

BIRTH REGISTRATION: UNIVERSAL RIGHTS OF CHILDREN

(POLICY BRIEF)



BACKGROUND

Birth Registration is recognized as a Fundamental Right of Children by the Constitution of Nepal¹. It is a first step of exercising Right to Identity as it plays a significant role in protection, participation, survival and development of a child. It is a critical step towards ensuring that children are recognized by their government. Birth Registration is also an essential element of Civil Registration and Vital Statistics System. It plays a pivotal role in recognizing basic Human Rights of individuals and is also a crucial aspect of development.

The rate of birth registration in Nepal has significantly increased from 35 percent in 2006 to 77.2% percent in 2019 for children below 5 years of age². However, birth registration is yet to be accessible in many parts of the country due to major setbacks and procedural difficulties in legal measure itself.

HIDR Nepal has reviewed the legal measures adopted by the government of Nepal and has outlined the efforts made in recognition of birth registration of children as a fundamental right. This policy brief examines various legal measures adopted to implement birth registration rights of children. It further examines the barriers in implementation of these legal measures and also gives

recommendations to address the shortcomings and achieve the goal of birth registration for every child.

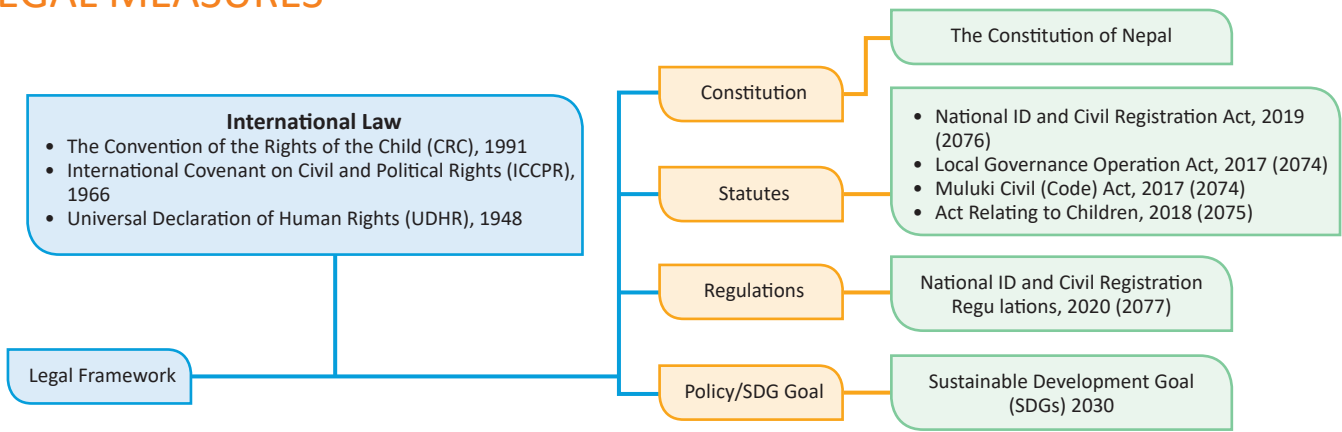
Issuance of Birth Registration aids in ensuring the following:

- Right to identity
- Record of existence
- Right to education
- Right to health
- Right to family
- Protection against exploitation
- Juvenile Justice
- State Benefits
- Identification of Legal Age
- Accurate planning of national development policies by the state.

¹ Constitution of Nepal, Article 39(1)

² MONITORING THE SITUATION OF CHILDREN AND WOMEN: Multiple Indicator Cluster Survey 2019, National Planning Commission, Central bureau of Statistics, United Nations Children's Fund,

LEGAL MEASURES



International Legal Measures

The Universal Declaration of Human Rights, 1948 implicitly discusses the importance of civil registration in Article 6, as it states that everyone has a right to be recognized before the law. The International Covenant on Civil and Political Rights (ICCPR) explicitly recognizes registration and naming at birth as a right of a child.³ However, The Child Rights Convention is more specific in putting down the provisions on birth registration of children. Article 7 states that the birth of every child must be registered. The convention focuses on the aspect of child registration as an important step towards obtaining citizenship and child protection. The convention also imposes an obligation on the state towards birth registration, considering the needs of children who have been illegally deprived of the same (Article 8). At a regional level, the Asia Pacific Ministerial Declaration of 2014⁴ has made a notable effort on this topic. It has committed to achieve the goals of universal civil registration of births, deaths and other vital events; with legal documentation and; complete and timely vital statistics (including on causes of death), based on registration on registration records, to be produced and disseminated. Nepal has duly recognized the importance of the fundamental right of all children to be registered upon birth and has signed and ratified multiple conventions, including the ICCPR and the CRC. In furtherance of its international commitments, Nepal has successfully enacted numerous laws to aid in Birth Registration. However, the laws have still not been designed and implemented well to appropriately facilitate birth registration.

