

# Foreign children in care in the Western Cape Province



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September 2015



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## Acknowledgments

The authors wish to thank Miranda Madikane, Giulia Treves, Lena Opfermann and Kathryn Hoeflich for their valuable contributions to the study. We also thank the Department of Social Development in the Western Cape, for allowing and supporting the study.<sup>1</sup> Photographs were provided by Simon Taylor. At the time of writing, the body of this report was under review for scholarly publication in the Potchefstroom Electronic Law Journal for the Faculty of Law, North-West University, Potchefstroom, South Africa.

## The Scalabrini Centre

The Scalabrini Centre of Cape Town is a non-profit organization providing services to asylum seekers and refugees in the Western Cape Province of South Africa. The centre is registered with the South African Department of Social Development as a non-profit organisation (021-079 NPO), as a youth and child care centre (C6887) and as a Public Benefit Organisation with the South African Revenue Services (930012808) and governed by a Trust (IT2746/2006). Auditors: CAP Chartered Accountants

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<sup>1</sup> The researchers obtained ethics clearance from the UWC Research Ethics Committee and the Provincial Department of Social Development (DSD) Research Ethics Committee in order to conduct this study.

## I. Introduction

Life in South Africa is centered around identification documentation and a person's ability to exercise basic Constitutional rights depends invariably on his or her documentation status. In the same vein, nationality has been said to be '*the right to have rights*'<sup>2</sup>, implying an inextricable connection between citizenship and human rights.

Figures from South Africa's 2011 population census suggested that 3.3% — or about 1.7-million — of the country's 51.7-million population were 'non-South African' citizens.<sup>3</sup> The number of unaccompanied and separated children in South Africa is extremely difficult to estimate, as many cross borders irregularly and no registration mechanism exists to record the entry and particulars of undocumented<sup>4</sup>, unaccompanied or separated foreign children. 'Unaccompanied children' are defined as children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. 'Separated children' refer to children who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives.<sup>5</sup>

Through the Scalabrini Centre's work with migrant and refugee communities in Cape Town, it became apparent that there is a need amongst social workers and service providers within the child protection system to understand the different positions and particular challenges faced by foreign children in need of care and protection. This gave rise to the idea to conduct an inclusive survey of the cases of foreign children placed in Child- and Youth Care Centres (CYCC) across South Africa's Western Cape Province.<sup>6</sup> The aim of the study was to collect and record evidence which would inform conclusions and recommendations to assist service providers in their approach to the cases of migrant children.

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<sup>2</sup> Independent Commission on International Humanitarian Issues, *Winning the Human Race?*, 1988, p. 107, quoted in Lawyers for Human Rights (2014) *Promoting citizenship and preventing statelessness in South Africa: A practitioner's guide*, p. 150

<sup>3</sup> Crush, J. (2011) Southern African Migration Programme, *Complex movements: Migration movements, confused responses: Labour in South Africa*, p.17, <http://dspace.africaportal.org/jspui/bitstream/123456789/32627/1/SAMP%20%20Complex%20Movements,%20Confused%20Responses.pdf?1> [Accessed 9 March 2015]

<sup>4</sup> In the context of migration, an undocumented person refers to a non-citizen who has no legal immigration status in South Africa.

<sup>5</sup> UN Committee on the Rights of the Child (CRC), *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, <http://www.refworld.org/docid/42dd174b4.html> [Accessed 11 June 2015]

<sup>6</sup> A Child and Youth Care Centre is a facility providing residential care to more than six children outside the child's family environment, and which provides certain therapeutic programmes. Section 191 of the Children's Act No. 38 of 2005.

The study purports to analyze the position of unaccompanied- and separated foreign children within the context of refugee- and immigration law, and explores the area where migration meets children's rights. It looks at the profile of foreign children accommodated in CYCCs, the children's reasons for migration, the circumstances around placement in residential care institutions, and looks at efforts made by social workers to trace and reunify foreign children with their families. Lastly, the children's documentation status and pathways to durable documentation solutions is assessed. The study will conclude with key findings and recommendations to relevant authorities.

## **II. Methodology and limitations**

From January to February 2015, it was established that 20 out of 50 CYCCs operational across the Western Cape Province provided services to 109 foreign children. In terms of the Children's Act No. 38 of 2005, a child is legally defined as a person under the age of 18. However, for the purposes of this study, the term 'foreign child' or 'foreign children' will be used to refer to the non-citizens who accessed the services of CYCCs, despite being over the age of 18. It was decided that it would be relevant to include them, as they continued to receive financial and social support from the CYCCs in which they were placed prior to turning 18. Foreign children represented 4% of the total number of children in care in the Province. Interviews were conducted with residential social workers attached to the particular CYCCs to gather information on individual cases. The study was limited insofar as the designated social workers appointed to the cases, by the Department of Social Development (DSD), and children themselves, were not interviewed. Secure care facilities were not included in the survey.<sup>7</sup>

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<sup>7</sup> Secure care facilities accommodate children in conflict with the law.

### III. Key findings

- During the research period, 50 CYCCs contacted by the authors had the capacity to accommodate 2 688 individuals. At 109, foreign children represented 4% of all children placed in care in the Province.
- The placement of foreign children is concentrated around the Cape Town Metropolitan area and does not extend across the Province.
- All children surveyed originated from African countries.
- Ages varied between 2 and 22 years with the largest age group being between 11 and 15 years old; gender was disaggregated as 60% male and 40% female.
- Of the children, 61% had been resident in South Africa for over five years. In 16% of cases, it was unknown for how long the child had been in the country.
- The children had spent lengthy periods in care. It was found that 41% children had resided in a CYCC for over five years. Of this group, 13% children had resided in a CYCC for more than eight years.
- All but three children of school-going age attended school in South Africa.
- A total of 56% of children entered South Africa accompanied by a parent (43%) or an adult family member (13%). Few children took the decision to migrate themselves (7%).
- The most common reason for placement in care was the inability of the parent or caregiver to provide financially for the child (33%). Other reasons included abandonment (22%) and neglect (14%).
- At 51%, just over half of children held documentation issued under the Refugees Act, mainly in their capacity as dependents of a parent or another adult.
- Few children appeared to qualify for refugee status independently (estimated at 8%). Fewer still had court orders issued under Section 32 of the Refugees Act (2%) - a statutory requirement for the submission of an asylum application by an unaccompanied minor.
- Two cases of suspected trafficking were under investigation.
- A large number of children had no birth certificate or document which would enable a claim to any particular nationality (80%). Based on factors such as irregular migration, lack of enabling documentation and lost contact with family, it was estimated that 15% of children were at some risk of statelessness.
- Nineteen children (17%) were born to foreign parents in South Africa, nine of whom did not have a birth certificate.
- No mechanism for the registration or documentation of undocumented, unaccompanied or separated foreign children exists in South Africa.
- Family reunification efforts were made systematically by residential social workers in cases where at least one parent resided in South Africa. However, cross-border family tracing or reunification was rarely pursued. The few attempts that residential social workers had made at tracing families internationally had not yielded any positive results.
- Social workers did not consider or pursue placement in alternative care in the country of origin as a possible solution, often due to a lack of information, and logistical or financial constraints.

#### IV. South African Legal Framework

The legislative frameworks governing the entry, stay and departure of foreigners, to and from the Republic, comprise of the Immigration Act No. 13 of 2002 and the Refugees Act No. 120 of 1998, accompanied by respective Regulations. Other relevant legislation includes the Bill of Rights, the Births and Deaths Registration Act No. 51 of 1992 and the Citizenship Act No. 88 of 1995. The Children's Act No. 38 of 2005 applies to all children within South Africa, no matter their nationality and documentation status. Procedures for approaching the cases of foreign unaccompanied and separated children are set out in *Guidelines on Separated and Unaccompanied Children Outside their Country of Origin in South Africa* (2009).<sup>8</sup> According hereto, appropriate documentation solutions should be explored as soon as the child's immediate safety is secured.<sup>9</sup> The child protection framework is informed by binding instruments of international law including the UN Convention on the Rights of the Child of 1989 and the African Charter on the Rights and Welfare of the Child of 1990.

