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Regimes of Proof: On Contested Identities in Border and Migration Control

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ABSTRACT

The capacity to establish migrants' legal identities is key to states' attempts to control access to their territories. This paper introduces the concept of regimes of proof to shed light on this often-neglected aspect of border and migration control and related migrant struggles. Negotiations around legal identities play a central role in deportation, but also in migrants' access to rights and government services. At the current conjuncture, this tension has become particularly relevant: new digital means of identification such as biometric residency cards or the analysis of mobile phone data are rapidly being introduced across the globe to establish and fix migrants' identities and to determine their country of origin. Drawing on ethnographic research in West Africa and Germany, we consider the implications of shifting regimes of proof in the context of asylum, deportation and regularisation procedures to highlight the centrality of identification to all aspects of migration management.

Years ago, a child was left in a basket at the doorstep of a Tibetan convent, where she grew up never knowing her parents or her birth name. A nun later told her that her parents had been politically active, but she had no means of discovering whether this was true, who they had been, or whether her birth had ever been officially registered. Although this presumably had many effects on her life, we know only of some of the administrative ones, as recounted in a judgement from Germany's Federal Administrative Court (Bundesverwaltungsgericht 2020): When she applied for refugee status in Germany in 2009, German authorities argued that her story was not corroborated by sufficient evidence of her identity, which was recorded only in the convent registry. Although she eventually succeeded in overturning the rejection of her asylum claim and obtaining refugee status, she would be haunted by her lack of identity documents once again when she later applied for German citizenship. Dominant

jurisprudence argues that granting citizenship to someone without a "clarified" identity is a security concern, even if they fulfil all other requirements. After the naturalisation office rejected her citizenship application, her case found its way to the Federal Administrative Court, which ruled in a now famous decision that where it is "objectively impossible and subjectively unreasonable" (Ibid., paragraph 8)¹ to obtain a passport or any other form of proof of official identity, an applicant's own statements can be accepted as the basis of their identity. Nevertheless, it was unable to determine whether this specific woman's story did in fact meet the criteria of "impossibility" and "unreasonableness" and sent the case back to the lower courts again, arguing they would need to collect additional evidence.

As this example shows, identificatory practices extend far beyond the checking of documents at border posts. State

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authorities continuously rely on documents, technical devices, and bureaucratic procedures to produce and verify officially recognised identities, operating under the assumption that self-reporting is an insufficient, unreliable source of truth. It is precisely state authorities' urge to generate legible, re-identifiable subjects in conjunction with their distrust of individuals that has led to the emergence of ever more complex regimes of proof. These heterogeneous, shifting ensembles comprise a range of technical devices and information infrastructures such as administrative registers, ID and residency cards and birth certificates. Such regimes of proof, we argue, are central to states' capacity to govern migration and regulate access to citizenship.

Identity records provide basic information about individuals, permitting government officials to take operational decisions at sites of border and migration control (Leese 2022). This is true across many bordering practices, spanning from admission to a state's territory all the way through regularisation and deportation procedures. Identification also intersects with differentiated entitlements to rights and resources along lines of administrative status. The government of borders and migration thus illustrates James Scott's observation that the production of legibility—that is, the conversion of the human and physical landscape into identifiable people and places through practices of categorising, naming, and registering—constitutes “a central problem of statecraft” (Scott 1998, 2). The state's ability to regulate migration and cross-border mobility hinges on its capacity to translate previously unknown migrants and travellers into re-identifiable, governable subjects (Pelizza 2021; Scheel 2023).

Conversely, many border struggles over entry, residency, and access to rights and resources also revolve around identification practices and related material artefacts such as passports or birth certificates. From a migrant perspective, this nation-state ambition transforms geopolitical borders, but also migration administrations, schools, and welfare offices into paper barriers, and migrants often struggle to provide the documents and other proofs of identity demanded by state agencies as a precondition for accessing certain rights and resources (Ferreri 2022). That proofs of identity may operate and be mobilised both as a means of surveillance and control and as a means of accessing rights and recognition as a legal subject highlights what we call the double-edged nature of identification. It explains, in turn, why migrants may at times not wish to be identifiable or fully legible to authorities, while trying by all means to satisfy the paper requirements set by authorities in other instances.

This article highlights identification practices' pivotal role in both contemporary migration management and migrants' border struggles by introducing the notion of regimes of proof, which we understand as a crucial sub-regime of any border, migration and citizenship regime. As acknowledged in the relevant literature, border and migration regimes always comprise various sub-regimes such as the asylum regime, the naturalisation regime (Fortier 2021), or the deportation regime (De Genova and Peutz 2010). We therefore propose to understand regimes of proof as an essential sub-regime of any border and migration regime that—as we show in this article—resembles a particular sub-regime to the extent that it runs transversal to and enables all these other sub-regimes.

A rich body of scholarship already exists around particular identification devices, such as birth certificates (Sillah 2022; Castaneda 2008; Manby 2021), biometric databases (Glouftsiou 2021; Muller 2010; Scheel 2019), passports (Torpey 1999) and visas (Infantino 2016; Zampagni 2016; Bigo and Guild 2005; Scheel 2019). Yet what is missing so far are concepts and approaches that allow scholars to study the production, verification, negotiation and contestation of officially certified identities in a systematic manner. We therefore develop the notion of regimes of proof in this article to offer scholars a concept to highlight the extent to which socio-technical identification practices and devices constitute an essential, non-negligible element of both border, migration and citizenship regimes, as well as related struggles within and against these regimes. In this way, the notion of regimes of proof also allows scholars to highlight that many border struggles are, in fact, epistemic struggles revolving around the production, verification, and contestation of officially certified identities.

