IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

JUDGMENT

Reportable

Case No.: 17367/2022

In the matter between:

BISIMWA FLORENCE CIRANGASHANE	First Applicant
CHIRUHULA PAPY CHISHUGI	Second Applicant
RAHEEMAH MSUSA	Third Applicant
ALMALIK MOHAMUD	Fourth Applicant
DIEUDONNE RUDAHUNGA	Fifth Applicant
SANDRINE GASANGWA MURERWA	Sixth Applicant
CHRISTIAN KADIMA MAKALA	Seventh Applicant
AYUK TARH	Eighth Applicant
MUKEBA MBELU	Ninth Applicant
KAYIBA PHILO MWENJI	Tenth Applicant

SIBONGISENI MPOFU	Eleventh Applicant
NENETTE KOTOBA LUBUYA	Twelfth Applicant
ANDRE NZUZI	Thirteenth Applicant
REFUGEE SOCIAL SERVICES	Fourteenth Applicant
JOHANNA MOGOTSI	Fifteenth Applicant
JOHN SECHELO	Sixteenth Applicant
KEFUOE ZEKA	Seventeenth Applicant
PHINDILE PRETTY BLANKWA	Eighteenth Applicant

and

DIRECTOR GENERAL OF HOME AFFAIRS	First Respondent
MINISTER OF HOME AFFAIRS	Second Respondent

and

SCALABRINI CENTRE OF CAPE TOWN	First *Amicus Curiae*
TRUSTEES OF THE SCALABRINI CENTRE OF CAPE TOWN	Second *Amicus Curiae*

Coram: Cloete J, Francis J et Mapoma AJ

Heard: 9 June 2026

Delivered: 29 July 2026

ORDER

Failure-to-comply exclusion

1. It is declared that the failure or refusal by the respondents, or either of them, or by officials of the Department of Home Affairs (Department), to receive, process and determine an application to register the birth of a child born in South Africa where one parent is a South African citizen, permanent resident or refugee and the other parent is not a South African citizen and does not possess, or is unable to produce, a valid, unexpired passport, visa or permit, on the ground only of the absence of such a document, is unlawful and unconstitutional.

2. The decisions of the respondents, or either of them, to refuse to register, alternatively the failure of the respondents or either of them to register, the births of the children listed below are reviewed and set aside: J[…] W[…] K[…] C[…]; Y[…] H[…]; Y[…] M[…]; A[…] R[…]; J[…] K[…] M[…]; and E[…] K[…] M[…].

3. The first respondent (Director-General) is directed to register the births of the children listed in paragraph 2 and to issue birth certificates for each child within 60 (sixty) days of the date of this order, or within 60 (sixty) days of the lodging of a substantially compliant application, whichever is later. The form and content of each certificate, including whether an identity number is assigned, shall be that prescribed by the Regulations on the Registration of Births and Deaths, 2014 (GN R128, GG 37373, 26 February 2014) (the Regulations) for the category into which the child falls. This order does not determine that category. Nothing in this paragraph limits the Director-General's powers under sections 7 and 9(1A) of the Births and Deaths Registration Act 51 of 1992 (the BDRA) to require further proof and to investigate before registration.

Valid-documents exclusion

4. It is declared that Regulations 8(3)(c), (d) and (e) of the Regulations are inconsistent with the Constitution and invalid to the extent that they fail to provide for the registration of a child born in South Africa where neither parent is a South African citizen, permanent resident or refugee and one or both parents do not possess a valid passport, visa or permit.

5. The declaration of invalidity in paragraph 4 is suspended for 18 (eighteen) months from the date of this order to permit the second respondent (Minister of Home Affairs) to remedy the defect, or until the defect is so remedied, whichever occurs first.

6. During the period of suspension, Regulation 8(3) shall be read as follows:

   (a) Regulation 8(3)(c): “where available, a certified copy of a valid passport and visa or permit of the mother or father, or both parents, of the child, as the case may be”;

   (b) Regulation 8(3)(d): “where applicable and available, a certified copy of the valid identity document or passport and visa or permit of the next-of-kin or legal guardian”;

   (c) Regulation 8(3)(e): “where applicable and available, a certified copy of an asylum seeker permit issued in terms of section 22 of the Refugees Act of the mother or father or both biological parents of the child”.

7. For the avoidance of doubt, the reading-in in paragraph 6 does not displace the powers of the Director-General under sections 7 and 9(1A) of the BDRA. Where a document referred to in Regulation 8(3) is not available, the Director-General may require such further proof, and conduct such investigation, as those sections permit, and must consider the application and may accept or reject the evidence and refuse the application on the available evidence. A refusal or failure to make a determination is subject to review. For purposes hereof, a document is ‘not available’ if it falls into one of the categories referred to in paragraph [30] of this judgment.

8. Subject to paragraph 7, the Director-General is directed to register the births of the children listed below and to issue birth certificates on Form DHA-19 (without an identity number, where the Regulations so provide) within 60 (sixty) days of the date of this order, or within 60 (sixty) days of the lodging of a substantially compliant application, whichever is the later,: E[…] K[…]; D[…] K[…]; S[…] M[…]; J[…] M[…]; J[…] M[…]; L[…] N[…]; and F[…] N[…].

Late-registration exclusion

9. It is declared that the Regulations are inconsistent with the Constitution and invalid to the extent that they make no provision for the late registration of a child born in South Africa where neither parent is a South African citizen, permanent resident or refugee.

10. The declaration of invalidity in paragraph 9 is suspended for 18 (eighteen) months from the date of this order to permit the Minister of Home Affairs to remedy the defect, or until the defect is so remedied, whichever occurs first.

11. During the period of suspension, Regulations 4 and 5 of the Regulations (as amended by the reading-in ordered in *Naki and Others v Director General: Department of Home Affairs and Another* [2018] 3 All SA 802 (ECG)) shall apply, with the changes required by the context, to the late registration of children born in South Africa where neither parent is a South African citizen, permanent resident or refugee; and the Department may continue to apply its Standard Operating Procedures as internal administrative machinery, only to the extent consistent with this order.

Abandoned-adults exclusion

12. It is declared that Regulations 5(3)(f), (g), (h) and (k) of the Regulations are inconsistent with the Constitution and invalid to the extent that they fail to provide for the registration of the birth of a person who is eighteen years of age or older, who was abandoned or orphaned as a child, and who is unable to provide the documentation of his or her parents or of his or her own birth required by those provisions.

13. The declaration of invalidity in paragraph 12 is suspended for 18 (eighteen) months from the date of this order to permit the Minister of Home Affairs to remedy the defect, or until the defect is so remedied, whichever occurs first.

