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BIRTH REGISTRATION AND STATELESSNESS IN THE MEMBER STATES OF THE SOUTHERN AFRICA DEVELOPMENT COMMUNITY

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1. BACKGROUND

It is estimated that at least 10 million people are stateless worldwide, while many more are at risk of statelessness. [1] A stateless person is defined as someone who is not considered a citizen by any State under the operation of its law. Statelessness has dire personal consequences, as it most often affects an individual's political, civil, socio and economic rights. Some children are born or become stateless because their parents are stateless, others because of discriminatory citizenship laws, abandonment, or difficulties proving their relationship to a state due to lack of documentation, such as birth certificates.[2]

Action 7: Ensure Birth Registration for Prevention of Statelessness

Source: UNHCR Global Action Plan to end statelessness

Universal birth registration is critical for preventing statelessness because a birth certificate is a crucial form of proof to confirm or acquire citizenship under a state's domestic legislation. Key information to assert a child's right to a nationality is the place of birth and the parental details. [3]

In Southern Africa, dysfunctional and, in some cases, exclusionary civil registration systems are a primary cause of statelessness.[4] Ensuring specific legal safeguards in the civil registration laws in the region is therefore vital to prevent statelessness. Civil Registration law should provide clear pathways for the registration of children despite life circumstances, although it does not always guarantee the acquisition of citizenship for all children.[4]

Children of long-term refugees can be at high risk of statelessness. New research on refugees and statelessness in the Great Lake region concludes that children of long-term refugees are at risk of statelessness because their parents are undocumented. Although children have birth certificates, the process of applying for citizenship by descent is cumbersome and expensive.[5]

Action 7 of the UNHCR's Global Action Plan to End Statelessness calls on States to ensure birth registration to prevent statelessness.[5] The objective of Action 7 is that *by 2024 no cases of*

[1] https://www.unhcr.org/ibelong/statelessness-around-the-world/

[2] UNHCR, What is the Statelessness? https://www.unhcr.org/ibelong/wp-content/uploads/UNHCR-Statelessness-2pager-ENG.pdf

[3] UNHCR Global Action Plan to End Statelessness, 2014 -2024 https://www.unhcr.org/ceu/wp-content/uploads/sites/17/2016/12/End-Statelessness-GlobalActionPlan-2019-Final-web.pdf

[4] Some children become stateless despite having a birth certificate because they lack other elements of proof required under the nationality determination procedures, or discriminatory citizenship laws.

statelessness will occur due to lack of birth registration.[6] Reaching universal birth registration relies on states establishing and maintaining functional and inclusive Civil Registration Systems. According to a recent statistical report by UNICEF, 14 million children under five are not registered in Southern Africa, and 19 million do not have birth certificates. Therefore, issuing birth certificates immediately after birth registration is good practice.[7]

In many countries, it is the poorest and most marginalised children who are not registered, blocking their access to resources and opportunities. UNICEF predicts that the total number of unregistered children will rise if governments do not accelerate their progress. Three approaches appear to facilitate enhanced access to birth registration: decentralisation, digitization and interoperability. Equally important, governments must be committed to the process from start to finish and include provisions for marginalised groups in their programming.[8]

Over the past decades, global and regional Civil Registration and Vital Statistics (CRVS) initiatives have helped develop guidelines and promote good practices for reforming country programs. The Sustainable Development Target 16.9, which aims to achieve "legal identity for all, including birth registration", has positioned civil registration as a global development issue aiding the agenda on statelessness because it incorporates birth registration. Multiple UN agencies, including UNICEF, UNDP, WHO, UNESCAP, UNECA and UNHCR, are engaged in different parts of the CRVS and Identity global agenda, together with other significant players like the World Bank, the Global Financing Facility (GFF), the EU and Vital Strategies (VS) as part of the Bloomberg Philanthropies for Health Data Initiatives.

Birth registration a priority for UNHCR

UNHCR is entrusted with the formal mandate to prevent and reduce statelessness worldwide. Birth registration is a global strategic priority, and UNHCR engages in birth registration programming related to the prevention and reduction of statelessness and the protection of persons of concern. Strengthening of birth registration systems is also part of UNHCR's mandate.[9] UNHCR provides children of concern, including stateless children, with access to rights and services and age-appropriate legal protection, protects them against violence and abuse, and prevents family separation in emergencies.[10]

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[6] UNHCR Good Practices Paper, Action 7: Ensuring birth registration for the prevention of statelessness, 2017 https://www.refworld.org/docid/5a0ac8f94.html

[7] https://www.unicef.org/stories/what-birth-registration-and-why-does-it-matter

[8] UNICEF, A statistical profile of birth registration in Africa, November 2020 https://data.unicef.org/resources/a-statistical-profile-of-birth-registration-in-africa/

[9] UNHCR Child Protection Issue Brief: Birth Registration, 2013 https://www.refworld.org/pdfid/523fe9214.pdf

UNHCR's mandate for refugees, stateless and IDPs https://emergency.unhcr.org/entry/91581/unhcrs-mandate-for-refugees-stateless-persons-and-idps

[10] UNHCR Good Practices Paper, Action 7: Ensuring birth registration for the prevention of statelessness, 2017 https://www.refworld.org/docid/5a0ac8f94.html

To achieve the objective of Action 7, UNHCR and UNICEF have launched the Coalition on Every Child's Right to a Nationality.[11] The coalition seeks to combat the hidden problem of childhood statelessness, often linked to the lack of birth registration, and to raise awareness of this issue—the Coalition Every Child's Right to a Nationality needs to be strengthened in Southern Africa. UNHCR has therefore developed a new regional strategy on birth registration and statelessness aligned to SADC's new statelessness strategy was endorsed by the SADC member states in July 2022. The regional strategy on birth registration and statelessness is based on the findings of this study.

In recent years, progress in birth registration programming has been recorded in many countries worldwide, including countries in Southern Africa. This study found that CRVS enhancement initiatives are ongoing in most SADC member states. Some countries in Southern Africa have been highlighted as demonstrating exemplary practices and can show remarkable results, including Botswana, Lesotho, Malawi, Mozambique, and Namibia.[12] However, this study also found that despite many good efforts and rising birth registration rates in Southern Africa, some states still display concerning practices and systematically deny some children access to birth registration, while many other countries seemingly still fail to register the most vulnerable and marginalised groups, creating significant risks of statelessness amongst these population groups.

2. SCOPE AND OBJECTIVE OF THE STUDY

This report focuses on the nexus between birth registration, citizenship and statelessness in the 16 member states of the Southern Africa Development Community (SADC). The intention is to take stock of the status and performance of the 16 SADC member states'[13] birth registration systems by analysing legislation governing birth registration against a selected set of benchmarks, considering fundamental legal safeguards for preventing statelessness in civil

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[11] See UNHCR, Coalition on Every Child's Right to a Nationality, https://www.unhcr.org/ibelong/unicef-unhcr-coalition-child-right-nationality/.

[12] Djokovic, Zoran, Maintaining civil registration resilience amid the COVID-19 crisis: Mozambique's vital events notification system, IDRC, 2021 https://crvssystems.ca/sites/default/files/assets/images/CRVS_Webinar_Mozambique_e_WEB.pdf

Forsingdal, Anette Bayer and Tulimeke Munyika, Technical Brief: Building resilient civil registration and vital statistics systems amid COVID-19: Namibia as a good practice, IDRC, 2021https://crvssystems.ca/sites/default/files/assets/images/CRVS_Webinar_Namibia_e_WEB.pdf

UNICEF Synthesis Report: Review of Civil Registration and Vital Statistics Innovations in Eastern and Southern Africa: Digitalization, Processes and Strategies, 2020 https://www.unicef.org/esa/media/6571/file/Review%20of%20Civil%20Registration%20and%20Vital%20Statistics%20Innovations%20in%20Eastern%20and%20Southern%20Africa.pdf

Video: Linking civil registration and identity management system in Botswana, 2017 https://crvssystems.ca/linking-civil-registration-and-id-management-botswana

It takes an Electronic Village: Improving CRVS in Malawi, Vital Stories, 2016 https://www.vitalstrategies.org/it-takes-an-electronic-village-improving-crvs-in-malawi/

[13] Angola, Botswana, Comoros, Congo, Democratic Republic of Congo (DRC), ESwatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Zambia and Zimbabwe

registration legislation. The report also identifies innovative practices, trends and gaps in programming for achieving birth registration for all. The report has been developed to inform and support UNHCR's Southern Africa regional strategy on birth registration and statelessness in terms of Action Point 7's target that *by 2024 no cases of statelessness will occur due to lack of birth registration.*

3. METHODOLOGY

This report is based on desk research of published information, an analysis of laws governing birth registration systems of the 16 SADC member states, and conversations with focal persons and protection officers from UNHCR's country offices and external global and regional experts in civil registration, statelessness, and citizenship laws. Benchmarks were carefully selected to guide the analysis of the countries' legal framework and governing practices. The selected legal benchmarks are, in our view, also vital safeguards to reduce statelessness and can also use to guide countries' legal reform initiatives. The benchmarks are listed in chapter 6 and further described and considered individually, together with the country's evidence. The legal safeguards largely follow the UN recommendations,[14] just as we have found guidance in the Civil Registration, Vital Statistics, and Identity Management, Legal and Regulatory Review Toolkit.[15] Our many years of experience working in the Civil Registration field have also contributed to the analysis; two of the authors have, for example, been heavily involved in reviewing the Namibian legislation and developing new legislation, which we believe provides a good example, in many aspects, on how to provide safeguards against statelessness in civil registration systems. The nexus between birth registration, citizenship and statelessness has been one of the most significant challenges to resolve. We believe that more guidance needs to be developed to address the situation on the ground.

Limitations

Since this study has been primarily based on published information, it has not been possible to document actual practices in most countries considered. We know from experience that many countries' practices and procedures are not aligned with their legal frameworks, sometimes in the child's interest and sometimes not. It is also common that procedures are not standardized within a country. Practices on how children born to non-citizens are registered, and the type of birth certificate they are issued, would be particularly relevant to study. In this regard, we had information only from Namibia, South Africa and Zimbabwe.

4. LEGISLATION TO PREVENT STATELESSNESS

It is part of States sovereign power to legislate regarding acquisition, change and loss of citizenship as part of their sovereign power. The same goes for civil registration legislation.

[14] UN Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems (Second Draft), 2019 https://unstats.un.org/unsd/demographic-social/Standards-and-Methods/files/Handbooks/crvs/CRVS_GOLF_Final_Draft-E.pdf

[15] Civil Registration, Vital Statistics and Identity Management (CRVSID), Legal and Regulatory Review Toolkit, 2022 https://advocacyincubator.org/wp-content/uploads/2022/03/CompleteToolkit.pdf

However, the discretion of States regarding citizenship and civil registration is limited by obligations under international treaties to which they are party, customary international law and general principles of law.[16] It is the responsibility of the States to incorporate international and regional legal responsibilities in their national laws to ensure alignment.

The essential international legal conventions for the protection of stateless persons are the 1954 Convention relating to the Status of Stateless Persons. It defines a stateless person and establishes minimum treatment standards for stateless people concerning several rights. These include, although are not limited to, the right to education, employment and housing. The 1954 Convention also guarantees stateless people a right to identity, travel documents and administrative assistance.

Specific obligations relating to the prevention and reduction of statelessness are established under the 1961 Convention on the Reduction of Statelessness. The 1961 Convention requires that States establish safeguards in legislation to address statelessness occurring at birth or later in life. It also sets out necessary safeguards to prevent statelessness due to loss or renunciation of nationality or state succession. The 1961 Convention also sets out the minimal situations in which States can deprive a person of his or her nationality, even if this would leave the person stateless.

Only a few countries in Southern Africa the following countries have acceded to both statelessness conventions, and some countries have reservations.

Parties to Statelessness Conventions in the SADC[17]

Parties to the 1954 and 1961 Conventions	Angola, Mozambique, Eswatini, and Lesotho
Parties to the 1954 Convention only	Botswana, Malawi, Zambia, and Zimbabwe
Parties to none of the Conventions	Comoros, Congo, DRC, Madagascar, Mauritius, Namibia, Seychelles, and South Africa

Another core convention is the Convention on the Right of the Child (CRC), which provides the child's right to an identity and nationality from birth. Article 7 states that birth registration is a child's right from birth.

"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."[18]

Other International instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of

[16] https://www.unhcr.org/ibelong/wp-content/uploads/UNHCR-Statelessness-2pager-ENG.pdf

[17] https://www.refworld.org/docid/623d8ec74.html

[18] The Convention of the Right of the Child, 1989 https://www.unicef.org/child-rights-convention/convention-text#

Discrimination against Women, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Convention on the Rights of Persons with Disabilities also contain provisions relating to the right to nationality and contribute to the protection of stateless persons and the prevention of statelessness. [19]

5. THE NEXUS BETWEEN BIRTH REGISTRATION, CITIZENSHIP AND STATELESSNESS

Birth registration is the official recording of the occurrence and characteristics of birth in the civil registry in accordance with a state's domestic legislation. The recording of the birth establishes a person's identity under the law, as well as the child's legal family relations. The birth certificate is the first legal document of a child and often the only legal record of the child.[20] [21] Procedures for birth registration and issuance of birth certificates vary from country to country, and there is no one model for how to register a child/person. However, guidelines and principles have been outlined by the UN.[22] Models involving the health sector have proven to have enhanced benefits.[23]

Birth registration and citizenship are interlinked, although these are two separate concepts commonly governed by separate pieces of legislation. Birth certificates are essential for establishing citizenship as they provide proof of the foundational facts needed to *confirm* or *acquire* citizenship under a state's constitution or citizenship legislation. Where national law confers nationality on the grounds of descent from citizen parents or grandparents (*jus sanguinis*), birth certificates are used as evidence to document the parental relationships. Where citizenship is conferred on the grounds of territory (*jus soli*), birth certificates serve as proof of the country of birth.[24]

However, birth registration is merely a permanent recording of a child's identity and factual information about the child's birth and parentage; in most countries, possessing a birth certificate issued by a country does not in itself *confer* nationality. Nationality is typically acquired through the operation of nationality laws. In Southern Africa, countries have outlined the criteria for the acquisition of citizenship in their Constitutions and/or in their Citizenship Acts.

