

10. What's in a Name?

Changing policies and beliefs in favour of women in Peru



Demonstration in Peru for the 'Right to a Name' campaign

Millions of people around the world cannot open a bank account, obtain credit, vote, own or inherit property, get a job or a passport, access health care, or sometimes even go to school. The reason? Because they do not have a birth certificate. Until recently, thousands of babies born to single mothers in Peru were denied the right to a name because they were not registered by both their parents. This paper shows how the Alliance for Citizen Rights, a network of non-government organisations, public organisations, women's groups, childhood organisations, academics, and politicians, worked together to change the law and challenge deeply held prejudices against women.

Introduction

Most people do not think about their birth certificate until they need it for a passport or other official document. And yet, without one, you cannot open a bank account, access credit or health care, own or inherit property, vote, find employment, or sometimes even go to school. Birth registration also helps to prevent child labour, and protects girls from early marriage and boys from under-age conscription, as without proof of when you were born you may not know how old you are.

Having your birth registered is a fundamental record of a person's right to exist, enshrined in human-rights declarations like the Convention on the Rights of the Child. South Africa's Archbishop Desmond Tutu said: 'It's time we made this one of the priority concerns of the international community.'¹

Despite this, more than half of all babies are not registered. This amounts to 51 million people who do not have a record of their right to exist.² UNICEF, the United Nations Children's Fund, notes that: 'These unregistered children are almost always from poor, marginalised or displaced families or from countries where systems of registration are not in place or functional.'³ South Asia has the largest number of unregistered children, with almost 23 million births not registered in 2006.

Number of annual births not registered, by region, 2006⁴

	Millions	Percentage under 5 not registered, 1987–2006 ⁵
South Asia	22.6	66
Sub-Saharan Africa	19.7	59
East Asia and Pacific	5.1	17
Middle East/North Africa	1.5	16
Latin America/Caribbean	1.1	10
CEE/CIS	0.6	10
Industrialised countries	0.2	2

In Latin America, 1.1 million of the region's 11 million births each year are not registered.⁶ At the region's first Conference on Birth Registration and the Right to Identity in 2007, Paraguay's Minister of Justice and Employment, Dr Derlis Céspedes Aguilera, explained the importance of birth registration:

‘When children are not registered...they are denied the identity of a nation and their rights. Not having an identity, the child is exposed to many forms of abuse and exploitation. Guaranteeing their identity allows them to access education, and also to become legal citizens with full rights to public office, education and financial well-being.’⁷

There are many reasons why parents do not register their babies – distance (if they live in a remote area), lack of information, and illiteracy may all contribute. This paper looks at a specific case, that of single mothers in Peru, who did not register their babies because the right to a name and to have a birth certificate depended on proof of the relationship between the father and the mother, and on the presence of the father for the signing of the birth certificate.

This paper shows how these single mothers in Peru were able to campaign to get the law, which discriminated against them and their babies, changed, and at the same time successfully challenge deeply held prejudices against women.

The situation in Peru

Most of those who do not register their babies at birth are either poor, or indigenous, or both. Forty per cent of Peruvians live in poverty. However, in rural areas the poverty rate soars to 75 per cent. Indigenous people make up 40 per cent of the total population and are often also poor.⁸

While Peru is a middle-income country, it has high levels of inequality. The country ranks 87th out of 177 countries in the Human Development Index, with 12 per cent of the population living below the poverty line in 2007.⁹ The richest 20 per cent of the population own 55.2 per cent of the country’s income, while the poorest 20 per cent own only 3.8 per cent.¹⁰

Each year, around 110,000 babies are not registered at birth. It is likely that the overall numbers without birth certificates are much higher: in 2006, out of a total population of 27.3 million, 3.5 million did not have identity documents.¹¹ Parents who do not have birth certificates themselves cannot register their children, who then are more likely to remain in poverty, and so the cycle continues. These people are denied many of the rights to which they are entitled in the country’s Constitution.

