

EQUITAS

Statelessness & the right to Education: Legal interventions for children in SA.



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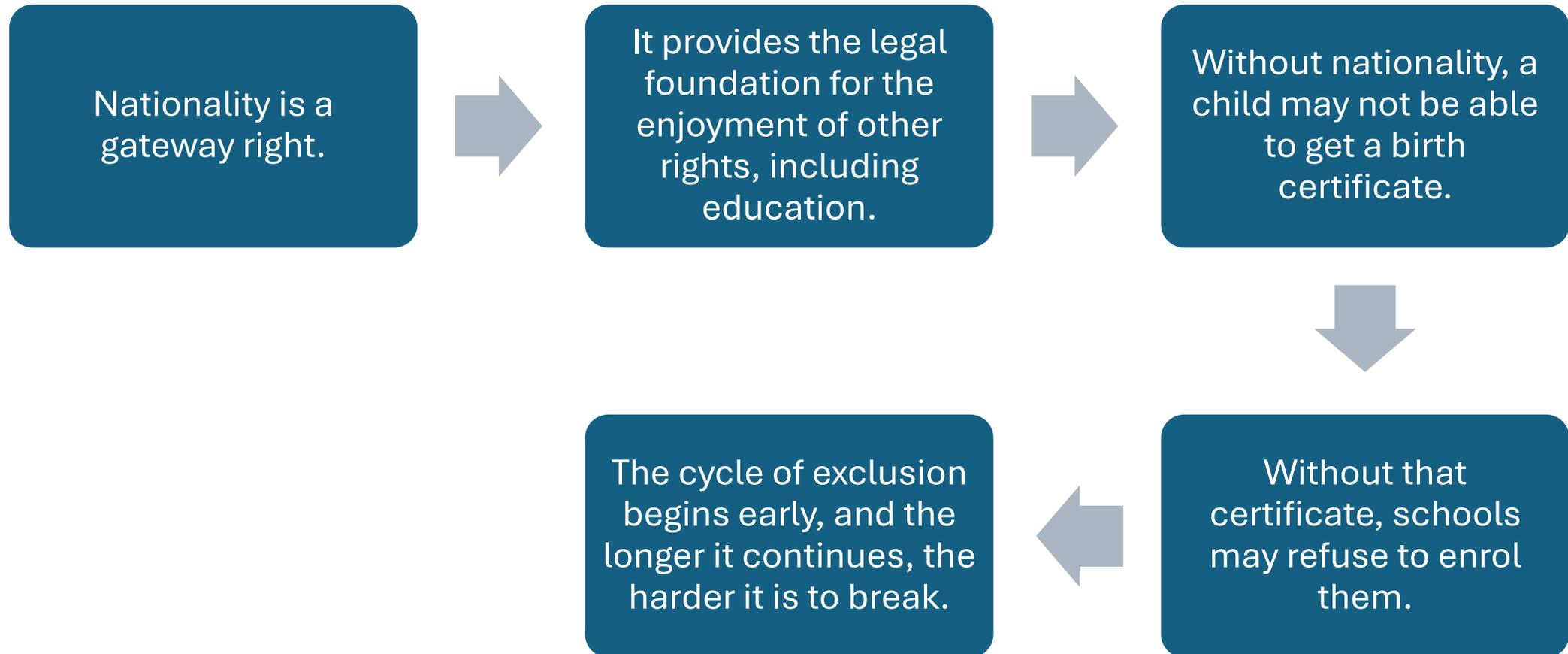
Reality check

- Statelessness is a global problem,
- The SAHRC reveals that in Sub-Saharan Africa, only 43 per cent of births are registered and
- South Africa, birth registration stands at only 38 per cent.

Understanding Statelessness

- Defining Statelessness- a stateless person is someone who is not considered a national **by any state** under the operation of its law.
- All persons, including children, has the right to a **name and nationality from birth**, this is enshrined in Section 28(1)(a) of the Constitution
- The link between nationality and statelessness is that nationality gives a personis **often a prerequisite for accessing rights** and services, including education, healthcare...
- The fundamental **right to education** is enshrined in Section 29(1) of the South African Constitution

Link between Statelessness and Nationality



South African cases

DGLR v Minister of Home Affairs is DGLR and Another v Minister of Home Affairs and Others ZASCA 1051

- An 8-year-old child, born in South Africa to Cuban parents who had lived in South Africa and lost their Cuban citizenship (foreign parents) was denied citizenship and faced barriers to accessing education.
- Legal Issue: The Department of Home Affairs failed to implement Section 2(2) of the Citizenship Act, which allows stateless children born in South Africa to acquire citizenship by birth.
- Court's Decision: The Supreme Court of Appeal ordered the Department to register the child as a South African citizen and to promulgate regulations facilitating citizenship applications for other stateless children.
- Impact: This case set a precedent for recognising the rights of stateless children and ensuring their access to education



Mulowayi and Others v Minister of Home Affairs and Another CCT249/18



- Facts: an undocumented child in the Eastern Cape, was denied admission to a public school due to lack of documentation.
- Legal Issue: The Department's policy required learners to produce birth certificates or identity documents for school enrolment, effectively excluding undocumented children.
- Court's Decision: The court declared the relevant clauses of the Admission Policy unconstitutional, affirming that every child has the right to basic education regardless of their documentation status.
- Impact: This ruling reinforced the principle that access to education cannot be impeded by administrative barriers.

Challenges

- Beyond individual cases, systemic issues persist in the where many undocumented children face obstacles in accessing education.
- Lack of clear guidelines for schools on admitting undocumented learners, and inconsistent implementation of court rulings.
- Lack of birth registrations- linked to exorbitant fees for DNA tests- late registration fees- undocumented parents

What do we do?

- Statelessness Determination procedures
- Department of Basic Education ensuring that school principals do not turn children away.
- Home Affairs to streamline late birth registration and ensure Section 2(2) of the Citizenship Act is properly applied.
- Advocating for awareness campaigns so communities understand their children's rights.
- Push for policy harmonisation between the education and immigration departments.

Conclusion...

- No child chooses to be stateless.
- No child should be denied an education because of paperwork.
- South Africa's Constitution is clear.
- **Every child not just every citizen** has the right to basic education.
- We have the law. We have the legal precedents. A lot of good decisions have been made ...now we need action.