



Citizen Registration: Tool of Inclusion or Alienation

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Abstract

This article is a critique of the citizen registration and identification laws, and practices in Pakistan. Comments on the performance of the National Database and Registration Authority are based on NADRA Ordinance (2000), information provided at NADRA web site and several dozen interviews with individuals denied CNIC's. The purpose of interviews was to assess how extensive the problem is and how the effected citizens may be helped. The study was conducted by the non-profit "Stateless People in Bangladesh and Pakistan."

Introduction

At least fifty countries around the world have mandatory citizen registration and identification programs. Another handful of states have a voluntary registration and identification program. A few additional countries such as Bangladesh and India are considering instituting such programs. States may wish to identify citizens for a variety of reasons including:

Collection of Taxes, Participation in political process, Caring for special needs of citizens, Administration of Social welfare and Health care programs, Strengthening of Law and Order, Dispensation of Justice Allocation of resources, Distribution of opportunities, Recognition of marginalized groups Management of security threats and Natural Disasters.

The author considers the following Broad Principles in Registration of Citizens and issuance of identification documents as minimum elements of the program in a free and democratic society.

1. Every program should begin with the premise that all habitual residents of the state are citizens of the State. The burden of proving otherwise is that of the State not of the individual.

2. All mechanisms of acquiring citizenship in the Nationality law of the State shall be accepted as valid basis for registration of citizens and issuance of legal identification documents.

3. Individuals may support their claim to registration using a variety of State issued documents. The State shall accept all such documents at face value regardless of the department or level of Government. The State may also accept other non-State issued identifications such as educational certificates, employee cards, Utility bills, ration cards etc.

4. When individuals shall be required to produce state issued identifications shall be a matter of elaboration in the citizen registration legislation. Any future uses of such identification shall not be implemented without a thorough examination and open debate. In no instance shall the inability to produce proof of registration shall result in the derogation of citizen's fundamental rights under the constitution.

5. Only such information shall be collected or displayed in citizen registration or identification process as may be warranted by the stated goals of the program.

6. Citizen registration or identification documents shall not cost the citizen any money unless the State is proposing to offer additional services that That were hitherto unavailable.

7. In case of denial of registration citizen shall have the right to administrative appeals, at no cost to the citizen.

8. No part of the citizen registration-identification legislation shall be in violation of the State's bilateral, multilateral or international obligations.

9. Requirements of registration shall be a clearly defined and The well publicized process with objectively established criteria with minimum possibility of abuse or corruption.

10. The registration legislation shall explicitly delineate populations exempt from requirements of registration.

11. Citizen's privacy shall remain protected during and after the registration.

12. The operation of registration/identification authority shall be transparent with full disclosure of its performance and activities to the public on a periodic basis.

The preceding is by no means an exhaustive outline of applicable principles rather it is the minimum standard of conformance to equity and justice. It is in this light the author proposes an examination of citizen registration and identification program in Pakistan.

Pakistan's National Identification Program

The first citizen identification program was introduced in Pakistan in 1973 and was based on an act of National Assembly called the National Registration Act 1973 (NRA). This legislation was in effect from 1973 to 2000. Population of the entire country was issued National Identification Cards (NIC). The Government of Pakistan (GOP) introduced a new Computerized Identification program in 2000, called the National Database and Registration Authority Ordinance (2000) or NADRA.

The government has not publicly released any information about the efficiency or efficacy of the program or the agency or how this program has served public interest over the last 35 years. It is possible that the original program was strategically or tactically flawed in achieving certain goals, nonetheless it was in effect for over quarter of a century, and the State must have known its merits and demerits. Why the NRA needed to be replaced with a brand new agency would have been a matter of great public interest. The reasons for its replacement should have been shared with the public and the necessity of the new program should have been explained in detail to the public.

If the GOP wanted to update methods of data collection and storage (as in manual vs computerized) then a brand new executive order and agency would hardly be justifiable. Introduction of the NIC's imposed burden and cost of compliance on the citizens the first time around. Even higher costs were imposed upon the citizens for a second time when the government promulgated a new ordinance and department. Add to that the burden of renewals and changes of information that falls on the citizens to keep the identification documents current.

The identification documents are essential for all; everyone is required to obtain them. The government has offered no new benefits or advantages to the citizens registering or acquiring new identification documents, state also retains physical ownership of the document; there is no justification for charging the citizen anything for the identification documents. Considering the above facts and the poverty of the vast majority of the citizenry, this program should have been paid from the general revenues of the state. An essential service which will be needed by all citizens, which the state wants to implement. Such a service should not be funded as a user fee.

Even a beggar on the street is a citizen, and needs the CNIC. But if the Government expects someone who can't feed himself or his family to pay for the identification then neither sense nor compassion is on the side of the Government.

