

# Revising Namibia's Births, Marriages and Deaths Registration Act of 1963

What do you think the new law should say?

## Registering the birth of a child born outside marriage

**T**he Ministry of Home Affairs and Immigration is in the process of replacing the Births, Marriages and Deaths Registration Act of 1963 with a new law that will be more appropriate to the needs of Namibia and more feasible to implement in practice. The Ministry is seeking public input on what the new law should say.

### 1. Current rules for registering the birth of a child born outside marriage

- Either parent can register the birth of a child born outside marriage. The **mother** of a child born outside marriage does not need to get permission from the father to register the child's birth, and she does not have to name the father if she does not want to. The **father** will be listed on the birth certificate only if (a) he has acknowledged paternity in person or in a sworn statement and (b) both the mother and the father have consented to having him named as the father on the birth certificate.
- The child can take the **mother's surname** without the father's consent, but 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.

**Namibia's current law treats unmarried mothers and fathers differently. Is this unconstitutional sex discrimination?** Some different treatment of mothers and fathers is justified by their biological differences. The mother will be present at the child's birth, but the father may not be there. However, some of the rules in the law come from the past, when it was not easy to prove who was the father of a child. Now it is possible to use medical tests to identify a child's father. If a father can prove paternity, he might be able to argue that he has a right to be listed on a child's birth certificate even if the mother objects. If paternity has been proved by means of a DNA test, the mother could argue that this fact should appear on the birth certificate regardless of the father's attitude.

**Different rules for married parents:** When a child is born to married parents, either parent can register the birth, and either parent can provide the particulars of both parents for inclusion on the birth certificate.



A Ministry official registering a birth in Mariental Hospital.



The Ministry also goes out to communities to register births. A child can be registered at any age.

## 2. What do other countries do?

**South Africa** has rules similar to the current law in Namibia with an important addition: If the mother does not consent to the father being named on the birth certificate, the father may apply to the High Court for an order declaring his paternity and allowing him to be named on the birth certificate even without the mother's consent.

**Botswana** has gender-neutral rules: Both parents of a child born outside marriage have an independent right to acknowledge parentage and have themselves listed as a parent on the child's birth certificate.

**New Zealand** has gender-neutral rules which make no distinction between married and unmarried parents. A parent's particulars can be listed on the child's birth certificate if:

- that parent has signed the birth registration form acknowledging parentage;
- the form has the particulars of both parents but is signed by only one parent IF the ministry official is satisfied that the other person listed is in fact the child's parent;
- there is a court order which confirms the parentage; or
- the parent makes a written request to be listed which is not disputed by the other parent.

Any person affected by the decision to list or not to list a person as a parent may appeal the decision to a Family Court.

## What should Namibia's new law say?

- (1) Should there be different rules for registering the birth of a child of **married and unmarried parents**? Should there be different rules for **mothers and fathers**?
- (2) Should a parent have to come to the Ministry of Home Affairs and Immigration Office **in person** in order to be listed on the child's birth certificate? or should it be acceptable to list both parents if one parent comes with a **signature or a sworn statement** from the other parent?
- (3) What should happen if **someone wants to be listed as parent** on the child's birth certificate but **the other parent disputes parentage or does not want both parents named**?
- (4) **Suppose that one parent can prove the other parent's identity.** For example, there may be a paternity test identifying the father or a notice of birth from the hospital identifying the mother. **Should a parent with such proof be able to register the details of the absent parent without that parent's consent?**
- (5) Should an unmarried mother or father be able to add the name of a **deceased parent** to a child's birth certificate? Should anyone else, such as the relatives of the deceased, be required to give permission? What proof of parentage should be required?

**Remember that the new law should focus on what is in the best interests of the child.**



**Send your comments to:**

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For more information about the Act revision process, contact the **Under-Secretary of the Department of Civil Registration, Lydia Kandetu**, at the Ministry of Home Affairs and Immigration in Windhoek: email [lkandetu@mha.gov.na](mailto:lkandetu@mha.gov.na) or telephone **061-2922093**.