The Refugees Act and Regulations applies to foreign nationals who enter South Africa with the intention to apply for asylum and sets forth three categories of applicants who qualify for refugee status. The first category is defined in terms of Section 3(a) of the Refugees Act which states that a *person qualifies for refugee status if that person is outside, and unable or unwilling to return to their country of origin, owing to a well-founded fear of being persecuted by reasons of his or her race, tribe, religion, nationality, political opinion or membership of a particular social group, is unable or unwilling to avail himself or herself of the protection of that country.* Section 3(b) of the Refugees Act applies to a person who flees his or her place of habitual residence as a result of external occupation, foreign domination, or events seriously disrupting public order. The third category pertains to the dependents of the asylum seeker or refugee, to whom a similar status is extended. This is discussed in more detail below.

Minor children are not able to apply for asylum without the intervention of a social worker and children's court. This is clear from Section 32 of the Refugees Act, read together with Section 46(1)(h)(viii) of the Children's Act:

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<sup>8</sup> During July 2015, DSD released 'Standing Operating Procedures for the tracing, reunification or alternative care placements of unaccompanied and separated children in South Africa' (SOPs).

<sup>9</sup> Department of Social Development (2009) *Guidelines on unaccompanied and separated children outside their country of origin in South Africa*, paragraph 6.2

*32(1) Any unaccompanied child who is found under circumstances that clearly indicate that he or she is an asylum seeker and a child in need of care contemplated in the Children's Act, 2005 (Act No. 38 of 2005), must—*

*(a) be issued with an asylum seeker permit in terms of section 22; and*

*(b) in the prescribed manner, be brought before the Children's Court in the district in which he or she was found, to be dealt with in terms of the Children's Act, 2005.*

*46(1) A children's court may make the following orders:*

*(h) a child protection order, which includes an order –*

*(viii) instructing an organ of state to assist a child in obtaining access to a public service to which the child is entitled...*

Over past years, practices at Refugee Reception Offices (RROs) had been inconsistent and the research revealed that some children had been able to apply for asylum without having the required order, whilst others were not able to.

Section 3(c) of the Refugees Act is of particular importance to the biological children of an asylum seeker or refugee, as it allows for the dependent to derive a similar status. The purpose of this provision is to preserve family unity.<sup>10</sup> A 'dependent' is defined to include the unmarried, dependent child of the asylum applicant.<sup>11</sup> In July 2015, the North Gauteng High Court ruled that the definition of 'dependent' be broadened to include separated children in the care of a relative other than a parent. The Department of Home Affairs (DHA) was ordered to inform RROs around the country by way of departmental directive to issue the relevant permits to separated children as dependents of their caregivers.<sup>12</sup> At the time of writing, the ruling was not yet implemented at the Cape Town RRO.<sup>13</sup>

It must be born in mind that all foreign children are not necessarily refugee children. If it appears that the child does not qualify for refugee status, his or her stay should be regularized in terms of the Immigration Act and Regulations. Temporary residence categories available to children are

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<sup>10</sup> Khan, F & Schreier, T (Eds) (2014) *Refugee Law in South Africa*, Juta, p. 214 - 216

<sup>11</sup> Section 1 of the Refugees Act No. 130 of 1998

<sup>12</sup> *Bulambo Biakomboka Mubake and Others v Minister of Home Affairs and Others*, Gauteng Division of the High Court, Case No. 72342/2012 (Unreported judgment), [http://www.lhr.org.za/sites/lhr.org.za/files/bulambo\\_\\_mubake\\_judgment.pdf](http://www.lhr.org.za/sites/lhr.org.za/files/bulambo__mubake_judgment.pdf) [Accessed 15 July 2015]

<sup>13</sup> During August 2015 the Refugees Act came under review and suggested that the definition of 'dependent' be narrowed further.

limited to study visas or relative's visas, depending on their circumstances. The unaccompanied or separated child is not likely to meet the requirements either of these.

With regards to the entry of undocumented foreign children to South Africa – there is presently no registration mechanism in place to record the number or profile of unaccompanied or separated children. Additionally, Immigration Regulations which came into force in June 2015, make it effectively impossible for foreign children to enter South Africa via formal entry points unless they are in possession of valid travel documents, an unabridged birth certificate and written, notarized consent to travel from their parents.<sup>14</sup> It is not clear to which extent this will apply to asylum seekers and more importantly, how this will be applied at border posts to adults arriving with children who are not in possession of the required documents.

The Children's Act 38 of 2005 and Regulations provide the framework for the placement of children in alternative care.<sup>15</sup> A child is placed in alternative care by a Children's Court, if it is found that he or she is in need of care and protection.<sup>16</sup> Section 150 of the Children's Act sets forth a list of indicators according to which the child's circumstances must be assessed to determine whether he or she is considered to be in need of care and protection. In *Centre for Child Law and Another v Minister of Home Affairs and Others*, the court established the link between migration and the child protection system by allowing for unaccompanied foreign children to be treated in accordance with the then Child Care Act 74 of 1983.<sup>17</sup> DSD's Guidelines state that *unaccompanied [foreign] children should be assumed to be children 'in need of care and protection'*.<sup>18</sup> Through placement in care, the unaccompanied and separated child's safety and ability to access basic rights such as the right to basic education, shelter and health care is assured. In the absence of any form of documentation, a court ordered age estimation, or the placement order itself, is often employed as a form of identification documentation which allows the child to access public services. However, the placement order itself does not confer legal stay in terms of the Immigration- or Refugees Act.

## V. Research findings

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<sup>14</sup> Regulation 6(12)(a)-(c) of the Immigration Regulations 2014

<sup>15</sup> Alternative care includes placement: - in foster care, in the care of a CYCC, or temporary safe care. See section 167 of the Children's Act No. 38 of 2005.

<sup>16</sup> Section 156 of the Children's Act No. 38 of 2005.

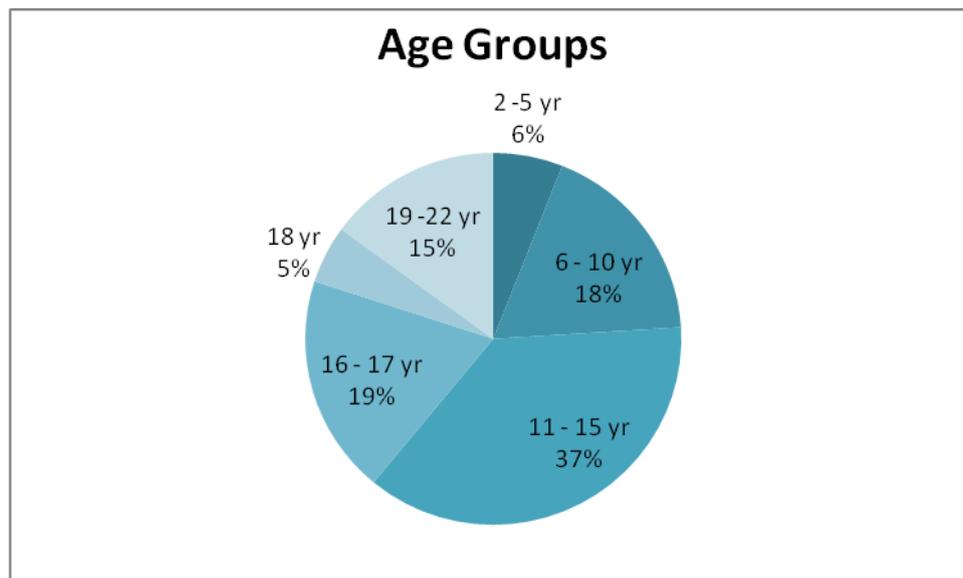
<sup>17</sup> *The Centre for Child Law and Another v Minister of Home Affairs and Others* 2005 (6) SA 50 (T), [http://www.centreforchildlaw.co.za/images/files/ourcases/our\\_cases\\_case\\_22866\\_04.pdf](http://www.centreforchildlaw.co.za/images/files/ourcases/our_cases_case_22866_04.pdf) [Accessed 1 June 2015] The Child Care Act No. 74 of 1983 was replaced by the Children's Act No. 38 of 2005.

