

HOW TO GET DOCUMENTED!

A step-by-step guide to getting
birth certificates, citizenship documents
and immigration visas
for children in South Africa.



CENTRE FOR
CHILD LAW



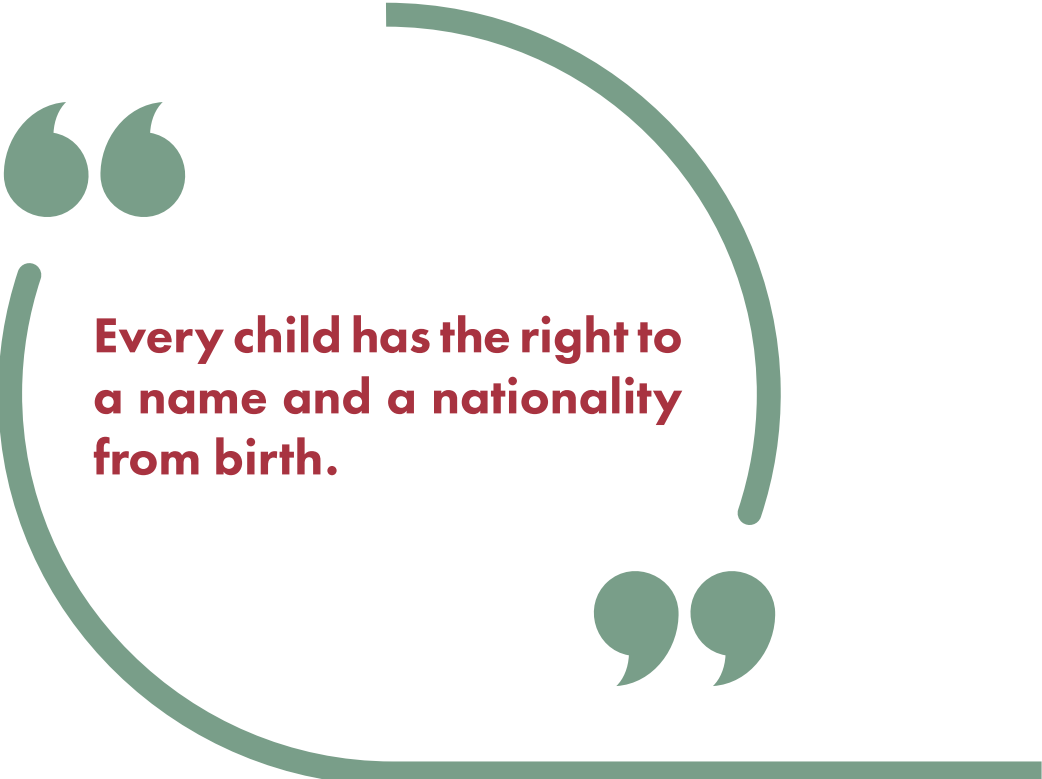
The South African Human Rights Commission (the Commission) and the Centre for Child Law (the Centre) bring you this simple, but comprehensive guide on documenting children in South Africa. Both the Commission and the Centre receive hundreds of requests for help with documenting children each year. This guide aims to compile what we have learnt about assisting children into one easy to use guide for parents, social workers, and even children themselves.

Every child has the right to a name and a nationality from birth. The Constitution of South African protects this right in section 28 of the Constitution. In fact, it is the very first right granted to children specifically. The right to a name and a nationality includes the right to birth registration, to an identity, to citizenship and to proof of that identity and citizenship.

A child's identity is a blend of their individuality, their culture, their communities, their ancestors, but also of the places and people who they interact with today. It is a rich and crucial part of every child's life. The right to have this identity preserved and recorded is what enables a child to move through the world and to interact with others in a meaningful way.

Although every child, regardless of their documentation, is entitled to all the rights in the Constitution, it can be difficult to register for school, or to be admitted to a hospital, without the relevant documentation. Without documents, children can be left out, and some can become stateless if they stay undocumented for too long.

Children deserve to reach their full potential as the Constitution requires in its preamble. Documentation is one of the keys which can unlock it. Our hope is that this guide will bring children, with the help of their caregivers, closer to that goal.



