Unaccompanied and Separated Children in South Africa: is Return the Only Option?

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Abstract

Despite recent legislative amendments aimed at stricter border control, migration by undocumented migrants, including unaccompanied and separated children, continues to occur. Once in South Africa, no mechanism exists for the identification or registration of undocumented migrant children. Due to statutory restrictions, the births of children born to undocumented foreign parents in South Africa are not recorded. Therefore, the presence of unaccompanied and separated children in the Republic goes mostly unnoticed. Under the migration framework, documentation to regularise a foreign child's stay is either derived from a parent, or requires significant financial support, and/or legal intervention, to obtain. The article finds that unaccompanied and separated children struggle to meet the requirements set to regularise their stay once in the Republic. In a society where the ability to exercise basic human rights is intrinsically linked to identification documentation, the few options available to unaccompanied and separated children make this group highly vulnerable to exploitation, destitution, abuse, neglect, statelessness and under-development, due to restricted access to education and essential services. The cases studied here show that unaccompanied and separated children do not reach social workers systematically, which means that no or little consideration is given to finding durable solutions relevant to the particular child. The article finds that a combination of legislative gaps on one hand and stringent requirements on the other, result in unaccompanied and separated children struggling to access education, child protection services, the asylum system, birth registration and the right to a name and nationality. The article concludes by making a few pertinent recommendations that address the main concerns raised.

Keywords Documentation, migration, child protection, birth registration, asylum, refugee, statelessness.

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Methodology

The methodology comprises of a desktop review of the available literature, a critical analysis of the applicable law and policy and an analysis of qualitative data collected from 109 case studies.

The cases were collected at the Scalabrini Centre of Cape Town (SCCT), a non-profit organisation based in Cape Town, South Africa, that provides multiple services to migrants, aims to alleviate poverty and promotes development in the Western Cape, while fostering integration between migrants, refugees and South Africans.[1] The Advocacy Programme of SCCT functions as a walk-in paralegal office and, as such, receives persons who have problems with access to basic rights connected to documentation, including issues pertaining to foreign children.

From May 2015 to May 2017, interviews were conducted with 87 caregivers of 109 unaccompanied and separated children, all of whom sought advice at SCCT. The cases studied included migrant children and children born to foreign parents within the South African territory. Data was collected through semi-structured interviews with the adult caregivers. Over the course of two years, SCCT was able to track and document the evolution of the individual cases. From an ethical point of view, all cases encountered were referred to the Department of Social Development (DSD) for assessment by a statutory social worker. All children and their caregivers resided in the Cape Town Metropolitan area.

Shifting Definitions – Unaccompanied and Separated Children

General Comment No. 6 (2005) to the UN Convention on the Rights of the Child defines 'unaccompanied children' 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." It goes on to define 'separated children' as "children who have been separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives." These may therefore include children accompanied by adult family members other than parents.

[1] The center is registered with the South African Department of Social Development as a Non-Profit Organisation, as a youth and child care center and as a Public Benefit Organisation with the South African Revenue Services and is governed by a Trust.

The relevance of defining a child as unaccompanied or separated pertains to child protection and immigration control (UNHCR, 1997). In the South African context, being categorised as an 'unaccompanied minor' has bearing on a foreign child's admission to the Republic and the ability to legalise immigration status subsequent to entry. In the context of border control, the Regulations to the Immigration Act (No.11, 2002) narrowly define an unaccompanied child as "a child under the age of 18 years who travels alone." With regard to child protection, DSD assumes greater vulnerability of unaccompanied children and this distinction therefore impacts upon the child's ability to access child protection services (DSD, 2009). The international definition has broader application insofar as it is concerned with the continued circumstances of the child beyond admission to the country.

Birth in South Africa does not automatically confer nationality. A child born to two foreign residents is considered, upon birth, as a non-citizen and retains the nationality of the parent(s) (Manby, 2011: 14). Such children are obliged to regularise their stay in South Africa in the same manner as foreign migrant children. Of the 109 cases studied, 12 children were born in South Africa to foreign parents and 97 of the children had migrated to South Africa. Of the 97, 24 children were in the care of a relative when they crossed the border, and therefore could be described as 'separated'; 54 were 'unaccompanied'; and 19 were accompanied by one or both parents. It was observed that the definitions 'separated' and 'unaccompanied' refer to fixed points in time. Once the migrant child or family settles in South Africa, their circumstances change to the extent that the definition describing their situation of care changes. After some time in the country, 92 children could be defined as 'separated' as they were now in the care of a relative, while 17 were still considered 'unaccompanied' as they are in the care of persons unrelated to them and previously unknown to them. This illustrates the fluidity of the definitions of 'unaccompanied' or 'separated' in the context of migration.