In some countries, however, birth certificates serve as *proof* of nationality based on either law or practice. For example, Botswana's birth and death registration law explicitly states that a

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[19] https://www.unhcr.org/ibelong/wp-content/uploads/UNHCR-Statelessness-2pager-ENG.pdf

[20] In some countries, ID cards are also issued to children; however, in most countries, ID cards are issued only to persons who have reached age 15-18.

[21] UNICEF, Birth Registration for every child by 2030: Are we on track?, 2019 https://www.unicef.org/media/62981/file/Birth-registration-for-every-child-by-2030.pdf

[22] UN Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems (Second Draft), 2019 https://unstats.un.org/unsd/demographic-social/Standards-and-Methods/files/Handbooks/crvs/CRVS_GOLF_Final_Draft-E.pdf

[23] UNICEF, Improving the civil registration of births and deaths in low-income countries: Guidance for the health sector managers, civil registrars and development partners, 2021 https://data.unicef.org/resources/improving-the-civil-registration-of-births-and-deaths-in-low-income-countries-guidance-for-the-health-sector/

[24] UNHCR Good Practices Paper, Action 7: Ensuring birth registration for the prevention of statelessness, 2017 https://www.refworld.org/docid/5a0ac8f94.html

birth certificate is proof of citizenship.[25] In other countries, birth certificates are treated as proof of citizenship in practice, even where the law does not provide for this. These practices may lead to a reluctance by registrars to register the births of children born to non-citizens or in extra-legal attempts to provide such children with "non-citizen" birth certificates without a proper legal process for determining their citizenship status. For example, Namibia and Zimbabwe issue non-citizen birth certificates in practice, even though this is not addressed in their civil registration laws. In South Africa, children who do not qualify for citizenship by birth are registered in local manual registers and, unlike children born to citizens, are not allocated a unique identification number (UIN) at birth.[26] The determination of whether a child is a citizen by birth or not is done by administrative officials in South Africa. In Zimbabwe, non-citizen parents are more accurately informed on the birth registration form that their child is not automatically a citizen of Zimbabwe by virtue of birth registration.

Significant challenges and misconceptions about the two legal concepts of 'birth registration' and 'acquisition of citizenship by birth' need to be resolved. Part of the problem is a purely practical one. Shortly after birth, public and private agencies need to make decisions based on a child's citizenship, such as the child's right to social services, health care, and passports (linked to citizenship or residency status in most countries). Birth registration is the only legal record of the facts of a child's birth. If birth certificates cannot be used to support a claim for citizenship by birth, then what is the alternative? This is particularly problematic since identity documents are not typically issued to children until sometime in their teens. There have been many incidences in Namibia where children and their parents have believed that they were citizens, only to be told at the age of 16 that they do not qualify for an ID card, which is only issued to citizens and permanent residents. Separate processes to consider citizenship and provide some form of proof of citizenship separate from birth certificates would be expensive and administratively burdensome, particularly in countries which are still struggling to increase birth registration rates in the first place. Providing separate proof would also be considered an unnecessary burden by many countries since most children born in any country are born to citizen parents, leaving little doubt about their citizenship status – as their birth certificate will indicate their parents' nationality or place of birth.

Indicating the nationality of a child on a birth certificate, particularly of non-citizens, also raises concerns. According to UNHCR, the child's nationality should not be recorded on a birth certificate, particularly for migrants and refugees. [27] Local civil registrars are typically not sufficiently trained, nor have they the legal authority to determine the nationality of the child born to migrants and refugees based on the documents provided by the parents. For example, some countries require children born outside the territory to apply for citizenship by descent (not an automatic process), while some other citizenship law requires the child a apply through consular services. [28] Therefore, according to UNHCR, nationality should be left blank on the

[25] Botswana, Births and Deaths Registration: Subsidiary Legislation https://botswanalaws.com/subsidiary-legislation/births-and-deaths-registration-subsidiary-legislation

[26] Births and Deaths Registration Act, No. 51 of 1992 https://www.gov.za/documents/births-and-deaths-registration-act. Note that the key aspects of the different processes for applying for a birth certificate for children born to South African citizen parents versus children born to non-citizen parents are described in subsidiary regulations and not in the birth and death registration law.

[27] Child Protection Brief: Birth Registration, UNHCR https://www.refworld.org/docid/523fe9214.html

[28] Manly, Bronwen, Risks of Statelessness for long-term refugees in the Great Lake, UNCHR, 2022 (Draft report)

birth record and birth certificate if it is unclear, as the nationality determination will only be done later. [29]

The legal and practical challenges regarding birth registration and acquisition of citizenship by birth have received very little attention from development partners and are often not discussed in global fora. The lack of guidance leads to undesirable and unstandardized practices in many countries [30] and causes some children to remain unregistered – which considerably increases the risk of statelessness.

Lack of clarity regarding birth registration and acquisition of citizenship cause problems not just in countries where citizenship is conferred on the grounds of descent from citizen parents or grandparents (*jus sanguinis*); but also in countries where citizenship is an automatic acquisition. It is recommended that UNHCR, together with other UN agencies, develops guidelines based on documented good practises, which provide countries guidance on establishing legal practises that ensure birth registration and pathways for the acquisition of citizenship for all. These guidelines should be based on known good practices, from different legal contexts, and cover issues such as

1. the recording of the nationality of children on birth records and certificates,
2. birth registration processes for population segments who might not be citizens by birth.
3. Examples of types of institutions that are legally competent to do citizenship determinations by birth.

Article 7 of the Convention of the right of the child must be kept in mind when developing these guidelines. The child does not only have right to name immediately after birth but also to acquire a nationality. *"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."*[31]

This is in line with a recommendation in a new yet unpublished research article on the risks of statelessness of long-term refugees in the Great Lake region by Bronwen Manby. It is recommended that AU and UN agencies provide guidance on the information to be recorded in birth registers and certificates regarding the nationality of refugee parents and – especially – their children.[32]

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[29] Child Protection Brief: Birth Registration, UNHCR https://www.refworld.org/docid/523fe9214.html

[30] In Namibia, for example, one case involved two children born to non-citizen parents in Namibia just a few years apart. One child was registered as a Namibian citizen at birth, while the other was issued with a 'non-citizen' birth certificate. The issue of the non-citizenship birth certificate to the one child was challenged, and the case went all the way to Namibia's Supreme Court, which found that this child was in fact a Namibian citizen by birth. But most families would not be able to mount this kind of legal challenge to an administrative determination of citizenship. *MW v Minister of Home Affairs* [also known as *De Wilde v Minister of Home Affairs*] 2016 (3) NR 707 (SC), available at https://namiblii.org/na/judgment/supreme-court/2016/12#:~:text=%5B5%5D%20Mr%20de%20Wilde%20launched,a%20full%20Namibian%20birth%20certificate.

[31] The Convention of the Right of the Child, 1989 https://www.unicef.org/child-rights-convention/convention-text#

[32] Manly, Bronwen, Risks of Statelessness for long-term refugees in the Great Lake, UNCHR, 2022 (Draft report)

6. THE STATUS OF BIRTH REGISTRATION IN SADC

Although significant efforts to improve birth registration have been observed in most countries in Southern Africa over the past two decades, the lack of timely and reliable birth registration data makes it difficult to measure actual improvements. Completeness rates, disaggregated by age and sex, are essential yardsticks for a country's performance level in terms of birth registration and other vital event registrations. Most countries still rely on survey data to calculate the completeness of birth registration.

Only a handful of SADC countries can yet generate vital statistics based on data collected in the Civil Registry. Botswana, Lesotho, Mauritius, Namibia, Seychelles and South Africa have all published vital statistics reports, with Lesotho and Namibia being the latest countries to achieve this target.

The data used in this report comes both from surveys and national vital statistics reports. The data sources are captured in each country's profiles. Three countries (Botswana, Mauritius and Seychelles) have announced that they have reached universal birth registration of children under the age of one. Nevertheless, significant disparities exist within the SADC region; only half of the 16 countries examined report birth registration rates above 75% under the age of five.

Mauritius and Seychelles are the only countries to report universal birth registration for children under five, followed by Congo (Brazzaville), with a birth registration rate of 96%. Angola and Zambia have the lowest birth registration rates, 25% and 14%, respectively, and are amongst the countries in the world with the lowest birth registration rates.

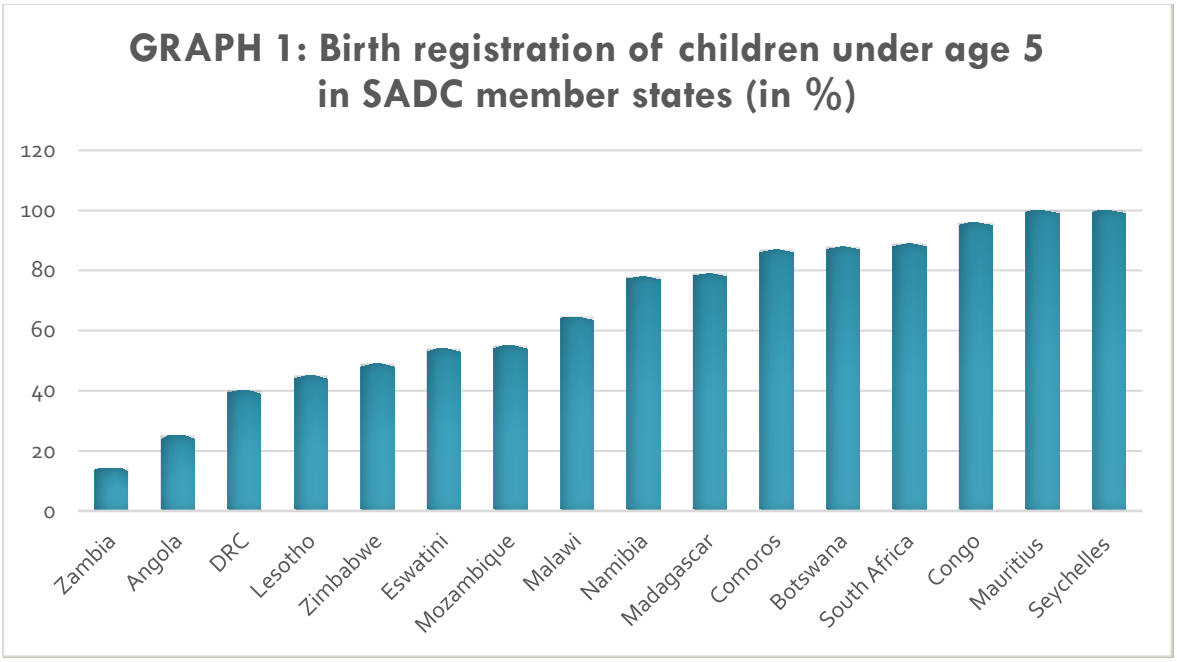
Despite a high degree of political will and numerous efforts to improve birth registration rates, Zambia has seen little progress in numbers; its birth registration rate rose from 11% in 2014 to 14% in 2018. [33] However, it must be noted that Zambia has large regional variances, with the Copperbelt, Central and Lusaka provinces having the highest birth registration rates in the country (29%, 22% and 21%, respectively).

According to Demographic Health Surveys, Namibia has recorded a significant increase in birth registration of children under the age of five, from 67% in 2007 to 87% in 2013.[34] In contrast, Zimbabwe has recorded a decline in birth registration rates from 49% in 2010 to 44% in 2015.[35]

[33] Zambia: Demographic Health Survey 2018

[34] Namibia: Demographic Health Survey, 2007 and Namibia: Demographic Health Survey, 2013

[35] Zimbabwe: Demographic Health Survey, 2015/2016



Graph 1: Percentage of children registered under age 5 in SADC member states [36]

When considering comparative statistics such as these, it is important to remember that national statistics can mask gaps in levels of birth registration among highly vulnerable children – such as children living outside of family households; undocumented nationals, [37] refugees and migrants, or other groups who are being left behind in the birth registration process. Comparing vital statistics generated by CRVS systems with external data sources is beneficial to test for systemic exclusions. This could, for example, be surveys and independent research carried out by independent research institutes.

