



social development

Department of
Social Development
FREE STATE PROVINCE

UNACCOMPANIED AND SEPARATED FOREIGN CHILDREN FOUND IN SOUTH AFRICA

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BACKGROUND

The Department of Social Development (DSD) has to ensure that all children in South Africa (SA) enjoy the care and protection that they are assured of in Section 28(1) and 28(2) of the SA Constitution (Act No. 108 of 1996), the Children's Act, 2005 (Act No. 38 of 2005), the UN Convention on the Rights of the Child, and the UN Guidelines for the Treatment of Unaccompanied and Separated Children outside their Country of Origin (General Comment No 6 of 2005).



BACKGROUND

The children migrating across the borders into SA may be in need of asylum and their families may be difficult to trace in their countries of origin, making family reunification more complex and time consuming. Otherwise, in terms of child protection, the procedures for unaccompanied children (UAC) and separated children (SC) are the same as the statutory procedures prescribed for all children in SA found to be in need of care and protection.



The procedures are therefore relevant for:

- Identification of UAC and SC in need of care and protection**
- Care arrangements for the UAC or SC in need of care and protection**
- Tracing of family members in country of origin and SA**
- Reunification of UAC and SC with family members found.**

DEFINITIONS



- **“Child” is any person below the age of 18 years**
- **“Unaccompanied children” are 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.**
- **“Separated children” are children who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.**

KEY GUIDING PRINCIPLES



- **Best Interest of the Child** Of paramount importance in every matter concerning the child and must be upheld during all stages of child protection procedures.
- **Parental Rights and Responsibilities** SA recognizes that all children have a right to parental care; and that parents have the responsibility and right to care for their children.
- **Family Preservation** SA recognizes the need of a child to be raised in a stable family environment. Priority to be given to a child remaining in the care of his parent/s, and to maintain a connection with his/her family, extended family, culture or tradition. Therefore, if in the best interests of the child, the first option should be aimed at re-uniting UAC and SC with their parents or primary legal or customary caregivers as quickly as possible.



KEY GUIDING PRINCIPLES (cont)

- **Non-Discrimination** in respect to all dealings with separated and unaccompanied children. It prohibits any discrimination on the basis of the status of a child as being unaccompanied or separated, or a foreign national or migrant.
- **Confidentiality** All stakeholders involved must protect the confidentiality of information received in relation to an UAC or SC. This obligation applies in all settings, including health and social welfare. Information sought and legitimately shared for one purpose should not be inappropriately used for that of another.
- **Non-refoulement (prohibition to return)** This means that states cannot return people to countries where they might be subjected to torture, inhumane or degrading treatment, or where their lives and freedoms might be at risk. The principle is applicable to any foreigner who needs some form of shelter from the state under whose control he/she is.



KEY GUIDING PRINCIPLES (cont)

- All children have a right to a name and identity.

In the case of UAC and SC this right is particularly challenging. Children should be provided with their own personal identifying documents as soon as possible, but **identifying documents should not be a prerequisite for access to services.** Absence of a birth certificate should not prevent a child from being taken through child care and protection statutory services. An age estimation and court order should help a child to access services as per his/her constitutional rights. Where a child has no legal birth certificate, the **Children's Act [sections 46(1)(h)(viii) and 48 (2)]** and Department of Justice and Constitutional Development's (**DOJCD**) **Regulation 10(5) and Forms 7 and 8** can be applied with prescribed procedures to estimate the child's age. Many children will have suffered trauma due to separation, violence and/or abuse, can be HIV infected, or have other special needs. These children should be provided with psychosocial care and be referred to other service providers. They should have the same access to health care as children who are nationals. And they should have full access to education, be registered with school authorities and get assistance in maximizing learning opportunities.

Identification of UAC and SC



- **UAC and SC are presumed to be “in need of care and protection” & should be afforded access to the statutory system as outlined in the Children’s Act (See sec 150 of Children’s Act).**
- **Must be reported to a designated Child Protection Organisation, SAPS, the Family Violence, Child protection and Sexual Offences Unit (FCS) or DSD in the area in which s/he was found.**
- **After hours assistance must be requested from SAPS/FCS (Sec 152 of Children’s Act)**
- **If the report has been made to SAPS, the safety and well-being of the child is the responsibility of the police and a report is to be made by them to provincial DSD or a designated child protection organization within 24 hours (Section 110 (4) of Children’s Act)**
- **If a child is suspected to have committed a crime follow the procedures of the Child Justice System.**



