# RESEARCH REPORT

# ENHANCING PROTECTION AND ASYLUM: A SOUTH-SOUTH DIALOGUE FOR RIGHTS AND SOLUTIONS

## SUPPORT PROGRAMME TO THE AFRICA-EU MIGRATION AND MOBILITY DIALOGUE (MMD III)

Scalabrini Centre of Cape Town

CoRMSA Consortium for Refugees and Migrants in South Africa

JRS Uganda
JESUIT REFUGEE SERVICE

SIHMA Scalabrini Institute for Human Mobility in Africa

CATHOLIC CENTRE FOR LEGAL AID SERVICES (CCLAS)

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**James Clacherty** is a qualitative researcher with a background in social anthropology and urban geography. James completed an MA in urban studies in 2019 and has

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# EXECUTIVE SUMMARY

**Introduction**

The Scalabrini Institute for Human Mobility in Africa (SIHMA) was tasked with conducting the research phase of the Support Programme to the Africa-EU Migration and Mobility Dialogue (MMD III): Enhancing Protection & Asylum (EPA). The research aims to produce a foundation of content to inform the set of dialogues, conferences and multi-lateral symposia that are part of the larger programme.

The findings in this report are presented under the two central objectives of the MMDIII: Central Objective 1 (CO1), which is related to general asylum processes and Central Objective 2 (CO2) which is related to asylum processes for children on the move.

The research was guided by the following activities stipulated under each Central Objective:

CO1: Conduct comparative research, enriched by engagements and key informant interviews with civil society organisations, refugee led organisations and relevant stakeholders.

CO2: Conduct comparative research supported by interviews with key informants in civil society organisations, refugee led organisations and relevant stakeholders working with children on the move.

**Research approach**

Stakeholders from a range of sectors who work directly with refugees, including children on the move were selected to participate in a Key Informant Interview. 10 interviews with stakeholders working with general asylum (CO1) and 10 working with children on the move (CO2) were conducted in both South Africa and Uganda. The interviews were recorded, transcribed and then analysed using a qualitative analysis tool. Ugandan and South African data was analysed separately and then compared. A series of deductive themes relating to the focus of MMDIII emerged.

## FINDINGS ON GENERAL ASYLUM IN UGANDA – CO1

In Uganda, refugees from conflict-affected countries who cross borders to be placed into settlements are quickly granted status under a prima facie system. Those applying for asylum in urban areas, under the non-prima facie system face more complex, procedures with strict deadlines and frequent delays. These, plus a lack of knowledge on the part of refugees and minimal legal support services mean that many refugees in urban areas are undocumented.

### Access to services

In terms of access to services refugees in settlements can access public health services, supported by NGOs. However, facilities are often underequipped, mental health services are scarce. In urban areas undocumented refugees may face denial of services. Children on the move, whether documented or not, are legally entitled to education under Universal Primary Education and Universal Secondary Education policies. However, hidden costs, long distances to secondary schools, and lack of documentation often lead to exclusion.

### Impacts of non-documentation

Practical impacts of non-documentation on refugees in urban areas include lack of access to formal work, meaning they have to rely on the informal sector and often find themselves in exploitative work. This can result in deep poverty and its concomitant vulnerabilities. Emotionally, undocumented individuals experience chronic uncertainty, exclusion, and low self-worth, though resilience emerges through refugee-led initiatives.

## FINDINGS ON GENERAL ASYLUM IN SOUTH AFRICA – CO1

### Asylum cycle

In South Africa, refugees face severe barriers to accessing the asylum system, with bottlenecks at Refugee Reception Offices, lack of interpreters, and punitive treatment for undocumented entry. Documentation delays, legal inefficiencies, and widespread fear of arrest exacerbate vulnerability. Many remain undocumented for years, while appeals and protection processes remain slow and ineffective. Xenophobia and securitisation worsen conditions, fostering mistreatment and leaving many refugees in legal limbo without protection or access to services.

### Access to services

In South Africa, healthcare access depends heavily on documentation. Asylum seekers face administrative barriers, discrimination, and denial of care, especially women and children, despite legal protections and ignored court rulings mandating free treatment. South Africa's legal framework supports education access for all children, including those who are undocumented. However, contradictory laws and schools' demands for documentation cause confusion and rejection, often requiring NGO intervention to secure enrolment for undocumented children.

### Impacts of non-documentation

Non-documentation has many practical impacts on refugees such as exclusion from healthcare, education, employment, and housing. Service providers report that many undocumented refugees face constant fear of arrest and deportation, leading to emotional trauma, social stigma, and hopelessness.

## FINDINGS ON PROTECTION AND DOCUMENTATION FOR CHILDREN ON THE MOVE IN UGANDA CO2

### Birth registration

Uganda's birth registration framework caters for children on the move. There are implementation challenges, however. Refugees in settlements cannot access registration offices which are sited in towns that are a long distance away. Mobile units are available but they do not have the resources to reach all settlements. Informal fostering complicates documentation leaving many children undocumented and vulnerable to exclusion.

### Unaccompanied and separated children

Uganda's refugee policy lacks specific provisions for unaccompanied and separated children. Care is often characterised by informal community arrangements without formal foster care or oversight.

### Access to services

In Uganda, there are legal frameworks to make sure that undocumented children can access education and healthcare. Healthcare seems to be easily accessible but access to education for undocumented children, who mostly live in towns and cities where economic conditions are difficult, is not always accessible because of hidden expenses such as exam fees. Informally fostered children are particularly vulnerable, facing frequent moves and lack of protection which cause psychological trauma, emotional distress, and increased vulnerability.

### Family tracing and reunification

Family tracing and reunification in Uganda are supported by strong legal frameworks, including the Convention on the Rights of the Child and Uganda's Children's Act. International agencies, like the Red Cross and ICRC, lead efforts but the challenge to gather accurate information from children because of their age and emotional state is always a challenge.

# FINDINGS ON PROTECTION AND DOCUMENTATION FOR CHILDREN ON THE MOVE IN SOUTH AFRICA – CO2

### Birth registration

In South Africa, birth registration is a fundamental right but challenging for undocumented parents. Proof of birth is often withheld by health services and legal barriers complicate late registration. Despite court rulings affirming the right to registration, inefficiency and discrimination on the part of officials hinders access, risking children's exclusion from education, healthcare, and legal status.

### Unaccompanied and separated children

While South Africa's Children's Act provides legal protections for vulnerable children, including unaccompanied and asylum seeking or refugee children, poor training, fragmented responsibilities, and documentation barriers hinder implementation.

### Impacts of non-documentation

In South Africa, undocumented youth face exclusion from education, employment, and services, leading to precarious living and stalled adulthood. Emotional distress, isolation, and fear dominate and turning 18 often triggers crisis, highlighting urgent policy needs to address systemic barriers and psychological harm. Children leaving court-ordered alternative care face particular challenges as there are no legal frameworks for their access to legal status.

### Statelessness

Statelessness denies individuals nationality, blocking access to rights like education and healthcare. In South Africa, lack of birth registration and documentation perpetuate statelessness, with weak implementation of citizenship laws. Institutional barriers and political inaction perpetuate generational exclusion, highlighting an urgent need for regulatory reform and political commitment.

### Conclusion

The rich data from civil society organisations, refugee led organisations and other relevant stakeholders presented in this report gives a graphic picture of the challenges faced by migrants, including children on the move. The stakeholders who work daily with migrants describe how they struggle to apply and comply with the existing legal frameworks in both countries. There are also examples of legislation that allows easy access to asylum. The comparison between Uganda and South Africa, in spite of some fundamental differences in approaches to migrants, is useful, particularly when looking at the situation of urban migrants in Uganda. Discussion of the comparative aspect of this report should allow for rich dialogue in forthcoming meetings that will discuss recommendations for legal, policy and implementation change.

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# LIST OF ABBREVIATIONS

| | |
|---|---|
| CBO | Community-Based Organization |
| CO | Central Objective |
| CV | Curriculum Vitae |
| CYCC | Child and Youth Care Centre |
| DHA | Department of Home Affairs |
| DRC | Democratic Republic of the Congo |
| DSD | Department of Social Development |
| MEC for Health in Gauteng | Member of the Executive Council for Health in Gauteng |
| MMDIII | Africa-EU Migration and Mobility Dialogue (Phase 3) |
| NGO | Non-Governmental Organization |
| NIRA | National Identification and Registration Authority |
| OPM | Office of the Prime Minister |
| RRO | Refugee Reception Office |
| RSDO | Refugee Status Determination Office |
| SCRA | Standing Committee for Refugee Affairs |
| UNHCR | United Nations High Commissioner for Refugees |

# 1. INTRODUCTION

The Scalabrini Institute for Human Mobility in Africa (SIHMA) was tasked with conducting the research phase of the Support Programme to the Africa-EU Migration and Mobility Dialogue (MMD III): Enhancing Protection & Asylum (EPA). The research aims to produce a foundation of content to inform the set of dialogues, conferences and multi-lateral symposia that are part of the larger programme. The findings in this report are presented under the two central objectives of the MMDIII: Central Objective 1 (CO1), which is related to general asylum processes and Central Objective 2 (CO2) which is related to asylum processes for children on the move. The research was guided by the following activities stipulated under each Central Objective:

- CO1: Conduct comparative research, enriched by engagements and key informant interviews with civil society organisations, refugee led organisations and relevant stakeholders.
- CO2: Conduct comparative research supported by interviews with key informants in civil society organisations, refugee led organisations and relevant stakeholders working with children on the move.

This report presents the findings from the above activities. There is an accompanying desk review of legal frameworks relating to asylum in Uganda and South Africa.

# 2. RESEARCH APPROACH

## 2.1 QUALITATIVE METHODOLOGY

Given that the focus of the study was the implementation of legal frameworks, the focus population needed to be individuals in NGOs, CBOs, government and United Nations institutions who deal directly with refugees, including children on the move. Given the people-centred nature of this focus a qualitative approach to the research was chosen to allow the complexity of everyday application of the law to emerge.[1] The research tool chosen was Key Informant Interviews. The interview protocols, which were reviewed by partners in both Uganda and South Africa, were identical in both countries.

[1] Michelle, B., Campbell 2., Miller, W. (2015) Conducting Qualitative Research**.** *Clinical Laboratory Science.* 28(3),186-189.

# 2.2 SELECTION OF PARTICIPANTS

Together with the partners implementing the MMDIII programme,[2] SIHMA identified which sectors would need to be engaged in the interviews. The following were identified:

- Government and UN officials
- Legal experts
- Legal practitioners who were working directly with refugees and children on the move
- Social practitioners working directly with refugees and children on the move
- Members of refugee-led organisations

Keeping in mind the principle of 'data saturation'[3] and the range of sectors listed above the decision was made to interview 10 stakeholders from each of the two MMDIII Central Objectives in Uganda and South Africa. See Tables i) and ii). below.

## Table i): CO1 number of stakeholders interviewed

| | South Africa | Uganda |
|---|---|---|
| Government and/ or UN officials | 2 | 2 |
| Legal experts | 2 | 1 |
| Legal practitioners | 1 | 2 |
| Social practitioners | 3 | 2 |
| Members of refugee-led organisations | 2 | 3 |
| Total | 10 | 10 |

## Table ii): CO2 number of stakeholders interviewed

| | South Africa | Uganda |
|---|---|---|
| Government and/ or UN officials | 2 | 1 |
| Legal experts | 1 | 2 |
| Legal practitioners | 2 | 2 |
| Social practitioners | 3 | 3 |
| Members of refugee-led organisations | 2 | 2 |
| Total | 10 | 10 |

[2] Scalabrini Centre of Cape Town (SCCT) - grant coordinator, Scalabrini Institute for Human Mobility in Africa (SIHMA), Consortium for Refugees and Migrants in South Africa (CoRMSA), Jesuit Refugee Service, Uganda and The Catholic Centre for Legal Aid Services, Uganda.

[3] "Theoretical saturation is achieved when no additional themes or insights emerge from the data collection, and all conceptual categories have been explored, identified, and completed". (p.2). Rahimi, S., & Khatooni, M. (2024). Saturation in qualitative research: An evolutionary concept analysis. *International Journal of Nursing Studies Advances*, *6*, 100174. https://doi.org/10.1016/j.ijnsa.2024.100174

# 2.3 PARTICIPANT ENROLMENT AND INTERVIEW PROCESS

The partner organisations in both countries were requested to identify relevant stakeholders and to contact them to ask if they were willing to be interviewed. Using information from the partners a researcher from each country contacted the stakeholders to set up an interview. The interviews were conducted online and recorded. The ethics committees[4] stipulated that individuals and organisations that were interviewed were not to be identified in this report.

# 2.4 DATA ANALYSIS

The recordings were transcribed and then uploaded to NVivo[5]. Using NVivo the data was organised around a set of deductive codes[6] based on the aims and objectives of the MMDIII programme. These have been analysed, creating a set of themes and sub-themes which have been further analysed for patterns, comparisons. Readers may find that some of the issues that they know exist are not included, this is because they were not raised by participants. In qualitative analysis this is, in itself, a finding. The pattern that emerged may show areas where further training is needed, for example.

# 2.5 REPORT STRUCTURE

The findings presented below are organised into themes and sub-themes. These are presented under the two MMDIII output areas, CO1 with its focus on general asylum and CO2 which focuses on children on the move. Findings from Uganda and South Africa are presented separately, allowing for the planned dialogues in each country. The presentation of data for each focus area (CO1 and CO2) in each country is followed by a comparative analysis in summary form to allow for easy dialogue.

[4] The University of the Witwatersrand Research Ethics Committee gave clearance for the research in South Africa and Makerere University in Uganda. In addition, clearance was given by the Uganda National Council for Science and Technology (UNCST). All participants signed consent forms approved by these institutions.

[5] Qualitative data analysis software. https://lumivero.com/products/nvivo/

[6] Patton, M. Q. (1990). *Qualitative evaluation and research methods, 2nd ed* (p. 532). Sage Publications, Inc.

# 3. RESEARCH FINDINGS

## 3.1 FINDINGS CO1: GENERAL ASYLUM PROCESSES

The findings from interviews with stakeholders who work on general asylum processes are presented in this section of the report. Interview participants in both South Africa and Uganda were asked to explore the extent to which the legal frameworks of their respective countries met the rights of refugees by applying easily accessible and protective asylum processes.

### 3.1.1 SOUTH AFRICA

This section of the report describes the themes and sub-themes that emerged from interviews with stakeholders in South Africa around general asylum and access processes.

#### THEME 1: CHALLENGES WITHIN THE LEGAL ASYLUM CYCLE

The most common theme that emerged from stakeholder discussions was the challenges related to accessing documentation within the asylum cycle. The emergent data on these challenges at each step of the cycle is described below.

**Accessing asylum**

The inability to access the asylum process itself was identified by participants as one of the biggest challenges.

> The most urgent one, I think would be accessing the system to begin with, access to asylum is by far the worst challenge … If your application for refugee status is rejected there is recourse. It's a better devil compared to not being able to access the system.

> The biggest one of all that we see at this stage is access to asylum. UNHCR says the right to seek asylum is a human right – we can't go around that one. And here in South Africa … seeking access is very problematic. Essentially what they do is put preconditions on legal entry.

> As far as we know, there were less than a hundred transit visas that were issued in a given year, we saw very few Section 23 transit visas being issued at the port of entries.

One of the major issues mentioned was the lack of information-sharing with those arriving at borders and, therefore, knowledge about the need to apply for a Section 23 Transit Visa immediately. People were also ignorant of the fact that they needed to report within five days to a Refugee Reception Office (RRO). Many participants also pointed out that the short time period was not practical because RROs were usually far from border points and people did not have the resources to get to them in 5 days. Another issue was that many refugees did not enter South Africa at a legal port of entry because of their circumstances of flight.

> But if you're coming from the war in Congo and you ended up going south … the threshold to go through a formal border post is rather high.

