

Children's right to identity in Namibia

**** Based on external information, secondary literature and pending review and verification by a local contact ****

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1 Creation of identity

Birth registration:

- It is estimated that the national birth registration rate is 87.8 % and that 77.6% of children under the age of five have a birth certificate, according to the Namibia Inter-censal Demographic 2016 Report.¹ It is worth mentioning that early and late registration – after the child is one years old – is free, as there is no penalty charged for late registration.²
- Most birth registration facilities appear to be based in urban centres, which entails that people living in rural communities may need to travel to the closest facility. Indeed, the Department of Civil Registration / Ministry of Home Affairs, Immigration, Safety and Security (MHAISS)'s civil registration network consists of 55 offices across the country: 14 regional offices; 23 hospital-based facilities to encourage early birth registration; and 18 sub-regional offices, of which nine offer ID card enrolment.³
- However, the Ministry also undertakes community outreach to register children, who are in the hard-to-reach communities, by sending mobile units to rural areas with sparse populations on a regular basis,⁴ coupled with targeted multi-sectoral outreach registration visits to border regions with low birth registration numbers, set up at clinics/hospitals, where nurses support the validation of the proof of birth due to their daily work with the communities; civil registration authorities register unregistered children and social welfare officials assess whether the newly registered child is eligible for a child grant. These efforts appear to also include refugee populations.⁵
- A civil registration steering committee has been established and includes the executive directors of the relevant line ministries and heads of institutions: Ministry of Home Affairs, Immigration, Safety and Security (MHAISS); Namibia Statistics Agency (NSA); Ministry of Health and Social Services (MoHSS); Ministry of Justice; Office of the Prime Minister; Ministry of Gender Equality and Child Welfare; Ministry of Education; Ministry of Labour and Social Welfare; and Government Institutions Pension Fund; a five-year CRVS strategic plan outlining the approach and direction to improve CRVS in Namibia initiated in 2015, slowed down and then resumed.⁶
- The Department of Civil Registration also works with the social protection and health authorities. Indeed, based on a memorandum of understanding with the MoHSS, the MHAISS has installed computerised systems in hospitals to run the e-birth and e-death notification software platform. The system is designed to capture all relevant identity data for expectant mothers when they are admitted to the hospital before giving birth. Right after the birth and before the mother and child leave the hospital, all information relating to the birth is added to the record. The birth notification is sent to the MHAISS and a notification receipt number is issued to the mother to be presented at the civil registration office to obtain the baby's birth certificate. The e-birth notification system enables real-time entries and validates new entries against other existing records. The e-birth notification is used in all hospitals, and the majority of health centres, where births occur. In addition, authorised staff can use e-notification systems on their mobile devices to notify about births and deaths. Birth notification is linked with the National Population Registration System (NPRS) through a number that is generated during the birth notification: this is treated as a unique identification number (UIN) in the NPRS.⁷

Abandonment:

- A Justice of the Peace, a Police officer or the child's caretaker may register the child's birth, if the parents are unable to do so. Indeed, if there are no living parents and the child is an orphan, the child's caregiver may register the birth, based on any document proving the child's identity and place of birth, e.g. the parents' ID cards, birth certificates and death certificates, or a letter from a headman, school principal or social worker. If the child is orphaned or abandoned, a report from a social worker is required; the social worker will choose a name and surname for the child if unknown. This applies to newborns. It is worth mentioning that if there are no parents living and the child is an orphan, the child may also register his or her own birth when he or she is old enough, with two people accompanying the child, who have been born in Namibia, have a Namibian ID and are at least five 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. The *Civil Registration and Identification Bill*, which is being drafted, provides for the reporting of abandoned children on all ages, which is also the current practice.⁸
- It appears that Namibia has faced incidents of baby abandonment, leading to the development of 'safe haven' laws, which involve the personal handover of an infant to a member of staff at a hospital, police station or fire station, and which 'came as a result of the rise in the number of babies reportedly dumped on a monthly basis'.⁹

Citizenship and statelessness:

- A collaboration launched in August 2022 between the MHAISS, the US government through the United States Agency of International Development (USAID) and its implementing partner, Project HOPE Namibia (PHN), is in the process of ensuring that many families are now able to obtain birth certificates swiftly and easily at selected mobile processing points. The campaign is primarily focusing on registering undocumented Namibians to acquire national documents and specifically targets over 4,800 beneficiaries of the HIV Adherence and Retention Project for orphans and vulnerable children.¹⁰
- It appears that Namibia is also conducting targeted campaigns to register refugees, aimed at facilitating the birth registration of children born to asylum seekers and refugees in its territory (see 'Birth registration' above).¹¹

