

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 2024-148658

In the application of:

HELEN SUZMAN FOUNDATION

Applicant for leave to
intervene as *amicus*
curiae

In the matter between:

THE CHILDREN’S INSTITUTE

First Applicant

[REDACTED]

Second Applicant

[REDACTED]

Third Applicant

[REDACTED]

Fourth Applicant

[REDACTED]

Fifth Applicant

[REDACTED]

Sixth Applicant

[REDACTED]

Seventh Applicant

[REDACTED]

Eighth Applicant

[REDACTED]

Nineth Applicant

and

MINISTER OF HOME AFFAIRS

First Respondent

DIRECTOR GENERAL: DEPARTMENT OF HOME
AFFAIRS

Second Respondent

WESTERN CAPE DEPARTMENT OF HOME
AFFAIRS PROVINCIAL MANAGER

Third Respondent

**DISTRICT MANAGER OF OPERATIONS: CAPE
METRO AND OVERBERG**

Fourth Respondent

**KHAYELITSHA OFFICE MANAGER:
DEPARTMENT OF HOME AFFAIRS**

Fifth Respondent

**BELVILLE OFFICE MANAGER: DEPARTMENT
OF HOME AFFAIRS**

Sixth Respondent

**CAPE TOWN OFFICE MANAGER:
DEPARTMENT OF HOME AFFAIRS**

Seventh Respondent

NOTICE OF MOTION:

APPLICATION TO BE ADMITTED AS *AMICUS CURIAE*

TAKE NOTICE THAT on a date and time to be arranged with the Registrar, the applicant will apply for an order in the following terms:

- 1 The applicant's non-compliance with the requirements of Rule 16A of the Uniform Rules of Court, together with the requirements relating to the timing and service of this application is condoned.
- 2 The applicant is admitted as *amicus curiae* in these proceedings.
- 3 As *amicus curiae*, the applicant is granted:
 - 3.1 The right to rely on the submissions set out in its founding affidavit together with any submissions set out in any replying affidavit that it may file;
 - 3.2 The right to lodge written argument in this matter; and
 - 3.3 The right to present oral argument at the hearing of this matter, provided that such argument does not repeat matters set forth in the

arguments of the other parties, and raises new contentions which may be useful to the court.

4 Further and/or alternative relief.

TAKE FURTHER NOTICE THAT the accompanying affidavit of **NASEEMA FAKIR** will be used in support of the application.

TAKE FURTHER NOTICE THAT the applicant will accept service of all documents and proceedings in this matter at the address of its attorneys of record as set out below. The applicant will accept service by email.

TAKE NOTICE FURTHER that if you intend opposing this application you are required (a) to notify the applicant's attorneys in writing and (b) to file your answering affidavits, if any within five (5) days of service of this application in accordance with Rule 16A(7).

Dated at Sandton on this the 14 day of **August 2025**.



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Attorneys for the Applicant

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Ref: PBO3070

TO:
The Registrar of the High Court

Western Cape High Court

AND TO:

Legal Resources Centre

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Second Applicants
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c/o Legal Resources Centre

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Kenilworth
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Email: charlenek@lrc.org.za
Ref: C Kreuser

AND TO:

The Minister of Home Affairs

First Respondent
1st Floor, FSI Building
909 Arcadia Street
Pretoria

AND TO:

Director-General: Department of Home Affairs

Second Respondent
Hallmark Building
Corner of Johannes Ramokhoase & Thabo Sehume Street
Pretoria

AND TO:

Western Cape Department of Home Affairs

Provincial Manager

Third Respondent
56 Barrack Street
Faircape Building
Cape Town
Western Cape

AND TO:

**District Manager of Operations Cape Metro
And Overberg**

Fourth Respondent
Crn Tsolo Street and Mzali Crescent
Khayelitsha
Cape Town
Western Cape

AND TO:
Khayelitsha Office Manager: Department of Home Affairs

Fifth Respondent
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AND TO:
Bellville Office Manager: Department of Home Affairs

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AND TO:
Cape Town Office Manager: Department of Home Affairs

Seventh Respondent
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Western Cape

AND TO:
The State Attorney

Attorneys for the Respondents
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Ref: 6553/24/P7

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and

MINISTER OF HOME AFFAIRS

DIRECTOR GENERAL: DEPARTMENT OF HOME
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WESTERN CAPE DEPARTMENT OF HOME
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First Respondent

