

INCEPTION REPORT:

**ESTABLISHING LEGAL IDENTITY
FOR SOCIAL INCLUSION**

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TABLE OF CONTENTS

Part One: Conceptual Framework	3
Part Two: Standard Format, Research Methodology and Key Questions for Country Reports	22
Part Three: Work Plan	35
Appendix A: Preliminary Research Instructions	38
Appendix B: Inception Meeting Agenda	42
Appendix C: Presentation of Conceptual Framework	44
Appendix D: Preliminary Research Findings	55
Appendix E: Field Research Proposals and Rationales	77

This Inception Report is submitted to the Asian Development Bank following the inception meeting for the three-country study on Establishing Legal Identity for Social Inclusion, which the ADB has contracted The Asia Foundation to conduct. The inception meeting, held in Bangkok, Thailand on June 27-29, 2005, was attended by all members of the Asia Foundation project team. This report reflects the consensus understanding reached by meeting participants on the conceptual framework, research methodology, and work plan for the project.

The report is divided in three parts. Part One presents the Conceptual Framework for the Legal Identity study. The three domestic consultants will be guided by this framework in conducting the country studies. The entire team will bear the framework in mind in noting trends and drawing conclusions from the regional experience that will inform potential ADB-supported efforts to promote the establishment of legal identity. Part Two presents the Research Methodology, which includes the standard format, research tools and techniques, and key questions for the country reports. And Part Three presents a detailed Work Plan, which covers the scheduling of key events and deliverables. Following the main sections of the report are detailed appendices, which include work products produced in preparation for the inception meeting.

PART ONE: CONCEPTUAL FRAMEWORK

I. Introduction

Legal identity is a critical and multifaceted issue situated at the intersection of human rights, demographic statistics, and administrative reform. Legal identity has wide reaching implications. For citizens individual rights and access to basic services are at stake. The implications for governments extend to development planning and resource allocations. Without complementary reforms, however, establishing legal identity alone may have a limited impact. But it can be a concrete, strategic, and practical intervention to promote legal empowerment strategies and advocate for improved governance.

This paper is divided into seven sections. Section II describes the elements of a civil registration system. Section III critically surveys the benefits and human rights often associated with legal identity. Section IV considers the empirical challenges to proving that lack of legal identity causes lack of access (and other problems) for vulnerable groups, even though it clearly correlates with problems of vulnerable groups. Section V critically weighs the costs of birth registration compared to its perceived benefits. Section VI examines the prospective importance as well as the practical limitation of the use of statistics in development planning. Section VII critically assesses and reviews the interventions used to promote legal identity.

II. Civil Registration System

On the supply side, establishing legal identity depends on the birth registration process, which in turn, depends on a functioning and accessible system of civil registrations. The United Nations defines civil registration 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 of each country.”¹ In addition to registering vital events which confer civil status, in theory the civil registration authority is also responsible for completing and submitting regular statistical reports on births and other vital events to the designated statistical agency, which compiles, process, and analyzes national population trends. The statistical information can play an important role in informing the planning of development policies and programs. Thus, an effective civil registration system serves important legal and statistical functions. However, a comprehensive system of civil registrations requires numerous inputs with budgetary implications, including:

- a sound legal framework,
- consistent definitions of vital events,
- full geographic coverage,
- appropriate institutional arrangements,
- qualified human resources,
- effective management structures,
- standardized operating procedures,
- coordination mechanisms,
- adequate assurances of confidentiality, and
- effective public outreach campaigns to address citizens’ concerns and ensure their participation.²

Legal Framework

While international experience demonstrates that there are multiple legal frameworks for effectively governing the organization and management of civil registration systems, there are certain basic issues, definitions, and structural arrangements that require a legal foundation. Many countries lack a thoughtfully-designed registration law that maps out how the civil registration system will function and is responsive to on-the-ground realities. Poorly designed laws mandating that a birth certificate is required to access public services and benefits, without first establishing an accessible and well functioning civil registration system, may result in perverse or unintended consequences, such as further exclusion and denials for vulnerable groups. The United Nations has drafted a model Organic Law on Civil Registration, which may serve as an example to guide legislative drafting efforts on civil registration systems. However, the UN model law is extremely detailed; it is comprised of 12 chapters, which include an explanatory statement, 178 articles, 12 transitory provisions, and 2 derogatory provisions.³

¹ United Nations Department of Economic and Social Affairs, Statistics Division (2002), *Handbook on Training in Civil Registration and Vital Statistics Systems*, United Nations, New York.

² United Nations Department of Economic and Social Affairs, Statistics Division (2002).

³ United Nations Department of Economic and Social Affairs, Statistics Division (1998a), *Handbook on Civil Registration and Vital Statistics Systems: Preparation of a Legal Framework*, United Nations, New York.

Some of the key issues a civil registration law should address and define include:

- the functions of the civil registration system;
- the vital events to be registered (generally births, deaths, marriages, and divorces);
- the structural organization of the system;
- the ministry or government agency responsible for civil registrations;
- the duties, functions, and responsibilities of local registrars;
- the applicable fees;
- assurances of confidentiality;
- registration procedures, time limits, and evidentiary requirements;
- eligibility and procedures for obtaining certified copies of vital records;
- procedures for coordination with the vital statistics system; and
- funding arrangements.

A civil registration law should also ensure full universal coverage, though the precise number, distribution, and geographic area of responsibility of local registration offices may be established through implementing rules and regulations which can be easily amended to respond to changing circumstances.⁴

Organizational Structure

The ability of individuals to establish legal identity and the capacity of governments to collect vital statistics depend in part on the institutional arrangements underlying a country's civil registration system. A system's structure should reflect and facilitate the key functions with which it is charged. In the case of the civil registration system, these include registering vital events that constitute civil status, issuing legal documents that attest to those events, and collecting vital statistics data. In many countries, civil registrations are conducted on an inconsistent or ad hoc basis or do not occur at all, due to institutional arrangements, management structures, and coordination mechanisms that are lacking entirely or not clearly defined. In those countries that do have functioning systems of civil registrations, international comparisons reveal a diversity of administrative and organizational structures.

The institutional arrangements for civil registrations may be centralized or decentralized. This choice generally depends on the country's existing administrative structures and political traditions. In centralized systems, responsibility for civil registrations may fall under an independent agency or a range of ministries, such as Health, Interior, or Justice. This national level agency is charged with providing overall management and technical oversight for civil registrations. It is also responsible for supervising and monitoring local registration offices throughout the country and coordinating with other agencies that play a role in the civil registration process, such as medical facilities and courts. The key advantage to a centralized system is that it can promote uniformity in terms of registration standards and procedures. Costa Rica and Thailand are examples of countries that have centralized civil registration systems.

⁴ United Nations Department of Economic and Social Affairs, Statistics Division (1998a).

In decentralized systems, the agency responsibility for civil registrations operates at the state, region, or province level. Mexico, Canada, and the United States are examples of countries that have decentralized systems. For large countries, particularly those with federal systems of government and diverse populations, a decentralized system may provide greater flexibility to respond to local conditions. However, without local consultations to establish national standards, decentralized systems can perpetuate regional disparities.⁵

Whether a civil registration system is centralized or decentralized, the core work of the system, the recording of vital events, takes place at the local level. The number, distribution, and geographic coverage of local civil registration offices should be periodically reviewed based on changing population trends to ensure that the system provides universal coverage. The local registration offices are the foundation of a civil registration system. Their duties include preparing and filing registration records, ensuring the accuracy of information provided, issuing certificates, completing and transmitting statistical reports, and providing customer service. Given the scale of these responsibilities, it is essential that the local registration offices are staffed by qualified professionals who are adequately compensated and well trained. A common problem, particularly in centralized systems, is that the national agency responsible for registrations does not have administrative authority over local registration personnel because they report to a different agency.⁶ This situation undermines the ability to institute a management structure based on accountability, incentives, and performance standards.

As mentioned above, the civil registration system can play an important role in collecting, documenting, and transmitting vital statistics to augment and update other sources of national statistics, such as population censuses and household surveys. However, the civil registration system's effectiveness in fulfilling this function will depend in part on the organizational structure for vital statistics and the institutional basis for coordination and interaction between the two systems. Responsibility for civil registrations and vital statistics may be unified under a single agency or may fall under separate administrative agencies. Also, like civil registrations, the administration of vital statistics may be centralized or decentralized. In Thailand, for example, both civil registrations and vital statistics are centralized, but fall under separate agencies. The Ministry of Interior is the agency responsible for civil registrations, while the Ministry of Public Health is responsible for vital statistics. In Canada civil registrations are decentralized to the provinces and territories, but responsibility for vital statistics is centralized under the authority of Statistics Canada.⁷

When civil registrations and vital statistics fall under separate authorities, institutional mechanisms are needed to facilitate collaboration. For example, it is crucial that the two

⁵ United Nations Department of Economic and Social Affairs, Statistics Division (1998b), *Handbook on Civil Registration and Vital Statistics Systems: Management, Operation, and Maintenance*, United Nations, New York. (This section is based largely on information obtained from this source).

⁶ UNICEF (2002).

⁷ United Nations Department of Economic and Social Affairs, Statistics Division (1998b).

systems agree upon standard definitions of vital events. Establishing interagency advisory groups or formal agreements on common approaches may help ensure the quality and completeness of the data collected. In reality, many countries lack well organized and coordinated statistical services. In Nepal, for example, the Central Bureau of Statistics is legally mandated to coordinate and oversee the collection, analysis, and publication of statistics. However, in practice, due to weak institutional and human resource capacity, the Central Bureau of Statistics has been unable to fulfill this role. Instead, statistics are collected in ad hoc manner by various organizations, without consultations on standards or consistent definitions.⁸

Registration Process and Requirements

Birth registration is the administrative procedure for formally establishing legal proof of identity. The particulars of the birth registration process vary by country, but generally the attending medical personnel or one or both parents are required to complete a birth registration form and file it with the applicable government authority responsible for civil registrations within a specified timeframe. The birth registration form outlines the information to be recorded, which usually includes the child's name, date and place of birth, and gender as well as the parents' names and dates and places of birth. The local civil registration authority is responsible for recording this information and for issuing birth certificates, which grant legal status and serves as proof of an individual's identity, age, place of birth, and familial relationships.

Registrations require some form of evidence to prove the validity of the information provided and to protect against fraudulent registrations, which can facilitate such abuses as illegal adoptions and the trafficking of children. Thus, evidentiary requirements should be stringent enough to detect fraud, but also readily available or reasonable to obtain, given the reality of local conditions. For example, in developed countries, most births occur in medical facilities and are registered by the attending medical professional. In the United States the evidence required to register the birth of a child born outside of a medical facility might include: photocopies of the parents' driver's licenses, proof of residency (e.g. a utility bill with the parents' names and addresses), diagnosis of the pregnancy from the physician or midwife on official letterhead, and a newborn screening form. In countries with less sophisticated infrastructure, this type of evidence would not be available. Other forms of evidence include court orders, medical certificates, witnesses, and declarations from legally designated informants.

The registration process should be sensitive to local needs to encourage participation in the system. For example, in areas with low literacy levels, registration procedures should be flexible to accommodate the needs of illiterate registrants. Similarly, registration offices should set their days and hours of operation to the convenience of the local population. In some cases, registration services may be offered in conjunction with other public programs that target widespread participation. Also, to increase public awareness of registration requirements and procedures, local registration offices should undertake education and outreach activities.

⁸ ADB (2003).

Generally the birth registration process and issuance of a birth certificate are provided free of charge, especially if registrations are compulsory. Fees may be charged for other services, such as obtaining certified copies of registration documents or late registrations. However, severe penalties for noncompliance are not recommended. In the interest of maintaining the confidentiality of information provided in registering, the procedures for issuing certified copies of birth certificate should include strict eligibility criteria.⁹

III. Incentives to Register

Legal identity has been framed as a human rights issue – both a fundamental right in and of itself as well as a necessary precondition for accessing other rights, which require proof of identity. The United Nations Convention on the Rights of the Child (CRC) states that, “The child shall be registered immediately after birth and shall have the right from birth to a name [and] the right to acquire a nationality.”¹⁰ International donors, such as UNICEF and Plan, have been strong proponents of a rights based approach to the issue of legal identity. Their efforts have focused primarily on universal birth registrations as a means to establish legal identity and they have sought to reorient birth registration from a bureaucratic procedure to a child rights issue.¹¹ Archbishop Desmond Tutu, who launched a global campaign for universal birth registration in February 2005, articulates the role of registration in the context of a rights based approach, “Registering a child at birth signifies the state’s recognition of the child’s existence and acceptance of its responsibility to ensure that the child enjoys the rights and privileges that he or she is entitled to throughout their lifetime.”¹²

The establishment of legal identity is seen to encompass the fundamental right to social status as well as the host of derivative rights and benefits that legal status confers. Legal identity is particularly relevant to the fulfillment of those rights and benefits that are contingent upon proof of age, familial relationships, or place of birth. Accordingly, establishing legal identity through birth registration has been linked to accessing services, benefits, and opportunities and to safeguarding human rights. These relationships are described in more detail below:

Accessing Services, Benefits, and Opportunities

If birth certificates are required to access public services, benefits, and opportunities, the lack of registration may contribute to patterns of exclusion and other long term consequences. For example, unregistered children may be denied free or subsidized medical services, including vaccinations. And the aggregate effect of systematic denials may increase child mortality rates. Similarly, the lack of registration may impede access to free education, resulting in low literacy rates and limited opportunities among unregistered children. Although in many countries birth certificates are not mandatory

⁹ United Nations Department of Economic and Social Affairs, Statistics Division (1998a).

¹⁰ 1989 United Nations Convention on the Rights of the Child (CRC), Article 7.

¹¹ Sharp, N. (2005), *Universal Birth Registration – A Universal Responsibility*. Plan, International Headquarters, United Kingdom.

¹² Sharp, N. (2005).

for school enrollment, they may be required to apply for scholarships or to sit for national exams. For example, in Nepal the Ministry of Education has instituted a policy of requiring birth certificates for school enrollment. This policy has not been uniformly enforced, as some principals still permit unregistered children to attend school. However, these children are not eligible to receive government provided textbooks or to sit for the exams required to enter higher education.¹³ Birth certificates may also be required to access a range of other administrative services and benefits, including:

- obtaining a driver's license,
- receiving employment authorization,
- applying for government subsidies or loans, and
- opening a bank account.

Lack of legal identity may have a negative impact on the security of property rights. Depending on land registration procedures and evidentiary requirements, individuals without proof of legal identity may find it impossible obtain a legal title to their property. Unregistered land is susceptible to land grabbing, border disputes, and multiple claims. Legal identity is particularly relevant to inheritance rights, which depend on proof of one's familial relationships. Without a birth certificate to establish one's family ties, children may be denied the right to inherit family property.

Legal proof of familial relationships and/or place of birth also provide the grounds to establish nationality and thus to access those rights and privileges reserved for citizens of a country including voting, standing for elected office, and obtaining a passport. Most countries grant citizenship based on having been born in the country's territory (*jus soli*) or having been born to parents who are citizens of the country (*jus sanguinis*). In either case, a birth certificate would provide the documentary evidence to establish one's citizenship. Certain populations, such as ethnic minorities, refugees, or children born to unregistered women who have been trafficked, may face particular difficulties in obtaining documentation to establish citizenship.

Safeguarding Human Rights

Individuals who don't have birth certificates, particularly minors, may be more susceptible to human rights abuses. Lack of legal identity may contribute to patterns of exploitation, including trafficking, child labor, underage marriage, and the conscription of child soldiers. To the extent that lack of registration is a barrier to education, unregistered children may lack alternative economic opportunities and be more vulnerable to such dangerous and abusive situations. The enforcement of laws and policies intended to protect or benefit children often require legal verification of age. For example, both international and domestic laws include special juvenile justice provisions to protect minors facing criminal charges. Protections include separate detention facilities, reduced penalties, and immunity from capital punishment. However, without the means to prove their age, unregistered children may not be able to enforce these provisions. UNICEF has documented anecdotal evidence that in Nepal unregistered juvenile suspects have no means to challenge police determinations that they have

¹³ UNICEF (2002), *Birth Registration: Right From the Start*, Innocenti Digest, March, No. 9.

reached the age of majority and are therefore, detained and prosecuted as adults.¹⁴ Similarly, when crimes victimizing minors, such as the trafficking of children for prostitution or forced labor, provide for more severe penalties, an inability to prove the victim's age may hinder efforts to prosecute and punish abusers to the full extent of the law. On a macro scale, the widespread lack of registration also undermines efforts to monitor and document patterns of human rights abuses, such as the employment of children in hazardous industries. Without this empirical information, it is difficult to develop and advocate for appropriate solutions.

IV. Causation

The correlations between lack of birth registration and patterns of poverty, exclusion, and vulnerability, described briefly above, have been empirically documented. UNICEF has conducted empirical research to assess how birth registration intersects with other indicators, such as socio-economic characteristics. The research, which includes 65 countries, cross tabulates birth registration data with background and proximate variables from nationally representative household surveys. The resulting profile indicates that unregistered children are generally delivered without the assistance of a health professional. They tend to be poor, live in rural areas, have limited access to health care and education, and suffer from higher levels of malnutrition and higher mortality rates. Their mothers tend to be uneducated and lack knowledge regarding the signs of childhood illness and the transmission of HIV/AIDS.¹⁵

Positive correlations between lack of birth registration and other disadvantages, however, do not establish causation. Nor do they imply that establishing legal identity will ensure access to basic services and fundamental rights. The extent to which these correlations are causal in nature has not been adequately researched. UNICEF makes the case that birth registration is linked to an array of rights and services, but acknowledges that “the exact linkages of ‘cause and effect’ between the impact of birth registration and all of these issues require much more research.”¹⁶ The lack of precision and specificity in understanding the nature of the relationship between birth registration and access to services and protections is evidenced by the phrases most commonly used to describe the connections (e.g. factors in, contributes to, plays a role in, is linked to, or correlates with).

