

PROMOTING DEVELOPMENT THROUGH LEGAL IDENTITY

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INTRODUCTION

Possession of legal identity is a fundamental threshold for gaining access to a range of goods and services that have the potential to improve people's lives, promote development, and help countries achieve the Millennium Development Goals (MDGs). Legal identity establishes citizenship and/or residency and can provide access to education, health care and social welfare, registration of title to land, receipt of pension or social security, obtaining utility connections, enforcing inheritance rights, and even registration and protection of small businesses. Legal identity also protects human rights such as freedom of movement, property rights, and the right to vote; helps limit crimes against minors such as trafficking and child labor; and improves government databases for better development planning and the adequate and equitable distribution of public resources to those who need it most.

Legal identity is a cornerstone for access to justice. Despite the unequivocal provision in the Universal Declaration of Human Rights, tens of millions of people lack a formally documented legal identity. Yet, the number of people without legal identity is shockingly high in many countries. It is estimated that more than seven in ten children in the world's least-developed countries do not have birth certificates or other registration documents. Over half of all births in South Asia go unregistered, leading to complications in obtaining legal identity later in life. In Nepal, for example, 80% of citizens are unregistered and as a result are often denied lawful access to education, employment opportunities, and the political process.¹

Lack of legal identity prevents the most marginalized and vulnerable people from accessing critical healthcare and education services - furthering the cycle of poverty and frustrating efforts to meet the MDGs. Social welfare and public services target the same disadvantaged populations that face the greatest barriers for obtaining legal identity. Rather than receive documentation that enables them to obtain benefits, they remain stuck in legal purgatory and unable to take advantage of anti-poverty programs specifically intended for them.

WHAT IS LEGAL IDENTITY?

Legal identity verifies the legal existence of a person vis-à-vis the state. Such identity entails benefits and protection accorded to citizenship, residency, or other national status. Legal identity is a recognized human right, but is also a gateway right that facilitates enforcement of other rights. Ultimately, legal identity is a complex combination of factors that enable a person to access rights, benefits, and responsibilities.

Legal identity includes the legal registration and documentation of name, personal data, date of birth, and unique characteristics such as biometric data or an identifying number.

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¹ Deprived of an individual *identity*: citizenship and women in Nepal. Mona Laczo, 2003



Legal identity typically accords a person possession of an official, government-issued and recognized identity document that contains basic information attesting to the holder's name, age, status, legal relationship(s), a unique identification number and photo form of identification. Most countries have a range of identity documents that serve a variety of purposes - from birth, marriage, and death certificates to passports and professional licenses. Birth certificates are, however, seen as the preferred standard and are the most common form of establishing legal identity.

The lack of legal identity, in particular birth certificates, is a chronic problem worldwide, especially in parts of Asia. In 2008, UNICEF estimated that approximately 36% of all births worldwide went unregistered.² South Asia had the largest number at 63% (about 23 million)³, representing 47% of all unregistered births worldwide. 19% of all births in East Asia and the Pacific and 55% in Sub-Saharan Africa were unregistered. According to UNICEF in India only 41% of children under five were registered at birth. There is a big urban rural difference in registration with 59% of urban children under five being registered at the time of the survey versus only 35% in rural areas.

An unregistered birth results in no birth certificate and complicates the process later on in life of obtaining a legal identity. Inability to prove identity results in a hampered capacity to exercise a person's full rights, including receiving the public services they are entitled to. Lack of legal identity as an adult can be depicted in a few ways: a) absolute - when the person's birth was not registered and therefore they have no birth certificate or identity document; b) relative - the person's birth was registered but no registration document was received due to a registration or other error, and thus never obtained a national identity document, c) partial – the person has a national identity document but it is incorrect in one of many ways that prevent the person from exercising his or her rights.⁴

Legal Framework

Almost all countries have international obligations to provide legal identity to their citizens. The Universal Declaration of Human Rights (UDHR) provides for the universal right to nationality (Art. 6) and the right to be considered a citizen of some state (Art. 15). The International Covenant on Civil and Political Rights (ICCPR) provides for "the right to be recognized as a person before the law" (Article 16). Article 24 provides for the rights for children (status as minors, nationality, registration and name). And Article 7 of the Convention on the Rights of the Child (CRC), 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." Article 7 contains a second paragraph explicitly requiring state parties to ensure the implementation of this right.

All countries have corresponding national legislation and norms for the registration of persons, their vital events, and the granting of their legal identity. Most also have institutions that regulate and enforce these procedures and requirements, and provide

² UNICEF State of the World's Children, 2008

³ This number reportedly increased to 69% according to the 2010 UNICEF SOWC

⁴ See. *Democratic Governance, Citizenship, and Legal Identity, Linking Theoretical Discussion and Operational Reality*, Mia Harbitz, Bettina Boekle-Giuffrida, Working Paper, Inter-American Development Bank, May 2009



processes by which citizens can access documentation that proves their legal existence.

Institutions and Procedures

Civil registries are typically the most important institution for documentation and birth registration. The civil registry fills various functional roles within the state including, establishing legal identity; providing basic demographic statistics; providing the basis for the electoral registry; and, in many countries, access to social programs.

