

30 June 2023

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RE: SUBMISSIONS THE NATIONAL IDENTIFICATION REGISTRATION BILL (2022)

INTRODUCTION

1. Lawyers for Human Rights (“LHR”) and Centre for Child Law (“CCL”) welcome the opportunity to make submissions on the National Identification and Registration Bill (hereinafter ‘The Bill’).
2. Lawyers for Human Rights (“LHR”) is an independent human rights organisation that employs a holistic approach to social justice and human rights enforcement in South Africa through strategic litigation, advocacy, law reform, human rights education, and community mobilization, and support. LHR operates a Statelessness project that advocates for the legal identity of all in South Africa and the eradication of childhood statelessness.
3. The Centre for Child (“CCL”) was established by the University of Pretoria in terms of a constitution. It is also a Law Clinic registered with the Legal Practice Council. Its main objective is to establish and promote child law and uphold the rights of children in South Africa, within an international and regional context, and in particular to use the law and litigation as an instrument to advance such interests.
4. These submissions are based on the two organisations’ extensive experience around access to legal identity and statelessness, as well as our consultations with and assistance provided to marginalised individuals, families, and communities, including children, who face barriers in accessing birth registration, identity documentation, citizenship, and legal status in South Africa.

SUMMARY

5. LHR and CCL is pleased to see that the Bill proposes provisions which allow for identity numbers which contain a non-binary gender marker; as well as the establishment of a database recording the details of non-nationals. We congratulate the Department of Home Affairs on these initiatives.
6. We wish to raise three main shortcomings in the Bill which we believe can be easily addressed. They are:
 - a. The requirement that a parent or guardian must make application for a minor's first ID card, without provisions for children's whose parent or guardian is not available.
 - b. The failure to make provision for the recording of non-national births in South Africa, and the re-issue of documents regarding their births.
 - c. The lack of provisions which set out constitutionally compliant procedures by which to verify, investigate and cancel certificates and ID cards in line with the right to just administrative action and the Promotion of Administrative Justice Act (2009).
7. Additional comments are made on general language, the objectives of the Bill in the context of South Africa's history, and the obligations to prevent statelessness and protect the best interests of the child.
8. A table is included on the last page which contains a summarized version of the suggested amendments.

GENERAL COMMENTS ON THE BILL

9. The Bill, like all legislation, must comply with South Africa's ***constitutional and international obligations***.
10. The Bill should consider international and regional standards, recommendations, and good practices, especially where they provide specific guidance on:

- a. the prevention of statelessness;
 - b. the promotion of legal identity for all in South Africa;
 - c. and the protection of the rights of children, including the best interests of the child.
11. **Language** used in law contributes to the narrative, the story a society tells itself, about the people it addresses. It influences how a society thinks about the humanity, or lack thereof, of certain people, and so it is important to consider carefully.
12. This Bill addresses both citizens and non-citizens. Where it refers to non-citizens, it uses the word “**foreigners**”. This terminology, we believe, entrenches a xenophobic narrative. Such a narrative denies the humanity of non-citizens and leads to violations of their rights to dignity, and even life in many instances, in South Africa.
13. South Africa has a duty to **prevent contemporary forms of racism, racial discrimination, xenophobia, and related intolerance**. The Special Rapporteur on this subject made the following comment in 2020:
- “Any human rights analysis of digital technologies must first grapple with the social, economic and political forces that shape their design and use, and with the individual and collective human interests and priorities at play that contribute to the racially discriminatory design and use of these technologies.”
14. In the spirit of “grappling with individual and collective human interests” in technological advances in identity tracking, the Preamble of the Bill should set the tone in line with the Constitutional cornerstone principle and right – **dignity**.
15. The Bill’s preamble already does so to an extent by establishing inclusion in a single, inclusive, and integrated national identification system to store the identity information “all citizens and foreigners within the Republic”. This aim is supported.
16. The preamble’s inclusive goal is however dampened by the use of the term “foreigners”, which bears negative connotations in South Africa. To promote belonging and respect, it is advisable to use the term “**non-citizen**”. This terminology is neutral in terms of belonging, a notion which in its absence breeds xenophobia.

