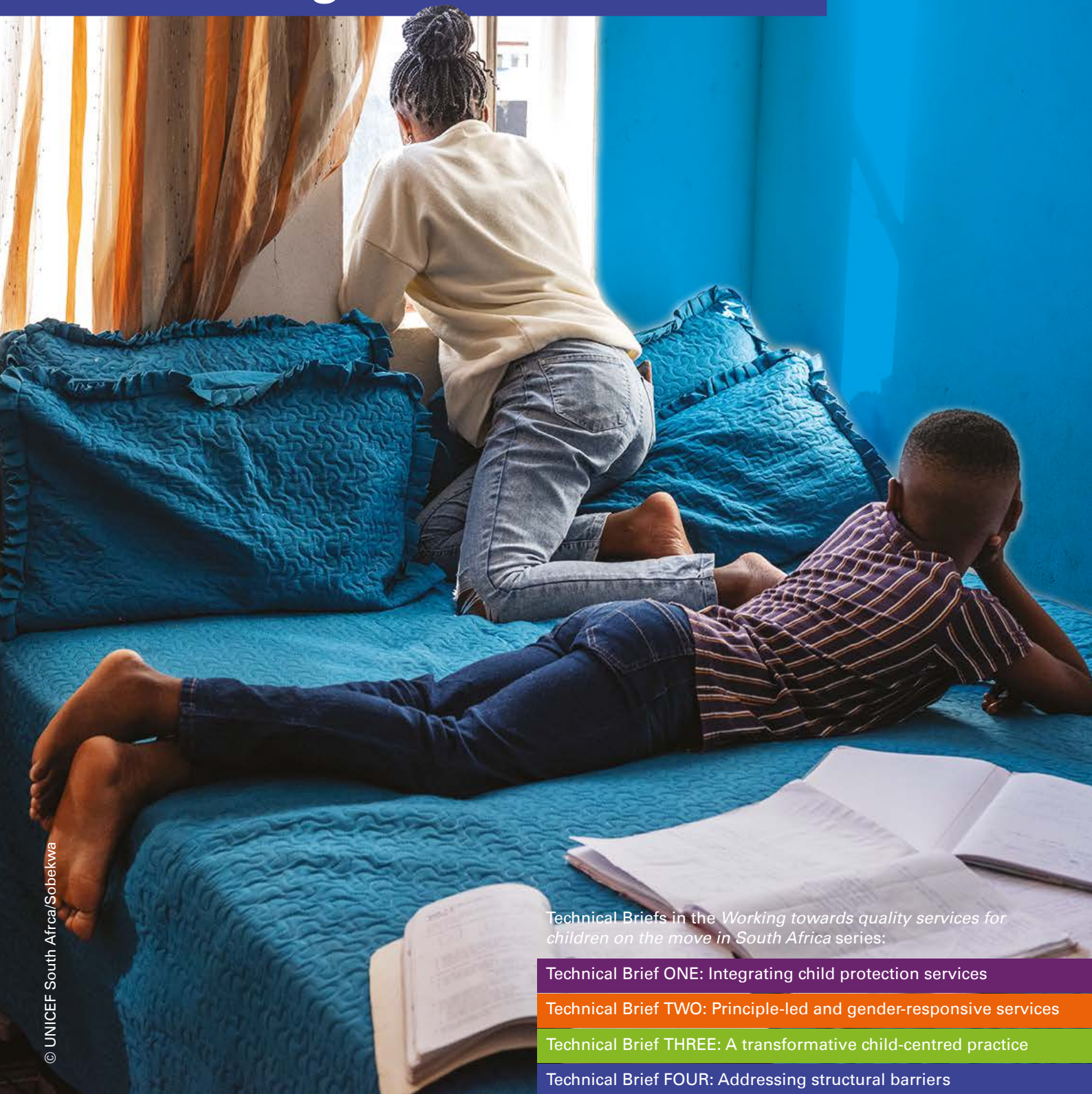


Working towards quality services for children on the move in South Africa

Technical brief FOUR

Addressing structural barriers



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Technical Briefs in the *Working towards quality services for children on the move in South Africa* series:

Technical Brief ONE: Integrating child protection services

Technical Brief TWO: Principle-led and gender-responsive services

Technical Brief THREE: A transformative child-centred practice

Technical Brief FOUR: Addressing structural barriers



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EU Global Promotion of Best Practices for Children in Migration – a project, implemented by UNHCR and UNICEF and the South African Department of Social Development and co-funded by the European Union, UNHCR and UNICEF.

The Best Practices for Children in Migration Project was a 30-month project (October 2020 – July 2023). The overall objective of the project was to contribute to the effective protection of children on the move and the realisation of their rights through child protection systems that provide quality integrated services, alternative care and mental health and psychosocial support all with a gender sensitive lens. The project sought to document and share lessons learnt and best practices towards the use of alternative care options to replace immigration detention.