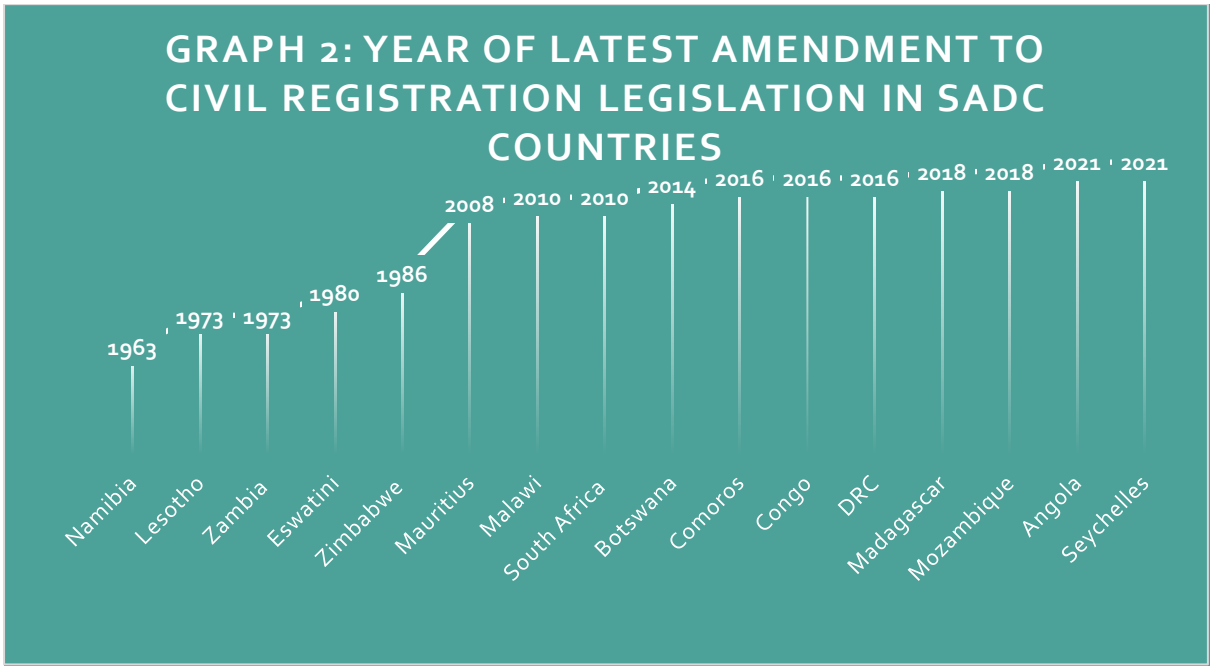
One development with a great deal of potential to enhance future data on the completeness of birth registration is the increased incidence of births taking place in healthcare facilities; in many SADC countries, health facility notification systems are being introduced to generate data on births that can be compared with birth registration data and used as a basis for outreach to secure the registration of children whose parents have not come forward to complete the process.

[36] This table was constructed by the authors from information in UNICEF, The State of the World's Children 2021, https://www.unicef.org/media/114636/file/SOWC-2021-full-report-English.pdf. The UNICEF data is drawn from the most recent DHS, MICS, other national surveys, censuses and vital registration systems, based on the most recent report for the period 2011-2020, last updated in February 2021.

37 Nationals who do not hold any legal government issued identification, such as birth certificates, ID cards, or passports.

7. LEGAL SAFEGUARDS IN CIVIL REGISTRATION LEGISLATION FOR THE PREVENTION OF STATELESSNESS

Globally, conflicting and outdated civil registration laws prevent children from being registered at birth and may put them at risk of statelessness. This study found that most countries in the SADC have recently amended or passed new legislation on civil registration – the latest being Angola, Seychelles, Madagascar and Mozambique. Five countries in southern Africa have not amended their civil registration legislation in more than 40 years, namely Namibia, Lesotho, Zambia, Eswatini and Zimbabwe, although Lesotho added provisions related to birth registration in its Children's Protection and Welfare Act of 2011 and scrapped the fee structure in its birth registration regulations in 2021[38], while in Namibia a new Civil Registration and Identification Bill, merging all legislation on civil registration and identity management, is expected to go to Parliament in late 2022. Malawi's National Registration Act is also under review. See graph 2 for a full overview.



Despite this positive trend, the legal frameworks are, according to our analysis, generally inadequate and in need of stronger safeguards against statelessness. For example, few laws deal adequately with registering children born to undocumented migrants or nationals. It is not an uncommon practice to require parents to provide state-issued identification documents, such as passports and IDs, as a pre-requisite to the birth registration of their children - leaving children of undocumented parents unregistered or unable to qualify for citizenship. Also, most legal frameworks do not provide sufficient legal guidance on late registration, often imposing fees but failing to provide any additional procedures to check the accuracy of the delayed information.

By studying global and regional guidelines and the legislative framework of the 16 member states of SADC, 13 legal safeguards for more robust mechanisms in birth registration law to

[38] Lesotho Government Gazette, vol. 100, no. 100, Friday, 5 November 2021.

prevent statelessness have been developed by the authors.[39] These legal safeguards were also used to analyse the gaps and best practices in the national legislation in this study, which are presented as chapters in the text below to provide insights into the level of protection against statelessness offered in current national laws on civil registration in SADC. Each of these benchmarks will be dealt with in detail below.

The causes of statelessness vary from country to country, and the levels of risk of statelessness. The interaction between birth registration laws and citizenship laws must be considered to inform understanding of the risk of statelessness, as well as factors outside the legal framework such as the completeness of birth registration coverage, practices on the ground that affect the implementation of each country's laws, the systemic exclusion of certain vulnerable groups from the civil registration system, and actual interventions to ensure inclusivity. Nevertheless, birth registration laws with legal solid safeguards against statelessness are a key starting point for reducing statelessness.

LEGAL SAFEGUARDS AGAINST STATELESSNESS IN CIVIL REGISTRATION LEGISLATION

1) Child's right to birth registration: Birth registration should be the right of all children born in a country regardless of their parents' citizenship, status or background. Legal provision for the registration of children born outside a country to nationals of that country is a useful additional safeguard given that such children are often entitled to the citizenship of their parents.

2) Compulsory birth registration: Birth registration must be compulsory for all births, yet ideally without imposing sanctions that might discourage birth registration. Sanctions and fees affect the most marginalised groups hardest and are a barrier to birth registration and, thus, proof of place of birth and family relations. Best practices focus on outreach and encouragement rather than sanctions.

3) Duty and ability to declare the birth of a child: The law should clearly state who has the *duty* to declare a child's birth and who has the *ability* to declare the birth of a child when persons with a primary duty to do so are unavailable or fail to act. For instance, at a minimum, it should be possible for either of a child's parents to declare the birth alone if the other parent is unable or unwilling to participate in the registration process. The persons who are able to declare a child's birth should be identified explicitly, keeping in mind the need to cover children who are not living with their biological parents, including children in alternative care, by providing authority for birth registration by extended family members, other persons who with custody of a child, government institutions or social workers if the parents are not available or not willing to act. As discussed below, there should also be clear procedures for registering abandoned, orphaned, and adopted children. Explicit registration processes, drafted in conjunction with citizenship laws, can reduce the risk of statelessness for the most vulnerable children.

4) Health sector involvement: The role of the health sector to notify births must be explicitly outlined in the law, to provide a reliable source of data for the registration of the child, and provides information that can be used for outreach by civil registration authorities where birth registration does not follow promptly after birth takes place. Other sectors can also be involved in notifying home births, depending on the country's circumstances. Notification of registration of births by health sectors provides essential evidence for the establishment of citizenship of

[39] Civil Registration, Vital Statistics and Identity Management (CRVSID, Legal and Regulatory Review Toolkit https://advocacyincubator.org/wp-content/uploads/2022/03/CompleteToolkit.pdf

the child. In some countries in Africa, health sector staff have been delegated the duty to declare births, ensuring the birth is registered immediately after it has occurred.

5) Evidence for birth registration: Documentary requirements must be stipulated but must never hinder a child's birth registration. Birth registration should take place whenever it can be reasonably confirmed that a birth has occurred and has not been previously registered, with missing information being simply noted as omitted if necessary. In particular, there should be clear procedures for registering children born to undocumented and stateless parents**.**

6) Late birth registration: Procedures for late birth registration must be explicitly outlined, including the documentary requirements or alternative forms of evidence if birth notifications from health facilities or other usually required documents are unavailable. It is important that in light of the deficiency of some civil registration systems, states consider adopting the concept of "possession d'état de national", that is, on the basis of evidence that a person has always been treated as a national, s/he should be issued with a birth certificate establishing. It is reasonable to require additional investigation or verification for delayed registrations, but fees or other penalties that might discourage registration should not be imposed. Late registration allows older children and adults to be documented and acquire citizenship and access to identity documents.

7) Abandoned children: There should be clear procedures (in civil registration or child protection laws) for registering the births of abandoned children, regardless of age; in many cases, current laws cover only abandoned "infants" or "new-borns". Abandoned children of all ages, including children living in the street, are at high risk of statelessness.

8) Orphaned children: There should be clear procedures (in civil registration or child protection laws) for registering the births of orphaned children. In addition to authorising appropriate persons to declare the births of such children, it is necessary to consider situations where the parents' identity documentation and/or death certificates are unavailable or where there are challenges in proving the parental relationship.

9) Children born to mothers in prison: Although such children should be covered by laws that mandate universal birth registration; it is useful to clarify the coverage of this group, as children might later be placed with family members or childcare faculties with little or no access to the mother, or the identity documents of the mother.

10) Children born to asylum-seekers and refugees: Although such children should be covered by laws that mandate universal birth registration, it is useful to clarify the coverage of this group. It is also important to stipulate the documentation that will be required from asylum-seeker and refugee parents, who may not have paperwork required from the countries they have fled.

11 Adopted children: There should be clear procedures (in civil registration or adoption laws) on how to record the details of an adopted child in the birth register after the adoption procedures have been finalized.

12) Reconstruction of lost or damaged records: There should be a legal provision to re-create a birth record if the original record has been lost or damaged. This can be particularly important in countries that are digitalising their records, as this process may bring to light gaps in past record-keeping or record storage. If such a provision is not in place, entire segments of the

population could become at risk of statelessness, particularly those who do not have paper or digital certificates.

13) Appeal procedures: The legal framework must provide an accessible appeal process for refusal to register a birth, decisions on the record of parentage in respect of birth registration and any determination of citizenship that is made in connection with birth registration (such as where different birth certificates are provided to citizens and non-citizens).

Our analysis also identified seven groups of children at particular risk of statelessness in SADC countries due to the absence of solid legal provisions in domestic civil registration laws. It must be noted that universal birth registration is an essential premise for preventing statelessness but not an absolute safeguard. Some children belonging to the identified categories are prone to becoming stateless despite being registered and issued with birth certificates if citizenship laws are not amended or correctly applied or if bilateral agreements with the countries of origin of their parents are not established. Common across all the categories identified children is that their family's circumstances are likely to be vulnerable due to difficult living circumstances, poverty, migration, or general lack of accessibility to government services. This is in line with global statistics showing that children in the lowest income groups are at the highest of not having their births registered.[40]

Categories of children at highest risk of statelessness in SADC due to insufficient legal safeguards in domestic civil registration and citizenship laws

- Children of undocumented parents, not limited to migrants.
- Abandoned children, street children and trafficked children. Older children without parents are more at risk of not being registered, as the laws of most countries cover only the registration of abandoned infants or new-borns.
- Orphans who are not registered at birth or live in child-headed families. The older the child gets, the higher the risk.
- Children who are not living with their parents but in orphanages or extended families. The older the child gets, the higher the risk.
- Children of migrant parents (covering both historical and contemporary migration).
- Children of asylum seekers and refugees.
- Border populations and nomadic ethnic groups.

7.1. Child's right to birth registration

Universal registration of all vital events is one of the key principles for a well-performing CRVS System that is aligned with Article 7 of the Convention of the Right of Child (CRC), which states that birth registration is the right of a child from birth.

[40] UNICEF, Birth registration for every child by 2030: Are we on track?, 2019 https://www.unicef.org/media/62981/file/Birth-registration-for-every-child-by-2030.pdf

> *"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."*[41]

All the SADC member states are parties to the CRC, but not all the countries have domesticated the provisions related to birth registration or nationality. A few countries – including Malawi, Namibia and South Africa – have incorporated this provision in their constitutions, while others – including Eswatini and Lesotho – have domesticated the right to birth registration in their child protection legislation.

Recommendation: It is recommended that all states should domesticate the right of the child to birth registration and nationality immediately after birth.

7.2. Compulsory birth registration

A universal right to birth registration implies that domestic legislation on civil registration must establish legal requirements and procedures to register *all* births. Reassuringly, all the countries in the SADC have made birth registration compulsory for all. Less encouraging is that this principle might not be observed in practice, partly because of a lack of policies to guide the implementation of the law.

In fact, the principle of universal birth registration has proven to be challenging to implement on the ground for many countries, especially if the population, in general, lacks documentation or if the country houses large undocumented migrant populations. For instance, in South Africa – where many citizens lack documentation due to the apartheid policies of the past – despite a decade of campaigning for timely registration and a high level of political will, universal birth registration for all has not yet been achieved.

It is also important to ensure that the mechanisms applied to make birth registration compulsory do not operate to discourage birth registration altogether. Fines and other sanctions – even if infrequently applied in practice – can discourage compliance. For example, in Namibia, during consultations around law reform on birth registration in 2012, some school-age children without birth certificates reported that they wanted to approach authorities to seek birth registration on their own but feared that this might lead to sanctions against their parents.[42]

Fees and penalties are widely documented to hamper the registration of vital events. According to the UN, fees or penalties for registration are generally not effective in preventing late or

[41] The Convention of the Right of the Child, 1989

[42] Namibia's current Births, Marriages and Deaths Registration Act, No. 81 of 1963, provides a fine for contravention of the provision of the Act on the duty to register the birth of a child, but this sanction is not generally applied in practice.

delayed registration but instead act as a disincentive to registration. Therefore, it is generally recommended that no fees be charged for the registration of births or a death.[43] [44]

All countries in the SADC region offer free birth registration when the registration takes place in a timely manner. The same cannot be said for late birth registration, which is discussed below.

The best practice is to make timely birth registration compulsory, emphasising "carrots" instead of "sticks". For example, many SADC countries have provisions requiring civil registration staff to engage in outreach, collaborate with the health sector or tie birth registration to access social grants can also be a positive encouragement.

Recommendation: It is recommended that there are no fees or penalties for the registration of children under the age of 18 years old and that birth registration should be encouraged as opposed to penalizing non-registration.