17. In the same spirit it is advisable to make specific reference to certain vulnerable groups of non-nationals, including ***stateless persons, refugees, and asylum seekers***.
18. The Bill requires children to ***apply for ID cards from the age of 10 years*** (section 16(1)). We find this requirement rather impractical as a child, particularly a separated or unaccompanied child, cannot realistically not be expected to carry or even store an ID card. This requirement places an ***unnecessarily heavy burden*** upon children and ***exposes them to criminal prosecution*** in terms of the Bill if they do not comply. This is not in the best interests of the child and there seems to be no legitimate rationale.
19. The Bill ***criminalises the act of burying of a deceased person without registration of death***. We are concerned for the child who becomes responsible for the burial of a family member and becomes liable to prosecution. Where a child is made to be responsible for such matters for lack of adult support, ***it is not in the best interest of the child to place additional responsibilities on them and to expose them to criminal persecution if they fail***.
20. It is advisable to add references to the ***Child Justice Act (2008)*** wherever criminal liability is addressed, to ensure the interests of children are protected.
21. It is important to note that while the true extent of statelessness and lack of documentation has not been determined, in 2018, the World Bank reported ***approximately 15 million unregistered people in South Africa (encompassing South African citizens and non-citizens)***.
22. The ***accuracy and comprehensiveness of the identity management system*** relies on precise and complete primary data. South Africa has not yet achieved universal birth registration and universal legal identity for all individuals. Introducing a new modernization project without addressing historical shortcomings in the system may lead to further instances of individuals losing their legal identity or perpetuating the exclusion of those who have been entitled to it but are unable to access it. Therefore, it is imperative to prioritize the resolution of these barriers to ensure a robust and inclusive system of legal identity.

THE LEGACY OF COLONIALISM AND APARTHEID AND IMPLICATIONS ON STATELESSNESS AND LEGAL IDENTITY IN SOUTH AFRICA

23. Statelessness in South Africa, as in other Southern African countries, has its roots in the colonial history of the region and the enduring impact of apartheid. The civil registration and identity management systems inherited from the colonial and apartheid regimes were primarily designed to exert control over the “native” population rather than effective administration and safeguarding the rights of all.¹
24. Prior to 1994, South Africa operated with separate population registers and identity documents that were segregated based on racial classifications. Different documents and records existed for black people, white people, coloured people, and Indian people, as well as for the self-governing Transkei, Bophutatswana, Venda, and Ciskei states (commonly known as the TBVC states). These documents were referred to by various terms such as "reference books," "books of life," and "blue identity documents." The civil registration and identity management system during this time played a crucial role in enforcing the social, spatial, and economic injustices imposed by the apartheid government. Within this system, black people were positioned at the lowest rung of a hierarchical structure rooted in bigotry, and they bore the brunt of the discriminatory policies prevalent throughout the apartheid era.
25. The advent of the new democratic dispensation provided the impetus to redefine registration as a means of inclusion rather than exclusion, and to establish efficient civil registration and identity management systems. The forthcoming elections also necessitated the consolidation of the racially fragmented and manual-based registration systems into a single National Population Register under the purview of the Department of Home Affairs. However, even in the post-apartheid era, the enduring impact of apartheid's legacy and discrimination continues to influence matters concerning citizenship, legal identity, and documentation. It is essential to acknowledge and address this issue to rectify the injustices of the apartheid system and to craft policies that effectively respond to this reality.

¹ UN High Commissioner for Refugees (UNHCR), *Citizenship and Statelessness in the Member States of the Southern African Development Community*, December 2020, available at: <https://www.refworld.org/docid/6012a0d44.html> [accessed 25 February 2021]; also See <https://www.hrw.org/legacy/reports98/sareport/Adv2c.htm> and Breckenridge, K. (2014). *Biometric State: The Global Politics of Identification and Surveillance in South Africa, 1850 to the Present*. Cambridge: Cambridge University Press.

MAIN ISSUE 1 – FIRST TIME ID APPLICANTS

26. The Bill requires a **parent or guardian to make an application for a minor’s first ID card**, without making provision for children’s whose parent or guardian is not available.

*“Section 16(2) A minor making an application in terms of subsection (1) must be assisted by a **parent or guardian or any person who is duly authorised** to submit such an application on behalf of the minor.”*

27. Such a provision does not consider the fact **that about 5 million children (25%) in South Africa do not reside with a biological parent or legal guardian.**

28. LHR and CCL have both received **numerous requests for assistance** when denied their right to apply for an ID card without their parent. Although the requirement is only introduced in this Bill, it has been implemented in terms of an instruction from the Director-General since 2017 (a copy is attached marked “A”).