Our approach is inspired by Sriraman's (2018) work on the history of identification documents in India. However, Sriraman only mentions “regimes of proof” in passing without elaborating further. We take it up here, first because its emphasis on “proof” allows us to capture the epistemic dimension of identification practices, and second, because the notion of a “regime” highlights the contested nature of this knowledge production. Drawing on the rich work on border regimes (Tsianos and Karakayali 2010; Hess and Tsianos 2010; Mezzadra and Neilson 2013), we argue that the production and certification of official identities is always contested and significantly shaped by various struggles. These include both struggles between different state institutions over the final authority to establish a person's identity, as well as struggles between state actors and migrants over competing identities and forms of proof. While authorities may contest or deny migrants' identity claims, migrants may in turn contest the identities that authorities assign to them based on alternative sources of evidence and truth production, such as identity records stored in biometric databases. Thus, the concept highlights, thirdly, the constitutive role that ordinary people subjected to identification practices play in the development of regimes of proof, not only by trying to conceal or play with their identity, but also by repurposing different forms of proof (cf. Sriraman 2018).

The current conjuncture is marked by major shifts in these regimes of proof. Existing means of identification such as birth certificates, passports, and ID cards are increasingly complemented, or even replaced, by digital identification devices such as biometric databases or the analysis of mobile phone data. This move towards the digital has immense implications, not only for the design and composition of regimes of proof, but also for the overall logic of border controls (Bigo 2011; Muller 2010), the pieces of information and forms of proof that constitute an official identity, as well as migrants' capacity to negotiate, evade, and subvert statist identification practices (Scheel 2019). To demonstrate the concept's analytical value for the study of migration and its regulation through border and citizenship regimes, while accounting for ongoing shifts in statist identification practices and related regimes of proof, we therefore engage with the following two interrelated research questions: First, what do processes of digitisation imply for regimes of proof and

their negotiation by migrants? And second, how is the epistemic authority to determine individuals' "official" identity constituted through regimes of proof?

We engage with these questions by drawing on ethnographic research on the production, verification, and negotiation of legal identities of West and East African migrants residing in Germany. The material combines non-participant observations and interviews conducted by Stephan at a migrant reception centre in Berlin between November 2019 and July 2021 with fieldwork conducted by Kelly in Germany and Senegal since February 2023.² We focus on migrants from these countries because their identity claims and the forms of proof they provide are often dismissed as unreliable by German and EU authorities, as we discuss later on. Resulting struggles around identification allow us to highlight both the contested nature of identification practices, as well as their epistemic dimensions. Moreover, by focusing on the implications of shifting regimes of proof in the context of asylum, deportation, and regularisation procedures, the following analysis demonstrates the central role identification practices play in all sub-fields of migration management.

After situating the concept of regimes of proof within the existing literature on identification practices, we use three cases to highlight what we see as key aspects of contemporary regimes of proof. First, by looking at mobile phone data analysis by Germany's Federal Agency for Migration and Refugees (BAMF), we illustrate identification's socio-technical nature: Innovative digital means of identification intersect and coexist with existing identification practices, modifying rather than reinventing regimes of proof. Turning to German authorities' treatment of birth and marriage certificates from West and East African countries in the context of regularisation procedures, we then show how low-tech means of identification, such as background research by so-called "trusted lawyers" in migrants' countries of origin, still feature as authoritative official means of truth production in today's regimes of proof, despite the ongoing introduction of digital identification technologies. The third section highlights the neocolonial impetus that underpins EU efforts to support the build-up of digital population registers and biometric registration systems in West African countries, as these new digital ID systems are intended to facilitate deportations from Europe.

1 | The Production of Legible Subjects Through Shifting Regimes of Proof

As the central "interface between the state and a person" (Leese 2022, 114), officially certified identities permit state authorities to accumulate knowledge about individual subjects and entire populations. Thereby, they facilitate different forms of power, including what Foucault (2007) calls disciplinary power and biopolitics. Identification practices serve at once to make individuals re-identifiable and traceable for state officials and to accumulate comprehensive knowledge about individual subjects and entire populations for practices of decision-making and interventions of government (Breckenridge and Szreter 2012; Higgs 2009). In this context, Scott (1998, 1) argues that mobile people "have always been a thorn in the side of states" because "the more static, standardised, and uniform a population or

social space is, the more legible it is, and the more amenable it is to the techniques of state officials" (Ibid., 82).

Building on Scott's observation, recent scholarship in critical border and migration studies demonstrates that this production of legibility is not a one-time foundational act of state-building, but rather an ongoing project. State authorities around the world are continuously confronted with translating hitherto unknown people entering their territory— asylum seekers, international students, economic migrants, tourists, etc.—into legible, re-identifiable subjects (Leese 2022; Pelizza 2021; Scheel 2023). To do so, they rely on official identities and means of identification (ID cards, passports, birth certificates, and the like) produced by other nation-states. When dealing with documents issued by authorities in the Global South, however, state authorities in the global North often claim these documents and the official identities they uphold are unreliable (Guild 2009; Noori 2022). The identities supported by documents and registration systems of countries in the Global South are thus often contested.

Moreover, migrants may tamper with, falsify or appropriate ID documents to practice "unauthorised identity craft" (Andrikopoulos 2023), in order to satisfy the entry requirements of other nation-states (Piot 2019) or to prevent deportation (Ellermann 2010). Furthermore, many migrants arrive without any form of official identification. According to official figures, over 50% of asylum-seekers in Germany do not present authorities with valid proof of identity such as a passport or an ID card (Deutscher Bundestag 2021, 26–27). Taken together, these dynamics explain the contested nature of identity claims and related identification practices in the context of border and migration management.

What we intend to highlight with the notion of regimes of proof is precisely this contested and manufactured nature of official identities. The concept underscores that border and migration regimes are also epistemic regimes that rely on various mechanisms of truth production. Taking cue from Foucault's (1980) seminal conception of a dispositive, we thus understand a regime of proof as a heterogeneous, shifting ensemble of practices, laws, institutions, bureaucratic cultures, material artefacts, operational logics, information systems and epistemic registers whose strategic function is to produce and maintain a state-certified truth about an individual subject, namely an officially recognised identity, thereby making that subject legible to state authorities.