7.3. Duty and ability to report the birth of a child (Informants)

The legal framework must explicitly specify the individual(s) or agencies that have a duty to declare a birth (typically one or both parents), as well as alternates in the event that the individuals/agencies holding this duty are unavailable or unable to register the child or fail to do so. Additional responsibilities to report a birth can also be placed on government officials – such as local government officials, tribal or traditional leaders, social workers or health workers.[45] In other places in Africa, like Rwanda and Tanzania, legal powers to register birth have been delegated to health personnel, giving an impressive rise to birth registration completeness.

Civil registration laws should also specify who has the authority to declare a birth in the absence of those who bear a legal duty to do so. For example, the ability to report an unregistered child could be given to government officials, extended family members or even the unregistered children themselves once they reach a stage of sufficient maturity.

Such provisions are crucial for abandoned or unregistered children who are not living with their biological parents. Creating alternative pathways to birth registration ensures that no children are excluded due to their social context or living arrangements.

All the countries examined provide the ability, or impose a duty, to report a child on other persons or authorities if the parents fail or are unable to register. All the countries place the primary duty on one or both parents, but countries vary on the point of who bears the secondary duty. In many countries, it is relatives. The Seychelles *Civil Status (Amendment) Act 2021*

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[43] UN Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems (Second Draft), 2019 https://unstats.un.org/unsd/demographic-social/Standards-and-Methods/files/Handbooks/crvs/CRVS_GOLF_Final_Draft-E.pdf

[44] UNICEF Birth registration for every child by 2030: Are we on track?. 2019 https://www.unicef.org/media/62981/file/Birth-registration-for-every-child-by-2030.pdf

[45] UN Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems (Second Draft), 2019 https://unstats.un.org/unsd/demographic-social/Standards-and-Methods/files/Handbooks/crvs/CRVS_GOLF_Final_Draft-E.pdf

provides an excellent example of how to ensure a legal pathway for registering all children by providing a list of alternatives to suit a range of possible care situations. See the box below.

SEYCHELLES Civil Status (Amendment) Act , 2021

Section 34: Registration of births

(1) The registration of the birth of a child born at any place within Seychelles shall be done within 30 days of the birth of that child.

(2) The registration of the birth of a child shall be completed by —

(a) the mother and father of the child; or

(b) the child's mother, if the father is deceased or incapable of registering the birth of the child or if the father is unacknowledged by or unknown by the mother; or

(c) the child's father, if the mother is deceased or incapable of registering the birth of the child; or

(d) a person having lawful custody of the child if both parents are deceased or incapable of registering the birth of the child; or

(e) a person authorized in writing by the mother of the child.

(3) If the birth of a child is not registered within a period of 15 days of the birth of that child, the Chief Officer shall send a written notice to any person specified in the notification of birth to appear before the Chief Officer to register the birth of the child in accordance with subsection (1).

7.4. Gender discrimination

Equally important, civil registration laws must give the parents equal rights to declare a birth – and in the absence of one parent, the other parent must be able to register the birth, as in the example of the Civil Status law of Seychelles above.

Worldwide, it is not uncommon for civil registration legislation to encompass gender discrimination - by excluding women from registering births of children altogether, by allowing women to register births only in exceptional circumstances or only if the child was born inside marriage. [46] Fortunately, none of the SADC countries exclude women from registering the births of their children. However, in Eswatini, the law is unclear. While the *Children's Protection and Welfare Act 2012* places equal responsibility on both parents to register their child's birth, *The Births, Marriages and Deaths Registration Act, 1983* specifically mentions only the father as having the primary responsibility to carry out the registration, followed by "any person present at the birth" (which presumably includes the mother), but only where the father has died, is absent or is unable to declare the birth.

Most SADC countries have laws which discriminate against fathers in respect of the ability to declare the births of children born outside marriage – in many instances stemming from times when children born outside marriage were considered to be legally related only to the mother because it was not scientifically possible to prove paternity with certainty. The corollary is that some civil registration laws allow only mothers to register the births of children born outside marriage.

[46] UNHCR and UNICEF: Background note on Sex Discrimination in Birth Registration, 2021 https://www.refworld.org/docid/60e2d0554.html

GENDER ISSUES IN BIRTH REGISTRATION \		
Country	General duty to report/declare birth	Birth registration of child born outside marriage
Angola	Legal duty to register birth falls **first on the father** and **passes to the mother only secondarily**	In addition to the general requirements, the birth certificate shall indicate whether the child is legitimate or illegitimate.
Botswana	Equal duties on both **parents**	Birth certificate must indicate the names of both parents of a child, regardless of whether the child was born inside or outside marriage (presumably where the identity of both parents has been established)
Comoros	**Father or mother**	A child born in wedlock bears the name of the father. A child born out of wedlock bears the name and surname given to him by his mother. However, a mention is entered in the register in the margin of the child's birth certificate, indicating that this name is not that of the child's father, who remains unknown. This mention will not appear in any case in the copies and the extracts of the birth certificate issued by the registrar. It will not appear in any official document concerning the child.
Congo (Rep of)	**Father or mother**	Parentage is governed by the law that governs the effects of marriage. Natural parentage is governed by the national law of the mother and, in the case of recognition by the father, by the latter's national law.
DRC	**Father or mother**	Provision for listing the particulars of both mother and father on the birth record of a child born outside marriage if paternity is acknowledged by the father
Eswatini	Equal duties on **both parents**	Father can acknowledge paternity only with the consent of the mother – or in the case of her death or unavailability, with the consent of a close relative of the mother or another person with knowledge of the child's birth Citizenship rules require descent from a citizen-father, with descent from a citizen-mother being recognised for citizenship purposes only where the child is born outside marriage, and the father does not adopt or claim the child.
Lesotho	**Father or mother**	Father may be listed on the child's birth record only at the joint request of the father and the mother and upon the father's acknowledgement of paternity
Madagascar	**Father or mother**	Father must conduct the birth notification or provide an acknowledgement of paternity by proxy Citizenship rules require descent from citizen-parent, but whether this must be the mother or father differs for children born inside and outside marriage
Malawi	**Father or mother**	Father can be listed as a parent only if paternity is proved in court or if he acknowledges paternity and this is not disputed by the mother
Mauritius	**Father or mother**	Father's name will be included in the birth record only if he has acknowledged paternity in person or via an agent with a power of attorney

Mozambique	Father or mother[47], [48]	Since the adoption of the Family Law in 2004, there is no longer any distinction between "legitimate" and "illegitimate" children.[49]. Single Mozambican mothers can now register their children under their maiden name and choose to register them as having a father other than her husband.[50]
Namibia	Current law: Legal duty to register birth falls **first on the father** and **passes to the mother only secondarily** Proposed new law: Equal duties on **both parents**	Current law: Father can be named in the birth record only with the mother's participation and consent. Father cannot register birth without the mother and must acknowledge paternity in person at the registration office. Proposed new law: Paternity based on factual proof of parentage, regardless of who is notifying the birth.
Seychelles	Equal duties on **both parents**	Father named on birth record on joint application with mother or if there is proof of paternity in the form of a court order or a DNA test
South Africa	Equal duties on **both parents**	A requirement that birth registration must be made by mother or jointly by mother and father ruled unconstitutional
Zambia	**Father or mother**	Father does not have a duty to notify birth and can be listed in the birth record only on joint request with the mother
Zimbabwe	**Father or mother**	The father is not required to acknowledge paternity and may do so either jointly with the mother or on his own if the mother of the child is dead or has abandoned or deserted the child; the mother can also include the father on the birth record if father is dead on joint request with the father's parent or other near relative

In South Africa, the *Births and Deaths Registration Act, 1992, as amended*, required that the notice of the birth of a child born "out of wedlock" must be made by the mother of the child or jointly by the mother and father. The law and regulations were silent on the procedure to follow if the mother, for example, perished in childbirth or did not carry out the duty to submit the notice of birth. In this way, the law discriminated against the fathers of children born outside marriage and the affected children. This provision was found to be unconstitutional by the High

[47] A 2004 reform of the Civil Registration Code of Mozambique also allows either parent to register the birth and obtain a birth certificate. Article 149 of Law No. 12 on the Civil Registration Code 2004 (as amended by law 12/2018), https://www.refworld.org/pdfid/60e2d0554.pdf

[48] Sample birth registration form, indicating check boxes for unknown mother or father. https://data.unicef.org/wp-content/uploads/2017/12/birthCertificate_Mozambique.pdf

[49] Convention on the Rights of the Child. Committee on the Rights of the Child; Fifty-second session Summary record of the 1430th meeting; September 2009. https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsialUb%2BZGftp59yZHGEX789WG3OnGAAWGOo0Y41fe1S02YWVlOvZabyykWrYw3m9R2n5gHl4%2FwcvKkZGy4sED2rufDgKCwjEKw%2FatCd0wzcM

[50] Article 238(1) of the Mozambique Family Law, 2004 (amended by law 22/2019).

Court in May 2020,[51] with the holding being confirmed by Constitutional Court in 2021.[52] The effect of these court rulings is that mothers and fathers should have the same duties and capacities regarding the birth declaration of their children.

Recommendation: The Civil registration law must give the parents equal rights to declare a birth – and in the absence of one parent, the other parent must be able to declare the birth.

7.5. Health sector involvement

Globally, births occurring in health facilities are increasing, which is encouraging news for efforts to enhance birth registration. Health authorities play an essential role in facilitating the collection of evidence about a child immediately after birth, which is essential for creating a birth record and verifying the child's identity. An electronic health notification process can also simplify the birth registration process, saving the parents from having to submit supporting documents and making it possible to complete the process with only one trip to the civil registration authorities.

Ideally, birth registration laws should give the health sector a legal duty to collect the information needed for birth registration and transmit this information to civil registration authorities.[53] Manual birth notification is common across the countries; only Mozambique and Namibia[54] have digitalised their health notification processes. In Namibia, one of the key motivating factors for introducing the e-notification system in 2016 was to collect evidence of the child's date of birth, place of birth and family relations at the time of birth; this provides a basis for verification of the child's identity and can also allow parents a longer grace period for registration since the key evidence has already been established.

In Namibia, the civil registration authorities receive endless requests for the correction of birth dates, which was declared before the requirement for a health notification was put in place around 2000. Many of these requests have no or little evidence of the facts, placing a large administrative burden on the system as many such cases are difficult to resolve. Moreover, large numbers of changes in birth dates served as an obstacle to building trusted identities as government was moving toward a new e-governance system. The health notification system should prevent this kind of uncertainty about key facts. The system is also helpful in Namibia's northern border regions, where Angolan citizens frequently travel to give birth due to Namibia's universal health policies. Clear information about the factual circumstances surrounding a

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[51] *Centre for Child Law v Director-General: Department of Home Affairs and Others* (CA 319/2018) [2020] ZAECGHC 43 (19 May 2020) http://www.saflii.org/za/cases/ZAECGHC/2020/43.html

[52] *Centre for Child Law v Director General: Department of Home Affairs and Others* [2021] ZACC 31 https://collections.concourt.org.za/bitstream/handle/20.500.12144/36654/%5bJudgment%5d%20CCT%20101-20%20Centre%20for%20Child%20Law%20v%20Director%20General%20Department....pdf?sequence=18&isAllowed=y

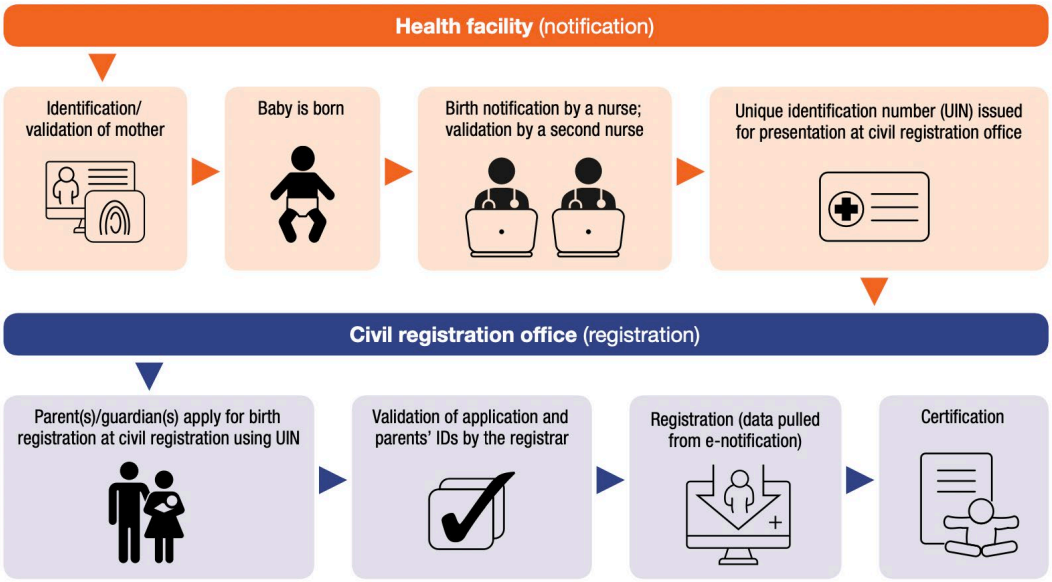
[53] UNICEF and WHO, Health sector contributions towards improving the civil registration of births and deaths in low-income countries https://reliefweb.int/report/world/health-sector-contributions-towards-improving-civil-registration-births-and-deaths-low, 2021

[54] Forsingdal, Anette Bayer and Tulimeke Munyika, Technical Brief: Building resilient Civil Registration and Vital Statistics Systems amid COVID-19: Namibia as a good practice, IDRC, 2021 https://crvssystems.ca/sites/default/files/assets/images/CRVS_Webinar_Namibia_e_WEB.pdf

child's birth makes it easier to determine whether the child qualifies for citizenship by birth under the criteria set out by the Namibian Constitution.

Only the laws of Mozambique, Seychelles and South Africa currently stipulate procedures for notification of birth by the health sector. However, Namibia has included health notification processes in its proposed new civil registration bill.