Legislations

There are several legislations enacted by the Parliament, which reflect its strong commitment to protect and enforce the right of children to birth registration and fulfill its international commitments. The Act Relating to Children, 2075 is the principal legislation enacted by the government in order to safeguard and promote the rights

THE CONSTITUTION OF NEPAL

The constitution ensures right to identity and birth registration as fundamental rights. Article 39 (1) states that “Every child shall have the right to name and birth registration with his or her identity”

of children, and to act in their best interest. The relevant provisions under the Act are as follows:

Section 4 of the act recognizes, the right of a child to name, nationality and identity it schemes on the following provisions that addresses birth registration rights;

- Right to have name with own identification and birth registration
- The right of every child to birth registration.
- The father and mother of the child have to mandatorily register the birth of their children along with a name. If the parents of the child are not available, then such responsibility lies on another family member or a guardian.
- When a child is born as a consequence of rape or an incestuous relationship, the birth of such child shall be registered with the name of the mother.
- The child can take the surname of either parents or both the parents.
- If the child’s parents are unknown and there are not any other relatives as well, the child can simply state that the identity of his/her parents in unknown.
- Parents should not conceal the child’s identity by altering his/her surname with the intent of acquiring undue advantage.

The National ID and Civil Registration Act, 2019 (2076) is another legislation aimed at safeguarding the right of registration of children. The key provisions under this Act are:

³ Article 24, Sub-Article (2) , (3), ICCPR
⁴ Ministerial Declaration to “Get everyone in the picture” in Asia and the Pacific
https://getinthepicture.org/sites/default/files/resources/Ministerial.Declaration.English.final__0_0.pdf

- 📌 Mandatory information of birth shall be given by the father or mother of the child within 35 days of birth to the office of the Local Registrar by filling the prescribed form.
- 📌 In the absence of the parents of the child, any person of the family who is above the age of 18 can give the information of birth for registration.
- 📌 In the case that the child is born outside Nepal, information of such birth should be given within 35 days to the concerned diplomatic mission in that country or within 35 days of arrival in Nepal.
- 📌 A person adopting a child shall register this information in the office of the Local Registrar.
- 📌 Even in the case of stillbirth or death of a child shortly after birth, such information has to be given to the local registrar.

The Local Governance Operation Act, 2017 (2074) is also relevant as it outlines the function, duties and rights of municipalities (rural and urban). One such responsibility of municipalities is the recording and registration management of birth. Alongside basic data collection and management, the municipality also has to engage in awareness programs on vital registration.

Lastly, the *Muluki Civil (Code), 2017 (2074)* also safeguards the right of children born out of void marriages, rape or incest as per Section 75. It has been provided that the legal rights of such children shall remain unaffected, including that of inheritance.

Regulations

The government of Nepal has recently come up with the National ID and Civil Registration Regulation, 2020 (2077) to supplement the National ID and Civil Registration Act, 2019 (2076). The key relevant provisions under the regulations are:

- 📌 While giving information of birth for registration an applicant has to fill a form prescribed under Annex – 10.
- 📌 Once the form has been filled, the Local Registrar has to issue a birth certificate as per Annex-15 after necessary verifications.
- 📌 If a person comes to register a personal event such as birth later than the statutory period prescribed under the Act, the Local Registrar shall register such event upon charging late fee.
- 📌 Foreign citizens can also register the birth of their child. They have to make an application to the local registrar of the place they are residing in along with his/her passport or any document disclosing their nationality, document showing proof of such personal event (e.g. birth) and a recommendation of the Concerned Diplomatic Mission shall also be

submitted in the case of a foreign citizen having his/her country's Diplomatic Mission in Nepal.