If the government wants these cards to be up to date (as in change of name, address etc.) then citizens should not be burdened with the cost of updates. The only justification for charging for this service may be replacement of lost or misplaced cards.

The author reviewed the National Registration Act 1973 and the executive order that replaced it (National Database Registration Authority Ordinance 2000). The author examined the stated purposes, objects and functions of both instruments. These are so vaguely phrased and imprecisely articulated that it is not possible to determine the real objectives of the programs. The ordinance is full of generalities with little by way of specifics. How are the civil servants charged with drawing up the regulations and detailed procedures supposed to get guidance from the legislation?

The author reviewed in detail the contents of NADRA The web site. The government has not released any factually relevant information about NADRA, on any aspect of its operation. Since Pakistan does not have a strong tradition of transparency and disclosure The author is concerned about reaction of NADRA in respect of releasing real and relevant information or telling the truth. Without access to actual performance or benchmarks the real value of the two programs is very difficult to assess. How then do the reviewers of the program arrive at an educated assessment about the effectiveness of this State program? The author can reach the individual citizens who have had an encounter with the program or can examine consequences created by the program and its implementation.

Ordinance and Objections

The author considers the following flaws structurally or procedurally significant.

Article 6.2 “The Authority may execute or supervise the execution of any scheme, proposal or plan sanctioned by the Federal Government or the Provincial Government or local authority and the authority may (Continued). Who runs the agency anyway and what is its purpose. Any public agency with multiple masters and no definite mandate is fatally handicapped.

Article 7.b.1 NADRA shall initiate and continue liaison with other two levels of Governments. The nature and purpose of liaison is not stated.

Article 7.b.ii Continuing stream of inputs from other sources is envisioned with no specifics as to parties, reliability of data, type or frequency of input.

Article 7.b.d the ordinance hints at user and feeder agencies consisting of all three levels of Government and private entities and individuals with out any specifics of their roles.

Article 7.b.i the ordinance provides for access to the database on-line or offline Government, semi-government and private institutions but there is no mention of terms and conditions or costs of such access.

Article 8 (2) the authority may provide, extend or withdraw any right, interest, privilege, benefit, reward or advantage to the citizens to incentivize compliance with the law. Most of the preceding is OK but the word “Rights” which has specific meanings in law does not belong in this category. The rights of citizens are determined by the constitution and may neither be infringed nor derogated for any class of citizens. The author is not aware of any incentives offered by the state to encourage participation of the citizens.

Article 17.2 “a citizen may become ineligible for the computerized national identity card.” Citizenship and legal identity are so absolutely intertwined that The author is not able see a set of

circumstances where a citizen may become ineligible to continue to have a legal identity except in the case of deprivation of Nationality or death.

Article 18.3.1 “a person may appeal to the federal government against cancellation or confiscation of an identity card and the decision of the federal government shall be final”. Unfortunately this provision indicates how out of touch the legislation is from realities of everyday life. In an open and democratic society very little is final. Good governance always calls for internal review procedures, appeals, and litigation if necessary. However the best approach is to provide the citizens redress at the lowest level, and then if necessary at progressively higher levels. The citizen may take up the matter in a court of competent jurisdiction at any time should that be their choice. Government shall abide by the judgments of internal reviews and the courts.

Article 20 The power of the Federal Government to exempt certain individuals or class of individuals from requirements of the ordinance are unnecessarily broad and unspecific.

Article 23 is produced here in its entirety for consideration of the readers:

“Power to call for proof of information. The authority or any person authorized by it in this behalf may require a person who has given any information to furnish such documentary evidence of the truth of that information as it is within the power of that person.” This is a much abused area of program, the citizens are routinely asked for proof that they cannot provide.

Article 38 (a and b) the authority submits annual reports and forecasts to the federal and provincial governments. Again and again there is confusion about roles of Federal vs. the Provincial governments. All reports should be published and accessible to any citizen.

From start to finish, the ordinance contains no measures for dealing with public complaints against the ordinance, or the agency. Nor are there any measures for public disclosure or safeguards against improper operational practices at any level. The ordinance does not specify the fees to be charged to the public for various functions it performs or any provision for citizens who are paupers.

Review of national laws and international norms

Some of the provisions of the citizen registration laws are in conflict with international norms, which Pakistan has signed or ratified. Here are just a few examples:

Restrictions on the movement of citizens within and outside the country due to lack of legal identity are violation of Universal Declaration of Human Rights Articles 13.1, 13.2, 14.1, 15.1, and 15.2.

Inability of parents to register births due to lack of legal identity is a violation of the Covenant on the Rights of the Child Article 7.1. Similar inability of the parents to enroll children in schools is a violation of the article 28.1 of the same instrument.

Citizens who are unable to vote or stand for public office for lack of legal identity is a violation of the Covenant on Civil and Political Rights Article 25b.

