

FOREIGN CHILDREN IN CARE: SOUTH AFRICA

A COMPARATIVE REPORT OF FOREIGN CHILDREN PLACED IN CHILD AND YOUTH CARE CENTRES
IN GAUTENG, LIMPOPO AND WESTERN CAPE PROVINCES OF SOUTH AFRICA

JULY 2019



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GLOSSARY

CYCC	Child and Youth Care Centre
DHA	The Department of Home Affairs
DRC	The Democratic Republic of Congo
DSD	The Department of Social Development
IOM	International Organization for Migration
ISS	International Social Services
SCCT	The Scalabrini Center of Cape Town
UAM	Unaccompanied Minor
NPO	Non-Profit Organisation

ACKNOWLEDGEMENTS

Certain sections of this research - namely the sections on legal frameworks pertaining to foreign children in South Africa - have been used directly from the 2015 report 'Foreign Children in Care in the Western Cape Province,' by Marilize Ackermann of the Scalabrini Centre of Cape Town. We would like to acknowledge Jennifer Khumalo for providing the photos in this report. This report is authored by Lotte Manicom, Advocacy Officer at the Scalabrini Centre of Cape Town.

1 | INTRODUCTION



To have a meaningful existence in South Africa, identification documentation is vital. A variety of rights flow from such a document; it establishes a nationality, an identity, and an ability to function within a formal society. For a child, an identification document is crucial in their ability to access their most basic rights, and to plan a meaningful future.

[The Scalabrini Centre of Cape Town](#) (SCCT) is an NPO offering specialised services to migrants, refugees and South Africans. [The Advocacy Programme](#) aims to promote and strengthen the rights and integration of migrants and refugees in South Africa, through providing individual advice and advocating for legislative and policy reform. Through its specific project advising caregivers of unaccompanied and separated foreign children, SCCT found 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 led to surveying every case of a foreign child placed in a Child and Youth Care Centre (CYCC) across South Africa's Western Cape Province. The resulting report was published in September 2015, on [For-eign Children in Care in the Western Cape Province](#).

The aim of the 2015 study was to establish the number of foreign children in care and gain a deeper understanding of the issues and challenges faced both by the children and the institutions caring for them. The findings informed conclusions and recommendations to assist service providers and relevant authorities in their approach to the cases of migrant and refugee children.

The issues faced by migrant and refugee children in CYCCs is an issue requiring policy-based solutions. For this reason, SCCT sought to survey all foreign children in care across Limpopo and Gauteng provinces. This was done jointly between SCCT, the International Organization for Migration (IOM) and the University of the Western Cape. In recent years, there has been increased interest – both nationally and regionally – in unaccompanied and separated foreign children. In 2015, the South African National Steering Committee on Unaccompanied and Separated Children¹ was established to seek understanding and solutions on the issue. In October 2017, governmental departments and civil society organizations signed resolutions at the Collo-quium on Separated and Migrant Children in South Africa. The resolutions sought to combat the issues faced by foreign children in South Africa. Research on foreign children was commissioned in order to guide the committee. In 2017, IOM published their [Study on Unaccompanied Migrant Children in Mozambique, South Africa, Zambia and Zimbabwe](#).

The increasing interest, from both the South African government and civil society, to develop solutions for migrant and refugee children is welcomed by SCCT. This study seeks to assist the formulation of solutions by analysing the position of unaccompanied and separated foreign children within the context of refugee and immigration law, and by exploring the area where migration meets children's rights.

The study looks at the profile of foreign children across Limpopo, Western Cape and Gauteng accommodated in CYCCs, the children's reasons for migration and the circumstances around placement in residential care institutions. It also 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.

1 The National Steering Committee includes agencies such as the Department of Social Development, the Department of Home Affairs, United Nations Children's Fund (UNICEF), The UN Refugee Agency (UNHCR), Save the Children, IOM and Lawyers for Human Rights.

2 | MAIN FINDINGS

GENDER

Overall, 60% of foreign children were male and 40% were female. However, in the Limpopo province, 73% of children were male.

AGE

The majority of children fell into the ages between eleven and eighteen, which cumulatively made up 47% of all children across the provinces. The average age of these children was sixteen. Children tended to be younger in Gauteng province where 52% were under sixteen years old. Children in the Western Cape were typically older. At 53%, the majority were sixteen years or older.

COUNTRY OF BIRTH

Children were born in fifteen countries, all in the African continent. One in three children were born in Zimbabwe – and whereas children in the Western Cape were born in eleven different countries, in Limpopo children were born in one of three countries. The top four countries of birth, across all provinces, were Zimbabwe (33%), South Africa (23%) and the Democratic Republic of Congo. (Children born in South Africa refers to children born to non-South African parents.)

NATIONALITY

Across all provinces, the children accounted for 28 different possible nationalities. The Western Cape Province was the most diverse in terms of nationality (18 nationalities) whilst Limpopo accounted for four nationalities only, which a large majority of Zimbabwean children (87%). The top four possible nationalities were Zimbabwean, Congolese, Mozambican and Unknown.

EDUCATION

Overall, 42% of children had spent over three years in the South African education system. Regarding access to education, 89% of children of school-going age were enrolled in school.

TIME SPENT IN SOUTH AFRICA

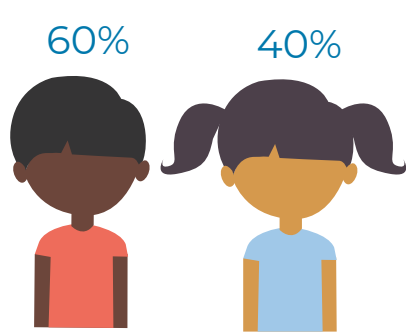
The majority of children had spent considerable time in South Africa, with 70% spending five years or more in the country. Children in Limpopo were more likely to have arrived more recently in South Africa. Those in the Western Cape had lived in the country for an average of nine years, and in Gauteng the average was eight years. In Limpopo, however, the average time spent in South Africa was four years.

REFUGEE CHILDREN

Overall, just under one third of children migrated – with or without an adult – due to conflict, war or persecution in their country of origin. None of these children were found in Limpopo – only in Gauteng and Western Cape provinces.

THE DECISION TO MIGRATE

In Limpopo, the majority of children took the decision to migrate to South Africa themselves (72% of children), whereas in Western Cape and Gauteng, only a minority of children decided to migrate themselves at 12% and 10% respectively. Overall, in 71% of all cases in which the child's migration history is known, it was not the child's decision to migrate to South Africa.



Gender
Of all children surveyed, 60% were male and 40% were female.

Education
42%
89%

of children had spent over three years in the South African education system.

of children of school-going ages were enrolled in school.



47% of children fell into the ages between eleven and eighteen. Children tended to be younger in Gauteng, whereas children in the Western Cape were typically older.

Age
47%

Time in South Africa



The majority of children had spent considerable time in South Africa, with 70% spending five years or more in the country. Children in Limpopo were more likely to have arrived more recently in South Africa.

Country of Birth

15 Children were born in one of fifteen different countries, as marked on the map below. All were born in the African continent. The top four countries of birth were Zimbabwe (33%), South Africa (23%) and the Democratic Republic of Congo (21%).

Nationality

28 Across all provinces, the children accounted for 28 different possible nationalities.

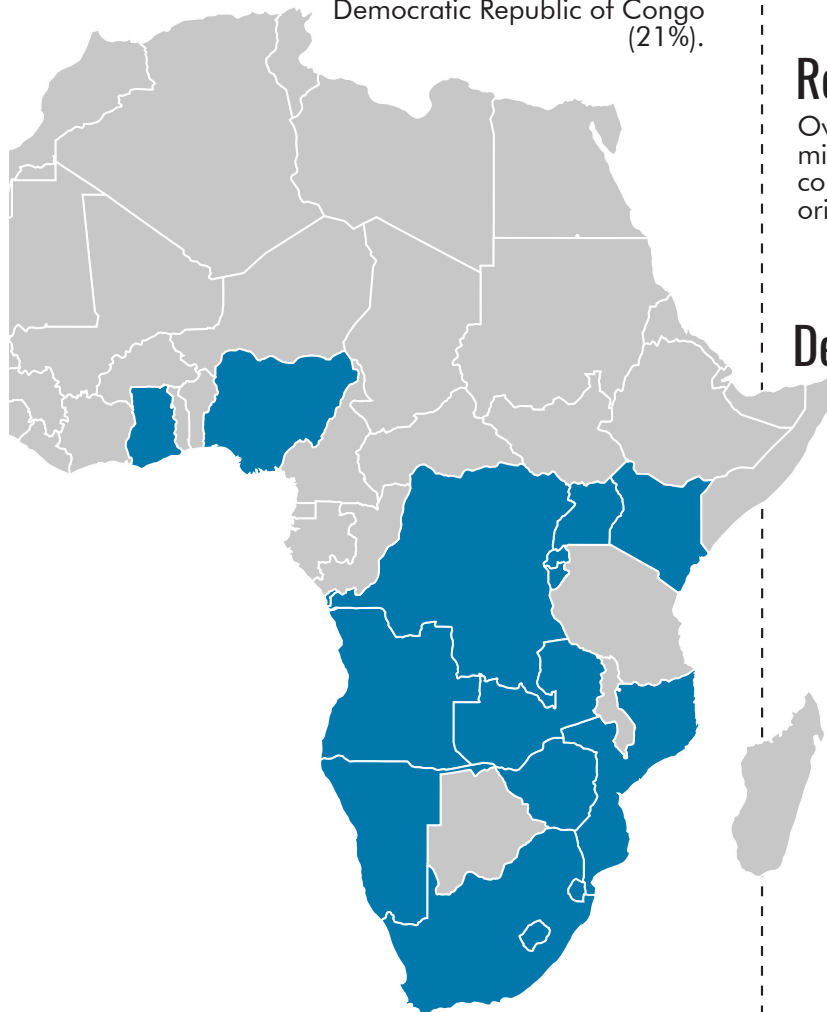
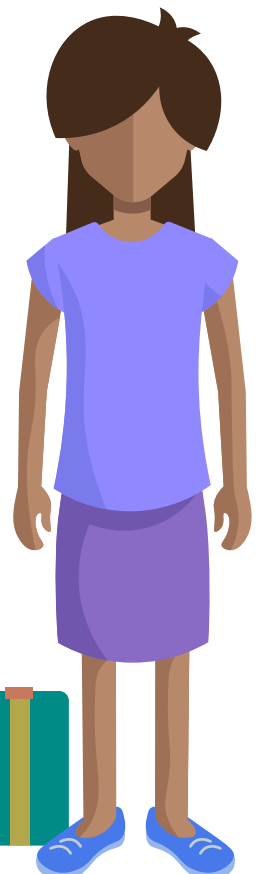


Refugee Children

Overall, just under one third of children migrated – with or without an adult – due to conflict, war or persecution in their country of origin.

Decision to migrate

In Limpopo, the majority of children took the decision to migrate to South Africa themselves (72% of children), whereas in Western Cape and Gauteng, only a minority of children decided to migrate themselves (10% and 12%). Overall, in 71% of all cases in which the child's migration history is known, it was not the child's decision to migrate to South Africa.



2 | MAIN FINDINGS

REASONS FOR MIGRATION

Of those children who took the decision to migrate to South Africa, those in Limpopo province were more likely to have done so for economic or education opportunities, at 93%. In the Western Cape, 36% of the children who decided to migrate did so due to conflict or war in the country of origin.

ENTRY INTO SOUTH AFRICA

At 43%, the majority of children entered South Africa with one of their parents. A further 27% entered as separated child and another 27% entered as an unaccompanied minor (UAM). Children in Limpopo are more likely to have entered South Africa alone, at 69%. In Gauteng, 12% of migrating children entered South Africa alone, and only 9% of children in Western Cape did so.

CIRCULAR MIGRATION

Data from Limpopo revealed more circular migration patterns, with 44% of children having entered and existed South Africa multiple times.

REASONS FOR PLACEMENT

A quarter of children were placed due to destitution, indicating the huge impact of socio-economic deprivation on child migrants.

TIME IN CARE

Overall, 46% of children spent one to three years in a CYCC. A further 20% of children have spent three to five years in a CYCC and 17% have spent five to seven years. Collectively, 5% have spent seven or more years in a CYCC.

UNDOCUMENTED CHILDREN

The largest proportion of children held no documentation at all, at 34% of all children. This seemed to be especially problematic in Limpopo, where 82% of children were undocumented.

DOCUMENTS UNDER REFUGEES ACT

Overall, 23% of children held documentation issued under the Refugees Act. No child in Limpopo held a refugee or asylum document, however. The majority of children holding refugee status or asylum-seeking documents were documented as 'dependents' of a principle applicant, and 64% of these children were no longer in contact with the principle applicant, thus rendering extension of the document impossible.

BIRTH REGISTRATION

The study showed that 39% of the children born in South Africa to foreign parents did not have a birth certificate.

STATELESSNESS

Those at risk of statelessness, in that they have no document at all, represent 40% of all children, and 27% of children were considered at 'considerable risk' of statelessness.

FAMILY TRACING & REUNIFICATION

In 62% of cases deemed relevant, family tracing had been undertaken. These tracing attempts were either ongoing or had failed at the time of the surveys. In 43% of cases, family reunification in country of origin was seen as a possibility and in 52% of these cases, cross-border reunification is either in process, or has been attempted and failed.

Entry into South Africa

Of those children who migrated to South Africa:

43%

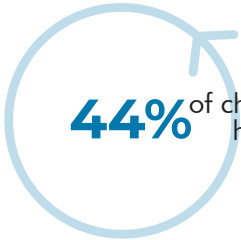
entered with one of their parents

27%

entered as separated child

43%

entered as an unaccompanied minor



Circular Migration

44% of children found in CYCCs in Limpopo had entered South Africa more than once.

Reasons for Placement



A quarter of children were placed in a CYCC due to destitution, indicating the impact of socioeconomic deprivation on child migrants.

Time spent in care

46% of children had been in a CYCC for 1-3 years.

20% of children had been in a CYCC for 3-5 years.

17% of children had been in a CYCC for 5-7 years.

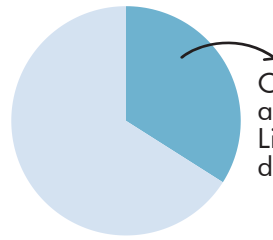
5% of children had been in a CYCC for 7+ years.

Birth Registration

39%

of children born in South Africa did not hold a birth certificate.

Documentation

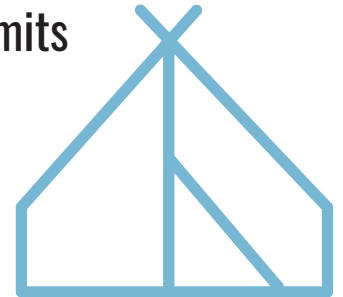


Overall, 34% of all children were without any document. The rate was higher in Limpopo, where 82% of children held no document.

Refugee & Asylum permits

23%

Of children held documentation issued under the Refugees Act across all three provinces.



Statelessness



40%

40% of all children were considered 'at risk' of statelessness. 27% of children were considered at 'considerable risk' of statelessness.

Family Tracing & Reunification

62%

of cases deemed relevant, family tracing had been undertaken. These tracing attempts were either ongoing or failed at the time of the surveys.

52%

of cases in which cross-border reunification was considered appropriate had reunification attempts marked as: in process, or attempted and failed.



3 | METHODOLOGY & LIMITATIONS

In September 2015, telephone contact was made with 92 CYCCs located throughout Gauteng province and 16 CYCCs in Limpopo province. Of the 92 CYCCs in Gauteng, 38 indicated to accommodate foreign children. Only 26 of the CYCCs were available to participate with the study. Out of 17 CYCCs contacted in Limpopo Province, 10 institutions said they accommodated foreign children, all of which participated with the study. Between October 2015 and February 2016, a total number of 216 cases of foreign children were surveyed (150 cases in Gauteng and 79 cases in Limpopo Province). Prior to this, in January and February 2015, it was established that 20 out of 50 CYCCs operational across the Western Cape Province provided services to 109 foreign children. These cases were surveyed in 2015, resulting in the above-mentioned research.

In accordance with the conditions attached to permission to conduct research, granted by the Research Ethics Committees of the Provincial Department of Social Development of both Limpopo and Gauteng, and the University of the Western Cape, field researchers conducted a questionnaire in respect of each individual child. The majority of questionnaires were conducted with residential social workers attached to a particular institution. A small number of questionnaires were conducted with the children themselves, if possible and appropriate, over the age of twelve. While the majority of the questions were qualitative in nature, attempts were made to frame questions in such a way that responses would allow for quantitative analysis. Care was taken to ensure the necessary level of sensitivity and all interviews were conducted in a child friendly manner. Interviews were conducted on an anonymous and voluntary basis. The surveys informing the study were undertaken in 2015 and 2016, thus portraying a snapshot of that specific period. The survey is calculated as of 2016.

The study was limited insofar as the information provided was limited to the knowledge of the designated social workers appointed to the cases. Cases of foreign minors are complex; some social workers had limited knowledge around the history and details of foreign children in their care. In such cases, these data fields are marked 'unknown'. Analysis drawn from some data fields will, where deemed necessary, make mention of the number of cases which information is not known about. Secure care facilities, accommodating children in conflict with the law, were not included in the survey.

The Children's Act of South Africa (No. 38 of 2005) defines a child as 'a person under the age of 18 years.' However, when dealing with migrant children, the frequent absence of identification documentation makes accurate age determination a difficult task. As part of the child protection process, a social worker may approach the court for a medical age estimation to be conducted. It is further noted that the Children's Act provides for the extension of alternative care for individuals over the age of eighteen, but younger than twenty-one, provided he or she is still enrolled in school.¹ It was decided to include in this study the cases of young people between the ages of eighteen and twenty-one, if they remained in residential care at the cost of the CYCC, were attending school, and if they were under 18 at the time of migration. The reasoning was that it would be relevant to examine the challenges faced by migrant children who transition into adulthood, especially with regards to the ability to access documentation. It was further presumed that the migratory experiences and protection needs would be as relevant as those of respondents aged under 18. References to 'children' or 'child' used throughout the report will therefore include the above cases. Where the study refers to 'children' or 'foreign children', it is taken to mean the sample of foreign unaccompanied or separated children in CYCCs that were surveyed for this study in Limpopo, Western Cape and Gauteng provinces.

¹ As per Section 176 of the Children's Act No. 38 of 2005.

4 | THE LEGAL FRAMEWORK

The Children's Act applies to all children within South Africa, no matter what their nationality or documentation status is.¹ Procedures for approaching the cases of foreign unaccompanied and separated children are set out in the 2009 and 2015 guidelines on Separated and Unaccompanied Children outside their country of origin in South Africa.² According hereto, appropriate documentation solutions should be explored as soon as the child's immediate safety is secured,³ followed by attempts at family tracing and reunification if appropriate.

The number of children migrating to South Africa is almost impossible to estimate, as no registration mechanism exists to record the entry and particulars of undocumented, 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.



1 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.

2 In 2009, DSD released Guidelines on unaccompanied and separated children outside their country of origin in South Africa and in 2015, DSD released 'Standing Operating Procedures for the tracing, reunification or alternative care placements of unaccompanied and separated children in South Africa'. At the time of writing, these guidelines were not available online.

3 Department of Social Development (2009) Guidelines on unaccompanied and separated children outside their country of origin in South Africa, paragraph 6.2.

'Separated children' refers to children who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives.⁴ Depending on the circumstances, extended family members 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 or alone, the child is categorised as unaccompanied.

Documentation of foreign children in South Africa

The legislative frameworks governing the entry, stay and departure of foreigners, to and from the Republic of South Africa, comprise 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 (No. 51 of 1992) and the Citizenship Act (No. 88 of 1995) which was amended by the South African Citizenship Amendment Act (No. No. 17 of 2010).

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, [and] 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.* Section 3(c) of the Refugees Act pertains to dependents of the asylum seeker or refugee, to whom a similar status is extended. This section is of particular importance to the biological

4 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>

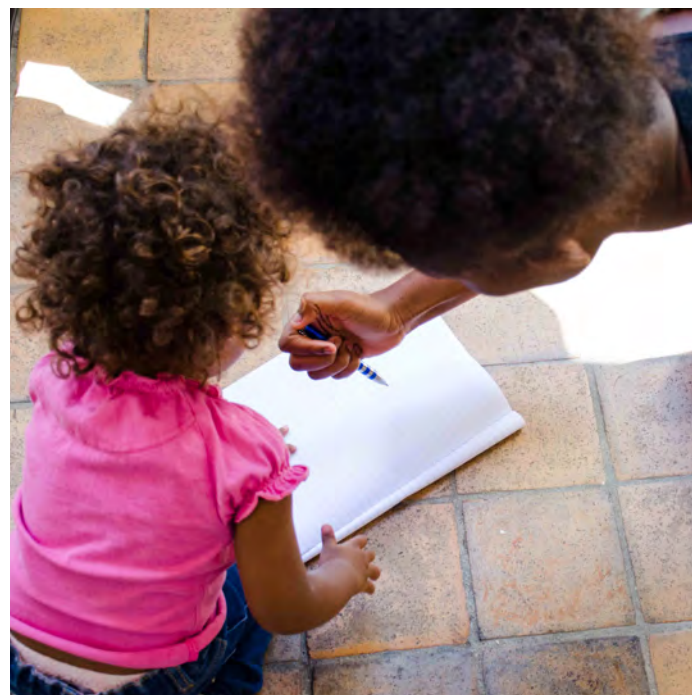
children of an asylum seeker or refugee, as it allows for the dependent to derive a similar status. A 'dependent' is defined as including the unmarried, dependent child of the asylum applicant.⁵ In July 2015, the North Gauteng High Court ruled that the definition of 'dependent' be broadened to include separated children in the care of a relative other than a parent. At the time of writing, the ruling was not yet implemented at the Cape Town RRO. Furthermore, provisions of the Refugee Amendment Act, which was signed into law in December 2017, have narrowed this definition to require that such children are noted at the time of application for asylum, or provide a birth certificate if born to the principle applicant thereafter.

Not all foreign children in South Africa are necessarily refugee children. However, for those foreign children with refugee claims, applying for asylum is not possible without the referral to and intervention of a social worker and children's court. This is set out in Section 32 of the Refugees Act, which states that *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.*⁶

Over past years, practices at Refugee Reception Offices have been inconsistent. The 2015 study on foreign children in the Western Cape province revealed that some children had been able to apply for asylum without having the required order, whilst others were not able to. The ongoing closure of RROs in Cape Town further restricts foreign children's ability to apply for asylum in South Africa.

If a foreign child does not qualify for refugee status, he or she could be documented in terms of the Immigration Act and Regulations. Temporary residence categories available to children are limited to study visas or relative visas, depending on their circumstances. The requirements for these visas require several documents, some of which are costly, and have to be applied to outside of South Africa. It is extremely unlikely that the unaccompanied or separated child is able to meet the requirements of these immigration visas.

In some cases, foreign children have spent long amounts of time in South Africa and in CYCCs, and family reunification or return to country of origin is proven to be inappropriate. If there is no option to document the child under the Refugees or Immigration Acts, an application might be submitted in terms of section 31(2)(b) of the Immigration Act, which permits the Minister of Home Affairs the ability to 'grant a foreigner or a category of foreigners the rights of permanent residence for a specified or unspecified period when special circumstances exist which justify such a decision'. Since 2014, SCCT has submitted 16 applications under this section of the Immigration Act. In 5 cases, the rights of permanent residency have been granted by the Minister of Home Affairs. Two have been rejected and in the remaining cases, no response has been given.



5 Section 1 of the Refugees Act No. 130 of 1998.

6 This is read together with Section 46(1)(h)(viii) of the Children's Act, which states that 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.

Protection of foreign children in South Africa

The Children's Act and Regulations provide the framework for the placement of children in alternative care.⁷ 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.⁸ 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. DSD's Guidelines state that unaccompanied [foreign] children should be assumed to be children 'in need of care and protection'.

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 South Africa.

CASE STUDY: THANDO

Thando* and his brother were born in the border region between DRC and Rwanda. Both parents were killed in the conflict and they were taken in by a neighbour. Together, they fled southwards and arrived in South Africa, where they were left by neighbour at a bus station. Thando and his brother were placed in a CYCC by DSD. With the assistance of a legal clinic, the brothers were considered to have a refugee claim and they were advised to apply for asylum via the Children's Court and with the assistance of a social worker. However, due to the closure of the Refugee Reception Office in Cape Town, the brothers were not able to make application to asylum in Cape Town. Such application could only be made at other RROs (Durban, Pretoria and Musina) travel to which is practically, legally and financially difficult. **pseudonym used to protect identity*



⁷ 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.

⁸ Section 156 of the Children's Act No. 38 of 2005.

5 | DEMOGRAPHICS

Gender

A larger proportion of foreign children placed in CYCCs were male. Across all three provinces, 60% of foreign children were male and 40% were female.

In the Western Cape and Gauteng, children's gender was split along similar lines. In Limpopo, a much larger percentage of children were male at 73%.