Guidelines/Directives

Certain Directives have been issued by the government of Nepal in relation to birth registration of a child. Some of key directives listed below have come into effect prior to the enactment of the new legislations:

- 📌 Directive issued birth registration of a child born abroad if the father of such child cannot be identified (dated 2067/06/14)
- 📌 Directive issued on the issue of informants in relation to registration of personal events (dated 2064/10/14)
- 📌 Directive about a child whose sex cannot be determined as neither male nor female during the time of birth (dated 2064/03/06)

BARRIERS OF BIRTH REGISTRATION

The newly framed legislation definitely seems to be progressive as it recognizes the right of every child to be registered immediately after birth. The law, in itself, seems to facilitate birth registration of children. Further, it also moves away from the patriarchal norm by creating provisions that allow registration of a child's birth in the name of the mother. However, despite some progress, there still exist barriers in legal measures and the implementation of the same.

Legal Barriers

While the newly enacted National ID and Civil Registration Act, 2019 (2076) and Regulation, 2020 (2077) provides much needed procedural guidelines in terms of registration of birth, there are certain shortcomings that act as unwanted barriers to achieve the goal of birth registration:

GAPS IN NATIONAL ID AND CIVIL REGISTRATION ACT, 2020

Limitation on birth notification: Section 18 confines the responsibility to notify the birth to the family members. There is no provision in the legislation to make public and private hospitals, birthing centers, health posts etc. responsible for birth notification to local registrar. Birth Registration and birth notification are two different aspects, which are not clearly defined in law.

Documentation and National ID: The current legislation fails to deal with a situation where an adult has no identity and no documentation with them to prove that they are also part of the same society as their registration was denied by the previous legislation. Therefore, in the absence of any document even after they are adults, it creates an undesired situation of statelessness.

National id of parents: Section 20 (2) restricts the registration of birth of children born to parents without a national identity. This provision contradicts the Constitutional rights of compulsory registration for all children. It also leaves many children unregistered which may lead to statelessness.

Provision for Late Fee: Under section 19(3)5 of the Act and Rule 17(2), there is a provision for late fee in case the information of birth is not registered within the statutory period of 35 days of the occurrence of such event. This provision may hinder mandatory and timely birth registration.

Non-registration: There is no clear provision on non-registration of birth/personal event in the legislation. As a result, there may be a high risk of non-registration or delay in birth registration.

Cut off age: Cut off age of the child is not mentioned in the act for registration of birth. This gives more discretion to the local registrars by allowing them to demand more verification documents, which is contrary to the objective of increasing birth registration

Family folder: There is no provision regarding a family folder system which can be used in future for various other state functions such as, to provide foster care, free education, issuance of national identity and even for the cases of juvenile justice.

Promotional activities: There is no promotional provision for birth registration which would make birth registration accessible to illiterate populations scattered throughout the country.

Linking between service and VERS: There is no provision in the legislation regarding proactive linkage between service provision and the VERS6 which can help the state to formulate policies for children in a proper manner.

Place of birth registration: There is no clarity on the Act that whether birth can be registered either at the permanent address or place of usual residence or at the place of event.

GAPS IN NATIONAL ID AND CIVIL REGISTRATION REGULATION, 2021

Discriminatory application form: While making an application for registration of birth, the concerned parent or guardian is required to fill a form prescribed in Annex-10 of the Regulations. When a birth registration is being done in the name of the mother due to the father being unidentified, a verification of the same is to be taken from the police. If the law itself allows registration independently by the mother, there is no need to make the process more cumbersome by also requiring verification from police that the father is unknown. Annex 10 also seeks marriage

5 If a person appears to get the information of personal event registered after expiry of the period referred to in Sub-Section (1) or (2) of Section 18, such a personal event shall be registered upon charging late fee as prescribed






6 Vital Event Registration System

and citizenship certificate information of both the parents. The consequence of having this provision is that parents who do not have citizenship certificates cannot register the birth of the child. Further, if the mother does not have support of her husband or family members, she will not be in a position to register the birth of the child. For this reason, Annex 10 contradicts Article 39(1) of the Constitution of Nepal and Section 4 of the Act Relating to Children, 2018 (2075).

Distinction between registered marriage and marriage registration: The Local Registrar often requires certification of registered marriage in the case of marriage with a foreigner. However, in the local context where there are frequent cross-border marriages, the practice is to marry according to customs and ceremonies instead of a court-registered marriage. Therefore, many applicants might not have a registered marriage certificate. While the law permits registration in the name of a single parent, there is no need to have a requirement to furnish a registered marriage certificate.

