

# Namibia Identity Management System Analysis Report



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# Identity Management System Analysis

**Namibia**  
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# ACRONYMS

ACC	Anti-Corruption Commission
AFIS	Automated Fingerprint Identification System
CR & VS	Civil Registration and Vital Statistics
DCR	Department of Civil Registration
ECN	Electoral Commission of Namibia
GIPF	Government Institutions Pension Fund
ICAO	International Civil Aviation Organization
ICT	Information and Communication Technology
IMSA	Identity Management System Analysis
MGEWCW	Ministry of Gender Equality and Child Welfare
MHAI	Ministry of Home Affairs and Immigration
MoF	Ministry of Finance
MOHSS	Ministry of Health and Social Services
MOIRAC	Ministry of International Relations and Cooperation
MoL	Ministry of Labour, Industrial Relations and Employment Creation
MOPE	Ministry of Public Enterprises
MOSS	Ministry of Safety and Security
NCIS	Namibia Central Intelligence Service
NID	National Identification Document (present)
NPD4	Fourth National Development Plan
NPRS	National Population Registration System
NPS	National Payment System
NSA	Namibia Statistics Agency
OMA	Government Offices, Ministries and Agencies
OPM	Office of the Prime Minister
OVC	Orphans and Vulnerable Children
SMS	Short Message Service
SWA ID	South West Africa Identity Document
UIN	Unique Identity Number
UNICEF	United Nations Children's Fund
WBG	World Bank Group
WHO	World Health Organization

# EXECUTIVE SUMMARY

Namibia should be congratulated on their forward looking and energetic public sector because of the strategic vision of the leadership, as could be observed in the Ministry of Home Affairs and Immigration.

Ministry of Home Affairs and Immigration (MHAI) is responsible for the technical and organizational infrastructure used to define, design, and administer the identity management system in Namibia. And from what could be observed there are systems and procedures in place to administer the registration of births and deaths and the linkage with the Namibian identification card. A complicating factor is the continued use of South West African (SWA) identity cards and the legacy register these represent. The fact that these have yet to be phased out represents both an administrative challenge which can delay identity verification processes, but also a security risk in that the issuance of the cards were based on standards that are different from today's requirements for strong verification and authentication practices.

The digital connectivity is a prerequisite for the interoperability of databases for the purpose of efficient deployment and use of electronic identification cards, and as such is a cornerstone of an identity management system. Namibia appears to be in a transitional phase with respect to putting in place the infrastructure needed for making their electronic governance vision a reality.

Addressing the objective facts, MHAI could take on the design, development and deployment of electronic identification cards if adequate human, financial and technological resources were made available to them. However, the political economy of undertaking the conversion to an electronic identification token should be subjected to a detailed cost benefit analysis. It will require investment in infrastructure (connectivity, hardware, security and software), human resources (training and appropriate technical skills), user acceptance and uptake, as well as the willingness to accept some risk tolerance (prioritization, collaboration, innovation, etc.).

Introducing an e-ID card has the potential to increase the effectiveness of both the public and the private sectors, and improve service delivery to citizens and residents alike. The proposal to Namibia is to consider a multi-step approach to identification cards by phasing out the SWA and the current national identity card, while phasing in an electronic identification card.

A number of policy decisions are necessary to establish a legal, institutional and technical basis for a digitally integrated identity management system for Namibia. Namibia has already advanced with respect to defining the foundations for linking services and systems, as well as thinking ahead with respect to the development and implementation of the same.







# 2

## OBJECTIVES

NAMIBIA OVERVIEW	
Income category	Upper middle income
Population (2011)	2,303,315
Population density	2.5/km <sup>2</sup>
Area	825,418 km <sup>2</sup>
GNI per capita (current USD) (2014)	5,630
Birth registration	80%
Unemployment rate	28.7%
Doing business rank (2015)	88 (out of 189 economies)
HDI (2014)	0.628 (126 out of 188)

The rationale for undertaking the analysis of the identity management system in Namibia was a request from the Ministry of Home Affairs and Immigration (MHAI) in Namibia to apply the WBG's Identity Management System Analysis (IMSA) tool. The MHAI is seeking a third party assessment of its systems and processes to inform future decisions as the Namibian government is considering changing from the current identification card to an electronic/smart identification card.

The request from MHAI is aligned with the priorities of Namibia's Vision 2030, the Fourth National Development Plan (NPD4), and the "e-Government Strategic action plan for the public service of Namibia," all of which depend on the capacity of the citizens and residents to have their identities verified and authenticated. The strategic intention of the Vision 2030 is "to improve the quality of life of the people of Namibia to the level of their counterparts in the developed world, by 2030." One of the defined outcomes is to improve public service delivery through the use of information and communication technology (ICT).

In addition to providing the requested technical support for the "e-readiness" assessment of the identity and identification system, the Ministry of Home Affairs and Immigration had also requested an Identity Management workshop as part of the mission. This Id-M workshop was held on the first day, and participants included 43 high-level government representatives from the office of the President, the Office of the Prime Minister, The Ministry of Home Affairs and Immigration, Namibia Statistics Agency, Ministry of Gender Equality and Child Welfare as well as representatives from banks and telecom companies and development partners.

The methodology used for this analysis is a combination of desk research, web-based information collection and meetings with stakeholders relevant to the identity management environment in Namibia based on the IMSA tool, to come up with a series of suggestions and recommendations that will be validated by the Namibian authorities.

The information gathered was incorporated into a draft report with the key findings, conclusion and recommendations that emerged from interviews undertaken between November 9 and 18, 2015. The draft report was presented to the stakeholders during a validation workshop which was carried out during the last week of February, 2016. This report has been discussed and finalized based on the suggestion and inputs of the stakeholders during the validation workshop.

### 3.1 INSTITUTIONAL FRAMEWORK GOVERNING ID-M

In order to comply with the terms of reference for undertaking an assessment of the identity management system of Namibia, this report will focus on the information obtained from consultations with Ministries and Government Agencies, Development Partners and private sector (banks and telecom companies) during the week of November 9, 2015. The identity management (Id-M) system encompasses the civil register that issues certificates, the civil identification register that issues the national identity cards and the immigration and passport division, all three located within the Ministry of Home Affairs and Immigration.

The MHAI, and the Department of Civil Registration (DCR) in particular should be commended for the forward looking policies and activities, and the strides the DCR has made to contribute to and support Namibia's general e-readiness. Contributions to the National Development Plan are substantial.

The presentation of the key findings are divided into three subcategories: (i) the institutional and administrative framework that support and govern the identity management environment in Namibia, (ii) a description of the operational context (users and producers of identity and identification), and (iii) the role of the key international development partners in Namibia.

#### 3.1.1 Institutional and Administrative Aspects

The Ministry of Home Affairs and Immigration (MHAI) is responsible for the management and immigration services in Namibia. The Minister of MHAI is the Honorable Pendukeni Iivula-Ithana, and the Deputy Minister is the honorable Esrastus Amunyela Uutoni. MHAI consists of two departments: the Department for Civil Registration and the Department for Immigration Services.

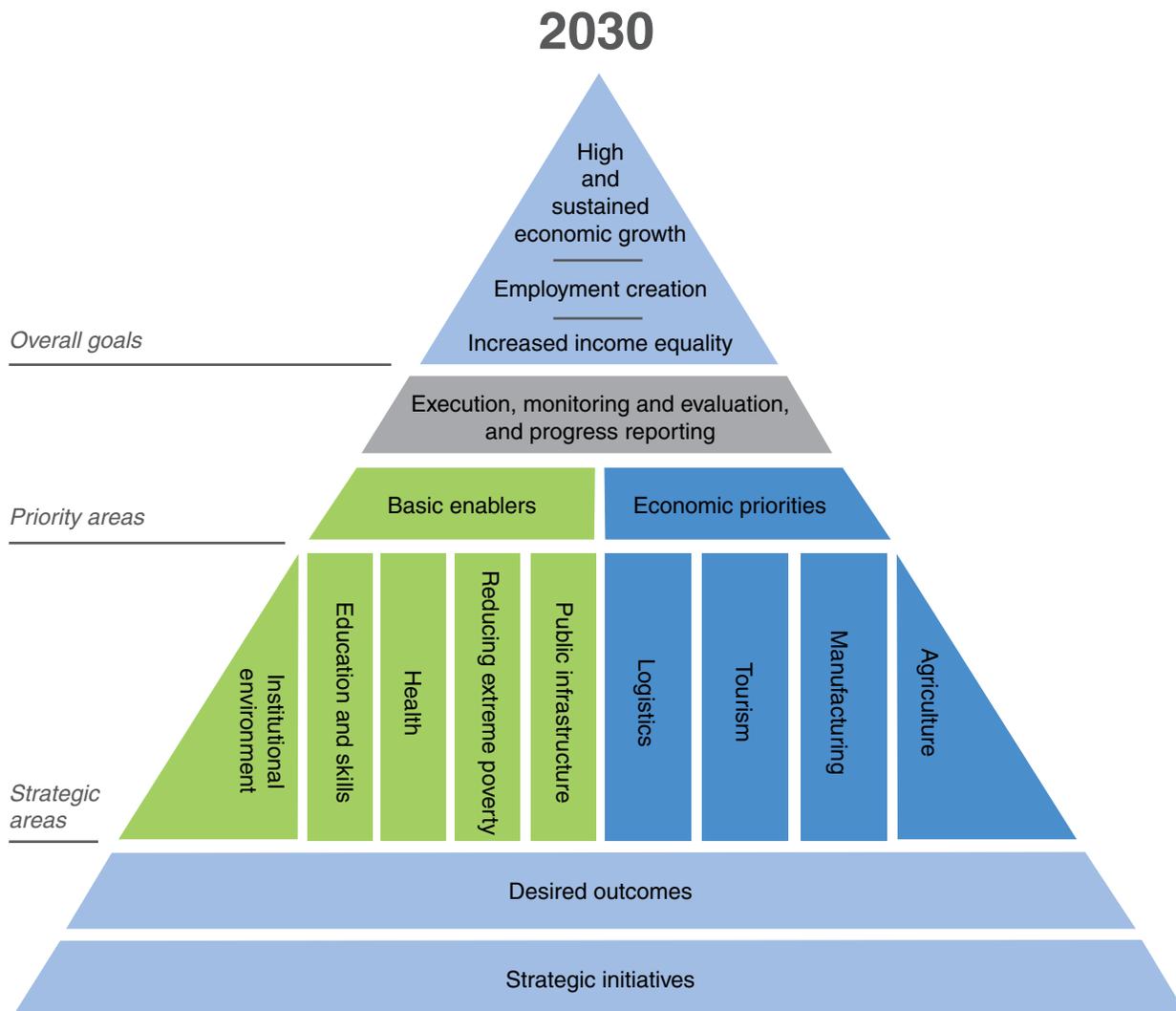
The Department of Civil Registration is responsible for maintaining the records of all vital and civil events in Namibia: births, adoptions, recognitions, marriages, divorces and deaths, and for issuing the relevant certificates as well as the national identity documents. The Department of Immigration Services is responsible for border control and issuance of citizenship certificates, passports, residence and domicile permits as well as visas.

MHAI has been through a structural change management process under the name 'The Turn Around Strategy', and the before-and-after state of affairs is remarkable, both internally for the employees and for the users of the system.

The issuance of a national identity card took 100 days in April 2014, by October 2015 it had been reduced to 16 days. The MHAI reached the goal of reducing the turnaround time for issuing the national identity card to 20 days by April, 2016.

The DRC uses an integrated web-based system, National Population Registration System (NPRS), with 4.7 million records digitalized (November, 2015). The MHAI completed the digitalization of all existing records by May 31, 2016 as planned. Since 2011 the NPRS links children with their parent(s) records in the system.

**FIGURE 1** Schematic representation of NPD4.



Source: NPD4, p. 12.

### 3.1.2 National Development Plan

The Government has declared “a war on poverty,” and the strategic framework for this is laid out in the Fourth National Development Plan (NDP4) 2012/13–2016/2017, with a strong focus on monitoring the implementations and evaluations of the results. The National Planning Commission is responsible for implementation, monitoring and evaluation of the plan.

The overarching goals of NDP4 are (i) high and sustained economic growth; (ii) increased income equality; and (iii) employment creation. Under the auspices of the National Planning Commission, the plan has developed a set of desired outcomes, a timeline and a responsible entity for each outcome. Interestingly, the NDP4 mentions the need to improve and speed up the processes for both land registration and business registration, but do not link either process to the need for stronger verification and authentication of identities.

The NDP4 explicitly recognizes and mentions the importance of universal and timely civil registration as a variable to enable access to poverty reduction programs, as well as a way to measure poverty reduction. The NDP4 also points out the need for improvements with respect to the implementation, monitoring, evaluation and progress reporting of activities under the plan. This implicitly indicates the need for coordination between civil registration and vital statistics as a way to establish a baseline for human development and poverty reduction.

Namibia has already carried out an assessment of the civil registration and vital statistics system, and a strategic plan for its improvement. See the Civil Registration and Vital Statistics Plan.

### 3.1.3 Office of the Prime Minister (OPM)

The OPM is in charge of guiding and implementing the ICT strategy for Namibia, and coordinates all “e” activities in Namibia guided by the Cabinet Committee on the Public Sector, which is chaired by the PM. The OPM initiated its current e-Governance project in 2010 with an assessment of the e-readiness of the Government of Namibia, which led to the definition of the “e-Government Strategic Action Plan for the Public Service of Namibia (2014–2018).” The strategic areas are<sup>1</sup>

- Impact and Visibility—this will include all those activities that will directly impact the lives of citizens and increase effective visibility of the Government services.
- Collaboration and Networking—this will include all activities that will ensure that e-Government in the country is a truly national effort requiring collaboration and sharing among the different Government Offices, Ministries and Agencies (OMAs).
- Consistency and Standardization—this will include all activities that will ensure that e-Government efforts across OMAs are consistent in their approach.
- Training, Education and Research—this will include all activities required to ensure that adequate capacities are created and enhanced among all stakeholders.
- Foundation Support—this will consist of all activities that are required to ensure that all necessary support structures are put in place for the e-Government effort to be successfully run in the country.

In the context of *Collaboration and networking* a unique identity number (UIN) for every citizen is defined a prerequisite for service provision and land management.

The UIN will be integrated into all applications for proof of identity, but does not imply or confer citizenship.

The OPM is designing the government wide area network that will connect all the ministries and agencies within Windhoek, the regions and the districts. Currently some of the offices that are not connected to the network are using mobile internet. The OPM also functions as a backup for databases for various ministries.

### 3.1.4 Namibia Statistics Agency (NSA)

The Namibia Statistics Agency (NSA) is the central statistical authority for the State and is located within the National Planning Commission (NPC), an agency within the Government of Namibia.<sup>2</sup> The NSA is a statutory body established in terms of the Statistics Act, 2011 (Act No. 9 of 2011). The Agency is mandated, among others, to constitute the central statistical authority of the State and to collect, produce, analyze and disseminate official and other statistics in Namibia in support of planning and decision-making processes, as well as to ensure its implementation, monitoring and periodic evaluation.

The NSA is also responsible for the National Spatial Data Infrastructure (NSDI), which includes the collection, processing, management, maintenance, integration, storage, distribution, and improved access and utilization of spatial data and services which is important for spatial planning as well as for socioeconomic activities.

The NSA is responsible for advising the Minister and Director of the National Planning Commission on matters related to official and other statistics, whether of its own accord or at the request of the Minister.

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<sup>1</sup>Source: <http://www.opm.gov.na/en/egovernment>.

<sup>2</sup><http://www.gov.na/gov-website-links>.

This report builds on the data from the Population and Housing Census that was carried out in August, 2011. According to the NSA, this was the most extensive census to be conducted since Namibia's independence in 1990.

The 2011 census asked whether the respondent was in possession of a Namibian birth certificate or not, and 92% indicated they had a birth certificate, however, this figure only represents individuals born in Namibia. The majority of the enumerated (96.8%) were Namibian citizens.

The NSA coordinates with and relates to a number of stakeholders. In the specific area of birth and death registration and vital statistics, there are at least three other agencies involved in the processing of the data: the Ministry of Health and Social Services (MOHSS), the Ministry of Home Affairs and Immigration (MHAI), the Ministry of Safety and Security (MOSS). MOSS becomes involved in the cases of unnatural deaths (violent deaths and accidents) where the cause of death needs to be investigated, but it does not issue death certificates. The cause of death is determined by a medical doctor after carrying out the post mortem and thereafter provides a cause of death with the informant present at MHAI for issuance of the death certificate and removal order. Some investigations can go on for a long period of time before the relevant documentation is issued, and this impacts negatively the timely analysis of cause of death.

Currently, NSA does not produce vital statistics from the civil registration system. The vital statistics that are produced are based on data collected through the census and surveys.

Incompleteness of the registration of vital events compromises the quality of the data that could be used to produce vital statistics. Gaps have been identified during the assessment of the civil registration and vital statistics system in Namibia and plans have been made to improve the system. A fully operational civil registration system should be able to provide profiles on the demographic and socioeconomic characteristics of the population. The NSA has identified this as a problem, is trying to set up an efficient system, and has expressed a wish to have links with MHAI to be able to collect information from one source only instead of various sources. The NSA considers that the quality of the data they have been able to obtain to date, and claim that the vital statistics produced are inconsistent. The data are neither accurate nor timely due to the occurrence of late registrations (estimated at 30–40%), which makes the data lose relevance according to the NSA.

In 2014 Namibia carried out an assessment of the Civil Registration and Vital Statistics (CR&VS) system as per the UN recommendation, and this assessment produced a number of recommendations aiming to improve the management and systems. One of the recommendation was to review and design new birth applications to meet the international requirement for collection of data from NPRS. A new application form is under development and will be introduced in mid-2016. This means that the first vital statistics, although based on incomplete data sets due to the high number of late registrations should be available in 2017.

In 2016 the NSA will carry out an inter-censal demographic survey (NIDS) and the questionnaire will include questions about birth registration and identity documents.

The proposed electronic Id-M system could solve the need for timely data and information on vital events that NSA requires.

### **3.1.5 Civil Registration and Vital Statistics (CR&VS) Plan**

A well-functioning civil registration system provides citizens with legal identity and ensures their rights of access to public services, social protection and human rights. But more importantly it generates statistics on population dynamics and health indicators on a continuous basis, as well as essential statistical information that decision makers can depend on for evidence based policy formulation, planning and implementation and monitoring national programs.

The civil register is a key contributor to the vital statistics system, and it is important the back end systems are set up to allow the relevant IT systems to communicate with each other in a timely fashion to ensure that the vital statistics are produced for informed planning and decision making. The principal actors are the Ministry of Health and Social Sciences (MOHSS), the MHA/DCA and NSA, but the Ministry of Justice and the Ministry of Safety and Security provide input to the VS system. A comprehensive assessment of the Civil Registration and Vital Statistics System in Namibia was carried out in 2014. Following that, a strategic Action Plan for the period 2015–2021 was developed, and approved by the authorities in February 2015.

In the introduction of the report it states “*Civil registration captures significant life events of people within the national borders. The information gathered by recording can be used by governments to generate vital statistics on the demographic dynamics and the health of the population. It produces reliable information on births, fertility and deaths that enable the calculation and production of timely and accurate population estimates, which contributes to policymaking and planning of important national development programmes.*”

The key observations from the assessment are clearly reflected in the CR&VS Plan, along with a timeline for the defined activities to be carried out. The observations from the assessment are in line with what the WB Mission could observe during the visit in November 2015, and are a valuable baseline for defining the baseline for introducing e-ID cards.

Many of the CR&VS assessment and 2015–20 Plan proposals are in the process of being implemented successfully by the DCR, but there is a clear need for a more defined policy and financial support to implement all the recommendations. It is also recommended to look at the governance structure of the identity management as a whole, given the fact that investments and upgrading of the civil registration system will have a positive impact on the processing of vital statistics if it can be fully automated. However, a condition for this to function is that the parameters for technology management and interoperability have been specified and put in place.

## 3.2 LEGAL FRAMEWORK

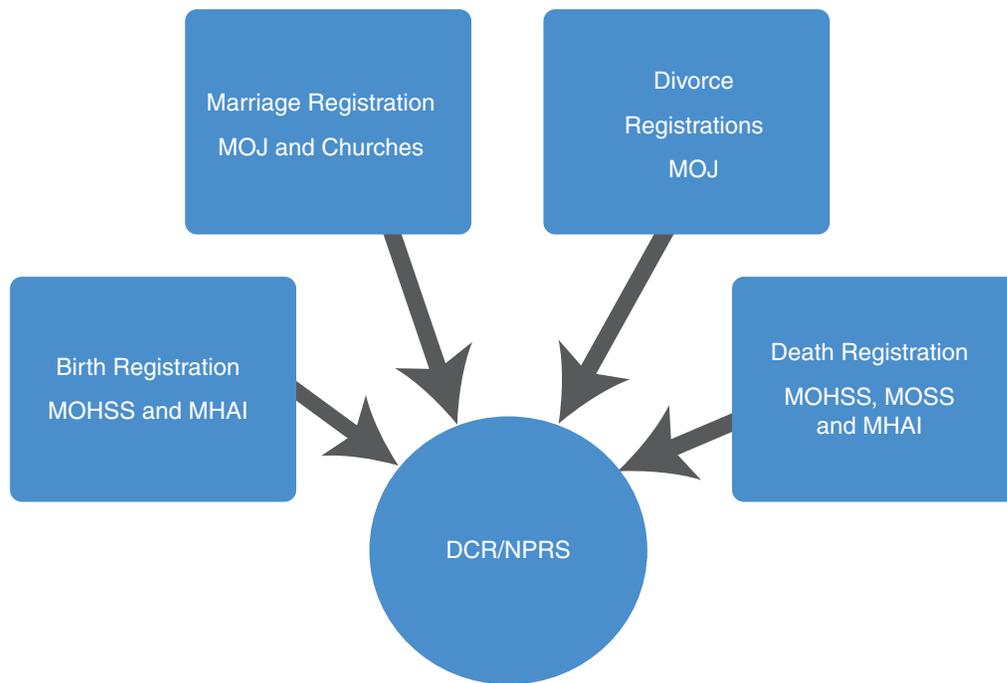
An extensive discussion of the current state of the legal framework that concerns identity management can be found in Appendix 7. Like most countries in the world that contemplate the introduction of an electronic identity management system, Namibia needs to upgrade current laws and regulations to respond to 21st century challenges, challenges of which many could not even have been imagined 10 or 20 years ago.

Namibia has an outdated national statute which makes the registration of births, marriages and deaths obligatory. Divorce records are not covered by the same law with the result that divorce records are not integrated into the civil registration system. Customary marriages and divorces which are recognized for many legal purposes are not subject to any legally mandated method of registration and fall outside the civil registration system. A separate law on adoption procedures requires registration of all adoptions and requires the issue of replacement birth certificates which list the adoptive parents as the child’s parents. Another law on identification documents requires that all citizens and permanent residents apply for Namibian identity documents at age 16.

One key problem area is the reliance on birth certificates as proof of citizenship. This has produced a reluctance to issue birth certificates in some cases, such as where the parents lack documentation, as well as a practice (at times) of authorizing clerks to issue ‘Namibian’ and ‘non-Namibian’ birth certificates without proper guidance.

Another key problem area is the current framework for registering the birth of children born outside marriage, which is fraught with contention and misunderstanding. A related problem concerns the surnames that can be registered for such children. Death registration and the use of civil registration documents for access to death-related benefits (such as pensions and insurance payouts and rights to inherited property) have been areas where attempts at fraud have been particularly common.

**FIGURE 2** Institutions involved in the civil registration process.



Source: Authors' elaboration.

Vision 2030, one of Namibia's key policy documents, identified universal and complete vital registration of births, deaths and marriages as one of the strategies connected with the goal of accurate and reliable information on the country's population to facilitate social and economic development planning and program management.<sup>3</sup>

Namibia has no jurisprudence on issues directly pertaining to civil identification and registration, although there are some court cases on citizenship issues which are tangentially relevant.<sup>4</sup> The detailed discussion of the legal framework can be found in Appendix 8.

### 3.3 HOW THE REGISTRATION PROCESS WORKS

Within the MHA the Department of Civil Registration (DCR) is responsible, for both the civil registration and the issuance of pertinent certificates, and civil identification and the issuance of the national identification document (NID). Birth, death, marriage and civil identification (ID) registration is free, but duplicates and later corrections are paid for. MHA officials fill in all forms as a way to minimize errors in the registration process, and the parents have the opportunity to check and confirm the information before the certificate is printed.

Given that there are several ministry agencies involved in the registration and enrollment processes, inter-institutional policy, administrative and procedural frameworks are required. The different registration processes have different procedures and reporting practices, and while the objective is to ensure that each person has a unique identity and a unique record, there are obvious risks of double registration, particularly because Namibia also manages the South West Africa population register, which is a legacy register from before Namibian independence in 1990. In its time the SWA register was developed and implemented by South Africa, and has since remained as part of the set of registers the MHA manages, and it is still consulted as a means to verify identities.

<sup>3</sup>Namibia Vision 2030: Policy Framework for Long-Term National Development (Main Document), Windhoek: Office of the President, 2004 at 74–77.

<sup>4</sup>These are discussed in the section on citizenship.

Routine activities such as civil registrations and operation of the system are in place and function well, however the nonroutine activities such as integrating/verifying identities with the SWA register when persons are applying for identity cards represents an obstacle to efficient management of the register. Between the time when the IMSA was carried out and the draft report was validated by the authorities, MHAI had prepared a Submission to Cabinet to phase out the South West Africa Identity Document (SWA ID) over a period spanning from April 1, 2016 to March 31, 2017.

### 3.3.1 Birth Registration

The necessary procedures and processes are clearly defined and the information is publicly available, both on MHAI's website, as well as in printed materials in English and all the main languages spoken in Namibia. There are facilities for the registration of birth in 22 out of 35 hospitals, and the staff in the maternity wards have received training on the importance of registering births, along with which documents are necessary to bring to the MHAI official. The law requires the birth to be registered within 14 days of the birth, but late registrations are not uncommon in Namibia.

The documents required to register a birth with MHAI (hospital or elsewhere) are a proof of birth, such as the Child's Health Passport, or birth notification, which are issued by MOHSS.

As part of MHAI's Turnaround Strategy, the register has made important progress with respect to making information available to the public, something that is particularly evident in all registration offices where all pertinent information is clearly posted.

 		
<b>NATIONAL DOCUMENTS PRICE LIST</b>		
<b>Product</b>	<b>Service</b>	<b>Fee</b>
<b>Birth Certificate</b>	Alteration	N\$ 30
	Correction of parent/s particulars	N\$ 30
	Change of surname	N\$ 80 (Minor) + N\$ 220 (Adult)
	Duplicate	N\$ 30 (Free if in possession of old abridged birth certificate)
	Re-registration	Free
<b>Citizenship Certificates</b>	Application	Free
	Duplicate	N\$ 100
<b>Death Certificate</b>	Registration	Free
	Duplicate	N\$ 12
	Correction	N\$ 30
<b>Certificate of Identity (for domiciled persons)</b>	Application and renewal	Free
<b>Emergency Travel Certificate</b>	Application	N\$ 120
<b>Identity Document</b>	Application	Free
	Duplicate	N\$ 50
	Data Update (signature, image)	Free (for conversion from SWA ID to Namibian ID) + N\$ 50 (Photo update)
	Correction	Free
<b>Marriage Certificate</b>	Correction	N\$ 30
	Duplicate	N\$ 12
<b>Passport</b>	Application	N\$ 160 (new application and renewal) or N\$ 320 (replacement of lost or damaged passport)
<b>Permits</b>	Temporary Resident Permit	N\$ 80 (Handling fee) + N\$ 780 (Success fee)
	Permanent Residence Permit	N\$ 80 (Handling fee) + N\$ 12 130 (Success fee)
	Study Permit: Primary and Secondary Education	N\$ 80 (Handling fee) + (number of years) x N\$1050 (Success fee)
	Study Permit: Tertiary Education	N\$ 80 (Handling fee) + (number of years) x N\$ 1395 (Success fee)
	Employment Permit	N\$ 80 (Handling fee) + (number of years) x N\$ 1395 (Success fee)
<b>Visas</b>	Work, Business, Study, Holiday, or Transit Visas	N\$ 80 (Handling fee) + N\$ 390 (Success fee)
	PRP Re-entry Visa	N\$ 890 (Success fee)

The original or certified copy of the ID card or birth certificate for one or both parents is needed. If the parents are not married, both parents have to present themselves in front of the Registrar, or a written affidavit should be submitted, indicating the father is declaring paternity. If the child is born within marriage, one of the parents should

AGE AT THE TIME OF REGISTRATION PER REGION 2015									
	1–30 days	>1 year	1–2 years	3–5 years	6–10 years	11–15 years	16–20 years	> 20 years	Total
Karas	982	638	441	90	100	91	112	308	2762
Erongo	2534	1317	2524	1238	515	164	590	804	9686
Hardap	856	627	574	144	127	68	44	175	2615
Kavango East	649	1313	1858	1233	1683	1131	1059	2050	10976
Kavango West	31	134	132	144	70	39	30	59	639
Khomas	7407	3475	3334	1578	1018	510	575	1934	19831
Kunene	278	839	1688	1193	743	247	99	230	5317
Ohangwena	639	1668	2732	1556	1182	459	280	532	9048
Omaheke	361	601	777	444	351	116	92	267	3009
Omusati	387	817	754	321	407	262	288	476	3712
Oshana	1578	1305	871	397	327	154	249	421	5302
Oshikoto	905	1508	1474	597	351	170	139	176	5320
Otjozondjupa	1026	1175	1567	809	600	251	184	356	5968
Zambezi	411	780	1253	647	472	220	217	242	4242
<b>Total</b>	<b>18982</b>	<b>16664</b>	<b>21390</b>	<b>10929</b>	<b>8513</b>	<b>4061</b>	<b>4093</b>	<b>8343</b>	<b>92975</b>

Source: NPRS number of registration of birth by age in all regions. Registrations above the age of one are considered a late registration of birth in 2015. Delayed registration of birth is still a major challenge in Namibia, despite multiple initiatives to improve access to birth registration at hospitals, and a strengthened cooperation with line ministries.

be present. A marriage certificate will be required. Foreign nationals living in Namibia must bring passport(s) and the residence permit. A child can only be registered with the mother's or the father's particulars, if the other parent's maternity/paternity is denied or he/she has disappeared. If a parent has deceased before his or her name was added to the birth records, their particulars can only be added to birth records if substantial documentation is presented. According to the Act, no. 63 of 1963, a child can only hold either the mother or the father's surname.

If a person has lost a document, they can apply for replacement copies directly from the MHAJ.