Clearly, some key questions remain unaddressed. For example:

- If marginalized groups had legal identity, would they have meaningful access to the services and protections they are currently denied?
- In other words, if all children were registered at birth, would other barriers still prevent access?
- If so, what are those obstacles?

¹⁴ UNICEF (2002).

¹⁵ UNICEF (2005), *The ‘Rights’ Start To Life*, Strategic Information Section Division of Policy and Planning, UNICEF Headquarters, New York.

¹⁶ UNICEF (2002).

- Should promoting birth registration be prioritized over addressing other obstacles?
- If increased birth registrations results in increased demand for services, would governments respond with appropriate budget allocations?
- Would governments reallocate funds to accommodate growing demand or would new barriers be erected to limit the numbers?
- Can birth registrations be used as an advocacy tool to increase demand and provide a basis for improved budgetary allocations?

The factors to consider in answering these critical questions will be further examined in the sections that follow.

V. Barriers to Establishing Legal Identity

A functioning, accessible, and effective civil registration system depends upon both supply and demand factors. On the supply side, the required inputs (discussed in Section II above) are significant, particularly in an environment of scarce resources, weak administrative institutions, and limited enforcement capacity. Equally important, however, is public demand for civil registration services. Civil registrations require an actively involved citizenry that has sufficient capacity and motivation to participate in the system. The reasons underlying low registration rates can be explained as they relate to limited state capacity to deliver and low public demand for registration services.

Low Public Demand

Public demand for registrations depends upon the transactions costs involved in the birth registration process compared to the perceived benefits of establishing legal identity. To the extent that the costs outweigh the benefits, it is natural that individuals will be disinclined to register vital events.

Transaction Costs

Parents will consider a range of factors in calculating the transaction costs required to register, including both the financial and non-pecuniary burdens incurred. The extent to which the transaction costs deter registrations will vary from family to family, depending on their available resources. This is confirmed by empirical research which found that disparities in household wealth are highly correlated with disparities in registration rates.¹⁷ On the most basic level, disadvantaged individuals may find the official registration fees alone prohibitive. However, even if registration is free and the cost of the birth certificate minimal, potential registrants will take account of the opportunity costs involved, particularly lost wages. For communities living in remote areas, the journey to the nearest registration office could be difficult, time consuming, and expensive. Moreover, in countries where low level bureaucratic processes regularly involve paying bribes, the expected price of registering will be further inflated.

¹⁷ UNICEF (2005).

To the extent that information on birth registration requirements and procedures is not widely available, the effort necessary to obtain this information will increase the transaction cost of registering. This is validated by research that found that lack of knowledge regarding where to register was among the top reasons for non-registrations internationally.¹⁸ Research in Cambodia found that one of the main reasons underlying low registration rates is a complete lack of awareness of the very notion of birth registrations. Interviews in two provinces revealed that in “the overwhelming majority heads of households where children have not been registered are simply not familiar with the basic concept of birth registration and are unaware that official authorities can deliver a birth certificate.”¹⁹

The time and money involved in registering may be further compounded by additional logistical hurdles, such as burdensome evidentiary requirements. For example, requiring parents to present a medical certificate will discourage registrations in areas where health care is not widely available and births generally take place at home without the assistance of a birth attendant. In such cases, the effort and associated expenses involved in obtaining a medical certificate would significantly increase the transaction costs of registration. Complicated procedures coupled with unhelpful registration staff and limited operating hours further discourage registrations, particularly among linguistic minorities, illiterate parents, and other groups who regularly face discrimination. Research on the reasons underlying low birth registration rates in Cambodia revealed that common problems encountered included: inability to complete the registration forms among illiterate applicants; difficulties in locating witnesses; and the fact that the commune offices were closed when registration was attempted.²⁰

Registration procedures that are incompatible with local conditions or cultural norms also decrease demand for registrations. For example, if the deadline for free registrations does not allow sufficient time for traditional naming ceremonies, communities that practice such rituals face the prospect of late fees.²¹ Similarly, gender biased registration laws that exclude mothers from registering their children tip the scale against registrations. In Nepal, for example, only men are legally authorized to register a child’s birth.²² In addition to being blatantly discriminatory, this law fails to take cognizance of the fact that men often migrate to urban areas or overseas in search of greater economic opportunities.

Finally, the availability and cost of fraudulent documents may also deter registrations, particularly if alternatives are less expensive and easier to obtain. In some countries, the black market for false certificates may undercut the official process. Reports indicate that Nepal, Cambodia, and Bangladesh all have thriving markets for counterfeit documents. For example, it is commonly known among Tibetan refugees in Nepal that phony citizenship documents and passports are readily available for a price. Research in

¹⁸ UNICEF (2005).

¹⁹ Child Rights Foundation (2003).

²⁰ Child Rights Foundation (2003), *Birth Registration in Cambodia: An Analysis of Kompong Speu and Svay Rieng Provinces*, sponsored by Plan Cambodia.

²¹ UNICEF (2005).

²² UNICEF (2005).

Cambodia indicates that the ability to procure false registration cards not only impedes birth registrations, but also contributes to child labor and other forms of exploitation.²³

Limited Perceived Benefits

It is unsurprising that motivation to register will be low, if there are no perceived benefits associated with obtaining a birth certificate. In some countries, birth certificates are not legally required to access basic services. Even where registrations are legally mandated, these laws and regulations may not be consistently enforced, particularly in remote areas. In this context, for the most part, parents would be correct in their assessment that registering a child's birth is of little value. In other cases, alternate means may be accepted for establishing legal identity. For example, the 1996 Cambodian law on National Identity Cards provides several methods for establishing identity, in addition to a birth certificate. Among these is "any document that could prove that such person is a Khmer citizen."²⁴ In this case, further investigation would be necessary to determine what counts as acceptable documentary proof in actual practice.

The benefits of establishing legal identity depend upon the extent to which other obstacles render a birth certificate less meaningful. Disadvantaged communities who are systematically excluded from social life are unlikely to see any point in registering vital events. Some vulnerable groups may be so cut off from opportunities, services, and protections that the need to prove their legal identity never arises. Incentives to register births are further diminished because the benefits of establishing legal identity are neither immediate nor self-actualizing. Often a birth certificate is not actually needed until many years after the birth. Meeting more basic, tangible, and immediate needs would naturally take priority.

In countries characterized by poor governance, weak institutions, and resource constraints, the benefits that flow from a birth certificate are reduced. For example, legal identity has been linked to the protection of basic rights, such as the enforcement of laws intended to protect children. However, if people lack faith in the courts' capacity to decide cases fairly or to enforce their decisions, the value of a birth certificate is diminished. Gender-biased citizenship laws may also reduce the benefits of registration for certain populations. Both Nepal and Bangladesh, for example, grant citizenship on the basis of the father's nationality. Thus, women married to foreign men have little incentive to register their children. Similarly, if resource constraints and lack of political priority limit the government's commitment to fulfill its human rights obligations, the benefits of a birth certificate may seem abstract and remote to ordinary people. For example, if a government does not provide separate detention facilities for minors, even those juvenile detainees who can legally prove their age will find themselves in adult prisons. Such a situation might be reported in the media or taken up by a public interest lawyer to highlight the problem and advocate for change, but until these efforts result in improved conditions, the individual's incentive to register will remain limited.

²³ Child Rights Foundation (2003).

²⁴ Anukret, July 26, 1996, On Khmer National Identity Cards, No. 36 Ank.

The potential risks associated with registering, whether real or imagined, will mitigate the benefits that a birth certificate might confer. In countries where trust in the government is low, people may view state authorities as people to be avoided. Ethnic or religious minorities who regularly face discrimination may be particularly reluctant to register their children out of concern that the information provided will lead to further persecution. If laws restrict internal migration, illegal migrant workers would justifiably find it imprudent to announce their presence to local authorities.

Limited State Capacity

Limited state capacity to deliver civil registration services is a fundamental barrier to the establishment of legal identity. Establishing and maintaining a complete, effective, and accessible civil registration system requires sufficient resources, political priority, enforcement capacity, and administrative infrastructure. These essential inputs, however, can be hard to come by, particularly in countries characterized by weak institutions, infrastructure, human resources, education levels, and governance. Budgetary constraints combined with widespread corruption and high poverty rates add further challenges.

In an environment of competing demands for scarce resources, a civil registration system may be a low priority item, particularly compared to other more urgent and concrete needs. Government officials may not view the transaction costs involved in establishing a universal system of civil registration as worthwhile, given the perceived benefits and the host of other problems requiring national attention. The lack of political priority to invest significant resources and attention in civil registrations is linked to the absence of pressure on the issue. Influential domestic constituencies have no motivation to lobby for improved civil registrations, as it does little to promote their personal interests. Constituencies that stand to gain from an improved civil registration system tend to be diffuse, disorganized, lacking in political clout, and preoccupied with meeting basic daily needs. International champions, such as Desmond Tutu, have raised the esteem of the issue, but still it is overshadowed by other more immediate and tangible problems, particularly those that readily engender widespread outrage.

Often the lack of political priority for civil registrations is unpremeditated; it is simply a function of insufficient funding to address the host of problems requiring resources and attention. In some cases, however, there may be an intentional effort to deny registration services to certain groups. Political will to promote the interests of a dominant group may translate into policies intended to deny services and protections to others (e.g. ethnic or religious minorities).²⁵ In this scenario, if legal identity does provide access to benefits and inform demographic statistics for development planning, denying registration services is a strikingly skillful tactic to minimize representation for certain groups and thereby exclude them from social and political life.

Lack of political priority often results in a poorly managed, under funded civil registration system, deficient in professional staff, adequate supplies, consistent standards, and effective public outreach. Given these conditions, citizens are less likely to register vital events. However, even where there is some level of political priority, the

²⁵ Sharp, N. (2005).

value of a civil registration system is only as far reaching as the state's capacity to provide services and enforce laws intended to protect citizens' rights. The civil registration system does not operate in a vacuum; the registration process depends upon outside institutions and informants, such as the courts and medical personnel, to provide evidentiary documents verifying the events to be registered. Moreover, if education and health departments are operating on meager budgets, the services they can provide will remain limited, despite increased numbers of people carrying birth certificates. In the best case, governments will respond to increased demand by reallocating resources to meet citizens' needs. But, experience demonstrates that increased demand can also lead to the creation of new barriers to limit access. Similarly, if the state does not have the capacity to enforce laws protecting rights, the ability to establish one's legal identity will do little to help those whose rights have been violated. This is not to say that an effective civil registration system is not worth pursuing, but only to be realistic about what it can and can't accomplish.

VI. Importance of Registrations for Government Planning

In addition to providing legal identity, a civil registration system can also serve an essential function in collecting demographic data for statistical analysis. More accurate and complete statistics can contribute to the planning of development programs that are responsive to citizens' needs. But what is missing from the literature is a clear-eyed, empirical examination of the extent to which statistics actually influence policy planning and resource allocations. While in principle vital statistics collected through civil registrations are superior to other sources of demographic data, in reality the transaction costs involved in establishing and maintaining a complete registration system may be prohibitive for developing countries, at least in the short-term.

After exploring the role of statistics in development planning, this section will provide an overview of the most common sources of demographic statistics and discuss the practical limitations of civil registrations in generating vital statistics.

Statistics for Development Planning

The civil registration process records key information on vital events, including births, deaths, marriages, and divorces. If registrations are complete and accurate, this process can serve an important statistical function by generating continuous population data, which provides an empirical basis for policy planning. Accurate and up to date information correlating trends in fertility and mortality rates with statistics on a population's size, age structure, and distribution can be analyzed by government agencies and international donor organizations to inform programs in such areas as public health, education, and infrastructure development. For example, when disaggregated by demographic characteristics, vital statistics data can reveal disparities among populations so that interventions can be targeted to where they are most needed. Similarly, statistics on fertility rates and migration patterns can help governments predict population distributions to guide resource allocations.

Particularly from a public health perspective, statistical information is essential for designing programs aimed at preventing disease and reducing mortality rates. For example, accurate birth statistics can facilitate efforts to estimate needs for vaccinations, vitamin A supplements, and health care professionals. Mortality statistics can be disaggregated by region, age, or cause of death to reveal patterns and target public health interventions accordingly. If such statistics are regularly monitored, governments and international agencies can more rapidly identify, respond to, and control potential crises, such as epidemics.²⁶

However, the extent to which statistics actually inform decision-making on development priorities is not entirely clear. For example, further investigation is needed to determine when statistics would move decision-makers to institute policy reforms that require reallocating funds. Government officials may be aware of existing needs, but constrained by competing demands for scarce resources. For example, the Nepal 2002 Population Report acknowledges that high rates of population growth warrant increased spending on basic social services such as education, health, and drinking water. But the report then goes on to note that “it has increasingly been difficult to meet the growing demands of people for these services.”²⁷

Three sets of actors might use accurate statistics to channel resources, confer status, and/or advocate: (1) governments (reformers within government), (2) international donors, and (3) civil society groups, both domestic and international. Some experts assert that vital statistics will “ensure that resources are allocated to where they are really needed within different geographical areas or different groups in society.”²⁸ But experience shows that inclusive action based on vital statistics depends on other variables. A common refrain in the political economy of developing countries is that too often political pressures, power dynamics and special interests dictate the distribution of services and benefits. Research is needed to clarify the relative weight of demographic statistics and their relationship to other factors that play a role in the resource allocation process. To what extent do donor agencies and governments rely upon statistics in determining their strategic priorities?

Given political realities, accurate statistics may be a useful advocacy tool to aid government agencies in lobbying for international assistance or an increased share of the national budget. Similarly, civil society groups can use statistics as a basis to demonstrate pressing needs and to demand improved services for disadvantaged communities. In this regard, statistics may serve an important function in negotiations with donor agencies.

Sources of Demographic Statistics

In addition to vital statistics, other sources of demographic data that comprise a nation’s statistics system include population censuses, household sample surveys, and administrative records. The collection, processing, analysis, and dissemination of

²⁶ Interview with Dr. Jacek Skarbinski, Epidemic Intelligence Service Officer, Center for Disease Control.

²⁷ Nepal Ministry of Population and Environment (2002), Nepal Population Report 2002.

²⁸ Sharp, N. (2005).

demographic statistics depend upon the sophistication and capacity of a nation's statistics system. Bangladesh, Cambodia, and Nepal all conduct population censuses. Nepal has been conducting modern population censuses on a decennial basis since 1952. Bangladesh conducted its first population census as an independent nation in 1974 and since then has completed three additional censuses in 1981, 1991, and most recently in 2001. And, after a 38-year gap, Cambodia conducted its first population census in 1998 with financial and technical support from a variety of United Nations agencies. In addition, all three countries conduct various household sample surveys on a fairly regular basis. These instruments provide a demographic snapshot based on a sample of the population at a specific point in time. The range of household sample surveys conducted in Bangladesh, Cambodia, and Nepal are outlined in the Inception Meeting country reports of ADB's study on Enhancing Social and Gender Statistics.²⁹ Official records maintained by government ministries and administrative agencies are another source of demographic data. For example, the Ministry of Education may maintain enrollment records that can generate statistics on the numbers, geographic distribution, gender, and ages of children attending government schools. The value of this information will depend upon the rigor of procedures employed in collecting and maintaining records.

Compared to these other data sources, a complete civil registration system has the advantages of collecting vital statistics data on a continuous and universal basis. Continuous vital statistics data can be disaggregated and analyzed to reveal short-term population trends, such as changes in birth and death rates, at both national and regional levels. The statistical data generated from a universal civil registration system reflect the incidence of vital events, rather than their prevalence.³⁰ In other words, complete civil registrations provide exact numbers, while household surveys provide approximations based on a sample population. Thus, vital statistics provide greater precision for planning purposes.

Practical Limitations of Civil Registrations for Collecting Demographic Statistics

While civil registrations have certain theoretical advantages over other sources of demographic data, the costs and challenges involved in establishing a fully functioning civil registration system (discussed in section V above) are significant. As a result, most developing countries are not in a position to rely upon civil registration systems for accurate, complete, and reliable vital statistics data. For example, registration rates for Bangladesh, Cambodia, and Nepal are estimated to range from 3 to 35 percent.³¹ Given these disturbingly low rates of registrations, development plans based on vital statistics would be misguided, especially because the people most in need of government assistance tend to be the very people who are least likely to register. Recognizing this dynamic, many countries do not use vital statistics in development planning. For example, the Nepal Population Report 2002, notes that "data obtained from the vital registration system are not used for demographic analysis" because the extent of under registration is not known. Instead, Nepal relies upon the alternative data sources

²⁹ ADB (2003). RETA 6007: Enhancing Social and Gender Statistics, Inception Workshop, Country Papers, Bangkok, Thailand, May 28-31, 2002.

³⁰ Lucas, D. (2003). *Registration, Administrative, and Qualitative Data*.

³¹ ADB (2005), Legal Identity for Social Inclusions, RFP.

discussed above, decennial population censuses, household surveys, and administrative records.³²

Whether investment in a civil registration system can be justified on the basis of the vital statistics it can generate depends upon a number of factors including: the availability of alternative sources of demographic data; an assessment of the gaps in existing statistics; the statistical needs of both governments and international agencies; and a cost-benefit analysis of civil registrations compared to other sources of vital statistics. Household surveys are said to be expensive, but if they are statistically reliable and supported by international donor agencies, governments may be disinclined to internalize the costs of establishing a fully functioning civil registration system.

