Comments on the Draft Regulations to the Births and Deaths Registration Act, 2018

By Centre for Child Law & Lawyers for Human Rights

16 November 2018

Endorsed by:

Scalabrini Centre of Cape Town

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MEDIAMONITORING AFRICA

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16 November 2018

Dear Sirs,

The Centre for Child Law (CCL) and Lawyers for Human Rights (LHR) welcome the opportunity to submit comments on the draft regulations to the Births and Deaths Registration Act (BDRA) 51 of 1992.

Since March 2011, LHR has operated a Statelessness Project that focuses on legal identity for all persons in the Republic. The Centre for Child Law contributes, within its means, to establish and promote the best interests of children in South Africa and to use the law as an instrument to advance such interests.

Both the CCL and LHR provide direct legal services to individuals who face barriers accessing their right to birth registration and nationality. We have found that the BDRA, its regulations and their implementation forms the gateway that either hinders or facilitates people's access to legal identity and nationality – without which all fundamental rights are inaccessible.

The BDRA and regulations give credence to many constitutional rights, such as the right of every child to a name and nationality from birth (section 28 of the Constitution); as well as the rights that flow from nationality, such as citizens' rights to political freedom, freedom of movement and residence, freedom of trade and occupation (sections 19, 21, 22 of the Constitution); the right of every citizen not to be deprived of their citizenship (section 20); and the fundamental rights to equality, human dignity, freedom and security of person, and fair labor practices of all persons on the territory, regardless of nationality (sections 9, 10, 11, 12, 23). As such the BDRA and its regulations are of utmost importance in providing practical and realistic

avenues for South Africans to access their citizenship; for non-citizens to access their right to a name and nationality from birth; and the right of stateless persons to acquire nationality.

We have observed a variety of barriers to birth registration and nationality among our clients, who consist of both South African citizens, unable to access nationality, and foreigners who are not recognized as nationals in any State. In December 2011, at a UNHCR Ministerial-level conference in Geneva, South Africa officially pledged to sign and ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, following internal consultative processes. South Africa is signatory to both the Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC).

As such, in drafting these critical regulations, South Africa should aspire to align them with the provisions of these treaties. The most important of these provisions is the child's right to be registered immediately after birth, the right from birth to a name and the right to acquire a nationality (article 6 of the ACRWC and article 7 of the UNCRC). States Parties are enjoined to ensure the implementation of these rights, in particular where the child would otherwise be stateless.

These comments are submitted with the following background documents in mind the parliamentary debate and presentations on the BDRA and South African Citizenship Act Amendment Bills and the Department of Home Affairs (DHA) reply to submissions on both Amendment Bills. These documents indicate government intentions to:

- continue to provide citizenship by birth to children born in the Republic who do not have citizenship or nationality in another country, or who do not have the right to such citizenship or nationality;

- provide citizenship by birth to children born in the Republic to a permanent resident parent only when they reach age of majority, provided that they have lived in Republic until that time (as opposed to providing citizenship immediately at birth, as under previous Act); and

- allow children born in the Republic whose parents are not citizens and who are not admitted for permanent residence to qualify to apply for citizenship if they have lived in Republic until age of majority.

We set out hereunder the specific regulations which we believe to be either unconstitutional (violating the rights in the Bill of Rights) or ultra vires (in that the regulation is wider than the Act provides for or amounts to an amendment of the provisions of the Act), or is otherwise in conflict with the government intentions stated above. We also point out where our courts have found sections of the regulations to be unconstitutional or have read in words to the regulations, which must be taken account in drafting the amendments.

We trust our comments will contribute to the overall quality of the regulations and its ability to foster and ensure universal birth registration in South Africa.