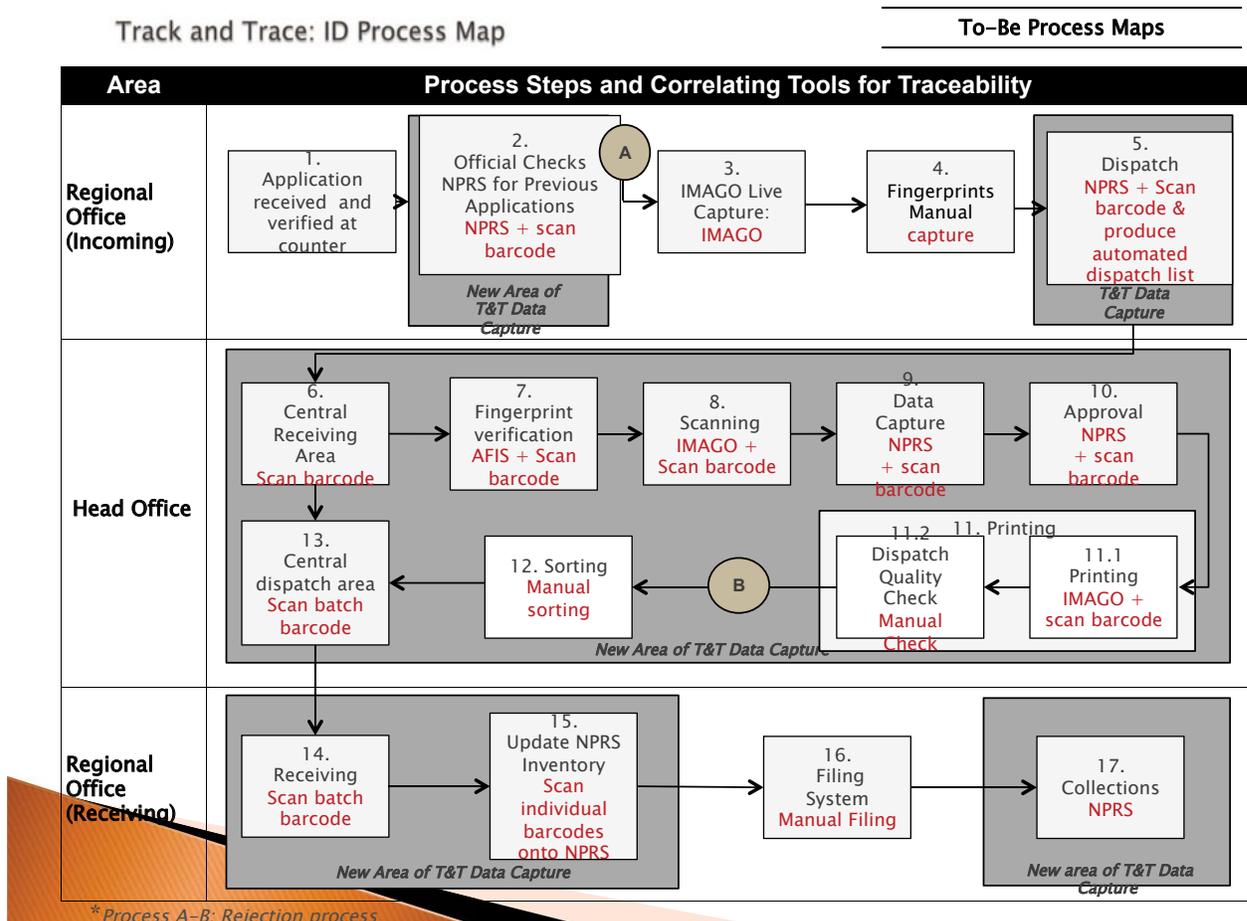
### Procedure

1. Parent(s) should complete a Birth Notification Form.
2. The Birth Notification Form should be submitted with any other required documents at any Ministry of Home Affairs and Immigration office where birth registrations take place.
3. The Ministry will issue a birth certificate if all the requirements were met and the Birth Notification Form was completed correctly.

### Births Are Registered at the Following Offices

Children younger than one year: Hospital, subregional MHAJ office, and some of the magistrates' courts. When the child is older than one year the registration must take place at the nearest regional MHAJ office.

MHAJ has instituted a barcode system to "track and trace" the internal workflow of production of ID documents. The system has been tested, and will be piloted in April/May 2016.



SITUATION	WHO CAN REGISTER THE BIRTH?	WHAT WILL THE SURNAME BE ON THE CHILD'S BIRTH CERTIFICATE?
Both parents want to register birth. Parents are married.	Either parent. Marriage certificate must be provided.	Surname of the married parents. If the parents use different surnames, parents can choose which of their surnames to give the child.
Both parents want to register the birth. Parents are not married.	Either parent. Father will be listed on birth certificate only if both parents consent to it. Father should be present, or provide sworn statement that he has consented to be listed on birth certificate.	It can be the surname of either parent. Surname of father will be used only if he and the mother both consent to this. Surname will otherwise be the surname of the mother.
Mother or father wants to register birth. Parents are not married. The other parent is alive but not participating in the registration of the child.	Either parent. Mother is not required to give any information about the father, but the father must provide documents for the mother if he is the one registering the child.	Surname of the parent registering the birth. Father's surname will be used only if both he and the mother consent to this. Otherwise child will have the mother's surname.
Mother or father wants to register birth. The other parent is deceased.	The surviving parent. Mother is not required to provide information about the father if the parents are unmarried. The death certificate of the deceased parent should be provided if his/her name is to be added to the birth certificate. Deceased parent's name can only be added when the birth certificate is issued for the first time. Deceased parent cannot be added to the birth certificate at a later stage.	If a death certificate is provided of a parent, the surname of either parent can be used. If the death certificate is not available, the surname of the parent registering the child will be used.
There are no parents living. The child is an orphan. The child's caregiver can register the birth.	Any document that proves the child's identity and place of birth. This could be parents' ID cards, birth certificates and death certificates, or a letter from a headman, school principal or social worker.	Surname of either parent, provided that there is sufficient information to prove the relationship.
There are no parents living. The child is an orphan. Children can register their own birth when they are old enough. <sup>5</sup>	Two people must accompany the child who have been born in Namibia, have a Namibian ID and are at least 5 years older than the child. They must be able to confirm that the child was born in Namibia. If any document of either of the child's parents exists, it should be provided.	Surname of either parent, provided that there is sufficient information to prove the relationship.

Source: MHAI.

<sup>5</sup>The common understanding of "old enough" was indicated to be 16 years of age.

This means that every request that is put forward to the MHA is traced through the system, be it for civil registration or civil identification. At the time of the assessment clients could request to get a Short Message Service (SMS) when their identity document or passport is ready for pickup. This service costs N\$3.50, and the information is clearly displayed and communicated to the users.



## SELF SERVICE ENQUIRIES: PASSPORTS



# Avoiding queuing, send an SMS to determine the status of your Passport

- 1. How do I do this?**  
Send an SMS containing **ONLY** your passport application number, found on your receipt, (Example PA0123456) to 10001 and receive information on the status of your application
- 2. Where do I find my receipt application number?**

Ministry of Home Affairs  
and Immigration  
PASSPORT FEE  
RECEPTION

Received at: Windhoek  
Cashier: xxxxx  
Cash till: xxxxx  
Date/Time: xxxxx  
Receipt No.: xxxxx  
Surname: xxxxx  
First Name: xxxxx  
Date of Birth: xxxxx  
PA Number: 0123456

Add the letters PA to this number to get PA0123456



SMS your application number (Example PA0123456) to 10001

- 3. What does this service cost?**  
SMS costs N\$ 3.50

The plan is to make it web-based to allow citizens to inquire about their applications, and receive notifications when the document is ready.

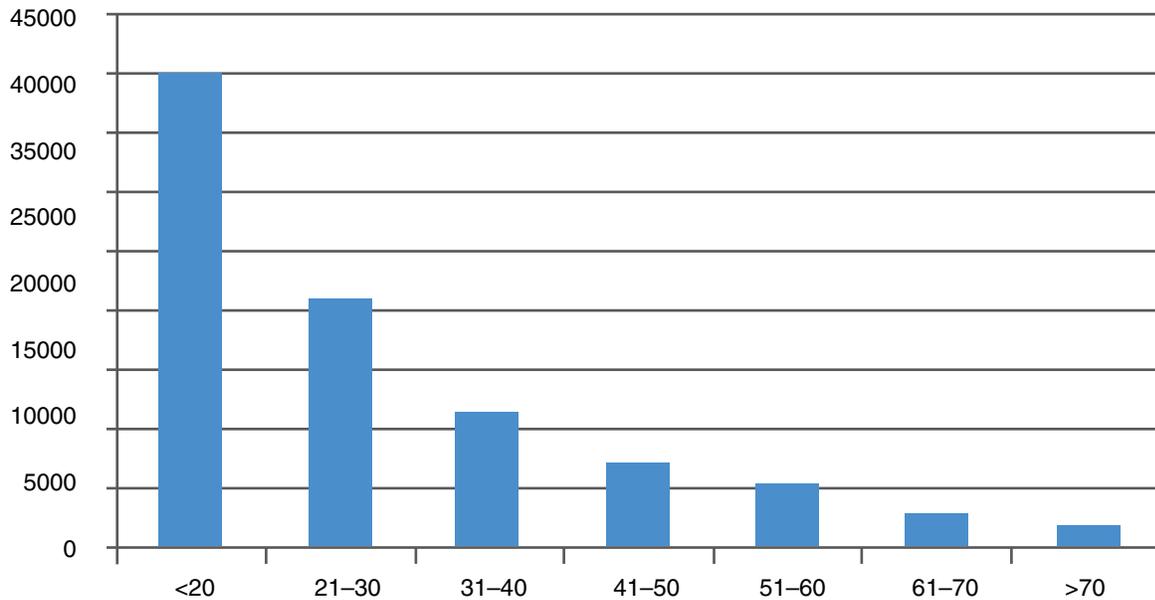
### 3.3.2 Identification

The MHA is responsible for issuing the national identification (NID) card to citizens or permanent residents who are 16 years or older, and the first card is free of charge. It is mandatory to hold a national identification card for identification.

According to the website the first-time application must be supported by the following documents:

- Application Form (pink form)
- Original/Full Birth Certificate
- Original Citizenship Certificate (only people born outside Namibia)
- Marriage Certificate (married women only)
- Original Permanent Resident Permit (permanent residents only)
- Old Namibian ID (only applicants in possession of an old ID)
- Fingerprints (taken in office)
- ID Photo (taken in office)

**FIGURE 3** Age at first application for national identity card (2015).



Source: MHAJ.

Blue identification cards are issued for citizens whereas permanent residents have blue and pink cards. There is a process in place for de-duplication of information before the card is issued, and biometric information is stored both in the database (full set) and on the card (left thumb).

The automated fingerprint identification system (AFIS) that MHAJ operates, is a self-contained system that captures all 10 fingerprints of every ID applicant in Namibia. However these fingerprints originate from using ink on the paper application form. The level of accuracy may not be as high as the fingerprints the Electoral Commission of Namibia (ECN) captures digitally for registration of voters. While the AFIS system could be used to de-duplicate identities, it appears that the current Chinese AFIS system may not be able to provide the 10 fingerprints needed to personalize an e-ID card in the future. The two issues are: (a) fingerprints are not captured digitally in the first place, and (b) the Chinese AFIS system claims that it does not have a data layer from which fingerprints can be extracted and exported to other systems. This may be a built-in security feature to discourage hacking and extraction of fingerprints en masse.

MHAJ does not currently have a mirror (backup system) for civil identification information, but is in the process of setting this up.

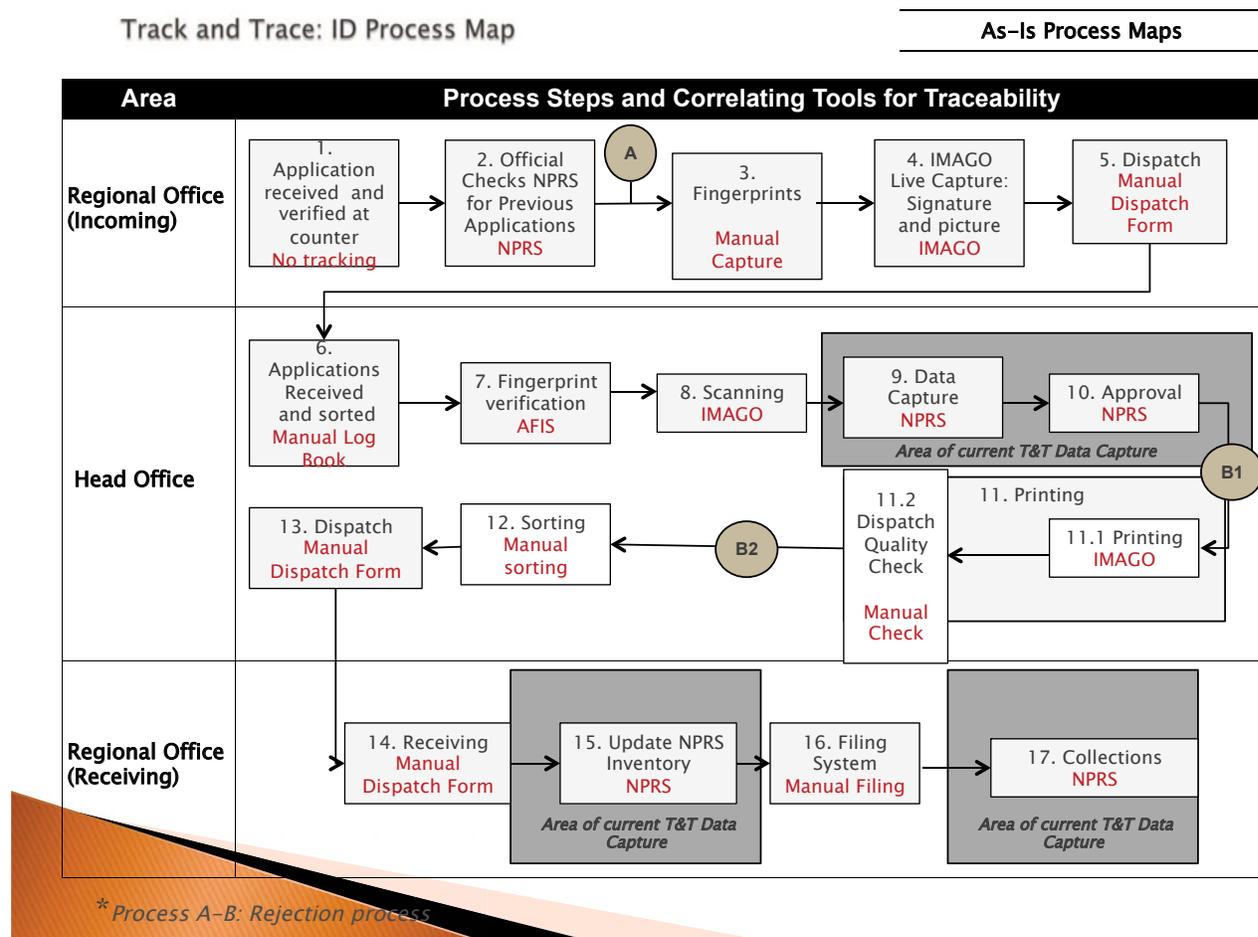
One challenge that Namibia is facing with respect to issuance of NID and passports is with respect to long-term residents, particularly individuals without any identity documents that took up residency on Namibian territory between 1979 and 1997, and have been living in Namibia continuously 10 years before or after independence.

### 3.3.3 Identity and Identification Documents

An identity document is a certificate issued by MHAJ that contains biographical and vital information about a person, such as birth, death, marriage and adoption certificates. An identification document has added biometric information so as to uniquely identify the person. In Namibia the first birth, death, marriage and civil identification (ID) registration is free, but duplicates and later corrections are paid for. This is in accordance with the best international practices. Birth and death certificates are issued locally, and on the spot.

The current certificates have low levels of security, and MHAJ is planning to replace these with papers with security features to increase trust in the certificates.

**FIGURE 4** The present processing of national identity cards.



Source: MHA1.

As stated earlier, one key problem area is the reliance on birth certificates as proof of citizenship. This has produced a reluctance to issue birth certificates in some cases, such as where the parents lack documentation, as well as a practice (at times) of authorizing clerks to issue ‘Namibian’ and ‘non-Namibian’ birth certificates without proper guidance.

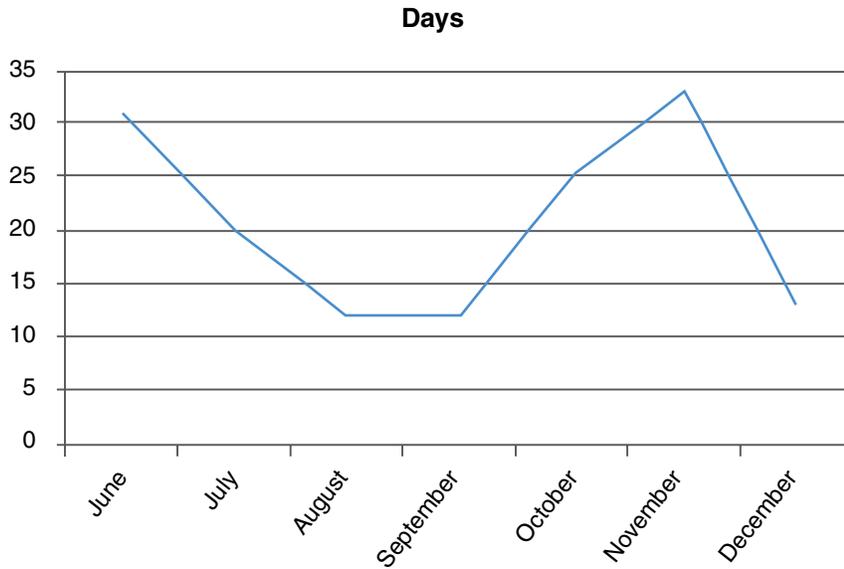
The national identity cards for citizens are blue, while those for permanent residents are pink and blue. The card is made of polycarbonate, and does not have a chip. The card contains a picture, and a representation of the left thumbprint and is bar coded, and machine-readable (contact). The card is International Civil Aviation Organization (ICAO) compliant, and issues only after the identity of the requester has been validated and confirmed. This process may take time, depending on the completeness and trustworthiness of the supporting documentation, but is continuing to improve due to improved internal routines.

Everyone, citizens and permanent residents alike, are required to apply for an identity card when they turn sixteen. The application for a new card is on a pink form, whereas the form to apply for a renewal or a lost card is white. The card personalization and production is centralized, and the production and maintenance of the card production have been contracted out. The present national identity card has no expiration. However, there is a question of the value the citizens associate with the national identity card.

### 3.3.4 Databases in MHA1 and Digital Connectivity

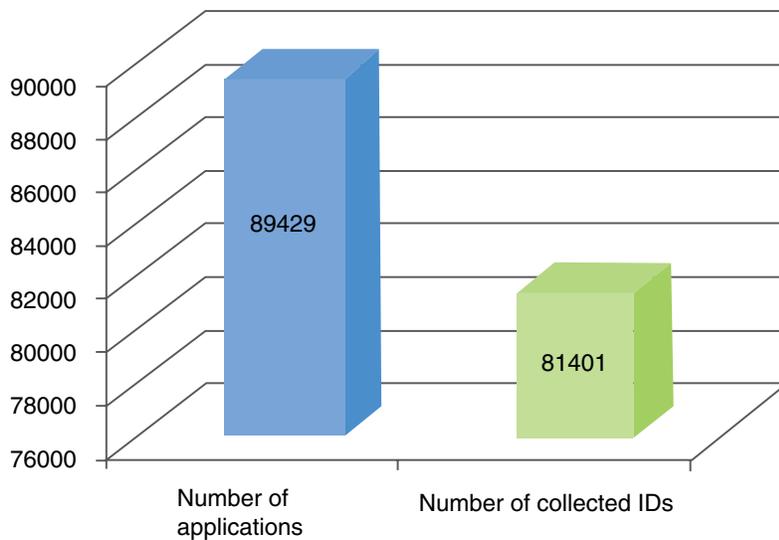
It is not known how many paper based records MHA1 has. At the time of the assessment (November 2015), MHA1 had in the NPRS digital records of 280,000 births, 460,000 deaths and 100,000 marriages. In the M-files system

**FIGURE 5** Turnaround time for national identity cards in 2015.



Source: MHAI.

**FIGURE 6** Number of printed vs. number of collected national identity cards in 2015.



Source: MHAI.

4.3 million birth records are stored. Unfortunately, the birth records from the M-files database cannot be migrated to the NPRS as many people have two birth records.

The MHAI runs six databases: the border control database, Automated Fingerprint Identification Systems (AFIS), the National Population Register System (NPRS), the IMAGO database as well as a database with 4.3M pdf records and amendments with births that occurred prior to 2012. From February 2016 MHAI has incorporated a citizenship database. The IMAGO database runs on Oracle. The border control database and the NPRS are both backed up in the OPM. The current server in the MHAI appears to be inadequate for civil registration and identification given the current level of traffic. To remedy this situation the MHAI has procured a new blade server which is expected to be installed early 2016.

**FIGURE 7** The NPRS organized around the individual's unique identity.



The digital connectivity is a prerequisite for the interoperability of databases, and will be what makes or breaks an identity management system. At the moment the connectivity between MHA data center and ISP is 512Kb/s to 1 MB/s bandwidth. However, the connectivity is not stable.

The NPRS is structured around the person's demographic profile using the UIN, which in turn is linked to parents' respective UINs.

The way the NPRS is designed will allow for the database to authenticate identities against it as long as the architecture of the e-Government structure is set up to enable online authentication.

### 3.3.5 Barriers to (Timely) Registration

Namibia has a good decentralized system of access to hospital deliveries for pregnant women. However, only 85% of the births take place in these hospitals, and below 25% of the births are registered prior to the child leaving the hospital. Birth, death, marriage and civil identification (ID) registration is free, but duplicates and later corrections are paid for. MHA officials fill in all forms as a way to minimize errors in the registration process.

The barriers to timely and universal birth registration exist on three levels, specifically at the legal, cultural and practical.

On the legal level there is the issue of processes for registering the children of undocumented citizens and immigrants. Timely and universal birth registration is important both for demographic vital statistics purposes, and the fact that it may be impossible for irregular immigrants to register given that the parents may not have the required documents to register the child. There is also some reluctance among this population to register for fear of retributions.

On the cultural level there are traditional delivery customs and rituals as well as naming practices. When the child is born in the hospital, parents will often leave with the child to be named according to cultural traditions, be it by the grandparents, village elder, or by customary rituals. The naming process may take a long time, and the parents may never go back to register the child. While information material on the importance and processes of birth registration exist in all major languages in Namibia, specific training is currently being offered to civil registration (CR) personnel on providing guidance to expecting mothers/parents. Some tribes prefer not to give birth in institutions and also do not see the benefits of birth registration such as the Ovahimba and the San ethnic groups (vulnerable groups).

On the practical level, the registration of the birth may be delayed because law requires the presence of the father. This may be solved ex-ante by preparing an affidavit and notarized copies of his identity documents if he cannot be physically present, such as in the case for migrant laborers.

In the past, many mothers were deterred from registering their children, as culturally it was believed that there could not be a child without a father, and that the child should be registered with his or her father's surname. There is still great social stigma associated with a child having the mother's surname. However, MHAI has put a lot of effort into ensuring that single mothers are not deterred from registering their children if the father is unknown or not present. There have been reports, however, that individual registrars may apply their personal criteria to the detriment of the single mother.

No direct gender discrimination has been reported, but single mothers generally have less money to cover the indirect costs associated with registering the child, especially when any displacement is necessary. Such costs can be loss of income, child care for other children, travel, cost of food while traveling, etc. If the mother does not have complete documents herself, she cannot register the child. Another deterrent can be the stigma, and in some cases loss of status, associated with only having the mother's surname in the event where a father denies paternity.

The late registration of births represents a challenge with respect to accurate and timely vital statistics. For instance, where should the birth be registered? Where did it take place, or where does the mother reside? Since census data are collected where the mother lives, it would be helpful to have the birth registered in the same place in order to strive for statistical coherence between census data and survey data.

MHAI has been organizing outreach and mobile campaigns to increase registration, particularly in areas where people have to travel a long way to the nearest registration office. One of the practical problems they have run into is accessing the NPRS to verify identities, and ensure there are no double entries.

### **3.3.6 Use and Management of Technology**

The digital connectivity framework and infrastructure is fundamental for an electronic identity management system, and will make or break the effort to modernize and upgrade Namibia's identity management efforts.

The current system is not sufficient to ensure effective flow of data for registration purposes, and there will be additional strains on the system once authentication protocols are implemented. However, it should be noted that MHAI has made considerable progress to improve the foundations for efficient data and records management.

The Automation Project, which aims to digitalize all records of Department of Civil Registration, commenced in February 2010. A contract was signed with Document Warehouse to facilitate the scanning, processing and filing of the records. Initially, one hundred (100) temporary data capturers were employed with approval from the Public Service Commission. This number was later, in 2013, reduced to sixty (60) data capturers.

Prior to the digitization, all the birth records were filed in the offices in the regions, while the death records and marriage records were filed at headquarters. Document Warehouse introduced a digital lifecycle for each single document to guarantee a standardized and safe mode of digitalizing the hundreds of thousands of records (millions of pieces of papers) filed in multiple spaces within the Ministry of Home Affairs and Immigration.

The life cycle of a document:

1. Packing of boxes
2. Receiving and bar coding of boxes
3. Preparing of papers for scanning

4. Scanning
5. Stable records
6. Capturing (M-files and later National Population Registration System)
7. Quality control
8. Filing

The project started with the birth records. The birth records were captured in a filing and record management system called M-filed. The system was introduced by Document Warehouse, but later proved to be insufficient for management of civil registration records. The Department of Civil Registration therefore decided to capture the historical death and marriage records in the National Population Registration System (NPRS), an integrated and web-based Civil Registration System developed by Office of the Prime, on the basis of the old ID system.

From 2012, it became compulsory for all office with access to the NPRS to capture new birth and death records in the NPR system, while the live capturing of marriage records began in late 2014.

Progress to date by record includes:

#### **Birth Records**

Approximately, 2.7 million birth records, including amendment records have been captured and quality checked in the M-files. The records can be traced from all offices with a network connection across the country. Today, M-files is an essential tool for the management of the country's birth records. Services can be delivered faster and more efficiently than post the digitalization.

#### **Death Records**

A total number of 379,447 historical death records have been captured by the Automation Project. Since 2013 the regional offices have been responsible to capture the records live on the NPRS. Prior to independence it was not compulsory for all population groups to register death. Therefore the number of registration of deaths rose dramatically after independence. Today, approximately 90% of all deaths are registered in Namibia, according to the Namibian Household and Housing Census, 2011.

TIME PERIOD	NUMBERS OF DEATH RECORDS IN NPRS
1970–1979	5,711
1980–1989	30,910
1990–1999	91,118
2000–2010	199,563
2010–2016	106,600
<b>Total</b>	<b>433,368</b>

#### **Civil Marriage Records**

The Automation Project has captured a total number of 130,184 marriage records. From 2015 the Subdivision: Marriages and Deaths, has become responsible for capturing of the marriage records being sent on a daily basis from the Magistrate Courts and appointed marriage officers. The Automation Project is currently working on the 1970s records and records between the years 2001–2011. It is estimated there are 35,000 records yet to be captured. Currently, 1500–2000 records are captured daily, depending on the speed of the NPRS system, which unfortunately due to low server capacity, is very slow.

TIME PERIOD	NUMBERS OF MARRIAGE RECORDS IN NPRS
1970–1979	6,907
1980–1989	31,386
1990–1999	42,619
2000–2010	21,217
2010–2016	27,955
<b>Total</b>	<b>130,184</b>

### **ID Application Forms**

All the blue ID application forms have been scanned, and are accessible at M-files. The pink ID application forms have been collected and approximately 90% have been scanned by Document Warehouse, and will be also be uploaded to M-files. The total number of pink forms is 1,100,000. The scanned blue and pink ID application forms will in the future be migrated to NPRS, again due to the low server capacity; it has been decided to postpone the migration, until the new NPRS blade server is in place.

The pink ID application forms are used for applicants who never had an ID including the SWA ID.

The blue application forms are used for applicants who previously had an SWA ID and correction of details on the ID records.

The Namibian government has defined the needs and the risks on the macro level in the e-Governance Strategic Action plan. However, a similar exercise should be undertaken for identity management to ensure an adequate environment for the use of smart cards. At present there are a number of databases that contain biographic and biometric information on Namibian citizens and residents. A structure for communication between some of these databases is essential to support verification and authentication of identities to improve delivery of government services.

Prior to defining and designing the technology solutions, it is important to put in place the inter-institutional collaboration arrangements, arrangements that have the potential for cost savings by avoiding duplication of efforts. A detailed mapping and identification of needs must be undertaken to comprehensively address the requirement.

## **3.4 LINK WITH OTHER REGISTERS AND INSTITUTIONS THAT REQUIRE PROOF OF IDENTITY**

Practice dictates that it is necessary to possess and present a government issued identity document to receive social benefits. The same goes for accessing private health services, but not public health services. While it is not a legal requirement to present a birth certificate to enroll in an education system, it has become a policy of the Ministry of Education. With the Government's declared war on poverty it will require stronger measures for identification of beneficiaries to distribute benefits.

Social protection has been fragmented in Namibia, and a new ministry has just been created to coordinate delivery of services. At the moment no policy exists, neither any structure for coordination with or between stakeholders. The legal basis for a more coherent social protection policy is laid out in the NDP4. At the time of the assessment there were no linked databases between grants registers, nor a unified database of social benefit recipients and potential beneficiaries. However, in the Government's e-Governance strategic action plan this has been identified as necessary.

The UN is interested in helping Namibia set up such a single beneficiary register system. (UNDP, UNICEF).

Government pensions and grants include Social Pensions (old age pension, disability pension and war veterans' subvention) and Child Grants (child maintenance grant, foster care grant, special maintenance grant and the place of safety grant). According to UNICEF, "the combined number of recipients of the various grants in Namibia is substantial, and in many households these are the only source of cash income."

The recently created Ministry of Poverty Eradication is responsible for veterans' grants, old age grants and policy development. Another key institution with respect to an identity management system is the Social Security Commission that deals with social insurance schemes.

There is also an expressed demand from the private sector for MHA I to provide a verification and authentication structure to better serve their clients. Presently the banks will do their own verification procedures, which can be time consuming, and they would rather access a trusted public system for identity authentication.

### **3.4.1 Ministry of Health and Social Services (MOHSS)**

The MOHSS is a key stakeholder in the identity management system in Namibia, both as producer of inputs to the vital statistics system, and also as a user of the vital statistics for planning and decision making. The inter-institutional relationship between MHA I and MOHSS is guided by a signed Memorandum of Understanding (MoU) that ensures that the registration of birth takes place in the public hospitals. Since 85% of all births occur in hospitals, this has led to an increase in timely birth registration since the inception of this arrangement. However, not all births are registered immediately.

The initiative to register births in hospitals or maternity wards started with a pilot program in the Katutura Hospital with a grant from UNICEF in 2008, and to date birth registration is carried out in 22 out of the 35 national hospitals. These 22 hospitals are the ones with the highest volume of births. Birth registration in the hospitals is only permitted prior to the child leaving the hospital.

At birth children are issued a "health passport" by the hospital as proof of live birth. In order to register their child's birth with MHA I, the parents will have to bring the "health passport" and the original or certified copy of their own ID card or birth certificate, or passport. They also need to bring the original or certified copy of the marriage certificate if they are married. Ideally both parents should be present for the registration of the child, however mothers can also register their children without the father's details. The father's details can be added for free later, if the father declares paternity.