GRAPH 3: Electronic health notification process in Namibia provides for verified evidence of child's birth



Recommendation: Health notification processes should be clearly stipulated in the civil registration legislation, regardless of whether a country has a manual or electronic health notification system in place.

7.6. Evidence for birth registration

As a fundamental principle, registrars of birth should require evidence to validate the information pertaining to a birth registration. The UN guidelines state that "*the proof or evidence required for registration must be sufficiently stringent to assure the information's accuracy without being so burdensome as to discourage or prevent registration*".[55] While the required evidence can be documentary or oral, documentary evidence is always preferred since a birth record establishes the person's legal identity and is the source for other documents to be issued to the person in question.

The most reliable and common form of documentary evidence is the notification of birth from the health sector, considering that this notification is verified by persons who have witnessed the birth. If a health facility or birth attendant is the primary informant and notifies the registrar

[55] UN Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems (Second Draft), 2019 (para 272) https://unstats.un.org/unsd/demographic-social/Standards-and-Methods/files/Handbooks/crvs/CRVS_GOLF_Final_Draft-E.pdf

directly, the child's parents will not need to submit further proof of the date and place of birth and other key characteristics.

In the absence of a health notification, testimony or affidavits of witnesses should be used as evidence of the birth, keeping in mind that the validity of the oral evidence loses value over time and that multiple witnesses might be needed for reliability. Evidence of a child's birth in such cases is likely to be more reliable for young children than for older children; it is easier to estimate the age of a younger child than an older child, and it is more likely that there will be persons who can validate the place of the birth where the birth took place recently.

The legal framework should also specify the documents required besides the proof of birth – such as the parents' identification documents to verify their identity.

However, there must always be exceptions to allow children to be registered. The evidence requirements must never block the registration of a child's birth, and the law should allow for alternative evidence of parental identity if the parents are undocumented. It is a good practice that the Birth Registry registers unregistered parents before registering a child, especially in countries with straightforward late registration procedures. The registration of a child then becomes less complicated if the parents are registered.

Legislation must also provide discretionary powers to registration officials to complete the registration process with the available information, for example, in cases where the parents' details are unknown, or the applicant cannot remember his/her exact birth date or place, but there is enough supporting evidence that the person was born in the country.

There are varying examples of how SADC countries have dealt with exceptions to the usual documentation requirements in their efforts to register children where little documentation exists. The Malawi legislation lays out which documentation is required for different types of registration. See the regulations below, which in cases where the birth has occurred outside a hospital, the village headman or cleric of a religious institution can sign the application. In Lesotho, the *Birth and Death Registration Act 1974* allows witnesses to come to a physical office to provide evidence.

Gaps in who has the duty and ability to report a birth, coupled with the evidence requirements established by law, are two factors that have the greatest potential to serve as barriers to the registration of children. To provide clear guidance and procedures, this study recommends that registration procedures should be explicitly outlined for different types of registration. This will leave little room for misinterpretation by registrars, even if overlaps are evident.

MALAWI: Regulations issued under the National Registration Act, No. 13 of 2010

The regulations state that birth particulars must be verified. It is required that different authorities sign the application forms, depending on the circumstances.

Regulation 23(1):

(1) The particulars in regulations 21 and 22 [birth reports] *shall be verified by any of the following*

(a) in the case of birth occurring outside a hospital or late registration, the village headman and a senior member of the village where the parents hail from, or a cleric of the religious institution in which the parents or one of them is a member;

(b) in the case of an abandoned child, the Social Welfare Officer of the District in which the child was found exposed and a letter from such Social Welfare Officer supporting the application shall accompany the birth report;

(c) in the case of an adopted child, a certified copy of an adoption order issued by a court, shall accompany the birth report;

(d) in the case of an adopted child whose adopting parents are non-Malawian citizens, certified copies of an adoption order issued by a court, and the relevant immigration permit of the adopting parents authorizing their stay in Malawi shall accompany the birth report;

(e) in the case of non-Malawian citizens, certified copies of the relevant Permanent Residence Permit, or Business Residence Permit or Temporary Employment Permit shall accompany the application; and

(f) in the case of Malawian citizens who are naturalized citizens or citizens by registration by the Malawi Citizenship Act, certified copies of their passports and Malawi Citizenship Registration Certificate shall accompany the application.

(2) Where birth occurs in a hospital or health facility, the health personnel responsible shall assist in filling a birth report in Form NR8 in the Schedule hereto.

LESOTHO: Registration of Births and Deaths Regulations, Legal Notice 14 of 1974, as amended

Regulation 6: Reporting of events

(1) A person whose duty it is to register a birth or death shall send or deliver to the district registrar of the district in which the birth or death occurred a notice –

in the case of a birth, in form C of the First Schedule; and

in the case of a death, in form D of the First Schedule.

(2) For the purpose of verifying the-prescribed particulars and the amplification or correction thereof the district registrar may by notice in writing require the informant or any other person-whose duty it is to register the birth or death or, in default of such person, any other reliable person having knowledge of the truth of the case, to attend personally at its office within a reasonable specified time to supply such further evidence or information as may be required. The informant shall then certify to the correctness of all alterations or additions so made to the prescribed particulars by affixing his initials or mark and the date thereto.

(3) The district registrar shall preserve the notice and such other written evidence as may have been submitted to him in support thereof as he may deem advisable.

The issue of what evidence is required for birth registration is particularly acute for children born to undocumented parents, who are probably the group of children at the greatest risk of non-registration and statelessness in Southern Africa. None of the legislation examined contained a clear provision or processes on how to ensure that children of parents without documentation can be registered, and little international guidance exists besides the UN principle that "*proof of identity should be provided without discrimination or distinction based on geography; racial, ethnic or religious group; status as a member of a nomadic, indigenous, native or aboriginal population; status as displaced, stateless, refugee, asylum seeker, or a*

person of undetermined nationality; or status as a foreign national born in the country or temporary worker; or any other characteristic."[56]

Recommendation: It is recommended that evidentiary requirements should be clear and appropriate to different categories of individuals for whom birth registration is sought, with sufficient flexibility to ensure that individuals are not left unregistered and at risk of statelessness. Civil registration laws must strike a balance between ensuring trusted identities and preventing exclusions that can be replicated over time if a generation of unregistered persons gives birth to a new generation of children who are prevented from being registered by virtue of having undocumented parents.

7.7. Late birth registration

UNHCR advocates that countries should have legal procedures for late birth registration so older children and adults can obtain birth certificates after the deadline for timely birth registration has passed.[57] Making provision for late birth registration is an important instrument to prevent statelessness amongst vulnerable groups.

The time periods that separate timely birth registration from late registration vary from country to country. Madagascar and Comoros have the shortest deadlines, at 12 and 15 days, respectively, while Lesotho and Zimbabwe only consider birth reported by the parents after a year as a late registration.

A birth registration deadline shorter than 30 days is not feasible for many people, particularly in communities where the grandparents give the first name after the birth of the child or as a part of a traditional ceremony or in rural areas where distances to civil registration offices may be long. Name-giving and traditional ceremonies are often done several months. The registration of children of migrant workers, where the father is not present in the country at the time of birth of the child, is also often delayed, especially if the parents are not married, as the father will have to declare paternity before the registration of the child.

Parents are more likely to register a birth in a timely fashion if an incentive is linked to birth registration, such as eligibility for a child grant. Placing birth registration offices at the health facility where the birth takes place also encourages timely registration.

While late registration should be discouraged in principle to ensure vital events are registered as soon as possible after they occur, it is paramount that deadlines are not so restrictive that they prevent or discourage registration overall.[58]

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[56] UN Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems (DRAFT)

[57] UNHCR Child Protection Issue Brief: Birth Registration, 2013 https://www.refworld.org/pdfid/523fe9214.pdf

[58] UN Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems (Second Draft), 2019 https://unstats.un.org/unsd/demographic-social/Standards-and-Methods/files/Handbooks/crvs/CRVS_GOLF_Final_Draft-E.pdf

Late birth registration		
Country	**Time period after which registration is considered late registration**	**Consequences of late registration**
Angola	30 days	Criminal prosecution of the person who failed to declare the birth and verification of particulars at that person's expense.
Botswana	60 days	Fee for late registration and extra documentation requirements; late registration takes longer to complete.
Comoros	15 days	Court judgment is required for late registration.
Congo (Rep of)	30 days	Late declarations may be received for up to three months after the birth of the child. Failure to make a declaration within the time limits is punishable by a fine of 2,500 to 10,000 francs. If the Presidents of the Village or Neighbourhood Committees fail to inform the Registrar of Civil Status of late registrants, the Presidents themselves are liable to a fine of 2,000 to 5,000 francs.
DRC	90 days	Fine imposed
Eswatini	90 days	Authorisation of Registrar and payment of a fee.
Lesotho	1 year	Written authority of the registrar.
Madagascar	12 days	Possible criminal offence resulting in a fine and/or imprisonment of 500 to 25,000 francs, and possibly up to 29 days imprisonment
Malawi	6 weeks	Fee imposed. Higher fees for foreigners.
Mauritius	45 days	Between 45 days and 3 months: Order of a District Magistrate or of the Registrar of Civil Status After 3 months: Order of the District Magistrate on the conclusions of the Ministère Public and payment of a fee. The authorities who are authorised to order late registration may request any evidence they think necessary to determine the exact date of birth.
Mozambique	120 days	Fee imposed
Namibia	1 year	*Current law:* Written authority of official at higher level: fee imposed by law but not enforced in practice *Proposed bill*: Three different registration processes: (1) before child reaches age one, (2) between age one and the minimum age for issue of an ID (currently age 16) (3) "mature person", which is anyone over the minimum age for issue of an ID. Registration is free in all of these categories, but the registration procedures progressively involve more information and investigation
Seychelles	30 days	After 30 days: civil penalty can be imposed which increases with each additional day that the birth is not registered. After 2 months;, the person who has failed to register can be summoned by a judge to appear before the Chief Officer; After 4 months: The Chief Officer will register the child using the information in the medical notification of birth; fee can be imposed.
South Africa	30 days	Different documentary requirements for late registration of children under age one and late registration of older child and fees can be imposed in theory No provision for the late registration of children born in South Africa to non-South African citizens, suggesting that the 30-day time frame may be an absolute cut-off date for this category of births
Zambia	30 days	There are two categories of late registration: (1) between 1 month and 12 months and (2) after 12 twelve months. Registration after 12 months: Authority from by Registrar-General; documentary requirements: baptismal certificate, a certificate from hospital where the child was born, or where the child was not born in a hospital, affidavits from two reliable witnesses to the birth.
Zimbabwe	1 year	Authorisation by the Registrar-General, with right to appeal to Minister if authorisation refused

SADC members states that late registration processes vary but generally raise multiple red flags. Many SADC countries impose fees for late registration, even though there is no evidence that this is an effective way to encourage timely registration.[59]

Several countries have very cumbersome late registration processes; others are not well-mapped out, while a few countries (like Angola, Congo and Madagascar) have provisions for criminal prosecution of persons failing to declare a birth promptly. For example, Article 121 of Angola's Registry Code states, *"Once the legal deadline has elapsed, civil registration officials and administrative authorities shall inform the Public Prosecutor's Office, which shall not only prosecute the person required to make the declaration but also conduct the verification, in the same process, of the elements necessary to draw up the register at the expense of the person responsible."*

In other countries (like Comoros, Madagascar and Mauritius), late registration also requires authority from a judge or a magistrate.

South Africa's late registration process kicks in after 30 days, and the regulations prescribe different documentary requirements for late registration of the birth of a child under age one and late registration of the birth of an older child. These procedures apply only to the birth of children born to South African citizens, permanent residents and refugees.[60] There is no provision for the late registration of children born in South Africa to non-South African citizens, suggesting that the 30-day time frame given may be treated as an absolute cut-off date for persons not falling into the three mentioned categories.

In Botswana, a board (Late registration Assessment Board) has been set up to assess applications for late registration. A centralised process is likely to lead to more harmonized decisions; however, it also bears the risk of long processing times.

Late registration procedures in Botswana

> (1) In the case of late registrations, the declarant also has to bring an affidavit and witnesses to confirm that the event indeed occurred. These extra steps are designed to prevent ghost registrations.
>
> (2) The application form is considered by the "Late Registration Assessment Board "for data authentication and authorization". The Board is based at the head office of the Department of Civil and National Registration in Gaborone. The board can either ask for additional information, refer the matter for further investigation, or approve or reject the registration.
>
> (3) If the case is approved, the applicant's details are immediately entered into the registration system, at which point the registration process is completed, and a certificate can be issued.
>
> (4) The customer can collect a certificate from any of the DCNR offices countrywide since the births and deaths registration system is decentralized and connected to the central database[61]

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[59] UN Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems (Second Draft), 2019 https://unstats.un.org/unsd/demographic-social/Standards-and-Methods/files/Handbooks/crvs/CRVS_GOLF_Final_Draft-E.pdf

UNICEF Birth registration for every child by 2030: Are we on track?, 2019
https://www.unicef.org/media/62981/file/Birth-registration-for-every-child-by-2030.pdf

[60] South Africa Regulations on the Registration of Births and Deaths, 2014

[61] ID4D Country Diagnostic: Botswana, World Bank, 2016

The ideal is to dispense with all fees for birth registration at any stage. If fees are charged for late registration, they should be minimal and included in regulations rather than the law to make it easier to adjust them over time. There should be a provision for the waiver of fees for those for whom a fee would be a hardship [62] or during mass registration campaigns. Notably, in 2021, Lesotho scraped all fees relating to civil registration in its continuous efforts to improve access to birth registration.[63]

One way of ensuring accessible and free late registration and reducing risks of statelessness is, as already suggested, to provide specific procedures targeting the different categories of children for whom lack of birth registration creates a particular risk of statelessness - such as abandoned children, children of refugees and asylum-seekers and children of undocumented parents.