<sup>18</sup> Department of Social Development (2009) *Guidelines on unaccompanied and separated children outside their country of origin in South Africa*, paragraph 6.1

## 1. Demographic profile

### 1.1. Age, gender and location in the Province

Of the total sample of 109 children, 101 children were placed within the Cape Town metropolitan area. Two children were placed in Malmesbury, two in Somerset West, one in Gordon's Bay and three in Stellenbosch. The gender of children was divided between 60% male and 40% female. The largest age group was 11 to 15 years (37%) and 20% of the respondents were 18 years old and above.



Of those over 18 years of age, 15% were between the ages nineteen and twenty two. The maximum age for placement in residential care is 21 years, subject to continued schooling.<sup>19</sup> It was decided to include all non-citizens who continued to receive financial assistance and emotional support from CYCCs. This is illustrative of a sympathetic obligation felt by some institutions. Twelve persons over the age of 18 continued secondary education and remained in care under the Children's Act. Ten persons over the age of 18 had completed Grade 12, but continued to receive support from the CYCC. Five of them continued to reside at the CYCC. One resided in a transition home for young adults and four resided with volunteer families. With the assistance of the CYCC, three children over 18 were enrolled in vocational training such as beauty therapy and cooking. Four were enrolled in tertiary education institutions following courses in business management, law and film studies, respectively.

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<sup>19</sup> Section 176(2) of the Children's Act No. 38 of 2005

## 1.2. Country of origin

Migrant children, especially unaccompanied children, are at high risk of becoming stateless. A stateless person is someone who is not considered as a national by any state under the operation of its law.<sup>20</sup> Risk factors include: birth outside one's parents' country of nationality; death or lost links to one or both parents; irregular migration; and no access to enabling documents such as clinic cards or proof of parentage.<sup>21</sup> Other contributing factors include laws which do not allow dual citizenship, or exclude particular social groups from accessing nationality, or laws which require compliance with specific administrative procedures to retain or claim nationality.<sup>22</sup>

The study revealed that few children had documentation to enable a claim to citizenship. For this reason, the term 'country of origin' is used instead of 'nationality.' Generally, a person's pathway to citizenship depends on his or her parent(s) documentation status and birth registration. The Bill of Rights states that every child, whether a citizen or a non-citizen, has the right to a name and a nationality.<sup>23</sup> In South Africa, birth registration proves a person's age and enables access to basic rights and nationality.<sup>24</sup> Children born to foreign parents, including refugee parents, are considered non-South African citizens. Non-citizens, including temporary residents, asylum seekers and refugees,<sup>25</sup> have the right to register the births of children born in South Africa, provided the parents are in possession of a valid passport and visa or permit.<sup>26</sup> It follows therefore, that if the non-citizen parent is an irregular migrant, the parent is barred from registering the child's birth. Nineteen

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<sup>20</sup> Article 1(1) of the UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, <http://www.refworld.org/docid/3ae6b3840.html> [Accessed 11 June 2015] At the time of writing, South Africa was not a signatory to the 1954 Convention.

<sup>21</sup> Lawyers for Human Rights (2014) *Promoting citizenship and preventing statelessness in South Africa: A practitioner's guide*, p.8, available at <http://www.lhr.org.za/publications/promoting-citizenship-and-preventing-statelessness-south-africa-practitioner%E2%80%99s-guide> [Accessed 22 April 2015]

<sup>22</sup> Lawyers for Human Rights (2014) *Promoting citizenship and preventing statelessness in South Africa: A practitioner's guide*, p.8, available at <http://www.lhr.org.za/publications/promoting-citizenship-and-preventing-statelessness-south-africa-practitioner%E2%80%99s-guide> [Accessed 22 April 2015]

<sup>23</sup> Section 28(1)(a) of the Bill of Rights, Constitution of the Republic of South Africa No. 108 of 1996

<sup>24</sup> Lawyers for Human Rights (2014) *Promoting citizenship and preventing statelessness in South Africa: A practitioner's guide*, p.23, available at <http://www.lhr.org.za/publications/promoting-citizenship-and-preventing-statelessness-south-africa-practitioner%E2%80%99s-guide> [Accessed 22 April 2015]

<sup>25</sup> See definition of 'non-South African citizen' at Regulation 1 of the Regulations on the Registration of Births and Deaths, 2014, [http://www.centreforchildlaw.co.za/images/files/South%20African%20Legislation/Regs\\_registration\\_of\\_births\\_and\\_deaths\\_14.pdf](http://www.centreforchildlaw.co.za/images/files/South%20African%20Legislation/Regs_registration_of_births_and_deaths_14.pdf) (Accessed 22 April 2015)

<sup>26</sup> Regulation 3(f) applies to the registration of birth of a child born to one citizen and one non-citizen. The non-citizen must have a valid passport, visa or permit to register the child's birth. Regulation 8(3)(c)&(e) applies to the registration of birth of a child born to two non-citizens. Both parents require a valid passport and visa or permit, including an asylum seeker permit, in order to register the birth.

children were born to foreign parents in South Africa, of whom ten had birth certificates. The births of the other nine children had not been registered.

It was generally observed that social workers' knowledge around the children' countries of origin and parentage was limited. In three cases, social workers were not sure from which country the children originated and it was simply known that the child is foreign. In five cases, both parents' nationalities were unknown to social workers. In 26 cases, the identities of the children' fathers were not known.

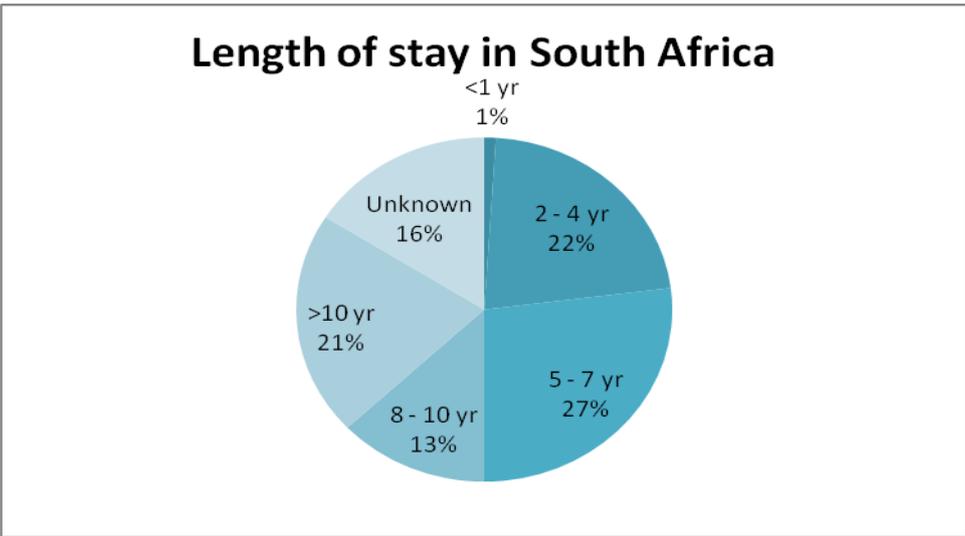
Most children, or their parent(s), originated from the Democratic Republic of Congo (DRC) (42%), with other countries of origin divided between Burundi (12%), Rwanda (9%), Zimbabwe (9%) and Angola (8%).