The second challenge was that when those who had not gained the Transit Visa (Section 23), either because they did not know they needed it or did not enter the country at a formal port of entry, presented themselves at an RRO to apply for an asylum permit, the process became very difficult.

> We see people who are unsuccessful in showing 'good cause' for illegal entry and are therefore, denied access to even applying for a Section 22 (temporary asylum permit). So, you need to show 'good cause' for illegal entry. That is why Scalabrini went to court[7] because now we are seeing a situation where someone goes to the refugee centre to apply for asylum and they end up getting arrested for failing to show good cause for illegal entry.
>
> The main thing that these people (officials assessing asylum applications) are doing is to verify why you didn't enter the country legally through the formal entry point. This then contradicts the right to seek asylum. Deciding if someone can seek asylum requires an analysis of … why you personally are here and you can't go back, rather than "Why did you enter the country irregularly?". So this whole process is full of gaps that need to be addressed.
>
> So, Article 31 of the Refugee Convention speaks to non-penalisation of illegal entry. Yes. But we are seeing that in South Africa … people are being penalised for illegal entry into the country.

This regulation in the international convention mentioned in the quote above has been domesticated by the Refugee Act of 1998, in section 21(4) which upholds the principle of non-penalization. Therefore, rejecting asylum seekers' intention to apply not on the merits of their claim but on how they got into the country is a disregard of the law.

[7] https://www.scalabrini.org.za/press-statement-landmark-ruling-western-cape-high-court-declares-provisions-of-refugees-act-unconstitutional/#:~:text=The%20Western%20Cape%20High%20Court,for%20Human%20Rights%20(LHR).

**Benefit of the doubt and credibility**

Participants highlighted the need to adapt South Africa law and practice to apply the concepts of 'benefit of doubt' and 'credibility'.

The Refugee Act and government implementation need to focus on the burden of proof and credibility in asylum claims. It was recommended that the UNHCR framework used to evaluate asylum cases should become the framework in law and practice in South Africa. The UNHCR uses three mechanisms:
proving identity (name and country of origin)
the claimant's profile (such as being a political activist or LGBTQI+)
the incidents that led to their departure.
Each element must be assessed separately and then considered together to determine credibility. However, the government tends to treat credibility as a single, yes-or-no question, which is problematic. The law should clarify that credibility isn't simply right or wrong, but a complex multi-faceted issue. Attempts to engage the government on applying concepts like benefit of doubt and credibility have been unsuccessful.

Another strong theme that emerged from many interview participants was the issue of language. This applies to the entire asylum cycle but is particularly problematic as people first arrive in the country. Section 38f (1) of the Refugee Act of 1998 requires the state to provide interpreters at all levels of the determination process, however, participants described how interpretation is often done, over the phone from Pretoria, without acknowledgement of the many different forms of Swahili, for example or there is a complete absence of any interpreter at all.

> So, for an example, you arrive (at the RRO) and you are not very fluent in English but you would not be granted an interpreter. So, you would have to quickly get someone from outside (for example, another refugee in the queue) to come and interpret on your behalf. Clients just have to approach almost anyone that they see even if they only speak a bit (of the language) and they are desperate at that point … That then ruins the whole process.

So, you find that somewhere along the way the claim is lost in translation.

**Accessing refugee status and appeal process**

Moving on to the next step in the asylum cycle, which is refugee status determination, a common pattern that emerged from the interviews was the lack of legal expertise of those dealing with applications for refugee status.

> So, most of the people do not know this area of law. In decisions you can get to see that this person really does not understand, they do not understand how to interpret Section 3A of the Refugees Act, for example.
>
> And then I think they also lack the understanding of the guidelines. UNHCR has guidelines on the status determination processes, for example there is a section, I think it's paragraph 96, that talks about the pattern of proof. It's a very long paragraph.

The final point made in the last quote is significant. A few respondents talked about the complexity of guideline documents, pointing out that Refugee Status Determination Officers just do not have the qualifications to use them but also find them intimidating to read. This seemed most common with the Refugee Reception Office and Immigration officers.

Another issue around accessing refugee status was the inability to access an Interview with a Refugee Status Determination Office (RSDO).

> The main problem is those who are on an asylum seeker permit are unable to get their application adjudicated by the RSDO to determine their stay in the country. So, they remain as an asylum seeker for many years.

The most common pattern related to accessing refugee status throughout all the interviews was the time taken for a Section 24 Permit (refugee status) to be awarded by the RSDO. Participants identified implementation as the main reason for delay. Implementation issues are described in Theme 2.

> Applications go through the Standing Committee to say you are now certified as a refugee indefinitely within the country. Even if the interview is done it can take over 30 years for one to get to that point. Previously there was a section within the Refugees Act to say the process should take about six months for the finalisation. However, because of the backlog and other things, they removed that section and so now it says it takes a minimum of 20 years.

In the past, the turnaround time for processing a claim was 180 days, although it was often disregarded. However, there is currently no defined turnaround time for claim processing, which represents a gap in the law as applicants can be on a section 22 permit for years, which has a bearing on their application for permanent residence and citizenship. Apart from the time delays, the other problem identified with accessing refugee status was the fact that claims were often rejected.

> In recent years, like the last two, three years, we have started seeing zero adjudication, zero finalisation or rejection of refugee status. Their status is just found to be unfounded. And now they have to go through all the appeal processes, which takes a long time. So, people remain undocumented in the country while they are still waiting for the appeal processes to kick in.

> The other thing is the enormous rejection of all, or almost all, applications for (refugee status). Looking at the numbers everybody gets rejected. Everybody.

**Appeal process**

If the Refugee Status Determination Officer (RSDO) finds the application for refugee status as unfounded, the applicant can appeal the decision to the Refugee Appeals Authority of South Africa (RAASA), and if it is determined as manifestly unfounded, fraudulent, or abusive, the applicant can appeal the decision to the Standing Committee for Refugee Affairs (SCRA). If both RAA and SCRA arrive at the same decision as RSDO, the applicant can approach the court for judicial review. For stakeholders the main issue was the inordinate time the appeal process took, often with no response to the appeal.

> The massive backlog in appeals is still a problem and when we have done appeals the decisions are not forthcoming. When one of the first things that you ask after you've done the appeal is 'when can we expect a decision?' they refuse to commit to any timeframe. Now, how can you work like that? Say it's three months, say it's two months, say it's six months, but there's an absolute refusal to give a time frame. And then now you have to launch an appeal with the Refugee Appeals Authority of South Africa (RAASA) they are always citing issues of capacity and human resource. I remember in some of the readings that I did, I think last year there were over 40,000 appeals that were still to be heard by the appeals board. And the appeals board doesn't sit every day. And if you are waiting for those appeals you then remain undocumented.

One participant did point out, however, that recently they had seen almost immediate final rejections by the Standing Committee for refugees.

**Application for permanent residency**

Refugees can apply for certification from the Standing Committee for Refugee Affairs (SCRA), confirming they will remain a refugee indefinitely and can then apply for permanent residence through the Department of Home Affairs. One of the issues raised by legal experts and legal advice service stakeholders was the risk of status withdrawal, because of long processing times, when refugees apply for permanent residency. Applying for permanent residence certification carries the risk that the SCRA may determine the individual no longer qualifies as a refugee, potentially leading to the withdrawal of refugee status. This is described in the quote below.

> Currently we are finding that a number of people applying to the standing committee for permanent residence are getting rejected and also their refugee status withdrawn. For example, a lot of Congolese nationals applied at a time when Kabila was still president and their motivation for refugee status was 'I left my country because I am under persecution by Kabila'. Now I'm applying to be certified as a refugee indefinitely to

> open up a way for me to apply for permanent residency. So the response from Home Affairs is that Kabila is no longer president so their status as a refugee is withdrawn. It is leading to a withdrawal of protection for people that have been in the country for over 20 years.

**Arrest and deportation**

A recurring theme in the interviews is the persistent threat of arrest and deportation faced by asylum seekers and undocumented migrants, which are caused by the systemic barriers to accessing the asylum system. Participants reported that individuals unable to formally enter the asylum process are increasingly vulnerable to being charged under Section 49 of the Immigration Act, which criminalises their presence in South Africa, rather than being processed under Section 34, which treats lack of documentation as an administrative irregularity. This shift in legal framing not only exposes individuals to criminal prosecution but also obstructs their ability to present asylum claims.

> Currently people are exposed to arrest because they have not managed to access the asylum system. When they are arrested under the Immigration Act it means that an individual will not get a chance to go to RSDO to explain why they left their country of origin to come to South Africa. The inquiry ends with immigration, we are returning you back to your country of origin. This undermines the principle of non-refoulement central to refugee protection, this is the bedrock of refugee law.

Participants described ongoing fear of arrest among refugees, with one social service practitioner recounting how many women stay within their one roomed homes almost permanently rather than face the possibility of arrest.

> They are very vulnerable to arrest. They are afraid of being arrested all the time this emotionally touches them. They are wondering when the police will come for them. This affects them mentally.

Routine immigration raids in areas where foreign nationals are known to live compound this fear. Participants gave reports of people being detained or deported before they can access any asylum process or the appeals process following status rejection. Language barriers and the lack of legal representation heightens the risk of wrongful deportation.

> At the moment now on a regular basis particularly on Thursdays and Fridays, immigration and police conduct these raids. So, they would arrest a couple on a Friday or on a Sunday evening and their children are alone. Those people won't have documentation so they are then charged in terms of Section 49(1)a of the Immigration Act saying they have entered and remained in South Africa illegally. They appear in court and if they do have our help [legal support] they usually go to bail and bail hearings can be postponed for a year even. The other challenge that we are seeing is the issue of immediate rejection and arrest.

The fear of arrest is such a dominant part of people's lived experience that they stay away from the very institutions that should be assisting them to access their rights as refugees, placing them in a spiral of ongoing non-documentation, risk of arrest and the need to remain invisible all of which pushes already vulnerable individuals on to the very edge of society.

> Another issue is that this fear means they do not want to go to Home Affairs in case they get arrested. Sometimes we have to persuade them to go, it's not seen as a service provider, but more of a policing department.

# THEME 2: IMPLEMENTATION GAPS

Implementation gaps were mentioned by every stakeholder interviewed. They were described as the most frustrating and time consuming issue for practitioners, preventing them from addressing their own backlog of cases. Most importantly though, participants from social and legal non-government organisations made the point that poor implementation not only led to deep practical and emotional impacts on refugees (see Theme 4) but also on their inability as NGOs to offer services to the huge numbers of people that came to their door. This resonates with the title of a recent research report that described the situation faced by service and legal NGOs as one of "Hollow Victories and Little Pockets of Hope"[8]. One participant called the situation 'organised chaos', suggesting that the inefficiencies in implementation were deliberate, whether this is the case or not the picture that practitioners describe is undoubtedly chaotic. Many participants in the research identified the fact that the law and policies were not the major challenge but it was the implementation or non-implementation that was the greatest issue for them. The theme below explores the implementation problems raised by participants.

The pattern of narrative in the data showed that most transcripts include many descriptions of each of the issues explored below and highlighted how the issues are interrelated and complex. The text below attempts to summarise the main issues raised.

**Confusing and inconsistent requirements**

Participants, even knowledgeable and experienced lawyers and legal advisors, find that requirements and processes within the different institutions dealing with asylum processes for refugees are inconsistent and confusing.

> I have two people in detention for lack of asylum papers. I go to the court and they say 'go to bail court' and then the bail court says "No we don't deal with refugees, we do bail". I'm in the process of setting up a meeting with one of the chief magistrates to clarify that, but the thing is there's the new East London Magistrate Court, then there's New Brighton Magistrate Court, and then there's Motherwell Magistrate Court. And in each court, they do things differently. There must be clarity. We want the same

[8] Freemantle, I. and Walker, R.(2020). *Hollow Victories and Little Pockets of Hope: The Challenges Facing Organisations Working with People on the Move in South Africa*. Brot für die Welt.

procedure to be followed in every court.

One lawyer described how she has to check that the process will be run according to law before she takes a client through a process.

> So last week I went down to the immigration officers just to make sure that they are on the same page as the Refugee Reception Office. I did that so that this office doesn't say one thing and the other one says the different thing. So, they agreed, so then I went ahead with the claim.

Both of the quotes above show legal professionals having to set up processes which should be in place and running efficiently.

> You find, you speak to one person who tells you one thing, you speak to the other person who tells you something else, so there's no clarity in the policies. I think the policy may be there but they work on their own discretion which I don't think should be the case, especially in public offices.
>
> For a single matter you have to go to court multiple times, and when you go to court, it's not as if you step in there do your five minute thing and there you go. You go there, maybe wait an hour and a half, and then address the court for 10 minutes and then they say, you need to do something else. So, it's very human resource intensive, because you are waiting, you are not productive.

Legal professionals and practitioners in NGOs described how they cannot cope with the number of cases they have or the people who need assistance.

> So, they come to our office and we can only assist a certain number, being three attorneys. You can only assess. So, we have to turn people away who genuinely need our help and we know how to help them, but we don't have the capacity to do anything which is a sad case.

**Lack of knowledge of frontline staff**

One of the main issues raised by many participants was the fact that frontline staff, and often even higher officials had little idea of the law and policies to be followed.

> We had a case of a separated child and there was a court order from the children's court appointing the aunt as the legal guardian. When we go to Home Affairs to say, this child is a dependent of this person who is a refugee they still could not join that child even after getting the court order. The Home Affairs officials didn't know what was needed and though we kept going back the case was delayed until the child turned 18.
>
> Many people tell us they ask border officials for the Asylum Transit Permit (Section 23) and they were just told to proceed to the Refugee Reception Office.

> The RSDOs, the immigration officers, are lacking in understanding when it comes to refugee law in particular. I don't think they get enough training and [their superiors] do not share the latest judgements, which impact on the legislation. You'll find that there are workshops where valuable information is shared, but it stays with the people who were attending there and they are representing others, but there is no opportunity when they go back to properly share this information and empower the rest. So I think our law enforcement officials and policy implementers are in need of serious training and upgrading of their skills and the knowledge of the relevant policies, national legislation and international treaties which we have bound ourselves to and how to give practical effect to that.

**Disregard of applicable laws**

Participants also described officials, who do know the law and policy, disregarding them, either for their own convenience or for xenophobic reasons. This was raised as a particular issue in regard to responding to case law. Amendments to legal frameworks through case law were seldom known and definitely not applied.

> In fact, Home Affairs has been notoriously slow to amend many aspects of the policies which have been found unconstitutional by the court.

Participants pointed out that this was likely because front line officials had not been made aware of the changes. The quote below illustrates this.

> There have been amendments to the legislation that says fathers can also now register the birth of their children, but this is applied randomly by Home Affairs, some fathers can register their children, others can't. When you point it out they say they are waiting for the National Office to give them new regulations. They still sit with the old regulations that say only a mother can do it.

The Constitutional Court Judgment in the case of the Centre for Child Law v Director General: Department of Home Affairs, found that sections 10 and section 9(2) of the Birth and Death Registration Act 51 of 1992, to be invalid, giving the father the right to register their child without the consent of their mother[9].

**Institutions not set up for scale of requests**

Another common theme that emerged was that the institutions that dealt with asylum issues did not have the infrastructure or personnel to deal with requests.

> So, if there's a hundred, and they assist only nine, that means 91 go unassisted or even if there's just 20 and they only assist five, 15 go unassisted. So, the majority of people who go there, do not get assistance. They remain undocumented for various lengthy periods of time.

[9] Centre for Child Law v Director General: Department of Home Affairs and Others (CCT 101/20) [2021] ZACC 31; 2022 (2) SA 131 (CC); 2022 (4) BCLR 478 (CC) (22 September 2021) https://www.saflii.org/za/cases/ZACC/2021/31.html

Often government officials institute their own strategies for dealing with numbers but people seeking service are not informed of this until they arrive at the Refugee Reception Office, for example, or even when they arrive at the head of the queue, having queued for hours.