Customary care is widely practiced in the South African and the broader African context. In brief, customary care refers to family-based care within the child's extended family, or with close friends of the family known to the child, whether formal or informal in nature (UN General Assembly, 2010). The terms 'customary care' or 'kinship care' are not formally defined in South African law and there are no particular mechanisms through which parental duties of care are transferred to the customary caregiver. The customary duty of care is determined by social or cultural norms and, often, a highly subjective sense of

responsibility that an individual caregiver attaches to a child. The evidence suggests that the customary duty of care may be fluid and shift between relatives of the child, depending on domestic, social, financial or other circumstances. In order for care relation to be formalised through foster care placement, "a need for care and protection" is required by the Children's Act (No. 38, 2005). In the context of migration, it must be noted that a customary duty of care does not confer immigration status or nationality. Therefore, references to duties of care do not have bearing on the documentation status of the child, and are uniquely concerned with the well-being or protection of the child.

All of the children concerned originated from African nations. Set out below is an indication of the children's countries of birth in the first column, and the countries of nationality of their parents (or mothers in the case of mixed parentage) in the second. The second column incorporates the countries of origin of the parents of 12 children born in South Africa.

Table 1: The documentation of unaccompanied and separated children

Country of birth		**Nationality of parent(s)**
Angola	3	4
Burundi	12	12
DRC	58	68
Malawi	-	1
Rwanda	4	5
South Africa	12	0
Somalia	13	13
Tanzania	3	0
Uganda	1	1
Zimbabwe	3	4
Zambia	-	1
Total	**109**	**109**

All but one of the 97 migrant children entered South Africa through land borders. Only three of the migrant children had entered South Africa regularly, using a passport and visitor's visa to gain entry. The remaining 94 children were undocumented upon admission. Fifty-four children were unaccompanied upon entry. The rules around travelling with children through ports of entry were significantly tightened by Regulations to the Immigration Act that entered into force on 1 June 2015. As described in an advisory by the Department of Home Affairs (DHA) (2015), the intention with the most recent amendment is to "establish the principle that all minors require the consent of their parents when travelling into or out of the Republic." Regulations 12(c) and (d) require unaccompanied minors and persons travelling with a child, who is not his or her biological child, to produce a number of certified identity documents and consent forms from parents. These persons must produce the contact details of the parents or legal guardian of the child. Parents travelling with their biological children are also required to produce birth certificates and consent letters or court orders from absent parents. Of the 97 migrant children, 32 had entered South Africa after the Immigration Regulations came into force, 28 of whom were unaccompanied at entry. None of the unaccompanied children were referred to DSD upon entry to South Africa and appear to have crossed the borders with relative ease.

It is concluded, therefore, that the application of the Immigration Act and Regulations as it pertains to unaccompanied minors is inconsistent at land border posts. Yet, the main point of concern here is not the fact of entry, but the absence of a mechanism of protection.

The reasons for the migration of unaccompanied and separated children are varied. Some of the main trends amongst the cases were identified as follows: conflict related (44%); death of the primary caregiver in the country of origin (21%); socio-economic reasons (22%) and abandonment in the country of origin (4%). Migration motivated by socio-economic reasons included children in search of better education opportunities, those whose caregivers could no longer care for them due to poverty or poor circumstances in the country of origin, or duties of parental care diverted to relatives following the separation of parents. The separated children typically migrated to South Africa to join a caregiver who was already residing in the Republic. The children's duration of stay in South Africa at the time of the interview varied from one week to 16 years, with 23 children having spent more than eight years in the Republic. The duration of stay had no impact on the child's ability

to secure documentation. All children had entered South Africa only once, indicating that migration by this group was not circular.