On the health passport certificate there is a field for the unique identity number. If for some reason the mother, or the parents, leave the hospital without registering the child with MHA I, they may come back and do it within one year. After one year it is considered a late registration and the enrollment will have to be done in the offices of the MHA I. While this may be the practice, the law mentions only the period of either 14 days or one year. Please see full report on legal framework for further details (Appendix 7).

In Namibia it is not required to have a birth certificate to get access to health services such as immunization programs, however it is often requested since it does help with age confirmation.

According to the Namibia Health Accounts report from 2012/13 "approximately 400,000 people, or 19 percent of Namibia's population, are covered by some form of health insurance, [. . .] 44 percent of the total health expenditure goes to paying for healthcare for only 19 percent of the population; the remaining 56 percent of the total health expenditure is spread among the other 81 percent of the population who are informal workers, the unemployed, and other vulnerable populations." (p. 10)

Considering that the MOHSS administers a number of mainly paper based registers by illness, rather than by case, and do not use the identity number in a standardized fashion, this results in a fragmented and inefficient management of patient data. It is impossible to trace or track patients across different registers. The MOHSS considers duplication of (patient) registers bigger than under registration in the health service provider system.

According to the 2011 census data, 88.5% of deaths are registered. However, as highlighted in the 2014 CR&VS assessment, there is still significant room for improvement with respect to recording the cause of death using ICD-10 coding.<sup>6</sup>

The Namibian health authorities have identified the need to increase the quality, accessibility and efficiency of the provisions of health services, and this has been further substantiated by the CR&VS action plan.

It will be important to ensure internet connection to all health centers by 2017 to provide an opportunity to make use of unique UIN and e-ID cards to track patients across databases, and in that way obtain disaggregated health statistics. It is necessary to make health systems patient- or case-based instead of disease-based to offer better services to the individual and save time and resources for MOHSS. In practice this will be done by cross-referencing case- and disease-based registers.

### **3.4.2 Ministry of Gender Equality and Child Welfare (MGECW)**

The mandate of the Ministry of Gender Equality and Child Welfare is to ensure gender equality and equitable socioeconomic development of women and men and the well-being of children.

The Ministry is a key player in the ongoing poverty reduction efforts, and is responsible for maintaining and updating the national database for orphans and vulnerable children (OVC).

It includes four directorates: Child Welfare Services, (two divisions: Child Care Services and Child Care Facilities and Protection, the latter dealing with grants, residential child care facilities and foster care), Community Empowerment (Division of Income Generation Activities and Division of Early Childhood Development), Directorate of Gender Equality and Research (Division Gender Mainstreaming and Division of Research) and Directorate of Administration and General Services (2 IT people for administrative purposes only). MGECW has 14 regional offices and 121 constituency level offices. Kavango is the region with the most vulnerable populations, highest rate of unemployment and the highest number of persons lacking documentation. The Ministry is working with MHAJ to ensure registration for those who need it.

The parents are registered in the beneficiary database with their national ID number and the full birth certificate of the child.

The grants are paid out on a monthly basis with the help of a contracted payment service provider to those who receive cash payments. The grants may also be paid out through banks to those who have bank accounts, as well as through the post office. However, in both cases the payer will charge a service fee. The payment service provider charge is N\$10 per transaction. The recipients have to present their national identity card or provide a thumbprint for verification on a fingerprint reader to receive the money. There is a process for grievance and exclusion and lack of payment, but according to MGECW there are few complaints.

Among the services this Ministry offers is access to grants for the care and protection of children in Namibia. Accessing these grants requires multiple forms of identification, and in practice only citizens receive benefits from these grants, although the current Children's Act 33 of 1960 authorized grants for "any child." Given the numerous steps involved in obtaining and presenting the required documents, children who in principle are eligible may not be able to obtain assistance from the grants.

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<sup>6</sup>International Classification of Diseases and related health problems (WHO).

According to MGECW as of October 2015, a total of 181,000 children under 18 years of age received grants. Of these, maintenance grants are paid out to 132,844 children, and have increased from 28,000 in 2004; 19,748 receive foster care grants and 5,244 receive special maintenance grants for disabled children under the age of 16. According to the 2011 census 48% of the population in Namibia is under 18 years, and an additional 22,422 children considered vulnerable are also receiving grants. The value of these grants is the same, that is N\$250 per child per month. The payment service provider started issuing orphans cards with biometrics (digital capturing of 10 fingerprints) of children 4–5 years ago, but unfortunately has not been able to complete the process given the limited human resources. Currently there are enrollment machines only at regional offices. At the time, approximately 90,000 children registered and the service provider kept the database with the biometric records of these children.

There are different requirements for the different types of grants. If one parent passes on, the other parent will need to present a death certificate, and in some cases a pay slip if the person is employed. On the other side, when a person is unemployed it is necessary to present a police declaration, and in any case a copy of the school record for the child. The upper limit is monthly income of N\$1,000 to receive support, an amount the Government is considering revising to increase.

Enrollment takes place at the constituency level, where the paper files are kept. Copies are sent to the national level, where the records are digitalized.

MGECW would be interested in capturing the information on children eligible to receive grants at the entry level, with MHAJ online validation of identities and timely electronic records of beneficiaries. They are also interested in linking up to the planned payments Vision 2020 (see 6.5.6). Presently they use a payment service provider that charges N\$10 for each payment transaction.

### **3.4.3 Immigration and Passports**

The immigration services of the MHAJ encompasses Border Control, Citizenship, Passports, Residence permits, Visas and Domicile certificates. The website is mostly clear and descriptive of what is required for each of the processes, but for example does not explain the difference between a visa and a permit. The work and activities are guided by the Immigration Control Act of 1993 (#7) and Namibian Constitution. For the specific case of Angolans, there is the Cabinet Action Letter from 2005.

The Department handles 300–400 passport applications daily.

Citizenship is automatically granted to a child born in Namibia when one or both parents hold Namibian citizenship.

According to the Constitution, as interpreted by the High Court of Namibia, dual citizenship cannot be prohibited to Namibian citizens by birth or descent. The process of obtaining citizenship by descent takes from 0 to 60 days.

The Cabinet allows naturalization by due process. The naturalization process can take up to 4 months; MHAJ maintains statistics on this but it is the goal of the MHAJ to reduce it to 2 months. However, the delays may often be outside of MHAJ's control and caused by the process of obtaining a birth certificate or certificates of conduct from country of birth (origin) of the person. This process can be less complicated and smoother if that country has a diplomatic mission in Namibia.

NAME OF GRANT	OBJECTIVE	TARGET GROUP	AMOUNT RECEIVED	REQUIREMENTS
Maintenance grants	<p>Maintenance grant is financial assistance that is given to a parent with a child(ren) that are under the age of 18 whose spouse has died. This financial support is for the care of children.</p>	<ul style="list-style-type: none"> <li>• A biological parent with a child or children under the age of 18 whose spouse has died and earns less than N\$1,000.00 per month or is unemployed</li> <li>• A child whose parent receives an old-age pension or a disability grant</li> <li>• A parent whose spouse is sentenced to imprisonment for six months or longer</li> <li>• Namibian citizens and permanent residents qualify to apply</li> </ul>	<p>N\$250 per child/month (no limit to the number of children)</p>	<p>Certified copies of the applicant's birth certificate and Identity document.</p> <p>Certified copies of the child or children's full birth certificates/confirmation of birth or baptism card.</p> <p>A certified copy of the applicant's marriage certificate where applicable.</p> <p>The latest school report of each school-going child.</p> <p>A certified copy of the spouse's death certificate in case of death.</p> <p>If the spouse is in prison, a letter from the prison and a declaration from him/her confirming this.</p> <p>Proof of the spouse receiving a disability grant or an old age pension.</p> <p>If the applicant is employed, a pay slip with the name, phone number and address of the employer; if not employed a police declaration.</p>

NAME OF GRANT	OBJECTIVE	TARGET GROUP	AMOUNT RECEIVED	REQUIREMENTS
Foster Care Grant (FCG)	FCG is the grant given to guardians who are taking care of children who are not theirs	<ul style="list-style-type: none"> <li>Children who lost both parents</li> <li>Children found in need of care</li> </ul>	N\$250/month	<p>Certified copies of the applicant's birth certificate and Identity document.</p> <p>Certified copies of the child or children's full birth certificates.</p> <p>A copy of the court order.</p>
Special maintenance grants	Special maintenance grant is financial support that is designed specially to assist Namibian children under the age of 16 with disabilities	<ul style="list-style-type: none"> <li>Namibian children under 16 years old who are living with disabilities</li> </ul>	N\$250/month	<p>A certified copy of the child's birth certificate.</p> <p>Certified copies of parent/caregiver's ID and birth certificates.</p> <p>A medical certificate from a state medical officer or doctor confirming disability.</p> <p>A social background report from a social worker.</p>

Source: <http://www.mgecw.gov.na/child-welfare>

SERVICE	WHAT DOCUMENTS DO I REQUIRE?	FEES
<p>By Marriage (10 year period of being spouse to a Namibian citizen, both parties are present)</p>	<ol style="list-style-type: none"> <li>1. Application form</li> <li>2. Certified copy of passport</li> <li>3. Certified copy of Marriage Certificate</li> <li>4. Certified copy of Birth Certificate</li> <li>5. Certified copy of Namibian ID (if held)</li> <li>6. Certified copy of Namibian spouse's Birth Certificate</li> <li>7. Certified copy of spouse's ID (if held)</li> <li>8. Letter from Receiver of Revenue confirming period of residence</li> <li>9. Police Clearance Certificate from country of origin, last country of residence, Namibian police</li> <li>10. Affidavit stating motivation for application from applicant and spouse</li> </ol>	Free
<p>By Descent</p>	<ol style="list-style-type: none"> <li>1. Application form</li> <li>2. Certified copy of Birth Certificate</li> <li>3. Certified copy of Namibian ID (if held)</li> <li>4. Certified copy of parent's Birth Certificates</li> <li>5. Certified copy of parent's ID (if held)</li> <li>6. Certified copy of Repatriation Form (if held)</li> <li>7. Letter from SWAPO Office (if child born in exile)</li> </ol>	Free
<p>By Naturalisation (10 year period of being a legal resident)</p>	<ol style="list-style-type: none"> <li>1. Application form</li> <li>2. Certified copy of Permanent Resident Permit</li> <li>3. Certified copy of Birth Certificate</li> <li>4. Certified copy of Namibian ID (if held)</li> <li>5. Letter from Receiver of Revenue confirming period of residence</li> <li>6. Police Clearance Certificate from country of origin, last country of residence, and Namibian police</li> <li>7. Medical report</li> <li>8. Affidavit stating motivation for application from applicant</li> <li>9. Job description of applicant (and spouse if applicable)</li> <li>10. Two character references (known for a period of longer than two years)</li> </ol>	Free
<p>Duplicates</p>	<ol style="list-style-type: none"> <li>1. Namibian ID (original and certified copy)</li> <li>2. Affidavit stating what happened to the original document</li> </ol>	N\$100

Source: <http://www.mha.gov.na/en/citizenship>.

Namibia already issues machine readable passports that conform to the ICAO 9303 standard, and plans to roll out ePassport in 2017. Initially Namibia plans to issue 100,000 ordinary ePassports, 12,500 official ePassports and 5,000 diplomatic ePassports. Inked fingerprints are being used for now.

The Directorate is in the process of automating its passport issuance processes. Considering the need to verify citizenship, it is necessary that the passport is linked with the NPRS for electronic verification of both biographic information and biometric attributes.

#### **3.4.4 The Financial Sector**

The banks require strong verification and authentication procedures for any financial transactions that take place as required by the Financial Intelligence Act 13 of 2012. Currently the banks accept the physical presentation of either the NID or the SWA identity card as proof of identity from customers who want to open an account, but the banks would be interested in a stronger online authentication system based on the MHAI's system of verified identities.

The development of the Namibia National Payment System Vision 2020 requires participation from all Namibian strategic stakeholders under the leadership of the Bank of Namibia, and the objective is to build and maintain an internationally reputable national payments platform that could be used by the major banks in the country. The National Payment System (NPS) was conceptualized to support the Government's Vision 2030, and its core values are collaboration, integrity, respect, transparency, fairness, innovation and excellence.

Online banking is already a fact in the country. This requires changes to the electronic banking and transactions laws and how identity will be authenticated with a view to the future. This has some bearing on the civil registration and civil identity systems in Namibia and the ability to securely and digitally authenticate identities for banking services and transactions. The "know your customer" (KYC) concept is the process of verifying the identity of a client or customer for anti-corruption, anti-bribery and identity assurance purposes. In order for the KYC process to be as secure and trustworthy as possible, the linkage with the national civil identification system is desirable, both from a customer point of view as well as from the agency, or banking point of view.

As part of the National Payment System, NAMCLEAR was set up in 2004 and is owned by the four biggest banks. NAMCLEAR is a service provider that provides local clearing of interbank transactions, such as electronic fund transfers (EFT), card and check payments, including settlement with the Bank of Namibia, in Namibia. The four banks that are behind NAMCLEAR are First National Bank, Standard Bank, Bank Windhoek and Nedbank Namibia.

#### **3.4.5 Electoral Commission of Namibia (ECN) Voter Registration**

As of November 2015, there were 1,267,335 registered voters in Namibia. The majority of the voters had obtained their voter cards by presenting the required documents, such as the national identification card (including the SWA card), or at a minimum a birth certificate. In the instances where only a birth certificate was presented, it was also necessary to provide a sworn statement with respect to the person's nationality. Of the total 120,037 had no proof of citizenship but had obtained a voter card with a sworn statement by two registered voters, 220,012 had birth certificates, but no national identity cards, and 60,144 were repatriated Namibians. According to ECN, one-third of all voters have not provided the maximum assurances of citizenship. Voter age is 18, and it is voluntary to vote. The ECN does voter education and outreach, runs TV ads, and pays visits to the communities. There was an 80% turnout in the last presidential election in November 2014.

It is assumed that the 2014 general voter registration cost between N\$40 and 50 million. According to the ECN, one of the main challenges with keeping the voter rolls current is the lack of updating of addresses. A voter has to live in a constituency for 12 months before being eligible to vote in local elections, whereas there is no constituency requirements for the presidential elections. Corrections and updates of voter records can be done locally and the ECN considers compliance to be good.

To maintain the voter register three types of registration processes take place, the continuous throughout the year, the supplementary before elections and then every ten years a re-enrollment process takes place.

MHAI provides information on deceased nationals, but does not supply information on cohorts that will be turning 18. A major effort to de-duplicate voter records normally takes place just before any major election. The regular procedure for de-duplication usually takes place every third month and until recently was paper based. ECN would send a team to MHAI to collect (photocopy) death information, but ECN has recently started to use USB flash drives instead of photocopies.

The Ministry and ECN have started a discussion on how to automatically update the voters register, through linking it to the NPRS.

The voters are registered with biometrics, facial and ten digital digits through AFIS (supplier of face recognition technology is from RSA). Electronic voting machines were introduced in 2014. Namibia was the first African country to start with digital voting. In theory the biometrics can be shared with MHAI to complement their biometric database. The database has 1.2 million voters registered with biometric attributes.

The voting machines are not connected to any platform for identity verification. Identities are verified prior to voting and visual verification continues to be important since fingerprints are not stored on the card. Voters are registered by their UIN. In the event the voter does not have a UIN, she or he is registered by their birth date.

The ECN indicated that automated processes for automatic updating of records would be beneficial; however that will require changes in the voter law. Another issue that needs to be addressed is the fact that the present law indicates that a birth certificate showing that a person was born in Namibia is sufficient proof of citizenship.

The political incentive is to keep voter rolls updated in order for politicians to reach out to potential constituents. Mobile enrollment kits are deployed during campaigns and cards are issued on the spot, and the information collected goes through a de-duplication process centrally. This process produces a list of invalid cards that will be distributed, and that is also published in local newspapers.

ECN's website is informative and contains detailed and practical information for voters.

### **How Do I Register?**

To vote in any of the elections, you have to be a registered voter. You can register in your respective local authority and constituency and you only have to register once as a voter.

### **Who Can Register?**

You must:

- be a **Namibian citizen**
- be **18 years old or above and** to register as a voter you need proof of Identity, Age and Namibian Citizenship by producing one of the following documents:
  - your valid **green passport** or **New Namibian ID**, or **Old Namibian ID** or one of the following combinations:
    - Citizenship Certificate and Old Namibian ID (if you were born outside Namibia)
    - Namibian Birth Certificate and New Namibian Driver's License
    - Namibian Birth Certificate and two registered deponents
    - Proof of Residency

Only original documents are allowed for identification purposes; no copies of any documents are allowed.

## **Remember**

To register to vote in any local authority council election, take along your Telecom or Municipal/Town/Village electricity and water bills to prove that you have lived in that area for 12 consecutive months. Alternatively bring along one person who is a registered voter in that particular local authority area to make a statement under oath that he/she knows that you have lived there for 12 consecutive months.

### **3.4.6 Ministry of Labour, Industrial Relations and Employment Creation (MoL)**

The Ministry of Labour, Industrial Relations and Employment Creation is comprised of the following offices and services: Office of the Labour Commissioner; Employment Equity Commission; Social Welfare; Labour Services; Labour Market Services; General Services; and International Relations and Advice.

The MoL has recently been restructured and the responsibility for social welfare has been moved to the newly created Ministry of Poverty Eradication and Social Welfare, including the disability grant.

Two key directorates of the MOL are (a) Directorate of Labour Services, responsible for Occupational Health and Safety, and the Labour Inspectorate, and (b) Directorate of Labour market, responsible for Labour Market Information and Employment Services.

The MoL is currently developing an employer database, and they already have a job seekers' database and a database for the verification of work permits for foreign nationals. The Minister then endorses each work permit for a foreign national after the permit has been assessed and recommended by the Labour Creation Council.

In its database of employers, MoL defines a relevant employer as someone who has 25 or more employees, and as such has to develop a plan to comply with affirmative action regulations, according to the Affirmative Action (Employment) Act 29 of 1998.

The Namibia Integrated Employment Information System is an online service for job seekers, developed by a Namibian company launched in 2013. The name and ID number of the job seeker is captured, along with address and professional qualification; however, the MoL also has their own reference number for each individual. Only citizens, legal residents and persons with refugee status may register in this database. It can be done online, and relevant documents must be uploaded. The MoL offices normally have access to the internet, so job seekers can enroll instantly and be assigned a case number.

MoL has 5–6 IT specialists employed for administrative support functions only. There is a server in MoL, with a backup server at the OPM.

An unemployment insurance scheme is still under discussion in the Social Security Commission who also administers a Maternity Leave, Sick Leave and Death Benefit Fund (MSD Fund); a Development Fund (DF); a National Medical Benefit Fund (NMBF); a National Pension Fund (NPF); and an Employees' Compensation Fund (ECF). The NMBF and NPF have been established but are not operational.

The Ministry of Labour and Social Welfare is mandated under the National Pension Act (Act 10 of 1992) to pay out disability pension grants to eligible individuals between 16 and 59 years of age who have been declared disabled by a State Medical Officer (MOHSS). Both Namibian citizens and those who are permanent residents are eligible to receive this benefit. Individuals are required to present the following documents: (i) An ID Document; (ii) Birth Certificate; (iii) If married a Marriage Certificate (applies to women only) and (iv) for a non-Namibian, the Permanent Residence Certificate and/or a Citizenship Certificate.

### **3.4.7 Telecom Namibia**

Telecom Namibia has been managed as a wholly owned government company since 1992. It operates on both fixed line telephones and mobile phones and has laid over 10,000 km of fiber optic cables all across Namibia. Telecom works with a variety of connectivity services such as fiber, WIMAX, copper, and multiservice access

nodes. Its mobile network includes 2G, 3G, and 4G services. It supported the government wide area network (GWAN) by providing the backhaul fiber and established regional hubs by November 2015. The government wide area network is operational in Windhoek. The Office of the Prime Minister (OPM) has already been connected with different ministries in Windhoek. The main ring around Windhoek operates with 10 Gbps bandwidth. The bandwidth given to agencies is currently 622 Mbps, but can be upgraded upon demand.

According to a research report “Namibia’s internet and broadband sector is reasonably competitive, with six ISPs active. Its development was long held back by high prices for international bandwidth caused by the lack of a direct connection to international submarine fibre optic cables. This changed in 2011 when the WACS cable landed in the country. International cable services were launched in May 2012. In parallel, Namibia is working to diversify its transit access routes via neighboring countries, but broadband price reductions on the retail level have remained moderate. The country’s boom in broadband services has been helped by developments with 3G and 4G mobile services, as well as by investments in national fibre backbone infrastructure. Several WiMAX and other wireless broadband services offer additional access options and are standing by to bring additional competition to the voice market as well, once internet telephony is deregulated.”

The plan for connectivity within the MHAI follows a phased approach. The bandwidth in MHAI is currently 20 Mbps. The second phase to improve mobile connectivity started in January 2016. Telecom Namibia is currently working on the last mile connectivity plan to provide digital connectivity to MHAI offices. The regional hubs are expected to accommodate local services as part of the overall decentralization effort of the government of Namibia. Telecom Namibia is also in the process of building a private cloud for the government of Namibia.

In the government wide area network (GWAN), Telecom Namibia will soon be able to connect all ministries within Windhoek with 5 Mbps at N\$6,000 per month. At headquarters, the ministries can get 10 Mbps at N\$6,000 per month. The MHAI uses VSAT technology in many places. It has been agreed that Telecom Namibia will work with MHAI to connect all their offices on a case-by-case basis. The monitoring of all links will be carried out by OPM. Telecom Namibia considers that a verified identity is key for all channels of customer service.

Telecom Namibia has identified three different risks that negatively affect their operations. These are—(a) the target of covering the entire population in 18 months has been tempered with the realization that Namibia is a very large country with a very low population density (b) power is costly, and (c) theft of solar panels and cables near mobile phone towers is common.

## **3.5 DEVELOPMENT PARTNERS**

### **3.5.1 United Nations Children’s Fund (UNICEF)**

At present UNICEF’s programs in Namibia focus on Child Health and Nutrition, Education and Child Protection and Social Protection. In the past, UNICEF has been a key supporter of MHAI in their efforts to improve birth registration in Namibia.

In this respect, UNICEF’s engagement has evolved from strong support to timely birth registration to supporting the strengthening of CRVS in Namibia. In 2014, Namibia carried out a comprehensive assessment of the civil registration and vital statistics (CR&VS) systems in joint collaboration with MHAI, MOHSS, WHO, UNECA, UNFPA and the AfDB. As a follow-up, a strategic action plan to improve the system was developed and published in 2015.<sup>7</sup>

UNICEF was an early supporter of the civil registration system in Namibia and initially supported three core areas: (i) decentralization of birth registration by helping set up 21 hospital-based offices subregionally, (ii) review of the legal framework and drafting of the National Population Registration Bill, and (iii) technical support and equipment to designing and rolling out of the NPRS.

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<sup>7</sup>[http://cms.my.na/assets/documents/CRVS\\_Comprehensive\\_Assessment\\_Report\\_Final.pdf](http://cms.my.na/assets/documents/CRVS_Comprehensive_Assessment_Report_Final.pdf).

To achieve this UNICEF supported the development of a MoU between MOHSS and MHAI for birth registration to allow for birth registration in hospitals.

UNICEF is presently supporting the elaboration of the second MoU between MOHSS and MHAI, and plans to continue to support implementation of the strategic plan to strengthen CR&VS.

In 2016, UNICEF Namibia will receive a grant of US\$1.5 toward mother and child protective services, including birth registration, and strengthening health information systems, which open up for activities in three areas: (i) technical and financially community outreach campaign in remote areas, (ii) vaccination campaigns, combined with (iii) awareness training on Civil Registration.

### **3.5.2 World Health Organization (WHO)**

The WHO's country cooperation strategy in Namibia has four priorities: (i) strengthening the health systems; (ii) combating priority diseases; (iii) improving maternal, newborn, child and adolescent health; and (iv) promoting a safer and healthier environment. A common element of all four is all four priorities depend on credible vital statistics to measure progress and results, and one of the most important sources for vital statistics is civil registration.

WHO was also a key contributor and supporter of the 2014 CR&VS Assessment and the ensuing Strategic Plan for CR&VS, along with MHAI, MOHSS, UNICEF, UNECA, UNFPA and the AfDB.

A special preoccupation for WHO is the inconsistent coding of causes of death, and incomplete registration of these in the MOHSS. Another challenge is data fragmentation, with a large number of different databases in the MOHSS that are not interconnected. Implementing a platform to interconnect the different databases, or vertical programs, represents another challenge given that there is no unique identifier that can be used to track patients across the systems.

WHO supports the introduction of e-ID cards as a way to reduce fragmentation of information to first and foremost provide better health services to individuals, but also as a tool to obtain disaggregated data to strengthen the health systems in Namibia.

Namibia offers universal health service, but has yet to interconnect all MOHSS health centers. This is planned for 2017. The health information systems in the private hospitals are not mandated to inform the MOHSS.



# 4

## RESULTS

The key findings of the IMSA for Namibia suggest the country has a well-functioning civil registration system, and a civil identification system. The registration and enrollment procedures are good, with methodical, albeit time consuming, verification and de-duplication measures in place. The processes are transparent, traceable and trackable, and the credibility and integrity of the documents issued by the MHAI will increase as efforts of de-duplication of records and consolidation of databases progress.

The Ministry of Home Affairs and Immigration has made immense strides in upgrading their civil registration and identification systems through the implementation of the “Turnaround Strategy,” a significant change management effort that was started in 2014 with the objective of improving service delivery to the public.

The changes that were implemented ranged from improving front-line customer service and cutting drastically down on processing times for the issuance of a document, to the back-office transformations to enhance the quality of both the information and documents issued. The changes were made possible by employee participation, involvement and contributions.

MHAI’s efforts have been closely coordinated with the Office of the Prime Minister (OPM) that is responsible for the design, coordination and implementation of Namibia’s e-Government policies and plans.

Namibia is a large country with a small population. This signifies a low density of population and creates outreach challenges. In the area of civil registration and identification, MHAI appears to have addressed this challenge quite well and has made important advances with respect to increasing the birth registration rates, and improving the veracity of documents issued. This is in large part due to the fact that the civil registration and civil identification functions are under the same ministry, a practice that is highly recommendable.

The results from the change management exercise that MHAI has undertaken has yielded impressive results, both with respect to the efficiency of internal work flows, and with the improvement in service delivery to clients seeking to register, or to obtain documents, including certificates of the national identity card.

MHAI has improved processes and made the management of both the DCR and service provision more efficient, whereas the potential for integration with other OMAs are largely underexplored and underexploited. With improved integration, MHAI should be in a better position to process applications faster, leading to more cost efficient operations, and with the potential to also save time and money for clients.

The factors that influence late or non-registration of births have been defined in the CR&VS assessment, and steps have been taken to remedy the situation, but more resources are needed to maintain the momentum. If the resources for planning and implementation of remedial actions were to remain at the level required, Namibia could reach universal birth registration, and thus be in a position to comply with the base premise of SDG 16.9 in a matter of a few years.

**Process innovation.** The first step toward e-governance is electronic civil registration records, starting with an electronic birth registration. Based on the assessment results Namibia has a rapidly maturing identity management system that builds on an efficient birth registration system. Namibia is a multiethnic and multilingual country, and while the birth registration forms are in English, they employ speakers of native languages to serve the multiethnic communities.

**FIGURE 8** MHAI modernization progress and outlook.



Source: Author's elaboration.

Currently 38 offices out of 65 MHAI offices have access to NPRS. 20 offices out of 65 offices are doing ID registrations. The ID production turnaround time has decreased from 140 days to 16 days in less than one year. In accordance with the best international practices both the registration processes and the first issuance of certificates and the NID are free.

**Management efficiency.** The MHAI should be commended for several of their practices—primarily the working environment at MHAI is exceptionally good. The professionalism and working environment is akin to working in a well-reputed private sector company. Then there is the “track and trace system” that is an example of leveraging ICT to track internal workflow to assist citizens and departmental personnel to track the status of any application for civil registration or civil identification.

If the momentum is to be maintained, the budget allocation must be adequate and realistic. Recent budget cuts in printing of forms and certificates and travel allowances has resulted in insufficient funds for maintaining the production rate.

**Potential for integration.** All the institutions interviewed for this report unanimously agreed on the need for better verification of identities, and the need for safe, secure and rapid (online) authentication of identities. Both the public and private sector entities see great promise for more efficient and secure service delivery, by applying 21st century technology. The integration can be achieved by general application of the UIN as a unique identifier across relevant OMA databases. There is also agreement on the need to upgrade the relevant legal and regulatory frameworks to protect both the OMAs and citizens from potential cyber crime, and protection of private data and confidential information. The target of integrating databases by secure and efficient authentication of identities is an achievable goal by way of the backbones the OPM is instituting through the e-Government Strategic Action Plan. However, it will depend on a governance structure that requires firm commitment and compliance from and between OMAs.

**Potential for faster processing.** The digital connectivity is a prerequisite for the interoperability of databases, and will be what makes or breaks an identity management system. OPM is in charge of the ICT strategy for Namibia and is helping design the government-wide area network that will connect all ministries and agencies within Windhoek, the regions and districts. Currently some offices that are not connected are using mobile internet. Connectivity between MOHA data center and the ISP is 512K to 1 MB bandwidth. The connectivity is not stable unlike the private banks, and needs to be upgraded. Again this is a target that is attainable with the full implementation of the e-Government Strategic Action Plan.

**Potential for cost effectiveness.** The anecdotal evidence regarding processing times for different documents is a further indication that a digital Id-M system can contribute to cost savings through improved public sector service delivery and has the potential to positively impact both the state and the individual once the integration processes are in place. By improving the link between civil registration and vital statistics, NSA should be able to produce timely and high quality demographic and vital data for timely and informed public policy and program making. If an e-IDM system is implemented, this use of the UIN across the databases in MOHSS has the potential to save both money and time in the treatment of patients. Avoiding identity fraud will not only make government aid programs more effective, but will also have an impact for insurance private entities such as banks and insurance companies.

This assessment has provided an opportunity to take stock of the civil registration and civil identification systems and their interfaces with other systems and services that need to verify or authenticate the identity of an individual for him or her to get access to services, rights and privileges. Namibia is a forward looking nation that has made major strides in improving its Identity Management Systems. However, there are still several challenges that need to be addressed before the country can advance to a fully digitalized management of identity and identification processes. Critical among them are continued political support, upgrading of existing legal framework, realistic financial planning and budgetary support, as well as continued investment in institutional strengthening and technology.