> The situation at the moment is quite bad, in that a small number get assisted on given days, nationality days.
>
> They say they are only doing 'just cause' interviews on a Tuesday.

I have a story of a family that came all the way to Durban from Newcastle to Home Affairs (339km away), husband, wife, and five children. They needed family joining (i.e. the children needed to be placed on the father's asylum file). They came on a Wednesday, then the process could not be completed so they came back Thursday, Friday, and the process still could not be completed. They were asked to come on Thursday of the following week. Where were they to stay until next Thursday? Also, somebody sponsored them to come to Durban so they had used the money for the fare back home to buy food for the last 3 days. Someone sent them to (our NGO). It was so distressing, it looked like the children had gone for a few days without taking a bath, they had slept on the street. We found them accommodation but we found it challenging to find the transport fare to get them back. The process was eventually completed because there was a legal organisation to help them.

**Process system failure**

Often the basic needs for operationalizing services are not there. Information from stakeholders highlighted how the refugee status determination process is dependent on the availability of resources, specifically human resources.

> If you have an appointment at the Refugee Reception Office you think you will be assisted, obviously provided that there are sufficient officials, there are translators, the telephones are working and all those normal things!
>
> There are serious technical challenges in the online renewal system.
>
> I sent Home Affairs a list and they gave me a date for six clients to go on Tuesday the 13th, where they will conduct 'good cause' inquiries. If they find there's 'good cause' they will then make an appointment with a Refugee Reception Office. They upload it and send it to the Refugee Reception Office. The Refugee Reception Office then comes back to them in a week with a date, which could be a month or two into the future, and that person must go on that date but there is absolutely no guarantee they

> will be seen on that date. Maybe they say, 'we only see Burundians on Tuesdays' or the computers are not working or…

**Lengthy processing time**

Processing time was identified by almost all participants, often with great impatience and even an angry tone.

> So, let's take a hypothetical example for someone that is coming from a war situation, a valid claim. Then they wait 10, 15 years before getting the hearing at the RSDO – they have a valid claim for being in South Africa, and then they get a Section 24 Refugee status. Then they must wait 10 years again before they're able to apply for certification as a permanent resident. It does not get issued in time (within the 10 years) so the validity of their Section 24 runs out. We've seen so many instances like this and then because you are undocumented, it brings along the other risk of getting arrested for being undocumented. It attracts an admission of guilt, which gives a criminal record for something that was beyond their control.

Some participants described tactics that they had developed for cutting down delays or confusion. The quote below describes how one legal professional has adapted her approach to get the best result for her clients.

> We used to be confrontational with the Department of Home affairs but we realized that they were not willing in any way to help. So, we then decided to change our approach to engagement with individuals which has worked very well. So, it has become very easy for us. Even if we send an application and it takes a little longer to be processed than we expected we are able to follow up with a call even on WhatsApp, straight to the centre manager. Then the attention is given to that request and the permit is processed. It is not dishonest, it is [making sure] it is processed according to the law. So that's one tactic that we have used.

**Xenophobia in the institutional system**

More than one participant attributed lengthy response times to xenophobia.

> In the Refugee Act it says that you have to submit your application for Asylum and the response is supposed to come in six months, but it's not the case. I see that as a situation that is created by the government to delay the processes, to make people confused and irregular. I think it is also to facilitate issues like corruption. Because corruption at the moment is visible.

Some participants discussed the fact that broader societal norms create a xenophobic 'landscape' which allows open prejudice in the street to extend to gross human rights violations at an institutional level.

> The press can demonise people from other African countries. I have seen media reports that describe violence in DRC in such a way that suggests Congolese are violent. So even before people come here as refugees there's a hostile reception. Politicians say things like 'refugees steal jobs, they are criminals'. This creates an environment of distrust creating xenophobia from the general public and in the institutions set up to protect refugee rights.
>
> I think there's a lack of implementation of mechanisms around hate crimes around discrimination and prosecution by the state. I think some people in government also hold xenophobic views, officials too.

In discussion with some participants the issue of securitisation, flowing from xenophobic values, was seen as a reason for the increasingly restrictive legal frameworks (e.g. Amendment of 2017) and implementation barriers, such as lengthy response times and deliberate obfuscation and 'kicking the can along to others'.

> They suppress or subject the asylum seekers and refugees to a confined corner where they can't actually leverage the rights that have been enshrined in the South African constitution.
>
> I think we have moved from humanitarianism, which is what refuge law should be, to securitisation law.

# THEME 3: ACCESS TO SERVICES

Across multiple interviews, participants consistently linked the denial of essential services, particularly healthcare and education, to the lack of recognised legal documentation. They made the point that these systemic exclusions not only contravene international human rights conventions and the constitutional guarantee of basic services but also perpetuate and add to the cycle of vulnerability and marginalisation described in the section looking at unlawful arrest in Theme 1.

As one participant noted, documentation status is the gatekeeper to a wide array of life-sustaining services.

> Banking, healthcare, employment. Most of them because documents are not being renewed in time they are not able to access those essential services and social assistance as well.

**Health care**

This gatekeeping is particularly stark in healthcare settings in spite of the fact that South Africa is a signatory to a number of international instruments that protect the right to access health care. Healthcare rights are also established in the Constitution Section 27 and the National Health Act 2003 Section 4(3) and though present in the 1998 Refugee Act Section 27(9) the 2017 Amendment makes a distinction between

the rights of refugees and asylum seekers and does not specifically include access to basic healthcare. Documentation has become the key to accessing health care.

> If you have to access healthcare services, even if you are a South African, the first thing that the healthcare worker will ask you is your form of identification. And when you are an asylum seeker … your chances of accessing healthcare services become very slim.

This systemic gatekeeping extends into interpersonal encounters with healthcare providers, where documentation status feeds discrimination and neglect.

> Discrimination against people who present as foreign [at] public healthcare facilities. Not providing people who are entitled to healthcare with healthcare services because of misconceptions of the law or wilful non-provision of services.

> I think for me the most impactful stories were the affidavits of the applicants presented in the Section 27 NGO[10] case against the MEC for Health in Gauteng. The narratives presented in the affidavits describe the suffering that people went through with small children dying because of being refused access to health care. There were repeated violations described in this court case; xenophobic discrimination that was felt at a personal and an institutional level. And I think for me, those affidavits are extremely powerful and make concrete what people experience on a daily basis which is literally people losing their lives because they are refused treatment and This is a flagrant violation of the right of access to healthcare.

The consequences of these exclusions are particularly severe for women and children which is why the Gauteng High Court ruling[11] that arose out of the court case described in the quote above is so important. The court ruled that free healthcare covers pregnant women, mothers, and children under six regardless of nationality. However, as discussed in Theme 1 these court rulings are seldom applied so rights violations are likely to continue.

**Education**

South Africa's Schools Act Section 3 ensures basic education for all, including refugees, while Immigration Act Section 39(1) threatens action against institutions admitting "illegal foreigners." The Phakimisa judgement[12] ruled on the contradiction and prohibited the exclusion of undocumented learners. The court decision was enforced by the Department's Education Circular 1 of 2020, allowing identity proof through affidavits. Participants described how, in spite of this positive legislative

[10] See one of the stories presented in the case: also: https://section27.org.za/2025/01/a-refugees-long-journey-to-access-healthcare-in-south-africa/?utm

[11] https://section27.org.za/2023/04/migrant-health-court-order/ Section 27 And Others Vs MEC For Health Gauteng And Others Case No 19304 22 Court Order Default Judgment 14 April 2023 Sutherland DJP

[12] https://lrc.org.za/wp-content/uploads/pdf/Phakamisa-judgment-20191212.pdf

environment children on the move are still frequently denied access to school.

> Schools from the very same education department who put out the Circular (described in paragraph above) still say to parents, 'you cannot register your child, go and ask this organisation [referring to an NGO offering legal services] to write a letter saying you are a refugee'. And if that organisation cannot write a letter, then the child would be excluded. Do we have to write letters and intervene? And often it is because documents are not being renewed in time, then they are not able to access those essential services and social assistance as well.

**Theme 4: Impacts of non-documentation**

While the remit of the MMDIII process may not explicitly encompass the practical and emotional consequences of legal frameworks on refugees, a human rights perspective compels us to explore these frameworks not only as abstract systems. They also need to be seen as mechanisms that deeply shape the lived experiences of displaced individuals. Legal norms, asylum procedures, and institutional practices are not neutral. They determine the extent to which refugees can access protection, security, and dignity. Given this perspective, the research interviews included questions on the practical and emotional impacts of the law and its application. The descriptions of the everyday struggles and hopes of refugees in the face of non-documentation which emerged in this research are presented below. There is a small, but growing body of research literature[13] that explores the impacts of legal frameworks and their implementation on refugees, and readers are encouraged to access this literature.

Though the impacts have been divided into two areas below, practical and emotional impacts are entangled in a complex pattern of 'back and forth', with the one feeding the other. This reality is particularly stark for social service providers as the quote below illustrates.

> And then the struggle with, how do you provide psychological services when people are literally starving or facing eviction or have been evicted?

**Practical impacts**

The practical impacts on the daily lives of undocumented individuals are significant and multifaceted. As the previous themes have shown, access to basic services, including employment, healthcare, education and protection from violence is frequently denied. This legal invisibility leaves people unable to formally work, forcing them into insecure, informal labour such as street vending or piece jobs, often without contracts or protection.

> Even if you are educated and have qualifications you cannot find work to support your family because employers are afraid of the repercussions of employing someone designated as illegal. Formal job application processes

[13] The publication holdings of the following institutions contain some of this research https://sihma.org.za/journal https://www.wits.ac.za/acms https://www.chr.up.ac.za/

are denied to you as they require documentation.

Safe and healthy housing is unattainable as documentation is required for renting, so families are forced to live in informal, often decaying houses rented out at extortionate rates by greedy illegal landlords. Simple acts like opening a bank account or obtaining a driver's licence become unattainable. These daily exclusions perpetuate poverty and vulnerability.

> I go to a place to apply for a job. Hi this is my CV, I am ready to work, and the next thing they will tell you "Where is your paper?" At the clinic you just say, "I am injured, can you help me?" "Where is your paper?" You go to the police, "I want to lay a complaint about someone touched me, someone wanted to rape me", "Where is your paper?"
>
> Undocumented, a year, two years, three years, four years – how do I survive?

Service providers face significant emotional and ethical challenges when supporting individuals without access to basic necessities such as food and shelter.

> If somebody does not have food, does not have accommodation it is so difficult for us to close the office and go home knowing we've left somebody who does not have a place to go and sleep. So it becomes a huge challenge for us.

The sense of moral responsibility described in the above quote underscores the deep commitment many frontline workers feel toward those they assist, particularly in contexts where systemic support is limited or absent.

**Emotional impacts**

The interviews from both social service providers and some legal advisors reflect the emotional distress caused by legal uncertainty, social exclusion and deep poverty that provides no possibility of future change. For many individuals, the bureaucratic processes surrounding immigration documentation are not only frustrating and confusing but also psychologically devastating. One participant recalled clients who had lived in the country for decades being told they had just "14 days to pick up what they've built within 30 years" an upheaval that underscores the precariousness of their legal status. This constant state of insecurity results in significant emotional strain created by the systemic barriers to accessing the asylum system.

> The biggest [impact] for me is the emotional impact... you can hear the frustration in their voices... the desperation when they ask you to do something for them to get their documents renewed.
>
> There are so many challenges that come with failure to access the asylum system... mental breakdowns also come into play.

Lack of documentation not only limits access to basic services but also erodes an

individual's sense of dignity and safety. As one interviewee explained,

> You are subject to extortion, cheap labour. Any South African thinks they can 'ride over you' because you are undocumented. The stigma attached to being undocumented foreign national has turned documentation status into a socially charged issue, sometimes a 'swear word', where 'undocumenteds' are blamed for societal problems.

When discussing the emotional impact of non-documentation research, participants talked about the fact that the everyday realities of non-documentation and its concomitant uncertainty goes against the fundamental need of refugees for protection and a place to feel safe. Fear of arrest, being too afraid to go to the hospital when your child is sick, having to rent squalid rooms without basic services, seeing your children denied access to school, having to take on menial work all because of non-documentation feeds into cycles of depression and deteriorating mental health as well as chronic illness.

> I think one of the things that an asylum seeker or a refugee is looking for after having escaped or run from persecution is to find a place where he will feel protected. Right? Safety, he is able to get a shelter, to get food. Those are the things that are basic for a human being, to feel like I'm a human being again, at least I belong in this community. I can go to the market, I can go to church. I can go to school. I can go to work. All of that allows one to feel that I belong, but the way the system treats asylum seekers and refugees here, you would say that I am not even recognised as a human.

One emerging theme that cannot be ignored is that almost all of the social service participants described the situation as 'worsening'.

> We see in our clients a general helplessness. So, we as service providers cannot solve the systemic problems and the impact this has on people. We have always tried to help people find bits of hope just to keep people going for another day, or another week or another month. Just little bits, sometimes even just symbolic hope to keep them going. It's becoming harder and harder. I used to say it's like finding a 'chappies' (a popular small bubble gum sweet sold by vendors in the streets) but now it's just finding a chappies wrapper. Picking something up that glistens a bit or that has a bit of colour that will get you through another day. It's getting harder and harder.

# 3.1.2 UGANDA

In Africa, Uganda has positioned itself as a 'safe haven' for people fleeing persecution. It offers protection through a settlement-based approach rather than enforced encampment. Refugees are provided land, documentation, and access to services. Most refugees in Uganda live in settlements though there is a growing population in urban areas such as Kampala. This section of the report describes the themes and sub-themes that emerged from interviews with stakeholders in Uganda around general asylum and access processes.

## THEME 1: CHALLENGES WITHIN THE LEGAL ASYLUM CYCLE

Regarding access to documentation within the asylum cycle, Uganda applies two main procedures for refugee status determination, they are described in turn below.

**Prima facie procedure**

The first is a prima facie process applied to people crossing into Uganda from countries with widespread conflict or persecution. At various relevant entry points along the border, officials register asylum seekers individually or as families after security checks. They are then transported to a Reception Centre for further processing, including care for vulnerable individuals. Refugee status is granted there, and ID cards and family attestations are issued. These legal documents allow access to services like banking, education, and settlement land allocation.

> Refugees from Sudan, South Sudan, Eastern Congo, they're granted status by just coming from this location because of the instabilities. Also Somalians get refugee status quickly in Uganda. The documentation is there.

> In Uganda nationals have an ID card, which is an issued document. For refugees, we have a refugee ID card, which serves as an equivalent to a national ID. It's issued by the office of the Prime Minister and they can use it as a legal document in banks, in schools, anywhere they're moving, if they present it. It is a valid identification.

Participants frequently took care to describe the difference between a camp and a 'settlement policy'.

> In terms of international conventions, there is the right to mobility within Uganda. That's why in Uganda they're called settlements. They're not camps. In camps like in Malawi, there's no right to mobility, but here it is a settlement.

**Non-prima facie procedure**

The second form of access is a non-prima facie process that involves a detailed individual evaluation to determine eligibility for refugee status. Uganda's legislation mandates timely application and decision-making. According to Section 19 of the Refugee Act, asylum seekers must submit an application to the eligibility committee within 30 days of their arrival in the country. Section 20 requires that a decision, either to grant or reject refugee status be made within 90 days of the application.

Most participants indicated that the challenges around asylum related to this non-prima facie process of accessing documentation.

> I think, to me, I see more challenges to the individual applicants as opposed to the groups, because when these mass movements are happening, it is everywhere in the news and everyone knows they are being forced. The assessment may not really need a lot of 'nitty gritties' to examine, but if you come individually, they need to really ask you questions. Why are you coming here? Why do you think you're being persecuted? It becomes quite lengthy.

Participants described how the details of definition lead to scrutiny in the case of individual applicants, with particular focus on some nationalities. Legal service providers talked about the need for legal assistance to navigate the system as the interview process can be complex.

