

ADB



LAW AND POLICY REFORM
AT THE ASIAN DEVELOPMENT BANK

2007

Legal Identity for Inclusive Development

Asian Development Bank

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Caroline Vandenabeele and Christine V. Lao, *Editors*

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LIST OF ABBREVIATIONS

ADB	Asian Development Bank
CIAA	Committee for the Investigation of the Abuse of Authority – Nepal
CPN–M	Communist Party of Nepal – Maoist
CRC	Convention on the Rights of the Child
DAO	District Administrative Office – Nepal
DDC	District Development Committee – Nepal
FGD	focus group discussion
FY	fiscal year
GDP	Gross Domestic Product
GOB	Government of Bangladesh
IDP	internally displaced person
ILO	International Labour Organization
KR	Riel, Cambodian currency ¹
LBMB	Law Book Management Board – Nepal
MLD	Ministry of Local Development – Nepal
MLGRD	Ministry of Local Government and Rural Development – Bangladesh
MOI	Ministry of Interior – Cambodia
NGO	nongovernment organization
NIC	national identity card
NRs	Rupees, Nepalese currency ²
Tk	Taka, Bangladeshi currency ³
TBA	traditional birth attendant
UNTAC	United Nations Transitional Authority in Cambodia
VDC	Village Development Committee - Nepal

NOTE

In this publication, “\$” refers to US dollars.

¹KR1 = \$0.000246; \$1 = KR 4068.00 (21 May 2007)

²NR1 = \$0.015358; \$1 = NRs 65.11 (21 May 2007)

³Tk 1 = \$0.014492; \$1 = Tk 69.00 (21 May 2007)

Foreword

To have one's legal identity and thus one's very existence recognized by the law and the State is often taken for granted by those of us who come from countries with well-functioning and universally applied civil registration systems. We seldom ask what it would mean if we did not have legal identity. On the rare occasions where legal identity is brought to the attention of the general public, it is often in the context of statelessness of refugees, catastrophes, identity theft, or the struggles of minority groups. Little is written on the link between legal identity (or the lack thereof) and access to basic services for the vast majority of ordinary citizens in developing countries.

In 2001, one of the lawyers of the Asian Development Bank was assigned to work on a rural development project where the main beneficiaries were intended to be sharecroppers in debt bondage. During field visits it became increasingly obvious that many of the long-term tenants and sharecroppers were not registered in the land and field books, despite having worked on the land for generations, and despite the fact that being registered would give them certain rights. She asked why tenants did not register. The reply was: "because we can't prove we exist." A year later, during the preparation of an empowerment of women project in another country, the issue resurfaced in the context of access to education and the context of property rights. Those incidents prompted the question to what extent there is a link between legal identity and access to basic goods, services and opportunities in life, and whether unawareness of such link might result in development projects not reaching an important portion of their intended beneficiaries. Ms. Caroline Vandenebeele deserves recognition for first spotting the issue and subsequently conceiving and implementing the research that is the subject of this publication.

When the research began, the available literature on legal identity was either focused on the technicalities of civil registration, or advocated for universal birth registration. While there was some information on the correlation between legal identity and poverty, there was very little research in the field on the causal link between the absence of legal identity and exclusion. This research, which was implemented in Bangladesh, Cambodia, and Nepal, in close partnership with The Asia Foundation, aims to contribute to the debate on legal identity and access to goods, services and opportunities, from a practical and empirical perspective. It attempts to answer questions on what legal identity can realistically deliver in terms of promoting inclusion, and on how, when and under what circumstances legal identity actually improves lives in concrete and meaningful ways.

It is our view that legal identity is an important element of inclusive development, provided that its promotion is part of a larger reform agenda. As the research demonstrates, legal identity touches upon many aspects of life, ranging from access to education, land and business registration, obtaining utility connections, and obtaining travel documents such as passports. Possessing some form of legal identity will become increasingly relevant to people's day-to-day lives as countries develop their capacity to provide goods and services, economies grow, and regional integration deepens. It is our hope that the research will contribute to the use of law as one way to better people's lives. It is dedicated to the sharecroppers in debt bondage who inspired our work.

EVELINE N. FISCHER
Deputy General Counsel
Office of the General Counsel
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EXECUTIVE SUMMARY

INTRODUCTION

This publication presents the findings of an Asian Development Bank multi-country study on legal identity. Based on extensive field research conducted in Bangladesh, Cambodia, and Nepal, the study assesses the potential and actual value of legal identity, given the realities of the developing country context.

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 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 provided by the state. Consequently, “legal identity” can be construed narrowly to refer to official, government-issued identity documents that prove one’s status as a person who can exercise rights and demand protection under the law.

Generally, birth certificates, administered through a civil registration system, are favored 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.

However, the study shows that in a number of instances, other identity documents, such as citizenship certificates or family and lodging books, proved to be more important than birth certificates in so far as access to benefits and opportunities are concerned. In light of these realities, rather than narrowly focusing on birth certificates, the research commenced with a review of the range of identity documents that are used in the three

Birth registration rates in Bangladesh are reportedly between 7-10% of the population. Cambodia has seen a recent surge in birth registration rates. It is 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.



countries and looking at what functions these documents actually serve in people's lives.

LEGAL IDENTITY: WHAT IT PROMISES AND WHAT IT DELIVERS

The key question that guided the research is: Does legal identity matter in people's day-to-day lives? Legal identity clearly provides official, state recognition of an individual's existence, which is important in

Legal identity may be needed to secure a broad range of benefits and opportunities ranging from access to education, to land and business registration, to getting a utility connection and obtaining passports.

its own right, and as such embedded in the Convention on the Rights of the Child. Legal identity also clearly has potential implications for a large and diverse range of issues—from access to education and utilities, to sitting for a civil service exam, to enforcing

inheritance rights, and even promoting development of small and medium enterprises.

However, less obvious are the answers to questions such as: What can legal identity realistically deliver in terms of promoting social and economic inclusion? How, when, and under what circumstances does legal identity actually improve lives in concrete and meaningful ways?

The study explores these questions, looking specifically at the connections between legal identity and three categories of goods or advantages that are often associated with civil registration documents: (a) the promotion of access to benefits and opportunities, (b) the protection of human rights, and (c) the generation of demographic statistics for development planning.

In general, the research findings are mixed. As the publication demonstrates, the evidence indicates that in reality these connections are not always as strong or as direct as they are assumed to be.

PROVIDING ACCESS TO BENEFITS AND OPPORTUNITIES

Legal identity may be needed to secure a broad range of benefits and opportunities such as access to education, health care, and other social services. Other benefits often linked to legal identity include professional credentials, bank accounts and credit, land and business registration, government employment, and permission to travel and work abroad. If legal identity is essential to accessing these benefits and opportunities, then we would expect that vulnerable groups with formal identity documents would enjoy a higher quality of life compared to others who are similarly situated, but do not have formal legal identity.

The research, however, points out several factors that diminish the ability of legal identity to enhance access to these and other opportunities:

- For legal identity to enhance access to benefits and opportunities, such services, benefits, and opportunities must actually exist. Unfortunately, in Bangladesh, Cambodia, and Nepal, these opportunities tend to be remote for the vast majority of the population, who rely on agriculture and the informal economy for their livelihoods.
- While legal identity can provide some benefits to vulnerable groups and, indeed, may be a prerequisite to accessing these benefits, such groups often face other fundamental economic, political, and social obstacles that prevent them from accessing benefits and opportunities, regardless of whether or not they have identity documents. Further, insisting on legal identity requirements for accessing

services could have the unintended effect of further excluding the most marginalized because these groups may face serious impediments in obtaining legal identity.

- Legal identity can only be a key factor in providing access to benefits and opportunities to the extent that laws, policies, and practices make the provision of benefits strictly contingent on the possession of a birth certificate and less formalized alternatives that are more accessible are not available. In the three countries included in the research, the government did not always make access to benefits and opportunities contingent upon providing a birth certificate. Officials often accepted a variety of less formal substitutes, thereby reducing the direct link between birth certificates and access to benefits and opportunities.

Nevertheless, initiatives to improve birth registrations remain relevant. In efforts to comply with their obligations under the Convention on the Rights of the Child, many countries are introducing policies that link legal identity and access to basic services. As countries develop and governments improve their capacity to provide basic services, these policies will make vital registration documents increasingly valuable. Moreover, as birth registration or citizenship certificates are often required for more sophisticated benefits and opportunities such as the capacity to register and transfer land, set up a busi-

Vital registration will become increasingly relevant as countries develop their capacity to provide services as economies grow, and regional economic integration deepens.

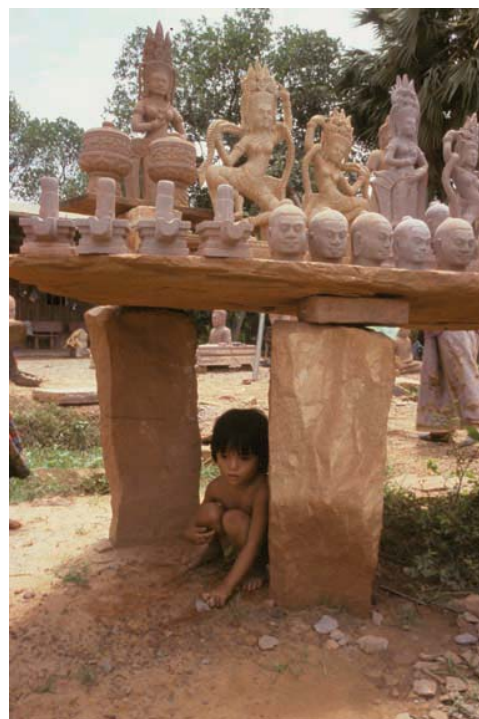
ness, or open a bank account, birth registration is linked to economic growth and development. A functioning and nondiscriminatory registration system supports regional economic integration and aids countries that, to some degree, rely on remittances from overseas contract workers, as it provides passports that enable these workers to travel to their place of employment.

PROTECTING HUMAN RIGHTS

At the time the research commenced, most of the literature on legal identity highlighted the important role that birth certificates played in protecting human rights, especially child rights. Age is an element in a wide range of laws seeking to protect children from exploitation and abuse, either by the state (juvenile justice and due process requirements), in the economy (child labor laws), or in the private sphere (laws banning child marriages or criminalizing child abuse). Such laws are often violated with impunity.

Though international organizations stress that birth registration is closely linked to an array of rights and protections, organizations such as the United Nations Children's Fund also acknowledge that the nature of the link between the two requires more research.

This report argues that a complex interaction of powerful social, economic, political, and cultural forces enable violations of children's rights, and that legal identity alone cannot serve as a panacea





for what is a very complicated problem. Several factors prevent legal identity from providing salient solutions to human rights issues:

- Child marriage and child labor continue to violate children's rights because of the social and economic factors that allow these practices to continue. Providing legal identity can only go so far in addressing these problems that seem firmly entrenched in the norms of several societies.
- The legal system often does not uphold human rights laws even when legal identity is not in question. Therefore, without complementary institutional reforms, possessing some form of legal identity alone is unlikely to protect minors' rights.

- The wide availability of fake legal identity documents such as birth certificates has affected the integrity of real documents. Thus, courts and other agencies often use alternative means—such as medical examination or testimony by neighbors, friends, and family—to establish age.

DEMOGRAPHIC STATISTICS FOR DEVELOPMENT PLANNING

Civil registration systems may enable government agencies to properly plan and define development priorities by providing exact demographic statistics. Such up-to-date demographic information provides a sound basis for the allocation of resources and benefits, especially for vulnerable and distressed communities.

However, several factors hinder the promised advantages of civil registration in this regard:

- Low registration rates, particularly in rural areas and among the uneducated and impoverished, make it impossible to plan based on vital statistics. Development planning based on these skewed statistics could actually have the perverse result of directing resources away from where they are most needed, as the people most in need of government assistance—the poor, those who lack education, and those who live in rural areas—tend to be the very people who are least likely to register. Therefore, unless registration rates are close to 100%, the value of birth registration for development planning is limited.
- The lack of standardized mechanisms to collect, document, transmit, store, consolidate, and analyze data that local registrars collect makes accurate statistical projections difficult. Poor coordination at the national and subnational levels among various government agencies exacerbates local inconsistencies and incompleteness.

- The production of accurate and complete statistics does not ensure the allocation of resources to the most vulnerable. Competing demands for scarce resources constrain resource distribution. This is further hampered by power politics and special interests, which interfere with the abilities of decision makers to make honest appraisals of the most pressing needs and to execute policies based on empirically driven analysis.

OBSTACLES TO REGISTRATION

A range of obstacles and challenges, including financial barriers, burdensome procedures, discriminatory laws and practices, institutional deficiencies, and a lack of adequate information about the benefits of legal identity, all serve to discourage people, especially the most vulnerable groups, from attempting to register themselves and their families:

Costs of Registration: In the three countries that are the subject of the research, a range of financial costs—including official fees, fines for late registrations, transportation expenses, bribes, and the opportunity costs for taking time away from work—contributes to deterring registrations, particularly among the poor. Fines, travel expenses, and lost work wages all exacerbate the official costs of registration, particularly for the rural poor who often cannot make it to the registration sites within the time allotted by law, and face fines when they fail to do so.

Cumbersome Registration Procedures: Burdensome procedures, including confusing and incoherent bureaucratic hurdles, as well as stringent evidentiary requirements, add to the mix of discouraging factors.

Discrimination: Discriminatory laws, practices, and attitudes toward registrants, particularly women and minorities, create further difficulties and discourage potential registrants.

Citizenship, birth registration, marriage and inheritance laws that contain discriminatory provisions undermine the goals of universal registration. Attitudes and beliefs that might be displayed by officers in charge of registration further deter registration. Single mothers, transsexuals, rural people, *dalits*, and ethnic minorities generally face higher levels of harassment. Consequently, the highest rates of non-registration are among women and other disadvantaged groups, such as indigenous communities. Single mothers face a particularly difficult task in registering themselves or their children.

Implementation Costs: The limited state capacity to deliver civil registration services serves as a fundamental barrier to establishing legal identity. Establishing and maintaining a complete, effective, and accessible civil registration system require sufficient resources, political priority, enforcement capacity, and administrative infrastructure, most of which are lacking in the three countries studied. Competing demands over scarce resources often result in the civil registration system being given low priority. This affects the system's capacity to handle registrants competently.

Public Awareness: Another consistent impediment to registration is the lack of basic knowledge, capacity, and motivation on the part of potential registrants. While outreach campaigns and other awareness-raising and education activities can compensate for some of these, many people will remain unmotivated to register unless there are obvious payoffs to doing

The highest rates of non-registration are among women, ethnic minorities, rural people, dalits and other disadvantaged groups.

Many people will remain unmotivated to register unless there are obvious payoffs that flow from doing so.

so. This is particularly the case for vulnerable groups. Besides lacking knowledge on the existence of registration laws and

procedures, many people, particularly rural populations and ethnic minorities, cannot complete the registration process without step-by-step assistance because of high rates of illiteracy and language barriers.

Perceived Value of Registering:

Perceptions that the benefits of legal identity are speculative and seemingly remote from people's daily experience also diminish their motivation to register. Some segments of society have very strong disincentives to register, such as those nearing mandatory retirement age who are seeking to remain employable longer. Some religious and racial minorities even fear registering out of concern that official record keeping could enable discriminatory treatment.

PUBLIC DEMAND FOR LEGAL IDENTITY AND THE OPERATION OF ALTERNATIVE MARKETS

Public demand for legal identity documents depends on a rational calculation that compares the perceived benefits of obtaining identity documents to the perceived registration costs.

If, based on this evaluation, the costs of identity documents outweigh the benefits, individuals will naturally be disinclined to register. If the benefits outweigh the costs, identity documents will be desirable. However, if less expensive, more accessible, and equally effective substitutes are available, many will opt for alternatives. These alternatives, which vary in terms of legality, include legitimate

substitutes and documents obtained through alternative or "black" markets.

The existence of an alternative market is perhaps the truest gauge of public demand for legal identity. Each of the three countries researched has an alternative market, although the degree of sophistication and robustness of these markets' activities varies. A robust and thriving alternative market, such as the one for citizenship certificates in Nepal, indicates that identity documents are very valuable and, at the same time, difficult to obtain. On the other hand, very modest black market activity for identity documents, as is the case in Cambodia, may be directly related to the government's flexible practice of accepting a variety of identity documents. In Bangladesh, alternative market activity for birth certificates has been virtually nonexistent because of the availability and acceptance of alternative forms of identification, as well as the lack of legal requirements to have a birth certificate to access benefits and opportunities. This is expected to change, however, as Bangladesh's Birth and Death Registration Act of 2004 (or: the 2004 Registration Act) will be fully implemented by the end of 2007. The 2004 Registration Act requires birth certificates to access a wide range of benefits and opportunities. Unintentionally, the 2004 Registration Act may well stimulate alternative market activity.

The research shows that people seek out identity papers in alternative markets for a variety of reasons. Some applicants, who are legally eligible for identity documents, are excluded because of discriminatory treatment or overly burdensome requirements for supporting documentation. Other applicants may need false documentation in order to pursue illicit activities, which could range in seriousness from working beyond mandatory retirement ages, to violent crimes such as human trafficking.

Alternative markets respond to these needs by delivering fast and efficient services through a creative and entrepreneurial network and clear incentive structures. “Fixers” or middle persons work with corrupt bureaucrats and/or criminal rings of counterfeiters to produce illicit identity documentation. The price and prevalence of these services vary, driven up by the urgency of the request, the type of document needed, and the associated risks. While the study is indicative rather than conclusive, the country researchers found that prices are not uniform. Apparently, actors in the alternative market network take advantage of the imperfect information held by consumers of their services. Moreover, country researchers found significant price volatility; generally, rates spike dramatically if the document confers substantial benefits or is very risky to obtain.

Alternative markets present a continuing challenge in implementing legal identity programs. This publication presents a case study of such challenges as they play out in Nepal, where the most robust alternative markets thrive. Despite adequate laws and even special governmental units dedicated to dealing with these activities, the likelihood of detection, prosecution, and conviction is low. The ease of falsification, the low risk of conviction, and the light penalties imposed all contrib-

ute to the continued existence of alternative markets. Challenges to combating alternative markets for identity documents include the lack of systematic record keeping; unsophisticated investigative techniques; inadequate human resources; and the mutually beneficial web of relationships binding politicians, bureaucrats, and black market document brokers to one another.

CONCLUSIONS

Legal identity is a multifaceted issue with potentially far reaching implications, ranging from accessing benefits and opportunities, to human rights protection, to the distribution of public resources. Due to the realities of the developing country



context, however, legal identity often fails to deliver all that it promises. The emerging picture is far more complex and challenging than a conceptual approach suggests. Fundamental obstacles, such as weak institutions and widespread poverty and corruption, limit the concrete value of legal identity. In the context of competing demands for limited resources, the impact of improved access to legal identity, at least for the most vulnerable communities, often remains speculative and remote.

Focusing on these challenges is not intended to be pessimistic, but provides a realistic baseline for those development partners seeking to address the obstacles



and to design programs targeted at improving the lives of vulnerable groups. Decisions about where to invest limited government and donor resources should be grounded in an evidence-based understanding of the problems so that program interventions can be finely tuned to achieve meaningful and cost-effective results.

The following key insights provide some guidance and direction for future involvement of development partners in promoting legal identity:

Birth certificates are an intermediate, not an ultimate, goal. Too often programs aimed at increasing civil registrations are based on an inadequate problem analysis that fails to differentiate between intermediate and ultimate outcomes. This research shows that increased access to services, benefits, protections, and opportunities does not automatically flow from the possession of a birth certificate.

Development partners should be aware of registration requirements when designing development interventions, but at the same time ensure that these interventions do not lead to unintended consequences. Development partners need to determine if national legal identity requirements could prevent mainstream development projects (e.g. in diverse areas such as health and education, development of small and medium enterprises, and delivery of utility services) from reaching target beneficiaries who lack the necessary documentation. This analysis should be conducted in the project design phase so that mitigating interventions can be incorporated. Development partners should also be aware that well-intentioned, but misguided interventions can generate increased corruption and public cynicism. Supporting registration laws that aim to create demand for registration by making benefits and opportunities contingent on birth certificates, without ensuring that registration offices have the capacity to distribute documents to all citizens, will stimulate the black market; as a result, the groups most in need of these benefits and opportunities may well be further excluded or compelled to pay bribes.

Complementary reforms are needed to make legal identity meaningful. The value of a civil registration

document is only as far reaching as the state's capacity to provide services and enforce laws intended to protect citizens' rights. Without complementary reforms, legal identity may make little practical difference in countries characterized by poor governance, weak institutions, and resource constraints. Alone, legal identity documents can accomplish little, but they can be an important part of a larger reform agenda for promoting inclusive development.

Understanding the country context, including the incentive structure of institutional actors, is essential. Establishing and maintaining a complete, effective, and accessible civil registration system requires sufficient funding, human resources, political priority, enforcement capacity, and administrative infrastructure. These essential inputs, however, can be hard to come by in the developing country context. Given this reality, technical approaches that work in developed countries cannot necessarily be transferred, unless adjustments are made to address critical issues and impediments.

Gauging political priority for registrations is essential. In an environment of competing demands for limited resources, civil registration may be a low priority item, particularly compared to other more urgent and concrete needs. Often the lack of political priority for civil registration is simply a function of insufficient funding to address the host of problems requiring state resources and the lack of powerful constituencies demanding reforms. Public officials may also be gaining from the status quo (e.g. working beyond mandatory retirement ages) and

therefore lack the incentive to push for reforms. Development partners should keep these factors in mind when planning interventions because if there is no political will to implement reforms, then they are not likely to succeed.

Donor-driven programs may not be sustainable. International pressure and donor support have engendered an increased level of political priority, domestic attention, and government engagement on the issue of legal identity in the three countries studied. However, the motivation for continuing registration work may end when donor funding dries up. Though dedicated civil servants may continue to power such programs, and perhaps, a "culture of registering" may take root, donors and governments should pay attention to signs that donor-initiated programs may be slowing down, and think creatively about how to sustain them once formal donor involvement comes to an end.

The sequencing of supply and demand interventions matters. The sequencing of interventions is particularly important, and reform agendas must carefully consider the dynamics of supply and demand related to legal identity. Unless identity documents serve some higher purpose and have some relevance to people's daily lives, they are unlikely to take the time, money, and effort to register. At the same time, if legislation that strictly requires identity documents to access important services and benefits is imposed, there is a clear and definite risk that instead of promoting inclusive development, legal identity could actually result in exclusion among vulnerable groups who tend to be less likely to register.



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.



LEGAL IDENTITY: What It Promises and What It Delivers

Legal identity¹ promises a host of goods that have tremendous potential to improve people's lives. Birth certificates are touted to provide greater access to services, benefits, and opportunities; greater protection of human rights and security; improved development planning and a more legitimate and equitable distribution of public resources. In states with a strong administrative infrastructure, the value of civil registration is self-evident. However, the findings of the field research in Bangladesh, Cambodia, and Nepal suggest that birth certificates and civil registration do not consistently deliver these promised goods in the developing country context.

A major advantage generally associated with birth registration is that it enables access to benefits and opportunities. The premise is that laws or policies make access contingent on providing formal proof of one's identity through an identity document, primarily a birth certificate. It assumes that benefits and opportunities are actually available. The research found that currently these assumptions do not always hold true, particularly in the developing country context, where few benefits and opportunities are available in the first place.

The research in Bangladesh, Cambodia, and Nepal investigated the nature of the relationship between lack of birth registration and patterns of exclusion from services, benefits, and opportunities. Does the lack of a birth certificate cause

vulnerable populations to be excluded from services and opportunities? If these groups had legal identity, would they have meaningful access to the benefits and opportunities they are currently denied? In general, the research found that the causal connections between legal identity and access depend on the country as well as the benefit, service, or opportunity in question. Due to budgetary constraints, few government services are actually available in the three countries researched. Those that are available can, in some instances, be obtained without presenting a birth certificate because more easily accessible substitutes, or no documents, are required. For example, all three countries in this study offer basic vaccina-

Does the lack of a birth certificate cause vulnerable populations to be excluded from services and opportunities? If these groups had legal identity, would they have meaningful access to the benefits and opportunities they are currently denied?

tions for children regardless of whether or not they have birth certificates. As regards education, proof of legal identity generally is not required to obtain access to primary education. However, access to scholarships, books, and secondary education may be contingent on proof of legal identity. When it comes to more sophisticated benefits and opportunities, the research found that vulnerable groups are often excluded, even if they have birth certificates and other required identity documents. For example, for many people, opportunities such as overseas study and government jobs are simply out of reach.

Child rights protection is a particular area where birth certificates are touted to play a critical role.

Nevertheless, initiatives to improve birth registrations remain relevant. In efforts to comply with their obligations under

the CRC, many countries are introducing policies that link legal identity and access to basic services. As countries develop and governments improve their capacity to provide basic services, these policies will make vital registration documents increasingly valuable. Moreover, as birth registration or citizenship certificates are often required for more sophisticated benefits and opportunities such as the capacity to register and transfer land, set up a business, or open a bank account, birth registration is linked to economic growth and development. A functioning and nondiscriminatory registration system also supports regional economic integration and aids countries such as Bangladesh and Nepal, which to some degree rely on remittances from overseas contract workers, as it provides passports that enable workers to travel to their place of employment.²

Another often-cited benefit of legal identity is that it can facilitate the safeguarding of human rights. The logic behind such statement is that birth registra-

tion provides the evidentiary link essential to enforcing legislation that is intended to protect the human rights. Child rights protection is a particular area where birth certificates are touted to play a critical role. UNICEF claims that “child exploitation and abuse appear to be on the rise and thrive on non-registration.”³ Birth certificates provide the state with a reliable means to verify a minor’s age. Without a birth certificate to serve as proof of age, victims may not be able to avail themselves of legally defined rights and protections. One example frequently mentioned is that successfully litigating a statutory rape case requires establishing that the victim is below the legal age of consent.

Weak civil registration has been linked to patterns of exploitation and abuse related to child labor, underage marriage, and trafficking. The extensive corpus of laws that make specific reference to age demonstrates the potentially far-reaching implications of birth registrations. That said, few cases of violations actually find their way into the courts. Legal enforcement is expensive and complicated; it requires transparency, commitment, and coordinated processes among a host of institutions. Victims may not have the financial means and know-how to access the legal system. Or, due to social and economic pressures, victims may view an abusive situation as preferable to their alternatives.

Again, these findings do not suggest that universal birth and civil registration is irrelevant to human rights protections. Rather, ground realities suggest that efforts to improve registration need to be closely linked to, and followed up by, efforts to build capacity to enforce these rights.

Finally, civil registration is often expected to aid governments in generating demographic statistics that can be used for more accurate and effective development planning. Conceptually, a fully functioning, universal system of civil registration can

produce detailed information on demographic trends, which can be analyzed to determine development priorities and direct resources to where they are most needed. Most of the literature on civil registration focuses on improving technical capacity to undertake civil registration, with a view to providing accurate and reliable demographic statistics that can contribute to planning development programs that are more responsive to citizens' needs.

For a civil registration system to generate useful statistics, the information recorded must flow to a central authority that has the ability and resources to consolidate and analyze the data. Building and maintaining the required capacity and institutions to accomplish these tasks is expensive. Is it realistic to expect developing countries to devote scarce resources to civil registration instead of more urgent needs?

Moreover, the use of civil registration statistics to inform development planning does not depend on technical capacity alone. This desired outcome assumes that unlimited resources are available, and that the budgetary allocation process consumes the information generated and yields social good maximization. The central assumption seems to be that politicians and governments would direct resources to respond to people's needs, if only they had more detailed information. However, resource allocation decisions do not take place in a politically neutral environment, nor are such decisions motivated necessarily by concern about social good optimization. This is not to say that resource distribution cannot be more responsive to better data, but to assume that it will become more responsive is misguided. What is missing from the literature is an empirical examination of the extent to which statistics actually influence policy planning and resource allocations.