VII. Review of Interventions to Promote Legal Identity

Programs aimed at promoting legal identity have focused primarily improving the efficiency and accessibility of civil registration systems. Programs to date have generally included:

- Training for civil registration officials and others involved in the registration process (e.g. medical personnel, traditional birth attendants)
- Institutional capacity building (mobile registration units, legislative drafting/reform)
- Awareness-raising for citizens and government officials on the importance of civil registrations
- Integrating registrations with other service delivery programs (e.g. immunizations, vitamin A drops)

Below are brief descriptions of projects focused on promoting legal identity:

United Nations: International Program for Accelerating the Improvement of Vital Statistics and Civil Registration Systems

Founded in 1991, the International Program for Accelerating the Improvement of Vital Statistics and Civil Registration Systems is a joint initiative of the United Nations Statistics Division, the United Nations Population Fund, the World Health Organization, and the International Institute for Vital Registration and Statistics. The program provides technical support to increase national capacity to undertake programs aimed at strengthening civil registration and vital statistics systems. The program's strategies include:

- Assessing the current situation of vital statistics and civil registration systems;
- Concentrating on how to improve national civil registration rather than on pilot studies; and
- Adopting a comprehensive registration improvement plan.

³² Nepal Ministry of Population and Environment (2002).

The program has sought to increase the capacity of officials responsible for civil registrations and vital statistics through disseminating a series of detailed technical handbooks and organizing a series of regional workshops.

Plan and UNICEF: The Unregistered Children Project

Plan and UNICEF work in partnership with governments, key stakeholders, and local NGOs on a range of activities aimed at promoting universal birth registrations. Their approach includes advocacy to increase political will, technical support, raising awareness, training, legislative drafting, and mobile registration units. Plan encourages children's participation in activities aimed at promoting birth registrations.

The Unregistered Children Project is a joint initiative of Plan and the NGO Committee on UNICEF. The project was launched in 1998 to promote the goal of universal birth registration in south and south-east Asia. It initially included Indonesia, the Philippines and Vietnam, but has since expanded to include Bangladesh, India, Nepal, Pakistan, and Sri Lanka. The project began with an assessment phase to evaluate the barriers to registration and the scope of the problem. These assessments have been discussed at a number of regional and national workshops, which resulted in the development of national action plans and the formation of the Asia Birth Registration Committee. Based on the action plans, interventions are currently being implemented at the regional, national, and grassroots levels.

Bangladesh: Plan's work in Bangladesh has resulted in the registration of more than four million children. Plan's strategy in Bangladesh has included technical support, the formation of stakeholder committees, raising awareness through religious leaders, as well as legislative reform. Plan's work has resulted in the enactment of a new law on registrations. Unfortunately, this law requires registration for accessing public services, without assuring that registrations are universally accessible. Unless registrations can be provided for all citizens, if this law is enforced, it may lead to further exclusion for remote and marginalized populations.

Cambodia: Plan Cambodia is working on a mobile registration strategy in coordination with the Asian Development Bank, the government of Cambodia, and United Nations' Volunteers. This strategy includes the placement of a United Nations Volunteer in each of Cambodia's 27 provinces to educate local populations on birth registrations. Plan has also provided support to the government for the development of a National Plan of Action for nation-wide registrations and for policy and legislative recommendations to improve registrations.

Nepal: Plan's work in Nepal is focused on increasing awareness of birth registrations and promoting registrations at the local level. Plan is a member of a steering committee on birth registrations formed by the Ministry of Local Development. This committee also includes UNICEF, Save the Children Japan and Save the Children USA. Plan is also working through Village Development Committees in Nepal to promote increased

awareness about the importance of birth registrations, particularly among women. The project has also supported child journalists to advocate on the issue.

Asian Development Bank

The ADB is supporting Cambodia's recently elected commune councils to implement a new civil registration system for births, deaths, and marriages. This comprehensive program of support includes training to operate the new system; distribution of instruction manuals; intensive public awareness and mobilization campaigns; provision of equipment, supplies, and record storage facilities; and technical capacity building on all aspects of operating a modern, efficient civil registration system.

Asia Foundation

The Asia Foundation has addressed issues related to legal identity within the framework of broader programs focused on a range of issues, including women's economic and legal rights, minority rights, post-conflict resettlement, child rights, and anti-trafficking programs. To date, the Foundation has supported civil registration projects in Cambodia, Nepal, Mongolia, Sri Lanka, and Thailand. These projects have included advocacy, research, legal and administrative reform, awareness raising, paralegal training, and institutional capacity building. For example, in Nepal as part of our efforts to prevent trafficking, the Foundation supported the Women's Rehabilitation Center, working in cooperation with local government officials, to launch a birth registration campaign, which included guidance and clarification of the registration process as well as reduced registration fees for target communities in the Dhanusha district in eastern Nepal. In Cambodia, the Foundation has provided support for a local NGO partner, Women for Prosperity, to work in partnership with the Women's Commune Council Networks to conduct a needs assessment on civil registrations, propose changes to remove barriers and simplify registration procedures, and design and implement an information campaign to encourage civil registrations.

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PART TWO: STANDARD FORMAT, RESEARCH METHODOLOGY, AND KEY QUESTIONS FOR COUNTRY REPORTS

A. FORMAT

The country reports should be organized according to the seven-section standard format laid out below:

<u>Section I:</u>	Introduction/Executive Summary
<u>Section II:</u>	Legal Identity System
<u>Section III:</u>	Incentives to Register
<u>Section IV:</u>	Obstacles/Disincentives to Register
<u>Section V:</u>	Alternative Markets for Legal Identity Documents
<u>Section VI:</u>	Conclusions and Recommendations
<u>Section VII:</u>	Appendices

The reports should be approximately 50-60 pages (single spaced) of text in length, not including the appendix tables and other attachments that supplement the prescribed text. In composing the reports, consultants should endeavor to address the issues and questions in Section C to the maximum extent possible.

Reports should conform to the following formatting requirements:

- Word documents
- 12 point Times New Roman font
- 1 inch margins on the top and bottom
- 1.25 inch margins on the left and right sides
- Headings in bold font
- Subheadings underlined

B. RESEARCH METHODOLOGY

Literature review

Consultants will collect and review relevant literature that will inform their work and form the core of an important, required product of the study, a comprehensive bibliography of documents related to legal identity. Interviewees may point consultants towards relevant secondary sources, including project documents prepared by practitioners (such as NGOs reporting to donors), evaluation or strategic planning reports commissioned by practitioners or donor agencies, and scholarly articles and other general literature about legal identity and civil registrations. These written sources need not be published.

Review of legal framework

Consultants will collect and review relevant laws, regulations, and official policies related to legal identity. This includes (1) laws on establishing legal identity through the civil registration system (or other means, if any); (2) laws making proof of legal identity compulsory for accessing services, benefits, and opportunities; and (3) laws that include age as an element. The research will not focus primarily on describing laws, but a review of the legal framework will be necessary to inform the research, which will emphasize actual practice and discrepancies between law and practice. Through interviews and focus group discussions consultants will seek to identify gaps between how the system is supposed to function according to the legal framework and how it functions in reality.

Stakeholder consultations and key informant interviews

In identifying stakeholders and key informants, consultants will draw on professional and personal contacts, Asia Foundation referrals, and their own research. Among those to interview are NGO personnel, government officials (at both national and local levels), donors, and other individuals involved in conducting or advocating for civil registrations or working on issues related to legal identity. Judges and court officials will also be interviewed regarding the evidentiary weight of various legal identity documents and acceptable substitutes for cases requiring proof of age or identity. Consultants will explain the nature of the study to key informants and encourage their participation. Every effort will be made to verify and cross-check information provided by practitioners and other stakeholders.

Focus group discussions

Consultants will conduct a series of focus group discussions to ensure that the research is representative and reflects the experiences of geographically diverse communities (including rural populations), ethnic and religious minorities, women, and other vulnerable groups. Consultants will identify vulnerable populations and make four field visits to conduct interviews and focus group discussions at the local level. If possible, sites selected for field visits should include one where donor or government funded registration projects have taken place. This will facilitate a comparison of vulnerable groups who have been registered and vulnerable groups who have not been registered in terms of access to services, benefits, and opportunities.

C. SECTIONS OF THE COUNTRY REPORTS

I. Introduction/Executive Summary

Humorous anecdotal stories, as shared at the Inception Meeting, may be included to capture the reader's attention and illustrate public opinions regarding legal identity. For example, the story of the visa applicant who when asked to produce a birth certificate presented his birth certificate along with his own death certificate demonstrates the widespread availability of false documents.

This section should provide a summary of the most important findings of the research. It should provide an overall assessment of the scope and extent of non-registration and the problems resulting from lack of legal identity. It should also briefly highlight:

- the legal framework and organizational structure of the legal identity system;
- the process and requirements for obtaining legal identity documents;
- the key ways that lack of legal identity prevent individuals from accessing benefits, services, opportunities, and protections, if at all;
- the key barriers and disincentives to establishing legal identity;
- alternative markets for legal identity; and
- prospects for reform.

II. Legal Identity System

This section will provide an overview of the legal identity system, including (a) the legal framework, (b) the organizational structure, (c) the requirements and procedures for registering and obtaining identity documents, (d) an assessment of the state’s capacity to deliver registration services, and (e) a review of alternative registration systems.

The section will focus on the key documents most commonly used to prove one’s identity. As a birth certificate is generally considered the most fundamental identity document, all three country studies will cover birth registration, which is part of the civil registration system.³³ This section will also cover other critical documents for establishing legal identity, which include the national identity card for Cambodians and the citizenship card for Nepalese. Bangladesh has plans to institute a national identity card, but has not yet done so.

A. Legal Framework

This section will begin with an introductory paragraph, providing a general overview of the legal system. Through a review of relevant laws and regulations, this section will describe the legal framework for legal identity and identify gaps in existing laws. In assessing the sufficiency of the legal framework, consultants will consider if the law addresses or provides for:

- compulsory registrations and universal coverage;
- the functions of the civil registration system;
- the organizations/agencies responsible for registrations and issuing certificates/cards;
- the vital events that must be registered;
- funding arrangements;
- consistent registration procedures and requirements;
- services and benefits that require a birth certificate; and
- confidentiality concerns.

³³ In Cambodia and Nepal the civil registration system covers birth, marriage, and death. In Bangladesh the civil registration system is limited to birth and death.

In reviewing the legal framework for obtaining legal identity documents, consultants will also assess:

- Whether the implementation of the registration laws reflects the reality of contemporary circumstances? (e.g. regarding who can register, where, and when);
- Contradictions or inconsistencies within the registration law itself; and
- Contradictions or inconsistencies between the registration law and the Constitution or other laws (e.g. Constitutional equal protections guarantees and restrictions on who can register a child's birth).

B. Organizational Structure

This section will begin with a brief introductory paragraph, providing a general overview of the organization of the civil administration system. Consultants will then describe where registrations fit in the civil administration and how the system is organized, both at the national and local levels. Consultants will explain the basic structure of the system, including how responsibility for registrations is divided among the various ministries, agencies, and institutions involved in the process. Other features of the system to be described in this section include:

- number and distribution of local registration units;
- management structures;
- accountability mechanisms;
- flow and aggregation of registration information for statistical purposes;
- archive facilities;
- range of coverage; and
- coordination mechanisms (e.g. between agencies responsible for registrations and vital statistics).

C. Registration Requirements and Procedures

This section will describe the procedures and requirements to register a birth and obtain an original birth certificate or request an official duplicate, both according to the law and in actual practice. For Cambodia this section will also describe the procedures and requirements for obtaining a national identity card and for Nepal, a citizenship card. Among the issues consultants will describe in this section are:

- when, how, and by whom events are to be registered;
- the supporting documentation required to register;
- the process for issuing duplicate copies of registration documents;
- applicable fees;
- information recorded on the birth certificate and other key identity documents; and
- measures, if any, to protect against fraudulent registrations.

D. State Capacity to Deliver Civil Registration Services

This section will assess and critique the government's capacity to provide the necessary inputs for a complete and universal registration system. Consultants will analyze and evaluate the overall effectiveness and accessibility of the registration system, noting weaknesses and perverse or unintended consequences in the legal framework, organizational structure, and registration procedures. For example, laws linking proof of legal identity to the provision of services, without complementary reforms ensuring the government's capacity to provide access to registrations at the local level, may lead to further exclusion for vulnerable groups. In examining the government's capacity to deliver registration services, issues to address include:

- political priorities;
- competing demands for available resources;
- administrative infrastructure (e.g. lack of performance standards, institutional inefficiencies, problems with the postal system or courts, etc); and
- enforcement capacity.

Various Dimensions of Political Priority: One dimension of political priority to consider is whether increased domestic attention to legal identity issues has resulted from external pressure, due to heightened security concerns in the wake of 911 and more stringent requirements (e.g. machine-readable, tamper resistant passports) for international travel. For countries reliant on overseas employment opportunities as a source of income, these new requirements create an economic incentive to prioritize the passport issue, which is closely linked to legal identity. Also, the issue of legal identity may be politicized, if registrations are linked to voter lists or the issuance of voter ID cards. This could result in politicians having a personal incentive to provide registrations to their constituents. Similarly, if the state has an interest in regulating certain behaviors and practices (e.g. age of marriage) that relate to legal identity, providing universal registrations may become a greater priority.

At the same time, other political dimensions may decrease priority for registrations. Internal actors may have an incentive to keep the legal identity system somewhat dysfunctional so that it can be manipulated to serve their personal interests. For example, there have been cases of government officials obtaining fraudulent identity documents so they can continue working beyond the mandatory retirement age. Concern about extending citizenship benefits to illegal migrants may also be a factor in government resistance to providing universal birth registrations. This is exemplified by the Nepalese government's backlash against Plan's birth registration campaign slogan, "Birth registration is a passport to citizenship."

E. Alternative Registration Systems

This section will describe any formal or informal systems that collect and record identity information on individuals. Alternative systems may include tax or vehicle registrations

or religious or astrological records. This section will describe the participants, procedures, and information documented by alternative registration systems. If these systems already exist and function, they may be tapped to generate statistical information, provide proof of age, and ensure access to services and benefits.

III. Incentives to Register

This section will describe the incentives to register based on an analysis of the benefits, services, opportunities, and protections derived from establishing legal identity. Specifically, this section will analyze the services, benefits, opportunities, derivative documents, and human rights protections contingent upon proof of legal identity. In analyzing the incentives to establish legal identity (listed below), consultants should consider their disparate impact on minorities, women, and rural populations.

A. Services, Benefits, and Opportunities

This section will examine the connections between establishing legal identity and accessing services, benefits, and opportunities, including both government and donor funded programs. Among the services, benefits, and opportunities to consider are the following:

- Enrolling in school (primary, secondary, university levels)
- Sitting for national exams
- Eligibility for free textbooks
- Applying for scholarships
- Opening a bank account
- Taking out a loan or participating in microfinance programs
- Accessing police services (e.g. filing FIR)
- Accessing the formal court system
- Joining or organizing a union
- Registering a business
- Joining the military
- Voting
- Running for office
- Registering land
- Participating in land reform schemes
- Purchasing land
- Inheriting property
- Purchasing or registering a motor vehicle
- Applying for social security, welfare, or retirement benefits
- Applying for government jobs
- Applying for overseas employment opportunities
- Sitting for civil service exams
- Sitting for professional qualification exams (bar, medical) or obtaining professional certification

- Applying for government subsidizes/rations
- Receiving health services (vaccinations, vitamin A supplements, etc.)
- Receiving medical attention in a clinic or hospital
- Other services or benefits not listed
- Obtaining derivative documents (e.g. passports, employment authorization, marriage certificates, identity cards, land titles, death certificates, driver's license, etc.)

Derivative documents: A birth certificate may not provide direct access to certain benefits, services, and opportunities, but may be required to obtain secondary documents that do. For example, a birth certificate (or national identity card) does not provide direct access to employment opportunities abroad, but is generally required to obtain a passport. In this section, in addition to describing the direct incentives to register, consultants will also describe the “chain of documentation” in terms of the incentives and legal identity requirements to obtain derivative documents.

The links between services, benefits, opportunities and derivative documents (listed above) and legal identity will be examined through three lenses:

(1) *Legal Framework:* Through a review of relevant laws, policies, and regulations, consultants will identify the formal legal identity requirements, if any, for accessing state benefits, participating in government or donor funded programs, and obtaining derivative documents.

(2) *Actual Practice – Consistency of Enforcement and Acceptable Substitutes:* Through interviews with key informants and focus group discussions, researchers will assess how legal identity requirements impact accessing services, benefits, opportunities and obtaining derivative documents in actual practice. Researchers will address the following questions:

- If laws/policies linking proof of legal identity to services, benefits, opportunities, and derivative documents exist, how consistently are they actually enforced?
- Are there substitutes or alternative means to prove identity (besides a birth certificate) that are acceptable in actual practice? For example, in the absence of a birth certificate as proof of age, in some countries a child's eligibility to attend school is determined by his ability to reach his hand over his head and touch his opposite ear.

(3) *Causation:* In investigating the nexus between legal identity and access to services, benefits, opportunities, and derivative documents, consultants will analyze whether the connections are causal in nature. Consultants will identify particular groups or regions that are excluded from social and political life. Through focus group discussions with these groups and key informant interviews, consultants will assess whether their exclusion is due to the denial of civil registration services or other obstacles that prevent access. In other words, is non-registration the primary obstacle or would excluded

communities be likely to face the same problems, even if they had a birth certificate?
The key questions to consider are:

- Do vulnerable groups who are registered have greater access to services and benefits than vulnerable groups who are not registered?
- Is the constraining variable birth registration or is it poverty coupled with poor service delivery?
- To what extent do limited resources, low capacity, poor governance, and lack of political priority limit the government's ability to deliver the services and protections legal identity is supposed to confer?
- What are the critical institutions that need to be reformed to make legal identity more meaningful?

