⁷
Cyprus	90% or more	2014	UNSD	90% or more	2014	UNSD		67.5% (2016) ³⁶⁸	
Egypt	98%	2016	UNSD	96%	2016	UNSD	100% (1985) ³⁶⁹ ; Above 90%	94% (2015) ³⁷²	

³⁴⁸ UN Statistics Division (n 120) 6-8.

³⁴⁹ United Nations Statistics Division (n 110) 31.

³⁵⁰ World Health Organization (n 294).

³⁵¹ United Nations Statistical Office (n 9) 73.

³⁵² UN Statistics Division (n 120) 56-61.

³⁵³ Ibid, 56-61.

³⁵⁴ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 261) 4.

³⁵⁵ Ibid, 7.

³⁵⁶ Ibid, 7.

³⁵⁷ UN Statistics Division (n 120) 6-8.

³⁵⁸ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 261) 8.

³⁵⁹ Ibid, 8.

³⁶⁰ UN Statistics Division (n 120) 67-70.

³⁶¹ International Institute for Vital Registration and Statistics (iiVRS) (n 1) 17-18.

³⁶² UN Statistics Division (n 120) 71-74.

³⁶³ World Health Organization (n 294).

³⁶⁴ Zoran Dokoric (n 66) 13.

³⁶⁵ United Nations Statistics Division (n 12).

³⁶⁶ World Health Organization (n 294).

³⁶⁷ United Nations Statistics Division (n 12).

³⁶⁸ World Health Organization (n 294).

³⁶⁹ International Institute for Vital Registration and Statistics (iiVRS) (n 78) 3.

³⁷² World Health Organization (n 294).

							(1994), ³⁷⁰ 98% ³⁷¹		
Georgia	90% or more	2016	UNSD	90% or more	2000	UNSD		90% (2015) ³⁷³	
Iraq	90-99%	2019	UNSD	70-79%	2019	UNSD	34% (2009) ³⁷⁴	64.5% (2016) ³⁷⁵	
Israel	90-99%	2018	UNSD	100%	2018	UNSD		100% (2016) ³⁷⁶	
Jordan	98%	2017	UNSD	65%	2017	UNSD	100% (1985), ³⁷⁷ 60% (2006); ³⁷⁸ 75% (2009) ³⁷⁹	56.3% (2015) ³⁸⁰	
Kuwait	90% or more	2001	UNSD	90% or more	2001	UNSD	Higher than 90% ³⁸¹	59% (2014) ³⁸²	Cause of death follows the broad categories of the IHO, but less so for the sub-categories ³⁸³
Lebanon	90% or more	2007	UNSD	90% or more	2007	UNSD	Most likely complete ³⁸⁴		
Libyan Arab Jamahiriya	90% or more	2001	UNSD	less than 90%	2001	UNSD	62% (1985) ³⁸⁵		
Morocco	86%	2005	UNSD	62.36%	2007	UNSD	40% (1985) ³⁸⁶	29.1% (2014) ³⁸⁷	
Oman	90-99%	2018	UNSD	80-89%	2018	UNSD	98% (2006) ³⁸⁸	73.6% (2014) ³⁸⁹ Recommended but not required by law ³⁹⁰	
Qatar	100%	2019	UNSD	100%	2019	UNSD	Above 90% (2009) ³⁹¹	50.4% (2017) ³⁹²	
Saudi Arabia	90-99%	2017	UNSD	90-99%	2017	UNSD		41.7% (2012) ³⁹³	yes ³⁹⁴
State of Palestine	90-99%	2017	UNSD	70-79%	2017	UNSD	75% (2004) ³⁹⁵		
Sudan	67%	2014	MICS				5% (1985) ³⁹⁶		

³⁷⁰ International Institute for Vital Registration and Statistics (iiVRS) (n 161) 6.

³⁷¹ United Nations Statistics Division (n 12).

³⁷³ Ibid.

³⁷⁴ United Nations Statistics Division (n 12).

³⁷⁵ World Health Organization (n 294).

³⁷⁶ Ibid.

³⁷⁷ International Institute for Vital Registration and Statistics (iiVRS) (n 78) 3.

³⁷⁸ United Nations Statistics Division (n 12).

³⁷⁹ Ibid.

³⁸⁰ World Health Organization (n 294).

³⁸¹ International Institute for Vital Registration and Statistics (iiVRS) (n 78) 1.

³⁸² World Health Organization (n 294).

³⁸³ Nasra Shah, Ali Mohammad Al-Sayed, Makhdoom Shah, 'Completeness and Reliability of Birth and Death Notification in Kuwait' (1992) iiVRS Technical Papers, Number 49, 6.

³⁸⁴ United Nations Statistics Division (n 12).

³⁸⁵ International Institute for Vital Registration and Statistics (iiVRS) (n 78) 3.

³⁸⁶ Ibid, 3.

³⁸⁷ World Health Organization (n 294).

³⁸⁸ United Nations Statistics Division (n 12).

³⁸⁹ World Health Organization (n 294).

³⁹⁰ United Nations Statistics Division (n 12).

³⁹¹ Ibid.

³⁹² World Health Organization (n 294).

³⁹³ Ibid.

³⁹⁴ Ministry of Health, Mortality Yearbook 2005 (see <http://www.mep.gov.sa/>).

³⁹⁵ United Nations Statistics Division (n 12).

³⁹⁶ International Institute for Vital Registration and Statistics (iiVRS) (n 78) 3.

Syrian Arab Republic	98%	2007	UNSD	75%	2007	UNSD	54% (1985); ³⁹⁷ 75% (2009) ³⁹⁸	82.7% (2010) ³⁹⁹	
Tunisia	100%	2018	MICS	64.0%	2000	WHO		29.2% (2013) ⁴⁰⁰	
Turkey	90-99%	2019	UNSD	90-99%	2019	UNSD		91.6% (2016) ⁴⁰¹	
United Arab Emirates	100%	2017	UNSD	100%	2017	UNSD	Above 90% (2007) ⁴⁰²	59% (2010) ⁴⁰³	
Western Sahara									
Yemen	31%	2013	UNSD	12%	2007	UNSD	13.2% (2003) ⁴⁰⁴		
Central Asia and Southern Asia									
Afghanistan	42%	2015	DHS						As of 2019, not used routinely ⁴⁰⁵
Bangladesh	56%	2019	MICS	less than 75%	2010-2015	UNSD	80% (2018) ⁴⁰⁶	yes ⁴⁰⁷	yes ⁴⁰⁸ (rollout in process)
Bhutan	100%	2010	MICS					yes ⁴⁰⁹	
India	86%	2016	UNSD	78.10%	2016	UNSD	70.9% (2014) ⁴¹⁰	10% (2011) ⁴¹¹	yes ⁴¹²
Iran, Islamic Republic of	97%	2015	UNSD	92%	2015	UNSD		90.1% (2016) ⁴¹³	
Kazakhstan	90-99%	2020	UNSD	90-99%	2020	UNSD		87% (2017) ⁴¹⁴	
Kyrgyzstan	99%	2018	MICS	90-99%	2017	UNSD	Above 90% (2019) ⁴¹⁵	91% (2016) ⁴¹⁶	
Maldives	99%	2016-2017	DHS	100%	2014	UNSD	90.1% (2014) ⁴¹⁷	91.5% (2015) ⁴¹⁸	yes ⁴¹⁹
Nepal	77%	2019	MICS	70%	2014	UNSD		yes ⁴²⁰	
Pakistan	42%	2017-2018	DHS						
Sri Lanka	90% or more	2009	UNSD	90% or more	2009	UNSD		yes ⁴²¹	

³⁹⁷ Ibid, 3.

³⁹⁸ United Nations Statistics Division (n 12).

³⁹⁹ World Health Organization (n 294).

⁴⁰⁰ Ibid.

⁴⁰¹ Ibid.

⁴⁰² United Nations Statistics Division (n 12).

⁴⁰³ World Health Organization (n 294).

⁴⁰⁴ United Nations Statistics Division (n 12).

⁴⁰⁵ United Nations Children's Fund (n 45) 29.

⁴⁰⁶ 'Get Every One in the Picture' website: www.getinthepicture.org/country/bangladesh Report of the Regional Steering Group for Civil Registration and Vital Statistics in Asia and the Pacific. Economic and Social Commission for Asia and the Pacific. Seventy-second session. Bangkok, 15-19 May 2016. Item 3 (h) of the provisional agenda; United Nations Children's Fund (n 64).

⁴⁰⁷ United Nations Children's Fund (n 45).

⁴⁰⁸ 'Get Every One in the Picture: Bangladesh' <www.getinthepicture.org/country/bangladesh> accessed 20 May 2024; United Nations Children's Fund (n 64).

