

Mother to Child

How Discrimination Prevents Women Registering the Birth of their
Child

Plan & the UHI Centre for Rural Childhood

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The research findings are solely those of the team at the UHI Centre for Rural Childhood and not attributable to any other party.

Universal Birth Registration and Gender

Introduction

This research was commissioned by Plan International, to highlight discriminatory laws which prevent a woman from registering her child alone and/or from conferring her nationality to her son or daughter. Primarily, this report examines whether there is discrimination in law, but it also sketches some of the ways in which discrimination happens in practice, even when legislation is gender-neutral. The international and regional legislation relating to birth registration and acquisition of nationality is also noted. The report covers the fifty countries in which Plan International has a presence,¹ which are categorised into four regions: Latin America and the Caribbean, Asia, East Africa and West Africa.

The Importance of Birth Registration

Registering a child's birth is the first legal acknowledgement of his or her existence. The absence of proof of identity renders an individual invisible to the authorities. Registration entitles children to their rights and helps to provide a safety net against abuse, exploitation and violence.

In many countries, proof of identity is essential for an individual to gain access to basic services and to exercise his or her fundamental human rights. A child without a birth certificate may face barriers to exercising his or her rights to education, health and claims to inheritance. Proof of age is also critical for the successful prosecution of perpetrators of crimes against children such as child trafficking, sexual offences, early recruitment into the armed forces, child marriage and child labour. It can also prevent children below the age of criminal responsibility being prosecuted and imprisoned with adults. As they age unregistered young people may find it harder to get an identity card, driving licence or passport. This can prevent them from working legally or opening a bank account.

Having a proportion of a state's population not officially registered as citizens has major implications. Such countries are unable to count their populations or predict trends such as rising birth and death rates. Governments and donors are unable to estimate what services such as schools and hospitals are needed, which can lead to under-resourcing of local services and uneven distribution of aid funding. In the absence of accurate population data, it is also impossible to track progress towards the UN Millennium Development Goals.²

¹ For information on these countries, see <http://plan-international.org/where-we-work>.

² The UN Millennium Development Goals range from halving extreme poverty to halting the spread of HIV/AIDS and providing universal primary education, all by the target date of 2015. These have been agreed to by all the world's countries and all the world's leading development institutions. For more see <http://www.un.org/millenniumgoals/>.

The Scale of the Problem

Progress has been made in the last decade, however there remain 51 million children i.e. one in three across the world who go unregistered each year. Only half of children under five are registered in developing countries (excluding China). 23 million are in South Asia alone while Sub-Saharan Africa has the highest percentage (66%) of unregistered under-five-year-olds.³

The Process of Registering a Child

In many countries, registering the birth of a child is not a straightforward procedure. The administrative process is often technical, complicated and lengthy. The period of registration is often too short to allow all newborns to be registered within the prescribed time – the registry offices may indeed be some distance from the place of birth. Legislation may also demand extensive paperwork to support a child's registration.

Gender Discrimination as a Barrier to Birth Registration

Many barriers prevent children from being registered. These include low awareness of parents on the importance of registration (and thus on the negative consequences of not being registered), geographical barriers (particularly for communities living in rural and remote areas); economic pressures due to the cost of registration; and complex administrative procedures and legal obstacles.

During the Count Every Child campaign, Plan also identified gender discrimination as obstacle to birth registration in the countries where Plan operates.⁴ Some countries do not have gender-neutral citizenship laws and women may face difficulties registering their children. This means that the nationality of the child is primarily determined by the father's nationality. To date very little research is available on this issue, and thus the scale of the problem remains unknown. However millions of children could be going unregistered as a result of discriminatory laws and practice which deter women from registering their children.

Based on this, albeit limited, assessment in the field, Plan decided to investigate the issue of gender discrimination during the birth registration process. This research builds on existing studies on nationality law; measures the scale of the problem across the countries in which Plan has a presence; and identifies countries where the legislation needs to be amended to ensure registration is a non-discriminatory process. The research also investigates where there may be discrepancy between law and practice; helps to identify factors preventing full implementation of the law; and offers solutions in the form of recommendations.

³ Statistics taken from Cody, C., (2009), *Count Every Child: The right to birth registration*. Woking, Plan Ltd.

⁴ For information on these countries, see <http://plan-international.org/where-we-work>.

The International Legal Framework

The principal instrument dealing with the rights of children is the 1989 UN Convention on the Rights of the Child.⁵ The Articles of most relevance to birth registration and nationality are:

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

The 1961 Convention on the Reduction of Statelessness,⁶ also deals with the issue of nationality in Article 1:

1. A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted:

(a) at birth, by operation of law, or

(b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this article, no such application may be rejected.

A Contracting State which provides for the grant of its nationality in accordance with subparagraph (b) of this paragraph may also provide for the

⁵ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577.

⁶ UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989. To date there are only 38 Contracting Parties to this Convention.

grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law....

3. Notwithstanding the provisions of paragraphs 1 (b) and 2 of this article, a child born in wedlock in the territory of a Contracting State, whose mother has the nationality of that State, shall acquire at birth that nationality if it otherwise would be stateless.

The International Convention on the Elimination of All Forms of Racial Discrimination 1965,⁷ in Article 5 provides:

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights [including]:

(d)(iii): The right to nationality

Article 24 of the 1966 International Covenant on Civil and Political Rights⁸ addresses the issue of birth registration and identity by stating:

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

The 1966 International Covenant on Economic, Social and Cultural Rights,⁹ Article 10 alludes to support to the family as the "natural and fundamental group unit of society."

⁷ UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660.

⁸ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999. See also the UN Human Rights Committee view in *Shirin Aumeeruddy-Cziffra et al v. Mauritius* (Mauritian Women case) 9 April 1981 (Communication No. 35/1978), that Mauritian immigration law was discriminatory by denying the foreign husband of a Mauritian woman automatic residency when this was not denied to the foreign spouse of Mauritian men. The former could apply for residency but the granting of this was at the discretion of the Mauritian Authority. See also, *The Attorney General of The Republic of Botswana vs Unity Dow* [June 1991] in which, despite being a citizen of Botswana, the law stated that because Unity Dow had married a foreigner their two children required residence permits and were denied their rights as citizens. The case confirmed that the guarantee of equality under the constitution applied to citizenship rights.

⁹ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993.

The 1979 Convention on the Elimination of All forms of Discrimination against Women,¹⁰ deals extensively with issues surrounding birth and identity, but particularly in:

Article 2:

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

Article 9:

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

¹⁰ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

It should be noted that there are extensive state reservations relating to this Convention, and many of these are in regard to articles addressing birth and family rights, for example Article 9(2) and Article 16.¹¹ However, the states concerned are predominately Middle Eastern countries and as such do not fall within the remit of this particular research project. Egypt is the only country addressed in this report to have a reservation regarding Article 9(2).

Addressed to a more specific group, the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families¹² provides in Article 29:

Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality.

At a regional level, the American Convention on Human Rights, 1969¹³ states:

Article 18. Right to a Name

Every person has the right to a given name and to the family names of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary.

Article 20. Right to Nationality

1. Every person has the right to a nationality.

2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.

In the African context, there is the African Charter on Human and Peoples' Rights ("Banjul Charter")¹⁴ and Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa,¹⁵ Article 6 of which provides:

¹¹ Article 2(1)(d) of the Vienna Convention on the Law of Treaties defines a reservation as a "unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State." 1969 Vienna Convention on the Law of Treaties U.K.T.S. 58 (1980) Cmnd.7964, entered into force January 1980.

¹² UN General Assembly, *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, 18 December 1990, A/RES/45/158.

¹³ Organization of American States, *American Convention on Human Rights, "Pact of San Jose"*, Costa Rica, 22 November 1969.

¹⁴ Organization of African Unity, *African Charter on Human and Peoples' Rights ("Banjul Charter")*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

¹⁵ African Union, *Protocol to the African Charter on Human and People's Rights on the Rights of Women in*

(h) a woman and a man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests.

Of the 1990 African Charter on the Rights and Welfare of the Child¹⁶ provides:

Article 6: Name and Nationality

1. Every child shall have the right from his birth to a name.
2. Every child shall be registered immediately after birth.
3. Every child has the right to acquire a nationality.
4. States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

The above international and representative regional legal instruments demonstrate the existence of a consensus, at least at that level, of the right to be registered at birth and acquire nationality.¹⁷ This is important because “registration entitles a child to their rights and bestows the responsibility for that child, throughout his or her life, on the state in which they are born.”¹⁸ Of course signing up to international and regional instruments is one thing, but for the consequential obligations incumbent on states to be realised these must be reflected in domestic legislation and practice: otherwise, signing up will be no more than a hollow gesture. That said, these instruments do provide strong normative guidance.

The legal status granted by a birth certificate entitles children access to health, education and legal provisions. It can also help to protect them from enforced labour, trafficking and child marriage. There is a need here for further definition of the relationship between birth registration and nationality. UNICEF states:

“The Committee on the Rights of the Child has drawn attention to the duty of States to register births. This is intended to facilitate the acquisition of nationality. It is also supposed to eliminate discriminatory aspects of legislation on nationality.”¹⁹

In *Statelessness, Protection and Equality*, Brad Blitz describes “*de facto* stateless” people

Africa, 11 July 2003. Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6 and entered into force Nov. 25, 2005.

¹⁶ Organization of African Unity, *African Charter on the Rights and Welfare of the Child*, 11 July 1990, CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999.

¹⁷ The survey of regional provisions has been limited to the countries which fall within the geographical scope of this project (see introduction). There are currently no relevant regional wide human rights instruments relating to Asia.

¹⁸ *Supra* note 3.

¹⁹ UNICEF, (2007), *Law Reform and Implementation of the Convention on the Rights of the Child*. Florence, Innocenti Research Centre, p 35.

who, although not precluded by any law from having a nationality, are unable to acquire proof of their nationality and are thus excluded in practice.²⁰ Therefore lack of birth registration can directly exclude people from nationality.

Nationality laws can also be an indirect barrier to birth registration. For example:

- In Dominican Republic, where the law on nationality is based on *jus solis*, any child born in the country has Dominican nationality, but a systematic policy to exclude children of Haitian origin from gaining nationality on this basis means that children suspected of being of Haitian origin are refused registration.²¹
- Members of the Rohingya community in Myanmar are denied birth registration because they are not entitled to citizenship.²² However it is unusual for a country to exclude, by law, children born in the territory from registration.
- Until changes brought about by recent amendments to the Constitution, Zimbabwean discriminatory provisions in citizenship law were mirrored in the law on birth registration. According to the Zimbabwean citizenship law of 1984 a child born abroad could only gain nationality through the father, unless the parents were not married, in which case the mother could pass on her nationality.²³ The still current Births and Deaths Registration Act states that a child born abroad can be registered if the child is born within marriage to a Zimbabwean father or is born to an unmarried Zimbabwean mother. The Act explicitly links registration to citizenship in stating that the Registrar can refuse registration to an individual who was born abroad and is over 18 “unless the Registrar-General is satisfied that that person is a citizen of Zimbabwe.”²⁴

Another facet to the relationship between nationality and birth registration is that of naming a child. If there is discrimination around nationality (i.e. if the father's name is required to gain nationality) this interacts with birth registration in rules on whether the father can be recorded. For example, in Sierra Leone there is a requirement for the father's name to be registered for child to get citizenship, but the child cannot be registered if born out of wedlock and not acknowledged by the father.²⁵

²⁰Blitz, B., (2009), *Statelessness, Protection and Equality*. Oxford, Refugee Studies Centre.

²¹Cody, C., (2009), *supra* note 3,p25. It should be noted that Dominican Republic and Haiti are independent states both situated on the island of Hispaniola. As such they share a border which is easily crossed.

²²US State Department, (2011) *2010 Country Report on Human Rights Practice*. Available at <http://www.state.gov/g/drl/rls/hrrpt/2010/index.htm> [accessed 01/08/11] at pages 31, 39 and 41

²³ *Citizenship Act* [Zimbabwe] 1984, amended 2003, Arts 5 and 6, available at: <http://www.lexadin.nl/wlg/legis/nofr/oeur/lxwezim.htm> [Accessed 19th August 2011]

²⁴ *Births and Deaths Registration Act* [Zimbabwe] 1986, amended 2001, Art 13, available at: <http://www.lexadin.nl/wlg/legis/nofr/oeur/lxwezim.htm> [Accessed 19th August 2011]

²⁵ Plan Sierra Leone, response to initial inquiry

Previous Research Activity and Findings

Plan International carried out a global campaign on birth registration from 2005-2009, documented in the reports *Universal Birth Registration: A Universal Responsibility* of 2005 and *Count Every Child*, published in 2009. The reports highlight the need for registration and the many barriers to it as well as Plan's work programme to overcome these. The reports identified gender discrimination as one of the barriers to universal birth registration, closely related to the right of a woman to pass on her nationality to her children. It was noted that more work needs to be done to combat gender discrimination both in law and practice. Although progress has been made (e.g. in Nepal) to reform legislation, practice has lagged behind due to lack of awareness and direction.²⁶

Several research studies have identified gender discrimination as a barrier to birth registration and have described discriminatory laws and practices which create this situation.²⁷ However, to date, there has not been research focusing solely on this and examining its extent.

There has been somewhat more research done into the law on nationality, in particular Bronwen Manby's comprehensive comparative study of citizenship laws in Africa, which examined gender discrimination in nationality law as well as other themes. Manby found gender discrimination in the citizenship laws of 12 out of the 53 African countries studied.²⁸

Plan's campaign reports also point to a discrepancy between law and practice, especially where there have been recent legislative reforms. Plan defines this problem as the legal system and birth registration systems not being "compatible with local realities."²⁹ Discriminatory social attitudes, causing women to choose not to register their children, contribute to this discrepancy. Other legal provisions, besides those directly relating to who can register a child, are also a factor as they can either reinforce or contradict the law on birth registration. For example, regulations on the naming of children born out of wedlock or family planning regulations. The report also makes clear that both law and practice vary across countries and between different communities.³⁰

A report published by the Inter-American Development Bank (IADB) examines the relationship between gender, ethnicity and social exclusion in Latin America. This report describes a close interaction between several factors which explain a low rate of birth registration: "ethnicity and gender are aggravating factors of the structural causes (rural location and poverty) that explain under registration of births and lack of legal identity."³¹

²⁶Sharp, N., (2005), *Universal Birth Registration: A Universal Responsibility*. Woking, Plan Ltd, as well as Cody, C., (2009) *supra* note 3.