B. Human Rights

Consultants will also examine the links between lack of legal identity and human rights abuses. Specifically, this section will consider how legal identity impacts the prevention of human rights abuses; the protection of victims' rights; the prosecution of offenders; and efforts to monitor human rights violations.

Legal identity is particularly relevant to the enforcement of laws intended to protect minors, as such laws make specific references to age. Without a birth certificate to serve as proof of age or identity, victims may not be able to avail themselves of such protections. For example, successfully litigating a statutory rape case requires establishing that the victim is below the legal age of consent. While there is an extensive corpus of laws that include age as an element, legal identity does not ensure their enforcement. Few cases of violations actually find their way into the courts and the institutions, process, and resources required to enforce these laws are often lacking.

Consultants will provide a survey of the human rights laws that reference age to demonstrate how pervasive the issue of legal identity is. Among the human rights abuses to consider are:

- child labor
- conscription of child soldiers
- trafficking
- police harassment
- underage marriage
- juvenile detention in adult prisons
- other abuses connected to lack of legal identity

In this section, consultants will investigate gaps and discrepancies between the role of legal identity according to the law and in actual practice. Consultants will conduct interviews with police, judges and other relevant court actors to determine how they weigh documentary evidence regarding age. Researchers will address the following questions:

- Are fraudulent identity documents used to facilitate abuses (e.g. fake marriage certificates for trafficking)? What is the scale of abuse? Is information based on anecdotes or is more robust empirical evidence available?
- Does inconsistent enforcement or non-enforcement of identity requirements facilitate human rights violations (e.g. age requirements for marriage)?
- How do police and courts assess a suspect's age (e.g. juvenile detention)?
- If the age of the victim is an element of a crime (e.g. statutory rape, child labor) or provides for harsher punishment, what form of evidence do courts require to establish age? If a birth certificate is not available, are other forms of evidence acceptable?
- How does widespread non-registration impact governments, civil society organizations, UN agencies, and multinational corporations in their efforts to monitor human rights violations, particularly abuses involving children?

IV. Obstacles and Disincentives to Register

In this section, consultants will describe obstacles or disincentives to registering. This section will be informed by focus group discussions, particularly with groups that tend not to register. In analyzing the obstacles and disincentives to registering (listed below), consultants should consider the disparate impact of barriers on rural populations, minorities, and women. Obstacles to establishing legal identity generally are factors that increase the transaction cost involved in registering, including the following:

- Official fees (registration fees, late charges, fees for certificates)
- Rent seeking
- Opportunity costs/Lost wages
- Transportation expenses
- Access to registration office (hours of operation)
- Information/knowledge barriers: time, expense, and effort involved in acquiring the necessary information
- Lack of immediate need to establish legal identity/delayed benefits of registering
- Complicated procedures
- Difficulty in obtaining supporting documentation
- Cultural incompatibilities and gender biases

One disincentive to establishing legal identity that should be given special consideration in this section is the potential risk of registering.

Potential Risks of Registering: In this section, researchers will investigate the potential risks associated with registering, particularly for unwed mothers, migrant workers, and ethnic or religious minorities. Through focus group discussions with vulnerable groups, researchers will explore concerns that information provided to state authorities or recorded on the birth certificate could be used to identify groups for targeted persecution or discrimination. Researchers will also investigate if feelings of low trust in the

government present an obstacle to registrations, as people are inclined to avoid contact with state officials.

V. Alternative Markets for Identity Documents

Investigating alternative markets for legal identity documents can provide insight into the demand and incentives to obtain these documents. The existence of an alternative market is a clear indicator of public demand for identity documents and the market price signifies the value of the document, in terms of the benefits and opportunities it may confer.

Alternative markets for identity documents may also be a contributing factor to low registration rates. Although the existence of alternative markets does not present a direct obstacle to registrations, the availability of cheap and effective “substitutes” may deter registrations, particularly if the black market provides alternatives that are cheaper and easier to obtain.

Researchers will investigate the availability and prevalence of alternative markets for key identity documents, including birth certificates, national ID cards, marriage certificates, passports, etc. Researchers will examine the procedures and fee structures (comparing official fees, unofficial fees or “speed money,” and the price range in fraudulent markets) for obtaining documents through alternative markets, including private sources providing pure counterfeits as well as corrupt government channels charging unofficial fees for authentic documents. Researchers will also analyze what motivates the demand that underpins alternative markets for identity documents. Do alternative markets offer less time-consuming and complicated procedures than the official process? Or are buyers in alternative markets unable to meet the official requirements to obtain authentic documents?

Consultants will interview key informants who are knowledgeable about alternative markets for identity documents, including embassy officials and “fixers,” if possible. Consultants will also investigate alternative markets through focus group discussions, using creative and culturally appropriate lines of questioning to get the desired information. Finally, if accessible, consultants may also review court files and decisions in corruption cases against both government officials and external actors for involvement in alternative markets for identity documents.

VI. Conclusions and Recommendations

This section will highlight key research findings and evaluate and prioritize potential interventions and reforms aimed at increasing citizen’s ability to establish legal identity, both for governments as well as donors. This section should include suggestions for pilot projects to consider for support. Among the interventions to consider are activities aimed at:

- raising awareness of the importance of registrations or the role of falsification markets;

- ensuring target beneficiaries are not excluded from participating in donor funded programs due to identity requirements;
- developing creative and effective substitutes for establishing legal identity where civil registration systems are not functioning or accessible;
- increasing staff capacity to conduct civil registrations;
- making registrations more accessible through mobile registration units;
- piggy-backing registrations on other service delivery programs or cultural traditions (e.g. vaccination programs or naming ceremonies); and
- building institutional capacity for civil registrations.

VI. Appendices

Appendix A: Methodology

In this section consultants will provide a description of their research methodology. This should include the following:

- a rationale for sites selected for conducting field research
- training and preparation provided for members of the research team
- criteria for selecting key informants and participants for focus group discussions
- procedures for conducting focus group discussions and key informant interviews

Consultants will also document all key informant interviews and focus group discussions, filling in the information requested in the tables below:

KEY INFORMANT INTERVIEWS				
Date	Name	Title	Organizational Affiliation	Location

FOCUS GROUP DISCUSSIONS			
Date	Location	Participants	Groups Represented

Appendix B: Summary Tables and Diagrams

Based on Sections II and III of the narrative report, consultants will complete the table below, which provides a quick reference on the key legal identity documents and the services, benefits, and opportunities they confer. This table will aid ADB staff to ensure that its programs take account of and address legal identity requirements so that intended beneficiaries are not excluded from participating in ADB funded projects.

Table 1

Key Identity Documents	Supporting Legislation	Issuing Authority	Provides Access to What Services, Benefits, and Opportunities (as a matter of law)	Provides Access in Actual Practice (Consistency of Enforcement and Acceptable substitutes)	Other Documents to which it is linked
Birth certificate					
National ID or Citizenship Card					

The table below, which is based on Sections IV and V of the narrative report, provides a quick reference on alternative markets for identity documents. Consultants will complete this table for primary legal identity documents as well as key derivative documents, such as passports, which are particularly significant in terms of access to overseas employment opportunities.

Table 2

Key Identity Documents	Constraints to Access	Official Fees		Unofficial fees for Authentic Documents	Cost of Fraudulent Documents
		Issuing	Penalties, Late Fees		
Birth Certificate					
Marriage Certificate					
National ID Card					

Passport					
Etc.					

Diagram 1

Based on Section II of the narrative report, consultants will diagram the key legal identity documents by addressing the questions below. Graphic representations may be useful to illustrate the organizational structure, processes, and flow of information.

For each key legal identity document describe:

- (1) Registration procedures (including the timeframe, place, and documentary evidence required for registering)
- (2) Organizational Structure/Institutional Arrangements for Processing Registrations (including national and local levels)
- (3) Flow of Information (including aggregation and processing of data collected, if any)

Appendix C: Bibliography

Researchers will compile and include a list of sources collected and reviewed in preparing the country studies, including reports, project documents, articles, legal documents, and evaluations.

PART THREE: WORK PLAN

The project, Establishing Legal Identity for Social Inclusion, is being implemented through a seven phase process: (1) development of the analytical framework and research design; (2) inception workshop; (3) preparation of country reports and stakeholder workshops; (4) draft overview report and regional workshop; (5) pilot testing of registration methods; (6) training of relevant ADB staff; and (7) final report and publications. A detailed strategy and work plan for each phase will be developed by the international consultants for presentation in the Inception Report.

Phase One: Development of the Analytical Framework and Research Design

During the first stage of the project, the co-team leaders, Erik Jensen and Debra Ladner, conducted a literature review of issues and challenges relating to the establishment of legal identity and international experience in promoting civil registrations. This literature survey informed the conceptual framework and research design, which in turn has guided the development of a common methodology, a core set of questions and indicators, and a standard format for the individual country reports. These initial documents were reviewed by ADB project staff, who provided extensive feedback and suggestions to clarify the analytical framework and improve the research design, during the course of a two-day pre-inception meeting, held at ADB headquarters in Manila on May 9-10, 2005. This meeting was attended by co-team leaders, Erik Jensen and Debra Ladner, as well as Caroline Vandenabeele, Hamid Sharif, and Lisa Botswick of the ADB Office of General Counsel. The analytical framework and research design were further developed and refined through inputs provided by the three domestic consultants – Ms. Sapana Malla, Dr. Sau Sisovanna, and Dr. Shahnaz Huda - on the diverse range of challenges and issues specific to Nepal, Cambodia, and Bangladesh. To gather this information, domestic consultants conducted a series of initial stakeholder consultations, soliciting views from a variety of key informants, including both activists working with vulnerable populations as well as government officials involved in the birth registration process or the provision and budgeting of services and protections which require proof of legal identity. These consultations were guided by clear instructions provided by the international consultants, detailing the types of information to gather and issues to probe. The instructions were developed to ensure sufficient consistency in terms of substance and analytical depth, while allowing the domestic consultants flexibility in approach to most effectively elicit the required information, particularly given their sensitivity to cultural and political dynamics (see Appendix A for Preliminary Research Instructions). During this initial information gathering stage, domestic consultants also sought to identify and compile available statistics and budgetary information related to birth registrations and public services.

Phase Two: Inception Meeting

The inception meeting, which was held in Bangkok, Thailand from June 27 -29, provided a participatory forum for international and domestic consultants and ADB staff to review, refine, and finalize the analytical framework and research design (see Parts I and II above). The meeting, which spanned three working days, included adequate time for

presentations, thoughtful exchanges, discussion of implementation issues and concerns, and refinement of and consensus on the research design (see Appendix B for Inception Meeting Agenda). Erik Jensen and Debra Ladner briefed the domestic consultants on the findings of the literature survey to ensure a clear and common understanding of the analytical framework and research methodology (see Appendix C for Presentation of Conceptual Framework). Domestic consultants shared the findings of their initial stakeholder consultations (see Appendix D for Preliminary Research Findings). This preliminary work was essential to ensure that the diversity of challenges and issues were captured in the final research design. Discussions also sought to define and limit the scope of the research. While legal identity is related to many interesting, timely, and relevant issues, the research needs to remain focused on the core questions: How can legal identity promote equity and equality in the context of scarcity? Do vulnerable groups with legal identity enjoy increased protections, benefits, services, and opportunities than vulnerable groups without legal identity? In addition to all members of the project team, this meeting was attended by Caroline Vandenabeele of ADB and Shahid Kardar, the former Finance Minister of Pakistan. Mr. Kardar facilitated discussions on the role of vital statistics in development planning and budgeting as well as alternative markets for identity documents. Workshop discussions also covered practical issues related to project implementation, including the scheduling of key events and deliverables, criteria for selecting field visit locations, and protocols for conducting interview and focus group discussions. Following the workshop, each of the domestic consultants submitted a rationale for their selection of proposed field visit sites (see Appendix E for Field Visit Site Selections and Rationale). Mr. Sisovanna of Cambodia reported that in order to ensure cooperation from stakeholders and key informants at the local level he would need an authorization letter issued by the Cambodian government. The Asia Foundation's Cambodia office has taken steps to secure the appropriate authorization letters. Debra Ladner reviewed the proceedings to finalize this Inception Report.

Phase Three: Preparation of Country Reports and Stakeholder Workshops

During Phase Three, the domestic consultants will prepare the country reports in consultation with the international consultants. The standard methodology confirmed in the Inception Workshop includes clear guidelines on the content and basic format of the country reports, which builds on the issues outlined in the TORs. In gathering the required information, domestic consultants will review and analyze legislation, policies, statistical and budgetary information, and institutional practices related to birth registrations. In addition, domestic consultants will conduct in-depth interviews with key informants to identify the services and protections which require legal identity and the barriers to establishing it. To ensure that the country studies are inclusive, domestic consultants will conduct focus group discussions and stakeholder consultations at the grassroots level to solicit the views of vulnerable populations (e.g., girls at risk of trafficking) and groups that face particular challenges in registering births (e.g., ethnic or linguistic minorities). During this phase, international consultants will provide guidance and direction by reviewing and commenting on domestic consultants' monthly progress updates and draft versions of the country reports. Prior to finalizing the country reports, each domestic consultant will organize and convene a one-day workshop to present the

findings and solicit substantive feedback from relevant stakeholders, including key informants interviewed. These workshops will also provide an opportunity to highlight the issues and challenges related to birth registration and to raise awareness of the link between legal identity and poverty. Co-team leader, Debra Ladner, or Asia Foundation field office staff will attend these workshops to ensure that the final report reflects the diversity of views and issues on the connections between poverty and legal identity. After revising the country reports to incorporate feedback provided at the workshop, domestic consultants will forward the final reports to the international consultants for submission to ADB.

Phase Four: Draft Overview Report and Regional Workshop

In Phase Four, the international consultants will work together to draft the Overview Report, which will present a summary of the individual country reports; an analysis of trends; a review of international best practices in birth registration systems and an analysis of their applicability to participating countries; and recommendations for addressing the problem, including future ADB interventions. One month following submission of the draft overview report, the international consultants will organize a regional workshop, to be attended by domestic consultants as well as ADB project officials and other relevant stakeholders. The tentative date for the regional workshop is the first week in February 2006. The draft overview report, which will be distributed to participants prior to the workshop, will serve as the basic document for discussion. Given the range and depth of issues to be discussed, the regional workshop will be scheduled for two full working days. Following the workshop, the international consultants will revise the overview study to incorporate (a) suggestions and feedback provided by workshop participants, (b) a summary of the workshop proceedings and discussions, (c) recommendations for the ADB, and (d) models for pilot testing of registration techniques in one of the participating DMCs.

Phase Five: Pilot Testing of Registration Methods

In consultation with domestic consultants, ADB project officials, and other relevant stakeholders, the international consultants will design a pilot project to remove barriers to establishing legal identity. The pilot project design will be informed by a detailed understanding of the issues and challenges involved in establishing legal identity, as revealed by the country studies, as well as a review of existing registration models, international experience, and practical solutions. The project design will include baseline research and detailed indicators for evaluating impact. The project will likely include a birth registration component. However, in addition to providing facilities, equipment, and training to increase birth registrations, the pilot may also include components focused on advocacy for law and policy reform, institutional capacity building, awareness raising, strategic planning exercises, alternative means of establishing identity, and training in statistical data collection for budgetary planning. In consultation with ADB project officials, the international consultants will identify opportunities to coordinate the pilot project activities with other ongoing ADB projects. The international consultants will oversee the project's implementation in partnership with the domestic consultant and with support from Asia Foundation field office staff. Data will be collected periodically

to monitor the project's impact and the results will be summarized and presented to the ADB after six months of implementation.

Phase Six: Training of Relevant ADB Staff

Co-team leader, Erik Jensen will offer two to three training sessions at ADB for lawyers and other relevant staff members to present the TA findings and raise awareness of the importance of legal identity issues. In preparation for these training sessions, the international consultants will develop a basic system of procedures, tools, and guidelines for ADB staff to ensure that issues related to legal identity are consistently and systematically identified, evaluated, and addressed in ADB proposed projects and loans. The training will emphasize ways to incorporate legal identity considerations into the design of ADB projects to ensure that participation is not limited by the intended beneficiaries' lack of birth registration. For example, ADB projects might include a registration component or specify alternative methods for establishing legal identity.

Phase Seven: Final Report and Publications

In addition to submitting a final report to ADB, the international consultants will provide inputs for ADB publications, including the OGC's publication on Legal Identity and Social Inclusion.

APPENDICES

APPENDIX A – PRELIMINARY RESEARCH INSTRUCTIONS

Preliminary Instructions for Country Consultants

To: Dr. Shahnaz Huda, Sapana Pradhan-Malla, and Sau Sisovanna

From: Erik Jensen (egjensen@stanford.edu)
Debra Ladner (dladner@asiafound.org)

Date: May 19, 2005

Re: Legal Identity Project Inception Meeting

Enclosures:

- Letter of Contract with attached Terms of Reference
- Travel Insurance form
- Draft Research Methodology
- Draft Conceptual Framework

We are very pleased that you will be working with the Asia Foundation as a Consultant on ADB RETA: 6188 Establishing Legal Identity for Social Inclusion. This project will examine the barriers to establishing legal identity and the connections between legal identity and access to benefits, services, protections, and opportunities, particularly for vulnerable groups.

As you know, we will be holding an Inception Meeting in Bangkok, June 27-29, 2005. Our field offices will assist you with logistical arrangements, including purchasing plane tickets and obtaining visas. The meeting will be held at the Bangkok Marriott Riverside Hotel, located at 257 Charoennakorn Road, Samrae Thonburi Bangkok, 10600. We will send you a meeting agenda and more detailed logistical information as the meeting approaches. In the meantime, should you have any questions, please contact us at the email addresses listed above.