- The move toward more effective identity management (Id-M) governance and electronic identity (e-ID) credentials requires strong leadership and political commitment. Identity management (Id-M) is a key part of the agenda for modernization of the state. The potential of a secure national civil identification system and the issuance of a trusted credential to leverage and promote social, financial and civic inclusion cannot be underestimated.
- Complete, reliable and trusted civil registration and civil identification registers are important for strategic government planning and decision making. MHA's role in the establishment, verification and authentication of identities is an essential service—both for individuals and also for public and private institutions.
- Upgrading the legal and regulatory environment (including the enactment of new laws and effective implementation of relevant legislation) are critical factors to the continued improvement of the civil register as well as the progression of the civil identification system to a fully integrated, seamless digitalized system. It will also entail the continued strengthening of the institutional framework and administrative capacity. The success of an electronic identity (e-ID) system depends upon the understanding of enabling factors such as the establishment of an identity from birth and the subsequent authentication processes for both public and private sector purposes.
- Given the relative sophistication of Namibia's e-Governance conceptualization and technical capacity, the capability to develop an effective digital identity management system exists. However, there are several challenges that need to be addressed such as—(a) the cost of rolling an e-ID system out in a vast country with low population density, (b) the usability of a smart card in areas with sparse communities, and (c) the acceptance and use by public and private service providers. The uptake of the e-ID by individuals and institutions is another question that needs to be answered, since it will depend upon the perceived utility (value) to the users. Currently, the national identity card does not garner much demand as users do not see much value in possessing a national identity card.

A legal identity for all, as SDG 16.9 calls for, will in and by itself not solve every problem associated with identity management. However, having a trusted identity management system could potentially confer several benefits such as: (a) ensuring distribution of and access to benefits, services and opportunities, (b) providing demographic

information for public sector planning and decision making, and (c) efficient public sector decision making. Universal registration is an effective tool that can boost public sector efficiency as well as the efficacy of private sector transactions.

MHAI has laid the initial foundations for achieving the SDG 16.9 and put Namibia on the path to becoming a regional model for a 21st century Id-M system. However, success depends upon the next steps and there is no standard blueprint to follow. Each country must follow different steps based upon its individual country context. Namibia must evaluate its strategic options and strike its own balance by defining a model that will fit its particular country context while building upon the analysis, adoption and adaption of good international practices.

# 6

## RECOMMENDATIONS

An electronic identity management system with an e-ID credential has the potential of considerable cost saving for the public sector by avoiding fragmentation and further streamlining provisions of services to citizens and residents. If Namibia is going to invest in an electronic identification card there are a number of criteria that must be met and fulfilled. Namibia has already advanced significantly in putting the foundations for a connected government in place, principal among them is the “e-Government Strategic Action Plan for the Public Service of Namibia (2014–2018).” The strategic action plan recognizes the importance of users and end users being able to securely identify themselves both in an online and an off-line environment.

The civil register and national identity card agency has already put in place processes to improve the trustworthiness of the certificates and the NID, and the relevant stakeholders are working together to further improve the identity management system.

In terms of future priorities, the costing and financial viability of the introduction of e-ID cards should be an immediate concern. Furthermore, the ability of the register to continue to improve service delivery depends on availability of the necessary technological, human and financial resources to allow for this.

In general terms, the MHA must continue to

- Ensure broad-based stakeholder buy in and support.
- Ensure intergovernmental communication mechanisms.
- Encourage citizen input to continued improvement of customer service delivery.
- Introduce strong monitoring mechanisms.

Recognizing that the conceptual framework for e-governance and e-ID cards is in place, the key recommendations that have come out of the IMSA and its validation process are a list of issues that may need further investment in the form of research, human or financial resources. The concrete recommendations are as follows:

1. Undertake inventory of institutional demand.
2. Develop a national identity policy to ensure a coherent approach to identity management across sectors.
3. Legal framework, and harmonization with existing laws.
  - a. Phase out the use of the SWA card and database
4. Regulations in place so there will be agreement on privacy, data protection and data sharing.
  - a. What data can be shared?
  - b. Who will have access?
  - c. How will data and documents be preserved?

5. Universal acceptance and relevant use of unique identity number (UIN).
  - a. Ensure inter-institutional arrangements for the flow of data based on the UIN
  - b. Use UIN as trace/tracker across ministries and programs
  - c. Promote closer links between importance of registration and social benefits
  - d. Issue UIN also for non-nationals, if necessary, with a coding system that defines nationality or not
6. Continue to improve birth registration rates.
  - a. MOHSS could add a notification procedure to their DHIS2 (in the Maternity Ward Module) that notifies MHAI electronically that a birth has occurred
  - b. MHAI should participate in MOHSS monthly mobile team activities to reach babies born at home in remote communities (e.g., San, Himbas, farm workers who are unable to access existing facilities)
7. Ensure that resources are allocated to fully implement the CR&VS plan.
  - a. Develop mechanisms to improve the vital statistical capacity of NSA
  - b. Include questions on civil registration and civil identification documents in the inter-censal survey, next DHS as well as the upcoming 2021 census as a way to monitor progress and uptake of new identification cards
8. Continue to build and improve on the operating procedures that are in place for civil registration and civil identification.
9. Work with OPM to continue to strengthen the government interoperability framework, and put in place the necessary resources to improve the use and monitoring of ICT systems.
10. The backbone of all this rests with the e-Government structures and the capacity to interconnect and interoperate between databases to authenticate identities at a speed that improves service delivery to the individual. Specifically
  - a. Infrastructure (network, network access, network services)
  - b. Definition of online applications (content: online payments, request for certificates, online declarations)
  - c. Adequate certification and time-stamping by a trusted authority
  - d. Identification and security (authentication service, access management, user (public sector, citizens and residents, etc., management services)
  - e. Data exchange protocols (ensure that an e-user only has to register/enroll once, and that the verification is done against that record independently of where the user is interacting within the state)
  - f. 24/7 access and support (availability of services and helpdesk)
11. User uptake.
  - a. Develop communication strategy to get all stakeholders on board
  - b. Does every citizen need an e-ID enabled card?
  - c. There can be a multi-tiered system of cards that will be priced according to level of complexity/usability/sophistication of the card. For instance “a fully loaded” e-ID card for those willing and able to pay to have unhindered access online services once they are widely available, and a low tech (but secure) version that will mainly be used for visual, off-line identity verification purposes
12. MHAI continue to take the lead of the multi-stakeholder dialogue by organizing periodic briefings about challenges and advances with respect to the advances in Id-M.
13. The e-ID card itself. The cost and durability will depend on how it is “constructed”
  - a. Define what services you want for the card for
  - b. Carry out detailed cost-benefit analysis for the production, issuance and usage of the e-ID card
  - c. Define specifications of the card
  - d. The card will require a card reader for online authentication

- e. E-signature? Who will issue the certificate? Every 5 years?
  - f. The cost of the card depends on a number of factors from the substrate (plastic) chosen, the security features, hologram(s), chip, etc.
14. Revenue generation by introduction of e-ID cards.
    - a. Define schemes to maintain necessary infrastructure and card issuance to differentiate charges for services or cards
  15. Seriously consider the challenges that cyber-attacks may represent to a digital Id-M system.
  16. Seek to continue and take advantage of regional and international opportunities for cross-fertilization of knowledge, exchanges and learning opportunities.

Theoretical next steps (with conservative timeline) to consider if all above criteria have been decided, risks addressed, and solutions defined:

		2016	2017	2018	2019	2023
1	Inventory of demand					
2	Develop national ID policy					
3	Feasibility study for e-ID cards					
4	Develop specifications					
5	Call for interest/information					
6	Tender/procurement					
7	Proof of concept					
8	Pilot e-ID card					
9	Roll out					



# GLOSSARY

Autonomous	(a) Having the right or power of self- government; (b) Existing or capable of existing independently ( <i>Merriam-Webster</i> ). For a registry, an entity legally entitled to administrative and budgetary self-rule within the executive branch of the government, but outside of the line ministries.
Back haul	The portion of the network that comprises the intermediate links between the core network, or backbone network and the small subnetworks at the “edge” of the entire hierarchical network.
Blade server	A blade server is a server chassis housing multiple thin, modular electronic circuit boards, known as server blades. Each blade is a server in its own right, often dedicated to a single application.
Certificate	An original document or certified extract, usually issued by a government authority, stating when and where a civil event occurred (birth, adoption, marriage, divorce, death).
Civil register	The repository of loose-leaf file, ledger book, electronic file, or any other official file set up for universal, continuous, and permanent recording, in accordance with established procedures, of each type of vital event and its associated data of the population of a defined area (e.g., county, district, municipality, or parish).
Civil identification	The verification, registration, management, and conservation of personal data of citizens, with the goal of establishing a unique civil identity. Civil identification includes all of the data from the civil registration on that particular citizen as well as other attributes such as a unique number and/or biometric data. The civil identification serves as a basis for the verification of identity (i.e. passport or national identification documents).
Data de-duplication	A specialized data compression technique for eliminating duplicate copies of repeating data. Related and somewhat synonymous terms are intelligent (data) compression and single-instance (data) storage.
Digital identity	A set of features that individualize a person in a computer based environment.
Electronic identification (e-ID)	A token that proves an individual’s identity and is used to identify, authenticate, and act as an electronic signature. Generally, a smart card that contains a contact- or contactless chip.
Electronic identity	A set of data or attributes that enables persons to prove electronically who they are to access services or reserved information.

Hash function	Any function that can be used to map digital data of arbitrary size to digital data of fixed size, with slight differences in input data producing very big differences in output data. The values returned by a hash function are called hash values. The main uses of the cryptographic hash function are in verifying the integrity of files or messages and digital signatures.
Identification	The determination of identity and recognition of who a person is; the action or process of determining what a thing is; or the recognition of a thing as being what it is.
Identification credential	Information (electronic, token, or paper) that seeks to uniquely identify or provide qualifications or attributes that define the individual identity.
Identity	A unique set of features and characteristics that individualize a person, including the name and other biographical data of the individual.
Identity management	A combination of systems, rules, and procedures that are defined between an individual and organizations regarding the entitlement, use, and protection of personal information in order to authenticate individual identities and provide authorization and privileges within or across systems and enterprise boundaries.
Identity Management System	The technical and organizational infrastructure used to define, design, and administer the attributes of an identity.
Identity token	A portable piece of hardware that a user carries and uses to access a network. The token enables the user to prove his or her identity and authentication for the use of a service.
Interconnection	In computing, communication between two or more points to create a bond between them, even temporarily, to make a punctual or fixed transmission, with the permanent connection of two machines.
Interoperability	The ability of information systems and procedures to share or authenticate data and enable the exchange of information and knowledge among them. This exchange is necessary to ensure cooperation, development, integration, and delivery of joint services by public institutions. It is also necessary to implement various public policies, principles, and rights; transfer technology; and use applications that enable new services and result in better efficiency and cooperation among different applications. All of this facilitates the development of an e-Government and information society.
Population register	A government data collection system in which the demographic and socio-economic characteristics of all or part of the population are continuously recorded. Norway, Denmark, Sweden, and Israel are among the countries that maintain universal registers for demographic purposes, recording vital events (birth, marriage, moves, and death) so that up-to-date information on the whole population is readily available.
Source de-duplication	Takes place in the file by using cryptographic hash functions to identify duplicate segments of data.
Target de-duplication	The process of removing duplicates when the data was generated at a different location.

# APPENDICES

**Appendix 1.** Background Information for Namibia Identity Management Systems Analysis

**Appendix 2.** IMSA Assessment Task Team Members

**Appendix 3.** Table of Namibia IMSA Findings

**Appendix 4.** Participants in IMSA Validation Workshop 23–24 February, 2016

**Appendix 5.** Presentations from Validation Workshop 23–24 February, 2016

**Appendix 6.** Namibia Integrated Id-M Model

**Appendix 7.** Lawyers Report

**Appendix 8.** Documents Reviewed



# BACKGROUND INFORMATION FOR NAMIBIA IDENTITY MANAGEMENT SYSTEMS ANALYSIS

## IMSA SHORT DATA SHEET

Country: <b>NAMIBIA</b>	Dates of IMSA field work: From: 09/11/2015 To: 18/11/2015
Name of IMSA responsible: Krishna Pidatala	Name of person filling the questionnaire: Mia Harbitz
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### Online resources for the IMSA

Population (indicate year):	Estimated number of unregistered population:
Last population census (year): 2011	<ul style="list-style-type: none"> <li>unregistered births (0–1):</li> <li>unregistered births (0–4): 20%</li> <li>age group 0–14 years:</li> <li>age group 15–n years:</li> </ul>
Birth registration rate: 80%	

*(For all questions in this section, please indicate year)*

Did the population census ask questions about birth registration, birth certificate or identity docs? **Yes**  
If Yes > Please reflect the results in the analysis, and list URL if the results have been published.

Has the Country carried out a Demographic Health Survey (DHS)? **Yes**  
If Yes > Last DHS (year): 2013

List key websites of CR, CI, and PR agencies relevant to Id-M, and other websites:

Civil Registration (CD) URL:

Civil Identification (CI) URL:

Population Registry (PR) URL:

Other (please specify) URL:

Which organizations, international and/or national, are active in the field of identity management in the country?  
UNICEF, WHO

World Bank ID4D Global Data Set (URL): <http://data.worldbank.org/data-catalog/id4d-dataset>

Key information providers			
Name	Position	Ministry/Agency	e-Mail/Phone
1. Anette Bayer Forsingdal		MHAI	
2. See Appendix 2			
3.			
4.			

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## TABLE OF NAMIBIA IMSA FINDINGS

#	EVALUATION CRITERIA	1	2	3	4	SCORE
Part I: Legal and regulatory framework for CR and CI						Max 12
1	Is there legislation enacted for CR?	Out-dated	New legislation is being drafted	New legislation drafted and in process of approval	Recent update (0–5 years old) enacted.	3
2	Is there national legislation enacted for CI?	Out-dated or non-existent	New legislation is being drafted	New legislation drafted and in process of approval	Recent update (0–5 years old) enacted. Brought into force in 2001	2
3	Is there national legislation on privacy and protection of personal data?	Out-dated or non-existent	New legislation is being drafted	New legislation drafted and in process of approval	Recent update (0–5 years old) enacted.	1
						7
Part II: Barriers and obstacles to timely and universal registration (accessibility)						Max 12
4	What is the estimated rate of birth registration? (0–5 years)	<50%	50–80%	81–94%	>95%	2
5	Has a CR&VS assessment been carried out?	No	Planned	To be carried out	Has been carried out	4
6	If the country is multi-ethnic or multilingual, are there provisions to ensure CR and CI for traditionally excluded groups?	No	Planned	Has been partially implemented	Provisions/ accommodations are in place	4
						10

(continued)

Continued

#	EVALUATION CRITERIA	1	2	3	4	SCORE
Part III: Institutional and administrative framework						Max 12
7	Are there clearly defined lines of administrative responsibility?	No	Organogram in preparation and operational manuals under preparation	Organogram and manuals prepared and implemented centrally (or mostly?)	Organogram and operation manuals implemented and functioning	4
8	Timeliness for issuing identity credential (CR certificate, or CI id token) after citizen applied/registered (assuming all documents presented were accepted as verification)	4–8 weeks	1–4 weeks	1–7 days	5–60 minutes	2
9	Does the agency have ISO certifications for any of the processes?	0	1	2	>3	1
						7
Part IV: Use and management of information and communication technology (ICT)						Max 12
10	Has ICT been introduced for the management and administration of the register?	No	Planned. Specification defined, will be procured.	In the process of implementing	Implemented and functioning	4
11	Has ICT been introduced for the registration processes?	No	Planned. Specification defined, will be procured.	In the process of implementing	Implemented and functioning	4
12	Does the certificate or identity token have security features that can prevent document fraud?	No	Weak	Strong	Very strong	?
						8+?

#	EVALUATION CRITERIA	1	2	3	4	SCORE
Part V: Interconnectivity and interoperability between legal and administrative registries						Max 12
13	Does the register have formal agreements with other agencies or institutions for the purpose of authenticating identities?	No	In the planning phase	Robust interconnected online protocol with $\geq 1$ other agency	Robust interconnected online protocol with $\geq 4$ other agencies	3
14	Are there explicit protocols on authentication of identity based on an identity token/ card?	No	In planning phase	Protocol developed and established with $\geq 1$ agency	Protocol developed and established with $\geq 4$ agencies	2
15	Is the passport agency interconnected with the CI agency?	No	In planning phase	In testing phase	Fully operational	4
						<b>9</b>



# PARTICIPANTS IN IMSA VALIDATION WORKSHOP 23–24 FEBRUARY, 2016

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(continued)

Continued

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# PRESENTATIONS FROM VALIDATION WORKSHOP 23–24 FEBRUARY, 2016

## *Group 1*

*What is the privacy concerns in terms of sharing data from the National Population register with other E-Systems.*

### *Handling privacy issues in NPR data sharing*

- *There must be a law in place to handle the confidentiality e.g. the law can establish a body that will be a watchdog on what info should and should not be shared by who and to who.*

*These laws can be amended as time goes based on the need*

- *Every stakeholder should have a methodology on how they prefer info to be shared*
- *There should be a grievance procedure*
- *Expose only what is needed by the stakeholders*

### *Handling privacy issues NPR data sharing*

- *Oath taking for those that will access NPR*
- *MHAI should educate public on procedures in case of lost documents*
- *Every stakeholder should have remedy to be applied in case info is leaked to an unauthorized person*
- *Pilot project e-ID first to smaller stakeholders*
- *User audit report (level and traceability)*

FINANCING OF AN E-ID: WHO SHOULD  
PAY? CONSIDER IF STAKEHOLDERS  
SHOULD PAY FOR DATA?

## GROUP 2

QUESTION 2: FINANCING OF AN E-ID

### Who should pay?

- The Government should fund the foundation of the environment in which the e- ID system will be developed and build. In terms of technical infrastructure, Security and connectivity between OMAs.
- Stakeholders should cover the cost of implementing the system within their offices in terms of procuring of equipment and skills development.

### Consideration of stakeholders if they should pay for data

- Stakeholders should pay for data
- We have categorized stakeholders as follows:
- Individuals/the public should pay for amendments and duplicates
  - Private sectors and Parastatals should pay for data, however consultations must be engaged on modality of payments.

# Group 3

Data minimization: what is the least amount of data needed to verify and authentic identities for different stakeholders? categories

## KEY STAKEHOLDERS

1. MOHSS – Identification of patients and deceased persons,
  2. MHA requires from MOHSS is the authentication of medical records.
  3. MSS – identification of suspects and deceased persons
  4. NSA – life data of vital statistics/events
  5. ECN – related civil data, birth, death and identities.
  6. MOJ – updated marriage and divorce records. Access to birth and identity of nationals.
  7. MURD – Identification of nationals/residence
  8. MOPEASS – Verification of Applicants and recipients of social grants. (B/C and ID)
  9. NCIS – National security
  10. MOIRAC – Verification of nationals and their social status
  11. MOF – They need to capture one ID number only (Single)
  12. GIPF - They should capture one ID number only (Single)
  13. MGEWCW – Accurate birth and identity information
  14. ACC – Identification of suspects.
  15. OPM – System upgrade and development.
- FINANCIAL SECTOR
1. Banks and Insurance companies – These sector needs a common single identity number for each client. (11 Digits)

## GROUP 4

Question: What rights & procedures should be in place to access to personal BMD records/certificates about yourself/other people?

### BIRTH

#### Rights

- ⦿ Biological parents must have the right to access
- ⦿ Legal guardians
- ⦿ Relatives e.g. children, grandparents, sisters and brothers
- ⦿ Social worker-MOHSS

#### Procedures

- ⦿ Family tree
- ⦿ Police declaration
- ⦿ Letter from the council/headman
- ⦿ Health passport

### MARRIAGE

#### Rights

- ⦿ Magistrate MOJ
- ⦿ Church leaders to see whether the person is already married
- ⦿ Wife and Husband
- ⦿ Lawyer appointed by MOJ or by wife & husband
- ⦿ Executor
- ⦿ Judges

#### Procedures

- ⦿ MOJ-can access with the notification from the owner of the records.
- ⦿ Investigation must be conducted before the ceremony.

### DEATH

#### Rights

- ⦿ Parents
- ⦿ Children
- ⦿ Spouse

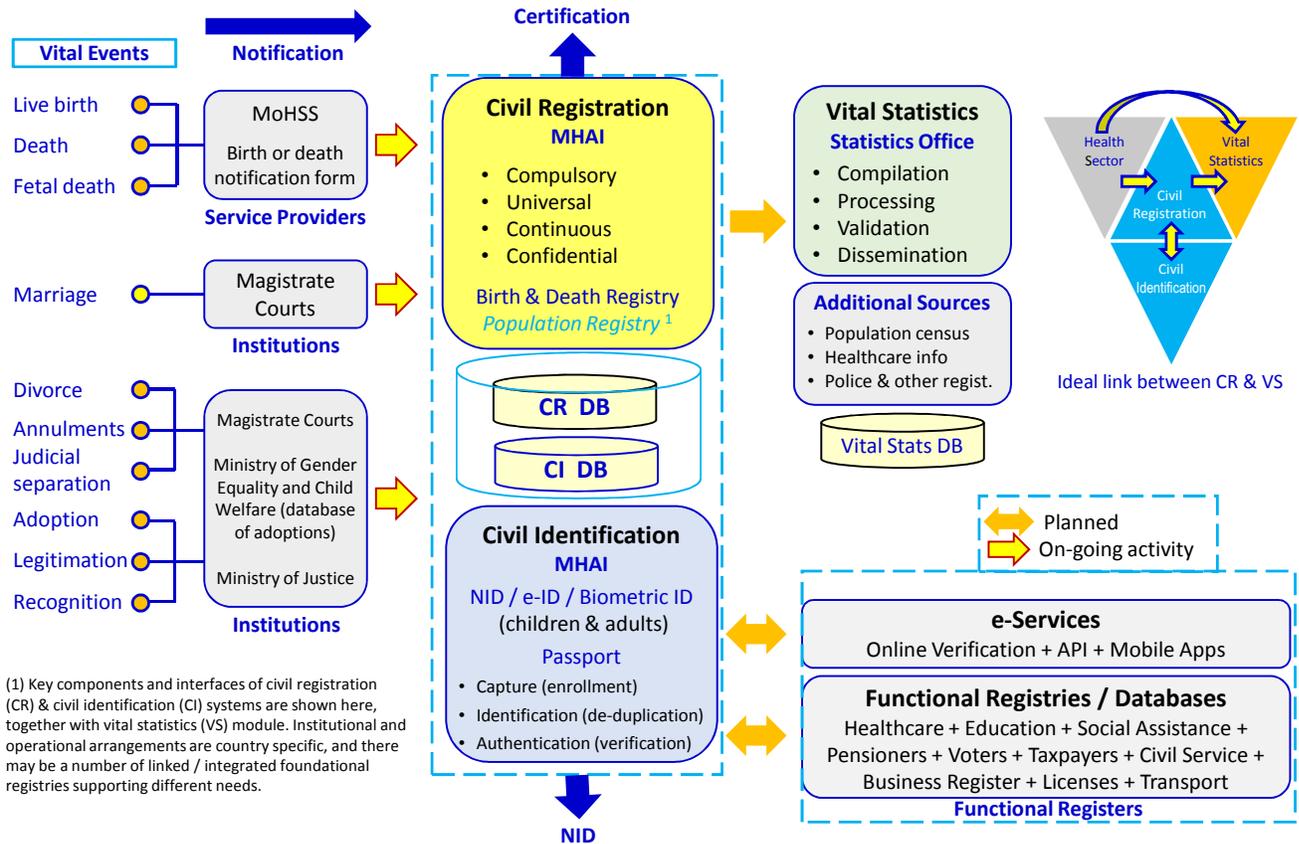
#### Procedures

- ⦿ Medical certificate declaring that the person is really dead.
- ⦿ Declaration from the police
- ⦿ Letter from the headman or councilor with the declaration from the police.



## Namibia Identity Management System

### Civil Registration & Identification + e-Services





## NAMIBIA: LEGAL AND REGULATORY FRAMEWORK

### SUMMARY

Namibia has an outdated national statute which makes the registration of births, marriages and deaths obligatory. Divorce records are not covered by the same law with the result that divorce records are not integrated into the civil registration system. Customary marriages and divorces which are recognised for many legal purposes are not subject to any legally-mandated method of registration and so fall outside the civil registration system. A separate law on adoption procedures requires registration of all adoptions and requires the issue of replacement birth certificates which list the adoptive parents as the child's parents. Another law on identification documents requires that all citizens and permanent residents apply for Namibian identity documents at age 16.

One key problem area is the reliance on birth certificates as proof of citizenship. This has produced a reluctance to issue birth certificates in some cases, such as where the parents lack documentation, as well as a practice (at times) of authorising clerks to issue 'Namibian' and 'non-Namibian' birth certificates without proper guidance.

Another key problem area is the current framework for registering the birth of children born outside marriage, which is fraught with contention and misunderstanding. A related problem concerns the surnames which can be registered for such children. Death registration and the use of civil registration documents for access to death-related benefits (such as pensions and insurance payouts and rights to inherited property) have been areas where attempts at fraud have been particularly common.

Vision 2030, one of Namibia's key policy documents, identified universal and complete vital registration of births, deaths and marriages as one of strategies connected with the goal of accurate and reliable information on the country's population to facilitate social and economic development planning and programme management.<sup>8</sup>

Namibia has no jurisprudence on issues directly pertaining to civil identification and registration, although there are some court cases on citizenship issues which are tangentially relevant.<sup>9</sup>

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<sup>8</sup>*Namibia Vision 2030: Policy Framework for Long-Term National Development (Main Document)*, Windhoek: Office of the President, 2004 at 74–77.

<sup>9</sup>These are discussed in the section on citizenship.

## STATISTICS

### 1. Birth Registration

The 2000 *Namibia Demographic and Health Survey (2000 DHS)* reported that on average 70.5% of births in Namibia were registered.<sup>10</sup> Registration of births in rural areas was reported to be at 64.3% while registration of births in urban areas was reported at 82.1%.<sup>11</sup> The main reason reported for not registering births was distance to the nearest registration location—a factor cited in respect of about one-third of those children whose births were not registered. Other reasons given were that the child was too young and that the mother either did not know that births must be registered or did not know where to go to register. Birth registration was more common among older children, those in urban areas and in the South Directorate and children whose mothers had more education.<sup>12</sup>

The *2006–07 Namibia Demographic and Health Survey* reported that only 60.4% of births were registered from 2001–2006—a slight decline from the 70.5% rate in the *2000 NDHS*.<sup>13</sup> Again, urban areas had higher birth registration (77.2%) than rural areas (52%).<sup>14</sup> There was substantial regional variation in the percentage of registered births, ranging from a low of 46% in Kavango to a high of 96% in Karas. Births in wealthier households were more likely to be registered.<sup>15</sup>

The Government responded to the decreases in birth registration with increased presence; between 2010 and 2012, it increased its regional offices from 13 to 60, increased its subregional offices from 7 to 26, and targeted hard-to-reach areas through inter-ministerial collaboration on outreach and mobile campaigns. The Ministry also introduced an innovative strategy approach of establishing birth registration facilities in 22 hospitals, to register children at birth, with nurses being trained to inform pregnant women attending antenatal clinics about this service and what documents they should bring when they give birth to facilitate immediate registration.<sup>16</sup>

Between 2008 and 2011 the number of birth registrations increased by 56% with a particularly significant increase in early registration rates.<sup>17</sup> When early and late registrations are analysed separately, early registrations increased from 48% of all birth registrations in 2008 to 63% of all birth registrations in 2011.<sup>18</sup> Birth registrations are close to and even over 100% when late registrations are included, based on a comparison between the number of birth registrations and the annual birth rates, although this somewhat overstates the success rate since some late registrations relate to children who were born in previous years including some adults.<sup>19</sup> It is noteworthy that by 2011, 50% of children born at hospitals with on-site registration facilities were being registered immediately after birth.<sup>20</sup>

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<sup>10</sup>Ministry of Health and Social Services (MoHSS), *Namibia Demographic and Health Survey 2000*, Windhoek: MoHSS, 2003 (hereinafter “2000 DHS”) at 128. Mothers of children under five were asked if their child’s birth had been registered, and whether they had a birth certificate for the child. A child’s birth was considered to have been registered if his or her mother could either produce a birth certificate or said the birth was registered. *2000 DHS* at 128.

<sup>11</sup>UNICEF, “Namibia birth registration country profile 2011,” *Eastern and Southern Africa Birth Registration Acceleration Strategy Country Profile*, Windhoek: UNICEF, 2011 at 1.

<sup>12</sup>*2000 DHS* at 128.

<sup>13</sup>Ministry of Health and Social Services (MOHSS), *Namibia Demographic and Health Survey 2006-07*, Windhoek: MOHSS, 2008 (hereinafter “2006–07 DHS”). At 23: “A child’s birth was considered to have been registered if the mother could produce a birth certificate or reported that the birth was registered. Not all children who are registered have a birth certificate because some certificates may have been lost or were never issued. However, all children with a certificate have been registered.” Only 7% of children whose births were reported to have been registered did not have a birth certificate at the time of the survey.

<sup>14</sup>UNICEF, “Namibia birth registration country profile 2011,” *Eastern and Southern Africa Birth Registration Acceleration Strategy Country Profile*, Windhoek: UNICEF, 2011 at 1.

<sup>15</sup>*2006–07 DHS* at 23.

<sup>16</sup>UNICEF, *A Rapid Overview of Birth Registration Systems in Namibia: Taking Stock, Birth Registration Field Assessment 2012*, Windhoek: unicef, 2012 at 5; Government of the Republic of Namibia, *State Party Report on the African Charter on the Rights and Welfare of the Child 2004–2012*, Windhoek: Ministry of Gender Equality and Child Welfare, [draft 25 January 2013] at para 1.7.

<sup>17</sup>UNICEF, *A Rapid Overview of Birth Registration Systems in Namibia: Taking Stock, Birth Registration Field Assessment 2012*, Windhoek: UNICEF, 2012 at 5.

<sup>18</sup>*Ibid*, calculated from the figures provided in the text. Early registration is defined as birth registration that occurs within the first year of the child’s life.

<sup>19</sup>*Implementation of the Convention on the Rights of the Child, List of issues concerning additional and updated information related to the second and third combined periodic report of Namibia (CRC/C/NAM/2-3), Addendum: Written replies of Namibia*, Committee on the Rights of the Child, CRC/C/NAM/Q/203/Add.1, 11 July 2012 at 19, citing MHA regional data 2011. The percentage can be over 100 as it is calculated based on the annual birth rate, while late registrations during that year will by definition relate to children born in previous years.

<sup>20</sup>*Ibid*.

ANNUAL REGISTRATION RATE COMPARED TO ANNUAL BIRTH RATE, 2008–2011						
Year	Annual birth rate	Total birth registrations	Early registration (under one year)	Late registration (after one year)	Early registration as % of annual birth rate	All registration as % of annual birth rate
2008	65,779	44,809	20,417	22,579	31	68
2009	63,862	41,532	22,267	19,301	35	65
2010	63,263	65,405	37,410	27,995	59	103
2011	67,320	56,828	41,443	24,385	62	98

Source: Based on *Implementation of the Convention on the Rights of the Child, List of issues concerning additional and updated information related to the second and third combined periodic report of Namibia (CRC/C/NAM/2-3)*, Addendum: Written replies of Namibia, Committee on the Rights of the Child, CRC/C/NAM/Q/203/Add.1, 11 July 2012 at 19, citing MHA regional data 2011.