OTHER BARRIERS

While the legal measures for registration of birth of a child is definitely progressive, there are certain social and other barriers that have and will prevent effective implementation of this regulatory framework:

-  Socio-cultural barriers,
-  Geographic isolation,
-  Economic-barriers,
-  Institutional-deficiencies,
-  Lack of adequate information about the benefits of legal identity all serve to discourage or prevent people, especially the most vulnerable groups.

RECOMMENDATIONS

Short Term Recommendations:

Amend the National ID and Civil Registration Regulation, 2020 (2077)

Changes to the application form: Requirement of furnishing verification from police when the identity of the father is unknown should also be amended in Annex-10 in line with legislation. Instead the application form can simply have a space to leave this section open based on the individuals' choice. Similarly, the mandatory requirement under Annex-10 of furnishing marriage and citizenship information of both parents should also be removed.

Provision of Marriage Registration: There should be a provision that accepts both marriage registration and registered marriage. Further, requirement of registered marriage certificate or marriage registered certificate

should be mandatory as it restricts the promotion of universal birth registration.

Other Short-term Recommendations

Training and Conferences: Adequate training and conferences are organized so that local registrars have knowledge about the importance of birth registration along with sensitization programs to educate them on rights of women and children so that women, especially victims of crime.

Awareness Campaigns: Awareness campaigns for citizens are equally important so that the importance of registration is realized.

Mid-Term Recommendations

Amend the National ID and Civil Registration Act, 2076:

Mandatory birth registration: Insert provisions that deal with the mandatory birth notification and put an obligation on private and public hospitals, health posts, birthing centers etc. to give information about the birth of a child to the local registrar. Insert provisions that also make private and public hospitals, health posts, birthing centers liable for notifying still birth to local registrar for authentic data collection.

Identification and Documentation: Ensure adequate mechanism at local level for those without any identification or documentation in a way that children born to such parents can be registered and identified.

Nationality of parents: Ensure universal registration of birth irrespective of nationality of parents as per the Article 39(1) of the Constitution of Nepal.

Provision of Grievance redress mechanism: Ensure to put the proper grievance redress mechanism in place since the current laws do not have provisions on such a mechanism in case a local registrar does not register any event, denies or causes prolonged delay. The mechanism should be aligned with compensation to victims.

Provision relating to late fee: It is suggested that the provision of late fee being imposed when birth registration is not done within 35 days should be removed completely and rather focus on making registration mandatory and timely.

Provision related to cut off age: A detailed cut off age must be provided by the law to ensure that the birth registration is timely and convenient without the need of many documents to prove the age of the child to increase birth registration.

Provision related to mandatory family folder system: Provision of mandatory family folder system should be introduced so that the state can have a proper picture of the status of children in terms of education, housing, and other basic necessities.

Promotional Interventions: Legal provision for outlining responsibilities of authorities for promotional intervention must be added to make birth registration accessible and easy for a diverse population across the country. The place of birth registration is still unclear in the laws. The state can add a clean and concise provision on the matter and also introduce a system of mobile registration of vital events in order to achieve maximum civil registration in case of geographical constraints.

Provision of harmonization among various services: There should be a provision in the legislation regarding proactive linkage between service provision and VERS.

Other Mid-term Recommendations

Clarifying place of birth registration: There should be a clear provision on location and place of registering birth in the act. The law should ensure that birth can be registered either at the permanent address or place of usual residence or at the place of event.

Provision for migrant worker, victims of trafficking and refugees: Certain amendments to clarify that the provisions of the act equally apply to women migrant workers, victim of rape, and victims of trafficking and transportation would also ensure that local registrars cannot deny registration of birth of such children born from women who have been victims of crime. Moreover, provisions should be inserted for registration of vital events for refugees in Nepal.

Ensure universal coverage of birth registration of all children in the territory: Enact/amend national ID and civil registration related laws of Nepal with the rights based approach, ensuring universal coverage of birth registration of all children within Nepal's territory regardless of their parent's citizenship or other status, in line with the Constitution of Nepal, 2015 and Nepal's human rights obligations.

Provincial level Monitoring: An authority at a provincial level needs to be set up so that the work done by local registrars of local units within each province is properly oversight.



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