⁴⁰⁹ Ibid.

⁴¹⁰ 'Get Every One in the Picture: India' <www.getinthepicture.org/country/india> accessed 20 May 2024; United Nations Children's Fund (n 64).

⁴¹¹ World Health Organization (n 294).

⁴¹² International Institute for Vital Registration and Statistics (iiVRS) (n 71) 8.

⁴¹³ World Health Organization (n 294).

⁴¹⁴ Ibid.

⁴¹⁵ Zoran Dokoric (n 169) 70.

⁴¹⁶ World Health Organization (n 294).

⁴¹⁷ United Nations Children's Fund (n 45).

⁴¹⁸ World Health Organization (n 294).

⁴¹⁹ United Nations Children's Fund (n 45).

⁴²⁰ Ibid.

⁴²¹ Ibid.

Tajikistan	90%	2017	DHS	75-89%	2007	UNSD		87.4% (2016) ⁴²²	
Turkmenistan	100%	2019	MICS					85.2% (2015) ⁴²³	
Uzbekistan	90-99%	2018	UNSD	90-99%	2018	UNSD		92.9% (2016) ⁴²⁴	
Eastern Asia and South-eastern Asia									
Brunei Darussalam	100%	2017	UNSD	100%	2017	UNSD(1)		99.7% (2016) ⁴²⁵	
Cambodia	73%	2014	DHS						
China	90% or more	2017	UNSD	4.0%	2012	WHO		61.5% (2015) ⁴²⁶	
China: Hong Kong SAR	90-99%	2020	UNSD	90-99%	2020	UNSD	Above 90% (1981) ⁴²⁷	yes ⁴²⁸	
China: Macao SAR	90-99%	2020	UNSD	90-99%	2020	UNSD			
Indonesia	78%	2017	DHS						
Japan	90-99%	2020	UNSD	90-99%	2020	UNSD		100% (2016) ⁴²⁹	
Korea, Dem. Peoples Republic of	100%	2009	MICS						
Korea, Republic of	100%	2017	UNSD	100%	2017	UNSD		100% (2016) ⁴³⁰	
Lao People's Democratic Republic	75%	2017	UNSD						
Malaysia	90-99%	2018	UNSD	90-99%	2018	UNSD		51.8% (2014) ⁴³¹	
Mongolia	100%	2018	MICS	90-99%	2017	UNSD		83.7% (2016) ⁴³²	
Myanmar	81%	2017	UNSD	57.20%	2017	UNSD			
Philippines	90-99%	2017	UNSD	87.60%	2015	UNSD		89% (2011) ⁴³³	
Singapore	90% or more	2012	UNSD	90% or more	2012	UNSD		66.1% (2016) ⁴³⁴	
Thailand	100%	2019	MICS	85.0%	2012	WHO		87.2% (2016) ⁴³⁵	
Timor-Leste	60%	2015-2016	DHS						
Viet Nam	95%	2015	UNSD						
Latin America and the Caribbean									
Anguilla	90% or more	2014	UNSD	90% or more	2014	UNSD			
Antigua and Barbuda	90% or more	2001	UNSD	90% or more	2000	UNSD		83.2% (2016) ⁴³⁶	

⁴²² World Health Organization (n 294).

⁴²³ Ibid.

⁴²⁴ Ibid.

⁴²⁵ Ibid.

⁴²⁶ Ibid.

⁴²⁷ International Institute for Vital Registration and Statistics (iiVRS) 'Vital Statistics Data Collection and Compilation System: Hong Kong' (1981) Technical Papers, Number 14 < https://unstats.un.org/unsd/demographic-social/crvs/documents/IIVRS_papers/IIVRS_paper14.pdf > accessed 30 January 2024, 3-4.

⁴²⁸ Ibid, 3-4.

⁴²⁹ World Health Organization (n 294).

⁴³⁰ Ibid.

⁴³¹ Ibid.

⁴³² Ibid.

⁴³³ Ibid.

⁴³⁴ Ibid.

⁴³⁵ Ibid.

⁴³⁶ Ibid.

Argentina	90-99%	2010	UNSD	90% or more	2008	UNSD	Nearly universal coverage (2017) ⁴³⁷	100% (2016) ⁴³⁸	
Aruba	90-99%	2019	UNSD	100%	2019	UNSD			
Bahamas	75-89%	2003	UNSD	90% or more	2003	UNSD		89% (2014) ⁴³⁹	
Barbados	99%	2012	MICS	100.0%	2007	WHO		79% (2013) ⁴⁴⁰	
Belize	96%	2015-2016	MICS	100.0%	2008	WHO		88.8% (2016) ⁴⁴¹	
Bolivia	90-99%	2017	UNSD	less than 90%	2000	UNSD			
Bonaire, Sint Eustatius and Saba	90% or more	2010-2015	UNSD	90% or more	2010-2015	UNSD			
Brazil	90-99%	2017	UNSD	90-99%	2017	UNSD		99% (2016) ⁴⁴²	
British Virgin Islands	90% or more	2001	UNSD	90% or more	2010-2015	UNSD			
Cayman Islands	90% or more	2008	UNSD	90% or more	2008	UNSD			
Chile	90-99%	2020	UNSD	90-99%	2020	UNSD		94.9% (2016) ⁴⁴³	
Colombia	97%	2015	DHS	72.90%	2000	UNSD	86% (2015); ⁴⁴⁴ Nearly universal coverage (2017) ⁴⁴⁵	79.8% (2015) ⁴⁴⁶	yes ⁴⁴⁷
Costa Rica	98%	2019	UNSD	97%	2019	UNSD		87.4% (2014) ⁴⁴⁸	
Cuba	100%	2017	UNSD	100%	2017	UNSD		100% (2016) ⁴⁴⁹	
Curaçao	90-99%	2017	UNSD	90-99%	2017	UNSD			
Dominica	90% or more	2000	UNSD	90% or more	2000	UNSD		100% (2015) ⁴⁵⁰	
Dominican Republic	80-89%	2019	UNSD	60-69%	2019	UNSD		58% (2013) ⁴⁵¹	
Ecuador	80-89%	2020	UNSD	80-89%	2020	UNSD		82.5% (2016) ⁴⁵²	

⁴³⁷ William Reuban and Flavia Carbonari 'Identification as a National Priority: The Unique Case of Peru' (2017) Center for Global Development, Working Paper 454 < <https://www.exemplars.health/-/media/files/egh/resources/stunting/peru/identification-as-a-national-priority.pdf> > accessed 31 January 2024, 13.

⁴³⁸ World Health Organization (n 294).

⁴³⁹ Ibid.

⁴⁴⁰ Ibid.

⁴⁴¹ Ibid.

⁴⁴² Ibid.

⁴⁴³ Ibid.

⁴⁴⁴ 'CRVS Country Report, Colombia: A Strategy to Improve the Registration and Certification of Vital Events in Rural Ethnic Communities' (University of Melbourne 2018).

⁴⁴⁵ William Reuban and Flavia Carbonari (n 418) 13.

⁴⁴⁶ World Health Organization (n 294).

⁴⁴⁷ The University of Melbourne (n 425).

⁴⁴⁸ World Health Organization (n 294).

⁴⁴⁹ Ibid.

⁴⁵⁰ Ibid.

⁴⁵¹ Ibid.

⁴⁵² Ibid.

El Salvador	90-99%	2017	UNSD	80-89%	2017	UNSD		92.7% (2014) ⁴⁵³	
Falkland Islands (Malvinas)	90% or more	2000	UNSD	90% or more	2000	UNSD			
French Guiana	90% or more	2004	UNSD	90% or more	2004	UNSD			
Grenada	90% or more	2010-2015	UNSD	100.0%	2009	WHO		100% (2017) ⁴⁵⁴	
Guadeloupe	90% or more	2004	UNSD	90% or more	2004	UNSD			
Guatemala	97%	2013	UNSD	94%	2007	UNSD		100% (2016) ⁴⁵⁵	
Guyana	80-89%	2017	UNSD	80-89%	2019	UNSD		90.1% (2014) ⁴⁵⁶	
Haiti	85%	2016-2017	DHS						
Honduras	99%	2013	UNSD	83.60%	2013	UNSD		13.6% (2013) ⁴⁵⁷	
Jamaica	90% or more	2008	UNSD	75-89%	2008	UNSD	Nearly universal coverage (2017) ⁴⁵⁸	93.6% (2014) ⁴⁵⁹	
Martinique	90% or more	2004	UNSD	90% or more	2004	UNSD			
Mexico	90-99%	2020	UNSD	90-99%	2020	UNSD		100% (2016) ⁴⁶⁰	
Montserrat	90% or more	2016	UNSD	90% or more	2016	UNSD			
Nicaragua	84%	2009	UNSD	69.90%	2009	UNSD		79.4% (2017) ⁴⁶¹	
Panama	100%	2014	UNSD	93.70%	2014	UNSD		92.3% (2016) ⁴⁶²	
Paraguay	93%	2016	MICS	65%	2013	UNSD		88.2% (2016) ⁴⁶³	
Peru	75-89%	2015	UNSD	50-74%	2015	UNSD	Nearly universal coverage (2017) ⁴⁶⁴	57.2% (2015) ⁴⁶⁵	yes ⁴⁶⁶
Puerto Rico	90-99%	2017	UNSD	90-99%	2017	UNSD			
Saint Kitts and Nevis	90% or more	2010-2015	UNSD	82.0%	2009	WHO		87.6% (2013) ⁴⁶⁷	
Saint Lucia	92%	2012	MICS	92%	2010	UNSD		97.2% (2014) ⁴⁶⁸	
Saint Vincent and	100%	2014	UNSD	90% or more	2016	UNSD		100% (2016) ⁴⁶⁹	

⁴⁵³ Ibid.