29. The children who request assistance include children:

- a. Whose parents are imprisoned;
- b. Who live with community or family members who are not formal guardians;
- c. Who are in child-headed households.

30. There is **no exception to this requirement or alternative provision** for children in these circumstances, and we have already seen the exclusion it causes. The requirement has already, and will continue to disproportionately affect vulnerable children, which amounts to unfair discrimination against children outside of a nuclear family structure.

31. Section 16(2) does refer to assistance by **“any person duly authorised”** but does not specify who such persons are and is ineffective as a result.

32. Where a child is denied an ID card, their **right to a name and a nationality from birth** (section 28 of the Constitution) is violated. This is a violation in itself, but also puts a child at **greater risk of statelessness** and is a violation of the **child’s right to have their identity preserved.**²

² Article 8 UN Convention on the Rights of the Child.

33. LHR has observed a concerning practice through its law clinics in which DHA offices refuse to accept first-time ID applications from children and adults if they are not accompanied by one or both parents, or a guardian, or an informant. The rationale given is to prevent “security breaches” in the system through verification. However, it is in fact resulting in unjust deprivation of IDs to South African citizens who are entitled to them. It excludes applicants whose parents are unavailable (due to death or abandonment), unwilling, or unable to accompany them in-person to the DHA offices.
34. Currently LHR represents 27 clients between the ages of 16 and 25 who are facing this predicament. In some of the cases, the DHA has referred the applicant to the Children’s Court or the Department of Social Development to obtain proof of guardianship, even when the applicant is of age of majority. In other cases, service is still refused even when the applicant provides a death certificate of a deceased parent. When the applicant and the living parent have different surnames, DHA officials advise them to "come with a relative with the same surname" or provide DNA test results as proof of relationship.
35. Two legal issues arise. Firstly, none of the applicants receive written reasons or a process for administrative review or appeal against the decision to refuse their applications, as required by the Promotion of Administrative Justice Act. They are merely informed verbally and sent back and forth between offices. Secondly, all these individuals have already been registered as South African citizens at birth. Section 28(2) of the Births and Deaths Registration Act confirms that their birth certificates serve as prima facie proof of their citizenship, but the DHA seeks to impose extra-legal requirements that compel citizens to re-prove their citizenship upon application for an ID.

MAIN ISSUE 2 – NO PROVISION FOR RECORD OF NON-NATIONAL BIRTHS IN SOUTH AFRICA

36. The establishment of a database for the details of non-citizens is commendable. There is one addition which could significantly increase its positive effects. That is the ***inclusion of recordings of non-citizen births in South Africa.***
37. The Births and Deaths Registration Act (BDRA) makes provision for every birth occurring in South Africa to be registered whether they are non-citizen or citizen births. It does not make provision for ***non-citizen births to be recorded in a central register.*** The issuance of

a hand-written birth certificate is considered the registration of the birth and no record is kept beyond the local office's one-line handwritten entry in a physical book.

38. LHR and CCL have provided legal assistance to numerous children and adults who have **lost their handwritten birth certificate** and who needed a reissued one. They were advised by the Department that a **handwritten birth certificate cannot be reissued**, or they treat the request as a new registration where a person must prove their place of birth again, years after the fact.
39. This lack of central record of all births may cause many children to be undocumented in South Africa. This causes an **extreme increase in their risk of statelessness**. This is not only a violation of their rights, but also makes them the responsibility of the South African state when they cannot prove a nationality.
40. **A birth certificate is crucial to establishing a nationality.** It records the place of birth, but also the identity of the parents. Without these a child will be unable to access their citizenship, whether South African or otherwise. **Stateless safeguards also become inaccessible to them.**
41. Keeping record of all non-citizen births in the database proposed by the Bill, will promote the child's right to a name and a nationality from birth as well as the child's **right to have their identity preserved.**
42. It is in the interest of the department to include non-citizen birth records in the database for the purpose of **verification of place of birth for the determination of eligibility for South African citizenship** in terms of section 2(2), 2(3) and 4(3) of the South African Citizenship Act (1995).