Access to Benefits and Opportunities⁴

The research revealed that citizens, particularly vulnerable groups, are more motivated to register when they perceive that a birth certificate not only recognizes their existence, but also provides access to concrete benefits and opportunities. Some deduce from this that birth registration is a critical determining factor for individuals in terms of their quality of life. Accordingly, in their view, vulnerable groups with birth certificates are expected to be significantly better off than their counterparts without birth certificates. Therefore, government policies or legislation that



In considering the role of birth registration in improving the living standards of vulnerable populations, correlation should not be confused with causation.

makes birth certificates, or other identity documents obtained based on birth certificates, a prerequisite to accessing benefits and opportunities would be critical in improving the quality of life of those who are most in need of increased

assistance and opportunities.

This, however, is not necessarily the case. The nexus between birth registration and access to benefits and opportunities depends on certain

underlying assumptions that often are not explicitly acknowledged. This linkage assumes that:

- services, benefits, and opportunities actually exist;
- laws, policies, or practices make access strictly contingent on the possession of a birth certificate or identity documents derived therefrom;
- easily available alternatives are not acceptable; and
- other more fundamental economic, political, and social obstacles do not impede access.

Strategies aimed at increasing birth registration by making it a prerequisite for accessing services and opportunities may result in exclusion rather than inclusion.

When these assumptions hold true, birth registration and legal identity documents derived from birth certificates can indeed make a meaningful difference in people's lives. To the extent that these assump-

tions prove false, however, their utility and what they can deliver are diminished.

The research revealed that the assumptions laid out above are not congruent with the realities of the developing

country context. A realistic look at the linkages between birth registration and access illustrates that, in some cases, registration is a crucial factor; in some it is a contributing factor, while in others it is a nonfactor. In considering the role of birth registration in improving the living standards of vulnerable populations, correlation should not be confused with causation. It is undisputed that unregistered individuals are often excluded from even the most basic benefits and opportunities. UNICEF has empirically established that unregistered children tend to be poor, live in rural areas, have limited access to health care and education, and suffer from higher rates of malnutrition and mortality.⁵ This disturbing profile, however, does not logically lead to the conclusion that the lack of birth certificates causes these deprivations, or that providing birth certificates alone can lead to an improved standard of living for the poor. In fact, where governments have little capacity or resources to register its citizens, requiring the presentation of birth certificates to access benefits and opportunities may have the opposite effect. The findings are particularly relevant in light of recent initiatives where a demand for birth certificates is created by making it prerequisite for accessing services. Such strategies must be carefully planned and sequenced for birth registration to result in greater social and economic inclusion, and not exclusion.

GENERAL OVERVIEW

Bangladesh

The birth registration rate in Bangladesh has been reported to be between 7 and 10%.⁶ Although the Government of Bangladesh (GOB) has increasingly collaborated with aid agencies to encourage birth registration, until recently, the vast majority of citizens, who are rural and dependent on agriculture, continue to pass their lives without the need for any formal

proof of identity. Due to a dearth of resources, the Government provides few social benefits or opportunities to its citizens. Those that do exist—such as childhood immunizations, primary education, old age benefits, vulnerable group development funds, and vulnerable group food rations—are generally not contingent on birth certificates or documents derived from birth certificates.

Should the need to prove one's age or identity arise, so far, the lack of a birth certificate has rarely caused insurmountable problems for Bangladeshis because a variety of substitute documents that are not derived from birth certificates are both easily accessible and widely accepted. These range in formality from a secondary school certificate, to a letter from a local authority, to a sworn statement from the applicant. Though the accuracy of these substitutes is often highly questionable, these generally serve the intended purpose of facilitating access.

The situation described above, however, is currently in a state of flux, as Bangladesh's comprehensive new law, The Birth and Death Registration Act of 2004 (or: the 2004 Registration Act), awaits full implementation. The 2004 Registration Act, which replaces the outdated 1873 Birth and Death Registration Act, became effective in July 2006, but a 1-year grace period was granted to allow Bangladeshis to obtain birth certificates.⁷ When this new law comes into full effect, the production of a birth certificate will be mandatory for a wide range of services—from admission to all educational institutions, to obtaining any utility connection, to registering a business, to registering and transferring land, to obtaining a passport. The underlying motivation for the 2004 Registration Act was to increase birth registration and improve the delivery of those advantages linked to the birth certificate. However, some fear that it could create an additional barrier to accessing the few essential benefits and

limited opportunities available to Bangladeshis. As birth certificates become mandatory for accessing an increasing number of benefits and opportunities, there will be a surge in the number of applicants seeking these documents. Unless the Government can meet this increasing demand, both rent seeking and delays in delivering birth certificates will likely increase. As a result, vulnerable groups risk facing further exclusion from the benefits and opportunities that are legally linked to birth certificates.

Cambodia

Over the past 2 years, the Government of Cambodia, with international donor assistance, has made great strides in raising the country's birth registration rate. Through an intensive, nationwide mobile registration campaign, registration teams have distributed birth certificates to over 90% of the population.

However, birth certificates are by no means the most critical legal identity document in Cambodia. The country has an array of identity documents that are not derived from birth certificates, and are administered by different government agencies with their own unique rules, procedures, and application requirements.

Although proof

The 2004 Registration Act of Bangladesh and its implementing rules mandate the production of birth certificates for the following purposes:

- Obtaining passports
- Registering marriages
- Obtaining admission into educational institutions
- Obtaining employment in the formal sector
- Obtaining drivers' licenses
- Registering motor vehicles
- Inclusion in the voter's register
- Registering land ownership
- Opening a bank account
- Installing a utility connection
- Receiving a tax identification number
- Obtaining national ID cards
- Obtaining an export or import license
- Obtaining a contractor's license
- Obtaining approval for architectural design of buildings
- Obtaining trade licenses

Through an intensive, nationwide mobile registration campaign, registration teams in Cambodia have distributed birth certificates to over 90% of the population.

Historically, family and lodging books have been Cambodia's most common, durable, and useful form of identity document. According to the Ministry of Interior's (MOI) June 2005 statistics, 91% of Cambodia's population is accounted for in lodging books, and 88% is covered by family books. Family books, which are issued by the commune police, track close family members who are of Cambodian descent, along with any adopted children. These books contain the names of each member of a family. A family book may contain details on more than one "nuclear" family, as siblings or children with their own families may reside together. These families, whose members' names are found in the family book, comprise the "family group." Lodging books record the number and identity of people residing in one household, and track the numbers and locations of people in the country. Unlike family books, they do not identify familial relationships or nationality; they simply list the people living in a particular place. All heads of households must have one or be subject to a fine. Other documents that can serve to establish identity to access benefits and opportunities include national identity cards (NICs), passports, yellow cards,⁸ and marriage and death certificates.

Benefits and opportunities that various forms of legal identity—including, but not limited to a birth certificate—facilitate in Cambodia:

- Obtaining employment authorization
- Sitting for national examinations
- Opening bank accounts
- Accessing police services
- Accessing the courts
- Becoming a member of a union
- Registering a business
- Joining the military service
- Voting
- Running for public office
- Purchasing/registering land and motor vehicles
- Enforcing inheritance rights
- Receiving government subsidies
- Overseas travel/employment
- Obtaining other identity documents
- Receiving protection against sexual exploitation, child labor, and trafficking
- Receiving juvenile justice protections

of identity is often required to access public benefits and opportunities in Cambodia, this does not make birth certificates as valuable as one might expect. First, given Cambodia's state of economic and social development, the public benefits and opportunities available, even to Cambodians who have identity documents, are severely limited. Secondly, a birth certificate is not the only acceptable means to establish

identity. The Government tends to take a flexible approach in terms of the documentation required to establish identity.

Particularly in rural areas, local officials are often personally acquainted with the

people in their communities through social relationships that may go back generations. In this case, requesting an official identity document would seem overly formalistic and unnecessary. Even in the absence of such informal relationships, the various documents listed are generally interchangeable. Although an individual with no legal identity at all could face exclusion from certain benefits and opportunities, an overwhelming majority of Cambodians at least have a family or lodging book, which is currently sufficient for most purposes.

Given its recent success in increasing birth registrations, the Cambodian government is considering adopting stricter identity requirements for accessing benefits, such as school enrollment. However, the Government has been commendably cautious in this regard, as they recognize that a more narrow approach risks excluding vulnerable groups, who are less likely to obtain the required documents.

Nepal

In Nepal, UNICEF puts the birth registration rate at 35%, with the population registrar himself estimating the number closer to 15%.⁹

Nepal's system of legal identity is a patchwork of law, structure, and practice. It is frequently contradictory, inconsistent, and unclear and reaches but a fraction of the country's population. The organizational structure provides for little oversight and accountability for local level officials, who are on the front lines of registering vital events (birth, marriage, and death) and issuing certificates. This contributes to the problem of registrars imposing inconsistent and extralegal procedural requirements, such as demanding unnecessary documents and bribes. Even those who strive to do their job professionally face massive challenges due to severe underfunding for even the most basic infrastructure and supplies (including forms) and internal budgetary misallocations.

The most important identity document in Nepal is not the birth certificate but the citizenship certificate. The citizenship document establishes nationality, and must be presented to obtain many important benefits and opportunities. Although birth registration can help facilitate obtaining a citizenship certificate, presentation of a birth certificate is not strictly required. If proof of birth registration is not available, a school certificate is generally acceptable.

The conflict between the Nepalese government and the Communist Party of Nepal–Maoist (CPN–M) has at once made identity documents more desirable and even more difficult to obtain. In an effort to exert greater control, the Ministry of Home Affairs, since November 2005, has required identity documents, preferably a citizenship certificate, for crossing the India–Nepal border (traditionally open), and even for traveling within Nepal.

Many advantages linked to the citizenship certificate are beyond the reach of most ordinary Nepalis, and particularly vulnerable groups, such as ethnic minority communities, regardless of whether or not they have the appropriate documents. These include the opportunities to sit for professional certification exams, open a bank account, or incorporate a company. Due to economic and social barriers, these prospects tend to be remote for all but the elite. Other social benefits tied to legal identity, however, are very relevant to the needs of vulnerable groups and have the potential to improve their living standards. For example, access to widowhood and senior citizen allowances, benefits for internally displaced persons (IDPs), and compensation for victims of the armed conflict depend on having the proper identity documentation—generally a citizenship certificate—while access to scholarships and free school books require a birth certificate. As a result of difficulties in obtaining identity documents, many people, particularly poor people and

ethnic minorities, are deprived of these critical benefits. Due to discriminatory provisions and burdensome evidentiary requirements, many Nepalis have been unable to acquire citizenship. Nepal’s new citizenship law, which Nepal’s House of Representatives passed in November 2006, will hopefully help alleviate these problems.¹⁰

The high demand and limited supply of the citizenship certificate and other identity documents in Nepal create a vast, highly organized and efficient alternative market. For many, the prospect of obtaining a viable, if illegal, identity document faster, cheaper, and more reliably through illicit or quasi-legal channels appears highly attractive. While this market may meet the needs of the wealthy or middle class, it appears to be cost-prohibitive for those most in need of assistance.

LINKS TO SPECIFIC BENEFITS AND OPPORTUNITIES

Education and health care

Education and health care are among the most basic and critical services a government can provide its people. The implications of access to health and education are wide reaching. A compelling body of research links education and health care to economic growth and development. This literature recognizes that investing in human capital results in future economic returns through increased earning potential and productivity among workers. Unfor-



tunately, this evidence is often not reflected in national budgetary allocations for the ministries of education and health.

Education

According to the *2005 Human Development Report* of the United Nations Development Programme, Bangladesh, Cambodia, and Nepal have among the lowest levels of public expenditure on education in the world, as a percentage of Gross Domestic Product (GDP). As a result, households in Bangladesh and Cambodia have been forced to cover between 50–75% of education costs.¹¹ For many rural families who live by subsistence agriculture,

education costs are the highest expense faced annually. This financial burden often results in low-income parents opting not to send their children (especially girls) to school or funding them only through primary levels, at

which point they enter the workforce to help support their families.

Due to economic and social realities in Bangladesh, Cambodia, and Nepal, education-related indicators tell a mixed story. Primary enrollment rates are relatively high.¹² However, with young boys entering the job market and with early marriages and household responsibilities for girls, secondary enrollment levels are

strikingly low. These low enrollment rates translate into fewer opportunities and less productivity.

At the time the research was conducted, it was found that children in the three countries studied were rarely barred from attending classes at the primary school level because they did not have birth certificates. In some cases, however, identity requirements for school enrollment were inconsistent, confusing, or unclear. For example, in Bangladesh, practices have varied widely by location because of the absence of central level rules or directives. In urban areas and locations where birth registration programs have been implemented, such as Dhaka and Rajshahi, school authorities are more likely to condition admission on the submission of a birth certificate.¹³ Under the 2004 Registration Act, a birth certificate is required for admission into all educational institutes.

In Nepal, a birth certificate is not legally required to be submitted for a child to attend school. But in reality a child seeking to enroll in a government school may be denied admission without one. This was verified by focus group discussion (FGD) participants who complained that one of the adverse consequences of not registering their children's births is the denial of school admission.

Moreover, while children may be allowed to attend classes without a birth certificate, they will not have access to scholarships and free books, and will not

While children may be allowed to attend classes without a birth certificate, they may not have access to scholarships and free books, and may not be able to sit for the school-leaving certificate.

Confusion and irregularities on the legal identity requirements for school attendance in Nepal stem from the government's lack of clarity and consistency in issuing rulings on the matter. A 1996 circular of the Ministry of Local Development (MLD) instructed schools to require birth certificates for school enrollment. This policy has since been reversed, but some complain that its legacy remains problematic, though school principals claim not to require formal certification for school admission. At the end of 2003, the MLD issued a new circular to all district development committees (DDCs), informing local registrars that children without birth certificates should not be deprived an education. However, many remain unclear on what is required and what is not. It is plausible that this confusion is caused by the fact that while the MLD's original circular was issued to schools, the retracting circular was issued to the DDCs.

be able to sit for the school-leaving certificate.¹⁴ These requirements have a disproportionate impact on *dalits*¹⁵ and other vulnerable groups, as they face greater obstacles to registering.

Where laws may mandate the production of a birth certificate for admission into primary schools, substitutes may be readily accepted in some cases. This flexible approach reflects the governments' recognition that education is an essential service and that stricter requirements could result in excluding vulnerable populations. In Bangladesh, most schools have relaxed requirements and readily accept alternatives in lieu of a birth certificate, especially for older children seeking admission.¹⁶ With few exceptions (e.g., the greater Rajshahi district), headmasters of government schools recognized the impracticality and potential danger of insisting on birth certificates, in light of high rates of poverty and illiteracy among the local population.

In Phnom Penh and other urban areas in Cambodia, some form of identity is supposed to be attached to applications for school enrollment. The birth certificate, however, is not the only acceptable document for purposes of enrollment. Participants in FGDs reported that acceptable documents for the purpose of school enrollment include national identity cards (NICs), family books, lodging books, and yellow cards. Moreover, as part of a campaign to eradicate illiteracy, parents and guardians are encouraged to bring their children to school, regardless of the availability of identity documents.

In several Asian countries, in the absence of any formal proof of age, a child's eligibility to attend school may be determined by the ability to place a hand over the head and reach and touch the opposite ear. The ability to do this is accepted as informal proof that the child meets the age requirement for school attendance.¹⁷



Despite the flexible requirements for primary school enrollment, it is interesting that many focus group discussants in Cambodia still considered birth registration important for this purpose. This may indicate a belief that the Government will tighten school admission requirements over time, particularly given its increasing emphasis on birth registration. Officials from the Ministry of Interior (MOI) reported that they would only formally institute a policy of linking birth registration and school enrollment if and when they achieve at least a 95% registration rate. This policy is commendable in that it prevents excluding unregistered children from a critical benefit provided by Government.

Identity documents other than a birth certificate play a significant role in provid-

ing access to other educational opportunities, which are usually unavailable to vulnerable groups regardless of whether or not they possess legal identity. In Cambodia, eligibility to sit for a national exam requires that the applicant present a school identity card with a photo.¹⁸

Health care

Similar to spending levels for the education sector, as a percentage of GDP, national budgetary allocations for health care in Bangladesh, Cambodia, and Nepal are among the lowest in the world.¹⁹ As a result, health care services for children are very limited. While free vaccinations are provided in all three countries, health indicators such as the under-five mortality rate remain abysmal, especially for children from poor families. In Nepal, for example, despite government provision of free vaccinations, outbreaks of preventable diseases that predominantly affect children, such as Japanese encephalitis, are still rampant. One of the reasons is that state-run hospitals are few and far between in Nepal, where the decade-long violent conflict has restricted government health care to a few large towns and cities. In Cambodia, the overall use of public health facilities is very low (at around 0.3 visits per person per year), as the country's under-resourced public health services have little to offer the rural poor.²⁰ Simi-

larly, due to the low quality of health care available at the district and lower levels, diarrhea and other communicable diseases continue to be major causes of death among children in Bangladesh.²¹

Although the free health services available in Bangladesh, Cambodia, and Nepal are severely limited, access is not contingent on presenting a birth certificate or other formal documentation of identity. Free childhood immunizations and vitamin A drops are among the few benefits that the GOB provides to its citizens. Because only a small percentage of births are registered, the GOB has refrained from making access to these critical services contingent on formal proof of identity. Similarly, in Cambodia, all children are entitled to receive vaccinations, regardless of their registration status. The only documentation officially required to receive vaccinations is a yellow card.²² Generally, however, even children without yellow cards are eligible to receive medical benefits.²³ In Nepal, interviews with officials of the Ministry of Health and Population and the Ministry of Industry Commerce and Supply consistently indicated that no birth registration or other legal identity documents are required for children to receive health services such as vaccinations, vitamin A drops,²⁴ and antiretroviral drugs for the human immunodeficiency virus.²⁵ Similarly, identity documents are not required for seeking medical treatment in hospitals or nursing homes.

In the three countries studied, governments appear to recognize that from a public health perspective, the danger of deterring unregistered individuals from accessing essential health services far outweighs the potential benefit of increasing registration. Rather than making benefits contingent on formal proof of identity, some governments and donors have undertaken efforts to introduce birth registration through avenues where public benefits, such as childhood vaccinations,



are already offered. These initiatives tack birth registrations onto service delivery programs. Thus, when citizens come to avail themselves of essential benefits, such as immunizations or vitamin A drops, their births are registered. This “one-stop-shop” strategy of utilizing essential services as a platform to register births is a promising approach for promoting registrations.

Social welfare benefits

Legal identity requirements for accessing social welfare benefits could present a serious obstacle for the disadvantaged populations these benefits aim to assist. Those vulnerable groups most in need of government assistance tend to be the same groups who are socially excluded and are least likely to have registration documents. Since the governments of Bangladesh, Cambodia, and Nepal offer little by way of social welfare assistance, ensuring that these scant resources reach those most in need is essential.

Bangladesh takes an accommodating approach to the identity requirements for accessing social welfare benefits, which are provided to the elderly and other vulnerable groups.²⁶ In the absence of a reliable means to establish age, however, determining who is eligible to receive government stipends is often problematic. Most Bangladeshis genuinely do not know their exact age. Local officials interviewed explained that if an applicant has no formal proof, the applicant’s presumptive age is roughly calculated based on physical appearance or on the fact that he or she has grown children. As a result of this unempirical (but flexible) approach, in some cases, deserving applicants are deprived of assistance, while in other cases benefits go to unqualified recipients. Many of the officials who were interviewed, particularly in the rural areas, emphasized the practical difficulties they face in ensuring that welfare benefits are properly distributed.²⁷

On the other hand, among the three countries, Nepal stands out for conditioning the distribution of social welfare benefits on strict and often burdensome identity requirements. Social welfare benefits are limited to those who can prove their citizenship status,²⁸ although presenting the citizenship certificate does not always suffice. For example, widows above 60 years of age are entitled to widowhood allowances, but must produce a relationship certificate as well as death and citizenship certificates of the deceased husband. Reports indicate that these requirements have resulted in a recent increase in applications for death and citizenship certificates, particularly among the elderly.

Obtaining these additional documents on top of the citizenship certificate makes access to benefits even more difficult. The documentary requirements to obtain a certificate of relationship are particularly onerous. The applicant must submit the relative’s citizenship certificate along with citizenship certificates of 7 witnesses to the application.²⁹ However, depending on the applicant’s status and the nature of the relationship in question, additional requirements could include relevant birth, death, marriage, and migration certificates.

In response to its conflict with the CPN-M, the Government of Nepal has initiated a compensation program, whereby NRs150,000 is provided to assist surviving family members of individuals killed in the conflict. This benefit, however, is only available to those who can establish Nepali citizenship. For example, a focus group discussant in Nawalparasi, a district on the Indian border, reported that one of his neighbors, who had lived in the area for more than 80 years, was killed in the conflict. However, because the man died without a citizenship certificate, his son could not obtain a citizenship certificate to present to the authorities. As a result, the family was denied compensation.³⁰



Formal Sector Opportunities and Mandatory Retirement

Formal Sector Opportunities

Legal identity documents—though not necessarily birth certificates—are often officially required to access a number of formal sector opportunities ranging from applying for government jobs to establishing professional credentials, opening a bank account, or incorporating a company. Unfortunately, in Bangladesh, Cambodia, and Nepal, these opportunities

tend to be remote for the vast majority of the population, who rely on agriculture and the informal economy for their livelihoods.

In Cambodia 85% of 6 million workers are in the informal economy, and this accounts for 62% of GDP.

If the supply of birth certificates cannot keep pace with increasing demand resulting from the 2004 Registration Act, there is a definite risk that rent seeking will increase and that vulnerable populations will face further exclusions.

In Nepal, 81% of the labor force is employed in the agricultural sector.

There are some indications, however, that this scenario is gradually changing. With agricultural economies under stress, urban migration has increased in recent years, particularly among the rural poor. Foreign direct investment, particularly in Bangladesh and Cambodia, has led to growing numbers of factory jobs, which are generally viewed as highly desirable, despite the sometimes harsh working conditions. With these shifting economic dynamics, legal identity may take on greater significance for greater numbers of people. While legal identity is not often identified by development organizations as a lead issue in determining the pace of movement to an increasingly formal economy, it may be critical for individuals in terms of their ability to participate in the formal economy when opportunities arise. Therefore, the development community needs to pay attention to what kind of legal identity document is required of its target beneficiaries so that they may be able to access formal sector opportunities.

Bangladesh's 2004 Registration Act and its draft rules seek to regularize and tighten the requirements for obtaining access to opportunities that fall outside the realm of basic needs. The 2004 Registration Act and its implementing rules mandate the production of a birth certificate to: (i) obtain employment in the formal sector (including government, nongovernment, and autonomous institutions); (ii) open a bank account; (iii) obtain an export or import license; (iv) receive a tax identification number; (v) obtain a contractor's license; (vi) gain sanction/approval for the architectural design of buildings; (vii) register vehicles; and (viii) obtain trade licenses. It is unclear how the 2004 Registration Act will impact citizens' ability to participate in these affairs given that the grace period for Bangladeshis to comply with the 2004 Registration Act

before its implementation had not yet ended at the time this publication was being prepared. It seems safe to predict, however, that the increased emphasis on birth registrations will increase the perceived importance of legal identity. However, if the supply of birth certificates cannot keep pace with increasing demand resulting from the 2004 Registration Act, there is a definite risk that rent seeking will increase and that vulnerable populations will face further exclusions.

In spite of increasing birth registration rates in recent years, Cambodia does not yet require that the birth certificate be the lone identity document that would enable access to formal sector opportunities. Cambodia takes a broader approach on the range of acceptable documents that need to be presented to gain access to formal sector opportunities.

Under Better Factories Cambodia, a program led by the International Labour Organization (ILO), investors who set up garment factories in Cambodia have to comply with labor standards, which strictly prohibit the employment of workers under the age of 15 years and limit the working hours of employees under the age of 18.³¹ Applicants seeking these highly coveted jobs must verify their age through an identification card, a birth certificate, a family book, or a voter registration card. Female garment workers interviewed claim that job applicants often present their voter registration cards to prove that they are 18.

FGD participants identified family books (followed by lodging books and then NICs) as the legal identity documents of choice for employment authorization. Few were aware that birth certificates could also be used for this purpose.³² The birth certificate is likewise not the only relevant document for obtaining a government job.³³ The birth certificate may not be required at all for opening a

bank account³⁴ or obtaining microcredit loans.³⁵

In Nepal, the citizenship certificate, and not the birth certificate, is required to access formal sector opportunities. These opportunities are reserved for Nepali citizens. The submission of a citizenship certificate is required to enter the army,³⁶ the armed police,³⁷ and the civil police force.³⁸ Similarly, entrance and licensing examinations for major professions such as law,³⁹ the civil service,⁴⁰ medicine,⁴¹ and health⁴² are restricted to Nepali citizens, who must establish eligibility by presenting citizenship certificates. Obtaining permission to publish a newspaper or operate a printing press is contingent on submitting the citizenship certificates of the publisher, editor, and members of the board of directors.⁴³

The formal processes for establishing a business in Nepal also mandate that all those involved are Nepali citizens. The submission of a citizenship certificate is required to incorporate a company, serve on a board of directors,⁴⁴ establish a private firm,⁴⁵ and purchase shares or debentures of a company.⁴⁶ Other opportunities to participate in the formal economy generally only extend to individuals who can establish Nepali citizenship. For example, the internal rules of most banks require the submission of a citizenship certificate to open an account or to access credit.⁴⁷ This requirement also applies to companies or legal persons, as the promoters' citizenship certificates or passports must be submitted along with the company's certificate of incorporation.

Mandatory retirement

Recognizing the dangers of linking access to benefits solely with birth certificates, some governments such as those of Bangladesh and Cambodia accept a wide variety of identity documents aside from, or instead of, birth certificates to satisfy identification requirements. Although this might appear as being more inclusive, this,

In Nepal, a dispute arose over the retirement date of a high level member of the judiciary due to inconsistencies regarding his birth date as recorded in various identity documents. The high level judge announced his date of retirement as 29 July 2005 and refused to retire on the date fixed by the personnel records office. The matter was referred to the Judicial Council, which ultimately upheld the date claimed by the retiring judge. A new practice has since been instituted to help prevent such age controversies. Whereas formerly the holder's age was noted in the citizenship certificate, now the exact date of birth is recorded.

Decreased reliability of any one document may very well lead to a situation where governments feel the need to strictly tie benefits and opportunities to a single document, with potentially exclusive effects.

too, is not without its problems.

The research revealed that definitively establishing age is not in the interest of government officials and other formal sector employees who are subject to mandatory retirement ages. Where no reliable system of birth registration exists, there is no reliable record of a person's birth date. Birth dates recorded in identity documents obtained later in life, such as citizenship certificates and national identity cards are often just an educated guess. Employees facing mandatory retirement thus have an economic incentive to falsify their birth dates in order to

prolong their earning potential. As a result, finding discrepancies among the dates of birth recorded in various identity documents is common. The net effect is that, while accepting many identity documents can seemingly improve access to benefits and opportunities, this decreases the reliability of any one identity document, particularly when persons routinely resort to using a variety of documents with different, fraudulent information, to suit various needs. Decreased reliability of any one document may very well lead to a situation where governments feel the need to strictly tie benefits and opportunities to a single document, with potentially exclusive effects.

International travel and internal migration

Overseas travel

Overseas travel for employment is among the most tangible and highly desired opportunities with clear-cut and direct links to identity documentation. In countries like Bangladesh, Cambodia, and Nepal, many workers look overseas for the chance to earn a better living. Where domestic economic opportunities are bleak, the prospect of a job overseas can have tremendous appeal. Many regard employment abroad as a ticket to greater opportunity, upward mobility, and a more prosperous future for themselves and their families. Registration officials interviewed in Bangladesh consistently identified international travel as the number one reason people are motivated to apply for registration documents. The robust market for falsified and counterfeit travel documents, which is discussed below, further attests to the instrumental value of these documents. Among registration documents available through unofficial or quasi-official channels, those that facilitate travel generally have the most robust markets and yield the highest prices.