14. During the period of suspension, the following interim arrangements apply:

14.1 The proviso in Regulation 5(1) read with Regulation 9 shall apply, with the changes required by the context, to the registration of the birth of a person who is eighteen years of age or older and who was abandoned or orphaned as a child and does not have the documentation of his or her birth or of his or her parents.

14.2 Where an adult who was orphaned or abandoned, and whose birth was not registered in terms of Regulation 9, seeks to register his or her own birth in terms of Regulation 5(2), the Department shall receive and consider an affidavit or affidavits, substantially complying with Form DHA-288, attested to by such person, or by any other person with knowledge of such person's personal circumstances and history in the Republic, setting out:

(a) the names and nationality of such person's parents (if known), the place of birth of such person (if known) and the date of birth of such person (or the nearest estimation);

(b) a detailed account of such person's history and life events in South Africa, from which the Director-General may be satisfied that (i) such person was born in South Africa; (ii) such person has an established presence in and connection to South Africa from childhood; and (iii) to the best of such person's knowledge, his or her birth has not been registered in any other country or territory.

14.3 Subject to paragraph 14,8 below, the Director-General must consider the application and the evidence, may require such further proof and conduct such investigation as sections 7 and 9(1A) of the BDRA permit, and may accept or reject the evidence and grant or refuse the application accordingly. Establishment of presence in and connection to South Africa from childhood is evidence relevant to, but is not a substitute for, satisfaction that the person was born in South Africa. The Director-General must be so satisfied on a balance of probabilities. A refusal or failure to make a determination is subject to review.

14.4 Regulation 5(3)(f) shall be read as follows: “where available, a certified copy of the identity document or passport and visa or permit of the parents of the child or person whose birth is sought to be registered, where one of the parents is a non-South African citizen”.

14.5 Regulation 5(3)(g) shall be read as follows: “where applicable and available, a certified copy of the death certificate of any deceased parent of the child or person”.

14.6 Regulation 5(3)(h) shall be read as follows: “where applicable and available, a certified copy of the marriage certificate of the parents of the child or person”.

14.7 Regulation 5(3)(k) shall be read as follows: “Form DHA-288 illustrated in Annexure 2B, save that the applicant need not include particulars of the birth that are unknown to the applicant”.

14.8 The Director-General is directed to receive, consider and determine the applications of the seventeenth and eighteenth applicants for the registration of their own births in terms of paragraphs 14.2 and 14.3, within 90 (ninety) days of the date of this order or within 90 (ninety) days of the lodging of a substantially compliant application, whichever is the later. A refusal or failure to make a determination is subject to review.

Structural and general relief

15. The Director-General is directed, within 60 (sixty) days of the date of this order, to issue a directive or circular to every office or branch of the Department of Home Affairs at which births may be registered, in terms that include the following:

15.1 that officials are obliged to receive, process and determine an application to register the birth of every child born in South Africa, whether or not one or both parents possess a valid, unexpired passport, visa or permit, subject to the interim arrangements set out in this order;

15.2 that officials are informed of the declarations of invalidity and the interim reading-in made by this Court;

15.3 that officials must give effect to the Regulations as read with the interim arrangements ordered in this judgment, including the registration of abandoned adults in terms of paragraphs 12 to 14 of this order;

15.4 that where parents or applicants do not possess valid documentation, officials must receive and consider affidavits and other alternative evidence as contemplated in this order and must not refuse to receive or determine an application solely on the ground of the absence of valid documentation, while remaining entitled to require further proof and to investigate as the BDRA permits.

16. The Director-General shall, within 30 (thirty) days of issuance of the directive or circular contemplated in paragraph 15, file an affidavit with the Chief Registrar of this Court attaching a copy of the directive or circular. The Director-General shall also, within 12 (twelve) months of the date of this order, file a further affidavit with the Chief Registrar of this Court setting out the steps taken to give effect to this order, including the progress of the regulatory amendments contemplated in paragraphs 5, 10 and 13.

17. To the extent necessary, the period prescribed by section 7(1) of the Promotion of Administrative Justice Act 3 of 2000, within which the review relief granted in paragraph 2 was to be instituted, is extended to the date on which the application as launched.

18. The Director-General and the Minister of Home Affairs shall *nomine officii*, jointly and severally, the one paying the other to be absolved, pay the applicants' costs

of the application on scale C, including the costs of two counsel where so employed.

JUDGMENT

<u>FRANCIS, J (CLOETE J et MAPOMA AJ concurring):</u>

Introduction

[1] This judgment concerns the constitutional validity of parts of the law governing the registration of births in South Africa. It bears emphasis that what it is *not* about is any misguided notion that birth registration has the automatic consequence of conferring South African citizenship, since no such consequence exists in our law. The applicants are seventeen individuals and the Refugee Social Services, a Non-Profit Voluntary Association providing social services to asylum seekers and refugees. The Scalabrini Centre of Cape Town and its trustees were admitted as *amici curiae*. The first to the thirteenth applicants are parents who, because of their immigration status, have been unable to register their children's births. The fifteenth to eighteenth applicants are adults who were abandoned or orphaned as children. Since the launch of this application, the births of the fifteenth and sixteenth applicants have been registered, but those of the seventeenth and eighteenth have not. The respondents are the Director-General and the Minister of Home Affairs, respectively.

[2] The papers identify four categories of would-be registrants, referred to as the four "exclusions". The first is the failure-to-comply exclusion, which concerns children with one South African or refugee parent and one parent without valid documentation. The second is the valid-documents exclusion, which concerns children of two foreign-national parents, neither of whom has valid

documentation. The third is the late-registration exclusion, which concerns the registration of children born to foreign parents after the prescribed thirty-day period in section 9 of the Births and Deaths Registration Act 51 of 1992 (*the BDRA*). The fourth is the abandoned-adults exclusion, which concerns adults whose births were not registered in childhood.

[3] In their answering papers, the respondents concede the unconstitutionality of the first three exclusions/categories. By the time of argument, the dispute on those three had narrowed considerably. The respondents no longer contend that an interview is impermissible in principle, and the applicants no longer contend that no safeguard of any kind may attach to the interim relief pending amendment to the impugned regulations. What remains in issue on the first three categories is the precise form of the interim remedy, in particular whether the reading-in should be expressed so as to make plain that the Director-General's existing statutory powers of verification are preserved. The fourth exclusion is opposed in substance. The principal issues are therefore the appropriate interim and final remedies for the conceded defects, and whether section 28(1)(a) of the Constitution, read with section 39(2), supports the relief sought in respect of abandoned adults.