Age

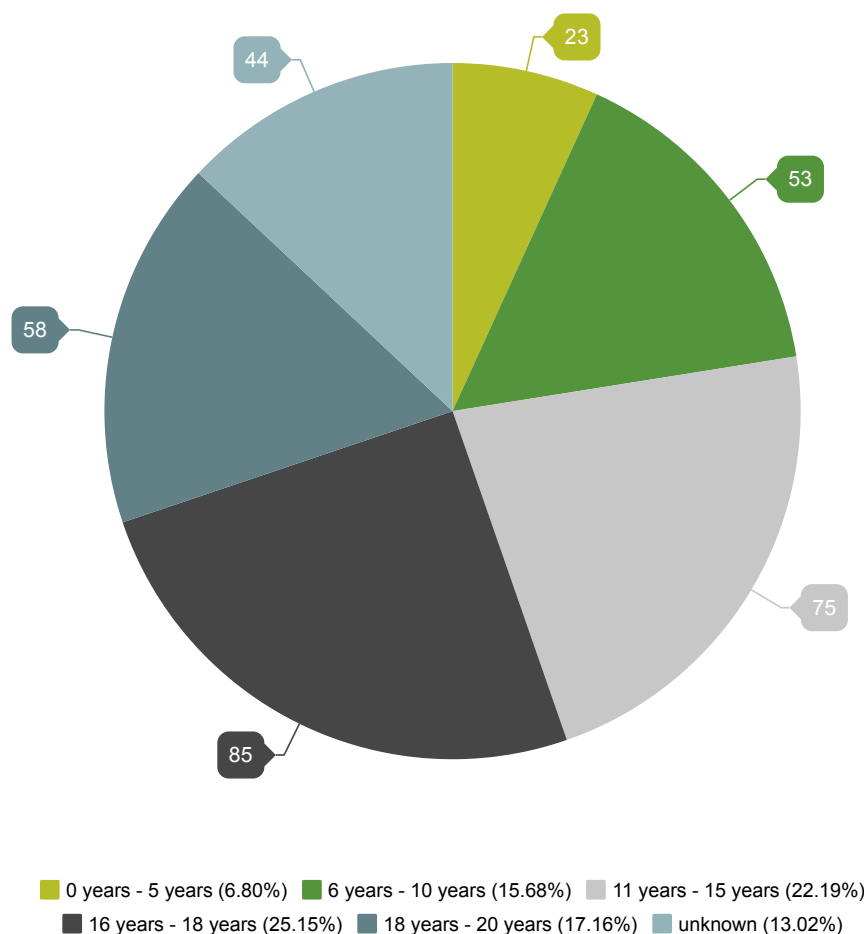
The majority of children fell into the ages between eleven and eighteen, which cumulatively made up 47% of all children across the provinces. Within this, 22% of children were between eleven and fifteen years of age, whilst 25% of children were between the ages of sixteen and eighteen. A further 17% of the children were between the ages of eighteen and twenty.

The data found that 16% of the children were between six and ten years of age and only 7% of children were between zero and five years of age. For 13% of children, their age was unknown.¹

The chart below displays the number of children that fall into each age category.

In terms of differences between the provinces, children in Gauteng are more likely to be of a younger age (52% of the children were under 16, in comparison with 30% and 45% of Limpopo and Western Cape respectively), whilst in the Western Cape, children were more likely to be older (53% of the children in Western Cape were between the ages of 16 and 20, in comparison with 34% and 43% in Gauteng and Limpopo respectively).

Ages of children across Gauteng, Limpopo and Western Cape Provinces (%)



¹ In terms of Section 48(2) of the Children's Act 2005 (Act No. 38 of 2005), an age estimation can be undertaken by a medical practitioner, however it would seem in these cases an age estimation has not been undertaken.

6 | NATIONALITY & BIRTHPLACE

Place of Birth

Across all three provinces surveyed, the largest percentage of children were born in Zimbabwe at 33%, followed by those born in South Africa (23%) and the Democratic Republic of Congo (DRC) at 21%. The most apparent trend is that a majority of children found in the Lim-popo area are born in Zimbabwe, at 69%. Of those children born in South Africa, the most were found to reside in Gauteng (52 children), followed by Western Cape (19) and Limpopo, where only 8 children were born in South Africa (the majority of children born in Burundi were also found to be in the Western Cape: 12 out of 14 children). Just over half of the children found in Gauteng were born in South Africa (53%), followed by those children born in Zimbabwe (23%), DRC (19%) and Mozambique (10%). Children found in Western Cape are the most diverse in terms of places of birth. Children in the Western Cape were born in 11 different African countries, compared to Limpopo where children were born in only three different countries. In the Western Cape, 41% of children in were born in DRC, followed by South Africa (19%), Burundi (12%) and Angola (10%). All children born in Angola (10 children) were found in the Western Cape. The top four countries of birth per province is set out in the table, below.

	All	Gauteng	Limpopo	Western Cape
1	Zimbabwe	South Africa	Zimbabwe	DRC
2	South Africa	Zimbabwe	South Africa	South Africa
3	DRC	DRC	DRC	Burundi
4	Mozambique	Mozambique	Unknown	Angola

Table 1: Top four countries of birth per province

Nationality / Citizenship

Birth in South Africa does not automatically confer South African nationality. Upon birth, a child born to two foreign residents in South Africa is considered a non-citizen. A child's nationality is determined in South Africa by the Citizenship Act which was amended in 2013.¹

Children born to two foreign parents in South Africa gain the nationality of those parents. If the parents are of two different nationalities, the child might be able to apply to one or both of these nationalities, dependent on the nationality law of those countries. South African citizenship can be gained through a child being born of at least one South African parent. Four children surveyed had one South African parent. South African citizenship is not automatic in such cases; the child would have to prove that they were born to a South African parent. The amended Citizenship Act provides, at Section 4(3), that any child born in South Africa to foreign parents may apply for South African citizenship upon reaching majority, subject to their holding a birth certificate and having resided in South Africa until the age of 18.

¹ The South African Citizenship Act of 1995 (Act 88 of 1995) was amended by the South African Citizenship Amendment Act, 2010 (Act No. 17 of 2010), as noted in Section 4 of this study.

² Those able to apply this section of the Citizenship Act was confirmed in the case, *Miriam Ali vs The Minister of Home Affairs* (case 15566/2016).

As it stands, only eight children out of the 338 surveyed may qualify to apply for South African citizenship in terms of this section.

From the surveys, it is possible to ascertain the possible nationality of foreign children from the nationality of their parents. This remains theoretical, however, as nationality is not automatically gained by foreign children born in South Africa but has to be applied for at the relevant consulate. The application process for such children to be recognised as a citizen of that country is subject to certain requirements and documents, and proof of biological relation to a national of that country.¹ Those at risk of statelessness is explored in more depth in section 10, below. Across all provinces, the children accounted for 28 different possible nationalities. The Western Cape Province was the most diverse in terms of possible nationalities (18 nationalities) whilst Limpopo accounted for 4 nationalities only, which a large majority of Zimbabwean children (87%). Twenty-three children, across all three provinces, originated from mixed-national parents.

Table 2: top four possible nationalities per province

	Gauteng	Limpopo	Western Cape
1	Zimbabwean	Zimbabwean	Congolese
2	Congolese	Unknown	Burundian
3	Mozambican	Mozambican	Zimbabwean
4	Lesotho	Congolese	Rwandan

¹ The surveys found that only 36% of children have contact with their mother and 18% have contact with their father. As willing and active contact is needed between child and parent to prove their biological relation, proving such nationalities may be difficult.

Table 3: possible nationality of children across all three provinces.

Nationality	Number of children
Zimbabwean	118
Congolese	75
Mozambican	29
Unknown	28
Lesotho	16
Burundian	15
Rwandan	10
Congolese / Angolan	7
Foundling	5
Angolan	4
Somali	4
Lesotho / South African	3
Congolese / South African	3
Kenyan / Congolese	3
Mozambican / Congolese DRC	2
Nigerian	2
Tanzanian	2
Ugandan	2
Cameroonian	1
Congolese / French	1
Ghanian / South African	1
Ghanian	1
Kenyan	1
Mozambican / Lesotho	1
Namibian	1
South African / Swazi	1
South African / Nigerian	1
Zambian	1

7 | EDUCATION



In terms of section 29(1) of the South African Bill of Rights, everyone in South Africa has the right to a basic education, including adult basic education. School is compulsory for children between the ages of six and fifteen.

It was found that children in care were largely able to access the right to education. Across all provinces, 38% of children were of school-going age, 89% of which were enrolled and attending school. The remaining 11% of these children, who were not attending school, were spread across all three provinces.¹ Children not accessing education was, therefore, not an issue specific to one province. This indicates a similar rate of access to education across all provinces.