**Every child has the right to
a name and a nationality
from birth.**

GLOSSARY OF TERMS

Documentation

is a term used to refer collectively to all government issued documents concerning a person's identity, including birth certificates, identity cards, passports, permits, visas, asylum seeker visas, and refugee permits.

Birth registration

is the permanent and official record of a child's birth by the government of the country where the child was born. A birth certificate is the document subsequently issued to that child, which reflects their name, date and place of birth, and the details of their parents.

"Citizenship" and "nationality"

have the same meaning and can be used interchangeably. In South Africa we use the word citizenship. Citizenship is the legal bond between an individual and the state. It is based on a person's "genuine links" to a state. A genuine link can take the form of birth in the territory of the state, or descent from citizens of the state. The rules for obtaining citizenship of a country are determined by the laws of each individual country. In South Africa, citizenship is determined by the South African Citizenship Act (1995).

Identity cards (ID cards)

are official documents issued to citizens, permanent residents, and recognised refugees. In South Africa, ID cards are issued to all persons whose details are recorded in the population register (South African citizen, permanent residents, and recognised refugees). The ID card reflects that person's official identity number. Other countries will have different ways to document their citizens and long-term residents.

Passports

are official documents which allow a person to travel to other countries. It is normally issued to citizens, but a state may also issue passports to non-citizens, such as refugees, who are unable to approach their countries for a passport.

Permits or visas

are official authorisations allowing non-citizens to reside or work outside their country of citizenship. They can take the form of a stand-alone document, or a sticker pasted into the passport, or a stamp in the passport. In South Africa they are issued by the Department of Home Affairs upon application.

An Irregular migrant

is a person who is not a citizen, and who does not have the required authorisation from a government to remain in its territory. An irregular migrant, may have an expired visa, permit or passport, or they may have no passport at all.

Undocumented persons

have no government issued proof of identity (documentation), such as a birth certificate, and identity card or a passport. Citizens, non-citizens, and stateless persons can all be undocumented.

1

Not all children born in a country, are citizens of that country

A common mistake many people make is to assume that a child obtains the citizenship of the country where they are born. In truth, most countries do not grant citizenship to all children born in their territory. Most countries grant citizenship to the children of their citizens. This is the case in South Africa. This, and other ways to acquire citizenship in South Africa are explained in this guide.

2

No two countries have the same rules

All countries have different rules about how, and to whom, they grant citizenship and issue documentation to their residents. No two countries have the same rules, but every country must ensure that they do not exclude children from citizenship and documentation, based on discriminatory laws, or practice. Human rights principles must be followed.

Some principles are universal and apply to all countries, such as:

Every child is entitled to a birth certificate immediately after birth.

The country where the child is born is responsible to issue the child with a birth certificate.

Every person has the right to proof of their citizenship.

The country where the child has citizenship is responsible for issuing the document which proves citizenship.

3

Most people will have at least two documents in their lifetime.

The first document is a birth certificate, and the second is a document proving their citizenship. In South Africa, a child needs both documents. A birth certificate is only the minimum.

Children living in South Africa could have several combinations of documents:

1. A South African citizen child born in South Africa will have at least two documents:
 - A birth certificate issued by South Africa's government.
 - When they turn 16 years, an identity (ID) card proving their South African citizenship.
2. A South African citizen child born outside of South Africa will have 3 documents:
 - A birth certificate issued by the country where the child is born.
 - An additional birth certificate issued by the South African government indicating that the child's details have been included in the National Population Register, and allocating them an ID number.
 - When the child turns 16 years, an ID card.
3. A non-South African child born in South Africa:
 - A birth certificate is issued to the child by South Africa's government, recording their birth in South Africa.
 - The country where the child has citizenship will use the information on the birth certificate to record the child as a citizen of that country.
 - A passport may also be issued to a child, in which a visa or a permit will be recorder authorising their stay in South Africa.

4

Parents, guardians, or social workers (in the case of an unaccompanied child) can assist a child to apply for documentation.

5

Children may not be refused basic services and fundamental rights, like healthcare, education, and social grants, because they are not documented.