> So, what is important is proof of what we call the 'reasonable fear' from your home country, there are certain requirements and conditions that must exist in your country of origin. Because some migrants are economic, they cross the border from another country to look for employment. And those are very many. Very many. So, there is a high level of scrutiny by UNHCR, in conjunction with the Office of the Prime Minister (OPM).
>
> There are some groups, Ethiopians, who might actually have to prove a lot to gain asylum.
>
> It's not that everyone who goes, will be registered, they have to do interviews, they give them appointments. But the other silver lining is that when the person has been verified, even if they have not been issued the real attestation they can be given the asylum seeker certificate, which is good enough.

The asylum seeker certificate, given while the individual waits for refugee status, allows them to access services within the country. Unlike the South African scenario, where the RSDO must make a decision before the asylum seeker is documented.

**Status determination and appeal process**

Once an interview has been conducted the application is referred to the Refugee

Eligibility Committee and refugee status is either accepted or rejected. If rejected, the applicant can appeal to the Refugee Appeal Board. Participants saw this step as particularly difficult and, therefore, required a legal representative.

> Generally, there is just not enough legal representation. This can lead to denial of status because of a simple lack of knowledge of the law.

Another gap identified was related to the Appeals Board. It has wide powers under the Refugee Act, and those powers are clearly spelt out under Section 16 (2) of the Refugee Act 2006 (Chapter 312 of the Laws of Uganda) and Regulation 37 (2) of the Refugees Regulations, 2010. It has powers to confirm or set aside the decision of the Eligibility Committee, it can also refer back the decision to the eligibility committee for further consideration and decision, it can also order the Eligibility committee to rehear the application, and it can as well dismiss the appeal entirely.

However, a gap is created by the fact that the commencement instrument (Statutory Instrument No. 14 of 2017) states that the Appeals Board decision is not final. It raises a question of what happens next if the decision isn't final.

> I think what happens is that if you apply and you succeed 'well and good'. If you apply and they don't grant you status you have no recourse.

Documentation is policed and usually followed by deportation, hence to avoid this, some of the asylum seekers decide not to present their claims.

> Also some could be knowing they will not have a claim so they choose not to register and they stay undercover.

Individuals do have the right to a court case if they are arrested because of non-documentation but most individuals have no access to legal representation so they face deportation. This violates the principle of non-refoulment which is provided for under Section 41 of Refugee Act, 2006.

> The police can arrest you. So after arresting you, then they can charge you and the court decides what happens to you. The court could decide for you but in most cases the court will tell you, you are here against the law. It is the law that says you can be deported. So deportation is one of the key things which can happen.

Participants did not discuss the conditions of detention and deportation though a few did indicate that they knew of no cases of human rights violations. On a more general note, it was difficult for interviewers to delve below the surface around violations of law in Uganda unlike in the interviews in South Africa where stakeholders were vocal about discrimination or human rights violations. It would take further research beyond the scope of this study to understand why this was the case.

> I have not really seen reports of the police or army violating human rights

of refugees.

> So far, if you ask any Ugandan, we'll tell you, ah, refugees here are very peaceful. Sometimes they're enjoying even more rights than the nationals.

> The government says to refugees, “You are here so just try to blend into the community. Look at what the certain morals here say and try to play along to avoid being pointed out as anti-social”.

A few participants working in legal aid raised the issue of voluntary repatriation as a relatively underutilised and understood option for refugees who wished to return to their countries of origin.

> I think if you look at the Ugandan context the policy is really comprehensive. What needs to be added or to be made more clear I think should be on voluntary repatriation. I think if someone sees that there is peace in my country or the region of my country and they have a feeling I can go back and make ends meet. I think this can be supported, there needs to be more effort to make awareness, publicity that it is an opportunity, a possibility

Linked to this was the lack of clarity in the law about repeat movement back and forth across the Ugandan border. The back-and-forth movement without declaration serves as one way to circumvent the tedious process of reapplying for refugee status and is an understandable tactic in the context of ongoing conflict in many countries that wanes and then flares time and again.

> There is always an issue with that, where we have seen some refugees, repatriating voluntarily but unofficially. They cross back maybe to South Sudan because that is their country. Anyway, they'll just quietly, but they were a refugee in Uganda. They still have their cards from four years ago. You can understand the case of South Sudan or DRC. These have been fragile states for many years so there is no guarantee of stability so I would think twice before I declare that I'm leaving and hand over my refugee status back to the government. What if anything happens, I have to come back and register again, go through the process. So they choose to walk back without notifying authorities. It's not clear in law what to do.

## THEME 2: IMPLEMENTATION GAPS

There was little discussion around implementation gaps in the context of prima facie cases and the process from entry to settlement. The discussion focussed on the gaps in the non-prima facie cases.

> Uganda is doing well. I think what I'd look at is trying to open up and improve the registration services in the city because this is where we are seeing a lot of issues. Some people say, I don't know where to go, where do I grow? Such things in the city for the urban refugees, but for those using

> the settlements most of the time, they're really straightforward.

Outside the settlement context in urban or rural areas of Uganda participants agreed that one of the main challenges was a lack of information for individual refugees or families about how to proceed with the asylum process.

> There are some refugees who go to live in small towns or in the country, they come in where there are no reception centres. We have seen them when we do our work and they say they're refugees, but they say we are not yet registered. They are seeking information. How should we register?
>
> And also, some people may come in and they don't know where to start to even get information on the right processes.

Another implementation gap was the large number of people applying at the Kampala office. This made access complicated and time consuming for both refugees and the service providers.

> It's the time, but also if you ever find time one day to go to OPM in Uganda. From the entrance there's always an influx of people. So there are many people and then there is the process it takes to verify. It is time consuming for service providers and for refugees who do not always have the money for transport to return.

To cope with the numbers the office often allocated certain days for different countries without advertising the fact, resulting in many applicants having to return repeatedly. Social service providers spoke about the fact that many applicants either came from the edges of the city or outside Kampala and this meant high transport costs, which many simply did not have.

> There are adults who when they go there irrespective, they'll not be registered because at that particular time, OPM will say, no, we are not registering new people from this particular nationality.

Another implementation issue raised was officials sending people from common conflict areas, who usually pass through border reception posts to register at these border posts. This had been the case recently with refugees from DRC who were escaping recent conflict and could not register as they entered the country because they did not use the border points.

> Because of the recent DRC conflict there was an influx of people from DRC, most were being registered at the border points. So those who found their way into Kampala were being asked to first go get registered there. But you might have just run across the border to get away from the war, which is what people do. People take different routes and may cross far from a reception point and make their way to Kampala as the capital city. So that was a very big challenge. So they would arrive, they don't have transport, and then they're being told, go to a particular place and they

> can't, they don't have money. So it seems like the process of crossing into the settlements is easy enough, but it's when people end up in an urban environment.

# THEME 3: ACCESS TO SERVICES

**Health services**

While Section 27 of the Refugee Act does not directly state healthcare rights for refugees and asylum seekers, Section 28 mandates Uganda to uphold international commitments, including the 1951 UN Convention, which guarantees refugees access to healthcare equal to that of nationals. In line with the 2016 Comprehensive Refugee Response Framework, Uganda has integrated refugees into national planning. The Ministry of Health's Health Sector Integrated Refugee Response Plan (2019–2024) ensures that both refugees and host communities receive essential healthcare services, with a focus on preventive and promotive care such as vaccinations, nutrition, and emergency referrals.

In the settlement context, refugees have access to government health services. Most other services are provided by international and local NGO implementing partners. Child protection services are also provided by NGO implementing partners. There are health service challenges in settlement contexts though. These include underequipped health centres, lack of qualified staff and clinics that are far from places where people live. Many participants talked about the dearth of mental health services.

> People are traumatized from the wars they ran from and there are few, very few NGOs that offer mental health services. There is such a need.

As previous themes have described there are refugees who remain undocumented. Almost all of these people are in urban areas with some in countryside towns. Participants indicated that the main challenge for undocumented refugees is access to services, including health services.

> Sometimes people do not get documents, for example in the Kampala office they will tell you to go back to a reception centre at the border to get proper registration but people do not have money for transport. Of course, these people are really impacted, because when you don't have documentation that means you can't receive support. You cannot access social services, bank services at times, even health services. Some health centres require you to bring documents.

One of the themes that emerged was the fact that there were refugees who chose to leave settlements for urban areas due to the perceived better livelihood opportunities in the urban areas.

> The urban life is quite tricky and despite all that, there is a new influx

> of people leaving the settlement to come to the urban setting because they believe that it's easier to survive in the urban setting. You can sell tomatoes and still make a living. You can wash someone's clothes in comparison to the settlement, especially after the recent food cut. So the city is receiving very big numbers. So specifically this month of May, our NGO has had people flocking and most of them are from the settlement. They're registered in the settlement, but now they're struggling to get rent, food, medical needs so they approach NGOs.

Social service participants pointed out that the open refugee policy is based on the idea that refugees who have the means to support themselves are those who can move to the city. However, some refugees that move to the city are faced with challenges because of the limited support for urban refugees.

> Once you choose to be an urban refugee, that means you're able to sustain yourself in the urban area. So to me, these are some of the challenges that you find urban refugees in a very poor state. But because they want to be in urban areas, they're not able to support themselves. They have families, they have children. At the end of the day, you find children suffering, not being able to access or to be provided with the best necessities.

**Access to education**

Access to education is acknowledged as a fundamental human right in the 1995 Constitution of Uganda. Building on this principle, the Universal Primary Education (UPE) policy of 1997 and the Universal Secondary Education (USE) policy of 2007 promote inclusive access to basic and secondary education for all children, including refugees and asylum seekers. The Refugee Act of 2006 further reinforces this commitment by granting children on the move the same right to basic education as Ugandan nationals. Additionally, the Education Act of 2008 emphasises that both primary and post-primary education in public institutions should be provided free of charge. Many participants described how though the law allowed access, economic realities impacted on access to education as certain hidden costs make education costly.

> Children often have to pay fees to sit national exams at the end of primary and secondary school. On top of that, some schools add extra charges for things like registration, school development, and meals. These extra costs make it hard for many refugee families to keep their kids in school, leading to more dropouts.

# THEME 4: IMPACTS

As explained in the section on 'impacts of legal policy' on refugees in the South African section it is important in a human rights paradigm to acknowledge that legal impacts are inextricably entangled with social impacts. In fact, most participants in the research placed much emphasis on social impacts. Some participants raised the issue of land in the settlements.

> The fact is the land that they're given is not always enough for them to completely support themselves even though they're also given food. There's assistance with food.
>
> Host communities and OPM have to come to agreements and this takes negotiating. You cannot expect from a reality point of view to give everyone enough land. Land is really a resource for everyone.

The other reality in refugee settlements was the lack of economic opportunities, which is why some refugees move to urban areas, as described earlier. One participant spoke about the need to build economic opportunities within settlements and to broaden economic skills.

> What is key is really supporting these refugees. Skills which could make them use the little land to do some activities which can fit on a smaller piece of land. I also think vocational training is key. To support refugees, get skills and start applying them within their own communities in the settlements. I think there are opportunities, for example, if you look at things like value addition to agricultural products, this is a big opportunity. If you look at the other skills for example. It can be even catering because there are service providers who do different activities within the camps.

Others discussed the fact that there is a growing movement of refugee-led initiatives, which they saw as a positive factor.

> We have refugees who have organised themselves and they have very good gathering groups, which NGOs actually have. We also have CBOs who are doing their best to organise teams into smaller groups like savings schemes. And they start that, and then the team can actually look at the savings and then put up a project and this can be supported to legalise it. And they start getting businesses from NGOs and other actors.

Most participants working for NGOs or government services in urban areas discussed the deep poverty that many urban refugees lived within. This is described in previous themes.

One important difference between Uganda and South Africa was the reported absence of xenophobic attitudes towards refugees. Most participants attributed

this to the norms encouraged by the Ugandan government positioning itself as a country that welcomes refugees. One participant described how this policy had been communicated and encouraged across society from a mass media level to a local community level. This awareness raising takes place within the refugee and national population.

> Around settlements and in the urban areas, OPM makes public the idea to refugees that if you have come to Uganda, look at your host community, try to learn their way of doing things. Don't live alone, it helps you to coexist. Because these are the people who have welcomed you, respect their norms and the local community must try to respect them. Other NGOs are also doing this. It is also encouraged in schools; the schools are shared by both refugees and the host community without discrimination.

# 3.2 COMPARING GENERAL ASYLUM ACCESS AND PROCESSES: UGANDA AND SOUTH AFRICA

The tables below, based on what emerged from the stakeholder interviews, present a summary of the key differences between Uganda and South Africa under each theme.

## 3.2.1 SUMMARY OF KEY DIFFERENCES: CHALLENGES WITHIN ASYLUM PROCESS

### Uganda

**Access to the System**

- Prima facie system is smooth: Refugees from countries with active conflict (e.g., South Sudan, DRC, Somalia) are granted status quickly.
- Non-prima facie system is challenging: Requirements are complex, individual assessment, burden of proof is high and lack of awareness of the processes.
- Strict deadlines: Application must be made within 30 days; decision required within 90 days, but delays occur.

**Documentation**

- Refugee ID cards issued: Equates to national ID, allows access to services (banks, education, land).
- Asylum seeker certificates: Issued, during delays offer some rights.
- Lack of documentation leads to risk: Risk of arrest and deportation if found without documents.

**Legal Representation and Appeals**

- Minimal legal support: Many lack legal assistance during status interviews, leading to rejections.
- Weak appeal mechanisms: Refugee Appeal Board has only advisory powers, cannot overturn decisions.
- Limited access to courts: Court recourse exists but is not always effective, deportation still common.

**Cultural Attitudes and Government Policy**

- Generally hospitable climate: Refugees perceived as well-treated, government promotes integration.
- Ambiguity around voluntary repatriation: No clear guidelines on crossing back and forth.
- Some asylum seekers remain undocumented by choice: Avoid registration due to fear of rejection.

## South Africa

**Access to the asylum system**

- Access is extremely difficult: Major bottlenecks in accessing Refugee Reception Offices (RROs).
- Barriers at entry: Lack of information on visas, few Section 23 transit visas issued.
- Penalisation for illegal entry: Contrary to national and international law, many are arrested instead of processed.

**Language Barriers**

- Severe lack of interpreters: Interpretation often inaccurate or unavailable.
- Claims 'lost in translation': Refugees rely on informal interpreters, compromising credibility.

**Documentation**

- Systemic exclusion: Refugees often remain undocumented for years.
- Slow processing: It can take decades to be granted refugee status.
- Backlog in appeals: Over 40,000 pending appeals, no guaranteed timelines.
- Zero adjudication trend: High rejection rates, with claims labelled "manifestly unfounded".

**Legal Representation and Appeals**

- Lack of legal knowledge among officials: RSDOs often poorly trained in refugee law.
- Credibility treated simplistically: No structured framework, benefit of the doubt rarely applied.
- Appeal process ineffective: Appeals take years, many never receive responses.

**Arrest and Deportation**

- Widespread fear of arrest: Due to non-documentation or failed

asylum attempts.

- Criminal charges under Immigration Act: Individuals treated as criminals, not asylum seekers.
- Routine raids and detentions: Refugees avoid services and remain hidden, worsening their vulnerability.

**Risk of Status Withdrawal**

- Permanent residency process risky: Applications can lead to review and withdrawal of refugee status.
- Change in home country politics used to revoke status: e.g., Congolese refugees losing protection after regime change.