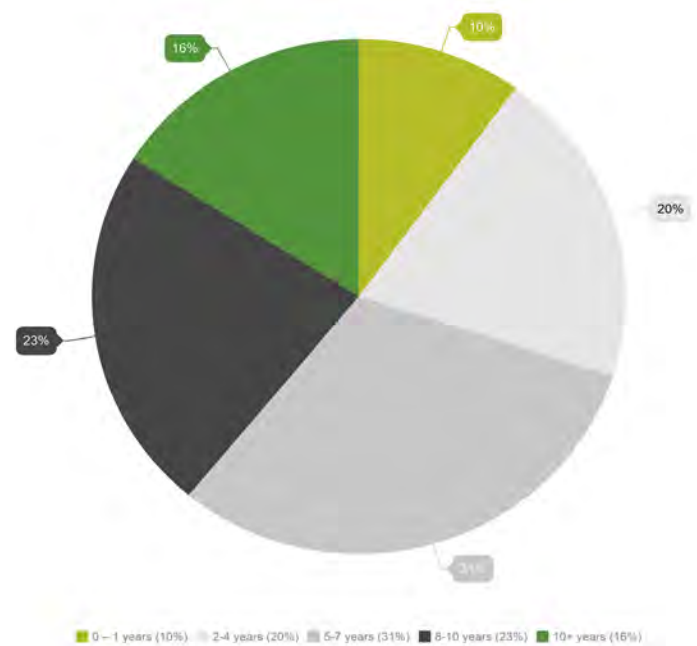
A high rate of enrollment in education was found among those children between the ages of eighteen and twenty, with 96% of this age group enrolled in school or tertiary education. Children had spent a considerable amount of time in the South African education system; in total, 42% of children had spent over three years in the South African education system.² Comparatively, only 5% had spent less than one year in South African schools.

¹ In Limpopo, only 2% of children of school-going age were not attending school, whereas in the Western Cape this was at 5% and in Gauteng 3%.

² 15% of all children had spent three to five years in the education system, and another 15% percent had spent five to seven years in South African education.

8 | TIME IN SOUTH AFRICA

The survey revealed lengthy periods of stay in South Africa.¹ At 70%, the majority of children had been present in South Africa for more than five years - 31% between five and seven years, 23% between eight and ten years, and 16% had been in South Africa for over ten years. It was found that 20% of children had resided in South Africa between two and four years and 10% had been in South Africa for less than a year. Considering the average age of this specific group is 16 years of age, the time spent in South Africa is considerable. Comparatively, the data indicates that the average year of arrival in Gauteng and Western Cape is similar. Children found in Gauteng had spent an average of eight years in South Africa, and in the Western Cape, children had lived in the country for an average of nine years. In Limpopo, however, the average time spent in South Africa was only four years. In Limpopo, no child had spent more than eight years in South Africa. Children arrived in Limpopo from 2008 coinciding with the economic crash Zimbabwe faced around 2007. A peak can be seen in the number of children arriving from Zimbabwe in 2014. One must take into consideration, however, the circular nature of migration found amongst children in Zimbabwe (see Section 9 below).



¹ This section of the study analyses the data of those children who were not born in South Africa, and for whom the date of arrival in South Africa was known by the respondent.

Analysis: Children of long-stay in South Africa

Twelve children – five of whom were found in the Western Cape and seven in Gauteng – have spent fourteen years or more in South Africa. In the Western Cape, all five of these children were born in Angola. This correlates with the flows of refugees from Angola during that time. The civil wars of Angola created thousands of refugees and was brought to an end in 2002 with the signing of the Luena Peace Agreement. In Gauteng, the nationalities of long-stay children are varied and there seems to be no emerging explanation. Of these 12 children, five have legal stay in South Africa. A further five have an identifying document, such as a birth certificate, but no legal stay in South Africa, and two hold no identifying documentation at all.

CASE STUDY: THEMBI

Thembi* arrived with her sister and mother in South Africa in 2002. Thembi is thought to have been born in Kenya. The reasons for her mother's migration to South Africa are not known. Her mother was financially and psychologically unstable and was unable to care for the children. Found living in a car, the children were removed and placed in a CYCC, after which their mother disappeared. The Kenyan authorities in South Africa could not recognize them as Kenyan nationals without required documentation. The children are at risk of statelessness and have no documentation options in South Africa. They have been residing at the CYCC for seven years.

**pseudonym used to protect identity.*

Analysis: Children of short-stay in South Africa

An analysis of those children who arrived in South Africa from 2014 onwards shows a different make-up. 36 children arrived after 2014 and of these, only one child is in Western Cape, whereas 22 are in Limpopo and 13 in Gauteng. The large majority of these children (24 children) are born in Zimbabwe.

Children's arrival in the Western Cape and Gauteng provinces shows similar patterns - there is a slight peak of arrivals between 2008 and 2011, but children have been arriving as early as 1999. In Limpopo, children only arrived from 2008.



9 | MIGRATION TO SOUTH AFRICA

This section focuses on children who decided to migrate alone to South Africa, and their reasons behind that migration, as far as it can be established from the data. The reasons for migration were found to be a confluence of multiple pull and push factors. 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.

The choice to migrate

The data analysis of this section only pertains to those children born outside South Africa, and those for whom a migration history is known. The surveys, which recorded whether it was the child's choice to migrate to South Africa or not, indicate a distinct difference between the provinces. In the Gauteng and Western Cape provinces, the large majority of children did not take the decision to migrate to South Africa. In Limpopo, however, the large majority of children decided, themselves, to migrate to South Africa – at 72%. This is displayed in the table, below. This pattern correlates with the finding, below, that a larger percentage of children in Limpopo are unaccompanied minors, as compared to Gauteng and Western Cape.

Table 4: percentages of children who decided to migrate, per province.

	Child decided to migrate to South Africa	It was not the child's decision to migrate to South Africa
Gauteng	10%	90%
Limpopo	72%	28%
Western Cape	12%	88%

Number of entries into South Africa

Surveys in Limpopo and Gauteng provinces recorded the circular nature of child migration. This data was not recorded in the Western Cape. In Gauteng, 90% of children who migrated to South Africa only entered once into South Africa. In Limpopo, only 56% of children entered once; the remaining 44% of children in Limpopo had entered South Africa at least twice, indicating a much more circular pattern of migration of children in and out of Limpopo. Those entering South Africa more than once in the Gauteng region was only 10%, indicating a more settled group of children.

Reasons for children's migration

Taking into consideration both children who decided themselves to migrate, and those who migrated due to a family member or another adult's decision, it appears that 29% migrated due to conflict, war or persecution in country of origin. None of these children were found in Limpopo – only in Gauteng and Western Cape provinces.

Children who chose to migrate to South Africa

Seventy children took the decision to migrate themselves. Of these children, the choice of children to migrate was motivated by factors such as:

- to search for work (41%) or better education (34%)
- due to conflict or war in the country of origin (11%)
- due to the death of a parent or caregiver (3%)
- to join family in South Africa (1%)
- on the promise of a better life in South Africa (1%)
- due to other or unknown reasons (7%).

In Gauteng, a quarter of these children decided to migrate due to better work or education opportunities, and another quarter migrated due to conflict or war. In the Western Cape, 36% of these children migrated because they were seeking better economic or education opportunities, whereas 55% of them migrated due to conflict. Conversely, in Limpopo, 93% of children who decided to migrate themselves did so due to better education or economic opportunities – but no child migrated due to conflict or war.

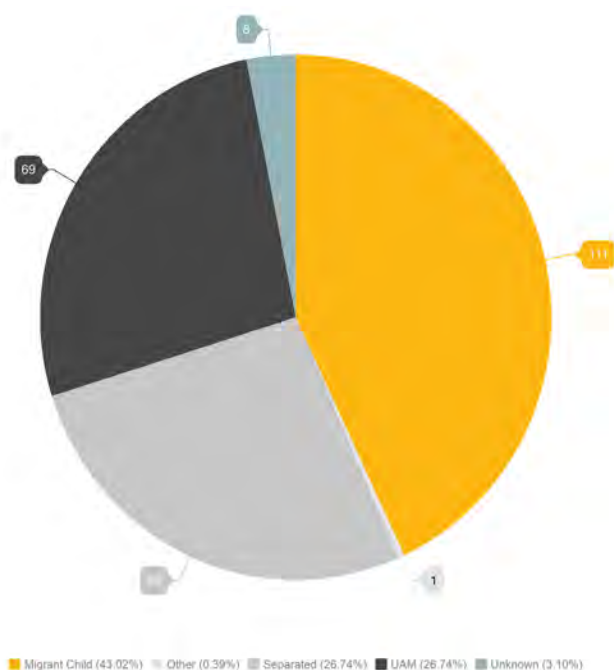
Children who did not decide themselves to migrate to South Africa

Across all three provinces, a total of 178 children came to South Africa because an adult, related or unrelated to the child, decided to migrate. Of these children,

- 45 came with economic migrant adults looking for work,
- four came with adults who intended to study
- nine came to join a family member in South Africa
- 64 migrated due to conflict or war
- five migrated due to the death of family members
- four migrated due to the imprisonment of the child's parents in country of origin
- one adult came for medical reasons and,
- the remaining cases came due to other (12) or unknown (34) reasons.