Birth certificates are generally preferred as legal identity because they document age, place of birth, and familial relationships from the very beginning of life. They are typically administered through civil registries. Other identity documents, such as citizenship certificates, ID cards, driver's licenses, and family and lodging books, are often used in place of birth certificates, and in many cases are easier to obtain. In some countries legal identity can only be proven by a complete set of documents. In Guatemala, for example, you must have a certificate of live birth, a birth certificate, and a national identity card. Without a birth certificate it is nearly impossible to obtain an identity card.⁵

With respect to registration of births, there are various scenarios: a) registration that is free of charge within timeframes established by law in each country - generally between 30 and 60 days following birth, but sometimes up to 12 years; b) late registration, which occurs later than the time periods established by law in each country and generally requires the payment of fees and administrative and judicial procedures; c) the absence of registration, that is, when there is no legal registration of birth - such situations usually need to be resolved by costly administrative and/or judicial processes; and finally, d) duplicate registration, the results of scant or deficient controls and security measures that enable duplication of registration and issuance of duplicate documents.

The causes of lack of legal identity can be nuanced - some people were never registered in the first place; some never obtained their identity documents; some misplaced their documents and never obtained replacements; some had their records lost (e.g., deterioration or disappearance of registration books); some were registered but the personal data at the registry is incorrect (e.g., spelling errors in the first or last names—a situation which occurs frequently among indigenous populations because of the inadequate knowledge of indigenous languages on behalf of civil registry staff); and some have invalid documents due to changes in countries' documentation systems.⁶ The failure to register births in a timely fashion is the precursor to most of the problems related to lack of legal identity in adulthood.

Indigenous right to identity

The International Labour Organization Convention No. 169 protects the rights of indigenous populations worldwide. Specifically, it allows for self-identification and guarantees the right

⁵ *The Significance of Legal Identity in Situations of Poverty and Social Exclusion: The Link between Gender, Ethnicity, and Legal Identity*, Mia Harbitz, Maria del Carmen Tamargo, Inter-American Development Bank, November 2009

⁶ *Más allá de los promedios: afro descendientes en América Latina. Los afroecuatorianos*. Editors: Josefina Stubbs and Hiska N. Reyes. Washington DC: The International Bank for Reconstruction and Development/World Bank, 2006



of citizenship without discrimination. Indigenous groups and ethnic minorities still suffer disproportionately from discriminatory practices that deny their legal identity and thus further their marginalization vis-à-vis the state. A lack of legal identity exacerbates social barriers to participation in the formal economy and receipt of public benefits. Examples include:

- *Thailand* - over half of the Hill Tribe population has been denied access to Thai citizenship as a result of excessively burdensome requirements to prove their nationality, even though the Hill Tribe people, who number over one million, were born in Thailand and have lived there all of their lives.
- *Bangladesh* - over 200,000 stateless Biharis first granted citizenship at the time of Bangladeshi independence were later denied citizenship by the Bangladeshi government and today live in camps in Bangladesh.
- *Kuwait* - the government has excluded the *Bidun* - descendants from nomadic tribes and migrants who have lived in Kuwait for decades.
- *Burma* - members of the Rohingya Muslim minority, who have been living in the northern state of Ankara since the 12th century, are excluded from citizenship by the 1982 citizenship law, which provides for several categories of citizenship, none of which the Rohingya are deemed to satisfy.
- *Middle East* – Palestinians in Syria and other Arab states, have been barred from acquiring citizenship.
- *Russia* - regional authorities in Krasnodar Krai have arbitrarily denied approximately 13-16,000 Meskhetians, a Turkish-speaking Muslim ethnic minority, all rights of Russian citizenship to which they are entitled as former Soviet citizens.
- *Kenya* - the Nubian community, composed of more than 100,000 descendants of persons originally from the territory of Sudan who were resettled by the British colonial government, live as *de facto* stateless persons without adequate legal protection as they are systematically denied their right to Kenyan citizenship and to own land.⁷

Much is made of the chronic and growing problem of statelessness – where individuals do not have recognized legal identity in any country and are continuously deported and relocated to other countries. This chapter will deal less with statelessness and international migration themes and more with domestic processes that impede access to legal identity for citizens.

BARRIERS TO LEGAL IDENTITY

A range of obstacles contributes to a lack of legal identity. Economic barriers, geographic isolation, burdensome procedures, socio-cultural barriers, discriminatory laws and practices, institutional deficiencies, and a lack of adequate information about the benefits of legal

⁷ See. *Human Rights and Legal Identity: Approaches to Combating Statelessness and Arbitrary Deprivation of Nationality*, Thematic Conference Paper, Open Society Justice Initiative, May 2006, (available at: http://www.soros.org/initiatives/justice/articles_publications/publications/identity_20060501)



identity all serve to discourage or prevent people, especially the most vulnerable groups, from attempting to register themselves and their families.

A birth registration document is the first and founding document of a chain of rights that should be gradually granted in one's lifetime. Ideally, every child should be registered at birth and thereby have automatic access to all citizenship rights. In reality this does not always happen. Without a birth registration document, access to all other documents such as passport and drivers license will be either denied, complicated, or associated with extra administrative or legal costs.