Assisted reproductive technologies and surrogacy:

- Surrogacy arrangements are not illegal in Namibia, nor does it have a protective legal framework.¹²
- However, it is worth mentioning the recent cases of cross-border surrogacy of a boy and two twin girls born in South Africa on the basis of surrogacy arrangements undertaken by a Namibian and Mexican same-sex couple resident in Namibia. In these cases, whilst the South Africa birth certificates clearly record both spouses as the babies' parents, Namibia did not issue Namibian travel documents for the twins, nor did it grant citizenship to the boy. The Ministry of Home Affairs has requested that the Namibian-national parent demonstrate that he is the biological father of the child, although this is not a requirement expected from heterosexual couples and even though Namibian legislation does not appear require a parent-child genetic link for official recognition. A number of claims have been raised in these cases: discrimination, the need for a careful determination of the children's best interests and granting of citizenship.¹³

Potential considerations:

- *What is the current status of the Civil Registration and Identification Bill?*
- *What has been the progress made on the birth registration of children in remote areas and of families on the move?*
- *What is being undertaken to ensure the creation and preservation of the identity and family relations of abandoned children?*
- *How are the children's rights to identity and origins fully safeguarded in potential domestic and cross-border surrogacy arrangements, in particular in the light of an absence of clear legal provisions?*



2 Modification of identity

Alternative care:

- The *Child Care and Protection Act* introduces a distinction between foster care and kinship care. Foster care now refers only to situations where children are placed by a court order with someone who is unrelated to them, while kinship care is the term for situations where children are placed with extended family members or close family friends. Persons, who wish to become foster parents, must be approved and listed on a register of prospective foster parents in advance of the placement of a child with them. Registering a kinship care agreement is a simpler process than obtaining a court order for foster care and acknowledges approaches to child care which are typical in Africa. While the placement may entail the transfer of parental rights and responsibilities, the foster parent has a duty to encourage the child to have contact with parents, extended family members and friends, unless such contact is prohibited by an order of the children's court or would not be in the child's best interests.¹⁴

Potential considerations:

- *What is being undertaken to ensure that any modification of a child's identity is duly justified in accordance with the law and the child's best interests?*
- *What actions are being implemented to accelerate the implementation of the law prohibiting child marriage and to overcome any remaining obstacles to the latter?*
- *Finally, what is being undertaken to ensure that migrant children's identities are preserved and to ensure that no child remains stateless or becomes at risk of statelessness?*

3 Falsification of identity

Adoption:

- There is limited reports of unethical or illegal adoptions in the country. However, some media report issues relating to 'illegal adoptions' in the San community, which continues 'to experience human rights violations, ethnic discrimination, unfair labour practice and illegal child adoption'. Indeed, it appears that 'people in neighbouring communities are taking San children from their parents through illegal child adoption and keeping them at their homes to look after their children or livestock without following the legal adoption processes as stipulated in Namibia's Child Care and Protection Act 3 of 2015'.¹⁵

Trafficking and exploitation:

- In 2021, Namibia made moderate advancement in efforts to eliminate the worst forms of child labour. The government substantially drafted an updated National Action Plan on Trafficking in Persons to guide responses to human trafficking, including of children. Children in Namibia are subjected to the worst forms of child labour, including in commercial sexual exploitation, sometimes as a result of human trafficking. Children also engage in domestic work and street work. Prevention and elimination of child labor are not integrated into key national policies. In addition, social programmes do not address child labour in agriculture and domestic work. In fact, the 2017–2022 Strategic Plan of the Ministry of Gender Equality, Poverty Eradication, and Social Welfare did not integrate child labor elimination strategies.¹⁶
- Children are trafficked within Namibia and from neighbouring countries, such as Angola, Zambia, Zimbabwe, and the Democratic Republic of the Congo, for forced labor in agriculture, domestic work, and commercial sexual exploitation. Traffickers subject Namibian children to sex trafficking and forced labor in agriculture, cattle herding, and domestic service. With the influx of more than 7,000 Angolan migrants fleeing severe drought and malnutrition in Southeastern Angola, Namibians increasingly employ Angolan children as domestic workers and cattle herders, who may be vulnerable to exploitation. Traffickers bring children from Angola and neighbouring

countries and subject them to sex trafficking and forced labor, particularly in agriculture, cattle herding, domestic servitude, street vending in Windhoek and other urban centers, and in the fishing industry. Zambian children migrate to work as cattle herders but may be subjected to forced labor. Furthermore, it is a common practice for parents to place their children in the care of relatives and kin relations for expanded education opportunities; in some cases, these children are subjected to forced labor. Children of the San and OvaZemba ethnic groups are particularly vulnerable to forced labor on farms and in homes.¹⁷