The parties and factual background

[4] It is not necessary to recite the applicants' personal circumstances in full. The founding and supporting affidavits set them out in detail, and the answering affidavit does not seriously dispute the underlying facts. In what follows, I recite the minimum facts required to render the legal analysis intelligible.

[5] The first to seventh applicants are parents falling within the first category. In each case one parent is a South African citizen, permanent resident or refugee, and the other does not have valid documentation. The position in their favour is settled by the decision in *Naki and Others v Director General: Department of Home Affairs and Another* [2018] 3 All SA 802 (ECG) (*Naki*), and is reinforced by the decision of the Constitutional Court in *Centre for Child Law v Director-*

General: Department of Home Affairs and Others 2022 (2) SA 131 (CC). Their complaint is that officials at branch level continue to refuse registration. The respondents accept that there has been inconsistent treatment and inconsistent decision-making at branch level.

[6] The eighth to thirteenth applicants are parents falling within the second category. Both parents are foreign nationals, and neither holds valid documentation, in some cases because asylum seeker permits lapsed while refugee applications were pending. Regulation 8(3)(c) to (e) of the Regulations on the Registration of Births and Deaths, 2014 (GN R128, GG 37373, 26 February 2014) (the Regulations), requires, in absolute terms, valid passports and visas or permits, or asylum seeker permits. The respondents concede the regulatory lacuna.

[7] Within this group, the late-registration problem identified as the third category arises because Regulations 4 and 5, governing late registration, do not, on their terms, apply to children of foreign parents who are not citizens, permanent residents, or refugees. The respondents concede this defect also.

[8] The fifteenth to eighteenth applicants are adults who were abandoned or orphaned as children and whose births were never registered, subject to what follows. They cannot produce the documents required by Regulation 5(3)(f), (g), (h) and (k) because the documents do not exist, are unknown to them, or relate to parents who are themselves untraceable or deceased. The fifteenth and sixteenth applicants have since been issued with birth certificates. I deal with mootness below.

[9] The *amici curiae* have provided evidence, not materially disputed, concerning the operating conditions in the Refugee Reception Office system. Closures, backlogs and procedural difficulties cause asylum seekers to lose documented status through no fault of their own, with consequences that fall on their children. That evidence has informed my understanding of the practical operation of the impugned provisions. The constitutional analysis, however, rests on the text and the law and stands independently of the *amici* material.

Procedural matters

[10] The respondents seek condonation for the late filing of the answering affidavit. The delay is explained by the complexity of the matter, settlement discussions, and the change in the Minister's office after the national elections. The application is not actively opposed. The matter raises constitutional questions of public importance, and refusing condonation would not serve the interests of justice. Condonation is granted.

[11] The respondents took the point *in limine* that the Departments of Health and Social Development should have been joined. That point is misconceived. Rule 10A requires the joinder of the executive authority responsible for administering the impugned law. The relief concerns the administration of the BDRA and its Regulations, for which the respondents alone are responsible. The Department of Health's role in confirming a live birth, and the Department of Social Development's role in respect of children in its care, do not give either department a direct and substantial interest in relief directed at the registration regime. The obligation of a social worker under section 12 of the BDRA applies only while the person concerned is a child. The respondents subsequently abandoned this point, and correctly so. The point is, accordingly, dismissed.

[12] On mootness, the respondents submit that the relief in respect of the first category is moot in light of *Naki*. That submission misstates the applicants' case. The complaint is not that the law is unsettled but that the settled law is not being applied. Continued non-compliance by officials at branch level is what the declaratory and individual relief seeks to address. A declaratory order serves a forward-looking purpose. It states the legal position by which officials' conduct may be measured and provides a foundation for further relief should non-compliance persist. The first-category claim is not moot.

[13] The respondents also submit that the claims of the fifteenth and sixteenth applicants are moot because they have since obtained registration. Those documents were issued only after this litigation was launched and after specific

intervention. The affidavits make that plain. In any event, their individual positions are instances of a regulatory deficiency affecting others. The systemic challenge to the abandoned-adults exclusion is not moot.

The legal framework

[14] Section 28(1)(a) of the Constitution provides that every child has the right "to a name and a nationality from birth". The phrase "from birth" identifies the moment at which the right vests. It does not provide that the right lapses at any later moment, and nothing in the text supports the reading in of such a limitation. The right is given content principally through registration. Without a recorded name, date and place of birth, and a record of parentage where parentage is known, the right cannot be given effect.

[15] The Constitutional Court has emphasised that the BDRA and its Regulations must be approached purposively and in light of South Africa's history of exclusion. In *Chisuse and Others v Director-General, Department of Home Affairs and Another* 2020 (6) SA 14 (CC), the Court preferred a construction of the South African Citizenship Act 88 of 1995 that gave effect to the vested citizenship of those born to South African parents both before and after the 2010 amendments, rather than a construction that would have produced statelessness. The principle is general. Statutory and regulatory provisions touching on identity, nationality and birth registration are not to be read, by overly narrow construction, so as to place persons in statelessness or to deny them legal personhood.

[16] In *Centre for Child Law* (CC), the Constitutional Court found that section 10 of the BDRA, by precluding unmarried fathers from registering their children's births under their surnames absent the mother's consent, was inconsistent with the best interests of the child and her rights to dignity, equality and a name and nationality from birth. The case concerned section 10, not Regulation 8, but the principle it states is not confined to that section. Rigid registration requirements

that operate to exclude children from the register, in circumstances not of their making, do not survive scrutiny under section 28(1)(a) read with sections 9, 10 and 28(2) of the Constitution. The Court also addressed, and rejected on the record before it, the contention that relaxation of documentary requirements would open the way to human trafficking, holding that the existing statutory safeguards, in particular the powers in sections 7 and 9(1A) of the BDRA, were, taken together, sufficient, and that the trafficking concern had not been substantiated by evidence as to its extent or circumstances.

[17] Section 9 of the BDRA requires notice of birth within thirty days, in the prescribed manner, and draws no distinction based on the nationality or immigration status of the parent giving notice. Section 9(3A) permits late registration and draws no age limit. Section 9(1A) empowers the Director-General to require biometrics. Section 7 permits the Director-General to require further proof and to investigate. The statute contemplates universal registration, subject to verification powers expressly conferred on the Director-General.