Please note

In the court case, Centre for Child Law v Minister of Basic Education (“Phakamisa”), the court ruled that undocumented children may not be refused admission to school, including matric. They must also be allowed to register for matric exams and be provided with their results. Department of Basic Education Circular 1 of 2020 directs public schools to admit undocumented children.

The next pages will provide you with all the information you need to apply for your child’s documents.

Birth certificates

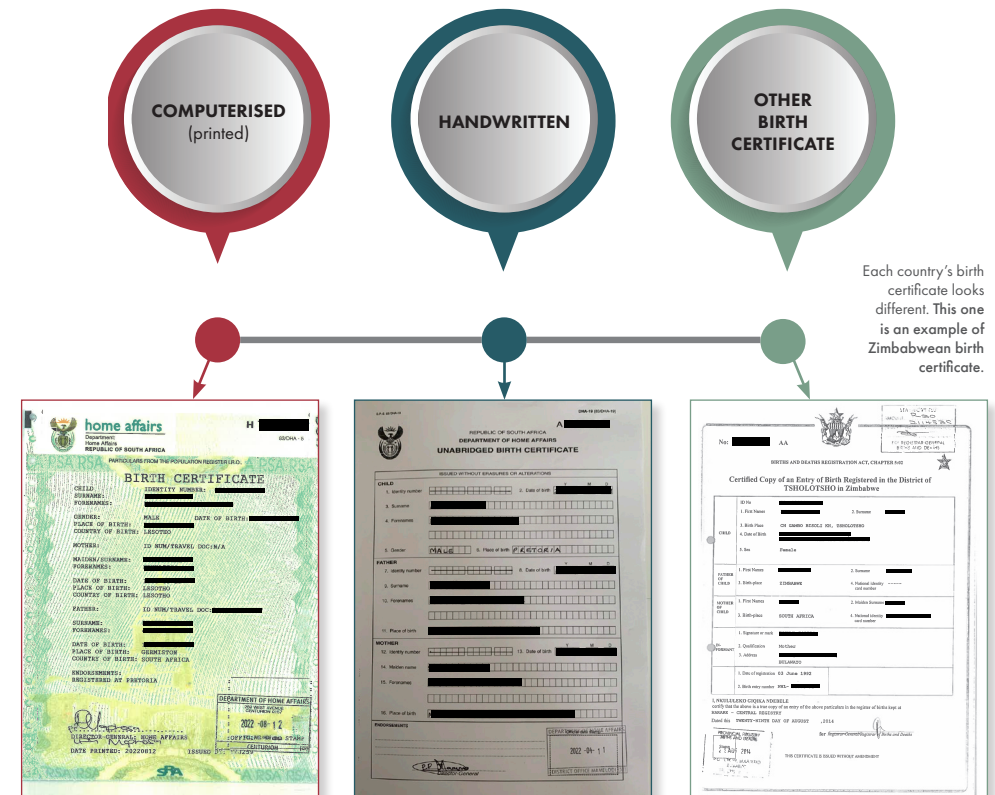
You might come across three different birth certificates in South Africa.

Two are issued by South Africa’s Department of Home Affairs (DHA). The third is issued by other countries.

There are two kinds of birth certificates **issued by South Africa’s DHA**:

- A computerised (printed) birth certificate (issued to South African citizens, who are born either inside or outside of South Africa)
- A handwritten birth certificate (issued to non-South Africans born in South Africa)
- Both these certificates are official and legitimate birth certificates.
- Non-South African children who were born outside of South Africa may have birth certificate, **issued by the country of birth**.

Three kinds of birth certificates





When & where?

A birth must be registered within **30 days after the birth** at the nearest Home Affairs office.

Some hospitals also offer birth registration. The parents may register the birth at the hospital where the child was born.



Requirements

Proof of birth form, also called a **DHA 24/PB**. This form is filled out and stamped by the hospital where the child is born. It provides the details of the birth.



The proof of birth form is NOT a birth certificate.

- If a child is born at home a different proof of birth form (called the DHA 24/PBD) must be filled out.
- Biometrics (palm, foot or fingerprint) of the child to be registered
- Fingerprints of parent/s
- ID/Passport of parent/s
- Where available, the visa/ permit of parent
- Where applicable, the death certificate of a parent

Please note

In the court case, Centre for Child Law v Director General: Department of Home Affairs and Others (“Naki”), the court declared these requirements unlawful because they exclude some children, and decided that even where a parent has no valid passport or visa, the birth must still be registered.