²⁷See Vandenabeele, C., and Christine V. Lao (eds.) (2007), *Legal Identity for Inclusive Development*. Manila, Asian Development Bank; also Harbitz, M., and Maria del Carmen Tamargo (2009), *The Significance of Legal Identity in Situations of Poverty and Social Exclusion : The Link between Gender, Ethnicity, and Legal Identity*. Washington, Inter-American Development Bank.

²⁸Manby, B., (2010), *Citizenship Law in Africa: A comparative study*. New York, Open Society Foundations, pp 40-41

²⁹Sharp, N., (2005), *supra* n. 26 above, pp 29-31.

³⁰Cody, C., (2009), *supra* note 3.

³¹Harbitz & Tamargo, *supra* note 27, Part 3(IV).

Many studies have found that birth registration is lower in rural and marginalised areas and point to the lack of accessibility of registry offices, expense and ignorance as the main explanatory factors.³² This report however, suggests a difficulty of separating gender from other factors in explaining low birth registration and points to the need for a holistic approach to combating discriminatory attitudes and practices.

This IADB report also notes lack of statistical data on the relationship between gender, ethnicity and birth registration.³³ Likewise, the lack of quantifiable data on the impact of legislative reform on the rights of children is highlighted by UNICEF as being absent from country reports to the UN Committee on the Rights of the Child.³⁴

The Current Research Methodology

This particular research project, commissioned by Plan International, was to identify what gender discrimination exists in relation to a woman registering the birth or conferring her nationality to a her child. It was primarily a desk based study conducted over a three month period. As a consequence the research focus had to be fairly narrow, particularly taking into account the wide geographical scope of the study, which, as already indicated, covered the fifty countries in which Plan currently works.

Legislation

A thorough review of domestic legislation was conducted resulting in a tabulation of the legal situation in each country, recording direct gender discrimination in relation to birth registration and nationality. Other laws which may impact on the likelihood of single women to register their children or women's ability to pass on their nationality were also considered. See Appendices 1(a)(b), 2(a)(b), 3(a)(b) and 4(a)(b) for a regional breakdown of this data.

In a number of cases, the current legislation was not accessible online and this meant secondary reports had to be relied upon to establish the existence, if any, of discrimination.³⁵

Country Reports: UN Treaty Bodies

Detailed reports as submitted by contracting parties to Committees of the various UN Human Rights instruments were sourced for information with direct relevance to the research question. More general information, such as the existence of gender discrimination in law or in social attitudes, was also sought. For each country within the

³²See for example Duryea, S., et al (2006). *The Under-Representation of Births in Latin America*. Washington, Inter-American Development Bank Research Department Working Paper No. 551, pp16-18. Also: Vandenabeele, C., and Christine V. Lao (eds.) (2007), *Legal Identity for Inclusive Development*. Manila, Asian Development Bank pp 47-49.

³³Harbitz, & Tamargo *supra* note 27.

³⁴UNICEF, (2007), *supra* note 19, p111.

³⁵ These were Burkina Faso, Cambodia, Egypt, Guinea, Guinea-Bissau, Haiti, Indonesia, Liberia, Malawi, Niger, Pakistan, Philippines, Sudan, Thailand, Togo and Uganda.

scope of the current study, the Concluding Observations by the Committee on the Rights of the Child (CRC) and the Committee on the Elimination of Discrimination against Women (CEDAW) were reviewed. The UN Committees' Concluding Observations are detailed but vary in terms of current relevance given some are several years old.

Country Reports: Other Organisations

The US State Department Human Rights Reports are published annually in April and report into the human rights situation. For the purpose of this study the 2011 reports were referenced. Each report includes information on discrimination against women and a child's right to a nationality. Other reports from, e.g., the Immigration and Refugee Board of Canada and the UK Border Agency were also used to provide insight into country-specific situations.

Online Survey

To inform the desk-based study an online survey of seven questions was compiled (see Appendix 5). This was designed to capture a snapshot of the social and cultural factors which may influence birth registration in the various countries. It was *not* a thorough examination of practices. The online survey was carried out with representatives from Plan Country Offices and other targeted participants identified via, for example, UNICEF Offices and women's organisations. This is an acknowledged limitation on the methodology, but the answers do provide somewhat of an overview of these factors and of the divergence between law and practice. This survey data can only give a suggestion of the situation in each country. There was only a small number of respondents for each country (in many cases only one), but the survey does provide a useful counterpart to the legal summary. It points to whether there is discrimination in practice and how it may operate. Inferences can be drawn, yet are inadequate to form the basis of firm conclusions or in depth comparison of the situation in each country.

Observations:

Legislative provisions

The legislation on birth registration and nationality share a number of common features. Most countries have laws which specify who should register a child and often set out an order of priority. In most cases the parents are equal in the list of priority, although in some countries the father takes precedence (Brazil, Dominican Republic, Ecuador and Sudan). A notable exception to this is Peru which gives priority to the mother. In other instances it is the 'head of household' who is listed (India, Laos and Nepal) who in these countries is likely to be male.

Legislatively regarding nationality a woman may be able to confer nationality to her children on the same terms as a man, or in more limited circumstances. The extent to which this is allowed may vary depending on whether the parents are married. A woman's inability to pass her nationality to a foreign spouse may also have repercussions for children of that relationship.

Some countries, while having discriminatory provisions in their nationality laws, seem to be at variance with their constitutional provisions, i.e. there is internal contradiction between the measures. An example of this is in Liberia where Article 20.1 of the Aliens and Nationality Act, 1973 (amended 1974) provides that nationality is gained by birth in Liberia or birth abroad to a Liberian father, and Article 21.31 states a child born abroad can only take on the mother's nationality if the father is naturalised while the child is still a minor and living in Liberia. This is against the background of the 1986 Constitution in which citizenship is gained by citizenship of one parent at the time of child's birth (provided any other nationality is renounced on reaching majority) (Article 28). The approach taken has been to interpret the Constitution as having repealed the contradictory provision in the earlier law if the Constitution sets out the rules in detail. If it merely provides for general principles and the detailed rules in the other legislation are discriminatory (this is the case in Sudan and South Sudan), the law has been interpreted to be discriminatory.³⁶

Most countries have prohibitions on discrimination (usually in the Constitution), but in a few countries these are subject to exclusions e.g. to family or customary law, or exclusions that only apply to the actions of state or which occur in public places. In some countries the definition of discrimination does not include gender. Other countries are criticised by CEDAW for not including direct and indirect discrimination within their legislative measures.³⁷

One factor which appears significant is the naming of a child born out of wedlock. In most countries there is a tradition of children taking the father's family name (or in South America, taking a family name from each parent). In either case it is obvious if a child has not been given his/her father's family name. Most countries' legislation provides that a child can be given the father's family name if the parents are not married as long as the father acknowledges paternity. Several survey respondents identified naming as a cause of delay in registration as women attempt to persuade their child's father to acknowledge paternity to avoid stigmatising the child. In some South American countries the law has attempted to ameliorate this situation by allowing a child to take two family names from the mother.

Practice

Legal protection against discrimination is not sufficient to provide equality in practice. A study of the country reports (CEDAW, CRC and US State Department Human Rights reports) and the survey responses revealed that gender discrimination, in relation to cultural practices and social attitudes, is a barrier independent of legislative protection. These reports record discriminatory and patriarchal attitudes in every country studied. A common societal background of gender discrimination is evident. However, it would be difficult to draw a comparison between levels of discrimination in the different countries given the limited remit of this particular project.

³⁶ This is consistent with Bronwen Manby's approach in *Citizenship Law in Africa* (See, Manby, B., (2010), *Supra* Note 28, p41)

³⁷ See, for example, the CEDAW country report on Tanzania, 2008. CEDAW also criticised China, Guinea, Laos, Liberia and Timor Leste for not having a definition of 'discrimination' in their legislation.

Most survey responses identified discriminatory social attitudes in one way or another impacting on a single woman's ability or likelihood to register her child. A number of different mechanisms were described in response to question 5 of the online survey, which asked for examples of social/cultural factors which could impact on the ability or likelihood of a single woman to register her child. These included, *inter alia*:

- General stigma which affects a woman's decision to register a birth – **Benin, Bolivia, India, Kenya, Malawi, Pakistan, Uganda,**
- A lack capacity to act alone – **Mozambique**
- Confinement extending beyond the registration period – **Guatemala, Kenya**
- Generalised attitudes against single mothers resulting in women delaying registration while persuading father to acknowledge paternity. This may be exacerbated by pressure from the woman's family - **Ecuador**
- Registration perceived as the father's responsibility – **Burkina Faso, Guinea-Bissau**
- Women and children perceived as the property of husband/father with a consequential lack of agency for the mother – **Cameroon, Togo**
- Naming in instances where the father's name is omitted due to non-acknowledgement of paternity – **Cameroon, Ecuador, Indonesia, Sierra Leone, Togo**
- Registrars not allowing women to register children alone – **Egypt, Mozambique**
- Shameful to register birth alone – **Egypt, Indonesia**
- Minority cultures denying hospital births – **Kenya**
- Lack of time and opportunity due to women's greater domestic responsibilities – **Cambodia**
- Treatment by officials – **Cambodia, Ecuador, Egypt, Mozambique, Rwanda**

In total, of 43 respondents (representing 35 countries) at least 32 respondents, from 27 countries, identified discriminatory social/cultural factors as a barrier to birth registration by single women.

In the following countries discrimination was not identified as a barrier or as not significant, at least according to survey respondents.³⁸

Bangladesh ³⁹	Philippines
Ghana	Sri Lanka
Liberia	Thailand
Nepal	Timor Leste
Paraguay	

Although gender was not openly acknowledged as a barrier to birth registration by respondents from these countries lack of awareness and poverty were mentioned. Stigma against unmarried mothers was noted, but it was claimed it would not be a significant barrier. Taking into consideration that stigma, lack of education and other socio-cultural factors were mentioned and given the societal context it is submitted that gender discrimination is a probable cause of such practices as manifested in the relevant countries. Obviously this cannot be stated conclusively in the absence of further analytical research.

³⁸ It is acknowledged that only those invited to respond to the web survey did so. A more refined and informed analysis would demand in depth engagement with a wider spectrum of participants including men and women, encompassing greater representation from various cultural and socio-economic individuals and groups.

³⁹ A response from Bangladesh stated there is a cultural taboo on extra marital relationships, but this has no impact on birth registration. Again, this would have to be explored in more detail to ascertain the accuracy of this statement.

Regional Analysis

The Legal Picture: Birth Registration - Latin America and the Caribbean

The picture that emerges is that there is legislative provision for a woman to register her child throughout Latin America and the Caribbean. This is generally to be found in civil registry laws or children's codes. There is no legislation that prohibits a woman from registering a child, irrespective of her marital status. However, as mentioned above, in some countries, e.g. in Brazil, Dominican Republic and Ecuador, the father is listed as having the primary responsibility for registering the child, and it is only in his absence that the mother would do so.

There are other legal provisions that could reinforce or detract from the capacity of a woman to register her children. For example in Bolivia, Ecuador and Honduras, the law specifies that the birth record should not indicate whether the child was born out of wedlock. On the other hand, Brazil and Haiti specify that the birth certificate should indicate if the child was born outside marriage. On paper, the lack of requirement to note the marital circumstances of the parents should lessen the stigma of lone women registering children, but whether this is borne out in practice would need further research.

Nicaragua alone, pursuant to Article 7 of *Ley de Responsabilidad Paterna y Materna, No. 623, 2007*, makes specific provision for a single mother registering a child, whereby a woman is able to register a child temporarily with the family name of the alleged father. The Registrar will initiate contact with the alleged father who then has 15 days to attend before the Registrar. If the alleged father does not attend, paternity will be assumed. If the man attends but denies paternity, he will be required to take a DNA test. In the absence of proven paternity, the child will be registered under the mother's family name only. Paternity is assumed if the father refuses to take the DNA test. Again, while this legally gives an incentive for a single woman to register a child, how this is reflected in practice would need further examination.

Traditionally in many Latin and South American countries a child takes the family name of each parent. Several countries have, through their laws on birth registration, attempted to reduce the stigma attached to being the child of a single parent by allowing for the child to be registered with the two family names of a single parent.

Most countries in Latin America and the Caribbean enshrine the right to a name and identity in either their constitutions or children's codes.

Practice: Latin America and the Caribbean

The information gathered identified patriarchal and discriminatory social attitudes as being prevalent in all the twelve Latin American and Caribbean countries studied. Direct evidence that this is a barrier to birth registration was identified for three countries: Bolivia, Ecuador and Guatemala. There was a suggestion that in Paraguay gender discrimination

is not considered a barrier.⁴⁰ Also recent administrative and legal changes in the Dominican Republic appear to be having a positive effect enabling some mothers to now register their children without problems, in circumstances which previously could have been problematic.⁴¹

In Bolivia the presence of stigma and gender discrimination was identified as possibly discouraging a woman from registering a child. Other suggested factors influencing low level of birth registration are a lack of sensitivity to ethnic differences and the geographical remoteness of some areas.⁴²

In Ecuador two discriminatory practices identified were pressure being placed on lone women by their families to delay registration until the father accepts paternity, and secondly, evidence was found that although legally the marital status of the parents is not required on the birth certificate, the authorities continue to ask for this information during the registration process and that this could be discouraging for a single mother wishing to register the birth of her child.⁴³

Lastly within Guatemala , the 'period of special care', i.e. confinement, is 40 days, however the period during which a child can be registered for free is only up to 30 days after birth. Evidently then, the traditional practice can be a barrier to a woman registering the birth of her child.⁴⁴

As the evidence suggests, the legal provisions for single women do not necessarily lead to the elimination of discriminatory practice. Legal provisions are only effective if the women registering births know their rights and the how the proper procedures should be executed, and that those authorities responsible for enacting the laws are working within the spirit of the law and are properly trained.