Sincerely,

CENTRE FOR CHILD LAW
Per: Anjuli Maistry

LAWYERS FOR HUMAN RIGHTS
Per: Liesl Muller

Reg	Current wording	Proposed wording	Motivation
1	"Confirmation of birth certificate" means a certificate issued to a non-South African citizen confirming that the birth of his or her child occurred within the Republic and enables the holder thereof to approach the relevant authorities of his or her country of citizenship or nationality in order to register the birth of his or her child in his or her country of citizenship or nationality's population register.	We propose removing this definition (and any other reference to it) from the regulations. The term "birth certificate" should be used universally for all children born in South Africa.	A "confirmation of birth" does not amount to a birth certificate. It is only the document which the child may use to obtain a birth certificate from another country. This is expressed clearly on form DHA 19 which states "This is not a birth certificate. Please register the birth of your child in your country of citizenship". There are several problems with this amendment. Firstly, every child has the right to be registered immediately after birth according to section 28 of the South African Constitution, article 7 of the Convention on the Rights of the Child and article 6 of the African Charter on the Rights and Welfare of the Child. Second, the amendment assumes that every child will be able to have their births registered at their embassy. This is not the case for: 1. The children of refugees and asylum seekers. Such children cannot approach their embassies, because this would jeopardise their protection from that country and it would be considered to be availment to the protection of their country by the Department of Home Affairs. 2. Orphaned, abandoned and other children in need of care and protection in terms of the Children's Act. Such children find it difficult to approach their embassy and prove a link to the country without their parents. This means that vulnerable children often wait years to get birth certificates or never get them at all, because of the difficulty in proving the identity of their parents or because of the cost of the documents. The Democratic Republic of Congo's embassy charges R4000 for identifying documents. Orphaned children cannot afford this and will remain without a birth certificate. 3. Stateless children. These children will not be able to approach any embassy for a birth certificate at all. This is because they do not have the nationality of any country. This amendment excludes all stateless children from obtaining a birth certificate.

			A birth certificate is crucial to finding pathways to citizenship for stateless children. If the stateless child is unable to obtain a birth certificate it renders section 2(2) of the South African Citizenship Act empty. This section recognises stateless children born in South Africa as citizens, but only if their births are registered. Likewise stateless children will not be able to be adopted without a birth certificate. If this amendment aims to exclude stateless children from birth registration, it aims to deprive them of their right to a nationality. In light of the above the amendment constitute a violation of the following law: 1. Section 10 of the Constitution 2. Section 28 of the Constitution 3. Section 20 of the Constitution in that no citizen may be deprived of citizenship 4. Section 9 of the Constitution 5. Article 7 Convention on the Rights of the Child 6. Article 6 African Charter on the Rights and Welfare of the Child The amendment amounts to unfair discrimination prohibited by section 9 of the Constitution. It serves no legitimate purpose. It serves only to exclude foreign children and deprive them of basic rights. It creates an arbitrary distinction between foreign children and the children of South African citizens. In so far as this change of wording will prejudice any child it is unconstitutional. Lastly, this amendment is ultra vires in that the Act requires all children born in South Africa to be registered whether foreign or South African. The regulations cannot amend the Act. These comments apply to every instance where “confirmation of birth” appears in the regulations, including regulation 7 and 8.
2(4)	Where the notice of birth is rejected, the Director-General shall	Where the notice of birth is rejected, the Director-General	Written reasons as to why the Director-General rejected the birth certificate must be provided, as his or her action constitutes administrative action

	cause the rejected notice to be safely stored as part of the records of the Department.	must provide the applicant with the written decision on the prescribed form within 30 days of the decision and inform the applicant of the reasons for the decision and her right to appeal the decision.	which adversely affects the rights of the applicant. The requirement of written reasons is contained in section 5(1) of the Promotion of Administrative Justice Act as well as section 33 of the Constitution. This must be duplicated, with its own timeframes that are shorter than those set out in PAJA and take into account what is in a child's best interests.
3(2)	Where both parents of a child whose birth is sought to be registered in terms of subregulation (1) are deceased, the notice of birth must be made by the next-of-kin or legal guardian of the child.	A definition for next of kin should be added to regulation 1 definitions.	The regulation does not stipulate who qualifies as next of kin. The result has been that officials only allow legal guardians, who have obtained a guardianship order from the High Court, to register the births of orphaned or abandoned, which is incorrect. A definition is necessary to clarify who qualifies as next of kin, and it should include grandparents, aunts, uncles and siblings and cousins. This would match the definition of 'family member' in section 1 of the Children's Act. This would ensure that the two laws are aligned.
3(3)(b)	An affidavit attested to by a South African citizen who witnessed the birth of the child where the birth occurred at a place other than a health institution	*Where available*, an affidavit attested to by a person who witnessed the birth of the child where the birth occurred at a place other than a health institution	The requirement that the affidavit must be made by a South African citizen is arbitrary and excludes all children who are born without witnesses or without a South African citizen as a witness. This regulation should allow for other persons to attest to an affidavit as well or it should require such affidavit only where it is available.
3(3)(f)	A certified copy of a valid passport and visa or permit, where one parent is a non-South African citizen	*Where it is available*, a certified copy of a valid passport and visa or permit, where one parent is a non-South African citizen	This regulation was under attack in Naki v the DG and another (the Naki Judgment).[1] The court found it to be unconstitutional and ordered the words "where it is available" be read into this section. This was in response to the applicants' evidence and submissions which indicated that many parents do not have this document, and that a child's right to birth registration should not be dependent on the documents that their parents do or do not have. The amendments should therefore reflect this constitutional reading.

