



Plot 390 Prof. Apolo Nsibambi Road, Namirembe, Kampala
Po Box 25603, Kampala
Tel: +256 312530683
Email: info@hrapf.org

SUBMISSION ON THE ISSUES PAPER FOR THE REVIEW OF THE BIRTHS AND DEATHS REGISTRATION ACT

1.0 INTRODUCTION

The Uganda Law Reform Commission (ULRC) is in the process of reviewing laws including The Births and Deaths Registration Act Cap 309. Human Rights Awareness and Promotion Forum (HRAPF) an organisation to ensure access to justice for all persons including marginalised groups, hereby makes its submissions on the issues raised in the Issues Paper.

2.0 SUBMISSION ON SELECTED PROVISIONS

2.1 Submission on Section 7 and 9

2.1.1 The provisions

Section 7(1): Within three months of the date of birth of a live child, the father or mother of the child shall register such particulars concerning the birth as may be prescribed with the registrar of the births and deaths registration district in which the child was born.

Section 9: Notwithstanding section 7, the father of a child, who is not a child by marriage, shall not be required to register particulars concerning the birth of the child, and no person shall be entered in the register as father of the child unless the father consents –

(a) by signing the register as father of the child; or

(b) by signing a consent in the prescribed form and forwarding it to the registrar of the births and deaths registration district in which the child was born.

2.1.2 The problem with the provisions

Whereas section 7(1) requires the father or mother of a live child to register the particulars of the birth, section 9 excludes a father of a child who is 'not a child by marriage'. Also no person shall be entered on the register as father of the child unless the father consents by signing the register or signing consent in the prescribed form and forwarding it to the Registrar.

This provision encourages men to disown children who are born out of wedlock. This is exacerbated when such a child is an intersex child as most fathers would not want to be associated with such children. This puts the child at risk of abandonment by the father, yet the child has a constitutional right under Article 34(1) of the Constitution to know and be cared for by his/her parents or those persons entitled to bring the child up. It would also give the father of an intersex child the leeway to avoid parental responsibility as defined in Section 6 of the Children's Act Cap 59.

Secondly, Section 9 has no justification in light of jurisprudence that has developed to the effect that children are children regardless of whether they are born in or out of wedlock. All persons are equal as provided for in Article 21 of the Constitution, and shall not be discriminated against on the grounds listed, which include marital status.

2.1.3 Recommendation

Section 9 should be deleted since Section 7 is sufficient to cover all children.

2.2 Submission on Section 12: Change of name of adult

2.2.1 The provision

Section 12. Change of name of adult.

(1) Any person, being over the age of twenty-one years or a widower, widow, divorced person or a married person, who wishes to change his or her name shall cause to be published in the Gazette a notice in the prescribed form of his or her intention to do so.

(2) Not less than seven days after the publication of the notice, the person intending to change his or her name may apply in the prescribed form to the registrar of the births and deaths registration district in which his or her birth is registered.

(3) The registrar shall, upon being satisfied that the requirements of this section have been carried out and upon payment of the prescribed fee, amend the register accordingly and shall sign and date the amendment.

2.2.2 The problem with the provision

This provision is problematic since it puts the age of maturity at 21 years, yet the Constitution establishes the age of consent to marriage at eighteen years. Section 2 of the Children's Act Cap 59 defines a child as someone below the age of eighteen. Therefore, the provision denies the persons the rights that accrue to adults including the right of the person to change his/her name without requiring consent.

Also the reference to 'married, divorced, a widower of a widow' in a provision concerning children is misplaced since the age of marriage in Article 31(1) of the Constitution, is eighteen years.

2.2.3 Recommendations

1. Amend the age at which a person is regarded as an adult from twenty-one years to eighteen years.
2. Delete reference to marriage, widowhood, or divorce because they are redundant for the age marriage is set at eighteen.

2.3 Submission on Section 13: Change of a name of a child

2.3.1 The Provision

Section 13. Change of name of child.

(1) The parents or guardian of any child under the age of twenty-one years who is not married, divorced, a widower or a widow may apply in the prescribed form to the registrar of the births and deaths registration district in which the birth of the child is registered to change the name of the child.

(2) The registrar shall, upon payment of the prescribed fee, amend the register accordingly and shall sign and date the amendment.