Regimes of proof are, essentially, regimes of truth production, and thus strongly related to what Foucault (1977) understands as a society's

'politics' of truth: that is, the types of discourse it harbours and causes to function as true; the mechanisms and instances which enable one to distinguish true from false statements, the way in which each is sanctioned; the techniques and procedures which are valorised for obtaining truth; the status of those who are charged with saying what counts as true.

(Foucault 1977, 12)

Despite border regimes' insistence that an individual can have only one singular identity, the production of truth is always contingent and the necessary metrics for judging a given identity as "real" may not be understood in the same way by different political regimes, international organisations or even at a local level between different offices of the same state—not to mention by individuals themselves. Situations of multiplicity, ambivalence, and opacity arise regularly, as different methods of identification enact different versions of identity and identity credentials issued by one authority may be dismissed as unreliable by another.

Regimes of proof are therefore regimes of truth, which are, despite their claim to generate a singular, universal truth about a subject, geographically and temporally contingent. A great number of migrants' border struggles are, in fact, epistemic struggles revolving around divergent normative orders and identification practices. These fragmented normative orders at times collide and conflict, and bordering practices become an important place to look at how such frictions and "regime conflicts" play out (Mezzadra and Neilson 2013, 182; Fischer-Lescano and Teubner 2004). As Pezzani and Heller (2013, 291) put it "the border is not only the space in which the enactment of the migrants' freedom of movement clashes with the state's prerogative of control, but it is also the zone of contact between conflicting epistemologies". Migration necessarily implies the entanglement of multiple migration and citizenship regimes as authorities of the destination country demand documents issued by migrants' countries of origin or previous countries of residence.

This may prompt clashes between the administrative practices, documentary requirements and bureaucratic cultures of different institutions and nation-states. The work of international organisations such as the ICAO or the IOM, which attempt to impose standards for document forms and biometrics and to promote cross-border data sharing and harmonise border and identity management practices on a transnational scale (cf. Walters and Vanderlip 2015; Frowd 2024; Singler 2024), also plays an important role in such negotiations over which forms of proof become accepted as hegemonic. What is at stake in such regime conflicts and border struggles are not only the fates of migrants but also questions of epistemic authority: who can legitimately claim, and on which grounds, to certify that a person is who they claim to be? Regimes of proof must therefore be understood as simultaneously overlapping, entangled, and potentially conflicting.

In the following we summarise these observations in what we regard as five core features of regimes of proof. These concern, inter alia, the (1) epistemic, (2) socio-technical and (3) performative dimensions of identification practices as well as their (4) contested nature and finally (5) their link to continuities of power, especially colonial legacies. The specific entanglements and the quality of the relationships between these different features, as well as their relative importance, are an empirical question of analysis for any study of regimes of proof.

1. The emphasis on proof points to the *epistemic* dimension of identification practices of states and migrants, who may

try to contest the identities and truths that state authorities wish to assign them. The production and maintenance of officially recognised identities involves far more than the one-off verification of identity claims. It takes place through a plethora of *practices*, such as interviewing, transcribing, printing, storing, checking, comparing, photographing, fingerprinting, scanning body parts, and so forth.

2. The notion of the regime highlights the *socio-technical* nature of identification practices, which are neither fully controlled by wilful human subjects, nor reducible to mere technical procedures without human agency or discretion. They rely on a range of material devices (ID cards, computer servers, magnifying glasses), architectures (registration centres, printing offices), and inscription devices (pens, fingerprint scanners, electronic card readers). Material and human elements are enmeshed in a "mangle of practice" (Pickering 1995) to the point that they are impossible to disentangle.
3. The third central feature of regimes of proof is that they are *performative*. That is, they bring into being the very identities to which they refer. Hence, regimes of proof and their means and practices of identification do not merely confirm a pre-existing identity. Rather, they enact—that is: perform, bring into being—these identities as officially recognised identities, and they do so in particular ways, depending on the epistemic registers and logics that inform them and the material artefacts and procedures they rely upon.
4. The emphasis on performativity and multiplicity underscores in turn the *contested* nature of official identities, regimes of proof and identification practices. If different means and methods of identification produce different versions of identity, then these different versions must be negotiated through processes of orchestration and hierarchisation to produce a single, if contestable and unstable, state-recognised truth about a subject (Mol 2002). We draw on material-semiotic approaches from STS to account for this important aspect of regimes of proof, as we explain below.
5. Finally, regimes of proof are linked to "colonial continuities" (Stambøl and Jegen 2022) and other histories of power and domination. Former colonies were the first testing grounds for many identification technologies. Biometrics were, for example, first used in colonised India for distinguishing between and controlling colonial subjects (cf. Cole 2001). Today, the legal and administrative legacies of former colonial powers such as France and Britain continue to shape the means and methods of identity proofing in previously occupied territories. Another important colonial continuity resides in the strong tendency that it is mostly migrants from former colonies whose narratives and documents are distrusted and considered as unreliable by state authorities in the global North because they are viewed—like colonised subjects during the colonial era—as subjects incapable of speaking the truth (Lorenzini and Tazzioli 2018; Scheel 2017). In conjunction with continued power asymmetries and neocolonial relationships, these colonial continuities are a crucial factor that motivates the

build-up, expansion and export of digital identification systems in both the Global North and South.

