



CENTRE FOR  
CHILD LAW

LAWYERS FOR  
HUMAN RIGHTS

Making Rights Real



Scalabrini  
Centre of Cape Town



## HOME AFFAIRS TO DISCONTINUE BIRTH CERTIFICATES FOR FOREIGN CHILDREN

JOINT PRESS RELEASE by

Centre for Child Law, Lawyers for Human Rights, the Scalabrini Centre of Cape Town, the UCT  
Refugee Law Clinic

For immediate release – 14 November 2018

The Department of Home Affairs has published its [proposed new regulations](#) to the Births and Deaths Registration Act and is calling for the discontinuation of the issuing of birth certificates to foreign children.

Where previously all children were issued with birth certificates, as is required by the Constitution and international law on children's rights, the new regulations propose that foreign children be issued with a mere "confirmation of birth" which is "not a birth certificate", according to the new form.

This proposal is problematic for various reasons:

1. Every child has the [right to a birth certificate](#);
2. In terms of international law, it is the responsibility of the country of birth to issue a birth certificate, regardless of whether citizenship is also granted or not;
3. It violates the child's right to a name and a nationality in terms of section 28 of the Constitution and various international law instruments;
4. It amounts to unfair discrimination on a prohibited ground (ethnic origin and birth) listed in the equality clause (Sec 9) of the Constitution.

The draft regulation requires children to present their "confirmation of birth" to their embassy in order to obtain a birth certificate from their country of nationality. This is particularly harmful to:

1. Refugee and asylum seeker children, because they cannot approach their embassies, which would jeopardise their protection in South Africa;

2. Orphaned and abandoned children who cannot prove their nationalities because their parents are absent;
3. Stateless children who do not have a country of nationality.

This proposed amendment comes in the wake of criticism from the UN [Committee on the Rights of the Child](#), the [African Committee of Experts on the Rights and Welfare of the Child](#) and the [UN Human Rights Council](#) on South Africa's violations of international law on the child's right to birth registration and a legal identity.

The UNCRC, in particular, has [recommended](#) that South Africa “*review and amend all legislation and regulations relevant to birth registration and nationality to ensure their full conformity with the Convention, including through the removal of requirements that may have punitive or discriminatory impacts on certain groups of children.*” Instead of implementing this recommendation, the Department is lowering the standard by removing birth registration for foreign children entirely.

Without a birth certificate children face immense barriers to basic services and human rights such as education, health and social services. The birth certificate also allows stateless children to apply for the safeguards which give them citizenship where they have no other citizenship.

The Constitution requires us to consider the best interests of the child to be paramount in all matters concerning the child (Section 28). Our courts have consistently found that it is in the best interest of the child to have a birth certificate and access to a nationality.

We urge the Department of Home Affairs not to pursue this amendment.

We further urge all stakeholders to submit their comments on this important issue to Tsietsi Sebelemetja ([Tsietsi.sebelemetja@dha.gov.za](mailto:Tsietsi.sebelemetja@dha.gov.za)) and Moses Malakate ([moses.malakate@dha.gov.za](mailto:moses.malakate@dha.gov.za)) by Friday, 16 November 2018.

For comment contact:

- Lawyers for Human Rights – Liesl Muller at [liesl@lhr.org.za](mailto:liesl@lhr.org.za) and 011 339 1960
- Centre for Child Law – Anjuli Maistry at [anjuli.maistry@up.ac.za](mailto:anjuli.maistry@up.ac.za) and 012 420 4502
- The Scalabrini Centre of Cape Town – Lotte Manicom at [lotte@scalabrini.org.za](mailto:lotte@scalabrini.org.za) and 021 465 6433
- The UCT Refugee Law Clinic – Dr. Fatima Khan at [fatima.khan@uct.ac.za](mailto:fatima.khan@uct.ac.za) and 021 650 5581