# TABLE SUMMARY OF KEY DIFFERENCES: CHALLENGES IN ASYLUM CYCLE

| Issue | Uganda | South Africa |
|---|---|---|
| *Ease of entry* | Generally open, especially under prima facie | Highly restricted, barriers at border and RRO |
| *Language access* | Less prominent as an issue, effective systems in place | Major obstacle: inadequate interpreting services |
| *Documentation* | Accessible under prima facie: delayed under non-prima facie | Extremely delayed: many remain undocumented |
| *Appeal process* | Limited; Appeal Board has no authority to change decisions | Some legal mechanisms are substantially backlogged |
| *Deportation risk* | Exists, but lower: relatively rare rights violations within deportation system | High: routine detentions and exacerbated by arrest by non-immigration and security officials e.g. traffic wardens and citizens |
| *Cultural-political climate* | Refugee-friendly: integration encouraged | Increasingly securitised: xenophobia and exclusion prevalent |

# 3.2.2 SUMMARY OF KEY DIFFERENCES: IMPLEMENTATION GAPS

## Uganda

**Focus on urban refugees:**

- Main gaps exist in non-prima facie cases, particularly for urban and rural refugees.
- Urban refugees lack clear information on where to go and how to start the asylum process.

**Geographic accessibility issues:**

- Refugees in small towns and rural areas often miss registration entirely due to absence of reception centres.
- Kampala office overwhelmed: high number of applicants, long queues and slow processing.
- Refugees face high transport costs returning multiple times due to unadvertised nationality-specific registration days.

**Informal exclusion and redirection:**

- Adults from certain nationalities are turned away on specific days because of strategies devised by local officials.
- Refugees from DRC redirected to border posts despite being in Kampala — causing hardship for those without transport or arriving via alternate routes.

**Settlement system fewer implementation gaps :**

- Within settlements, registration and processes are considered straightforward.

## South Africa

**Widespread systemic dysfunction:**

- Described as "organised chaos" - policy exists, but non-implementation is the biggest challenge.
- Refugee-serving NGOs overwhelmed, unable to meet demand due to backlog and staff shortages.

**Inconsistency and confusion:**

- Legal professionals face contradictory instructions from different courts and officials.
- Inconsistent procedures across locations, requiring extra verification and preparation by lawyers.

**Lack of staff training and awareness:**

- Frontline staff unaware of basic laws, policies, and even court orders (e.g., guardianship for minors).
- Case law not implemented due to poor communication or wilful ignorance by officials.

**Institutional incapacity:**

- System, including infrastructure unable to handle volume which means many applicants go unassisted.
- Frequent use of unannounced nationality-based days and quotas created by local officials, causing hardship for applicants.

**System failures and delays:**

- Appointments do not guarantee service, infrastructure failures (e.g., broken computers, lack of interpreters).
- Processes can take over a decade, leading to legal limbo and risk of arrest.

**Xenophobia and securitisation:**

- Institutionalised xenophobia delays applications and fosters mistreatment.
- Media and politicians reinforce negative stereotypes, affecting public and official attitudes.
- Shift from humanitarian to securitisation logic, eroding refugee protections.

# TABLE SUMMARY OF KEY DIFFERENCES: IMPLEMENTATION GAPS

| Issue | Uganda | South Africa |
|---|---|---|
| *Urban access* | Limited information, costly travel | Chaotic and inconsistent |
| *Process clarity* | Better in settlements | Confusing even for legal experts |
| *Frontline knowledge* | Acceptable | Widely criticised as inadequate |
| *Capacity and infrastructure* | Kampala office overwhelmed | Home Affairs has trained staff in some divisions and infrastructure but the challenge is political will and decision making creating broad systemic issues |
| *Attitudes* | Open and accepting, some issues around land | Xenophobic and institutionalised, affects delivery |

# 3.2.3 SUMMARY OF KEY DIFFERENCES: ACCESS TO SERVICES

## HEALTH SERVICES

### Uganda

- Refugees (documented) have access to government health services.
- Health services are supplemented by international NGOs in settlements.
- Challenges:
    - Health centres in settlements are often underequipped.
    - Mental health services are extremely limited and mostly unavailable.
    - Undocumented refugees are sometimes denied access due to lack of papers.

### South Africa

- Access is highly dependent on documentation.
- Despite legal rights, asylum seekers face denial of access due to administrative gatekeeping.
- Systemic and interpersonal discrimination is common in healthcare settings.
- Women and children face severe consequences, including deaths due to denied care.
- Court rulings (e.g., Gauteng High Court) mandating free care are often ignored.

## EDUCATION

### Uganda

- Children on the move are legally entitled to the same education as Ugandan children.
- UPE and USE policies support access to primary and secondary education.
- Barriers:
    - Distance to secondary schools.
    - Hidden costs (exam fees, meals, registration) lead to dropouts.
    - Undocumented refugees face exclusion from school.

### South Africa

- Legal framework (Schools Act & court rulings) supports access for all children, including undocumented.
- Contradictory laws (e.g., Immigration Act) create confusion and school-level rejection.
- Schools demand documentation despite Circulars allowing alternatives.

- NGOs are often needed to intervene on behalf of undocumented children.

# LEGAL DOCUMENTATION & ACCESS TO SERVICES

## Uganda

- Lack of documentation limits access to:
    - Health care
    - Education
    - Social services
    - Banking
- Refugees unable to reach border reception centres remain undocumented, especially in urban areas.
- Urban refugees are assumed to be self-reliant, but many live in extreme poverty without support.

South Africa

- Non-documentation is a central barrier to nearly all forms of services.
- Impacts include:
    - No access to formal employment, health care, or education.
    - Legal invisibility leads to housing insecurity, extortion, and unsafe work.

# MENTAL HEALTH AND PSYCHOSOCIAL SUPPORT

## Uganda

- Very limited mental health services – most provided by NGOs
- NGOs that offer such services are scarce despite high trauma prevalence.

## South Africa

- Refugees face constant risk of arrest, emotional stress related to basic needs layered on to past traumatic experiences leading to mental health problems.
- Emotional toll of documentation struggles is significant.
- Refugees experience depression, anxiety, and feelings of dehumanisation.
- Social service workers express burnout and moral distress.
- Increasingly, they describe clients' situations as hopeless and worsening.

# URBAN VS. SETTLEMENT EXPERIENCE OF ACCESS TO SERVICES (UGANDA-SPECIFIC)

- Refugees in settlements have better structured access to services via NGOs and government.
- Urban refugees often lack support, face rising costs, and fall outside the formal aid system.
- Urban migration is driven by the hope of economic survival but leads to greater hardship.

# 3.2.4 SUMMARY OF IMPACTS OF NON-DOCUMENTATION

## Uganda

**Practical Impacts**

- Barrier to basic services: Non-documentation limits access to education, healthcare, food aid, and livelihoods programs.
- Exclusion from official refugee registration: Especially common among urban refugees who miss registration at border points.
- Limited economic opportunity in settlements:
    - Land is often too small for full self-sufficiency.
    - Vocational and small-business development is needed but underdeveloped.
- Urban poverty:
    - Urban refugees face extreme poverty due to lack of access to both formal support and jobs.
    - Many turn to informal, precarious, or exploitative work.

**Emotional Impacts**

- Chronic uncertainty amongst undocumented: Non-documentation fosters a continual sense of instability, fear of arrest and deportation.
- Support exclusion: Those without documents are alienated from formal refugee networks and aid structures.
- Emotional strain due to unmet needs:
    - Affects self-worth and motivation, especially in urban settings.
    - Some respondents noted the need for hope, opportunity, and recognition to regain dignity.
- Lower levels of xenophobia reduce emotional distress:
    - Hostility from locals is less severe compared to South Africa.
    - Governments and NGOs promote integration and mutual respect.
- Emerging resilience: Refugee-led initiatives (CBOs, savings groups) suggest some emotional empowerment and community solidarity among those affected.

## South Africa

**Practical Impacts**

- Severe exclusion from services:
    - Non-documentation results in being denied access to healthcare, education, legal protection, employment, or housing.
- Pervasive legal invisibility:
    - Undocumented individuals cannot open bank accounts, sign leases, or get driver's licences.
- Exploitation in informal economy:
    - Many do 'piece jobs' or vending without contracts or safety.

- Constant fear of arrest, extortion, or deportation.

- Denied formal employment despite qualifications:
  - Employers refuse to hire without documentation.
- Loss of human capital:
  - Talented youth are denied schooling and future prospects, leading to wasted potential.

**Emotional Impacts**

- Desperation and emotional breakdowns:
  - Service providers report rising mental health crises.
  - Long waits and repeated rejections from the asylum system create psychological trauma.
- Systemic dehumanisation:
  - Refugees feel erased from legal and social existence ('not even recognised as a human').
- Social stigma and internalised shame:
  - Being 'undocumented' becomes a form of social branding or marginalisation.
- Fear dominates everyday life:
  - Fear of arrest, eviction, or not getting medical help when needed (e.g. when a child is ill).
- Service provider burnout:
  - Frontline workers experience moral distress and hopelessness due to inability to help.
- Collapse of hope:
  - Participants speak of no longer being able to offer even "symbolic hope" to clients.

## TABLE SUMMARY OF KEY DIFFERENCES: IMPACTS

| Issue | Uganda | South Africa |
|---|---|---|
| Access to a 'good enough' living | Limited in urban areas but some community-based, NGO, and settlement supports available | Nearly complete exclusion without documentation |
| Xenophobia | Generally low, due to government-led integration efforts | High: social stigma and scapegoating of undocumented foreigners |
| Legal consequences of non-documentation | Exclusion from services and risk of detention/deportation | High risk of arrest and systemic abuse |
| Emotional landscape | Stressful but some space for resilience and community mobilisation | Deep emotional trauma, increasing hopelessness, and psychological collapse |

# 3.3 FINDINGS CO2: PROTECTION, RIGHTS REALIZATION AND DOCUMENTATION - CHILDREN ON THE MOVE

This section of the report presents findings on interviews with stakeholders who work with children on the move as described in Central Objective 2 (CO2). As outlined in the introduction (Section 1) to this report, the aim was to understand the extent to which legal frameworks promote the rights of children on the move to protection, documentation and access to services.

Given that children's access to protective asylum is mediated through general migration laws and refugee policies the challenges faced by children are similar to those experienced by adults within the asylum and refugee systems. This section of the report needs to be read in conjunction with the findings on general asylum issues.

## 3.3.1 SOUTH AFRICA

This section of the report describes the themes and sub-themes that emerged from interviews with stakeholders in South Africa around asylum and access processes for children on the move.

### THEME 1: KEY BARRIERS TO ACCESSING DOCUMENTATION

A prominent theme that emerged from the interviews deals with challenges in accessing birth registration which, if not completed at birth, creates problems later in life, including exclusion from asylum processes and basic rights.

**Accessing birth registration**

Birth registration is a fundamental right that forms the foundation of a child's legal identity and ensures access to essential services such as education and healthcare. The legal framework of this process includes: the Birth and Death Registration Act 51 of 1992 (BDRA), the Identification Act 68 of 1997, and the South African Citizenship Act 88 of 1995 (SACA).

One challenge related to birth registration is discriminatory or exclusionary policy proposals. One participant expressed concern over recent developments in South Africa's 2024 White Paper on Citizenship, Immigration, and Refugee Protection, which includes a proposal to deny birth certificates to children born in South Africa to non-South African parents. The proposed policy suggests such children should obtain documentation from their parents' countries of origin. This move was seen as a significant step backward from the more inclusive 2010 amendment to the

Citizenship Act that came into effect in 2013, which had allowed foreign children to be registered at Home Affairs[14]. Participants viewed this proposed policy change as regressive and potentially harmful to children's futures.

> I'll just speak on the contents of the 2024 White Paper because in this new White Paper they left out most of those things that they were proposing in the 2017 White Paper, which I can tell you were good proposals. But all those things were dropped out of this new White Paper. I think one of the big issues with this White Paper is where they are proposing actually not issuing birth certificates to children who were born in South Africa saying they should go to their embassy and get their birth certificates there. And then also there's the big issue of wanting to reverse the Citizenship Act of South Africa, which says that foreign children who were born in South Africa to foreign parents, if they can prove that they've lived here for all their 18 years, can apply for South African citizenship when they reach 18.

Apart from these concerns about proposed changes to citizenship, participants highlighted a range of existing structural, legal, and practical barriers that prevent timely or successful registration of births.

> When you work with refugees you realise that most of the children who have been born in South Africa, the majority of them do not have birth certificates.

Hospitals and health clinics are a common point of obstruction in the birth registration process. The usual procedure is to obtain a 'proof of birth' from the hospital or clinic after delivery. This is required to register the birth, within 30 days, with the Department of Home Affairs (DHA). Multiple participants described cases where mothers, those with formal documentation and those with refugee documentation such as asylum seeker status, were denied proof of birth by healthcare facilities.

> The parents are documented and they want now to have their children documented. It becomes a back and forth from the health clinic that delivered the child, back and forth. It becomes so stressful for them to get out of those clinics with proof of birth. It is even worse if they are undocumented.
>
> We've had to go to hospitals with the client to get proof of birth, to maternity. We have managed to do this. When we advocate, they get the proof of birth.
>
> But proof of birth! Hospitals deny them proof of birth saying that their documents are not valid, not 'real documents'. But they need the proof of birth. If they go to Home Affairs they can show that, 'yes', I gave birth in South Africa and this is proof'. And then the child can be documented.

[14] https://www.google.com/url?q=https://www.lhr.org.za/archive/news/2013/new-citizenship-laws-now-effect.html

As the quote above illustrates 'proof of birth' is essential for initiating the registration process at the Department of Home Affairs.

> It is basically impossible for them to register the child without 'proof of birth'.

Even when proof of birth is eventually secured, obtaining a birth certificate is difficult. When refugee parents attempt to register the birth of a child born in South Africa at Home Affairs they cannot register the child if they are undocumented. Given the challenges in obtaining asylum or refugee documentation described in the findings on CO1 in this report, this means that registering children born to one or both parents who do not hold current legal status in South Africa is impossible. This is in spite of the fact that in the Naki vs Director-General of Department of Home Affairs (2018) court case restrictions on birth registration based on parental immigration status were ruled unconstitutional, affirming that all children have the right to birth registration regardless of their parents' status[15]. The main problem identified by stakeholders was the fact that Home affairs officials did not know about or chose to ignore the case ruling.

Given the fact that birth registration is difficult to access, many people apply survival tactics to access registration for their child. They do not always understand the implications of this, especially at the age of 18 when the child's file gets separated from the guardian and they have to independently apply for asylum.

> You get these really complicated cases. People are desperate to get their child into school but they need a birth certificate so they ask a friend who has refugee status to register the child but 18 years later, that creates a huge problem.

Even when parents are documented their child is issued with a handwritten birth certificate, whereas South African citizens receive digital birth certificates, which are processed electronically and recorded in the national population database. The handwritten certificates are not always recognised as valid.

> Some of them, yes, they do have the handwritten birth certificate, which when you try to apply for education in local schools, sometimes they do not admit that birth certificate because they say it's not a real birth certificate, it's just a representation of, or it's a paper that shows that you were born in South Africa.

These accounts reveal a multi-layered system of barriers, legal, bureaucratic, and institutional that impede birth registration for migrant and asylum-seeking children. One participant explained how the many children 'lost in the system,' without any official recognition, face not only exclusion from services and life as a contributing adult but also increased protection risks.

[15] Centre for Child Law v Director General: Department of Home Affairs and Others (CCT 101/20) [2021] ZACC 31; 2022 (2) SA 131 (CC); 2022 (4) BCLR 478 (CC) (22 September 2021). https://www.saflii.org/za/cases/ZACC/2021/31

> So many children are undocumented and these children are particularly vulnerable even though the Children's Act calls for the best interest of the child. It's very difficult to get child protection agencies to do anything for undocumented children, for example to remove a child from an abusive parent.

**Challenges related to informal fostering and joining and separating family files**

Another recurring challenge raised by participants in the research was the fact that Home Affairs, when issuing asylum claims, records only biological children on parent's claims/files but not those who arrive in kinship care or foster arrangements (which are common when people escape conflict and help a lone child to safety or bring a relatives child with them ). These children are often excluded from documentation entirely and fall through the cracks of the asylum process. One participant described how previously Home Affairs applied a more flexible household-based approach to documentation.