For developing countries, economic migration also has significant implications for GDP growth and poverty alleviation, with overseas remittances generating desperately needed capital inflows. Bangladesh, which is a major labor exporter, consistently ranks among the countries with highest total remittances. In fiscal year (FY) 2006, Bangladesh received \$4.81 billion in remittances from some 3 million expatriate workers.⁴⁸ With declining tourism due to the conflict in Nepal, Nepali workers are increasingly migrating abroad for employment opportunities. In FY 2005, remittances to Nepal rose by 17.6% to \$1.1 billion.⁴⁹

For overseas travel, the ultimate document required is invariably a passport. The laws currently enforced in

Bangladesh, Cambodia, and Nepal generally do not require the presentation of a birth certificate. The exception—governing the issuance of passports to minors in Cambodia—requires a birth certificate and two other documents to be presented.⁵⁰ In Nepal, a citizenship certificate, and not a birth certificate, is required to obtain a passport. As minors are not eligible for citizenship certificates, passport applicants under the age of 16 must submit minor identification cards and their parents' citizenship certificates. Without a citizenship certificate, it is not possible to obtain a passport; and without a passport, international travel is not possible.⁵¹ A migration certificate, which officially attests to one's status as a permanent local resident, is also required from migrants who wish to obtain both a passport and a citizenship certificate. Because many Nepalis do not have the required documentation, they are denied opportunities to pursue higher education, business, and employment overseas.⁵²

Although the passport application form that Bangladeshis are required to fill up does not state that they need to present birth certificates or citizenship certificates in order to obtain a passport,⁵³ some city corporations such as Sylhet require these supporting documents. In Sylhet, high demand for certificates has resulted in severe pressures on registration staff. Bangladesh's 2004 Registration Act emulates Sylhet in adopting the requirement of a birth certificate to obtain a passport on a nationwide basis. How the Government will respond to the increased demand for birth certificates that this new requirement is likely to generate is still unclear.

Extralegal requirements and documentary hurdles aside, the formal and informal costs of obtaining a passport and supporting documents also limit access. In Bangladesh, the Government has raised the official fees for procuring a passport, partly in response to a shortage of passport books and increased costs.

Many Bangladeshis opt to obtain passports through unofficial channels instead of following the official procedure and paying a special fee for official expedited service. The use of middle persons and frequent demands for bribes and speed money also increase costs to passport seekers. In Cambodia, official fees for obtaining passports are high, amounting to some \$100 and additional charges apply for rush service.⁵⁴

The foregoing obstacles to obtaining passports—and therefore access to international travel—have contributed to the growth of alternative markets for identity documents. Frequent resort to these alternative markets can decrease international acceptance of passports. For example, Bangladeshi passport holders face various problems abroad, especially due to increased security concerns in the wake of the 11 September 2001 terrorist attack in the United States of America.⁵⁵ This highlights the fact that, although alternative markets might appear to facilitate access to international travel, widespread forgery and irregularities in obtaining passports might result in receiving states making access to entry and employment in their jurisdiction more difficult for all passport holders, whether or not they had engaged in forgery or fraud in obtaining passports.

Internal migration and legal identity in Nepal

As mentioned above, obtaining a passport in Nepal requires the presentation of a citizenship certificate and a migration certificate. The migration certificate is also required of migrants who wish to obtain a citizenship certificate. A migration certificate, which attests to one's status as a permanent local resident of Nepal, is required for domestic migration and

Some form of legal identity is required to obtain a passport, a prerequisite for working overseas.

short-term travel within the country, notwithstanding that Nepal's Constitution explicitly recognizes freedom of movement as a fundamental right.⁵⁶ Under the law, migration must be registered and duly certified.⁵⁷ Prior to moving, individuals are required to notify the Ministry of Land and Development (MLD) of their intention to migrate.⁵⁸ Then, within 35 days of arriving at their destination, migrants must submit a migration certificate to the local registrar.⁵⁹

The conflict in Nepal has increased the need for migration certificates, as IDPs flee their homes in search of safety, often without any documents. Conflict has made documentation more difficult to obtain, due to the lack of functioning institutions at the local level. IDPs are especially crippled by these obstacles; as a result, they often cannot get migration certificates and passports.

The conflict also had an impact on short-term travel, both within the country and across the India–Nepal border, which until November 2005 was open. Identity documents, preferably citizenship certificates, are now compulsory even when traveling domestically.⁶⁰ Similarly, the Ministry of Home Affairs has mandated new identity requirements for travel to India.⁶¹

Property ownership, land registration, and related inheritance rights

Economists have identified insecure property rights as a major impediment to economic growth and development.

Without land titles, real property owners are often unable to use their assets to their fullest potential. Many assert that insecure property rights constrain business opportunities, as unregistered land cannot serve as collateral to access the credit needed to finance entrepreneurial endeavors. Research in

Bangladesh, for example, indicated that 35% of firms regard lack of access to land as their main obstacle.⁶² Yet, despite the potential of land registration to catalyze economies and help alleviate poverty, only a fraction of the property in developing countries is formally registered. According to economist Hernando De Soto, developing countries are sitting on \$9.3 trillion worth of unregistered property, or what he refers to as “dead capital.”⁶³ High transaction costs and inefficient registration systems deter many from registering their land.

While legal identity alone cannot solve this complex and multidimensional problem, it is a necessary prerequisite to implement a system of secure property rights. Recording and documenting property transactions, including inheritance rights, require a reliable means to establish identity and familial relationships. Although birth and civil registration systems could serve this purpose, the role that birth registration currently plays in accessing and enforcing property rights differs from country to country.

Bangladesh

In Bangladesh, land registration is listed among the many enumerated benefits contingent on birth certificates under Bangladesh's 2004 Registration Act. How this requirement will play out in practice, however, is not yet clear. But even as the 2004 Registration Act has yet to come into force, Bangladeshis appear to perceive a strong link between birth certificates and land ownership. Officials interviewed in Bangladesh identified facilitating land transfers as one of the primary reasons people seek out registration certificates. Particularly in inheritance cases, the lack of identity documentation often results in lengthy and expensive litigation, which not only delays the disposal of cases, but also contributes to the courts' endemic backlog. As one expert observes, “A host of litigation and legal proceedings take place

Legal identity is a necessary prerequisite to implement a system of secure property rights.

simply because no one has any record of birth, as in the case of succession for obtaining succession certificate. Had birth registration been firmly in place, there would not have been any need for a judicial proceeding for simply determining who are the sons and daughters of a deceased person.⁶⁴

Cambodia

The link between birth registration and property ownership is not as strong in Cambodia. Land registration proceedings, which the Ministry of Land Management, Urban Planning and Construction oversees, are started by identifying the land owner, generally through the latter's submission of a NIC, a passport, or family book. If the landowner does not have any of these documents, the Land Registration Committee will accept an Act of Genealogy issued by the local commune authorities. Obtaining this substitute document is likely to delay the registration process and entails significant opportunity costs.⁶⁵

The family book is particularly important in enforcing in court a person's claim of land ownership based on that person's being in open, continuous, and exclusive possession and occupation of a parcel of land within 5 years prior to 30 August 2001.⁶⁶ The family book records the person's residence on the land as well as the date of the book's issuance.

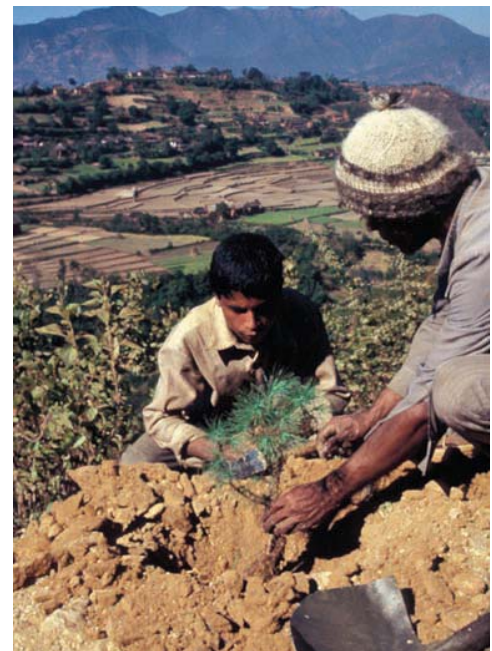
The Law on Property/Land Law of 1992 governs succession and inheritance. Although the passage of the Sub-Decree on Systemic Land Registration (2000) has raised questions on the applicability of some of the former law's provisions, courts largely follow the 1992 law, which gives precedence to the deceased's will as the primary determinant of inheritance. If a will is not available, the Constitution and the Marriage and Family Law grant a legitimate wife the right to inherit property from her deceased husband.⁶⁷ If the woman married the deceased after

1989—when the Marriage and Family Law was passed—courts require that she present a marriage certificate to prove her status as a legitimate wife.⁶⁸ Accordingly, a widow who married after 1989 but does not have a marriage certificate may find it difficult to prove her right to inherit property from her husband. As regards the proof required of children, including those born outside of wedlock, the practice is to present at least one of the following identity documents to prove one's right to inherit from the deceased: a family or lodging book; NIC; a birth certificate; student identification; or a marriage certificate.⁶⁹ If a child is unable to produce any of these documents, the courts may rely on testimony from the surviving parent or evidence from siblings or neighbors.⁷⁰

Despite the provisions described above, the majority of Cambodians do

not possess any documentation establishing land ownership. Very few focus group participants were aware of the documentary requirements for purchasing, registering, and inheriting property. This may be due in part to the fact that the system for land registration has only recently been integrated with legal identity requirements.⁷¹ Moreover, systemic titling procedures have faced problems in implementation.⁷²

Despite the existence of title records, judges sometimes require additional proof of ownership, and courts reportedly remain incapable of enforcing land rights.⁷³ As a result, conflict and human rights abuses in Cambodia continue to



stem from land tenure insecurity. Notwithstanding the enactment of laws that allow the poor to use a variety of identity documents as proof of land ownership, land-grabbing and evictions by dominant interests reportedly continue to displace the poor.

Nepal

In Nepal, while birth registration and property rights are not directly linked, there is a strong link between other identity documents and property rights. Nepal's Constitution guarantees the right to acquire, own, sell, and dispose of

personal and real property.⁷⁴ In actuality, however, the right to purchase immovable property within the territory of Nepal is contingent on possession of a citizenship certificate.⁷⁵

Without citizenship certificates, a substantial portion of Nepalis find that they are unable to enforce their constitutional right to property ownership. Efforts to acquire or maintain property, particularly in cases of inheritance, often pit family members against one another.

In addition to the citizenship certificate, land registration authorities may require additional documentary support, depending on the

nature of the property transaction. For example, to transfer land, other required documents may include a relationship certificate, a recommendation from the concerned village development committee (VDC)/municipality, a birth certificate, and a death certificate. Cancellation of land registration requires a copy of the deed of compromise endorsed by a court, the judgment of the competent authority, or the deed of will and a death certificate. To register land on the basis of *Nissa* (old evidence) requires the submission of the previous and the new land ownership certificates, a copy of the field book/blue print of the land, and a *sarjamin* (deed of inquiry).

Each additional document makes the recognition and enforcement of one's property rights more complicated and costly. In the case of land transfers, obtaining the required certificate of relationship—1 of 4 required documents other than the citizenship certificate—is very burdensome and requires the presentation of more than 7 additional documents.⁷⁸

Aside from these cumbersome formal procedures, reports indicate that extralegal requirements are sometimes imposed. For example, land registration officials have refused to transfer ownership of inherited property to female applicants if their family name differed from that of their husbands. It has also been reported that some land registration officials have even demanded that the female applicant change the family name in her identity document to match that of her husband, although this is not legally required.⁷⁹

Registering to vote

Legal identity documents can facilitate the compilation of voter registration lists, and help ensure that eligible voters are not excluded from exercising this fundamental right. The constitutions of Bangladesh, Cambodia, and Nepal grant citizens the right to vote, and all three countries have

A Nepalese widow filed a case claiming a share of her deceased husband's property. The case was decided in her favor, but she needed proof of citizenship to transfer the property into her name. The widow requested her brother-in-law's assistance to establish citizenship, but he refused to help. The brother-in-law recognized that her lack of citizenship served his interest, as he would retain the entire parcel of land. As a result, the widow was denied her rightful share of the property, even after years of litigation and a judgment in her favor.⁷⁶

The citizenship requirement for property registration fuels the market for fraudulent documents, particularly among people of Indian origin who have settled in Nepal's *tarai* region. Out of 21 ongoing citizenship cases at the Supreme Court, 16 are from the *tarai* districts. Defendants in false registration cases tend to be poor farmers or small business owners.⁷⁷ Sadly, 12 of the 21 cases reviewed for this study resulted from people reporting their relatives for allegedly providing false registration information. These cases are often motivated by disputes over property or inheritance rights.

healthy voter turnout rates.⁸⁰ This is facilitated by the lenient requirements for voter registration. The research consistently found a flexible and broad approach to voter registration across all three countries. The relaxed identity requirements for voter registration may reflect the fact that politicians have a strong incentive to ensure that constituents are able to participate in the electoral process. An equally plausible explanation is that less stringent identity requirements for voters allow politicians greater ease in manipulating elections. Further research would be required to test these hypotheses.

Bangladesh

In Bangladesh, only citizens who have reached their 18th birthday are included in the voters' list. Although the Secretary of the Election Commission of Bangladesh has acknowledged that birth certificates are the most reliable method for determining an applicant's age,⁸¹ the Election Commission applies flexible standards in determining eligibility for inclusion in the voters' list,⁸² as the vast majority of Bangladeshis do not have birth certificates. Thus far, the Election Commission has employed a pragmatic methodology that favors inclusiveness over precision. In 2000, the Election Commission Secretariat issued a directive regarding the procedures to be followed in collecting and authenticating information for the voter registration list.⁸³ According to this directive, if an applicant is unable to supply his correct date of birth, the data collector is instructed to record the season (summer, monsoon, winter) in which the applicant was born.⁸⁴ While the relevance of the season is not entirely clear, this directive reflects the reality that many Bangladeshis do not know their dates of birth.⁸⁵

The 2004 Registration Act will provide a stark change in policy, as it strictly mandates the production of a birth certificate for one to be included in the voters' register. If implemented, this

provision could politicize birth registrations since elected officials will have a personal incentive to ensure that their constituents are included.⁸⁶ Strategies to take advantage of politicians' interest in working for the inclusion of their constituents in birth registries may be useful to consider, particularly because the 2004 Registration Act makes birth registration a requirement not only for voters' registration but also for access to many other benefits and opportunities.

Cambodia

Cambodia conditions the right to vote on age and citizenship criteria, but takes an inclusive approach when it comes to establishing eligibility. Officially, the registration process proceeds as follows: First, local authorities compile an initial list of qualified voters from the family and lodging book registers. Then, individuals on the list are summoned to register at the office nearest their residence. To complete the registration process, individuals must appear in person and establish their identity to the reasonable satisfaction of the registration officer. Acceptable identity documents generally include the following: NIC, an employment card, a civil servant card, a student identity card, a family book, a lodging book, a birth certificate, or any other document that proves both legal identity and age. Once registered, the applicant is issued a registered voter card to present at the polls. In practice, however, officials responsible for voter registration often go door-to-door and register eligible voters, based on lists compiled from lodging and family book registers. Perhaps because of this, only a small number of focus group participants were aware that formal legal identity is needed when registering to vote. Given Cambodia's exceptionally high voter turnout rates, this lack of awareness most likely indicates that the legal identity requirement for voter registration is not strictly enforced, particularly in rural areas.

Nepal

In contrast to nearly every other advantage in Nepal, a citizenship certificate is not required to participate in the country's elections. Although the right to vote is constitutionally reserved to citizens aged 18 and over, a broad range of documents are accepted to establish one's eligibility. To facilitate public participation in Nepal's electoral process, the Government enacted the Voter's Identity Card Regulation in 1996 and has since started issuing voter's identity cards to various constituencies. Since these cards have not yet been issued to all constituencies, however, voters must bring another form of identity to cast their votes.⁸⁷ The Election Commission publishes notices before an election to inform voters of this requirement. The range of acceptable documents is quite wide. For example, in a published notice prior to the municipal elections, held in February 2006, the list of approved identity documents included: a citizenship certificate, land ownership certificate, press representative pass issued by the Department of Information, any identity document issued by any government office or by an educational institution, a recommendation letter from a VDC or a municipality, or an authentic identity card from any other institution.⁸⁸ Surprisingly, a citizenship certificate is not legally required for the issuance of a voter's identity card, provided the name of the concerned voter is included in the voters list.

CONCLUSION

Our findings on the link between legal identity and access to benefits demonstrate that: (1) birth certificates are by no means the only document used to verify identity as a prerequisite to accessing benefits; (2) although multiple legal identity documents can provide various modes of access to benefits and opportunities, they can decrease the value of all identity documents; and (3) tying benefits to a single

identity document—whether or not a birth certificate—does not always further social and economic inclusion either.

Particularly when governments have yet to improve their capacity to provide basic services or to ensure universal registration, tying benefits to a single document could hinder the intended beneficiaries of universal birth registration efforts. Poor and vulnerable groups tend to be less likely to register. The danger in making access to benefits and opportunities contingent on legal identity is that unless all citizens are registered, these policies may contribute to patterns of exclusion particularly among these poor and vulnerable groups. For example, if birth certificates are required for school enrollment, then the lack of registration will impede access to free education, resulting in low literacy rates and limited opportunities among unregistered children.

Nevertheless, initiatives to improve birth registrations remain relevant because many countries are introducing policies that link legal identity and access to basic services. As governments improve their capacity to provide basic services, these policies will make vital registration documents increasingly valuable. One of the important questions that this raises concerns the sequencing of reforms, which is further elaborated below. Additionally, some jurisdictions are considering the idea of imposing punitive sanctions for nonregistra-

The danger in making access to benefits and opportunities contingent on legal identity is that unless all children are registered, these policies may contribute to patterns of exclusion particularly among poor and vulnerable groups.

tion. This policy would further exclude individuals who lack registration documents.

Meanwhile, the research has also shown that, although multiple legal identity documents can provide various modes of access to benefits and opportunities, they can also decrease the value of all identity documents. Multiple identity documents may mean less predictability and more avenues for forgery, fraud, and corruption. Birth registration may prove useful, as it would provide a source by which other identity documents may eventually be verified.

Protecting Human Rights

The literature on legal identity highlights the link between birth certificates and human rights protections, particularly children's rights. Enforcement of legislation, particularly legislation that is intended to protect children, requires a reliable and accurate means to establish their age. Without birth certificates to prove their legal status, unregistered minors may be unable to enforce legally defined rights and protections. UNICEF notes that although birth registration is closely linked to an array of rights and protections, "the exact linkages of 'cause and effect' between the impact of birth registration and all of these issues require much more research."⁸⁹ This study, informed by field research conducted in the three countries, attempts to contribute to this research by looking at how birth certificates actually succeed, or fail, in enforcing laws that aim to protect children from exploitation and abuse—such as those that protect children from child labor and child marriage. The research examines how they help or hinder efforts to prosecute and punish persons who engage in abduction and trafficking, crimes where laws provide for more severe penalties if the victim is a minor. The research examines how birth certificates help, or why they fail to help, children facing criminal charges enforce rights

under juvenile justice laws—i.e., laws that mandate separate detention facilities, reduced sentencing guidelines, and immunity of minors from capital punishment.⁹⁰

Child Labor

The three countries in the study express, in principle, an interest in restricting child labor, as evidenced by domestic legislation and international commitments limiting the employment of children, particularly in hazardous industries or dangerous working conditions.

Yet, despite the clear intent articulated in laws, on-the-ground realities indicate that prohibitions against child labor often do not extend beyond the realm of aspiration.

Some believe that the failure to enforce child labor laws is partly because of the difficulty in establishing the age of working children, many of whom lack birth certificates. According to this line of reasoning, a universal system of civil registrations would facilitate the regulation of child labor by providing a reliable means to verify age. This argument has also been put forward with regard to the conscription of child soldiers in Nepal.

The ILO has estimated that some 250 million children 5–14 years old are working in developing countries. This constitutes about 15–20% of the total child population of the same age group. This figure is exclusive of children who are engaged in regular noneconomic activities, including those who provide services of domestic nature on a full-time basis in their own parents' or guardians' households.⁹¹

According to a 2002/03 study, Bangladesh has 4.9 million working children, which accounts for 14.2% of the total 35.06 million children in the age group of 5–14 years.⁹² In Cambodia, it is estimated that 52% of 7–14 year olds – or 1.4 million children – were economically active in 2001.⁹³ The ILO-International Programme on the Elimination of Child Labour has claimed that there are more than 2.6 million child workers in Nepal.⁹⁴ Among them, many are employed in severely dangerous situations, including some who have been recruited as soldiers in Nepal's armed conflict.⁹⁵

FGD participants in Nepal noted that the lack of birth registration among dalits and internally displaced children has increased their risk of military recruitment.⁹⁶ The media, human rights groups, and United Nations agencies have voiced similar concerns, based on anecdotal evidence that children are kidnapped from their villages and forcibly conscripted. Both the CPN-M and government forces have consistently denied recruiting children under the age of 18. Given allegations that conscription practices involve severe coercion, birth certificates are unlikely to be of much use to individual children.

Bangladesh does not strictly prohibit children from working, but it does seek to prevent their exploitation. In doing so, Bangladeshi law conditions the proscription of child labor on the industry in question. The Factories Act defines the age of majority as 16, while the Mines Act, the Plantation Labor Ordinance and the Employment of Children Act all define a child as below 15 years of age. The Shops and Establishment Act sets the age of a child at 12. In Cambodia, the employment of children under the age of 12 is strictly prohibited, while children 12 to 15-years-old may only be hired to do “light work.”⁹⁷ The employment of children aged 15 through 17 is permissible, though special rules apply regarding the conditions and terms of their employment. Nepal’s Child Labour (Prohibition) Act of 2000 strictly prohibits the employment of children below the age of 14 years and places restrictions on the working conditions of children aged 14 to 16.



However, the findings suggest that economic and political forces make it no one’s interest to monitor the enforcement of child labor laws, notwithstanding a child’s possession of a birth certificate.

State enforcement of child labor standards and monitoring compliance face opposition from powerful interests. These also require dedicated resources, which are hard to come by particularly in the developing country context where the ministries of labor and labor inspectorates are often severely under-resourced. In the absence of powerful constituents (e.g. international consumers) pushing the issue, governments have little incentive to allocate the resources necessary for monitoring and enforcement. Perhaps due to weak enforcement, many companies have no commitment to comply with protections against child labor, and either rely solely on physical appearance to determine age or ignore child labor standards entirely.

Child laborers themselves may find enforcement of labor standards against their economic interest. Due to widespread poverty, employment is generally viewed as a more desirable option than the alternatives, regardless of the working conditions. Research in Nepal found that even if child

laborers did have birth certificates, they would be disinclined to reveal their true age and risk losing their jobs. Similarly, the findings in Cambodia show that even if a nongovernment organization (NGO) had the financial means to seek redress in court, abused child workers would be reluctant to come forward because many are grateful to have a job.

The findings also reveal that legal enforcement of child labor standards in court is expensive, given significant court fees, official or otherwise, suggesting that possession of a birth certificate alone—without resources to access the courts—will not yield much human rights protection.

This is not to say that birth registration is irrelevant to protection against child labor, only that it needs to be part of a larger reform agenda. Where compliance

In Bangladesh, the hunger for work is so severe that girls, some as young as 11 or 12, reportedly obtain false “licenses for prostitution.” Although prostitution is not legal, it is often tolerated, if the woman has this informal license or affidavit, which attests that she has reached the age of majority and that she has willingly decided to engage in prostitution as a source of income.⁹⁸



is monitored, the key role that birth records play in such protection becomes apparent.

Some companies engage in self-monitoring their compliance with applicable labor standards, generally due to pressure from international watchdog groups and socially conscious consumers. However, due to the absence of birth certificates, they are constrained to use substitute means to verify age. For example, since most child workers in Bangladesh have no formal proof of age, multinational export-oriented companies that are committed to complying with applicable child labor statutes rely on alternatives, such as medical examinations. In the absence of formal legal identity, they require certification of age by a registered physician to assure adherence to the law.

Similarly, foreign-owned garment factories in Cambodia are required to comply with relevant labor standards as part of Better Factories Cambodia, an International Labour Organization program established under a trade agreement. Job applicants must submit documentary evidence to verify their age, though the range of acceptable documents ensures that the process is neither overly burdensome nor exclusionary.

As illustrated above, a wide gap between rhetoric and practice exists with regard to child labor. Legal identity, in particular, birth registration, can play a role in bridging that gap by providing a means

to verify age, but other factors need to be simultaneously addressed so that the value that birth registration brings may be maximized.

Child Marriages

Early marriages have been recognized as human rights violations that result in serious physical, psychological, and emotional harm.⁹⁹ Furthermore, child marriages can translate into the trafficking of young girls, as marriage is a popular tactic for procuring girls for commercial sexual exploitation.¹⁰⁰

Echoing a range of international human rights instruments,¹⁰¹ the legal codes of Bangladesh, Cambodia, and Nepal prohibit child marriages by defining the minimum age for marriage.

Despite these laws, child marriages remain a widely accepted customary practice, particularly in Bangladesh and Nepal. Poverty and traditional gender roles are the primary reasons underlying the practice of child marriages. Families living in extreme poverty may view an unmarried daughter as an economic burden. Parents often consider marriage as the most practical option to protect and provide a secure future for their daughters.

In all three countries in this study, the lack of accurate and reliable birth registra-

Bangladesh's Child Marriage Restraint Act of 1929 prescribes the minimum age for marriage as 18 years for women and 21 for men. Those responsible for the marriage of children under the relevant ages are subject to punishment, though under both Muslim and Hindu laws, the marriage is still considered to be legally binding. Cambodia's Law on Marriage and Family defines the legal age of marriage as 20 years for men and 18 for women. In Nepal, the legal age for marriage is 18 years with parental consent, and 20 without. Child marriage has been criminalized and is punishable by up to 3 years imprisonment and a fine of up to NRs10,000.¹⁰²

Incomplete government statistics, due in part to weak registration systems, make it difficult to accurately quantify the extent of child marriages.¹⁰³ Existing data sources, however, provide at least a partial picture. For example, survey research in Bangladesh, where the age for marriage is 18 for women and 21 for men) found that 5% of 10–14 year olds were married.¹⁰⁴ According to data collected by the UN Population Division in 2000, 51% of Bangladeshi girls, aged 15–19, are married. The Population Council found that 81% of women aged 25 through 29 years were married prior to reaching their eighteenth birthday. In Nepal, where the age for marriage is 18 (with parental consent) or 20 (without parental consent), child marriage is especially prevalent in rural areas. Nepal's 2001 population census indicates that 55.5% of girls marry between the ages of 15 to 19 years.¹⁰⁵

tions has been identified as a major impediment to the implementation of laws that regulate the age of marriage.¹⁰⁶ Policy and decision makers are increasingly recognizing the benefits of birth registration as an effective tool in preventing early marriages.

Does it follow, then, that universal birth registration will significantly decrease, if not eradicate, child marriages? A birth certificate protects a minor only if we assume that no marriage can take place without the minor or the minor's guardian presenting proof of the minor's age.

The research findings suggest that this is not necessarily the case. In Bangladesh, for example, marriage registrars rarely demand proof of age and instead rely on guardians' declarations, even as the 2004 Registration Act requires that registrars check birth certificates to determine marriage eligibility. The marriage certificates of underage individuals invariably show their ages as 18 for the bride and 21 for the groom to avoid punishment under the Child Marriage Restraint Act of 1929.

Moreover, many marriages tend to be private, family affairs that fall outside the scope of the state's reach. A significant number of marriages are not formally registered.¹⁰⁷ To begin with, many marriages in Nepal—whether or not involving minors—take place outside the formal registration system because many spouses are unable to present a citizenship certifi-

cate, which the Marriage Registration Act of 1971 requires as a prerequisite to registering a marriage.¹⁰⁸ In the case of child marriages, however, there is an additional incentive against registration: child marriages are illegal in Nepal, even as they continue to be held surreptitiously. Border officers in Nepal are generally willing to accept letters of recommendation from VDCs as proof of marriage and as substitutes for formal marriage registrations. These substitutes, which can be easily obtained through forgery or bribes, further facilitate underage marriages and child trafficking.

Prosecutions for child marriages are very rare. In Nepal, for example, police records for the past 7 years show that only 14 cases of child marriages have been registered in the entire country.¹⁰⁹

Although birth certificates could help prove victims' age and in theory facilitate prosecution, they are unlikely to be useful if there is complicity among all parties involved. As long as poverty provides a strong incentive to marry off young girls and identity documents are easily falsified, regulating the age of marriage is likely to remain a mere aspiration.