Economic barriers

While registration of birth is an obligation of the state and technically free in many countries, the reality is that most poor, rural and indigenous populations lack access to government registry offices and would incur considerable expenses to travel to register birth of their children. Most births still do not occur in hospitals and even when they do there is no system for automatic birth registration. In addition, many countries charge fees for registration.

Countries typically have a 30 to 60 day requirement for registering a birth, after which a more complicated application is required. Late registration of both children and adults requires extemporaneous creation or replacement of birth certificates and implies considerable administrative procedures - often a series of affidavits must be generated, that necessitate the hiring of a notary public and/or attorneys. This is too high a cost for many families to bear.

Corruption or rent-seeking, often by local officials or elites, can create additional economic barriers for access to legal identity. In Bangladesh, for example, procedural barriers help construct additional economic barriers. Citizens requesting legal identity or late registration of a birth are required to apply for a recommendation letter from a local official such as a mayor. Applicants complained that they were often unable to obtain the required recommendation without paying a bribe. Those who cannot provide cash nor goats are denied legal identity.⁸

Geographic barriers

Lack of legal identity is particularly high in rural areas throughout the world. In India studies have shown up to a 24% difference between rural and urban registration. In parts of Latin America the number of unregistered rural births is triple that of urban births.⁹ Government legal identity campaigns often fail to access rural areas and remote populations. A lack of access to government offices, civil registries, lawyers, and public notaries in rural areas compounds gender, ethnic and other barriers, particularly for attempts to retroactively register a birth or establish legal identity.

⁸ See. *Legal Identity for Inclusive Development*, eds. Caroline Vandenabeele and Christine V. Lao, Asian Development Bank, 2007

⁹ Supra note 5



The establishment of legal services offices in rural areas that address legal identity among other issues has demonstrated impact in strengthening identity in remote and disadvantaged populations.¹⁰

Procedural barriers

The various mechanisms, procedures, and administrative arrangements that govern the granting of birth certificates, revision of faulty legal identity, and retroactive establishment of identity can severely hamper legal identity efforts. These procedures raise costs, take up time, serve as disincentives, or represent insurmountable barriers that disproportionately affect economically and socially disadvantaged groups. They also create an environment for rent seeking by public officials. Paying bribes to obtain or change identity documents is a normal practice in countries throughout the Asia region.

Most births are not registered immediately after their occurrence (see example in Figure 1). Yet many countries have procedural burdens for late registration of both children and adults that require production of affidavits and sometimes references from government officials. This results in substantial delays, extra costs, and exposure to rent-seeking.

Some countries have been able to reduce procedural requirements by, for example, allowing birth registration at any time up until adulthood, or by reducing the number and/or nature of affidavits. Allowing less formal testimony of someone's identity has associated risks of abuse, but a wider benefit of increasing access for the poor and indigenous. There is sometimes a tradeoff between inclusiveness and precision.

FIGURE 1. REGISTRATION OF BIRTHS IN RAMGRAM MUNICIPALITY, NAWALPARASI, NEPAL¹¹

	Before 35 days	After 35 days	Total
2000-2001	62	396	458
2001-2002	34	409	443
2002-2003	37	370	407
2003-2004	42	661	703
2004-2005	48	575	623
2005-2006	15	438	453

Discriminatory laws and practices

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 can contain discriminatory provisions that undermine the goals of universal registration. But often the practices of officials at registries and other institutions are the leading cause. Additional procedural requirements facilitate discrimination by officials, for example, in many countries a migration certificate is required

¹⁰ See. *Mystery of Legal Empowerment: Livelihoods and Community Justice in Bolivia*, Tiernan Mennen, Legal Empowerment Working Paper, no. 6, IDLO, 2009

¹¹ Supra note 7 at 48



to obtain a legal identity document in a place other than the district where the father's citizenship is registered.

Research has shown ethnicity and gender to be aggravating factors of the structural causes of lack of legal identity.¹² In Guatemala, for example, only 10% of the entire population is unregistered compared to 40% of the indigenous population.¹³ Migrants and minority groups are often denied legal identity or registration of the birth of their children. In Syria, ethnic Kurds are systematically denied identity documents and citizenship. Local control of citizenship registration can encourage discriminatory practices by local majority groups over minorities or outsiders.

Women are systematically discriminated against in registration, particularly if they are also a minority, indigenous or rural poor. In some countries only male or paternal relatives can apply for the registration of a relative's birth, even if the father is unknown, residing elsewhere, or refuses to provide assistance. Officials have also been found to refuse the transfer of ownership of inherited property to female applicants if their family name differed from that of their deceased husbands.¹⁴

Social and cultural barriers

Cultural norms and lack of awareness can complicate or provide additional disincentives to registration and obtaining legal identity. Language barriers for ethnic minorities impede the communication of the importance of legal identity. Some religious and racial minorities and immigrants fear obtaining legal identity out of concern that government recognition could enable discriminatory treatment.

Parents often do not associate birth registration with access to benefits such as education and healthcare. There is often a stigma for single mothers associated with registering children born out of wedlock. In many instances girls are under-registered as they are perceived as not desirable or will require education. Many people will remain unmotivated to register unless there are obvious payoffs for doing so.