⁴⁵⁴ Ibid.

⁴⁵⁵ Ibid.

⁴⁵⁶ Ibid.

⁴⁵⁷ Ibid.

⁴⁵⁸ William Reuban and Flavia Carbonari (n 418) 13.

⁴⁵⁹ World Health Organization (n 294).

⁴⁶⁰ Ibid.

⁴⁶¹ Ibid.

⁴⁶² Ibid.

⁴⁶³ Ibid.

⁴⁶⁴ William Reuban and Flavia Carbonari (n 418) 13.

⁴⁶⁵ World Health Organization (n 294).

⁴⁶⁶ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 76) 147.

⁴⁶⁷ World Health Organization (n 294).

⁴⁶⁸ Ibid.

⁴⁶⁹ Ibid.

the Grenadines									
Sint Maarten (Dutch part)	90% or more	2010-2015	UNSD	90% or more	2010- 2015	UNSD			
Suriname	90-99	2018	UNSD	90-99	2018	UNSD		79.6% (2014) ⁴⁷⁰	
Trinidad and Tobago	97%	2011	MICS	86.0%	2007	WHO		83.3% (2012) ⁴⁷¹	
Turks and Caicos Islands	90% or more	2010-2015	UNSD	75% or more	2010- 2015	UNSD			
United States Virgin Islands	90% or more	2010-2015	UNSD	90% or more	2010- 2015	UNSD			
Uruguay	90-99%	2018	UNSD	90% or more	2018	UNSD		100% (2016) ⁴⁷²	
Venezuela	75-89%	2016	UNSD	90% or more	2016	UNSD		89.4% (2013) ⁴⁷³	
Australia and New Zealand									
Australia	100%	2018	UNSD	100%	2018	UNSD		100% (2016) ⁴⁷⁴	
New Zealand	90-99%	2020	UNSD	90-99%	2020	UNSD		100% (2014) ⁴⁷⁵	
Oceania excluding Australia and New Zealand									
American Samoa	90% or more	2010-2015	UNSD	75% or more	2010- 2015	UNSD			
Cook Islands	90% or more	2010-2015	UNSD	82.0%	2012	WHO		100% (2016) ⁴⁷⁶	
Fiji	89%	2012-2017	UNSD	92.6%	2012- 2018	UNSD		100% (2012) ⁴⁷⁷	
French Polynesia	90% or more	2010-2015	UNSD	75% or more	2010- 2015	UNSD			
Guam	90% or more	2003	UNSD	90% or more	2003	UNSD			
Kiribati	92%	2018-2019	MICS	76.0%	2002	WHO			
Marshall Islands	90% or more	2001	UNSD	90% or more	2001	UNSD			
Micronesia, Federated States of									
Nauru	83%	2007	DHS	75% or more	2010- 2015	UNSD			
New Caledonia	90% or more	2010-2015	UNSD	75% or more	2010- 2015	UNSD			
Niue	90% or more	2010-2015	UNSD	100.0%	2000	WHO			
Northern Mariana Islands	90% or more	2010-2015	UNSD	90% or more	2010- 2015	UNSD			
Palau	100%	2014	UNSD	100%	2014	UNSD		95% (2013) ⁴⁷⁸	

⁴⁷⁰ Ibid.

⁴⁷¹ Ibid.

⁴⁷² Ibid.

⁴⁷³ Ibid.

⁴⁷⁴ Ibid.

⁴⁷⁵ Ibid.

⁴⁷⁶ Ibid.

⁴⁷⁷ Ibid.

⁴⁷⁸ Ibid.

Papua New Guinea	13%	2016-2018	DHS	50-74%	2004	UNSD		yes ⁴⁷⁹	yes ⁴⁸⁰
Samoa	67%	2019-2020	MICS	51.0%	2002	WHO		yes ⁴⁸¹	
Solomon Islands	80%	2007	DHS						
Tokelau	less than 90%	2010-2015	UNSD	less than 90%	2010-2015	UNSD			
Tonga	98%	2019	MICS	70.0%	2002	WHO			
Tuvalu	50%	2007	DHS	100.0%	2000	WHO			
Vanuatu	43%	2013	DHS					yes ⁴⁸²	
Wallis and Futuna Islands	90% or more	2010-2015	UNSD	90% or more	2010-2015	UNSD			
Northern America and Europe									
Åland Islands	90% or more	2013	UNSD	90% or more	2013	UNSD			
Albania	90% - 99%	2018	UNSD	75-89%	2016	UNSD		53.25% (2010) ⁴⁸³	
Andorra	90% or more	2004	UNSD	90% or more	2005	UNSD		100% (2015) ⁴⁸⁴	
Austria	90% or more	2016	UNSD	90% or more	2016	UNSD	Above 90% (2014) ⁴⁸⁵	100% (2017) ⁴⁸⁶	
Belarus	90% - 99%	2018	UNSD	90% - 99%	2018	UNSD		99.9% (2014) ⁴⁸⁷	
Belgium	90% or more	2016	UNSD	90% or more	2016	UNSD	Above 90% (2014) ⁴⁸⁸	100% (2016) ⁴⁸⁹	
Bermuda	90-99%	2020	UNSD	90-99%	2020	UNSD			
Bosnia and Herzegovina	90% or more	2011	UNSD	90% or more	2011	UNSD		95% (2016) ⁴⁹⁰	
Bulgaria	100%	2018	UNSD	100%	2018	UNSD		100% (2015) ⁴⁹¹	
Canada	90-99%	2017	UNSD	90-99%	2017	UNSD		100% (2015) ⁴⁹²	
Channel Islands	90% or more	2010-2015	UNSD	90% or more	2010-2015	UNSD			
Croatia	90% - 99%	2019	UNSD	90% - 99%	2019	UNSD		100% (2016) ⁴⁹³	
Czech Republic	100%	2018	UNSD	100%	2018	UNSD		100% (2017) ⁴⁹⁴	
Denmark	90% or more	2011	UNSD	90% or more	2011	UNSD		100% (2015) ⁴⁹⁵	

⁴⁷⁹ Bakker, M L, International Institute for Vital Registration and Statistics, 'The Status of Civil Registration and the Collection of Vital Statistics through Alternative Sources in Papua New Guinea', Technical Papers, iiVRS, Number 30, July 1987, 6-7

⁴⁸⁰ Ibid, 6-7

⁴⁸¹ Pacific Community (n 251) 46.

⁴⁸² Ibid. 46.

⁴⁸³ World Health Organization (n 294).

⁴⁸⁴ Ibid.

⁴⁸⁵ Statistics Norway (n 28) 7-10

⁴⁸⁶ World Health Organization (n 294).

⁴⁸⁷ Ibid.

⁴⁸⁸ Statistics Norway (n 28) 7-10

⁴⁸⁹ World Health Organization (n 294).

⁴⁹⁰ Ibid.

⁴⁹¹ Ibid.

⁴⁹² Ibid.

⁴⁹³ Ibid.

⁴⁹⁴ Ibid.

⁴⁹⁵ Ibid.