Objectives of the Inception Meeting:

The Inception Meeting will provide a forum for project consultants and ADB staff to develop a clear and common understanding of the Conceptual Framework and Research Methodology for this project. Drafts of these documents are attached, but they will be revised and refined based on our discussions during the Inception Meeting. One of the most important dimensions of the Inception Meeting is to reach agreement on points of emphasis and de-emphasis to ensure that the final research design reflects relevant problem analysis that is based on the diversity of issues and challenges in each of the

participating countries. The preliminary tasks and deliverables described below are intended to inform the discussions at the Inception Meeting.

Preliminary Tasks/Deliverable:

Prior to the Inception Meeting, consultants will complete the following tasks:

- (1) Review the attached documents.
- (2) Collect and review relevant reports, laws, and policy materials related to legal identity.
- (3) Conduct initial stakeholder consultations with a minimum of five key informants, including government officials responsible for civil registrations, local NGOs working with vulnerable populations, donors focused on legal identity, etc. Interviews should solicit views on the questions listed below to be addressed in a brief overview paper.

Based on the document review and interviews outlined above, please prepare a brief overview paper (approximately 5 pages), addressing the following issues:

- (1) What are the major laws on legal identity/civil registrations? What are the procedural and documentary requirements for establishing legal identity through the civil registration system? Are there acceptable substitutes for establishing identity besides civil registrations? If so, what are they?
- (2) What services, benefits, opportunities, and protections actually require proof of legal identity (e.g. education, scholarships, vaccinations, etc.)? What forms of identity are acceptable? Are certain groups excluded from accessing public benefits due to their inability to establish legal identity?
- (3) Are there markets for fraudulent identity documents (passports, national identity cards, land registration documents, marriage or birth certificates)? If so, how do these markets work? How accessible are they? How are false documents priced? What motivates individuals to purchase fake documents rather than registering through official processes?
- (4) What are the major obstacles to establishing legal identity and which groups are particularly affected by these barriers?
- (5) Suggestions for improving and refining the research design, based on its suitability, relevance, and applicability to your country context.
- (6) A list of a minimum of five proposed field visits for interviews/focus group discussions to ensure that the research represents the experiences of vulnerable groups, including rural populations, ethnic and religious minorities, etc.

(7) Please attach a list of key informants interviewed in preparing this paper.

If you have any questions, please feel free to contact us. Papers are to be emailed to us prior to the Inception Meeting; Thursday, June 23rd would be appreciated, **but no later than Friday, June 24th**.

APPENDIX B – INCEPTION MEETING AGENDA

Inception Meeting: ADB RETA 6188: Establishing Legal Identity for Social Inclusion

**The Asia Foundation
June 27-29, 2005
Bangkok, Thailand**

Venue: **Marriott Resort & Spa**
257/1-3 Charoen Nakorn Road
Bukkalo, Thonburi Bangkok 10600, Thailand
Tel: (66) 2476 0022
Fax: (66) 2476 1120

Sunday, June 26

Arrival

Monday, June 27

Meetings will be held in the Lotus Room, located on the Upper Lobby level, in the Lotus Meeting Center, past the Business Center.

9:00 – 9:30

Welcome remarks

9:30 – 10:00

Participant introductions

10:00 – 10:30

Overview of the meeting agenda, goals, and objectives

10:30 – 10:45

Coffee break

10:45 – 12:15

Overview presentation and discussion of the conceptual framework and research agenda

12:15 – 1:15

Lunch at the Market

1:15 – 4:30

Brief country presentations and discussions to cover:

- an overview of the preliminary research findings;
- lessons learned through preliminary research;
- opportunities and constraints in implementing the research;

1:15 – 2:15

Bangladesh

2:15 – 3:15	Cambodia
3:15 – 3:30	Coffee break
3:30 – 4:30	Nepal
4:30 – 5:00	Remaining issues, recap of the day, and plans for tomorrow
7:00	Welcome dinner at the River Terrace

Tuesday, June 28

9:00 – 10:30	Civil registration systems
10:30 – 10:45	Coffee break
10:45 – 12:30	Incentives to register
12:30 – 1:30	Lunch at Benihana
1:30 – 3:00	Barriers to establishing legal identity
3:00 – 3:15	Coffee break
3:15 – 4:15	Markets for fraudulent identity documents
4:15 – 5:30	Statistical function of civil registrations and links to development planning and resource allocations for national governments and donor agencies
	Evening free

Wednesday, June 29

9:00 – 10:30	Suggestions for improving the research design
10:30 – 10:45	Coffee break
10:45 – 12:15	Review of terms of reference
12:15 – 1:15	Lunch at the Market
1:15 – 4:30	Remaining issues

APPENDIX C – PRESENTATION OF CONCEPTUAL FRAMEWORK

Slide 1

**Establishing Legal Identity for
Social Inclusion:**

Inception Meeting
June 27–29, 2005

Slide 2

**The U.N. Convention on the
Rights of the Child states:**

“The child shall be registered
immediately after birth and shall have
the right from birth to a name [and]
the right to acquire a nationality.”

Slide 3

Framing Question:

How can legal identity promote equity
and equality in the context of
scarcity?

Slide 4

Research Agenda:

- Civil Registration Systems
- Incentives to Register
- Obstacles/Disincentives to Register
- Vital Statistics and Development Planning

Slide 5

**Civil Registration
Systems**

Slide 6

The United Nations defines civil registrations 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 of each country.”

Slide 7

Key Functions of a Civil Registration System:

- Registering vital events that confer civil status
- Issuing legal documents that attest to those events
- Collecting vital statistics data

Slide 8

Elements of an Effective Civil Registration System:

- Sufficient Resources
- Sound Legal Framework
- Consistent Definitions of Vital Events
- Full Geographic Coverage
- Standardized Operating Procedures
- Appropriate Institutional Arrangements
- Qualified Human Resources
- Effective Management Structures
- Coordination Mechanisms
- Adequate Assurances of Confidentiality
- Effective Public Outreach Campaigns to Ensure Citizen Participation

Slide 9

Civil Registration Systems:

- Legal Framework
- Organizational Structure
- Registration Process and Requirements
- State Capacity to Deliver Civil Registrations
- Alternative Registration Systems

Slide 10

Legal Framework

- Compulsory registrations
- Responsible organization/agencies
- Vital events to be registered
- Funding arrangements
- Universal coverage
- Consistent procedures/requirements
- Services and benefits requiring registration
- Confidentiality concerns

Slide 11

Key questions on the legal framework:

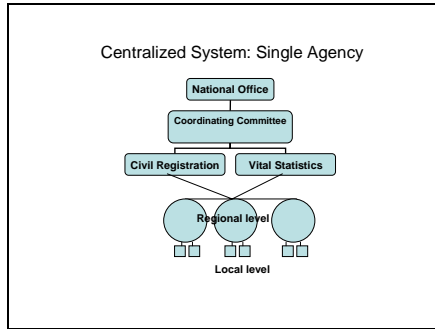
- Does the civil registration law reflect the reality of contemporary circumstances?
- Are there contradictions or inconsistencies within the civil registration law or between the civil registration law and the Constitution or other laws?
- Does the legal framework lead to perverse incentives or unintended consequences?

Slide 12

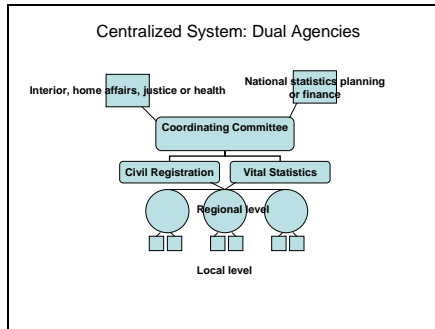
Organizational Structure

- number and distribution of local registration units;
- division of responsibilities;
- management structures;
- accountability mechanisms;
- archive facilities; and
- coordination mechanisms.

Slide 13



Slide 14



Slide 15

- Birth Registration Process and Requirements:**
- when, how, and by whom events are to be registered;
 - the supporting documentation required to register;
 - the process for issuing duplicate copies of registration documents;
 - applicable fees;
 - information recorded on the birth certificate; and
 - measures, if any, to protect against fraudulent registrations.

Slide 16

**State Capacity to Deliver Civil
Registration Services:**

- available resources
- competing demands
- political priorities
- administrative infrastructure and
- enforcement capacity

Slide 17

Alternative Registration Systems

- Religious records
- Tax registrations
- Vehicle registrations
- Others?

Slide 18

**Incentives to
Register**

Slide 19

Incentives to Register:

- Services, benefits, and opportunities contingent upon registration.

- Human rights protections contingent upon registration.

Slide 20

Services, Benefits and Opportunities:

- Health Care
- Education
- Administrative Services/Benefits
- Employment
- Citizenship benefits
- Land/inheritance
- Financial services
- Legal system
- Others

Slide 21

Links between Legal Identity and Services, Benefits and Opportunities:

- Laws, regulations, and policies

- Actual practice/enforcement

- Causation

Slide 22

Key Questions on Causation:

- Do vulnerable groups who are registered have greater access to rights and services than vulnerable groups who are not registered?
- But for lack of birth registration, would disadvantaged groups have access to the services and protections they are currently denied?

Slide 23

Human Rights

- Child labor
- Underage Marriage
- Conscription of Child Soldiers
- Trafficking
- Juvenile Detention and Prosecution as an Adult
- Police Harassment

Slide 24

How does legal identity impact:

- the prevention of human rights abuses;
- the protection of victims' rights;
- the prosecution of offenders; and
- efforts to monitor human rights abuses?

Slide 25

Institutions Involved in Delivering Services and Protecting Rights:

- Health Ministry
- Education Ministry
- Social Welfare Ministry
- Labor Department
- Land Registration Unit
- Police
- Courts
- Prosecutorial Service
- Election Commission

Slide 26

Obstacles and Disincentives to Register

Slide 27

Disincentives to register =

- High Transaction Costs

+

- Low Perceived Benefits

Slide 28

- Barriers to Establishing Legal Identity:**
- Official fees
 - Rent seeking
 - Opportunity costs/lost wages
 - Transportation expenses
 - Access to registration office
 - Information/knowledge barriers
 - Complicated procedures
 - Cultural Incompatibilities and gender biases
 - Difficulty in obtaining supporting documentation
 - Lack of immediate need to establish legal identity/delayed benefits of registering

Slide 29

- Potential Risks of Registration:**
- Unwed mothers
 - Migrant workers
 - Ethnic and religious minorities
 - Refugees/asylum seekers
 - Other vulnerable groups?

Slide 30

- Falsification Markets:**
- Birth certificates
 - National identity cards
 - Marriage certificates
 - Passports

Slide 31

Vital Statistics and
Development
Planning

Slide 32

- Key Questions on Civil Registrations and Vital Statistics:**
- To what extent do donor agencies and governments rely upon statistics in determining their strategic priorities?
 - What role do demographic statistics play in governments' and donors' budget allocation processes?
 - Is there a gap between the statistics required for development planning and those currently available through other sources (e.g. household surveys)?

APPENDIX D - PRELIMINARY RESEARCH FINDINGS

I. BANGLADESH

To the vast majority of the population of Bangladesh the question of legal identity is neither relevant nor considered to be of great importance. This is primarily because people perceive, correctly for the most part, that there is no causal relationship between identity and access to resources and benefits. For many, birth registration is considered 'to be an unnecessary botheration because it leads to no significant or tangible benefits',³⁴ That the majority of Bangladeshis are not registered at birth is a well established and accepted fact that requires no further proof. Many studies, research projects, and investigations pertaining to questions regarding age or identity have demonstrated that most people do not have a birth certificate or any other proof of identity.

Researchers, legal practitioners, development planners, and government officials have recognized the need to establish a system of legal identification. In particular, the Government has begun to appreciate the importance of civil registration as means of imparting legal identity. The challenge is to make the general public also understand the need for such proof of identity and to have a viable and pragmatic strategy to provide such identification to all citizens of the country. Birth registration, therefore, needs to demand oriented rather than supply oriented.

Due to the fact that only a small percentage of births are registered, currently very few matters rely strictly on proof of formal identity. Rather than making benefits contingent on legal identity, efforts have been made at the Government level to introduce birth registration through avenues where some benefits are already offered. For example, links have been established in certain cases between registrations and service delivery programs such as: immunization programmes, opportunities for free primary education, and Vitamin A campaigns. Thus, when citizens avail themselves of these benefits their births are registered, which serves to improve service delivery.³⁵

At present there are several accepted (rather than acceptable) substitutes for establishing identity: accepted because of the dearth of better ways of proving identity. Besides birth registration, most of the other means of establishing identity apply to persons who have reached adulthood. For example, the need to establish identity arises when people become eligible to vote upon reaching the age of eighteen; when they sit for their first public examination i.e. the Secondary School Certificate (SSC) Examination; when they need to apply for a passport; when they seek employment and so forth.

Unless a child is registered at birth, often much of the information pertaining to substitute means of establishing legal identity are based on inaccurate or falsified information. In

³⁴ Rahman, Mizanur (1997). Evaluation of Birth, Death & Marriage Registration practices in Bangladesh; UNICEF, Bangladesh.

³⁵ UNICEF (2002). Birth registration A Vehicle for Child Rights Promotion ---Experiences with Birth Registration Promotion in Bangladesh; UNICEF, Bangladesh at p.17.

many cases such misinformation may be given intentionally, but in other cases false information is provided because the applicant genuinely does not have the correct information. Birth dates are generally not considered important to Bangladeshis so when asked their age most tend to guess or to try to recall a significant concurrent event.

Currently, alternative documents that are acceptable as means of identification include: Secondary School Certificate; Passport; Affidavit; Notarized document. These documents generally contain such information as name, age, name of parents/guardians, date of birth, and address. However, in the absence of documents resulting from registration at the time of birth, other documents often contain incorrect information. As people generally only obtain birth certificates when there is a dire need for it, most birth certificates are fictitious.³⁶

The Election Commission (EC), for example, relies on SSC certificates when they are available.³⁷ For those who do not have an SSC certificate, testimony from the parents, certificates from local authorities, and in many cases a sworn written statement from the person concerned may be acceptable. The Secretary of the EC is of the opinion that birth registration would definitely be the most convenient method to determine age, but in reality even in its absence, insurmountable problems are not faced. This is especially true in rural areas where most of the people are known to the authorities at some level. The question of age applies not only for voters, but also for potential candidates since there are age requirements for all elected officials. For example, a candidate for Membership of Parliament must be of 25 years of age.³⁸

Legal Framework

The laws which deal with birth and death registration as well as other issues related to legal identity include the following:

The Birth and Death Registration Act of 1873 still continues to be in effect as the parent law. The Act of 1873 was supplemented by the Birth, Deaths and Marriage Registration Act of 1886 and amended by the Birth and Death Registration Amendment Act of 1979.

At the international level, Bangladesh is also committed to the registration of all births and to providing legal identity to all children. As one of the earliest parties to the Convention on the Rights of the Child (CRC), Bangladesh is officially committed to substantive implementation of the Convention. The GOB acknowledges the need to rethink their overall strategy for birth registration in order to provide children with identities.³⁹

³⁶ Siddiqui, Kamal (2001). *Better Days, Better Lives—Towards a strategy for implementing the Convention on the Rights of the Child*; University Press Limited, Dhaka at 13.

³⁷ Personal interview with S.M.Zakaria; Secretary, Election Commission, Bangladesh.

³⁸ *Ibid.*

³⁹ Committee on the Rights of the Child; Session on Bangladesh Second Periodic Report; 30 September, 2003; Geneva, Switzerland,

Apart from the above, the laws relating to citizenship⁴⁰ and naturalization⁴¹ also affect legal identity as does the personal laws of the citizens e.g. laws relating to adoption, legitimacy of children etc.

By amendment of the abovementioned Act of 1873, the process of civil registration has been decentralized and entrusted upon elected representatives. The following persons are ex officio the Registrars of Births in Bangladesh:

- For the six metropolitan cities (Dhaka, Chittagong, Khulna, Rajshahi, Sylhet and Barishal) the six Mayors of the City Corporations. Persons may register births by contacting the Chief Health Officer, Ward Commissioner, Zonal offices of the city corporations.⁴²
- For towns the Pourashava (Municipality) Chairmen -- The Secretary of the Pourashava administers birth registrations and parents report directly to the Pourashava Chairman's office.
- For the rural villages the Chairman of the Union Parishad. S/he may delegate his duties to other members: The UP is the lowest administrative unit at the village level. Under the Act of 1873, the village Chowkidar (watchman) or any person so appointed is responsible to report every birth occurring within his beat. Other persons bound to report births are the father and mother of the child or assisting midwife, who shall personally or through the persons mentioned before, provide information regarding the birth within 8 days
- For the Cantonment areas the Cantonment Board.

The procedural and documentary requirements for birth registration are theoretically simple, but in reality inaccessible for many people. At the Dhaka Municipal Corporation, for example, there is now a Birth and Death Registration Section where the record keeper deals with registration. The Government fees required (for which an official receipt is given) is Tk.30-35.⁴³ The documents necessary to register the birth of a child aged between 0-90 days are a photograph of the child, a certificate from the Medical institution where the child was born, and preferably photograph of the mother. Although the official fee is small, in reality four times the amount (around Taka 165/- extra) is needed (for which no official receipt is given). The certificate is delivered after five days, but the officials offer to have everything done within a day for Taka 500/-. This suggests that it may be easy to obtain fraudulent certificates of birth.⁴⁴

In 2004 a new law, The Birth and Death Registration Act, was enacted but has not been activated and the date on which it is to become operational has not yet been announced. The concerned Ministry is in the process of drafting Rules for the Act and the delay in the implementation of the new law is attributed to this. Three sets of Rules are being drafted to deal with civil registrations at the Union Level, Cantonment areas, and for Embassies.