Citizen's disqualification from employment in public and private institutions is a violation of their economic rights under article 1.2 of the Covenant on Civil and Political rights. The provincial government of Sindh is requiring employers to ask for copies of employee identity cards. In some cases, individuals have been terminated from private employment because they didn't have an Identity card.

Persons without Identity cards can also be prevented from boarding public transportation such as trains and airplanes. This effects citizen's freedom of movement under the constitution and human rights instruments.

Review of local practices

The author visited Pakistan sometime ago to investigate and assess the situation on the ground. Before arrival in the country, The author placed a small advertisement in one of the local Urdu-language papers in Karachi and invited individuals who had been refused a CNIC to contact the author.

The author scheduled approximately two dozen interviews at a camp office in Karachi. About 20 respondents who had been denied the Computerized National Identity Cards (CNICs) contacted the author. Ninety five percent of the individuals interviewed had been born in Pakistan and all were members of a minority groups. Although no economic data was gathered but they all appeared to be working poor. Sixty five percent were married, and had 4.8 children per family.

The author met several individuals who have a valid birth certificate but have been denied CNIC. According to the Pakistani nationality law, any person born in Pakistan without reference to the status or nationality of the parents or grandparents is a citizen of Pakistan. Thus if a person born in Pakistan produces a birth certificate, there is no basis for denial of CNIC to such a person.

Furthermore, any person whose parents or grandparents (without distinction of gender-maternal or paternal or residency requirements) were citizens of Pakistan is a Pakistani. The author came across several cases of individuals whose parents (father or mother) had CNIC but the children upon reaching age of majority are being denied CNIC. Many women married to Pakistani men (who have a CNIC) are also being denied legal identity.

Persons who are being denied nationality are permanent residents of Pakistan. These individuals consider themselves to be Pakistanis. They have not ever held any other nationality. They cannot be deported to another country, nor is there another country willing to accept them.

According to the NADRA ordinance, all persons holding a National Identity Card were to be provided CNIC's from the beginning. Typically when these persons present themselves for a new identity card they have to surrender the NIC. Their cards are confiscated and their applications are denied. They are left without any legal identification.

In most countries if one has been issued a passport it becomes their proof of citizenship in the country. Not so in Sindh, Pakistan. One of the individuals who had been denied a CNIC had an expired Pakistani passport in his name. If one has served in the armed forces of the country that is also accepted as proof of one's citizenship. The author came across an individual who was a retired enlisted man, was a Pakistani soldier and a POW in India for three years until his official repatriation to Pakistan. He has his complete record of military service, yet has been denied a CNIC.

Another individual told us that he applied for a CNIC and was issued one. Later he was approached by someone claiming to be an employee of NADRA who asked to see the card. Once the card was in possession of the presumed NADRA employee, he took off with the card. The citizen filed a report at the nearest police station but has not been able to get a replacement CNIC.

Ethnic minorities such as Urdu or Bengali speaking individuals or those living in minority dominated areas are having the most difficulty obtaining CNIC's. One individual even elicited a comment from one of the officials "That you look too dark to be a Pakistani", as if Pakistani citizenship is predicated on the skin color.

An elected representative (member of national assembly) from Orangi Township told us that he is getting at least 7-10 complaints from his constituents each week from people who have been denied CNIC's.

The question of denials of CNIC has been raised in the National Assembly on several occasions, Govt. has made some noises but the operative policies and practices at the regional offices of NADRA have not changed. Since the GOP releases no figures ever about the program. The author only has conjecture to estimate the extent of the problem. Estimates range from 100,000-150,000 individuals in the city of Karachi alone.

Conclusion:

The agency registering citizens and providing them legal identification documents has become a conduit for effective denial of nationality to minorities. Urgent action from the federal government is required in the following areas.

Complete review and revision of the ordinance and associated regulations is essential. The goals and activities of the agency and the program should be clearly defined and detailed. The Government should provide clear examples how the data has been used in the past and how it may be used in the future. No new application of the data shall be approved without a thorough examination of consequences.

The federal agency should be firmly under the hand of the federal government accepting feedback from not only the provincial and local governments but also NGO's, citizens and academics. All parties with a need for the data collected may continue to receive access under defined terms and in a transparent manner.

Wherever possible remove generalities from the legislation. Such statements represent ambiguities of purpose and lack of clear policies and stand in the way of development of rational and streamlined procedures.

The government should publish all of the laws, regulations, procedures and forms on the web site of the agency. Means to accept citizen feedback should be provided. Reports about the work and performance of NADRA should be published regularly and disseminated widely.

Reader's comments and critique is warmly welcomed and greatly appreciated. The author is a retired Pakistani Engineer, divides his time between Canada and Pakistan. A social observer of liberal values, and a secular humanist. E-mail: spib1971@gmail.com