Crimes against minors

Like other countries, Bangladesh, Cambodia, and Nepal have laws that recognize the vulnerability of children and provide

The criminal codes of both Bangladesh and Nepal include statutory rape laws, and define sex with a child under the age of 16 as rape, even if it is committed with the child's consent.¹¹⁰

Article 5 of Cambodia's law on the Suppression of Kidnapping, Trafficking, and Exploitation of Human Persons enhances the punishment (from 5–10 years to 10–20 years of imprisonment) for these offenses if the victim is under the age of 15. Similarly, under Bangladesh's Penal Code of 1860, the penalties for abduction are more severe if the victim is less than 16 years of age.

heightened protection to prevent their exploitation and abuse. These laws make the age of the victim an element of the criminal offense, or provide harsher sentencing guidelines for those who commit crimes against minors.

A birth certificate, which can prove the victim's age, can play a critical role in successfully prosecuting and punishing offenders to the full extent of the law. Without birth certificates, courts are forced to rely on the victim's statement of age or on medical experts who estimate age from the victim's physical appearance.¹¹¹

Some judges err on the side of caution and presume that a victim is of consensual age unless she can establish age in a more satisfactory fashion. Rulings based on such evidence of age are often contradictory and suggest the judge's reluctance to punish crimes where the victim's age is an element because there is no other more satisfactory way of proving age.¹¹²

While birth certificates can serve as a dependable record of victims' age, the failure to prosecute crimes against minors is by no means caused by the absence of birth certificates alone. The usual barriers to justice, such as distrust of the courts, low-paid judges, and the high costs of filing a complaint, are compounded for child victims of sexual violence, who face threats of retaliation, shame, and stigmatization, and dismissive attitudes from officials. Due to these formidable barriers, the judicial system handles only a small fraction of cases. In most cases, potential litigants choose to do nothing, though some cases are resolved through informal compromises. These out-of-court settlements are often brokered by police or other court officials, who may coerce the victim to accept monetary compensation from the perpetrator in exchange for dropping the complaint.

Juvenile Justice

All three countries have ratified the CRC, which prohibits the imposition of capital

In a case involving the rape of a minor, a Nepali court relied on the opinion of a medical expert, who determined that the victim was between the ages of 12 and 14, which is below the age of consent (16). Accordingly, the court imposed an enhanced sentence, as mandated by law.¹¹³ In another statutory rape case, according to the First Information Report recorded by the police and the victim's statement, she was 9 years old at the time of the offense. A medical examination determined that the victim was 12 or 13 years old at the time of the offense, which would still make her below the legal age of consent. Despite this evidence, the court acquitted the defendant, arguing that the sexual intercourse was consensual and that the girl could not establish that she was below 14 when the offense was committed.¹¹⁴

According to survey research on child abuse in Cambodia, 63% of girls and 64% of boys reported that they know a child who has been raped by an adult; and 23% of boys and 21% of girls reported they had personally witnessed child rape.¹¹⁵ Despite these disturbingly high figures, few cases are reported and even fewer are actually tried in court. LICADHO, one of Cambodia's most prominent human rights NGOs, reports that "the biggest obstacle to the prosecution of rapists is the long-standing practice of compensation settlements."¹¹⁶ According to their statistics from 2002, of the 179 sexual assault cases reported to them, 43 (24%) were resolved through out-of-court compromises. In at least 27 of those cases, the settlements were arranged through the active involvement of police or court officials. Unfortunately, since many rape cases are resolved outside the official system, to date, there is little evidence that legal identity has helped curb child exploitation and abuse in Cambodia.

punishment on children and limits their detention periods and the prison sentences that might be imposed on them. The countries' commitment to juvenile justice is further demonstrated by the enactment of domestic legislation implementing, or consistent with, the CRC. Both Nepal and Bangladesh have domestic legislation specifically aimed at protecting children in conflict with the law.¹¹⁷ The United Nations Transitional Authority in Cambodia (UNTAC) law prohibits children under the age of 13 from being placed in pretrial detention and limits the detention of children between the ages of 13 and 18.¹¹⁸ Article 68 of the UNTAC law also allows for a reduction of the sentence by half for offenders under the age of 18.¹¹⁹

Children are incarcerated in adult prisons and are meted sentences intended for adult convicts.

Unfortunately, juvenile offenders in Bangladesh, Cambodia, and Nepal face a reality that often falls short of the CRC's objectives. Reports indicate that children in all three countries are regularly incarcerated in adult prisons, and are meted sentences intended for adult convicts—sometimes even life imprisonment or capital punishment.

Evidentiary weight accorded birth certificates

Verifying the alleged offender's age ought to be a critical factor in enforcing laws aimed at protecting minors entitled to protection under juvenile justice laws and the CRC. Accordingly, birth certificates could play a critical role in protecting children facing criminal charges. The argument assumes that birth certificates and civil registration records are widely accepted as unimpeachable evidence of age. However, the research indicates that far from being unimpeachable evidence of age, birth certificates are often not given much credence by the courts, which accept a wide range of evidence apart from birth certificates to prove age.¹²⁰

In Bangladesh entries in birth and death registers are considered *prima facie* evidence of age.¹²¹ If the validity of a birth certificate is challenged, the court may seek expert medical opinion. Given the ease of falsifying and forging birth certificates, they are not viewed as dispositive proof.¹²² Rather, courts have discretion regarding the weight to be given to birth certificates and other identity documents that can prove age. Various documents, such as passports, secondary school certificates, and school admission records may be submitted and the court is left to determine the evidentiary value of these documents. There are no regulated standards as to what kind of proof courts will

accept to establish a person's identity or age.

Nepal's Birth, Death, and Other Personal Events (Registration) Act 1977 provides that courts should consider birth certificates as legal proof of age.¹²³ The evidentiary value of birth certificates is further clarified by the Child Labor (Prohibition and Regulation) Act, which provides that if a dispute arises, the age according to the date of birth recorded in the birth certificate is to be regarded as the child's true age.¹²⁴ In practice, however, the possession of a birth certificate does not ensure that juveniles are able to enforce their legal rights. Since fraudulent and counterfeit identity documents are well known to be easily obtainable, courts and police in Nepal do not always view birth certificates, passports, and citizenship certificates as highly credible.

The case of a minor accused of homicide in Nepal illustrates how the high prevalence of fake certificates may decrease the credibility of legal identity documents. The boy produced a birth certificate as well as a school transfer certificate as evidence of his juvenile status. The court assumed that the documents were fraudulent because they were prepared during the proceeding of the case. As a result, the court refused to accept the documents as evidence and imposed a punishment of life imprisonment.¹²⁵

Determining age in the absence of birth certificates

In the absence of any formal documentary proof, courts have alternate means to determine age. In Nepal, for example, if a child in conflict with the law does not have a birth certificate, the law dictates that the age ascertained upon examination of the child's body shall be deemed the real age.¹²⁶ Similarly, the Children's Act provides that if a child's date of birth cannot be determined, the custodian or institute

caring for the child must ascertain the date of the birth through the expert opinion of a registered medical practitioner.¹²⁷ In Cambodia, where courts accept a wide range of identity documents, including birth certificates, to prove age, courts have been known to accept the testimony of family members or neighbors in the absence of any of these documents. Courts are also known to determine a child's status as a minor from his appearance. In ambiguous cases, however, courts and police are required to seek an expert medical opinion to determine the age of the accused.

Unfortunately for juvenile offenders, police and courts have limited interest in following these legally mandated procedures. In Bangladesh, for example, in the absence of proof of age, police often claim that juveniles have reached the relevant age of majority to avoid following the provisions of the Children's Act.¹²⁸ One researcher has commented, "For all practical purposes, it is easier for all concerned to write '19' and save all the trouble of separating, transferring cases and sending the child to juvenile court."¹²⁹ Similarly, in Nepal, rather than calling in medical experts to verify questionable identity documents, courts have been known to simply ignore them and instead assume that the accused has reached the age of majority. There is tremendous concern that this apathetic attitude could result in capital punishment for juvenile offenders.¹³⁰

Factors other than birth registration that affect juvenile justice protection

What is apparent from the foregoing discussion is that birth registration alone does not and cannot prevent violation of juvenile justice rights. How courts and law enforcement agencies view birth certificates, and how much evidentiary weight they will accord birth records presented by minors to prove their age, contributes to their value, in so far as rights protection

A boy claiming to be 14-years-old faced charges for rape and murder. Attempting to prove that he was a minor and, therefore, entitled to reduced sentencing guidelines, he produced not only his birth certificate but also his school admission records, and a school certificate. Due to a slight discrepancy between his testimony and one of his documents, the court ordered a medical examination, which determined his age as 16, still below the age of majority. The court nevertheless ordered him incarcerated in a regular prison, rather than sending him to a juvenile reform home.¹³¹ Similar cases appear common in Nepal, despite a writ of mandamus from the Supreme Court ordering the transfer of juveniles out of adult penitentiaries.

is concerned. Where false or fraudulent birth records and other identity documents can be easily procured, courts and law enforcement agencies are less likely to view birth certificates as unimpeachable proof of age.

The commitment and capacity of courts to enforce protection of minors' rights is just as crucial—for even when proof of age can definitively be determined, a birth certificate is only as effective as the system of which it is a part.

If government institutions lack the capacity to handle current caseloads or monitor the age of detention prisoners, for example, an offender's possession of a birth certificate is not likely to increase the chances of successfully asserting rights that the CRC and relevant domestic legislation seek to protect.

A severe backlog of cases is typical in Bangladesh, as illustrated by the case of Md. Nazrul Islam. After his arrest at the age of 11 or 12, he was neglected by the court system for over a decade. Only when stories on his predicament appeared in the media was he released.¹³² Even when the offender's status as a minor can be established beyond doubt, more often than

not, children are incarcerated with adults because all three countries lack sufficient juvenile detention facilities. In Cambodia, for example, juveniles do not have separate facilities while serving their sentence.

Conclusion

Conceptually, birth registration has the potential to play a key role in protecting human rights. In the context of child rights protection, birth certificates prove the legal status of minors and give them the means to enforce their legally defined rights and entitlements.

Understanding if, when, and how legal identity can play a critical role in protecting human rights requires a pragmatic and realistic assessment of on-the-ground realities, including an evaluation of government enforcement and monitoring capacities.

Widespread lack of registration can help perpetuate human rights violations by undermining efforts to monitor and document patterns of abuse. For example, NGOs and governments seeking to address child labor and early marriages face difficulties in

verifying the extent of the problem. Without an empirical baseline, developing and advocating for appropriate solutions is difficult.

However, it is important to bear in mind that child rights violations are caused and perpetuated by a complex interaction of social, economic, political, and cultural factors. Therefore, providing birth certificates will not, by itself, guarantee child rights protection.

The research reveals that children's rights continue to be violated, despite the possession of identity documents. Weak enforcement mechanisms, cultural values that conflict with the law, severe economic hardships, and widespread corruption undermine the instrumental value of a birth certificate. Complementary reforms

need to be undertaken if the connection between possession of birth certificates and human rights protection is to be made real. To seriously engage in human rights protection, universal birth and civil registration advocacies should be integrated with justice sector reform, capacity development, anticorruption, and poverty reduction. Strategic partnerships with persons involved in these issues should be created and nurtured, and ways to sequence and fund the necessary reforms need to be discussed.

Demographic Statistics for Improved Development Planning

Conceptually, legal identity documents recorded in a civil registry can provide better access to benefits and opportunities and better rights protection, in another way: Proponents of universal civil registration often tout civil registration as a tool for improved development planning, a way of accounting for every person so that no one is left behind. The civil registration process records key information on vital events, including births, marriages, and deaths. If registrations are complete and accurate, this process can generate continuous population data, which could be useful to both government agencies and donor organizations in policy planning and defining development priorities. When disaggregated by demographic characteristics, vital statistics data can reveal disparities among populations, thereby allowing policy and development planners to allocate resources “where they are really needed within different geographical areas or different groups in society,”¹³³ including and especially poor and vulnerable groups. Similarly, statistics on fertility rates and migration patterns can help governments predict population distributions to guide resource allocations.

Vital statistics continuously and universally collected through a civil

registration system can provide greater precision for policy and development planning compared to other data sources. Complete civil registrations provide exact numbers, while household surveys only provide approximations based on a sample population.¹³⁴ Moreover, 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, that surveys based on sample populations cannot accurately do. 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 to inform programs in such areas as public health, education, employment, and infrastructure development.¹³⁵

The research revealed a number of factors that negate the use of civil registration statistics for effective development planning in the three countries included in the research. These factors, which are analyzed below, include: (i) low registration rates, (ii) problems with data verification and flow, (iii) lack of interagency coordination, and (iv) limited resources and political realities of the budget allocation processes.

Despite these critical problems, some recent initiatives, also discussed below, may offer promise for the future.

LOW REGISTRATION RATES

A civil registration system's usefulness to development planning depends on the existence of accurate, complete, and universal registration, which the three countries in the study do not yet enjoy. As noted above, 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%. Registration rates in Bangladesh are reportedly between 7-10%.¹³⁶ While Cambodia has seen a recent surge in birth registration rates, marriage

and death registration rates remain low.¹³⁷ Empirical research has demonstrated that registration rates are lowest in rural areas and among the uneducated and those living in poverty.¹³⁸

Development planning based on these skewed statistics could actually have the perverse result of directing resources away from where they are most needed. The people most in need of government assistance—the poor, those who lack education, and those who live in rural areas—tend to be the very people who are least likely to register. Recognizing this, many countries do not use vital statistics for development planning. They continue to rely on population censuses, household surveys, and administrative records for planning purposes.¹³⁹ Unless registration rates improve, relying on the civil registration system to provide data for development planning would be misguided.

PROBLEMS WITH DATA VERIFICATION AND FLOW

Due to a range of institutional weaknesses, the research revealed that civil registration data may be of questionable quality. In this case, conclusions based on the analysis of such data would be problematic.

Standard procedures and regular reporting

The statistical function of a civil registration system depends on standard mechanisms and procedures for collecting, documenting, transmitting, storing, consolidating, and analyzing the data collected by local registrars. On the most basic level, this requires that local registrars use effective procedures and mechanisms to verify the accuracy of the information collected. For example, all local registrars must consistently submit periodic reports to a central authority responsible for consolidating and analyzing the data. In reality, data reports are not submitted at all or are submitted on an ad hoc basis.

Lack of space for maintaining registration files

A fundamental problem is the lack of even the most basic facilities for maintaining registration files. Many village development offices, which are responsible for storing registration records, have been demolished due to the conflict in Nepal. Even among those that have been spared, many lack rudimentary infrastructure, such as cabinets and racks, to store the records and keep them secure.¹⁴⁰ As a result, some VDCs and municipalities have completely lost track of old records.

Problems related to inadequate facilities extend even to the central level registrar, who is responsible for preparing annual reports for submission to the government and for public dissemination. In Nepal, for example, the central level body responsible for registration of vital events lacks sufficient office space and archive facilities to store registration reports received from the districts.¹⁴¹ These records, which could be analyzed to generate demographic statistics, are instead decaying in the basement of an office building.¹⁴² In 2001, as a result of the backlog of documents at the central registrar's office, the district development committees (DDCs) were instructed to cease the practice of submitting monthly vital registration reports to the central registrar.¹⁴³ This effectively renders the data from the district levels, which are no

longer collated at the central level, inaccessible for development planning purposes.

Computerization and data flow

A frequently suggested solution to data flow and verification issues is the computerization of registration data that are collected and sent to the central level. Interestingly, based on the locations investigated in this research, there does not appear to be a positive correlation between the provision of computers for recording registration data and the practice of submitting reports to higher level authorities. For example, in Bangladesh, registration information is computerized at Khulna and Rajshahi City Corporations and at some *paurashavas* (municipalities) that have received support under the birth and death registration project, but there is no flow of data from these localities. On the other hand, in Barisal and Sylhet City Corporations and Moulvi Bazar paurashava, data are entered by hand, but reports are submitted to the Ministry of Local Government, Rural Development, and Cooperatives.

This finding is significant in that computerization entails huge capital outlay. For resource-strapped countries, less expensive but effective options that improve data reporting to central levels—but do not necessarily involve computerization—may need to be explored and developed.

In Bangladesh, responsibility for birth registration is decentralized and delegated to various local level authorities, resulting in inconsistent standards and widely divergent practices. The research revealed that civil registration data are generally handwritten in ledgers, which are preserved at the local level. Registration officials at the Dhaka City Corporation reported that they have handwritten ledgers dating back to 1913; and birth registration data preserved at the Barisal City Corporation go back 40 years. Some locations, such as Rajshahi City Corporation and Gazipur Municipality, which have received support under donor-funded pilot initiatives, now computerize their birth registration data. Sylhet City Corporation has received computers and training, but due to a shortage of human resources, officers continue to manually enter registration data in ledgers. Whether the data are handwritten or computerized, few officials reported that they regularly send statistical reports on to the Ministry of Local Government, Rural Development and Cooperatives or any higher level authority.¹⁴⁴

LACK OF COORDINATION MECHANISMS

Coordination among various agencies responsible for statistical analysis is necessary to leverage resources and prevent the duplication of efforts. The three countries in this study lack well-organized and coordinated practices for generating statistics that are useful for development planning. Countries in similar situations may likely face the same problems.

As the table below illustrates, all three countries in the study have multiple identity documents that serve a variety of purposes. The agencies responsible for issuing each have their own system for collecting and processing applications, which contain a great deal of personal information data. However, these systems operate independently and have no coordination mechanisms for sharing, cross-checking, or consolidating the information they receive.

The data obtained through each identity document are often incomplete and cannot be used to plan or allocate resources because each identity document serves a different purpose. Even identity documents that were supposed to have been instituted for development planning purposes may not always prove to be sufficient; therefore, coordination between various agencies is key to attaining accurate data.

In Bangladesh, the Bureau of Statistics under the Ministry of Planning does not receive civil registration data, but instead depends largely on sample surveys. These multiple data sources produce inconsistent

results that do not often tally with statistics that international agencies generate. The current lack of a centralized authority, a unified database, and coordination mechanisms makes it impossible to cross-check statistical information. As a result, the accuracy and reliability of statistics are frequently contested.

In Cambodia, commune councils submit monthly registration statistics to district level authorities, who in turn pass them to provincial level authorities. These authorities then provide quarterly statistics to the MOI, which enters the registration data in a basic computerized spreadsheet with columns for population, numbers registered, and percentages registered.¹⁴⁵ Despite the existence of a system that enables data to flow seamlessly from district and provincial levels to the central level, the data collected by MOI are not currently used for planning purposes.

In Nepal, three agencies are responsible for collecting, maintaining, and analyzing demographic data. These are the MLD, the Central Bureau of Statistics, and the Ministry of Health and Population. The Central Bureau of Statistics is legally mandated to coordinate and oversee the collection, analysis, and publication of statistics. In practice, however, due to weak institutional and human resource capacities, statistics are collected in an ad hoc manner by various organizations, without consultations on standard practices or consistent definitions.¹⁴⁶ For example, rather than developing a joint initiative to improve the quality and comprehensiveness of these statistics, the

Potential Sources of Personal Data for Generating Demographic Statistics

Bangladesh	Cambodia	Nepal
Birth, marriage, and death registration certificates	Birth, marriage, and death registration certificates	Birth, marriage, and death registration certificates
Citizenship certificate	National identity card	Citizenship certificate
Passport	Passport	Migration certificate
	Family and lodging books	

Ministry of Health and Population and the Central Bureau of Statistics opt to collect their own data through other means, such as household surveys. The lack of coordination results in the replication of efforts among the different agencies responsible for collecting and analyzing similar types of data.

POLITICAL REALITY OF BUDGET ALLOCATION PROCESSES

Claims that disaggregated population data will “ensure that resources are allocated to where they are really needed within different geographical areas or different groups in society”¹⁴⁷ ignore the political and economic realities of policy-making and budget-allocation processes. Too often, limited resources, political pressures, power dynamics, and special interests dictate the distribution of services, benefits, and opportunities. There is little

evidence that statistics actually inform development priorities or move decision makers to institute policy reforms that require reallocating funds. Even without detailed statistics, government officials may be aware of existing needs, but are constrained by competing demands for scarce resources.¹⁴⁸ Donors may also define program priorities based on domestic political agendas, rather than an empirical analysis of competing needs.

That said, 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.

The NIC of Cambodia was reportedly introduced to create a centralized system to monitor population trends among all adult Cambodian citizens and legal permanent residents. The intention was for Cambodia to obtain and compile more accurate demographic statistics to inform long-term development planning. The Government has successfully linked NICs to a national registration system and has created a support register which contains the information detailed on the card, including a permanent identification number which allows the Government to track the holder over time.¹⁴⁹ However, the NICs, which are distributed by the local police,¹⁵⁰ are issued only to adults without criminal records. The data recorded therein cannot therefore be considered complete for development planning as they cannot be used to plan or allocate resources for development initiatives aimed at children, such as the provision of education and vaccination services. They also exclude persons with criminal records from development planning purposes.

ENDNOTES

- ¹ The paper uses the term “legal identity” in two senses: Broadly speaking, legal identity refers to a human being’s legal (as opposed to physical) personality. Construed narrowly, legal identity refers to identity documents that prove one’s status as a person who can exercise rights and demand protection under the law.
- ² See Asian Development Bank (ADB). 2004. *Report and Recommendation to the President, Skills for Employment Project*. Manila. The report finds that Nepalese workers cannot fulfill the demand for overseas labor available because they do not have, among other things, passports.
- ³ United Nations Children’s Fund (UNICEF). 2005. *The ‘Rights’ Start to Life: A Statistical Analysis of Birth Registration*. New York: UNICEF.
- ⁴ “Benefits” refer to public subsidies, services, or other social programs that provide assistance to participants. “Opportunities” refer to advantages that facilitate increased prospects of employment, travel, or business. This section on access to benefits and opportunities includes in its discussion what are recognized as civil and political rights, as well economic, social, and cultural rights, under international human rights law. For example, the Universal Declaration of Human Rights recognizes the right to travel and the freedom of movement as human rights. The Universal Declaration and the International Convention on Civil and Political Rights also recognize the right to vote as a human right. Both the right to travel and the right to vote, as well as other basic rights, are discussed under this section, instead of the section on human rights, because the latter focuses on the role that legal identity plays in enforcing human rights protections, particularly the evidentiary weight that courts and law enforcement agencies accord legal identity documents. In contrast, this section focuses on how identity documents provide access to the realization of the mentioned human rights.
- ⁵ Note 3.
- ⁶ Government of Bangladesh (GOB), Ministry of Local Government, Rural Development and Cooperatives (Local Government Division). 2007. Technical Assistance Project Proposal on Birth and Death Registration Project (2nd Phase), p. 4.
- ⁷ During the grace period, birth registrations increased from an estimated 5% to an estimated 7% of the population.
- ⁸ The attending doctor or midwife issues a yellow-colored medical card upon the birth of a child. These cards, commonly called “yellow cards,” are used to record basic medical information such as vaccinations.
- ⁹ Discussions at the Regional Workshop on Establishing Legal Identity for Social Inclusion. 2006. Phnom Penh, Cambodia. 6-7 December.
- ¹⁰ 2006. Nepal Passes New Citizenship Bill. *OhmyNews*. Available: http://english.ohmynews.com/articleview/article_view.asp?at_code=376068. (Accessed 28 November 2006).
- ¹¹ A study, which documented the cost of education in Cambodia, surveyed 77 schools in 11 provinces. It found that 74.8% of the cost of primary education in Phnom Penh was paid by the students’ families, while the government paid 12.9% of such cost. It was observed that this is one of the lowest government contributions to primary education in the world. Bray, Mark. 1998. Financing Education in Development Asia: Themes, Tensions and Policies. *International Journal of Educational Research*. 29(7): 627-642. Cited in UNESCO, 1998, *Towards the 21st Century: National Strategy for Education for All*. (Phnom Penh: UN Working Group on Poverty and Education).
- ¹² In Bangladesh, the primary enrollment rate is relatively high at 84%; however, youth literacy and secondary enrollment lag behind at 50% and 45% respectively. In Cambodia, both youth literacy and primary enrollment rates are high at 83% and 93% respectively. However, secondary enrollment is very low at 24%. Indicators for Nepal fall in between Bangladesh and Cambodia, with youth literacy rate at 70%, primary enrollment at 71%, and secondary enrollment at 45%. United Nations Development Programme (UNDP). 2005. *Human Development Report*.
- ¹³ In a focus group discussion, elected members of a union *parishad* within Dhaka Division reported that in their area, schools require the production of a birth certificate during enrollment. Some schools strictly enforce this requirement and direct parents without certificates to obtain them, particularly when a younger child is to be enrolled.

These findings were corroborated by the observation of registration officials in Dhaka and Rajshahi City Corporations that there was an increase in the number of birth registration applications in December, when school admissions begin. Similarly, in Sylhet City, the Ministry of Education has instructed all schools to request birth certificates during enrollment. Most, but not all schools in Sylhet City do so. Private English language schools generally require the production of birth certificates.

¹⁴ The school-leaving certificate is a document that allows a student to pursue higher secondary level studies.

¹⁵ The Nepal Human Development Report 2004 has used the term *dalit* to designate a community from whom water is not accepted, and whose touch requires the sprinkling of water by the so-called high caste community. The National Dalit Commission Bill (Nepal) defines “dalit” as “those communities who by virtue of atrocities of caste-based discrimination and untouchability are most backward in the social, economic, educational, political, and religious fields, and are deprived of human dignity and social justice.”

¹⁶ At village schools, for example, a parent’s declaration regarding their child’s age is generally sufficient. Even in Dhaka, several schools reported that they do not have any hard and fast rules regarding the production of a birth certificate during school admission.

¹⁷ Sisovanna, Sau. 2005. Input during discussions at the Inception Meeting for the ADB Regional Technical Assistance on Establishing Legal Identity for Social Inclusion. Bangkok, Thailand. June. This was confirmed by Cambodian participants during discussions at the Regional Workshop on Establishing Legal Identity for Social Inclusion. 2006. Phnom Penh, Cambodia. 6-7 December.

¹⁸ This requirement is intended to ensure that the person taking the examination is indeed who he or she claims to be. FGD participants from vulnerable groups were generally not aware of the requirements for taking national examinations and acquiring higher levels of education.

¹⁹ In 2002, % of gross domestic product on health in Bangladesh = 0.8%, Nepal = 1.4%, Cambodia = 2.1%. Note 12.

²⁰ World Health Organization (WHO). *Cambodia Health Situation*. Available: www.wpro.who.int/countries/05cam/health_situation.htm

²¹ WHO. *Country Health Profile: Bangladesh*. Available: www.searo.who.int/LinkFiles/Bangladesh_bang.pdf

²² Yellow cards are generally issued by the doctor or midwife who delivers the child. If a child is delivered at home without the assistance of a health worker, the parents can take him or her to the hospital to obtain a ticket that will allow them to get a yellow card; or they can obtain a certification from the village chief that states that the child’s birth date and the name of the child’s parents, which they can present to obtain a yellow card. These cards are readily obtainable, often even at the child’s first vaccination appointment.

²³ The head of one health center in Prey Veng province, for example, stated that their nondiscrimination policy included a commitment to treat all children, regardless of whether or not they have any documentation.

²⁴ Interview with Management Support Services staff involved in the health service delivery system. 1 December 2005.

²⁵ Interview with National AIDS Center representative. 1 December 2005.

²⁶ The Ministry of Food and Ministry of Social Welfare provide these benefits.

²⁷ One union parishad chairman explained: “Suppose a person is about 50-years-old and he sees that he will get certain benefits if he says he is 60, and other benefits if he is 50. At one time, he says his age is 60 and then later, 50, to avail [himself] of all the benefits. We have no information, and neither does he know or have any proof of his own age. As elected public servants, we cannot behave badly, and therefore have to deprive others who [otherwise might] have gotten the benefits.” Interview with Md. Rabiul Awwal, Chairman No. 7 Deopara Union Parishad, Upazilla Godari, District Rajshahi. 12 October 2005.

²⁸ For example, establishing eligibility to receive senior citizenship allowances, which are provided to individuals above 75 years of age, requires the submission of a citizenship certificate. Interview with a local registrar at Kathmandu Metropolitan City.