There are two groups of people who are particularly affected. The first is poor people in rural areas, who were the main victims of the internal armed conflict between 1980 and 2000. The second group, the subject of this paper, are the children of single mothers. Thus those with the least voice and power in society are those whose children are most likely to be denied the right to a name.

Discrimination against women

Women in Peru face discrimination on a number of fronts. For example, they are still under-represented in politics, despite a 1997 law requiring a 30 per cent quota of women candidates in political parties; they earn on average 46 per cent less than men and usually work in less secure occupations; sexual harassment does not qualify as an offence; and illiteracy rates for women are more than double the rates for men.

Cooking, washing, ironing...

The following quote, from Dominica, a rural woman in Peru, giving advice to her son about what he should look for in a wife, highlights the place women hold in Peruvian society:

'Cooking, washing and ironing, this, young man, this is the life for a woman now. When you look for a wife you're not only going to look for someone for the bed, you have to look for someone to iron, to wash, to make sure they can sew. Although you might not wear knitted socks now, she's going to have to mend your trousers when you get a hole, she's going to do the ironing. This is the work of a woman right till the end.'¹²

Children born to single mothers

The law on birth registration effectively discriminated in particular against the children of women who were single mothers. In Peru, a person must have two surnames: their father's first surname and their mother's first surname. Under the Peruvian Civil Code, the children of married parents automatically have their father's first surname and their mother's first surname.

A married woman can go to a civil registry office with a marriage certificate and the registrar will register the newborn child with the first surname of the spouse on the certificate, followed by her own first surname.

However, until recently, children born outside wedlock were given both surnames only if the father recognised them as his children. This was a problem, as fathers were not always willing to recognise children who were the product of an extra-marital relationship. Norma Rojas, member of the Alliance for Citizen Rights, explained: 'The act of registering does not mean recognition unless both mother and father sign the birth certificate'.¹³

Single mothers were not able to go to a civil registry office, register a child as theirs, and declare the name of the father so that the child could be registered with its father's and mother's first surnames. If the father failed to go to the civil registry office to recognise the child as his, a very common occurrence, the child had to have both of the mother's surnames instead. On the surface, this apparently solved the problem, giving the children of single mothers two surnames as required by Peruvian law.

Child of married couple

María Rodríguez Santos + Silvio Cueto Lopez = Rosa Cueto Rodriguez

Child of single mother

Dolores Delgado De Sousa = Alejandro Delgado De Sousa

However, this meant that children born to single mothers appeared to be their siblings rather than their children, since they had the same paternal and maternal surnames as their mother. This situation immediately identified them as children who were not recognised by their fathers, or as the child of an unmarried woman. In a society as conservative as Peru, this was likely to lead to teasing by their peers and to discrimination.

In other cases, the second surname was simply registered as a blank.

'My true identity is a blank line'

Angela Bazán is now an adult who was registered only by her mother. Her father never recognised her, and her identity card still says:

Name: Angela
First surname: Bazán
Last surname: _____.

Angela says: 'I do not have an identity, what is my name? I am Angela Bazán plus a line. This is my true identity: a line'.

In order to avoid this stigma, single mothers often preferred not to register their child, in the hope that they could eventually persuade the father to agree to sign the birth certificate. Like the children of poor and indigenous people, such children had no legal existence because they did not officially appear on any legal documents.

The only other option was for the mother to file a paternity suit, which involved going to court, incurring high legal costs, and exposing both her child and herself to a public process where their honour and dignity could be called into question. DNA testing is an option for single mothers in other countries, but this involves finding the father and securing his agreement to be tested. In addition, it is expensive, and unless the state pays, generally the mother cannot afford it. Therefore although the problem of identity is an issue for all single mothers, it affects poor single mothers even more profoundly because without financial resources, they do not have the option to try to resolve the situation using the legal process.