Conflict related reasons were the most common factor motivating migration amongst the children. Out of 43 cases, 23 of the children accompanied an adult asylum seeker (including parents or relatives) to South Africa. Accordingly, 15 children derived asylum (7) or refugee status (8) from a parent (11) or another caregiver (4), subsequent to their entry to South Africa. Twenty children were unaccompanied upon entry to South Africa *and* had migrated in the context of conflict. In theory, these children should have access to the asylum system to undergo refugee status determination. Section 32 of the Refugees Act (No. 130, 1998) deals with unaccompanied refugee children insofar as any child who appears to qualify for refugee status, and is found under circumstances that clearly indicate that he or she is a child in need of care, as contemplated under the Children's Act, should be brought before the Children's Court of the district in which he or she was found. Hereupon, the Children's Court may order that the child be assisted in applying for asylum. According to the data collected, only four of the unaccompanied children who migrated in the context of conflict were issued asylum seeker permits and were duly advised by an official at a Refugee Reception Office (RRO) to return with a Children's Court order. None of the children had returned with the required order and all four permits lapsed. At the time of their first contact with SCCT, none of the unaccompanied refugee children had been referred to a social worker.

It is argued that Section 32 falls short of providing adequate protection to unaccompanied refugee children for three main reasons. Firstly, the Refugees Act presumes that the unaccompanied refugee child is in need of care and protection, as understood in the context of the Children's Act, and it does not envisage assisted asylum claims by separated children who are adequately cared for by relatives.[2] Secondly, it presumes that there is a designated office, or person, tasked with identifying the unaccompanied refugee child and ensuring that he or she is brought before the Children's Court. Lastly, only three RROs across South Africa were receiving new asylum applications at the

[2] Section 150 of the Children's Act lists the circumstances under which a child is deemed in need of care and protection. These include abandoned or orphaned children without visible means of support; street children; children with uncontrollable behavioural issues or drug-abuse issues; abused, exploited or deliberately neglected children; or children exposed to other types of harm, amongst other things.

time of writing. These are located in Durban, Musina and Pretoria. Were a child to be brought before the Children's Court in the Western Cape Province, in the absence of a legal guardian, the social worker assigned to the case would have to accompany the child to a RRO in Gauteng or Pretoria. Practically, the capacity and resources required to achieve this are simply not in place. The limited number of points of access to the service of Home Affairs spread over a large geographical area restricts the unaccompanied or separated refugee child's ability to gain access to the asylum system.

Table 2: Main reasons for migration	
Death of primary caregiver	21
Abandoned in country of origin	4
Accompanied asylum seeker	23
Conflict related	20
Imprisonment of primary caregiver	1
Mental illness of primary caregiver	2
Old age of primary caregiver	1
Socio-economic	22
Relocation of primary caregiver to third country	1
Suspected abduction	1
Accompanied parent for medical care	1
TOTAL	**97**

Not all foreign children are refugee children and asylum is not appropriate in the cases of children who migrated for reasons other than those set out under Section 3 of the Refugees Act. Following their entry to South Africa, only two of the children had secured documentation under the Immigration Act. One had obtained permanent residency through an exemption process envisioned under Section 31(2), which allows the Minister of Home Affairs to grant permanent residency to a foreigner on "special grounds." The intervention of the High Court was required to achieve this result. The second child secured a

passport and a study visa by a family member travelling to the country of origin for this purpose. It was found that the unaccompanied and separated children whose cases formed part of the survey did not meet the requirements to obtain documentation to regularise their stays.

In addition to documentation proving legal stay under the migration framework, the majority of the children lacked any form of identification documentation. In total, 55% of the children did not have birth certificates. Birth registration is a prerequisite to accessing citizenship (Lawyers for Human Rights, 2014: 10-11). The lack of proof of birth or parentage is a factor that contributes to the risk of statelessness. The lack of documentation impacts the unaccompanied and separated child's ability to exercise basic rights, as discussed below.

The Right to a Name and Nationality and the Risk of Statelessness

The right to a name and nationality is the most basic of human rights. Internationally and regionally, it is set out under Article 7(1) of the UN Convention on the Rights of the Child, Article 6(3) of the African Charter on the Rights and Welfare of the Child, as well as the International Covenant on Civil and Political Rights. South Africa has signed and ratified these treaties and is therefore bound by these obligations. Reflecting international obligations, Section 28(1)(a) of the Bill of Rights sets this out clearly by stating that "[e]very child has the right to a name and a nationality from birth." In the same vein, the right to birth registration is enshrined in Article 7(1) of the UNCRC and the African Charter on the Rights and Welfare of the Child in Article 6(1). Birth registration in South Africa is governed by the Births and Deaths Registration Act (No. 51, 1992) (BDRA) and accompanying Regulations. The ability to register the birth of a child born to foreign parents in South Africa is directly linked to the documentation status of the parent(s). Regulations 3, 4 and 5 to BDRA require a child's parents to have a valid immigration status to register a birth. These requirements exclude birth registration by those without any form of identity documentation or legal status to sojourn in the Republic, those with expired asylum seeker and refugee permits and those with expired visas in a passport.