- ²⁹ Kathmandu Metropolitan City. *Citizen's Charter relating to Relationship Certificate*.
- ³⁰ Focus group discussion (FGD) with stateless persons (Nawalparasi district, 9 September 2005). Nepal's new citizenship law is expected to help prevent this type of situation in the future.
- ³¹ The Labor Law (Cambodia), art. 177, establishes that the minimum working age is 15.
- ³² This, however, is likely to change as more people are being issued birth certificates.
- ³³ Candidates may submit any one of the following documents: birth certificate, national identity card (NIC), student identity card, employment card, family book, or lodging book.
- ³⁴ For individuals, a NIC or family book is required, while companies or organizations must submit an authorized license, a document on the status of the organization, the organization's internal rules, the appropriate authorization signatures, and copies of the passports or NICs of the signatories.
- ³⁵ NGOs and banks that provide microcredit generally ask loan applicants to prove identity through presenting one's family book or NIC. For example, Vision Fund, a program affiliated with World Vision, provides credit to village residents between the ages 18 and 65. Applicants must establish that they meet the eligibility requirements by submitting an identity card or family book. Without these documents, certification of the applicant's status from the head of the village is generally acceptable. ACLEDA, a microcredit bank, has similar requirements.
- ³⁶ Royal Nepal Army Recruitment rules 4 and 6 (1963); Royal Nepal Army Appointment, Promotion and other Miscellaneous Provisions Related General rule 3 (1964); Royal Nepal Army (Pioneer Battalion) Recruit rule 3 (1964).
- ³⁷ Armed Police Regulation (Nepal), rule 8 (2003).
- ³⁸ Police Regulation (Nepal), rule 13 (1) and (2) (1992).
- ³⁹ Nepal Legal Practitioner Council Act, sec. 17 (1993).
- ⁴⁰ Civil Service Act (Nepal), sec. 10 (1992).
- ⁴¹ Nepal Medical Council Regulation, rule 3 (1967).
- ⁴² Nepal Health Professional Regulation, rule 5 (1999).
- ⁴³ Citizen's Charter for Organization, Newspaper and Press, District Administration Office, Kathmandu.
- ⁴⁴ Company Ordinance (Nepal), Annex 28 (2005).
- ⁴⁵ Private Firm Registration Regulation (Nepal), rule 5 (1978).
- ⁴⁶ Note 44, Annex 22. If a share or debenture is purchased in a minor's name, the minor's birth certificate must be attached to the application. Note 44, Annex 15.
- ⁴⁷ Information collected after the research team after visiting the Nepal Arab Bank, Nepal Industrial and Commerce Bank, Nepal Bank Limited, and Rastriya Banijya Bank. For foreigners, most banks require a copy of the applicant's passport along with a recommendation letter from their embassy.
- ⁴⁸ World Markets Research Centre. 2006. *Global Insight*. 6 July.
- ⁴⁹ ADB. 2006. *Asian Development Outlook 2006: Economic Trends and Prospects in Developing Asia: South Asia*. Available: www.adb.org/documents/books/ado/2006/part020000.asp
- ⁵⁰ The procedures for obtaining passports in Cambodia are governed by Sub-Decree No. 68 of 1995. Applicants for Cambodian passports who are 18 years or older are required to submit their family books. Ministry of Interior's (MOI) Prakas, art. 19(a), (28 December 1994). In addition to family books, minors must present additional documentation, including birth certificates and written authorization from their parents or guardians.
- ⁵¹ Passport Act (Nepal), sec. 3 (1967).
- ⁵² Forum for Women on Law and Development. 2005. *Baseline Study of Nationality Right*.
- ⁵³ Under the Bangladesh Passport Order of 1973 and the Bangladesh Passport Rules of 1974, Bangladeshis seeking passports must complete an application form, which requires detailed personal information, and have it certified by one of the following individuals: a city corporation mayor, a member of parliament, a deputy commissioner, a university professor, any government level officer, or a newspaper editor. Applicants must also submit photos, a voter identification number, a driver's license (if available), and a police clearance. The applicant's own declaration regarding his/her date of birth is generally sufficient.

- ⁵⁴ Cambodians traveling for overseas employment can obtain passports at discounted rates (ranging from \$20 to \$50) but must obtain prior approval from the Ministry of Labor and Social Affairs. This additional procedural requirement was instituted to prevent ordinary travelers from taking advantage of the reduced prices, which are intended to benefit disadvantaged laborers.
- ⁵⁵ To avoid such problems, GOB had planned to issue machine readable passports by August 2006. GOB had allocated Tk1,000 crore for this “jumbo project” to “check widespread forgery and achieve international acceptability” of Bangladeshi passports. However, as of August 2006, reports indicated that this project had not yet been implemented. See, 2006. Flawed machine readable passport scheme shelved. *BangladeshNews.com.bd*. Available: www.bangladeshnews.com.bd/2006/08/06/flawed-machine-readable-passport-scheme-shelved/ (Accessed 27 November 2006).
- ⁵⁶ Constitution of the Kingdom of Nepal, art. 12(2), (1990).
- ⁵⁷ Birth, Death and Other Personal Events (Registration) Rules (Nepal), Schedule 16 (1978). The migration certificate records the following information: applicant’s name, current and destination addresses, and whether the applicant is migrating alone or with his or her family.
- ⁵⁸ Birth, Death and Other Personal Events (Registration) Act (Nepal), sec. 4(1)(d) (1977).
- ⁵⁹ Ministry of Local Development (MLD)/His Majesty’s Government, Kingdom of Nepal. 2004. *Personal Events Registration Program Annual Report*. p. 50.
- ⁶⁰ Nepal Gazette. 2005. Vol. 41, part 55. 19 October.
- ⁶¹ Note 60. According to a notice issued by the Ministry of Home Affairs, persons crossing the border should hold any one of the following documents: a passport; citizenship card; land registration certificate, or *lahpurza*, with photo; a voter’s card; an identity card of a service holder; or an identity card with photo that is issued by local authorities, an administrative office, or an educational institute.
- ⁶² The World Bank. 2005. *Doing Business in 2005: Removing Obstacles to Growth*. Oxford University Press.
- ⁶³ Note 62. However, others have a critical view of De Soto’s theory. Some assert that property registration does not benefit the poorest of the poor. Others believe that registration drives the price of land to levels beyond the means of the poor, or that land registration campaigns have resulted in land-grabbing.
- ⁶⁴ Malik, Shahdeen. 2004. *The Children’s Act 1974: A Critical Commentary*. p. 17.
- ⁶⁵ Once the owner has been properly identified, the committee proceeds to identify the coordinates of the land and issues title. Sub-Decree on Systemic Land Registration (Cambodia). 2000. This law was specifically intended to help the poor obtain legal title to their property. Under this sub-decree, land registration is mandatory at the commune level.
- ⁶⁶ Under Cambodia’s Land Law (2001), a person is entitled to legal ownership over a parcel of land if there are no other claims on it and the person had gained possession by peaceful means, within five years prior to 30 August 2001. If a third party with legal title claims the land within this time frame but does not actually occupy the land, legal title can be defeated in court if the actual possessor can establish proof of continuous peaceful possession. Land Law (Cambodia), art. 40 (2001).
- ⁶⁷ The Constitution and the Family Law (Cambodia) grant the surviving spouse the right to half the property acquired during the marriage.
- ⁶⁸ Courts generally assume that marriages contracted prior to 1989 are legal, even if no marriage certificate is presented.
- ⁶⁹ In the absence of a will, children, including those born outside of wedlock, are entitled to receive the remaining half of their deceased parent’s estate, at least when the father dies.
- ⁷⁰ This framework was scheduled to undergo revision and consolidation in late 2006 or early 2007.
- ⁷¹ Historical land records were destroyed when the Khmer Rouge controlled Cambodia. Currently the government controls over 80% of the country despite the lack of demarcation or registration of public land, while little more than 600,000 private land have been formally registered. NGO statement at the Consultative Group Meeting on Cambodia. Available: www.ngoforum.org.kh/Develop

- ment/Docs/ngo_statement_2000/land_reform.html
- ⁷² Notwithstanding the creation of a National Cadastral Commission (with sections at the national, provincial, and district levels) in 2002, systemic titling continues to elude most land owners. World Bank. 2005. *Kingdom of Cambodia: 2005 CAS Completion Report*. 30 March. Available: <http://siteresources.worldbank.org/INTCAMBODIA/Resources/Kingdom-Cambodia.pdf#search=%22systemic%20land%20law%20%2B%20cambodia%22>
- ⁷³ Bull, Carolyn. 2004. *Countries at a Crossroad: Country Profile of Cambodia*. 13 October. Available: unpan1.un.org/intradoc/groups/public/documents/NISPAcee/UNPAN016026.pdf#search=%22systemic%20land%20law%20%2B%20cambodia%22
- ⁷⁴ Note 56, art. 17 (1990).
- ⁷⁵ Country Code (Nepal), Chapter on Miscellaneous Provisions (Adalko Mahal), no. 2 (1963).
- ⁷⁶ Note 30. FGDs reveal that this anecdote is typical. The support and assistance of family members, which may be required to register events and secure identity, often depends in part on whether helping would serve their proprietary interests. FGD participants raised a surprising number of cases in which close family members, and even their fathers, refused to register the birth or citizenship of a relative out of fear that doing so might lead the registrant to claim shares in familial property.
- ⁷⁷ Nepal's new citizenship law is intended to address these types of problems.
- ⁷⁸ The applicant must submit his/her relative's citizenship certificate; if he/she is a minor, his/her birth certificate; if the person is deceased, the death registration certificate of that person; the marriage certificate (if married), and, if applicable, a migration certificate. Furthermore, the citizenship certificates of 7 witnesses to the document must also be submitted.
- ⁷⁹ FGD with widows or single women (Dhadheldhura, Nepal, 23 September 2005).
- ⁸⁰ According to the International Institute for Democracy and Electoral Assistance, voter turnout rates in Cambodia, Nepal, and Bangladesh are 90.5%, 63.7%, and 56% respectively. Available: www.idea.int/publications/vt/upload/VT_screenopt_2002.pdf
- ⁸¹ Interview with S.M. Zakaria, Secretary, Election Commission, Bangladesh.
- ⁸² The Election Commission prefers formal documentary evidence, such as secondary school certificates, if they are available. Other acceptable proofs include a testimony from the applicant's parents; a certificate or letter from a local authority; or, in many cases, a sworn and written statement from the applicant.
- ⁸³ Election Commission Secretariat (Bangladesh). 2000. Voter Registration Karjokrom (Programme). Dhaka.
- ⁸⁴ The year is to be divided into seasons that correspond with the months of the year, i.e., summer (March to June—in Bangla, *Asbar* to *Kartik*); monsoon (July to October—in Bangla, *Agbraaiyan* to *Magh*); and winter (November to February—in Bangla, *Falgun* to *Jaisthya*).
- ⁸⁵ Members in Pubail Union under Dhaka Division echoed the sentiment of this directive, explaining that estimating the applicant's age is often the only feasible way of determining eligibility for purposes of including the applicant in the voters' registration list.
- ⁸⁶ For example, tea plantation workers have very little incentive to register their births. They live completely outside the realm of public benefits and opportunities. The tea garden authorities provide for their basic needs—from immunizations to rations. Since the workers are potential voters, however, registering their births may become a priority for local candidates running for elected positions.
- ⁸⁷ Voter's Identity Card Regulation (Nepal), rule 13 (1997).
- ⁸⁸ Note 60.
- ⁸⁹ UNICEF. 2002. Birth Registration: Right from the Start. *Innocenti Digest* No. 9 (March).
- ⁹⁰ UNICEF has documented anecdotal evidence suggesting that unregistered juvenile suspects in Nepal have no means to challenge police determinations that they have reached the age of majority. They are therefore detained and prosecuted as adults.
- ⁹¹ Ashagrie, Kebebew. *Statistics on Working Children and Hazardous Child Labour in Brief (1997-1998)*. Geneva: International Labour Office. Available: www.ilo.org/public/english/standards/ipecc/simpoc/stats/child/stats.htm

- ⁹² International Labour Organization (ILO)-International Programme on the Elimination of Child Labour. Subregional Information System on Child Labour, Bangladesh. Available: www.ilo.org/public/english/region/asro/newdelhi/ipec/responses/bangladesh/index.htm
- ⁹³ 2004. *NGO Sectoral and Issues Papers on Poverty Reduction and Development in Cambodia 2003*. March. Available: <http://www.ngoforum.org.kh/Documents/Sectoral%20Paper%20PRD2003/Child.htm> <http://siteresources.worldbank.org/INTEAPREGTOPLABSOCPRO/Resources/UCW-Cambodia.pdf>
- ⁹⁴ ILO-International Programme on the Elimination of Child Labour. 1996. *Fact Sheet: Child Labour Situation in Nepal*. Available: www.cwin.org.np/press_room/factsheet/child_labour_in_nepal.
- ⁹⁵ Nepal has signed the optional protocol to the Convention on the Rights of the Child (CRC) on the Involvement of Children in Armed Conflict (2000), but no initiative has been taken to ratify it. According to the Child Soldiers World Report, around 30% of CPN-M soldiers are children below the age of 18 years. According to the Human Rights Watch's *Nepal: Child Soldier Use* (2003), there were "no indications of a policy of, or systematic recruitment below the age of 18 into the Royal Nepal Army." Available: <http://hrw.org/reports/2004/childsoldiers0104/12.htm>. However, anecdotal evidence suggests that children are used by government forces as informers.
- ⁹⁶ The Compendium of Cambodian Laws. Labor Law, Vol. III, 9-35.
- ⁹⁷ FGD with internally displaced people (Kathmandu, 20 November 2005).
- ⁹⁸ ECPAT International and Bangladesh National Women's Lawyers' Association. 2004. *Report on Laws and Legal Procedures Concerning the Commercial Sexual Exploitation of Children in Bangladesh*. October. Available: www.ecpat.net/eng/Ecpat_inter/projects/promoting_law/bangladesh_report/Laws_Legal_Procedures_Bangladesh_Oct2004.pdf
- ⁹⁹ This practice has negative repercussions for young girls, from limiting their personal freedom and impeding their development, to negatively impacting their health and education. UNICEF. 2001. Early Marriage Child Spouses. *Innocenti Digest*. No. 7. March.
- Child brides are typically isolated and confined to their husband's homes, where they may face abusive situations. In addition to cutting off access to education and economic opportunities, early marriages often lead to premature pregnancies, which can involve serious health risks.
- ¹⁰⁰ UNDP. 2002. *Human Security in Bangladesh—In Search of Justice and Dignity*. The practice of luring trafficking victims through fake marriages is also rampant in Nepal. From 1996 to 2003, some 661 victims' cases made their way to the courts, though this likely represents but a fraction of the total. Of these, 94 women were trafficked under the pretense of a false marriage.
- ¹⁰¹ See Universal Declaration of Human Rights, art. 16; Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage, arts. 1, 2, and 3 (1964); Convention on the Elimination of All Forms of Discrimination against Women, art. 16 (1979); and CRC (1979).
- ¹⁰² Country Code (Nepal) Chapter on Marriage No. 2 (1963).
- ¹⁰³ In Bangladesh, government statistics regularly report an increase in the mean ages of marriages. However, researchers question the reliability of the data because of the absence of complete and accurate birth registration.
- ¹⁰⁴ 1996. The Demographic and Health Survey. *Innocenti Digest*.
- ¹⁰⁵ National Planning Commission, Central Bureau of Statistics, His Majesty's Government, Kingdom of Nepal. 2001. *Population Census*, p.12.
- ¹⁰⁶ Huda, Shahnaz. 2004. Child Marriage: Social Marginalization of the Statutory Law in Bangladesh. *Journal of Law*. 1(2):138-181. October. The lack of birth registration combined with the prevalence of child marriage make Bangladeshi children particularly vulnerable to commercial sexual exploitation. ECPAT International and PLAN International. 2004. *Report on Laws and Legal Procedures to Combat Sexual Exploitation of Children in Bangladesh*, p. 26. October. Although the 2004 Registration Act makes birth certificates mandatory for marriage registration, whether this requirement will reduce the prevalence of child marriages remains to be seen. Likewise, the lack of birth registrations in rural areas makes it difficult to determine a girl's age prior to marriage in Cambodia. Low-income parents

- often conceal a daughter's true age to facilitate her marriage.
- ¹⁰⁷ This is the case in Cambodia. In general, only civil servants or staff of international organizations obtain marriage certificates, and only when they are required for a specific purpose, such as obtaining child allowances or registering land.
- ¹⁰⁸ District Administration Office, Kathmandu, Nepal. *Citizen's Charter for Marriage*.
- ¹⁰⁹ Nepal Police, Women and Children Service Center. Records accessed December 2005.
- ¹¹⁰ The *Nari O Shishu Nirjaton Daman Ain* (Bangladesh) 2000 deals with offenses such as rape, trafficking of children, and sexual abuse. It also provides for children's safe custody and maintenance of children born as a result of rape. It defines a child as a person under the age of 16. In Nepal, the relevant law is Country Code Chapter on Rape, No. 1 (1963).
- ¹¹¹ A more comprehensive discussion of how courts determine age and the weight they accord birth certificates as proof of age is provided in the next subsection on juvenile justice.
- ¹¹² The case of *Sumati Begum v. Rafiqullah* is typical of the Bangladeshi courts' ad hoc approach to determining age. In this case, the court considered a variety of conflicting evidence purporting to establish the age of a juvenile victim. The girl's father reported that she was between 14 and 15 years of age; the medical board opinion stated she was between the ages of 15 and 16; and the girl herself claimed that she was 20 years of age. On consideration of the evidence presented, the court found that the girl was, "over 16 years, but had not completed 18 years of age..." Yet, the court provided no reasoning as to how it arrived at this conclusion, which was inconsistent with the medical examiners report. The general trend among judges in Bangladesh is to rely on their own subjective impressions, based on how old the person appears. Courts do not consistently order medical examinations to verify if the person concerned is a minor for the purpose of the law in question. Even when medical examinations are conducted, the courts are left to accept or reject the age determinations that medical experts provide. *Sumati Begum v. Rafiqullah*, 44 DLR (HCD) 500 (1992).
- ¹¹³ *Birendra Kumar Tiwari v. HMG*, NKP 103-105 (1985).
- ¹¹⁴ *HMG v. Jamindar Kurmi*, NKP 50-59 (1971).
- ¹¹⁵ 2005. *The Cambodia Daily*, p. 13. 10 March.
- ¹¹⁶ LICADHO. 2004. *Rape and Indecent Assault*. March.
- ¹¹⁷ In Bangladesh and Nepal, children under the ages of 9 and 10 years respectively are exempt from criminal liability. The Penal Code 1860 of Bangladesh grants complete immunity from criminal liability to children under 9, while the Bangladesh's Children's Act of 1974 provides that minors may not be charged or tried for offenses or imprisoned together with adults. Under Nepal's Children's Act of 1991, children less than 10-years-old are exempt from criminal liability. The Children's Act also provides a graduated scale of reduced sentences for children 10 years of age and above if they are convicted. The Children's Act, sec. 11(2) (1991) provides: "A child between the ages of 10 and 14 found guilty of a crime punishable by imprisonment may only be incarcerated for up to 6 months; children ages 14 through 16 are liable for half the adult incarceration period if convicted."
- ¹¹⁸ Under article 14(4) of the United Nations Transitional Authority in Cambodia (UNTAC) law, children between the ages 13 and 18 may only be detained for 1 month. 2004. *Guide for Cambodian Criminal Law: Pre-trial Phase*, p.48. Cambodia has no age limit for complete exculpation from criminal liability.
- ¹¹⁹ Cambodia's laws on juvenile sentencing guidelines are not entirely clear. Although article 68 of UNTAC allows for a reduction of the sentence by half for offenders under the age of 18, article 8 of the 2002 Law on Aggravated Felony does not recognize mitigating circumstances for juveniles.
- ¹²⁰ In Cambodia, courts accept virtually any form of legal identity to access the formal court system, to identify an individual in legal proceedings, or to officially verify a statement in court. No FGD participant identified a birth certificate as being useful in dealings with the courts or police, or proving age to protect juvenile detainees.
- ¹²¹ *Abdul Rahman v. Upendra N. Majumdar*, 4 DLR 237 (1952).
- ¹²² Interviews with: Sohul Hossain, Former Law Secretary, 5 October 2005; S.M. Kuddus Zaman, Additional District Judge, Barishal, 11 October 2005; Advocate Ehsanul Huque

Samaji, 15 October 2005; Advocate Shafique Ullah, 15 October 2005; and Justice Mamnoon Rahman, Supreme Court of Bangladesh, 16 October 2005.

¹²³ Note 58, sec. 9.

¹²⁴ Labour Act (Nepal), sec. 12 and sec. 32(b) (1992).

¹²⁵ His Majesty's Government Nepal v. Pasang Sherpa (Year 10) Vol. 4 at 19.

¹²⁶ Note 58, sec. 12; see also Note 125 sec. 32(b).

¹²⁷ Children's Act (Nepal), sec. 3(2) (1992).

¹²⁸ Shahjahan, Lutfur Rahman, and Saira Rahman Khan. 2001. *Juvenile Justice in Child Rights: Reality and Challenges—A study by Shishu Adhikar Sangjog*. The British Council, p. 128.

¹²⁹ Naela, Sattar. 1997. *Juvenile Justice, Rights of the Child, Law and Reality*. Cited in *Human Rights Law: A Manual on Human Rights Training Programme for Lawyers*. Dhaka: Legal Education and Training Institute, Bangladesh Bar Council.

¹³⁰ Mohammad Selim was sentenced to death by a martial law court and executed on 27 February 1986. Amnesty International reportedly had information supporting the allegation that he was 17-years-old at the time of his execution. The Government has claimed that he was at least 18 at that time. Available: <http://web.amnesty.org/library/Index/engACT500021998?OpenDocumnt&of=COUNTRIES%5CIRAN>

¹³¹ HMG Nepal v. Samodh Mandal, Kathmandu District Court Criminal Case No. 367/729 (28 November 2001).

¹³² State v. Deputy Commissioner, Satkhira 45 DLR (HCD) 643 (1993).

¹³³ Sharp, Nicola. 2005. *Universal Birth Registration—A Universal Responsibility*. London: PLAN International. February.

¹³⁴ This has prompted one author to say, "The statistical data generated from a universal civil registration system reflect the incidence of vital events rather than their prevalence." Lucas, David. 2003. *Registration, Administrative and Qualitative Data*. February. Available: <http://demography.anu.edu.au/Publications/Books/BAPSchap2b.pdf#search=%22Registration%2C%20Administrative%2C%20and%20Qualitative%20Data%22>

¹³⁵ 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 the need for vaccinations, vitamin A supplements, and health care professionals. Mortality statistics can be disaggregated by region, age, or cause of death to reveal disease 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. Interview with Dr. Jacek Skarbinski, Epidemic Intelligence Service Officer, Center for Disease Control, December 2005.

¹³⁶ Note 6.

¹³⁷ According to the MOI Report on Statistics of Citizens Registered in Civil Registrations from August 2002 until November 2006, birth certificates had been issued to 89.75% of Cambodia's population (12,849,452 in total), while only 176,330 marriage certificates and 14,275 death certificates had been issued.

¹³⁸ UNICEF conducted empirical research to assess how birth registration intersects with other indicators, such as socioeconomic characteristics. The research, which included 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. Note 3.

¹³⁹ The Nepal Population Report 2002 notes that because the extent of under-registration is unknown, "data obtained from the vital registration system are not used for demographic analysis." Nepal relies upon alternative data sources such as decennial population censuses, household surveys, and administrative records. Ministry of Population and Environment. 2002. *National Assessment Report for the World Summit on Sustainable Development*. Kathmandu, Nepal.

¹⁴⁰ Note 59, p. 32.

¹⁴¹ Dahal, Loknath. Head, Vital Registration System Strengthening Task Force. The Population and Registration Management Section of the MLD is the central level body

responsible for vital events registration in Nepal.

¹⁴² Note 140.

¹⁴³ To help address this situation, UNICEF Nepal has provided steel racks for the safekeeping of record books. The central level facility received 80 steel racks and 44 districts received one rack each. The United Nations Population Fund/Population and Reproductive Health Integrated Project has provided two computers, a photocopy machine, and a multimedia projector for the sake of systematic record management. Note 59, pp. 12-13. While these interventions are very useful for storing and protecting registration records, they do not ensure the regular flow of registration data to the central level.

¹⁴⁴ Bangladesh's Registration Act of 2004 imposes a duty on local authorities to transmit birth registration statistics to the Local Government Division of the Ministry of Local Government, Rural Development, and Cooperatives (MLGRDC) every quarter. In a meeting facilitated by the Birth and Death Registration Project in November 2005, it was agreed that information from various authorities would be sent to the MLGRDC, which planned to publish a semiannual report. A government representative also announced that the Government intended to establish a central database. At the time of the field research, the impact of the MLGRDC's directives seemed to be just beginning to trickle down to the local level, but data flow remained sporadic at best. For example, the sanitation officer at the Barisal City Corporation reported in July 2005 that they had just sent a report to the Local Government Division of MLGRDC, after receiving instructions to do so. Similarly, officials at the Sylhet City Corporation reported that they had recently started sending quantitative registration data to the MLGRDC and planned to do so every 3 months. Others, however, confessed that they were not in compliance with directives requesting registration reports. Many local authorities readily admitted that registration data were incomplete and that the informa-

tion obtained from those who did register remained in ledger books, which were stored at the local level. Whether or not the new policy initiatives will take root remains to be seen.

¹⁴⁵ At the time the publication was being prepared, MOI was working with PLAN International on a pilot initiative to develop a more sophisticated computerized database. ADB is working with the Government of Cambodia to develop technological solutions such as scanning and digitization of registration data, to preserve records that are currently available only in hard copy.

¹⁴⁶ ADB 2003. *ADB's Experience and Lessons Learned: Improved Market Functioning and Access to Resources for Pro-Poor Economic Growth*. Manila. Available: www.adb.org/documents/reports/annual_report/2003/law03.asp

¹⁴⁷ PLAN International. *Universal Birth Registration*. Available: www.writemedown.org/research/intro/

¹⁴⁸ 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 lament the reality that "it has increasingly been difficult to meet the growing demands of people for these services." Ministry of Population and Environment (Nepal). 2002. *Nepal Population Report*.

¹⁴⁹ The Cambodian NIC contains information about the holder's name, gender, date of birth, place of birth, permanent address, physical characteristics, as well as the date the card was issued and the card's expiration date. The front of the card contains the holder's photo, fingerprints, and identification number. Each card is valid for 10 years.

¹⁵⁰ Provincial/municipal level authorities maintain the NIC register. Officials from the National Police of Statistical and Identity Cards, Department of the Police General Commissariat (under MOI), are responsible for coordinating with local level police officials who in turn coordinate the distribution of NICs.



Obstacles to Registration¹

The official procedures and requirements for registering and obtaining identity documents (including, identity documents recorded in the civil registry, i.e., birth, marriage, and death certificates) in Bangladesh, Cambodia, and Nepal are set out in Appendix 1. The appendix illustrates the relevant timelines, fees, and documentary requirements, as set out in the legislation or rules, for obtaining key identity documents in each of the three countries.

Identity documents are difficult to obtain in countries characterized by weak human resources and institutions. Due to a range of obstacles, the registration process often entails more time, money, and effort than it seems to be worth. Complicated and expensive procedures, coupled with unmotivated and under-resourced registration staff, tend to discourage registrations and obtaining identity documents, particularly among vulnerable groups. Applicants in Bangladesh, Cambodia, and Nepal face various obstacles, including financial barriers, burdensome procedures, discriminatory laws and practices, institutional deficiencies, and lack of knowledge and motivation.