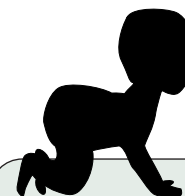
If a birth is not registered within 30 days of the birth, a more challenging process, called late registration of birth (LRB), is followed.



Requirements

There are **3 categories of LRB** according to the child’s age:

In each category the informant (parent/next of kin/social worker) will be interviewed by a panel of Home Affairs officials who either approve or deny the LRB application.



CATEGORY 1: Registration from 31 days up to 1 year after the birth

- DHA 24/LRB (Notice of birth form for LRB)
- DHA 24/PB (Proof of birth for children born at a health facility) / DHA 24/PBA (Proof of Birth Affidavit for children born at home)
- DHA 288/A (Affidavit giving reasons for LRB)
- Biometrics (palm, foot or fingerprint) of the child to be registered
- Fingerprints of parent/s
- ID/Passport of parent/s



CATEGORY 2: Registration from 1 year up to 7 years

- Category 1 requirements
- DHA 288 (Affidavit in support of the notice of birth)

CATEGORY 3: Registration from 7 years and above

- Category 1 requirements
- ID-size photo and fingerprint of the person being registered



Please note

In the court case, Centre for Child Law v Director General: Department of Home Affairs and Others (“Naki”), the court declared these requirements unlawful because they exclude some children, and decided that even where a parent has no valid passport or visa, the birth must still be registered.

The births of orphaned and abandoned children must be registered by a social worker.

Requirements



- A DHA 24 form (notice of birth)
- The Children's court order in terms of section 156 of the Children's Act which finds the child to be in need of care and protection
- A certified copy of the social worker's ID card or passport and visa
- Where available, a certified copy of the ID card / passport / visa or permit of the parents of the child.
- Where available, a certified copy of the death certificate of the parents of the child.
- The social workers' report that was presented to the children's court.



Where a child is being registered by parents with different citizenship, or by an unmarried South African father, the father could be referred to the National Health Laboratory Service (NHLS) for DNA proof that he is the biological father of the child.

DHA Circular 5 of 2014 requires DNA proof only when:

- The child's parents are not married, AND
- One parent is South African and the other is non-South African.

DNA proof is required in practice when an unmarried father registers the birth of the child without the mother present, because she is deceased, unwilling or unavailable to attend to the registration.

DNA testing costs R750 per person being tested, amounting to at least R1500.

If a father cannot afford to pay for the test, he may approach a Children's Court to apply for one of the following:



An order recognising him as the father of the child (a paternity order in terms of section 26 of the Children's Act (38 of 2005).



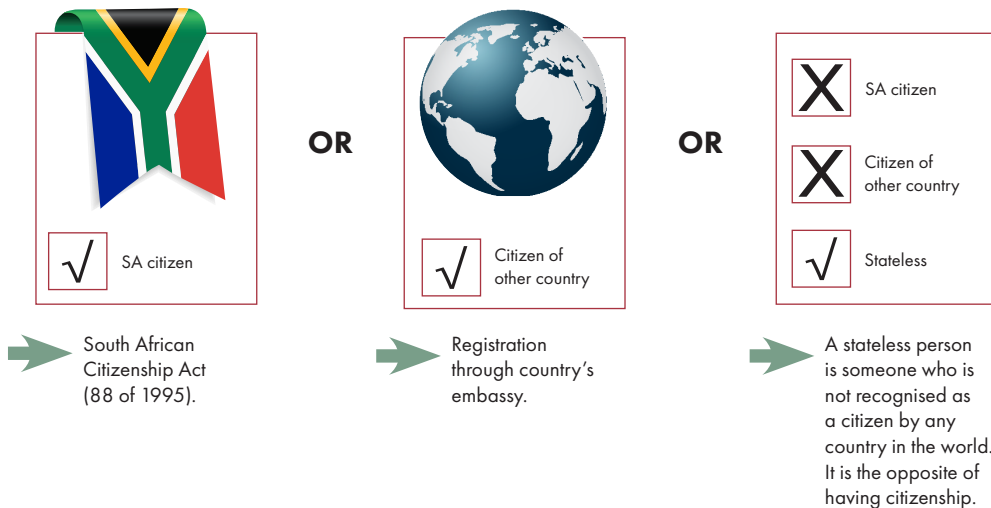
An order recognising that he has parental rights and responsibilities in terms of section 21 of the Children's Act.