Namibia's proposed new civil registration law is an example of good practice. The proposed law posits three timelines: timely birth registration within one year, late registration after one year but before the minimum age for acquiring an identification document, and "mature" registration for anyone over the minimum age for acquiring an identification document. There are no fees or penalties at any stage. The purpose of the different categories is merely to trigger appropriate requirements in terms of evidence and verification for the varying time periods. The proposed law also provides for the designation of staff members holding different positions for the registration of persons of different ages so that cases where verification of information is more challenging, can be handled by staff with appropriate training for this purpose.

NAMIBIA: Civil Registration and Identification Bill

Section 11: Application for late registration of birth of child

(1) Late registration of birth applies to the registration of the birth of a child after one year has passed since the child's birth but before the child in question has reached the minimum age for the issue of an identity document specified under this Act.

(2) An application for the late registration of birth must be made in person and be submitted in the prescribed form to the civil registration point nearest to the place of residence of the person to be registered -

(a) by the child whose birth is to be registered himself or herself, if the child is at least 14 years of age and of sufficient maturity and stage of development to do so;

(b) by both parents of the child whose birth is to be registered;

(c) by either parent of the child in the event that one parent is deceased, unknown or for any other reason does not or is unable to participate in the late registration of birth; or

(d) in the event that both parents of the child are deceased, unknown or for any other reason do not or are unable to participate in the registration of birth of the child, by any person having lawful physical custody or care of the child or by a social worker, but a staff member of the Ministry may conduct any reasonable investigation to verify the -

(i) lawful physical custody of the child;

(ii) unavailability, inability or unwillingness of the parents of the child to participate in the registration of birth; or

(iii) factual information regarding the child's birth.

[62] UN Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems (Second Draft), 2019 https://unstats.un.org/unsd/demographic-social/Standards-and-Methods/files/Handbooks/crvs/CRVS_GOLF_Final_Draft-E.pdf

[63] Lesotho Government Gazette, vol. 100, no. 100, Friday, 5 November 2021.

(3) An application in terms of subsection (2) must be accompanied by -
(a) a sworn declaration specifying the reasons for the late registration of birth; and
(b) sufficient information and documentation to establish the facts pertaining to the birth.
(4) The Minister may prescribe other information required for registration of a birth under this section.
(5) Registration of birth in terms of this section must be captured in the Births Register by staff members of the Ministry at positions approved in writing by the Minister, and the Minister may approve different positions for registration of birth depending on the age of the person whose birth is to be registered.
this section.
(5) Registration of birth in terms of this section may be captured only by staff members of the Ministry at positions approved in writing by the Minister, and the Minister may approve different positions for such registration of birth depending on the age of the person whose birth is to be registered.

Section 12: Application for registration of birth of mature person

(1) For the purposes of this section, a "mature person" refers to a person who has reached or exceeded the minimum age for receiving an identity document specified under this Act.
(2) An application for the registration of the birth of a mature person whose birth has not been previously registered must be made in person and be submitted in the prescribed form to the civil registration point nearest to the place of residence of the person to be registered -
(a) by the person whose birth is to be registered; or
(b) in the event that the person is for some reason unable to apply in person, by -

- the parent or parents of that person;
- any other informant who is in a position to provide the required information; or
- any other prescribed category of persons.

(3) An application in terms of subsection (2) must be accompanied by -
(a) a sworn declaration setting out the reasons why the birth was not previously registered; and
(b) sufficient information and documentation to establish the facts pertaining to the birth.
(4) The Minister may prescribe other information required for registration of a birth in terms of this section.
(5) Registration of birth in terms of this section may be captured only by staff members of the Ministry at positions approved in writing by the Minister, and the Minister may approve different positions for such registration of birth depending on the age of the person whose birth is to be registered.

Recommendation: It is recommended that there are no fees or penalties for timely or late registration of children under the age of 18 years old. If fees are imposed, they should be minimal, and there should be provision to waive such fees in cases of hardship, during targeted campaigns or for specified groups. Procedures for late registration should impose only the requirements necessary to verify relevant information instead of being aimed at penalizing late registration, which might end up discouraging registration altogether. There should not be any criminal sanctions for late registration.

7.8. Abandoned children

UNICEF estimates that worldwide, 2.7 million children live in residential care, and it is likely the actual figure is likely much higher.[64] Many of these children have been abandoned.

[64] UNICEF Press Release: Data gaps leaves children in residential care the most vulnerable unaccounted for, 2016 https://www.unicef.org/press-releases/data-gaps-children-residential-care-leave-most-vulnerable-unaccounted

Although it has not been possible to trace the national statistics of children living in residential facilities or the number of abandoned children in the SADC region, there is little doubt that the abandonment of children in the region is rife. The demographic health surveys in four selected countries might provide an idea of the extent of the challenge. The DHSs reveal that large numbers of children are not living with either of their biological parents even though the parents of these children are, in some cases, still alive. It must be noted that the numbers do not reflect the exact numbers of abandoned children as it is not uncommon for children to stay with grandparents or extended family for long periods. However, a high number of these children have likely been abandoned or orphaned. In Malawi, 32,9%[65] are not living with either their biological parents; in South Africa, 23%; in Zimbabwe, 26%[66] and in Zambia, 16%.

The gravity of the situation is supported by a study conducted by the Medical Research Council in South Africa which revealed that every year about 3500 children survive being abandoned in the country. This study further estimates that for every child alive, two are found dead; 65% of abandoned children are new-borns, while 90% are under one.[67]

There are many reasons why children are being abandoned or not living with their biological parents. From a civil registration perspective, the question is how to ensure that the civil registration law and practices cater to the country's context in caring for such children. This includes children living in the streets, who may or may not have any contact with their biological parents.

According to the Consortium of Street Children, the discrimination that children living on the streets encounter is reinforced if they do not have access to birth registration and identity documents, exacerbating the negative perception that they are not citizens. Their lack of official status heightens the other vulnerabilities that they experience and exacerbates their marginalization. [68]

This context emphasises the need for civil registration legislation to clearly identify who is responsible for the birth declaration of an abandoned child, including children living on the street, as well as the information to be collected and the procedure for registering a birth in these circumstances.

The entry in the birth register should be clearly marked as a "foundling" and information about parentage left blank. Provisions should also be made for estimating the child's age if necessary (especially if the child is not a new-born) and assigning a name and place of birth.

It is suggested that the institution that assumes custody of an abandoned child or arranges for the care of such a child should be responsible for ensuring that the child's birth is registered.

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[65] Malawi: Demographic Health Survey 2015/2016 https://dhsprogram.com/pubs/pdf/FR319/FR319.pdf

[66] Zimbabwe: Demographic Health Survey, 2015 https://dhsprogram.com/publications/publication-fr322-dhs-final-reports.cfm

[67] https://theconversation.com/south-african-women-needing-to-abandon-their-babies-dont-have-safe-options-this-must-change-163992

[68] https://www.ohchr.org/sites/default/files/Documents/Issues/Children/BirthRegistration/CSCsubmission.pdf

In terms of older children, including children living on the street, it is essential that multiple persons, and not just the parents, have the duty or ability to declare the birth of such a child.[69]

Children in these situations may need to draw on the principle noted above that, while the law must establish what evidence of a child's particulars is required, it must also be sufficiently flexible to cater for a different type of categories of vulnerable children who may be at particular risk of statelessness.

Many countries do not specify the procedures for abandoned children, only for infants. This is the case for Madagascar, Mauritius, Namibia, Seychelles and Zambia. Botswana's Birth and Death Registration Act does not specify procedures for registering abandoned children of any age. In Namibia, in practice, the civil registration authorities are working closely with social protection authorities to report children living in residential care and other children abandoned by their parents. A report is required to document the knowledge about the child, and if the parents are completely unknown, the child will be issued a birth certificate without the parents' details. If these should be discovered, a process exists to add the parents' details later. Highlighted in blue are good practices.

Country	Provision for birth registration of abandoned children	Person responsible for declaring	Provision for citizenship
Angola	Covers abandoned children of all ages	Whoever found the child	New-born children found in Angolan territory are presumed to be an Angolan citizens by origin
Botswana	None		No citizenship provision for abandoned or orphaned children of unknown parents
Comoros	Applies only to new-borns	Whoever found the child	Unclear
Congo (Rep of)	Applies to new-born only		A child of unknown parents (only for children born by Congolese)
DRC	Detailed provision on how to register new-born children	Any person	Abandoned new-born are presumed to be citizens.
Eswatini	Provision for infants as well as vulnerable and orphaned children		Abandoned children under the age of 8 are considered citizens
Lesotho	Vulnerable children have a right to registration		No citizenship provision for abandoned or orphaned children of unknown parents
Malawi	Covers all abandoned children	Social worker	No citizenship provision for abandoned or orphaned children of unknown parents
Madagascar	Applies only to new-borns	Whoever found the child	Children of unknown parents are considered to a citizen if a least one of the parents are presumed to be Malagasy (name and appearance)
Mauritius	This applies only to new-borns	Police officers and + one person who found the child	Only a provision for citizenship for abandoned new-born children
Mozambique	This applies to children under age 14	Whoever found the child	Abandoned children are citizens by origin

[69] Civil Registration, Vital Statistics and Identity Management (CRVSID, Legal and Regulatory Review Toolkit https://advocacyincubator.org/wp-content/uploads/2022/03/CompleteToolkit.pdf

Namibia*	Applies only to new-borns	Justice of the Peace, police officer. caretaker	No citizenship provision for abandoned or orphaned children of unknown parents
Seychelles	Applies only to new-borns	Police officer & caretaker of the child	No citizenship provision for abandoned or orphaned children of unknown parents
South Africa	Covers abandoned children of all ages	Social workers	No citizenship provision for abandoned or orphaned children of unknown parents
Zambia	Applies only to new-borns	Whoever found the child	Children are considered citizens if their parents are unknown
Zimbabwe	Covers abandoned children of all ages	Grandparents, relatives	Children of unknown nationalities and parents are considered citizens until the age of 15 years.

*The Civil Registration and Identification Bill provide for reporting abandoned children of all ages, which is also the current practice.

The South Africa *Births and Deaths Registration Act, 1992, as amended,* allows social workers to register foundlings and abandoned children with no age limit. Parentage will be left blank if this information is not available, and the birth registration can be amended if the parents are identified at a later stage. However, the citizenship of such children is not explicitly addressed in any of the relevant South African laws. It must be noted that the actual implementation of the provision has received extensive criticism, and many abandoned children are still left unregistered in practice.

Among these children will be many whose parents are not known or whose parents were of unknown nationality. Among SADC member states, Botswana, Lesotho, Malawi, Namibia, Seychelles, and South Africa have no provision in their citizenship law for acquisition of citizenship for children whose parentage is completely unknown ("foundlings"), as this is a group that is otherwise almost certain to be stateless.[70]

Recommendation: It is recommended to specify the procedures for registration of abandoned minor children (all age groups), including clear documentary requirements and directions on how to address missing information in the birth record. No fee should be charged. It is also a good practice that there is a "direct line" for social workers and other government officials to submit applications for registration. Social workers should not line up with the rest of the public.

[70] Manly, Bronwen, Citizenship and Statelessness in the Member States of SADC, UNHCR, 2020 http://citizenshiprightsafrica.org/wp-content/uploads/2021/02/Statelessness_in_Southern_Africa_Dec2020.pdf

SOUTH AFRICA Births and Deaths Registration Act, 1992, as amended

Section 12: Notice of birth of an abandoned or orphaned child

(1) The notice of birth of an abandoned child which has not yet been given, shall be given, after an enquiry in respect of the child concerned in terms of the Children's Act, by the social worker concerned: Provided that in the event of any parent of the child being traced after the registration of the birth and the particulars in any document or record in respect of the child not being reflected correctly, the Director-General may on application, in the prescribed manner, amplify and correct the said particulars.

(2) The notice of the birth of an orphaned child which does not list any of the persons contemplated in terms of section 9(1) [parents and prescribed persons who bear the duty to give a notice of birth when the parents are deceased], shall be given by a social worker, after the conclusion of an enquiry in respect of such the child concerned in terms of the Children's Act.

Regulations on the Registration of Births and Deaths, 2014

Regulation 9: Notice of birth of abandoned or orphaned children

(1) A notice of birth of an abandoned or orphaned child in terms of section 12 of the Act must be given on Form DHA-24 illustrated in Annexure 1A by a social worker within 60 days of obtaining a court order in terms of section 156 of the Children's Act, and must be accompanied by-

(a) a court order issued by the children's court.

(b) a certified copy of the identity document or valid passport and visa or permit of the social worker;

(c) where available, a certified copy of the identity document or passport and visa or permit of the parents of the child;

(d) where available, a certified copy of the death certificate of the parents of the child; and

(e) a social workers' report that was presented to the children's court.

(2) Where it is apparent from a notice of birth that the child whose birth is sought to be registered in terms of the court order is a non-South African citizen, the Director-General may deal with the notice as contemplated in regulation 8 and inform the relevant children's court accordingly.

(3) The social worker who submits a notice of birth of a child referred to in sub-regulation (1), must give a name or surname, or both name and surname, to that child if the name or surname or both name and surname have not been given to the child.

(4) A birth certificate issued in terms of section 12 of the Act must contain the particulars of the parents of the child where such particulars are known.