Financial barriers

The process of obtaining identity documents in Bangladesh, Cambodia, and Nepal entails a variety of financial expenses, including official fees, fines for late registration, opportunity costs, transportation expenses, and bribes. The extent to which these expenses deter registration varies from family to family, depending in large part 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.²

For the most disadvantaged groups, official registration fees alone may be prohibitively expensive. In Cambodia one-third of FGD participants reported that the main obstacle to acquiring a birth certificate was that “registration requires money,” while one quarter confirmed that the main obstacle to the acquisition of a family book was that it was “too expensive.” Whether or not these perceptions are correct, they impact individual decisions regarding obtaining identity docu-

In countries characterized by weak human resources and institutions, identity documents are difficult to obtain.

ments. Similarly, in Nepal, where 42% of the population lives below the poverty line and earns less than a dollar a day, FGD participants reported that they could not afford birth registration.³ Some asked why they should pay the fees required to register their children's births when they did not even have the money to provide them with basic essentials, such as clothes and school books.⁴

Fines for late registration add to the financial burden. In Cambodia, applicants who live far from the commune office often cannot meet the 30-day limit for free registration and, consequently, may be subject to late fines, which officially amount to 1,000–4,000 riels (KR), depending on the applicant's province. Similarly, in Nepal, though birth registration is free if completed within 35 days, a late fee of NRs8 is charged for registration between 35 and 70 days.⁵ Registration, however, often takes place after 70 days. Applicants who register after the 70-day grace period are subject to a fine of up to NRs50.⁶ This is a significant expense for the rural poor, many of whom have a nominal income. Moreover, in practice, local registrars are inconsistent and arbitrary in levying late fines; some impose minimal fines, while others demand higher amounts.⁷

The statistics below demonstrate that many applicants in Nawalparasi, Nepal only seek birth registration after the 35-day time limit, and thus will be subject to paying a fine.

On top of direct out-of-pocket expenses, applicants often incur significant

opportunity costs in terms of forgone wages since registering takes time away from work. For those who live in remote areas, the journey to the nearest registration office could be difficult, time consuming, and expensive.

In Cambodia, FGD participants reported that trips to the commune center are often wasted, due to inconvenient and irregular office hours and shortages of basic forms and materials. This problem is exacerbated by the lack of affordable public transportation to the commune centers, where civil registration officials are posted. When traveling by foot or oxcart, distances beyond a few kilometers make for an onerous journey. Bicycles are expensive and of little help when road conditions are poor, and travel by motorcycle-taxi significantly adds to the overall cost of registration. FGD participants living in the mountain/plateau zone identified the cost of transportation to the commune office as one of the main



Registration of Birth within and after 35 days in Ramgram Municipality, Nawalparasi, Nepal

Fiscal Year	Within 35 days	After 35 days	Total
2000/01	62	396	458
2001/02	34	409	443
2002/03	37	370	407
2003/04	42	661	703
2004/05	48	575	623
2005/06	15	438	453

Source: Data collected during field visit.

deterrents to registration. Transportation is far less problematic for urban populations, as demonstrated by discrepancies between rural and urban registration rates.

Opportunity costs are particularly burdensome in Nepal. In certain areas of the country, where the conflict due to the insurgency resulted in the demolition of VDC buildings, local registrars are temporarily housed at the district headquarters. As a result, registering vital events may require a long and arduous trip, which from remote parts of the country can involve days of walking. This is a difficult prospect for people living on daily wages, as it not only entails time away from work, but also additional expenditures for travel, lodging, and food.⁸ Moreover, inconsistent requirements for supporting documentation sometimes result in applicants taking multiple trips to the registration office.

In Bangladesh, Cambodia, and Nepal, low level bureaucratic processes reportedly involve paying bribes. Rent seeking, which FGD participants in all three countries identified as a major impediment to registration, further inflates the cost of identity documents. In Bangladesh, complicated and inconsistent registration procedures increase opportunities for corruption. As a result, FGD participants reported that they paid prices above and beyond the official fees for identity documents. Although Bangladesh's 2004 Registration Act provides for free registrations for all within two years of the law coming into force and thereafter for newborns and infants up to a certain age, many expect that speed money will continue to be a factor in the process. In fact, it may well substantially increase with the strict application of the 2004 Registration Act.

In Nepal, officials routinely require “monetary favors” in exchange for issuing identity documents. FGD participants from the *Madhesi* community⁹ complained that local lords demand exorbitant

bribes to assist them in obtaining citizenship certificates.¹⁰ Some local lords employ a flexible payment scheme, and are willing to accept goats in place of cash payments. However, applicants who could offer neither goats nor cash reported that they were denied citizenship.¹¹ Some FGD participants, who lacked citizenship certificates,¹² reported that they were able to obtain birth certificates for a bribe of NRs100 plus a gift of liquor to the local registrar.¹³

Unofficial payments also add to the cost of obtaining identity documents in Cambodia. FGD participants reported an average charge of KR5,000 for a birth certificate—12 times the official fee. Family and lodging books were reported to cost twice that or more, while marriage certificates might carry “surcharges” of KR15,000. Though NICs are officially free, almost all FGD participants reported paying for them. FGD participants reported that when issuing family books, police consistently record the information incorrectly. As a result, the applicant is compelled to return to have this “mistake” corrected, which, not surprisingly, entails a fee.

Interestingly, officials in Cambodia were reported to apply a sliding scale when imposing bribes, depending on the applicants' means. Consequently, average prices may well be significantly higher than those reported by FGD participants in this research, who primarily represented vulnerable groups. This is confirmed by

The following anecdote exemplifies how travel and opportunity costs increase applicants' vulnerability to exploitation. RB traveled from Nepalgunj to Kathmandu to obtain official translations of his marriage and citizenship certificates from the Law Book Management Board (LBMB).¹⁴ When the office employee told him to come back after 5 days, RB asked if the task could be completed earlier. The LBMB employee responded that faster service would require paying an additional fee of NRs1,500. Despite RB's repeated requests, the official refused to provide expedited service free of charge, pointing out that it would be more costly for RB to stay for 5 days in a hotel in Kathmandu waiting for the translations. Given the economic reality of his situation, RB finally agreed to pay the speed money.¹⁵

interviews with key informants who reported that some commune officials demand as much as \$5 or \$10 for marriage and other registration services that are officially free. Corruption has been blamed in part for delaying the Government's birth registration project, which aimed to register all Cambodian citizens and issue birth certificates by August 2005. As a result, municipalities have installed complaint boxes in the Phnom Penh commune offices for citizens to report incidences of rent seeking during the registration process. The MOI has promised that the boxes will be checked daily and that corrupt officials will be punished. However, whether this initiative has had any impact in terms of decreasing corrupt behavior is unclear.¹⁶

Burdensome procedures

The registration process often presents procedural obstacles, bureaucratic hurdles, and burdensome evidentiary requirements. Surmounting these barriers translates into additional time and money, deterring many from registering.

Burdensome procedures are problematic in all three countries. In Bangladesh, procedural impediments stem from the absence of standardized systems and processes. As a result of Bangladesh's highly decentralized approach, birth registration procedures and requirements vary widely throughout the country. Moreover, the lack of coordination among various local level government authorities hinders effective planning and consistent implementation of policies. In Cambodia, FGD participants expressed confusion on the documentary requirements for birth registration and noted that the "complicated procedures" function as obstacles to registration.

Among the three countries in this study, however, procedural obstacles are most acute in Nepal. This is especially so

when it comes to obtaining citizenship certificates, which require a recommendation from the local DDC, VDC, mayor, or high ranking government official. FGD participants consistently complained that their inability to obtain the required recommendation letter prevented them from acquiring citizenship. Nepal's new citizenship law will hopefully help ensure that all eligible individuals are able to acquire citizenship.

Nepal's documentary requirements for legal identity are particularly taxing on IDPs and migrants. A migration certificate is required to obtain any legal identity document, if the application is submitted in a place other than the district where the father's citizenship is registered. Among the supporting documents needed to obtain a migration certificate is a recommendation letter from a local government official in the applicant's original home district. For those who have fled their homes on short notice, because of the insurgency, this requirement presents an insurmountable hurdle. Even for those migrating in more peaceful circumstances, the required recommendation letter may be impossible to obtain, given that many local government offices are not functioning.

On top of Nepal's official evidentiary requirements, registration officials often impose unwarranted demands for extralegal supporting documentation. For example, for all practical purposes, birth registration requires the parents' citizenship certificates, though this is not legally mandated. Similarly, in violation of Nepal's citizenship law, registration officials regularly require that the applicant be identified by a family member. There is, however, a lack of consistency in applying this extralegal requirement in terms of who is eligible to serve as a qualifying family member. In some cases, an uncle's recommendation has been accepted,¹⁷ while in others, it has been rejected, resulting in the denial of citizenship.¹⁸

Extralegal requirements are also imposed on applicants seeking migration, birth, and land registration certificates. Some FGD participants reported that they were denied migration certificates because they either still owned property in the place of their former residence or because they could not produce a land ownership certificate in the location of their new residence.¹⁹ Authorities in Kathmandu have also reportedly demanded tax clearance for birth registration, even though this is not required by law or the city's citizen's charter.²⁰ Finally, FGD participants reported that some land registration officials required female applicants to take their husband's family name in order to obtain title to inherited property.²¹

Discriminatory laws, practices, and attitudes

Discriminatory laws, practices, and attitudes present a barrier to registration, particularly for women and minority groups. These obstacles are especially pronounced in Nepal, where laws related to citizenship, birth registration, marriage, and inheritance all contain discriminatory provisions, which undermine the goal of universal registration.²²

Until the Gender Equality Act of 2006 was passed, only male or paternal relatives could apply for the registration of a relative's birth. In the absence of male or paternal relatives, local officials, and not female or maternal relatives, were authorized to apply for registration. The 1977 Registration Act specifically provides that information on the birth of a child be furnished by either the "head of the family" or the "eldest male member of the family."²³ Although the term "head of the family" is technically gender neutral, in practice, women have been excluded. This gender-biased interpretation is further supported by a later provision in the law,

which stipulates that in the absence of a male relative, the following individuals are legally empowered to register the birth:²⁴ the chairperson of the concerned VDC, the secretary of the concerned VDC, the mayor/deputy mayor of the concerned municipality, the relevant secretary or the executive officer in his/her absence.²⁵ In a recent historic judgment, issued in September 2005, the Supreme Court declared this provision unconstitutional and struck it down. The practical impact of this decision remains unclear, however, given frequent breakdowns in implementation.

Nepal's birth registration procedures also discriminate against refugees. In violation of human rights guidelines, the Government issued an internal circular,



instructing registrars that the births of refugee children should be documented for statistical/demographic purposes only. No birth registration certificates are to be provided.²⁶

One of the most glaring and problematic defects in Nepal's legal framework is that citizenship can only be established based on the applicant's patriarchal lineage.²⁷ Under Nepal's Constitution and Citizenship Act, a mother does not have the right to transfer Nepali citizenship to her child.²⁸ The law provides that a child who is found within the Kingdom of Nepal and the whereabouts of whose

parents are not known shall be deemed a citizen of Nepal until the father of the child is traced.²⁹ In practice, however, Nepali children are often denied citizenship, if the father is unknown,

Single mothers report that they are reluctant to register their children because of the stigma attached to having a child out of wedlock.

residing elsewhere, refuses to provide assistance, or denies the relationship.

Discriminatory citizenship and marriage registration laws have impacted thousands of Nepali women who are married to Indian nationals. A Nepali woman cannot convey citizenship to a foreign spouse by way of marriage, though this is not the case for marriages between Nepali men and foreign women.³⁰ Marriages between Nepali women and foreign men are denied registration, based on the cultural belief that a married woman should reside with her husband's family. The lack of official records of these marriages has serious implications for the exploitation of women, as phony marriages are a common guise to lure trafficking victims.

In addition to discriminatory laws, attitudes and beliefs that further deter registration exist in administrative institutions. Due to the rigid hierarchy of Nepal's caste system, registration officials reportedly respond to certain groups with

disdainful attitudes and condescending treatment. Reports indicate that local registrars tend to be arrogant and rude in their interactions, regardless of the applicant's personal circumstances.³¹ However, those most likely to face outright harassment include single mothers, transsexuals, rural people, dalits, and ethnic minorities, among others.³² Consequently, it is not surprising that women and members of disadvantaged communities, such as dalits and *janajatis* (indigenous groups), have the highest rates of nonregistration.³³

Single mothers report that they are reluctant to register their children because of the stigma attached to having a child out of wedlock. The registration process requires the mother to publicly disclose the fact that the child's father is unidentified, which implies deviance on her part. Registration officials tend to lack empathy for single mothers and often add to their humiliation by tagging them as sex workers and treating them with derision and contempt. Some FGD participants spoke with great emotion, confessing that feelings of shame have compelled them to conceal the fact that they have had a child. For these women, birth registration is out of the question.³⁴ Single mothers in border areas report that officials are often reluctant to register their children, as there is an increased likelihood that the unidentified father could be Indian.³⁵

Institutional deficiencies

Limited state capacity to deliver civil registration services is a fundamental barrier to establishing 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 charac-

terized by weak institutions, infrastructure, human resources, and governance. Competing demands over scarce resources often results in the civil registration system being given low priority, and this affects the system's capacity to handle registrants competently. Lack of political priority often results in poorly managed, underfunded civil registration systems, deficient in full-time professional staff, adequate infrastructure and supplies, and consistent standards. Given these conditions, citizens are less likely to register vital events. The research identified insufficient financial and human resources as a key constraint to effective registration in all three countries.

BANGLADESH

Bangladesh's under-resourced civil registration system lacks well-trained professional staff and basic materials and supplies, and suffers from dilapidated facilities. Due to the lack of dedicated staff, the Dhaka City Corporation has accumulated a backlog of over 5 years' worth of unprocessed registration data. Additionally, registration personnel at all levels tend to have low competency and skill levels. The field research identified the need for greater computer proficiency among registration staff. Bangladesh's 2004 Registration Act provides that data may be processed and stored through the use of computers and information technology, but even when it is available, relevant personnel are incapable of using such technology. For example, in some locations, such as Sylhet City Corporation, data are still handwritten in ledgers, while donor-provided computers remain unused. An additional obstacle to building a stronger human resource base is the high frequency of rotations among government officials.³⁶ Time and money invested in specialized training programs are adversely affected when officials are transferred after a short period.



Observers caution that, if left unaddressed, current resource deficiencies will intensify when the 2004 Registration Act comes into full effect. The 2004 Registration Act is certain to generate a tremendous increase in demand for birth certificates. Yet, little has been done to ensure that registration offices will have the resources and capacity to deal with the expected proliferation in registration applications. While local government authorities in relatively more well-off urban areas are by no means immune from the anticipated financial strain, union parishads in the rural areas are likely to be hardest hit since they are heavily under-resourced and have limited authority to levy taxes.

The 2004 Registration Act specifies that no fees are to be charged for timely birth registrations. To address the expected financial shortfall, the Government has proposed allocating up to 5% of a small percentage of the Annual Development Fund, (a block grant of about Tk 4 lakhs, or Tk. 400,000 or about \$7,000) currently provided to each union council, to cover expenses related to registering births. This

Due to the lack of dedicated staff, the Dhaka City Corporation has accumulated a backlog of over 5 years' worth of unprocessed registration data.

plan has met with disapproval and resistance from some observers including registrars. Critics advocate that separate resources should be allocated to the union councils, pointing out that increased birth registrations could potentially consume a significant portion of this already small fund, which is intended to cover a variety of development initiatives. Others generally agreed that birth registrations should be prioritized, but cautioned against underestimating the resources required by this large scale project.³⁷ At the union *parishad* level, lone secretaries will be unable to cope with the surge in registrations, especially from adult applicants. It is time-consuming to inquire and confirm the details provided by these applicants. Unless this situation is remedied, the increased demand for registration will likely result in increased rent seeking and corruption among registration personnel.

Registration offices, which are likely to face acute pressures in the foreseeable future, are completely unprepared to deal with the anticipated surge in demand for registration certificates. Unless substantial external assistance is procured, the 2004 Registration Act could decrease social inclusion. If vulnerable groups are unable to obtain identity documents, they may be deprived of benefits and opportunities to which they are otherwise entitled.

CAMBODIA

The Cambodian administrative apparatus faces serious problems in its efforts to provide registrations due to inadequate financial allocations for office facilities, materials, and staff salaries. These obstacles were identified by key informants interviewed, who expressed concerns regarding the lack of financial resources dedicated to civil registrations.

Few full-time staff are solely dedicated to civil registrations.³⁸ The commune councils are responsible for civil registrations within their jurisdictions. Provincial/

municipal police commissioners have operational responsibility for providing family and lodging books, while station and commune police are charged with the issuance of NICs. In all cases, these underpaid local level officials have competing demands on their time. To help address this situation, the MOI has developed an instruction manual and trained one clerk for each commune to assist with registrations.

FGD participants consistently complained about overcrowded registration offices and delays in obtaining registration documents. The “inaccessibility” of registration officials and “overcrowded registration centers” were cited as two of the main obstacles to civil registrations. Key informants interviewed reported that problems also stem from the lack of a sufficient supply of birth registration forms at the commune level. Moreover, the subdecrees governing civil registration fail to specify a time frame for the delivery of identity documents. As a result, applicants sometimes face unreasonably long delays in obtaining registration certificates, though commune officials appear to provide more timely service than the police who are responsible for family books. Nearly half of all FGD participants reported that the commune office took over a week to deliver their identity certificates, while more than half claimed that it took over a month to obtain a family book, lodging book, or NIC.

Cambodia recently completed a mobile registration campaign, which brought fast and efficient birth registration to the doorsteps of the people. This

The “inaccessibility” of registration officials and “overcrowded registration centers” were cited as two of the main obstacles to civil registrations.

resource-intensive campaign, which received significant donor support, achieved impressive results. However, sustainability remains an issue. Unless institutional deficiencies are addressed, Cambodia may not be able to maintain its current registration rates.

NEPAL

Despite ambitious statements on registration in Nepal's 10th Development Plan, registration has not yet been extended to the people's doorsteps. Field research revealed a mismatch between the importance of legal identity and the resources devoted to providing it; the budget commitment for civil registrations amounts only to some 0.10% of the national total. Perhaps more telling is the distortion of the vital registration program's own budget: 98% of its annual budget in 2004/05 went to staff salaries and allowances, with only 2% remaining for program expenses. This trend continued in 2006.

Weak human resources are particularly problematic in Nepal, where secretaries to the VDCs serve double duty as local registrars.³⁹ VDC secretaries have a range of other job responsibilities and tend to view processing registration applications as an additional burden, which provides nothing in the way of increased compensation. Additional challenges stem from an inefficient management structure for registration staff. Nepal's vital registration law centralizes authority at the national level and confers too much power, such as the ability to make corrections, solely on the central registrar. This structure has created a tremendous workload for the central registrar. As a result, applicants seeking to correct identity documents face acute delays. A related deficiency is that there is no district or regional level body with the authority to coordinate and provide necessary directions to the local registrars, who are of low rank in Nepal's

civil service organization. Since no intermediate level monitoring and oversight mechanism is in effect, registrars are expected to consult with and seek direction from the central registrar to deal with even minor issues and problems.⁴⁰ This structural problem may account for the prevalent lack of accountability, uniformity, and consistency in adopting procedures.

Compounding matters, local registrars risk incurring criminal liability for issuing citizenship or birth certificates, if the supporting documents or their contents were later found to be false.⁴¹ Nepal's legal framework provides no protection for government officials, even if their work was performed in good faith. Consequently, registration staff are disinclined to issue registration certificates, if they have any doubts regarding the veracity of the supporting documentation. The combined effect of imposing "liability" on local registrars for improper registrations and the lack of professional training contribute to procedural inconsistencies.

Untrained registrars often institute novel and ad hoc procedures reflecting their own sense of what is required.

The reluctance to issue birth certificates is further exacerbated by a common misperception, even among registration officials that citizenship can be acquired based on birth in Nepal alone. Donor-driven programs that promote birth registration as the "ticket to citizenship"



have furthered this misperception. Given this situation, it is unsurprising that registrars lack a customer-service orientation and expect applicants to offer additional remuneration.

In addition to weak human resources, Nepal's registration system suffers from a lack of basic facilities, supplies, and infrastructure. These problems have been exacerbated by the insurgency, which has devastated government outposts throughout much of the country. Local registration offices have been demolished and documents and records have been destroyed. For example, currently in Bhojpur, only 33 out of 63 VDC offices

“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”

are operational. In response, the Government has relocated some registration offices to the district headquarters, which renders them inaccessible for people living in remote areas.

As a consequence of budgetary shortfalls, the civil registration process is often disrupted and delayed.⁴² Even in places where VDC offices are open for business, they have little material and logistical support. Many VDCs do not even have enough forms required to register vital events. Registrations rely on manual, paper-based record keeping; and sufficient storage facilities are lacking. Lost records often remain that way, and there is no mechanism to cross-check or verify information within the system. In 2005, the Vital Registration System Strengthening Task Force and High Level Commission for Information Technology issued a report suggesting ways to computerize the registration system, yet progress on this front remains to be seen.

Lack of knowledge and motivation

Obtaining identity documents requires a basic level of knowledge, capacity, and motivation on the part of the applicant. For some potential applicants, the fundamental steps of acquiring information on the registration process and filling out the application forms present a formidable challenge. International research found that the lack of knowledge regarding where to register was among the top reasons for nonregistrations.⁴³ While knowledge and information barriers can be addressed through awareness-raising interventions, such as outreach campaigns, many will remain unmotivated to register unless the concrete benefits of obtaining identity documents are apparent.

Awareness and knowledge barriers contribute to low registration rates among vulnerable groups in Bangladesh, Cambodia, and Nepal. Some vulnerable groups, particularly in remote areas, are completely unfamiliar with the concept of birth registrations.

Research in Cambodia by the Child Rights Foundation found that one of the main reasons underlying low registration rates is a complete lack of awareness of the very notion of birth registration. 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.”⁴⁴ Similarly, a study sponsored by UNICEF in Bangladesh found that 74% of respondents were unaware of the existence of any laws relating to registration.⁴⁵

Even among those who are familiar with the concept of birth registration, following basic registration procedures can be cumbersome for those with low

knowledge and capacity levels. Many Cambodians, especially in rural areas, are illiterate and so cannot read, fill in, or sign the necessary forms. Due to language barriers, communicating with registration staff presents an additional challenge for indigenous communities from Cambodia's highlands, whose members require step-by-step assistance to complete the tasks involved in registration. During the mobile registration campaign, the Government made a commendable effort to address this obstacle by providing clerks to assist in recording the relevant information for birth registrations. However, this assistance is not offered for other identity documents, which remain out of reach for many.

Language also impedes registrations in Nepal; application forms are only available in Nepali, which many ethnic minority communities do not understand.⁴⁶ Even Nepali speakers complain that the registration forms are too lengthy, technical, and complicated. Illiteracy is a contributing factor to low registration rates in Bangladesh, where outreach campaigns often fail to attract a significant portion of the population that cannot read or write.

The benefits and opportunities associated with legal identity can sometimes seem speculative and remote. As a result, many see little point in registering, unless a specific need arises.

Absent a specific need, such as international travel or national exams, registration is generally viewed by Bangladeshis as an unnecessary, burdensome, and expensive legal formality. Until the 2004 Registration Act, most

Bangladeshis could go through life without ever facing a concrete need for a birth certificate. In light of this reality, there seemed to be a little incentive to invest the time and money it takes to register.

If and when Bangladesh's 2004 Registration Act is implemented and birth certificates become compulsory for accessing a wide range of benefits and opportunities, incentive structures are certain to change. As a result, many citizens are expected to be more motivated to obtain birth certificates. However, it was apparent from FGDs that certain vulnerable groups are so excluded and marginalized that it is likely that they will remain unable to register and obtain birth certificates.

Cambodians generally have little incentive to register since the lack of any one particular form of identity is generally not a major problem. Moreover, there are few benefits available.

Nepalis seem to take an instrumental approach to legal identity: they get it when they need it. According to a registrar interviewed for this research, birth registration occurs usually around the age of 6, when a birth certificate may be necessary to enroll in school, or at 16, when in addition to higher education, one may also become eligible for Nepali citizenship. Nepalis in their early 20s seek identity certificates as well, reflecting a desire to obtain migration certificates and passports for foreign employment. If these applicants seek birth certificates through official channels, they will face late fines, which while nominally small, may represent an additional hurdle.

ENDNOTES

- ¹ In this section, empirical information on Cambodia does not include figures reflecting the outcome of recently completed mobile registration campaigns which aimed to overcome some of the obstacles described.
- ² UNICEF. 2005. *The 'Rights' Start to Life: A Statistical Analysis of Birth Registration*. New York: UNICEF.
- ³ Focus group discussion (FGD) with migrant children and women (Dadeldhura, 5 September 2005).
- ⁴ Note 3.
- ⁵ Birth, Death and Other Personal Event (Registration) Act, sec. 5(3), (1977).
- ⁶ Birth, Death and Other Personal Event (Registration) Act, sec. 5(4), (1977).
- ⁷ FGD with widows or single women, (Dadeldhura, 23 September 2005).
- ⁸ Note 7.
- ⁹ The Madheshi community is a community residing in the *tarai* (plain) areas of Nepal, and whose members are of Indian origin.
- ¹⁰ FGD with stateless persons, (Nawalparasi district, 9 September 2005).
- ¹¹ Note 10.
- ¹² Although citizenship certificates are not legally required for birth registrations in Nepal, they are frequently required in practice.
- ¹³ Note 10.
- ¹⁴ For the official use of any translated document, the translator's signature must be authenticated from the Law Book Management Board (LBMB), HMG of Nepal. The applicant must be present himself at LBMB's office at Babar Mahal, Kathmandu to authenticate the signature imposed on the translated copy. The period to get the document back from the LBMB is 48 hours.
- ¹⁵ Interview with a key informant associated with the Ministry of Law, Justice and Parliamentary Affairs. (Kathmandu, October 2005).
- ¹⁶ 2005. *The Cambodia Daily*. 19 October, p. 13.
- ¹⁷ Note 7.
- ¹⁸ Note 7.
- ¹⁹ Report on the FDG held with Internally Displaced Persons, (Kathmandu, 20 November 2005).
- ²⁰ Interview with Srijana Mali (Kathmandu, September 2005).
- ²¹ Note 7.
- ²² The research for this report was conducted prior to Nepal's recent adoption of a new Act to Eliminate Gender Discrimination in 2006. Despite this generally positive development, some discriminatory provisions still remain. For example, a Nepali woman cannot transfer citizenship to her non-Nepali spouse by virtue of the marriage and children born to such a couple are only entitled to Nepali citizenship if they reside in Nepal. Similarly, married daughters continue to face gender discrimination in inheriting parental property and discriminatory grounds for divorce that are detrimental to the wife have not been eliminated.
- ²³ Birth, Death and Other Personal Event (Registration) Act, sec. 4(1), (1977).
- ²⁴ Birth, Death and Other Personal Events (Registration) Act, sec. 4(4), (1977).
- ²⁵ The Nepal Gazette, part III, at 4, (10 March 2003).
- ²⁶ This circular was first made for Tibetan children on 10 January 1999. A similar circular has been made for the children of Bhutanese refugees on 1 January 2003.
- ²⁷ Nepal's new Citizenship Law addresses many of the problems described.
- ²⁸ Constitution of the Kingdom of Nepal, art. 9 (1), (1990) ; see also Nepal Citizenship Act sec. 3(1), (4) and (5), (1963).
- ²⁹ Constitution of the Kingdom of Nepal, art. 9(2), (1990).
- ³⁰ The new law has not changed this practice.
- ³¹ PLAN International/Unregistered Children Project. 2000. Nepal Report-Towards the Full Implementation of Article 7 of the United Nations Convention on the Rights of the Child. June, pp. 70-72.
- ³² FGD with identity challenged persons (Kathmandu, 19 September 2005).
- ³³ Plan Nepal. 2004. Evaluation of Unregistered Children Project Phase II, July 2001-June 2004, p. 28.
- ³⁴ Note 32.
- ³⁵ Note 7.
- ³⁶ UNICEF. 2002. *Birth registration A Vehicle for Child Rights Promotion-Experiences with Birth Registration Promotion in Bangladesh*, p. 34.

- ³⁷ For example, several union parishad chairpersons in attendance stressed the serious potential for human resource constraints to undermine the successful implementation of the 2004 Registration Act. These concerns echoed views expressed by registration officials interviewed, who consistently complained that they are overworked, underpaid, and dissatisfied with their working conditions.
- ³⁸ MOI Report and Guidelines on the Second Stage of Mobile Civil Registrations in the Kingdom of Cambodia, December 2005.
- ³⁹ These individuals are not highly qualified; under Nepal's civil service system, VDC secretaries are classified as assistant level support staff.