Second Respondent

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DISTRICT MANAGER OF OPERATIONS: CAPE METRO AND OVERBERG	Fourth Respondent
KHAYELITSHA OFFICE MANAGER: DEPARTMENT OF HOME AFFAIRS	Fifth Respondent
BELVILLE OFFICE MANAGER: DEPARTMENT OF HOME AFFAIRS	Sixth Respondent
CAPE TOWN OFFICE MANAGER: DEPARTMENT OF HOME AFFAIRS	Seventh Respondent

FOUNDING AFFIDAVIT
APPLICATION TO BE ADMITTED AS *AMICUS CURIAE*

I, the undersigned,

NASEEMA FAKIR

do hereby make oath and say that:

- 1 I am an adult and the Executive Director of the Helen Suzman Foundation, the applicant for admission as *amicus curiae* (HSF). I confirm that I am duly authorised to depose to this affidavit on behalf of HSF for leave to intervene as *amicus curiae*.
- 2 The facts contained in this affidavit are within my personal knowledge, save where the contrary appears from the context or it is otherwise stated, and are to the best of my belief true and correct.
- 3 Where I deal with questions of law, I do so on the advice of HSF's legal representatives.

PARTIES

- 4 The applicant is the Helen Suzman Foundation a non-governmental organisation situated at North Block, La Val Office Park, 45 Jan Smuts Avenue, Westcliff, Gauteng. A resolution by the HSF will be filed with the Court on request.
- 5 The parties in the main application are as set out in the founding affidavit to the main application.

OVERVIEW AND TIMING

- 6 This is an application in terms of Rule 16A(6) of the Uniform Rules of Court (**Uniform Rules**), for the admission of the HSF as *amicus curiae* in the main application. The main application has been brought by the Children's Institute and persons adversely affected by the backlog of applications for the late registration of births.
- 7 HSF believes that it is able to provide useful and novel submissions that will assist the Court in the main application and wishes to intervene as *amicus curiae* to do so. It therefore seeks this Court's authorisation to make both written and oral submissions to the Court on the issues set out below.

Timing of this amicus application

- 8 I am advised that in terms of Rule 16A of the Uniform Rules, an applicant raising a constitutional issue in an application or action shall give notice thereof to the registrar at the time of filing of the application. The registrar is then required to place such notice on the notice board designated for that purpose.

The main application was launched, together with a Notice in terms of Rule 16A, on 30 December 2024.

9 I am advised that, in terms of Rule 16A(2) and (3) of the Uniform Rules, an applicant for admission as *amicus curiae* must request consent from the parties to be admitted within twenty days of the filing of the application, and, if successful in securing such consent, must lodge such consent with the registrar within five days.

10 On a strict reading of the Rule, HSF was required to have requested consent to intervene in the matter by 28 January 2025. Instead, HSF delayed until 22 July 2025 before directing its consent letter to the applicants' and respondents' legal representatives.

11 The circumstances surrounding the delay are as follows:

11.1 The application filed by the applicants is essentially comprised of two parts:

11.1.1 In prayers 1 and 2, the applicants sought expedited relief for the second to the fourth, and the sixth to the ninth applicants' applications for late registration of their births¹.

¹ See also paragraph 6.1 of the Founding Affidavit

11.1.2 In the balance of the prayers, the applicants sought broad systemic relief in respect of the general problem of backlogs in the determination of late birth registrations.²

11.2 The HSF took the view that it was not appropriate to intervene as *amicus* at an early stage as HSF understood that the applicants and respondents were in sensitive discussions regarding a resolution in respect of prayers 1 and 2 and did not wish to upset that process.

11.3 On 11 July 2025, HSF's attorneys conducted a meeting with the applicants' attorneys in order to discuss the outcome of the aforementioned discussions, the future of the broader litigation, and the question of whether the HSF's intervention as *amicus curiae* in the matter would negatively influence the timeous resolution of the matter.

11.4 As will be apparent from paragraph 19 below, the HSF participates frequently as *amicus curiae* in important impact litigation conducted before the courts. The HSF however only does so if it is satisfied that it will be in a position to make a meaningful contribution to the matter and that its involvement will not have any negative impact on the expeditious determination of the main parties' dispute.

11.5 Once it was ascertained that HSF's potential involvement would not unduly delay the main application, and that its involvement could provide useful assistance to the Court, a decision was taken to

² See also paragraph 6.2 of the Founding Affidavit

proceed with this application. On 22 July 2025, a consent letter was sent to the parties, and they were requested to provide their consent or objection to HSF's intervention by 28 July 2025. I attach a copy of this letter as **NF1**.