The Legal Picture: Nationality - Latin America and the Caribbean

All the legislation in the countries of Latin America and the Caribbean is gender-neutral in terms of conferring nationality to children. Several countries however prohibit dual nationality which could have an effect on a woman married to a non-citizen of her country. This is an issue that requires further examination before determining whether it does lead to any gender-based discrimination.

Another factor which reinforces a woman's right to confer her nationality to her children is

⁴⁰ Survey response

⁴¹ Survey response

⁴² At 74% Bolivia has the lowest level of birth registration in the region according to *Birth registration in Latin America and the Caribbean*, UNICEF Latin American and the Caribbean Regional Office, Newsletter No.1, July 15th 2011.

⁴³ Survey response

⁴⁴ Survey response

the child's right to nationality which is enshrined in the laws of most of the countries in Latin America and the Caribbean. This is closely linked to the right to have a name and identity as mentioned above (see also Appendix 1(a), Column 4).

Conclusions: Latin America and the Caribbean

Discriminatory practice exists despite the legislative protection in place. Latin America and the Caribbean provide strong legal protection for a woman registering the birth of her children and conferring her nationality. However, in reality gender discrimination is still a barrier to birth registration.

The legislative provisions relating to birth registration and nationality are essentially gender-neutral. One factor contributing to this could be that many of the constitutions in this region are relatively recent, with the majority being drawn up since 2000. Another feature of many of the countries in Latin America and the Caribbean is the inclusion of children's codes within their legislative framework which are underpinned by the guiding principles of children's rights.

However, although putting laws on the statute book is necessary, it is not sufficient and discriminatory practice does appear to still occur. Law does not function in a vacuum and its realisation and efficient practice depends on a number of factors, including the wide publicising of laws to raise awareness of the existence and purpose of birth registration provisions. This demands effective dissemination and training of officials. These are factors which can be addressed immediately, provided there is an investment of resources and a rolling out of relevant policy.⁴⁵ This, of course, will take political will.

In addition to the above, there are also deeply entrenched social attitudes which will have a strong impact on birth registration, which will vary between different ethnic groups and cultures within the countries and the wider region. For example, there may be a difference between urban and rural communities, but that can be affected by infrastructure of a country and geographical remoteness as much as social attitudes. It cannot be assumed in the absence of a stronger evidence base, that rural populations are more conservative or discriminatory.

More in depth qualitative research would need to be conducted to identify exactly the reasons for the practice falling short of the law, as well as the interaction of different kinds of discrimination including ethnicity, poverty, gender, physical which can lead to exclusion.

Recommendations: Latin America and the Caribbean

- Public education programmes promoting the advantages of birth registration taking account of the need to access those in more remote areas.
- Tackling entrenched discriminatory attitudes towards women, particularly against

⁴⁵ See for example, UNICEF, (2007), *supra* note 19. This report covers in detail and makes recommendations for the types of policies which could help the practical implementation of legal reforms.

the background of the levels of violence against women in the region. This demands the education of men as much as women.

- More in depth, longitudinal research to isolate the influence of gender discrimination as opposed to racial/ethnic marginalisation, geographical barriers and other factors e.g. literacy rates which could affect birth registration rates

The Legal Picture: Birth Registration – West Africa

Overall there are legal provisions throughout the West African countries examined for a woman to register her child. These are generally contained within family codes, civil codes or registration codes. There is no legislation that prohibits a woman from registering a child, premised on her marital status. There are no instances specifying that one parent takes precedence in registration. In Cameroon, Liberia and Sierra Leone, however, it is stated that the primary responsibility for registering a birth lies with the health professionals from the hospital in which the birth took place.

There are other legal provisions that could reinforce or detract from the capacity of a woman to register her children. Some countries specifically provide that a child born outside of marriage cannot assume his or her father's family name unless paternity is acknowledged. These are Cameroon, Senegal and Togo. In the cases of Ghana and Sierra Leone it is only at the joint request of both parents that a child born out of wedlock can take the father's family name. Mali has a somewhat similar provision, but more gender-neutrally, in that it states that if the parents are not married then either family name will only appear on the record if either parent recognises the child. Mali is also the only country in this region that explicitly states the birth record must not indicate the marital status of the parents.

The right to a name and identity does not habitually feature in the constitutions or domestic legislation of this region. The only exceptions in which this is specifically provided for are Ghana, Mali and Sierra Leone. Togo provides for the right to a family name.

Practice: West Africa

According to the sources used, there appears to be deeply rooted discriminatory practices and attitudes in this region. The sense that emerges from the majority of survey responses is that the woman and child are regarded as the property of the husband and father. Even when the term 'property' was not explicitly used⁴⁶, reference was made to the father being the primary holder of 'responsibility'. This is indicative of pervasive gender discrimination in which women are not accorded the same level of agency as men. The countries where discrimination was explicitly linked to low levels of birth registration were Benin, Burkina Faso, Cameroon, Guinea-Bissau, Sierra Leone and Togo.

In Ghana the research suggested that there was no direct gender discrimination that would

⁴⁶Survey response

affect a woman's ability to register her child although there are other factors which lead to a low level of registration, specifically 'ignorance'.⁴⁷ Arguably this could be a result of indirect discrimination whereby women are generally less educated than men and among whom literacy levels remain lower.

The Legal Picture: Nationality – West Africa

There are two countries within those studied in West Africa in which there is a level of discrimination against a woman passing on her nationality to her child: Senegal and Sierra Leone.

In the case of Senegal nationality acquired through descent is primarily through the father when the parents are married. The mother is only able to pass on Senegalese nationality if her husband is stateless or of unknown nationality. In the case of parents who are not married, nationality passes primarily through the first parent to acknowledge parentage. However, in addition, a child born in Senegal to parents also born in Senegal (but not necessarily citizens) will also acquire Senegalese nationality. In practice then, any gender discrimination related to the passing on of nationality is most likely to affect women whose children are born outside Senegal.

The discriminatory provision found in Sierra Leone's case is specifically to do with children born abroad, where nationality is primarily gained through a Sierra Leonean father. Nationality can only be acquired outside Sierra Leone through the mother if the child does not acquire the citizenship of any other country.

In some of the West African countries there appears to be some contradiction between the constitutions and citizenship/nationality laws. It has been interpreted that the constitutions repeal the citizenship/nationality laws, because these constitutions contain prescriptive legal rules.⁴⁸ This is the case in Liberia and Togo.

Conclusions: West Africa

Throughout West Africa there are apparent elements of gender discrimination relating to birth registration and the conferring of nationality. While there is no direct discrimination in the letter of the law, how the law is applied and the lack of strong legal protections reinforcing the right to a name and identity, result in discriminatory practice which in turn might negatively affect children's right to an identity.

Additionally, there appears to be discrimination in practice even where there are legal provisions, due to endemic gender discrimination which regards women as being the property of male family members and of women having lower social status.

It can be seen that there is a relationship between discriminatory practice relating to birth

⁴⁷ Survey response

⁴⁸ *Supra* note 28.

registration and discriminatory nationality laws in that a child who cannot be registered with his or her father's family name, due to lack of recognition by the father, is denied citizenship as a result. This can be seen, e.g. in Sierra Leone.

Also, in several of the countries here, the language of the law reflects somewhat discriminatory attitudes towards children, e.g. still using terms such as 'legitimate' in referring to children born within marriage or 'natural' to refer to those born outside marriage.

Again, as already noted above in the case of Latin America and the Caribbean, law itself will not be sufficient to counter the traditional societal attitudes inherent to this region, but is an important first step. Political will is also necessary to strengthen domestic legislation to comply with the international and regional instruments available.

Recommendations: West Africa

- The promulgation of domestic legislation to strengthen protections which these countries have in principle signed up to by ratifying international and regional legal instruments (UNCRC, African Charter etc.)
- Awareness raising on the importance of birth registration and supporting a woman's right to register her child
- Awareness raising more generally in terms of women's position within society, particularly against the background of discriminatory traditional practices
- More in depth qualitative research into the underlying factors leading to low birth registration and the interplay of these causal factors

The Legal Picture: Birth Registration – East Africa

In the countries studied in East Africa none have legal provisions that overtly discriminate against a woman by not allowing her to register the birth of her child. In Egypt however, this has only been the case since the 2008 amendment to the Children's Code. Previously, a woman could not register her child, and children born out of wedlock could not be registered.

Four countries examined (Kenya, Tanzania, Zambia and Zimbabwe) specify that there must be acknowledgement of paternity for the father's name to be registered. In the case of Kenya, Zambia and Zimbabwe it is registered at the joint request of both parents, whilst in Tanzania, it can be recorded at the acknowledgement of paternity by the father alone. Mozambique requires for the marital status of the parents to be stated on the birth certificate. However Mozambique has recently abolished the husband's legal status as head of the family in its 2004 Family Law, which could, in theory, work in favour of women

registering children.

The East African countries which provide for a child's right to a name and nationality are: Ethiopia, Kenya, South Sudan and Tanzania. Rwanda provides the right only to nationality and Rwandan law makes no special provision for unmarried parents. Ethiopia does not have a civil registration system or law providing for birth registration. A draft law does exist, but this has been the case for several years and has not yet been enacted. In Sudan the duty to register births lies primarily with the medical professionals who assisted at the birth. Secondary responsibility lies with the father and only if he was not present at the birth does the mother register the child.

Practice: East Africa

Discriminatory attitudes were identified within each of the East African countries, and in six of the countries studied, evidence was found explicitly linking discrimination with the low rates of birth registration: Egypt, Kenya, Malawi, Mozambique, Rwanda and Zimbabwe.

In Egypt and Mozambique the attitude of officials was highlighted as a barrier to women, especially lone mothers, registering their child. In Egypt lack of awareness among registrars of the recent legal amendment was cited. In Mozambique due to the fact that men are often away working, even married women found it difficult to register a child on their own. In Rwanda registrars may demand to see a marriage certificate upon registration.

Other practices militating against a woman registering the birth of her child were identified. In Kenya, for example, the period of confinement is longer than the time span during which a child must be registered. Also, in Sudan, adultery remains a capital offence and this could deter a woman from registering a child alone for fear of being accused of adulterous behaviour. Sudan, it should be noted, has not signed CEDAW.

Unlike some of the West African survey participants, the East African respondents did not explicitly refer to women being the 'property' of men. However they did identify general discriminatory attitudes which permeate the culture, leading to the stigmatisation of women who are perceived as not acting in accordance with traditional roles.

The Legal Picture: Nationality – East Africa

Discrimination has been identified in the laws of Egypt, South Sudan and Sudan. In Egypt, despite the 2004 Act on Nationality which created gender equality in passing nationality on to children, there still remains an exception to Egyptian women married to Palestinian men. A decree of May 2011 would eliminate this exception however this has not yet come into force.

The situation in both South Sudan and Sudan relates to internal contradictions found between their Constitutions and nationality laws. Both countries have constitutions stating

that children born to a national mother or father has a right to nationality, but the constitutions provide general principles rather than prescriptive legal rules. The nationality laws which provide the detailed rules still allow for discriminatory nationality practice. In South Sudan, the Nationality Act of 2003 states that nationality is gained through a South Sudanese father and makes no provision for a South Sudanese mother married to a foreigner. In the case of Sudan, the 2005 amendment to the Nationality Law allows the children of Sudanese mothers and foreign fathers to claim nationality, but it is not automatically granted at birth.

It is interesting to note that in Kenya there has been a reform in 2010 allowing women to pass on nationality. As of yet there is an absence of data as to how this is coming to fruition, but anecdotal evidence suggests that the amendment is not being uniformly applied, probably due to a lack of awareness among officials.

In Zimbabwe there appears to be some contradiction between the Constitution and the citizenship legislation. This report has interpreted it that the constitution repeals the citizenship laws, because the constitution contains prescriptive legal rules.

The CEDAW State Report, Malawi 2010, highlights there is a contradiction between the Constitution and the Citizenship Act in that a Malawian woman will lose the right to her original citizenship on marriage to a foreign spouse, unless she renounces the citizenship of her foreign husband on the first anniversary of their marriage. This provision does not apply to men in a similar situation. This draws attention to the issues of women's ability to pass her nationality to her foreign spouse and laws disallowing dual nationality. The combination of these two could preclude a woman from passing on her nationality to her children.

There is anecdotal evidence that in Ethiopia despite the applicable law relating to nationality being gender-neutral, in actuality it is the older 1930 law, which is discriminatory, that is still widely applied.⁴⁹

Conclusions: East Africa

The picture that emerges from East Africa is somewhat patchy. It appears that established practices are working against the success of legal attempts which have been put in place to address gender discrimination.

The situation in East Africa is, on the face of it, better than in West Africa, both in law and practice, with the concept of women and children being male property not being so evident. Also, there seem to be stronger legal protections in regard to the right to name and nationality.

However, as in the previous cases, protections in law do not always seem to be filtering

⁴⁹ Anecdotal evidence provided in personal correspondence.

through to practice and the awareness of the right to, and benefits to be gained from, birth registration need to be instilled more deeply. This will involve education and awareness-raising among communities and the officials responsible for birth registration.

Recommendations: East Africa

- The countries of this region should scrutinise their legal provisions to ensure internal consistency relating to birth registration and nationality laws
- Wider training of registrars and other relevant officials to ensure they have contemporary knowledge of legal developments and thus able to conduct their duties professionally and efficiently
- General public awareness raising and tackling entrenched patriarchal attitudes and practices which have the possible effect of relegating women to a lower social status
- More research into the socio-cultural environment to factors inhibiting the fulfilment of gender-neutral legislation

The Legal Picture: Birth Registration – Asia

Asia is distinct as it is the one region in this study where there is discrimination in the law relating to birth registration, as well as in practice. The Asian countries, for the most part, do not discriminate in law against a woman registering her children, but there are exceptions: India, Laos, Nepal and at least some areas of Pakistan.