Weak institutions

Civil registries are essential institutions for maintaining accurate birth registration and identity records. However, registries often lag behind other institutions with respect to modernization and budgetary support, despite the ramifications for public service planning, elections and other aspects of government that depend on demographic information. Establishing and maintaining a complete, effective, and accessible civil registration system requires sufficient resources, political priority, enforcement capacity, and administrative infrastructure. Registries are typically understaffed and have low national coverage, particularly in rural areas. Low levels of information processing technology and expertise and the persistence of manual practices have also plagued reforms.

¹² Supra note 5

¹³ Id.

¹⁴ Supra note 7



Centralization of civil registries creates a number of benefits for consistency, accuracy and safety of information across countries, particularly those with high rates of migration and urbanization or displaced populations. But centralization can create its own technological barriers such as a lack of reliable, consolidated databases, electronic infrastructure failures, and inadequate electronic connectivity between district and municipal offices. Despite centralization and computerization efforts most people have to return to their place of birth to properly register or change identity documents.

Institutional deficits also relate to how countries register births. Hospitals and maternal health centers are often the frontline for birth registration, yet often they do not have registration capabilities, requiring families to instead register separately with the civil registry or appropriate authority. Even when hospitals are able to link birth records with the central registry, over half of all births in developing countries occur outside the public health system.

Political barriers

Capacity-building efforts and direct registration efforts are far too often frustrated by political barriers that exclude targeted segments of the population from full participation. This problem is particularly acute for groups denied citizenship on grounds of their ethnicity or their status as refugees or migrants. Examples of groups that have no formal citizenship rights, or limited citizenship rights, include the Kurds in Syria and Turkey, the Palestinians throughout the Middle East, Nubians in Kenya, Bihari in Bangladesh and Rohingyas in Myanmar. Political barriers to legal identity can also exist simply due to entrenched interests that would suffer should registration affect more constituents from areas that support the opposition (e.g., indigenous populations in the Andes and Central America). Formal registration is a threat to the incumbent elite because it would incorporate greater numbers of poor and indigenous.

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.

LEGAL IDENTITY IMPACTS

Having a document that verifies one's identity is fundamental for any citizen to be able to protect their rights and access benefits and services. Identity provides legal protection and redress for violations by allowing access to state institutions such as courts and law enforcement agencies. It also provides access to social welfare, health care, professional opportunities and a range of other public services and entitlements. Having a legal identity is increasingly important as countries strive to improve services for the poor and meet their MDG obligations.

Without proof of one's legal identity it is difficult if not impossible to exercise and enforce one's full set of rights and obtain public benefits and opportunities. Consequently, legal



identity can be construed narrowly to refer to the full set of identity documents that prove one's status as a legal person and allow access to institutions and benefits. There are often multiple required documents depending on the service or benefit. Most documents derive from a valid birth certificate, but not all are easy to obtain even with registration.

Protection of Rights

Legal identity is critical to protecting a litany of human rights and facilitating enforcement of laws and regulations intended to protect the poor and disadvantaged. Weak civil registration has been linked to patterns of exploitation and abuse related to child labor, underage marriage, and trafficking. Registration of land and property is also dependent on having legal identity. There is an extensive corpus of laws to protect children, yet few cases of violations actually find their way into the courts. Children's rights are often dependent on being able to prove age based on a valid birth certificate. Laws seeking to protect children from exploitation and abuse include, juvenile justice sentencing and due process requirements, child labor laws, anti-child trafficking efforts, and laws banning child marriages. All depend on verification of age. Such laws are often violated with impunity. Moreover, access to courts, prosecution, and public defender services to enforce these rights is contingent upon being able to demonstrate legal identity and/or citizenship. Legal recognition aside, victims may still not have the financial means and know-how to access the legal system, or may view lack of prosecution as more socially acceptable.

Property rights and the ability to register, sell and inherit land is a major impetus for acquiring legal identity. In many countries lack of a birth certificate can significantly impair access to land markets. Lack of legal identity documents can lead to lengthy and expensive litigation for inheritance of land. In Bangladesh, for example, there are a large number of unnecessary legal proceedings that take place simply because there is no record of birth and therefore a significant barrier to obtaining a succession certificate.¹⁵

Access to Benefits

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. See Figure 2 for the range of benefits and activities, presuming they are available, that require a birth certificate or other form of recognized legal identity document.

Public benefit programs are designed to target poverty. Lack of access to programs due to lack of legal identity documents undermines their mission. For example:

- A child who lives in a poor, rural and/or indigenous family that cannot prove his or her identity with a birth certificate will more likely be excluded from receiving a scholarship and possibly prevented from attending school, especially if suspected of being an immigrant or too young/old.
- An elderly person that is poor and/or indigenous and does not have an identity

¹⁵ Id.



document will not be able to access economic assistance from publicly-funded social security schemes.

- A poor indigenous mother with minor children will be excluded from access to public welfare and family economic assistance (cash transfer) programs if she cannot prove her legal identity by means of an identity document, although she is part of the target population that the program is aimed to assist.
- A recently unemployed worker will not be able to receive unemployment benefits or access to government employment schemes – such as the National Rural Employment Guarantee Act.