11.6 On 28 July 2025, the attorneys acting for the applicants responded, consenting to HSF's intervention as an *amicus*. I attach their correspondence as **NF2**.

11.7 As at the date of deposing to this affidavit, HSF's attorneys are yet to receive any reply from the respondents.

12 In summary, I submit that there is a reasonable explanation for HSF's failure to comply with Rule 16A.

13 The respondents have not yet filed answering papers. In those circumstances, I respectfully submit that the parties to the application will not suffer any prejudice as a result of HSF's non-compliance with Rule 16A, as HSF's involvement will not delay the litigation.

14 As will become apparent from what is set out below, the HSF's submissions will only serve to assist this Court in making a just and equitable determination of the constitutional issues at play, particularly in respect of its exposition of the rights of the child under international law.

15 In summary, I pray that condonation be granted as it would be in the interests of justice to do so.

16 In what follows, I canvass:

16.1 HSF's interest in this matter;

16.2 Overview of HSF's proposed submissions; and

16.3 The relief sought.

HSF'S INTEREST IN THIS MATTER

17 The HSF is an independent and not-for-profit institute in South Africa, dedicated to promoting constitutional democracy, human rights, and the rule of law in South Africa. The HSF engages in various activities, including research, publications, litigation, and submissions to the South African Parliament. It advocates for policies that translate the aspirations of the South African Constitution into reality for all who live in South Africa, emphasizing good governance, transparency, and accountability.

18 HSF is not aligned with any political party but actively participates in public debates to uphold constitutional values. The HSF regularly participates in public interest litigation both as a party as well as an *amicus*. The HSF's key focus areas include the rule of law, defence of Constitutional and international law rights, as well as the defence of migrant rights.

19 In this regard some of the recent matters in which HSF has participated include:

19.1 *Scalabrini Centre of Cape Town v Minister of Home Affairs and Others* [2025] ZAWCHC 202 where HSF acted as *amicus* in the litigation concerning the constitutionality and validity of certain subsections of section 4, section 21(1B) of the *Refugees Act, 1998* and Regulation 8

of the *Refugees Regulations, 2019*, which came into effect at the beginning of 2020. In particular, the HSF made detailed submissions on the rights of the child under Constitutional and International law. These submissions were extensively referred to by the Court with approval.

- 19.2 *Helen Suzman Foundation and Another v Minister of Home Affairs and Others* [2023] ZAGPPHC 490, involving the withdrawal of the Zimbabwe Exemption Permit. The HSF successfully litigated this matter as co-applicant through to the Constitutional Court.
- 19.3 *Helen Suzman Foundation v Judicial Service Commission* (CCT289/16) [2018] ZACC 8. The HSF successfully litigated this matter in multiple fora, including the Constitutional Court.
- 19.4 *Corruption Watch NPC and Others v President of the Republic of South Africa and Others* [2018] ZACC 23 where the HSF acted as *amicus* in the litigation concerning Mr Nxasana's removal as Director of the NDPP.
- 19.5 *McBride v Minister of Police and Another* [2016] ZACC 30 where the HSF acted as *amicus* in proceedings concerning the independence of IPID.
- 19.6 *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* [2014] ZACC 32. The so-called *Glenister II* matter.

- 20 The litigation in the main application falls directly within HSF's mandate and the HSF is well equipped to deal with the issues raised and to provide high quality assistance to the Court as *amicus curiae*.
- 21 HSF frequently acts in defence of constitutional and human rights, and the rule of law. In accordance with its mandate, it has focused on the need to foster deliberative, reasoned decision making by government and institutions in South Africa. The main application impacts upon all of these issues, which underpin HSF's interest in the matter.
- 22 Pursuant to its consideration of the papers filed to date, HSF is of the view that it can present a relevant and specific perspective which will be of assistance to the Court in the determination of the matter, namely that the lack of a reasonable plan to address the backlog in late registration of birth cases has a dramatic impact on children whose rights are Constitutionally required to be held paramount. Secondly, the failure by the respondents to provide for such a plan has the result that children are penalised in circumstances where they should not be held responsible for the actions of their parents.
- 23 Consequently, the HSF has a clear interest in, and contribution to make to, the important constitutional issues arising in the main application.

OVERVIEW OF HSF'S PROPOSED SUBMISSIONS

- 24 HSF agrees broadly with the applicants' overall submission that the ongoing failure of the State to decide applications for the late registration of births (**LRB**) has a significant and adverse impact on the constitutional rights of those whose

applications are caught in the backlog, particularly children, and is therefore inconsistent with the Constitution, unlawful and invalid.