An unrecognised son

'I am an unrecognised son, rejected by my father. My mother had to register my birth with her own surnames, and so now I appear before society as a brother of hers. This rejection, not only by my father, but also by my society, is still very difficult to deal with. I hope things change and a lot of children like myself can at least enjoy their right to have a name like everyone else, and their mothers won't have to suffer like my mother'.

Jorge Flores, aged 14 at the time, a leader in his neighbourhood, in an audience with Congress in 2006 as part of the campaign.

'He has his daddy's eyes, but not his surname'

In June 2004, the Alianza por el Derecho Ciudadano (ADC – 'Alliance for Citizen Rights') was formed in response to widespread concern about this whole issue. The Alliance is made up of more than 15 institutions from civil society, the state, and international agencies, and at the time it was supported by Oxfam GB. Its aim was to use a rights-based approach to address the issue of lack of documentation and to campaign for a change in the law so that a birth certificate did not require the participation of the father as well as the mother. The campaign was entitled: *Tiene los ojos de Papá, pero no su apellido* ('He has his daddy's eyes, but not his surname').

ADC identified the fact that it was Article 321 of the Peruvian Civil Code that prevented single women from registering their children with the surnames of both the father and mother unless both parents went to the civil registry office. Since this was a legal issue, ADC commissioned studies from experts in civil and family law as well as international human-rights law, which gave the campaign a sound legal basis.

ADC sought to demonstrate that the right to a name is a public as well as a private matter, because it is a human right protected by international regulations approved by Peru. This was a new way of looking at civil rights. ADC pointed out that: 'The State must guarantee the right of all Peruvians to an identity and a name and that Peruvians, in turn, have the right to demand that this right be respected'.¹⁴

Once the results of the studies were obtained, ADC drew up a legal proposal to eliminate Article 321 from the Civil Code, so that a single mother could go to a civil registry office and register her child with the father's surname even when he was not present. She would have the right to mention the name of the father and the civil registrar would be obliged to register the child with the father's first surname (mentioned by the mother) and the mother's first surname. As a result, the child would have its two surnames, just like children born to married parents.

The ADC proposal sought to guarantee the right of all children to a name, regardless of whether the parents were married or not. It was not about paternal obligations, which are only established once the father personally and voluntarily recognises his child. That is a separate issue which has still not been resolved.

Cultural barriers: a father's honour or a child's right?

Discussions in Congress revealed interesting lessons for those who work for a gendered approach to public policies. Members of Congress from all political parties put up strong resistance to changing the current legislation. The most frequent opposing argument was that single women could provide false information about the name of the child's father. Members of Congress pointed out that their duty was to preserve the 'honour' of families constituted by marriage and to protect the 'honour' of men who could be involved in situations affecting their privacy and dignity. They must also protect those wives who could find their marriage and the reputation of their spouses questioned, based on the statements of a single woman who was seeking to attribute the paternity of her 'extra-marital' child.

Antero Flores Araoz, Congressman in the previous government, said: 'The mother can simply say of the father – or the supposed father: "My son is his". How easy! A woman could simply say that such and such a child is the son of Martin Luther King or Bill Clinton, or whoever she wants'. Interestingly, such are the deeply held prejudices against women that some of the mothers from women's organisations in poor neighbourhoods had the same reaction as the members of Congress. Some said: 'But I am a mother, and I wouldn't like some woman saying that my son was the father of a child of hers', or: 'Some women lie, and that is a real risk'.

However, making a false statement to a public official is considered a crime and therefore a false declaration on the part of a single mother would not enjoy impunity under the law, a fact which made it obvious that the resistance was not legal but cultural. Women who are single mothers do not want their children to have the surname of someone who is not their real father; on the contrary, they want the 'real' father to recognise his child and assume all the obligations that a father should legally fulfil: food, education, health, and care, among others. Declaring a false name is, therefore, a strategy that does not work for the mother or the child.

In addition, a series of studies and reports issued by feminist organisations, pro-child organisations, magistrates, and civil registries reported that women who are single mothers do provide the true name of the father of their children. While many men refuse

to recognise their children legally, at a social and family level they already tacitly recognise that they are the father.