MAIN ISSUE 3 – LACK OF PROCESSES FOR VERIFICATION AND INVESTIGATION OF IDS

43. In section 13 the Bill allows for broad and vague process for “verification” of particulars and “cancellation” of IDs without the requisite safeguards against statelessness and violations of the **right not to be deprived of citizenship and to just administrative action.**
44. **Verification of particulars included in database** is regulated as follows:

Section 13. The Director-General may— (a) request any person to furnish the Director-General with proof of the correctness of the particulars which have been furnished in respect of such person in any document in terms of this Act; and (b) investigate or cause to be investigated any matter in respect of which particulars are required to be recorded in the database.

45. Section 24 makes provision for the ***DG to seize and cancel IDs without procedural safeguards or prescribed processes.***
46. These sections give broad powers to the DG to seriously affect a person’s access to their identity, citizenship, and immigration status, without procedural safeguards or formal procedures. This can potentially lead to violations of a person’s right not to be deprived citizenship and their right to just administrative action.
47. Recent court proceedings, in ***Mazibuko and others v The Minister of Home Affairs and others***, record at least ***100 persons’ stories of being unlawfully and arbitrarily deprived of their citizenship or immigration status, including their IDs.*** Both LHR and CCL have received and advised on these cases. It is illustrative of the serious effects a lack of fair processes can cause in practice.
48. We recommend that the Bill include process by which anyone whose particulars are suspected of being incorrectly recorded in the National Population Register and Database, whether by intentional action of the affected person or not, must be afforded the following procedural rights PRIOR to the cancellation of an ID:
- a. To be provided with a written notice of the decision to investigate, and upon finalisation potentially cancel an ID, including sufficient reasons for the decision;
 - b. To be afforded an opportunity to make representations in response to such a decision, this includes the right of the child to participate in proceedings which affect them, and for their views and best interests to be taken into account;
 - c. If after investigation and consideration of representations, a decision is made to cancel an ID, to be provided with written notice of such decision along with sufficient reasons in writing, including how the best interests and views of the child were accounted for;
 - d. To be informed in writing of their right to appeal such a decision and to be afforded the opportunity to make such an appeal, and to be given notice in writing with sufficient reasons in writing of the outcome.

49. Anything less than the above would be a violation of section 33 of the Constitution, the right to just administrative action.

VICTIMS OF ID BLOCKING

50. ID blocking refers to the cancellation or invalidation of an identity document by DHA due to administrative errors or suspected fraud. The DHA considers ID blocking as an "administrative tool" to safeguard the integrity of the National Population Register and rectify legacy issues inherited from the apartheid era and the transition to democracy.³

51. In a 2012 briefing by to the Portfolio on Home Affairs, the DHA explained the following:

- 23.1. Prior to 1994, reference book holders were assigned ID numbers without being informed and a pre-printed list of ID numbers was used to allocate identity documents. Consequently, many reference book holders applied for identity documents without using the pre-allocated ID numbers which resulted in misallocation and duplication of ID numbers. During that time, fingerprints were not captured making verification impossible.
- 23.2. In the late 1980s, electronic birth certificates with ID numbers were introduced but without fingerprints and manual fingerprint capture occurred alongside ID number recording in the National Population Register.
- 23.3. In 2002, the Home Affairs National Identity System (HANIS) was developed to convert and store the manually captured fingerprints, but it was not integrated with the National Population Register. During the conversion process some fingerprints could not be captured due to poor quality. In 2005, the digitization of manual records took place, incorporating them into the Automated Fingerprint Identification System (AFIS). Through this "back record conversion" the DHA began to identify thousands of duplicate ID cases (over 500 000 cases were identified

³ Department of Home Affairs progress report on status of duplicate documents, uncollected IDs and backlog permits case (14 august 2012). Available at: <https://pmg.org.za/committee-meeting/14682/>.

where more than one person shared an ID number or where one person had multiple ID numbers)⁴ and some fraudulent ID cases.