[1] Naki and others v The Director General of the Department of Home Affairs and another (GHC) Case number 4996/2016.

3(3)(i)	Where applicable, a certified copy of the identity document or valid passport and visa or permit of the next of kin or legal guardian.	Where applicable **and available**, a certified copy of the identity document or valid passport and visa or permit of the next of kin or legal guardian.	This regulation has been declared to be unconstitutional in the Naki judgment. To remedy this constitutional defect, the court order states that the words "and available" be read into the regulation. The amendments should reflect this constitutional reading.
3(3)(5)	A notice of birth which does not meet the requirements of subregulations (3) and (4), shall not be accepted.	**Delete**	The Naki judgment has found this regulation to be unconstitutional. The effect of this order is to do away with the absolute barrier to birth registration that the section imposes and to allow the department to accept all applications and decide them on a case by case basis on the facts before them. The court made this decision based on the fact that this regulation prevented the first and second applicants from being able to register the birth of their child. In order to comply with the order in the judgment, this section must be removed.
4(3)(b)	The wording for this section is identical to that in section 3(3)(b), except that it applies to a different age group. Therefore see comments in relation to 3(3)(b)	See comments on 3(3)(b).	See comments on 3(3)(b).
4(3)(f)	A certified copy of a valid passport and visa or permit, where one parent is a non-South African citizen	*Where* **it is available**, a certified copy of a valid passport and visa or permit, where one parent is a non-South African citizen	This regulation has been declared to be unconstitutional in the Naki judgment. The court ordered that "where it is available" be read into this section. The amendments should reflect this constitutional reading.
4(2)	The wording for this section is identical to that in section 3(2), except that it applies to a different age group. Therefore see comments in relation to 3(2).	See comments on 3(2).	See comments on 3(2).

4(3)(i)	Where applicable, a certified copy of the identity document or valid passport and visa or permit of the next of kin or legal guardian.	Where applicable **and available**, a certified copy of the identity document or valid passport and visa or permit of the next of kin or legal guardian.	This regulation has been declared to be unconstitutional by the High Court in the Naki judgment. To remedy this constitutional defect, the court order that "and available" be read into the regulation. The amendments should reflect this constitutional reading.
4(3)(5)	A notice of birth which does not meet the requirements of subregulations (3) and (4), shall not be accepted.	**Delete.**	The High Court in the Naki judgment has found this regulation to be unconstitutional. The effect of this order is to allow the department to accept all applications and decide them on a case by case basis on the facts before them. The court made this decision based on the fact that this regulation prevented the first and second applicants from being able to register the birth of their child. In order to comply with the order in the judgment, this section must be removed.
5(2)	The wording for this section is identical to that in section 3(2), except that it applies to a different age group. Therefore see comments in relation to 3(2).	See comments on 3(2).	See comments on 3(2).
5(3)(b)	The wording for this section is identical to that in section 3(3)(b), except that it applies to a different age group. Therefore see comments in relation to 3(3)(b).	See comments on 3(3)(b).	See comments on 3(3)(b).
5(3)(f)	A certified copy of a valid passport and visa or permit, where one parent is a non-South African citizen	**Where it is available**, a certified copy of a valid passport and visa or permit, where one parent is a non-South African citizen	This regulation has been declared to be unconstitutional by the High Court in the Naki judgment. The court ordered that "where it is available" be read into this section. The amendments should reflect this constitutional

