



Submission

to the

Department of

Home Affairs

on the

Draft Regulations on the Registration

of Births and Deaths, 2018

16 November 2018

1. The Catholic Parliamentary Liaison Office welcomes the opportunity to comment on the Draft Regulations on the Registration of Births and Deaths.
2. We confine our comment to the question of ‘confirmation of birth’ documents that the Department proposes to issue to ‘foreign’ children.
3. Nothing in the draft regulations explains or justifies the proposal to provide such children with a different, and inferior, form of birth certification.
4. It is clear that the envisaged ‘confirmation of birth’ document does not have the same legal status as a Birth Certificate. The latter is an official extract from the Population Register, while the former is merely a record of certain particulars.
5. Recent experience with the requirements around Unabridged Birth Certificates and travel have shown just how important it is for a child to have an official Birth Certificate. To refuse to provide such a certificate to a child simply because he or she is ‘foreign’ will inevitably out him or her at a serious disadvantage.
6. It is, with respect, nonsensical to require the parents of such a child to register its birth in their ‘country of citizenship’ and then to obtain a passport for it from that country. In the case of refugees and asylum seekers this could involve serious risks. In the case of other foreigners/migrants it might be financially impossible for them to travel either to their home country or to a mission of that country in South Africa.
7. Regardless of whether the parents are legally entitled to be in South Africa or not, and regardless of their citizenship status, their child enjoys elevated rights under our Constitution. Section 28(2), in particular, provides that “*a child’s best interests are of paramount importance in every matter concerning the child.*” It cannot be argued that “child” in this context means “a child of South African parents”. Neither can it be argued that it is in the best interests of a child to be given a ‘confirmation of birth’ document, rather than an official Birth Certificate.
8. The current proposal would therefore constitute unfair discrimination on the basis, *inter alia*, of nationality and/or birth.
9. The proposal also appears to contravene section 9(5) of the Births and Deaths Registration Act 51 of 1992, which provides that “*The person to whom notice of birth was given in terms of subsection (1), shall furnish the person who gave that notice with a birth certificate, or an acknowledgement of receipt of the notice of birth in the prescribed form, as the Director-General may determine.*” Subsection (1) requires notice of birth to be given regardless of the nationality or status of the child or its parents; and once such notice is given, either a Birth Certificate must be provided to them or,

as a preliminary step, an acknowledgement of receipt of notice of birth. There is no provision in the Act for a 'confirmation of birth' document to take the place of a Birth Certificate.

10. We are strongly of the view that the proposal violates the rights of the children concerned, and that it does so in ways that amount to unfair discrimination. We accordingly urge the Department to withdraw this proposal, and to ensure that all children born in South Africa, regardless of the nationality of their parents, are entitled to receive a Birth Certificate.

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