25 If granted leave to intervene as *amicus curiae*, HSF wishes to advance the following broad submissions, against which it will submit the issues in the main application fall to be determined:

25.1 **First**, the respondents' failure to address the backlog in deciding LRB applications has the practical impact that children are denied access to their most basic rights, including health care, social services and education. This, I will submit, is contrary to the Constitution, international law obligations and national legislation.

25.2 **Second**, South Africa's constitutional and international law obligations require the respondents to formulate a reasonable and constitutional plan to address the backlog.

26 HSF does not intend to repeat any submissions made by the applicants or the respondents, nor does the HSF intend to introduce any new evidence to the proceedings and will confine its contribution to legal submissions.

27 Accordingly, HSF submits that its proposed submissions are unique and will assist this Court in coming to a determination of the issues in the main application.

Children's rights

Introduction

- 28 Children are vulnerable members of society, even more so when they are without valid birth certificates. Children without valid birth certificates are at a greater risk of being unable to enjoy and access several fundamental constitutional rights such as the rights to education, social assistance, healthcare and nationality. Access to these rights often hinge upon the registration of their birth, the generation of their identity number, and the issuing of a birth certificate in their name. Therefore, children without birth certificates are effectively denied support and assistance that is considered necessary for their positive growth and development.
- 29 As such, birth registration is fundamentally important for the realisation of the rights of children. It establishes the legal existence of a child and serves as the key that unlocks other fundamental rights for the child from early childhood. The effects of the lack of birth registration result in disproportionately more severe consequences for children who are born to indigent families.

The impact upon children

- 30 Section 9(1) of the *Births and Deaths Registration Act*, 1992 (the **Act**) requires that on the birth of a child, any one of their parents or an applicable caregiver, is required to give notice of that birth in the prescribed manner. This is confirmed by Regulation 3(1) of the Regulations to the Act. Where notice of birth is not given within 30 days, the LRB process must be followed as prescribed by Regulations 4 and 5. As is apparent from the founding affidavit in the main application, the LRB process has resulted in significant backlogs, the effect of which is to cause considerable prejudice to the children themselves.

- 31 Whilst it might be argued that adult parents and caregivers are required to timeously register the births of their children, the failure to do so timeously should not negatively impact their child's life and their ability to access some of the most basic social goods and services. I am advised that the Constitutional Court has expressed the view that under the constitutional dispensation, *"the sins and traumas of fathers and mothers should not be visited upon their children."* (*S v M* [2007] ZACC 18 at para 18).
- 32 I am further advised that the Constitutional Court has emphasised that, *"children are individual right-bearers and not "mere extensions of [their] parents, umbilically destined to sink or swim with them."* (*AB and Another v Pridwin Preparatory School and Others* [2020] ZACC 12 at para 234). The aforementioned dicta were most recently confirmed by a full bench of this Court in *Scalabrini Centre of Cape Town and Another v Minister of Home Affairs and Others* (8684/2024) [2025] ZAWCHC 202 (**Scalabrini 4**) at para 65.
- 33 Self-evidently, children are not able to effect their own registration of birth and are thus entirely reliant on the positive actions of their parents or caregivers. Accordingly, they should not be penalised due to the failure by their parents to do so timeously.
- 34 The inability of the respondents to formulate a plan to deal with LRB applications, and the resultant malaise, is in conflict with their Constitutional, and legislative obligations, the nature of which I briefly describe below:

34.1 The Constitution:

- 34.1.1 The issues involved in the main application are Constitutional matters.
- 34.1.2 Section 28(1)(a) of the Constitution provides that every child has the right to a name and nationality from birth.
- 34.1.3 Section 28(1)(c) of the Constitution provides that every child has the right to basic nutrition, shelter, basic health care services and social services.
- 34.1.4 Section 28(1)(d) of the Constitution provides that every child has the right to be protected from maltreatment, neglect, abuse or degradation.
- 34.1.5 Section 28(2) provides further, and by way of emphasis, that a child's best interests are of paramount importance in every matter concerning a child.
- 34.1.6 Overarching all these rights is the obligation to afford children their rights to equality and human dignity, as required by sections 9 and 10 of the Constitution. The Constitutional Court has stressed in *Dawood*³ that "*dignity is not only a value fundamental to our Constitution, it is a justiciable and enforceable right that must be respected and protected.*"