[18] The Regulations prescribe the documentary requirements. Regulation 8 governs children born to non-South African parents who are not permanent residents or refugees, and at sub-regulations (3)(c) to (e) requires, in absolute terms, valid passports and visas or permits, or asylum seeker permits. Regulations 3 to 5 govern children of citizens, permanent residents and refugees, and were the subject of the reading-in order in *Naki*. Regulation 8 was not before the court in *Naki* and has remained unamended. I note, and return to below, that the parental nexus in the first category (one South African or refugee parent) is absent in the second category (two foreign parents). That distinction is relevant not to whether the absolute bar is unconstitutional, which the respondents concede, but to the shape of a just and equitable interim remedy, and in particular to the importance of preserving the Director-General’s verification powers expressly on the face of the order.

[19] The respondents rely on internal Standard Operating Procedures, in force since 2015, to permit registration in circumstances not provided for by the Regulations.

They also rely on the legislative reform proposed in the White Paper on Citizenship, Immigration and Refugee Protection (Gazette No 50530, 17 April 2024). The legal status of the SOPs and the relevance of the White Paper are addressed in the analysis that follows.

[20] Although the determination of these issues turns on the Constitution and the BDRA, several international instruments bear on the analysis under section 39(1)(b) of the Constitution. Article 7(1) of the United Nations Convention on the Rights of the Child requires that every child be registered immediately after birth and have the right from birth to a name and to acquire a nationality. Article 24(2) of the International Covenant on Civil and Political Rights is to similar effect. Article 6 of the African Charter on the Rights and Welfare of the Child is in materially identical terms. South Africa is a party to those instruments. They support, but do not exhaust, the analysis under section 28(1)(a).

Category 1: the failure-to-comply exclusion

[21] The applicants seek a declaration that the respondents' failure to register the births of children in which one parent is a South African citizen, a permanent resident, or a refugee, and the other lacks valid documentation, is unlawful. They also seek individual relief by way of review and substitution in respect of the children of the first to seventh applicants.

[22] The respondents do not dispute that the legal position is settled. Their response is that the difficulty is one of internal compliance, to be addressed through training, and that declaratory relief is unnecessary.

[23] That response does not address the evidence. The first to seventh applicants set out, in detail and without contradiction, repeated refusals at multiple offices to register children whose registration is required by law. The respondents have accepted, in the answering affidavit, that this has been the experience of would-be registrants in the first category. Where a settled legal position is not being given effect in practice, declaratory relief serves both a clarificatory and a regulatory function. In *Minister of Health and Others v Treatment Action*

Campaign and Others (No 2) 2002 (5) SA 713 (CC), the Constitutional Court addressed the use of declaratory and mandatory orders to secure compliance by organs of state. The declarator also provides a clear standard against which the future conduct of officials may be measured, and a basis for further relief if non-compliance continues.

[24] Declaratory relief is therefore appropriate. The declarator, however, is directed at the duty to receive, process, and decide an application. Officials may not refuse to receive or determine an application for registration merely because a parent lacks a valid, unexpired passport, visa, or permit. The content of the registration that follows, including whether an identity number is assigned, is governed by the Regulations and is not determined by the order in this judgment. The respondents have no discretion to refuse to entertain such an application. The law requires registration where the statutory requirements, as read in this judgment, are met. The individual relief in respect of the children of the first to seventh applicants is granted, with a direction that the births be registered and birth certificates issued within sixty days, the form and content of the certificate to be that prescribed by the Regulations for the category into which each child falls. The respondents did not take a delay point. To the extent that the review of those refusals is subject to the 180-day period in section 7(1) of the Promotion of Administrative Justice Act 3 of 2000, I extend that period under section 9, in the interests of justice, to the date on which the application was launched.

Category 2: the valid-documents exclusion

[25] Regulation 8(3)(c) to (e) is, on its face, absolute. It requires valid, unexpired documents. Where the documents do not exist or have lapsed, even for reasons unrelated to the parents' conduct, registration is not possible. That is inconsistent with section 28(1)(a) of the Constitution and with section 9 of the BDRA, which does not draw the distinction the Regulation makes. The respondents concede the inconsistency. The dispute concerns remedy.

[26] The applicants propose a suspended declaration of invalidity for eighteen months, with an interim reading-in of “where available” (or “where applicable and available”) into the impugned sub-regulations. The remedy is modelled on, though not identical to, that adopted in *Naki* in respect of Regulations 3 to 5.

[27] The respondents initially proposed a structured interview process for undocumented foreign parents, supplemented by affidavits and, in the Director-General’s discretion, proof of paternity or maternity. By the time of argument, the respondents accepted that an interview should not be mandatory in every case but should be available where reasonably necessary to verify material facts. The applicants accepted that the interim relief could carry safeguards and that the Director-General’s verification powers were not to be displaced. The remaining difference is one of drafting and emphasis rather than principle. The question is whether the order should leave the verification powers to inference or expressly record them.

[28] I am not persuaded that a free-standing mandatory interview, superimposed by judicial order on the statutory scheme, is necessary or just and equitable. I am, however, persuaded that the order should state expressly that the reading-in does not displace the Director-General’s powers of verification. That meets the respondents’ legitimate concern without importing a separate procedural regime that the Regulations themselves do not contain.

[29] The respondents’ concerns about fraud and trafficking are asserted but not substantiated by evidence. The answering affidavit and supporting material provide no evidence of fraud on any meaningful scale, nor of any causal connection between the absence of mandatory interviews and the incidence of trafficking. That is the same evidentiary deficiency the Constitutional Court identified in *Centre for Child Law* (CC). A finding of justification cannot rest on assertion alone. The concerns are not illegitimate, but the evidence does not bear the weight the respondents place on it.

[30] The BDRA already provides the verification powers the respondents say are necessary. Section 9(1A) permits the Director-General to require biometrics. Section 7 permits the Director-General to require further proof and to investigate. The "where available" reading-in does not remove those powers, and the order records as much. It prevents the absence of a document, in circumstances where the document does not exist or cannot be obtained, from operating as an absolute bar to registration, while leaving the Director-General free to require further proof, investigate, and refuse an application where the available evidence does not support it. A refusal so taken is reviewable on conventional administrative-law grounds. For this purpose, a document is available if it exists and can be obtained by the applicant through reasonable effort. A document that does not exist, or that the applicant cannot obtain despite reasonable effort, is one that is not available, and its absence cannot bar registration. The respondents' objection that "where available" reduces the inquiry to nothing is met by the express preservation of those powers in our order.

[31] On the uncontested evidence, including the *amici* submissions and the affidavits of several applicants who describe their fear of approaching Home Affairs offices because of their immigration status, a mandatory interview administered in every case would deter some parents from seeking registration. That consequence would undermine the constitutional purpose of the remedy. A verification power exercised where reasonably necessary does not carry the same flaw.