Assessment and statutory intervention

- **Upon receiving report on a UAM or SC at risk the Designated Child Protection Organisation, SAPS/Family violence, Child protection and Sexual offences Unit (FCS) or DSD to ensure the immediate safety and well-being of the child.**
- **Procedures outlined in Section 152 in the Children's Act, Form 36 provides prescribed format for social worker or police officer who removes child to temporary safe care while investigation takes place.**
- **If the child is undocumented, section 48(2) of Children's Act provides that the children's court can estimate the age of the child.**
- **Preference should be given to reunification with family for UAC or SC. Social Workers need to exhaust all possibilities of the child returning to family care before recommending alternative care.**



Assessment and statutory intervention (cont)

- **Social Workers to investigate the circumstances of the child and record findings with a recommendation to the court (Form 38 provides prescribed format).**
- **The children's court will determine whether the child is in need of care and protection and will provide an Order.**
- **Efforts to find a more durable/long term solution (refer to 6.4 of DSD Guidelines on Separated and Unaccompanied Children outside their country of origin in SA) are required while children are in alternative care. Alternative care should be seen as temporary arrangement while a more durable placement should be pursued in community of origin.**



Family Tracing

- **For foreign UAC or SC identified in SA it is important to exhaust all possibilities of child returning to community of origin – will prevent situation of child staying in SA alternative care until he/ she reaches 18 years and then becoming an “illegal citizen” without SA identification.**
- **Establish the safety of child and why child left home/ country and came to SA and if there are any other children in the same situation.**
- **Establish, as a matter of priority, if there are parents/ responsible adults/ caregivers and /or extended families of the UAC or SC and who they are, where they are and their home circumstances. [ICRC, International Social Services (ISS), and International Organisation for Migration (IOM) are useful resources in doing cross border family tracing and assessment]**

Family Tracing (cont)



- **Once family members have been traced in another country, Social Workers to request an assessment (with reunification plan if family reunification is possible) of the family through the local ISS office in national Department of Social Development, by the ISS focal point in country of child's origin. An inter-country report will be provided through the National ISS and made available to the local social worker/stakeholders offering services to the child (see ISS National Guidelines).**
- **The request of an assessment can also be done through cross border relationships with social services in respective countries, established through cross border working groups. There is no statutory requirement that these assessments only be done through ISS.**



Family Tracing (cont)

- Social Workers can approach respective embassy of child to obtain information/ birth certificate of the child. [For any child born in SA of a foreign parent, a notice of birth will be provided by DHA to the mother of the child (not the father) for her to return to country of origin for application of birth certificate. The child would therefore not be listed in SA population register.]
- Social Workers to outline reintegration options and discuss the proposed plan with the child and family.

Reunification or placement



- **If report from country of origin is favourable in terms of family's ability and willingness to take care of child, and it is in the best interests of the child to return to family of origin, then the child may be reunited with family. Procedures for returning children to country of origin will be arranged on a case to case basis.**
- **All repatriations should be in the best interests of the child, which is sometimes not the child's first choice.**
- **Travel documentation, will have to be arranged with relevant embassies.**
- **Safe travel arrangements are critical to avoid trafficking and exploitation. A social worker to accompany the child to the border where the child will be handed over to the family or pre-identified authorities and the recipient person needs to sign for the child. Confirm details of family member receiving the child.**
- **Ensure a court document discharging /releasing child from statutory system is produced and that this is handed over to agency receiving child.**

Alternative care placements



social development

Department of
Social Development
FREE STATE PROVINCE

- **For children who cannot be reunified with their family or if it is not within the child's best interests to be repatriated, an alternative care arrangement, suitable for the child should be recommended to the presiding officer at children's court.**
- **If family exists consider the distance to family and country of origin – it may be best to place child within distance of family's reach.**
- **The Social Worker to ensure that child/ caregiver receives relevant documentation – health records, school enrollment papers and school reports etc**
- **The Social Worker to ensure child is enrolled in school – and if there are challenges with this, enlist support from Department of Basic Education as all children, regardless of nationality, have a right to education (SA Constitution)**
- **Each child to have Individual Care Plan (IDP).**



Follow up and case closure

- **If family reunification is secured, the child must be discharged from the statutory system by informing the children's court (section 175 of the Children's Act) and release papers need to be given to responsible adult/ caregiver. This will relieve alternative caregiver of any further responsibilities relating to the child.**
- **The Social Worker to ensure social services across the border have the necessary information to be able to do follow-up visits.**
- **For child in alternative care, and in education or training, the Social Worker may request extension of placement until the age of 21, if current alternative caregiver is able and willing to continue caring for the child and if child completes education or training (See section 176 of Children's Act).**



I THANK YOU