In India, Laos and Nepal there are national laws in place which specify that in the case of births taking place at home, the head of the household has the primary duty to register the birth. In Pakistan it was not possible to find the content of the national legislation, but responsibility for birth registration is devolved to a provincial level and reference is made in the Punjab Local Government Ordinance to penalties applicable to the head of the household for failure to declare a birth. This suggests that in Punjab at least, and possibly in other regions of Pakistan, it is also the case that the head of the household has the primary responsibility to register births.

Although the term “head of household” does not explicitly refer to a male this provision has the effect that if a single woman lives with her parents or extended family it is most likely to be her father or another male relative who is legally obliged to register her child. Canada's Immigration and Refugee Board information on single women in Pakistan states that in rural areas the normal situation is for both women and men to live with their extended family until marriage. In this context it would seem very unlikely that a single woman would have the legal capacity or social agency to register her child alone.

In the case of India it is specifically mentioned that in the absence of the householder or his nearest relative the person responsible for registering the birth is the oldest adult male present in the house.

In several countries there are other legal provisions which, while not directly discriminating against single women, would make it less likely for a single woman to register her child.

In China the regulations on birth registration are part of the family planning regulations and are the responsibility of the provinces. While it is the case that there is not a direct legal barrier to a single mother registering her child, it is also illegal in most provinces for a woman to give birth out of wedlock and there are heavy fines for doing so.

Four countries in Asia protect the right to identity and name in their constitutions. These are Indonesia, Laos, Nepal and Timor Leste.

The gender equality provisions in some constitutions are subject to limitations which has the effect of weakening the goal of equality. In Bangladesh for example, gender equality provisions apply only in spheres of state and public life. This entrenches the public/private dichotomy by limiting state protection to the public sphere, which has had a negative effect on the realisation and protection of the human rights of women. India is similar in this respect, limiting gender equality provisions to actions by the state and over public areas, thus excluding private, home life. Myanmar constitutionally allows for appointment to positions that are “suitable for men only”.

Practice: Asia

According to the sources used, discriminatory attitudes were discovered across this region linked to birth registration in five countries: Cambodia, India, Indonesia, Laos and Pakistan. In five other countries (Bangladesh, Nepal, Philippines, Sri Lanka and Timor Leste) an explicit link was not drawn between discrimination and birth registration. This does not however exclude the possibility that discrimination could operate indirectly.

The situation in China stands out as distinct from the other Asian countries. The evidence suggests that it is rare for a single woman to give birth in China due to the family planning restrictions and also due to the fact that having a child would reduce her likelihood of finding a husband. Instead “the vast majority”⁵⁰ of pregnancies out of wedlock are terminated. This implies that the restrictions on single mothers are not necessarily a barrier to registration but instead, because of the availability of abortion, and presumably the lack of social taboo associated with it, they are a barrier to childbirth.

At this juncture it is worth mentioning in regards to China, the existence of ‘black’ children or hei haizi, i.e., unregistered children.⁵¹ These are the children of pregnancies in

⁵⁰ Survey response

⁵¹ See, for example, UK Border Agency COI Service, *China: Country of Origin Information (COI) Report*, 24 August 2011. It should also be noted here that the situation in China is complex and is compounded by the unregistered children of migrants and the children of North Korean mothers and Chinese fathers.

contravention of the family planning laws, who may not be registered for a number of reasons, including the requirement of having to pay a fine, or the desire to circumvent the one child policy.

In Bangladesh, children born from polygamous marriages or out of wedlock are often abandoned and thus presumably unregistered. Similarly, in Indonesia polygamous marriages are illegal, but still occur. If a child is born from such a union the father may refuse the mother permission to register the child because in order to avoid flagging up the illegal nature of the marriage, the child could only have the mother's name on the register. This goes against the patriarchal tradition that a child should have his or her father's name.

Also in Bangladesh, reflecting a discriminatory social context, is the existence of fatwas against women for alleged infidelity or immoral behaviour, leading to extrajudicial punishments. This would be likely to discourage an unmarried woman from registering a child.⁵²

In Cambodia a combination of factors contributing to women not registering children were identified, including their low social status; workload and lack of time; the treatment received from officials; and illiteracy. Again this highlights how the interaction of several factors can form barriers.

In Nepal the Birth, Death and Other Personal Incidences (Vital Registration) Act 1976 was amended in 2006 to allow a mother to register the birth of a child, which had previously been the sole responsibility of the child's father or another close male relative. Although the law was recently amended to achieve gender-equality it is unclear yet how this is filtering through to practice. Nepal has not submitted reports to either CEDAW or CRC since the change in the law.

The Legal Picture: Nationality – Asia

None of the Asian countries surveyed in the study preclude a woman from passing on her nationality to her children. However the situation in two countries would be problematic for a woman married to a foreigner, as it would also for a man married to a foreigner.⁵³ These are Myanmar, where for a child to have nationality, both parents must be Burmese; and India where a child cannot gain nationality if either parent is an illegal migrant.

Several countries have only provided equality provisions in their legislation in relatively recent amendments: Bangladesh in 2009, Nepal in 2007, Pakistan in 2000 and Sri Lanka in 2003. Of these Sri Lanka is notable in backdating the right of women to pass on their nationality by allowing the children of Sri Lankan mothers and foreign fathers born before 2003 to claim Sri Lankan nationality.

⁵² Survey response

⁵³ It is acknowledged that this should be characterised as discrimination on the grounds of nationality as opposed to gender.

In Nepal there is a suggestion that despite the 2007 Constitution providing for gender equality in passing on nationality to children, previous discriminatory provisions continue in practice. The 2006 Citizenship Act contained a contradictory provision: while Article 3.1 states that nationality is gained by birth to a Nepalese father or mother, Articles 3.2 and 5.2 state that children of a Nepalese mother and foreign father would have to acquire citizenship by naturalisation i.e. not on an equal basis with children of Nepalese father. This article is inconsistent with the 2007 Constitution which should have repealed it. However, the 2010 US State Department Human Rights Report states that in practice “government officials often refused to grant citizenship documents based on the mother’s citizenship if a father’s identity was unknown or when he was a foreign national.”

Conclusions: Asia

The Asian region was the only one in this study in which some countries still have gender discriminatory laws relating to birth registration on the books. As with the other regions, discrimination is broadly accepted as a barrier, even in the countries where it does not exist in law.

In China the family planning laws create a unique context in which gender discrimination is acted out, with the law essentially exacerbating the preference for boys and putting single women into the difficult position of having to choose to terminate a pregnancy rather than face fines or other penalties.

Of the regions studied, Asia had the most survey respondents who did not identify gender discrimination as a barrier to birth registration in practice. However given that the UN treaty body reports reviewed do identify societal discrimination across this region and further that in several countries legislation providing for equality is relatively new, the absence of discrimination identified in the survey should be treated with caution.

Recommendations: Asia

- Legislators should be aware of the consequences of legislative provisions in practice, e.g. when employing terminology such as ‘head of household’, and accordingly any legislative changes should be closely scrutinised
- Awareness raising, particularly where there have been recent legislative changes
- Cultural awareness raising regarding the general place of women in society, challenging the stereotyped norms
- More research into the discrimination against and marginalisation of women in their everyday lives and the legislative frameworks which purportedly promote and protect the rights of women, including equality in all family matters

Overall Conclusions

Gender discrimination in respect of birth registration and the conferring of nationality does exist although more in practice than in law. Notwithstanding this discriminatory measures were found to still exist in legislation in the following countries: Senegal and Sierra Leone in West Africa (see Appendix 2(b)); Egypt, Sudan and South Sudan in East Africa (Appendix 3(b)); and India, Laos, Nepal and possibly Pakistan in Asia (Appendix 4(a)). In the East and West African countries, the discrimination relates to limitations placed on a woman passing on her nationality to her child, whereas it is in the law relating to birth registration that discriminatory measures are contained in the Asian context.

Yet while the overall legislative picture is fairly positive, there is still gender bias in practice. A supposedly neutral law may not be so neutral in application, e.g. in cases where the 'head of the household' is granted the primary responsibility of registering a birth. On paper this appears to be gender-neutral, but in reality, it is a term which will, as a norm in that particular culture, denote a male and thus will, even unintentionally, result in a barrier to a woman registering the birth of her child.

In other cases it could be that although the legal provisions are gender-neutral, those applying the law are not doing so impartially. That can be seen in some of the survey responses which cited instances of, e.g. marriage certificates being demanded for a birth to be registered in contravention of domestic legal requirements. In an example such as this, it is the operation of the law which is discriminatory, not the law *per se*. What is apparent is that the solution to eliminating any gender discrimination in this area is not the introduction of more laws. The legal provisions are adequate: it is the application of them that needs to be addressed. Law is but a tool, and those using it must be educated and trained to do so in a neutral manner.

That the legal framework around birth registration and nationality is sufficient is true at the domestic, regional and international levels. However states must ensure that they are acting in accordance with their obligations. It is not enough to have signed up to international instruments, and states must assure that their practice conforms to and reflects the duties contained within. To this end, it is important that the committees of the UN Treaty Bodies continue to monitor and report on state practice, and the UN's power to hold states to account if they are demonstrably failing to uphold their obligations is strengthened. To this end states should be encouraged, where appropriate, to acknowledge the right of individual communication as provided in the Optional Protocol to CEDAW.⁵⁴

⁵⁴ The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, United Nations Treaty Series, vol 2131, p 83. Currently there are 102 State parties to the Optional Protocol which entered into force in December 2000. The Optional Protocol provides individuals and groups of women the right to complain about alleged violations of the Convention. It also, pursuant to Article 8, provides for the inquiry procedure whereby the Committee can conduct inquiries into grave or systematic abuses.

Obviously, law by itself cannot end gender discrimination deriving from entrenched customary attitudes and practices. What law can do, however, is act as a standard setting tool and strengthen the hand of those trying to change discriminatory traditional systems, by providing the means by which governments and individuals can be held to account.

As noted above, what is required if gender discrimination is to be eliminated from registering births and conferring nationality, is a shift in conventional viewpoints held quite widely in the countries studied that women are not on an equal standing with men, particularly in family and legal matters. As highlighted especially in the West African countries, the notion of women as the 'property' of men is still prevalent. That said, where gender discrimination is present, other forms of prejudice can often also be found. More research and analysis would need to be undertaken, but the influence of other forms of social and physical marginalisation needs to be considered, including *inter alia*, the role of ethnic or tribal discrimination, of social class or caste, and the effect of education levels, the impact of divisions between urban and rural communities.

Historical influences also demand more in depth study. The four regions looked at in this project all have colonial histories, and it is anticipated share some common experiences as a consequence. However, it would be interesting to try to comparatively assess whether having been occupied by different cultures led to variances in the manner and depth with which birth registration and passing on of nationality took root post-colonially.

It is worth mentioning while considering the regional breakdown of this study, the unique case of Asia, and specifically China. There is evidently real gender discrimination in China resulting from and being reinforced by the family planning laws. This is patent in the distorted male to female ratio brought about by, among other things, the preference for male children within the context of the one child policy.⁵⁵ However, China probably needs to be viewed individually, as being so distinct and the issues so unique, that it offers little in the way of comparative studies.

Another regional consideration is that the absence of Middle Eastern countries from this study may have resulted in a more positive picture legally than expected. As previously mentioned most of the reservations made in regards to CEDAW are from Middle Eastern countries and are largely concerned with issues relating to the law and family. Any further study would benefit from the inclusion of this region in order to get a broader picture of more direct discrimination relating to birth registration and nationality, in both law and practice

Ultimately though this study has found the laws surrounding birth registration and the conferring of nationality to be adequate and do not create barriers to women in these matters. Law however, does not exist in isolation, and regardless of the protections provided on paper, will only be effective if those administering them do so objectively and

⁵⁵ See, for example, Li, S., (2007) *Imbalanced Sex Ratio at Birth and Comprehensive Intervention in China*, United Nations Population Fund.

consistently. Gender discrimination may closely interact with other forms of discrimination and disadvantage, and thus there is evident need for a holistic approach to be developed through the education and training of officials, as well as the wider community. Discriminatory traditional attitudes and practices can interfere with the application of law on an equal basis, and it is these which lead to gender discrimination and represent barriers to a woman registering the birth of, or conferring her nationality onto, her child.