Unaccompanied and separated children

The survey identified 27% of the children as separated children and 27% as unaccompanied children upon entry into South Africa. The largest percentage of children (43%) entered South Africa with at least one of their parents. It is therefore assumed that they were later separated from this parent and placed in a CYCC. In the case of the remaining 3%, whether the child entered as a UAM or a separated child is unknown. In one case, the Ghanaian social services arranged entry but the child later went into a CYCC. This is displayed in the chart below:

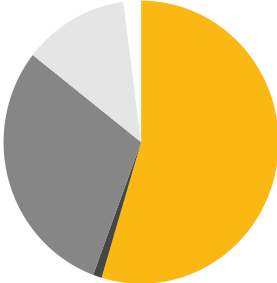


An unaccompanied child is recognised, automatically, as a child in need of care and protection, as per Section 152 of the Children's Act. Separated children, however, are in the care of an adult and therefore require the investigation of a children's court to determine whether they are in need of care and protection. Considering that 27% of children were separated children, and 43% entered with a parent, a large majority of these children would not have been automatically considered in need of care and protection upon entry. As separated children are considered a particularly vulnerable category of foreign children in South Africa, SCCT undertook research on the issues faced by separated children and caregivers in the Western Cape Province.¹ The categorisation of children between UAM, separated and migrant child differs dramatically between provinces. Children in Gauteng and Western Cape are more likely to have entered South Africa with a parent (55% and 52% respectively). Children in Limpopo, however, are more likely to have entered into South Africa as an unaccompanied minor, which is the case in 69% of the children found in Limpopo. The occurrence of unaccompanied minors in Gauteng is also more likely than in Western Cape. In Gauteng, 12% entered South Africa alone and in Western Cape, only 9% of children did so. In the Western Cape, 38% of children entered as a separated child and in Gauteng, 30% entered South Africa in this manner. Charts on the following page display the different categorisation of unaccompanied, separated and migrant children per province. Children who entered South Africa as separated children entered with different adult figures. Of those 69 children, they entered South Africa with uncles (fifteen children) aunts (twelve children), adults unknown to the child (eleven children), siblings (eleven children), grandmothers (eleven children), neighbors (three children) stepmothers or parents' partners (three children), extended family members (two children) or with a cousin (one child).

¹ Scalabrini Centre of Cape Town (2017) [Unaccompanied and Separated Foreign Children in the Western Cape, South Africa: Exploring \(the lack of\) durable solutions for children in informal relations of care](#)

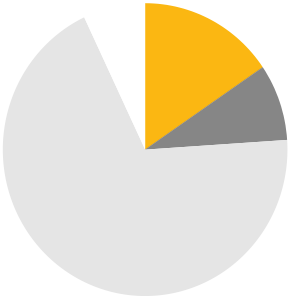
The different categorisation of unaccompanied, separated and migrant children per province.

GAUTENG



■ Migrant Child (54.64%) ■ Other (1.03%) ■ Separated (29.90%) ■ UAM (12.37%) ■ Unknown (2.06%)

LIMPOPO



■ Migrant Child (15.49%) ■ Other (0%) ■ Separated (8.45%) ■ UAM (69.01%) ■ Unknown (7.04%)

WESTERN CAPE



■ Migrant Child (52.22%) ■ Other (0%) ■ Separated (37.78%) ■ UAM (8.89%) ■ Unknown (1.11%)

Method of entry

The method of entry into South Africa was recorded in the Limpopo and Gauteng surveys. The overwhelming majority entered irregularly into South Africa at 90%. In Limpopo, it is noted that all children entered irregularly. Between these two provinces, whilst 4% of separated children entered legally (i.e. at a border post, with documentation) into South Africa, only 1% of unaccompanied minors entered legally. At 8%, children entering South Africa with one or more of their parents were more likely to enter legally.

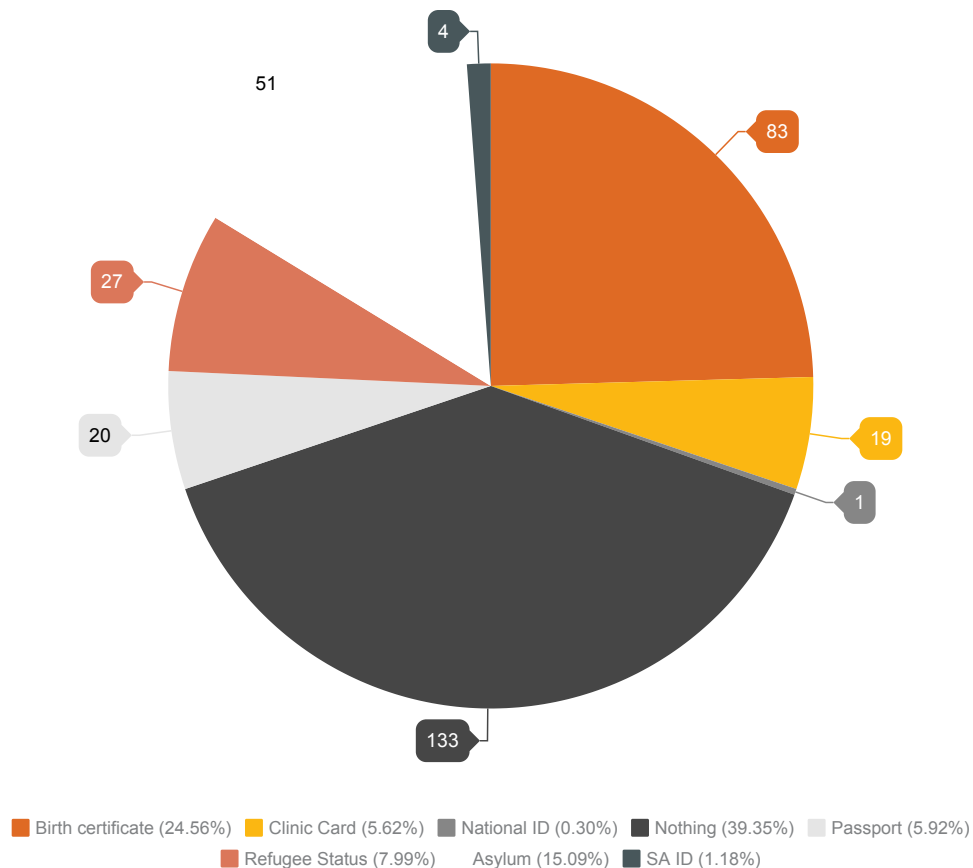
Trafficking

Of those children to whom it pertained (i.e. those who migrated to South Africa), 5% of cases were considered as potential cases of trafficking. Of those that showed signs of trafficking, ten were in Gauteng and three were in Western Cape. There were no cases recorded in Limpopo. Three of the children considered as potential cases of trafficking were born in DRC, nine in Mozambique and one in Zimbabwe.

10 | DOCUMENTATION

The purpose of documentation is to identify the child and to legalise stay of the foreign child in terms of the laws governing migration. The legal framework around documentation in South Africa is explored in Section Four of this report. The survey recorded the types of documentation that children placed in CYCCs held. The 'primary document' is considered to mean the document that is most likely to denote possible legal stay in South Africa, and for which other documents would have been a prerequisite. For example, to hold a passport, a child would have had to have proven their place of birth and nationality.

Of all children surveyed, the following documents were held:



Documentation held by children, across all three provinces.

	All	Gauteng	Limpopo	Western Cape
Birth certificate	25%	39%	8%	15%
Clinic Card	6%	5%	6%	6%
ID document from country of origin	0%	1%	0%	0%
No document	39%	27%	82%	25%
Passport	6%	8%	4%	5%
Refugee Status	8%	1%	0%	23%
Asylum Seeker Permit	15%	15%	0%	28%
South African ID	1%	3%	0%	0%

Table 5: percentages of documentation held by children, per province.¹

Children documented under the Refugees Act

At 23%, a sizeable number of children held documentation issued under the Refugees Act – which may or may not have been valid at the time of the survey. This group of children was divided between those who held Asylum Seeker Temporary Permits (15%) and those who held refugee status (8%). The majority of children holding documentation issued under the Refugees Act were located in the Western Cape. No children in Limpopo were documented under the Refugees Act.

A child, who derives asylum seeker- or refugee status from a parent, is reliant on the main applicant for the finalisation of the asylum application. In such cases, children can be said to be documented as an adult's dependent. It is imperative for the child to maintain

¹ The table displays small percentages of children with South African IDs. These children were issued birth certificates with South African identification numbers provided on the certificate itself. It is not clear why the South African Identification number was generated. These children were likely to be considered as foundling children, as each of them were born in South Africa and were abandoned by their parents. When they are sixteen, they would be able to apply for a South African ID card.

contact with the parent who is the main applicant. Continued documentation becomes problematic if the relation of dependency between the child and adult applicant ceases to exist.