To highlight the performative and socio-technical dimensions of regimes of proof we draw on material-semiotic approaches, as developed in Science and Technology Studies (STS). By centring analysis on socio-technical, relational, and performative practices, material-semiotic approaches need not start with pre-existing entities; rather, they begin from the premise that realities are the effect of complex, fragile socio-technical networks and hold only so long as the webs of relations that bring them into being “are enacted, enacted again, and enacted yet again” (Law 2008, 635). Rather than starting from the assumption that methods of identification verify an already existing identity, a material-semiotic approach examines the production and maintenance of officially certified identities, in which bits and pieces of information—names, dates of birth, eye colour, biometric fingerprint templates, legal and administrative categories—are converted into identity records via multiple, intersecting data practices (Scheel 2023).

By focusing on data practices and the processes of translation they facilitate, scholars can trace “chains of verification” (Rader 2016) through which fingerprints, information gleaned from interviews and other identity records are translated into datasets in administrative databases, pieces of code, statistical facts, state-defined categories and so forth. All identification systems, regardless of their degree of digitisation, ultimately rely on chains of reference, recommendation and vouching by persons or institutions perceived to have epistemic authority or “standing” (Noiriel 2001; Higgs 2009). In our material-semiotic understanding, however, objects and material practices themselves often constitute important conduits of recognition and authority. The cases considered also reveal how post-colonial legacies continue to shape the distribution of and conflicts about epistemic authority, as states in the Global North often reject identification practices used in the Global South and try to impose their own standards, norms and practices.

In sum, an understanding of regimes of proof as socio-technical, performative, contested and power-laden allows us to tease out the epistemic stakes of many of the border struggles migrants

are engaged in today over competing versions of identity and resistance to easy identification and legibility. In the following sections, we illustrate these central features of regimes of proof by assessing the implications of digitisation for establishing and negotiating the epistemic authority to determine individuals’ identities within contemporary regimes of proof.

2 | Asylum and the Technopolitics of Disbelief

In 2017, the German asylum authority (BAMF) introduced the so-called Identity Monitoring System (IDM-S), featuring three technologies to assist caseworkers in establishing the identity and country of origin of asylum seekers (Federal Ministry of Interior 2017): speech biometrics providing indications of an applicant’s country of origin based on their dialect, Arabic-to-Latin transliteration software for preventing multiple name spellings by different agencies, and a device for extracting and analysing asylum seekers’ mobile phone data.

When asked how the last of these, mobile phone analysis, helped to establish the identity of an asylum seeker and to decide on their application, a caseworker (hereafter L) cited the case of an asylum seeker from Ghana:

We can infer a lot from the results report [see Figure 1]. We can see since when the mobile phone was used, the times when it was switched off, all the contacts, as well as outgoing and incoming calls listed by country code. We also have information about the language settings, and the language used in text messages is analysed. Moreover, we can see geolocation data of the phone, so where the mobile phone has been. This is shown on a map [see Figure 2], but this information is not as meaningful as you might think because people might have bought a used phone. [...] But in general, it is super handy to have as much information as possible about a person in the [asylum] hearing, especially if I do not have certified details about

Ausgehend

#	Land	Dauer	Anzahl	%
1	Deutschland (+49)	0:16:43	74	27.82%
2	[nicht valide] (-)	0:18:58	71	26.69%
3	Ghana (+233)	1:53:52	66	24.81%
4	Belgien (+32)	0:21:05	31	11.65%
5	Sonstige Länder	0:03:00	11	4.14%

Eingehend

#	Land	Dauer	Anzahl	%
1	Deutschland (+49)	7:05:11	91	38.89%
2	Ghana (+233)	1:11:53	52	22.22%
3	Belgien (+32)	0:39:07	43	18.38%
4	Niederlande (+31)	0:16:52	15	6.41%
5	[nicht valide] (-)	0:07:58	14	5.98%

FIGURE 1 | Data on outgoing and incoming calls taken from anonymised results report received by BAMF.