However, the *2013 Namibia Demographic and Health Survey* does not reflect the degree of improvement which might be expected. It found that 87% of children under five were registered with the civil authorities—but only 63% of children in this age group had a birth certificate; another 23% had only a hospital card and less than 1% were reported to be registered but did not have a birth certificate. The urban-rural divide was similar to that in previous surveys (77% of children in urban areas had a birth certificate, versus 54% in rural areas). This survey also reported that children under age 2 were *less* likely to have a birth certificate (56%) than children age 2–4 (68%), and that male children were slightly more likely to have a birth certificate than female children (65% versus 62%).<sup>21</sup>

#### BARRIERS TO BIRTH REGISTRATION IN NAMIBIA

- Populations live in remote areas, far from registration points.
- People cannot afford the cost of travelling to registration points.
- Difficulties are posed if a child's parents are unmarried or not living together. For example, the father has to consent to his name appearing on the birth certificate, and the Ministry cannot simply assume that a man said to be the father is indeed the father.
- Cultural practices, such as requiring the presence and identity details of the father, which may not be possible or readily available, and requiring the father-in-law to provide the child's name, which can take time.
- For a child who has been abandoned or orphaned, registration can be difficult even if there is proof of birth, because the details of at least one parent are required, but both parents are absent or deceased. This is particularly challenging where a child is living with a relative and the relative has no record of the child's birth.

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<sup>21</sup>Ministry of Health and Social Services (MOHSS), *Namibia Demographic and Health Survey 2013* Windhoek: MOHSS, 2014, at 20. Data collection was carried out from May to September 2013 (see Foreword, xvii).

## CONTINUED

- Parents not knowing or understanding the importance of birth registration and its gatekeeping role for accessing services.
- Unclear guidance from the existing legislation and unclear standard operating procedures translate into regions applying the law anecdotally.

UNICEF, *A Rapid Overview of Birth Registration Systems in Namibia: Taking Stock, Birth Registration Field Assessment 2012*, Windhoek: UNICEF, 2012 at 12

- Long distances to service sites, and poverty.
- Absent unmarried fathers could delay the registration process.
- Customary naming practices have prevented early birth registration among some communities. For example, women in the northeast of the country have delayed the registration of their children's births until after the annual return of the fathers from the mines to enable the men to name their children.
- The requirement that the parent/s of children must register their births has created difficulties for the registration of undocumented, abandoned or severely neglected children, such as children living on the streets and children from homes with high levels of alcoholism among parents.
- Undocumented orphaned children have been especially difficult to register because of difficulties associated with proving their birth and nationality.
- A lack of knowledge of the process or understanding of the importance of birth registration among parents.
- Legal uncertainty as to the registration process for children of stateless people, migrants and refugees. For example, there is no definition of a "stateless child," and consequently there is no systemic legislative framework securing their rights to a name and nationality.
- Unclear guidance from existing legislation and unclear standard operating procedures result in regional clerks delaying decision making on registering children in especially vulnerable difficult situations, and/or there are inconsistencies in the application of the law across different regions.

Government of the Republic of Namibia, *State Party Report on the African Charter on the Rights and Welfare of the Child 2004–2012*, Windhoek: Ministry of Gender Equality and Child Welfare, [draft 25 January 2013] at para 1.6

## 2. Death Registration

Namibia's National Population and Housing Census included questions on death registration for the first time in 2011. It found that 88% of all deaths reported to have occurred during the 12 months prior to the census were registered, with higher registration rates in urban areas (93.7%) compared to rural areas (85.7%). The region with the lowest death registration rate was Ohangwena (86.8%).<sup>22</sup> However, the census report notes that the deaths which occurred may have been underreported,<sup>23</sup> meaning that the percentages of deaths registered may actually be lower.

<sup>22</sup>Namibia 2011 Population & Housing Census Basic Report [Windhoek: Namibia Statistic Agency, National Planning Commission, 2013] at 43.

<sup>23</sup>Ibid.

## Death Registration Status by Area

AREA	TOTAL REPORTED DEATHS	TOTAL REGISTERED DEATHS	PERCENT
Namibia	22,668	20,056	88.5
Urban	7,858	7,363	93.7
Rural	14,810	12,693	85.7
Caprivi	1,063	772	72.6
Erongo	1,069	1,007	94.2
Hardap	1,033	1,016	98.4
Karas	825	802	97.2
Kavango	3,265	2,601	79.7
Khomas	2,360	2,228	94.4
Kunene	1,097	965	88.0
Ohangwena	3,056	2,653	86.8
Omaheke	801	751	93.8
Omusati	2,794	2,495	89.3
Oshana	1,953	1,796	92.0
Oshikoto	1,866	1,671	89.5
Otjozondjupa	1,486	1,299	87.4

Source: *Namibia 2011 Population & Housing Census Basic Report* [Windhoek: Namibia Statistic Agency, National Planning Commission, 2013] at 43.

## OVERVIEW OF LEGAL FRAMEWORK

### 1. Namibian Constitution

Article 15 of the *Namibian Constitution* says that children have ‘the right from birth to a name’ and ‘the right to acquire a nationality’. This Article goes on to guarantee such rights as protection from economic exploitation and protection from preventative detention for children under the age of 16 years old. Children under the age of 14 are also guaranteed the right not to be employed to work in any factory or mine, and all minor children are protected against being subject to forced labour by virtue of their parent’s being labourers on a farm or private enterprise. These constitutional guarantees make it vital for Namibia to have accurate records of children’s births and birth dates, to realize the rights in Article 15.

Article 17 of the *Namibian Constitution* also sets the voting age at 18, which again makes it crucial to provide for adequate records of birth and age.

It is also relevant to note that Article 4 of the *Namibian Constitution* provides a detailed set of criteria for Namibian citizenship by birth, descent, marriage and naturalisation—which affect the intersection of civil registration and various citizenship issues.

Article 10 prohibits discrimination on the basis of sex, race, colour, ethnic origin, religion, creed or social or economic status. This means that any law on civil identification or registration may not be formulated or applied in a way which violates this constitutional guarantee, although in terms of Article 140 of the Constitution, pre-Independence laws remain in force as they stand until amended or repealed by Parliament or invalidated on constitutional grounds by a competent court.

## 2. International Commitments

### 2.1 Convention on the Rights of the Child

Namibia was among the first African countries to become a party to the Convention on the Rights of a Child,<sup>24</sup> which states that all children have a right to be registered immediately after birth as well as rights to health, education, care and protection which are underpinned by adequate systems of civil registration and identification. Namibia ratified the Convention without reservations.

The process of fully harmonising Namibian law with the Convention requirements is still underway. Technically, all international conventions which are binding on Namibia automatically become part of the law of Namibia, in terms of Article 144 of the *Namibian Constitution*, but in practical terms this is not a substitute for domestication.

Namibia presented its First, Second and Third Periodic Reports on the Implementation of the Convention on the Rights of the Child to the UN Committee which monitors this Convention in July 2012.<sup>25</sup> The Committee's concluding observations on Namibia's report highlighted the issue of birth registration. The Committee expressed particular concern about the low levels of birth registration, particularly in rural areas and amongst children living in poverty, the restrictive legal framework, the difficulties refugees and asylum-seekers face in obtaining birth certificates for children born in Namibia and the lack of legal provisions on granting nationality to abandoned children with unknown parents. Amongst the Committee's recommendations were the reform of the Birth, Marriages and Death Registration Act of 1963 and special efforts aimed at registering the births of refugee and asylum-seeking children. The Committee also recommended that Namibia should accede to the *1954 Convention Relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*.<sup>26</sup>

### 2.2 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Namibia is obligated in terms of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to ensure that registration of all marriages in an official registry is compulsory.<sup>27</sup> In 1997, the Committee which monitors this Convention recommended that Namibia should "ensure, as soon as feasible, the registration of all customary marriages, so as to ensure that women could enjoy all rights that accrued as a result of marriage."<sup>28</sup> In 2007, the Committee again expressed specific concern "that Namibian law does not require the registration of customary marriages."<sup>29</sup>

<sup>24</sup>Namibia ratified the Convention on the Rights of the Child on 30 September 1990.

<sup>25</sup>*First, Second and Third Namibia Country Periodic Reports on the Implementation of the UN Convention on the Right of the Child and Two Optional Protocols (1997–2008)*, Windhoek: Ministry of Gender Equality and Child Welfare, [2009]. As the introduction to the report explains (at 1): "Namibia adopted the Convention on the Rights of the Child in 1990, within the first year following Independence. Two years thereafter, the Initial Report to the United Nations Committee on the Rights of the Child was submitted; the committee provided feedback in 1994. According to the committee's reporting schedule, Namibia's periodic reports were due in 1997, 2002 and 2007. Uncertainty regarding the institutional home of children's rights within the Government of the Republic of Namibia (GRN) led to delays. In 2000 the Ministry of Gender Equality and Child Welfare (MGECW) was established, the child welfare functions were transferred from the MOHSS in 2002. The new ministry consolidated child welfare and advocacy-related functions throughout the government, bringing focus and a sense of ownership regarding matters relating to children, and also creating a platform for civil society, communities and individuals with interests in children's issues. This report encompasses activities undertaken in Namibia on behalf of children since 1992."

<sup>26</sup>Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: Namibia*, CRC/C/NAM/CO/2-3, 5 October 2012 at paras 36–37.

<sup>27</sup>Article 16(2) states: 'The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.'

<sup>28</sup>Committee on the Elimination of Discrimination Against Women, *Concluding Observations: Namibia*, A/52/38/Rev.1, Part II (1997) at para 125.

<sup>29</sup>*Concluding Comments of the Committee on the Elimination of Discrimination against Women: Namibia*, 2 February 2007, CEDAW/C/NAM/CO/3 at para 28.

This duty is supported by Namibia's obligations in terms of both the *Protocol to the African Charter on the Rights of Women* and the *SADC Protocol on Gender and Development* to ensure that all marriages are registered.<sup>30</sup> The *Protocol to the African Charter* additionally requires that married women be allowed to continue to use their maiden names, jointly with their husband's surnames or separately.<sup>31</sup>

### 3. National Legislation

This section gives a brief summary of the current laws in place and the topics they cover. Because there are areas of overlap between the current laws, more detailed discussion of the key issues relating to identification and civil registration is organised by topic below. Annotated versions of all the laws and their accompanying regulations will soon be available on the Parliamentary website ([www.parliament.na](http://www.parliament.na)) and on the website of the Legal Assistance Centre ([www.lac.org.na](http://www.lac.org.na)), but have not yet been uploaded in their current amended form at the time of writing.

TOPIC	LAWS/ACTS	ISSUES COVERED	YEAR (ENACTED)	YEAR (ENFORCED)
Civil registration	<i>Births, Marriage and Death Registration Act 81 of 1963</i>	registration of births, marriages and deaths; name change procedures in certain circumstances	1963 enacted in South Africa and inherited by Namibia at independence	1972 came into force in South West Africa on 1 February 1972 when the amendments made by Act 58 of 1970 were brought into force by RSA Proc. 170/1971
	<i>Aliens Act 1 of 1937</i>	name change procedures; offence of using an assumed name	1937 enacted in South Africa and inherited by Namibia at independence	1937 came into force in South Africa and South West Africa on 1 February 1937 (section 14 of Act)
	<i>Marriage Act 25 of 1961</i>	solemnization and registration of civil marriages	1961 enacted in South Africa and inherited by Namibia at independence	1972 came into force in South West Africa on 1 February 1972 when the amendments made by Act 51 of 1970 were brought into force by RSA Proc. 169/1971

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<sup>30</sup>*Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, which came into force on 25 November 2005, Article 6(d); *SADC Protocol on Gender and Development* which came into force in March 2013, Article 8(2)(c). Namibia has ratified both; however, Namibia entered a reservation to the effect that it will not be bound by Article 6(d) of the *Protocol to the African Charter* until it has enacted legislation regarding the recording and registration of customary marriages.

<sup>31</sup>*Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, Article 6(f).

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TOPIC	LAWS/ACTS	ISSUES COVERED	YEAR (ENACTED)	YEAR (ENFORCED)
	<i>Children's Act 33 of 1960/Child Care and Protection Act 3 of 2015</i>	changes to birth registration records upon adoption	1960/2015 Children's Act 33 of 1960 enacted in South Africa and inherited by Namibia at independence; to be replaced by the Child Care and Protection Act, enacted in Namibia in 2015	1977/2016 made applicable to South West Africa by the <i>Children's Amendment Act 74 of 1973</i> , which came into force on 1 January 1977, by virtue of RSA Proc. 264 of 17 December 1976; to be replaced by the Child Care and Protection Act, expected to be brought into force in 2016
Civil identification	<i>Identification Act 21 of 1996</i>	establishment of population register; issue of identification documents	1996	2001 brought into force on 18 May 2001 by GN 95/2001
E-Government				
Privacy & personal data protection	<i>Identification Act 21 of 1996</i>	contains a single provision on secrecy of information in population registry	1996	2001 brought into force on 18 May 2001 by GN 95/2001
Electronic/digital signature				
Other	<i>Namibia Citizenship Act 14 of 1990</i>	elaboration of some forms of citizenship prescribed in the <i>Namibian Constitution</i> , but not citizenship by birth	1990	1990 brought into force on 15 September 1990 by Proc. 13/1990
	<i>Inquests Act 6 of 1993</i>	governs inquests into deaths suspected of resulting from unnatural causes, which can include findings of presumption of death where there is no body; requires reporting of all findings to MHA	1993	1994 brought into force on 1 January 1994 by GN 156/1994

TOPIC	LAWS/ACTS	ISSUES COVERED	YEAR (ENACTED)	YEAR (ENFORCED)
	<i>Dissolution of Marriages on Presumption of Death Act 31 of 1993</i>	provides for judicial dissolution of marriage when there is a court order for presumption of death, but with no link to civil registration system	1993	1993 came into force on date of publication: 20 December 1993
	<i>Children's Status Act 6 of 2006/Child Care and Protection Act 3 of 2015</i>	accessible procedure for proof of parentage	2006/2015 current law to be replaced by the Child Care and Protection Act, enacted in 2015	2008/2016 brought into force on 3 November 2008 by GN 266/2008; to be replaced by the Child Care and Protection Act, expected to be brought into force in 2016

### 3.1 Identification Act 21 of 1996

The *Identification Act 21 of 1996* establishes a population register which records data on Namibian citizens and permanent residents of Namibia, and provides for the issue of identification documents to these persons. It includes a provision on the secrecy of information in the population register

This law is likely to be replaced in the near future by a more comprehensive law on civil identification and registration.

### 3.2 Births, Marriage and Death Registration Act 81 of 1963

The *Births, Marriage and Death Registration Act 81 of 1963* sets out the framework for civil registration that is currently used in Namibia. The current Act was inherited from South Africa at Independence, with South African amendments as well as amendments made in colonial "South West Africa." As a result of the multiplicity of amendments, the Act has become confusing and ambiguous.

The Act also predates the Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child and other relevant international instruments pertinent to children's rights. Furthermore, the Act was created during the apartheid era and was focused primarily on the needs of the nuclear European family; it is not responsive to the needs of many Namibians, does not consider the cultural context of many families and indigenous communities and does not respond to the evolution of the family structure since it was first implemented.

To date, the government's attempts to implement pragmatic changes to the civil registration system have been limited by the outdated legal framework.

The current law gives no guidance on a number of problematic fact situations regularly encountered by the Ministry. It is gender-biased, by giving primary duty to register a child's birth to the father, with the legal duty passing to the mother only secondarily. It also provides confusing and inadequate procedures for the registration of births where children are born outside marriage (which is a common situation in Namibia). It provides limited choices for the assignment of surnames, and the rules on surnames do not cater adequately for Namibia's diversity of cultural practices.

The registration of divorces is not addressed in this statute, and the records of divorces maintained by the courts are not integrated into the civil registration system—thus weakening the value of the registration of marriages since, without accompanying divorce registration, current marital status cannot be definitely determined.

Customary marriages are not yet fully recognised as marriages for all purposes, and there are no official certificates to mark a customary marriage of divorce. Thus, these marriages and divorces are not currently captured in Namibia's civil registration system.

### **3.3 Aliens Act 1 of 1937<sup>32</sup>**

The only remaining substantive provision of this South African statute inherited by Namibia at independence sets forth the procedure for name changes and makes it a criminal offence to use an assumed surname, with some exceptions, unless a Minister or a public official has authorized him or her to assume a different surname and this authority has been published in the *Government Gazette*.<sup>33</sup>

This law addresses the surnames which may be used by married and divorced women. Women who are or have been married are allowed to continue to use their maiden surnames or to adopt their husband's surnames, as they wish, without any notice to anyone.

The United Nations Committee which oversees the International Covenant on Civil and Political Rights ruled in 2002 that providing a special rule for married women but not married men constitutes unfair sex discrimination in terms of the Covenant, and directed the Namibian government to report on what it had done to rectify the problem within 90 days.<sup>34</sup> However, the relevant provision in the Aliens Act has not yet been amended.

### **3.4 Marriage Act 25 of 1961**

This law covers the procedure for the solemnisation and registration of civil marriages by persons designated as marriage officers. It is an outdated law inherited from South Africa at independence. A replacement Marriage Bill is in its final stages of preparation by the MHA.

### **3.5 Children's Act 33 of 1960/Child Care and Protection Act 3 of 2015**

The *Children's Act 33 of 1960* is expected to be replaced by the *Child Care and Protection Act 3 of 2015* during the course of 2016. The latter law has been passed by Parliament but not yet brought into force, as the regulations needed to accompany it are still being finalised. The current law and its successor both address procedures for registering adoptions and altering birth registration records to reflect the adoption.

### **3.6 Namibia Citizenship Act 14 of 1990**

This Act supplements the *Namibian Constitution* by regulating citizenship acquired by descent, marriage, registration and naturalisation but does not add anything to the constitutional provisions on citizenship by birth. It

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<sup>32</sup>The legal history of this law which Namibia inherited from South Africa is complex. In summary, the only surviving sections are s. 1 (definitions, as amended by s. 1 of Proc.15/1989), s. 9 (change of name, as amended by s. 12 of Proc.15/1989) and s. 14 (short title).

<sup>33</sup>*Aliens Act 1 of 1937*, s. 9 (1)(a)–(f). The exceptions to the general rules that must be followed for a change of surname cover the following situations:

- a woman may assume the name of her husband upon marriage
- a married woman/divorced woman/widow may resume a surname which she bore at a prior time
- a woman who has concluded an Islamic marriage, Indian marriage or customary union may assume the name of the man with whom she concluded such marriage or union
- a person adopted according to law may assume the name of the adoptive parents
- a person born as an 'illegitimate' child may, after the marriage of his parents, assume the surname of his father
- a person may assume a surname and a name attaching to a title to which he succeeded to by inheritance (e.g. hereditary kingship).

<sup>34</sup>UN Human Rights Committee, Communication No. 919/2000, CCPR/C/74/D/919/2000, 28 June 2002. The Supreme Court had found that this differential treatment did not constitute unfair sex discrimination. *Müller v President of the Republic of Namibia and Another* 1999 NR 190 (SC).

prohibits dual citizenship,<sup>35</sup> but the High Court has held that it is unconstitutional to apply this prohibition to persons who are Namibian citizens by birth or descent.<sup>36</sup>

## 4. Law Reform

### 4.1 Civil Registration Bill

The MHA is in the process of replacing the three main pieces of legislation on civil registration and identification—the Identification Act; the Births, Marriages and Death Registration Act; and the Aliens Act—with a single integrated new statute on this topic.

A draft bill was prepared by the Ministry in 2011–2013 with technical support from UNICEF and the Legal Assistance Centre (a Namibian nongovernmental organisation). This process was supervised by a Technical Working Group which included representatives from the Ministry of Home Affairs and Immigration, the Ministry of Health and Social Services, the Ministry of Gender Equality and Child Welfare, the Ministry of Safety and Security, UNICEF and the Legal Assistance Centre. (The Ministry of Justice was invited to attend but was unable to send a representative for the entire duration of the revision process.)

The law reform process began with detailed background research into international best practice. Public input was solicited through traditional forms of media (printed materials, radio and television) as well as new forms of social media such as Facebook and text messaging, which is an increasingly popular form of communication in Namibia.<sup>37</sup> The Ministry held three regional one-day workshops on the draft bill, targeting areas where birth registration is lower than the national average, as well as one national one-day workshop. These workshops were attended by key stakeholders, including government officials, development partners, traditional leaders, private stakeholders such as representatives from insurance brokers and representatives from various local nongovernmental organisations. In line with the principle of child participation, the Ministry also hosted several regional consultations with children. Individual interviews on specific issues were conducted with several key stakeholders, such as representatives from private insurance companies and the Government Institutions Pension Fund and the Master of the High Court who oversees the administration of deceased estates.

The Ministry prepared a draft Civil Registration Bill based on the input received, which went through several revisions based on input from the Technical Working Group and Ministry staff. The draft bill was further refined by a technical legal drafter. Draft regulations to accompany the bill were prepared using the same process.

The recommendations discussed herein, unless otherwise indicated, were the outcome of this consultative law reform process.

### 4.2 Marriage Bill

The MHA is also in an advanced stage with the preparation of a new Marriage Bill which will replace the Marriage Act 25 of 1961. It is currently envisaged that provisions on registration of marriages and divorces will be placed

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<sup>35</sup>Namibia Citizenship Act 14 of 1990, s. 26.

<sup>36</sup>*Thoro v Minister of Home Affairs* 2008 (1) NR 97 (HC); see also *Le Roux v Chief of Immigration and Others* 2011 (2) NR 606 (HC).

<sup>37</sup>The Ministry placed full page **factsheets**, translated into English and two Namibian languages, in two of the daily newspapers. The factsheets contained information about the current law in Namibia and some examples of approaches in other countries, to stimulate discussion. Each factsheet included a list of short, specific questions for public feedback. The Ministry also placed one of the factsheets in a magazine for youth produced by a local NGO which is distributed to some 80,000 youth in three regions.

The Ministry also placed a **full page comic** accompanied by some key questions for discussion in a third daily newspaper, in an attempt to attract interest amongst less literate segments of the public.

In addition, the Ministry ran a **question and answer column** in one of the daily newspapers. This was a technique not previously used in law reform processes in Namibia. The purpose of the column was to discuss problems people have with the current law, to assist the Ministry to understand some of the issues which the new legislation should address. The column ran over a period of several months, with a total of seven columns being placed, and it stimulated extensive input from both adults and children.

Further public outreach was in the form of **pamphlets** in English and several local languages on how to register the birth of your child and how to change a child's surname, distributed through the Ministry's regional offices and accompanied by questions for public debate.

Members of the technical working group also discussed the revision process in multiple languages on a range of radio stations and on **national television**.

The Ministry provided electronic versions of its consultation materials on its **website** and created a **Facebook page** which engaged debate by periodically posing questions to the public.

alongside those on the solemnisation of marriages in the Marriage Bill to facilitate the understanding and training of marriage officers on their legal duties. The Marriage Bill covers only civil marriages at present.

#### 4.3 Recognition of Customary Marriages Bill

The Law Reform and Development Commission has prepared a bill on the Recognition of Customary Marriages which would provide for certificates of marriage and divorce in respect of civil marriages for the first time, and ensure that such marriages are fully recognised as marriages for all legal purposes.<sup>38</sup> This bill is expected to go to Cabinet some time in 2016. As this Bill moves forward, it will be necessary to ensure that it provides adequately for the registration of customary marriages and divorces in a manner parallel to that provided for civil marriages.

#### 4.4 Other relevant family law reforms

A number of other family law reforms which have been prepared by the government's Law Reform and Development Commission are anticipated in the next year or two, some of which could have implications for civil registration issues:

- The Divorce Bill would replace Namibia's outdated common law procedures on divorce and provide new and more accessible procedures. This could affect the forums for divorce, and thus impact divorce registration procedures.<sup>39</sup>
- The Marital Property Reform Bill could affect the format of marriage certificates. It proposes a new system whereby standard marital property systems can be explained by the marriage officer, chosen at the time of marriage and indicated on the marriage certificate.<sup>40</sup>
- The Intestate Succession Bill and accompanying Administration of Estates Amendment Bill are expected to change the rules on intestate succession and provide new protections against 'property-grabbing' which sometimes takes place before proper distribution of the deceased estate.<sup>41</sup>

#### 4.5 Electronic Transactions and Cyber Crime Bill

The Ministry of Information and Communication Technology is in the process of preparing an Electronic Transactions and Cyber Crime Bill which would address, amongst other things, procedures for the authentication of electronic signatures.

## DETAILED DISCUSSION OF KEY ISSUES

### 1. Population Register

The *Identification Act 21 of 1996* establishes a population register which records data on Namibian citizens and permanent residents of Namibia.<sup>42</sup> The population register is designed to include the following particulars in respect of every person listed in it:

- the particulars required to be furnished when **notice of birth** is given;
- if he or she is a Namibian citizen other than by birth, the **date on which he or she obtained Namibian citizenship** and the particulars thereof;
- for permanent residents, the **date on which they obtained permanent residence** and the particulars thereof;

<sup>38</sup>Law Reform and Development Commission (LRDC), *Report on Customary Law Marriages* (LRDC 12), Windhoek: LRDC, 2004.

<sup>39</sup>Law Reform and Development Commission, *Report on Divorce* (LRDC 13), November 2004.

<sup>40</sup>Law Reform and Development Commission, *Report on Marital Property* (LRDC 15), March 2010.

<sup>41</sup>Law Reform and Development Commission, *Report on Succession and Estates* (LRDC 20), March 2012.

<sup>42</sup>*Identification Act 21 of 1996*, s. 2. Note that the Act only came into force on 18 May 2001 (Government Notice 95 of 2001, GG 2533).

- the **particulars of marriage**, if any, drawn from the relevant marriage register or any other document relating to the contracting of a marriage, as well as “such other particulars concerning his or her marital status as may be furnished;”
- if an identity document has been issued, a **photograph, fingerprints and palm prints**;
- after the death of the person, the particulars required to be furnished when the **notice of death** was given;
- **date of permanent departure from Namibia**, if this is relevant;
- any particulars concerning the **cancellation of his or her identity document**; and
- such **other particulars** as the Minister may by notice in the *Gazette* direct to be recorded in the population register but subject to such conditions, exceptions or exemptions as may be determined in the notice.<sup>43</sup>

Each person listed in the population register is assigned an 11-figure **identity number**.<sup>44</sup>

In addition, the statute authorises the Minister to require that certain categories of persons must apply for identification documents within a specified period;<sup>45</sup> the Minister has accordingly issued a Government Notice which requires every person over the age of 16 to apply for an identification document within three months of attaining that age.<sup>46</sup> Persons over the age of 16 who apply for identity document must present themselves to have a photograph taken,<sup>47</sup> and must provide fingerprints and palm prints. Failure to comply with any of these rules is an offence, punishable by a fine of up to N\$8,000 or to imprisonment for up to two years, or both.<sup>48</sup>

An identity document may contain only certain particulars:

- the identity number;
- the holder’s full name, “gender” (sex is presumably what is meant), date of birth, height, eye colour, and place of birth (if born in Namibia) or country of birth (if born outside Namibia);
- a statement of whether or not the holder is a Namibian citizen;
- a photograph of the person;
- such fingerprint or other mark as may be prescribed;
- such other particulars in the population register as the Minister may by notice in the *Government Gazette* authorize to be included in an identity document but subject to such conditions, exceptions or exemptions as may be prescribed in the notice.<sup>49</sup>

The regulations cover situations where the thumbprint which usually appears on the card cannot be taken; if no left or right thumbprint can be taken because of deformity, injury or absence of the digit, a sticker with the word “DISABLED” is imprinted in the space where the thumbprint would normally appear<sup>50</sup>—even though this label might be a misnomer. The possible stigma resulting from such a label seems not to have been considered, and this labelling raises issues of privacy and sensitivity.

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<sup>43</sup>Id, s. 3.

<sup>44</sup>Id, s. 4.

<sup>45</sup>Id, s. 5(2).

<sup>46</sup>*Regulations under the Identification Act, 1996*, Government Notice 96 of 2001 (GG 2533), reg 2(2). When read together with sections 2(1) and 5 of the Act, this would apply to citizens and permanent residents. However, the timeframe within which permanent residents must apply for identification documents is not stated in the Regulations.

<sup>47</sup>*Identification Act 21 of 1996*, s. 7.

<sup>48</sup>*Identification Act 21 of 1996*, s. 15(j) read together with 15(i) in respect of an offence under s. 5(2), 7 or 8.

<sup>49</sup>Id, s. 5(3).

<sup>50</sup>*Regulations under the Identification Act, 1996*, Government Notice 96 of 2001 (GG 2533), reg 3(iii).

The Minister has the power to institute an investigation of any of the matters which are to be recorded in the population register<sup>51</sup>—such as citizenship status.

Citizens are issued with blue identity documents, and permanent residents are issued with pink ones.<sup>52</sup> Given that identity documents are requested in numerous public situations, having two different colours of cards immediately signals citizenship status to persons who may have no legitimate reason to be informed of this.

Where an identity document contains incorrect particulars or a photograph which is no longer a recognisable image of the person in question, the holder must return the ID within 30 days of becoming aware of the error for cancellation and re-issue. Failure to do this could result in seizure of the ID document.<sup>53</sup> Anyone who is in possession of the ID document of a deceased person must hand it over to the Ministry within three months of becoming aware of the death, or of coming into possession of the ID document. Failure to do this could similarly lead to seizure. The identity document of the deceased person will be cancelled by the Ministry, but that identity number will be retained on the system for a year.<sup>54</sup>

There is no rule requiring that a person must carry his or her identity document at all times. However, the Identification Act does state that an “authorized officer” (which includes police or any other peace officer, or any other official designated by the Ministry<sup>55</sup>) “may request any person reasonably presumed to have attained the age of 16 years to prove his or her identity within a reasonable time” by presenting to that officer his or her identity document, passport or other proof of identity.<sup>56</sup> An officer in the service of the Ministry of Home Affairs who becomes aware that a person over the age of 16 has failed to apply for an identity document must “take such steps as may be necessary to ensure that such person applies for an identity document.”<sup>57</sup>

## 2. Birth Registration Procedure

### 2.1 Basic procedure

Technically, a person who wants the birth of a child to be registered approaches the Ministry and makes application for registration of the birth. The Ministry is the body that actually registers the birth.<sup>58</sup> However, the process of making the application for birth registration is often referred to as “registering the birth.”

The statute provides for the registration of any birth which occurs after the point of viability,<sup>59</sup> but with different procedures and documents being issued for live births and stillbirths.<sup>60</sup> Separate birth registration forms are required for each child in the case of multiple births.<sup>61</sup>

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<sup>51</sup>Identification Act 21 of 1996, s. 9.

<sup>52</sup>Regulations under the Identification Act, 1996, Government Notice 96 of 2001 (GG 2533), reg 3.

<sup>53</sup>Identification Act 21 of 1996, s. 12; Regulations under the Identification Act, 1996, Government Notice 96 of 2001 (GG 2533), reg 5.

<sup>54</sup>Identification Act 21 of 1996, s. 13; Regulations under the Identification Act, 1996, Government Notice 96 of 2001 (GG 2533), reg 6.

<sup>55</sup>Identification Act 21 of 1996, s. 10(3). A peace officer is defined in section 1 of the Criminal Procedure Act 51 of 1977 as “any magistrate, justice of the peace, member of the police, member of the prison service and, in relation to any area, offence, class of offences or power referred to in a notice issued under section 358(1), any person who is a peace officer under that section.” Section 358(1) of that Act provides the designation of persons holding additional offices as peace officers.