FIGURE 2. LEGAL IDENTITY BENEFITS AND RIGHTS

Vital Events	Civic Events and Rights	Social Rights and Benefits
Birth registration Death Adoption Marriage registration	Voting Military service Tax registration (ID) and payment National ID Passport/travel documents Right to legal protection/court access Protection against exploitation, child labor, and trafficking Juvenile justice protection Enforcing inheritance rights	National welfare scheme benefits (ex., National Rural Employment Scheme – India) Family cash transfer programs Admission into public education institutions Services at public hospitals and health centers Employment in the formal sector Joining a union Obtaining an export or import license Obtaining a contractor's license Obtaining trade and other professional licenses Obtaining drivers' licenses Registering motor vehicles Registering a small business Registering land ownership Opening a bank account Connecting to a utility line

While legal identity is a fundamental precursor to obtaining benefits it is not a magic bullet. Barriers to access are often varied, complex and context-specific. Possession of a legal identity document does not guarantee access to services. Depending on the country as well as the benefit, service, or opportunity in question, budgetary constraints and other barriers (geographical, discriminatory practices) often make government services unavailable. Those services that are available can, in many instances, be obtained without presenting a legal document. Health treatment and school registration, for example, are often provided regardless of documentation.

The nexus between legal identity and access to benefits and opportunities depends on certain underlying assumptions that: 1) services, benefits, and opportunities actually exist; 2) laws, policies, or practices make access strictly contingent on the possession of a birth certificate or identity document; 3) available identity alternatives are not acceptable; and 4)



other more fundamental economic, political, and social barriers do not impede access.¹⁶

Public Planning

Accurate demographic information provided by civil registries is essential for public planning for development, funding and provision of public services. Civil registration systems enable government agencies to properly plan and define development priorities and provide for the proper allocation of resources and benefits, especially for poor and disadvantaged communities. However, low registration rates, particularly in rural areas and among the uneducated and impoverished, make it impossible to plan based on vital statistics.

Many citizens lack legal identity and documents because of insufficient financial resources for registration services and, consequently, inadequate service coverage, especially in remote areas. From a budgetary perspective, this also means that unregistered citizens do not pay income or payroll taxes and thus governments have less means to repair critical holes in the tax system.⁸ Moreover, if considerable numbers of citizens are unable to exercise their rights to vote and/or be elected to office, it will be difficult for a modern nation state to reach a higher degree of democratization.

Economic Growth and Millennium Development Goals

Legal identity has profound implications for achieving the Millennium Development Goals. As many of the MDGs relate to provision of public services for the poor and disadvantaged the inability of the poor to access these services due to systemic barriers is a critical consideration. Beyond access to public benefits, birth certificates and other identity documents are often required for more sophisticated transactions that have ramifications for economic opportunity. Activities such as registration and transfer land, access to credit, starting and registering a business, getting a professional license, and opening a bank account directly affect economic growth and development more broadly.

According to an econometric study in Bolivia, Brazil, Colombia, Peru, and Nicaragua the pervasive problem of under-registration of births is central to poverty reduction. Children and adults without legal identity are more prone to lack of access to health, education, housing, and nutrition benefits guaranteed by public poverty reduction policies.¹⁷ The study shows that children from low socioeconomic backgrounds face higher risks of being unregistered from birth to the age of five and that poverty and under-registration are strongly connected to each other.

The nexus between the MDGs and legal identity is pronounced in each of the seven goals, but is particularly strong for goals that relate to public service provision:

- *Goal 1: Eradicate extreme poverty and hunger* – poverty and hunger are byproducts of a range of structural issues, denial of human rights, and lack of access to public benefits and poverty reduction schemes. National welfare and cash transfer programs, especially for single mothers, can counter extreme poverty and hunger,

¹⁶ Id at 8

¹⁷ See. Suzanne Duryea, Analia Olgiati, and Leslie Stone, *The Under-Registration of Births in Latin America*, Inter-American Development Bank, January 2006.



but are often dependent on proof of legal identity or possession of a birth certificate. The most in need are also the most likely to have not had a registered birth or able to afford late registration or subsequent administrative processes for obtaining a legal document. Inadequate birth registration and civil registry systems also hamper public planning efforts for relieving hunger and extreme poverty by both national governments and international relief organizations.

- *Goal 2: Achieve universal primary education* – primary education is often unavailable to people living on the margins and that cannot prove the legal identity of their children. Often lack of identity is an aggravating factor for discriminatory practices that deny education to ethnic minorities, girls, or migrants.
- *Goal 3: Promote gender equality and empower women* – lack of legal identity disproportionately affects women and girls, denying them access to benefits and protection by the law from discriminatory practices. Many national birth certificate programs, especially for late registration, require information or presence of the father – a considerable obstacle for many single mothers.
- *Goal 4: Reduce child mortality rates; Goal 5: Improve maternal health; Goal 6: Combat HIV/AIDS, malaria, and other diseases* – public health-focused MDGs face various rights-related barriers that have curtailed their progress. Lack of accurate birth registration and access to legal identity also undermines demographic-based planning efforts to meet the demands for health services, but it also prevents individual barriers to health services that require some proof of identity or citizenship. Obtaining a medical card that allows access to services is difficult without a birth certificate and can require days of travel to a government office where women, especially single mothers, are often harassed. Vulnerable populations such as displaced persons and indigenous groups have the greatest need but are the most likely to be denied services for lack of identity.
- *Goal 7: Ensure Environmental Sustainability* – community ownership and sustainable use and management of local natural resources is often denied by states, sometimes due to lack of access of persons and communities to legal identity and thus the ability to register their lands and concomitant resource rights.