⁴⁰ See The Citizenship Act, 1951; Bangladesh Citizenship (Temporary Provisions) Order, 1972; Bangladesh Citizenship (Temporary Provisions) Rules, 1978.

⁴¹ The Naturalisation Act, 1926; The Naturalisation Rules, 1961.

⁴² Bangladeshe Jonmo Nibandhan (2003). (Birth Registration in Bangladesh): Leaflet published by UNICEF Bangladesh and Local Government Division, GOB.

⁴³ One US dollar equivalent to approx. 64 Bangladesh Taka.

⁴⁴ Personal interview with father of newborn whose birth was registered last month (May 2005).

The new law was enacted for the purpose of amending and consolidating existing laws relating to the registration of births and deaths. It specifically makes the production of a birth certificate mandatory for the following purposes: issuance of passports; marriage registration; admission into educational institutes; employment in government, non-government and autonomous institutions; obtaining a driver's licences; voter registration; land registration; and any other cases provided by law. The new Act is substantially the same regarding who has responsibility for registering births and deaths. One new facet is that for Bangladeshis born abroad, the respective High Commissioners or other authorized personnel may act as Registrars.

Alternative Markets for Identity Documents

There is allegedly a thriving market for forged documents such as passports, driver's licences, etc. Fraudulent passports are used for illegal migration, trafficking and so forth. However, with the introduction of more modern laminated passports, it has become difficult to obtain false ones. Other documents like driver's licences are relatively easier to obtain and there have been many allegations against officials and Government employees for involvement in forgery rackets. For example, newspapers report that fake driver's licences may be obtained through the payment of bribes to officials of the Bangladesh Road Transport Authority (BRTA), for the price of Bangladesh Taka 5000-6000.⁴⁵ Such falsified documents are often used in cases where a person may wish to hide his identity or escape from the country to avoid prosecution or for involvement in other criminal activities. In many cases, however, people procure false documents or documents containing inaccurate information either to avoid the hassle of red tape or bureaucracy or because the concerned person does not know the required information. There is a difference in Bangladesh between fraudulent documents/documents containing false information and genuine documents that are obtained bypassing the required procedure through the payment of bribes. Passport may be obtained through both of these methods. Illegal manpower agents offer 'package' deals which include passports, employment abroad, as well as visas. One such package to Saudi Arabia, for example, may cost between 80,000 to 125,000 Takas.

Major obstacles to establishing legal identity and groups particularly affected by these barriers:

- Lack of awareness of birth registration laws
- High illiteracy rate
- Lack of perceivable social benefits accruing from registration
- Confusing and complicated procedures in reality
- Lack of knowledge as to how to obtain legal identity
- Lack of political will and proper planning
- Lack of resources to cover the entire population
- Easy acceptability of ad-hoc documents as proof of identity
- Fear (on the part of some groups) of being identified

⁴⁵ The Daily Star, 12-06-05.

- A large floating population
- High frequency of rotation of government officials at district level⁴⁶
- Weak capacity of locally elected representatives
- Challenges of coordination between Ministries and between different decentralised levels of Govt. which hinder sharing of information and effective policy planning and implementation
- Rent seeking' amongst some officials⁴⁷

According to UNICEF, the main drawbacks regarding the implementation of the existing birth registration laws are the three Ms-⁴⁸

Man –i.e. personnel are unqualified

Material ---not standardized

Mobilization –lack of awareness and no demand for birth registration

Birth certificates are generally needed by more advantaged sectors of the society, such as those who need travel documents or for employment in foreign countries, embassies, and aid agencies. The groups who are most excluded are a very large sector of the population who are economically and socially deprived of even the most basic necessities. Quite a large percentage of the rural population falls within this criteria. Also among the deprived and excluded are those members of the urban population who live on the streets or in slums and therefore are termed 'floating'. Again, those living in areas that are not easily accessible or considered to be politically sensitive are also prone to being excluded. Because of the lack of perceivable benefits many Bangladeshis could easily go through life without ever facing the need to establish identity.

Initiatives to provide legal identity have been undertaken in the past and continue. Some of the most noteworthy are:

Multi-purpose National ID card: The Home Ministry has initiated a project to issue national ID cards to citizens. A cabinet committee meeting on administrative reform and good governance approved a project to introduce such multi-purpose machine readable identity cards. The I.D. card is to carry the cardholder's name, photograph, code number, parents' names, permanent and present address, finger print, blood type, and telephone number among other details. One of the main reasons for the decision to introduce ID cards is that starting in 2006, only machine readable passports will be accepted worldwide. ID cards will be issued at either two stages of a person's life—12 years or 18 years.⁴⁹

Voter ID card project: According to the Secretary of the Election Commission the electoral role is the only printed document containing information regarding citizens. However, this only includes the identities of persons above the age of 18 and cannot be said to cover the entire eligible population. In 1995, a project, funded exclusively by the

⁴⁶ Supra note 2 at p.

⁴⁷ Ibid.

⁴⁸ Personal Interview with Mr. Azizur Rahman, UNICEF

⁴⁹ Personal interview with S.M.Zahurul Islam, Additional Secretary; Ministry of Home; GOB.

GOB, was undertaken by the Election Commission Secretariat ‘to generate laminated ID cards for every eligible voter in the country’. Unfortunately the project was abandoned when it was determined that the project could reach only approximately 76% and not 100% of the eligible population.⁵⁰

Birth Registration Project: The Government of Bangladesh has officially taken steps to encourage birth registrations through a number of projects. The Local Government and Rural Development Ministry of the GOB, with the support of UNICEF, initiated a Birth and Death registration Project in 2001. Under this project, 24 districts have been covered and eight million births have been registered. One of the innovations of the project was the establishment of linkages between child health services and birth registration through the use of computers.⁵¹ PLAN International has used the same model in 4 districts.

Research Design

The Research design seems generally appropriate with the potential to incorporate and accommodate country based contextual issues relevant to legal identity. As far as Bangladesh is concerned, the position regarding the law relating to birth registration is (as may be seen from above) that a new law has been enacted and is awaiting implementation. It is possible that during the period of the research, this law may become operational and that has to be kept in mind. Personal laws also need to be dealt with in some detail.

List of Key Informants Interviewed for Preliminary Research

1. S. M. Zakaria: Secretary, Election Commission, Government of Bangladesh
2. Md. Azizur Rahman: Assistant Project Officer; Child Protection Section: UNICEF
3. Mr.Shafiul Islam: Project Director, Birth And Death Registration Project, Local Government and Rural Development Ministry (LGRD); Government of Bangladesh (GOB)
4. Mr.Shafiul Alam: System Analyst; Birth And Death Registration Project, Local Government and Rural Development Ministry (LGRD); Government of Bangladesh (GOB)
5. Dr.Najmanur Khanum: Deputy Director; Birth And Death Registration Project, Local Government and Rural Development Ministry (LGRD); Government of Bangladesh (GOB)
6. S.M. Zahurul Islam: Additional Secretary, Ministry of Home: GOB
7. Professor Omar Rahman; ; Executive Director; Centre for Health, Population and Development.
8. Ms.Zinat Afroz: Social Development Advisor; PLAN International

⁵⁰ Bangladesh Enterprise Institute and The Asia Foundation (2004). Study of eGovernment in Bangladesh; April 2004 at p. 43.

⁵¹ UNICEF and Government of Bangladesh; Mid-Term Review 2003 Bangladesh—9 October 2003; Country Programme of Cooperation 2001-2005; at p.121.

II. CAMBODIA

Establishing legal identity depends on the birth registration process, which in turn, depends on a functioning and accessible system of civil registrations. Civil registration refers to the legal regulations for recording, updating and maintaining data on the population related to birth, death, and marriage. It establishes a person's "existence" within a society and provides evidence regarding an individual's claim to certain benefits.

Major Civil Registration Law in Cambodia

The Cambodian Legislative framework pertaining to civil registrations was adopted relatively recently and consists of the following legal documents:

- Sub-decree #103 on civil status, dated 29 December 2000;
- Amendment to Sub-decree #103, dated 24 June 2002;
- Sub-decree #60 on fees for issuing civil registration documents and stamps, dated 24 June 2002;
- Guidelines #12 of the Ministry of Interior for recording of civil status, dated 8 November 2002;
- Guidelines #18 of the Ministry of Interior for collecting civil status documents, dated 21 December 2001.

According to sub-decree #103 dated 29/Dec/00, civil registration is the common bond tying nationality with the state and the status of a person within her/his own family and society. It establishes duties and obligations for that person.

All births must be registered within 30 days. After 30 days, all requests for birth certificates must be adjudicated by the local court, prior to actual registration in the commune-sangkat office. Public notices to disclose a pending marriage must be posted at the local commune-sangkat offices of both members of the future couple for 10 days, prior to actual wedding ceremony. Death certificates must be issued within 15 days, at the commune office of the permanent place of residence of the deceased person.

On 24 June 2002, the civil registration fee rates were established by a sub decree. Birth and death certificate proceedings are to be done free of charge (Article 58 of the December 2000 Sub-decree). However each copy of the marriage, birth, and death certificate costs KR400. The sub decree establishes a reduced rate of KR100 Riels for five officially poorest provinces (Rattanakiri, Mondolkiri, Steung Treng, Preah Vihear, Oddar Meanchey).

An amending sub decree (issued on 24 June 2002) formally establishes commune-sangkat council responsibility for civil registrations and defines a 3 year period for clearing the unregistered backlog, without the requirement of adjudication in court, as 1 August 2002 to 1 August 2005. Amendments to the civil registration law establish fees for late registrations as follows: If there is new born baby and if there is failure to register

the birth within 30 days after delivery, the father or mother or guardian shall apply for the child's birth certificate from commune/sangkat chief by paying 1,000 Riels for the birth certificate for people living in Rattanakiri, Mondulakiri, Stung Treng, Preah Vihear, and Uddar Mean Chey, and 4000 Riels for the other provinces/Municipalities. The same fees will be charged for a death certificate if there is failure to report within 15 days.

The Mobile National Civil Registration Project started nationwide in August 2004 with the participation of Commune Council members. The project is aimed at clearing the backlog of unregistered citizens by August 2005. Civil Registration teams travel from village to village according to a plan prepared by the commune councils. Through this project citizens can register without incurring the costs of having to travel long distances. The registration teams provide registration documents the same day, free of charge.

The civil registration structure and system is consistent with the Government's administrative structure. At the national level, the Department General of Administrative, Ministry of Interior is the focal point for the development of the policy and legal frameworks, and is responsible for monitoring and evaluating implementation throughout the country. At the provincial/municipal level, the offices for general affairs of the provincial/municipal departments are responsible for coordinating and monitoring civil registrations.

The provincial/municipal courts shall be responsible for maintaining copies of civil certificates for issuing copies of civil registration certificates, including birth attestation letters for infants who have not been registered as scheduled. At the district level, the district administrative offices shall assist the district governors in maintaining copies of birth certificates, as implemented at the provincial/municipal courts, in issuing copies of civil certificates, and in monitoring birth registration by the communes. At the communal level, the commune councils are responsible for civil registrations with the commune chiefs serving as civil registrars. Commune clerks shall assist the commune chiefs in this matter.

The office of civil registration within the Ministry of Interior, Department of General Administration manages the new civil registration system. A set of 13 forms has been produced: four each for birth and death and 5 for marriage. The four forms for each category of vital life-event are for first time certificates, repeat certificates, historic life events, and current life events. The fifth form for marriage is for providing public notice of a pending marriage. Record-keeping books have been produced for each of the three categories of life-events. The commune-sangkat clerk will maintain two copies of each record book.

Major Benefits of civil registration

Civil registration records can provide a basic and continuous source of information about the population of a country. In addition to providing a record of vital events related to persons living in the state, these records can also satisfy the need for evidence, which has a bearing on rights, entitlements, liabilities, status and nationality. Such information

(along with other data) helps to achieve various vital objectives, including planning for schools, hospitals, housing schemes, etc.

The civil registration registers can provide the government with valuable information for social development planning. For example, civil registrations provide information on: average family size; average age of marriage; space between births of children related to infant and maternal mortality rates; causes of death and disease patterns; demographic changes resulting from population shifts within the country; number of legal immigrants; etc.

Civil registration has the following benefits for individual citizens, society and the state:

- It underpins the civil status of a person and establishes his/her legal identity as an individual and as a member of society.
- It provides certificates required by various government department and agencies for establishing rights and access to services (e.g. old age pensions, passports, driver's licenses, etc.)
- Evidence of birth, marriage, and death is often needed for commercial and personal purposes.
- It can serve as a source of statistical information on the population and reveal social trends that inform the planning and implementation of social sector development programs.
- It provides legal status to foreigners living within a country.
- It gives adopted children official/legal status, thereby helping to control child abuse including child trafficking, child labor, and child sexual abuse.
- It ensures one's right to inherit property by providing legal evidence of familial relationships.
- Birth registration protects a child's right to education, as school admission requires a birth certificate.
- It can provide a means to monitor illegal immigrants entering the country.
- It can help allocate resources on the basis of accurate data about the population.
- It can enable government departments to cater to the needs of the people.

Presently in Cambodia civil registration is paper-based. If this data were computerized, it could help in achieving a number of other objectives that would serve to strengthen democracy and good governance including:

- Preparation and updating of voters lists
- Issuing passports and national identity cards
- Issuing driver's licenses and arms licenses
- Creating functional links between people and facilities
- Furthering urban and rural planning and utility management

Previously Cambodia had no uniform civil registration system. The documentation that existed did not meet the requirements of a modern state responsible for the delivery of social services. Accordingly, the Cambodian government has developed a uniform civil registration system for the country. The legal instrument - sub decree on civil registration

- adopted in August 2000, however, could not be implemented until 2002. The Ministry of Interior has to ensure that each and every citizen has a birth certificate or a letter certifying birth. Then birth registrations need to be integrated with marriage and death to bring about a fully functional system.

Falsification of Legal Identity/Civil Registration

The use of falsified or bogus legal identity/civil registration cards/certificates is still common in Cambodia and often exposes children to exploitation. Under existing legislation, the process of registering births, marriages, and deaths is open to abuse by unscrupulous individuals, who are able to falsify their own identity or the identity of third persons, including children. In order to check such abuse, the civil status officials may require wider powers to compel individuals to present the particulars of their birth for verification in specific circumstances. Forging legal identity and providing false information concerning a birth are considered criminal acts under existing law.

In 2004 the Cambodian authorities cracked down on a major criminal ring involved in forging civil registration documents. The extent and scope of such activities may cause long-term damage to national security. The scheme's mastermind, Oknha, and members of the group were arrested and exposed to the public by the Ministry of Interior. Also on display was a collection of confiscated evidence, including computer equipment, scanners, and thousands of fake documents, from royal decrees issued by former King Norodom Sihanouk to bachelor's degrees from many universities in Cambodia. Many of the fake educational documents on display bear the forged signature of former Minister of Education, Tol Lah. In more than two years of operation, this forgery ring illegally issued Cambodian citizenship documents and passports to at least 30 foreigners for cash payments of between \$20,000 and \$40,000 per person. The group also issued several land titles and business licenses, which were fabricated with such precision that court officials said the forgeries were indistinguishable from the actual documents through simple eye examination alone.

Moreover, black market trading in Cambodian and Western passports is common, as foreigners take advantage of Cambodia's unsophisticated entry and exit controls. The trafficking in genuine passports has gained momentum since 1993, when Cambodia opened its gates to attract tourist dollars. The ease with which non-Cambodian nationals can pass in and out of the country has left the country's borders and ports wide open to abuse by foreigners including economic migrants, political refugees, and even criminals. Since the Ministry of Interior (MOI) started to issue standard Kingdom of Cambodia passports in August 1995, reports have surfaced as far afield as France and the United States regarding non-Cambodian Chinese (originating from mainland China, Hong Kong, and Taiwan) traveling on fraudulent or illegally obtained Cambodian passports. It appears that Cambodians, who are normally required to pay \$100 for a passport, can sell their passports to foreigners for as high a price as \$2,000. They are then able to apply for a new one without great difficulty by reporting that their passport was lost or stolen.

Major Obstacles to Civil Registrations

The poor rate of birth registration in Cambodia and in many developing countries can be attributed to a number of factors of difficulties, some of which are described below:

Lack of knowledge of the importance of civil registration as a human right: The problem of lack of knowledge about requirement and importance of civil registrations is particularly acute in rural areas. People in poverty-stricken areas may be illiterate and often do not know and sometime do not care about the relevance or need for civil registration. There is also little knowledge regarding the procedures involved in registering a child's birth. In addition, local officials may not be fully aware of and appropriately updated on existing legislation concerning civil registrations.

Socio-cultural factors: The studies covered by our literature review indicate that the rate of civil registrations is very low among ethnic minorities and populations in remote and rural areas. Moreover, further socio-economic disadvantages can result from this poor rate of civil registration. Under existing law, the parents (often the mothers, by default) bear responsibility for registering the child's birth and the parents presenting the child for registration is required to specify their marital status. This requirement has a negative impact on registration rates of illegitimate children, as unwed mothers may be embarrassed to register due to cultural taboos in traditional societies. In addition, parents in poor and remote areas may not be able to afford the necessary time or travel expenses incurred in the process of obtaining a birth certificate for their child.

Lack of access to registration facilities and lack of effective registration infrastructures: In Cambodia there are no effective administrative mechanisms at the community or village level to facilitate the process of civil registrations. Although Cambodian law provides that the parents are obliged to report a birth before a civil registration official at the khum or sangkat (commune) of their permanent residence, access to such officials may be difficult or fraught with administrative obstacles. A commune registration system may be in place but the infrastructure may not be set up adequately because of lack of skilled human resources, materials (e.g. paper forms and stationary), and incentives.