<sup>56</sup>To be acceptable, such other proof of identity must be one that is prescribed by the Minister, or one that is issued by the State and includes the name and a photograph of the holder (such as a driver’s license).

<sup>57</sup>Identification Act 21 of 1996, s. 19(2).

<sup>58</sup>For example, Namibian law technically speaks of the duty of the parent to “give the prescribed notice or information.” *Births, Marriages and Death Registration Act 81 of 1963*, s. 9(1).

<sup>59</sup>*Births, Marriages and Death Registration Act 81 of 1963*, definition of ‘birth’ and ‘stillborn’ in s. 1. Ministry staff have suggested that there is a need for clearer definitions of key terms such as “birth” and “stillbirth” than those currently provided in the law. It should be noted that basing any definitions on “viability” is unwise, as in practical terms this can depend on the degree of neonatal medical care available.

<sup>60</sup>*Births, Marriages and Death Registration Act 81 of 1963*, ss. 19 and 20.

<sup>61</sup>*Births, Marriages and Deaths Registration Regulations*, GN 214 of 1987 (Official Gazette 5480), reg 8: “If a woman be delivered of more than one child at a single confinement, the information concerning the birth of each child shall be furnished on a separate form of information and the exact time (if known) of each birth shall be recorded on such form.”

Namibia currently requires a single-step process for birth registration. A Notice of Birth must be completed by the parents within 14 days of the birth<sup>62</sup> and given to the registrar or assistant registrar.<sup>63</sup> Yet late registration procedures apply only if more than one year has elapsed since the child's birth.<sup>64</sup>

The registrar must examine the Notice of Birth for any omission, defect or inaccuracy and require that the information be corrected if necessary.<sup>65</sup> The Notice of Birth constitutes the request for registration of the child's birth.

The regulations issued under the Act provide procedures for correcting inaccuracies in the birth registration record,<sup>66</sup> and for dealing with double registrations.<sup>67</sup>

Namibia's current regulations envisage the possibility of a dual notification system, by additionally obligating the person in charge of any hospital, maternity home, nursing home, orphanage or similar institution to submit to the registrar or assistant registrar weekly returns of all births, stillbirths and deaths at the institution "when called upon to do so."<sup>68</sup> This is not currently being implemented.

A dual notification process involving a Notice of Birth submitted by medical practitioners or medical facilities, in addition to an Application for Birth Registration submitted by the child's parent or parents, could have several advantages. First, it would create an independent record of births, allowing for follow-up with the family in question if an application for birth registration was not received in respect of every child on the medical notification. Second, it would create a record of basic information which could be referenced until such time as sufficient information is gathered or submitted to issue a birth certificate. Third, it would provide information which could be used to verify the information provided by the parents. Fourth, should some dispute arise about the child's identity or the identity of the child's mother, the notice of birth would provide useful evidence of the facts surrounding the birth. In rural areas, if there were no medical personnel in attendance at a birth, the village chief or headman could be required to submit a Notice of Birth. If a dual notification system were adopted, it should be clear that a child will not be penalised in any way if the requisite Notice of Birth is not received, and that this will be no bar to the registration of the child's birth through an application for birth registration.

## 2.2 Duty to give information about birth to Ministry

Under Namibia's current law, the primary duty to register the birth of a child falls on the father. If the father is uninvolved by choice, or because of death, illness, absence from the country or otherwise, then it is the duty of the mother to register the child's birth. If the mother is uninvolved or incapable, then the duty passes to any person who was present at the birth or the occupier of the dwelling in which the child is born. If none of these people are able to register the child's birth, then the duty passes to the person having charge of the child. These persons have a legal duty to provide information for birth registration within 14 days of the child's birth.<sup>69</sup>

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<sup>62</sup>*Births Marriages and Deaths Registration Act 81 of 1963*, s. 19(1).

<sup>63</sup>*Id.*, ss. 4–5.

<sup>64</sup>*Id.*, s. 7.

<sup>65</sup>*Id.*, s. 5. Most other African countries (such as Botswana, Kenya, Tanzania, South Africa, Zambia and Zimbabwe) also follow a single-step registration process for birth registration similar to that used in Namibia. However, countries such as Australia, New Zealand, Canada and many countries in Europe follow a dual notification system that requires a preliminary Notice of Birth to be filed by relevant medical personnel prior to the actual birth registration. The preliminary Notice of Birth and the subsequent Birth Report are two separate documents. Australia, Canada and New Zealand require the medical practitioner (doctor, midwife or nurse) or hospital administrator to issue a "preliminary" Notice of Birth. The parents are required to complete a separate Birth Report, usually at a later date. Generally speaking, the preliminary Notice of Birth must be filed by the doctor, midwife or nurse present at the birth or by the hospital administration, within 1–7 days of birth and prior to the birth being registered.

<sup>66</sup>*Births, Marriages and Deaths Registration Regulations*, GN 214 of 1987 (Official Gazette 5480), reg 11.

<sup>67</sup>*Id.*, reg 12.

<sup>68</sup>*Id.*, reg 15.

<sup>69</sup>*Births, Marriages and Deaths Registration Act 81 of 1963*, s. 19(1). The actual wording of this provision (with emphasis added) is as follows: "In the case of any child born alive it shall be the duty of the **father** of the child, and, in the event of the death or absence or other inability of the father, then of the **mother** of the child, and in the event of the death or inability of the mother, then of **any person, present at the birth**, or of the **occupier of the dwelling in which the child is born**, and, in the event of the death or absence or other inability of such occupier, then of the **person having charge of the child**, within fourteen days after the birth, to give the prescribed notice or information thereof either to the registrar or assistant registrar concerned, or (if the child was born outside an urban area), to any justice of the peace or police officer: Provided that if the father or mother of the child is resident in an area other than that in which the birth occurred, that father or mother may give the prescribed notice or information to the registrar in whose area his or her residential address is." Where the duty to register the child falls on "any person, present at the birth," there is no provision for "death or absence or other inability."

The gender-biased approach to the first link in this chain of responsibility is inappropriate. It would be more appropriate to give the duty to register a child’s birth to both parents in the first instance, and if both the mother and father are incapable, unwilling or unknown, to any person having custody or care of the child—including a sibling, another extended family member, social worker, place of safety or foster parent. The law could also be reformed to *authorise* the following persons to register a birth which is otherwise not registered:

- a. the child himself or herself if he or she is capable of doing so;
- b. an extended family member of the child, a traditional leader or a social worker, if the parents have failed to register the birth of the child within a prescribed time period;
- c. the Registrar-General, if a Notice of Birth has been received from a medical practitioner or facility (or information about the birth has been received from any other source) but no Application for Birth Registration has been received after a prescribed period of time.

It is technically an offence for anyone to fail to comply with a legal duty to give a notice or information under the law—but the law protects the person in question from conviction if they have subsequently supplied the necessary information. The penalty for this offence is a fine of up to N\$250.<sup>70</sup> In practice, however, the Ministry of Home Affairs does not make use of this mechanism for attempting to secure birth registration.<sup>71</sup>

Namibia currently requests that the information shown in the box below is included on the notification of birth provided by the parent (or other informant).

NAMIBIA—INFORMATION CURRENTLY REQUESTED FOR BIRTH REGISTRATION	
<p>Particulars of child:</p> <ul style="list-style-type: none"> <li>• name of child</li> <li>• date of birth</li> <li>• place of birth: city, region, country</li> <li>• whether the child was born in hospital</li> </ul> <p>Particulars of parents:</p> <ul style="list-style-type: none"> <li>• ID number</li> <li>• name: surname, first name and mother’s maiden name</li> <li>• date of birth</li> <li>• place of birth</li> <li>• parent’s citizenship at time of child’s birth</li> <li>• whether or not parent is a permanent resident of Namibia, and if so relevant permit number</li> </ul>	<p>Marriage of parents:</p> <ul style="list-style-type: none"> <li>• yes/no</li> <li>• place of solemnization</li> </ul> <p>General information:</p> <ul style="list-style-type: none"> <li>• name of person or institution caring for the child</li> <li>• postal address of person or institution</li> <li>• residential address where the child is cared for (generally address of parent or parents)</li> </ul> <p>Declaration of one person as to truth of information</p>

Not all of the information requested may be known or available. For example, the child’s parents may lack documents proving their identity, citizenship, place and date of birth—particularly if the parent’s birth was never registered. This situation is not uncommon given Namibia’s large rural population and colonial past and in practice,

<sup>70</sup>Id, ss. 45, 49.

<sup>71</sup>One problem with applying a penalty is that this could discourage late registration by someone else. For example, a child might hesitate to register his or her own birth if this could (even in theory) result in the imposition of a fine against the parents who failed to register the child immediately after birth. Another problem with such a penalty is that it operates in essence as a fee for late registration. Also, enforceability could be problematic; the Ministry would have information about parents who failed to register the birth of a child only from the preliminary Notice of Birth (if a dual notification process were adopted)—and this is likely to include information only about the mother since it would arise from the medical fact of giving birth. Furthermore, given the vastness and poverty of Namibia, with its many remote areas, it would be unfair to impose sanctions if the reason for not registering is distance, cost of travel or customer service difficulties experienced with the Ministry. Therefore, if any penalty is retained, consideration should be given to imposing sanctions only in a situation where the person in question has been notified of the requirement to submit an Application for Birth Registration and wilfully ignored this duty, despite having the capacity to fulfil it.

this sometimes leads to a failure to issue a birth certificate for the child. It is important that all births be registered, on the basis of the available information, to break the chain of undocumented persons in Namibia.

### **2.3 Late registration**

Current Namibian law states that birth registration later than one year from the date of the birth requires the written authority of the “Secretary for Civic Affairs.”<sup>72</sup> This is outdated terminology, and in practice all Ministry offices issue birth certificates in respect of late registrations without the approval of any higher official in the Ministry.<sup>73</sup> The law authorises the Ministry to charge a fee for late registration (in contrast to early registration which is free), but there is at present no fee for late registration.<sup>74</sup> No additional information requirements for late registrations are specified in the law or the regulations.

Thus, although there are theoretically two different procedures at present, the current system is not well designed to address concerns about fraud or inaccuracies. In practice, late registration came into active use in post-Independence Namibia primarily to address the problem of adults who had not been registered under the colonial regime (when birth registration was not compulsory for blacks).

As a mechanism to prevent fraud, it has been suggested that additional procedures be applied to birth registrations which take place after one year (“late registration”), and further additional procedures to birth registration which takes place after the child is age 16 (“adult or mature registration”), with the age of 16 being suggested as the age at which Namibian IDs are currently being issued.<sup>75</sup>

### **2.4 Birth registration by married parents**

Under the current law, the birth of a child to married parents can be recorded by either parent, and either of them can provide the particulars of both parents for inclusion on the birth certificate. The law places the primary duty to register the child’s birth on the father, but if he does not act, the duty passes to the mother, or to other persons who are in a position to have knowledge of the birth.<sup>76</sup> This is allowed because the law presumes that the spouses are the two parents of a child born to a person who is married.

If both married parents are named on the birth certificate, current practice is that the child can be given either the mother’s surname or the father’s surname.<sup>77</sup> If the parents are married and proof of marriage is presented (i.e. a marriage certificate or a letter from a headman stating the parents were married under customary law), then the father is presumed to be the child’s parent and the child can take his surname even if he is not physically present to register the child. However, if only the mother is registered on the birth certificate, then the child must be given the mother’s surname—even if she is married.

### **2.5 Birth registration by unmarried parents**

One contentious issue in Namibia is the registration of children born outside marriage, and the circumstances in which one parent may register the particulars of another parent who is not participating in the birth registration process. As a background to this discussion, it should be noted that the legal distinctions which once

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<sup>72</sup>*Births, Marriages and Deaths Registration Act 81 of 1963*, s. 7. The 1963 law used to fall under the “Department of Civic Affairs and Manpower,” thus, the analogous official in independent Namibia would probably be the Permanent Secretary of the Ministry of Home Affairs and Immigration.

<sup>73</sup>Personal communication from Ministry of Home Affairs and Immigration.

<sup>74</sup>*Births, Marriages and Deaths Registration Act 81 of 1963*, s. 7.

<sup>75</sup>Additional documentary evidence could include:

- a sworn statement from the birth attendant with a detailed set of questions to ascertain his or her presence at the birth and knowledge of the events of the birth;
- a sworn statement of at least one other person who attended the birth or had knowledge of the birth shortly after it occurred; and
- where necessary, a medical examination by a doctor verifying the age of the person being registered.

<sup>76</sup>*Births, Marriages and Death Registration Act 81 of 1963*, s. 19; *Births, Marriages and Deaths Registration Regulations*, GN 214 of 1987 (Official Gazette 5480), reg 5.

<sup>77</sup>The *Births Marriages and Deaths Registration Act 18 of 1963* does not explicitly state that a child may be named with the surname of either of the married parents, but the law seems to be premised on the assumption that the norm is that married women take their husband’s surnames and children born within marriage take this family surname. See, for example, s.8A(1)(c) and (d).

existed between children born inside and outside marriage in respect of maintenance and inheritance have been repealed or struck down by the courts.<sup>78</sup> The main issue arising in respect of unmarried parents is proof of parentage. The law presumes that a child born to married parents is the child of the two spouses.<sup>79</sup> However, there is no easily demonstrable presumption which applies in respect of unmarried parents—only presumptions which come into play if certain facts are established, such as cohabitation or sexual intercourse at the approximate time of conception, which Ministry officials would not be well-placed to determine.

Another problematic issue concerns what surname may be given to a child born outside marriage, particularly when the parents are not in agreement about this question or when one parent has not acknowledged parentage.<sup>80</sup> It should be noted that naming customs carry important symbolic value, often signalling connection to kinship groups or conferring social status. Naming practices are reported as being key sources of difficulty in respect of birth registration by both members of the public and Ministry staff. In colonial times, surnames were sometimes assigned to children on the basis of the surnames of the parent's employers or the month of the child's birth, raising issues about control over a person's identity.<sup>81</sup> It is particularly important against this authoritarian background for future laws in Namibia to adopt an approach which respects personal choice as well as Namibia's diverse cultural traditions.

Either parent can register the birth of a child born outside marriage. However, the law is not gender-neutral—primarily because it dates from a time before DNA tests when positive proof of paternity was not scientifically possible. A mother who is registering the birth of a child outside marriage does not need to get permission from the father to register the child's birth. She also does not have to identify the father; if the mother does not want to give any details about the father, no one will be named as the child's father on the birth certificate. Listing a man as a father on the birth certificate requires an affidavit in which the man in question acknowledges paternity.<sup>82</sup>

Conversely, the law allows a man to be named as the father on the child's birth certificate only if both he and the mother consent to this—even if the father has initiated registration of the birth on his own, and even if paternity has been proved in court or by means of medical testing.

Information about the father can be added at a later date without cost if there is acknowledgement of paternity. However, the father's particulars cannot be added after he is deceased.

The rules on the surname given to a child born outside marriage mirror the rules on the listing of the father's particulars. If the father has not acknowledged paternity, then the father's particulars cannot be listed on the birth certificate and the child must be given the mother's surname. If both parents are named on the birth certificate,

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<sup>78</sup>See the *Children's Status Act 6 of 2006*, the *Maintenance Act 9 of 2003* and *Frans v Paschke and Others* 2007 (2) NR 520 (HC).

<sup>79</sup>This is a common-law presumption which has been codified in the *Children's Status Act 6 of 2006*.

<sup>80</sup>These problems usually relate to questions of paternity, but the same principles apply in the more unusual situation where the identity of the mother is uncertain, so this discussion uses the gender-neutral terms parent and parentage.

<sup>81</sup>For example, in 2004, a group of San approached the Legal Assistance Centre to complain about the fact that many members of their community had been given Afrikaans or German surnames by the farmers for whom they work. Others have been given Herero names by their adopted families. These 'imposed' surnames do not relate to the San culture and have caused much disquiet. The group in question was seeking to have the costs involved in name changes waived so that they could formally acquire their traditional surnames. A local newspaper agreed to publish the requisite advertisement of the proposed name changes for free. The Legal Assistance Centre took up the matter with the Ministry of Home Affairs and Immigration, but was unable to secure a waiver of the fees for the required publication of a proposed name change in the *Government Gazette*.

<sup>82</sup>The current law is somewhat confusing on what is required in order to register a man as the father of a child born outside marriage. Section 10(1) of the *Births, Marriages and Death Registration Act 81 of 1963* requires that the father acknowledge paternity in the presence of the registrar or assistance registrar, whilst section 10(2) appears to refer to acknowledgement by means of an affidavit. Strictly speaking, the correct interpretation of the law would have to satisfy *both* requirements, meaning that registration of the father's particulars would require the father's appearance in person, in addition to a written acknowledgement of paternity. However, the law has been applied in practice to allow the details of the father to be registered if there is an affidavit acknowledging paternity, even if the father is not present. The benefits of clarifying the current legal position are obvious.

the child can be given either the mother's surname or the father's surname. The father does not have to consent if the mother wants to give the child her surname, but the mother must consent in order for the child to be given the father's surname. In other words, the child can take the father's surname only if (a) the father is named on the birth certificate and (b) both the mother and the father consent to this. If the father's particulars are added at a later date, after the initial registration, the child can be given the father's surname at this point if the mother consents.

## **2.6 Double-barrelled surnames**

The current law makes no provision for double-barrelled surnames combining the surname of both parents, regardless of the parent's marital status—although this is sometimes requested by members of the public. Ministry practice on whether or not such surnames are allowed seems to have been inconsistent.<sup>83</sup>

## **2.7 Law reform recommendations on parentage and surnames**

The existing rules are confusing and have sometimes been applied inconsistently in practice. They have also given rise to many complaints from members of the public. It seems to be a constitutional imperative to remove all sex-based distinctions in the rules on birth registration, so that mothers and fathers have equal powers to register a child's birth and to give that child their surnames.<sup>84</sup>

It would simplify the law to apply a similar set of rules to all children, regardless of whether they are born inside or outside marriage. Applying a single set of rules on surnames to all children would also follow the trend of removing legal distinctions between children born inside and outside marriage, thus emphasising the equality of all children before the law.

On the question of listing the particulars of parents on the birth certificate, it is recommended as follows:

- Where the parents are married, if both parents sign the Application for Birth Registration, and submit a copy of their marriage certificate, one parent can submit an application listing the particulars of both parents.
- Where the parents are unmarried, if both parents sign the Application for Birth Registration, they can submit an application listing the particulars of both parents provided that there is a supporting affidavit from the absent parent acknowledging parentage.
- No parent may be compelled to give information about the identity of the other parent in order to register a child's birth.
- In the event that a parent, married or unmarried, is not participating in the birth registration process for any reason (incapacity, death, illness, imprisonment, being outside the country or simply choosing not to cooperate) the Registrar-General should be empowered to complete the required particulars concerning the nonparticipating parent upon presentation of sufficient proof of that person's parentage.
- If a mother or a father is listed in the birth register but proof is offered that another person is actually the mother or the father, the Ministry may alter the birth register and issue a new birth certificate accordingly if the proof is clear as to which person should be listed as the parent.

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<sup>83</sup>It should also be noted that Article 6(f) of the *Protocol to the African Charter on the Rights of Women in Africa* specifically requires that married women be allowed to continue to use their maiden names, jointly with their husband's surnames or separately. It would seem to be a logical corollary of this principle that parents should have the option of giving their children a hyphenated surname combining the mother's and the father's surname.

<sup>84</sup>There have been no test cases in Namibia on these issues to date.

On the question of acceptable surnames, it is recommended as follows:

- The general rule should be that a child born inside or outside marriage should be allowed to take (a) the current or former surname of the mother or the father;<sup>85</sup> (b) a hyphenated surname which combines the surnames of both parents; or (c) any surname which is consistent with the established cultural traditions of one or both parents if acceptable evidence of the naming practice in question is provided to the satisfaction of the Registrar-General.<sup>86</sup>
- If only one parent's name is listed on the birth certificate, then the child can NOT be given the current or former surname of the unlisted parent in any form, nor any culturally-permitted surname associated only with the unlisted parent.
- If only one parent is participating in the birth registration but the other parent's parentage has been established (as provided for in the rules for listing that other parent's particulars on the birth certificate), then the child can take either parent's current or former surname. To put it another way, if both parents' particulars are listed on the birth certificate because parentage has been proved, but only one parent has signed the birth registration form, that one parent can choose the current or former surname of either parent, a hyphenated surname which combines the current or former surnames of both parents or any current or former surname which is consistent with the cultural traditions of one or both parents.
- If both parents are participating in the child's birth registration, regardless of whether they are married or not, the child may be permitted to take either parent's current or former surname or a hyphenated name consisting of the current or former surnames of both parents in any order chosen by the parents.
- If both parents are participating in the child's birth registration but cannot agree on the child's surname, the child will be given a hyphenated surname comprising the current surnames of both parents in alphabetical order.<sup>87</sup>
- Where the child's birth is registered with the particulars of only one parent but the other parent's particulars are added in accordance with the rules on who may be listed as a parent while the child is still under age 16, allow the child's surname to be altered without fee and without any special name change procedures, in accordance with the rules listed above.<sup>88</sup>
- As a transitional provision, if a parent wants to give a child a surname which was possible under the new law that was not possible under the old law (e.g., a hyphenated surname combining the surnames of the mother and the father), this surname change may be effected free of charge and without

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<sup>85</sup>"Former surname" will be defined as the surname which the parent in question bore at the time of his or her birth, or—but only where the parent in question can demonstrate that it would be in the child's best interests—any other surname legally assumed by that parent at any time. The following are some examples of situations when this might be requested:

- A divorced mother has a child with a man other than her ex-husband, but this father is not participating in the birth registration. The mother has been known by her married surname for years and so did not revert to her maiden name, but she does not want her child to be known by the name of her ex-husband who is not the child's father, nor by the surname of the nonparticipating biological father. The mother's maiden name would be a sensible surname choice to reflect the child's family ties.
- In the case of a late registration, the mother may have married after the child's birth and taken her new husband's surname, whilst the child's father may be another man who is not participating in the birth registration. It would make sense in this situation to give the child the surname which the mother bore at the time of the child's birth, prior to her new marriage.
- Where a family has only daughters, who have all married and taken on their husbands' surnames, the maternal family name would disappear if the children born to these married mothers all take the surname of their fathers. It should be acceptable for the parents to choose to give such a child the mother's maiden name as a surname, in order to keep that surname alive in the family heritage.
- Yet another example is where the mother and the father were married and shared the same surname, but the father was severely abusive. Suppose that a child is born after the relationship has broken down. The mother does not name the father in the birth registration process, and the father is not participating. The mother might logically prefer for her child not to bear the surname she shared with the abusive husband, but rather to be known by her maiden surname which she might also revert to in due course.

<sup>86</sup>The option of choosing a surname consistent with an established cultural naming practice would cater for communities where the tradition is to give the child the surname of a grandparent or a surname based on the first name of the father, to provide for names such as "ya Toivo" or to allow variations of a surname to indicate masculine or feminine form (such as giving the surname Gawanab to a son born to a mother named Gawanas). Demonstrating respect for cultural traditions would respect the Constitutional protection for culture, and would demonstrate a clear change in approach from the apartheid era when people were sometimes assigned surnames by government officials which denied or hid their heritage. If the custom in question is not widely known, the parent asserting the culturally acceptable surname should be asked to provide a letter from a recognized traditional authority, religious leader or other appropriate expert supporting the request.

<sup>87</sup>It should be noted that the Ministry has not yet encountered a situation where two participating parents cannot agree, but it is possible that such a situation could arise in the future.

<sup>88</sup>If the child is old enough to express a meaningful view, the child's wishes should be taken into account. If there is conflict between the child's wishes and the parent or parents' wishes, the question should be referred to the Registrar-General, who should make a decision based on the best interests of the child.

formal name change procedures so long as the affected child has not yet reached the age of 16. If the child in question is already over age 16, formal name change procedures would have to be utilized.

- The Ministry should allow use of traditional or current standard orthographies (writing and spelling systems) for clicks and other sounds that are used in indigenous Namibian languages or any other internationally-recognised languages.

## 2.8 First names

First names also raise some issues of concern. It is common in many Namibian communities for parents to give their children multiple first names, sometimes including names chosen to honour friends or relatives. The current law does not set a limit on the number of first names a person in Namibia can have, although parents are discouraged in practice from exceeding the space on official forms.<sup>89</sup> Also, assigning a first name to a child takes place in some instances as part of a traditional custom or ritual which must in some cases involve a specific extended family member and which sometimes occurs only weeks or even months after the birth. Such practices currently lead to reluctance on the part of some parents to register children immediately after birth.

Current Namibian law provides that no person's birth will be registered unless a name has been assigned to that person.<sup>90</sup> It is possible for the application for birth registration to be held over for up to one month by the registrar if it is incomplete.<sup>91</sup> There is also a simple procedure in the law which allows a parent to change the record of a child's first name if the name has been altered in practice while the child is still under age 18, or for the person in question to do this personally after age 18.<sup>92</sup>

However, Ministry officials nevertheless report that birth registration can be problematic where parents do not want to assign a first name to the child at birth, but want to wait until family members can be consulted or other traditional customs observed. The problem is that parents who are not allowed to register the child's birth immediately are likely to fail to return to do this at a later stage.

Namibia at present does not have any legal provisions, regulations or policy on acceptable or unacceptable first names. However, cultural sensitivity must be exercised. A name that might appear odd or insulting in one language or culture may be perfectly acceptable in another. For example, many Damara/Nama-speaking people are given the first name “//aisib”; this name translated into English means “ugly” but it is a common Damara/Nama name and not understood in the indigenous language as being insulting or derogatory in any way. As another example, names that might appear unusual in some communities are unexceptional in others.<sup>93</sup> Other names which appear unusual to some may be part of cultural traditions extending through generations.

On the issue of first names, it is recommended that:

- The general rule should be that a child must be given a minimum of one first name at the time of initial registration for identification purposes. However, the child's name may be changed or amplified before the child reaches age one without payment of any fee and without requiring or publication of the name change. Allowing for additional names to be added later on will encourage parents in such a situation to register the child's birth right away instead of delaying until such time as the cultural practices can be observed.

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<sup>89</sup>Some communities use both traditional indigenous first names along with 'Christian' first names. However, the Christian names are often placed first in order, and these are sometimes the only names put on the birth certificate. Christian names were historically given only when a child was baptised. In this scenario, a child's birth would only be registered after baptism. However, some recent interviews suggest that at present, a child receives a Christian name at birth, prior to baptism. Interviews in Windhoek, November 2012.

<sup>90</sup>*Births Marriages and Deaths Registration Act 81 of 1963*, s. 9(1). Section 1 states that “name” includes a surname, except in sections 8 and 9 where it does not include a surname. This, in section 9, “name” refers only to a first name or names. Where a person was registered without a first name (before the provision forbidding this came into force in 1970), an application to amplify the birth registration by adding a name can be made by the person's parent or guardian (if the person is a minor) or the person himself or herself (if the person is a major) (s. 9(2)).

<sup>91</sup>*Births, Marriages and Deaths Registration Regulations*, GN 214 of 1987 (Official Gazette 5480), reg 13.

<sup>92</sup>*Births Marriages and Deaths Registration Act 81 of 1963*, s. 8.

<sup>93</sup>Examples (in English) include Morning-star, Remind-me, Believe-me, Vision, Imagine, Forgive them, Born-bright, Iraq and Iran (twins), America, Election (for a boy born on Namibia's first election day in 1990), Freedom, Liberty, Summer and Rain. The most uncommon name that Ministry staff could recall was a case where a woman was called “Anneli-watch-your-manners.” Information from MHAI, 23 January 2013.

- Require that each parent who signed the birth registration form must participate in or consent to the proposed name change or amplification. However, if one of the parents is incapable of consenting or unavailable, and appropriate proof is furnished, then the Registrar-General should be empowered to dispense with the incapable or unavailable parent's consent.
- The Ministry should issue a birth certificate at the time the birth is initially registered. Where the child's name is changed or amplified during the first year of the child's life in accordance with this rule, the parent must return the original birth certificate and a new birth certificate will be issued without charge (with exceptions for cases where there is satisfactory proof that the original birth certificate has been lost or destroyed).
- First names should not be restricted in number, although the Registrar-General could be given discretion to limit situations where the number of first names is impractical (e.g., more than five first names) or where the names are cumulatively so long that they cannot be entered into the government's database.
- The Ministry should prohibit the use of offensive names and give the Registrar-General the option to refuse to register a child with any name that is deemed to be contrary to the child's best interests. (Guidelines on the application of this general rule could be published by the Ministry from time to time.)

### **3. The Birth Certificate**

In general, after the necessary information has been provided to the relevant government authorities, the birth is registered and a birth certificate is issued.

In the past, Namibia has utilised two different formats: full and abridged birth certificates. The abridged birth certificate included only the child's first names and surname, date of birth, place of birth, sex, and "entry number." However, the Ministry has indicated its intention to utilise only full birth certificates now and in the future.



Namibia has rolled out the new birth certificate in 10 of the 14 regions.

AB 0031031

REPUBLIC OF NAMIBIA  
MINISTRY OF HOME AFFAIRS AND IMMIGRATION  
BIRTH CERTIFICATE

PARTICULARS OF CHILD Application form number:

Surname: \_\_\_\_\_ First name(s): \_\_\_\_\_  
Date of birth: \_\_\_\_\_ Identity number: \_\_\_\_\_ Gender: \_\_\_\_\_  
Constituency of birth: \_\_\_\_\_ Region of birth: \_\_\_\_\_  
Country of birth: \_\_\_\_\_ Entry number, if applicable: \_\_\_\_\_

PARTICULARS OF CHILD'S FATHER

Surname: \_\_\_\_\_ First name(s): \_\_\_\_\_  
Place of birth: \_\_\_\_\_ Nationality: \_\_\_\_\_ Date of birth: \_\_\_\_\_

PARTICULARS OF CHILD'S MOTHER

Surname: \_\_\_\_\_ First name(s): \_\_\_\_\_  
Place of birth: \_\_\_\_\_ Nationality: \_\_\_\_\_ Date of birth: \_\_\_\_\_

INFORMANT

Capacity of the informant: \_\_\_\_\_ Signed by: \_\_\_\_\_  
Full name of registrar: \_\_\_\_\_ Registrar of Births: \_\_\_\_\_  
Place: \_\_\_\_\_ Date: \_\_\_\_\_ Signature \_\_\_\_\_

© Republic of Namibia  
Option 2011

It must be kept in mind that the birth certificate itself will often be presented to officials outside the Ministry, and sometimes even outside the country. Birth certificates are relevant for a range of purposes, such as proving age for school entrance or participation in sporting teams, proving age and nationality for voting or standing for office, proving parentage for purposes of an application for maintenance or a social welfare grant or applying for visas or study permits in other countries. Thus, it is important to strike a balance between proving unnecessary and useful information and protecting the privacy of the persons in question.