**TABLE 1: COUNTRIES OF ORIGIN**

<b>Country of origin</b>	<b>Number</b>
Angola	9
Burundi	14
Cameroon	1
DRC	46
Kenya	4
Lesotho	3
Namibia	1
Nigeria	2
Rwanda	10
Somalia	4
Tanzania	2
Uganda	1
Unknown	1
Zambia	1
Zimbabwe	10
<b>Total</b>	<b>109</b>

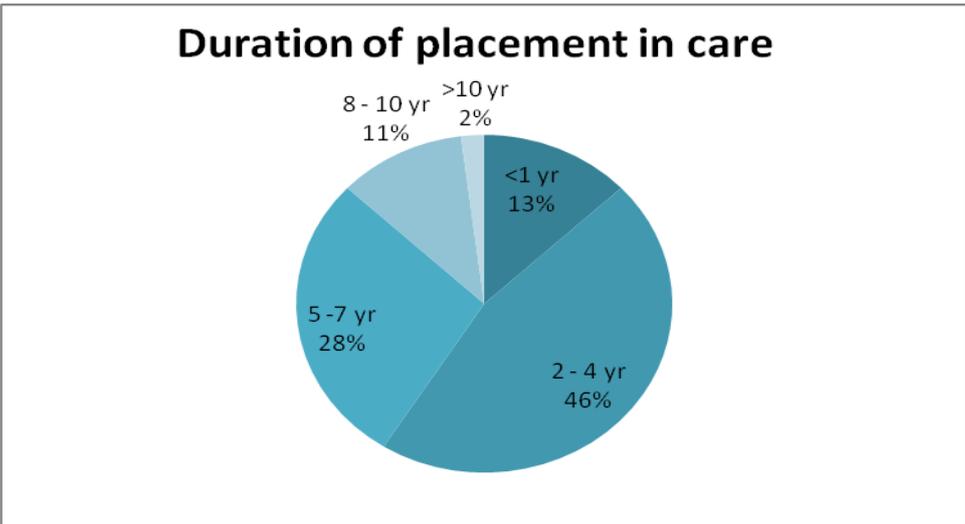
### **1.3. Duration of stay in South Africa**

The survey revealed lengthy periods of stay in South Africa. At 61%, the majority of children had been present in South Africa for more than five years: - 27% between five and seven years, 13% between eight and ten years, and 21% had been in South Africa for over ten years. It was found that 22% of children had resided in South Africa between two and four years and only one individual had been in South Africa for less than a year. The date of arrival in South Africa was not captured by social workers in 16% of the cases.



#### 1.4. Time spent in residential care

At 46%, just under half of the children had spent between two and four years in residential care. This was followed by 28% of children who were accommodated in CYCCs for five to seven years, eleven percent between eight and ten years, and 2% were in care for more than ten years. Thirteen percent of children had been placed in care for less than a year. This includes temporary safe care- and permanent placement orders. Lengthy periods spent in care contradict a United Nations recommendation that children should be institutionalized for the shortest possible duration.<sup>27</sup> It is concluded that, on average, the duration of placement in care exceeded an acceptable standard. Arguably, this situation implies that placement in foster care is not being considered as a preferable or sustainable solution, and points to low rates of family reunification.

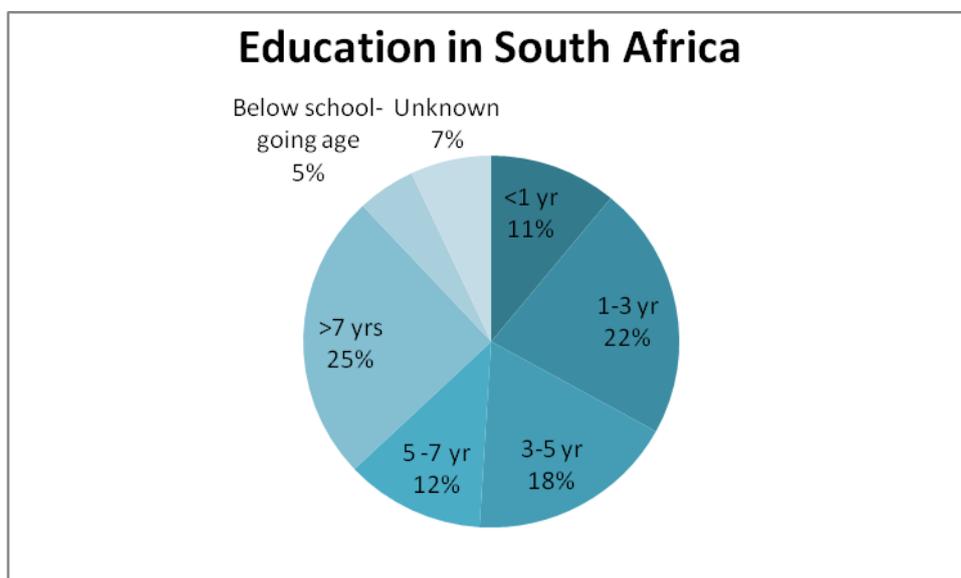


<sup>27</sup> UN General Assembly, *Guidelines for the Alternative Care of Children*, A/RES/64/142, 24 February 2010, paragraph 14, [http://www.unicef.org/protection/alternative\\_care\\_Guidelines-English.pdf](http://www.unicef.org/protection/alternative_care_Guidelines-English.pdf) [Accessed 25 May 2015]

## 1.5. Education in South Africa

In terms of Section 29(1) of the Bill of Rights, everyone has the right to a basic education, including adult basic education. It was found that children in care were able to access the right to education, with all but three children of school-going age attending school. Of the three not enrolled in schools, one was attending a bridging programme and two were the process of undergoing psychometric testing to establish their level of education. Seven children were enrolled in a school for children who have fallen behind mainstream education (Adult Basic Education and Training (ABET curriculum)). The main reasons for children to remain in care beyond attaining majority include gaps in education which result in late completion of secondary education, or struggles with language and mainstream schooling which cause children to fall behind.

The research indicates that children spent lengthy periods in the public school system. Twenty five percent of children had spent more than seven years in a South African school; eleven percent had spent five to seven years in school; 18% had completed three to five years of schooling; 22% have attended school for between one and 3 years. Only 8% of children had spent less than one year in school.



## 1.6. Disability

Out of the group, only one child was disabled and suffered from Down's syndrome. She was enrolled in a special school.



## 2. Migration

The reasons for migration were found to be a confluence of multiple pull-and push factors. In the context of highly exclusionary immigration laws, the asylum system is often resorted to as a way of regularizing stay in South Africa and may affect statistics on reasons for migration. As far as it could be established, this section looks at the factors which motivated parents, caregivers, or children themselves, to migrate to South Africa.

### 2.1. Entry to South Africa

It is traditional for children in African societies to be raised by extended family instead of (a) biological parent(s).<sup>28</sup> Depending on the circumstances, extended family members such as aunts, uncles, elder siblings and grandparents may have a customary duty of care towards the child. If at the time of entry to South Africa the child was accompanied by other children, persons unknown to the child (including handlers or smugglers), persons known but unrelated to them, or alone, the child is categorized as unaccompanied. The survey identified 13% of the children as separated children and 24% as unaccompanied children. The data indicated that 47 children were accompanied by a parent or both parents at the time of entry. In one case it was not known whether the child was

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<sup>28</sup> Usang Maria Assim (2015) *Understanding kinship care of children in Africa*, Eleven International Publishing, p. 22

accompanied by anyone. Eleven children were accompanied by adults unknown to them, which may point to smuggling but does not necessarily amount to trafficking. At the time of writing, two cases of trafficking were under police investigation.