In addition to having a birth certificate, a child should also have a document proving their citizenship. These include:

- A South African citizen computerised birth certificate with an ID number; and
- A South African citizen ID card, from age 16; or
- A passport if the child is not a South African citizen (a refugee / asylum seeker child may or may not have a passport).

A South African child is also entitled to a passport, but it is not necessary unless they want to travel to another country.

To decide which document to apply for, the child's citizenship must be determined.



The next section will tell you how to determine if a child is a South African citizen.

South African citizenship is determined by the South African Citizenship Act.

The Citizenship Act provides **4 ways** for children to get South African citizenship.



A child can be a South African citizen if:

ONE	TWO	THREE	FOUR
Their parent is a South African citizen (section 2(1)).	They were born in South Africa, and they are stateless (section 2(2)).	They were adopted by a South African citizen (section 3).	They applied for and was granted a certificate of naturalisation (section 5).

When a child turns 18, there are 2 additional options for getting citizenship. A child can apply for South African citizenship at age 18 if:

- A child was born in South Africa, and their parent had a permanent residence permit on the day of the birth, and the child lived in South Africa from birth until their 18th birthday (section 2(3)).
- A child was born in South Africa, and their parent was not a citizen, nor did they have a permanent residence permit, and the child lived in South Africa from birth until their 18th birthday (section 4(3)).

Section 20 of the Constitution says: No citizen may be deprived of citizenship.

If a child qualifies for citizenship in terms of the Citizenship Act, but is denied citizenship documentation by the Department of Home Affairs, it can be interpreted as a decision not to recognise the child as a citizen, or even a deprivation of the child's citizenship. Denying a child their citizenship document is a violation of their right not to be deprived of citizenship, and can be reviewed by a court.

Requirements for citizenship at age 18



SECTION 2(1) "Citizenship by birth"

- The child's parent is a South African citizen on the day of the child's birth
- The child is born in or outside South Africa

This form of citizenship by birth is automatic, and not subject to anyone's discretion.

SECTION 2(2) "Citizenship by birth" for stateless children

- The child is stateless, and
- The child is born in South Africa, and
- The child's birth is registered

This form of citizenship by birth is automatic, and not subject to anyone's discretion.

SECTION 3 "Citizenship by descent"

- The child is adopted by South African parent(s), and
- The child's birth is registered.

This form of citizenship by birth is automatic, and not subject to anyone's discretion.

SECTION 5 "Citizenship by naturalisation"

- The child has a permanent residence permit, and
- The child has had the permanent residence permit for 5 years OR the child has applied to the Minister to exempt him from the 5-year requirement.
- The child has applied for a naturalisation certificate

This form of citizen is not automatic, you must apply for and be granted a naturalisation certificate, before the citizenship comes into existence. It is subject to the Minister's discretion.



SECTION 2(3) "Citizenship by birth"

- The child is born in South Africa, and
- The child's parent(s) has a permanent resident permit on the day of the child's birth, and
- The child's birth is registered, and
- The child has lived in South Africa from birth until their 18th birthday.

This form of citizenship by birth is not automatic. An application must be made, before the citizenship comes into existence. It is not subject to the Minister's discretion. If all 4 requirements are met, the Minister must grant citizenship.

SECTION 4(3) "Citizenship by naturalisation"

- The child is born in South Africa, and
- The child's parent(s) are neither citizens, nor permanent residents on the day of the child's birth, and
- The child's birth is registered, and
- The child has lived in South Africa from birth until their 18th birthday.

This form of citizenship by birth is not automatic. An application must be made, before the citizenship comes into existence. It is not subject to the Minister's discretion. If all 4 requirements are met, the Minister must grant citizenship.