³ *Dawood and Another v Minister of Home Affairs and Others, Shalabi and Another v Minister of Home Affairs and Others; Thomas and Another v Minister of Home Affairs and Others* [2000] ZACC 8; 2000 (3) SA 936 (CC) at para 35

- 34.1.7 It is trite that all organs of state are under an obligation to uphold these rights and to fulfil them. Moreover, the state is enjoined by section 7(2) of the Constitution to “*respect, protect, promote and fulfil*” the aforementioned rights.
- 34.1.8 Section 237 of the Constitution requires the state to perform its constitutional obligations “*diligently and without delay*” and section 195(1) of the Constitution requires the public administration to, *inter alia*, provide services “*impartially, fairly, equitably and without bias*”.
- 34.1.9 Importantly, the rights of the child to basic nutrition, shelter, basic health care services and social services are immediately realisable and are not contingent on the state’s available resources or progressive realisation.
- 34.1.10 Any conduct by the state that is inconsistent with the rights of the child must be declared invalid. HSF supports the view that the state’s conduct in allowing the backlog to develop, and then not planning for its removal, is inconsistent with the Constitution and may be impugned for that reason. It is simply Constitutionally non-compliant and there is no saving it.
- 34.1.11 If that is the case, then all that remains is for the Court to grant just and equitable relief and HSF supports the structured approach motivated for by the applicants in prayers 3 to 6 of the notice of motion.

34.2 Legislation:

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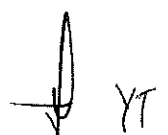
- 34.2.1 The *Children's Act*, 2005 (the **Children's Act**) was enacted in compliance with the state's obligations in terms of section 28 of the Constitution.
- 34.2.2 The Children's Act applies in accordance with South Africa's Constitutional and International law obligations, to ensure that children have access to social services (section 2(b)(ii)); are protected from maltreatment, neglect, abuse or degradation (section 2(b)(iii)); and that the best interests of the child are of paramount importance (section 2(b)(iv) and section 9).
- 34.2.3 All organs of state are required to respect children's rights and to cooperate in doing so (section 5).
- 34.2.4 All proceedings, actions or decisions by an organ of state in any matter concerning the child or children in general must respect the child's inherent dignity (section 6(1)(b) and section 6(2)(b)). In this regard, I am advised that the Constitutional Court has held that "Children's dignity rights are of special importance." (*De Reuck v Director of Public Prosecutions (Witwatersrand Local Division) and Others* (CCT5/03) [2003] ZACC 19 the CC (para 63)).
- 34.2.5 The failure to address the backlog in deciding LRB applications is thus contrary to the Children's Act.

International law

- 35 South Africa's international law obligations directly engage the rights of the child. The HSF intends to make submissions that the following international law instruments support the relief sought in the main application.

The UN Convention on the Rights of the Child

- 36 South Africa ratified the United Nations Convention on the Rights of the Child (the **CRC**) on 16 June 1995. It is significant that this was the first international treaty that the post-apartheid government had ratified. It protects all persons under the age of 18.
- 37 Aside from requiring states to always act in the best interests of the child (Article 3), the CRC provides that a child shall be registered immediately after birth and shall have the right from birth to a name, and to acquire a nationality (Article 7).
- 38 Article 8 provides that states "*undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.*"
- 39 Furthermore, the CRC specifically enjoins states to:
- 39.1 Ensure that no child is deprived of their right of access to healthcare services (Article 24);
- 39.2 Take necessary measures to ensure a child's right to benefit from social security (Article 26);

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39.3 Recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development (Article 27); and

39.4 Recognise the right of the child to education (Article 28).

40 The UN Committee on the Rights of the Child (the **Committee**), an independent body of experts established in terms of Article 43 of the CRC, is tasked with examining the progress made by state parties to achieve the realisation of the obligations undertaken in the CRC. In February 2024 the Committee issued recommendations to South Africa, urging it to "*remove barriers to birth registration and adopt measures to ensure that all children are properly registered at birth, and in particular:*

40.1 *Ensure that legislation, regulations, directives, circulars and standard operating procedures are brought in line with the court judgments;*

40.2 *Remove fees for late registration after 30 days after birth;*

40.3 *Withdraw the requirement for DNA paternity testing for children born to unmarried South African fathers and foreign, undocumented or deceased mothers;*

40.4 *Simplify the birth registration of orphaned and abandoned children by relatives and other caregivers;*

40.5 *Increase the number and reach of the mobile registration units for children born in rural areas."*

41 The Committee further emphasised that the state should "*ensure that the lack of birth registration does not hinder children's access to social and child protection services*".