Estonia	100%	2019	UNSD	100%	2019	UNSD		100% (2016) ⁴⁹⁶	
Faeroe Islands	100%	2019	UNSD	100%	2019	UNSD			
Finland	100%	2019	UNSD	100%	2019	UNSD		100% (2016) ⁴⁹⁷	
France	90% - 99%	2017	UNSD	90% - 99%	2017	UNSD		100% (2015) ⁴⁹⁸	
Germany	100%	2019	UNSD	100%	2019	UNSD		100% (2016) ⁴⁹⁹	
Gibraltar	90% or more	2004	UNSD	90% or more	2004	UNSD			
Greece	90% or more	2016	UNSD	90% or more	2016	UNSD			
Greenland	100%	2017	UNSD	100%	2017	UNSD			
Holy See	90% or more	2010-2015	UNSD	90% or more	2010-2015	UNSD			
Hungary	90% - 99%	2018	UNSD	90% - 99%	2018	UNSD		100% (2017) ⁵⁰⁰	
Iceland	100%	2019	UNSD	100%	2019	UNSD		100% (2017) ⁵⁰¹	
Ireland	90% or more	2007	UNSD	90% or more	2007	UNSD		100% (2015) ⁵⁰²	
Isle of Man	100%	2017	UNSD	100%	2017	UNSD			
Italy	100%	2017	UNSD	100%	2017	UNSD		100% (2015) ⁵⁰³	
Latvia	90% or more	2015	UNSD	90% or more	2015	UNSD		100% (2015) ⁵⁰⁴	
Liechtenstein	90% - 99%	2018	UNSD	90% - 99%	2018	UNSD			
Lithuania	90% - 99%	2019	UNSD	90% - 99%	2019	UNSD		99.2% (2017) ⁵⁰⁵	
Luxembourg	100%	2018	UNSD	100%	2018	UNSD		100% (2016) ⁵⁰⁶	
Malta	90% - 99%	2018	UNSD	90% - 99%	2018	UNSD		100% (2015) ⁵⁰⁷	
Monaco	90% or more	2006	UNSD	>80%	2012	WHO		100% (2012) ⁵⁰⁸	
Montenegro	100%	2017	UNSD	100%	2017	UNSD		93.8% (2009) ⁵⁰⁹	
Netherlands	90% or more	2015	UNSD	90% or more	2015	UNSD	Above 90% (2014) ⁵¹⁰	100% (2016) ⁵¹¹	
North Macedonia	90% - 99%	2019	UNSD	90% - 99%	2019	UNSD		100% (2013) ⁵¹²	

⁴⁹⁶ Ibid.

⁴⁹⁷ Ibid.

⁴⁹⁸ Ibid.

⁴⁹⁹ Ibid.

⁵⁰⁰ Ibid.

⁵⁰¹ Ibid.

⁵⁰² Ibid.

⁵⁰³ Ibid.

⁵⁰⁴ Ibid.

⁵⁰⁵ Ibid.

⁵⁰⁶ Ibid.

⁵⁰⁷ Ibid.

⁵⁰⁸ Ibid.

⁵⁰⁹ Ibid.

⁵¹⁰ Statistics Norway (n 28) 7-10.

⁵¹¹ World Health Organization (n 294).

⁵¹² Ibid.

Norway	90% or more	2013	UNSD	90% or more	2013	UNSD	Above 90% (2014) ⁵¹³	100% (2016) ⁵¹⁴	
Poland	100%	2018	UNSD	100%	2018	UNSD		100% (2016) ⁵¹⁵	
Portugal	100%	2020	UNSD	100%	2020	UNSD		100% (2016) ⁵¹⁶	
Republic of Moldova	90% or more	2010	UNSD	90% or more	2010	UNSD		79.6% (2017) ⁵¹⁷	
Romania	100%	2018	UNSD	100%	2018	UNSD		100% (2017) ⁵¹⁸	
Russian Federation	90% or more	2013	UNSD	90% or more	2013	UNSD		100% (2015) ⁵¹⁹	
Saint Pierre and Miquelon	90% or more	2010-2015	UNSD	90% or more	2010-2015	UNSD			
San Marino	100%	2017	UNSD	100%	2017	UNSD		100% (2015) ⁵²⁰	
Serbia	90% or more	2016	UNSD	90% or more	2016	UNSD		94% (2016) ⁵²¹	
Slovakia	90% or more	2010	UNSD	90% or more	2001	UNSD		100% (2014)	
Slovenia	100%	2019	UNSD	100%	2019	UNSD	Above 90% (2014) ⁵²²	100% (2015) ⁵²³	
Spain	90% - 99%	2018	UNSD	90% - 99%	2018	UNSD		100% (2016) ⁵²⁴	
Svalbard and Jan Mayen Islands	90% or more	2010-2015	UNSD	90% or more	2010-2015	UNSD			
Sweden	90% or more	2013	UNSD	90% or more	2013	UNSD		100% (2016) ⁵²⁵	
Switzerland	100%	2020	UNSD	100%	2020	UNSD		100% (2016) ⁵²⁶	
Ukraine	100%	2017	UNSD	100%	2017	UNSD		92.3% (2017) ⁵²⁷	
United Kingdom	100%	2020	UNSD	100%	2020	UNSD		100% (2016) ⁵²⁸	
United States of America	100%	2017	UNSD	99.90%	2017	UNSD		100% (2016) ⁵²⁹	

⁵¹³ Statistics Norway (n 28) 7-10

⁵¹⁴ World Health Organization (n 294).

⁵¹⁵ Ibid.

⁵¹⁶ Ibid.

⁵¹⁷ Ibid.

⁵¹⁸ Ibid.

⁵¹⁹ Ibid.

⁵²⁰ Ibid.

⁵²¹ Ibid.

⁵²² Statistics Norway (n 28) 7-10.

⁵²³ World Health Organization (n 294).

⁵²⁴ Ibid.

⁵²⁵ Ibid.

⁵²⁶ Ibid.

⁵²⁷ Ibid.

⁵²⁸ Ibid.

⁵²⁹ Ibid.

Annex 7: Vital Statistics Agency and Source of Data

Country	National Agency for Statistics	Source of Statistics
Afghanistan	Vital Statistics and Demographic Department of the Central Statistical Office	Weak civil registration system cannot provide sufficient data for the calculation of vital statistics, at present. At present, vital statistics are calculated on the basis of national surveys. ⁵³⁰
Aland Islands	Statistics Åland	
Albania	Institute of Statistics (INSTAT)	
Algeria	Office national des statistiques	
American Samoa		
Andorra	Departament d'Estadística	
Anguilla	Statistics Department	
Argentina	Instituto Nacional de Estadística y Censos	
Armenia	National Statistical Service of the Republic of Armenia	Vital statistics are based on two sources from the civil registration system: - Medical death certificates are automatically sent to the National Statistics Committee to allow for calculation of cause of death, for example, and other issues (cause of death defined as per the international classification system); - CSARA produces a report on vital events, which is shares with the National Statistics Committee.⁵³¹
Aruba	Central Bureau of Statistics	
Angola	Instituto Nacional de Estatística	
Australia	Australian Bureau of Statistics	
Austria	Statistics Austria	
Azerbaijan	State Statistical Committee of Azerbaijan Republic	
Bahamas	Department of Statistics	
Bahrain	Central Informatics Organisation - Statistics	
Bangladesh	Bureau of Statistics	Vital statistics produced on sample survey data ⁵³²
Barbados	Barbados Statistical Service	
Belarus	National Statistical Committee of the Republic of Belarus	
Belgium	Statistics Belgium	
Belize	Statistical Institute of Belize	
Benin	Institut national de la statistique et de l'analyse économique	
Bermuda	Department of Statistics	
Bhutan	National Statistics Bureau	Vital statistics are not based on the civil registration ⁵³³
Bolivia	Instituto Nacional de Estadística	
Bosnia and Herzegovina	- Agency for Statistics of Bosnia and Herzegovina - Federal Office of Statistics - The Republika Srpska Institute for Statistics	
Botswana	Central Statistical Office	As of 2010, vital statistics were compiled based on civil registration data, population census, and sample surveys. ⁵³⁴
Brazil	Instituto Brasileiro de Geografia e Estatística (IBGE)	

⁵³⁰ United Nations Children's Fund (n 45).

⁵³¹ Zoran Dokoric (n 66) 13.

⁵³² United Nations Children's Fund (n 45).

⁵³³ Ibid.

⁵³⁴ UN Statistics Division (n 120) 6.