			reading.
5(3)(i)	Where applicable, a certified copy of the identity document or valid passport and visa or permit of the next of kin or legal guardian.	Where applicable **and available**, a certified copy of the identity document or valid passport and visa or permit of the next of kin or legal guardian.	This regulation has been declared to be unconstitutional by the High Court in the Naki judgment. To remedy this constitutional defect, the court ordered that "and available" be read into the regulation. The amendments should reflect this constitutional reading.
5(3)(5)	A notice of birth which does not meet the requirements of subregulations (3) and (4), shall not be accepted.	**Delete.**	The High Court in the Naki judgment has found this regulation to be unconstitutional. The effect of this order is to allow the department to accept all applications and decide them on a case by case basis on the facts before them. The court made this decision based on the fact that this regulation prevented the first and second applicants from being able to register the birth of their child In order to comply with the order in the judgment, this section must be removed.
6(3)	The Director-General must, in respect of each notice of birth contemplated in regulations 3, 4 and 5 authenticate the veracity of the information furnished to him or her and either approve or reject the notice.		If the Director-General rejects the notice, written reasons must be provided to the applicant that was rejected. This is in accordance with the Promotion of Administrative Justice Act 3 of 2000 as well as section 33(2) of the Constitution. The timeframes under which the written reasons will be provided must be specified under the BDRA Regulations. In creating timeframes, the BDRA must be cogniscant of the fact that birth registration predominantly affects children, and therefore the timeframes must take into account their vulnerability and need for certainty. In addition, it is important to create an internal appeal or review procedure. The majority of applicants for birth certificates are unlikely to be of the means to approach a court in order to dispute the rejection of their application for a birth certificate. Further, the majority of applicants are children, whose interests undoubtedly necessitate the creation of an appeal mechanism. Not only will this will allow for procedurally fair administrative action, but it will also ensure access to justice.

6(5)	The screening committee must, after interviewing all relevant persons relating to the information contained in the notice, make recommendations to the Director-General who shall consider and approve or reject the notice.	The screening committee must, after interviewing all relevant persons relating to the information contained in the notice, make recommendations **within 90 days** to the Director-General who shall consider, and approve or reject the notice, **within 30 days.**	The decision significantly affects the rights of a person whose application for a birth certificate has been affected, in particular their right to citizenship. If they are a child the decision affects their right to a name and nationality from birth. Further, the Children's Act, in section 6(5), states that in matters concerning children, delays in action or decisions to be taken must be avoided as far as possible.
6(6)	Where it is apparent from a notice of birth that the child or the person whose birth is sought to be registered is a non-South African citizen, the Director-General may deal with the notice as contemplated in regulation 8.	Where the person or child whose birth is sought to be registered is a non-South African citizen in terms of the Citizenship Act, the Director-General may deal with the notice as contemplated in regulation 8.	The phrase "where it is apparent" is overly vague. It is unclear when it becomes "apparent" from a notice of birth that a person or child is a non-South African citizen. It also affords an overly wide and unlawful discretion onto officials to make such a determination, where practices which do not have a place in our democracy may be engaged in. E.g. a practice in which it is determined that a child or person is not a South African citizen based on their physical features. Rather than this, the section should be amended to ensure that where it is determined that a person or child is a non-South African citizen that determination is made in terms of the Citizenship Act.
6(8)	Where a notice of birth is rejected, the Director-General shall inform the parents in writing, of the rejection of the notice.		The motivation in respect of 6(3) applies here.
6(9)	If at any time after a birth certificate has been issued it becomes apparent that the birth certificate was issued erroneously to any person, the Director-General must cancel		The effect of this section has material and adverse consequences on people whose birth certificates have been cancelled. The section must contain safeguards for affected persons, including an opportunity to make representations before a decision is taken. The ability to make representations requires access to the contents of the investigation that prompted a potential cancellation.