ADC's strongest legal argument was that where rights conflict, the legislator must opt for that which protects a greater good. In the case of children, the superior interest of the child (the guiding principle of international law regarding children's human rights) and the principle of non-discrimination made it valid to guarantee the child's right to a name, even given the possible, but unlikely, effect it could have on the reputation of adult men.

Press coverage

Interestingly, the press coverage focused on children and the consequences of not being registered, rather than on the plight of single mothers. In the words of one journalist, this was for very practical reasons: 'gender discrimination doesn't sell, children do'. The media used testimonies from children who, because they only had their mother's surnames (even though they might know their father), felt deeply that their name exposed them to society as rejected, unloved beings. They felt they were inferior to children born to a family protected by the state and the law: a family based on marriage. The discussion was not about the right to a name, but rather how the state could guarantee this right by attributing value to a statement made by a single mother.

It became very clear that the reactions of politicians, the press, and even some of the women themselves, were underpinned by very strong cultural barriers which prevent women from identifying the way in which public policies exclude them from exercising their rights. Such is the strength of these barriers and prejudices that talking about rights and gender discrimination is no easy task, even with those who suffer from gender discrimination themselves.

A battle won: linking civil society with the state

One of the strategies used by ADC was to make links between civil society and sympathetic members of government. This gave the campaign legitimacy in the eyes of potential opponents and of the press, who could not argue that this was a campaign of 'opposition' to one state sector or another.

The Ministry of Women and Social Development, an ADC member, and the Minister in particular, played an important role in the campaign. Thanks to ADC, the Minister sent a communication to Congress, attaching the proposal to modify the Civil Code. That proposal was then sent to the Commission for Women and Social Development, chaired by a representative of the governing party.

After months of intense activity in Congress, including several public audiences promoted by ADC, meetings with parliamentary groups, and with members of Congress who are opinion leaders, the modification to the law was put on the Congressional agenda to be debated by 120 members of Congress.

A week before the decisive debate in Congress in March 2006, ADC launched a mass media campaign. A journalist was hired and for two weeks ADC was present on national television and in the written press. The Ministry of Women and Social Development made specific statements referring to ADC and the legislative proposal. At the same time, the member of Congress who was leading the issue on the Women's Commission gave a number of interviews.

Finally, on 30 March 2006, the day of the debate, one of Peru's most important political magazines, *La República*, published a note addressed to Congress encouraging them to vote for the modification. Outside the Congress building where the debate was being held, women from grassroots organisations demonstrated by pretending to 'wash' birth certificates - imitating the 'flag-washing' campaign in 1999, which had contributed to the return of democracy and the resignation of President Alberto Fujimori. Flag-washing symbolised the need to get rid of corruption. 'Washing' the birth certificates highlighted the need to 'clean up' the unequal state of birth registration.

The demonstration was transmitted live from outside the Congress building and attracted considerable media attention.

The amendment to the law was passed by a small Congressional majority. The president, who had to ratify it, subsequently also approved it. ADC and its supporters had managed to modify Peru's Civil Code. As a result children who are born out of wedlock can now have the last name of both parents, just like children born to married couples.

This law thus achieved a change in policy and national legislation. It also demonstrated a change in the practices of policy makers. Confronted with compelling legal arguments, they had to admit that the main arguments against a change that would benefit thousands of children were in fact grounded in prejudice.

It is because of this law, achieved by ADC's campaign, that poor women and their children can now be recognised by the state, and the children can exercise their right to a name and identity, and eliminate the discrimination made by the conservative sector of Peruvian society. Now, the children of single mothers have a name, just as the children of married woman do.