The project was implemented across four countries in two regions: El Salvador and Mexico in the Latin America and the Caribbean Region (LACR); and South Africa and Zambia in the Eastern and Southern Africa Region (ESAR). The programme's final beneficiaries are children on the move, including migrant, internally displaced, returnee, asylum seeking, and refugee children as well as children who move voluntarily or involuntarily, within or between countries, with or without their parents or other primary caregivers.

Three of the four outcomes identified in the project framework for the South African component of the Best Practice Project are listed below:

- Child protection systems include gender responsive, high quality, and integrated services in reception centres and other care and attention facilities.
- Child protection systems have integrated, gender responsive psychosocial services and prevention mechanisms addressing gender-based violence and other structural problems.
- Child protection systems provide alternative care options, with emphasis on community and family-based alternatives.

The fourth outcome was to document and share lessons learnt and best practices related to processes, approaches, and methodologies adopted through the project experience in South Africa.

This is the fourth technical brief in a series of four that document what the implementing NGO partners have learned about how to deliver quality integrated services for children on the move.

This set of technical briefs focuses on the South African project which was implemented in partnership with the South Africa Department of Social Development, UNHCR and its implementing partners: The Scalabrini Centre (Western Cape); Refugee Social Services (KwaZulu Natal); The Centre for Child Law (University of Pretoria); Future Families (Limpopo); The South African Human Rights Commission (national), Action for Conflict Transformation (Gauteng); Childline (national), and The Consortium of Refugees and Migrants in South Africa (national).

Children on the move

The umbrella term 'Children on the move' refers to children who migrate within their countries or across borders. Children move for a variety of reasons: to seek protection, to pursue a better life, or to reunite with family. Some children migrate with their families while others move alone because of conflict, natural disaster or other deprivations. Children on the move can include refugees, asylum seekers, internally displaced children, trafficked and smuggled children, and children who are documented or undocumented (1).

Acronyms

ACRWC African Charter on the Rights and Welfare of the Child
ACT Action for Conflict Transformation
CBO Community-based organisation
CCL Centre for Child Law
CYCC Child and youth care centres
DBE Department of Education
DHA Department of Home Affairs
DIRCO Department of International Relations and Cooperation
DOCJ Department of Justice and Constitutional Development
DOE Department of Education
DOH Department of Health
DOJ Department of Justice
DSD Department of Social Development
ESAR Eastern and Southern Africa Region
EU European Union
LACR Latin America and the Caribbean Region
MHPSS Mental health and psychosocial support
NGO Non-governmental organisation
RSS Refugee Social Services
SAHRC The South African Human Rights Commission
SAPS South African Police Service
SDG Sustainable Development Goals
SOP Standard Operating Procedure
UNCRC United Nations Convention on the Rights of the Child
UNHCR United Nations High Commissioner for Refugees
UNICEF United Nations Children's Fund

Background

Across Southern Africa, children move within and over borders, to earn money, to escape conflict, to support their families at home, to escape domestic violence, to escape oppression or persecution, for education, for adventure, or due to changes in families such as the death of a caregiver (2,3). Some children on the move in the region travel with family members or informal caregivers, but many travel alone, either having chosen to move in search of work and education or having been separated from families on their journeys. All children on the move in Southern Africa are protected by the United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) which make it the responsibility of individual countries to protect children wherever they are regardless of the origin of those children (4,5). The ACRWC states that 'the best interests of the child shall be the primary consideration in actions concerning the child' and protects the right to education, the right to health, the right to a name, and the right to a nationality and to be registered at birth (4).

In South Africa there are an estimated 642,000 migrant and refugee children making it the country with the largest population of children on the move on the continent (6)¹. South Africa's progressive legislative framework provides for the right to self-settlement of migrants (rather than being placed in camps), access to basic healthcare, and to education (7). The care and protection of unaccompanied and separated migrant children is determined by the courts and children are often placed in child and youth care centres (CYCC)², or in community-based foster care (8).

However, the laws and policies designed to address key welfare and protection challenges for children on the move lack robust implementation. This means that many children, particularly those who are separated or unaccompanied, face barriers to accessing asylum, documentation, healthcare, education, and other basic services and rights. Additionally, the lack of social protection means that many families and children on the move live in deep poverty in unsuitable housing without the ability to access education or enter the formal economy because of a lack of documentation. These precarious living conditions coupled with high levels of xenophobia from some local residents creates ongoing stress which, in addition to past traumatic experiences, affects caregivers' and children's psychosocial wellbeing (9).