The proposed format for Namibia has several weaknesses:

- The proposed format does not provide a place to list both the mother's current surname and her maiden name, if she is married and has assumed her spouse's surname. (She may have been known by several surnames if she has been married more than once.) Consideration should be given to providing a place on the birth certificate for each parent's surname at the time of that parent's birth along with the surnames at the time of the birth registration, and providing a place to list each parent's unique ID number.
- The reference to "constituency of birth" is problematic. The purpose of this information is unclear, particularly since the constituency of birth may not be the same as the constituency where the child resides (it will in most cases be the constituency of the hospital). The birth certificate also lists "region [of birth]." Since the Ministry's internal database will record the name of the hospital or the physical address of a birth which takes place outside a hospital, it is not clear what practical function the listing of the constituency plays. It could also cause confusion when it comes to voting; even though the birth certificate format says "constituency of birth," it could be confused with constituency of residence for

voting purposes. It is suggested that the birth certificate should replace constituency with “place of birth” (as for the child’s parents). The “region of birth” could remain.<sup>94</sup>

- It is not clear what purpose is served by including the capacity and signature of the informant. This information should be on the application form, but including it on the certificate could stigmatise children whose birth was not registered by a parent. Also, including the capacity and signature without the informant’s name seems somewhat strange. Furthermore, the informant is the person who provides information to the Ministry. The Ministry issues a birth certificate only if it has determined that the information which has been provided to it is sufficient for inclusion in the birth record. The birth certificate is not issued by the “informant,” but by a Ministry official, who is thereby confirming that the information is a true extract from the Ministry’s birth record. We suggest deleting the information about the informant from the birth certificate, which will also give more space on the birth certificate for other more vital information.
- The reference to “gender” represents an erroneous use of this term. “Gender” properly refers to the changeable social roles played by men and women. “Sex” is the correct term for indicating that a person is biologically a man or a woman. This term should be changed. (It should be noted that this space could be left blank in the rare circumstance where a child is born with both male and female sex organs, if it is not immediately determined which sex the child will be assigned with the aid of medical intervention.)
- It would be useful to include a space for the ID number of the ministry official who issues the birth certificate. This would be useful for monitoring and verification, and it could also be used to trace fraud.<sup>95</sup>

#### 4. Amendments to Birth Records and Birth Certificates

Namibia’s current law is silent on the issue of altering a birth certificate where there is incomplete, missing or incorrect information, although it makes specific provision for amendments to birth records in certain specified situations:

- where the parents of a child born outside marriage “legitimate” the child through a subsequent marriage;<sup>96</sup>
- the alteration of a description of the sex of a person who has undergone a sex change operation.<sup>97</sup>

The regulations make provision for correcting errors in the Ministry’s birth records and for adding information where the information initially provided was incomplete, but these regulations do not clearly address corrections to the birth certificate itself.<sup>98</sup>

#### 5. Duplicate Birth Certificates

Namibia’s current law does not make any explicit provision for the issue of duplicate original birth certificates when the originals are lost, destroyed or damaged. However, in Namibia, there are instances where birth certificates of

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<sup>94</sup>It should be noted in this regard that many other official forms ask for “place of birth;” if “place of birth” is not listed on the birth certificate, it is possible that the person in question may not know where he or she was born.

<sup>95</sup>Marital status is not included on the template. This seems sensible in light of privacy concerns, and in light of the fact that the legal distinctions which once existed in Namibian law between children born inside and outside marriage in respect of maintenance and inheritance have been repealed or struck down by the courts. See *Child Care and Protection Act 3 of 2015*, *Children’s Status Act 6 of 2006*, *Maintenance Act 9 of 2003* and *Frans v Paschke and Others 2007 (2) NR 520 (HC)*.

<sup>96</sup>*Births, Marriages and Deaths Registration Act 81 of 1963*, s. 11.

<sup>97</sup>*Id.*, s. 7B.

<sup>98</sup>*Births, Marriages and Deaths Registration Regulations*, GN 214 of 1987 (Official Gazette 5480), regs 11 and 13, read together with definition of “form of information” in reg 1.

others (such as those of stillbirths or children who have died) are used for fraudulent purposes—a problem which might be multiplied if unlimited duplicate originals were allowed.

## 6. Name Changes

Name changes are covered in the *Aliens Act 1 of 1937*, supplemented by provisions of the *Births, Marriages and Deaths Registration Act 81 of 1963* covering the alteration of surnames in certain specific situations, most of which involve minors who are known in practice by a surname different from that listed on their birth certificates (such as children registered in the surname of one parent but known by the surname of the other parent, or children known by the name of a stepfather).<sup>99</sup>

The *Aliens Act* sets forth the procedure for a name change, which requires a motivation for the name change and publication of the proposed change in the *Government Gazette* and two daily newspapers, as well as payment of a prescribed fee.<sup>100</sup>

In practice, the provisions for changing a surname to that of a stepparent are utilised fairly frequently in practice, as well as requests to change from one parent's surname to another. Name changes are also requested by persons who were given a name during apartheid times which is not their correct name, and for religious reasons (e.g., to change a typically Christian name to a typically Muslim one after conversion to Islam). In 2004, the Ministry estimated that the total cost of the name change procedure under the *Aliens Act* was about N\$800.<sup>101</sup>

All issues relating to name changes should be placed in one place in the anticipated new law on civil registration, and revised to be gender-neutral and to allow certain name changes (such as those which occur as a result of marriage or dissolution of marriage) to be accomplished upon completion of a simple administrative form filed at any Ministry office, without more complex name change procedures. The new law should also clarify name changes affecting minors on the issues of what surnames are allowed and whose consent must be obtained (in line with the principles discussed above), and on child participation. It should not be possible to utilise the name change procedure to circumvent the rules on the circumstances in which the surnames of a child's mother and/or father may be given to a child.

## 7. Citizenship and Birth Certificates

### 7.1 Background

Concerns relating to the intersection of birth registration and proof of citizenship are foundational to many of the problems that clients and Ministry staff are experiencing, particularly with respect to late registration and the registration of children whose parents do not have birth certificates or sufficient proof of residence in Namibia. The most commonly cited reason for denying a birth certificate to both children and adults is that Ministry staff are concerned that the person seeking registration is not a Namibian citizen.

As a starting point, it must be remembered that there is a duty flowing from the *UN Convention on the Rights of the Child* to register *all* children born in Namibia immediately after their birth. Thus, every child born in Namibia is entitled to a birth certificate. It should also be remembered that the primary function of a birth certificate is to serve a statement of facts about the circumstance of birth—not to serve as proof of citizenship.

It is also necessary to be mindful of the need to prevent even temporary statelessness. Even infants who are temporarily deprived of a right to Namibian citizenship could suffer hardship—such as difficulty obtaining travel documents for urgent medical treatment outside the country, or proving eligibility for grants or programmes which are limited to citizens. Thus, any approach to birth registration and citizenship should avoid at all costs leaving any persons stateless.

<sup>99</sup>*Births Marriages and Deaths Registration Act 81 of 1963*, s. 8A.

<sup>100</sup>*Aliens Act 1 of 1937*, s. 9(2)–(4). See also *Regulations for a Change of Name*, Government Notice 759 of 1937 (Official Gazette 720), as amended by Government Notice 1030 of 1938 (South African GG 2540) and Government Notice 2134 of 1943 (South African GG 3272).

<sup>101</sup>Cost estimate provided to the Legal Assistance Centre in 2004 in response to enquiry on behalf of clients.

## 7.2 Rules on Namibian citizenship

The rules for Namibian citizenship by birth are contained in Article 4(1) of the *Namibian Constitution*. The *Namibian Citizenship Act 14 of 1990* regulates other forms of Namibian citizenship, but adds nothing to the Constitution's rules on citizenship by birth. With respect to children born since Namibian independence (21 March 1990), a person is a Namibian citizen by birth if he or she was born in Namibia after independence and his/her father or mother was a Namibian citizen at the time of the birth. This situation would apply to most children born in Namibia after the date of independence.<sup>102</sup> A child is also a Namibian citizen if he or she was born in Namibia after independence and his/her father or mother was 'ordinarily resident' in Namibia at the time the child was born and did not fall into one of these exceptions:

- persons with diplomatic immunity;
- career representatives of another country;
- police, military or security force members seconded for service in Namibia by the government of another country; or
- illegal immigrants.

Article 4(1) of the *Namibian Constitution* says that the listed exceptions to citizenship by birth for a child born in Namibia to a non-Namibian parent ordinarily resident in Namibia *will not apply* to children who would otherwise be stateless. This wording leaves a worrying gap. The Constitution provides that the *exceptions* to citizenship by birth will be ignored if they would produce a stateless child, but they do not assist a child who would be stateless by virtue of some problem not covered by the listed exceptions—such as an abandoned child found in Namibia whose parentage and place of birth were unknown. However, Namibia's obligations under international law go further.<sup>103</sup>

Until recently, the only Namibian jurisprudence on the meaning of the term 'ordinarily resident' ruled only that ordinary residence must be lawful residence, without any further findings on the meaning of the concept.<sup>104</sup> A recent High Court case<sup>105</sup> ruled that this term in the Constitution should be equated with 'permanent residence' (which is capable of clear proof), but this holding is on appeal to the Supreme Court with judgement still awaited. The Ministry's position is that the High Court case simply confirmed the understanding of the term "ordinarily resident" which has been applied all along, but in fact this test for citizenship has been applied inconsistently in the past.<sup>106</sup>

Prior to the High Court ruling, the meaning of "ordinarily resident" applied in light of case law from other jurisdictions, would have depended on a range of factors and could not be conclusively determined from an examination of the parents' passports or from the legal basis of the parents' presence in Namibia, particularly since individuals can be present in Namibia on successive work permits for many years.

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<sup>102</sup>It may also be relevant to some birth registration situations to note that a person is a Namibian citizen by descent if he or she was born *outside* Namibia to a parent who is a Namibian citizen. See Article 2(2) of the *Namibian Constitution*.

<sup>103</sup>Article 6(4) of the *African Charter on the Rights and Welfare of the Child* states: "States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws." Article 7(2) of the *Convention on the Rights of the Child* also gives particular attention to the duty to prevent statelessness.

<sup>104</sup>Until recently, the only two cases involving the application of the term to immigration or citizenship issues held only that a person who has entered Namibia illegally *cannot* be ordinarily resident for the purpose of citizenship by marriage even if that person remains in the country for a long period and enters a good faith marriage to a Namibian citizen after the illegal entry. These two cases did not discuss the other factors which are relevant to ordinary residence:

*Government of the Republic of Namibia v Getachew* 2008 (1) NR 1 (SC): In this case, the person in question entered and remained in Namibia illegally. His passport was of "dubious validity" and was missing some pages, and the passport entry purporting to indicate permanent residence in Namibia was not credible.

*Minister of Home Affairs v Dickson and Another* 2008 (2) NR 665 (SC). In this case, the person in question entered Namibia illegally, fraudulently procured a Namibian birth certificate, used the birth certificate to obtain an identity card and Namibian passport, and essentially masqueraded as a Namibian citizen for some 12 years.

<sup>105</sup>*De Wilde v Minister of Home Affairs, High Court of Namibia*, (A147/2013) [2014] NAHCMD 160 (22 May 2014).

<sup>106</sup>Even in the *De Wilde* case itself, one child born to the parents in question was treated as a Namibian citizen and the other as a noncitizen, even though the parents' status in Namibia was identical at the time of both births.

The Ministry has, at least at times, issued “non-Namibian birth certificates” to children born in Namibia to non-Namibian parents. This is problematic for several reasons:

- There is no current legal authority for issuing different types of birth certificates on this basis.
- The “non-Namibian” designation would not be accurate in every situation—depending on the final determination of the meaning of the term ‘ordinary residence’. If ordinary residence is not the same thing as permanent residence, then it is unlikely that it could be definitively determined by an administrative official.
- It could lead to discrimination against persons who hold such certificates. Even though many Constitutional rights extend to residents of Namibia and not just citizens, children holding “non-Namibian” birth certificates might struggle in practice to access education, health care or state grants—which would be particularly unfair if they were in fact Namibian citizens in terms of the Constitution. The erroneous issue of such a birth certificate could also result in a Namibian citizen being denied his or her right to vote or run for political office.

Ministry officials have expressed concerns about children being born in neighbouring countries, such as Angola, and being brought into Namibia for the purposes of obtaining birth registration and Namibian citizenship. A related concern is that a number of pregnant women come from neighbouring countries to give birth in Namibia because of the superior quality of the medical facilities. Another concern is that some Namibian women are being paid to register a foreign child as their own so that the child can obtain a Namibian birth certificate and Namibian citizenship. There are also serious concerns regarding improper access to social benefits reserved for Namibian citizens, or improper exercise of the right to vote.

On the other hand, during the apartheid era, the births of many Namibians were not registered. The result is that many Namibian adults have never been registered and therefore do not possess documentation regarding their own identity and citizenship—which hampers their ability to register the birth of their children, and thus creates a self-perpetuating cycle.<sup>107</sup>

### **7.3 Possible ways forward**

In considering possible ways forward, it must be noted that the citizenship status of most children born in Namibia will be clear. A child born in Namibia to at least one parent who is a Namibian citizen is unquestionably a Namibian citizen. In such cases, the link between Namibian citizenship and the information on a Namibian birth certificate will be obvious; a birth certificate which records the place of birth as Namibia and the citizenship status of the mother or father as a Namibian citizen would be proof of Namibian citizenship.

It will also be clear in many cases that a child born in Namibia is NOT entitled to Namibian citizenship. This would be the case for children born to foreign diplomats or foreign military personnel stationed in Namibia, children born to illegal immigrants (since “ordinary residence” must be legal residence) and children born to persons who entered Namibia temporarily for purposes of tourism or access to health care, with no intention to remain. However, these situations—whilst not necessarily difficult to verify—will not always be self-evident from the information normally recorded on the notices provided to the Ministry or the information recorded on the birth certificate.

There will be several types of cases where it may be particularly difficult for Ministry officials to determine whether or not a child is a Namibian citizen—many of which will persist regardless of the courts’ final interpretation of the term ‘ordinary residence’:

1. **Cases where a child is born in Namibia to two non-Namibian parents:** Depending on the pending court case on the definition of ‘ordinary residence’, it may not be readily apparent whether a child born to noncitizen parents is a Namibian citizen without further investigation which is outside the scope of birth registration procedures.

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<sup>107</sup>It was reported in 2012 that about 10,000 children identified as orphans or vulnerable children were not receiving social grants because they lacked identity documents. Luqman Cloete, “Growing numbers of street children worry Govt,” *The Namibian*, 8 November 2012.

2. **Cases where a child is born in Namibia to Namibian parents who lack documentation to prove their Namibian citizenship:** Such persons are likely to be mostly rural-dwellers or persons disadvantaged by the apartheid regime or by poverty in terms of access to documentation for themselves or their families.
3. **Cases where a child is born in Namibia, but the identity or citizenship of one or both parents is unknown:** For example, suppose that an unmarried Angolan mother gives birth to a child in Namibia. She says that the father is a Namibian citizen, but he is not prepared to acknowledge paternity and she does not have any proof that he is the father, nor his current contact details.
4. **Cases where a child is found in Namibia, but the child's place of birth and parentage is unknown:** This would apply, for example, to abandoned children, such as cases of baby-dumping where the mother cannot be traced, or older children who are found in Namibia without any family members or background information.
5. **Cases where a child born in Namibia would be rendered stateless if not granted Namibian citizenship:** Namibia has international and constitutional obligations to ensure that no child in Namibia is rendered stateless. As explained above, the Constitutional protections state that *certain specific exceptions* will not be applied if they would result in statelessness, but Namibia's regional and international obligations to prevent statelessness are broader.

The objectives of a future system should be protecting the right to citizenship whilst satisfying the state's need for clear proof of citizenship and attempting to ensure that no one born in Namibia is rendered stateless, as well as avoiding a situation where every child born in Namibia would require a separate document as proof of citizenship, which would entail a heavy administrative burden.

One possibility would be to issue three types of birth certificates: (a) "Namibian citizen" (where at least one parent of the child is a Namibian citizen); (b) "non-Namibian citizen" (only in clear-cut cases where there is no possibility that the person being registered could be a Namibian citizen, in accordance with unambiguous guidelines issued by the Ministry) and (c) "citizenship status undetermined" (where there is insufficient information to make a positive and immediate determination of citizenship). To avoid leaving anyone even temporarily stateless, people in the third category could be granted temporary Namibia citizenship rights for a limited period while their qualification for Namibian citizenship is being investigated.<sup>108</sup> Any time such a certificate is issued, the case could be automatically referred to specialised staff in the Ministry for investigation. If the Ministry is unable to prove that the person in question is NOT entitled to Namibian citizenship after a period of 2 years from the date of issue of the "citizenship undetermined" certificate, then this certificate would be withdrawn and replaced with a Namibian citizen birth certificate. This approach would have the advantage of breaking the cycle of undocumented persons giving birth to more undocumented persons, with the result that after one generation, the people who fall into this category should be very few. In such instances, the law could place a duty on the persons making the application for birth registration to cooperate with the Ministry's investigation.

Assigning a caseworker to conduct investigations in this category of cases would create an opportunity to uncover wrongdoing—such as cases involving child trafficking or fraudulent attempts to obtain Namibian citizenship for a child. Allowing the birth registration to proceed while the question of citizenship is being investigated in these unclear cases would create a record of the individual's existence and the "facts of the birth" as they are known, and allow the child to be entered into the National Population Register immediately. It would also create a clear starting point for further investigation, instead of risking the creation of a new generation of undocumented persons. Assigning a specific caseworker to such cases would also increase administrative efficiency within the Ministry, by ensuring that a particular case is handled by the same official as it progresses. This method would also be a fair way to redress the impact of discriminatory documentation of individuals during the colonial era, by providing assistance instead of expecting affected families and individuals to prove their citizenship without

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<sup>108</sup>Some additional rules could be applied to late birth registration of adults. It has already been recommended that such persons should be obligated to provide more information than is contained in the usual application for birth registration. In such cases, the temporary citizenship rights afforded while the investigation is under way could possibly exclude the rights to vote or run for office.

government assistance—which could be viewed as a secondary form of oppression and would only serve to perpetuate the unfairness of the past.

The approach of applying a presumption of citizenship to such cases is suggested for several reasons:

- In comparison to the average Namibian, the government caseworker has the necessary resources, education, and power to investigate a case and “disprove” citizenship.
- People who have lived for multiple generations in Namibia without documentation may find it impossible ever to *prove* their citizenship or residency status in Namibia. Therefore, it makes sense to grant citizenship to children born to such parents if the right to citizenship is not *disproved*. Otherwise, colonial policies or marginalization will have the effect of denying Namibian citizenship to many simply because of a lack of documentation.
- Orphans and vulnerable children are amongst the most vulnerable and ‘at risk’ sector of the Namibian population when it comes to indeterminate citizenship status. The primary concerns that emerged during community and stakeholder interviews were: (1) the inability to access social benefits for children if the child lacked a birth certificate; and (2) the child being refused entrance to school (despite the fact that the constitutional right to education accrues to all persons in Namibia rather than to citizens alone<sup>109</sup>). These problems would be alleviated if citizenship is presumed in questionable cases, until or unless it is disproved upon investigation.
- Placing the onus on the caseworker to disprove citizenship reduces the incentive for families to attempt to “buy” citizenship through bribes to Ministry officials. It also prevents people from remaining in limbo if caseworkers lack motivation to assist a client.
- Errors in the type of birth certificate issued or in the process of disproving Namibian citizenship could be addressed through an internal review process as well as through an appeal to the courts if necessary.

The only real disadvantage to this approach is that it would place an additional administrative burden on Ministry officials.

## 1. Adoption

Namibia approves a relatively small number of adoptions each year, with an average of about 80 adoptions registered each year. Adoption is currently governed by the *Children’s Act 33 of 1960*.

The *Children’s Act* provides some information about the birth registration of an adopted child, although there are many omissions. The Act provides a procedure for the alteration of the birth register when an order has been made for the adoption of a child whose birth has already been registered. The adoptive parent *may* apply for an alteration of the birth register. The birth register will then be altered to record “the fact of the adoption and whether the name of the adoptive parent was or was not conferred upon the child by virtue of the adoption.”<sup>110</sup> However, a birth certificate reflecting the child’s surname as being that of the adoptive parents will be issued only if “that fact has been recorded on the original birth information form.”<sup>111</sup> No current law addresses the listing of parentage on the birth certificate of an adopted child, although the *Children’s Act* states that “an adopted child shall for all purposes whatsoever be deemed in law to be the legitimate child of the adoptive parent.”<sup>112</sup> However, the adopted child retains a right to inherit intestate from the biological parents and their relatives,<sup>113</sup> so it would be in the child’s interests to maintain records linking the child to the biological parents.

<sup>109</sup>Article 20: (1) All **persons** shall have the right to education. (2) Primary education shall be compulsory and the State shall provide reasonable facilities to render effective this right for **every resident within Namibia**, by establishing and maintaining State schools at which primary education will be provided free of charge.

<sup>110</sup>*Children’s Act 33 of 1960*, s. 80(1).

<sup>111</sup>Id., s. 80(2). This provision in the *Children’s Act* appears to authorize the adoptive parents to register the child in their surname (where the adoption order gives the child their surname) only if the child’s birth has not been registered before the adoption order is issued. However, where the birth was already registered in the name of the biological parents, the child’s surname could be altered to that of the adoptive parents in terms of the general provision in the *Births, Marriage and Death Registration Act* which covers the alteration of a surname in an instance where “any person has under any law adopted a surname different from that under which his birth is registered.” *Births, Marriage and Death Registration Act 81 of 1963*, s. 8A(1)(a).

<sup>112</sup>*Children’s Act 33 of 1960*, s. 74(2).

<sup>113</sup>Id., s. 74(3).

The *Child Care and Protection Act 3 of 2015*, which is expected to replace the *Children’s Act 33 of 1960* in 2016, makes improved provision for the registration of children who are adopted, both from within Namibia and from outside Namibia, and addresses many of the omissions in the current law. As under the current law, an adoption order would confer the surname of the adoptive parent on the child, or such other surname as may be decided upon by the adoptive parent, except when otherwise provided in the order.<sup>114</sup> The new Act provides that “an adopted child must for all purposes be regarded as the child of the adoptive parent and an adoptive parent must for all purposes be regarded as the parent of the adopted child”—without preserving the right of intestate inheritance.<sup>115</sup>

The new statute gives the Adoption Registrar several duties relating to civil registration:

- to ensure that the birth of any child eligible for adoption is registered with MHAJ before the adoption takes place;
- to ensure that all adoption orders and orders for rescissions of adoption are submitted to MHAJ; and
- to provide relevant information to the birth registration authority of a foreign country, on request, where a child born in Namibia is adopted by citizens of that country.<sup>116</sup>

The clerk of a court handling an adoption has a duty to transmit a copy of court order for adoption to the Ministry, who must record the adoption and alter the birth register accordingly, along with a similar duty in respect of children whose birth was registered outside Namibia but who are adopted in Namibia.<sup>117</sup>

Access to information in the Adoption Register maintained by the Ministry of Gender Equality and Child Welfare is regulated to preserve confidentiality, while allowing adopted children (as well as adoptive and in some cases biological parents) access to information about the adoption when the adopted child reaches adulthood<sup>118</sup>—but this needs to be accompanied by explicit provisions on the confidentiality of the birth and adoption records maintained by MHAJ. In practice, MHAJ keeps on file a record of the biological parents of an adopted child, but this information is not ever made available to the public; the adopted child is re-issued with a birth certificate reflecting only the name of the adoptive parents. The idea is that an adopted child seeking information on the adoption, upon reaching majority, would approach the MGECW for access to the Adoption Register rather than seeking that information from MHAJ—because the provision on access to the Adoption Register includes the possibility of associated counselling.

## 2. Abandoned Children

In terms of current Namibian law, a person finding an abandoned child (alive or dead) must notify a police officer. The police officer, any person having charge of the child and any person conducting an official inquiry into the abandonment must give notice, in the prescribed form, to the registrar or to the assistant registrar for the area where the child was found.<sup>119</sup>

This provision overlaps to some extent with provisions in the current *Children’s Act 33 of 1960* which makes abandonment a basis for social worker investigation and possible alternative care, as well as provisions in the *Child Care and Protection Act 3 of 2015* (which will replace the *Children’s Act* as soon as it comes into force) requiring that anyone finding an abandoned child who is alive must report this immediately to the police, with the child being handed over to a social worker for investigation and appropriate follow-up action.<sup>120</sup> The existing

<sup>114</sup>*Child Care and Protection Act 3 of 2015*, s. 178(2)(b).

<sup>115</sup>*Id.*, s. 178(2). However, an adoption does not permit any marriage or sexual intercourse between the child and any other person which would have been prohibited had the child not been adopted, and does not affect any rights to property acquired by the child before the adoption.

<sup>116</sup>*Id.*, s. 183.

<sup>117</sup>*Id.*, ss. 181–183.

<sup>118</sup>*Id.*, s. 184.

<sup>119</sup>*Births Marriages and Deaths Registration Act 81 of 1963*, s. 12.

<sup>120</sup>*Children’s Act 33 of 1960*, ss.18(1), 30–31; *Child Care and Protection Act 3 of 2015*, s. 227(2).

*Children's Act* and the *Child Care and Protection Act* which will soon replace it both address the estimation of age in cases where a person's age is unknown.<sup>121</sup>

Article 7(1) of the *UN Convention on the Rights of the Child*, which Namibia is a party to, obligates Namibia to act to combat statelessness.<sup>122</sup> The key conventions on statelessness, which Namibia has not yet acceded to, are the *1954 Convention Relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*. Article 2 of the *1961 Convention on the Reduction of Statelessness* states: 'A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State.'

It is recommended that the law on birth registration of abandoned children be harmonized with the related provisions on child protection. A person who finds an abandoned child of any age should be required to report this to the nearest police station, and to provide as much information as possible about the circumstances in which the child was found. The social worker who is assigned to investigate the case (under the *Children's Act* or its successor the *Child Care and Protection Act*) should be obligated to seek a medical examination of an unregistered child to ascertain a probable age and date of birth within seven days of being assigned to the case. The social worker assigned to the case should be given responsibility to contact the Ministry of Home Affairs to provide an Application for Birth Registration with all of the particulars which can be ascertained, including (a) a proposed name and surname for the child which are appropriate to the child's apparent cultural background and (b) information on the child's approximate age and date of birth based on the medical examination conducted.

The social worker should be required to provide this information within a maximum of 14 days of being assigned to the case. The Registrar-General should be required to search the population registry to see if the child's birth has already been registered, insofar as this may be possible on the basis of any known particulars or any biometric information which can be utilized (depending on the age of the child). If the Registrar-General is satisfied that the child's birth has not been previously registered, the Registrar-General should issue a birth certificate based on the known particulars and the approximate age and date of birth estimated by means of the medical examination, which shall include a name and surname for the child chosen by the social worker to accord with the child's apparent cultural background insofar as this can be ascertained or guessed.

If it is not possible to estimate the date of birth medically, the Registrar-General shall randomly assign a date of birth which is consistent with the medical findings on the child's approximate age; if there is an age range, the random date assigned as the date of birth should be in the middle of the estimated age range. If there is no information on the place of birth, the Registrar-General should record the place where the child was found as the place of birth. Namibian citizenship should be presumed in such cases, unless information comes to light during the investigation of the child's circumstances.

### 3. Registration of Marriages and Divorces

#### 10.1 Registration of civil marriage

Civil marriages may be solemnised by magistrates or by religious officials who have been designated in writing as marriage officers by the MHA.<sup>123</sup> The Act sets the minimum age for civil marriage at 18 (unless state permission for marriage at an earlier age has been obtained)<sup>124</sup> and requires that each of the intending spouses must present an official identification document or 'other satisfactory proof of identity'.<sup>125</sup>

<sup>121</sup>*Children's Act 33 of 1960*, s. 85; *Child Care and Protection Act 3 of 2015*, s. 187(1)(c) which authorises regulations on the procedure for estimation of age.

<sup>122</sup>*Convention on the Rights of the Child*, Art 7: "(1) 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. (2) States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless."

<sup>123</sup>*Marriage Act 25 of 1961*, ss. 3–4.

<sup>124</sup>*Id.*, s. 26.

<sup>125</sup>*Id.*, s. 12(a).

Current practice is that, while magistrates are *ex officio* marriage officers, religious officials must apply to become marriage officers as representatives of their religious bodies, pass a test on the requirements of marriage and the duties of a marriage officer, and then undergo additional training. Once they have completed this process, the Ministry issues them with marriage registration books and gives them a certificate with a unique number which authorises them to perform marriages.

The MHA has recently encountered problems where some persons have abused their powers as marriage officers—particularly in respect of marriages between Namibians and non-Namibians which may not be in good faith. Thus, there is a need for legal provisions providing for increased supervision of marriage officers and clearer mechanisms for removal of their status as marriage officers where warranted.

Confusingly, provisions on the record-keeping duties of marriage officers are contained in both the *Marriage Act* and the *Births, Marriages and Deaths Registration Act*, and in regulations issued under both laws.<sup>126</sup>

The *Births, Marriages and Deaths Registration Act* requires the marriage officer, the spouses and at least two competent witnesses to sign a register of the marriage and a copy of the register before they leave the premises where the marriage took place. The marriage officer is required to retain the copy of the register and to transmit the original register to the Ministry within three days of the date of the marriage.<sup>127</sup> The regulations issued under this Act give marriage officers a duty to complete a prescribed marriage certificate and hand it over to the spouses after solemnising a marriage.<sup>128</sup> These regulations also provide a procedure for the corrections of mistakes in the marriage register, but only by the marriage officer who solemnized the marriage.<sup>129</sup>

Record-keeping duties regarding supporting documents which apply to certain unusual situations (such as consents to the marriage of persons below age 18) are contained in the *Marriage Act* and its regulations.

Record-keeping of marriages has generally been good, but would benefit from a clarified and more detailed regulatory framework. One problem recently encountered in practice, for example, related to instances where a particular marriage officer who was deceased had not completed and signed the marriage register properly for several years. In some instances, the register had also not been signed by the spouses and/or the witnesses. There are no Namibian cases dealing with this problem. However, South African case law on a slightly different version of the *Marriage Act 25 of 1961* indicates that registration of a marriage is beneficial, but not required by law as a component of solemnisation. Minor mistakes in formalities and procedure are ignored if they are the result of disabilities which occurred in good faith; marriage is deemed too important an institution to be invalidated by such minor actions and thus there is a presumption in its favour, unless the marriage officer was not actually authorised to solemnise a marriage. In subsequent litigation (such as divorce proceedings), where there is no marriage certificate or record of registration of the marriage, cohabitation by the couple, a public reputation that they are married and witness statements may be used as proof of the existence of the marriage.<sup>130</sup>

The Marriage Bill or the Civil Registration Bill (or their accompanying regulations) should provide a standard form for marriage certificates. Insurance companies have indicated that they would like to see the marriage certificate reflect the information recorded in the marriage register, as additional information is relevant when one of the spouses dies; they feel that the marriage certificate format currently in use is too short and uninformative. They suggested that the previous marital status of the person should be listed on the marriage certificate, but the Ministry expressed the view that this would be an invasion of privacy and irrelevant to most persons who view the marriage certificate.

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<sup>126</sup>*General Regulations*, Government Notice 213 of 1987 (Official Gazette 5480), issued under the *Marriage Act 25 of 1961*; *Births, Marriages and Deaths Registration Regulations*, GN 214 of 1987 (Official Gazette 5480).