Keys to success

ADC and the Oxfam GB Peru programme offer this experience as a successful example of joint action between the state and civil society to change a law that discriminated against women. This alliance helped to bring about changes in public policies against a backdrop of deeply rooted beliefs about the inferiority of women, even from some of the women themselves. Some of the keys to success included:

- Identifying common objectives and coherent strategies based on academic knowledge, political advocacy, and public pressure. This made it possible to overcome prejudice and the cultural and social obstacles that tend to be more difficult than those imposed by law.
- Building an alliance between many different sectors in society – lawyers, academics, politicians, NGOs, and women’s groups.
- Realising that small gains were an incentive to keep people engaged and motivated to take on bigger challenges ahead.
- Working with the media, and making links with journalists. It was necessary to identify angles that would interest the press, and use the appropriate language.
- Doing thorough research and understanding the gender inequalities on which the law was based.
- Having a sound legal basis for the proposal. ADC commissioned studies from legal experts that grounded the proposal firmly in legal knowledge and expertise.
- Ensuring that the leadership, especially women’s leadership, had the resources to identify situations of gender discrimination and to be convinced both of the need to remove this discrimination and of the feasibility of doing so.

There is more work to be done in this area. Many women in Peru still do not know about the changes to the law, especially in remote and rural areas. More research is needed on how it is affecting the lives of children and of single mothers. The law must be made retrospective so that it applies to children who still have both their mother’s surnames.

At the time of writing, the campaign continues and the Alliance is lobbying RENIEC (the public institution in charge of documentation in Peru) to try to build the capacity of civil registrars at the national level. The campaign wants civil registrars to be informed of key facts, such as that the procedure to register a child is free; that single mothers should not have to pay a fee; and that the father should be notified of any new procedures.

There are many other policies that discriminate against women and poor people in Peru, which infringe their rights and silence their

voices. Changing these will take time, but it is a task that civil society, international co-operation, and progressive sectors of the state can embark on together. For now, one small battle has been won.

Notes

¹ UNICEF (2005) 'Child protection from violence, exploitation and abuse: Desmond Tutu helps launch campaign for Universal Birth Registration', www.unicef.org/protection/index_25228.html (last accessed September 2008).

² UNICEF (n.d.) 'Child protection from violence, exploitation and abuse: Birth Registration', www.unicef.org/protection/index_birthregistration.html (last accessed September 2008).

³ *Ibid.*

⁴ *Ibid.*

⁵ UNICEF (2007) 'Progress for Children: A World Fit for Children, Statistical Review', Number 6, www.unicef.org/progressforchildren/2007n6/files/Progress_for_Children_-_No._6.pdf (last accessed September 2008).

⁶ UNICEF (n.d.) *op.cit.*

⁷ *Ibid.*

⁸ According to the Instituto Indigenista Interamericano III, cited in National Vital Statistics and Civil Registry Office (RENIEC) (2005) 'National Plan to Restore Identity: Documenting the Undocumented 2005–2009', Perú.

⁹ UNDP (2007) 'Peru – The Human Development Index – Going Beyond Income', http://hdrstats.undp.org/countries/country_fact_sheets/cty_fs_PER.html (last accessed September 2008).

¹⁰ Desarrollo Peruano, http://desarrolloperuano.blogspot.com/2008/06/el-per-en-el-ranking-latinoamericano_08.html (last accessed September 2008).

¹¹ Figures from the National Plan to Restore Identity (2005), approved by the National Vital Statistics and Civil Registry Office (RENIEC), the constitutional body responsible for civil registries in Peru.

¹² See Mountain Voices, www.mountainvoices.org/p_th_gender.asp#testimonies (last accessed September 2008).

¹³ R. Mendoza (2006) 'Niños deben tener sus dos apellidos', *La República* www.larepublica.com.pe/component/option,com_contentant/task,view/id,105930/Itemid,0/; and Diary of Debates, Second Session of Congreso 2005 (30 March 2006), pp. 136–7, www2.congreso.gob.pe/sicr/diariodebates/Publicad.nsf/SesionesPleno?OpenView&Start=1&Count=30&Expand=6.5.1#6.5.1 (last accessed September 2008).

¹⁴ Article 2 (inc. b) of the Constitution of Peru.

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