> Previously they (Home Affairs) when people came in with their own children and relatives. For instance, I came in with my own children and my sister's children. They declare all those children at Home Affairs. Previously Home Affairs would include them in the file. They registered as a household. And then I think a few years back, I can't tell you how many years back, that changed and they stopped including relatives or foster children. Even if that child came with the family.

> Officials now restrict inclusion on a parent's file to biological children only. So, they document the adults and the adult's own children, but they won't document the foster children, which for me, I say, "What are you doing? The child is now lost to the system".

The South Africa's Refugees Act (No. 130 of 1998), SA Constitution and the Children's Act (No. 38 of 2005), allows for documentation of children under kinship arrangements or foster care, however the implementation is problematic. DHA may not always recognize the child as a legal dependent, especially if there is no formal court order granting guardianship or foster care or formal proof of relationship to their caregivers.

Other challenges raised were cases where a child arrives in the country after a parent and the parent finds that they cannot easily be added to their file as a dependent.

> We know that children who come after their parents are often not getting added to the parent's case. So we have parents who come to us for help, "I tried to get my kid added to my file when they came to South Africa. I think I went on 50 occasions! Now the school will not take them". All the documents are in order but it's very unlikely that the children will be added to the parent's file.

Some participants described how some Home Affairs officials refused to register or

add a child to a parent's file until they had undertaken a DNA test to prove the child was theirs. A DNA test is impossibly expensive for refugee parents and though some service providers described paying for these tests they did not have the funds to do this in every case. The child, therefore, stays undocumented.

The complexity of some of the cases service providers face is illustrated by the two quotes below. This complexity, which derives from the social realities caused by the nature of being a refugee, poses challenges and it is understandable that stakeholders and officials struggle to 'unwind the strands'. It is, however, the mandate of the law and those who implement it to deal with such cases, because if they do not, they deny a child the right to protection through legal status.

> I have a young client whose cousin in the DRC gave birth to a child and the mother then died so this young woman took this child as her own. In DRC she registered the child as her own so she has this birth certificate. She then came to South Africa. Now she wants to get that child onto her file. But Home Affairs says she has to prove that she actually is the mother. And a DNA test would prove that she isn't.
>
> This client came to us for assistance to register for asylum. We helped her and there was one child in the family that she had declared as her own at Home Affairs. Then a couple of months down the line, another client came through to say this is her nephew, she had thought the child was lost but recognised him at the beach one day so now this child is with her. And then you start looking at the case, he needs to be moved from one file to another but this is a classic case of a child that is in actual limbo and he is almost 'aging out' (turning 18) now. We've been through Home Affairs on numerous occasions. We've taken it to the UNHCR. We've gone through a whole process, but nothing's happened. He's here with his aunt, he's undocumented. And we can't get through that process.

Participants attributed some of these issues to a lack of training among Home Affairs officials, particularly in relation to best practices for assessing children's claims. Officials are reportedly unprepared or unwilling to assess children on their own merits, despite the availability of guidelines in Refugee Status Determination procedures. This gap in practice reflects broader concerns about the system's capacity to respond to the lived realities of displaced children and families, as well as the absence of consistent procedures for children's claims to be fairly assessed and documented.

# THEME 2: UNACCOMPANIED AND SEPARATED CHILDREN

While South Africa's Children's Act provides a legal framework for the protection of children, participants described a system that is often unable to meet these obligations largely because of a lack of policy implementation and institutional coordination.

A fundamental mechanism to protect unaccompanied children is the 2022 amendment to the Children's Act (Section 150) which extended the definition of a vulnerable child "in need of care and protection" to unaccompanied children on the move. Under the amendment children who are identified as unaccompanied should be referred to a designated social worker who will investigate their circumstances. The child should be placed in alternative care which includes, placement in foster care, a Child and Youth Care Centre or temporary safe care.

One of the problems, highlighted by a number of participants, was how many social workers did not apply this legislation, mostly because of lack of knowledge of the law or how to apply it.

> It was surprising to see how many social workers come across unaccompanied and separated migrant children, but they don't know what to do. They don't know what to assess. They just do the intake and give the child food parcels. There is a process, this child is not documented, alone living within the community with other people, and the government is not aware that this child exists.

> It's the capacity of the social workers; they need to be capacitated. There are proper processes to be followed, including doing some assessment or follow ups with the families that are staying with this child. They're brought to the attention of the social workers, maybe a community member comes and says, "I took in this child, he is alone". Then the social workers will say, "No, the only children that we cater for are those in the CYCC". We need to train them that yes, children can also live within the community, but we need to be aware of them. The law allows them to access services as any other child. So, the capacity, a lot of training is needed.

One stakeholder explained that there was a lack of standard operating procedures for social workers to follow. Their ability to do best interest determination for unaccompanied and separated children was limited. In the absence of guidance or clear pathways, the system often defaults to inaction. Although children's courts are mandated to issue care orders and appoint legal guardians, social workers admit that they do not always understand the law or how to work within it.

> We find legal things 'to be a bit tricky,' referrals to court are not always timely or effectively managed. To get children placed… that's what consumes the majority of our time.

Other participants pointed out that even when a child is identified by a social worker as unaccompanied or separated and placed into alternative care it is almost impossible to get them documented.

> So, the biggest challenge that we see is just access to the asylum system, the first step in the process. Unaccompanied and separated children are almost never registered by the Department of Home Affairs. I have not in my four years in this position seen one unaccompanied child documented.

> I've seen a few separated children who had guardians documented. Unaccompanied and separated children face such insurmountable procedural and administrative barriers.

A few participants identified the fact that many different government departments had to be involved in facilitating access for unaccompanied children to the asylum process which made their task difficult. This was exacerbated by the lack of cooperation between these departments. A lack of standard operating procedures was another issue identified.

> One reason is that there's all these different actors that have to come together in order to get the child registered. So, if you're talking about an unaccompanied child, the children's court has to issue an order to the Department of Home Affairs to register the child. Even sometimes when that happens, the Department of Home Affairs is not doing it. Sometimes the child is not accompanied by a legal representative so there is no legal knowledge at Home Affairs. Eventually, and this is an issue not just for children, there's been so many different interactions and trying to get the child registered that everyone gives up. Initially they are referred by DSD to the court and maybe then the child is with a guardian or in a CYCC, and then they're back and forth between DSD and the courts and Home Affairs to try to get the child documented.
>
> This has been a point of contention between DSD and DHA because DSD has said, “We do all the steps that we need to do in terms of bringing the child through the court process and getting the court order, but then you guys on your end are not documenting the child”. Attempts at getting joint Standard Operating Procedures between the two departments have failed so far.

Delays in documentation and lack of inter-agency communication mean that placement in a CYCC is often treated as a temporary fix that becomes permanent by default.

> Oftentimes we think, oh, at least this is a solution for now. But it's not.

These placements, while intended to provide immediate safety, do little to address the long-term needs of children, particularly in the absence of plans for family tracing, local integration, or repatriation. The system’s inability to move beyond temporary placements leaves children in limbo, potentially for years. One participant gave a striking example of this situation.

> A girl from the Democratic Republic of Congo who entered South Africa in 2014 and has remained in a CYCC ever since. Now 14 years old, she has been in an institution for 10 years with no progress on documentation or durable solutions. The CYCC said they were stuck with that case, not knowing that they can bring these kids to the attention of Home Affairs,

A further set of challenges arises at the point of admission to shelters or care facilities, where documentation becomes a gatekeeping mechanism. One respondent described how shelters funded by the Department of Social Development often turn away undocumented children, even those born in South Africa.

> When you call firstly to that shelter where they are receiving children, [they ask] “Are they documented?” When you say “No” they tell us “Unfortunately we cannot receive the children because we work with children that are documented”. So, children are becoming homeless.

Perhaps most troubling is the lack of awareness about policies guiding alternative care among local actors. One participant recounted how, in some communities, unaccompanied children are placed with families informally, without any legal framework or oversight.

> They just take the child. The social worker says, “Let’s just look for a family”. We give that family [the child]. Sometimes they (DSD) don’t even give support to that family. In such cases, children often shift from one home to another.

Child protection is supposed to monitor (foster care) but this rarely happens in practice.

Together, these accounts reveal a care system that lacks the coordination, capacity, and accountability needed to meet the needs of unaccompanied and separated children. Without clear pathways for documentation, consistent interdepartmental communication, and adequate oversight of placements, children risk becoming ‘stuck’ in institutional care, excluded from services, or subject to informal arrangements that undermine their rights and well-being.

# THEME 3: ‘AGING OUT’ OF THE SYSTEM

**Aging out of dependency status at 18**

Upon turning 18, children who were previously included as dependents on a parent's asylum file are required by Home Affairs to open a separate file and apply independently for asylum or refugee status. This process often involves an interview with the Refugees Status Determination Officer, where the young adult must provide a valid asylum claim. Any irregularity will prejudice the young person being granted asylum.

Some participants described the challenges that young people face if their parents have abandoned their claims, disappear, return to their countries of origin or die in South Africa. In these circumstances many young people are trapped by the system with no way out.

> The mother received her asylum and the child was placed under the

> mother's file, then the mother decided to leave. This child has now turned 18. The child has the asylum paper with her mother and herself. The last time the document was renewed was 2019. We sent someone to the Home Affairs Refugee Reception to ask what we do in these circumstances. They said, "The mother's document is invalid, she needs to renew it so that we can remove the child from her file". But the mother is nowhere to be found. So, the child is stuck in South Africa with an expired permit but cannot renew because the mother hasn't renewed! The social worker asked social development about the case and they can't assist. This child is on their own with no documents.

Another issue raised by participants was the fact that when young people attend the interview with the Refugee Status Determination Officer, they have little knowledge of the reasons for flight as they entered the country when young so 'good cause' is impossible to identify. One participant noted,

> The child's claim is rejected because the children say, "We do not know the reason why we are forced to leave our country of origin". This leaves the individual without status through no fault of their own.
>
> This is made worse by the fact that parents seldom talk about why they left their country of origin often because it is a traumatic experience to recount events or they want to protect their children.

One participant talked about the need for the legal framework to respond in a flexible manner to child cases. One promising action, in this regard, is the establishment of a provincial task team in the Western Cape that has created new spaces for inter-sectoral coordination.

> The task team is still in its infancy, but it's promising in terms of starting to look at children as children and not just migrant children.

**Children in care who turn 18**

One of the issues raised by a number of participants was the moral and legal disconnect between the protections offered to young adults who have grown up under state care and what happens when they leave care. There are currently no routine mechanisms for assessing and documenting these youth upon turning 18, nor is there a structured process to support their legal independence from parents or guardians who may no longer be present.

> Now they have become adults. What options do they have for documentation? And they are stuck. Because they came as children, they cannot go to [the] refugee reception centre and say, "I want to claim asylum". The barriers they face are both legal and bureaucratic. Young adults who were brought into the system as undocumented children do not qualify for asylum as new applicants, and they lack the legal pathways available to adult migrants.

There were participants who worked as legal advisors for children in care, they described some of the complex processes they have to go through to try any route they can to get documents for the child. In many cases especially for separated and unaccompanied minors documentation through the permanent residence permit exemption becomes the only alternative.

> Normally for abandoned children in children's homes, the last resort is to apply for an exemption application. It goes directly to the Minister of Home Affairs because the minister is the only person who can make a decision on that one. They need special circumstances to be granted permanent residence in South Africa. Normally, they take a long time to be processed and actually I can say in most of the cases, they're only processed when we start threatening going to court or we send a letter of demand and that's when you see maybe action is being taken. If I can look at our previous cases, most of them have only ever got decisions when we threatened launching cases in court, that's when they would jump and give us the decisions.
>
> The minister in most of the cases, really does not attend to those matters on time and considering that this is a matter that is affecting a child's life we feel the minister should really prioritise these cases.

Linked to this was the fact that care institutions, foster care managers and social workers do not create a transition plan which often leaves the young person in legal limbo.

> The problem is with the CYCC, they do not know how to do proper intake processes for unaccompanied and separated children when they arrive. The sooner this is done the better because the child may remember something. They wait till the child is 16 or even 18, they call us and say, “This child is turning 18 next week and they have no papers, what do we do?” Children have aged out, they've become adults because DSD has done nothing. And it's been a perennial sort of problem.

There is little understanding of best interest determination and tracing and reunification processes.

> Social workers tread very carefully on whether to document these children or to repatriate these children, or look for durable solutions. A child having arrived in South Africa, maybe at six, they just stay in the CYCC, there is no exploration of what the durable solution is. Shouldn’t we start with family tracing? If the family tracing and reunification fails, then we explore the available options including fostering these children into South African homes or having to document these children as South Africans.

Ultimately, these gaps reflect a broader failure of the child protection and migration systems to coordinate long-term solutions for undocumented and vulnerable children. Until clear policies and protocols are put in place to address aging out,

children will continue to fall through the cracks at the very moment when they are most vulnerable.

# THEME 4: CHILDREN AT RISK OF STATELESSNESS

Statelessness is a condition where individuals are not recognised as citizens by any country.[16] It prevents people from fully accessing a broad spectrum of civil, political, and socio-economic rights. Without legal citizenship, they are left without official identity, excluded from political participation, and denied basic services like education, healthcare, and job opportunities.

Although only briefly mentioned in the interviews, the theme of statelessness is a significant issue in the South African context. It often results from a combination of earlier barriers, especially lack of birth registration and delays in documentation leading to the eventual loss of any formal legal identity. Stakeholders flagged that children aging out of the system without documentation are particularly vulnerable.

Participants described statelessness as an outcome of both institutional neglect and regulatory ambiguity.

Section 2(2) of the Citizenship Act allows a stateless child to apply for citizenship when no other country recognises the child as a national. However, implementation is severely hampered by the absence of formal procedures and the fact that a child needs a birth certificate to apply for citizenship.

> There is no particular process that is followed. Previously there was a court judgment[17] where they said the minister must promulgate regulations so that you can get the necessary documentation. So currently we don't have that, and the applications are made through an affidavit where a lawyer will then be assisting that child.

This regulatory vacuum has created a situation in which the Department of Home Affairs routinely refuses to accept or process Section 2(2) of the Citizenship Act applications. Participants ascribe this to a lack of internal guidance within Home Affairs.

> Home Affairs will refuse the application and say "We don't want to deal with this application because no one has told us how to do this particular application when it comes to us".

One participant pointed out the generational nature of statelessness.

> If a child was born in the republic and is stateless, and they now become an adult, they will have children also. Then statelessness will be a generational thing, their children don't have documentation because the parents don't

[16] Blitz, B. K., & Lynch, M. (Eds.). (2011). *Statelessness and citizenship: A comparative study on the benefits of nationality*. Edward Elgar Publishing.

[17] Khoza v Minister of Home Affairs and Another [2023] https://www.saflii.org/za/cases/ZAGPPHC/2023/1275

know what to do.

The failure to address statelessness is not only an administrative issue but also a failure of political will. One participant recalled that during South Africa's most recent reporting to the African Committee of Experts on the Rights and Welfare of the Child, the issue of statelessness[18] was explicitly raised.

> The committee did pick it up and made recommendations for the Department of Home Affairs. The Department of Home Affairs did not believe that the recommendations of the committee were worth implementing.

This dismissive attitude by the Department of Home Affairs suggests that statelessness is not regarded as a priority issue, despite its potential to compound over generations and create enduring cycles of exclusion.

Participants discussion of the issue described the urgent need for regulatory clarity, interdepartmental coordination, and political commitment to address the rights of stateless children. Without these, South Africa will likely continue to fall short of its obligations under both domestic and regional child rights frameworks, and a growing number of children will remain outside the protection of the law.

# THEME 5: IMPACTS OF CONSTRAINED ACCESS TO DOCUMENTATION

**Practical Impacts on Children**

Across contexts, undocumented and displaced children face a wide range of immediate and long-term practical consequences that significantly constrain their development, wellbeing, and future opportunities. These impacts are not abstract but manifest in concrete and often devastating ways.