Lack of effective legislation and enforcement: The existing Cambodian legislation on civil registrations is inadequate. Although the current law provides that the parents of a child are obliged to register the birth of the child, it remains doubtful whether the requirement to register a birth is mandatory. As stated earlier, the requirement that parents must reveal their marital status may be an impediment in itself for socio-cultural reasons.

Suggestions for Potential Interventions

In order to achieve universal civil registrations, it is necessary to provide effective and accessible civil registration services, as well as to foster incentives to use registration services. The following issues should be addressed:

- Improve the supply side of the process by increasing the capacity of civil registration officials to deal appropriately with future responsibilities in the civil registration process.
- Increase awareness of the importance of the civil registration process among the population;
- Develop efficient feedback mechanisms that can help ensure the sustainability of the civil registration process in actual practice.

List of Key Informants Interviewed for Preliminary Research

1	PLAN, Cambodia
2	Child Right Foundation
3	Ministry of Interior
4	LIDEE Khmer Research Center
5	Asian Development Bank, Cambodia
6	UNICEF, Phnom Penh

III. NEPAL

Legal identity is critical not for establishing civil status, but also for accessing rights and protections. Legal identity provides the individual with proof of name, date of birth, nationality, and family relationships. It also establishes a relationship between the individual and the state. Denial of legal identity may result in social exclusion from the benefits, resources, and protections of the state.

Major Laws on Legal Identity, Civil Registrations, and Citizenship

Even though there is no specific legislation that deals with legal identity, various laws prevailing in the country provide legal identity, such as The Constitution of the Kingdom of Nepal, 1990; Birth, Death and Other Personal Incidents (Registration) Act, 1977; Birth, Death and Other Personal Incidents (Registration) Regulation, 1978; Children Act, 1992; Children Regulation, 1995; Passport Act, 1967; Passport Regulation, 1970; Local Self Governance Act, 1999; Local Self Governance Regulation, 1999; Voters List Act, 1996; Voter List Regulation, 1996; Nepal Citizenship Act, 1963; Nepal Citizenship Regulation, 1992; and Marriage Registration Act, 1971. Under these laws birth registration, child ID card, citizenship card, passport and voters card are major official documents for establishing the legal identity of a person.

In addition, the government is also accountable to provide legal identity under various human rights instruments such as the Universal Declaration of Human rights 1948,

ICCPR 1966, CEDAW 1979, and CRC 1989. These instruments create state obligations to provide registrations, right to name, right to acquire nationality, right to know about one's parents, right to family, avoidance of statelessness, and non discrimination on the basis of sex.

Right to Name: Children Act guarantees every child the right to a name after birth.⁵² According to this provision, every child is entitled to a name according to the religion, culture, and traditions of his father. If the father is not available, these rights rely on the mother and if the mother is also not available these rights depend on any other member of the child's family. In cases where the father, mother, or any other member of his family are not alive or their whereabouts are not known, the person or organization bringing up the child should give a name to the child.

Determination of Birth Date: If a child's date of birth is unknown, the person or organization bringing up the child shall, in consultation with a registered medical practitioner, determine the child's birth date. Unless otherwise proved, the date so determined shall be considered to be the date of birth of the child⁵³.

Birth Registration: Birth, Death and Other Personal Incidents (Registration) Act, 1977 requires registration of personal incidents such as birth, death, marriage, divorce and migration of any person residing in Nepal.⁵⁴ Information regarding birth should be furnished by the head of the family, and, in his absence, the senior most adult male member of the family. The informant needs to fill up the prescribed forms and provide information to the office of the local registrar for the registration of personal incidents within thirty-five days after the occurrence of such incidents.⁵⁵ Immediately after receiving the information, the local registrar should record such incidents in the appropriate register. The registrar can examine whether or not the form filled in by the informant is correct, and if not, have such forms filled in correctly.

Citizenship: Any person born after the commencement of the 1990 Constitution and whose father is a citizen of Nepal at the birth of the child is a Nepali citizen by descent.⁵⁶ Any child who is found within the Kingdom and the whereabouts of whose parents are unknown is, until the father of the child is traced, considered a Nepali citizen by descent.⁵⁷ A woman of foreign nationality who has a matrimonial relationship with a Nepalese citizen and who has initiated proceedings for renunciation of her foreign citizenship,⁵⁸ and any other person who has renounced the citizenship of Nepal and has gone to a foreign country but who has renounced his foreign citizenship, may acquire the citizenship of Nepal.⁵⁹ Anyone residing in Nepal for at least fifteen years and engaged in

⁵² Section 3.1 of the Children Act, 1992.

⁵³ Section 3.2 of the Children Act 1992.

⁵⁴ Section 2 and 3 of the Birth, Death and Other Personal Incidents (Registration) Act, 1977.

⁵⁵ Section 4, Ibid.

⁵⁶ Article 9 (1) of the Constitution and Section 3(1) of Nepal Citizenship Act, 1964.

⁵⁷ Article 9 (2) of the Constitution and Section 3(4) of Nepal Citizenship Act, 1964.

⁵⁸ Article 9 (5) of the Constitution and Section 6(2) of Nepal Citizenship Act, 1964.

⁵⁹ Article 9 (5) of the Constitution and Section 6B. of Nepal Citizenship Act, 1964.

any profession or vocation may be eligible for receiving citizenship by naturalization.⁶⁰ A person who is the son or daughter or descendant of a citizen of Nepal and who has resided in Nepal for a period of at least two years may acquire the citizenship of Nepal within the terms and conditions prescribed by law.⁶¹

A child ID card is also issued as per the circular of the government for the identification of children who are not entitled to receive a citizenship card. Nepali citizens are also entitled to obtain passports to demonstrate their legal identity at the international level. Travel documents are provided to those children who are adopted or who have not taken their father's citizenship, but are residing in Nepal.

A Voters ID Card is provided to citizens who have attained the age of eighteen.⁶² However, many people who have voters' ID cards do not have citizenship certificates. Government mobile citizenship distribution teams have also been mobilized to make citizenship distribution more accessible to the public. However, data shows more than 1,100,000 people do not have citizenship certificates.⁶³

Procedures for Obtaining Legal Identity

A. Procedure for Civil Registrations:

Initially, the Ministry of Home Affairs was the national level institution responsible for vital registrations, including birth registrations. At the district level, the District Administration Office mobilized the VDC secretaries for the task of birth registration. However, in 1995 responsibility for registrations shifted to the Ministry of Local Development. There is a Vital Registration Section in the Ministry of Local Development, headed by a registrar who is responsible for the issue of civil registration. Presently, however, due to non-existence of Village Development Committees (VDCs),⁶⁴ District Development Committees have also been authorized to undertake such functions.

According to existing law, the father or the most senior male member of the family should notify the child's birth to the Local Registrar's Office within 35 days of the birth. Births that occur outside the country should be registered within 60 days of return to Nepal. If the parents of the child are migrants to that village from another district, they have to present their migration certificate to the Local Registrar. If the application is filed within 35 days, the certification is issued free of cost. However, if the deadline is not met, a fine of Rs. 8 will be charged for an additional 35 days if the people concerned are inside the country for the relevant period and for an additional 60 days if they are outside the country. Beyond these periods, the Registration Officer charges a fine ranging from Rs. 9 to 50, at his or her discretion. If the informant is illiterate, the local registrar should fill

⁶⁰ Article 9 (4) of the Constitution and Section 6(1) of Nepal Citizenship Act, 1964.

⁶¹ Article 9 (6) of the Constitution and Section 6(3) of Nepal Citizenship Act, 1964.

⁶² However this program is being implemented in selected districts in a phase-wise.

⁶³ See Baseline study on Citizenship, FWLD, 2005

⁶⁴ Local government elections have not been held due to insurgency in the country

out the form, or arrange to have it filled out, according to information provided by the informant, and have the informant affix his thumb-impression on the form.⁶⁵

Required documents for birth registration:

- Application form,⁶⁶ Citizenship Certificate of father - if the mother is the informant, her citizenship must be presented along with the father's citizenship, unless the father's name is mentioned in the mother's citizenship.
- Marriage registration certificate in case of non-availability of the father's original citizenship certificate. (However, in practice, if the grandfather, grandmother, or uncle on the father's side testifies, there is no need to present the marriage certificate).
- Birth has to be registered in the district from which the father's citizenship was issued. Applicants seeking to register from other districts must provide a migration certificate, except in the case of government officials working outside their home district.
- If there is any dispute regarding familial relationships, especially about the father, the registrar can register according to a court verdict establishing the relationship, if a copy of the court decision is presented.
- For orphans a ward recommendation letter is required and the mayor/chairperson or executive officer of the municipality/VDC will serve as the informant on the situation of the child.
- If the child is an orphan, a letter from the orphanage or child's guardian is required.
- Generally the registrar does not question the date of birth, but if there is any conflicting information, the registrar can request a birth certificate from the hospital, a school certificate, a recommendation letter from the Ward secretary, etc.
- Foreigners need to submit their passport or other identity card. They also need to submit a birth certificate from the hospital. If a birth certificate from the hospital is not available, a letter from their embassy or office of employment is required.

Trends in Birth Registration: Generally around 5% people register the births of children within 35 days. However, parents don't register their children until there is some concrete need for a birth certificate. For example, many children are registered at 5-7 years of age, when a birth certificate is needed for school enrollment or other educational benefits. Others register at the age of 16-17 when a birth certificate may be required to acquire citizenship.⁶⁷

Campaigns initiated by UNICEF and Plan have had some encouraging results in terms of increasing registrations. For example, a UNICEF campaign in Udayapur District resulted in 49,000 registrations in a 4 month period.

B. Procedures for acquiring citizenship

⁶⁵ Section 5, Ibid.

⁶⁶ As prescribed in Annex 2 of Birth, Death and Other Personal Incident (Registration) Regulation 1977.

⁶⁷ Interview with the Registrar,

The government has adopted a policy of granting citizenship certificates to anybody who can establish his/her lineal descent to a Nepali father. In practice, however, applicants sometimes face complications in their interactions with government officials entrusted to distribute citizenship.

Submission of application form along with other required documents. Testimony by father or brother or uncle (father's brother) or any person from paternal side (of descent) and mother can also testify if, in her citizenship certificate, her husband's name is mentioned, otherwise a marriage certificate or a document establishing relationship with the husband is required. CDO office can examine documents and facts if they have any doubt or suspicion about it and issues citizenship certificate.

Documents required for the citizenship

The following documents are required to apply for citizenship:

- application form⁶⁸
- passport size photos
- recommendation letter of chairperson or vice-chairperson of DDC, mayor or deputy mayor of municipality, president or vice president of VDC or gazetted officer of HMG or Royal Palace Service⁶⁹ However, in practice, due to the vacuum in local bodies, recommendations can also be received from the ward secretary (for municipality) or secretary of VDC.
- birth registration certificate or school administration certificate
- original citizenship certificate of the father is necessary in most cases, except some unusual circumstances, such as when the father has died before the child obtained a citizenship certificate. In such a situation, the grandfather's or uncle's citizenship can be produced along with a relationship certificate.
- For orphans, a letter from the orphanage or person who brought up the orphan child.

I

C. Procedures and required documents to get Children ID Card

Generally both the mother and father must be present with the child and submit the application form along with other required documentation, which include the parents' citizenship cards, the child's birth registration certificate, and the parents' marriage registration certificate. In exceptional circumstances, if both parents are not available, either can be present. CDO office can examine the documents and information provided, if they have any doubts or suspicion about it. Once they are satisfied they issue child ID card.

D. Procedure and required documents for Obtaining a Passport

⁶⁸ as prescribed in Annex-1 of Citizenship Regulation 2049

⁶⁹ Rule 3.1 of the Citizenship Regulation 1993 as amended on 2059.11.22

An application form must be submitted to the CDO office (in exceptional circumstances the form may be submitted directly to the Foreign Ministry or the Nepali embassy in foreign countries) along with four photographs and the original citizenship certificate. In practice, guardian consent letter is required for women below the age of 35. For internal migrants, a migration registration certificate, land ownership certificate, and house registration certificate are also required.

For children between the ages of 5 and 16 the passport application require two copies of the completed application form, child ID card, citizenship certificate of father or citizenship certificate of mother if her certificate mentions the husband, parents' marriage registration certificate, consent letter of parents, and two passport size photographs.

E. Acceptable substitutes for the establishment of identity

Acceptable substitutes for legal identity depend on the particular situation and agency. For those born before the Birth, Death, and other Personal Incident Registration Act was enacted, documents that may be acceptable in practice include: hospital birth certificate, affidavit, and public notary certificate. For those persons who were born after the enactment of the Act, but before its coming into effect in a particular district, a recommendation letter may be provided by the registrar's office. Other forms of documentation that may also be accepted include *janma patri*, school certificate, a letter from the concerned authority (e.g. letter from an orphan home), a court verdict, a *Sarjamin* paper.⁷⁰ Land ownership papers, company or firm registration, tax certificates, and driving license are also used for the purpose of establishing identity.

Importance of Legal Identity

Proof of legal identity is required for accessing certain services and benefits such as education,⁷¹ free text books, scholarships, student/minor or senior citizen discounts, medical care, provident funds, insurance services, widow or senior citizen allowances, pensions, and social security benefits. Legal identity may also be required to access certain public places such as hotels, adult movie theaters, night clubs, and casinos. Opportunities such as employment, travel, inheriting or transferring property, establishing a business, banking services and driving licenses may also require proof of legal identity. Legal identity may also play a role in protecting human rights or preventing certain abuses including child marriage, juvenile justice, crimes against women and children (e.g. statutory rape, trafficking), child labor, and child soldiers.

As per the decision of the Local Development Ministry, the Ministry of Education has made a birth registration certificate compulsory for school admission and for getting free text books. This requirement has discouraged parents from sending their children to school and has resulted in many children being excluded from getting free text books.

⁷⁰ This paper is prepared by concerned government agencies where local residents certify any incident or fact.

⁷¹ As per the decision of Local Development Ministry, Ministry of education send a circular requiring birth registration certificate for the admission in primary school on 15 November, 1996.

The Ministry of Education is being inflexible about this requirement and even about accepting the ‘free test book distribution letter’ of a local body as a substitute for Birth Registration.⁷²

Certain excluded groups are particularly vulnerable due in part to difficulties in obtaining legal identity. These groups include sex workers and their children, children of stateless parents, illegitimate children, *Madhesi* people living in border areas, families of naturalized citizens, *janjati* (*raute, kusunda* etc), women (particularly single women, divorcees, separated women, women married to foreigners, and domestic violence victims), and displaced people.

Existence of fraudulent identity document market

The concerned authorities accept the existence of a market for fraudulent identity documents. In a number of cases government authorities from both Nepal and foreign countries have sought to verify certain documents.

Local registrars, CDO Offices and the Commission for the Investigation of Abuse of Authority accept that people use false documents for registration. In practice, even though they are aware that false documents are submitted, legal action is rarely taken. Rather, local registrars encourage applicants to correct the information provided or ask applicants to come back with proper documents for vital registrations. However, there are certain cases in which the affected parties have reported false documents to the authorities.

CDO has a right to cancel the birth registration certificate if it was provided on the basis of false documents or information. In the last three years there have been three cases in the Kathmandu CDO office regarding false marriage and birth registration certificates.

Cases registered with CIAA tend to be related to issues of driving licenses, passports, citizenship cards, birth certificates and education certificates. Cases are only registered with CIAA, if public servants are involved.⁷³ CIAA initiates the investigation based on FIR, anonymous reports, cases identified through inspections, cases reported by affected persons, and cases identified in the process of investigating other cases.

The market for false documents functions in an organized fashion. Generally, the market is run by a broker, who has relationships with public servants. The broker will facilitate the entire process for their clients. Often the broker will prepare the documents required to obtain legal identity. Working in connection with concerned public servants, the broker will submit the falsified documents required to obtain the desired identity document. Brokers may also prepare forged certificates or make multiple copies of

⁷² As per the policy of tenth plan for the education of all and government policy to provide free education a new circular has been made by registrar to ensure enrollment is not denied due to lack of birth registration (November 2, 2003)

⁷³ Interview with the joint secretary for CIAA

identity certificates. These brokers have established relationships with public servants, who receive a percentage of their fees.

There are three ways to access the market for false documents. The first and most common way is through brokers who can be found outside the concerned offices where identity certificates are issued. These brokers offer their services to applicants who are not eligible to get certificates or who are facing procedural problems. These brokers may prepare the necessary evidentiary documents or make false certificates. The second way to access the false document market is directly through public servants. Finally, clients in need of false documents may seek out a broker, generally through connections with former clients.

The price of false documents varies depending on the client's economic status, the nature of document, the risk involved, and the usefulness and utility of the documents. Generally fake citizenship can be obtained for payment in the range of Rs. 5,000 – 50,000. Fake passports range from Rs. 5,000 – 50,000 and fake birth registration certificates range from Rs.1,000 –10,000. Applicants seeking to obtain documents more quickly may pay between Rs. 100 –5,000.

The most common motivations for purchasing false documents are to acquire a foreign resident visa, ID, or resident permit (for Diversity Visa/ Green Card or Hong Kong ID); to establish or break a relationship; to transfer the property; to obtain foreign employment; to further criminal activities; to get asylum as IDP or conflict affected person; to access benefits reserved for citizens; to access benefits dependant on one's date of birth; and to create other documents. Other motivating factors include the existence of the market, widespread corruption, lengthy and complicated procedures, and discriminatory laws.