Appendix 1(a): Birth Registration in Latin America and the Caribbean

Country	Is there direct discrimination in law?	Law	Content	Other factors which impact (other laws / social / cultural factors)
Bolivia	No	Código Niño, Niña y Adolescente No 2026, de 1999.	Art 98: If the identity of either or both the parents is unknown the child is still registered with two family names. Situation is not recorded on birth certificate.	Constitución 2008, Art 59.4: child's right to identity. Código Niño, Niña y Adolescente, No 2026, 1999. Art 97: Child must be registered and has the right to a name. Survey identified stigma and discrimination against single mothers as barriers to registration. ⁵⁶
Brazil	No.	Lei No 9534	Art 52: Father must register child but in his absence the mother must.	Lei No 6015 – Art 54 birth record contains details of parents and where married Estatuto da Crianca e Adolescente, Lei No. 8069, 1990 Art 17: Includes right to identity. Art 25: Defines family as parents or either one of them and their children
		Estatuto da Crianca e Adolescente, Lei No. 8069, 1990.	Art 26: Children born out of wedlock can be acknowledged jointly or separately by parents.	
Colombia	No.	Ley por la cual se expide el Código de la Infancia y la Adolescencia, No 1098, 2006,	Art 38.4: Family has obligation to register birth.	Ley por la cual se expide el Código de la Infancia y la Adolescencia, No 1098, 2006, Art 25: Right to identity and nationality and to be registered immediately after birth.
Dominican Republic	No	Ley sobre Actos del Estado Civil, No. 659, 1944	Art 43: Primary responsibility to register is with father, or in his absence, with mother. Art 46: If parents are unmarried, father's name is only recorded if he acknowledges paternity.	Código para el Sistema de Protección y los Derechos Fundamentales de Niños, Niñas y Adolescentes, No 136, 2003, Art 12: Includes right to identity. Law and administrative systems were recently amended to allow women to register their children. Some mothers have now managed to register their children with no problems. ⁵⁷
Ecuador	No.	Ley de Registro Civil, Identificación y Cedulación, Decreto Supremo No. 278.	Art 30: Obligation to register birth primarily with father but in his absence, the mother.	Constitución 2008, Art 45 and Código de la Niñez y Adolescencia, 2003, Art 33: Children and adolescents have the right to identity, name & citizenship. Constitución, 2008, Art 68: recognises “common law marriage” Art 69.7: No declaration of marital status of parents is required at birth registration and this information is
		Código de la Niñez y Adolescencia , 2003	Art 35: Obligation to register child immediately after birth with paternal and maternal family names. Art 36: if identity of one parent is unknown, child takes the two family	

⁵⁶ survey response

⁵⁷ Survey response

			names of the parent who registers.	not recorded on birth certificate. Survey identifies discrimination by authorities, who may ask for details of mother's marital status despite legal provision which states this should not be included in the birth record; poor advice from medical staff; fear of prejudice; and pressure from families to get the father to acknowledge paternity (due to naming), as barriers to registration. ⁵⁸
El Salvador	No	Ley de Protección Integral de la Niñez y Adolescencia, No 839, 2009	Art 75: Children born in hospital must be registered by hospital staff. Information can be provided by mother, father or a representative. Art 77: If birth was not attended by professionals, either parent can register.	Ley de Protección Integral de la Niñez y Adolescencia, No 839, 2009, Art 73: Right to identity including name and nationality; Art 74: Every child must be registered immediately after birth.
Guatemala	No.	Ley del Registro Nacional de las Personas, Decreto 90, 2005	Art 68: Registration is obligatory and is an inalienable right. Art 73: Application to register birth should be made by both parents but in the absence of one parent it can be made by the other.	Decreto 27-2003: Ley de Protección Integral de la Niñez y Adolescencia, 2003, Art 14: Right to identity including name and nationality. Survey response suggests single women have difficulty in registering their children as there is a "period of special care" for a new mother lasting 40 days whereas the period in which the child can be registered for free is 30 days. ⁵⁹ Indigenous women are put off registering children by the need to "interact with non-indigenous male government officials" ⁶⁰
Haiti	No ⁶¹	Code Civil	Birth can be registered by father or mother. If the child is born out of wedlock and not recognised by the father, s/he will take mother's family name. ⁶²	Birth certificate states whether child is born within wedlock or " <i>enfant naturel</i> ". ⁶³ Code Civil Art 306. If a child is born out of wedlock they are not permitted to know the identity of their father. ⁶⁴
Honduras	No.	Ley del Registro Nacional de las	Art 55: Birth registration is obligatory and primary obligation is	Constitución, Art 114 and Código de la Familia, Art 99: No distinction

⁵⁸ Survey response

⁵⁹ Survey response

⁶⁰ US State Department, (2011) *2010 Country Report on Human Rights Practice: Guatemala*. Available at <http://www.state.gov/g/drl/rls/hrrpt/2010/index.htm> [accessed 01/08/11], p 23

⁶¹ Immigration and Refugee Board of Canada, (2007) *Haiti: Procedure to obtain a birth certificate, HT1102668.FE* available at: http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=451740&l=e, [accessed 16 August 2011]

⁶² *ibid*

⁶³ *ibid*

⁶⁴ UN Committee on the Convention on the Rights of the Child (2003). Thirty-second session consideration of reports submitted by states parties under article 44 of the Convention. Concluding Observations: Haiti [online] Available at: <http://www2.ohchr.org/english/bodies/crc/sessions.htm> [accessed 4 August 2011], p7

		Personas, Decreto No 62, 2004	on father or mother. Art 62: Provides for recording only one parent in registry	based on marital status of parents – no registration doc will indicate this fact.
		Código de la Niñez y Adolescencia, Decreto No. 73, 1996	Art 30: Duty of father, mother or legal guardians to register child.	Código de la Niñez y la Adolescencia, Decreto No. 73, 1996. Art 29: Right to nationality, identity, first name and family name
		Constitución, 1982 (amended to 2006).	Art 39: All Hondurans must be registered.	Ley de Igualdad de Oportunidades para la Mujer, Decreto No. 34, 2000, Art 11: State should promote concept of shared responsibility in family life emphasising needs of working mothers and female heads of households.
Nicaragua	No	Ley de Responsabilidad Paterna y Materna, No. 623, 2007	Art 7: Single mother can register child temporarily with her family name and that of alleged father. Registrar will then contact alleged father to confirm paternity and if he does not attend within 15 days, paternity is assumed. Art 9 & 10: If alleged father denies paternity he is asked to take a DNA test. If paternity is not proved, child is registered with mother's family name only. If alleged father refuses to take test, paternity is assumed.	Código de la Niñez y la Adolescencia, No 287, 1998, Art 13: Right to nationality and name and identity. Ley de Responsabilidad Paterna y Materna, No. 623, 2007, Art 1: Purpose of Act is to expedite birth registration in order to regulate the child's right to a name; Art 5: Right to a name and family name.
		Código de la Niñez y la Adolescencia, No 287, 1998.	Art 13: The child shall be registered within the time limits set out by law.	
Paraguay		Ley del Registro del Estado Civil, No 1266, 1987 (amended by Ley No 3156, 2007)	Art 51: Inscription of birth should include name of father or mother or both parents. Art 55: Registration is carried out by health professional who attended birth. If birth was not attended by health professionals, either parent can register. If the parents are unmarried, child is registered with the name of the parent who registers.	Código de la Niñez y la Adolescencia, No 1680, 2001, Art 18: Right to Identity, including right to nationality and a name recorded in the registry. Survey does not identify discriminatory social and cultural factors as a barrier to registration.. ⁶⁵
		Código de la Niñez y la Adolescencia, No 1680, 2001	Art 19: Birth registration must be carried out by health institution where baby is born. 1 st copy of birth certificate is provided free to the mother.	
Peru	No.	Código de los Niños y la Adolescentes, Ley No. 27337, 2000. Amended by Decreto N° 26102	Art 6: Right to a name, identity and Peruvian nationality: Children must be registered by mother or responsible person immediately after birth.	Constitution Art 2.2: Right to identity.
		Código Civil, Decreto	Art 19: Everyone has the right and duty to bear a name.	

⁶⁵ Survey response

		Legislativo 295, 1984	Art 21: Child born out of wedlock takes the two family names of the parent who recognises him/her. Takes family names of both parents if they both recognise the child.	
		Ley Orgánica del Registro Nacional de Identificación y Estado Civil	Art 41: Registration is obligatory and is an inalienable right.	

Appendix 1(b): Nationality in Latin America and the Caribbean

Country	Is there discrimination in law?	Law	Content & notes
Bolivia	No	Constitución 2008	Art 141.1: Nationality gained by birth in Bolivia (unless the child of a foreign diplomat) or birth abroad of a Bolivian father or mother
		Código Niño, Niña y Adolescente, Ley no 2026, 1999	Art 94: Corresponds to Art 141.1 of Constitución.
Brazil	No	Constituição 1988	Art 12: Nationality gained by birth in Brazil (unless the child of a foreign diplomat); birth abroad of Brazilian father or mother in service of Brazil, or if registered with Brazilian authority or if living in Brazil and expressing wish to become Brazilian when gaining majority.
		Lei no 818 da Nacionalidade, 1949	Art 1: Nationality obtained by birth in Brazil, birth abroad of Brazilian father or mother in service of Brazil or resident in Brazil.
Colombia	No	Ley por medio de la cual se establecen las normas relativas a la adquisición, renuncia, pérdida y recuperación de la nacionalidad colombiana, No 43, 1993.	Art 1.1: Nationality gained by birth in Colombia to a Colombian father or mother or to foreign parents if one of them is domiciled in the country; or by birth abroad to a Colombian father or mother if the child is then domiciled in Colombia.
		Constitución, 1991 (amended 1997)	Art 96.1: Corresponds to Art 1.1 of nationality law.
Dominican Republic	No	Constitución Política del Estado, 2010.	Art 18: Nationality gained by birth to a Dominican mother or father; or by birth in the territory (unless the child of a foreign diplomat or illegal alien). Possibly discrimination in practice due to process of Pink Certificates, i.e. an additional registration system for mothers who are not documented residents of Dominican Republic. Concerns these could be used as exclusion from right to nationality.
Ecuador	No	Constitución, 2008,	Art 7: Nationality gained by birth in Ecuador or birth abroad to Ecuadorian mother or father.
El Salvador	No	Constitución, 1983	Art. 90: Nationality gained by birth in El Salvador or birth abroad to Salvadoran father or mother. Art. 91: Allows for dual nationality.
Guatemala	No	Constitución, 1985 (amended up to 1993)	Art 144: Nationality gained by birth in Guatemalan (unless child of foreign diplomats) or birth abroad of Guatemalan father or mother.
		Ley de Nacionalidad, Decreto Numero 1613, 1966 (amended to 1996)	Art 25.2: Guatemalan birth certificate can be used as proof of nationality.

Haiti	No	Constitution, 1987	Art 11: Nationality gained by birth to Haitian father or mother. Art 15: Prohibits dual nationality.
Honduras	No	Constitución 1982 (amended to 2006)	Art 23: Nationality gained by birth in the territory or birth abroad to a Honduran father or mother.
Nicaragua	No	Ley de Nacionalidad, No 149, 1992	Art 3: Nationality gained by birth in the territory (unless child of foreign diplomat or foreign employee of international organisation) or by birth abroad to Nicaraguan father or mother.
		Constitución, 2000	Art 16: Corresponds to Art 3 of Ley de Nacionalidad. Art 22: Dual nationality allowed on the basis of treaties and principle of reciprocity.
Paraguay	No	Constitución, 1992	Art 146: Nationality gained by birth in territory or birth abroad to Paraguayan parents in service of the country or permanently resident in the territory. Art 149: Multiple nationality allowed on the basis of treaties and principle of reciprocity.
Peru	No	Constitución, 1993	Art 52: Nationality gained by birth in territory or birth abroad to Peruvian father or mother and registered during their minority.
		Ley de la Nacionalidad, No 26574, 1996	Art 2: Nationality gained by birth in territory or birth abroad to Peruvian father or mother (up to the 3 rd generation) and registered during their minority.

Appendix 2(a): Birth Registration in West Africa

Country	Is there direct discrimination in law?	Law	Content	Other factors which impact (other laws / social / cultural factors)
Benin	No	Code des personnes et de la famille No 07, 2002	Art 60: Birth can be registered by father, mother or a relative.	Survey identifies that there are social and cultural constraints on unmarried women which may influence her decision to register her child. Constitution does not include rights to name, nationality or identity.
Burkina Faso	No	Code de la Famille et de la Nationalité, 1996.	Art 107: Birth can be registered by father, mother, relative or anyone present at the birth. ⁶⁶	Survey identifies as a barrier some cultural practices which allow only a male head of family to declare a child's birth. For single mothers where paternity is contested this can delay or often create an insurmountable barrier to birth registration. ⁶⁷ Constitution does not include rights to name, nationality or identity.
Cameroon	No	Ordinance No. 81/2, 1981 (amended by Law No 201, 2011)	Art 31: Births in hospital must be registered by medical staff or if they fail to do this, the parents. Art 34.2: If parents are unmarried, father's name is only recorded if he acknowledges paternity.	Survey identifies discrimination as a barrier to single women registering a child due to attitudes which maintain women and children as the property of the husband / father. States that all children go by their father's name and that an unmarried woman would need two witnesses to testify to the paternity of her child for a birth certificate to be issued. ⁶⁸
Ghana	No.	Registration of Births and Deaths Act, No 301, 1965 (amended 1968)	Art 8.3: Birth can be registered by father or mother. Art 9.b: If parents are unmarried, father's name is only recorded at joint request of parents.	Children's Act Art 4: right to name and nationality. Gender discrimination not identified as a barrier by survey or by CRC. ⁶⁹
		The Children's Act 1998	Art 6.4: Each parent is responsible for registration of birth. Names of both parents appear on birth certificate unless father is unknown to mother.	
Guinea	No.	Code Civil (text for this part of the law not found)	Birth can be registered by father or mother. Law also allows for child of single mother to take her family name. ⁷⁰	Constitution 1992 (Constitution of 2010 unavailable online) Arts 16 & 17: On children's rights – not very fully elaborated. Does not include

⁶⁶ Survey response

⁶⁷ Survey response

⁶⁸ Survey response

⁶⁹ Survey response and CRC C.Obs, 2006

⁷⁰ Plan Guinea, (2011) Response to initial query (unpublished).

		online)	Art 196: Birth record includes details of father and mother but child can be registered by one parent without providing details of the other. ⁷¹	right to identity or nationality.
Guinea - Bissau	No	Registration Code 1967	A single mother can register her children without the father's name. ⁷²	Survey identifies discrimination as a barrier to a single mother registering her children because it seen as the father's role. ⁷³ Difference in the treatment of children born to married parents. ⁷⁴
Liberia	No	Law on Public Health 1976 (not available online)	Ch 15.21.b: Health professional has primary duty to register birth; parents have secondary duty. ⁷⁵	Survey does not identify discriminatory social and cultural factors as a barrier to registration. ⁷⁶
Mali	No	Loi Regissant L'Etat Civil , No 24, 2006	Art 74: Every child born in the territory must be registered. Art 76: Child can be registered by the father or mother. Art 77: If parents are not married, their names only appear in the birth record if they recognise the child. Birth record must not indicate whether the child is born within wedlock.	
		Ordonnance portant code de protection de l'enfant, No 62, 2002	Art 4: Every child has the right to identity, including name and nationality, and birth registration.	
Niger		New law in 2007 on birth registration and a National Registry Policy.		Not acceded to the Convention relating to Status of Stateless Persons. ⁷⁷ Constitution, 1999, does not include rights to identity, name or nationality.
Senegal	No.	Code de la Famille	Art 3 & 4: Child born in wedlock takes the father's	Code de la Famille Sénégalais, No 61 1972,

⁷¹ Immigration and Refugee Board of Canada, (2005), *Response to Information Request, GIN100489.FE*, available at: http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=450181&l=e [accessed 29/08/11]

⁷² Survey Response

⁷³ Survey response

⁷⁴ Guinea-Bissau (2008), *State Report of Guinea-Bissau to the UN Committee on the Rights of the Child*, available at: <http://www2.ohchr.org/english/bodies/crc/future.htm> [accessed 13 August 2011] p17.