Brunei Darussalam	Statistics- Department of Economic Planning and Development	
Bulgaria	National Statistical Institute of the Republic of Bulgaria	
Burkina Faso	Institut National de la Statistique des et de la Démographie	
Burundi	Institut de Statistiques et d'etudes Economuques	
Cambodia	National Institute of Statistics	
Cabo Verde	Instituto Nacional de Estatística	
Cameroon	Institut Nationalde la Statistique	Civil registration systems and vital statistics systems are not synchronized. Vital statistics are poor/non-existent in Cameroon. National statistics are predominately based on MICS and DHS. ⁵³⁵
Canada	Statistics Canada	
Cayman Islands	Economics and Statistics Office	
Central African Republic	Direction Générale de la Statistiques, des Etudes Economiques et Sociales	
Chad	Institut National de la Statistique des Etudes Economiques et Demographiques	
Chile	Instituto Nacional de Estadísticas	
China	National Bureau of Statistics of China	Sample based mortality surveillance system used for vital statistics ⁵³⁶
China, Hong Kong SAR	Census and Statistics Department	
China, Macao SAR	Statistics and Census Service	
CNMI		
Colombia	Departamento Administrativo Nacional de Estadística (DANE)	Starting in 2005, DANE and the Ministry of Social Protection have worked together to digitize the civil registration system and the production of vital statistics. ⁵³⁷
Congo	Centre National de la Statistique et des Etudes Economiques	
Cook Islands	Cook Islands Statistics Office	
Costa Rica	Instituto Nacional de Estadística y Censos	
Cote d'Ivoire	Institut National de la Statistique	
Croatia	Croatian Bureau of Statistics	
Cuba	Oficina Nacional de Estadísticas	
Curacao	Central Bureau of Statistics	
Cyprus	Statistical Service of the Republica of Cyprus	
Czech republic	Czech Statistical Office	
Denmark	Statistics Denmark	
Djibouti	Ministère de l'Economie, des Finances et de la Planification, chargé de la Privatisation	
Dominican Republic	Oficina Nacional de Estadística	
Dominia		Inadequate vital statistics ⁵³⁸
DRC	National Institute of Statistics, Ministry of Home Affairs ⁵³⁹	National Institute of Statistics uses demographic surveys and censuses to estimate vital statistics. ⁵⁴⁰

⁵³⁵ Center of Excellence for Civil Registration and Vital Statistics Systems (n 26) 5.

⁵³⁶ Shiwei Liu, Xiaoling Wu, Alan D Lopez, Lijun Wang, Yue Cai, Adnrew Page, Peng Yin, Yunning Liu, Yichong Li, Jiangmei Liu, Jinling You, Maigeng Zhou (n 76) 46-57.

⁵³⁷ Juan Pablo Toro Roa, Roberto F Inues, Samuel Mills (n 69) 13.

⁵³⁸ International Institute for Vital Registration and Statistics (iiVRS) (n 210) 7.

⁵³⁹ UN Statistics Division (n 120) 23-25.

⁵⁴⁰ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 10).

Ecuador	Instituto Nacional de Estadísticas y Censos	
Egypt	Central Agency for Public Mobilization and Statistics (CAPMAS); ⁵⁴¹ Central Agency for Public Mobilization and Statistics	Almost completed from Civil registration as of 2016, ⁵⁴² data complemented to census and sample survey data. ⁵⁴³
El Salvador	Dirección General de Estadística y Censos	Vital statistics are drawn from civil registration data. ⁵⁴⁴
England		Vital statistics are drawn from civil registration. ⁵⁴⁵
Estonia	Statistics Estonia	
Equatorial Guinea	Dirección General de Estadística y Cuentas Nacionales	
Ethiopia	Central Statistical Agency of Ethiopia	Vital statistics are drawn from civil registration, sample surveys and censuses. ⁵⁴⁶
Faroe Islands	Statistics Faroe Islands	
Fiji	Fiji Islands Bureau of Statistics	
Finland	Statistics Finland	
France	Institut National de la Statistique et des Études Économiques - Le Portail de la statistique publique française	
Gabon	Direction Générale des Statistiques	
Gambia	Gambia Bureau of Statistics	
Georgia	National Statistics Office of Georgia	
Germany	Federal Statistical Office	
Ghana	Ghana Statistical Services	As of 2016, exclusively relaying on census and household survey data. ⁵⁴⁷
Greece	National Statistical Service of Greece	
Greenland	Statistics Greenland	
Guam	Bureau of Statistics and Plans	
Guatemala	Instituto Nacional de Estadística	
Guinea	Direction Nationale de la Statistique	Limited vital statistics are generated from the civil registration data, though they are not made public. Vital statistics are more commonly based on population census data and sample surveys. ⁵⁴⁸
Guinea-Bissau	Instituto Nacional de Estatística e Censos	
Guyana	Bureau of Statistics	
Haiti	Institut Haïtien de Statistique et d'Informatique	
Hong Kong	Census and Statistics Department is	Vital statistics are based on civil registration data. ⁵⁴⁹
Hungary	Hungarian Central Statistical Office	
Iceland	Statistics Iceland	
India	Ministry of Statistics and Programme Implementation	The civil registration system is constantly generating statistical information at the local level. The registrar consolidates the information each month and transfers it to the Chief Registrar, who in

⁵⁴¹ International Institute for Vital Registration and Statistics (n 126).

⁵⁴² United Nations Statistics Division (n 110) 25.

⁵⁴³ United Nations Statistics Division (n 12).

⁵⁴⁴ International Institute for Vital Registration and Statistics (iiVRS) (n 73) 2.

⁵⁴⁵ International Institute for Vital Registration and Statistics (iiVRS) (n 91) 3-5.

⁵⁴⁶ Centre of Excellence for Civil Registration and Vital Statistics System (n 34) 7.

⁵⁴⁷ United Nations Statistics Division (n 110) 25.

⁵⁴⁸ Centre of Excellence for Civil Registration and Vital Statistics, 'Snapshot of Civil Registration and Vital Statistics Systems of Guinea' (2019) International Development Research Centre < https://apai-crvs.uneca.org/sites/default/files/resourcefiles/CRVS_GuineeSnapshot_e.pdf > accessed 31 January 2024, 7.

⁵⁴⁹ International Institute for Vital Registration and Statistics (iiVRS) (n 427) 5.

		turn provides it to the State Government and the Registrar General, Ministry of Home Affairs, Government of India. ⁵⁵⁰
Indonesia	BPS- Statistics Indonesia	
Iran	Statistical Centre of Iran	
Iraq	Central Organization for Statistics and Information Technology (COSIT)	
Ireland	Central Statistics Office Ireland	
Israel	Central Bureau of Statistics	
Italy	National Institut of Statistics	
Jamaica	Statistical Institute of Jamaica	
Japan	- Office of Director-General for Policy Planning (Statistical Standards) - Statistics Bureau	Vital statistics drawn from civil registration data. ⁵⁵¹
Jordan	Department of Statistics	The civil registration system is the primary source of vital statistics. ⁵⁵² However, sample surveys are conducted to understand specific fertility and mortality trends. ⁵⁵³
Kenya	National Bureau of Statistics	
Kazakhstan	Statistical Office	
Kiribati	National Statistics Office	
Kyrgyzstan	National Statistical Committee of Kyrgyz Republic	Vital statistics are based on the civil registration system, ⁵⁵⁴ as well as other data forms. ⁵⁵⁵
Korea	Statistics Korea	
Kuwait	Central Statistical Office	
Latvia	Central Statistical Bureau of Latvia	
Lao People's Democratic Republic	Lao Statistics Bureau	
Lebanon	Central Administration for Statistics	
Lesotho	Lesotho Bureau of Statistics	Vital statistics are drawn from population census and sample surveys. As of 2010, civil registration was not used in the production of vital statistics. ⁵⁵⁶
Liberia	Liberia Institute of Statistics & Geo-Information Services	Vital statistics are based on sample surveys. ⁵⁵⁷
Liechtenstein	Bureau of Statistics	
Lithuania	Statistics Lithuania	
Luxembourg	STATEC	
Madagascar	Institut National de la Statistique	As of 2010, vital statistics were based on population census and sample surveys. Civil registration is not used as a source for vital statistics. ⁵⁵⁸
Malawi	National Statistical Office of Malawi	Vital statistics are not generated from civil registration data. ⁵⁵⁹ Vital statistics are based on population census and sample surveys. ⁵⁶⁰
Malaysia	Department of Statistics Malaysia	
Maldives	Department of National Planning	
Mali	l'Institut National de la Statistique	
Malta	National Statistics Office	

⁵⁵⁰ United Nations Children's Fund (n 45).

⁵⁵¹ International Institute for Vital Registration and Statistics (iiVRS) (n 77).

⁵⁵² United Nations Statistics Division (n 12).

⁵⁵³ See Jordan Department of Statistics < http://www.dos.gov.jo/sdb_pop/sdb_pop_e/index.htm >

⁵⁵⁴ Centre of Excellence for Civil Registration and Vital Statistics Systems 'Compendium of Good Practices in Linking Civil Registration and Vital Statistics and Identity Management Systems, 2019, Case Study 3: Kyrgyzstan' Global Partnership for Sustainable Development Data < https://crvssystems.ca/sites/default/files/assets/files/CRVS_Compndium_e_WEB.pdf > accessed 30 January 2024; Zoran Dokoric (n 150) 11.

⁵⁵⁵ Zoran Dokoric (n 150) 11.