To apply for citizenship in terms of section 2(3) or section 4(3), the applicant must depose to an affidavit alleging that they have complied with all the requirements attaching proof to that effect. It can be submitted at the local Home Affairs office for a fee of R300.

Certificates of citizenship in cases of doubt

If a child's South African citizenship is in doubt, you may apply to the Minister of Home Affairs for a certificate of citizenship in cases of doubt in terms of section 15 or 16 of the Citizenship Act. This can be used as a last resort before court intervention, when South African citizenship documentation is denied by the Department of Home Affairs. There is no official form or format. It can be submitted by way of a letter to the Minister.

Non-South African citizens

Children who do not qualify for South African citizenship, are either the citizens of a different state, or are stateless.

To determine whether a child is a citizen of a different state, an embassy must be approached and asked to determine the citizenship of the child, unless the child is a refugee.

To decide which embassies to approach, consider their links to a country such as:

- The country where the child's parents have citizenship;
- The country where the child's parents were born;
- The country where the child was born, or lived for a significant time.
- The country where the child resided previously.

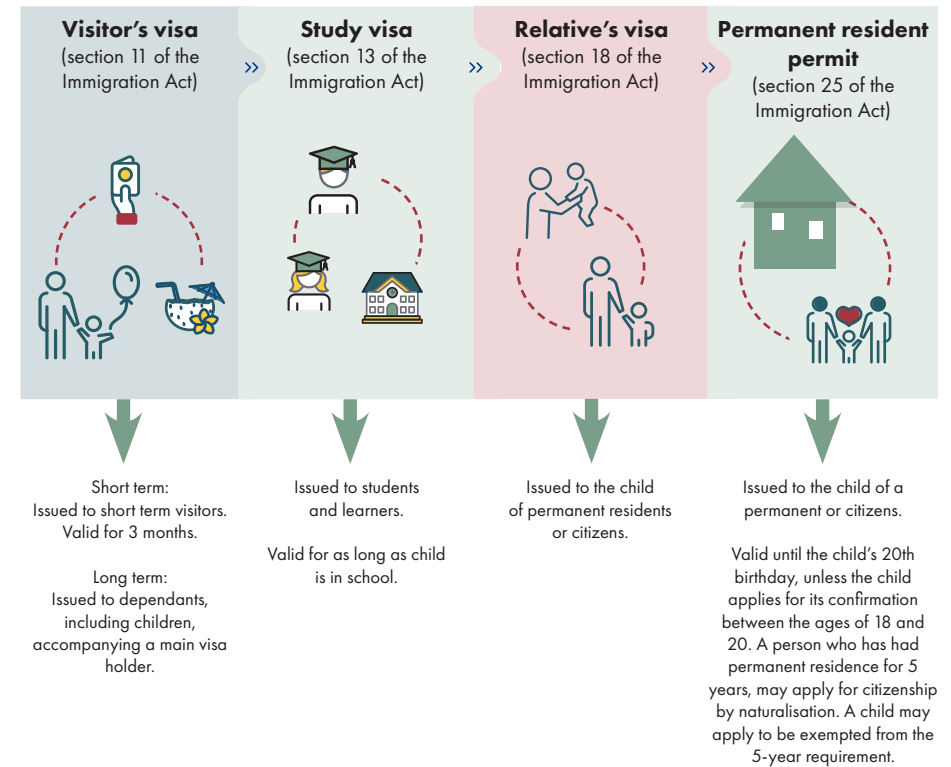
The embassies of these countries should be approached to determine whether they recognise the child as a citizen. If so, an application for a passport must be made.

Once the child is issued with a passport, you must apply for a visa from the Department of Home Affairs.

Immigration visas/permits

South African citizens automatically have the right to reside and work in South Africa. However, non-nationals must have authorisation from the state to reside and work in South Africa. These authorisations are called visas or permits.

VISAS AVAILABLE TO CHILDREN:



All applications for immigration visas must be made through VFS Global at <https://visa.vfsglobal.com/zaf/en/dha>



STUDY VISA

A refugee is a person who owing to a well-founded fear of being persecuted by reason of his or her race, tribe, religion, nationality, political opinion or membership of a particular social group, is outside the country of his or her nationality and is unable or unwilling to avail himself or herself of the protection of that country, or, not having a nationality and being outside the country of his or her former habitual residence is unable or, owing to such fear, unwilling to return to it (section 3 of the Refugees Act (130 of 1998)).