⁷⁵ Survey response

⁷⁶ Survey response

⁷⁷ UN Committee on the Convention on the Rights of the Child (2009). Fifty-first session consideration of reports submitted by states parties under article 44 of the Convention. Concluding Observations: Niger [online] Available at: <http://www2.ohchr.org/english/bodies/crc/sessions.htm> [accessed 7 July 2011] p10

		Sénégalais, No 61, 1972	family name; child born out of wedlock takes the mother's family name unless recognised by father. Art 51: Births must be registered within a month; father or mother can register birth.	Constitution, 2001, does not include rights to identity, name or nationality.
Sierra Leone	No.	Birth and Death Registration Act 1983.	Art 7: Primary duty to register falls to health professionals. Parents have equal responsibility if birth is unattended. Art 15: If parents are unmarried, father's name is only recorded at joint request of parents.	Requirement for father's name to be registered for child to get citizenship, but can't be registered if child born out of wedlock and not acknowledged by father. ⁷⁸ Stigma against single mothers is a barrier to registration. ⁷⁹
		Child Rights Act 2007	Art 26.4: Duty of each parent to register child; names of both appear on birth certificate unless father is unknown to mother.	Lack of BR does not result in statelessness. ⁸⁰ Child Rights Act (2007) includes the right to a nationality.
Togo	No	Loi relative à l'organisation de l'Etat Civil, No 2009 – 010 (text not available online)	Parents have primary responsibility to register, followed by anyone who attended the birth. ⁸¹	Survey identifies social stigma as a barrier to registration: a child is seen as belonging to his/her father's family and there is shame for the family associated with a child bearing his/her mother's name. Often in rural areas a woman cannot register her child without the agreement of the father or his family ⁸²
		Loi Portant Code de l'enfant, No 2007-017:	Art 10: Right to a family name; Art 11: Child born out of wedlock takes the father's family name if father acknowledges. Otherwise s/he takes the mother's.	

⁷⁸ Plan Sierra Leone, response to initial inquiry

⁷⁹ Survey response

⁸⁰ US State Department, (2011) *2010 Country Report on Human Rights Practice: Sierra Leone*. Available at <http://www.state.gov/g/drl/rls/hrrpt/2010/index.htm> [accessed 01/08/11], p26

⁸¹ Plan Togo response to initial query

⁸² Survey response

Appendix 2(b): Nationality in West Africa

Country	Is there discrimination in law?	Law	Content & notes
Benin	No	Code of Dahomean Nationality, No 17, 1965	Art 7 & 8: Nationality gained by birth in Benin to a parent also born in Benin (if gained through mother only it can be renounced in the six months before majority). Art 12 & 13: Nationality gained by birth abroad to Beninese father or mother (if gained through mother only it can be renounced in the six months before majority).
Burkina Faso	No	Code de la Famille et de la Nationalité, 1996.	Art 140: Nationality gained by birth to Burkinan father or mother (if only one parent is a national and the child is born abroad, nationality can be renounced within six months of gaining majority)
Cameroon	No	Law to set up the Cameroon Nationality Code, No. 1968-LF-3.	Sections 6-8: Nationality gained by birth a Cameroonian father or mother.
Ghana	No	Constitution, 1993 (amended 1996) Art 6.2	Nationality gained by birth in or out of Ghana if either parent or one grandparent is/was a citizen of Ghana
		Citizenship Act 2000 Art. 7	Restates Constitution Art 6.2
Guinea	No	Code Civil 1983 (new Civil Code was drafted but not yet in force. ⁸³)	Arts 30-37: Nationality gained by birth to a Guinean parent or birth in Guinea to parents also born in Guinea but nationality acquired through mother can be renounced on reaching majority (so discrimination exists but would not have practical effect)
Guinea-Bissau	No	Nationality Act, 2/1992	Neither Act contains any discriminatory norm with regard to women. ⁸⁴
		Citizenship Act.	Citizenship is also derived by birth within the country. ⁸⁵
Liberia	No	Constitution, 1986	Art 28: Citizenship is gained by citizenship of one parent at the time of child's birth (provided any other nationality is renounced on reaching majority). However there remains unrepealed the 1973 Aliens and Nationality Act which only allows the father to pass on nationality.
Mali	No	Code of Malian Nationality, No 18, 1962, (amended 1995)	Art 8 & 10: Nationality gained by birth to a Malian parent but nationality acquired through mother can be renounced within six months of majority (so discrimination exists but would not have practical effect)
Niger	No	Ordonnance Portant Code de	Art 8: Nationality gained by birth in Niger to a parent also born in Niger.

⁸³ UN Committee on the Convention on the Elimination of all forms of Discrimination Against Women (2007). Thirty-ninth session consideration of reports submitted by states parties under Article 18 of the Convention. Concluding Observations: Guinea [online] Available at:

<http://www2.ohchr.org/english/bodies/cedaw/sessions.htm>, [accessed 7 August 2011], p 4.

⁸⁴ Guinea-Bissau, (2009), *State Report of Guinea-Bissau to the UN Committee on the Elimination of all forms of Discrimination Against Women*, available at: <http://www2.ohchr.org/english/bodies/cedaw/cedaws44.htm> [accessed 13 August 2011] p44.

⁸⁵ US State Department, (2011) *2010 Country Report on Human Rights Practice: Guinea-Bissau*. Available at <http://www.state.gov/g/drl/rls/hrrpt/2010/index.htm> [accessed 01/08/11], p15.

		la Nationalité Nigérienne, No 33, 1984, (amended 1999)	Art 11: Nationality gained by birth to mother or father who is a national.
Senegal	Yes	Code de la Nationalité Sénégalaise, Loi No 61-70, 1961	Art 1: Nationality gained by birth in Senegal to parents also born in Senegal. Art 5: Nationality by descent is gained by birth in wedlock to Senegalese father or birth out of wedlock where the first parent to establish parentage is Senegalese. In either case the mother or second parent can pass on nationality if the other is stateless or of unknown nationality.
Sierra Leone	Yes	Citizenship Act 1973, Amended 2006	Art 3: Nationality gained by birth in Sierra Leone if either parent or one grandparent was born in Sierra Leone. Art 5: Nationality by descent is gained by birth outside Sierra Leone of Sierra Leonean father. Art 6: Nationality can be gained by birth abroad to Sierra Leonean mother if the child does not acquire the citizenship of another state. Child Rights Act (2007) includes the right to a nationality.
Togo	No	Loi No 2007-017 Portant Code de l'enfant Constitution, 1992	Ch 2: The right to a nationality Art 17: Nationality gained by birth to Togolese father or mother. Art 32: Nationality gained by birth to Togolese father or mother. In other cases, the attribution of nationality is regulated by law. However there remains unrepealed the 1978 Loi sur la Nationalité Togolaise which only allows the father to pass on nationality. Despite provisions in Constitution, 1992 and Children's code 2007, US State HR Report states that Togolese nationality is only derived from birth in the country or from father's citizenship. (unless father of unknown or no nationality).

Appendix 3(a): Birth Registration in East Africa

Country	Is there direct discrimination in law?	Law	Content	Other factors which impact (other laws / social / cultural factors)
Egypt	No.	Children's Code Law No 12/1996 (amended by law No 126/2008) (text not available online)	2008 amendment introduced right for both parents to register child and for children born out of wedlock to be registered. ⁸⁶	Constitution 2011 Art 7: Prohibition of discrimination does not include on basis of gender. Social stigma is a barrier to children born out of wedlock from getting birth certificates. ⁸⁷ Survey identifies lack of awareness of the new law, including by registrars, as a barrier to registration by single women – thus a woman may be refused if she tries to register her child alone. Discriminatory social pressures are also identified as it is described as “very shameful” for a woman to register her child alone. ⁸⁸
Ethiopia		Draft Law on Vital Registration – still not in force. ⁸⁹		Constitution Art 36: Child's right to a name and nationality. Ethiopia does not have a civil registration system. ⁹⁰
Kenya	No	Births and Deaths Registration Act (Revised 2010)	Art 11: Primary duty to register child is with father and mother. Art 12: If parents are unmarried, father's name is only recorded at joint request of parents.	Constitution 2010: Art 53.1.a and Children's Act, No 8 of 2001 Art 11: Right to a name & nationality. There is discrimination against children born out of wedlock in access to birth registration: cultural beliefs are a barrier as in some communities mothers are confined for 9 months after childbirth; also fathers often have greater parental responsibility. ⁹¹ Survey identifies generalised stigma against single mothers and suggests this may contribute to

⁸⁶ UN Committee on the Convention on the Rights of the Child (2011). Fifty-Seventh session consideration of reports submitted by states parties under article 44 of the Convention. Concluding Observations: Egypt [online] Available at: <http://www2.ohchr.org/english/bodies/crc/sessions.htm> [accessed 6 July 2011], p10

⁸⁷ UN Committee on the Convention on the Rights of the Child (2011). *ibid*, p10.

⁸⁸ Survey response

⁸⁹ Referred to in Ethiopia, (2005), *State Report of Ethiopia to the UN Committee on the Rights of the Child*, available at: <http://www2.ohchr.org/english/bodies/crc/sessions.htm> [accessed 12 August 2011] p11. See also Gutu, S., (2010), *Efforts Made in Establishing Civil Registration and Vital Statistics Systems in Ethiopia*, Presentation to Conference of African Ministers Responsible for Civil Registration, 13-14th August 2010, available at: <http://www.uneca.org/crmc/presentations-ministers.html> [accessed 23 August 2011]

⁹⁰ Gutu, S., (2010), *ibid*.

⁹¹ Kenya, (2006), *State Party Report to the UN Committee on the Rights of the Child*, available at: <http://tb.ohchr.org/default.aspx?Symbol=CRC/C/129/Add.8> [accessed 25 August 2011], p36.

				women not registering their children. Also identifies practices of some cultures as barriers: not allowing women to deliver in hospital and requiring women and children to remain in the house for 40 days after delivery. ⁹²
Mala wi		National Registration Act, 2009 (not available online)		Child Care, Protection and Justice Act (2010) Survey identifies social/cultural factors as impacting on the ability and likelihood of a single woman being able to register the birth of her child. ⁹³
Moza mbiq ue	No.	Código do Registo Civil, Lei No 12/2004	Law does not specify who should register the child. Art 1: Registration of births is obligatory. Art 85: Parents and their marital status are recorded in the birth record if known. Art 129: Child can take family names just from one parent if necessary.	Lei de Família No. 12/2004 ends husband's status as head of family. ⁹⁴ Survey identifies gender discrimination as a barrier to registration, stopping women from registering a child without the father being present. This is described as a problem for mothers whose partners are temporarily away working, as well as single mothers. Also identifies discriminatory practice by registrars not allowing women to register children without a partner being present. ⁹⁵
Rwa nda	No.	Law Governing Registration of the Population and Issuance of the National Identity Card, No 14, 2008	Art 8: Father or mother must register child within 30 days of birth and should provide the names of both parents. No specific provision relating to single parents.	Constitution, 2003, Art 7: Right to nationality. Constitution does not include right to name and identity. Social stigma and gender discrimination identified as a barrier to birth registration by single mothers, stating that a single mother would be considered a prostitute and that registrars may demand to see a marriage certificate. ⁹⁶
		Law on the Rights of the Child and Protection of the Child Against Violence, No 27, 2001	Art 5: Every child must be given a name and registered.	
Suda n	No	Civil Registry Act 2001 (text not available online)	Chapter 4.2: Birth Registration: Obligation register: 1) medical professional, 2) father (if present at birth), 3) mother, 4) person at whose home the birth occurred	Sudan has not signed CEDAW. Adultery is a capital offence – Police can arrest pregnant unmarried women unless they can

⁹² Survey response

⁹³ Survey response

⁹⁴ US State Department, (2011) *2010 Country Report on Human Rights Practice: Mozambique*. Available at <http://www.state.gov/g/drl/rls/hrrpt/2010/index.htm> [accessed 01/08/11], p20.

⁹⁵ Survey response

⁹⁶ Survey response

			etc. A mother can register her child born out of wedlock. ⁹⁷	prove they have been raped. ⁹⁸ Unmarried mothers & children born out of wedlock suffer “societal discrimination.” ⁹⁹
South Sudan	No	South Sudan Child Act 2008 There is not yet a specific law providing for birth registration.	Art 11.1: Every child has right to free birth registration Art 39.1.a Parental duty to register child at birth. Art 40: Married parents have equal responsibility. If unmarried, mother has sole responsibility unless father acquires it.	Transitional Constitution 2011 Art 17.1.b and South Sudan Child Act 2008 Art 10: Right to name & nationality. New registration system due to recent independence. ¹⁰⁰
Tanzania	No	Births and Deaths Registration Act 1920 (amended to 1993)	Art 11: Primary duty to register births is with father and mother; Art 12: If parents are unmarried, father's name is only recorded at his request and with his acknowledgement of the child.	Law of the Child No. 21 of 2009: Art 6.1: Right to a name and nationality.
		Law of the Child No. 21 of 2009	Art 6.3: Each parent or Guardian is responsible for registration of birth.	
Uganda	No.	The Birth and Death Registration Act, 1970, CAP 309 (text not found online)	Primary obligation to register birth is with father or mother. ¹⁰¹	Neither Constitution nor 1997 Children Act include right to identity, name or nationality. Survey identifies social stigma against single mothers as a barrier to registration. A single mother may be under pressure to name the father of the child before registering. ¹⁰²
		Constitution, 1995	Art 18: The state shall register every birth occurring in Uganda.	
Zambia	No	Births and Deaths Registration Act 1973 (amended 1994)	Art 5: Birth of every child born in Zambia shall be registered; Art 14.1: Primary duty to register birth is with father and mother; Art 15: If parents are unmarried, father's name is only recorded at joint request of himself and the mother.	Constitution 1991 (amended to 2009): Art 32: Prohibition of discrimination excludes personal and customary law. Principle of non-discrimination not adequately implemented regarding children born out of wedlock. ¹⁰³
Zimbabwe	No.	Births and Deaths	Art 11: Father or mother can register child.	Discrimination identified as a barrier to birth registration in that it is

⁹⁷ Kidani, A., (2007), *Universal Birth Registration in Sudan*. Khartoum, Sudan Vision, available at: <http://www.sudanvisiondaily.com/modules.php?name=News&file=print&sid=52516> [accessed 8/8/11]

⁹⁸ US State Department, (2011) *2010 Country Report on Human Rights Practice: Sudan*. Available at <http://www.state.gov/g/drl/rls/hrrpt/2010/index.htm> [accessed 01/08/11], p11

⁹⁹ UN Committee on the Convention on the Rights of the Child (2010). Fifty-fifth session consideration of reports submitted by states parties under article 44 of the Convention. Concluding Observations: Sudan [online] Available at: <http://www2.ohchr.org/english/bodies/crc/sessions.htm> [accessed 6 July 2011], p5.

