



Birth registration and documentation of children: Law and practice in South Africa

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THE IMPORTANCE OF BIRTH REGISTRATION

A BIRTH CERTIFICATE ESTABLISHES A CHILD'S:

- Name
- Place of birth & date of birth
- To whom the child is born
- It therefore establishes the child's nationality
- Allows the state to quantify births within South Africa
- A birth certificate is vital in avoiding childhood statelessness.
- A birth certificate is the key to accessing many services in South Africa.



INTERNATIONAL LAW

The following conventions make clear that all children, regardless of their nationality, race, legal or other status, are entitled to a name, a nationality and immediate birth registration:

- **1989 United Nations Convention on the Rights of the Child (Article 7)**
- **1966 Covenant on Civil and Political Rights (Article 24)**
- **1999 African Charter on the Rights and Welfare of the Child (Article 6)**

South Africa is party to all of these conventions and is, therefore, bound to implement the provisions relating to birth registration.

NATIONAL LAW

The South African Constitution pertains to all people in South Africa, regardless of nationality. Section 28(a) states that 'Every child has the right to a name and a nationality from birth.'

The Births and Deaths Registration Act provides for birth registration of all children born on the territory, whether to South Africans or foreign parents.

The Regulations to the Births and Deaths Registration Act provide the rules and procedures surrounding birth registration in South Africa. This includes the requirements and forms to register children's births.

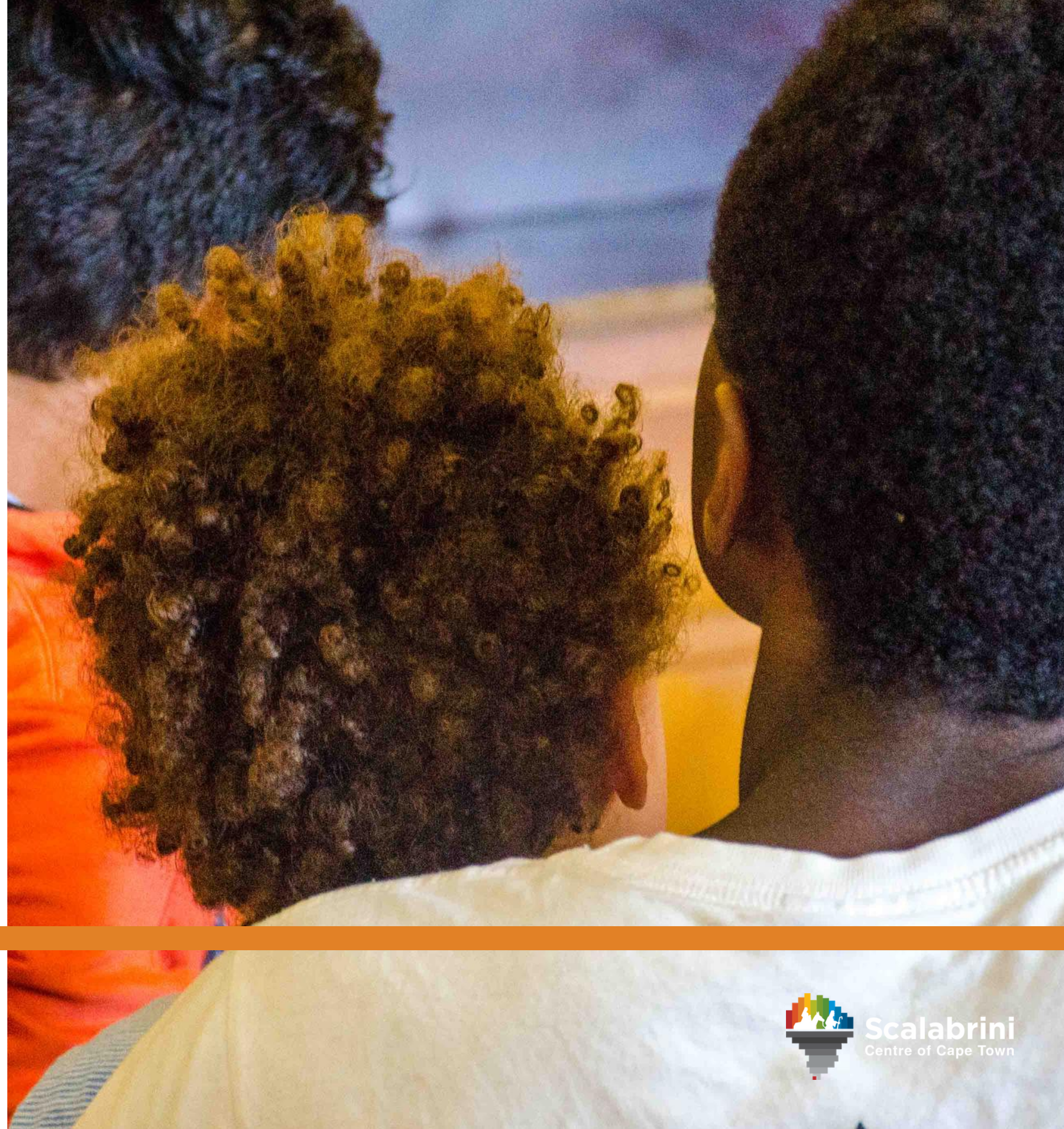


ISSUES AROUND BIRTH REGISTRATION IN SOUTH AFRICA

The Regulations of the Birth and Deaths Registration Act require parents to hold valid documentation in order to register their child's birth. Regulation 8 states that;

Non-South African (and non-PR) parents must provide a "certified copy of a valid passport and visa or permit of the mother or the father, or both parents of the child as the case may be".

It is not only foreign parents that are affected.





ISSUES AROUND BIRTH REGISTRATION CONTINUED

- Notice of birth to be given within 30 days of birth –thereafter treated as late birth registration and require additional documents
- Reg. 12 - Children born out of wedlock – birth shall be registered by the mother
- Verification of asylum seeker and refugee permits
- Lost hand written birth certificates for foreigners cannot be re-issued
- Birth in SA does not automatically confer SA citizenship
- DNA testing policy



UNDOCUMENTED PARENTS IN SOUTH AFRICA

There are several reasons why people fall into an undocumented state in South Africa.

- Asylum permit expiry issues
- Refugee reception office closures
- Expired visas cannot be extended in South Africa
- Final rejections on asylum claims
- Very restrictive immigration laws

THE IMPACT

- No proof of child's nationality
- Child at risk of statelessness
- Access to services become problematic
- South African government cannot quantify births
- Inability to prove age and identity – risk of detention, destitution, abuse and exploitation.



DOCUMENTATION OF CHILDREN

- **Refugee children – documentation under the Refugees Act**
- **Migrant children – documentation under the Immigration Act**
- **Unaccompanied and separated children**





RECENT DEVELOPMENTS

Several NGOs such as The Centre for Child Law, Lawyers for Human Rights have litigated on this matter.

Most recently, in July 2018, a Grahamstown High Court judge declared as unconstitutional a blanket ban on birth registrations by parents whose circumstances do not adhere to the department's checklist, and has sent the regulations back to parliament to be fixed. This case was brought by the Legal Resource Centre

WATCH!

SHORT VIDEO ON BIRTH REGISTRATION IN SOUTH AFRICA, RELEASED BY SCALABRINI, LAWYERS FOR HUMAN RIGHTS AND LEGAL RESOURCES CENTRE JOINTLY. CLICK ON THE IMAGE BELOW:



