

RISK 9

IMPEDIMENTS AND/OR RESTRICTIONS TO ACCESS TO LEGAL IDENTITY, REMEDIES AND JUSTICE



WHAT ACTS OR SITUATIONS CONSTITUTE THE PRESENCE OF THE RISK?

This protection risk includes all measures, acts and practice that prevent people from accessing documentation, remedies and justice with consequent harm at individual, household and community levels. **Denial of access to legal identity** refers to all situations preventing a person to possess legal identity or any other fundamental documentation to be recognized as a person before the law. **Denial of access to remedies** includes all impediments to obtain effective procedural and substantive remedies following legal claims. Procedural remedies include regulations, laws, processes, and entitlements. Substantive remedies include effective remedies at the conclusion of the processes – such as restitution, compensation, rehabilitation, or others. **Denial to access to justice** relates to the impediments to access to judicial mechanisms, processes, and remedies, ranging from access to statutory courts or commissions to traditional mechanisms such as customary or faith-based dispute resolution bodies. States have the duty to respect, protect and fulfil a population’s rights to access legal identity and civil documents, remedies and justice, but non-State actors have responsibilities according to different national and international frameworks.



WHAT FACTORS MUST BE IDENTIFIED FOR MONITORING?

The monitoring of this protection risk should include a focused attention that the mechanisms, whether judicial or non-judicial, do not only treat the population as passive recipients. The risk can manifest even when legal and policy procedure are in place, if the mechanisms are not accessible, affordable, adequate, timely and if they are not created, designed, and operated in consultation with the affected population. The addressing of this protection risk is fundamental to enabling an individual to claim other rights and enjoy basic services and entitlements, including the right to a nationality, freedom of movement, and to access a range of basic services, such as education, healthcare and adequate housing. Importantly, a lack of legal identity and civil documents puts children at increased risk of statelessness, as well as exclusion from both accessing basic services and from political, social and economic life. Lacking identity and civil documents may increase risk of arbitrary arrest or detention and has serious consequences for people relations with both authorities and the wider community. It increases risks of community stigmatization, isolation, and exclusion, particularly for female-headed households, who often lack strong community support networks to navigate potentially hostile environments.



WHAT INFORMATION & DATA CAN ILLUSTRATE THE PRESENCE OF THE RISK?

Support from legal aid and analysis actors is fundamental for the identification of this protection risks. Information and data may include: monitoring of confiscated civil IDs, nationality cards and other state-issued documents (by state and NSAGs), registration of undocumented children, access to services and facilities, access legal notices and information, availability and affordability of legal assistance, presence of substantive and procedural safeguards recognized in international law, discriminatory law and/or social practices, monitoring from civil society organizations, information and understanding on power imbalances and discrimination, existing legal and human rights reforms, impact assessments, information, counselling and legal support.