¹⁰⁰ Survey response

¹⁰¹ Republic of Uganda, (2005), *Country Report for the Eastern and Southern Africa Conference on Universal Birth Registration*, available at: ssl.brookes.ac.uk/ubr/files/3/77-Uganda_Country_Report.pdf [accessed 29 August 2011] p 6.

¹⁰² Survey response

¹⁰³ UN Committee on the Convention on the Rights of the Child (2003). Thirty-third session. Consideration of reports submitted by state parties under Article 44 of the Convention. Concluding Observations: Zambia [Available online at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/427/71/PDF/G0342771.pdf?OpenElement>] [accessed 7th September 2011] at p.5

		Registration Act	Art 12: If parents are unmarried, father's name is only recorded at joint request of himself and the mother.	difficult for women who still have their maiden name to register their child. ¹⁰⁴ .
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¹⁰⁴Survey Response

Appendix 3(b): Nationality in East Africa

Country	Is there discrimination in law?	Law	Content & notes
Egypt	Yes	Act on Nationality, No. 154 of 2004 (not available online)	Nationality Law amended to create gender equality in passing nationality on to children but exception remained for Egyptian women married to Palestinian men. ¹⁰⁵
		Joint decree of Ministries of Interior and Foreign Affairs, 2 nd May 2011 on Egyptian women married to Palestinian men.	Decree allows Egyptian women married to Palestinian men to pass nationality to children but not yet incorporated into law. ¹⁰⁶
Ethiopia	No	Constitution, 1995	Arts 9 & 36: Nationality gained by birth where either parent is Ethiopian.
		Proclamation on Ethiopian Nationality, No. 378 of 2003.	Art 3: Makes no distinction between the mother or father.
		Nationality Law, 1930	Despite Constitution and 2003 Proclamation on Nationality being gender neutral, anecdotal evidence suggests that in practice the 1930 Nationality Law, which is discriminatory, is still being used
Kenya	No	Constitution 2010	Art 14.1&2: Nationality gained by birth to a Kenyan father or mother whether born in or outside Kenya. Reform allowing women to pass on nationality is only recent (2010).
Malawi	No	Citizenship Act s. 5	Art 4: Nationality by birth gained by birth in Malawi to a Malawian parent (exception is if father is enemy alien in occupation) Art 5: Nationality by descent is gained by birth abroad to a parent who is Malawian by birth.
		Also s. 47 of the Constitution	Art 47 (3): States that nationality is governed by law CEDAW, Concluding Observation 2010 states there is contradiction between the Constitution and the Citizenship and Immigration Acts: "The Citizenship Act provides that upon marrying a foreign man, the Malawian woman will lose the right to Malawian citizenship unless she renounces the citizenship of

¹⁰⁵ Egypt, (2008). *State Party Report to the UN Committee on the Elimination of all Forms of Discrimination Against Women*, available at: <http://www2.ohchr.org/english/bodies/cedaw/cedaws45.htm> [accessed 26 August 2011], p35. Also Soliman, A., (2008), *Shadow Report on Egypt to the UN Committee on the Convention on the Elimination of all forms of Discrimination Against Women*, available at: <http://www2.ohchr.org/english/bodies/cedaw/cedaws45.htm> [accessed 26 August 2011] Section titled "Equality before the Nationality Law".

¹⁰⁶ UN Committee on the Convention on the Rights of the Child (2011). Fifty-Seventh session consideration of reports submitted by states parties under article 44 of the Convention. Concluding Observations: Egypt [online] Available at: <http://www2.ohchr.org/english/bodies/crc/sessions.htm> [accessed 6 July 2011], p10

			her foreign husband on the first anniversary of marriage. It also provides that the children of a Malawian woman by a foreign husband cannot be Malawian citizens by virtue of their mother being Malawian. However, a Malawian male in a similar situation retains his citizenship and is able to pass it on to his children." ¹⁰⁷
Mozambique	No	Constitution 2005	Art 23 & 24: Nationality gained by birth in Mozambique or birth to Mozambican parent abroad if wish to be Mozambican is declared.
		Nationality Act 1975 (with amendments of 1987)	Arts 1,2 & 8: Corresponds with Arts 23 & 24 of Constitution
Rwanda	No	Law relating to Rwandan Nationality, No 30/2008	Art 6: Nationality is gained by birth to a Rwandan parent.
		Law on the Rights of the Child and Protection of the Child Against Violence, No 27, 2001	Art 6: Right to nationality. Specifies that child of Rwandan mother and foreign father automatically has nationality.
Sudan	Yes	Interim National Constitution 2005	Art 7(2): Children born to Sudanese mother or father have the right to nationality. Art 7(3): Citizenship regulated by the law Art 7(4): Allows dual nationality Constitution does not include detailed rules on gaining nationality.
		Sudanese Nationality Law 1994, Amended 2005 (text not found online)	2005 amendment allows children of Sudanese mothers and foreign fathers to claim nationality but they do not get it automatically ¹⁰⁸
South Sudan	Yes	Nationality Act 2003 (New Sudan)	Art 5 (2): Nationality gained through Sudanese father. No provision for children of Sudanese mothers and foreign fathers.
		Transitional Constitution 2011	Art 45(1): Nationality is right of children of South Sudanese mother or father. Art 45(5): Allows dual nationality Constitution does not include detailed rules on gaining nationality.
Tanzania	No	Citizenship Act 1995	Art 5&6: Nationality gained by birth in Tanzania (unless child of foreign diplomat or enemy) or by birth outside Tanzania to father or mother who is Tanzanian (to one generation).

¹⁰⁷ UN Convention on the Elimination of All Forms of Discrimination against Women. Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women. Sixth periodic report of States parties: Malawi (2008) [Available online: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/562/67/PDF/N0856267.pdf?OpenElement>] [Accessed 7th September 2011] at p.33 at footnote.40.

¹⁰⁸ Manby. B, *supra* note 28 p37

Uganda	No	Constitution, 1995	Art 10(a): Nationality gained by birth in Uganda to a parent or grandparent belonging to one of the indigenous communities of Uganda. Art 10(b): Nationality gained by birth in or outside Uganda to a parent or grandparent who is a citizen of Uganda by birth.
		Uganda Citizenship and Immigration Control Act, 1999	Art 12: Corresponds with Art 10 of Constitution.
Zambia	No	Constitution 1991 (amended to 2009)	Art 5: Nationality gained by birth to a Zambian parent, whether born in or out of Zambia.
Zimbabwe	No	Constitution, 1980, consolidated to 2009	Art 5(1): Nationality gained by birth in Zimbabwe to a parent or grandparent who is Zimbabwean. Art 5(2): Nationality gained by birth outside Zimbabwe to a parent who is Zimbabwean and ordinarily resident in Zimbabwe or in service of Zimbabwe abroad. Art 6(1): Anyone born outside Zimbabwe to a parent or grandparent who is Zimbabwean but not ordinarily resident will be Zimbabwean by descent. However there remains unrepealed the 1984 Citizenship of Zimbabwe Act which only allows the father to pass on nationality. The 2003 Amendment to this Act did not repeal this provision despite a gender neutral provision in the 1980 Constitution.

Appendix 4(a): Birth Registration in Asia

Country	Is there direct discrimination in law?	Law	Content	Other factors which impact (other laws / social / cultural factors)
Bangladesh	No.	Births & Deaths Registration Act 2004	Art 8: father or mother is responsible for registering child.	<p>Constitution 1972, Amended to 2004, Art 28: Gender equality is in spheres of state and public life only.</p> <p>Constitution does not include right to identity, name and nationality.</p> <p>Problem of fatwas leading to extrajudicial punishments, often against women for alleged infidelity / "immoral behaviour"¹⁰⁹</p> <p>Reservations to Arts 2 and 16.1(c) of CEDAW.</p> <p>Suggestion of discrimination around birth registration and children born out of wedlock. Often children born out of wedlock or in polygamous marriages are abandoned.¹¹⁰</p> <p>Two survey responses, neither identifies gender discrimination as a barrier to birth registration either in law or practice, although taboo on extra-marital relationships is noted.</p>
Cambodia	No	The Civil Code, 2007 (to be enacted Nov 2011)	Art 985: Primary duty to register child is with parents. ¹¹¹	Survey identifies several barriers for single women, to registering children: low social status; workload / lack of time; treatment by staff at the commune council; illiteracy. ¹¹²
		Law on the Marriage and Family, 1989,	Art 91-93: A child whose parents are not married can be registered and recognised by either parent. If only recognised by one parent the second can still recognise the	Constitution does not include rights to name, nationality or identity.

¹⁰⁹ US State Department, (2011) *2010 Country Report on Human Rights Practice: Bangladesh*. Available at <http://www.state.gov/g/drl/rls/hrrpt/2010/index.htm> [accessed 01/08/11], pp33-34. Also UN Committee on the Convention on the Elimination of all forms of Discrimination Against Women (2011). Forty-eighth session consideration of reports submitted by states parties under article 18 of the Convention. Concluding Observations: Bangladesh [online] Available at: <http://www2.ohchr.org/english/bodies/cedaw/sessions.htm> [accessed 5 August 2011], p4.

¹¹⁰ UN Committee on Convention on the Rights of the Child (2008) Consideration of reports submitted by states parties under article 44 of the Convention. Third and fourth periodic reports of States parties due in 2007: Bangladesh [Available online at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/446/58/PDF/G0844658.pdf?OpenElement>] [accessed: 7th September 2011] at p.48. See also, UN Committee on the Rights of the Child (2009) Fifty-first session consideration of reports submitted by state parties under article 44 of the Convention [Available online at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/432/48/PDF/G0943248.pdf?OpenElement>] [accessed: 7th September 2011] at p.10

¹¹¹ Survey response

¹¹² Survey response

			child later.	
China	No ¹¹³	National Population and Family-planning Law, 2002	Art 18: Responsibility for specific regulations is with provinces.	<p>Childbirth out of wedlock is illegal in almost every province.¹¹⁴</p> <p>eg: Population and Family Planning Regulation Fujian Province 2002 Art 14: birth outside marriage is forbidden; Art 15: specific measures for receiving birth certificates are arranged by the family planning administrative department of the province; Art 39: Penalties (heavier for childbirth outside marriage than non-permitted childbirth in marriage)</p> <p>However, fines for breaches of the family planning regulation are not often enforced although this varies across different regions.¹¹⁵</p> <p>Marriage Law 1981, Amended 2001 Art 22: Children can take either parent's family name; Art 25: Children born out of wedlock have same rights as others. Prohibits discrimination against them.</p> <p>It has been suggested births to single women occur only infrequently in China as family planning regulations and a general unwillingness of men to marry women who already have a child mean that the "vast majority" of pregnancies out of wedlock end in abortion.¹¹⁶</p> <p>Constitution, 1982, Consolidated up to 2004 does not include right to identity, name or nationality.</p>
India	Yes.	Registration of Births & Deaths Act (Act No 18 of 1969)	Art 8: Primary duty to register birth: a) if birth took place in a house – the head of the household / nearest relative / oldest adult male present; b) births taking place in hospital etc – medical officer in charge; etc	<p>Constitution 1955 (amended to 2007) Art 15: Prohibition of discrimination is limited to discrimination by the state and over access to public places; Art 16: Equality of opportunity re employment and appointment to official office.</p> <p>Constitution does not include right to identity, name or nationality.</p>

¹¹³ Huawen, 2004

¹¹⁴ Immigration and Refugee Board of Canada, (2009), China: treatment of pregnant, unmarried women by state authorities, CHN 103135.E, available at: http://www.irb-cisr.gc.ca:8080/RIR_RDI.aspx?id=452415&l=e [accessed 29/08/11].

