

The Hidden Struggles of Queer Parents Registering Births in South Africa

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INTRODUCTION

Registering the birth of a child is an essential process that establishes the legal relationship between parents and their children, however, this seemingly simple act of administration often becomes a very complicated and emotionally straining matter to deal with for parents in the queer community, in South Africa.

Despite the progressive legal framework in South Africa that recognises and protects the rights of queer people and families, the implementation of these laws in practice often falls short. This particularly evinced by the Department of Home Affairs' method of registration of queer parents on birth certificates.

This article seeks to examine the systemic barriers faced by queer parents during this process and the impact of same on queer families. It highlights the need for urgent reform to ensure that the rights of all parents are respected and protected.

THE LEGAL LANDSCAPE AND LGBTQ+ RIGHTS IN SOUTH AFRICA

Our country's legal framework is globally renowned for its commitment to non-discrimination and equality, specifically in relation to the rights of members of the queer community. The Constitution of the Republic of South Africa, through its Bill of Rights, prohibits any unfair discrimination based on sexual orientation and guarantees equality before the law. Precedent setting rulings such as the *National Coalition for Gay and Lesbian Equality v. Minister of Justice and Minister of Home Affairs v. Fourie*, further affirm the nation's commitment to providing extensive protections from discrimination to queer individuals, which include (amongst others) protection when it comes to rights pertaining to marriage and child adoption. In addition thereto, the Civil Union Act and the Children's Act provide the legal basis for queer couples to be recognised as parents.

However, despite these numerous protections afforded to the LGBTQ+ community, the community continues to face challenges when registering as parents at the

Department of Home Affairs, which challenges are rooted in the inconsistencies and often discriminatory practices in the administrative process.

CHALLENGES FACED BY QUEER PARENTS IN BIRTH REGISTRATION

One of the biggest obstacles faced by queer parents when registering the birth of a child is the inadequacy of the forms and required documentation at Home Affairs. Traditionally, birth registration forms have been created with heteronormative presumptions in mind. An example of this is the BI-154 form which asks for the "Particulars of Father" and "Particulars of Mother". These forms can be confusing and alienating for same-sex couples since they do not recognise the reality of two mothers or fathers, and because of this, many queer parents struggle to have their families appropriately acknowledged. Despite there being efforts to develop more inclusive form, the implementation thereof has been lacklustre and inconsistently applied across various jurisdictions.

POSSIBLE PERSONAL PREJUDICES

Another important concern is the discrimination and prejudice that queer parents may face while dealing with Home Affairs representatives. Notwithstanding the legal safeguards, certain authorities could harbour personal prejudices towards members of the queer community, which could result in unwarranted examination, delays, or outright denials to register both parents on the birth certificate. These kinds of encounters may be quite emotionally taxing, adding to the strain that comes with juggling the demands of parenthood.

INSUFFICIENT KNOWLEDGE AND EXPERIENCE

Staff members at Home Affairs can also be insufficiently trained to cater to the needs and rights of LGBTQ families, which adds to the difficulties encountered by queer parents. This gap in knowledge often results in misinformation being provided to queer parents, incorrect processing of birth registrations, and a general lack of empathy and understanding for queer families.

The lack of uniform protocols that consider the diversity in LGBTQI+ families (instead of focusing only on the heterogeneity of the typical South African family) results in disparities in the treatment of queer parents at different Home Affairs offices.

IMPACT ON QUEER FAMILIES

For queer families, the challenges of registering a child's birth can have far-reaching effects. Firstly, issues with parental rights, inheritance, and service access can become complicated legally and socially if one parent is not listed on the child's birth certificate. Furthermore, the psychological toll that prejudice takes during such a significant life event can strain relationships and erode the legitimacy and sense of security that every family ought to have.

The repercussions of these administrative issues are equally significant for youth and children born of queer families. A birth certificate that is inaccurate about their biological parents can cause anxiety, shame, and a feeling of alienation. There may also be consequences insofar as the ability to claim maintenance is concerned, as well as immigration and identity issues pertaining to a child's citizenry.

RECOMMENDED ADJUSTMENTS TO OVERCOME THESE ISSUES

- a. The revision of forms - To better represent the variety of family structures in South Africa, Home Affairs should update its forms and paperwork. In order to represent the reality of LGBTQI+ families, it is imperative that all forms utilize gender-neutral wording and offer alternatives for identifying two moms, two fathers, or other combinations.
- b. Employee Sensitization and Training - Staff members working at Home Affairs must get extensive training on LGBTQI+ rights and birth registration laws, eliminating prejudices, encouraging empathy, and making sure that every family is treated with respect and decency should be the main goals of this program.
- c. Normative Processes - All Home Affairs offices should use the same protocols in order to guarantee uniformity in the processing of birth registrations for parents who identify as queer. These policies should be made to guard against discrimination and guarantee that every family's legal rights are upheld without needless hiccups or delays. Where there are sound and non-discriminatory reasons for adjusting the process of registration, it must be apparent to the public what these reasons are, to encourage transparency and avoid incorrect understandings of the reason for the differentiation.

- d. Legal Guidance and Assistance - In order to assist parents with navigating the procedure and resolving any challenges that may come up, support services like counselling and speedy and free legal assistance should also be made available.
- e. Amendment of definitions in pre-existing laws - It might be necessary to re-define certain phrases in pre-existing laws. For example, in certain laws (such as the Children's Act) phrases like "mother" could have two distinct meanings – the biological birth mother, or the female care-giving custodian of parental rights and responsibilities. Although one person typically fulfils both these roles, it may not be the case in a LGBTQI+ family. An investigation into the different relationship types, and how our pre-existing legislation can be amended to accommodate these non-typical relationships, ought to be carried out and the recommendations implemented as soon as possible.

CONCLUSION

Although there has been progress in South Africa toward the acknowledgement and defence of the rights of queer people, there is still much work to be done in terms of putting these rights into practice, especially when it comes to the recognition of LGBTQI+ families by state entities like Home Affairs. In addition to the undermining of their legal rights, the difficulties queer parents encounter at Home Affairs place needless emotional and social strain on their families. Because of the Constitution's Bill of Rights, we can guarantee that all families, regardless of their makeup, receive the respect and dignity they deserve by tackling these issues through focused reforms.

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