42 Quite plainly, the Committee is of the view that the state has failed in its obligations under the CRC. Regrettably nothing appears to have changed.

African Charter on the Rights and Welfare of the Child

43 South Africa is also a signatory to the African Charter on the Rights and Welfare of the Child (the **Charter**) which applies to all children, regardless of origin. Similarly to the CRC, the Charter requires signatory states to at all times act in the best interest of the child (Article 4).

44 Of particular note is Article 6 which provides that:

"2. Every child shall be registered immediately after birth."

45 The Charter also provides for rights which would be impacted by the state's failure to address the backlog in LRB cases:

45.1 The right to education (Article 11); and

45.2 The right to healthcare (Article 14).

46 In summary, the CRC and Charter require states to act in the best interests of the child and to ensure immediate birth registration. To the extent that it is for whatsoever reasons not possible to immediately register a child's birth, the international instruments oblige the state to put in place sufficient measures to ensure that LRBs are dealt with expeditiously and not, as is the unfortunate

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reality, to perpetuate the situation where a massive quantity of LRB applications are undecided and where that backlog is only growing.

- 47 These international instruments further guarantee children's rights to a name, nationality, healthcare, social security, and adequate standard of living and education. The failure to address the backlog in LRB applications effectively renders these rights inaccessible, placing the State, and in particular the respondents, in breach of its international law obligations.

The Universal Declaration of Human Rights

- 48 Although I am advised that the Universal Declaration (the **Declaration**) is non-binding, it remains highly relevant to the interpretative exercise performed by the courts in terms of section 39(1)(b) of the Constitution.
- 49 Importantly, Article 1 of the Declaration stresses the importance of human dignity. It states: "*All human beings are born free and equal in dignity and rights.*"
- 50 Article 15 provides that "*everyone has the right to a nationality*" and "*no one shall be arbitrarily deprived of his nationality*".
- 51 I submit that the backlog in respect of LRBs effectively denies children a nationality. It certainly deprives them of their dignity.

International Statelessness Conventions (1954 and 1961)

- 52 The backlog in respect of LRBs has the very real effect that children can be left de facto stateless for protracted periods of time.



- 53 The 1954 Convention relating to the Status of Stateless Persons defines a stateless person as “a person who is not considered as a national by any State under the operation of its law” (Article 1).
- 54 The 1961 Convention on the Reduction of Statelessness focuses on preventing statelessness, particularly at birth, by providing safeguards such as granting nationality to children born in a state’s territory who would otherwise be stateless (Article 1).
- 55 South Africa is not a signatory to these International Statelessness Conventions. However, the High Court in *M.M.E v Director General, Department of Home Affairs and Another* (21970/2021) [2025] ZAGPPHC 236, confirmed that the principles set out in the Conventions have nonetheless been recognised and made part of our domestic law through section 2(2) of the *Citizenship Act*, 1995. Given that South Africa has recognised and domesticated the principles of the Conventions, even without formally ratifying them, it was incumbent upon the state to prevent statelessness in line with these international obligations. The Conventions must in any event be considered in terms of section 39(1)(b) of the Constitution.
- 56 Furthermore, the Committee has recommended that South Africa consider ratifying these Conventions.

Conclusion on international law

- 57 It is clear that the state is under a number of international law obligations that would firstly impugn its current conduct in allowing the LRB backlog to develop

and which would secondly demand that the state take steps to remove this backlog through appropriate means.

58 Accordingly, I submit that the relief sought by the applicants is consistent with South Africa's international law obligations.

CONCLUSION

59 Accordingly, HSF submits that it has satisfied the requirements for admission as *amicus curiae*.

60 I pray for the orders set out in the Notice of Motion to which this affidavit is attached.



NASEEMA FAKIR

I certify that the deponent has acknowledged that she knows and understands the contents of this declaration and informed me that she does not have any objection to taking the oath and that she considers it to be binding on her conscience and that the deponent uttered the following words "I swear that the contents of this declaration are true, so help me God". I certify further that the provisions of Regulation R1258 of the 21st July 1972 (as amended) have been complied with.

Signed and sworn to before me at Westcliff on this the 14th day of August 2025.