Generally, it was not known at which border crossing the children entered. It appears that all children crossed land borders and none had travelled by plane to South Africa.

**TABLE 2: DETAILS OF CHILD’S COMPANION DURING MIGRATION**

<b>Child accompanied by: -</b>	<b>Number</b>
Parent(s) (Accompanied)	47
Aunt, Uncle, Sibling (Separated)	15
Other children (Unaccompanied)	2
Person unknown to child (Unaccompanied)	11
Alone (Unaccompanied)	6
Person known but unrelated to child (Unaccompanied)	8
Born in South Africa	19
Unknown	1
<b>Total</b>	<b>109</b>

## 2.2. Reasons for migration

Of fifteen children who entered South Africa as separated minors, seven were accompanied by extended family members who had the intention of claiming asylum; five children accompanied adults for socio-economic reasons and in three cases the reasons for migration were unknown.

Of the twenty seven children were unaccompanied upon entry, eight (7%) had taken the decision to migrate themselves. The choice of children to migrate alone was motivated by factors such as the death of a primary caregiver; escape from poverty; escape from an abusive domestic situation; or flight from a conflict situation in the country of origin (3 cases).

Without being able to assess the adults’ reasons for migration, but considering the children’s documentation status, it is estimated that at least 60% of adults accompanying children migrated for the purpose of claiming asylum.

In nineteen cases, children’s entries were arranged between family members in the country of origin and family already established in South Africa. Eighteen children were sent to South Africa for socio-

economic reasons which include better education opportunities (5), the death of the primary caregiver (6), protection from domestic abuse (3) and imprisonment of the primary caregiver (4). One child's entry was arranged by extended family to remove him from a conflict zone, following the death of the sole caregiver in this context.

### 2.3. Refugee children

A brief assessment indicated that nine children (four family units) appeared to qualify for refugee status. Of these, three had Children's Court orders directing that they be assisted in applying for asylum. In addition to statutory restrictions that prevent minors from applying for asylum, the limited functionality of RROs impose practical barriers. At the time of writing, three RROs, located in Durban, Pretoria and Musina, accepted new asylum applications. The Cape Town RRO closed for new asylum applications in June 2012 and was in the process of winding down its operations. If an order in terms of Section 32 of the Refugees Act is made, refugee children, accompanied by a statutory social worker, should apply for asylum at one of the RROs in Limpopo-, Gauteng- or KwaZulu Natal provinces. Given the geographic location of the RROs in relation to the Western Cape, this represents a major administrative, financial and logistical difficulty for CYCCs and social workers.<sup>29</sup> This was the experience of a particular CYCC who accommodated three boys who appeared to qualify for refugee status and in respect of whom orders under Section 32 of the Refugees Act were obtained. The administrative and financial burdens meant that the CYCC could not arrange for these children to submit an asylum application outside the Western Cape Province throughout the duration of their placement. Two of the children subsequently turned 18 and were able to apply for asylum at the Durban RRO. Their claims were rejected as unfounded since they could not satisfy the Refugee Status Determination Officer of their knowledge of the region they claimed to originate from (Eastern DRC). Since they were no longer children, they were not interviewed in a child-sensitive manner and were expected to show a certain level of knowledge around geographical landmarks and social- and political issues affecting the area they claimed to originate from. At that point, they had been in South Africa for four years. It is recommended that children undergoing a refugee status determination assessment be interviewed as soon as possible after entry, and in a child sensitive manner.<sup>30</sup> Time spent in care will necessarily have an impact on the development of the child and the way he or she reflects on the reasons for flight from the country of origin. Furthermore, the

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<sup>29</sup> The Children's Act requires that permission be obtained from the Provincial Head of Social Development in order for the child to move out of a province. The particular CYCC becomes responsible for travel costs and arrangements.

<sup>30</sup> UNHCR (1997) *Guidelines on Policies and Procedures in dealing with unaccompanied Children Seeking Asylum*

reasons which had compelled the child to leave may have change over the course of years. Arguably, these children would have qualified for refugee status if they had been able to apply for asylum within a reasonable time.

The concerning conclusion is that the asylum system is practically inaccessible to unaccompanied and separated refugee children placed in care the Western Cape Province.

### **3. Documentation as a component of protection**

Documentation is an integral and often overlooked component of child protection. The UN Guidelines on the Alternative Care of Children (2009) recommend that authorities make all reasonable efforts to procure documentation and information in order to conduct an assessment of risks, as well as social and family conditions in the country of habitual residence, to assist in planning the future of an unaccompanied or separated child.<sup>31</sup> It is further recommended that data be collected and recorded to enable states to know the number, demographic- and protection profile of unaccompanied and separated children.<sup>32</sup> Nationally, DSD Guidelines require the immediate registration and documentation of the child, but give no indication as to how this should be done. Whilst DHA is moving towards capturing the biometric data of all persons in the country, undocumented children are presently excluded.

#### **3.1. Documentation status**

The purpose of documentation is to identify the child and to legalize stay of the foreign child in terms of the laws governing migration. Twenty two respondents had identification documentation in the form of a birth certificate or passport without a valid visa, which did not allow legal stay in South Africa.

Fifty six respondents (51%) held documentation issued under the Refugees Act – which may have been expired or valid, but which would potentially allow temporary legal stay in South Africa. This was divided between thirty three children (28%) who held Asylum Seeker Temporary Permits and

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<sup>31</sup> UN General Assembly, Guidelines for the Alternative Care of Children : resolution / adopted by the General Assembly, 24 February 2010, A/RES/64/142, paragraph 147, <http://www.refworld.org/docid/4c3acd162.html> [Accessed 2 May 2015]

<sup>32</sup> UN General Assembly, Guidelines for the Alternative Care of Children : resolution / adopted by the General Assembly, 24 February 2010, A/RES/64/142, paragraphs 99 - 100, <http://www.refworld.org/docid/4c3acd162.html> [Accessed 2 May 2015]

twenty five children (23%) who held refugee status permits. Twenty six children had no documentation at all. Sixteen children were in possession of birth certificates issued by authorities from various countries and six had clinic cards obtained at hospitals or clinics. Children with no documentation generally relied on court issued age estimations as proof of identity.

Five children were in possession of passports, of which two contained no valid visas. Two children were granted permanent residency in terms of a certificate of exemption issued under Section 31(2)(b) of the Immigration Act. One child held a study visa which allowed her to remain in South Africa until she completes high school. All children with documents issued under the Immigration Act obtained these with the assistance of the CYCC at which they were placed.

### **3.2. Challenges around documentation issued under the Refugees Act**

A child, who derives asylum seeker- or refugee status from a parent, is reliant on the main applicant for the finalization of the asylum application.<sup>33</sup> It is imperative, therefore, for the child to maintain contact with the parent who is the main applicant.<sup>34</sup> Continued documentation becomes problematic if the relation of dependency between the child and adult applicant ceases to exist. If, for example, the child was documented as a dependent of a person who is not truly the biological parent or if the child was separated from the principal applicant subsequent to applying for asylum, the claim based on dependent status may lapse.

Sixteen children held documentation issued under the Refugees Act as dependents to persons that are not their parents (13 Refugee status permits; 3 Asylum seeker permits). Eight children had derived either asylum seeker status (5) or refugee status (3) from a parent or foster parent, but were since separated from the parent. It can be foreseen that these children will experience difficulties in retaining their documentation status once they attain majority. Eight children had submitted asylum applications independently. Six of the children were assisted to apply for asylum by a social worker (without an order in terms of Section 32 of the Refugees Act). However, following a brief assessment, none of these children appeared to have an independent refugee claim.

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<sup>33</sup> Section 3(c) of the Refugees Act

<sup>34</sup> Regulation 16 to the Refugees Act requires of dependents to present themselves at the RRO together with the main applicant in order to finalize the asylum application.