The majority of children holding refugee status or asylum-seeking documents were documented as dependents. Of those 77 children, only nineteen children held their own asylum or refugee document and in 53 cases, children were documented as dependents. Of these, only 34 remained in contact with principle applicants, and so continued documentation would become problematic.²

In these nineteen cases of children applying for asylum alone, twelve were in Gauteng, and seven were in the Western Cape. In eight of these cases, an order was granted as per section 32 of the Refugees Act, and all but one of these cases was in Gauteng. Of the ten children who took a decision to migrate themselves and did so due to conflict or war, all but one held an asylum seeker permit or a refugee status. However, only one of these children held their own asylum seeker permit. The rest are documented as dependents of others. Of the 71 children who migrated alone or with an adult due to conflict or war, 32 hold an asylum seeker permit and 23 hold a refugee status, which represents 77% of those children. There therefore seems to be a good correlation between those who fled due to conflict and those documented under the refugee regime. Of the ten children who seem to have asylum claims but are undocumented, all but one were residing in the Western Cape province. Three have been granted an order to apply for asylum but they are unable to travel to a Refugee Reception Office (RRO). This highlights the impact of the ongoing closure of the RRO in Cape Town, which restricts foreign refugee children's ability to apply for asylum in South Africa.

² Principle applicants were typically a mother or father (37 children), a parent's partner (4), a foster parent (3) or an uncle (8). The remainder were unknown.

Children holding passports

Twenty children were in possession of passports, of which five contained valid visas, and a further 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.

Foundling children

In ten cases in Gauteng, children were found to be foundling children. Foundling children who are abandoned at birth may, with the assistance of a social worker, be issued a South African birth certificate with a South African identification number. All of these ten children, who ranged in ages between eight and twenty-one, were found to be in Gauteng. In two cases, it is unknown where the child was born at all. In the remaining eight cases, the children were born in South Africa.

CASE STUDY: UNATHI

Unati*, 16, was born in Zimbabwe. Her mother and father died and she was raised by her grandmother, who became too frail to take care of her. She migrated to South Africa in search of education and employment and was placed in a CYCC in Limpopo. Unati holds a Zimbabwean passport but has no visa issued. There exists no immigration permits that Unati could apply for in South Africa. Attempts are being made to trace the grandmother in Zimbabwe and assist with reunification, however the child shows no interest in returning to Zimbabwe.



Undocumented children, birth registration and statelessness

A “stateless person” is someone who is not considered as a national by any state under the operation of its law.¹ Children who hold no documentation at all are considered at risk of statelessness. At 39%, the largest proportion of surveyed children held no document at all. This was especially problematic in Limpopo, where 85% of children were undocumented. A quarter of children were undocumented in Western Cape and 27% were undocumented in Gauteng. In 30% of these cases, a social worker had attempted to document the child, with 21% of social workers approaching DHA for assistance. A lack of viable documentation options, as explored in section four of this report, would contribute to a large amount of children remaining undocumented in South Africa. The largest majority of children with no document at all were born in Zimbabwe (53%), followed by DRC (13%) and South Africa (12%). Out of all 338 children, in 45 cases, social workers had tried to establish nationality of the child.

Birth registration is a key component to avoiding childhood statelessness, as a birth certificate certifies the place of birth, name and nationality of the child. Of the 79 children born in South Africa, 48 had birth certificates, representing 61%. Of all children surveyed, 25% held only a birth certificate. Those children at risk of statelessness, in that they have no document at all, number 35, representing 40% of all the children. In Gauteng, 27% of foreign children in CYCCs have no document or proof of birth at all. In Limpopo, this percentage is at 82%. In Western Cape, it is at 27%. Those undocumented children who were at ‘considerable risk’ of statelessness is defined by either (a) country of birth is unknown or nationality of both parents unknown and/or (b) the child has no contact

¹ UN High Commissioner for Refugees (UNHCR), [Guidelines on Statelessness No. 1: The definition of “Stateless Person” in Article 1\(1\) of the 1954 Convention relating to the Status of Stateless Persons](#), 20 February 2012.

with their parents. Of those children who are undocumented, 88 children are not in contact with their mother or their father and a further 3 children were born in an unknown location. Therefore, 91 children – representing 27% of all respondent children - were considered at considerable risk of statelessness.

CASE STUDY: JOELA

Joela* was born in 2007. Her parents are unknown and, as a baby, she was found abandoned in a field in Johannesburg. She was placed in care by DSD and attempts at family tracing were initiated. No family was found. Joela has special needs and attends a special needs school. Adoption was not feasible. Attempts are being made to apply for a ‘foundling’ birth certificate as the parents are unknown, but the social workers are facing several barriers in applying to this at DHA.

**pseudonym used to protect identity.*



11 | PLACEMENT IN CYCC

Court Orders and reasons for placement in CYCC

A child considered in need of care and protection can be placed in alternative care – such as a CYCC – by order of the Children’s Court. External social workers approach the Children’s Court to apply for a Court Order renewal every two years. Overall, 85% of children were placed in a CYCC as per an order granted by the Children’s Court. This was a similar rate across all three provinces. In Gauteng, 85% of children were on court orders, of which 16% were expired, in Limpopo, 84% were on court orders (3% were expired) and in Western Cape 83% were on court orders (27% of were expired).

Children were placed in CYCCs for a variety of reasons. A quarter of children were placed due to destitution, indicating the huge impact of socio-economic deprivation on child migrants. Destitution is the main reason children were placed in CYCCs in Western Cape and Limpopo, whereas in Gauteng, neglect was the most often-used reason for placement in a CYCC.

The main reasons for children’s placements in CYCCs are displayed in the table on the following page.



Reason for Placement	Percentage of children
Destitution	25 %
Abandonment	18 %
Neglect	17 %
Orphaned	9 %
UAM or no adult caregiver in South Africa	8 %
Abuse or Neglect	8 %
Unknown	7 %
Imprisonment of parent	3 %
Trafficking	2 %
Previous caregiver deceased or unable to care	2 %
Sentencing	1 %
Behavioural Issues	1 %

Table 6: reasons for children’s placement in CYCCs.

Time spent in CYCCs

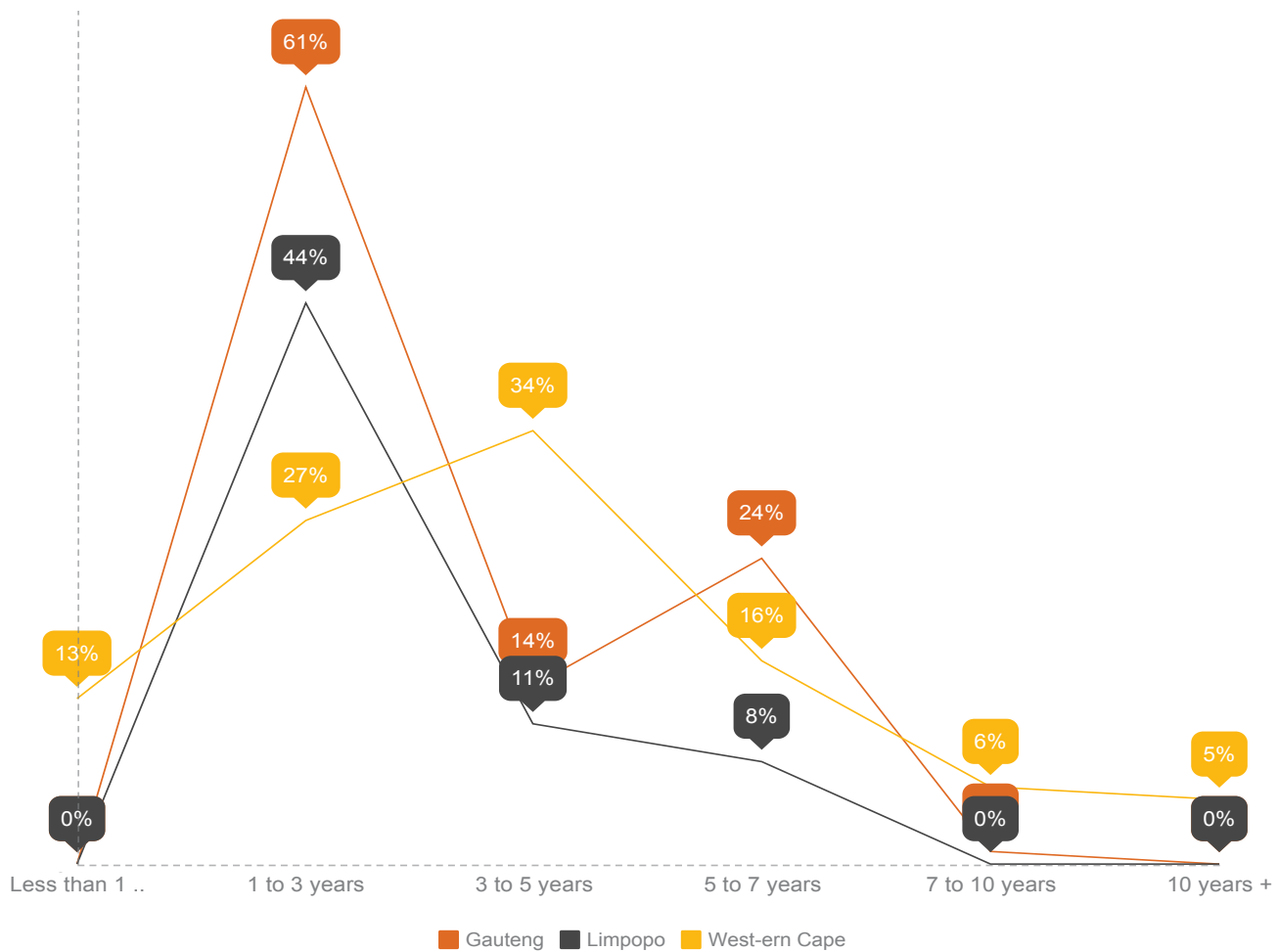
Overall, the majority of children have spent one to three years in a CYCC, at 46% of all children. Following this, 20% of children have spent three to five years in a CYCC and 17% have spent five to seven years. Collectively, 5% have spent seven or more years in a CYCC.

