



## Children's Institute's submission on the Draft National Identification and Registration Bill

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Thank-you for the opportunity to comment on the draft National Identification and Registration Bill. Our submission is focussed on **universal birth registration** which the bill states is one of its objects [section 4(a)] and **the age and requirements for ID application** [section 16]

### **1. Introduction to the Children's Institute and our work on birth registration**

The Children's Institute (CI) is a multi-disciplinary research and advocacy unit based in the Department of Paediatrics and Child Health at the University of Cape Town. We conduct child centric and rights-based research, advocacy, and education to strengthen national laws, policies and services for children and their caregivers. We focus on addressing challenges that are preventing the realisation of rights for the majority of children in South Africa. These include high levels of inequality, poverty, malnutrition and stunting, and violence; and the lack of children's participation in matters that affect their current and future wellbeing and opportunities.

One of the CI's projects provides legal services to parents of children without birth certificates, with the aim of (a) supporting them to access birth certificates, social grants, and education and (b) identifying and addressing systemic barriers preventing our clients and many others similarly affected, from accessing these services. The majority of our clients are South African citizens who have tried to access late registration of birth at DHA but are stuck due to systemic challenges within the system.

The CI identified birth registration as a challenge due to multiple studies illustrating that the lack of IDs and birth certificates was contributing to the exclusion of eligible poor children from government grants. In 2016 SASSA and UNICEF estimated that approximately 1,8 million eligible children were excluded from accessing social grants,<sup>1</sup> while in 2022 a follow up study by UNICEF estimated this number had grown to 2 million excluded children.<sup>2</sup> The absence of a birth certificate for the child or an ID for the caregiver is cited as the primary reason for these exclusions.

Our own analysis of survey data also revealed that children without birth certificates are more likely to be excluded from other government services including health care services like growth monitoring and immunisation and education.<sup>3</sup> A 2019 study by Grow Great in the Mqanduli area in the Eastern Cape where many of our clients come from, reveals that children without birth certificates are 85% more likely to be nutritionally stunted than children with birth certificates.<sup>4</sup>

Unregistered children are therefore a very vulnerable subset of children and require proactive measures by government to ensure their survival and development.

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<sup>1</sup> DSD, SASSA & UNICEF (2016) Removing barriers to accessing Child Grants: Progress in reducing exclusion from South Africa's Child Support Grant Pretoria: UNICEF South Africa. Available at <https://www.unicef.org/southafrica/media/1226/file/ZAF-removing-barriers-to-accessing-child-grants-2016.pdf>.

<sup>2</sup> UNICEF (2022) An update study on the exclusion error for children who are eligible to receive the Child Support Grant. Pretoria: UNICEF South Africa.

<sup>3</sup> Hall K (2019) *Expert affidavit in the matter between Centre for Child Law and others v Minister for Basic Education and others*. Case no: 2480/17 in the High Court of South Africa, Eastern Cape Division ("Phakamisa case"). For a summary, see Hall K, Sambu W et al (2019) Early Childhood Review 2019. P.32 Available: [http://childrencount.uct.ac.za/uploads/publications/SA%20ECR\\_2019.pdf](http://childrencount.uct.ac.za/uploads/publications/SA%20ECR_2019.pdf).

<sup>4</sup> Grow Great (2022) *Nutritional status of children under five in Mqanduli, Eastern Cape* Available at <https://www.growgreat.co.za/wp-content/uploads/2022/01/GG-MQANDULI-REPORT-FINAL-13.1.21.pdf>.

Through assisting parents and children since 2018, we have identified certain categories of children and parents/caregivers who are more likely to struggle to access birth certificates and/or ID cards. From our experience, children who struggle most with accessing birth registration are:

- children born in rural areas or born at home;
- children whose mothers do not have identity documents;
- children whose mothers work in another province;
- orphaned and abandoned children in the care of relatives;
- children living with unmarried fathers where the mother has died or her whereabouts are unknown;
- children of parents whose IDs have been 'marked' or 'blocked' by the DHA; and
- children born in South Africa to one or two non-citizen parents.

Early and current year birth registration has improved substantially over the past two decades, but some families, and particular types of families, still face a range of challenges that result in late registration or failure to register at all. Many of these challenges are not within their own control and they require pro-active support and flexibility from the state to enable them to overcome these challenges.

## **2. The Draft National Identification and Registration Bill**

### **Section 3: Application of the Act**

Section 3 provides that the Bill applies to all persons who are South African citizens and persons who are lawfully and permanently resident in the Republic; and foreigners who sojourn temporarily within the Republic for a prescribed period.

**Comment:** We recommend that the population register for citizens and the database for non-citizens should record of people who have **applied** for documents and not only records of people who have been issued finalised documents.