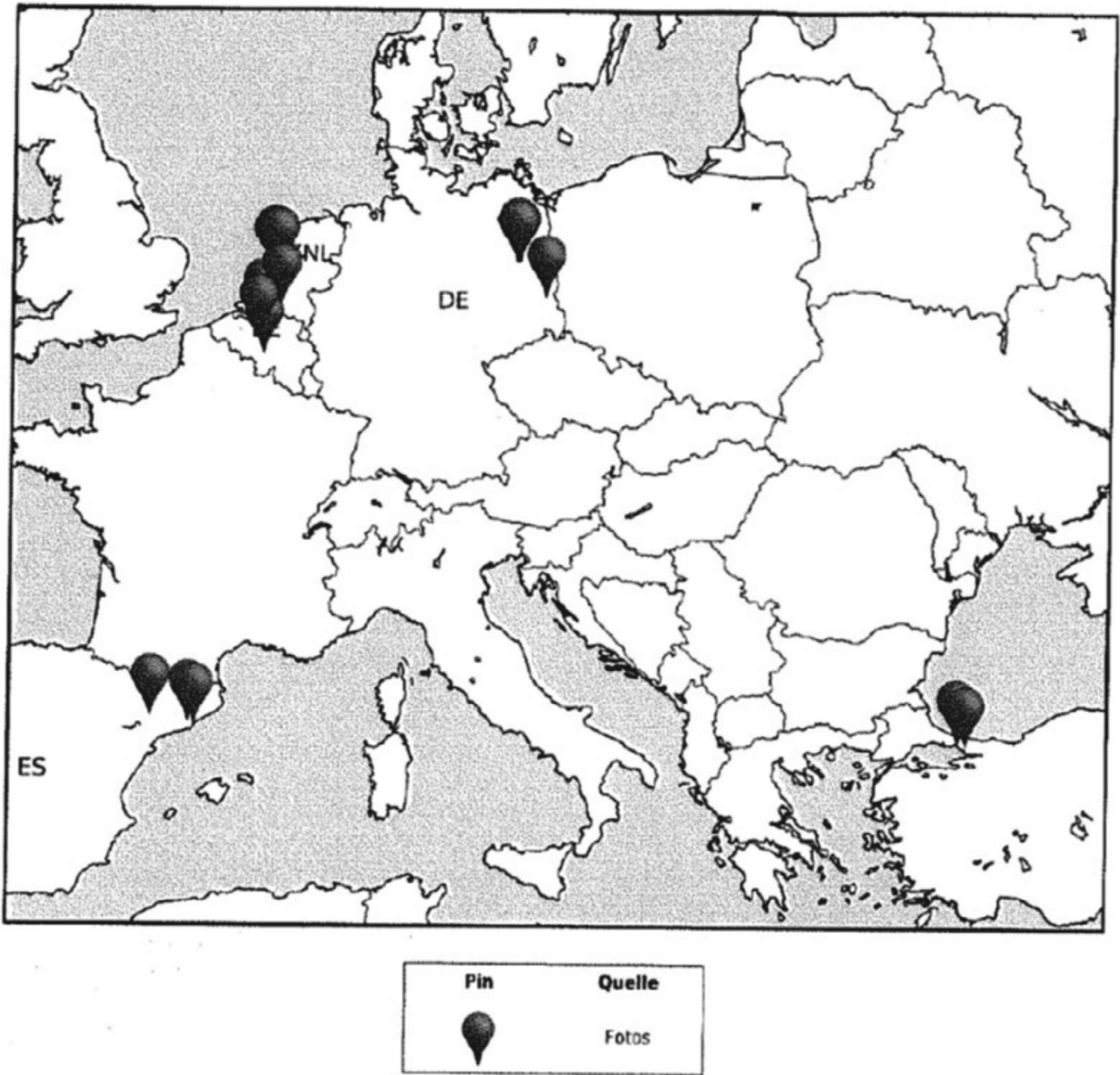


FIGURE 2 | Geolocation data based on images taken with the phone (same results report).

that person. [...] For example, I can infer [from the results report] that a person already left their country of origin a long time ago, but only recently arrived in the EU. This is an indicator for me that there may not be too much persecution. I will then scrutinise the case even more closely. For example, recently I had a case in which a man from Ghana claimed that he was persecuted by the members of a particular church because of his homosexuality. When I asked him towards the end of the hearing [based on information of the results report] what he did for such a long time in Belgium before coming to Germany, he told me that he had stayed in a church of the very same community that had apparently

persecuted him in Ghana. Such a contradiction is of course not so great [for the credibility of the man's story]. But the information from mobile phone data analysis proves to be useful exactly for discovering such inconsistencies.

(Fieldnotes, June 2021)

When asked why the man had revealed details seeming to contradict his story, L replies:

It is always a good idea to first let people talk to see what they come up with. [...] Only towards the end of the hearing will I confront them with the results report. Usually, I confront them with highly detailed

information, so they think I already know everything. This sometimes prompts people to give more honest answers, or they get tangled up in contradictions. I ask for example: ‘Why have you called your country of origin four times on this day? What did you do in the Netherlands? Who are the five contacts in the Netherlands that you have contacted?’ By asking such detailed questions you create the impression that you already know everything anyway and people may start to talk...

(Fieldnotes, June 2021)

This brief account illustrates, firstly, the socio-technical character of regimes of proof. Hardware components are connected to asylum-seekers’ phones with an adapter by a caseworker to retrieve data analysed by algorithms. Extracted data are stored in an inaccessible repository on an encrypted server and deleted automatically after a retention period to comply with data protection laws. The results report, a 5–10-page long document with multiple charts, graphs, and explanatory notes, is visible to the caseworker in charge of the asylum case only after release by a senior officer. Laws, regulations, bureaucratic routines, technical devices, paper forms, human actors, algorithms, encrypted servers, and mobile phones come together in this regime of proof in which meaning—most importantly clues about an asylum seeker’s identity and country of origin—is produced through material practices.

The second important observation is that digital technologies like mobile phone data analysis reconfigure existing regimes of proof, rather than replacing them. Existing methods for establishing asylum-seekers’ identities and countries of origin—like posing highly specific questions about their supposed country of origin—are not discontinued but complemented and refined through digital means of truth production. Moreover, the caseworker still occupies the central position and remains the epistemic authority in the asylum decision-making procedure. Digital technologies like mobile phone data analysis are auxiliary tools that generate clues about the applicant’s identity and country of origin. However, these clues must be translated by the caseworker into hard juridical evidence and finally, through “legal story-telling” (Kruse 2012), into an administrative decision (cf. Scheel 2024).

Third, the account demonstrates that the digitisation of existing regimes of proof tends to diminish asylum seekers’ room for manoeuvre, rearticulating the power relations between caseworkers and asylum-seekers to the latter’s detriment. Data are used to question, test, and verify information provided by asylum-seekers on their country of origin, their identity, or their reasons for protection. Effectively, an asylum-seeker’s data shadow is turned into a witness used by authorities to question, dismiss, or confirm the asylum-seeker’s own account. Digital identification and surveillance technologies thus facilitate the epistemic domination of asylum-seekers by means of data extraction. In the case cited by L, the asylum application was rejected as “unfounded” and the man was ultimately deported.

3 | Regularisation: Contesting and Verifying Migrants’ Identities

In an interview with a social worker counselling migrant single mothers and survivors of domestic violence in Berlin, she tells us that “far over half” of her clients with young children experience difficulties when applying for a birth certificate. She recounts the story of one Nigerian client who was unable to receive a birth certificate for her child because an immigration office doubted the authenticity of her passport: “the problem is that they don’t consider her identity as clarified and she doesn’t know why. She submitted a passport to the authorities, but they doubt it. Subsequently, she submitted further documents, including an affidavit from her brother who confirmed her identity under oath and her Nigerian birth certificate. But neither the registry office nor the immigration office accept it” (Fieldnotes, December 2023).