[32] As to deference, a court should generally exercise restraint before intruding on executive policy-making in complex regulatory fields. That principle does not apply with full force here. The unconstitutionality is conceded, and the harm is ongoing. The legislative reform proposed in the White Paper has not progressed to the stage of a tabled Bill. The reading-in contained in our order does not dictate the content of future regulations but serves to preserve access to birth registration on a narrowly tailored basis, with the verification powers intact, until the Minister acts. That is a conventional exercise of the remedial power under section 172(1)(b) of the Constitution. In fashioning a just and equitable remedy

under that provision, the court may give weight to the views of the responsible functionary on the purpose of the impugned provisions, on the justification advanced for them, and on the conditions of any suspension. But that weight attaches to a view borne out by the record. Here the record does not support the justification advanced, for the reasons already given. I have set the suspension period at eighteen months. That period is long enough to allow the Minister to complete the regulatory amendments, the substance of which is already under consideration in the White Paper, and short enough to limit the time for which persons entitled to registration must depend on the interim reading-in.

[33] The applicants' proposed remedy is adopted, subject to the express preservation of the Director-General's verification powers set out in the order. Regulation 8(3)(c), (d) and (e) is to be read with the words "where available" or "where applicable and available" inserted as set out in the order. The declaration of invalidity is suspended for eighteen months. The Director-General is directed to register the births of the seven children identified in the order within sixty days, subject to the Director-General being entitled, before doing so, to require such further proof and to conduct such investigation as sections 7 and 9(1A) permit.

Category 3: the late-registration exclusion

[34] The Regulations make no provision for the late birth registration of children born to parents who are not South African citizens, permanent residents or refugees. The respondents concede the defect. They propose that their internal SOPs be endorsed as the interim mechanism. The applicants propose that Regulations 4 and 5 apply, with the changes required by the context, until amendment. The applicants do not object to the SOPs being used as internal administrative machinery. They object to the SOPs being treated as the source of legal authority.

[35] The proposal that an internal SOP serve as the interim *legal* regime cannot be accepted. The BDRA requires registration in the prescribed manner. The prescribed manner is set by regulation. An internal administrative document,

unpublished, not subject to public comment, and not binding on the public, is not a regulation. Internal guidelines cannot supplant regulations made under empowering legislation (see *Minister of Health and Another v New Clicks South Africa (Pty) Ltd and Others* 2006 (2) SA 311 (CC), and also *Akani Garden Route (Pty) Ltd v Pinnacle Point Casino (Pty) Ltd* 2001 (4) SA 501 (SCA) at para 7). If a regulatory framework is constitutionally defective, the cure is not an unpublished SOP. The cure is a lawful regulation or, in the interim, a reading-in by the court. That does not preclude the Department from continuing to use the SOPs as internal machinery, provided they are applied consistently with the order.

[36] There is a further, practical point. The respondents' own evidence is that the SOPs are inconsistently applied at branch level. That is the difficulty across the first category. An SOP that depends on uniform application by officials who, on the respondents' own account, have failed to apply settled law uniformly is not a workable substitute for a legal rule.

[37] The applicants' proposal is practicable and maintains due regard for the separation of powers. Regulations 4 and 5 exist. Extending them to children of foreign parents, with the changes required by the context, provides a clear interim framework and leaves the Minister free to legislate properly during the suspension period. The relief is granted in the terms set out in the order.

Category 4: the abandoned-adults exclusion

[38] The fourth category presents the only substantial point of dispute on the merits. The fifteenth to eighteenth applicants are adults whose births were not registered in childhood. They were abandoned or orphaned. They cannot produce the documents that Regulation 5(3)(f), (g), (h), and (k) require. Those provisions assume the existence of parents who are identifiable, or whose deaths are documented, or who can produce evidence about the birth. None of those assumptions holds in the applicants' cases.

[39] The respondents resist the relief on three grounds. The first is textual. Section 28 of the Constitution speaks of "every child", and the applicants are adults. The

second is statutory and institutional. The BDRA was not designed for adult self-registration. Section 12 and Regulation 9 are confined to children, and the proper recourse is a case-by-case inquiry as in *Khoza v Minister of Home Affairs and Another* [2023] 2 All SA 489 (GP). The third is policy. The relief sought would open a pathway to fraudulent citizenship claims.

[40] I deal with each in turn.

The textual argument

[41] The textual argument is not as strong as the respondents present it. Section 28(1)(a) speaks of "every child" having "the right to a name and a nationality from birth". The phrase "from birth" identifies when the right vests. It does not identify when the right expires. On the respondents' reading, the right would vest at birth and lapse without remedy on the eighteenth birthday, even where the state's own failure to register the child during childhood is the reason the right was never given effect. The result is untenable. The state could effectively extinguish a constitutional right by the simple expedient of failing to give it effect for long enough.

[42] Section 39(2) of the Constitution requires courts, when interpreting any legislation, to promote the spirit, purport and objects of the Bill of Rights. This is the primary basis on which I decide the fourth category. The BDRA is silent on the position of an adult whose birth was not registered in childhood because of abandonment, orphanhood or state failure. In that silence, the section 39(2) duty compels a reading that allows registration on appropriate proof. Any other reading would permit the state to deny a person, permanently, any record of legal existence, a result inconsistent with the values of dignity, equality, and the rule of law. The Constitutional Court adopted a comparable approach in *Chisuse*, preferring a constitutionally compliant reading of the citizenship provisions to recognise vested status and avoid statelessness. The BDRA may, and must, be read to permit the registration of an adult abandoned or orphaned as a child whose birth was not registered, on appropriate proof.

[43] The applicants relied on *Centre for Child Law and Others v Media 24 Limited and Others* 2020 (4) SA 319 (CC) for a broader "principle of ongoing protection" into adulthood. That reliance must be approached with care. In *Media 24* the Constitutional Court confirmed the invalidity of section 154(3) of the Criminal Procedure Act 51 of 1977 to the extent that it failed to protect the identity of child victims of crime. It further held that the anonymity protection of that section does not lapse when the protected person turns eighteen and read in an interim regime under which the protection continues into adulthood, subject to the person's consent to publication or an order of court. The Court did not, then, leave the position of adults undecided. It held, in the setting of a statutory anonymity protection, that a childhood protection may endure beyond majority where the harm it addresses endures. *Media 24* is not, however, authority for the proposition that section 28(1)(a) of its own force continues to operate in adulthood. It rested on the best interests of the child, on privacy and dignity, and on the guarantee of equality, in the particular setting of statutory anonymity protection. I do not rest my conclusion on it. At most, *Media 24* furnishes an analogy. Where a harm that a childhood right addresses continues to operate after majority, there is no self-evident reason to treat the right as evaporating on the eighteenth birthday. But the analogy has limits. *Media 24* concerned a protective right balanced against expression and open justice. Section 28(1)(a) is a constitutive right, and birth registration may, as the respondents correctly observe, form part of the statutory route to citizenship. Those differences are reasons to decide the fourth category under section 39(2) and the *Chisuse* reasoning set out above, and to treat *Media 24* as a supportive analogy only. The conclusion does not depend on it.