7.9. Orphaned children

Worldwide, the number of orphans is increasing due to wars, conflicts, epidemics, poverty, mass migrations and natural disasters. It is estimated that the world's orphan population is over 140 million, including children that have lost one or both their parents. Fifty-two million children in Africa have lost both parents, and sub-Saharan Africa is one of the areas of particular concern in this regard. Children who lose one or both parents are faced with an array of economic and mental disadvantages and are at higher risk of early death.[71]

[71] IHH Humanitarian Relief Foundation, 2021 Orphan report https://ihh.org.tr/public/publish/0/152/insamer-2021-yetim-raporu-eng-200425-n.pdf

Orphaned children are also likely to face challenges in getting birth certificates if they are not registered at birth. They may find it challenging to prove the identity of their parents, who, in some cases, may have been undocumented. Even if the parents' documentation is available, the child might be requested to prove the relationship, which can be difficult. Therefore, it is advisable to set up legal procedures in the legislation, regulations or standard operating procedures that specify the documentation required to register an orphan. Only Eswatini, Lesotho and South Africa have provisions explicitly protecting the right of orphans and vulnerable children to birth registration.

Even though few SADC civil registration laws mention orphans explicitly, in some cases, good legal rules on who can report a child's birth and flexibility in respect of documentary evidence requirements may operate sufficiently to assist orphaned children. The introduction of health notifications can also provide a source of verification that may be of special assistance to orphaned children.

LESOTHO: Children's Protection and Welfare Act, No. 7 of 2011

Section 9: Right of orphaned and vulnerable children to registration

(1) Orphaned and vulnerable children shall have a right to registration.

(2) The Department responsible for the registration of births and deaths shall maintain and administer systematic and comprehensive data in relation to all groups of orphaned and vulnerable children.

(3) Bureau of Statistics shall have access to date [data] in relation to all groups of orphaned and vulnerable children.

Namibia: Civil Registration and Identification bill

Section 13: Particulars relating to parentage and age.

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(3) If one or both parents of a person whose birth is to be registered have died prior to the registration of the birth, the Registrar-General may capture the required particulars of the deceased parent or parents in the Birth Register on the request of a surviving parent or another informant, if no other person is listed in the Birth Register in the place of the deceased, on being provided sufficient proof of the deceased's parentage which may include -

(a) an undisputed sworn declaration made by the deceased prior to the date of death confirming parentage;

(b) the result of a recognised scientific test confirming parentage, the reliability of which has not been challenged;

(c) a court order confirming parentage in terms of section 93 of the Child Care and Protection Act or any other law;

(d) a court order premised on parentage including but not limited to an order concerning that parent's rights and obligations regarding access, custody, guardianship or payment of maintenance in respect of the person whose birth is to be registered, if such court order is not the subject of a pending appeal; or

(e) in the event of the deceased parent being the mother of the person whose birth is being registered, an e-notice of birth, a medical record or a sworn declaration by a medical practitioner, registered nurse or registered midwife as defined in section 1 of the Nursing Act, 2009 (Act No.8 of 2009) identifying such parent as the parent who gave birth to the person in question.

7.10. Children born to asylum-seekers and refugees

According to the latest internal statistics of UNHCR[72], there are 8 727 0432 persons of concern in SADC, of which 1,106,369 are asylum seekers/ refugees, and 8.727,042 are internally displaced persons. The far majority of internally displaced persons are in the DRC. Birth certificates are an essential protection instrument during displacements and conflicts, and UNHCR has made birth registration for asylum seekers and refugees a strategic objective since 2012. UNHCR supports governments in civil registration reform and advocates for legal frameworks with explicit legal procedures for registering asylum-seekers and refugees to underline the importance of civil registration for this group.[73]

Children of refugees may be at risk of statelessness if the host country does not provide birth registration services.[74] Nevertheless, birth registration is not sufficient to resolve statelessness, especially if there is the uncertainty of the children can acquire the parents' nationality. The risk of statelessness increases with the succession of generations of refugees because refugees will usually be unable to obtain copies of these important documents issued in the country of origin from their consular authorities. Therefore Articles 12 and 25 of the UN Refugee Convention (and of the Convention relating to the Status of Stateless Person) also provide for the recognition of personal status and administrative assistance for the authentication or substitution of personal status documents that would normally be obtained from a consulate of the country of nationality[75]

Most of countries are registering children born to asylum seekers and refugees in their national registries. Besides Botswana, most countries have major backlogs in terms of birth registration of children of asylum and refugee seekers born within their territory. Congo and Mozambique appear to make some efforts to ensure birth registration, with 48% and 61% of the children registered, respectively. Therefore, national governments, with support from UNCHR, should increase their efforts to register persons of concern.

Apart from South Africa, none of the countries examined mention the specific rights or requirements for registration of children born to asylum-seekers and refugees. (Namibia's proposed bill will also address this explicitly.) In some cases, this may have been addressed in laws specific to refugees, which were not examined, but integration with civil registration laws is important. The issue of birth certificates being treated as proof of citizenship arises in respect of this group. It may contribute to reluctance to facilitate registration regardless of what the law says.

[73] UNHCR: Social Protection Issue Brief: Birth registration

[74] Plan International: Birth registration in emergencies a review of best practices https://www.ohchr.org/sites/default/files/Documents/Issues/Children/BirthRegistrationMarginalized/PlanInternationalGeneva_5.pdf

[75] Manby, Bronwen The risks of statelessness for long-term refugees in the Great Lake Region, UNHCR, 2022

NAMIBIA: Civil Registration and Identification Bill

Section 17: Registration of birth of children of refugees

(1) The birth of persons in Namibia whose parents are refugees, asylum-seekers or protected persons must be registered in the same manner as any other person born in Namibia.

(2) Despite subsection (1), the Registrar-General may, on good cause shown, deviate from any prescribed time periods in relation to the registration of birth of a person born to parents who are refugees, asylum-seekers or protected persons.

Country	Number of refugees /asylum seekers	Number of internally displaced persons	Children born to asylum seekers/refugees in host country (only those registered in the UNHCR system	% of children registered with a birth certificate in host country	The county is capturing asylum seekers and refugees in their national birth registry
Angola	56648		2011	2010	100%*
Botswana	806		287	287	100%
Comoros	23		28%	0	0
Congo (ROC)	64997	304430	15615	7566	48%
DRC	518505	6,286,135	95946*	3178	3%
Eswatini	1835		247	0	0%
Lesotho	520		77	0	0%
Madagascar	308		26	0	0%
Malawi	55054		12345	0	0%
Mauritius	13		0	0	NA
Mozambique	29189	988573	4941	3000	61%
Namibia	6905		1188	392	33%
Seychelles	0	0	0	NA	NA
South Africa	242988		7835*	91	1%
Zambia	100882		31761	8271	26%
Zimbabwe	22696	41535	3788	50	1%
Total	1,106,369	7,620,673			
Total number of persons of concern in SADC	87227042				

***Many of the refugees are not registered in UNHCR system ProGres, and the number of births to refugees and asylum seekers is, therefore, much higher than reflected in the above table.**

Recommendation: The civil registration law must explicitly specify the rights of children of asylum-seekers and refugees to be registered in the National Civil Registry without a fee and should include directions on the procedures and evidence required.

7.11. Children born to mothers in prison

Pregnant prisoners are not uncommon in female prisons. It is estimated that there are over 700,000 women and girls incarcerated globally. Approximately 24,000 to 60,000 of these women are pregnant while incarcerated. The UN guidelines recommend that the head of a detention facility, or the person in charge of healthcare within the detention facility, should be required to notify the civil registration authorities of all vital events that occur in custody

because women who give birth in custody may have no opportunity to declare the birth of their child while incarcerated or detained. Only a few countries, like Mauritius and Seychelles, have provisions on how to register children of incarnated mothers in their civil registration laws. However, this may be covered in some countries in the laws pertaining to prisons, which were not examined. In Namibia, for instance, the Correctional Services Act, No. 9 of 2012 directs that arrangements must be made for children of prisoners to be born in a hospital outside the correctional facility (which would have birth registration facilities on-site) and directs that in the event that a child is born in a correctional facility, this facility must not be mentioned as the place of birth on the birth certificate.

Recommendation: The civil registration legislation should specify the rights to birth registration of children of imprisoned mothers without a fee, including details regarding the required procedures and evidence. There should be no reference to the prison or the mother's imprisonment on the child's birth certificate

7.12. Adopted children

Adoptions must go through a judicial process before being registered in the civil registry. Again, countries' requirements vary. In some countries, the parental details and the name of the child can be changed, while in other countries, an adoption certificate is issued. The adoption certificate must retain facts like date of birth and place of birth, as well as any unique identification code. However, for the purpose of the nationality acquisition by the adopted child and the assimilation of the child into his/hers new legal family, it is the authors' view that it is crucial to establish a process for re-registration of the adopted child in the birth registry.
Angola, Congo (Brazzaville), Eswatini, Lesotho, Madagascar, Namibia, Seychelles, South Africa, and Zambia have legal provisions in their civil registration legislation on amending or re-registering the birth record of a child in the birth registry upon adoption. The procedures vary from country to country.

If a child is adopted from a foreign country, most countries have a process by which the adoptive parents may apply for a domestic birth certificate, reflecting the place and date of birth in light of the adoption certificate, as well as reflecting the names of adoptive parents. This will ultimately support the acquisition of nationality by the adopted child. In many countries, those adoptive children automatically qualify for citizenship by descent. However, in a few countries, like Namibia, despite the issuance of domestic birth certificates, the parents must go through a citizenship process for acquiring citizenship by descent.

Recommendation: There must be a provision for registration of an adoption either in the Child Protection or Civil Registration legislation. The registration of the child's new name and parental details can support the nationality acquisition.

7.13. Reconstruction of lost or damaged records

Paper records and registers are at significant risk of being damaged, lost, or destroyed during natural disasters and wars. It is, therefore, important that there is a provision for the reconstruction of records if destroyed or lost. It is important to stipulate in the law or the regulations which evidence is needed to reconstruct a record. It has also been documented how legal identities documents are crucial during a disaster, as persons need to prove who they are, and for government and non-government organisations to support persons during an

evacuation, settlement, and repatriation. It is also important that civil registration is classified as an essential service.[76]77

South Africa's Birth and Death Registration Law explicitly makes provision for reconstructing lost or damaged birth records. Congo (Brazzaville) in 2018 included time-limited law. Papers records, kept in manual registers, are prone to be damaged, lost or misplaced. There should be a process that allows individuals to have their records recreated based on producing evidence of the existence of the record. If the state refuses to reconstruct or replace the original record, such situations could lead to statelessness.

SOUTH AFRICA: Birth and Death Registration Act, No. 52, 1992, as amended

Section 6: Reproduction of documents,

(1) Notwithstanding anything to the contrary contained in any law, the Director-General may reproduce or cause to be reproduced any document submitted in terms of this Act or record mentioned in section 5(1)(b), by means of any process in accordance with the regulations which in his or her opinion accurately and durably reproduces such document or record, and he or she may preserve or cause to be preserved that reproduction in lieu of such document or record and may destroy such document or record.

(2) A reproduction mentioned in subsection (1) shall, notwithstanding anything to the contrary contained in any law, for all purposes, be deemed to be the original document or record from which it was reproduced, and a copy of such reproduction certified to be a true copy of the original by the Director-General shall in any court of law be conclusive proof of the contents of the original document or record.

Recommendation: Manual records are at high risk of being lost or damaged, and in countries where birth records are being transported to be captured electronically in a central location, there is a high risk that they may be lost. It is therefore recommended that there is a process for a birth record to be recreated, including directions on how to source and verify missing information in such cases.

7.14. Appeal procedures

Some decisions made by a civil registrar, such as refusal to register a child's birth or to correct an error, can have devastating consequences and fundamentally impact the child's life. Therefore, decisions by the registrar should be subject to administrative and judicial review. This can be ensured by including a process where individuals can appeal the decision of a local civil registrar to a higher administrative level, up to the central level. Such an internal process allows the civil registration authorities to correct the mistake without burdening the courts or

76 https://crvssystems.ca/sites/default/files/assets/images/CRVS%20in%20Conflict%2C%20Emergencies%20and%20Fragile%20Settings_Full%20Compendium_e_WEB.pdf

seeking legal guidance and will often be the most accessible route of redress for the aggrieved parties. In cases where an individual is unsuccessful in challenging a decision through such internal administrative processes, that individual must still be able to seek relief from the courts. A civil registration law should provide the right to appeal a registrar's decision via a straightforward process with a clear timeline.

Botswana, Zimbabwe and Zambia are the only countries which provide an internal appeal process for challenging a denial of late birth registration. For example, in Botswana, it is possible to file an appeal with the Minister according to procedures set out in the regulations.

Recommendation: The Civil registration law should always grant access to the court for appeal or review of administrative actions. Moreover, the law should also provide for additional appeal mechanisms within the administration, as illustrated by the example of Botswana below, as well as access to quasi-judicial bodies such as the ombudsman and national human rights commissions. These mechanisms are typically more accessible, quicker and cheaper for the aggrieved parties. Having a realistic avenue of appeal is important because of the fundamental nature of civil registration and its ripple effect on citizenship rights.

BOTSWANA: *Births and Deaths Registration Act, 1968* as amended

Section 11: Late registration of births, still-births and deaths

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(5) Any person aggrieved by a refusal of the Registrar in terms of subsection (4) may appeal in the prescribed manner to the Minister, whose decision shall be final.

An aggrieved person could also apply to the High Court
for an order that a birth must be registered.

Section 16. Authorization of High Court to register births, still-births and deaths

(1) The High Court may, on application thereto at any time by the Registrar or by any other person and on payment of the prescribed fee, by order authorize or direct the Registrar to register a birth, still-birth or death, as the case may be.

(2) The High Court shall not make an order under this section unless the material facts relating to the birth, still-birth or death, in respect of which the application is made, are proved to its satisfaction.

(3) Without prejudice to the generality of section 18, the High Court may make an order under this section notwithstanding that no person is reasonably available or able to assist the High Court in reaching a determination as to the person who is or was required or authorized to give notice or information of the birth, still-birth or death, in respect of which the application is made under this Act or under any law in force at any time before this Act came into operation by which provision was made for the registration of births, still-births and deaths.