Recently the Department briefed the Portfolio Committee on Social Development on a range of backlogs it was facing. This included backlogs in Unabridged Birth Certificates, permits and visas. When asked about the backlogs in applications for **late registration of birth**, the Department replied that these numbers were not available as the applications lay at local office level and national still needed to collate them to know what the backlog is. If these applications had been loaded by the local offices onto a digital database, National DHA would have instant access to data on the number of applications made per year and where these applications were in the pipeline.

But it appears that these applications are taken in paper form only. This makes them more susceptible to becoming lost or to being used fraudulently. It also prevents DHA, SASSA, DSD and DBE from being able to compare databases of 'unregistered' children and to work together on finalising these children's registration. SASSA and DBE both have their own administrative databases which include many unregistered children. SASSA has approximately 50 000 children in receipt of social grants without birth certificates on its SOCPEN database while DBE has approximately 1 million undocumented learners on LURTIS and SASAMs. These unregistered children who are visible on the SASSA and DBE databases are not visible on any DHA database. Yet many of them are sitting in the paper files for late registration of birth at local DHA office level. If applications for late registration of birth could be taken and loaded onto an electronic database, it would facilitate co-operation between the various state departments tasked with supporting the birth registration process and take SA closer towards the goal of complete and universal birth registration.

We would also recommend that applications for late registration of birth are opened on the digital system on the applicant's **first visit to a DHA office** and not only when they have managed to collect all the supporting proof required. **If the applicant's ID number and biometrics and the child's biometrics and ID photos were loaded at this first visit, a record of the applicant and child would exist electronically.** Missing supporting documents can be added on the second visit.

This application database would provide a mine of information of 'unregistered' people who are waiting in the queue for final registration. We estimate that there are likely close to 1 million children waiting in the late registration of birth paper files located at local office level. Within these files are ID photos and biometrics of parents and children. However, this

information is not accessible to anyone (including the criminal justice system or SASSA or DBE) because it is located in paper files at local office level. Including this information on the new population register being created by this bill, albeit in a 'waiting room' section, would solve many challenges and support the object of universal birth registration. Each application could be allocated a unique reference number while awaiting finalisation of their ID number. This reference number could be used within the Education, SASSA and Health systems.

#### **Section 4: Objects of the Act**

The objects of the Bill include to “ (a) **ensure universal registration of** all vital events, including but not limited to, **births**, marriages and deaths; “

**Comment:** We support this objective because universal registration of births will ensure that all children in South Africa are able to access birth registration and to obtain a birth certificate. It is not clear however how the Bill will achieve this objective:

- (a) the bill does not purport to provide for or regulate birth registration. Birth registration is provided for and regulated by the Births and Deaths Registration Act, which this draft Bill does not purport to amend or repeal.
- (b) there are no provisions in the bill that are aimed at providing for universal birth registration.

We list a few suggestions below on what would strengthen SA's ability to achieve universal birth registration: Firstly, we recommend that DHA should invest more in strengthening the proven mechanisms that have already improved early birth registration significantly, and secondly we recommend that DHA should address the current barriers to universal birth registration.

#### **Proven mechanisms in need of strengthening:**

- Expand DHA's footprint to more maternity wards.
- Ensure 24hour presence and 24 hr connectivity at high volume maternity wards.
- Invest more in live capture capacity at existing DHA points in health facilities
- Liaise with the Department of Health (DoH) to allow and welcome fathers into maternity wards to participate in birth registration applications, irrespective of marital status. This

would improve the number of father's included on the birth register [Over 60% of births recorded on the NPR have no details of the child's father included on the birth notice]. While some provincial DoHs allow fathers to be present in maternity wards (eg Western Cape), others continue to exclude and discourage the presence of fathers (eg Gauteng). If fathers are not allowed to be present when babies are registered and they are not married to the mother, they will not be recorded as the child's father.

- Liaise with DoH to identify pregnant women who are eligible for SA IDs but have not yet applied for their IDs and pro-actively refer them to DHA for ID applications. DHA should then mark these applications as priorities for turn around within 30 days to prevent the mother giving birth without an ID. [If the mother's give birth without an ID, they cannot register their child's birth].