One of the most immediate consequences is exclusion from education and employment opportunities. Children who grow up without legal documentation find that their lives come to a 'standstill' when they reach adulthood. As one South African participant explained,

> Your life is... on standstill... To rent a house, you need a document, to get a job, to open a bank account, get a driver's license, you need a document.

These bureaucratic barriers translate into stalled transitions into adulthood and forced dependency, regardless of a child's talents or aspirations.

> Their friends go to university or they're doing courses or they're doing this and that and they can't do anything. They are stuck. So, I can imagine what

[18] https://www.lhr.org.za/lhr-news/reflecting-on-the-43rd-ordinary-session-of-the-african-committee-of-experts-on-the-rights-and-welfare-of-the-child/

> it does to a young person psychologically and in every other sphere of their life because when you turn around a document is needed, you have to have a document for everything that you need to touch.

Even in cases where children excel academically or in extracurricular fields such as sports they are systematically excluded from advancement due to documentation barriers.

> Somebody else that does boxing and even though they can get into competition and do really well, the fact that they don't have proper documentation means that they are left out in terms of both getting scholarships or getting to take part in tournaments.

One participant talked about the 'tragedy' of children with immense potential being left to 'hustle'.

> I can tell you about a family from the DRC. Both parents came together with two children and then had four more in South Africa. Very bright children. The two oldest that they came with were on their father's file. The mother's file is separate. The father went to the appeal board and finally, after 18 years, had his appeal hearing and his claim was rejected, which means that the two older children who are now around 20 basically have also been rejected and must also leave. So, they are just hustling, working on the street for vendors and pushing trolleys. The youngest one, we got into a small school and she's doing exceptionally well there. But now the school is asking for papers and now she will lose her space there. It is a devastation we can't actually face ourselves. The older one is a very bright young man. They're gifted young people and it is just a complete waste of human potential. They're not going to go back to Congo. There's nothing there. They don't know anybody. So, they will hustle their way underground here, with no opportunity to realise even a tiny bit of their potential.

Another spoke about how the lack of documentation impacted on access to basic needs; legal precarity leading to lived deprivation.

> Parents and children over 18, who have left school cannot get good jobs that allow for regular rent, so they are evicted. The informal economy has limited opportunities, especially when people live in areas where everyone is poor. Hunger, hunger is the biggest challenge we face. And then the struggle with, how do you provide psychological services when people are literally starving or facing eviction or have been evicted?

What the quotes in this theme illustrate is that children affected by documentation challenges are not only blocked from long-term opportunities but are also made vulnerable to immediate forms of harm and exclusion that shape the trajectory of their lives in deeply harmful ways

**The emotional burden of being undocumented**

The emotional and psychological impact of constrained access to documentation emerged as one of the most consistent and urgent themes across all stakeholder interviews. While practical consequences, such as being denied education or healthcare, were significant, many participants emphasised that these barriers often translated into deeper emotional distress, especially as children reached adolescence and adulthood. These emotional impacts include fear, hopelessness, exclusion, anxiety, and a diminished sense of self-worth, often compounding over time.

Several participants described the way documentation barriers compromise children's sense of identity.

> It has an impact now on their overall psychological wellbeing. We always have to make sure that they provide them with counseling to help them understand that they still belong even without that necessary birth certificate that is needed for them to access services.

One service provider explored how the document becomes a symbol of belonging. Having a document suggests that things will change in the future. So the document holds emotional power.

> We have a youth group and I have tried to understand this focus on documents. Obviously, it is important for survival but I think the document is a starting point, I don't think it's the whole story. They live in a landscape of deprivation and 'unbelonging', very few say they have friends. They say they don't trust anyone. I think the un-rootedness comes from being forced by circumstance or war or poverty into another country. The document then becomes the symbol. They hang their hopes for the future on it. It will take them out of poverty, it will take away the psychological alienation they feel from not belonging here, from being uprooted. The document is what people hang their hopes onto.

The sense of not belonging, of existing on the margins, was a common thread. Even when children were embedded in social institutions such as schools or care centres, the looming uncertainty of their legal status cast a long shadow over their emotional state. This uncertainty is especially acute for children in Child and Youth Care Centres (CYCCs), many of whom face the daunting prospect of exiting state care at the age of 18 without documentation, support, or a legal pathway to remain in the country.

> They're always concerned about what's going to happen tomorrow, fear of maybe being detained, and there's no one to come there and assist them. Turning 18 becomes a moment not of celebration or transition, but of crisis.

> So there's a lot of hopelessness. At the end of it all. And especially those who are in care, they are stuck because they only have a court order. They have reached the age of majority, they have done their matric and they have performed very well, and then they're told "No, if you don't have a study permit or a passport you cannot access tertiary education". There is a lot of desperation and a lot of hopelessness, and I see this, and especially with young girls. Once they finish matric they're stuck. They become hopeless. So it's stress, desperation, and hopelessness at the end of it all.

Participants described how emotional anxiety, depression and fear is at its height as young people approach 18.

> I think more and more it happens as they get older and they realise I don't have this document. You don't have to worry about it as a child, but as you reach 18 and you have goals and you have hopes for your future, and suddenly you realize, actually none of this is for me. Then there's this resentment towards parents as well. "Why did you bring me here?" There's resentment towards South Africa.
>
> Another issue is that as children they cannot be deported, they are protected by the law from deportation, but obviously the moment you reach the age of 18, that protection falls away. So now you've got that fear that you are now at risk of being arrested or detained or even deported.

Some participants pointed to the broader sense of exclusion and disorientation that undocumented children experience in society. Even those who have lived in South Africa since early childhood often feel they do not belong. One participant recalled asking a young woman who had been in South Africa since she was a child, "Where do you feel you belong?" Her answer: "We will always be foreigners in this country". This internalised sense of foreignness is not simply a legal issue, it is deeply related to mental wellbeing.

Taken together, these testimonies illustrate that the emotional consequences of non-documentation are not incidental, they are central. Fear, anxiety, exclusion, and hopelessness permeate the experiences of children on the move, often beginning in adolescence and intensifying into early adulthood. These effects are compounded by systemic barriers and institutional limitations producing a profound emotional toll that deserves greater attention in policy and programming.

## 3.3.2 UGANDA

This section of the report describes the themes and sub-themes that emerged from interviews with stakeholders in Uganda around asylum and access processes for children on the move.

It is important to highlight a general point before exploring the more detailed themes that emerged from discussion with stakeholders around children on the move. Several participants made the point that the lack of explicit child-centred migration policy in Uganda limits the visibility and prioritisation of children within the broader refugee response. Although there are broad national child protection laws in Uganda, participants highlighted that without policy instruments tailored to the specific needs of children on the move, protection and rights access will continue to fall short, especially in resource-constrained settings.

> Our law, the refugee policy, is not specific about children, especially when it comes to unaccompanied and orphan children, it's not very specific about that.
>
> There is a good legal framework for protection of children in Uganda, and we have been using that to address the rights of refugee children but the legal framework is not specific on refugee children.

This general point suggests the need for work on a legal framework that addresses the specific protection of refugee children.

# THEME 1: ACCESS TO DOCUMENTATION

Many of the systemic issues and barriers affecting the general asylum process (See Section 2 CO1) in Uganda similarly impact children on the move. One of the key factors is that the legal and implementation landscape of access to asylum in Uganda is governed by a bifurcated system that affects children as much as adults. Those living in settlements experience markedly different conditions and challenges compared to their urban counterparts (see Section 2 CO1). There are, however, challenges that cut across both contexts, for example, birth registration and the difficulties related to informal fostering. Both the cross-cutting issues and those specific to particular contexts are explored below.

**Birth registration**

A number of participants raised the issue of birth registration in settlements. Stakeholders described that while the legal and institutional frameworks for birth registration exist, implementation is irregular and often hindered by funding constraints. The National Identification and Registration Authority (NIRA) manages birth registration. To register the birth of a child at NIRA, refugees must provide a birth notification record (which is often called a short-term notification) which is given by a health facility and a copy of a valid refugee ID or family attestation card. Unlike nationals and immigrants, refugees are not charged a fee for birth certification. One of the challenges described was that health facilities in settlements did not always supply a notification.

> In theory, children born in health facilities should receive short-term notifications, but in practice this does not always happen, the facilities are

> busy and many informal in the way they run and sometimes women give birth at home.

Even with a short term birth notification there are still significant barriers, most notably, the cost and difficulty of transportation. This is because refugee settlements are typically located in remote rural areas, while the necessary NIRA offices are situated in distant district centres. NIRA can visit refugee settlements to undertake birth registration but participants described funding restrictions.

> NIRA can go on the ground to give long-term birth notifications. They can do outreach but they say it is always depending on the funding capacity. So many children are not registered.

The law also makes provision for undocumented asylum seekers to register the birth of their children.

> The law provides that if there is a 'declaration of intent' with the OPM or UNHCR to apply for a refugee document, such a parent can register the birth of their child.

The issue is, therefore, one of implementation rather than a gap in law.

**Challenges related to informal fostering**

One of the significant challenges highlighted by stakeholders is the informal nature of many foster care arrangements which impacts on documentation of children. This is linked to the issues discussed under unaccompanied and separated children (see Theme 2). Often, community members or refugees themselves take the initiative to care for children without engaging formal procedures or notifying authorities. Young people arriving alone or separated often make their own decisions about who to live with.

> Rhino Settlement has a lot of children that come on their own and they join a family. Like in my own family, we have about three boys that we live with, and all of these guys left their parents in Sudan, but we lived with them for 10 years. Also, those refugees sometimes see kids alone and they try to make sure that they accommodate them when it comes to registration. So, they register them in the same card.

> There's no one who identifies family for them. It's themselves that identify some of the families. For example, like if you're in the 'reception' inside that big fence and you may get to know some of those families who speak the same language. Then they just add you with them, as family, when they register. Or sometimes you can meet in the vehicle (from the border entry point). You speak the same language. As you reach the reception, they register you because they know all of you are running from the same war. The refugees are not lying, they just don't know the policy.

> If you're still new in the country, you don't know what the policies are there. Sometimes you just go to a family, they just need support. Sometimes they don't open up to UNHCR to tell them they are alone.

After registering, the child may not stay with the family as they do not support them. They often move from one family to another or choose to stay with other young people. Stakeholders pointed out that often this can create long-term legal invisibility. Without official recognition, children are unable to access services, including education and healthcare, and cannot be easily traced by authorities or support organisations.

# THEME 2: UNACCOMPANIED AND SEPARATED CHILDREN

Unaccompanied children face the most acute risks within Uganda's refugee protection system. Participants described challenges ranging from lack of consistent guardianship to increased exposure to abuse and exploitation, to difficulties navigating the documentation process without adult support.

The major issue raised was that refugee policy was not specific about how to deal with unaccompanied or separated children.

> Our law, I've read through the refugee policy. It is not specific about that... when it comes to unaccompanied and separated children , it's not very specific about that.

This vagueness means that while general national child protection laws, they do not translate into consistent or adequate provisions for children on the move, particularly those without family support. As a result, unaccompanied children often fall through the cracks of both national child protection systems and the refugee response framework. Another participant echoed this concern, stating plainly,

> The policy existing does not cater to the needs of the unaccompanied children. I don't think that there is [a] special law that [is] speaking about them in a special way. Refugee [response] does not specifically have a policy for abandoned children.

In settlement areas, initial screening and profiling of unaccompanied children takes place at border transit centres. According to one respondent, this is where,

> They will be paying attention to the children who are there, and especially those that are unaccompanied, those that look sick, so that these children can be properly flagged and supported when transferred to camps.

Yet, as described in the section on informal fostering, this system has limitations. Even when a child is identified as unaccompanied the absence of trained service organisations who are often overstretched leads to children being placed in foster care without adequate provision for documentation or monitoring of care and

protection. One model described was to place young people in their own household in the settlement close to another family's supervision, not necessarily under the same roof. While this flexibility may be necessary in overburdened settings, it raises questions about consistency and quality of care.

Participants describe the situation of unaccompanied children in urban settings.

> Usually in Kampala are those cases who have come with their parents. And the parents die, or the parents disappear or they abandon the children and now they're living on their own.

Such scenarios lead to increased exposure to harm. As one child protection actor described, many unaccompanied or child-headed households drop out of school to find work. The main form of response to unaccompanied children in urban areas is through the community and service organisations. As described in Theme 1 community members may also take action directly, alerting authorities when a child is abandoned or when protective action is needed. The care of service providers is often comprehensive and careful.

> We place children with foster families and keep monitoring systems, like a database of the children who are placed with foster parents and we make sure that this child is actually going to school and cared for.

In practice, this means that services like shelter, psychosocial support, and case management are often provided on an ad hoc basis, typically by civil society or non-governmental organisations rather than through formal state or UNHCR systems. It was often community members that identified and referred unaccompanied children.

> In cities and settlements, referrals often depend on informal community knowledge rather than institutional processes. If people in a community know that, okay, there is this agency that supports children, then they will bring them there or they will come there.

This ad hoc system places an undue burden on communities to navigate complex and disjointed service networks and means that children who are unaccompanied or outside of community structures may be overlooked entirely.

Even when a child is identified by a service organisation the challenge was, not only to support them in accessing documents but to find safe foster care for them. Service providers raised the issue of the scarcity of suitable foster homes, in both settlement and urban areas, particularly those that align with children's linguistic or cultural backgrounds.

> There are very few who agree to foster children because there is nothing given to maintain the child. People feel this puts their family in danger of not enough to maintain themselves.

The main gap in both the urban and settlement context, was the absence of a formal functioning foster care network that would make sure children were identified, registered and then protected. This was also identified as a legal gap.

> We don't have a mechanism yet for foster care. I've not seen it in any of the organisations where such children are taken into foster care. Each organisation does what they think is best. I've not seen a formal policy in the urban refugee network or in settlements.

As a result, many children remain in informal care arrangements with little to no official follow-up. This creates uncertainty in their living situations, lack of access to support, and absence from official records that would be needed in the future. It was clear that the government systems were available and able to register unaccompanied and separated children but the absence of a centralised system through which children could be identified was the main issue.

> The process becomes a bit more prolonged and sometimes it means children cannot go to school but officials are tasked with confirming the authenticity of each case, a process that is there.

In summary, the absence of a child-focused migration policy in Uganda has concrete implications. Without specific policy instruments, children on the move, especially those who are unaccompanied or separated, remain insufficiently protected, and the response depends heavily on the capacities of overburdened NGOs. Participants were clear that until the refugee policy explicitly addresses the unique vulnerabilities and rights of children on the move, gaps in implementation and protection will persist.

## THEME 3: FAMILY TRACING, REUNIFICATION, AND REGISTRATION BREAKDOWNS

Family tracing and reunification are supported by strong legal and policy processes. International laws, especially the Convention on the Rights of the Child (CRC), to which Uganda is a signatory, emphasises the importance of tracing and reuniting children with their families as a critical factor in supporting their emotional, mental, and physical well-being, provided this aligns with the child's best interests. Article 7 of the CRC guarantees every child the right to know and be cared for by their parents, while Article 22 obliges governments, UN bodies, and NGOs to cooperate in locating the families from whom children have been separated. In Uganda, where large numbers of children are in displacement, family tracing and reunification efforts are especially important. According to Section 4(1) of Uganda's Children's Act, every child has the right to live with a parent or guardian. In practice, the tracing and reunification of separated and unaccompanied migrant children in Uganda are mainly handled by international agencies. The Ugandan Red Cross is responsible for managing all reunification cases within the country, whether within or between settlements, while the International Committee of the Red Cross (ICRC) handles

family tracing that involves crossing borders.

Only a few participants discussed family tracing and reunification with most saying that they referred the children to “The Red Cross”. One of the few participants who did discuss the issue was a child protection officer who noted how difficult it was to undertake the process.