Identification features prominently in migrants’ struggles for state recognition, playing a key role in the negotiation of access to government services, rights and regularisation. Birth certificates are the first form of legal paperwork many human beings receive, and therefore form an important starting point for rights (Manby 2021) as the first link in chains of verification. In Germany, however, migrants often face serious obstacles in obtaining birth certificates. Registrars often refuse to certify a child’s birth if they have doubts about the authenticity of a parent’s own birth certificate or proof of their marital status (Gerbig 2018; Scheel 2025). The suspicion of doubt primarily affects individuals with non-German documents: While Section 437 of the German Code of Civil Procedure (ZPO) stipulates that German documents carry “the presumption of authenticity”, non-German documents are to be assessed “according to the circumstances of the case” (ZPO, Sec. 438). The child of the woman mentioned above inherited German citizenship through its father, a fact which should allow her to receive a residence permit as well by proxy. However, without a birth certificate it becomes practically unfeasible to receive a passport and exercise many fundamental rights, such as access to healthcare, welfare, education and mobility, or extending residency rights to family members (Gerbig 2018; Farinha 2022).

Such accounts illustrate the exclusionary effects and real-life implications that conflicts between the regimes of proof of different countries may have for migrants whose proofs of identity are doubted and verified in lengthy bureaucratic procedures. The registration and documentation systems of migrants’ countries of origin become, in effect, part of the European border regime when German authorities ask migrants for passports, ID cards and other official documents from their respective country of origin as material proof for their claimed identity. The cross-border movements, activities and legal claims of migrants cause the regimes of proof and documentary systems of the state apparatuses of two or more countries to become entangled and overlap. However, the relation between these overlapping and intersecting regimes of proof is, in many cases, fraught with tensions, incommensurable demands, and paper requirements, as well as conflicts, often leaving migrants and their children in highly precarious conditions of legal limbo.

Legal advisors and lawyers interviewed emphasise that state officials such as registrars in many cases have the discretionary power to accept foreign documents, or, in their absence, even sworn statements from the applicant about their identity (Fieldnotes, April 2023). However, if registrars have doubts about the “evidentiary value” of the documents, they often insist on additional verification procedures before accepting them as authentic. As in the example above, this can have significant practical consequences.

The performative dimension of regimes of proof and chains of verification comes to the fore precisely in situations in which these chains of reference and the identities they support break down. When immigration authorities reject a document as insufficient or inauthentic, it becomes apparent that it is official documents and verification procedures which formally enact the identity of the person to which they refer. Only if these chains of references hold and the processes of translation succeed is the person in question recognised, in legal and administrative terms, as the person they claim to be.

In practice, German bureaucrats often refuse to accept forms of proof generated by West and East African state authorities without the German state itself taking a hand in their verification (cf. *Auswärtiges Amt* 2023). However, while they may question the authority and veracity of documents provided by African state authorities, the verification procedures that German authorities mobilise in such cases are themselves deeply reliant on low-tech methodologies which often prove to be unsystematic and untransparent. So-called “trusted lawyers” (*Vertrauensanwäl*innen*) are often tasked by the local German embassy in migrants’ supposed country of origin with double-checking information through in-depth investigations into the veracity of the information or documents in question. According to one embassy worker, these lawyers typically in turn subcontract other investigators to report to them (Fieldnotes, August 2023). Investigators often interview relatives and acquaintances in the person’s hometown, or check hospital or school archives for traces of a person’s identity and personal history. The “trusted lawyer” subsequently reports on the findings of their investigation to German authorities.

Many social workers, lawyers, and affected individuals we spoke to dismiss these verification procedures as untransparent and impenetrable. They also report long waiting times, corruption, and multiple cases in which “trusted lawyers” ultimately judged individuals’ identities unconfirmable even after they had discovered a wealth of supporting evidence (Fieldnotes, April 2023, June 2023). For instance, in the case of one Kenyan woman against whom such a procedure had been initiated, her social worker explained: “This [procedure] cost her nearly €600 and afterwards they told her the birth certificate wasn’t genuine, it wasn’t correct” (Fieldnotes, December 2023). A minor discrepancy between the date of birth in her birth certificate and the Kenyan birth registry, caused by a bureaucratic mix-up, resulted in the registry office arguing that it no longer regarded the woman as “credible”. It therefore refused to accept her corrected birth certificate as well and some 4 years after the woman’s child had been born her social worker remained unsure how to convince the registry office and obtain a birth certificate for the child (Fieldnotes, December 2023).

One embassy worker interviewed understood her role in initiating such procedures as that of an “intermediary” between two different legal orders. She conceded, however, that the embassy was still working out some details: “all of this is not a science ... we work with approximative values” (Fieldnotes, August 2023). She was unable to say how these “trusted lawyers” had obtained their status of trust, noting only that the contacts had been passed on to her from previous embassy workers.

Through such methods, the German state essentially attempts to compensate for a perceived lack of trustworthy actors in the documentary system of other countries by externalising the German bureaucratic system and assuming the role of the epistemic guardian checking and verifying the authenticity or non-authenticity of information. The resulting procedure is far from systematic, transparent or even structured, but is nevertheless perceived as preferable to accepting the documents issued by African states or migrants’ own accounts. The mobilisation of “trusted lawyers” as epistemic authorities thus illustrates how, despite shifts towards digitisation, the production of official identities in contemporary regimes of proof still relies heavily on low-tech procedures (cf. Canzutti and Tazzioli 2023).

Finally, the use of “trusted lawyers” demonstrates that regimes of proof essentially function through chains of verification, which are enacted through processes of translation and data practices. Information becomes ‘true’ as a function of the perceived reliability of the authority which certifies it. Its enactment as official and trustworthy by a series of authorities, testing devices, and technical procedures depends on their own judgements on the credibility of other actors. For migrants, however, the concatenation of state registration and identificatory systems means that any missing or broken link in the chain of reference and paperwork may have knock-on effects, as in the example of refused birth certificates, leading to impediments to access to many basic rights and public services.