⁵⁵⁶ UN Statistics Division (n 120) 25-28.

⁵⁵⁷ Centre of Excellence for Civil Registration and Vital Statistics (n 22) 5.

⁵⁵⁸ UN Statistics Division (n 120) 29-31.

⁵⁵⁹ Ibid, 31-33.

⁵⁶⁰ Ibid, 31-33.

Marshall Islands	- Embassy of the Republic of the Marshall Islands - Economic Policy-Planning and Statistics Office	
Mongolia	National Statistical Office	
Mauritania	Office National de la Statistique	
Mauritius	Statistics Mauritius Office	As of 2010, vital statistics were compiled based on civil registration data (predominately), population census, and sample surveys. ⁵⁶¹
Mexico	Instituto Nacional de Estadística, Geografía (INEGI)	
Micronesia	Government of the Federated States of Micronesia (FSM)	
Moldova	National Bureau of Statistics	
Monaco	Official Government Portal	
Montenegro	Statistical Office of Montenegro	
Morocco	Direction de la Statistique	
Mozambique	Instituto Nacional de Estatística	No vital statistics based on civil registration data (data is not transferred from CR to NIS). ⁵⁶² Vital statistics are based on the population censuses and sample surveys. ⁵⁶³
Myanmar	Central Statistical Organization	
Namibia	Central Bureau of Statistics	Though civil registration systems moderately strong, weak link between CR and VS systems prevent use of civil registration in vital statistics, as of 2010. ⁵⁶⁴
Nauru	Nauru Bureau of Statistics	
Nepal	Central Bureau of Statistics	
Netherlands	- Statistics Netherlands - Bonaire, Curaçao, St. Maarten, St. Eustatius and Saba (formerly known as the Netherlands Antilles)	
New Zealand	Statistics New Zealand	
Nicaragua	Instituto Nacional de Información de Desarrollo (INIDE)	
Niger	Institut National de la Statistique	
Nigeria	National Bureau of Statistics	Vital statistics drawn from civil registration data. ⁵⁶⁵
Niue	Niue Statistics	
North Macedonia	State Statistical Office	
Northern Mariana Islands	Department of Commerce: Central Statistics Division	
Norway	Statistics Norway	
Oman	National Center for Statistics & Information	Since 2004, civil registration data, population census and sample surveys are used to generate vital statistics. ⁵⁶⁶
Occupied Palestinian Territory	Palestinian Central Bureau of Statistics	Vital statistics are drawn from Department of Civil Registration data. ⁵⁶⁷
Pakistan	- Federal Bureau of Statistics - Ministry of Economics Affairs & Statistics	No vital statistics are produced from civil registration, as coverage is too low. ⁵⁶⁸

⁵⁶¹ Ibid, 6, 33-38.

⁵⁶² Ibid, 39-44.

⁵⁶³ Ibid, 39-44.

⁵⁶⁴ Ibid, 44-48.

⁵⁶⁵ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 271) 7.

⁵⁶⁶ United Nations Statistics Division (n 12).

⁵⁶⁷ Ibid.

⁵⁶⁸ United Nations Children's Fund (n 45).

Palau	Palau Statistics	
Panama	Dirección Nacional de Estadística y Censo	
Papua New Guinea	National Statistical Office of Papua New Guinea	
Paraguay	Dirección General de Estadística, Encuestas y Censos	
Peru	Instituto Nacional de Estadística e Informática (INEI)	
Philippines	Philippine Statistics Authority	
Poland	Statistics Poland	
Portugal	Instituto Nacional de Estatística	
Qatar	Statistics Authority	Vital statistics are based on civil registration, population census and sample surveys. ⁵⁶⁹
Romania	National Institute of Statistics	
Russian Federation	Federal State Statistics Service	
Rwanda	National Institute of Statistics of Rwanda	
Saint Helena	Statistics	
Saint Lucia	Saint Lucian Government Statistics Department	
Saint Martin	Department of Statistics	
Samoa	Samoa Bureau of Statistics	
San Marino	Office of Economic Planning Data Processing and Statistics	
Sao Tome and Principe	Instituto Nacional de Estatísticas	
Saudi Arabia	General Authority for Statistics	Vital statistics are produced on the basis of civil registration, population census and sample surveys. ⁵⁷⁰
Sierra Leone	Statistics Sierra Leone ⁵⁷¹	Vital statistics based on censuses, sample surveys, and civil registration. ⁵⁷²
Singapore	Singapore Department of Statistics	
Senegal	Agence Nationale de la Statistique de la Démographie	Vital statistics are based on civil registration, as well as other sources. ⁵⁷³
Serbia	Statistical Office of the Republic of Serbia	
Seychelles	National Bureau of Statistics	Vital statistics were compiled almost completely from civil registration data as of 2016. ⁵⁷⁴
Sierra Leone	Statistics Sierra Leone	
Slovakia	Statistical Office of the Slovak Republic	
Slovenia	Statistical Office of the Republic of Slovenia	
Spain	Instituto Nacional de Estadística	
Sri Lanka	Department of Census and Statistics	
Solomon Islands	Solomon Islands National Statistics Office	
South Africa	Statistics South Africa	As of 2010, vital statistics were compiled based on civil registration data, population census, and sample surveys. ⁵⁷⁵
South Sudan	National Bureau of Statistics	
Sudan	Central Bureau of Statistics	
Suriname	General Bureau of Statistics	
Swaziland	Central Statistical Office	As of 2009, the civil registration system was largely manual and, as such, vital statistics were not derived from the system. Vital statistics

⁵⁶⁹ United Nations Statistics Division (n 12).

⁵⁷⁰ Ibid.

⁵⁷¹ Centre of Excellence for Civil Registration and Vital Statistics System (n 54) 6.

⁵⁷² Ibid, 6.

⁵⁷³ Senegal, Agence Nationale de la Statistique et de la Démographie < http://www.ansd.sn/index.php?option=com_docman&Itemid=259 > Accessed 29 April 2024.

⁵⁷⁴ United Nations Statistics Division (n 110) 25.

⁵⁷⁵ UN Statistics Division (n 120) 6.

		at this juncture were drawn from the population census and sample surveys. ⁵⁷⁶
Sweden	Statistics Sweden	
Switzerland	Swiss Federal Statistical Office	
Syria	Central Bureau of Statistics	Vital statistics are draw on civil registration data. ⁵⁷⁷
Tajikistan	State Statistical Committee of Tajikistan	
Thailand	National Statistical Office	
Tanzania	National Bureau of Statistics (main land); ⁵⁷⁸	Though civil registration systems are moderately strong, there is a weak link between CR and VS systems prevent use of civil registration in vital statistics, as of 2010. ⁵⁷⁹
Timor Leste	Direcção Nacional de Estatística	
Togo	Direction Generale de la Statistique et de la Comptabilite Nationale	
Tonga	Tonga Department of Statistics	
Trinidad and Tabago	Central Statistical Office	Vital statistics based on civil registration data. ⁵⁸⁰
Tunisia	Institut national de la statistique	
Turks and Caicos Islands	Department of Economic Planning and Statistics	
Turkey	Turkish Statistical Institute	
Tuvalu	Central Statistics Department	
Uganda	Uganda Bureau of Statistics	
United Arab Emirates	Federal Competitiveness & Statistics Authority	Based on the vital events database. ⁵⁸¹
United Republic of Tanzania	National Bureau of Statistics	
Ukraine	The State Committee of Statistics of Ukraine	
United Kingdom	- UK Statistics Authority - Office for National Statistics	
Uruguay	Instituto Nacional de Estadística	
United States	Fedstats - Bureau of the Census - Bureau of Economic Analysis - Bureau of JusticeStatistics - Bureau of Labor Statistics - Bureau of Transportation Statistics - Department of Commerce (STAT-USA) - Office of Energy Statistics - National Center for Health Statistics - The National Center for Education Statistics - United States Department of Agriculture, Economic Research Service	
Uzbekistan	State Committee of the Republic of Uzbekistan on Statistics	
Vanuatu	Vanuatu National Statistics Office	
Viet Nam	General Statistics Office	
Venezuela	Instituto Nacional de Estadística	
Yemen	Central Statistical Office	

⁵⁷⁶ Ibid, 56-61.

⁵⁷⁷ United Nations Statistics Division (n 12).

⁵⁷⁸ UN Statistics Division (n 120).

⁵⁷⁹ Ibid, 6.

⁵⁸⁰ International Institute for Vital Registration and Statistics (iiVRS) (n 229)

⁵⁸¹ United Nations Statistics Division (n 12).