YANN NGAMENI
Practicing Attorney
45 Jan Smuts Avenue
Johannesburg 2193
Commissioner of Oaths
Tel: 011 486 0242



COMMISSIONER OF OATHS

22 July 2025

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Dear Colleagues

Request to intervene as *amicus curiae*: Helen Suzman Foundation in Children's Institute and others // Minister of Home Affairs and Others (case no. 2024-148658)

1 Introduction

- 1.1 We confirm that we act on behalf of the Helen Suzman Foundation (the **HSF**).
- 1.2 We write to you to obtain written consent on behalf of your respective clients for the HSF to be admitted as *amicus curiae* in the above matter (the **Children's Institute application**) as contemplated by Rule 16A of the Uniform Rules of Court.
- 1.3 If granted admission, the HSF intends to draw on its expertise and interest in the issues raised in the Children's Institute application and will make written and oral submissions which will be of assistance to the Court as it is of the view that the matter will undoubtedly have wide-reaching impacts for the public interest, well beyond the immediate parties alone.
- 1.4 The submissions intended to be advanced are underpinned by a deep commitment to acting in the public interest, specifically in the best interests of the child. The HSF does not intend on duplicating any of the submissions to be made by the parties in the Children's Institute application.

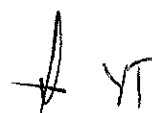
2 The Helen Suzman Foundation's standing

- 2.1 The HSF is an independent and not-for-profit research institute in South Africa, dedicated to promoting democratic values, human rights, and the rule of law in South Africa. The HSF engages in various activities, including research, publications, litigation, and submissions to the South African Parliament. It advocates for policies that translate the aspirations of the South African Constitution into reality for all citizens, emphasizing good governance, transparency, and accountability.
- 2.2 The HSF is not aligned with any political party but actively participates in public debates to uphold constitutional values. More specifically, it also provides support to asylum seekers and engages in international anti-corruption efforts.
- 2.3 The HSF regularly participates in public interest litigation both as a party as well as an amicus. In this regard some of the matters in which the HSF has previously participated include:

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Consul tant: AJ Chappell PM Chironis RA de la Harpe AGS Dixon MC Hartwell GCB Kahle JM Kiron WP te Riese E Lamprecht P Naudé

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- (1) *Scalabrini Centre of Cape Town v Minister of Home Affairs and Others* [2025] ZAWCHC 202 where the HSF acted as amicus in the litigation concerning the constitutionality and validity of certain subsections of section 4, section 21(1B) of the *Refugees Act, 1998* and Regulation 8 of the *Refugees Regulations, 2019*, which came into effect at the beginning of 2020. In particular, the HSF made detailed submissions on the rights of the child under Constitutional and International law. These submissions were extensively referred to by the Court with approval.
 - (2) *Helen Suzman Foundation and Another v Minister of Home Affairs and Others* [2023] ZAGPPHC 490, involving the withdrawal of the Zimbabwe Exemption Permit. The HSF successfully litigated this matter as co-applicant through to the Constitutional Court.
 - (3) *Helen Suzman Foundation v Judicial Service Commission* (CCT289/16) [2018] ZACC 8. The HSF successfully litigated this matter in multiple fora, including the Constitutional Court.
 - (4) *McBride v Minister of Police and Another* [2016] ZACC 30 where the HSF acted as amicus in proceedings concerning the independence of IPID.
 - (5) *Corruption Watch NPC and Others v President of the Republic of South Africa and Others* [2018] ZACC 23 where the HSF acted as amicus in the litigation concerning Mr Nxasana's removal as Director of the NDPP.
- 2.4 From this it can be concluded that the HSF has the capacity and experience meaningfully to contribute to the Court's determination of the dispute between the parties.
- 3 The Helen Suzman Foundation's interest**
- 3.1 The HSF acts frequently in defence of constitutional and human rights, the rule of law and the need to foster deliberative, reasoned, and accountable decision-making. The Children's Institute application impacts upon all of these issues, which underpin the HSF's interest in the matter.
- 3.2 The HSF is of the view that it can present a relevant and specific perspective which will be of assistance to the Court in the determination of the matter, namely that the lack of a reasonable plan to address the backlog in late registration of birth cases impacts on children who should not be held responsible for the actions of their parents.
- 3.3 If admitted, the HSF will broadly advance the following submissions:
- (1) The practical impact of the respondents' failure to address the backlog in deciding applications for the late registration of births on children's constitutional rights, particularly how the failure to address the backlog will deny children access to their most basic rights, including health care, social services and education.
 - (2) Children are individual rights-bearers and not appendages to their parents. Accordingly, they should not be penalised due to the failure by their parents to register their birth timeously.
 - (3) As the Constitutional Court has recognised, children are entitled to dignity and protection as a consequence of their innate vulnerability. This is particularly the case where the child is unregistered and thus additionally vulnerable.
 - (4) Further, South Africa's international law obligations require the respondents to formulate a reasonable and constitutional plan to address the backlog.
 - (5) In summary, the HSF shall contend that the respondents' above-mentioned failures are irrational and unjustifiably limit the rights of the child.
- 3.4 The HSF confirms that it does not intend to introduce new evidence in the matter.