When documents like birth certificates are rejected by German bureaucrats, it is not only the truth claims of migrants that are discredited: doubts are cast by proxy on the entire documentary state apparatus of non-EU countries. What is at stake is therefore also ultimately which state apparatuses are seen as competent and trustworthy enough to issue reliable documents in the first place (Dalberto et al. 2018). These judgements are often inflected by (post)colonial continuities, as bureaucracies in former colonies are often viewed by German bureaucrats as unreliable, backward, and corrupt. State apparatuses and documentation systems in the global North are, meanwhile, cast as trustworthy and aligned with Weberian ideals of modern bureaucracy. Yet the biased nature of these judgments is illustrated by the fact that the methods of identification used to compensate for the alleged insufficiency and unreliability of documentation and registration systems in the Global South—like trusted lawyers—prove themselves to be unsystematic, untransparent, and unreliable. In the next section, we further highlight the (post)colonial dimension of regimes of proof by examining how the EU’s efforts to digitalise, systematise, and interoperationalise the registration systems of countries in the Global South connect to the facilitation of deportations.

4 | Deportation: Bordering Europe Through the West African Documentary State

“Maybe he will get a Duldung [suspension/stay of deportation] forever but at least he can’t be deported [...] There’s no real chance of obtaining documents”. An immigration lawyer in Berlin is describing a case in which the asylum authorities questioned his client’s nationality (Fieldnotes, December 2023). In their rejection of his asylum application, they issued a deportation order but did not name the country to which he should be deported. “They simply threatened him with deportation, but without saying where to”, he adds. This refusal to recognise his client’s identity has blocked his client, potentially indefinitely, from improving his residency status since a “clarified identity” is a prerequisite for regularisation in Germany. At the same time, his unclarified identity protects him from the possibility of actually being deported. What the case illustrates is the *double-edged nature of identification*: proof of identity is a precondition for recognition by state authorities and thus key to negotiating access to basic rights and improving one’s migration status. Yet, at the same time, being identifiable makes individuals susceptible to intrusive and potentially harmful forms of government interventions such as surveillance, control and deportation (Breckenridge and Szreter 2012; Weitzberg et al. 2021).

In the context of deportations, identification is crucial because a deportation order cannot be executed if no state has agreed to accept a deportable person as “its” citizen (Ellermann 2010). If a person does not have a passport or other evidence of their nationality, this in many cases makes their deportation unfeasible. Establishing migrants’ “true” identities and countries of origin for deportation thus regularly results in intense political struggles. Migrants may refuse individually to cooperate with authorities in establishing their identities (Ellermann 2010). They may also organise collectively against embassy hearings in which delegations from the assumed country of origin are invited and paid by German authorities to identify presented migrants as national citizens (Lecadet 2017; Korvensyrjä and Osa 2022). Cooperating on deportation is, moreover, not always in the interest of states in the Global South, especially given the social and economic importance of remittances for left-behind families and communities (Zanker et al. 2019). In response, bi- and multinational deportation agreements, aggressively pushed by the EU and its member states, define not only return procedures but also which identificatory practices and forms of proof are to be accepted by the signatories to enact the identity of a deportable migrant as a national citizen (Cassarino 2010). European state authorities have also introduced various measures, task forces, and technologies, including biometric databases like the Visa Information System (VIS), to establish the identity of deportable migrants in order to procure travel documents for them and execute their deportations (Scheel 2019; Bescherer 2023).

This regime of proof extends—like the European border regime—beyond the territorial bounds of the EU. Germany and the EU have invested immense resources in building up socio-technical infrastructure to facilitate the swift identification and deportation of migrants from countries in the Global South. Financial and technical support for the creation of digitalised identification procedures and biometric population registration systems in West African countries feature centrally in these

attempts, extending the EU’s regime of proof into migrants’ countries of origin to facilitate its deportation efforts. While many relevant government programs are shrouded in secrecy and relevant documents are “classified”, there are administrative traces confirming these plans. An EU Trust Fund action paper on a birth registration project in Ivory Coast, for instance, observes that the “simultaneous introduction of a biometric population identification file connected to a reliable civil status system will make it easier to identify people who really are of Ivorian nationality and to organise their return more easily” (EUTF 2018, 3).

The project in Ivory Coast is one of several similar projects of the European Trust Fund for Africa (EUTF) aimed at modernising and digitalising West African civil status systems (Privacy International 2020). The link between centralised, digital population databases and deportation was already made explicit in the action plan of the Valletta Summit (European Council 2015), at which the €5 billion fund was launched, articulating its goal to “strengthen the capacity of authorities of countries of origin to respond in a timely manner to readmission applications, including through support to modernise civil registry systems and fingerprints digitalisation” (European Council 2015, 17).

In interviews, actors involved in an EUTF-funded registration project in Senegal largely denied any direct connection to migration control, even though this objective is stated clearly in early policy documents (Fieldnotes, February 2023, August 2023). Instead, they emphasised the project’s importance for improving the Senegalese population’s access to rights and government services. Nevertheless, an EU Commission representative begrudgingly conceded that “for the European Union [the project] has perhaps some importance because a good civil registry system also makes it possible to combat document fraud. When certain people go to the embassies with false passports, with a good civil registry system, that’s not going to happen anymore” (Fieldnotes, September 2023).