- ⁴⁰ Interview with the Local Registrars from Dang and Dadeldhura; Ministry of Local Development, HMG, *Personal Events Registration Program, Annual Report* pp. 30–31 (2003).
- ⁴¹ Birth, Death and Others Personal Events (Registration) Act, sec. 13, (1977).
- ⁴² Interview with the Registrar at the Ministry of Local Development, September 2005.
- ⁴³ Note 2.
- ⁴⁴ Child Rights Foundation (2003).
- ⁴⁵ Rahman, Mizanur. 1997. *Evaluation of Birth, Death and Marriage Registration Practices in Bangladesh*. New York: UNICEF, p. 23.
- ⁴⁶ Note 7.



ALTERNATIVE MARKETS FOR LEGAL IDENTITY: A Cost Benefit Analysis

Public demand for legal identity depends on a rational calculation that compares the perceived benefits of obtaining identity documents to the perceived costs involved in the registration process. In deciding whether or not to register, people ask themselves the following questions:

- What do I get out of registering? (Or what are the repercussions of not registering?)
- What does registration cost?
- Is there an alternative that is cheaper or involves less hassle?

In answering these questions, individuals generally rely on a subjective analysis, based on the cumulative impact of their perceptions, impressions, and experiences. If the costs outweigh the benefits, individuals will naturally be disinclined to register. If the benefits outweigh the costs, registration documents will be desirable. However, if less expensive, more accessible, and equally effective substitutes are available, many will opt for alternatives.

The first two of the questions listed above are explored in the preceding chapters, which provide a detailed analysis of the benefits and costs of registering. This chapter focuses on the third question,

by examining available alternatives. These alternatives, which vary in terms of legality, include legitimate substitutes as well as documents obtained through alternative or “black” markets.

Legitimate Substitutes

A wide range of substitutes for legal identity documents may be accepted in practice, depending on the intended purpose. Legitimate alternatives to identity documents vary in their degree of formality. For example, in the rural areas of Bangladesh and Cambodia, government officials, who are personally acquainted with members of the local community, are frequently lenient in interpreting identity requirements, and their own familiarity with a particular family becomes a highly informal legitimate substitute for birth certificates or other identity documents. In Bangladesh, local government officials report that they often estimate an applicant’s age if no formal proof is available. In many cases, in the absence of a birth certificate, a sworn declaration provided by the individual in question or a relative or neighbor may be sufficient for many purposes, such as enrolling in school or obtaining social welfare benefits.



In addition to the highly informal substitutes, various formal and quasi-formal alternatives may also be accepted. Among the three countries, Cambodia stands out for its flexible approach to establishing proof of identity. Cambodia's various identity documents are generally interchangeable for most purposes. If a birth certificate is not available, often a family book, lodging book, or NIC will do.

In Bangladesh, in addition to official citizenship certificates, which are governed by the Citizenship Act of 1951, a second type of semiformal citizenship attestation is regularly issued by various levels of government authorities, from city corporations and mayors down to the lowest level rural officials. Despite serious effort, this research could not identify any legal authority governing the provision of these documents, which may explain the inconsistency in the procedures for obtaining them. They are also referred to in different ways: Aside from being called a "citizenship certificate," this document

may also be referred to as a "letter of certification" or a "certificate of nationality and character."

Despite the lack of consistency, this semi-formal form of legal identity is commonly used, and is often essential when seeking employment. No supporting documentation is required, though a local ward member must vouch for the applicant. These semi-formal documents generally feature the same minimal personal information, including the applicant's name, parents' names, village of residence, and post office, while birth dates are not included. More importantly, however, these certificates testify that the bearer is of good character, has not been involved in any anti-state activities, and that he or she is a permanent citizen of Bangladesh (though one city corporation attests only to permanent residency). These certificates are usually provided free of charge, although bribes are common.

In Nepal, citizenship certificates are strictly required to access many of the most important benefits and opportuni-

ties. However, a variety of other quasi-official alternative documents are sometimes accepted for limited purposes. One alternative that is widely used, particularly in areas that have been hit hard by the insurgency, is a letter of recommendation from a VDC or municipality. These letters are sometimes, though not consistently, accepted in place of migration certificates or for school admissions. Other alternative documents sometimes accepted in practice include hospital cards, affidavits, and family records. Traditional Hindu religious documents, which are prepared by a local priest, may also serve to establish age since these documents note the astrological indicators of birth.

Alternative Markets

The existence of alternative markets is perhaps the truest gauge of both public demand for legal identity and the barriers to obtaining it. The market price signifies the value of the document, in terms of the benefits and opportunities it confers, as well as the degree to which the official system fails to deliver efficient services. Thus, the emergence of a thriving alternative market reflects the costs and benefits of identity documents.

REASONS FOR ENTERING ALTERNATIVE MARKETS

The most common reasons applicants enter the alternative market are: (1) the applicant is eligible in principle, but excluded from the official system; (2) the alternative market provides more efficient service; (3) the applicant is ineligible to receive an official document; or (4) the applicant needs a false document to facilitate illicit activities. The third and fourth categories capture a graduated scale of culpability and deceit in terms of the intended use of falsified documents—from illegal migration, to working beyond

mandatory retirement ages, and to serious, violent crimes such as human trafficking.

Some applicants face difficulties in obtaining identity documents due to exclusionary laws and practices, such as discriminatory treatment or overly burdensome requirements for supporting documentation. These applicants may resort to alternative markets because they cannot access the official system to obtain identity documents, even if they are legally entitled to do so.

While the alternative market provides relief to applicants that cannot obtain identity documents from the official system for one reason or other, the high fees it charges may render alternative markets out of reach for vulnerable populations.

Despite prices higher than those for an official document, documents procured through alternative markets are in high demand, even among those who can obtain bona fide documentation. The processes associated with obtaining official legal identity documents can be discriminatory, inconsistent, lengthy, unpleasant, confusing, and inaccessible. In contrast, alternative markets offer relative efficiency and accessibility. Those seeking documents through alternative markets can count on receiving them in less time, with less hassle.

In other cases, the alternative market provides services to prospective applicants who are ineligible to receive the document in question. The ultimate goal of such applicants is often to obtain documents that are necessary to earn a living. In Nepal, for example, the bulk of alternative market activity occurs in the *terai*

A focus group participant in Nepal reported that she had a child as the result of incestuous rape. After the child was born, she decided to leave the country to avoid the ensuing stigmatization. The local registrar refused to register the child's birth, however, because the application did not attach a copy of the father's citizenship certificate. The case went up to the ministry level, but the authorities refused to issue the child a passport without a birth certificate. As a result, the mother was compelled to turn to the alternative market, where she managed to get a birth certificate for NRs 6,000.¹

districts bordering India. Indian citizens often turn to the alternative market to obtain Nepalese identity documents so that they can conduct business and purchase property in Nepal. It is unclear to what extent the insurgency has curtailed this interest.

Tibetan refugees also access Nepal's alternative market for citizenship documents and passports and use these documents to obtain work overseas. Interestingly, it is perceived that officials are generally more inclined to provide fraudulent or questionable legal identity documents to Tibetans than to Indians. Since Tibetans tend to leave the country, whereas Indians remain and compete for limited business opportunities, providing falsified documents to

An official interviewed at the Commission for the Investigation of Abuse of Authority, Nepal's anticorruption watchdog agency, shared that it took him 3 days to register the transfer of a piece of land simply because everyone in the land revenue office was aware of his position and did not dare suggest that he go through the alternative market. Had he done so, his documentation would have been processed within a single day.²

Tibetans is viewed as having a less harmful socioeconomic impact on local Nepali communities.³

Other applicants enter the market for false documents with more devious intentions, ranging from manipulating the system of public benefits to engaging in criminal activities. In some instances, applicants seek falsified identity documents to take advantage of various benefits that are otherwise mutually exclusive. For example, multiple identity documents noting differing ages may allow an individual to collect retirement or old age allowances, while at the same time continue to work beyond the mandatory retirement age. False identity documents may also facilitate international travel.

Researchers in all three countries also noted the potential connections between false documents and serious, violent crimes against the person. In Bangladesh,

One researcher in Bangladesh recounts the story of a man applying for a visa to visit a country notoriously strict about issuing visas. The gentleman became so exasperated by the embassy's demands to submit various documents, including a birth certificate, that he produced both his birth and his own death certificate to demonstrate the futility of relying on such documents.⁴

for example, fraudulent and counterfeit documents are used to facilitate crimes, such as fleeing the country to escape prosecution and human trafficking. Similarly, in Cambodia and Nepal, traffickers often use false marriage certificates as a pretense to entice and transport victims.

MODES OF OPERATION

The modes of operation of alternative markets reflect the creativity and entrepreneurial spirit of those involved. Through collaborative working relationships, sound incentive structures, and well-organized procedures, the alternative markets are able to deliver fast and efficient services. Key players in the alternative markets are middle persons or "fixers," who work together with corrupt bureaucrats and/or criminal rings of counterfeiters to produce illicit identity documentation for a large and diverse clientele. The falsification of documents that are difficult to replicate (e.g. passports and driving licenses) is more likely to involve public officials. The research gained some insights into how these alternative markets operate within the three countries by examining reported cases and interviewing a range of participants, including middle persons, government officials, and clients.

Alternative markets provide a range of services, depending on the client's particular situation and needs. The most basic service offered simply involves paying a bribe, commonly known as

“grease” or “speed” money, to bypass official procedures and get faster document delivery. Applicants may pay government bureaucrats directly. However, in many cases, officials prefer to work together with mediators or “fixers.” Even though they take a percentage of the bribe, mediators screen applicants and provide a useful buffer that can serve to reduce risk.

In Bangladesh, those seeking to have false identity documents commonly avail of the services of middle persons, or *dalal*. According to a *dalal* who was interviewed, an efficient system has developed where applicants pay an additional fee to avoid the hassle of going through the official procedures, particularly for procuring passports. The *dalal* pays the relevant issuing officer, who in turn pays the special branch of the police for the required verification. Such verification is generally issued regardless of whether the information provided is correct or not. While the *dalal* spoke disparagingly about fraudulent passports and lamented the country’s widespread corruption, it seemed he considered his own enterprise to be perfectly legitimate.

In Nepal, mediators, who can be found in the vicinity of relevant government offices, regularly approach prospective applicants to offer assistance in obtaining their desired documents. The district administrative office (DAO), land revenues offices, transport management offices, and Law Books Management Board (LBMB) are among the more notorious examples of agencies where getting things done through a commission agent or broker has become standard practice. A Committee for the Investigation of Abuse of Authority (CIAA) official interviewed explained that even when the middle persons have to resort to official formalities, these channels provide efficient service and the client is not required to do anything except pay the price and wait for the result.⁵

For those seeking fraudulent documents, the alternative market consists of several major modes of supply: (1) producing genuine documents based on false information or supporting documentation, (2) obtaining and manipulating preexisting documents, and (3) outright counterfeiting.

A common mode of falsification involves obtaining bona fide identity documents on the basis of false information. Mediators can facilitate this process by ensuring that officials required to sign off turn a blind eye and have sufficient incentive to do so. Providing false information in an

application form is fairly straightforward, but producing supporting documentation may be required to minimize the risk of detection.

In Nepal, falsified supporting documentation is sometimes generated by manipulating judicial or translation service procedures. An applicant may file a claim in court, which identifies a third party as possessing a certain status or relationship. The official court documents are then used as proof of the false status or relationship.⁶ Opportunities to obtain falsified supporting documentation also exist in the translation processes of Nepal’s LBMB. This scheme involves submitting false papers to the LBMB for translation, and then obtaining a certified translation to use as an original document. The LBMB is not equipped to check this abuse because it lacks any means or procedures to ascertain the veracity of documents submitted.

Another common practice in Nepal that facilitates the issuance of false documents, while reducing the risk of detection, involves removing the complete file or record of an identity document that was issued based on false information or

The most basic service offered simply involves paying a bribe, commonly known as “grease” or “speed” money, to bypass official procedures and get faster document delivery.

fake supporting documents.⁶ This tactic, which requires the involvement of public officials, is facilitated by poor record-keeping practices. In a case investigated by the CIAA, the production of the official record behind the issuance of a citizenship certificate was ordered. The concerned DAO responded that the official record pertaining to the questionable citizenship certificate could not be found, although a search was under way. The CIAA's only recourse was to direct the Ministry of Home Affairs to be more vigilant in maintaining records in a secure manner.⁷

A second method of falsification is to alter or manipulate preexisting official documents. According to the dalal interviewed in Bangladesh, criminal syndicates provide what is known as *gola kata* (or cut-neck) passports. These forgeries rely on replacing the original passport holder's photograph with the purchaser's. Such passports often contain unexpired visas, and are bought and sold in the black market.

Similar tactics are also used in Nepal. In the case of *HMG v. Som Bahadur Junjali* and others, the CIAA found that a passport with a visa to the United Kingdom, which had been used by the original holder, was purchased and manipulated so that the purchaser could also enter the

In 2004, the Cambodian authorities busted a major criminal ring that produced counterfeit and forged civil registration documents. Among the evidence confiscated were computer equipment, scanners, and thousands of fake documents. In over 2 years of operation, this group provided at least 30 foreigners with illegal Cambodian passports and citizenship documents. The group also issued several land titles and business licenses, which were fabricated with such precision that court officials reported that the forgeries were indistinguishable from the actual documents through an eye examination alone.⁸

country using the same passport and visa. After arriving in the United Kingdom, the genuine passport holder sent the passport back to Nepal, where the photograph was changed and the immigration seal was distorted.

Outright counterfeiting of documents is another frequent method of falsification. Inadequate security features, like the lack of serial numbers on Nepal's citizenship certificate holograms, make counterfeiting fairly easy. In Bangladesh, however, the introduction of modern technology, such as machine-readable passports, is making it increasingly difficult to produce counterfeits of the more heavily regulated documents.

COST STRUCTURES FOR COMMONLY FALSIFIED DOCUMENTS

The alternative market for identity documents is a reflection of supply and demand. Both the pervasiveness and the price of fraudulent identity documents vary, depending on the document involved. The research suggests that countries with robust alternative markets are those where: (1) obtaining identity documents takes a long time; (2) offices in charge of providing identity documents impose burdensome evidentiary requirements as preconditions to releasing these documents; and (3) identity documents are widely recognized to facilitate access to more opportunities and benefits. Common examples of documents that meet these criteria are passports, academic certificates, and driving licenses. The cost of false documents generally depends on the urgency and means of the service seeker, the nature of the document, and the risks associated with the specific type of document falsification. Rates tend to be higher if the document yields significant benefits or if obtaining it entails considerable risks.⁹ Due to the illicit nature of the business, prices charged even for the same document tend to be neither

uniform nor transparent. However, the research discovered anecdotal evidence of price information based on interviewing knowledgeable informants and reviewing reported cases and relevant news items.

Based on the analysis of the benefits and costs of legal identity, it is not surprising that among the three countries in this study, Nepal has the most robust alternative market for identity documents. Identity documents, particularly citizenship certificates, are strictly required in Nepal to access a wide range of advantages—from land ownership to employment opportunities. At the same time, they are difficult to obtain. Together, these incentives and obstacles to procuring official legal identity documents combine to create a thriving alternative market. Nepal's alternative markets for falsified identity documents are estimated to generate millions of rupees.

In Nepal, the cost of false birth registration reportedly ranges from in-kind gifts, such as alcohol and goats, to cash payments of up to NRs10,000.¹⁰ Passports and letters of recommendation for citizenship are both significantly more expensive and more likely to be falsified, though their prices vary greatly. On the high end, the accused in one case investigated by the CIAA claimed that he paid over \$6,000 for a falsified passport with a visa to the United Kingdom. In a case filed at the Supreme Court, a foreigner married and residing in Nepal paid only \$200 for a falsified passport.¹¹ Another Supreme Court case, which involved staff of the Nepalese Embassy in New Delhi, reported that fees of \$900 were charged for the processing of falsified passports.¹²

Reported cases on fake citizenship documents also reveal a wide disparity in prices charged; service recipients paid fees ranging from NRs4,000–60,000. In one case, for example, the accused paid NRs6,000 for a local authority's recommendation for citizenship.¹³ Cases reported by the CIAA indicate that multiple



identity documents are often involved.¹⁴ In *HMG v. Binod Kumar Sharma*, a senior public officer and others were charged with corruption for seeking bribes of NRs22,000 from each of 15 people in exchange for fake citizenship, passports, and migration certificates.¹⁵

Compared to Nepal, Cambodia falls on the opposite end of the spectrum in terms of public demand for identity documents. Since by and large the country's various identity documents are interchangeable, citizens can generally access the few available benefits and opportunities, provided they have at least one form of identity. The Government's flexible approach of permitting the use of identity documents interchangeably diminishes the incentive to obtain identity documents, which in turn reduces the demand needed to fuel a thriving alternative market. Among the FGD participants, only one reported any direct experience with alternative markets for identity documents. FGD participants could not provide information on the cost of these falsified documents.

The majority of Cambodia's alternative market activity is concentrated in passports. This is not surprising since this is the one document for which substitutes are not acceptable. While FGD participants outside of Phnom Penh were barely aware of the concept of a passport, those

in Phnom Penh were well informed of the alternative market for faster delivery of official passports. This service, which unofficial agents with connections to passport staff facilitate, appears to have a standardized, transparent scale of graduated prices, depending on the purchaser's desired time frame. Passports are delivered in 1 month for a fee of \$120, in 3 weeks for \$150, in 2 weeks for \$170, in 1 week for \$200, and in 3 days for \$250.

In Bangladesh, there does not seem to be an active market for fraudulent birth certificates since alternatives are so readily accepted. It can be expected, however, that this will change as soon as birth registration becomes a mandatory precondition for accessing benefits and opportunities under the 2004 Registration Act.

Increasing technological sophistication and anti-fraud measures make passport counterfeiting quite difficult, and has led to an apparent decrease in this activity. However, false passports appear to remain available through illegal manpower agents, offering package deals which include passports, visas, and employment abroad. Packages to Saudi Arabia, for example, are offered for prices ranging

A market for Cambodian passports also appears to have emerged since the Ministry of Interior started issuing standard Kingdom of Cambodia passports in August 1995. It appears that the clients of this market are primarily foreigners. According to media reports, a Cambodian passport, which officially costs \$100, can go for as much as \$2,000. This is easy money for Cambodians, who can replace a passport without great difficulty by reporting the old one lost or stolen. Westerners appear to be doing the same thing, but with a much greater reward, as the going rate for an American passport is \$25,000. Other anecdotal evidence from news reports indicates that forgery rings charge foreigners up to \$40,000 for Cambodian citizenship and passports.

from Tk80,000–125,000. Additionally, like Cambodia, Bangladesh has a well-developed market for the delivery of official passports through unofficial mediators or agents. For example, the official fee for an urgent new passport is Tk5,000. However, an applicant can avoid the hassle of the official procedures by paying a dalal Tk6,500, of which Tk700 or Tk800 is reportedly paid to the officer, who then allegedly pays a share to the police official.

Challenges in Preventing Alternative Market Activities: Nepal Case Study

The research in Nepal included a thorough review of ongoing and reported cases involving false identity documents. It provides a picture of the challenges faced in government efforts to curb alternative market activities.

Nepal has a range of legal provisions that criminalize the creation, provision, sale, and use of fraudulent identity documents. Various authorities are responsible for initiating legal action against fraudulent activities involving identity documents. Most cases of fraud involving private individuals are subject to prosecution through normal legal channels under the State Cases Act of 1992. Other laws, such as the Citizenship Act, the Passport Act, and the Country Code, criminalize the creation, provision, and use of false documents under their purview. The Registration Act of 1977, for instance, gives DAOs the power to bring charges against fraudulent acts in vital registrations. The DAO is subject to the procedures of the Special Court Act of 2002 and its decisions may be appealed at the concerned appellate court.¹⁶

Also relevant is the Prevention of Corruption Act, which established the CIAA. The CIAA has jurisdiction over cases of fraudulent identity documents involving corruption among public

officials. In response to suspected offenses, the CIAA may take two types of action: It may file charges in special courts where the fraud is willful, or it may refer the matter to the relevant ministry where it is negligent.

Despite adequate laws, however, the likelihood of detection, prosecution, and conviction for participating in Nepal's alternative markets is low. This is especially so for the falsification of civil registration documents. The number of cases filed under the Birth, Death, and Other Personal Events (Registration) Act is strikingly low. Not a single case of fraudulent birth registration could be found with the DAOs in four of the five districts where this research was conducted.¹⁷ Among the three reported cases on vital registration filed with the DAO of Kathmandu, two involved birth registration and one marriage registration. Moreover, only a single case on vital registration could be found in all of Supreme Court jurisprudence.¹⁸

A significantly higher number of fraudulent identity cases related to citizenship certificates and passports could be found. These cases generally involve the illegal acquisition of documents by means of providing inaccurate information in the application form; submitting false recommendations, falsified supporting documentation, or fraudulent signatures; using false names; or producing counterfeit seals. The CIAA has recently investigated and prosecuted a number of cases, though their overall success ratio remains low.

Despite the fact that the CIAA has established a special investigation unit on citizenship, passport, and vehicle registration, the trade in fraudulent identity documents remains a high-profit, low-risk business. According to key informants interviewed, major factors that perpetuate



the production, sale, and use of forged documents are the ease of falsification and forgery, the low rate of convictions, and light penalties imposed. Some of the challenges in trying to stem the tide of false document registration include a lack of systematic record keeping; unsophisticated investigation techniques; a dearth of human resources; and the mutually beneficial web of relationships among politicians, bureaucrats, and black market document brokers. The low conviction rate is not only a matter of incapacity, but also one of political will. On several occasions, the CIAA has directed the government to take administrative action against violators of registration regulations to no avail. Informers do not often step forward in forgery/false document cases. In any event, the punishments imposed are generally quite low.

LOW REPORTING

Procuring false modes of legal identity through the alternative markets is a mutually beneficial transaction between the buyer and seller that produces seemingly few negative externalities. It is, therefore, generally considered to be a victimless

crime. As a result, few cases are reported. Interestingly, those cases that are reported are frequently due to internal family disputes over property. Since citizenship is required to own property in Nepal, invalidating the grounds for an individual's citizenship is an effective strategy to prevent one from receiving a share of family property. Out of the 21 Supreme Court citizenship cases reviewed, 12 involved people who reported their neighbors or relatives for allegedly providing false information regarding lineal descent in their citizenship applications, thus effectively depriving them of their right to own or inherit property.

LOW PENALTIES AND IMPUNITY

Further undermining deterrence are the light punishments imposed for participating in the production and sale of fake identity documents. For example, the penalty for altering a document issued by a government agency is imprisonment from 3 months to 2 years, a fine of up to NRs50,000, or both.¹⁹ Similarly, the destruction of a government document is punishable by imprisonment from 6 months to 1 year, a fine of NRs10,000–50,000, or both. This provision, however, is only applicable in corruption cases involving public officials. The forgery of government documents, not involving corrupt public officials, is subject to 1 year imprisonment. Additional penalties, including fines and increased prison time, may be imposed, depending on the specific characteristics of the offense. The punishment for acquiring or trying to acquire a passport by providing false information is imprisonment of up to 1 year, a fine up to NRs500, or both.

Even when harsh sentences are permissible, they are rarely imposed. In one case, the CIAA raided the residence of a local registrar, where they recovered counterfeit government seals, registers, and birth registration forms. Investigators

discovered that the local registrar was working in conjunction with other government officials, including a section officer of the home ministry, to produce and sell fake birth certificates to Tibetan refugees. The CIAA only ordered departmental action against those found guilty.²⁰ In another case, the CIAA discovered that the accused had purchased and manipulated a passport with a visa to the United Kingdom. The penalty imposed in this case was cancellation of the passport and a warning to the immigration officials for their negligence.²¹

Often cases involving false documents are treated with outright impunity. For example, in 1999 the CIAA ordered the Government to take action against a local official of Siraha district for illegally providing citizenship and passports. But as of 2004, nothing had been done. Similarly, in 1997 the CIAA decided to take action against a government official in Chitwan, but this has not been done to date.

BURDENSOME PROCEDURES AND HIGH STANDARDS OF PROOF TO ESTABLISH CORRUPTION

Filing charges in fake document cases involves lengthy and burdensome procedures, including verification of the documents and an inquiry with the concerned agency. These cases are also frequently delayed due to the nonavailability of records. Officials involved often destroy the original registration records to obstruct investigations. Further undermining the risk of punishment is the high standard of proof needed to establish corruption. What constitutes sufficient evidence of corruption is not clear, but the following anecdotes illustrate that the bar is high.

INVOLVEMENT OF ORGANIZED CRIME SYNDICATES

This CIAA has found that the market for fraudulent identity documents is highly

The Bhaktapur DAO issued 78 passports without duly verifying the authenticity of the supporting documents. The CIAA later found that this was not a case of negligence; the registrars involved willfully failed in their duty to conduct due diligence. Yet the CIAA could not prove that an exchange of money occurred, resulting in an acquittal.²²

An assistant level employee, who was the custodian of 28 passports “lost” in the process of distribution, admitted to selling the passports for NRs70,000. Despite this confession, the court found that the prosecution lacked sufficient evidence of guilt, and dismissed the case.²³

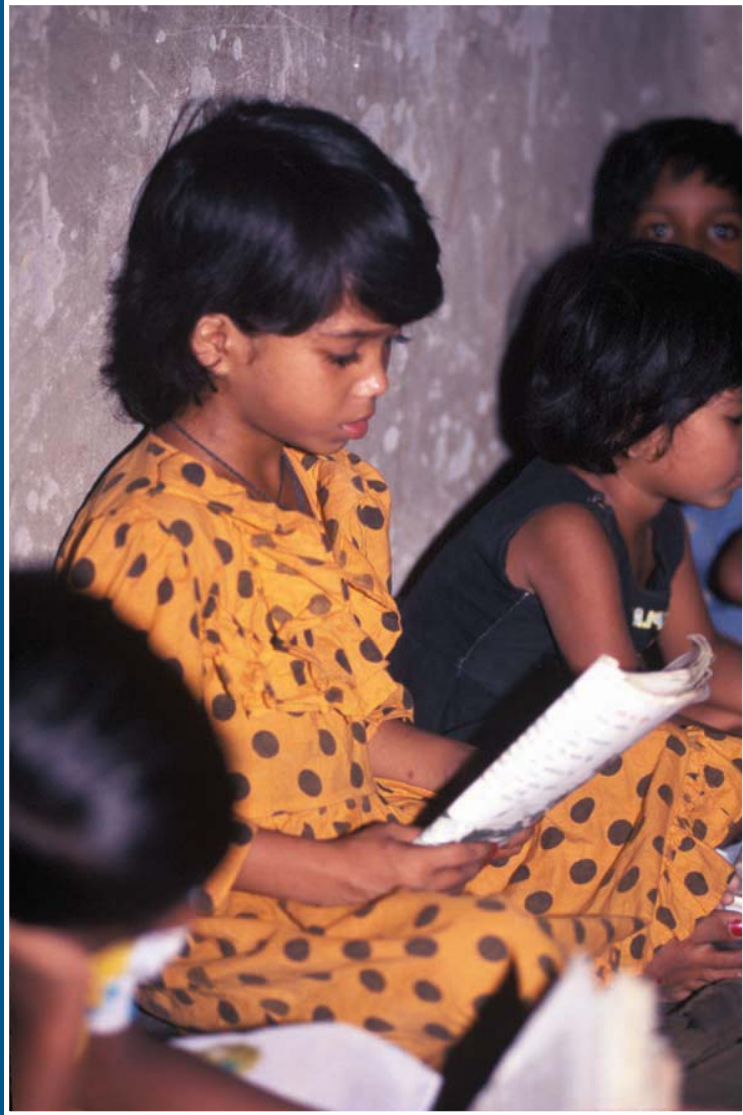
organized, based on well-established, mutually beneficial relationships among varying levels of government officials and

external brokers. In a recent case, the CIAA discovered that an organized network, which included brokers, mediators, and a range of public officials, issued falsified passports based on fake citizenship and migration certificates. It was established that 15 fraudulent passports were sold to residents of Darjeeling, India. The CIAA initiated an investigation and prosecuted the case at the Special Court, but failed to convict the defendants due to inadequate evidence of bribery. The case illustrates how the alternative markets operate through organized crime syndicates, which makes it difficult to pinpoint the actual persons responsible and the exact modes of operation. Moreover, since those involved include insiders, they are able to use sophisticated means to obstruct law enforcement efforts and protect one another.