In absence of documentation to legalize stay in South Africa, a foreign child, who may have spent several years in residential care, automatically becomes at risk of detention and deportation once he or she turns 18.

### **3.3. Problematic nationality and statelessness**

A brief assessment pointed to at least seventeen of the children being at risk of statelessness. Of further concern was the fact that a number of children held documentation issued by DHA on which crucial identifying information was incorrectly recorded, presumably the result of clerical errors or incorrect information given at the time the application for asylum was brought.

An example of children at risk of statelessness included four siblings born to parents who originated from a Central African country, but migrated to Mozambique in search of refuge. Three of the siblings were born in Mozambique, and the eldest had vague memories of the family's life prior to migration. None of them had any kind of enabling or identification documentation, and they had lost contact with their mother. Their father was deceased. With the assistance of a social worker, an application for asylum was made, recording their nationality as Mozambican. They are unable to sustain independent refugee claims and it is foreseen that their applications will be rejected.

Another example involved two siblings who were either brought to South Africa from Angola at a young age, or born in South Africa to Angolan parents, who were both subsequently deceased. The siblings had been placed in care for several years, did not have contact with any extended family members and had no documentation to enable an eventual claim to Angolan or South African citizenship.

Two separate children' nationalities were not known to the social workers, which situation raises serious concerns around family tracing and reunification efforts. One child was brought to South Africa from Angola as a one year old baby by a woman whose relation to him could not be verified. He was removed from the woman's care following allegations of abuse, over ten years ago. She disappeared and was not heard of since. He has no recollection of his parents or country of origin. He had been placed in alternative care since age four. All attempts at finding family up had failed. Now aged sixteen, he grew up in care without any idea as to whom or where his family might be. He has no identification documentation and speaks only IsiXhosa and English.

Three children of the same family were born in Kenya to Kenyan parents, but held refugee status permits on which their country of origin was recorded to be the DRC. They were accompanied to South Africa by their mother, who derived refugee status from her Congolese partner and erroneously included the children in the asylum application. Their father was deceased and their mother had left them at a young age, to live in a third country. They had no enabling documents and it can be expected that they will have difficulty to retain refugee status due to discrepancies around their identity.

Three were the children of a failed asylum seeker. Their father's asylum claim was finally rejected in 2008 whereupon he returned to Burundi, leaving them behind with their stepmother, from whose care they were removed. He died in Burundi in 2010. They had no proof of birth and had been in South Africa for more than ten years. The siblings had only vague recollections of their home country, and no documentation to allow them to prove Burundian nationality. The eldest child had subsequently turned 18 and had given birth to a boy, who was also placed in care.

Three siblings held refugee status permits as dependents to a previous foster parent, from whose care they were removed. Crucial identifying information pertaining to the country of origin and birth dates was incorrectly recorded on all three children's permits. The particular siblings were born in Rwanda to Rwandan parents, but grew up in various refugee camps around the Eastern DRC. Both parents were deceased. The errors meant they encountered all kinds of difficulty with enrolment in education institutions, and raised questions around their eligibility for placement in care. Thus far, attempts at rectifying these administrative errors at the RRO were not successful.



#### 4. Reasons for placement

Reasons for placement were varied and often overlapped. The majority of children were placed in care as a result of their parents' or caregivers' inability to provide for them financially. Other main reasons included abandonment (24 cases), removal as a result of neglect (16) and abuse (9). The category 'orphaned' was applied in cases where it is known that both parents are deceased and children were placed in care as a result thereof. Six respondents are orphaned, in three cases parents had passed away subsequent to migration. In three cases, children were sent to live with extended family already established in South Africa, following the death of their parents.

**TABLE 3: REASONS FOR PLACEMENT IN CARE**

Reasons for placement	Number
Abandoned	24
Abuse or sexual abuse	9
Behavioural issues	2
Financial reasons	36
Imprisonment of primary caregiver	5
Neglect	16
No adult caregiver in SA	11
Orphaned	6
<b>Total</b>	<b>109</b>

#### 5. Family tracing

Family tracing is a crucial step towards finding durable solutions for a foreign child in South Africa. The duration of stay impacts directly on the level of integration and acculturation of the child in the host country. This has a potentially prejudicial affect on the individual who is eventually required to leave the country due to a lack of documentation. Once family is traced, a social worker in the country of origin must assess whether family reunification would be in the child's best interest. This involves an assessment of the circumstances of the family in the home environment, and consideration of the context in which the child has left the family and country of origin. Necessarily, such assessments require cooperation between social workers across two countries.

In 2010, a toolkit and training manual was developed by international non-governmental organization, Save the Children, to assist authorities to determine the best interests of

unaccompanied children on the move in South Africa (BID Toolkit).<sup>35</sup> In terms hereof, certain crucial questions need to be asked in order to establish the solutions available to the child, in terms of protection and documentation. The assessment form suggests the collection of data according to ten key questions relating to ‘whether the child has a parent/s or caregiver/s; if the parent/s or caregiver/s are willing to be reunified with and able to care for the child; if there is a positive relationship between them, and with the sibling/s and extended family; whether the child is safe at the proposed residence and willing to be reunified with a particular person; whether the child is involved in hazardous labour; and whether there are adequate educational opportunities and health services for the child.’<sup>36</sup> The data collected will point to one of six possible solutions, which have also been adopted in the DSD Guidelines of 2009 and are set out as follows:<sup>37</sup>

- Immediate reunification;
- Delayed reunification with the family the child was living with, following the rectification of certain issues, either in relation to their living environment or in addressing the child’s need that cannot be addressed at home, regardless of reason;
- Alternative care in the country of origin with an extended family member;
- Alternative care in South Africa with a suitable caregiver within the extended family;
- Supported, independent living or placement into a place of safety in South Africa for children who are unable or unwilling to return to live with family or alternative caregivers in country of origin;
- Foster care for younger children who are unable or unwilling to live with family or alternative caregivers in their country of origin.

According to the DSD Guidelines, ‘an analysis of the possibility of family reunification is the first step in searching for a durable solution’ for the child. If the parents’ whereabouts in the country of origin are known, the case should be referred to the provincial focal point of International Social Services (ISS), who, in collaboration with welfare services in the child’s country of origin, is responsible for assessing the possibility of reunification. It must be noted that the services of ISS does not include cross-border family tracing. For this, social workers may make use of international networks such as

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<sup>35</sup> International Organization for Migration (2013) *Children on the move*, p.76, [http://publications.iom.int/bookstore/free/Children\\_on\\_the\\_Move\\_19Apr.pdf](http://publications.iom.int/bookstore/free/Children_on_the_Move_19Apr.pdf) [Accessed 1 June 2015]

<sup>36</sup> International Organization for Migration (2013) *Children on the move*, p.77

<sup>37</sup> Department of Social Development (2009) *Guidelines on unaccompanied and separated children outside their country of origin in South Africa*, paragraph 6.4

the International Committee of the Red Cross (ICRC) and International Organisation for Migration (IOM).<sup>38</sup>

When faced with the prospect of cross-border family tracing- and reunification of foreign children, residential social workers generally found themselves at a loss as to how to proceed. Many social workers interviewed were unaware of the existence of ISS and did not know whether the statutory or designated social worker had made contact with ISS about the case. Some social workers relied on their own initiative and creativity to find ways of following leads to find families. For example, one social worker had engaged with a school in Uganda which the children attended prior to migration, to find out whether they had any records for the children and contact details for the mother. Another social worker attempted to make contact with a school in rural Zimbabwe, via the Ministry of Education, to find proof of the child's identity. A third social worker managed to secure a birth certificate for a child born in Namibia, with the assistance of an NGO in Windhoek.