[44] Article 7 of the Convention on the Rights of the Child and article 6 of the African Charter on the Rights and Welfare of the Child require that every child be registered. The State has accepted those obligations. To read section 28(1)(a) so that the state's failure to register a child in childhood becomes incurable in adulthood would frustrate the very obligations those instruments impose. This

reinforces, but is not necessary to, the conclusion already reached under section 39(2).

The institutional and statutory argument

[45] The respondents submit that the BDRA was not designed for adult self-registration. They add that section 12 of the BDRA and Regulation 9, being confined to children and cross-referenced to the Children's Act, cannot be read to include adults. They contend that the principle *generalia specialibus non derogant* therefore defeats the applicants' reading-in. And they submit that *Khoza* supports a case-by-case approach. The first proposition is partly correct as a matter of legislative history. The *generalia specialibus* point and the reliance on *Khoza* do not, on analysis, assist the respondents.

[46] The maxim *generalia specialibus non derogant* resolves a conflict between a general and a specific provision that both apply to the same matter. It presupposes that the matter is provided for. Here the difficulty is not a conflict between section 12 (the specific provision for abandoned children) and Regulation 5 (a more general provision). It is that neither the section nor the Regulation provides at all for an adult who was abandoned or orphaned as a child and whose birth was never registered. This is a true *lacuna*, not a contest between competing provisions. The maxim is therefore not triggered. Because the gap exists in both the empowering statute and the Regulations, the primary cure is interpretive. The BDRA, read through section 39(2), permits adult registration on appropriate proof, and the regulatory declaration that follows is consequential, giving the prescribed manner of registration content consistent with that reading. So approached, no question of *generalia specialibus* arises, and the alternative challenge to the constitutional validity of sections 9 and 12 of the BDRA need not be reached. That is also the course that avoids the confirmation consequences of a declaration of invalidity of an Act of Parliament, to which I return.

[47] The reliance on *Khoza* cuts both ways. The court in *Khoza* ordered the registration of Mr Khoza's birth and declared him a South African citizen. It did so not because he had merely an established life in South Africa, but because the evidentiary record, including the investigation and report of a Home Affairs official, satisfied the court that he was born in South Africa. The court was critical of the respondents' conduct, describing the documentary requirements insisted upon as absurd and the failure to promulgate regulations as unacceptable in itself. *Khoza* demonstrates two things. First, that the existing law, applied with the Director-General's investigative powers, can yield registration where birth in South Africa is established on the evidence. Second, that absent a framework, vindication of the right required a decade of refusal and litigation. *Khoza* is thus not authority for the adequacy of case-by-case litigation. It is a demonstration of its inadequacy. No abandoned adult should be required to litigate his or her way to a birth certificate. The reading-in does not dispense with the requirement that the Director-General be satisfied, on appropriate proof, that the person was born in South Africa. It supplies the framework within which that satisfaction is to be assessed and removes the impossible documentary preconditions.

[48] The "not designed for" argument otherwise proves too much. The BDRA was no doubt drafted with the registration of newborns principally in mind. But section 9(3A) plainly contemplates registration after the initial period and draws no age limit. Section 12 provides for the registration of abandoned children. The statute is not closed against adult registration. It merely fails to address it in terms. In my view, where the statute is silent, and the silence produces a constitutional violation, the court's task is to fashion a remedy rather than to defer to the silence.

The fraud argument

[49] The respondents submit that adult registration creates a route to fraudulent citizenship claims. The concern is legitimate in principle, and the respondents are correct that, under the Citizenship Act, birth registration may constitute an

antecedent step to certain citizenship claims. Two considerations qualify the concern on the present record.

[50] The first is evidential. The concern is, again, asserted rather than substantiated. The papers contain no material from which the court could assess the scale or character of the risk, and the court was not invited to, and could not properly, take judicial notice of it.

[51] The second is that the relief is not a regime of registration on assertion. The applicants' own formulation, refined in reply, requires an affidavit substantially complying with Form DHA-288, setting out a detailed history of the person's life events in South Africa, and a basis on which the Director-General must be satisfied that the person was born in South Africa, has an established presence in and connection to South Africa from childhood, and that the birth has not been registered elsewhere. That is an evidentiary standard, and the applicants accept that the Director-General must in fact be so satisfied. The order makes that satisfaction requirement explicit. It also preserves the Director-General's investigative powers under sections 7 and 9(1A) of the BDRA. The Director-General is not obliged to register every applicant. He is obliged to receive the application, to consider it, and to decide it on the available evidence. He may accept or reject the evidence, and a refusal is reviewable on conventional administrative-law grounds.

[52] I record, to remove any doubt raised by the respondents, that "established presence in and connection to South Africa from childhood" is not a substitute for the requirement of birth in South Africa. It is evidence from which, together with the other material, the Director-General may be satisfied of birth in South Africa. It does not displace that ultimate question. The standard by which the Director-General must be satisfied is the ordinary civil standard, a balance of probabilities. It is not raised to a higher level by the circumstance that registration may later form a step towards a claim to citizenship, because registration and citizenship are distinct and the latter is not decided by the act of registration. Nor is the absence of documents, on its own, a ground of refusal. As *Khoza* makes plain,

the enquiry must accommodate the evidentiary difficulties that attend abandonment, orphanhood and statelessness, and the absence of a document that does not exist is not to be held against the applicant. On that footing, the relief strikes the balance that section 36 of the Constitution requires. It addresses the constitutional defect while preserving the Department's legitimate verification function, and it does not displace administrative or judicial scrutiny of individual applications. This judgment determines the registration of birth alone. Whether a person whose birth is so registered is entitled to citizenship is a separate question, governed by the Citizenship Act, and it is not decided here.