Zimbabwe	ZIMSTAT	Vital statistics are drawn from population censuses and sample surveys. ⁵⁸²
Zambia	Central Statistical Office of Zambia	As of 2016, exclusively relaying on census and household survey data. ⁵⁸³
Zanzibar	Office of the Chief Government Statistician (under the Finance and Economic Affairs) (Zanzibar) ⁵⁸⁴	Though civil registration systems are moderately strong, the weak link between CR and VS systems prevent use of civil registration in vital statistics, as of 2010. ⁵⁸⁵

⁵⁸² UN Statistics Division (n 120) 71-74.

⁵⁸³ United Nations Statistics Division (n 110) 25.

⁵⁸⁴ UN Statistics Division (n 120).

⁵⁸⁵ Ibid, 6.

Annex 8: Date of Establishment of Modern Civil Registration System

Africa

Country	Year civil registration started	Year civil registration was made universal
Algeria	1882 ⁵⁸⁶	
Benin	1933 ⁵⁸⁷ /1966 ⁵⁸⁸	1998, with revision of the Registration Act ⁵⁸⁹
Botswana	1939 ⁵⁹⁰	
Burkina Faso	1933 ⁵⁹¹	
Burundi	1922 ⁵⁹²	
Cameroon	1917 ⁵⁹³	
Central African Rep	1940 ⁵⁹⁴	
Chad	1961 ⁵⁹⁵	
Congo	1922 ⁵⁹⁶	
DRC	1958 ⁵⁹⁷	2016 ⁵⁹⁸
Egypt	1250 B.C., most likely only for the elite; ⁵⁹⁹ modern system was put in place 1839 ⁶⁰⁰	
Gabon	1940 ⁶⁰¹	
Ghana	1888, ⁶⁰² geographically limited; reform in 1912 and 1926 remained focused on urban areas ⁶⁰³	1965, ⁶⁰⁴ expanded to all parts of the country
Guinea-Bissau	1976 ⁶⁰⁵	
Ivory Coast	1933 ⁶⁰⁶	
Kenya	1904, ⁶⁰⁷ only Europeans, Americans and Indians across Kenya	Compulsory registration for all areas and people implemented in phases starting in 1963; Amended in 1972 to require mandatory registration ⁶⁰⁸
Lesotho	1880 ⁶⁰⁹	

⁵⁸⁶ International Institute for Vital Registration and Statistics (iiVRS) (n 1) 15-16.

⁵⁸⁷ Ibid. 15-16.

⁵⁸⁸ United Nations Statistics Division Demographic Statistics (n 120) 18-23

⁵⁸⁹ United Nations Statistics Division Demographic Statistics (n 120) 18-23

⁵⁹⁰ International Institute for Vital Registration and Statistics (iiVRS) (n 1) 15-16.

⁵⁹¹ Ibid. 15-16.

⁵⁹² Ibid. 15-16.

⁵⁹³ Ibid. 15-16.

⁵⁹⁴ Ibid. 15-16.

⁵⁹⁵ United Nations Statistical Office (n 9) 43.

⁵⁹⁶ International Institute for Vital Registration and Statistics (iiVRS) (n 1) 15-16.

⁵⁹⁷ United Nations Statistical Office (n 9) 43.

⁵⁹⁸ Center of Excellence for Civil Registration and Vital Statistics Systems (n 10) 5.

⁵⁹⁹ Gamal Askar (n 263).

⁶⁰⁰ Ibid.

⁶⁰¹ International Institute for Vital Registration and Statistics (iiVRS) (n 1) 15-16.

⁶⁰² Ibid. 15-16.

⁶⁰³ International Institute for Vital Registration and Statistics (iiVRS) (n 304)1.

⁶⁰⁴ Act 301 of 1965 and amended by N.L.C Decree 285 of 1968

⁶⁰⁵ United Nations Statistical Office (n 9) 43.

⁶⁰⁶ Ibid. 43.

⁶⁰⁷ Ibid. 43.

⁶⁰⁸ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 20) 4.

⁶⁰⁹ International Institute for Vital Registration and Statistics (iiVRS) (n 1) 15-16.

Libya	1968; ⁶¹⁰ Established during Italian colonial rule, voluntary registration in urban areas ⁶¹¹	Following independence, a more comprehensive registration was put in place, covering the entire country ⁶¹²
Madagascar	1878 established by Royal Decree ⁶¹³	
Malawi	1904 ⁶¹⁴ (only white and Asian communities)	2009, extended to everyone ⁶¹⁵
Mali	1933 ⁶¹⁶	
Maritania	1933 ⁶¹⁷	
Mauritius	1793 ⁶¹⁸ /1667 ⁶¹⁹ /1800 ⁶²⁰	
Morocco	1915, for French nationals ⁶²¹	In 1931 Moroccans were granted access; in 1950 it became mandatory for everyone ⁶²²
Mozambique	1930, only covering the Portuguese population ⁶²³	1961 (following independence) to cover the rest of the population ⁶²⁴
Namibia		1963; ⁶²⁵ reestablished in 1990 following independence from South Africa ⁶²⁶
Niger	1933 ⁶²⁷	
Nigeria	1867 ⁶²⁸	
Rwanda	1922 ⁶²⁹ /1963 ⁶³⁰	
Senegal	1916 ⁶³¹	1972 ⁶³²
Seychelles	1893	
Sierra Leone	1801 ⁶³³	
Somalia	1904 ⁶³⁴	
South Africa	1924 ⁶³⁵	
Swaziland	1900 ⁶³⁶ /1927, ⁶³⁷ only for certain races	Extended to the whole population in 1971 ⁶³⁸
Tanzania	1917 ⁶³⁹	
Togo	1923 ⁶⁴⁰	
Tunisia	1918 ⁶⁴¹	

⁶¹⁰ United Nations Statistical Office (n 9) 43.

⁶¹¹ International Institute for Vital Registration and Statistics (iiVRS) (n 23).

⁶¹² Ibid.

⁶¹³ International Institute for Vital Registration and Statistics (iiVRS) (n 1) 15-16.

⁶¹⁴ United Nations Statistical Office (n 9) 43.

⁶¹⁵ UN Statistics Division (n 120) 31-33.

⁶¹⁶ International Institute for Vital Registration and Statistics (iiVRS) (n 1) 15-16.

⁶¹⁷ Ibid, 15-16.

⁶¹⁸ International Institute for Vital Registration and Statistics (iiVRS) (n 1) 15-16.

⁶¹⁹ Michel Francois (n 312) 74-75.

⁶²⁰ UN Statistics Division (n 120) 33-38.

⁶²¹ Violeta Gonzales-Diaz, International Institute for Vital Registration and Statistics 'Reforms in the Civil Registration and Vital Statistics Systems of Morocco' (1991) iiVRS Technical Papers, Number 44, 1.

⁶²² Ibid, 1.

⁶²³ UN Statistics Division (n 120) 39-44.

⁶²⁴ Statistics Norway (n 28) 37-38.

⁶²⁵ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 1) 94-95.

⁶²⁶ Ibid, 7.

⁶²⁷ International Institute for Vital Registration and Statistics (iiVRS) (n 1) 15-16.

⁶²⁸ Ibid, 15-16.

⁶²⁹ Ibid, 15-16.

⁶³⁰ Michel Francois (n 312) 74-75.

⁶³¹ International Institute for Vital Registration and Statistics (iiVRS) (n 1) 15-16.

⁶³² Centre of Excellence for CRVS, Snapshot of Civil Registration and Vital Statistics Systems of Senegal, 2019, 6.

⁶³³ International Institute for Vital Registration and Statistics (iiVRS) (n 1) 15-16.

⁶³⁴ Ibid, 15-16.

⁶³⁵ United Nations Statistical Office (n 9) 43.

⁶³⁶ International Institute for Vital Registration and Statistics (iiVRS) (n 1) 15-16.

⁶³⁷ UN Statistics Division (n 120) 56-61.

⁶³⁸ Ibid, 56-61.

⁶³⁹ International Institute for Vital Registration and Statistics (iiVRS) (n 1) 15-16.

⁶⁴⁰ Ibid, 15-16.

⁶⁴¹ United Nations Statistical Office (n 9) 43.