<sup>127</sup>*Births Marriages and Deaths Registration Act 81 of 1963*, s. 40.

<sup>128</sup>*Births, Marriages and Deaths Registration Regulations*, GN 214 of 1987 (Official Gazette 5480), reg 20.

<sup>129</sup>*Id.*, reg 22.

<sup>130</sup>See *Ex parte Efron* 1940 CPD 199; *Ex parte Michaelson* 1941 (2) PH 57; *Ex parte L (also known as A)* 1947 (3) SA 50 (C); and of *Ex Parte Dow* 1987 (3) SA 829 (D). Another principle emerging from the South African precedents is that a marriage must be proved by documentary evidence where possible—but if there is evidence that it is not possible for the parties to produce a marriage certificate, then other evidence of the existence of a marriage will be considered by the court. *Wittekind v Wittekind* 1948 (1) SA 826 (W).

## 10.2 Registration of divorces from civil marriages

Divorces in respect of civil marriages can be obtained only by means of a High Court order. There is no legal provision mandating transmission of such orders to MHA, and no legal duty on the parties or anyone else to report a divorce. Divorce orders issued by the High Court are not stored in a manner which makes them easily searchable. This is a problem which must be addressed in forthcoming law reforms.

It is recommended that the forthcoming law reforms should make provision for “divorce certificates” which can be used as proof of the key facts concerning a divorce: the names and identity numbers of the spouses, the date of the divorce and the Court which granted it. This is because the divorce order issued by the Court may contain information which the parties would prefer to keep private (such as the amount of spousal or child maintenance or matters pertaining to child custody and access); thus, the parties may not wish to present a copy of the divorce order in all circumstances where they need to provide proof of the divorce. This would also have the advantage of placing all civil events covered by the law on an equal footing.

## 10.3 Customary marriage and divorce

As discussed above, records of customary marriage and divorce need to be integrated into the civil registration system as soon as law reforms providing for formal procedures and documentation are in place.

## 4. Death Registration

### 11.1 Duty to report death and cause of death

The registration of all deaths is mandatory in Namibia.<sup>131</sup> There is a two-step process which is similar in some ways to that proposed for the registration of births, with notification duties being placed on both family members and medical personnel. The duty to report deaths to the Ministry in terms of the *Births, Marriages and Deaths Registration Act 81 of 1963* overlaps to some extent with reporting duties in the *Inquests Act 6 of 1993* for deaths suspected to have resulted from unnatural causes. These duties are summarised in the chart below.

CURRENT LAW AND PRACTICE IN NAMIBIA—DEATH REPORTING PROCEDURE	
Natural Causes	Unnatural Causes
<p><b>Adult relative</b> or other person present at death or ‘occupier of dwelling’ or co-dweller or undertaker must report death to Ministry, along with the medical certificate if there is one.</p> <p>If there are no family members to register the death, this is done in practice by the <b>police</b>.</p> <p>There is currently a <b>moratorium on registration of death by undertakers</b> because of problems of organised corruption in this sector.</p>	<p><b>Adult relative</b> or other person present at death or ‘occupier of dwelling’ or co-dweller or undertaker must report death to Ministry.</p> <p>There is currently a <b>moratorium on registration of death by undertakers</b> because of problems of organised corruption in this sector.</p> <p><b>Any person with knowledge of death</b> must report it to police unless they believe the report was already made by another (<i>Inquests Act</i>).</p>

<sup>131</sup>*Births, Marriages and Deaths Registration Act 81 of 1963*, s. 22.

Natural causes	Unnatural causes
<p><b>Medical practitioner</b> must issue medical death certificate to person with duty to report death.</p> <p>If no medical practitioner was involved, the <b>mortuary</b> is currently issuing the medical certificate.</p>	<p><b>Medical practitioner</b> with suspicions must make report to <b>magistrate</b>.</p> <p><b>Magistrate</b> instructs district surgeon or other medical practitioner to investigate cause of death.</p> <p>Note that the functions assigned to the magistrate by the <i>Act</i> are now mostly performed in practice by regional ministry offices or by police.</p>
<p>If no medical practitioner was present or involved, <b>registrar</b> who is satisfied that death was result of natural causes can register death and issue burial order without a medical certificate.</p>	<p><b>Police</b> investigating death must report to <b>magistrate</b>.</p> <p><b>Magistrate</b> issues certificate once body is no longer needed, without stating any cause of death.</p>
	<p><b>Registrar</b> must report to <b>magistrate</b> any death which may have been from unnatural causes, regardless of whether there is a death certificate from a medical practitioner or not.</p> <p><b>Magistrate</b> instructs district surgeon or other medical practitioner to investigate cause of death.</p>
	<p><b>Magistrate or judge</b> who holds an inquest or enquiry must report prescribed information from that proceeding to the registrar.</p>

In addition, an undertaker or a person in charge of a funeral must give to the person in charge of the burial place the information which is necessary for the burial register. The person in charge of the burial place must keep a “burial registrar” which contains prescribed particulars.<sup>132</sup>

The notice of death must be given within 24 hours of the death if it occurred in an urban area, and within 14 days if it occurred elsewhere.<sup>133</sup>

The system proposed for the forthcoming new statute is shown in the chart below.

<sup>132</sup>Id., ss. 14–15. “Burial place” encompasses places where bodies are interred, cremated or disposed of in any other way (definition in s. 1).

<sup>133</sup>Id., s. 22(1)(a)–(b). The definition of “urban area” in s. 1 is outdated.

PROPOSED LAW IN NAMIBIA—DEATH REPORTING PROCEDURE

Natural Causes	Unnatural Causes
<p>The following persons should have a duty to notify the Ministry of a death:</p> <ul style="list-style-type: none"> <li>any adult relative, guardian or curator of the deceased OR</li> <li>if there is no such relative, any adult person present at the death OR</li> <li>in the case where a person finding a corpse reports this to the police, the police OR</li> <li>any adult person taking charge of the body for burial or other disposal, provided that deaths may be reported by undertakers only where they have been licensed by the Ministry after complying with prescribed requirements.</li> </ul> <p>These persons must submit a <b>Notice of Death</b> to the Ministry along with a <b>copy of the Medical Certificate of Death</b>.</p> <p>A person is relieved of this duty if they have reasonable basis for believing that the Ministry has already been notified by someone else who bears the duty.</p>	<p>Same persons as for death by natural causes have duty to report death to Ministry and <b>also to police</b>. Police would have duty to report death if there is no family member to perform this duty.</p> <p>Any person with knowledge of such death must also report it to police unless they believe the report was already made by another (<i>Inquests Act</i>).</p>
<p><b>1) Medical practitioner involved:</b> A medical practitioner who attended the deceased during his or her last illness or examined the body after death must issue a <b>Medical Certificate of Death</b> and give one original to the next of kin and a second original directly to the nearest MHA registration office. The original which must be transmitted directly to the nearest MHA registration office can be sent by postal courier (as with medical Notices of Birth).</p> <p>A registrar of deaths who is satisfied on the basis of the Notice of Death and the Medical Certificate of Death that the death was result of natural causes can register the death and issue a <b>Death Certificate</b> and a <b>Burial Order</b>.</p> <p><b>2) If a body is buried without having been examined by a medical practitioner</b> (such as where practical considerations require this in a rural area), then the burial must be reported to a traditional leader or councillor. Upon receipt of appropriate supporting documentation, the registrar will register the death but must report the death to the police so that they can investigate if appropriate for possible unnatural causes of the death. The person(s) who took charge of the body for burial must demonstrate</p>	<p>Medical practitioner with suspicions must make a report to police, and issue <b>Medical Certificate of Death reflecting that cause of death is under investigation</b>. At this stage, the Registrar-General may issue a <b>Death Certificate</b>.</p> <p>Police investigating death apparently from unnatural causes will instruct a district surgeon, pathologist, official from the National Forensic Institute or some other medical practitioner to investigate the cause of death and, once the body is no longer needed for investigation, issue an additional <b>Medical Certificate of Death</b>, indicating the cause of death if possible, giving one original to the police and a second original to the Ministry.</p> <p>Once the police have confirmed that the body is no longer required for investigation, the registrar may issue a <b>Burial Order</b>.</p> <p>The <i>Inquests Act</i> applies, but this does not involve the Ministry.</p>

Natural Causes	Unnatural Causes
<p>that they either contacted the police, or made all reasonable efforts to contact the police before the burial. Failure to have done so, without reasonable justification, will be an offence.</p> <p>If no medical practitioner was present or involved, a registrar who is satisfied that death was result of natural causes on the basis of the <b>Notice of Death</b> can register the death and issue a <b>Death Certificate</b>.</p> <p><b>3) If there is no body, then Ministry will register death only upon receipt of court order re: presumption of death.</b></p>	
	<p>Any Ministry official must report to police any death which may have been from unnatural causes, regardless of whether there is a Medical Certificate of Death by natural causes from a medical practitioner or not.</p>
	<p>Magistrate or judge who holds an <b>inquest or enquiry</b> must report prescribed information from that proceeding to the registrar.</p> <p>Whenever there is a <b>court proceeding regarding presumption of death</b>, clerk of court or registrar must report outcome to Ministry.</p>

The time frames proposed for reporting a death under the new law are 72 hours in an urban area and 14 days in a rural area.

**11.2 Presumption of death**

Inquests in cases where no body has been found or recovered, can result in a finding beyond reasonable doubt that a death has occurred. In such a case, if identity of the deceased and the date of death can be determined, this finding has the effect of a presumption of death.<sup>134</sup> Where an inquest results in an order with the effect of a presumption of death in respect of a married person, that order has the effect of dissolving the marriage by death.<sup>135</sup> Because any of the findings of an inquest must be transmitted to the Registrar,<sup>136</sup> this would allow for registration of the death in question and any associated dissolution of marriage.

The High Court also has power to issue orders on presumption of death, on application, but it is not clear if these would be communicated to the Ministry of Home Affairs or not. The High Court is empowered to include an order that a marriage has been dissolved in the order presuming a death, or to make this as a separate and subsequent order.<sup>137</sup> But again, there is no explicit provision for reporting this to the Ministry of Home Affairs.

**11.3 Issues of concern**

During public consultations around proposed law reforms on civil registration, stakeholders raised concerns relating to death registration in Namibia—some of which involve the role of birth and marriage certificates when a death has occurred.

<sup>134</sup>*Inquests Act 6 of 1993*, s. 21.  
<sup>135</sup>*Dissolution of Marriages on Presumption of Death Act 31 of 1993*, s. 2.  
<sup>136</sup>*Births, Marriages and Deaths Registration Act 81 of 1963*, s. 13.  
<sup>137</sup>*Dissolution of Marriages on Presumption of Death Act 31 of 1993*, s. 1.

**Confirming death certificates and verifying ID documents:** The most common and pressing concern expressed was the need to have a dedicated help-line or call-centre where death certificates can be confirmed. Pension and insurance companies who must obtain confirmation before making payouts because of problems with fraudulent death certificates, are required to confirm all death certificates prior to paying out death benefits. Some suggested having an electronic link with the Ministry for this purpose—such as a secure portal where the insurance company could input various pieces of data recorded on the birth, marriage and death certificate and have a screen pop up that says “verified” or “not verified.”<sup>138</sup> Another recommendation was to have the Ministry issue a monthly communication to companies that deal with death and death registration listing the death certificates issued that month. The Ministry is in fact already in the process of establishing a secure online portal which will provide approved users with a procedure to verify information on birth, marriage and death certificates, with a view to combating fraud, without compromising confidentiality.

**Inconsistent, incomplete and duplicative documents:** All the interviewees expressed concern about documents where the person’s name and/or date of birth and/or parentage are incorrectly listed, particularly in respect of the fathers of children born outside marriage. For example, some clients have presented two birth certificates that list two different fathers, or birth certificates which falsely list a male relative as a father in an effort to benefit from family members who are employed.

There is a need for a public education campaign on the usefulness of the accessible proof of parentage procedures in the *Children’s Status Act 6 of 2006*, which makes provision for some or all of the costs of DNA testing to be paid by the state if the parties cannot afford it. The relevant provisions will soon be replaced by similar provisions in the *Child Care and Protection Act 3 of 2015* which have added possible mechanisms for proving parentage after the death of the presumed parent.<sup>139</sup>

**Universal national ID number used on every piece of identifying documentation:** Insurance companies expressed frustration with multiple people applying for funeral benefits and insurance or pension payouts using different and multiple ID documents. Beneficiaries may currently present a Namibian ID card, South African ID card, birth certificate or passport to apply for insurance policies. Each of these documents has a different ID number, which results in confusion in the creation of computer profiles and can be used to disguise crimes such as money-laundering. It has been suggested a single universal national ID number should be used consistently on every piece of ID a person can obtain in Namibia—birth certificate, health passport, Namibian ID card, driver’s license, passport, marriage certificate, divorce certificate and death certificate. It is understood that this is, in fact, precisely what the Ministry has in mind with the revamped National Population Register.

**Consistency in documentation of place of birth and death:** Stakeholders requested that birth, marriage and death certificates and national ID cards need to have a uniform method for listing the place of birth/death. Currently one form may ask for “place” while another asks for “district” and another records “place/country of birth.” When ‘place’ is requested, people may list village, area or region. There was a request for more accuracy and uniformity.

**Recording cause of death:** Reasons for death need to be more specific and uniform, for statistical and actuarial purposes. It has been suggested that regulations issued under the forthcoming law should specify that the causes of death which can be listed on the Medical Certificate of Death should be consistent with the three-digit codes for causes of death which are used in the Health Information System maintained by the Ministry of Health and Social Services.<sup>140</sup> It is also recommended that the cause of death be omitted from the death certificate, and appear only on the Medical Certificate of Death because of privacy concerns; not everyone who might have a need to access the other information on a death certificate has any reason to be informed of the cause of death.

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<sup>138</sup>The companies recognized that there are privacy concerns involved, and understood that private information cannot be made readily available—which is why they proposed a verification system, where only the information they already possess can be either “verified” or “not verified.”

<sup>139</sup>*Child Care and Protection Act 3 of 2015*, s. 93(5). Possibilities include proving that no family member or heir disputes the claim, scientific testing of other close relatives or (as a last resort) exhumation of the deceased.

<sup>140</sup>These codes are currently based on an international standard disease coding list called the *International Classification of Diseases (ICD) Revision 10 Tabular Listing*.

**Marital status on death certificates:** There are a number of instances where the death certificate incorrectly records the deceased's marital status. This is often the case when there is a customary wife, because the customary marriage is not recognised or registered; the person will be recorded as single when in reality he or she was married. There are also other instances where the person may be separated from the spouse, yet still legally married with the result that the marital status is incorrectly recorded. This results in problems with the payment of death benefits to spouses. The anticipated reforms on marriage and divorce registration, including those expected on the documentation of customary marriage and divorce, should take care of this concern.

**Multiple death certificates:** Insurance companies are often presented with multiple death certificates for the same person (not merely copies of one original, but multiple independent death certificates with different entry numbers for the same person). Once the computerised system is fully operational, this should occur only if there is an attempt at fraud; the Ministry should be contacted in such cases to verify from the database which is the correct certificate and to take appropriate action in cases of possible fraud.

**Certified copies:** One company reported difficulties with police acting as commissioners of oaths, finding that some police are not taking the time to ensure the client is not lying under oath, or not properly reviewing the documents they are certifying as true copies, but merely performing a "rubber-stamping" function. It was suggested that only banks officials and lawyers should be allowed to act as commissioners of oaths. The Ministry is aware of problems involving fraudulent "certified copies." Several possible solutions to this problem have been considered, including the possibility of providing special Ministry-certified copies of death (and other event) certificates for certain purposes (such as where financial benefits such as inheritance, pension, social security or insurance are at stake). These could be marked with a special stamp which would not be easy to duplicate privately, and the stamp could be designed to cover most of the face of the document so that fraudulent alterations would be harder to make. However, the Ministry has decided that a better solution will be to adapt its computer program so that duplicate copies (marked as such) can be issued with the same entry number as the original. This approach has the advantage of generating a trail of who printed the copies, and so can be more easily monitored to detect and prevent fraudulent misuse.

#### **11.4 Right to obtain death certificate**

The current law in Namibia is silent on this question. Currently, there are instances where people attempt financial or other advantages by racing to obtain the death certificate first and then depriving others of access to it. Thus, it is recommended that the original death certificate should be provided to the person who reports the death but that official copies should be provided by the Ministry as a matter of right to a spouse or ex-spouse of the deceased; a parent of the deceased; a child of the deceased; a close family member of the deceased; anyone who is an heir of the deceased by intestate succession or in terms of a will; and anyone who may be a beneficiary of the deceased in terms of a life policy, insurance policy or similar. (Access to copies by other persons is discussed under the topic of privacy.)

In current practice, undertakers often collect the death certificate on behalf of family members too bereaved to cope with administrative details. However, in the future, the Ministry would like to limit this (and other statutory functions and powers) to undertakers who have followed a prescribed process for registration with MHA, as a result of experiences involving systematic fraud within this sector. Such registration could involve the provision of basic information to verify the validity of the business, and could provide for de-registration in the event of improper exercise of statutory functions.

#### **11.5 Information on death certificates**

The Namibian death certificate currently lists the following information:

- name, surname, sex (or "gender") and ID number of deceased
- date and district of death
- date of birth

- “marital status”
- cause of death
- signature of registrar of deaths
- place and date of issue of death certificate
- “entry number.”

“Marital status” is an inaccurate designation which can cause confusion, because the Ministry does not have information about customary marriages for which there is, as yet, no registration mechanism. We suggest that this designation be deleted, and replaced with a reference to civil marriage status and customary marriage status—to allow for the time when information on both types of marriage can be supplied. In the meantime, the customary marriage line could state “unknown.” This would help to prevent confusion. As discussed in connection with birth certificates, “gender” is an inappropriate term and should be replaced by “sex.”

### **11.6 Information on next of kin of deceased**

Because of the concerns about fraud, there should be a mechanism whereby parties with a legitimate interest (such as those which provide some kind of death benefits) can confirm next of kin as they appear in the Ministry’s database (i.e. parents, children and spouses in civil marriage as they appear in the National Population Register—together with their ID numbers and information on whether these persons are still living).

## **5. Privacy**

A key concern in civil registration is how to balance the privacy of individuals and their information against the need to maintain a system that allows access to information relevant to civic obligations and duties such as law enforcement, statistical research and verification of entitlement to benefits—just to name a few.

The wording of the *Namibian Constitution’s* privacy provision is somewhat narrow; its focus on the right to privacy in respect of “homes, correspondence or communications”<sup>141</sup> arguably does not cover civil registration information or biometric data. However, the broader privacy provisions of the *International Covenant on Civil and Political Rights (ICCPR)* and the *Convention on the Rights of the Child*—which do include general protections for “privacy”—are incorporated into Namibia law by virtue of Art 144 of the *Namibian Constitution*.<sup>142</sup>

The *Identification Act 21 of 1996* contains a provision on the secrecy of information in the population register:

14. (1) Subject to the provisions of subsection (2), no person shall disclose to any other person any information recorded in the population register or any identity document or proof of registration and which he or she acquired by virtue of his or her functions in terms of any law, except for the purposes of this Act or any judicial proceedings or the performance of his or her functions in terms of any other law, and no person to whom any such information has to his or her knowledge been disclosed in contravention of the provisions of this subsection, shall disclose such information to any other person.

(2) Notwithstanding the provisions of subsection (1), the Minister may furnish any information in relation to a person whose name is included in the population register to any ministry, regional council, local authority, statutory institution or body established by or under any law for any purpose of that ministry, council, authority, institution or body.

<sup>141</sup>*Namibian Constitution*, Article 13(1).

<sup>142</sup>Article 17 of the *ICCPR* protects individuals more broadly against arbitrary or unlawful interference with their privacy. This language is mirrored by Article 16 of the *Convention on the Rights of the Child*, meaning that children also have a right to privacy. General Comment 16 of the Human Rights Committee on Article 17 of the *ICCPR* (issued on 8 April 1988) suggests that computer databases which store personal data must be governed by law, stored securely and used only for purposes compatible with the Convention. Individuals must be able to find out what information is stored about them, who controls access to the database and the purposes for which the data may be used, and must have the right to request the rectification of incorrect data, or the elimination of data which has been collected or processed contrary to the law. The *African Union Convention on Cyber Security and Personal Data Protection*, which was adopted in 2014 but will be implemented only if ratified by at least 15 of the 54 AU members, is also highly relevant (available at <http://pages.au.int/infosoc/cybersecurity>).

This provision appears to conflict with current Ministry practice on providing copies of birth, marriage or death certificates—which are technically extracts from the National Population Register, and does not appear to make provision for giving information from the register to a person about his or her own entry. At the same time, the existing provision is very broad with respect to information sharing with government agencies; it places no limits on information-sharing with, for example, the “taxman,” the Namibian Police or the Namibia Central Intelligence Service for any purpose relevant to such institutions. Furthermore, although the legal scheme for identity documents states that the identity number of a deceased person will be retained on the system for a year,<sup>143</sup> there is no provision covering the destruction of fingerprints, palm prints, photographs or other personal information—all of which is therefore presumably retained in the Ministry’s files indefinitely.

In terms of the *Births, Marriages and Deaths Registration Act 81 of 1963*, any person can currently make an application to receive a copy of any birth, marriage or death certificate.<sup>144</sup> The accompanying regulations do not contain any provisions regarding confidentiality of information in the registers. However, they do limit the information which may be furnished on request to an abridged or full birth certificate, an abridged or full marriage certificate and an abridged or full death certificate.<sup>145</sup> Thus, the operational theory seems to be that there is no privacy interest in the limited information which is contained in these certificates—in contrast to the more detailed information which is on file.

The MHA’s forthcoming new legislation is expected to address confidentiality issues in much more detail than the current law.<sup>146</sup>

It has been suggested that the bare facts of births, marriages, divorces, deaths and name changes (information that these events have taken place and the dates of the events) are of public relevance, and that there is a lesser privacy interest in these matters than in other details pertaining to the events. This is consistent with the existing requirement that marriage ceremonies take place in public places, that divorces are granted by means of court orders which are publicly-accessible documents and that name changes are announced in the *Government Gazette*.

Discussions of possible privacy provisions made a distinction between “duplicate originals” (which replace lost, stolen or destroyed originals, or originals which need to be amplified or corrected) and “copies” which could be marked “copy for information purposes only” (or similar) so as not to be confused with an original document. It is recommended as follows:

- Any information in the National Population Register must be available to the individual to whom it relates (or to a parent or guardian in the case of a minor), with the following exception of information about adoptions (which is to be obtained from the Adoption Register of the Ministry of Gender Equality and Child Welfare).
- Any individual (or that person’s parent or guardian) will be able to request a duplicate original of a birth, marriage, divorce or death certificate which pertains to himself or herself.
- Any individual (or that person’s parent or legal guardian, curator, etc., as above) will be able to request a duplicate original of a birth, marriage, divorce or death certificate which pertains to himself or herself.
- A copy of a birth, marriage, divorce, death or name change certificate, or verification of information on purported copies of such certificates by other means, may be supplied to any government body which requires the information to fulfil one of its statutory purposes; any person who has applied in the prescribed manner, provided that the register is satisfied that the furnishing of that information (a) is in the public interest or in the interest of the person whose particulars are being requested; (b) is not being requested for a fraudulent purpose; and (c) will not constitute an unwarranted invasion of the privacy of the person whose particulars are being requested.

<sup>143</sup>*Identification Act 21 of 1996*, s. 13; *Regulations under the Identification Act, 1996*, Government Notice 96 of 2001 (GG 2533), reg 6.

<sup>144</sup>*Births, Marriages and Deaths Registration Act 81 of 1963*, s. 42.

<sup>145</sup>*Births, Marriages and Deaths Registration Regulations*, GN 214 of 1987 (Official Gazette 5480), reg 14(3).

<sup>146</sup>It has been reported that law reform may be in the pipeline on general access to government information and on the collection of DNA for purposes of population, sexual offender and missing persons’ databases, but no drafts of such possible laws have been publicly circulated.

- Where information is sought by the Namibian Police, the rules on searches and seizures (which require warrants with certain exceptions) should apply with the necessary changes to biometric information such as fingerprints or other personal information, with the possible exception of a person's stated address which may not in itself attract a privacy interest (although the rules on searches and seizures in the Criminal Procedure Act would still apply to the police powers to enter the premises in question). Correspondingly, where information is sought by the Namibia Central Intelligence Service, this should be made available only with judicial authorisation (as contemplated under section 24(2) of the *Namibia Central Intelligence Service Act 10 of 1997*).
- A copy of a death certificate will be available as a matter of right to certain persons with a clear interest in the information it contains: a spouse or ex-spouse of deceased; a parent of deceased; a child of deceased; a close family member of deceased; anyone who is an heir of the deceased by intestate succession or in terms of a will; and anyone who is a beneficiary of the deceased in terms of a life policy, insurance policy or similar.
- The Ministry may enter into agreements with governmental or nongovernmental institutions or businesses which regularly require information about events—such as pension funds and insurers who need copies of event certificates in order to determine correct payment of pensions or death benefits or election authorities who need to verify that persons have reached voting age—to facilitate appropriate information-sharing and protection of the privacy of the persons involved.
- To facilitate historical and genealogical research, after 30 years have elapsed since the death of a person, copies of event certificates pertaining to that person may be made available to anyone who pays the prescribed fee.
- Regarding information which is in the Ministry's database or files but is not recorded on event certificates, the Registrar may upon application search the register for an entry about a particular event and provide specific information from the Register or refuse to release any information concerning the entry—after the applicant has provided a full written exposition of the purposes for which the information is required, paid the prescribed fee and provided his or her own identification—taking into account:
  - a. the relationship (if any) between the applicant and the person to whom the information relates;
  - b. the age of the entry;
  - c. the contents of the entry;
  - d. the reason for the applicant's interest in the subject matter;
  - e. the sensitivity of the subject matter;
  - f. the balance between the applicant's need for the information and the privacy interests of the person to whom the information relates;
  - g. any other relevant factors.
- It should be a serious criminal offence for anyone with access to the Register to reveal any information from the Register or from any document submitted to the Ministry in accordance with the *Act*, except as provided for in terms of the *Act*.

## 6. Functional Registries

### 13.1 Election law

Registration and voting procedures for local, regional and national elections are covered in the *Electoral Act 5 of 2015*.

A person wishing to register to vote must identify themselves by presenting one of the following forms of proof:

- an official Namibian identification document;
- a Namibian passport;

- a Namibian driving license accompanied by a birth certificate ‘from which it appears that the applicant was born in Namibia or is a Namibian citizen’;
- affidavits by two registered voters as to the identity of the applicant.

In order to prove that the requisite voting age of 18 has been reached, the applicant must present a birth certificate.

In order to prove Namibian citizenship, the applicant must present

- a certificate of citizenship issued under the *Namibian Citizenship Act 14 of 1990*;
- a valid Namibian passport;
- a birth certificate ‘from which it appears that the applicant was born in Namibia or is a Namibian citizen’, accompanied by an affidavit stating that Namibian citizenship has not been lost by means of renunciation.<sup>147</sup>

The requirements pertaining to proof of citizenship unfortunately reinforce the problematic link between birth certificates and citizenship, since a birth certificate indicating the place of birth as Namibia will not always prove Namibian citizenship if all children who are born in Namibia are entitled to birth registration in Namibia.

An applicant who is registered to vote is given a voter identification card which includes a signature (or a fingerprint in the case of illiterate voters) and, if issued electronically, a digital image and digital fingerprints.<sup>148</sup> If the application to register is refused, there is an appeal process.<sup>149</sup>

Registered voters are listed in a register which is made available for public inspection prior to elections, to allow opportunity for objections.<sup>150</sup>

At the time of voting, the voter must produce the voter registration card.<sup>151</sup>

### **13.2 Social welfare grants**

The *National Pensions Act 10 of 1992* provides for national pensions to be paid to aged, blind and disabled persons who are Namibian citizens or permanent residents, provided that such persons are also ordinarily resident in Namibia.<sup>152</sup> The mechanism for identifying persons eligible to receive such pensions at the time of payment is not specified in the *Act*, and no regulations have been issued under it. However, in practice, biometric mechanisms are employed for this purpose.

Similarly, child maintenance grants are paid in terms of the *Children’s Act 33 of 1960*, but the current criteria and methods of identification and registration fall outside that legal framework. The *Child Care and Protection Act 3 of 2015* which will soon replace the *Children’s Act 33 of 1960* provides for state maintenance grants and child disability grants, but the criteria for eligibility for such grants and the mechanisms for accessing them are to be contained in regulations which are not yet finalised.

The *Veterans Act 2 of 2008* provides for the registration of veterans of the liberation struggle, and their dependants, which may lead to eligibility for the payment of benefits from the Veterans Fund established by the same law.<sup>153</sup> The regulations provide for the issue of a registration card for this purpose, which is to be issued in a

<sup>147</sup>*Electoral Act 5 of 2015*, s. 26. Additional proof of residential address must be supplied if the voter is registering to vote in local or regional elections (s. 26(5)).

<sup>148</sup>*Electoral Act 5 of 2015*, s. 30(1).

<sup>149</sup>*Electoral Act 5 of 2015*, s. 29.

<sup>150</sup>*Electoral Act 5 of 2015*, s. 31-ff.

<sup>151</sup>*Electoral Act 5 of 2015*, s. 100(3).

<sup>152</sup>*National Pensions Act 10 of 1992*, s. 3(1). Persons ordinarily resident in Namibia with citizenship applications pending are also covered.

<sup>153</sup>*Veterans Act 2 of 2008*, s. 27-ff.

format provided, and which must bear the veteran's or dependant's photograph, along with a signature, or right-hand thumbprint or, where this is not possible, any fingerprint.<sup>154</sup> The prescribed registration card contains the following information: name, date of birth, signature or thumbprint, region, citizenship, country of birth, "gender," date of issue and "national registration number."<sup>155</sup>

### **13.3 Employment-related benefits**

The *Social Security Act 34 of 1994* requires employers to register themselves and all of their employees, and provides for the voluntary registration of self-employed persons. The Social Security Commission maintains a register of all registered employers and employees and issues registration cards to registered employers and social security cards to registered employees.<sup>156</sup> This registration is the gateway to participation in the mandatory Maternity Leave, Sick Leave and Death Benefit Fund. The *Act* also provides for a National Medical Benefit Fund and a National Pension Fund, for employees who do not have other coverage in these areas, but these schemes have not yet been established in practice.<sup>157</sup> Both employers and employees are issued with social security numbers upon registration.<sup>158</sup>

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<sup>154</sup>*Regulations relating to Registration and Benefits of Veterans and Dependants of Veterans*, Government Notice 168 of 2008 (GG 4080), as amended by Government Notice 134 of 2010 (GG 4514), reg 6.

<sup>155</sup>*Id.*, Form VA3, Veteran/Dependant Registration Card.

<sup>156</sup>*Social Security Act 34 of 1994*, s. 20.

<sup>157</sup>*Id.*, s. 21.

<sup>158</sup>See *General Regulations*, Government Notice 198 of 1995, (GG 1181), as amended, reg 3 and Forms 6 and 7.

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