Conclusion on Category 4

[53] The right in section 28(1)(a) of the Constitution, read with section 39(2), requires that the BDRA be construed to permit the registration of an adult abandoned or orphaned as a child and whose birth was not registered in childhood, on appropriate proof that the person was born in South Africa. Regulation 5(3)(f), (g), (h) and (k) is unconstitutional to the extent that it fails to provide for that registration. The declaration of invalidity is suspended for eighteen months. During the suspension, the reading-in described in our order applies. That leaves the position of the seventeenth and eighteenth applicants, whose births remain unregistered. The fifteenth and sixteenth applicants have been registered, and I have dealt with the suggestion that their claims are moot. The seventeenth and eighteenth applicants stand differently from the children in the first and second categories, where the law is settled, or the factual nexus is plain. Whether each was born in South Africa is a question of fact that the interim regime remits, in the first instance, to the Director-General on appropriate proof. It would not be right to register their births by order, as though that fact was established, when the very process this judgment creates exists to determine it. I do not substitute my own decision for that of the Director-General. I direct instead that he receive, consider, and determine their applications under that process within a fixed period, with the verification powers preserved and a refusal open to review. The order so provides. It is not necessary to reach the alternative challenge to the

constitutional validity of sections 9 and 12 of the BDRA, and I make no order on it.

The amici

[54] I record my indebtedness to the *amici*. The Scalabrini Centre of Cape Town and its trustees, admitted as first and second *amici curiae*, placed before the Court evidence of the conditions under which the Refugee Reception Office system operates, and made submissions on the practical operation of the impugned provisions and on the remedies in contention. That evidence assisted my understanding of how the provisions work in practice, and the submissions were of real assistance on the questions of remedy. The *amici* kept to that role and did not trespass on the dispute between the parties. As is usual, they neither sought nor are awarded costs.

Costs

[55] Both parties seek costs. The approach to costs in constitutional litigation between a private litigant and an organ of state is set out in *Biowatch Trust v Registrar, Genetic Resources and Others* 2009 (6) SA 232 (CC). A private party that succeeds against the state in asserting a constitutional right should ordinarily have its costs, and one that fails should not ordinarily be ordered to pay the state's costs. The applicants have succeeded, and substantially so. The declaratory and reading-in relief has been granted across all four categories, and the individual relief has been granted. The starting point favours an order in their favour. The respondents urged that costs should nonetheless not follow the result. They conceded the unconstitutionality of the first three exclusions and, by the time of argument, had narrowed the dispute in those categories to the form of the interim remedy; their resistance to the abandoned-adults category was a genuine contest over a question not previously decided. That conduct was responsible, and I take it into account. It does not, however, displace the rule. The concessions, welcome as they were, came after the applicants had incurred the expense of launching proceedings to secure rights that, in the first category,

were already settled, and to expose the defects that the respondents then accepted. The reasonableness of the state's conduct under *Biowatch* shields an unsuccessful private litigant from an adverse award. It is not a reason to deny a successful one its costs. The applicants prevailed on the fourth category as well, and the genuine contest on it does not alter the result. The matter was complex and of public importance, and the employment of two counsel was warranted. The first and second respondents are to pay the applicants' costs of the application on scale C, jointly and severally, the one paying the other to be absolved, including the costs of two counsel.

Confirmation

[56] Section 172(2)(a) of the Constitution requires confirmation by the Constitutional Court of an order of constitutional invalidity made by a High Court, but only where the order concerns an Act of Parliament, a provincial Act or conduct of the President. The declarations of invalidity in this judgment concern Regulations made under the BDRA. Regulations are subordinate legislation and fall outside the terms of section 172(2)(a). Accordingly, they are not subject to the confirmation requirement. Because the fourth category is decided by way of the interpretive route under section 39(2), and the alternative challenge to sections 9 and 12 of the BDRA is not reached, no declaration of invalidity of an Act of Parliament is made, and no referral for confirmation arises. The orders take effect on the date of this judgment, subject to the suspension provided for in each.

Order

[57] The following order is made.

Failure-to-comply exclusion

1. It is declared that the failure or refusal by the respondents, or either of them, or by officials of the Department of Home Affairs (Department), to receive, process and determine an application to register the birth of a child born in South Africa where one parent is a South African citizen, permanent resident or refugee and

the other parent is not a South African citizen and does not possess, or is unable to produce, a valid, unexpired passport, visa or permit, on the ground only of the absence of such a document, is unlawful and unconstitutional.

2. The decisions of the respondents, or either of them, to refuse to register, alternatively the failure of the respondents or either of them to register, the births of the children listed below are reviewed and set aside: J[…] W[…] K[…] C[…]; Y[…] H[…]; Y[…] M[…]; A[…] R[…]; J[…] K[…] M[…]; and E[…] K[…] M[…].

3. The first respondent (Director-General) is directed to register the births of the children listed in paragraph 2 and to issue birth certificates for each child within 60 (sixty) days of the date of this order, or within 60 (sixty) days of the lodging of a substantially compliant application, whichever is later. The form and content of each certificate, including whether an identity number is assigned, shall be that prescribed by the Regulations on the Registration of Births and Deaths, 2014 (GN R128, GG 37373, 26 February 2014) (the Regulations) for the category into which the child falls. This order does not determine that category. Nothing in this paragraph limits the Director-General's powers under sections 7 and 9(1A) of the Births and Deaths Registration Act 51 of 1992 (the BDRA) to require further proof and to investigate before registration.

Valid-documents exclusion

4. It is declared that Regulations 8(3)(c), (d) and (e) of the Regulations are inconsistent with the Constitution and invalid to the extent that they fail to provide for the registration of a child born in South Africa where neither parent is a South African citizen, permanent resident or refugee and one or both parents do not possess a valid passport, visa or permit.

5. The declaration of invalidity in paragraph 4 is suspended for 18 (eighteen) months from the date of this order to permit the second respondent (Minister of Home Affairs) to remedy the defect, or until the defect is so remedied, whichever occurs first.

6. During the period of suspension, Regulation 8(3) shall be read as follows:

(a) Regulation 8(3)(c): "where available, a certified copy of a valid passport and visa or permit of the mother or father, or both parents, of the child, as the case may be";

(b) Regulation 8(3)(d): "where applicable and available, a certified copy of the valid identity document or passport and visa or permit of the next-of-kin or legal guardian";

(c) Regulation 8(3)(e): "where applicable and available, a certified copy of an asylum seeker permit issued in terms of section 22 of the Refugees Act of the mother or father or both biological parents of the child".

7. For the avoidance of doubt, the reading-in in paragraph 6 does not displace the powers of the Director-General under sections 7 and 9(1A) of the BDRA. Where a document referred to in Regulation 8(3) is not available, the Director-General may require such further proof, and conduct such investigation, as those sections permit, and must consider the application and may accept or reject the evidence and refuse the application on the available evidence. A refusal or failure to make a determination is subject to review. For purposes hereof, a document is 'not available' if it falls into one of the categories referred to in paragraph [30] of this judgment.