The inability of the undocumented parent to register the child's birth effectively functions as a form of migration control or punitive measure towards the parent, but essentially has profound prejudicial impact on the child. As mentioned earlier, 12 of the children were born in South Africa.

Out of the 12, four did not have birth certificates issued by the DHA. The reasons for not having a birth certificate were cited as follows: the mother passed away shortly after birth (2); the mother gave birth on a farm, thereafter abandoning the child with no documentary proof of birth (1) and the mother was undocumented at the time of the child's birth (1). Without birth registration documentation, the foreign child is excluded from accessing identification documentation. Without strong links to parentage or the country of origin, the child will not be able to claim the nationality of the parent. Undocumented children who turn 18 are unable to marry or register the births of their children in returning to their countries of origin, thereby perpetuating the cycle of illegality. While four is a comparatively small number, it represents a sample of individuals who are likely to face insurmountable difficulties to prove their identities and regularise their presence in South Africa.

It is important to note that not all undocumented persons are stateless. Whether a person is at risk of statelessness is determined by a number of risk factors (Lawyers for Human Rights, 2014: 7-8). The main indicators of statelessness include one or more of the following circumstances (Lawyers for Human Rights, 2014: 8):

- Birth outside of one's parent's country of nationality
- Death or desertion by one or both parents
- Irregular migration across borders
- Mixed nationality parentage
- Inability to produce any form of identity documents or records proving links to parentage or place of birth
- The operation of nationality laws

Section 1 of the 1954 Convention relating to the Status of Stateless Persons defines a stateless person as someone who is not considered a national by any state under the operation of its law. South Africa is not a signatory to the treaty and, therefore, the mechanisms to prevent and respond to statelessness under domestic law are mostly lacking. Of the cases studied, 45 of the children had no document to enable a claim to citizenship. Of the 45 children who had no documentary link to any particular state, 13 were orphaned and ten had been abandoned by both parents for at least four years. As there is no single test in

place to determine whether a person is stateless, a combination of factors may indicate a risk of statelessness. Based on the lack of enabling documentation and tenuous or no links to parentage or other family members, it was concluded that at least 23 of the children in this study were at high risk of statelessness.

The Right to Basic Education

Another major concern is the undocumented child's inability to access basic education. The laws governing access to education by foreign children in South Africa are contradictory. Section 29(1)(a) of the Bill of Rights extends the right to basic education to "everyone" and Section 3(1) of the South African Schools Act (No. 84, 1996) makes it compulsory for every child to attend school from age seven until the learner reaches age 15, or the 9th Grade, whichever occurs first. National policy around the admission of non-citizen learners asks of school principals to help the parents to obtain the necessary documentation on behalf of children, where this is not available. In such cases, the child must be admitted to the school while the parent obtains the required documents (Admission of Learners to Public Schools, 2001). It states further that "the child must be admitted to the school conditionally while the parent obtains the needed documentation. When the required documentation is not available within three months of the child having been conditionally admitted to the school, the School Governing Body in consultation with the District Officials must attend to the matter by liaising with the relevant authorities and parents" (Admission of Learners to Public Schools, 2001). Contrary hereto, Section 39(1) of the Immigration Act renders instruction by a learning institution to an "illegal foreigner" an offence for which the school and principal may incur criminal liability. Additionally, the National Education Policy Act (No. 27, 1996) requires persons classified as illegal aliens, when they apply for admission for their children or for themselves, to show evidence that they have applied to the DHA to legalise their stay in the country in terms of the Aliens Control Act (No. 96, 1991).[3] Reflecting this confusing position, which is no doubt difficult for school administrators to interpret, 63 of the children whose cases were studied were attending school, while 44 (40%) of the children were not attending school. The caregivers of 21 of the children indicated that non-attendance was a direct result of the child not having a document. Of the children not attending school, 14 were under the age of 15

[3] Repealed and replaced by the Immigration Act No. 13 of 2002.

years. Other reasons for non-attendance included the inability to afford the costs associated with schooling (6) and language barriers (5). Two children were indicated as not going to school because they were working. Both were 17 year old males. Two children were not attending school for medical reasons. Five of the children were able to enrol for school through legal intervention on their behalf.