LEGAL IDENTITY PROGRAMMING

Programming that specifically targets increasing access to legal identity can have a multiplier effect on other development efforts, including the MDGs. However, it is also worth cautioning that legal identity is not the only or even a primary solution to development problems. There are many other barriers to receiving benefits and protecting rights, regardless of whether legal identity exists. For example, legal identity can help ensure access to benefits and livelihood opportunities, but such services, benefits, and opportunities must actually exist. Unfortunately, in many countries across the Asia region these benefits are far removed from large segments of the population that rely on agriculture and the informal economy for their livelihoods.

Programming should consider the underlying causes of the various barriers to legal identity



and design interventions appropriately. The barriers detailed here can generally be categorized under three primary causes:

- First, many countries lack an effective bureaucratic system for providing accessible, reliable, and low-cost registration services for all people who would like to formally register themselves with the state. This encapsulates a range of technical and management capacity, geographic, procedural and financial barriers.
- Second, the denial of legal identity is often the result of a deliberate interest in excluding certain groups from full participation in the economy and public sphere. Sometimes this exclusivity arises because of acute discriminatory practices. In other cases, such as those involving long-term migrant or refugee populations, the problem is more complex, and may implicate the policies of more than one state.
- Third, some poor individuals may lack formal legal registration because they choose not to take the steps necessary to acquire it. Sometimes this avoidance is rational and based on disincentives toward registration. In other cases, it is due to a lack of awareness of the benefits registration accords.

Programming efforts often focus on and advocate for universal birth registration as the primary means for ensuring legal identity. The reality of universal registration is, however, more complicated. Significant geographic, socio-cultural and discriminatory barriers exist in most countries that make complete formal registration impossible. Concurrently, there are many laws, procedures and institutions that need updating, streamlining and modernization with potentially larger, more cost-effective benefits that can provide legal identity to both adults and children.

This chapter groups programming efforts to strengthening legal identity into two categories - community empowerment and institutional support, or demand and supply. In this way, both community-based social programs and state modernization projects can address legal identity as part of an integrated approach to development.

a. Institutional and legal framework reforms

Programs that improve institutional capacity and address legal and procedural barriers can facilitate access to legal identity documents. Civil registries are a primary institutional focus. A lack of a consistent, comprehensive and centralized registration database creates gaps and duplication, especially for mobile populations in regionally diverse countries. In many countries citizens have to travel back to their birthplace to obtain identity records or to make revisions to erroneous identity documents. At the same time, overly centralized civil registries create access problems for rural populations. Having to travel to regional or national capitals to register a birth is a major disincentive.

Improved capacity and autonomy of civil registries

Modernization programs can buoy under-resourced government agencies to introduce best practices and technology. In many countries creation of a single agency is needed to coordinate registration and provision of legal identity documents. Institutional support to registries, or the agency tasked with registration, should include expanding operations to underserved areas, improving connectivity of these offices, introducing better databases,



computerization, and improving internal staff capacity and procedures that ensure more accurate and reliable information.

Establish autonomous civil registration institutions. Without independence from the political arm of government, a civil registry will not develop the administrative capacity it needs to function adequately and will be at risk of a high turnover of personnel as successive, new governments assume power. A further risk in non-autonomous registries is manipulation and malfeasance for rent-seeking purposes or political maneuvering.¹⁸

Where an autonomous agency is not possible coordination between government agencies is essential. Many countries have multiple agencies with identification responsibilities. Each often administers databases for their specific function, without cross-checking statistical information. In these instances, programs should identify the benefit of creating a centralized agency that coordinates and ensures standardization and accuracy across each database.

Decentralization

Support to building institutional capacity should not ignore the role that local and municipal governments, religious institutions, and civil society play in providing information for registration. For example, church parishes, synagogues and mosques have long played a key role in keeping registries of births, marriages and other important life events in their communities that have been used and trusted at the local level to create a legal or public identity. In Cambodia, commune councils submit monthly registration statistics to district level authorities, which in turn pass them to provincial level authorities. These authorities then provide quarterly statistics to a central ministry, which enters the registration data in a basic computerized spreadsheet with columns for population, numbers registered, and percentages registered. Such a system enables data to flow seamlessly from district and provincial levels to the central level.¹⁹

Programs should strive to establish standard mechanisms and procedures for collecting, documenting, transmitting, storing, consolidating, and analyzing the data collected by local registrars and community partners. 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. Increased use of computers and digital databases at local registrars can assist in this process, but often face additional obstacles.