	the birth registration, birth certificate and any other documents, including an identity document or passport issued to the holder of such birth certificate.		Where a decision is taken to cancel, comprehensive written reasons must be provided, and must include access to the investigation that led to the cancellation. Further, it is necessary to establish an appeal process for the reasons set out in 6(3) above, which takes into consideration the vulnerability of children and what is in their best interests, as well as the inability of aggrieved applicants to approach a court to obtain recourse.
7(2)	Upon approval of a notice of birth, the Director-General must issue to the parents a confirmation of birth on a Form DHA–19 illustrated in Annexure 4: Provided that an identity number, as contemplated in terms of section 7 of the Identification Act, for holders of a valid permanent residence permit issued in terms of the Immigration Act or refugee permit issued in terms of section 24 of the Refugees Act, will be allocated to the child after the issuance of the derivative permanent residence status or refugee status to the child.	Upon approval of a notice of birth, the Director-General must issue to the parents a birth certificate: Provided that an identity number, as contemplated in terms of section 7 of the Identification Act, for holders of a valid permanent residence permit issued in terms of the Immigration Act or refugee permit issued in terms of section 24 of the Refugees Act, will be allocated to the child after the issuance of the derivative permanent residence status or refugee status to the child and a birth certificate will be re-issued to reflect the identity number.	For the reasons provided in the comments on regulation 1 the “confirmation of birth” should be deleted entirely and replaced with “birth certificate”. The children of permanent residents have the right to a birth certificate immediately after birth. In terms of this regulation, they may not have access to this right if: 1. The child of a permanent resident is stateless and therefore cannot get a birth certificate from an embassy; 2. The child is orphaned or abandoned before registration at an embassy and the child cannot prove her link to the country. The children of refugees have the right to a birth certificate, but in terms of this regulation will not have access to this right: 1. The child of the refugee will not be able to approach their embassy for the issuance of a birth certificate. 2. The regulation does not make provision for the issuance of a birth certificate after the child has obtained refugee status. 3. An application for refugee status takes considerable time and leaves the child without a birth certificate and vulnerable during that time. If the parents die or abandoned them before the child obtains refugee status, the child will have no claim to refugee status and have no birth certificate.

8		Regulations 3, 4, 5 and 6 hall apply with the necessary changes to the non - South African children.	Regulation 8 does not include a provision for the late registration of birth of children born to non-South African citizens. These children may also need to be registered late if their parents have not registered them within 30 days. The child's right to a birth certificate does not expire after 30 day and provision should be made for late registration of their births.
8(2)	The wording for this section is identical to that in section 3(2), except that it applies to a different group of people. Therefore see comments in relation to 3(2).	See comments on 3(2).	See comments on 3(2).
8(3)(b)	The wording for this section is identical to that in section 3(2), except that it applies to a different group of people. Therefore see comments in relation to 3(3)(b).	See comments on 3(3)(b).	See comments on 3(3)(b).
8(3)(c)	A certified copy of a valid passport and visa or permit of the mother or father or both parents, of the child as the case may be.	**Where available**, a certified copy of a valid passport and visa or permit of the mother or father or both parents, of the child as the case may be.	See comments on regulation 3(3)(f). For the same reasons as provided by the High Court in the Naki judgment, this regulation is unconstitutional and "where available" should be added to remedy the constitutional defect. The regulation creates a complete barrier to birth registration for all children whose parents are undocumented. This will violate the child's right to a birth certificate, but it will also lead to growing numbers of undocumented children in South Africa.
8(3)(d)	Where applicable, a certified copy of the valid identity	Where applicable **and available**, a certified copy of the	See comments on regulation 3(3)(i). For the same reasons as stipulated in the Naki judgment, this section is unconstitutional.