Major Obstacles to Establishing Legal Identity

- *Discrimination in birth registration:* As the law requires either the child's father or the eldest male member of the family to be present at the time of registration, women are excluded from the registration process. Even though the law does not define who the "head of the family" is, in practice generally only males accepted as heads of families. The birth is supposed to be registered if the mother claims that the father is unidentified. However, interviews indicated that registration officials tend to resist registering such births, especially in the border areas where there is a higher possibility that the father could be Indian. Due to the stereotypical outlook of registration staff, there is also a tendency to question the women's dignity and integrity if father is not present. These factors also encourage corruption and the market for false documents.
- *Legal prosecution of responsible authorities discourages registrations:* Government policies provide for the prosecution of responsible authorities for registering events based on incorrect information. Fear of prosecution may make

registrars reluctant, thereby discouraging the registration of vital events and the establishment of legal identity.⁷⁴

- *Sex based discriminatory citizenship law:* As a woman does not fall under the descent of the family in Nepal, she has no right to give any identity to her children as a mother or a spouse. As Nepal does not grant citizenship through maternity, a foreign man who has married a Nepali woman is not entitled to acquire Nepali citizenship on the basis of the marriage. The assumption of this policy of exclusion is that a woman who marries a foreign national and her children will live in the father's country of origin and become citizens of that country. Only a Nepali father or husband can extend citizenship to his children and wife. This policy denies the independent existence of a wife or a mother as a citizen of the country.
- *Guardian's approval to acquire passport for women:* The passport application form requires including the applicant's father's name or husband's name. In practice, for women below the age of 35 obtaining passport requires her guardian's approval. This policy denies women the right to self determination and mobility. A male passport holder has to include the details of his wife and children who would accompany him. However, this fails to recognize the independent existence of a woman, making her as dependent as a child.
- *Contradicting laws:* Contradictory and mutually conflicting provisions exist in different laws (e.g. Birth, Death and Other Personal Incidents (Registration) Rule and Children's Act). Children Act clearly states that the identity of the mother and maternal grandfather can be provided if the father is unknown,⁷⁵ whereas birth registration forms and certificates only provide for the names of the father and paternal grandfather.⁷⁶
- *Inadequate institutional arrangements:* Vital registration is not a priority program of the government. Even though a vital registration body was established as a central level department, it is just a section within the ministry of local development. Due to inadequate budgetary allocations, vital registrations are dependent on donors' programs and it is not a priority issue even among donors.⁷⁷ No specific human resources are available at the local level. Instead, registration is an additional responsibility assigned to the VDC secretaries. Additionally, there is no infrastructure for preserving the records and certificates.⁷⁸ No substitute arrangements are made when government officials are on leave or tending to other duties.

⁷⁴ Interview with registrar office

⁷⁵ Section 10 of Children Act

⁷⁶ Annex 2 and 12 of Birth, Death and Other Personal Incidents (Registration) Regulation

⁷⁷ Interview with the Registrar

⁷⁸ Annual Report of Personal Incident Registration Program 2060, Population and registration management section, Ministry of Local development, p 15

- *Procedural problems:* Procedural hurdles include the lack of application forms, the complicated nature of the forms, the requirement to provide the father's citizenship for birth registration, the requirement to provide the father's family name in the child's birth registration, etc.⁷⁹ Errors on identity documents concerning name, caste, and date of birth can be corrected within 6 months only with the approval from the central registrar. If an application for an identity document is filed in any place other than the father's home district, a migration registration certificate is required. Registering to migrate requires a recommendation from the local government of the original district. However, due to the current conflict, local government bodies are not functioning or can be difficult to reach. For people from conflict affected areas, passports are issued from the three districts of the Kathmandu valley.⁸⁰
- *Lack of understanding of difference between birth registration and citizenship:* Because a birth registration certificate is viewed as a preliminary requirement for acquiring citizenship, the relevant authorities tend to resist easy issuance of the document. There is lack of understanding that in Nepal citizenship cannot be acquired on the basis of the place of birth.
- *Low birth registration ratio:* One of the major factors contributing to the low birth registration rate is the fact that about half of the country's population remains illiterate. Other factors include lack of awareness about the importance of birth registration and lack of incentives to register births.

List of Key Informants Interviewed for Preliminary Research

1. Mr. Lok Natha Dahal, Registrar, Population and Registration Management Section, Ministry of Local Development (17th June 2005)
2. Mr. Bimal Raj Bagale, Demographer, Population and Registration Management Section, Ministry of Local Development (17th June 2005)
3. Mr. Iswari Prashad Ghimire, Section Officer, Population and Registration Management Section, Ministry of Local Development (17th June 2005)
4. Mr. Bachu Ram Bista, Local Registrar, Kathmandu Metropolitan City (19th June 2005)
5. Mr. Him Nath Dawadi, Assistant CDO, District Administration Office, Kathmandu (20th June, 2005)
6. Mr. Bishwa Kumar Sharma, Officer, Legal Section, District Administration Office, Kathmandu (20th June, 2005)
7. Mr. Bhanu Pathak, Child Protection Officer, UNICEF/Nepal Country Office (19th June, 2005)
8. Ms. Srijana Mali Pradhan, President, Women Awareness and Legal Center (WALC) (20th June, 2005)

⁷⁹ Interview with the Local registrar, Kathmandu Metropolitan City

⁸⁰ For example Kathmandu CDO office is authorized to issue passport for Dang, Rukum, Rolpa, Salyan, Manang, Puthan, Dadeldhura, Darchula, Okhaldunga, Solukhumbu, Baitadi and Khotang (collected on 21st June 2005), Interview with WALC.

9. Mr. Kumar Chudal, Joint secretary, Commission on Investigation of Abuse of Authority (CIAA) (21st June 2005)
10. Mr. Krishna Ghimire, sponsorship and grant support manager, PLAN Nepal (22nd June 2005)

APPENDIX E – FIELD RESEARCH PROPOSALS AND RATIONALES

I. BANGLADESH

The purpose of the field work is to ensure that the study on legal identity substantially mirrors the situation regarding legal identity of the entire country and not just the capital city, Dhaka. While it cannot claim to be methodologically representative of the entire country, it will hopefully present an overview of the prevalent situation. Bangladesh is divided into six administrative divisions with 64 districts. There are 496 Upazilas and six city Corporations, which are further divided into wards and 127 Municipalities. The lowest tier of Government is the Union Parishad or Council, of which there are 4,451 divided into 64,000 grams or villages.

The proposed locations for field visits roughly represent the different geographical areas of Bangladesh and reflect of a mixture of the population, including individuals belonging to the majority Muslim Bengali population as well as Bengali Hindu and Christian populations. The proposed sites also include areas which host diverse indigenous groups. The sites represent five of the six Divisions into which Bangladesh is divided. The aim is to hold small focus group discussions as well as non-structured interviews amongst stakeholders including officials in charge of birth registrations and ordinary citizens. For each area, the field work will include research in the city corporations (where applicable) as well as chosen Municipalities, Upazilas, Union Parishads, and villages. The rationale for the selected sites is provided below.

Dhaka: The first location selected for the field work is the capital city Dhaka. Dhaka represents central Bangladesh as well as the Dhaka Division. The Executive and Legislative as well as other policy making authorities are concentrated in Dhaka as is the passport issuing authority. Interviews will be conducted at the City Corporation of Dhaka, which is in charge of issuing birth certificates; the passport authorities; and the statistical bureau of the Government. Entities involved in rackets of forged, fraudulent, and illegally issued/procured documents will also be investigated. Attempts will be made to study the realities on the ground both in the City Corporation as well as a village within the Dhaka division.

Rajshahi: The second locale chosen is Rajshahi. Rajshahi is located in the West of Bangladesh and borders on India. It represents the Rajshahi Division. Rajshahi is both a district and a divisional town. A successful birth registration project has been ongoing in Rajshahi under the GOB with the financial assistance of UNICEF. Moreover, under this project, the Rajshahi City Corporation has taken the initiative to introduce an Electronic Birth Registration System (EBRS), which (it is claimed) provides citizens with unique identity cards. The field survey will attempt to find out how successful the project really has been with the purpose of investigating the viability of replicating best practices in other areas. Comparing Rajshahi with other sites that have not had birth registration projects may provide some insights into the core question: Do vulnerable populations

who are registered enjoy more benefits, services, opportunities, and protections than vulnerable groups who are not registered? An attempt will be made to investigate the situation regarding the birth registration scenario amongst the indigenous Santals (who have their own language), which constitute an important portion of the population. Also, the effects, if any, of cross-border migration on issues of legal identity may also be investigated.

Chittagong Hill Tracts (CHT): The third location is Chittagong Hill Tracts. This site was selected because it represents the Chittagong division and the East of Bangladesh. This is the only extensive hill area in Bangladesh. It lies in the southeastern part of the country and it comprises approximately one tenth of the total area of Bangladesh. One of the reasons CHT has been chosen as a field work location is because this part of the country is dominated by Mongolian groups and hosts 13 different tribes. Chief amongst these tribes are the Chakma, Marma, Mizo, and Bawn tribes who practice Buddhism, Hinduism, and Christianity. CHT is also the area in which an armed insurgent movement has been ongoing for a couple of decades and issues concerning the settlement of Bengalis and the eviction of hill people continue to be contentious. In 1997 a Peace Plan was signed, but the situation is still finely balanced and the research would definitely be more valuable if it takes into account the situation of this area of Bangladesh.

Sylhet: Sylhet represents the Sylhet Division as well as Northern Bangladesh. An overwhelming 91.96% of the population is Muslim, but there is a large indigenous population known for their work on the tea plantations. This group has traditionally been removed from the mainstream. Attempts will be made to investigate the situation regarding birth registration, awareness of laws, etc. amongst the general population as well as the ethnic Khasi and Moipuri populations and workers at the tea plantation. As the Sylhetis are famous for migrating to the UK and other countries, questions of proof of identity may be especially relevant to them because many seek to follow family members upon marriage and settle abroad.

Barisal: Barisal represents the Barisal Division and Southern Bangladesh. Apart from the general population, which includes various religions, in Barisal the situation regarding registrations amongst Hindus (who constitute 13.10% of the population) and Christians (who constitute 0.63% of the population) will be investigated. Barisal is the only field work site apart from Dhaka that does not border on India. At the south of Barisal lies the Bay of Bengal.

II CAMBODIA

The project on Establishing Legal Identity for Social Inclusion will be conducted in Cambodia in order to investigate the registration of vital statistics (such as birth, marriage and death) as well as the issuance of National Identity Cards, Family Books, and Passport. This research seeks to understand the actual process of civil registration as opposed to the legislative regulations, as well as to assess the impact of the registration process on social inclusion in terms of citizens' rights and obligations. These issues will

be analyzed from both the supply and demand sides. A thorough understanding of the process of establishing legal identity and an accurate assessment of the impacts on citizens will provide appropriate background for the development of programs of assistance to improve the civil registration process and to close the gap between globalization at country level and low participation and benefits at the individual level.

Data Collection Method: To obtain a detailed knowledge of the process of establishing legal identity and its impact on social inclusion we will rely primarily on a literature review, key informant interviews, and focus group discussions. Interviews will be conducted with stakeholders from the supply side of the process as well as those from the demand side. Investigating perspectives from both sides of the process will increase the validity of our research. To efficiently obtain reliable information from the supply side we will conduct interviews with individual key informants. For the demand side we will organize focus group discussions.

Data collection Instrument: The team will elaborate two sets of semi-structured questionnaires with mostly open-ended questions. These questions will be administered to the informants from the supply side and demand side of the process separately. Specific controls over the interviewing process, interpreted by the questionnaire flow, will be embedded in the questionnaire to guide the process itself as well to facilitate comparisons of opinions and points of view on certain aspects of services, benefits, and opportunities as well as obstacles and disincentives to register.

Sampling: In our sampling we use a multi-stage sampling method. In first stage we stratify Cambodia into five domains consisting of one metropolitan area of Phnom Penh and four regions: Plain, Tonlesap, Mountain and Coastal. Next, we stratify by ethnicity: Khmer, Chinese, Cham (Muslim people), Vietnamese and Khmer-Leu (high-land people). The final unit of sample, the individual as key informant, will be identified at the time of the field visit and focus group discussion. The final sample will include at least twenty-five to thirty-five representatives from the supply side (civil registration officials from commune to national level, court-provincial/municipality, police inspector from commune to district, provincial/municipality and national level, midwife, doctor) and seventy-five to eighty-five representatives from the demand side, including both registered and unregistered individuals from vulnerable groups (village residents, women, disabled, individuals from each ethnic strata).

Field Work: The research team will organize the focus group discussions in the destination areas, determine the key informants from both the supply and demand sides, and administer face-to-face interviews using the semi-structured questionnaire. The team will administer the interviews and record the information provided by the informant. All members of the team involved in the field work will be carefully trained to efficiently take note of useful information relevant to the establishment of legal identity for social inclusion. In the Cambodian context, the key issues of legal identity are birth, marriage, and death certificates, as well as National Identity Cards, Family books, and Passports.

List of Proposed Field Visit and Research Sample

DEMAND SIDE

No.	First Strata: geographical region	Second Strata: ethnicity	Total Sample Unit
1	Phnom Penh	- Khmer population - Chinese population - Vietnamese population - Cham (muslim) population	15-20
2	Plain region - Prey Veng Province	- Khmer population - Chinese population - Vietnamese population - Cham (muslim) population	15-20
3	Tonlesap region- Siem Reap province	- Khmer population - Chinese population - Vietnamese population - Cham (muslim) population	15-20
4	Highland region- Rattanakiri Province	- Khmer population - Chinese population - Vietnamese population - Cham (muslim) population - Khmer-Leu (indigeneous) population	15-20
5	Costal region- Kampot province	- Khmer population - Chinese population - Vietnamese population - Cham (muslim) population	15-20
	Total		75-100

SUPPLY SIDE

No.	First Strata: geographical region	Total Sample Unit
1	Phnom Penh	5-7
2	Plain	5-7
3	Tonlesap	5-7
4	Mountain	5-7
5	Coastal	5-7
	Total	25-35

III. NEPAL

The research methodology will incorporate the following:

Review of the Law: In addition to the legal framework, it will be informative to review the judgments of the Supreme Court on issues related to legal identity. Also, we will review cases initiated by the Kathmandu District Court, the CDO office outside the Kathmandu Valley, and the CIAA related to false identity documents. We will explore the following aspects:

- the nature of the cases
- the number of cases initiated
- the number of cases dropped
- the reasons cases were dropped
- disciplinary actions taken
- the success ratio
- purpose/motive of false documents
- mode and rate of making such documents
- degree of organization of those involved in producing false documents,
- access to the market for false documents

Key Informant Interviews: The following is a preliminary list of key informants to be interviewed:

1. Registrar
2. Vital registration Department
3. Ministry of Local Development
4. Home Ministry/Election commission
5. LDO
6. VDC Secretary
7. Municipality
8. CDO
9. UNICEF
10. SAVE the children
11. PLAN Nepal
12. Action Aid
13. WALK
14. Public Attorney
15. CIAA
16. Education Ministry
17. Affected persons
18. CELLRD
19. CIWIN
20. Maiti Nepal
21. LACC
22. Central Child Welfare Board
23. WDO

24. Judges (age identification or identity evidences)
25. Political Party representatives

Observations: Researchers will observe the civil registration system and process of citizenship distribution.

Collection of case studies: to complement and supplement the information provided on the impacts of laws and procedures.

Field Visits: In each district, the researchers will conduct focus group meetings and interviews with key informants. Key informants to be interviewed during the field visits will include LDO, CDO, District judges and registrars, NGOs, victims, secretary of the VDC or Municipality, Child Welfare Officers, District Education officers, police, public attorneys, and medical doctors. Research assistants will be selected on the basis of a legal background, familiarity with the issues, and adequate research experience. Prior to the field visit an orientation session will be held for the researchers. Check lists and questionnaires for the different focus groups and key informant interviews will be developed to provide guidance, but researchers will not be limited to these structured questions and lists.

Additionally, if cases involving fraudulent activities are identified during the field visits, they will be documented through observations, the collection of relevant information, and follow-up interviews with the concerned groups or individuals if necessary. Cases regarding false identity documents will be collected from the CDO and district level courts.

Proposed districts and justification for the selections:

Dang: Dang had the highest registration rate in the last year with 27,877 registered out of a population of 462,380 (16.59% in 2060 BS). It is a valley in the far western region and a conflict affected area which is home to ethnic communities (*tharus*). It is also a critical area, as it is home to the Badi community,⁸¹ which includes many sex workers and single mothers. Focus group discussions will include: Badi women, ethnic minorities (Tharu community), and conflicted affected people.

Dadeldhura: The lowest rate of registration is seen in *Jajarkot (134,868:121)*, *Dadeldhura (126,162:117)*, where only 0.09 % registered in 2060 BS. Dadeldhura has been selected for the purpose of representing: geographically remote people, widows and single women (also check deuki practices), and issues related to children whose parents have migrated. Due to the geographical isolation and high unemployment rate, many from Dadeldhura have migrated to India in search of employment opportunities.

Nawal Parashi: Nawal Parashi is a plain area in the western region and has an open border with India. There is a large *madhise* community. As cross-border marriage is

⁸¹ *Badi communities were historically use to dance and sing for their livelihood, some of them are in sex work for their survival*

quite high, there are many naturalized citizens as well as many living without any form identity. Communities targeted for focus group discussions will include: *Madhise*, border villages (for cross-border marriages), and people without citizenship.

Dolkha: Data on the rate of birth registrations is not available for Dolkha. This district was selected to investigate the constraints on maintaining statistics, to cover a high mountain region, and to maintain the study's geographical balance. Focus groups discussions will explore how legal identity issues impact ethnic mountain communities, women, and geographically remote communities.

Kathmandu: Kathmandu is the capital city and is the home to the central offices of all concerned government agencies and political parties. It has a large population of local ethnic groups, who have migrated in search of economic opportunities. Focus group discussions will include: displaced people, orphans, street children, and others who face challenges in establishing their identity.