The Gauteng and Limpopo provinces are similar in that the majority of children have been in the CYCC for one to three years. In Limpopo, 44% of children are in a CYCC for one to three years, which also resonates with the circular migration noted in Limpopo, as noted in Section Nine of this report. Data from Western Cape reveals a wider range of time spent in CYCCs. In Western Cape, 5% of children have been placed there for ten years or more. This is displayed, in both table and chart format, on the following page.

CASE STUDY: JOANNA

Joana* and her siblings migrated to South Africa to live with their uncle, as he was the only family member able to care for them when their mother was imprisoned in Mozambique for murdering the siblings' father. The uncle was unable to take care of all three siblings and suffers from emotional disorders. The siblings were placed in a CYCC in Johannesburg. Attempts at family reunification hinge around the mother's release from prison. In the mean time, there exist no realistic temporary or permanent documentation options in South Africa.





Time spent in CYCCs, per province.

Note that this chart does not include those cases in which it is unknown how long the child was placed at the CYCC.

12 | 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 effect on the child, 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.

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 family's 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 the International Committee of the Red Cross and IOM. In many cases, when faced with the prospect of cross-border family tracing and reunification of foreign children, residential social workers found themselves at a loss as to how to proceed. The complexity of the processes, and lack of capacity and resources to undertake tracing, were preventative factors in pursuing family tracing.

In Limpopo and Gauteng, residential social workers – or, if appropriate, children themselves – were asked if the child had indicated an intention to return to their country of origin.

This information was known in only 131 surveys. In sixty-three cases, children indicated an intention or desire to return to their country of origin. In nine of these cases, return would be conditional on their completing an education in South Africa. In 68 cases, or 52% the child indicated that they did not want to return to the country of origin.

In 151 cases, representing 45% of all cases, it was deemed necessary that family tracing be undertaken for a child. In 93 cases (representing 62%) attempts at family tracing had been made, and at the time of the survey, this tracing would be ongoing or exhausted. In Gauteng, 44 family tracing attempts had been made, representing 29% of all Gauteng cases. In Limpopo, 72% of all cases had family tracing attempts made on their behalf and in the Western Cape, 19% of cases had had family tracing undertaken.

In 109 cases, family reunification within South Africa was considered a possibility. In 73 of these cases, or 67%, attempts to reunify family in South Africa were ongoing or failed. In 93 cases, family reunification in country of origin is seen as a possibility. In 49 (52%) of these cases, cross-border reunification is either in process, or has been attempted and failed.



12 | CONCLUSION



Child migration is a subjective and qualitative phenomenon. Attempting to quantify the journeys and lives of these young people risks over-simplification. At the core of this, however, lies the lives of hundreds of children – many of whom have uncertain futures, and many of whom risk being deportable once they exit care.

Most notably, the study found that the majority of children (43%) migrated with parents into South Africa and were no longer, for one reason or another, in their care. Another 27% of children entered as separated children and 27% entered South Africa alone. In Gauteng and Western Cape, the large majority of children did not choose to migrate to South Africa (90% and 88%).

In Limpopo, the large majority of children (72%) took the decision to migrate to South Africa themselves. Surveys conducted in Limpopo also revealed distinct patterns of migration; foreign children in Limpopo are more likely to be of Zimbabwean origin and are more likely to have migrated in a circular fashion. Furthermore, in Limpopo, 93% of children who decided to migrate themselves did so due to better education or economic opportunities – and none migrated due to conflict or war. Overall, across the three provinces, the study found that 29% of children migrated – with or without an adult – due to conflict, persecution or war.

The main challenges foreign children face are linked to documentation. The largest proportion of children held no documentation at all, at 34% of all children. This seemed to be especially problematic in Limpopo, where 82% of children were completely undocumented. A further 23% of children held documentation issued under the Refugees Act – but many of these children are unable to extend documentation as they are documented as a ‘dependent’ – and they are no longer in contact with the principle applicant, whose presence is required to extend documentation and finalize asylum claims. 40% of children are at considerable risk of statelessness.

Present immigration laws and regulations prevent the opportunity for these children to document themselves with study or relative visas – and it is foreseen that many of the children will have no choice but to return to the country of origin once their placement order is no longer valid or extendable. At the same time, this study shows considerable amounts of time spent in South Africa. At 70%, the majority of children had been present in South Africa for more than five years - 31% between five and seven years, 23% between eight and ten years, and 16% had been in South Africa for over ten years. The social implications of long stay in South Africa include an increased sense of belonging and acculturation in the host state. Social workers indicated the difficulties they face around resources, capacity and knowledge when it comes to family tracing and reunification attempts. Jointly, these factors result in children spending long periods of time in CYCCs, which is contrary to international standards, which recommend that children be placed in institutionalised care for the shortest possible duration.

13 | RECOMMENDATIONS

This report recommends that:

- a) The Resolutions, signed by governmental departments and civil society organisations in October 2017 at the Colloquium on Separated and Migrant Children in South Africa, are formalised and adhered to. These resolutions included:
 - a. The creation of updated interdepartmental Standard Operating Procedures and protocols on unaccompanied and separated foreign minors
 - b. The establishment of an interdepartmental committee at provincial level to find durable solutions for unaccompanied and separated foreign minors, and to create recommendations in policy and law change needed around unaccompanied and separated foreign minors
 - c. The creation of a focal point, in each department, dealing with unaccompanied and separated foreign minors cases
 - d. Improved family tracing processes
 - e. Best Interest Determinations that are undertaken at provincial level for unaccompanied and separated foreign minors cases and the creation of permanent documentation options, where relevant
 - f. A budget for unaccompanied and separated foreign minors per department is created
 - g. The creation of a system of data collection on unaccompanied and separated foreign minors
 - h. The implementation of an awareness campaign on unaccompanied and separated foreign minors
 - i. The implementation of computer-generated birth certificates for unaccompanied and separated foreign minors born in South Africa
 - j. The waiver of DNA testing fees in cases in which it was required for unaccompanied and separated foreign minors cases
 - k. The creation of a temporary document (a special dispensation permit) for unaccompanied and separated foreign minors cases pending durable solution, and
 - l. The establishment of a nationality and status determination committee for those unaccompanied and separated foreign minors at risk of statelessness.

Furthermore, this report recommends the following:

- b) That 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) That reasons for migration be established to determine whether the child appears to qualify for refugee status. Refugee children must be assisted to apply for asylum, at any RRO in South Africa, through an order outlined in 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. DSD should be aware of the practice at RROs which requires an unaccompanied refugee child to be accompanied by a statutory social worker in applying for asylum.

- d) That all efforts to trace and reunify family 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.
- e) 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.
- f) The study showed that 39% of 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.
- g) Cross-border family reunification mechanisms must be strengthened as a priority. It is specifically recommended that the functionality of ISS be strengthened. As a starting point, links should be strengthened with counterparts in the main sending countries.
- h) 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.

Specifically to the Department of Home Affairs, this report makes the following recommendations:

- i) If no immigration status is accessible to certain foreign children, a special dispensation permit should be rolled out, made possible under Section 31(2)(b) of the Immigration Act. It is recommended that, under this section of the Immigration Act, the Department of Home Affairs allow the creation of a special dispensation permit for certain unaccompanied and separated foreign minors, namely those for whom family tracing is inappropriate or exhausted, and for whom permanent integration into South Africa is within their best interests. By setting certain guidelines for applications made on behalf of children in care, DHA would be in a position to regulate such applications.
- j) 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. 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 detention and deportation, to keep track of their whereabouts and their departure from South Africa.
- k) 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.



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