- 23.4. In 2012, the DHA then initiated a campaign to eliminate duplicate and fraudulently obtained ID numbers, publishing a list of over 20 000 ID numbers that would be blocked if affected persons did not come forward.
- 23.5. In 2013, the DHA announced the roll-out of new “smart ID cards” to replace the “green book” ID documents and that would be verifiable against fingerprints.⁵
24. The cases of blocked IDs have increased significantly over the years. As of December 2020, the Minister of Home Affairs reported that there were 813 343 cases of blocked IDs across various categories, including cases of duplication/multiplication and cases of alleged fraud or misrepresentation.⁶ Currently, LHR has reported over 100 unresolved cases of blocked IDs to the DHA. The primary concern is that there is that victims of ID blocking are not provided with due process. Their IDs are blocked without prior notification, an opportunity to make representations, and information on appealing or reviewing the decision to block the ID. To further compound matters, victims are effectively stripped of their South African citizenship and rendered stateless, particularly when the decision implies that the affected person is suspected to be an "illegal immigrant."
25. Considering the above, this Bill cannot be passed without putting into place proper procedural safeguards.

CONCLUSION AND RECOMMENDATIONS

26. While addressing long overdue issues in terms of updated and modernising the current identity record systems, the Bill contains significant gaps which need to be addressed.
27. The Bill in its entirety must be supplemented with considerations of, and protections of the best interest of the child. Where criminal liability is addressed, reference must be made to

⁴ https://www.gov.za/sites/default/files/gcis_document/201409/homeaffairsannrep20042005.pdf – The HANIS system has three component Identity Card, AFIS and System Integration.

⁵ DHA PMG presentation, L Muller 2013 Article, 2005 DHA annual report.

⁶ Question NW2763 to the Minister of Home Affairs by Ms. LF Tito (2 December 2020): Available at: <https://pmg.org.za/committee-question/15119/>.

the Child Justice Act. The principles of non-discrimination and child participation in procedures which affect children must be specifically included. These are basic minimums to pass constitutional muster on the rights of children.

28. The Act must make provision for the recording of all non-citizen births to protect the right of children to have their identity preserved, as well as the right of everyone to not be stateless (the right to a nationality), and the right not to be deprived of citizenship, through failure to provide access to proof of vital events, citizenship, and immigration status.
29. The right to administrative justice must be protected by the inclusion of procedural safeguards. Without these, the Bill cannot pass constitutional muster.
30. By complying with the above requirements, the Bill will comply with basic standards of international and domestic law.
31. The objective of the Bill is to ensure that everyone residing in South Africa is registered in a single, inclusive, and integrated national identification system. However, it fails to acknowledge the significant number of individuals who lack the necessary primary identity documents, such as birth certificates or national identity cards, that are essential for creating a comprehensive population register and database as outlined in the Bill. Without actively addressing the underlying barriers to obtaining documentation and resolving existing claims to nationality or legal identity, the Bill will only further marginalize and burden an already vulnerable group of people. The DHA must actively include and prioritize those who have historically been overlooked, uncounted, and excluded.
32. LHR and CCL recommend that the Department consider including provisions which address statelessness by recording the particulars of stateless persons. And to prevent statelessness amongst legal citizens by making provision for access to information in the NPR and database which allow persons to apply for nationality determination processes, including in terms of section 15 and 16 of the South African Citizenship Act on citizenship in case of doubt for those with inadequate documentary evidence of their SA citizenship.
33. We are available for further enquiries, and we request to make oral submission should this be a possibility in future.

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Table of sections

Section	Existing wording in Bill	LHR & CCL proposed wording (additions underlined)	Reasoning
Preamble, 3(b), 7(1), 10(1)(b), 12(1)	“foreigners”	“non-citizens”	To promote narratives which promote the humanity of non-citizens, and prevent xenophobia.
Section 1	“ verification ” means the process by which the accuracy of identity information is established.	“ verification ” means the process by which the accuracy of identity information is established <u>in terms of section 13</u> .	“Verification” is broad and vague. Link to section 13, which must also be amended to include PAJA compliant processes.
Section 1	(No definition for permanent resident).	“ permanent resident ” means a non-citizen who has been granted the rights of permanent residence, in terms of the Immigration Act (2002) and a recognised refugee in terms of the Refugees Act (1998).	To prevent confusion about where refugees fit in in the Act.
Section 3	3. This Act applies to— (b) foreigners who sojourn temporarily	3. This Act applies to— (b) <u>non-citizens who are born in the Republic, and those</u> who sojourn temporarily within the	The Act should make provision for the recording in the database of non-