When asked about their methods, social workers who had made attempts at tracing family stated to have interviewed the child, or any other person known to the child, as the first step towards finding links. Most commonly (17 cases), social workers turned towards foreign embassies or consulates for information. In none of the cases did contact with foreign representatives yield a positive result towards finding families. Social workers reported that the UNHCR was contacted to assist in two cases, and the IOM was contacted in respect of 16 cases. Other attempts include the submission of family tracing requests with ICRC via the SA Red Cross.

## 6. Status of parental relationships

Both parents of 19 respondents were alive, while both parents of nine respondents were deceased. A death certificate was available in only one case. In nine cases, both parents' whereabouts were unknown. For 17 respondents, the mother was the only living parent, while the father was the only living parent in nine cases. A total of 59 respondents had mothers who were living. Of these, the mothers of 35 respondents were resident in South Africa and were the primary caregiver of the child immediately prior to placement. The remaining 24 respondents' mothers resided outside South Africa. The locations of mothers, as far as this could be established, are indicated on the table below.

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<sup>38</sup> Department of Social Development (2009) *Guidelines on unaccompanied and separated children outside their country of origin in South Africa*, paragraph 6.4.1

Out of the 59 respondents whose mothers were alive and whose places- or countries of residence were known, 44 respondents had been able to make contact with their mothers, or were in continued contact. Fifteen respondents had no contact with their mothers. The nature of contact varied between telephonic contact only, visits and telephonic contact, and indirect contact (contact via a third person or messenger).

Twenty seven respondents did not know if their mothers were alive, nor were their whereabouts known. Social workers had made efforts to trace families in only three out of 27 cases. Such efforts had not yielded any positive result at the time of writing.

The whereabouts of the fathers of 33 children were known or presumed, whilst 43 did not know where their fathers were. Thirty three children had fathers who were deceased. Of the fathers whose whereabouts were known, 20 resided in South Africa, and 13 resided outside South Africa. Contact was maintained in 24 cases.

**TABLE 4: LOCATION OF MOTHERS WHO'S WHEREABOUTS ARE KNOWN**

Location of mother	Number
Western Cape	29
Gauteng	6
Angola	5
Burundi	3
DRC	6
Malawi	1
Mozambique	4
Spain	3
Zambia	1
Zimbabwe	1
<b>Total mothers in South Africa</b>	<b>35</b>
<b>Total mothers outside South Africa</b>	<b>24</b>
<b>Total</b>	<b>59</b>

**TABLE 5: LOCATION OF FATHERS WHO'S WHEREABOUTS ARE KNOWN**

Location of Father	Number
Western Cape	17
Gauteng	2
Limpopo	1
Angola	3
Burundi	1
DRC	7
France	1
Zimbabwe	1
<b>Total fathers in South Africa</b>	<b>20</b>
<b>Total fathers outside South Africa</b>	<b>13</b>
<b>Total</b>	<b>33</b>

It is concluded from the above that family tracing efforts should be initiated in at least 52 cases – those who did not have any contact with their families despite being aware of their country of residence, and those for whom the whereabouts of parent(s) were not known.

## 7. Family Reunification

### 7.1. Reunification of children with parents

It was observed that residential social workers were making real efforts to reunify foreign children with parents resident in South Africa, but cross-border family reunification was not being pursued. This represents a major challenge to finding durable solutions for foreign children and is not in line with the DSD guidelines or suggested durable solutions in accordance with the BID toolkit.

Of the twenty four children whose mothers resided abroad, ten were in telephonic contact with them. Of these, only two were deemed to have a 'good' relation with their mothers, whilst social workers described the remaining relations as 'weak.' This indicates a need for strengthening existing family links. In none of the cases were the relations verified or the circumstances of the mother assessed by a social worker in the country of residence of the mother.

The fathers of four children were known to reside outside South Africa, but contact was not maintained in any of these cases. In two cases, social workers deemed family tracing and establishing contact with the father worth exploring and indicated an intention to take steps towards restoring family links. However, no actual steps had been taken towards cross-border reunification.

### 7.2. Reunification of children with extended relatives

Repatriation of a foreign child should not take place unless it is in the context of family reunification or placement in formal care in the country of origin. Return should be pursued if this is in the best interest of the child and can only be arranged if it is certain that the child be returned to the safe and suitable custody of a parent, extended family member, a Government agency, an authorized agency or facility in the country of origin.<sup>39</sup>

Eight children had other relatives (6 x uncles; 1 x aunt and 1 x grandparents) who resided outside South Africa, who could be traced and with whom the possibility of reunification might be explored.

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<sup>39</sup> Department of Social Development (2009) *Guidelines on unaccompanied and separated children outside their country of origin in South Africa*, paragraph 6.4.2 and UN General Assembly, Guidelines for the Alternative Care of Children : resolution / adopted by the General Assembly, 24 February 2010, A/RES/64/142, paragraph 148 (b), <http://www.refworld.org/docid/4c3acd162.html> [Accessed 2 May 2015]

In six cases, efforts had been made to trace extended relatives, and outcomes were pending. Eleven children (eight family units) had siblings known to reside in the country of origin. Thirteen children (five family units) had siblings known to reside in a third country.

Anecdotally, the extended family (paternal aunt) of a particular child originating from Kinshasa in the DRC had expressed the wish that the child be returned to their care. The child was sent to South Africa to live with a relative, but the latter was not in a position to care for him. Despite family reunification being an eventual solution, no steps had yet been taken to explore this possibility.

In none of the cases did social workers consider placement in alternative care in the country of origin to be an option. Instruments of international law, as well as the DSD Guidelines, emphasize placement in alternative care in the country of origin as a durable solution. With appropriate coordination, the implementation hereof should be strengthened.

## **VI. Conclusion and recommendations**

Representing approximately 4% of all children in care in the Province, the number of foreign children is not indicative of an influx of foreign children into the child protection system. Nevertheless, it is sufficient incentive to establish clear and good practice, so service providers are aware of the issues to consider when dealing with such cases. Given the complications that social workers and courts have to contend with when dealing with foreign children, it is in DSD's interest to closely monitor such cases.

The majority (56%) of children was accompanied to South Africa by parents (43%), or other adult family members (13%). Only 7% of children in care decided to cross borders by themselves. In these cases, the decision to migrate was motivated by the death of the primary caregiver, poverty, an abusive domestic situation or escape from a conflict zone. It is concluded therefore that children's reasons for migration are directly dependent on parents/caregivers' motivation for migration, or the parents/caregivers' reasons for arranging the child's migration (19%).

In 33% of cases, the reasons for placement in alternative care were directly relative to the financial position of the caregivers. Abandonment (22%) and neglect (14%) were other common reasons for placement. In order to draw comprehensive conclusions however, it is suggested that these be

compared with reasons for placement of South African children. Arguably, foreign children will be placed in alternative care for similar reasons as local children.

The main challenges foreign children face are linked to documentation. Just over half the children held documentation issued under the Refugees Act (51%). At least 39% of these applications were problematic and not deemed a durable documentation solution - 22% due to discontinued/problematic relations with the principal asylum applicant; and at least 7% of applications submitted independently were inappropriate in the circumstances and can be expected to be rejected. Essential identifying information was incorrectly recorded on 10% of documents issued under the Refugees Act. The number of children at risk of statelessness is estimated at 15%, with 80% of children not being in possession of a birth certificate or another document which would enable access to any particular nationality. This situation restricts the child's right to a name and nationality.

A significant number of children fall in the age groups 16 - 18 (19%) and 11 – 15 (37%) which is a crucial period during which documentation must be secured for children, to prepare them for an independent life.