Legal and Regulatory Reform

Legal and regulatory reform can relieve bottlenecks and inefficiencies that prevent the efficient operation of civil registries and create barriers for the poor and marginalized to legal identity documents. Legislation in most countries requires registration of a birth within

¹⁸ Supra note 4 at 36

¹⁹ Unfortunately, in Cambodia this system is not integrated well into the civil registry and public planning efforts. Supra note 7 at 35



30 to 60 days. At any point beyond this legal grace period, registration becomes more complicated, costly, and lengthy, and in some cases too onerous, especially for the poor. Other changes to identification documents, such as correcting an erroneous name or wrong birth date often requires multiple affidavits, a judicial decision, and multiple trips to central government offices and long waiting periods. Legal and procedural reforms should seek to increase the grace period for free birth registration – some countries have extended to 10 to 20 years - bearing in mind access issues for the poor and isolated. Other reforms should decrease the formal legal processes that are required for late registration or for fixing an erroneous identification document and consider alternative forms of supporting documentation, such as those that would be available through local councils or community leaders.

Programs should push for the elimination of fees for birth registration and first application for a legal identification document. The usual arguments for user fees for government services do not apply for legal registration - legal identity is not a scarce resource that the government needs to regulate and prevent abuse of.

A child's access to health and education programs is an important point of entry where the presence or absence of a birth registration document becomes an issue. It is precisely in these moments where health care and educational institutions should be more flexible and legally allowed to accept children, even if the grace period for registration has passed. Regulatory reforms are needed in these instances to allow institutions and service providers to provide benefits without onerous identification requirements. Regulations should be altered to consider whether identification is needed at all, such as for health services, and if so to accept a variety of documents, besides a birth certificate, as legal identification.

Examples of over-formalized and cumbersome national identity legislation are many. Restrictive legislation creates an environment that furthers exclusion and informal economic activity. The 2004 Registration Act of Bangladesh, for example, mandates the production of birth certificates for a wide array of purposes - going to school, employment in the formal sector, registering to vote, formally owning land and registering title to land, opening a bank account, receiving public utilities, paying taxes, obtaining a drivers license or registering a car, obtaining a trade license, passports for international travel, etc.²⁰ Requiring a birth certificate creates barriers to formal economic opportunities, driving growth of the informal sector, and limits democratic participation for the majority of the population born outside of hospitals and with no registration of their birth.

b. Community-based programs

Large community awareness and direct documentation campaigns are essential for tackling the sheer size of legal identity gaps in many countries. They often are needed as the implementing mechanism for new legal and policy reforms, to ensure those reforms do not remain paper tigers. Done correctly, they can also empower communities and citizens and build further momentum behind legal identity policy and legislation reform efforts.

²⁰ Supra note at 16



Awareness-raising

Awareness-raising campaigns can serve to cultivate the agency of citizens to strengthen their own legal identity through better understanding of the benefits it provides to them and their children. Campaigns also increase knowledge of how to access identity documents, where to register births, and the availability of legal or other assistance for more complicated cases. Campaigns should be sensitive to cultural barriers, low literacy rates and the prominence of indigenous languages in many isolated communities and therefore incorporate methodologies such as radio programs and community drama groups to spread the word.

Direct documentation

Civil registration and documentation campaigns can provide direct services to targeted, underserved populations that might otherwise face insurmountable barriers to legal identity. Such populations could include ethnic minorities, migrants, slum dwellers, rural communities, single mothers, and other isolated communities. Documentation campaigns should encourage alternative approaches such as the creation of ad hoc, itinerant and decentralized systems to register individuals.

Many countries conduct campaigns that boost registration in underserved areas, only to see results not sustained over time. A successful example is Chile, which has annual expeditions to the remotest areas of the country to register civil events and issue identity cards.²¹ Documentation campaigns that are strategic and have long-term perspectives will increase the level of general awareness in society and demonstrate the benefits of registration, thus increasing demand and community-driven solutions. Campaigns should be timed, coordinated, financed, and organized in a way that allows a long-term impact, including in cooperation with civil society organizations that are closer to the needs of local people, their languages, and cultural traditions.

In order to reach remote areas, it is equally important to develop strategies that diversify the support structure of civil registration with the help of local NGOs, churches, and community organizations. This has been the case in Nicaragua, an example highlighted later. Local organizations, such as the municipality, the church, or any other community organization, play important roles in encouraging and facilitating that process of civil registration for events such as birth, marriage, divorce, and death. In some countries, midwives and other individuals trusted by the community have been trained to register births and other civil events as an approach to increase the rate of registration.

Advocacy

Awareness-raising and access to registration services can sometimes have limited effect due to more powerful underlying causes. Political and local power dynamics often create suspicion by the poor toward the state and its agents or create disincentives for registration that outweigh any benefits. Registration efforts could actually be counter-productive if they coerce or persuade poor people into registration that is ultimately against their own

²¹ Supra note 5



interests. Programs should be careful to identify these causes and analyze the underlying dynamics to design interventions appropriately. Programs that encounter these barriers will likely have to address wider structural inequalities and integrate legal identity efforts into broader legal reforms. Broad-based legal service programs that include support to policy reform, advocacy and litigation has shown promise in addressing these issues.