**Address current barriers to birth registration:**

- Unmarried fathers are generally still unable to register their children's births despite the Naki (2018) and CCL (2021) court orders. Most DHA offices insist on a paternity test and or a court order. The paternity test is not affordable to most fathers and court orders are difficult to obtain as most social workers do not assist fathers [their mandate is to assist orphaned or abandoned children, and children with a father are not orphaned or abandoned]. DHA needs to issue a directive and change its forms and systems plus train its officials to allow unmarried father's to register their children in circumstances where the mother is undocumented, deceased or absent. If DHA insists on paternity tests, it needs to pay for the costs if the father cannot afford the cost.
- Allow one parent to register the child's birth if the second parent is undocumented or has an invalid or blocked ID. If the child's father for example has a valid ID, allow the child to be registered on that ID while the mother's documents are sorted out or her ID is unblocked. Do not deny birth registration to a child due to one parent's documents not being in order.
- Court orders for registering the birth of orphans in the care of relatives are not necessary in terms of the BDRA but are requested as the default by most DHA offices. Many relatives will have a death certificate for one parent but not the other. In many cases the other parent's identity and or whereabouts are unknown and they have not been parenting the child. DHA should allow the relatives in such cases to register the child's birth without the

need for the other parent's death certificate and without the need of a Children's Court order.

- DHA, DSD and DOJ should develop a joint protocol that clarifies when a Children's Court order is required for a late registration of birth, what type of court order is needed, and what the roles and responsibility of each department is in the process.

## **Section 16: Application for identity card**

**Section 16(1)** of the Bill states that a person whose particulars are included in the database and who has attained the age of 10 years must, in the prescribed form and within 30 days from the date when such person attains the age of 10 years, apply to the Director-General for an identity card to be issued to him or her.

### **Comment:**

The rationale for lowering the age for obtaining an ID from 16 to 10 years is not explained. The only explanation we could find was a media article where the Minister explained that the age was being lowered so that the police could have access to children's fingerprints to aid the fight against crime.<sup>5</sup>

We require more information from DHA on the reasons why the age is being lowered and how this reform will further children's best interests. We understand that taking the biometrics of babies at birth is currently not possible and that taking biometrics of children as early as possible will be in children's best interests. However, 10 years appears as an arbitrary choice due to the rationale not being clearly explained. It is also not clear whether the individual will have to present themselves again for a later ID photo and biometrics as they have not yet gone through puberty and their facial features will change significantly.

**Section 16(2)** provides that a minor making an application in terms of subsection (1) must be assisted by a parent or guardian or any person who is duly authorised to submit such an application on behalf of the minor. DHA already requires first time applicant for Smart ID cards

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<sup>5</sup> <https://www.enca.com/news/cabinet-approves-bill-allow-10-year-olds-have-id>

to be accompanied by parents and guardians, although the requirement is not legislated. Although we understand the rationale for this practice, it poses an inflexible barrier to the many young people who do not have parents or legal guardians.

We have many cases of young people over the age of 18 who do not have parents, who are then requested to provide a legal guardian to vouch for them. However, most orphaned or abandoned children in SA do not have legal guardians so will not be able to comply with this request. Furthermore, once they are over 18, they cannot acquire a legal guardian as legal guardians are only for children, not adults. Some are requested to bring the social worker who worked on their case when they were a child. But most never had a social worker or if they had, the social worker is no longer in her same post and is not contactable.

This requirement to produce a parent or legal guardian is based on Western notions of nuclear families and incorrect assumptions that people can afford to access High Court guardianship orders. It fails to acknowledge the lived realities of African children and the cultural practices of childcare in black families. Many children are informally cared for by relatives after their parents pass away, move to the cities for work or abandon them. There is no state involvement in these family decisions, no legal guardian appointed, and no social worker involved. The requirement also fails to acknowledge the legacy of the HIV/AIDS and COVID-19 pandemics which resulted in the death of many children's parents.

The bill will need to clarify what is meant by 'any person who is duly authorised':

- The majority of children who are orphaned or abandoned are informally raised by relatives. Their relatives are not parents, nor legal guardians, nor 'duly authorised'. Most of these children do not have social workers involved in their care arrangements. It is therefore not clear who is 'duly authorised' to apply for IDs for these children when they turn 10. **We would recommend that the relative who is their primary caregiver should be allowed to assist them to apply for their ID.**
- Less than a third of the abandoned or orphaned children in SA are in the formal foster care system (via a court order) and under the 'supervision' of a social worker. Their foster parents are not 'parents' or 'legal guardians' and therefore cannot assist the children to obtain their IDs. The social worker supervising their case will need to accompany them to DHA as the representative of the provincial Minister of DSD as the child is a ward of the

state and the state is therefore their legal guardian. Due to the high turnover of social workers, many relatives caring for orphaned or abandoned children in formal foster care will struggle to identify, locate and convince their social worker to accompany them to DHA to apply for their child's ID when they turn 10 years old. **We would recommend that foster parents be authorised to assist orphaned or abandoned children in their care to apply for their IDs.**

Thank-you for the opportunity to comment on the bill. We look forward to further engagements.