Access to the Child Protection System

Section 28(1)(b) of the Constitution states that "[e]very child has the right to family care or parental care, or to appropriate alternative care when removed from the family environment." Section 28(2) further states that "the best interests of the child are of paramount importance in every matter concerning the child." In line herewith, the Children's Act does not distinguish between 'citizens' and 'non-citizens'. Supplementing the Children's Act, DSD Guidelines of 2009 provide some guidance to social workers as to their approach to foreign children and specifically stipulate that unaccompanied foreign children *should be assumed* to be children "in need of care and protection." The evidence suggests, however, that the unaccompanied and separated child's documentation status has an impact on his or her ability to access the child protection system.

Relations between children and caregivers, other than parents, can be formalised through foster care, guardianship or adoption. The caregiver's ability to formalise the relation of care, however, is determined by his or her documentation status. With regard to non-citizens, only recognised refugees and permanent residents are eligible foster parents. Following the judgments in *Khosa v Minister of Social Development, Mahuale v Minister of Social Development* and *Minister for Welfare and Population Development v Fitzpatrick,* these categories qualify for the foster care grant. Five of the children were placed in the foster care of their refugee caregivers, although 47, in total, were cared for by caregivers with refugee status. Asylum seekers are not considered eligible foster parents, given the temporary nature of asylum seeker status. Twenty-two children were cared for by primary caregivers with asylum seeker status. Undocumented caregivers are also not eligible to formally care for children. It is argued that excluding children from the foster care system, purely based on the documentation status of the caregiver, is not consistent with the best interest principle. Placement with an asylum seeker may, in some cases, be in the best interest of a particular child and formal care could be feasible, especially in light of the lengthy asylum

process. It has been documented that asylum seekers may wait up to 18 years for the administration of their claims (Amit, 2015: 25). It is submitted that, if deemed to be in the best interest of the child to be placed in the foster care of a person who might leave the Republic, the child should be allowed to leave with the caregiver, with the necessary consent of the Children's Court.

It was further documented that in the cases of 47 children, caregivers had approached DSD or a designated Child Protection Agency (CPA) in an attempt to formalise the care relation. Indeed, 14 of the children were placed in foster care, eight of whom were placed in the care of unrelated South African citizens and six were placed with relatives holding either refugee status or permanent residency. The cases of 62 unaccompanied or separated children did not reach a social worker at all. When asked about the status of their cases with the social services provider, 15 caregivers indicated that their case was taken by an intake social worker, but had not yet produced any result. Access to child protection services was expressly denied in six cases. Reasons given for refusal include the fact that the child did not have a birth certificate (1) and the fact that the child was illegal (5). In one case, the social worker did not want to place the child in foster care as she feared the placement order would "make an illegal child legal." Needless to say, a foster care placement order does not function as immigration status and is purely concerned with the protection of the child. Six children's cases were finalised in the form of a social worker's report, but did not result in placement as the children were not found to be in need of care and protection as defined under the Children's Act.[4]

The number of cases that did not reach DSD or CPA for an assessment is somewhat concerning from a child protection point of view and it is clear that this failure is due to a combination of reasons, notably, limited knowledge on the part of caregivers, the absence of a clear system of referral and procedures to follow in the cases of foreign children and the lack of clarity around eligibility to access foster care.

Guardianship is dealt with under Section 24 of the Children's Act, where it is stated that any person having an interest in the care, well-being and

[4] Section 155(4)(a) of the Children's Act, read with Regulation 55, determines that after investigation, if a social worker finds that the child is not in need of care and protection, the reasons for this finding must be indicated in a report, which must be submitted to the Children's Court for review. According to 150(3) and 155(4)(b) of the Children's Act, the report should indicate recommendations to the family/caregiver and measures must be taken to assist the child through counseling or other relevant services available and relevant to the case.

development of a child may apply to the High Court for an order granting guardianship of the child. Section 25 goes on to treat guardianship applications by non-South African citizens as inter-country adoptions under The Hague Convention on the Civil Aspects of International Child Abduction or Hague Abduction Convention (The Hague Convention).