Uganda	1905 ⁶⁴²	

East and Central Asia

Country	Year civil registration started	Year civil registration was made universal
Afghanistan	1878, ⁶⁴³ but inconsistently applied ⁶⁴⁴	
Armenia	Church registry prior to 1900s ⁶⁴⁵	Institutionalized under MoJ in the early 1900s ⁶⁴⁶
Bangladesh	1873, under British rule ⁶⁴⁷	
China	1950s, geographically limited to 13 cities ⁶⁴⁸	Progressively expanded, by 2012 in 22 provinces ⁶⁴⁹
Japan	86 BC; ⁶⁵⁰ 645 AD (limited to certain socioeconomic groups) ⁶⁵¹	1871 (KOSEKI Family registration system established) ⁶⁵²
Hong Kong	Late 1800s ⁶⁵³	
India	Mid-1800s various provinces passed legislation, related to disease surveillance (geographically limited); ⁶⁵⁴ 1866 voluntary civil registration across British India ⁶⁵⁵	
Korea		1960s ⁶⁵⁶
Maldives	1980s, when Department of National registration sent teams across Island to collect data	1993, law passed on birth and death certification, the law provided the basis for the establishment of the civil registration system in 1999 ⁶⁵⁷
Mancau	Late 1800s ⁶⁵⁸	
Nepal	1961, geographically limited ⁶⁵⁹	1976, universal registration rolled out over 15 years ⁶⁶⁰
Pakistan		1959 and 1960 ⁶⁶¹
Philippines	1898, follow independence from Spain and separation of church and state ⁶⁶²	
Sri Lanka	1847, did not include Kandyan Sinhalese and Muslims ⁶⁶³	

⁶⁴² Ibid, 43.

⁶⁴³ United Nations Children's Fund (n 45) 29.

⁶⁴⁴ Ibid.

⁶⁴⁵ Zoran Dokoric (n 66).

⁶⁴⁶ Ibid.

⁶⁴⁷ Birth and Death Registration Act (1873)

⁶⁴⁸ Shiwei Liu, Xiaoling Wu, Alan D Lopez, Lijun Wang, Yue Cai, Adnrew Page, Peng Yin, Yunning Liu, Yichong Li, Jiangmei Liu, Jinling You, Maigeng Zhou (n 76) 46-57.

⁶⁴⁹ Shiwei Liu, Xiaoling Wu, Alan D Lopez, Lijun Wang, Yue Cai, Adnrew Page, Peng Yin, Yunning Liu, Yichong Li, Jiangmei Liu, Jinling You, Maigeng Zhou (n 76) 46-57.

⁶⁵⁰ International Institute for Vital Registration and Statistics (iiVRS) (n 77).

⁶⁵¹ Ibid.

⁶⁵² Ibid.

⁶⁵³ Committee of Asia Experts under the auspices of the IIVRS and the United Nations Economic and Social Commission for Asia and the Pacific (n 59) 90.

⁶⁵⁴ International Institute for Vital Registration and Statistics (iiVRS) (n 71) 1-2.

⁶⁵⁵ Birth, Deaths and Marriages Registration Act (1866)

⁶⁵⁶ Minah Kang, Green Bae, Heeun Kim, Seung Yeon Hong, Samuel Mills (n 60).

⁶⁵⁷ Reniec, Historia < <https://www.reniec.gob.pe/portal/html/institucional/institucionalHistoria.html> > a 30 April 2024.

⁶⁵⁸ Committee of Asia Experts under the auspices of the IIVRS and the United Nations Economic and Social Commission for Asia and the Pacific (n 59) 90.

⁶⁵⁹ United Nations Children's Fund (n 45).

⁶⁶⁰ Ibid.

⁶⁶¹ Basic Democracies Order (1959) and Municipal Ordinances (1960) required that vital events were made compulsory and uniform

⁶⁶² United Nations Department for Economic and Social Information and Policy Analysis Statistical Division, International Programme for Accelerating the Improvement of Vital Statistics and Civil Registration Systems (n 62).

⁶⁶³ Ordinance No. 6 (1847); International Institute for Vital Registration and Statistics (iiVRS) 'The Development and Organization of Civil Registration in Sri Lanka' (1990) Technical Papers, Number 41 < https://unstats.un.org/unsd/demographic-social/crvs/documents/IIVRS_papers/IIVRS_paper41.pdf > accessed 1 February 2024

Europe

Country	Year civil registration started	Year civil registration was made universal
Albania	1930s ⁶⁶⁴	
Denmark	Several centuries, deaths were registered by parishes ⁶⁶⁵	Civil registration system was formalized in 1924 ⁶⁶⁶
England and Wales	Modern system put in place in 1836 ⁶⁶⁷	Made compulsory in 1874 ⁶⁶⁸
Finland	Death records in some parishes were as early as 16 th century (when Finland was still part of Sweden); Ecclesiastical Act of 1686 required clergy to compile population registers, but limited to parishes ⁶⁶⁹	In 1917 registration was required for all persons, including those outside the parishes ⁶⁷⁰
Netherlands	Beginning of the 1800s ⁶⁷¹	

Middle East

Country	Year civil registration started	Year civil registration was made universal
Iraq	Modern civil registration system established in 1921 with independence, law passed in 1924 required registration for all Iraqi citizens ⁶⁷²	
Jordan	Long history; modern system established in 1930 ⁶⁷³	
Kuwait	1952	1964, mandatory birth and death registration ⁶⁷⁴
Lebanon	1924 ⁶⁷⁵	
Oman	1970s, limited to people working in the public sector ⁶⁷⁶	2004 extended to all foreigners and non-foreigners ⁶⁷⁷
oPt	1966 ⁶⁷⁸	
Qatar		1982 ⁶⁷⁹
Saudi Arabia	1930s	
Syria	1914 under Ottoman Empire, formalizing registration that was already in place ⁶⁸⁰	1923, following independence establishing modern civil registration system ⁶⁸¹
Yemeni	1991 ⁶⁸²	

⁶⁶⁴ Statistics Norway (n 28) 33-34.

⁶⁶⁵ International Institute for Vital Registration and Statistics (iiVRS) (n 88).

⁶⁶⁶ Ibid.

⁶⁶⁷ Births and Death Registration Act of 1836 (came into force on 1 July 1837); International Institute for Vital Registration and Statistics (iiVRS) (n 110) 2.

⁶⁶⁸ International Institute for Vital Registration and Statistics (iiVRS) (n 91) 2.

⁶⁶⁹ International Institute for Vital Registration and Statistics (iiVRS) (n 152) 1.

⁶⁷⁰ Ibid, 1.

⁶⁷¹ Zoran Dokoric (n 92) 2.

⁶⁷² United Nations Statistics Division (n 12).

⁶⁷³ Ibid.

⁶⁷⁴ Nasra Shah, Ali Mohammad Al-Sayed, Makhdoom Shah (n 383) 1.

⁶⁷⁵ United Nations Statistics Division (n 12).

⁶⁷⁶ Ibid.

⁶⁷⁷ Ibid.

⁶⁷⁸ Ibid.

⁶⁷⁹ Ibid.

⁶⁸⁰ Ibid.

⁶⁸¹ Ibid.

⁶⁸² Ibid.

Latin America

Country	Year civil registration started	Year civil registration was made universal
Colombia	Put in place in 1852, ⁶⁸³ but Catholic Church continued to provide registration services for a long time after.	Responsibility for civil registration was formally transferred to the state in 1938 ⁶⁸⁴
Ecuador	1924 ⁶⁸⁵	
Mexico	Late 1970s/early 1980s ⁶⁸⁶	
Peru	Incas of Peru (1,200 to 1,527 AC) recorded vital events through a system of intertwined coloured ribbons; ⁶⁸⁷ 1749 under colonial rule, undertaken by Catholic church under Canon Law; ⁶⁸⁸ 1852 (independence), ⁶⁸⁹ established CR managed by civil state, replacing parochial registration by Catholic church ⁶⁹⁰	1993, post conflict registration system established ⁶⁹¹
English-speaking Caribbean	Slave Registration established by British colonial govern in 1817; progressively ecclesial systems were replaced by civil registration (St Christopher in 1859; Barbados in 1924; Jamaica in mid-1800s; 1847 in Trinidad ⁶⁹²)	

⁶⁸³ Law 2159

⁶⁸⁴ Law 92; RNEC 2019c

⁶⁸⁵ Veronica Alvarez (n 74).

⁶⁸⁶ International Institute for Vital Registration and Statistics (iiVRS) 'Demographic Information from Vital Registration Offices in Mexico' (1982) Technical Papers Number 23 < https://unstats.un.org/unsd/demographic-social/crvs/documents/IIVRS_papers/IIVRS_paper23.pdf > accessed 30 January 2024, 3.

⁶⁸⁷ William Reuban and Flavia Carbonari (n 418) 5.

⁶⁸⁸ Reniec, Historia < <https://www.reniec.gob.pe/portal/html/institucional/instiHistoria.html> > a 30 April 2024.

⁶⁸⁹ First Civil Code (1852)

⁶⁹⁰ Centre of Excellence for Civil Registration and Vital Statistics Systems (n 76) 137.

⁶⁹¹ New Constitution (1993); National Register was established in 1995 with Peru's Organic Law

⁶⁹² International Institute for Vital Registration and Statistics (iiVRS) (n 210)

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