Community legal services

Access to community legal services can provide a key often, missing component of a systematic approach to fighting barriers to legal identity. Legal support services are commonly needed to respond to the often onerous administrative and legal requirements for late registration or revision of faulty legal identification documents. Programs, such as community justice and legal aid and information centers can play a key role in helping marginalized communities access information on securing legal identity and provide the legal representation necessary to ensure enforcement.²²

Public-interest litigation

Lack of legal identity is sometimes a product of discrimination based on race, ethnicity, gender or other issues. In these instances, legal action is required to enforce rights. Systematic legal identity discrimination against entire segments of the population is common throughout the world, including the Roma in Europe, Dominicans of Haitian descent, and Nubians in Kenya. Immigrants are also systematically denied their right to an identity. There are active class action suits in both domestic and international forums according to violations of international treaties and *jus cogens*. International human rights litigation is most effective as part of a broader political strategy. International tribunal decisions are rarely enforced, but the visibility and political pressure they generate can stimulate compromise and mobilize domestic actors. Civil society plays an important state-monitoring role and creates the groundswell that can help ensure all people are recognized as people in the eyes of the law.

c. Country Examples

UNDP has been implementing the Equal Access to Justice Project in **Sri Lanka** since 2006. The project has supported legal and mobile clinics through war-affected areas in the north and east. As part of its legal assistance work, the project supported mobile documentation clinics in priority areas that provided documentation services to large segments of the population, including large numbers of displaced people. The Project expands legal awareness on basic civil and human rights, as well as on the importance of civic documentation, through radio campaigns, schools, hospitals and other social services. There were over 29,000 legal identity beneficiaries in 2009 alone. The project provided to a range of legal identity documents, including birth certificates, ID cards, marriage certificates, and titles to land. The Project also supports long-term sustainability through work with the

²² For more detail on legal service programs assisting access to legal identity see. *Mystery of Legal Empowerment: Livelihoods and Community Justice in Bolivia*, Tiernan Mennen, Legal Empowerment Working Paper, no. 6, IDLO, 2009 (details a USAID-funded access to justice program that made substantial impact on increasing legal identity in targeted rural areas through a broad based legal service program that conducted proactive legal identity campaigns)



Registrar General and the Registration of Persons Department to build capacity toward a national mechanism for the provision of civic documents.

A number of donor-funded initiatives have attempted to modernize registration systems in **Bangladesh**. Responsibility for birth registration is decentralized and delegated to various local level authorities, resulting in inconsistent standards and widely divergent practices. Handwritten ledgers of births are stored with local municipal corporations, some dating back to 1913. A number of donor-supported initiatives have provided computers, servers and other equipment and staff trainings in an attempt to digitize, centralize and standardize the central registry. However, human resource shortages and continued low capacity result in most officials continuing manual registration into ledgers. Central-level ministries rarely receive regular, reliable reports of registration from the numerous local authorities.

The World Bank, UNICEF and other international actors have been providing support to the **Egyptian** government to help thousands of women obtain legal identity cards, relying on local NGOs and community-based organizations. These local organizations have proved particularly valuable in registering wary, marginalized groups, such as women and ethnic minorities.

UNICEF has worked in **Angola** for many years to strengthen national and local administrative systems and community capacity to increase access to legal identity. Local community workers are trained to write formal documents and to negotiate with government officials. Angola has introduced new systems that created specialized units within the civil registration system to work with excluded and vulnerable populations, created mobile registration units to access isolated communities, placed civil registration facilities in hospitals, and introduced a unique personal identification number that is used on all legal identity documents from birth certificates to driver's licenses.

CONCLUSION AND RECOMMENDATIONS

Access to legal identity is a crosscutting issue that should be addressed by all international development initiatives. Legal identity affects development objectives that pertain to virtually all of the Millennium Development Goals. Its causes and ramifications are often not readily apparent upon initial program design, thus donor programs should anticipate legal identity barriers and consider potential interventions. For example, empowering health care professionals that provide pre-natal care to register newborns can substantially improve registration efforts. Recommendations for donor-funded projects include:

1. Analyze and be cognizant 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.



2. 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, i.e., how could existing legal identity regulations limit the range of project beneficiaries?
3. Programs that attempt direct registration campaigns in coordination with government partners should encourage outsourcing registration processes to local organizations, community councils, chiefs and elders, churches, mosques, and other places where people engage in social and economic activities, making legal identity a part of everyday life. Local authorities play an important role in providing local knowledge to the registration and legal identity process. Incorporating community councils, local chiefs, and community leaders can help civil registries and other centralized institutions liaise better with poor communities. Local leaders can both provide information to the community and deal with the state authorities.
4. Legal and regulatory reform - important aspect is the lengthening of the period of birth registration, taking into consideration the objective and symbolic-cultural conditions of diverse population groups.
5. Incorporate legal service provision and strategic advocacy on legal identity issues, in particular to help drive reform of regulations to reduce barriers for the poor and marginalized.
6. Institutional improvements to improve the quality of civil registration - depends not only on the individual agency and how it performs on its own, but also the importance of communication and coordination between agencies.
7. Complementary reforms are needed to make legal identity meaningful. Alone, legal identity documents can accomplish little, but they can be an important part of a larger reform agenda for promoting inclusive development.
8. Understanding the country context, including the incentive structure of institutional actors, is essential.
9. 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.