While this article will not provide an in-depth analysis on the possibility of inter-country adoption, as it applies to the cases surveyed, it suffices to say that inter-country adoptions are challenging for a number of reasons. Firstly, the adoption of refugee children is exceptional and refugee children are generally considered not-adoptable (UNHCR, 1995).[5] Secondly, the process for adopting a child with no documentation (especially those without birth certificates) is extremely challenging, as administrative requirements for adoption are unfulfilled. Signatory states to The Hague Convention agree to establish a Competent Authority that functions as the service provider to children and prospective adoptive parents. Whilst South Africa is a Member State, a number of African nations are not signatories to The Hague Convention, including the DRC, Zimbabwe and Somalia. This means that there is no functioning counterpart to the South African Competent Authority in such states and, as such, these adoptions are classified as non-convention adoptions. Non-convention adoptions are dealt with by the International Social Services (ISS) (DSD, n.d.: 21-22). The success of such adoptions depends on whether ISS is operational in the country of origin of the child.

Thus, it follows that guardianship over children by refugees and asylum seekers is not easily accessible and, in fact, it is misleading to say that guardianship applications are available to non-citizens. The evidence confirms this finding. Amongst the cases studied, none of the caregivers, whether citizens or non-citizens, were court appointed legal guardians, nor were any of the children being considered for adoption. Given the difficulties related to accessing the formal child protection system, it may be useful to explore administrative measures to address these cases, but at the time of writing, such alternatives were not in place and thus this forms part of the recommendations.

[5] The UNHCR and Hague Convention favour family reunification and temporary, alternative care pending such reunification over adoption, when dealing with refugee children. Particularly, the UNHCR policy is that "children in an emergency context are not available for adoption."

The Right to Basic Healthcare

Section 27 of the Bill of Rights entitles "everyone" to the right to healthcare services and explicitly states that no one may be denied emergency treatment. However, an individual's ability to access healthcare services is determined by his or her documentation status and the applicable fees are determined by a sliding scale used to calculate eligibility for subsidised care. A 2017 study on migrants' rights to healthcare in the Western Cape Province found that undocumented persons were mostly able to access emergency healthcare services, but outside the context of emergency care, hospital administrators routinely required valid documentation for care to be administered (Alfaro-Velcamp, 2017).

Of the cases studied, 30 children had needed healthcare services at some point during their stay in South Africa. Of the 30, three children were reportedly denied medical treatment (including dental treatment (1)) due to their inability to produce a valid document. Two caregivers reported to have been too afraid to take the undocumented child to a healthcare facility on the assumption that the undocumented children would be denied services. Four caregivers were able to access healthcare services either through paying for private consultation (1) or agreeing to pay maximum fees for public healthcare services (4).

It is concluded therefore that the children were generally able to access the right to healthcare; however, the number of individuals who needed healthcare was small and possibly not representative of the larger population group.

A Reflection on Durable Solutions

In the words of the UNCRC General Comment No. 6, "the ultimate aim in addressing the fate of unaccompanied or separated children is to identify a durable solution that addresses all their protection needs, takes into account the child's view and, wherever possible, leads to overcoming the situation of a child being unaccompanied or separated."

The search for a durable solution commences with analysing the possibility of family reunification (UNCRC, General Comment No. 6, par. 79). Practically, family reunification starts with family tracing (if the whereabouts of the family are not known). According to paragraphs 81 and 82 of General Comment No. 6, all efforts should be made to return an unaccompanied or separated child to

his or her parents, except where further separation is necessary in the best interests of the child. Circumstances involving abuse or neglect of the child by the parents may prohibit eventual reunification, as may a "reasonable risk" that such a return would lead to a violation of the fundamental human rights of the child, with particular reference to the principle of *non-refoulement*. In 13 of the cases in this study, children did not know whether their mother was still alive; and in ten cases, the child knew the mother was still alive, but had lost contact with her. This finding indicates a clear need for family tracing. Unfortunately, ISS counterparts are not operational in a number of African states, meaning that referrals would not necessarily achieve any results (Southern Hemisphere Consulting, 2016).

Return to the country of origin should not take place without advance secure and concrete arrangements of care and custodial responsibilities upon return (UNCRC, General Comment No. 6, par. 84). Alternatively, a government agency or child-care agency should have agreed, and should be able, to provide immediate protection and care for the child upon arrival (UNHCR, 1994). In none of the cases relevant to this research 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, mention placement in alternative care in the country of origin as a durable solution, but this option does not appear to be exercised in South Africa. A desktop search revealed that there is no literature available that explores alternative care in the country of origin as a durable solution in Southern Africa. Presumably, this is due to a lack of infrastructure, resources and information.