¹¹⁵ Survey response

¹¹⁶ Survey response

				<p>Social stigma identified as a barrier to registration for single mothers. (Source: Survey response)</p> <p>Reservations to CEDAW articles 5(a) & 16(1)</p>
Indonesia	No. ¹¹⁷	<p>Presidential Regulation No. 25 2008 on Conditions and Procedures for Population Registration and Civil Records (text not available online)</p>	<p>Article 52: Identity cards of parents and copy of marriage certificate are required at registration but still possible to register child born out of wedlock, as a child from a single woman.¹¹⁸</p>	<p>Law no. 23 on Child Protection, 2002: includes right to identity.¹¹⁹</p> <p>Law on Human Rights, No 39, 1999, Art 53.2: Right to name and nationality from birth.</p> <p>Children of unofficial polygamous or inter-religious marriages or unmarried couples (dowry is a barrier to formal marriage for some ethnic groups) can only be registered under the mother's name but often the father will not allow registration without his name. Single women also often don't register children due to shame.¹²⁰</p> <p>Inability to access birth registration services has been linked to the medicalization of FGM and to trafficking in females.¹²¹</p> <p>Societal discrimination against children born out of wedlock.¹²²</p>
		<p>Law no. 23 on Child Protection, 2002 (text not available online)</p>	<p>Art 27(1): Every child shall be given an identity right after birth.¹²³</p>	
Laos	Yes	<p>Law on Family Registration 1992</p>	<p>Art 9: Responsibility to register is with head of household in which birth took place. If birth doesn't take place in a house, father or mother is responsible.</p>	<p>Law on the Promotion of the Rights and Interests of Children, 2007, Art 3.2: Right to be registered at birth, to a name and to acquire a nationality.</p> <p>Discriminatory practice identified as a barrier to birth registration because in practice the name of the father is essential to register a child.¹²⁴</p>

¹¹⁷ Survey response

¹¹⁸ Survey response

¹¹⁹ UNICEF, (2007), *Law Reform and Implementation of the Convention on the Rights of the Child*. Florence, Innocenti Research Centre p.35

¹²⁰ Survey response

¹²¹ Committee on the Elimination of Discrimination against Women (2007) Thirty-ninth session, concluding comments: Indonesia [available online at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/460/12/PDF/N0746012.pdf?OpenElement>] [accessed: 7th September 2011] at p. 9

¹²² Committee on the Rights of the Child (2004) Thirty-fifth session. Consideration of reports submitted by States parties under Article 44 of the Convention. [Available online at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/405/10/PDF/G0440510.pdf?OpenElement>] [accessed 7th September 2011] at p.6

¹²³ Survey response

¹²⁴ Survey response

Myanmar	No	Citizenship Act 1982	Art 9: Child born in the state must be registered by parent or guardian before reaching 11 years old. Art 10: Child born abroad must be registered with the Burmese embassy within 1 year of birth.	Constitution 2008, Art 348: Prohibits discrimination. Art 352: Makes exception for appointments to “positions that are suitable for men only”
		Child Law, 1993	Art 9.b: Parents or guardian must register the child.	Constitution does not include rights to identity, name or nationality.
Nepal	Yes.	Birth, Death and other Personal Incidences (Vital Registration) Act 1976 (amended 2006)	Art 4.1.a: Primary duty to register birth is with head of the family	Law was recently amended to allow a mother to register her child and it is unclear how it has been in practice. Interim Constitution 2007, Art 22: right to identity and name. Survey does not identify discriminatory social and cultural factors as a barrier to registration. ¹²⁵
Pakistan	Unclear: likely that it varies across the country. Discrimination identified in Punjab.	National Registration Act 1973 (text not found online)	Unclear whether this Act contains a provision stating who should register a child. There is a high degree of autonomy among the provinces to organise birth registration systems but detailed laws for most provinces are lacking ¹²⁶ .	Constitution does not include right to identity, name or nationality. Survey suggests that social and cultural factors influence a single woman's decision to register her child.
		Punjab Local Government Ordinance, 2001	Art 82: Union bye-laws will provide for registration of births and deaths. Eighth Schedule includes among list of offences: Failure of the head of family to report the birth.	There is a national authority (the National Database and Registration Authority (NADRA)) which provides an online registration service and is in co-operation with some local authorities to provide a registry service. NADRA requires details and identity cards of both parents to register a child. ¹²⁷ According to a report from CEDAW C.Obs 2007 50% of women do not hold a national identity card. ¹²⁸

¹²⁵ Survey response

¹²⁶ The survey response cites “Bylaws on marriage, birth and death” as governing birth registration; see also Pakistan, (2009), *State Report of Pakistan to the UN Committee on the Rights of the Child*, available at: <http://www2.ohchr.org/english/bodies/crc/crcs52.htm> [accessed 29 August 2011], especially para 176 on Challenges and Difficulties; A review of the laws of three of the provinces of Pakistan (laws for Sindh could not be found online) found that only Punjab had a law on birth registration, see:

<http://www.punjablaws.gov.pk/index1.html>,

http://www.balochistan.gov.pk/index.php?option=com_docman&task=cat_view&gid=938&Itemid=677,

<http://www.khyberpakhtunkhwa.gov.pk/Gov/Rule-Regulations-Laws-Acts.php>.

¹²⁷ Pakistan, (2009), *State Report of Pakistan to the UN Committee on the Rights of the Child*, available at: <http://www2.ohchr.org/english/bodies/crc/crcs52.htm> [accessed 29 August 2011], para 174; see also NADRA's website: http://www.nadra.gov.pk/index.php?option=com_content&view=article&id=10&Itemid=13

[accessed 30 August 2011]. There is no mention of provision for single parents in either of these.

¹²⁸ UN Committee on the Convention on the Elimination of all forms of Discrimination Against Women (2007). Thirty-eighth session consideration of reports submitted by states parties under article 18 of the Convention. Concluding Observations: Pakistan [online] Available at:

<http://www2.ohchr.org/english/bodies/cedaw/sessions.htm> [accessed 7 August 2011]

				The Immigration and Refugee Board of Canada states it is extremely unlikely that a woman would live alone in a rural area of Pakistan, and that rural women lack agency to act in any public sphere. ¹²⁹
Philippines		Civil Registry Law, Act 3753, 1931.	Section 5: Primary duty to register is with birth attendant, secondary duty is with parents. ¹³⁰	<p>“The government continued to promote birth registration.”¹³¹</p> <p>Implementation of the BR Project and the establishment of the Barangay Civil Registration System.¹³²</p> <p>Stigma around birth outside marriage identified but suggestion is this is not a major barrier to birth registration.¹³³</p> <p>Constitution, 1987 does not include right to identity, name or nationality.</p>
		Family Code	Art 176: If parents are unmarried, father's name is only recorded if he acknowledges child. ¹³⁴	
		Executive Order 157, 1994.	Established civil registration for Muslims, taking into account their distinct customs and practices. ¹³⁵	
Sri Lanka	No.	Births & Deaths Registration Act 1954 (amended up to 2005)	<p>Art 15: Primary duty to register births is with father and mother.</p> <p>Art 21: If parents are unmarried, father's name is only recorded at joint request of himself and the mother.</p>	<p>Survey response indicates that birth registration is “normal” in Sri Lanka. Does not identify gender discrimination as a barrier.¹³⁶</p> <p>Constitution, 2000, does not include right to identity, name or nationality.</p>
Timor Leste	No	Civil Registry Code – Draft (not found online)	Unknown	<p>Constitution 2002, Art 18: children born out of wedlock have same rights and protections</p> <p>Children's Code – Draft 2011, Art 7 & 9: rights to name and identity.</p> <p>Laws governing birth registration are not yet in force – not clear what regulations govern registration at the moment.</p> <p>Survey does not identify discriminatory social and cultural factors as a barrier to registration.</p>
		Children's Code – Draft 2011.	Art 10 Right to birth registration: Every child born in Timor Leste must be registered regardless of parents' marital status; Recognition of birth registration as guarantee of right to nationality.	
		Civil Code – Draft	Art 1755: child can take family name of both or just one parent(s)	

129 Immigration and Refugee Board of Canada, (2010), *Circumstances under which single women can live alone*, PAK103608.E, available at: http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453229&l=e [accessed 30 August 2011]

¹³⁰ Survey response

¹³¹ US State Department, (2011) 2010 Country Report on Human Rights Practice: Philippines. Available online at: <http://www.state.gov/documents/organization/160099.pdf>] at p. 26

¹³² Committee on the Rights of the Child (2009) Fifty-second session consideration of reports submitted by states parties under article 44 of the Convention. Concluding observations: Philippines [Available online at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/456/32/PDF/G0945632.pdf?OpenElement>] [Accessed

7th September 2011] p.9

¹³³ Survey response

¹³⁴ Survey response

¹³⁵ Survey response

¹³⁶ Survey response

				States that accessibility is most significant factor. ¹³⁷
Thailand	No	The Civil Registration Act 1991 (Amended by Civil Registration Act (No.2) B.E. 2551) (not found online)	Art 18: When the birth occurs at home the householder or parents must register; where the birth does not occur in a house, the parents must register. ¹³⁸	<p>"...the government approved the withdrawal of the reservation on article 7 of the Convention on the Rights of the Child..."¹³⁹</p> <p>Constitution does not include right to identity, name or nationality.</p>
Vietnam	No	Decree 158/2005/ND-CP Arts 13-15	Art. 15(3): If parents are not married and father not identified, birth can be registered with only mother's details.	Constitution, 1992, does not include right to identity, name or nationality.

¹³⁷ Survey response

¹³⁸ UNESCO, (2008), Capacity Building on Birth Registration and Citizenship in Thailand: Citizenship Manual, available at: unesdoc.unesco.org/images/0016/001621/162153e.pdf [accessed 30 August 2011]

¹³⁹ US State Department, (2011) 2010 Country Report on Human Rights Practice: Thailand. Available online at <http://www.state.gov/documents/organization/160104.pdf> [Accessed 7th September 2011] p.31

Appendix 4(b): Nationality in Asia

Country	Is there discrimination in law?	Law	Content & notes
Bangladesh	No	Pakistan Citizenship Act, 1951 (Bangladesh). Amended by Citizenship (Amendment) Act 2009	Art 4&5: Nationality gained by birth in Bangladesh (unless to foreign diplomat or enemy) or by birth outside Bangladesh to father or mother who is citizen (equality provided in 2009 amendment)
Cambodia	No	Law on Nationality, 1996.	Art 4: Nationality gained by birth to married parents either of whom is Khmer; or if parents are unmarried, nationality can be passed on by either but only if parentage is established.
China	No	Nationality Law, No. 71, 1981	Art 4&5: Nationality gained by birth in China when one parent is a Chinese national or by birth abroad to a Chinese parent, unless child acquires foreign nationality at birth.
India	No	Citizenship Act 1955, amended by Citizenship Amendment Act 2003.	Art. 3&4: Nationality gained by birth in India to one Indian parent (if the other parent is not an illegal migrant, foreign diplomat or enemy in area under occupation) or by birth abroad to one Indian parent if child does not have another nationality.
Indonesia	No	Law on Citizenship, Law No 12, 2006.	Art 4: Nationality gained by birth to an Indonesian national (if born out of wedlock to only Indonesian father, he must legally recognise child) or by birth in Indonesian territory to parents of unknown nationality / stateless.
		Human Rights Act 1999	Art 53.2: Every child has the right to name and nationality from birth. CRC C.Obs 2004 state that despite right to nationality in Human Rights Act 1999, there is concern that “in some instances” children born out of wedlock “may be” denied right to know their father; Children with foreign father “may be” denied citizenship. ¹⁴⁰
Laos	No	Law on Nationality 2004	Art 10&11: Nationality gained by birth anywhere to two parents who are nationals or by birth in the territory to one parent who is a national or by birth abroad to one parent who is a national if either parent has permanent address in Laos or if one parent is stateless.
Myanmar	No but still problematic for single mothers or women married to foreigners.	Citizenship Act 1982	Art 5&7: Citizenship by birth is gained by birth to parents who are both nationals (Art 7 lists different types of nationals who can confer citizenship)
		Constitution 2008	Art 345.a: Citizenship gained through birth to parents who are both nationals.
Nepal	No	Nepal Citizenship	Art 3.1: Nationality gained by birth to Nepalese

¹⁴⁰ CRC C.Obs 2004

		Act 2063, 2006.	father or mother. Act also contains Art 3.2 & 5.2 which state that children of Nepalese mother and foreign father would have to acquire citizenship by naturalisation i.e. not on an equal basis with children of Nepalese father. However this article is inconsistent with the Constitution and thus should be repealed by it.
		Interim Constitution, Act 2063, 2007.	Art 8(2)(b): Nationality gained by birth to Nepalese father or mother. The law regarding nationality and birth registration were both recently amended. Despite the law being changed it is unclear how this has been implemented. US State Department Human Rights Report 2011 suggests there is still discrimination in practice: "In practice, however, government officials often refused to grant citizenship documents based on the mother's citizenship if a father's identity was unknown or when he was a foreign national." ¹⁴¹
Pakistan	No	Pakistan Citizenship, 1952 (amended 2000).	Art 9: 2000 amendment gives equality to men and women in passing on nationality to children
Philippines	No	Constitution, 1987	Art 4.1: Nationality gained by birth to Philippine father or mother.
Sri Lanka	No	Citizenship Act 1948 (amended 2003)	Art 5.1&2: Nationality gained by birth in Sri Lanka to a Sri Lankan parent or by birth abroad to a Sri Lankan parent if birth is registered within a year at consular office or in Sri Lanka; Art 5A: People born prior to amendment and denied nationality because only mother was Sri Lankan can claim Sri Lankan nationality if they renounce any other nationality which they have.
Thailand	No	Nationality Act B.E. 2508, 1965 as amended by Acts B.E. 2535 No. 2 and 3 (1992) and 4 (2008).	Art.7(1): Nationality gained by birth to Thai father or mother whether in or out of Thailand. Art 7(2): Nationality gained by birth in Thailand unless either parent is temporarily resident or illegally resident in Thailand and the other is not a Thai national. Art. 8: A person born in Thailand where either parent is a foreign diplomat and the other is not a Thai national is not entitled to nationality.
Timor-Leste	No	Constitution, 2002	Art 3: Nationality gained by birth in the territory to East Timorese father or mother, or parents with unknown nationality or stateless, or parents unknown; birth abroad to East Timorese father or mother.
		Law On Citizenship, No. 9/2002	Art 8: Corresponds to Art 3 of Constitution.
Vietnam	No	Law on Vietnamese Nationality (No. 24/2008/QH12) Arts 15-17.	Arts 15-17: Nationality gained by birth inside or outside Vietnam to parents who are both Vietnamese; or to one parent who is Vietnamese if the other is stateless; or to one parent who is Vietnamese and the other has foreign nationality if

¹⁴¹ US State Department Human Rights Report 2011

		the parents agree in writing at the time of birth registration for the child to have Vietnamese nationality.
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Appendix 5: Birth registration survey

1. In what country do you live?
2. What is the law governing birth registration in your country? (title and article if known)
3. What is the law governing who can pass on nationality? (title and article if known)
4. Is there other legislation which directly impacts on the ability or likelihood of a single woman to register her child?
5. Are there social / cultural factors which impact on the ability or likelihood of a single woman to register her child?
6. Are you aware of any landmark judicial rulings setting a precedent in this area?
7. Do you know of any local organisations which support women, who might be willing to be contacted in furtherance of this project?

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