2.3.2 The problem with the provision

This provision is problematic since it regards a person who has reached the age of eighteen to be a child yet the Constitution establishes the age of consent to marriage at eighteen years. Section 2 of the Children's Act Cap 59 defines a child as someone below the age of eighteen. Therefore, the provision denies a person who has made eighteen years but who is not yet twenty one and who is for all other reasons an adult to be denied the right to change their name without the need for parental consent.

Also the provision seems to be making provision for persons who are below eighteen to be married. This is contrary to Article 31 of the Constitution, which gives the right to marry to only those who have reached the age of eighteen.

2.3.3 Recommendations

1. Amend the age at which a person is regarded as a child from below twenty one years to below eighteen years.
2. Delete reference to marriage, widowhood, or divorce because they are redundant for marriage can only be entered into by those who are above eighteen years.

2.4 Submission on Section 14:

2.4.1 The Provision

14. Change of sex of child.

If a child, after being registered, either through an operation or otherwise, changes from a female to a male or from a male to a female and the change is certified by a medical doctor, the registrar of the

births and deaths registration district in which the birth is registered shall, with the approval of the Registrar General and on the application of the parent or guardian of that child, alter the particulars of the child which appear on the births register.

2.4.2 The problem with the provision

The provision is problematic in the following respects:

1. It does not provide for change of sex for adults: The provision only expressly provides for change of sex of children. So, there is no procedure for adults to change their sex in the Births Register even if they have undergone an operation or otherwise changed their sex.
2. The decision to change the sex of the child lies entirely in the hands of the parents or guardian and the medical doctor: However, most intersex and transgender persons realise their sex during adulthood when certain developmental milestones have not been achieved. In most cases, surgeries have gone wrong and this has caused devastation since it is in most cases irreversible. Consenting to such decisions, should be done by a person who is a consenting adult, aware of the consequences of the change and ready to live with such consequences. It is unfair to place such a personal and life changing decision in the hands of a person not directly affected by it. There are of course some instances when a sex changing operation should be done as soon as possible and these include: situations where the life of the child is in danger or where there is a sex that clearly manifests itself as the sex of the child, the one that is dominant. That is why the option should still be available for children. But in instances where a child can develop normally without complications until they are of adult age, then they should be left to make the decision themselves as adults.
3. The provision only refers to sex change either through 'surgery or otherwise' and does not recognise change of gender without change of sex: Transgender people usually only change their gender without changing their sex, and yet identify with the sex, which corresponds with their gender roles. It should be noted that sex and gender are two different concepts. Sex is the natural or biological anatomy of a person while gender refers to the roles society attaches to a particular sex. So some people can change their gender without changing their sex. The Act should be such that this gender orientation/identification is reflected in the official records of the person. If a person identifies as a man, their records should be able to reflect this. Many transgender persons are arrested and accused of impersonation and fraud. This is because they identify as persons of a sex different from what is reflected in their official identification records.
4. There is no provision for recording a 'third gender or sex': Some people may not want to identify as male or female or men or women, or it is impossible to determine whether they are male or female using the conventional methods, or may not fit comfortably within any sex. These should be able to have their records amended to reflect the 'third gender/sex'. The Supreme Court of India recently in *National Legal*

Services Authority v Union of India and others, WRIT PETITION (CIVIL) NO.604 OF 2013 & WRIT PETITION (CIVIL) NO.400 OF 2012.directed the state to make provision for a third gender.

2.4.3 Recommendations

1. Provide a procedure for adults to have change of sex reflected on their birth documents.
2. The Act should only allow a parent/guardian to make a decision to change the sex of a child if the doctor certifies that the change is medically necessary. Decisions to change or determine sex of a child who cannot consent should not be made for them without pressing reasons.
3. The Act should make provision for transgender persons who want to change sex (as regards official records) but do not go through an operation as regards changing their sex biologically.
4. The Act should provide for a 'third gender/sex' for those who do not want to identify either as male or female or as men or women for various reasons.

3.0 CONCLUSION

The provisions above are the only problematic provisions identified by HRAPF. Registration of a person's birth is very crucial to the obtaining of all other documents including a passport. The process should allow changes to be easily reflected in the register. Also references to children should align with definition of the child under the Children's Act. The section on change of sex should include adults since it is a decision that should ordinarily be made by the person concerned. The Act should also include a provision that protects transgender persons and their gender identity as discussed above.