	document or passport and visa or permit of the next of kin or legal guardian.	valid identity document or passport and visa or permit or asylum seeker permit of the next of kin or legal guardian.	The words "and available" should be added in order to ensure its constitutionality. The words asylum seeker permit should be added to this section as the next of kin or legal guardian may be an asylum seeker.
8(3)(e)	Where applicable, a certified copy of an asylum seeker permit issued in terms of section 22 of the Refugees Act of the mother or father or both biological parents of the child.	Where applicable **and available**, a certified copy of an asylum seeker permit issued in terms of section 22 of the Refugees Act of the mother or father or both biological parents of the child.	See comments on regulation 3(3)(i). For the same reasons as stipulated in the Naki judgment, this section is unconstitutional. The words "and available" should be added in order to ensure its constitutionality. If the documents are not available, the applicant should be allowed to have their birth registered, and provide the documents at a later stage (provided that if the documents are never produced, the child's birth remains registered).
9(1)	"abandoned or orphaned child"		There appears to be confusion about the definition of an abandoned child, and about when this section applies and to whom. The regulations ought to include a definition of abandoned in it. In this regard, a cross reference to the definition of an abandoned child in the Children's Act should be added to the regulations.
9(1)(a)	"A court order issued by the children's court"		This section requires clarity on what children's court order is being referred to. Section 156 refers to a range of orders that a children's court can make.
9(1)(e)	"A social worker's report that was presented to the children's court"		This section requires clarity on what section in the social worker's report should accompany the notice of birth. Logically, the section that should accompany the notice of birth should contain a finding that the child is indeed abandoned, but the regulations must be specific. Other parts of the social workers report, including how the child came to be abandoned, are irrelevant to the DHA and the registration of their birth, and a requirement of having to share this information is a violation of that child's privacy, dignity and best interests.
9(2)	Where it is apparent from a notice of birth that the child whose	Where it is apparent from the notice of birth that a child	This regulation is vague and is likely to lead to discrimination against children who seem foreign based on their physical features, including the

	birth is sought to be registered in terms of the court order, is a non-South African citizen, the Director-General may deal with the notice as contemplated in regulation 8 and inform the relevant children's court.	**does not qualify for citizenship under the South African Citizenship Act**, the Director General may deal with the notice as contemplated in regulation 8. **If the child's parents are unknown or the nationality of the parent is unknown or unverifiable the child must be registered in terms of regulation 3,4 or 5 as a South African citizen based on section 2(2) of the South African Citizenship Act**.	colour of their skin or the ethnicity of their parents. The regulation should specify that the child's nationality can only be determined by the provisions of the Citizenship Act and not by assumptions based on ethnicity. The regulation does not make it clear that foundling children must be registered as South African children in line with section 2(2) of the South African Citizenship Act. We raise this point because we have received an influx of reports from social workers confirming that officials are not willing to register foundling children as South African, unless the social worker can prove that a parent was South African. This is mostly impossible to prove especially in the case of foundling children where the parents cannot be found. Such children are South African citizens by birth in terms of the South African Citizenship Act (section 2(2)) and have the right to be registered as South Africans.
10(3)	Upon approval of the application to record the adoption of the child on the birth register, the old identity number of the adopted child must be blocked and marked and a new identity number issued, together with a corresponding birth certificate recording the names of the adoptive parents.	Upon approval of the application to record the adoption of the child on the birth register, the old identity number of the adopted child must be blocked and marked, and a new identity number issued, together with a corresponding birth certificate recording the names of the adoptive parents. In the event that a child did not have an identity number before the adoption, an identity number must be issued to them.	This regulation does not currently make provision for the issuance of an ID number to children who did not have ID numbers before their adoption and re-registration of birth. This has caused confusion in the past. Registration of birth has been denied to some of our clients where there was no existing ID number prior to the adoption being granted. Further, the lack of an identity number should not be an impediment to an adoption proceeding or being granted.