	within the Republic for a prescribed period.	Republic for a prescribed period.	citizen births in the Republic.
Section 4(c)	4. The objects of this Act are to— (c) criminalise the act of burying of a deceased person without registration of death.	4. The objects of this Act are to— (c) criminalise the act of burying of a deceased person without registration of death.	This provision will affect those living in poverty and in rural places disproportionately and lead to unlawful discrimination.
Section 10(i)(h)	10. (1) The Director-General must, in respect of any person referred to in section 3(a), include in the population register the following relevant particulars available to him or her— (h) on permanent departure of that person from the Republic, the date of such departure, and particulars concerning the cancellation in the prescribed manner of the identity card or that card with the exception of the prescribed section thereof if any;	10. (1) The Director-General must, in respect of any person referred to in section 3(a), include in the population register the following relevant particulars available to him or her— (h) on permanent departure of that person from the Republic, the date of such departure, and particulars concerning the cancellation in the prescribed manner of the identity card or that card with the exception of the prescribed section thereof if any;	The permanent departure of a person is not determinable until the end of a person's life, and is irrelevant to this Bill or any other legislation, and cannot legally lead to the cancellation of an ID. If this section is meant to refer to loss or deprivation of citizenship, permanent residence, or refugee status it should specify.
Section 11(d)	11. The Director-General must, in respect of any person referred to in section 3(b) include in the database the following relevant particulars available to the Director-General— (d) particulars concerning passports and travel documents, <u>and birth certificate</u> ;	11. The Director-General must, in respect of any person referred to in section 3(b) include in the database the following relevant particulars available to the Director-General— (d) particulars concerning passports and travel documents, <u>and birth certificate</u> ;	Inclusion of non-citizen births in South Africa to ensure possibility of re-issuance and to enable verification of birth in the Republic for purposes of naturalisation and

	passports and travel documents;		registration of South African citizenship.
Section 13	<p>13. The Director-General may— (a) request any person to furnish the Director-General with proof of the correctness of the particulars which have been furnished in respect of such person in any document in terms of this Act; and (b) investigate or cause to be investigated any matter in respect of which particulars are required to be recorded in the database.</p>	<p>13. The Director-General may— (a) <u>in the course of an investigation</u> request any person <u>being investigated</u> to furnish the Director-General with proof of the correctness of the particulars which have been furnished in respect of such person in any document in terms of this Act; and (b) investigate or cause to be investigated any matter in respect of which particulars are required to be recorded in the database.</p> <p><u>13(2) In the course of such investigation, and before any action is taken, including marking or cancellation of an ID, the person being investigated must:</u></p> <ol style="list-style-type: none"> a. <u>Be provided with a written notice of the decision to investigate, and upon finalisation potentially cancel an ID, including sufficient reasons for the decision;</u> b. <u>Be afforded an opportunity to make representations in response to such a decision, this includes the right of the child to participate in proceedings which affect them, and for their views and best</u> 	<p>Procedural safeguards are required as discussed in detail above.</p>

		<p><u>interests to be taken into account;</u></p> <p>c. <u>If after investigation and consideration of representations, a decision is made to cancel an ID, be provided with written notice of such decision along with sufficient reasons in writing, including how the best interests and views of the child were accounted for;</u></p> <p>d. <u>Be informed in writing of their right to appeal such a decision and to be afforded the opportunity to make such an appeal, and to be given notice in writing with sufficient reasons in writing of the outcome.</u></p>	
Section 15(d) and (f)	<p>15. An identity card may contain only the following relevant particulars in respect of the person to whom it is issued— (d) prescribed naturalisation information; and (f) any other particulars in the population register determined by the Minister by notice in the <i>Gazette</i> as particulars which, subject to the</p>	<p>15. An identity card may contain only the following relevant particulars in respect of the person to whom it is issued— (d) prescribed naturalisation information; and (f) any other particulars in the population register, <u>except gender and race</u>, determined by the Minister by notice in the <i>Gazette</i> as particulars which, subject to the conditions, exceptions or exemptions if any, mentioned in the notice, may be included in identity cards.</p>	<p>The naturalisation particulars of the person is irrelevant to any conceivable ID card purpose and only provides opportunity for discrimination.</p> <p>The race and gender of the person should never be allowed to be shown on the ID card, as it creates opportunity for discrimination.</p>