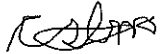
22 July 2025

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4 **Conclusion**

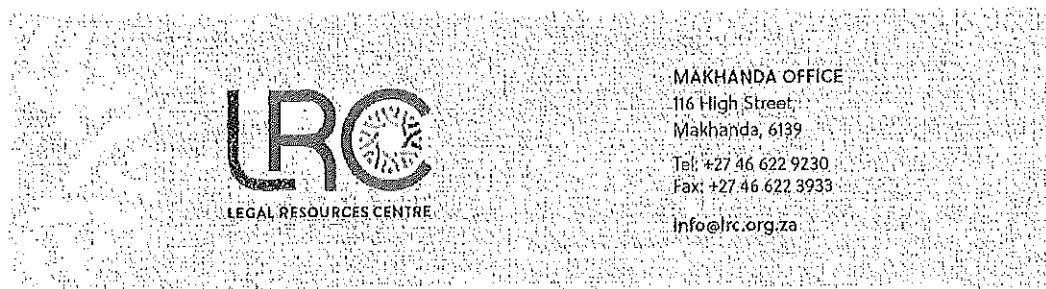
- 4.1 Should you or your clients consent to the HSF's admission as an *amicus curiae*, the HSF will ensure that its application for admission is delivered without delay and by no later than 8 August 2025.
- 4.2 If admitted, the HSF intends to make brief written submissions and will deliver these according to the timetable set by the Registrar of the Western Cape High Court and with due deference to the parties and make short oral submissions at the hearing of the matter.
- 4.3 Kindly confirm by no later than **28 July 2025** that your respective clients consent to the HSF being admitted as *amicus curiae*.

Yours faithfully



Chuma Bubu, Associate
Jason Whyte, Director
Norton Rose Fulbright South Africa Inc





28 July 2025

Chuma Bubu / Jason Whyte

Norton Rose Fullbright South Africa

Per email: Chuma.Bubu@nortonrosefulbright.com

Art.Wynberg@nortonrosefulbright.com

jason.whyte@nortonrosefulbright.com

Cc: Mr N Nene

State Attorney

4th Floor, 22 Long Street, Cape Town

Per email: NtoNene@justice.gov.za / CVisagie@justice.gov.za

Dear Ms Bubu and Mr Whyte,

**THE CHILDREN'S INSTITUTE AND OTHERS // MINISTER OF HOME AFFAIRS
AND OTHERS CASE NO. 2024/148658: REQUEST TO INTERVENE AS AMICUS
CURIAE (HELEN SUZMAN FOUNDATION)**

Legal Resources Centre South Africa NPC

Registration No. 2022/410419/08

PBO No. 930077643

NPO No. 290-199

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Handwritten initials or signature.



MAKHANDA OFFICE
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Fax: +27 46 622 3933
info@lrc.org.za

1. The above matter and your letter dated 22 July 2025 refer.
2. Our clients have considered your client's request for consent to be admitted as *amicus curiae* in the above matter. Our clients have no objection to such an intervention.
3. We have however been instructed by our clients to kindly request that the court papers in this matter be handled in strict confidence. All the papers contain personal identifying information related to parents, guardians, caregivers, and children. If made public, the individuals are at significant risk of identity theft. It has been marked on Court Online as "restricted". Without their clear consent, our clients do not want to have their names or any other identifying detail such as dates of birth, ID numbers, school names, places of birth, addresses published in the media or any other forum.
4. We can provide your office with a redacted version of the papers, should NRF or the Helen Suzman Foundation wish to distribute the papers to any other person and/organisation that do not form part of the litigation.
5. We further request that should your client wish to distribute its application to anyone who does not form part of the litigation, that it too provides a redacted version that

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removes any personal and recognisable information of the applicants in this matter, in particular all names, addresses, schools, places of birth, dates of birth and ID numbers

6. We would like to request written confirmation that your client will keep the papers in this matter confidential.

Kind regards,

A handwritten signature in black ink, appearing to be 'Cecile van Schalkwyk', written over a horizontal line.

CECILE VAN SCHALKWYK

LEGAL RESOURCES CENTRE

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