

INTRODUCTION: A Practical Approach for Inclusive Development

This publication presents the findings of an Asian Development Bank (ADB) multi-country study on legal identity.¹

Broadly speaking, legal identity refers to a human being's legal (as opposed to physical) personality. Legal identity allows persons to enjoy the legal system's protection and to enforce their rights or demand redress for violations by accessing state institutions such as courts and law enforcement agencies. Proof of one's legal identity consists of official, government-issued and recognized identity documents—documents that include basic information attesting to the holder's identity and age, status, and/or legal relationships. Without these proofs of one's legal identity, persons find it difficult to exercise and enforce their rights, or obtain benefits and opportunities that the state provides. Consequently, legal identity can be construed narrowly to refer to identity documents that prove one's status as a person who can exercise rights and demand protection under the law.

Most countries have a range of identity documents that serve a variety of purposes—from birth, marriage, and death certificates to passports. However, the international community emphasizes the importance of birth certificates as the preferred standard in establishing legal

identity. This is primarily because birth certificates have the advantage of documenting age, place of birth, and familial relationships from the very beginning of life.

Issuing, storing, managing, and retrieving birth certificates depend on a functioning and accessible civil registration system, which records information on vital life events (i.e. birth, marriage, and death) and issues certificates attesting to the details of these events.⁴

At the time the research started, literature on legal identity focused mostly on promoting universal birth registration and on establishing national civil registration systems. Proponents of these approaches are organizations that regard legal identity from either a rights-based or a technocratic perspective. The rights-based approach to legal identity is rooted in Article 7 of the Convention on the Rights of the Child (CRC), which 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.”⁵ Proponents of the rights-

Birth registration rates in Bangladesh are reportedly between 7 and 10%.² Cambodia has seen a recent surge in birth registration rates. It has been estimated that birth certificates have been distributed to over 90% of the population. In Nepal even the most optimistic estimates put the registration rate at only 35%, with the Population Registrar himself estimating the number closer to 15%. Empirical research has demonstrated that registration rates are lowest in rural areas and among the uneducated and those living in poverty.³



based approach view legal identity as a fundamental right, in and of itself: a fundamental right of both intrinsic and instrumental value. Legal identity has intrinsic value because recognition of one's existence is integral to human dignity. Legal identity's instrumental value relates to it being a gateway to other rights and benefits that are, or may be, contingent on proof of identity, age, familial relationships, or place of birth. Based on this approach, international donor organizations, such as the United Nations Children's Fund (UNICEF) and PLAN International, have sought to reorient birth registration from a bureaucratic procedure to a child rights issue.⁶ Their efforts have focused primarily on advocating for and supporting universal birth registration as a means to enforce the right to legal identity.

Organizations that aim to accomplish universal civil registration employing the technocratic perspective focus on the technical requirements of establishing a civil registration system, rather than emphasizing the right to identity. The International Program for Accelerating the Improvement of Vital Statistics and Civil Registration Systems, a project of the United Nations, has produced detailed handbooks and training programs that provide technical expertise on every aspect of civil registrations—from drafting legislation to training registrars to establishing standardized operating procedures and institutional infrastructure.

Organizations that approach legal identity from either a rights-based or a technocratic approach make birth certificates the focus of their efforts. The primary advantage of a birth certificate is that it documents age, familial relationships, and place of birth from the very beginning of life. In developed countries where birth certificates are nearly universal, few people ponder what it takes on the government's part to issue birth certificates or what impact these documents have on their lives. Birth certificates are commonly associated with establishing citizens' eligibility to access certain benefits and opportunities, protecting human rights and security, and generating demographic statistics to inform development planning so that resources are directed to where they are most needed. But do birth certificates and civil registration actually provide access and protections in developing countries?

This publication—which is based on extensive field research conducted in Bangladesh, Cambodia, and Nepal—contributes to the discussion on legal identity by examining the issue from an empirical and practical perspective. It looks at how legal identity—both in the narrow sense (i.e., birth certificates and other identity documents registered in the civil registry system) and the broad

sense—can be used to promote inclusive development. It assesses the potential and actual instrumental value of various forms of legal identity presently used in the three participating countries (as opposed to those obtained and recorded through the civil registration system alone). While fully recognizing the importance of legal identity as a human right under Article 7 of the CRC, the perspective of this study is neither for nor against universal birth registration and civil registration as a matter of principle. Rather, it situates both in the context of developing country realities (scarcity of resources, competition among various needs and interests, weak

institutions, and widespread corruption, among other things) and, in this context, calls for weighing the relative costs and benefits of civil registration. The framing questions for the analysis are:

- What can we realistically expect legal identity in general, and birth and civil registration in particular, to deliver?
- Given the wide range of unmet needs among citizens and the opportunity costs entailed in pursuing any development initiative, what priority should be given to expending limited donor and government resources on civil registrations?

ENDNOTES

¹ Regional Technical Assistance No. 6188, Establishing Legal Identity for Social Inclusion (financed by the Poverty Reduction Cooperation Fund and approved on 30 September 2004).

² Ministry of Local Government, Rural Development and Cooperatives (Local Government Division), Government of Bangladesh. 2007. Technical Assistance Project Proposal on Birth and Death Registration Project (2nd phase), p. 4.

³ UNICEF has conducted empirical research to assess how birth registration intersects with other indicators, such as socioeconomic 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. UNICEF. 2005. *The 'Rights' Start to Life: A Statistical Analysis of Birth Registration*.

⁴ 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.” United Nations Department of Economic and Social Affairs, Statistics Division. 2002. *Handbook on Training in Civil Registration and Vital Statistics Systems*. New York.

⁵ Convention on the Rights of the Child, art. VII, United Nations (1989).

⁶ Sharp, Nicola. 2005. *Universal Birth Registration—A Universal Responsibility*. London:, PLAN International.