In cases where return to the country of origin is not possible, local integration is the primary solution. It is crucial that integration be based on secure legal status, including residence status (UNCRC, General Comment No. 6, par. 88). Finding durable solutions for foreign children is an aspect of the statutory social workers' mandate that is underdeveloped.

Conclusion

It is believed that the numbers of unaccompanied and separated children are not overwhelming, yet the individual consequences are significant enough to merit attention and a search for solutions. The main conclusion of this study is that the absence of documentation options available to unaccompanied and separated children restricts adequate child protection and is at the core of the challenges faced by unaccompanied and separated children. The prevalence of

derivative documentation options under the legal framework, and the exclusion of caregivers from guardianship, adoption and foster placements, due to their documentation status, suggest restricted application of the best-interest principle. A lack of documentation, and thus the inability to access essential services, renders local integration by unaccompanied and separated children effectively impossible. Despite the challenges to obtaining documentation, cross-border family reunification is not systematically pursued as a durable solution in such cases. The concerning and very real result is that unaccompanied or separated children remain mostly undetected in South Africa, and at high risk of abuse, neglect and statelessness. This situation is clearly not conducive to economic growth in South Africa and the broader region. In light of these realities, unaccompanied and separated children are basically faced with the choice of either leading a life outside the realms of formal societal structures, or eventual return to the country of origin.

Recommendations

The following recommendations are made based on the findings in this article:

a) It is important that a mechanism be established to register the presence of unaccompanied and separated minors within the Republic. The reasons to maintain such a register would be:

   - To enable authorities to keep track of the size of this group, so as to identify the needs and extent of the State's duties towards such children;
   - To enable the issuance of a document to a child, registered as unaccompanied or separated, which would enable access to basic rights whilst in South Africa pending the active consideration of appropriate solutions in his or her case;
   - To enable access to the right to a name and a nationality, whether South African or the nationality of the parent(s);
   - To enable authorities to make appropriate referrals to ensure children are adequately protected;
   - To assist the State in effective prevention and combating of trafficking, smuggling and abduction; and

- To position the State with regard to finding regional solutions to irregular migration by unaccompanied and separated children.

b) It is recommended that a link be established between DHA and DSD to liaise over matters concerning unaccompanied or separated children. The Refugees Act and the BDRA are administered by DHA, however, these Acts also create statutory duties for other departments, particularly DSD. It is recommended that a liaison office be established to address cross-cutting issues. It is recommended that a designated office or officer be appointed to be available to social workers, to respond to queries, to provide technical support and to prioritise individual cases that may warrant urgent intervention.

c) With regard to refugee children, it is recommended that the DHA facilitate simpler access to the asylum system for unaccompanied and separated children who appear eligible under the Act. To improve access to this highly vulnerable group, it is recommended that at least one satellite office within each province should receive asylum applications by unaccompanied and separated minors. It is recommended that unaccompanied and separated refugee children's cases be prioritised and treated with the necessary attention. The consideration of an unaccompanied or separated child's application for asylum, should not be dependent on the need for care and protection.

d) To give effect to local integration as a durable solution, it is recommended that a designated officer be appointed to assist the Minister of Home Affairs in the timeous and attentive consideration of exemption applications brought in terms of Section 31(2) on behalf of unaccompanied or separated minors. This recommendation would not require any legislative change, but would require reinforcement of administrative measures already provided for within the legal framework.

e) With regard to birth registration, it is recommended that the relevant sub-sections of Regulations 3, 4 and 5 to the BDRA be reviewed to ensure that every child, regardless of the legal status of his or her parent(s), can access a nationality from birth, as well as other socio-

economic rights conferred through the Constitution that require documentation.

f) It is recommended that the inconsistencies between laws and policy around access to education by unaccompanied and separated children be reviewed. Section 39 of the Immigration Act, in particular, should not bar the child's basic right to education, as this is in contradiction with the SA Schools Act and Section 29 of the Bill of Rights.

g) It is recommended that Section 24 and 25 of the Children's Act be amended to allow guardianship applications by non-citizens, in principle, and to grant jurisdiction to the Children's Court to deal with such applications.

h) It is recommended that investment in family tracing and reunification services be considered; particularly for the DRC, from whence the largest number of unaccompanied children come. Awareness-raising to social workers around existing services and networks in this area of expertise is also needed.

i) Alternative care placements in the country of origin should be studied.

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