8. ACCESSIBILITY

Besides having inclusive, detailed, well-described and flexible registration procedures to ensure pathways for all children to be registered and thereby reduce the risks of statelessness, it is important to strengthen accessibility to civil registration services. According to UNICEF, three approaches have proven to enhance access to birth registration: decentralisation (increasing the number of registration points), interoperability and digitalization. [78] Interoperability is dealt with as part of the digitalisation process.

8.1. Decentralisation (increasing the number of registration points)

Some countries have enhanced accessibility to birth and death registration by decentralising registration facilities. Countries like Botswana, Eswatini, Lesotho, Namibia, South Africa, and Zambia have established hospital registration facilities with support from UNICEF. The involvement of health officials in notifying births and actively engaging parents about birth registration has also proven significant.[79] In Mozambique and Namibia, the civil registration authorities are electronically notified about all births occurring in health facilities. In contrast, the civil registries in Botswana and South Africa rely on manual birth notifications.

Early and primary evidence about the child and the child's family relations can be crucial if the child's birth is not registered in a timely manner. The registration process should also shift the burden for evidence from the parent(s) to the health authorities.[80] Unfortunately, it is not uncommon for health authorities to withhold the notification from the parents if they do not pay their hospital bills. Incidences of such practices were reported in South Africa, where asylum-seekers, refugees and migrants are consequently denied access to birth registration. [81]

Mobile birth and ID registration campaigns have also enhanced better access to registration. The practice of having civil registration authorities set up temporary mobile offices in urban and rural areas is a common approach in Southern Africa. Currently, Zimbabwe and Eswatini are

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[78] UNICEF, A statistical profile of birth registration in Africa, November 2020 https://data.unicef.org/resources/a-statistical-profile-of-birth-registration-in-africa/

[79] UNICEF and WHO, Health sector contributions towards improving the civil registration of births and deaths in low-income countries https://reliefweb.int/report/world/health-sector-contributions-towards-improving-civil-registration-births-and-deaths-low, 2021

[80]Djokovic, Zoran and Hosea Mitala Maintaining civil registration resilience amid the COVID-19 crisis: Mozambique's vital events notification system, IDRC 2021 https://crvssystems.ca/sites/default/files/assets/images/CRVS_Webinar_Mozambique_e_WEB.pdf

Forsingdal, Anette Bayer and Tulimeke Munyika Building resilient civil registration and vital statistics systems amid COVID-19: Namibia as a good practice, IDRC 2021 https://crvssystems.ca/sites/default/files/assets/images/CRVS_Webinar_Namibia_e_WEB.pdf

[81] Information provided by UNHCR, South Africa

conducting nationwide registration campaigns ahead of their upcoming national elections. Zimbabwe aims to register 2 million persons for ID cards in 2022.[82]

Over the past years, Namibia has conducted scheduled outreaches to rural areas with sparse populations, coupled with targeted multi-sectoral outreach registration visits to border regions with low birth registration numbers. For the targeted multi-sector outreach visits, registration points would be set up at clinics/hospitals, and clear roles and responsibilities of the involved authorities would be agreed upon. Nurses would support the validation of the proof of birth due to their daily work with the communities; civil registration authorities would register unregistered children, and social welfare officials would assess whether the newly registered child is eligible for a child grant.[83]

In Botswana, an extensive campaign targeting vulnerable groups, such as homeless people, was organized in 2012. Marginalised groups typically would have few documents, and the government would then relax fees and registration requirements to ensure the registration of persons characterized as vulnerable.[84]

Lesotho has run large birth registration campaigns in South Africa to register Basothos and provides birth certificates to those at risk of losing their work permits.[85] Bi-lateral agreements between countries would be a strong instrument to get pockets of non-nationals and their descendants registered in parts of Southern Africa.

Countries like Namibia, Zimbabwe and Zambia frequently conduct targeted campaigns to register refugees, often supported by UNHCR. All countries hosting refugees reported that they are facilitating the birth registration of children born to asylum seekers and refugees in their territory. In South Africa, refugees face several issues with birth registration caused by the requirement that they must produce identity documentation or are not issued birth notifications from the hospitals if they cannot provide refugee IDs. This has been worsened by the COVID lockdowns that closed the refugee determination processes, leaving many children born to asylum seekers or refugees with no refugee cards without access to birth registration.[86]

Moreover, it has been documented that the most efficient response to ensure birth registration operations during emergencies is to have flexible procedures in place and use existing staff to roll out the programs. This involves establishing mobile registration units for remote rural areas or nomadic populations and more decentralised services. [87]

8.2. Digital Civil Registries

Digitization of civil registration processes has been highlighted as one of the approaches by UNICEF that can significantly contribute towards achieving universal registration of vital

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[82] Two million ID targets for mobile registration blitz, Chronicle, 22 February 2022

[83] See Namibia Country Profile

[84] See Botswana Country Profile

[85] See Lesotho Country Profile

[86] See South Africa Country Profile

[87] 2021 Orphan report https://ihh.org.tr/public/publish/0/152/insamer-2021-yetim-raporu-eng-200425-n.pdf

events if deployed and appropriately maintained.[88] Digital civil registration systems can support improving registration coverage, standardizing and simplifying registration processes, and integrating data from multiple systems. According to the CRVS Digitalisation Guidebook, ICT is premeditated to facilitate the process of providing legal documentation for civil registration systems and producing accurate, complete and timely vital statistics.[89] Interoperability between the different CRVS actors is critical to allow data to be validated and shared smoothly.

Seven countries in Southern Africa have partly or fully digitalized their civil registries (Botswana, Lesotho, Mauritius, Mozambique, Namibia, Seychelles and South Africa), while Angola, Madagascar, Malawi and Zambia are in the process of establishing their digital systems. Whether the digital systems have supported higher birth registration rates is yet to be documented.

It is also important to note that it is important that the design of the electronic civil registration system is flexible and inclusive. It must allow registration of children with unknown parents and registration based on different types of evidence. In Namibia and Lesotho, the electronic birth registry allows for the registration of all children, despite the status of their parents, while the ID registry is exclusive to certain categories of persons. In Namibia, this is done by having a status data field indicating the child's and parents' status. The status data field can be changed if the status of the child changes.

9. GOVERNANCE

9.1. CRVS National Strategies

Having a national strategic plan for CRVS is necessary to take a holistic approach to reform the civil registration services. Some countries[90] have conducted CRVS national assessments and developed national strategic CRVS plans in response to Africa's commitments to improve CRVS systems on the African Continent, made in September 2012 in Durban, South Africa.[91] The Africa Programme on Accelerated Improvement of Civil Registration and Vital Statistics (APAI-CRVS) oversees and supports governments in developing their strategies.[92] Some countries have also incorporated universal birth registration into their national development plans. For

[88] UNICEF, A statistical profile of birth registration in Africa, November 2020 https://data.unicef.org/resources/a-statistical-profile-of-birth-registration-in-africa/

[89] CRVS Digitalization Guidebook http://www.crvs-dgb.org/en/

[90] Botswana, Eswatini, Lesotho, Namibia, Zambia. Zimbabwe has recently started their assessment supported by UNICEF.

[91] Ministerial Statement: Second conference of african ministers responsible for civil registration africa 6-7 September 2012 https://archive.uneca.org/sites/default/files/uploaded-documents/Statistics/CRVS/2nd-declaration-ministerielle-crvs-2012_en.pdf

[92] The APAI-CRVS a regional programme developed following the African Minister responsible for Civil Registration political commitment to improve CRVS system in Africa. The Secretariat of the Programme is based in African Center for Statistics (ACS) at Economic Commission for Africa.The CRVS APAI secretariat programme is currently being evaluated, and the results will be ready for the coming 6th Ministerial meeting, which will be held in Addis Ababa, Ethiopia, in October 2022.

example, in addition to incorporating birth registration in the national development strategy, Namibia has also committed to regularising undocumented and stateless persons under the second Harambee Prosperity Plan 2021-2025.[93] See the country report on Namibia.

9.2. Coordination and collaboration for stronger CRVS systems

The APAI-CRVS Programme has continuously advocated for countries to set up national CRVS coordination mechanisms, considering the multiple agencies involved in CRVS processes.[94] A strong coordination mechanism is also considered a best practice by the UN. According to the UN, it facilitates accurate, timely and updated information across databases; aids in producing timely and accurate statistics; avoids duplication, errors, or omissions; ensures concepts, definitions, and classifications are consistent nationally and helps align system processes. [95]

Many countries have created coordination mechanisms to govern their reform initiatives, and in Madagascar, a coordinating committee has been established in law. The following countries have been reported to have functioning CRVS coordination mechanisms: Botswana, DRC, Eswatini, Malawi, Madagascar, Mozambique, Namibia, South Africa and Zambia, while Angola and Lesotho are in the process of setting up formal committees.

Sub-working groups can be established under the national committees, and it is strongly recommended that a working group related to the reduction of statelessness is established for stakeholders to formulate an action plan on how to ensure the registration of children and other persons at risk of statelessness due to lack of birth certificates.

In parallel, UNHCR has, as part of its #IBelong Campaign to End Statelessness by 2024, taken action to improve birth registration to prevent statelessness. Some countries (such as Angola and Namibia) have appointed focal persons in government to strengthen country efforts on statelessness. Typically, the Commissioners for Refugees have been appointed as statelessness focal persons, which has proven to have some difficulties in terms of birth registration efforts since birth registration and citizenship do not fall under their mandates. In future, consideration should be given to working directly with the government officials responsible for civil registration to address issues related to statelessness as well.

10. CONCLUSION

Universal birth registration is critical for preventing statelessness, as a child's birth certificate documents where a person is born and who their parents are. This is vital information for determining a child/person's citizenship. Dysfunctional and, in some cases, exclusionary civil registration systems are a primary cause of childhood statelessness in Southern Africa.

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[93] Harambee Prosperity Plan 2. Action Plan of the Namibian Government towards economic recovery and inclusive growth

[94] https://crvsgateway.info/CRVS-coordinating-committee~330

[95] https://unstats.un.org/unsd/demographic-social/Standards-and-Methods/files/Handbooks/crvs/crvs-mgt-E.pdf

Significant efforts to enhance accessibility to birth registration have been observed in most countries in Southern Africa over the past two decades. However, the lack of timely and reliable birth registration data makes it difficult to measure actual improvements. Only 3 out of 16 countries in the SADC have reached universal birth registration, according to vital statistics reports based on data from the birth registries. (*Botswana, Mauritius, and Seychelles*) while 8 out of 16 countries have birth registration rates over 75% for children under the age of 5 years. *(*Botswana, Comoros, Congo, Madagascar, Mauritius, Namibia, Seychelles, and South Africa)

Many countries in the SADC have recently amended or passed new legislation on civil registration – the latest being Angola, Seychelles, Madagascar and Mozambique. Five countries in southern Africa have not amended their civil registration legislation in more than 40 years (Namibia, Lesotho, Zambia, Eswatini and Zimbabwe)

As recommended by the UN, birth registration is compulsory in all 16 countries, and none of the countries has discriminatory provisions for mothers registering the births of their children. Many countries have a close corporation with the health sector to ensure the timely recording of births. Unfortunately, most countries have not embedded the roles and responsibilities of the health sector in law, which is best practice. Collecting evidence about the child's birth as early as possible is vital for the integrity of the data when determining citizenship.

Also, in terms of digitalization, many countries have made good progress. At least 11 of 16 countries have fully, partly or are in digitalizing their civil registration systems. (Botswana, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Zambia, Zimbabwe) over the past 10 –15 years.

In terms of the prevention of statelessness, this study found that more focus from UN agencies and other global partners is needed to strengthen the knowledge and guidance around the cross-cutting concepts of birth registration, citizenship and statelessness. None of the 16 countries has sufficient legal safeguards in their civil registration to prevent childhood statelessness. In fact, many countries have very weak safeguards for registration of vulnerable children, such as abandoned and orphaned children. Only 6 countries have legal provisions for registration of abandoned children of all ages. (Angola, Eswatini, Lesotho, Malawi, South Africa and Zimbabwe),
Furthermore, equally worrisome, only three countries have appeal processes if a registrar has denied a child/person registration. (Zambia, Zimbabwe and South Africa). The following groups were identified as being a particular risk of statelessness and should serve as guidance for countries in SADC legal review and programming.

- Children of undocumented parents, whether migrants or not
- Abandoned children, street children and trafficked children. Older children without parents are more at risk of not being registered, as the laws of most countries cover only the registration of abandoned infants or new-borns.
- Orphans not registered at birth, living in child-headed families. The older the child gets, the higher the risk.
- Children are not living with their parents but in orphanages or with extended families. The older the child gets, the higher the risk.
- Children of migrant parents (covering both historical and contemporary migration)
- Children of asylum seekers and refugees
- Border populations and nomadic ethnic groups.

Another key challenge is that, currently, civil registrars are not always part of the national discussions with UNHCR and other partners on how to reduce and prevent statelessness.

Typically, the statelessness focus person is the Commissioner for Refugees, who limited ability to influence the strengthening of the birth registration procedures or citizenship determination processes. Overall, there are considerable knowledge gaps in the countries on how to prevent statelessness legally and practically, likely because there has been little focus on the relationship between birth registration and statelessness. So far, countries have been offered little technical guidance and insufficient knowledge on preventing and reducing statelessness in civil registration legislation and practice. UNHCR, UNICEF, and other international partners would be well placed to initiate conversations with countries and support ensuring birth registration pathways for all children.

Southern Africa, 2022

Front Page Caption : DRC, An IDP holds her 6-month old baby 's new birth certificate in Kabembe, Katanga Province, Democratic Republic of Congo © UNHCR/Brian Sokol