If a child appears to be a refugee, they must be assisted to apply for refugee status at a Refugee Reception Office (RRO). They may be assisted by their parent, or a family member in whose care they are.

If unaccompanied, they must be assisted by a social worker, after being brought before a Children’s Court.

The RRO will first issue the child with a section 22 asylum seeker visa. This visa will allow the child legal residence until their refugee application is finalised. It is valid for 6 months at a time, and must be renewed.

When a child’s application for refugee status is approved, they are issued with a section 24 Refugee permit. This permit is valid for two years at a time.

Both an asylum seeker and refugee permit allows a child to study, access health care and other services.”

If the child does not qualify for South African citizenship, and after approaching relevant embassies, it is found that no country recognises them as a citizen, they must be stateless.

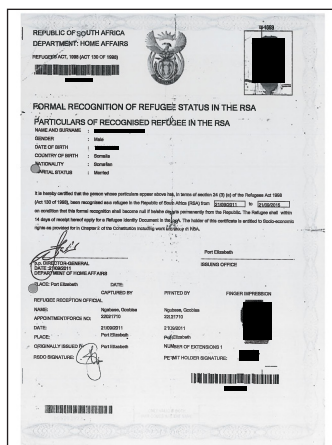
Solutions to statelessness:

- If the child is born in South Africa and are stateless, they automatically qualify for South African citizenship by birth (section 2(2) of the Citizenship Act).
- If a stateless child was born outside of South Africa, an application to the Minister of Home Affairs can be made for permanent residence by way of exemption. Section 31(2) (b) of the Immigration Act authorises the Minister to grant permanent residence to non-nationals, without complying with the usual requirements for permanent residence, if special circumstances justify it. The application must be made through VFS Global. The cost is R1350 per application.

ASYLUM SEEKER VISA EXAMPLE



REFUGEE PERMIT EXAMPLE



EXAMPLE OF EXEMPTION PERMIT

WHERE CAN I FIND HELP?



The South African Human Rights Commission (SAHRC)

The South African Human Rights Commission (SAHRC) has a Child-Friendly Complaints Procedure specifically designed to handle complaints made by or involving children. If you have experienced a human rights violation, you can make a complaint to any one of the nine provincial offices where children or their parents/guardians/caregivers can lodge a complaint in a safe, affirming and child-friendly space.

<https://www.sahrc.org.za/childrensrights/index.php/en/childrens-complaint-box>



The Centre for Child Law

The Centre for Child Law is an impact litigation organisation that was established in 1998. The Centre is registered as a Law Clinic and is based in the Faculty of Law at the University of Pretoria. The Director of the Centre is Ms Karabo Ozah.

The vision of the Centre is to establish child law and uphold the rights of children in South Africa, within and international and regional context, particularly insofar as these interests pertain to their legal position.

The Centre's mission is to work towards the development of child law and the realisation of children's rights in South Africa, within a regional and international context.

<https://centreforchildlaw.co.za>

SAHRC PROVINCIAL OFFICES

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LAWYERS

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www.centreforchildlaw.co.za

LAWYERS FOR HUMAN RIGHTS

Kutlwanong Democracy Centre
357 Visagie Street, Pretoria
Tel: 012 320 2943
www.lhr.org.za

SCALABRINI CENTRE OF CAPE TOWN

47 Commercial Street, Cape Town
Tel: 021 465 6433
Email: info@scalabrini.org.za
www.scalabrini.org.za

LEGAL AID SOUTH AFRICA

<https://legal-aid.co.za/>

OTHER CONTACTS

UNICEF

Equity House, 659 Pienaar street, Brooklyn, Pretoria
Tel: 012 425 4701
Email: pretoria@unicef.org

DEPARTMENT OF SOCIAL DEVELOPMENT

134 Pretorius Street, HSRC Building, Pretoria
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DEPARTMENT OF HOME AFFAIRS

<http://www.dha.gov.za/>



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