12(1)	A notice of birth of a child born out of wedlock shall be made by the mother of the child on Form DHA-24 illustrated in Annexure 1 of Form DHA-24/LRB illustrated in Annexure 2, whichever applicable.	A notice of birth of a child born **to unmarried parents** shall be made by **either** the mother **or father** of the child on Form DHA-24 illustrated in Annexure 1 of Form DHA-24/LRB illustrated in Annexure 2, whichever applicable.	The High Court in the Naki judgment has found this regulation to be unconstitutional. The court ordered the reading in of "either" and "or father" into the regulation to remedy its unconstitutionality. The court made this decision based on the fact that many children are not registered because this regulation does not allow fathers to register children where the mother is undocumented or unavailable. The court found that the implementation of regulation 12 inhibits access to the rights in section 28(1)(a) and 28(2) of the Constitution and for that reason it is inconsistent with the Constitution We are of the view that the regulation is also discrimination against single fathers on the basis of marital status, which is a prohibited ground listed in the equality clause (section 9). In order for this regulation to be constitutional the Department should add the words "or father". Lastly, the term "child born out of wedlock" should not be used in these regulations as it stigmatizes the children. The term "child born to unmarried parents" should be used instead.
12(2)(a)	The person who acknowledges that he is the father of the child born out of wedlock must enter his particulars and sign on Part A4 of Form DHA-24 illustrated in Annexure 1 at the office of the Department and in the presence of an official of the Department as contemplated in section 10(1)(b) of the Act.	The following wording should be added: **Where the biological father is deceased, unwilling or unable to sign in the presence of a Home Affairs official, documentary proof that indicates paternity, or a paternity order from Children's Court shall be accepted instead of the father's**	This section does not make provision for a child to add the particulars of their father when the father is deceased or incapacitated. The child born to unmarried parents is able to add their father under any circumstances by producing the marriage certificate. The married man is presumed to be father of the wife's children under the presumption of legitimacy. This discriminates against the child born to unmarried parents in that they cannot add their father's particulars to their birth certificate, nor access the nationality of their father, on an equal basis with children born to married parents. The regulation should make provision for the child born to unmarried parents to be able to add the particulars of a child's father even if he is

		signature.	unavailable. The presumption of paternity, contained in Chapter 3 and 4 of the Children's Act, may be applied to cases where fathers are deceased or unavailable.
14(2)	An application contemplated in subregulation (1) made by a person who is a non-South African citizen shall be accompanied by original paternity test results, not older than 3 months, from an institution designated by the Director-General confirming that such person is the biological father of the child.	An application contemplated in subregulation (1) made by a person who is a non-South African citizen shall be accompanied by original paternity test results from an institution designated by the Director-General confirming that such person is the biological father of the child.	First, the insistence on paternity test results as the only method of proving paternity must be done away with. A recent judgment from the Supreme Court of Appeal has found that where paternity can be proven on a balance of probabilities, DNA paternity tests should not be required.[2] Second, if the DHA insists on the use of paternity tests, then they must bear the cost of the test, as well as the cost of travel and accommodation to the testing centres. It is often only the cost that prevents fathers from undergoing them. Third, if the DHA insists on the use of paternity tests, we must bear in mind that paternity test results do not expire. Once the paternity test results state that a person is a child's father, that fact remains. There is no good reason to make it a requirement that the paternity test results have to be redone, especially where the exorbitant cost of the test is to be borne by the applicant.
15(2)	The conclusive proof contemplated in subregulation (1) shall be in the form of original paternity test results not older than 3 months, obtained at the cost of the applicant from an institution designated by the Director-General.	The conclusive proof contemplated in subregulation (1) shall be in the form of original paternity test results. YM v LB 2010 (6) SA 338 (SCA)	The requirement that the applicant must pay for paternity test results is arbitrary. Further, the likelihood that applicants are unable to pay given the socio-economic circumstances of most South Africans, is relatively high. The knock-on effect will inevitably be that children's births are left unregistered. Therefore this requirement must be done away with. It is a violation of a child's right to a name and nationality, as well as their best interests.
18(2)(a)	The reasons referred to 26(2) of the Act must relate to a	The reasons referred to 26(2) of the Act must relate to a	This section must be changed to ensure men are also able to change their surname after marriage. Ensuring that they are allowed to do so preserves

[2] YM v LB 2010 (6) SA 338 (SCA)

	change in the marital status of the woman.	change in the marital status of the woman **or man**	their dignity.
18(2)(b)	The reasons referred to 26(2) of the Act must relate to assumption by a person of his or her biological father's surname, where the father has recently acknowledged paternity in terms of regulation 13 or 14.		This section must be changed to ensure that a child is also able to change their surname from their father's surname to their mother's surname. Ensuring that they are able to do so preserves their dignity, and if they are children, ensures that their best interests are considered to be of paramount importance.