8. Subject to paragraph 7, the Director-General is directed to register the births of the children listed below and to issue birth certificates on Form DHA-19 (without an identity number, where the Regulations so provide) within 60 (sixty) days of the date of this order, or within 60 (sixty) days of the lodging of a substantially compliant application, whichever is the later,: E[…] K[…]; D[…] K[…]; S[…] M[…]; Joshua[…] M[…]; J[…] M[…]; L[…] N[…]; and F[…] N[…].

Late-registration exclusion

9. It is declared that the Regulations are inconsistent with the Constitution and invalid to the extent that they make no provision for the late registration of a child born in South Africa where neither parent is a South African citizen, permanent resident or refugee.

10. The declaration of invalidity in paragraph 9 is suspended for 18 (eighteen) months from the date of this order to permit the Minister of Home Affairs to remedy the defect, or until the defect is so remedied, whichever occurs first.

11. During the period of suspension, Regulations 4 and 5 of the Regulations (as amended by the reading-in ordered in *Naki and Others v Director General: Department of Home Affairs and Another* [2018] 3 All SA 802 (ECG)) shall apply, with the changes required by the context, to the late registration of children born in South Africa where neither parent is a South African citizen, permanent resident or refugee; and the Department may continue to apply its Standard Operating Procedures as internal administrative machinery, only to the extent consistent with this order.

Abandoned-adults exclusion

12. It is declared that Regulations 5(3)(f), (g), (h) and (k) of the Regulations are inconsistent with the Constitution and invalid to the extent that they fail to provide for the registration of the birth of a person who is eighteen years of age or older, who was abandoned or orphaned as a child, and who is unable to provide the documentation of his or her parents or of his or her own birth required by those provisions.

13. The declaration of invalidity in paragraph 12 is suspended for 18 (eighteen) months from the date of this order to permit the Minister of Home Affairs to remedy the defect, or until the defect is so remedied, whichever occurs first.

14. During the period of suspension, the following interim arrangements apply:

    14.1 The proviso in Regulation 5(1) read with Regulation 9 shall apply, with the changes required by the context, to the registration of the birth of a person who is eighteen years of age or older and who was abandoned or orphaned as a child and does not have the documentation of his or her birth or of his or her parents.

14.2 Where an adult who was orphaned or abandoned, and whose birth was not registered in terms of Regulation 9, seeks to register his or her own birth in terms of Regulation 5(2), the Department shall receive and consider an affidavit or affidavits, substantially complying with Form DHA-288, attested to by such person, or by any other person with knowledge of such person's personal circumstances and history in the Republic, setting out:

(a) the names and nationality of such person's parents (if known), the place of birth of such person (if known) and the date of birth of such person (or the nearest estimation);

(b) a detailed account of such person's history and life events in South Africa, from which the Director-General may be satisfied that (i) such person was born in South Africa; (ii) such person has an established presence in and connection to South Africa from childhood; and (iii) to the best of such person's knowledge, his or her birth has not been registered in any other country or territory.

14.3 Subject to paragraph 14,8 below, the Director-General must consider the application and the evidence, may require such further proof and conduct such investigation as sections 7 and 9(1A) of the BDRA permit, and may accept or reject the evidence and grant or refuse the application accordingly. Establishment of presence in and connection to South Africa from childhood is evidence relevant to, but is not a substitute for, satisfaction that the person was born in South Africa. The Director-General must be so satisfied on a balance of probabilities. A refusal or failure to make a determination is subject to review.

14.4 Regulation 5(3)(f) shall be read as follows: "where available, a certified copy of the identity document or passport and visa or permit of the parents of the child or person whose birth is sought to be registered, where one of the parents is a non-South African citizen".

14.5 Regulation 5(3)(g) shall be read as follows: “where applicable and available, a certified copy of the death certificate of any deceased parent of the child or person”.

14.6 Regulation 5(3)(h) shall be read as follows: “where applicable and available, a certified copy of the marriage certificate of the parents of the child or person”.

14.7 Regulation 5(3)(k) shall be read as follows: “Form DHA-288 illustrated in Annexure 2B, save that the applicant need not include particulars of the birth that are unknown to the applicant”.

14.8 The Director-General is directed to receive, consider and determine the applications of the seventeenth and eighteenth applicants for the registration of their own births in terms of paragraphs 14.2 and 14.3, within 90 (ninety) days of the date of this order or within 90 (ninety) days of the lodging of a substantially compliant application, whichever is the later. A refusal or failure to make a determination is subject to review.

Structural and general relief

15. The Director-General is directed, within 60 (sixty) days of the date of this order, to issue a directive or circular to every office or branch of the Department of Home Affairs at which births may be registered, in terms that include the following:

15.1 that officials are obliged to receive, process and determine an application to register the birth of every child born in South Africa, whether or not one or both parents possess a valid, unexpired passport, visa or permit, subject to the interim arrangements set out in this order;

15.2 that officials are informed of the declarations of invalidity and the interim reading-in made by this Court;

15.3 that officials must give effect to the Regulations as read with the interim arrangements ordered in this judgment, including the registration of abandoned adults in terms of paragraphs 12 to 14 of this order;

15.4 that where parents or applicants do not possess valid documentation, officials must receive and consider affidavits and other alternative evidence as contemplated in this order and must not refuse to receive or determine an application solely on the ground of the absence of valid documentation, while remaining entitled to require further proof and to investigate as the BDRA permits.

16. The Director-General shall, within 30 (thirty) days of issuance of the directive or circular contemplated in paragraph 15, file an affidavit with the Chief Registrar of this Court attaching a copy of the directive or circular. The Director-General shall also, within 12 (twelve) months of the date of this order, file a further affidavit with the Chief Registrar of this Court setting out the steps taken to give effect to this order, including the progress of the regulatory amendments contemplated in paragraphs 5, 10 and 13.

17. To the extent necessary, the period prescribed by section 7(1) of the Promotion of Administrative Justice Act 3 of 2000, within which the review relief granted in paragraph 2 was to be instituted, is extended to the date on which the application as launched.

18. The Director-General and the Minister of Home Affairs shall *nomine officii*, jointly and severally, the one paying the other to be absolved, pay the applicants' costs of the application on scale C, including the costs of two counsel where so employed.

M FRANCIS

Judge of the High Court

J I CLOETE

Judge of the High Court

Z L MAPOMA

Acting Judge of the High Court

Appearances:

For Applicants:	Adv M Bishop with Adv A G Christians
Instructed by:	Legal Resources Centre
For Respondents:	Adv A Nacerodien with Adv C Burke
Instructed by:	State Attorney
For *Amica Curia*:	Adv E van Heerden
Instructed by:	Deneys Attorneys