It is important to highlight the colonial histories and continuities which inhere in such projects (Stambøl and Jegen 2022; Madianou 2019; Couldry and Mejias 2019), which attempt to turn the registration and identification systems of migrants’ countries of origin into elements of the regime of proof of the European border and migration regime. If the development of a documentary infrastructure and the production of legibility is understood as a key way in which a given state realises itself (Scott 1998), then efforts to export the norms, standards, and epistemic registers of the regime of proof of the European border regime must be understood as interventions into the most basic operations and inner logics of the state targeted by these projects. Population registration intersects not only with the EU’s “return policy” but also with elementary state functions such as education, taxation, or voting (Dalberto et al. 2018; Privacy International 2021). Accompanying alterations in material infrastructure may, in turn, imply a shift in the meaning of registration as a state practice or even require a re-organisation of state competencies. For instance, replacing local, manually organised registries with centralised digital databases implies an increase in centralised state powers, potentially conflicting with delicate existing distributions of power between central and local governments.

Yet it is important to keep in mind that the EU's attempts to project the norms and standards of its regime of proof onto migrants' countries of origin constitutes, essentially, a response to migrants' frequently successful practices of concealing their identity to prevent their deportation. Projects like the EUTF-funded registration drives in Ivory Coast and Senegal thus confirm the hypothesis that the "imperial character" (Beck and Grande 2005) of the EU is also "an expression of migrations that compel Europe to extend its institutional apparatus all the way to the Sahel-zone" (Karakayali and Tsianos 2007, 12).

5 | Conclusion

Identification practices and related 'paper walls' often constitute crucial hurdles for migrants in substantiating their claims to asylum, obtaining a residence status, or preventing deportation. In this article we have therefore introduced and developed the concept "regimes of proof" to shift scholarly attention towards statist identification practices and their contestation. While identification practices, struggles, and devices constitute a central element of any border, migration, and citizenship regime, they have to date mostly been treated as a peripheral issue, or studies have focused on particular identification technologies such as biometric databases. The concept of *regimes of proof* aims to overcome this relative neglect by highlighting the importance of identification practices to all sub-fields of border and migration management, as well as to related migrant struggles and resistance.

As the three analytical sections on asylum, regularisation, and deportation procedures demonstrate, many migrant struggles ultimately revolve around the production, negotiation, and contestation of state-recognised identities, which are often key to accessing mobility or residency and exercising social and political rights. The notion of regimes of proof thus foregrounds identification practices and related devices of identity proofing in light of their central relevance for both migrants and state authorities. Furthermore, it makes clear that regimes of proof are part and parcel of any border, migration and citizenship regimes. As a result, both migrants' border struggles as well as institutional struggles over competencies and authority are, to a considerable extent, epistemic struggles. These struggles determine who can legitimately claim the authority to enact and certify officially recognised identities and who can ultimately decide which identities are considered real or fake.

In sum, our analysis of the impact of processes of digitisation on the regimes of proof of contemporary border, migration, and citizenship regimes leads us to three key observations: First, the introduction of digital methods of identification tends to renegotiate migrants' room for manoeuvre in struggles around "proving" identity without erasing it completely. The second analytical section shows, in turn, that processes of digitisation do not replace, but rather reconfigure the design and composition of existing regimes of proof, which continue to feature low-tech elements, as illustrated by the ongoing relevance of "trusted lawyers" in identity verification procedures. It also indicates that these assemblages of epistemic authority are still shaped significantly by post-colonial legacies. Third and finally, migrants' capacity to act and the persistence and creativity of their practices of evasion, subversion, and appropriation still

constitute a non-negligible factor that any analysis of the contested politics of identification and related regimes of proof must consider. The EU's financial and technical support for the development of biometric civil registration systems in West Africa illustrates how migration acts as a dynamic force in the development of the European border regime and related regimes of proof. For it is ultimately the efficacy of migrants' practices of concealing their identity and country of origin to forestall their deportation which has compelled the EU and its member states to extend their regimes of proof to migrants' countries of origin. Hence, these moves to render the migrant "Other" legible and re-identifiable are not necessarily a sign of strength. Rather, they resemble a desperate attempt to cope with and tame migrants' insistence on their "right to opacity" (Glissant 1997).

As Glissant (1997, 197) reminds us, "it is impossible to reduce anyone, no matter who, to a truth he would not have generated on his own". Rather than promoting the introduction of ever farther-reaching identification and surveillance technologies, we propose that state authorities as well as international organisations like the IOM should aim to approach proof in less restrictive and authoritarian ways, less often casting doubt on documents simply because they were issued by another state, more often accepting people's own claims about their identity, and acknowledging the validity of plural regimes of proof. For instance, although seldom applied, German law provides for the use of sworn testimony as the basis for birth registration when no documents can be obtained.³ Such a shift would help to curtail situations of legal limbo, which carry severe consequences for the life opportunities and socio-economic well-being of migrants and their children. Regional differences in the acceptance of birth and other certificates from West African countries by registrars and migration authorities in Germany demonstrate that a more lenient approach is not only possible, but beneficial for all parties involved.

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Data Availability Statement

Research data are not shared.

Peer Review

The peer review history for this article is available at <https://www.webofscience.com/api/gateway/wos/peer-review/10.1111/imig.70099>.

Endnotes

¹ Authors' translation. All subsequent quotations of legal norms, case law and interviews are in translation from German or French.

² Although this contribution is more conceptual in nature, we draw on fieldwork for our empirical material. Kelly Bescherer conducted interview-based research on identification practices connected to deportation. Interviews were carried out primarily in Germany and Senegal, but also in France, comprising a total of 35 interviews. She

also draws indirectly on experiences working for over 6 years in a legal advice centre for migrants in Berlin, where issues around identification came up almost daily. Stephan Scheel's contribution is based on fieldwork that was conducted at a migrant reception centre in a major German city in the course of 2019. This fieldwork comprised 8 days of participant observation which were complemented with more than 20 interviews. Some of these interviews were conducted at a later stage via video call during the pandemic in 2021.

³ See Section 9 Sub-section 2 German Civil Status Act (PStG).

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