Child marriage:

- 7% of girls in Namibia are married before the age of 18 and 2% are married before their 15th birthday; and 1% of boys in Namibia are married before their 18th birthday. Girls as young as 13 years are reportedly forced into marriage in a number of ethnic groups in Namibia, including the Ovahimba, indigenous San groups and in Owambo, Kavango and Zambezi communities. The highest prevalence of child marriage is found in Kavango (38%), Kunene (24%), Zambezi (24%), Omaheke (23%), Otjozondjupa (23%) and Oshana (7%).¹⁸
- Under the *Married Persons Equality Act 1996*, which amends the 1961 Marriage Act, the minimum legal age of marriage is 18 years. However, under Article 24, girls and boys under 18 years can marry with the written permission of a Minister or any staff member in the Public Service authorised by the Minister. It must be noted that customary marriages are not recognised under Namibian law.
- According to an SDGs Baseline Report by the Namibia Statistics Agency, child marriage is declining. However, cases of child marriage could be underreported because many marriages are carried out under traditional arrangements with little documentation or official registration. Indeed, there is limited information on child marriage in Namibia, but available studies show that it is also exacerbated by:
 - *Harmful practices:* The practice of lobola (bride wealth) is still common in some regions of Namibia and it appears that cultural practices in Namibia perpetuate gender inequality and the notion that girls are the property of men. Humiliation and violence against young girls is sometimes used to enforce submission and obedience in preparation for child marriage;
 - *Gender norms:* Generally young girls in Namibia marry much older men, which further emphasises power and gender imbalances within marriage.
 - *Weak legal frameworks:* In Namibia, child marriages or statutory rape cases are seldom reported to authorities as they are often perpetrated by family members. When cases come to light, law enforcement authorities are lenient.
 - *Cultural norms:* The practice of tijramue, preparing girls for adulthood and marriage, is still common when girls reach puberty in the Kunene region, sikengein Zambezi and eengoma in Ohangwena region.¹⁹
- In 2017, the Ministry of Gender Equality and Child Welfare conducted a study into the extent of child marriages in Namibia with a view to inform the development of evidence-based policies, legal reform, resource mobilisation and programming. On the occasion of International Women's Day 2018, the Minister of Gender Equality and Child Welfare publicly condemned child marriage and called upon her nation to work towards ending child marriages in Namibia. The Government of Namibia launched the Namibia National Action Plan on Women, Peace and Security 2019-2024. The main priority areas of the plan include: the prevention of all forms of violence against women and children; the prevention of sexual and gender-based violence; and the protection of women and children against sexual and gender-based violence.²⁰

Potential considerations:

- *What is being undertaken to address potential illicit and fraudulent activities leading to illegal adoptions, including through the sale and trafficking of children?*
- *What actions are being undertaken to prevent child trafficking within Namibia and beyond its borders and to trace potential family relations, thereby promoting family reintegration?*
- *What actions are foreseen to implement any legislative provisions and safeguards to prevent child marriage?*



4 Preservation of identity and access to origins

Adoption:

- The Central Authority - the Ministry of Gender Equality, Poverty Eradication and Social Welfare – is responsible for preserving information concerning the child's origins and records used in the adoption process, for the tracing of biological parents and for counselling all the parties concerned as well as, in some cases, facilitate the introduction process. The information concerning the child's origins is preserved for 10 years within the Central Authority's Archive; after that, it is sent to the National Archive where it is kept indefinitely.
- The law allows the child to access his or her records after reaching the age of 18 years. Any other person make access the information if the Minister responsible for Child Welfare gives permission. If it is non-disclosing adoption, the identity of the biological parents is not shared with the child or adoptive parents. However, when the child turns 18, the Ministry provide psychosocial support to the biological parents as well as the child before such information is shared with either one of them. Indeed, counselling or other guidance / support is given to prepare the parties on the nature of information and how to establish and maintain contact; the country has stated that it has not developed any support for incomplete/non- existent adoption records.²¹
- The 1993 Convention on Intercountry Adoption entered into force in Namibia in 2016, but Namibia is currently not undertaking any intercountry adoptions.²²

Potential consideration:

- What information is kept on the child's original identity and family relations kept on his or her file?
- What is being undertaken in practice for adoptees to access their origins and to search for their biological families?
- How is the principle of subsidiarity implemented?

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