While it is difficult to estimate a number, it is foreseen that many of the children will have no choice but to return to the country of origin once the placement order is no longer valid, since, given their circumstances, no immigration status is available to them in terms of the present legal framework. The social implications of long stay in South Africa include the loss of children's ability to speak home languages, the loss of identity and the sense of belonging. For this reason, it is imperative that existing family links be maintained and strengthened throughout the placement period. Fifty percent of children had at least one parent residing within the Republic. Thirty three percent of children had parents residing outside South Africa. Of all the children whose parents' whereabouts are known, 62% were in contact with a parent. Family reunification efforts were being made in all cases of parents residing in South Africa, but no concrete steps had been taken in any cases of parents residing outside South Africa. Cross-border family reunification efforts should be strengthened and placement in alternative care in the country of origin must be assessed as a priority in cases where family reunification is not an option.

## 8.1 Recommendations to DSD

The data indicated that 61% of children in care had been resident in South Africa for more than 5 years, and that 41% have been in care for more than 5 years. This is contrary to international standards which recommend that children be placed in institutionalized care for the shortest possible duration. It is recommended that:

- a) DSD facilitate a focus group discussion with statutory social workers in the Cape Town metropolitan area who are responsible for the cases of foreign children, with the objective of gaining a full understanding of the particular issues they are dealing with. Given the low number of cases and the fact that most issues faced by foreign children are identifiable, problem resolution could be approached on a case-by-case basis.
- b) National Guidelines and Standard Operating Procedures on dealing with unaccompanied and separated children should be amended to include clear instructions, designation of tasks, discussion of various outcomes and brief description of applicable laws around documentation. The Guidelines should be widely disseminated and freely available to social workers and Children's Court magistrates.
- c) A best interest determination assessment should be conducted systematically in all cases of foreign children placed in care, so that the need for family tracing- and reunification efforts are identified as soon as possible.
- d) The reasons for migration should be established to determine whether the child appears to qualify for refugee status. Refugee children must be assisted to apply for asylum through an order envisaged under Section 32 of the Refugees Act. Asylum applications should not be submitted simply as a means of obtaining documentation, since this is not a durable or appropriate solution in all cases.
- e) DSD should be aware of the practice at RROs which requires of an unaccompanied refugee child to be accompanied by a statutory social worker in applying for asylum. Practicalities of giving effect to this requirement, given that it involves the removal of the child from the Province, should be considered.
- f) DSD should adopt clear policy directives with regard to the placement of foreign children in the foster care of recognized refugees. A uniform approach by all child protection agencies would support the establishment of standard practices. In addition to the financial arguments in favour of the State, it is beneficial for the child to grow up in a family- and culturally similar environment. It is recommended that DSD establish a data-base of eligible foster parents with refugee status, and consider the placement of migrant children in the

foster care of relatives with refugee status as a sustainable solution, if this is in the child's best interest.

- g) All efforts to trace and reunify family should be clearly documented in the child's case file. It is particularly valuable to record successes in order to develop a model of good practice.
- h) In cases where family tracing efforts fail, or where reunification is not deemed in the best interest of the child, it is imperative that durable documentation solutions be explored.
- i) The study showed that half the children born in South Africa did not have a birth certificate. It is important that social workers work with parents to ensure that children's births are registered and that the child is in possession of a birth certificate. The value of birth registration cannot be underestimated.
- j) If no immigration status is accessible to the child in the circumstances, social workers should prepare the child for eventual return.
- k) Cross-border family reunification mechanisms must be strengthened as a priority. It is specifically recommended that the functionality of ISS be strengthened. A clear referral mechanism should be in place, and possible outcomes should be delineated. Whilst the children originated from multiple African countries, the majority migrated from the DRC (46%), Burundi (12%), Rwanda (9%) and Zimbabwe (9%). As a starting point, links should be strengthened with counterparts in the main sending countries.
- l) Alternative care in the country of origin should not be discounted as a solution for some children. Again, this would involve establishment and strengthening of working relations between DSD and appropriate, identified care facilities in the sending country so that the best interests of the child are protected.

## 8.2 Recommendations to DHA

- a) Children who are identified as unaccompanied at border posts should be referred systematically to the nearest office of DSD. In this regard, it is recommended that interviews with children be conducted by trained staff, in a secure and quiet location. Information around the identities of the parents must be gathered as far as possible.<sup>40</sup> It is extremely important that practice around the reception and referral of such cases to DSD be clear and coherent. It is useful to identify unaccompanied foreign children so as to prevent unlawful

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<sup>40</sup> International Committee of the Red Cross (2004) *Inter-agency Guiding Principles on Unaccompanied and Separated Children*, available at [http://www.unicef.org/violencestudy/pdf/IAG\\_UASCs.pdf](http://www.unicef.org/violencestudy/pdf/IAG_UASCs.pdf) [Accessed 25 May 2015]

detention and deportation, to keep track of their whereabouts and their departure from the Republic.

- b) DHA should ensure the documentation of separated children in the care of relatives who are asylum seekers and refugees.
- c) It is recommended that DHA provide clarity on the application of Regulation 6(12)(a)-(c) of the Immigration Regulations of 2014, which requires an unaccompanied child to be in possession of a passport, visa, an unabridged birth certificate, and notarized consent from both parents on children accompanying asylum seekers or unaccompanied children.
- d) It is recommended that DHA provide a clear directive on the application of Sections 2(2) and 4(3) of the Citizenship Act as amended, to enable access to citizenship in an attempt to reduce statelessness.
- e) It is recommended that applications for permanent residency in terms of Section 31(2)(b) of the Immigration Act be made accessible to unaccompanied and separated foreign children in care. By setting certain guidelines for applications made on behalf of children in care – for example taking into consideration reasons for migration, reasons for placement, the number of years in care and setting minimum standards for a monitoring and evaluating family tracing and reunification efforts, DHA would be in a position to regulate such applications.

### **Instruments of international law**

UN Committee on the Rights of the Child (CRC), *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6

UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360

UN General Assembly, *Guidelines for the Alternative Care of Children*, A/RES/64/142, 24 February 2010

### **National legislation and policy documents**

Births and Deaths Registration Act No. 51 of 1992

Department of Social Development (2009) *Guidelines on unaccompanied and separated children outside their country of origin in South Africa*

Department of Social Development (2015) *Standing Operating Procedures for the tracing, reunification or alternative care placements of unaccompanied and separated children in South Africa*

Children's Act No. 38 of 2005

Citizenship Act No. 88 of 1995

Constitution of the Republic of South Africa, No. 108 of 1996

Immigration Act No. 13 of 2002

Refugees Act No. 130 of 1998

### **Articles and reports**

Crush, J. (2011) Southern African Migration Programme, *Complex movements: Migration movements, confused responses: Labour in South Africa*

Connelly, H. (2015) *Seeking the relationship between the UNCRC and the Asylum System through the eyes of the Unaccompanied asylum seeking children and young people*, 2015 (23) International Journal on Children's rights 52 at 55.

International Committee of the Red Cross (2004) *Inter-agency Guiding Principles on Unaccompanied and Separated Children*

International Organization for Migration (2013) *Children on the move*

UNHCR (1994) *Guidelines on the Protection and Care of Refugee Children*

Schreier, T. (2011) *Critical Challenges to Protecting Unaccompanied and Separated Foreign Children in the Western Cape: Lessons Learned at the UCT Refugee Rights Unit*, University of Cape Town Refugee Rights Unit

UNHCR (1997) *Guidelines on Policies and Procedures in dealing with unaccompanied Children Seeking Asylum*

### **Books**

Khan, F & Schreier, T (Eds) (2014) *Refugee Law in South Africa*, Juta

Lawyers for Human Rights (2014) *Promoting citizenship and preventing statelessness in South Africa: A practitioner's guide*

Sinding, C, & Barnes, H. (2014) Wilfrid Laurier University Press, *Social Work Artfully: Beyond Borders and Boundaries*

Usang Maria Assim (2015) *Understanding kinship care of children in Africa*, Eleven International Publishing

### **Case law**

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