> I think one of the challenges is that in most cases they don't have the right information, of course, because they're children. They may share information and then as you're speaking to them, the next day's different, totally different information. It takes to build trust with these children, we use play and are always caring so they feel safe enough to share accurate information about their background and needs.

Beyond these practical implications, participants talked about the psychological and emotional burden children face when separated from family and caught in uncertain or bureaucratically complicated living arrangements.

## THEME 4: PRACTICAL AND EMOTIONAL IMPACTS

Participants described how the lack of proper documentation and family support contributes to a form of invisibility that has practical impacts. Without papers, children are excluded from school or forced to drop out.

In settlement contexts, the main issue raised by participants was the fact that the practice of informal ‘fostering’ at registration leads to practical problems. If the family who has brought the child into the settlement withdraws their support or the child moves on, they are undocumented.

> For instance, if a child is registered under a guardian’s attestation certificate and that guardian does not want the child, the child may be unable to access food rations, education, or healthcare.

Participants described the practical and emotional impacts on children abandoned during foster care.

> “This is my aunt”, or “This is my uncle”, no one verifies. Then when the family settles they have to survive also and they don’t want the child so they get moved from one guardian to another. Some change repeatedly.
>
> I may not be feeling comfortable because I may be feeding on their food every time. So that one also can bring psychological trauma.

There was also discussion of the protection risks that unaccompanied children who have not accessed the formal system are exposed to. One participant described them as “set free” not in the sense of being liberated but rather left to navigate a

complex and often hostile environment without protection.

> These children are almost set free. And the fact that they're set free, anyone can use them for their own gain. I can take a girl child from the refugee centre and I take her as a sex worker, she's looking for work. In some places like on the road to Gulu you see this a lot.

Participants in social service organisations described the lack of mental health and psychosocial services in both settlements as

> Shocking. That's why sometimes we see people doing suicide in the camps. There is a mental health crisis that is not discussed. The displacement, trauma and memories is made worse for children who are unaccompanied or fostered.

These testimonies point to an urgent need for psychosocial support and safe, stable environments where children can reclaim a sense of safety, identity, and future. Despite the urgent nature of these emotional impacts, structural reforms to address them remain limited.

# 3.4 COMPARING ASYLUM ACCESS AND PROCESSES FOR CHILDREN ON THE MOVE: UGANDA AND SOUTH AFRICA

## 3.4.1 SUMMARY OF KEY DIFFERENCES: ACCESS TO DOCUMENTATION

### South Africa

- Birth Registration
  - Fundamental right but challenging when the parent is undocumented.
  - Registration depends on a proof of birth from the hospital, often withheld from undocumented or refugee mothers.
  - Even when proof of birth is secured, obtaining a birth certificate can be challenging.
  - Late birth registration is challenging
- Legal Framework and Challenges
  - BDRA, Identification Act, and SACA govern birth registration.
  - Proposed 2024 White Paper threatens inclusive provisions, proposing that children born to foreign parents must register in their parent’s country of origin.

    - Naki vs Director-General ruling affirms every child's right to a birth certificate regardless of parent status, but DHA often does not implement this.
- Discrimination Against Refugees
    - Children born of non-South African citizens receive handwritten birth certificates that should be digitized
    - Formal and informal barriers (e.g., DNA test requirements, denial of proof of birth) impede access.
- Challenges in Family Registration
    - Only biological children can be added to parent files.
    - Complex cases arise when children are separated from parents or cared for by relatives, making registration nearly impossible.
- Implication
    - Without documentation, children risk exclusion from services (school, health), vulnerability to exploitation, and loss of legal status.

## Uganda

- Birth Registration
    - Framework allows for birth registration of children on the move, regardless of status, through NIRA and OPM.
    - Challenges arise due to inconsistent implementation and delays, especially in rural settlement areas.
    - Health facilities sometimes fail to provide birth notifications, complicating the process.
- Logistics and Cost Barriers:
    - Refugees must often travel long distances from remote settlements to NIRA offices.
    - Outreach services by NIRA happen only if funding is available, leaving many children unregistered.
- Informal Fostering and Registration Challenges:
    - Common for unrelated or extended family to care for children, making formal registration difficult.
    - Registration often occurs informally, relying on trust and verbal declarations within communities.
    - Without formal legal status, children can be left undocumented, making it difficult to access services or trace relatives.
- Lack of Formal Foster Care System
    - No official foster care or child protection structures in urban or settlement areas.
    - Reliance on NGOs and ad hoc referrals leaves many children unseen and unsupported.
- Implication:
    - Similar to South Africa, many children fall through the cracks due to systemic delays, bureaucratic hurdles, and the absence of formal foster care arrangements.

## TABLE COMPARISON OF DIFFERENCES: ACCESS TO DOCUMENTATION

| Issue | Uganda | South Africa |
|---|---|---|
| Urban access | Limited information, costly travel | Chaotic and inconsistent |
| Process clarity | Better in settlements | Confusing even for legal experts |
| Frontline knowledge | Acceptable | Widely criticised as inadequate |
| Capacity and infrastructure | Kampala office overwhelmed | Countrywide systemic breakdown |
| Attitudes | Open and accepting, some issues around land | Xenophobic and institutionalised, affects delivery |

# 3.4.2 SUMMARY OF KEY DIFFERENCES: UNACCOMPANIED AND SEPARATED CHILDREN

## Uganda

- Policy Gaps:
  - Refugee policy lacks specific provisions for unaccompanied and separated children.
  - General child protection laws do not effectively translate to the needs of refugee children.
- Screening and Registration:
  - Initial screening occurs at border points, focusing on identifying unaccompanied and at-risk children.
  - Formal and standardized foster care is largely absent, making long-term placement and follow-up challenging.
- Care Practices:
  - Care often depends on ad hoc or informal arrangements within the refugee community.
  - Children placed in foster care based on language or ethnic connections, often without formal oversight.
- Implementation Challenges:
  - Services are largely reliant on NGOs and CBOs, with the state providing minimal direct support.
  - Registration and access to services are delayed due to transportation costs and logistical constraints.
- Implication:
  - Unaccompanied and separated children often fall through the cracks due to the lack of formal policies, long-term planning, and

systemic support.

## South Africa

- Policy Framework:
  - Legal provisions under the Children's Act (amended in 2022) define unaccompanied children as in need of protection.
  - Formal pathways for referral to social workers and placement in alternative care (foster care, CYCCs) are defined.
- Implementation Challenges:
  - Social workers lack training or understanding of their legal obligations, leading to inconsistent or incorrect practice.
  - Legal and procedural delays arise due to miscommunication and fragmented responsibilities between the DSD (Department of Social Development), DHA (Department of Home Affairs), and the courts.
- Documentation Barriers:
  - Unaccompanied and separated children rarely gain legal status because of lack of documentation options under the Immigration Act.
  - Social workers and service providers struggle with making children 'visible' to authorities and accessing long-term documentation.
- Care Practices and Oversight:
  - CYCC placement often becomes a long-term 'default' solution rather than an interim measure.
  - Informal foster care is common, with little monitoring or support for children and their carers.
- Implication:
  - Despite robust legal frameworks, systemic deficiencies in implementation, training, and coordination leave unaccompanied and separated children at risk of institutionalisation, invisibility, and rights violations.

# TABLE SUMMARY OF KEY DIFFERENCES: UNACCOMPANIED AND SEPARATED CHILDREN

| Issue | Uganda | South Africa |
|---|---|---|
| Policy Framework | No specific provisions for unaccompanied/separated refugee children. General child protection laws not adapted for refugees. | Legal framework (Children's Act 2022), explicitly includes unaccompanied children as "in need of care and protection." |

| | | |
|---|---|---|
| Initial Registration | Done at border crossings, relying on NGOs/CBOs for screening and foster arrangements. | Formal referral to social workers and courts intended by law but inconsistently implemented. |
| Care Practices | Informal fostering based on ethnic/language connections, often without formal monitoring. | Mixed formal (CYCC, foster care) and informal arrangements, often with long-term institutionalisation due to delays. |
| Documentation Barriers | Registration delayed by logistics, transportation costs, and rural settlement constraints. | Registration almost never achieved for unaccompanied children due to systemic delays and unclear responsibilities across departments. |
| Implementation Challenges | Heavy reliance on NGOs/CBOs due to absence of formal state support. | Weak enforcement of formal procedures, low social worker training, fragmented cooperation between DSD, DHA, and courts. |
| Implication for Children | Risk of falling through the cracks due to ad hoc placements and lack of long-term planning. | Risk of long-term institutionalisation, invisibility, and exclusion from services despite robust legal provisions. |

# 3.4.3 SUMMARY OF KEY DIFFERENCES: PRACTICAL AND EMOTIONAL IMPACTS

## Uganda

**Practical Impacts:**

- Lack of documentation leads to practical invisibility, excluding children from school or causing them to drop out.
- Informal fostering arrangements during registration cause children to become undocumented if guardians withdraw support.
- Children registered under a guardian's attestation can lose access to food rations, education, and healthcare if the guardian rejects them.
- Poverty in urban areas compounds exclusion despite some free services; schools may still charge exam fees and registration money.
- Unaccompanied children without formal protection are vulnerable to exploitation (e.g., forced into sex work).
- Children frequently moved between guardians with no

verification, causing instability.
- Older children may leave families voluntarily due to discomfort or exploitation risks.
- Lack of mental health and psychosocial services is severe, contributing to crises including suicide.
- Structural reforms to address these challenges remain limited despite urgent psychosocial needs.

**Emotional Impacts:**

- Psychological trauma arises from instability, abandonment, and forced dependence.
- Children feel "set free" in a hostile environment, increasing risks of exploitation.
- Emotional distress due to lack of belonging and identity, worsened by repeated moves between guardians.
- The absence of safe, stable environments increases vulnerability and mental health crises.

## South Africa

**Practical Impacts:**

- Undocumented children face immediate exclusion from education, employment, housing, banking, and legal services.
- Bureaucratic barriers stall transitions into adulthood, forcing lifelong dependency regardless of talents.
- Even talented youth are excluded from scholarships, competitions, or advancement due to documentation gaps.
- Cases of young people stuck in limbo ("hustling" underground) with no opportunity to realise potential.
- Lack of documentation results in precarious living conditions: eviction, hunger, informal employment, and deprivation.
- Young people leaving care centres at 18 face crisis due to lack of documentation and support.

**Emotional Impacts:**

- Emotional distress is profound: fear, hopelessness, anxiety, exclusion, and diminished self-worth.
- Documentation becomes a powerful symbol of identity, belonging, and hope for future change.
- Youth experience isolation, distrust, and "un-rootedness" due to forced displacement and alienation.
- Turning 18 is a moment of crisis rather than celebration, with fear of detention or deportation.
- Emotional anxiety and depression peak as undocumented youth realise limited future prospects.
- Resentment towards parents and the host country emerges from their precarious status.
- Internalised sense of foreignness deepens psychological harm, even for those born or raised in South Africa.

- Emotional effects are compounded by systemic and institutional barriers, demanding more attention in policy.

## TABLE SUMMARY OF KEY DIFFERENCES: UNACCOMPANIED AND SEPARATED CHILDREN

| Issue | Uganda | South Africa |
|---|---|---|
| Practical barriers | Informal fostering causes instability; exclusion from schooling, healthcare, food rations; poverty worsens access | Exclusion from education, employment, housing, legal services; stalled adulthood; informal economy struggles |
| Vulnerability | Unaccompanied children vulnerable to exploitation and abuse | Youth stuck "hustling" underground; risk of eviction, hunger |
| Mental health support | Severely lacking; contributing to crises including suicides | Limited, but high emotional distress and anxiety reported |
| Emotional distress | Psychological trauma from abandonment, instability, lack of belonging | Anxiety, hopelessness, fear of deportation, isolation, resentment |
| Identity and belonging | Lack of verification of guardianship causes repeated displacement; "set free" without protection | Documentation symbolizes hope and belonging; many feel permanent outsiders |
| Transition to adulthood | Unaccompanied children face high risks without formal system | Aging out of care centres leads to crisis without documentation |
| Systemic reform | Structural reforms limited despite urgent psychosocial needs | Emotional toll recognized but systemic barriers remain significant |

# 3.4.4 FAMILY TRACING, REUNIFICATION

## Uganda only

**Strong legal foundation:**

- Guided by international laws such as the Convention on the Rights of the Child (CRC).
- Article 7: Right of the child to know and be cared for by their parents.
- Article 22: Obligation for states and agencies to assist in tracing and reunifying refugee children with their families.
- Uganda's Children's Act (Section 4(1)): Every child has the right to live with a parent or guardian.

**Key actors in Uganda:**

- International agencies lead tracing and reunification efforts.
- Ugandan Red Cross: Manages all reunification cases within Uganda.
- International Committee of the Red Cross (ICRC): Handles cross-border family tracing.

**Operational challenges:**

- Few participants in the study discussed family tracing and reunification in detail.
- Most simply referred children to the Red Cross for support.
- INGOs have widely documented these issues and have SOPs.

**Fieldworker insight:**

- Child protection officers highlighted difficulty in gathering accurate information from children.
- Children often provide inconsistent or changing information due to trauma or distrust.
- Building trust is essential—play and care are used to help children feel safe enough to share their backgrounds.

**Emotional and psychological impact**

- Separation from family causes significant emotional distress.
- Children face uncertainty and bureaucratic complications in their living arrangements, compounding trauma.

# 3.4.5 CHILDREN AT RISK OF STATELESSNESS

## South Africa only

**Definition and Consequences of Statelessness**

- Statelessness occurs when a person is not recognized as a national by any country.
- It denies access to civil, political, and socio-economic rights including identity, healthcare, education, and employment.
- Stateless individuals are effectively invisible to the state.

**Causes in the South African Context**

- Often results from earlier issues such as:
  - Lack of birth registration.
  - Delays or failures in obtaining documentation.
  - Aging out of care or dependency systems without legal status.

**Legal Provision but No Implementation**

- Section 2(2) of the Citizenship Act allows stateless children to apply for citizenship if no other country recognises them.
- However, no formal procedures exist to operationalise this right.
- Applications are typically made via affidavit with legal assistance due to lack of guidance.

**Institutional Barriers**

- The Department of Home Affairs often refuses Section 2(2) applications, citing lack of procedural instructions.
- Home Affairs lacks internal guidelines and capacity to process statelessness-related claims.

**Generational Impact**

- Statelessness can become a generational issue:
  - Stateless children grow up, have their own children, and the cycle continues.
  - Lack of parental documentation perpetuates exclusion for future generations.

**Failure of Political Will**

- Despite international and regional recommendations (e.g. African Committee of Experts on the Rights and Welfare of the Child), the Department of Home Affairs has not acted.
- Recommendations to address statelessness have been dismissed as unimportant.

**Urgent Need for Reform**

- Participants called for:
  - Clear regulatory frameworks.
  - Better coordination between departments.
  - Stronger political commitment.
- Without reform, South Africa will continue to breach child rights obligations and leave many children unprotected under the law.

# 4. CONCLUSION

This report will serve as a foundation for discussion in the many different dialogues to be held as part of the MMDIII programme. Participants in these dialogues will be led through processes, based on the findings presented here, to develop recommendations and action plans that respond to the issues raised by the participants of this research study.

The rich data from civil society organisations, refugee led organisations and other relevant stakeholders presented in this report gives a graphic picture of the challenges faced by migrants, including children on the move, in their attempts to access asylum in Uganda and South Africa. The stakeholders who work daily with migrants describe how they struggle to apply and comply with the existing legal frameworks in both countries. There are also examples of legislation that allows easy access to asylum. The comparison between Uganda and South Africa, in spite of some fundamental differences in approaches to migrants, is useful, particularly when looking at the situation of urban migrants in Uganda. Discussion of the comparative aspect of this report should allow for rich dialogue.

Our hope, as researchers, is that by listening to and synthesising what stakeholders told us we have produced a useful tool for engagement around how existing legal frameworks in both Uganda and South Africa can be improved to allow migrants, including children on the move, access to their rights.

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