	conditions, exceptions or exemptions if any, mentioned in the notice, may be included in identity cards.		
Section 16	<p>16. (1) A person whose particulars are included in the database and who has attained the age of 10 years must, in the prescribed form and within 30 days from the date when such person attains the age of 10 years, apply to the Director-General for an identity card to be issued to him or her.</p> <p>(2) A minor making an application in terms of subsection (1) must be assisted by a parent or guardian or any person who is duly authorised to submit such an application on behalf of the minor.</p>	<p>16. (1) A person whose particulars are included in the database and who has attained the age of 10 <u>16</u> years must, in the prescribed form and within 30 days from the date when such person attains the age of 10 <u>16</u> years, apply to the Director-General for an identity card to be issued to him or her.</p> <p>(2) A minor making an application in terms of subsection (1) must be assisted by a parent or guardian or any person who is duly authorised to submit such an application on behalf of the minor. <u>Where a parent or guardian is not available, an affidavit setting out the reasons for the unavailability of a parent or guardian may be provided instead.</u></p>	<p>Requiring 10 year old children to apply for and hold an ID card is an unjustifiably heavy administrative burden on the child.</p> <p>Children whose parents are not available must be included by allowing them to submit affidavits.</p>
Section 24	<p>24. (2) If the identity card, temporary identity certificate or certificate referred to in subsection (1) is not handed over or sent to the Director-General in accordance with that subsection, the Director-General may,</p>	<p>24. (2) If the identity card, temporary identity certificate or certificate referred to in subsection (1) is not handed over or sent to the Director-General in accordance with that subsection, the Director-General may, in the prescribed manner, obtain restoration thereof or seize it. (3) If, in</p>	<p>Procedural safeguards must be included to ensure protection of rights.</p>

	<p>in the prescribed manner, obtain restoration thereof or seize it. (3) If, in terms of this section, the Director-General has obtained possession of— (a) an identity card, he or she must, subject to section 16, without delay, cancel it in the prescribed manner and replace it with a corrected identity card; or (b) a temporary identity certificate or any certificate, he or she must, without delay— (i) effect the necessary corrections directly on the temporary identity certificate or other certificate, as the case may be, if in his or her opinion it can be done; or (ii) in the prescribed manner, cancel and replace it with a corrected temporary identity certificate or appropriate certificate, as the case may be. (4) When it comes to the attention of the Director-General that an identity card has been issued to a person whose name is not required in terms of section 3 to be</p>	<p>terms of this section, the Director-General has obtained possession of— (a) an identity card, he or she must, subject to section 16, without delay, cancel it in the prescribed manner and replace it with a corrected identity card; or (b) a temporary identity certificate or any certificate, he or she must, without delay— (i) effect the necessary corrections directly on the temporary identity certificate or other certificate, as the case may be, if in his or her opinion it can be done; or (ii) in the prescribed manner, cancel and replace it with a corrected temporary identity certificate or appropriate certificate, as the case may be. (4) When it comes to the attention of the Director-General that an identity card has been issued to a person whose name is not required in terms of section 3 to be included in the population register, the Director-General must request that person to return the identity card for cancellation.</p> <p>Prior to any seizure, correction or cancellation in terms of this section, an affected person must:</p> <p>a. <u>Be provided with a written notice of the decision to investigate, and upon finalisation</u></p>	
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	<p>included in the population register, the Director-General must request that person to return the identity card for cancellation.</p>	<p><u>potentially cancel an ID, including sufficient reasons for the decision;</u></p> <p>b. <u>Be afforded an opportunity to make representations in response to such a decision, this includes the right of the child to participate in proceedings which affect them, and for their views and best interests to be taken into account;</u></p> <p>c. <u>If after investigation and consideration of representations, a decision is made to cancel an ID, be provided with written notice of such decision along with sufficient reasons in writing, including how the best interests and views of the child were accounted for;</u></p> <p>d. <u>Be informed in writing of their right to appeal such a decision and to be afforded the opportunity to make such an appeal, and to be given notice in writing with sufficient reasons in writing of the outcome.</u></p>	
Section 26	Offences and penalties 26.	Offences and penalties 26.	Children require special protection in

		Wherever a child is liable to prosecution in terms of this section, the Child Justice Act shall apply.	cases of criminal liability.
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