ENDNOTES

- ¹ The affected person recounted her story during a focused group discussion (FGD) held in Kathmandu, September 2005.
- ² Interview with a key informant working with the Committee for the Investigation of Abuse of Authority (CIAA), September 2005.
- ³ Interview with a key informant working with the CIAA and DAO, Kathmandu, September 2005.
- ⁴ Shahnaz Huda, researcher in Bangladesh.
- ⁵ Interview with the chief of the Special Team on Fake Certificates and False Citizenship and Passports in the CIAA, 22 November 2005.
- ⁶ Raj Kumar Shaha vs. HMG Nepal, NKP, vol. 7, at 403–406, (1998).
- ⁷ CIAA Annual Report, Fiscal Year 2002–20-03.
- ⁸ 2004. The Cambodia Daily. 9, September.
- ⁹ Note 5.
- ¹⁰ FGDs and interviews with key informants.
- ¹¹ Supreme Court (Nepal), writ No. 71, decision No. 6212.
- ¹² Supreme Court (Nepal), writ No. 57, decision No. 4463, (1991).

- ¹³ HMG v. Shila Shah Teli et al. (Ongoing case at Supreme Court of Nepal).
- ¹⁴ Interview with CIAA key informant and review of CIAA case file and Annual Report (2001–2004).
- ¹⁵ HMG v. Binod Kumar Sharma, 2003(CIAA 14th Annual Report, 2060, pp. 13–15).
- ¹⁶ Birth, Death and others Personal Events (Registration) Act (Nepal), sec. 15(1), (1977).
- ¹⁷ No cases on birth registration were found in Nawal Parashi, Dang, Dadeldhura, and Dolka.
- ¹⁸ This case is related to death registration.
- ¹⁹ Prevention of Corruption Act (Nepal), sec. 11, (2003).
- ²⁰ CIAA Annual Report for FY 2003/04, pp. 63–64.
- ²¹ HMG v. Som Bahadur Junjali.
- ²² Interview with the concerned investigation officer of the CIAA, 20 November 2005.
- ²³ Note 22.



Conclusions

This research project critically assessed whether improved access to some form of legal identity improves the lives of vulnerable communities in the three countries that were studied. The research explored legal identity as an instrument for obtaining services, benefits, protections and rights, rather than as the self-evident right to be recognized to exist. Its main conclusion is that legal identity issues are country- and benefit-specific, and need to be addressed as an integrated part of a larger reform agenda.

Legal identity is a multifaceted issue with potentially far-reaching implications, ranging from accessing benefits and opportunities, to human rights protection, to the distribution of public resources. Due to the realities in developing countries, however, fundamental obstacles—such as weak institutions, widespread poverty, and corruption—limit the concrete value of legal identity. In the context of competing demands for limited resources, the impact of improved access to legal identity, at least for the most vulnerable communities, often remains speculative and remote. In fact, promoting legal identity by creating a demand—whereby a birth record is a prerequisite for accessing services and opportunities—without complementary reforms, seriously

risks further exclusion of the very people intended to benefit.

Focusing on these challenges provides a realistic baseline for those development partners seeking to address the obstacles and design programs targeted at improving the lives of vulnerable groups. Decisions about where to invest limited government and donor resources should be grounded in an evidence-based understanding of the problems so that program interventions can be finely tuned to achieve meaningful and cost-effective results.

Key Insights

BIRTH CERTIFICATES ARE AN INTERMEDIATE, NOT AN ULTIMATE, GOAL.

Too often programs aimed at increasing civil registrations are based on an inadequate problem analysis that fails to differentiate between intermediate and ultimate outcomes. While recognizing the right to be registered at birth as a human right, the ultimate goal is not simply to increase registration rates but to improve access to services, benefits, protections, and opportunities. Program interventions often seem based on the assumption that the distribution of birth certificates will



lead to human rights protections and better distribution of resources and opportunities. The research shows that in the three countries studied, this assumption is misplaced. The goods associated with legal identity do not automatically flow from the possession of a birth certificate.

With donor assistance, the GOB has undertaken a number of projects to encourage birth and death registrations. While these projects have been touted as successful, it is not clear whether any success has been achieved beyond the number of people registered in the districts targeted by the registration campaigns. In fact, there have reportedly been large discrepancies between the number of people registered and the number who have actually collected their registration certificates. This divergence suggests that many people think that birth certificates have little practical value. Initiatives to increase birth registrations should be pursued, but these efforts should be coordinated with complementary reforms that aim to improve the delivery of essential services and make birth certificates more relevant to people's lives.

DEVELOPMENT PARTNERS SHOULD BE AWARE OF REGISTRATION REQUIREMENTS WHEN DESIGNING DEVELOPMENT INTERVENTIONS BUT AT THE SAME TIME ENSURE THAT SUCH REQUIREMENTS DO NOT LEAD TO UNINTENDED CONSEQUENCES.

When designing mainstream development projects in areas such as education, health, land rights, small and medium enterprise development services, and delivery of utility services, development partners need to critically analyze the potentially negative impact of the existing identity regime. Key questions to ask in the project design phase are: Could the domestic legal identity regime limit the range of project beneficiaries? If so, what can be done to mitigate this undesirable result?

For example, donors funding education sector projects in Nepal (or in Bangladesh after the 2004 Registration Act is fully implemented) should be aware that legal identity requirements may exclude those beneficiaries most in need of assistance, such as women and minorities. In fact, in Nepal, a review of the

multidonor Education for All Program in the primary education sector highlighted this very issue—that scholarships did not get to dalits because they lack birth certificates.¹ Dalits face barriers to obtaining birth certificates, which are required to apply for scholarships. In such cases where legal identity requirements have an exclusionary impact on unregistered individuals, mitigation measures should be incorporated into the project design. For example, donors providing funding for scholarships in Nepal should ensure that alternative documents are accepted for dalits and other excluded groups, or ensure that the delivery of birth certificates is linked with service delivery such as enrolment in primary schools.

Well-intentioned interventions in the domestic legal identity regime, such as Bangladesh's 2004 Registration Act, can also result in negative, unintended consequences. Registration laws that aim to create demand for registrations by making benefits and opportunities contingent on birth certificates could lead to increased social and economic exclusion among vulnerable groups that face obstacles to registering. Similarly, corruption is likely to increase significantly if the supply of registration services cannot keep pace with increased demand.

UNDERSTANDING THE COUNTRY CONTEXT, INCLUDING THE INCENTIVE STRUCTURE OF INSTITUTIONAL ACTORS, IS ESSENTIAL.

A thorough understanding of the programming environment is essential when designing programs to promote legal identity in developing countries. Establishing and maintaining a complete, effective, up-to-date, and accessible civil registration system requires sufficient funding, human resources, political priority, enforcement capacity, and administrative infrastructure. These essential inputs, however, can be hard to come by, particularly in develop-

ing countries, which are generally characterized by weak institutions and scarce resources, and where corruption is rampant. Given this reality, technical approaches that work in developed countries cannot necessarily be transferred, unless adjustments are made to address critical issues and impediments. This challenge should not be underestimated. For example, if responsibility for registrations falls on overworked, underpaid, low-level officials, without any thought to developing performance-based incentive structures, it is unrealistic to expect high-quality, customer-oriented work standards.

COMPLEMENTARY REFORMS ARE NEEDED TO MAKE LEGAL IDENTITY MEANINGFUL.

The value of a civil registration document is only as far reaching as the state's capacity to provide services and enforce laws intended to protect citizens' rights. In countries characterized by poor governance, weak institutions, and resource constraints, legal identity may make little practical difference without complementary reforms. For example, if the education and health departments are operating on meager budgets with poor internal incentives and monitoring, the services they can provide will remain limited, regardless of the number of people with 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 intended to limit access. Similarly, links between legal identity and human rights protections are based on the assumption that courts have sufficient capacity and

Experience demonstrates that increased demand can also lead to the creation of new barriers intended to limit access.

resources, and that they vigilantly and consistently decide cases fairly and enforce their decisions. If laws are regularly violated with impunity, 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; however, it is necessary to be realistic about what it can and cannot accomplish. Legal identity documents alone can accomplish little, but they ought to be an important component of a larger reform agenda for promoting inclusive development. In other words, law is a tool of and supplements development policy. It does not substitute for such policy.

GAUGING POLITICAL PRIORITY FOR REGISTRATION IS ESSENTIAL.

In an environment of competing demands for limited resources, civil registration may be a low priority item, particularly compared to other more urgent and concrete needs. Reforming and improving institutions is expensive. Government officials may not view the transaction costs involved in establishing a universal civil registration system as worthwhile.

Often the lack of political priority for civil registration is not premeditated, but results from insufficient funding for measures to address the host of problems requiring significant state resources and attention. In some cases, however, government officials may have personal interests in maintaining a dysfunctional system that can easily be manipulated by insiders. This issue was raised a number of times in all three countries in relation to incentives to work beyond mandatory retirement ages.

Clearly, governments may be able to overcome tremendous institutional weaknesses when they are genuinely interested in doing so. The widespread distribution of family and lodging books

in Cambodia is illustrative in this regard. According to the MOI's 2005 statistics, 91% of Cambodia's population is accounted for in lodging books and 88% in family books.² These impressive statistics were accomplished without donor assistance. While donors may not support the original purpose of family and lodging books, which seem to have historical ties to government control over the population, it is still worth asking how the Government achieved these results. The answer could provide important insights and guidance for those seeking to promote birth registration. Investigating this question would require further research, but the Government's success in distributing family and lodging books was probably achieved because such registration had practical value and enjoyed political priority.

DONOR-DRIVEN PROGRAMS MAY NOT BE SUSTAINABLE.

International pressure and donor support have engendered an increased level of political priority, domestic attention, and government engagement on the issue of legal identity in the three countries studied. All three countries have received donor support for a range of registration-related projects, from a nationwide mobile registration campaign in Cambodia to human resource development in Nepal. Donor-supported initiatives in Bangladesh have utilized innovative approaches to increase the efficiency of the registration process in pilot project locations. These projects have benefited from the involvement and dedication of proactive government officials, who have demonstrated a genuine interest in improving registration rates. For example, in Rajshahi City Corporation, the commitment and dedication of local officials—from the mayor down to the local level health workers—has resulted in the registration of every birth within the city limits.

While these projects represent positive steps, the issue of sustainability cannot be ignored. In the case of Bangladesh, concerns have been expressed that health workers responsible for collecting and reporting information, who are paid with project resources, may not be as motivated or efficient once project funding comes to an end. Similarly, it remains to be seen if Cambodians will continue to register new births once mobile registrations are no longer provided and the process requires a trip to the commune/*sangkat* office within 30 days of the birth to avoid late fees. When asked about the issue of sustainability, officials at the MOI expressed concern, but claimed that a culture of registering has been generated through the mobile campaign and that training programs have built solid capacity among those responsible for registrations at the local level. Moreover, they are counting on fines for failing to register within the prescribed time to motivate people to continue registering. To supplement these measures and help ensure sustainability in the wake of the mobile

registration campaign, ADB supported a pilot project that engages traditional birth attendants (TBAs) and midwives to provide new and expectant mothers with information on the birth registration process. This is further described in the part on promising approaches.

In some cases, projects undertaken due to external pressure are implemented without sufficient planning or coordination of efforts. In Bangladesh, for example, it has been reported that projects have been initiated without adequate attention to developing an empirical baseline and sequencing of interventions. In some areas donor-provided computers sit idle because systems for organizing data and trained human resources are lacking. Unfortunately, proper attention to baseline research and planning may also be lacking in the case of programs aimed at implementing the 2004 Registration Act. For example, the budget allocations and civil registration personnel may be insufficient to meet the increased demand for registrations that the 2004 Registration Act will generate.



A Central Challenge: Which comes first, supply or demand?

A functioning civil registration system relies on both supply and demand factors. On the supply side, an efficient civil registration system needs sufficient material and human resources as well as effective management structures, institutions, and processes. On the demand side, the timely registration of vital events requires citizen participation. However, unless the registration document provides access to definite, substantial advantages, it

The tension between supply and demand factors creates a sequencing dilemma for those seeking to build a universal civil registration system.

is unrealistic to expect that citizens will register, particularly given the costs and hassles involved. For remote and vulnerable populations, the majority of whom may be

unlikely to see any direct benefits of obtaining registration certificates, they have little incentive to invest the time and expense required to collect the necessary supporting documents, take time off from work, and travel to the registration office.

The tension between supply and demand factors creates a sequencing dilemma for those seeking to build a universal civil registration system. Both supply and demand must be generated, but which comes first is not an easy question to answer. For example, demand can be built by imposing strict identity requirements to access important benefits and opportunities, which will give citizens an incentive to register. However, at least in the short term, this strategy risks exacerbating the exclusion of unregistered individuals from taking advantage of those benefits, protections, and opportunities for which legal identity is mandated. Moreover, if local registration offices are unprepared to meet the increased public

demand, rent seeking will likely increase. This may have a disproportionate exclusionary effect on poor and vulnerable groups. Another strategy that could have an exclusionary effect is to penalize citizens for failing to register on time by charging additional fees. This tactic is unlikely to result in timely registrations and again may serve to further marginalize vulnerable populations. For example, some mothers in Nepal reported that they were reluctant to register their newborn babies, given the costs incurred and the reality of high infant mortality rates. For these mothers, the cost of registration does not make economic sense until they are confident that the child will live long enough to need a birth certificate. Similarly, FGD participants in Cambodia reported that the timeframe for free registrations is too short, given the challenges involved in getting to the registration offices.

An alternative approach is to focus on supply by building the necessary infrastructure to accomplish universal registrations. However, this is a resource-intensive undertaking, which makes little sense unless registration documents have a concrete instrumental value. Even if the registration process is affordable, straightforward and user-friendly, citizens will lack the motivation to register if the practical value of doing so is not apparent. In this case, the high investment required to develop and maintain a civil registration system will not yield sufficient returns. For example, the system will fail to generate complete demographic statistics, which is a major benefit from the government's perspective.

Recent efforts to promote civil registrations in Cambodia and Bangladesh exemplify the shortcomings of the two approaches described above. The Cambodian government has focused primarily on supply, while Bangladesh on demand. Over the past 3 years, the Cambodian government with international donor assistance has made great strides in raising

the country's birth registration rate, largely due to an intensive, nationwide mobile registration campaign. Through this campaign, mobile registration teams have traveled throughout the country to bring free birth registration to people's doorsteps. The Cambodian government has also invested significant resources to build the capacity of local registration offices. These efforts have resulted in a dramatic increase in the birth registration rate, which is currently estimated to be over 90%, from less than 5% when the program began in 2003.³

Despite these impressive results, the Cambodian government has refrained from mandating birth certificates to access benefits and opportunities. This policy decision is based on the Government's recognition of the potential negative effects of linking birth registrations and access. MOI officials reported that they would not consider requiring birth certificates for school enrollment unless and until they were confident that at least 95% of the population had registered. While this policy is commendable for prioritizing inclusiveness, there are serious concerns about sustaining the recent advances in registration rates, particularly once the mobile registration campaign comes to an end and registering entails a trip to the commune office. If citizens find that the certificates they received through the mobile registration campaign are of little use, it is difficult to imagine what would inspire them to register children born subsequent to the campaign.

The GOB, also with international donor assistance, had passed the 2004 Registration Act. This law, which is currently awaiting full implementation, makes birth certificates mandatory to access a wide range of benefits and opportunities, from education to installing a utility connection to inclusion in the voters' list. This law provides very clear incentives for citizens to register. However, efforts to build the capacity of

Bangladesh's registration system have been inadequate, in light of the increased demand this law is expected to generate. Although some pilot efforts, such as the project in Rajshahi City Corporation, have been very successful, a nationwide replication has not been initiated and would be prohibitively expensive. Local officials have expressed serious concerns that registration offices are unprepared to deal with the expected surge in registration applications and that the proposed funding arrangements are inadequate. Observers have warned that this new policy could have the unintended negative effect of fueling both corruption and exclusion.

The 2004 Registration Act does anticipate this eventuality and includes some provisions aimed at ensuring that children without birth certificates are not deprived of essential benefits. Educational institutions, for example, may admit students without birth certificates, but should require students to submit and deposit such birth certificate within 45 days of admission.

Promising Approaches

Standard programmatic approaches for encouraging registrations tend to correspond to supply and demand challenges, focusing on building capacity and raising awareness. These familiar approaches include a range of activities, from training relevant personnel to street theater productions. While these types of programs can be useful, unfortunately, in some cases they are divorced from the reality of citizens' true experiences. For example, the story line for one street theater production in Cambodia involved a woman who refused a marriage proposal because the man could not prove his age. While audiences most likely found this story entertaining, it is difficult to imagine that it would motivate parents to register their newborns.

Two innovative approaches that hold some promise for addressing the central sequencing dilemma are highlighted below. These approaches are recommended because they use existing resources, and demonstrate an appreciation for citizens' priorities and needs.

LINKING REGISTRATIONS TO SERVICE DELIVERY

One of the most promising strategies, particularly for addressing the sequencing challenges, involves piggybacking registrations onto other service delivery programs. Rather than making benefits contingent on proof of identity, this reverse approach provides birth registrations through avenues where other benefits and services are already offered. When citizens come to avail themselves of public benefits, such as health or education, they also receive birth certificates. This strategy is skillful in that it simultaneously addresses problems related to both incentives and obstacles. Citizens are naturally motivated to come forward when advantageous and tangible services and benefits are available. At the same time, applicants save the time and expense required to make a special trip for the sole purpose of registering, which experience demonstrates they are likely to put off.

This approach has been adopted in certain areas of Bangladesh, where registrations have been linked to immunization programs, free primary education, and vitamin A campaigns. A government official at the national workshop for this research proclaimed that universal birth registrations will be successful only if these two platforms, education and health, are effectively employed. It is estimated that these two platforms could reach 23% and 2% of the population respectively, leaving an adult backlog of 65%.⁴

Bangladesh's 2004 Registration Act appears to contemplate linking registrations to other service delivery programs.

The rules state that registrations can be completed through the assistance of health and family planning workers or an educational institution. In addition, the 2004 Registration Act authorizes a broad range of actors to supply details of a birth to the Registrar, including local officials and health and family planning workers. However, how proactive or motivated these individuals will be to provide assistance is not yet clear.

BRINGING REGISTRATION TO PEOPLE'S DOORSTEPS

Another strategy that has proven effective involves bringing registration to the people's doorsteps. As mentioned previously, the Government of Cambodia adopted this approach in implementing a massive, nationwide mobile registration campaign. A less costly, more sustainable option uses local level health workers to collect registration information. This practice has been pilot-tested in Bangladesh. For example, in Rajshahi City Corporation, health workers who are paid an incentive of Tk2 for each birth registered visit clinics and hospitals to collect information on pregnant women and new births within their areas. Similarly, the Khulna City Corporation has distributed registration forms to health workers and NGOs, which collect information through house-to-house visits, vaccination sessions, and from clinic/hospitals and medical centers.⁵

ADB, in partnership with the Asia Foundation, adopted a similar model in a pilot project in Cambodia as part of this research. Under this project, midwives and TBAs were trained to provide targeted outreach to raise awareness on birth registrations among new and expectant mothers. This project was implemented in three provinces: Kampong Speu, Svay Rieng, and Seam Reap. The health workers disseminate information on registration requirements and procedures through one-on-

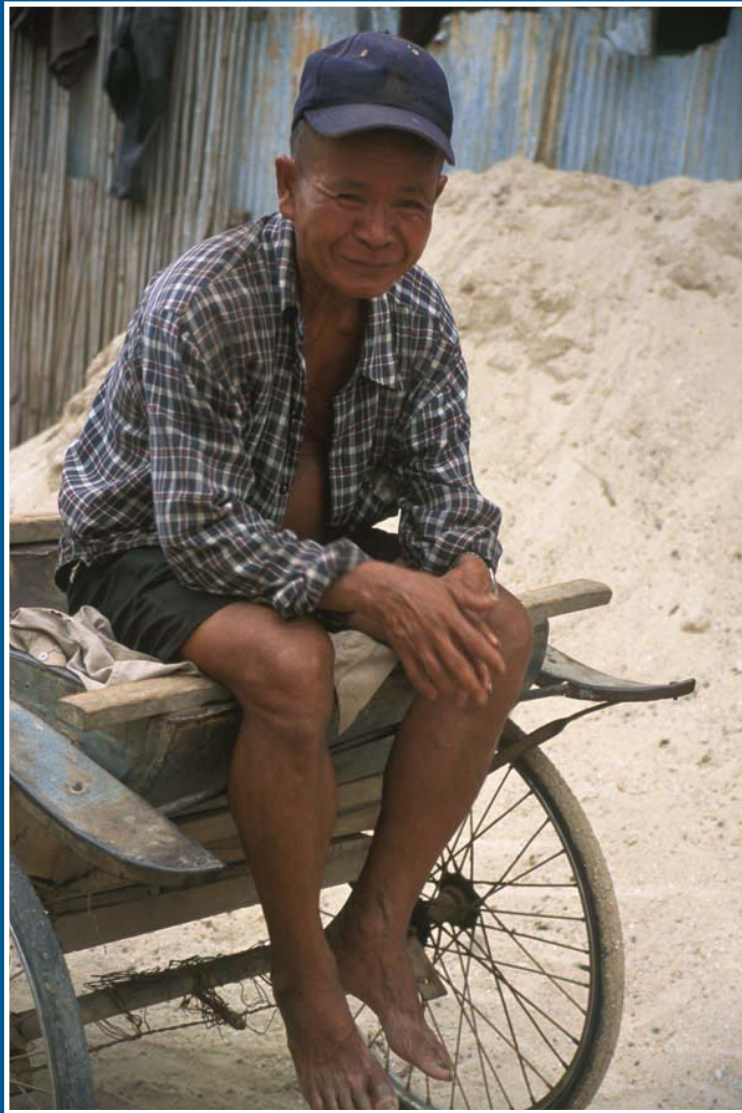
one interactions shortly before or after the birth, the time when this information is most relevant. Engaging midwives and TBAs in an awareness campaign on birth registration is a particularly strategic approach in the context of Cambodia, where 69% of births are assisted by TBAs and 89% take place at home.

The rationale for this pilot was to test whether targeted outreach to new mothers would be an effective strategy for encouraging continued registrations in the wake of the mobile registration campaign. The project was based on the hypothesis that direct, one-on-one

outreach aimed at new and expectant mothers would be more effective than general outreach, such as billboards and radio spots, in actually increasing registration rates. The project aimed to measure the effectiveness of this approach by comparing the percentages of newborns registered in project and control areas. While the scale of the project is too small to draw definitive conclusions, results demonstrate that a higher percentage of newborns have been registered in project areas. This suggests that this may be a strategic and effective approach, worth replicating in other areas.

ENDNOTES

- ¹ ADB. *Report and Recommendation to the President for the Proposed Program Cluster of Loans and Asian Development Fund Grants, Nepal Education Sector Program I. Appendix, Table A 4.*
- ² These are the most up-to-date statistics available as of January 2007.
- ³ MOI Report on Cambodian citizens registered as of 30 November 2006.
- ⁴ Ministry of Local Government, Rural Development and Cooperatives (Local Government Division). 2007. Technical Assistance Project Proposal on Birth and Death Registration Project (2nd Phase).
- ⁵ Interview with Sheikh Tayebur Rahman, Mayor, Khulna City Corporation, 13 November 2005.



APPENDIX 1

Bangladesh: Registration Procedures for Key Legal Identity Documents

Document	Agency	Informant	Time frame	Fees	Required Documents/Information
Birth Certificate	Local registrar*	Child's father, mother or guardian, members of the union <i>parishad</i> , the village police, the city corporation commissioner, health and family planning workers employed by the city, or NGO field workers	45 days	No fees up to 2 years after birth; Tk 5 or 10 thereafter to register and Tk 20 or 40 for a Bangla copy of the certificate and Tk 50 or 100 for an English copy	-Name -Gender -Father's address -Evidentiary information if child is registered 90 days after birth: -Name -Date of birth -Place of birth -Gender -Name of father or mother -Nationality
Marriage Certificate	Local registrar,* Muslim marriage registrar	Concerned persons		Fees depend on the religion of the couple (e.g. Christian marriage certificates are Tk 500)	-Ages of spouses (age of consent is 21 for a man, and 18 for a woman) -Must show a birth certificate under the 2004 Registration Act
Death Certificate	Local registrar*	Family members		Free registration up to 2 years after the death, Tk. 5.00 or 10.00 thereafter, Tk 20.00 or 40.00 for a Bangla copy of the certificate and Tk. 50.00 or 100.00 for an English copy	-Name -Date of death -Place of death -Gender -Name of father or mother or husband/wife
Citizenship Certificate	Chairman of the union parishads, the district commissioners, and mayors	Concerned person		No fees	-Name -Father's/husband's name -Mother's name -Name of the village of residence -Post office
Passport	Regional passport office	Concerned person		Tk 2,000	-Must show a birth certificate -Application form requires: father's/husband's and mother's name; physical characteristics; marital status; means of establishing Bangladeshi nationality; and address

*The local registrar's authority will be delegated by: the mayor in the case of a city corporation, the chairman in the case of a *paurashava*/municipality, the chairman in the case of a union parishad, the president in the case of a cantonment board, and the high commissioner/ambassador in the case of Bangladeshis born abroad

Cambodia: Registration Procedures for Key Legal Identity Documents

Document	Agency	Informant	Time frame	Fees	Required Documents/Information
Birth Certificate	Local commune/ sangkat civil registration official	Parents of the child; or if unavailable then a relative or neighbor who witnessed the birth	30 days	No fee up to 30 days from birth; KR1,000-4,000 (depending on province) thereafter -KR300 for a copy of the birth certificate -KR400 for stamping the certificate	<ul style="list-style-type: none"> - Marriage certificate if parents are married - Medical practitioner's certification or two witnesses - Statement from the hospital or from the chief of the village; the family book of the child's family; the family book of the reporter, if he or she is not a member of the family.
Marriage Certificate	Local commune/ sangkat civil registration official	Husband and wife		KR1500	<ul style="list-style-type: none"> - Names of spouses - Ages of spouses (age of consent is 20 for a man, and 18 for a woman) - Occupations - Place of residence - Date of marriage - Same information from the parents
Passport	Ministry of Interior (for regular passports)*	Concerned person		USD 100	<ul style="list-style-type: none"> - Must be 18 years or older to apply - If under 18, must submit a family identification card, a birth certificate and written authorization from their parents/guardians - Family book
Death Certificate	Local commune/ sangkat civil registration official	Family member or relative, or neighbors, or ministry official	15 days	KR400	<ul style="list-style-type: none"> - Authorization for the cremation or burial issued by a civil registration official upon investigation of the cause of death
Cambodian National Identity Card	National Police General Commissariat, Ministry of the Interior	Concerned person		No fee	<ul style="list-style-type: none"> - Must be at least 18 years old - Photo and fingerprint - Family and/or lodging book or birth certificate or court decree declaring the concerned person's nationality
Family Books and Lodging Books	Police, Ministry of the Interior	Person responsible for a house, either as an owner, landlord or tenant		No fee	<ul style="list-style-type: none"> - Application form - Head of family must enter their member's names in the family book at the residence of the head of the family

* Diplomatic and service passports are issued by the Ministry of Foreign Affairs and International Cooperation.

Nepal: Registration Procedures for Key Legal Identity Documents

Document	Agency	Informant	Time frame	Fees	Required Documents/Information
Birth Certificate	Local registrar	Head of the family/ senior male member	35 days	No fee up to 35 days; NRs 8 up to another 35 days; NRs 50 thereafter	-Citizenship of father -Hospital certificate (if born in a hospital) -Letter of the Government office in case of employees
Marriage Certificate	Local registrar	Husband and wife	35 days	Same as above	-Citizenship of both husband and wife -Ward recommendation
Migration Certificate	Local registrar	Head of the family/ person migrating	35 days	Same as above	-Original migration certificate -Land ownership certificate as may be necessary -Family details -Ward recommendation -Citizenship certificate
Death Certificate	Local registrar	Head of the family/ senior male member	35 days	Same as above	-Citizenship certificate of the deceased
Citizenship Certificate	District administrative officer	Concerned person	May be obtained after completing 16 years of age	No official fee but in practice fees are levied for the application form	-Citizenship certificate of father or husband -Recommendation letter from gazetted officer of His Majesty's Government, Kingdom of Nepal or representative of local government -Birth certificate or school certificate

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