South Africa has adopted the UN and UNHCR Global Compact on Refugees (2018) and the Global Compact on Migration (2018) both of which ensure a human rights and child-centred approach to child protection across borders and within the country (10,11). Additionally, UNICEF's key frameworks on children on the move, including the Global Framework on Children on the Move, the Six-Point Agenda for Programmatic Action, and Children Uprooted – What Local Governments Can Do (1,12), contribute to the approach used in South Africa. However, an increasingly restrictive migration governance framework, inconsistencies between policy and practice, and increasing anti-foreigner sentiments pose challenges for those working with children on the move (13,14). That said, there have also been many positive steps, primarily driven by a collaborative approach by state and non-state actors, to safeguard and protect children on the move. The Best Practice Project has worked with some of these actors to extend the reach and increase the effectiveness of this work. This series of technical briefs highlights some of that work.



1 Accurate statistics on children on the move in the region are difficult to access as children and youth often choose to remain 'invisible' for their own protection. Additionally country census processes do not all make provision for migrancy. Therefore, the number of migrant children is likely much higher.
2 Amendment of Section 45 of the South African Children's Act 38 of 2005 provides for the placement of children in alternative care. A child and youth care centre is a facility that provides residential care. The Act outlines the norms and standards for the CYCCs.

Methodology for documenting the Best Practice Project

A qualitative, emergent research approach was used to document the Best Practice Project. Implementing partners of the project participated in semi-structured interviews and a reflective workshop to share the work they had done (15). The reflective workshop included 'mapping' the context in which each partner worked including the policy frameworks within which they work, the activities they undertook, the underlying principles they applied, and the impacts they observed. The workshop provided an opportunity to create the story of their project using visual tools that explained the ways they worked and case studies of individual children. This approach allows authentic data to emerge and makes the resulting technical briefs co-created products (16).

The discussions from the workshop were recorded, transcribed, and combined with the data from the interviews. This data was analysed using a thematic approach where emergent themes were identified in the data. These themes directly informed the focus of each of the technical briefs in this series. In each of the briefs the examples provided by the implementing partners highlight different, but closely related, human rights and child protection initiatives, including legislative and policy reform processes in South Africa.

During the documentation workshop participants worked with a diagram based on the socio-ecological systems theory (17,18). The socioecological model illustrates the importance of networks of people and structures that surround a young person and safeguard their well-being and sense of agency, and support their optimal development. This theoretical frame places individual child development within a set of intersecting domains that all influence the child's wellbeing. Working on the diagram the participants highlighted how factors from each domain (as experienced in their context) intersected to impact on the children they work with.

(Re)engaging with this familiar framework helped partners think through the challenges and barriers that they face at each level of the systems in which they work. It also allowed them to identify the supportive and protective resources that both children on the move and their own organisations draw on. As the partners presented the interacting systems in their context there was much discussion of how the domains outside the family and community e.g., government institutions, social services, and local and national politics impacted on their ability to deliver quality services to children. There were many structural barriers preventing children on the move accessing their rights and the services they needed. In response to this all of the partners identified how their work has gone beyond service delivery to include the fight for social justice through advocacy.

"Sharing our work and thinking critically has shown me that in everything we do, even assisting on family, we are doing activism and working for social justice!"



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Photo by Future Families

Recognising and addressing structural barriers

The Best Practice Project outcomes included the need to support organisations working with children on the move to address structural problems that could affect access to children's rights and provoke violence against children on the move, especially gender-based violence and the resulting effect that this has on psychosocial wellbeing (19). During the documentation workshop participants identified a number of structural barriers to the realisation of rights and access to services for children on the move. These included fragmented policies related to children on the move across government departments (see Example 2 below); complex and dysfunctional government processes for registering births and accessing birth certificates, asylum and refugee status papers; difficulty in accessing foster care grants for non-South Africans; xenophobic attitudes of some government officials; and a gap between policy and practice resulting in children on the move being unable to access the protection and support provided for in law (8,20,21).

These barriers affected, among other things, children's ability to attend school and engage in extra-curricular activities – all basic rights and normalising activities that help children grow and thrive as well as cope with grief, loss, and responses to traumatic events.³ Participants in the workshop described a lack of documentation as the most significant barrier because it prevents access to education, as described above, as well as safe alternative care, health services, and GBV support. While the lack of documentation is a clear barrier to achieving global

commitments including the Sustainable development Goal (SDG) 10 (on reducing inequalities) (22) and violates the basic rights of a child, it also means that children are left in a protracted state of unease and fear about the future. The implementing partners described how the children they work with are afraid of becoming stateless and afraid of the increased vulnerabilities to exploitation and harassment associated with statelessness. This is raised as a central issue in UNICEF's Programme Framework on Children on the Move (1).

Alongside these institutional barriers children and families on the move are often marginalised and experience high levels of violence (structural, xenophobic, and gender-based) that impacts on their health and wellbeing. Because of their marginalisation and lack of documentation, most families and children on the move struggle to maintain their socio-economic security (23). Many migrant families live in overcrowded housing with no services and the constant threat of eviction because they are unable to pay rent.

Though all of the implementing partners who provided services as part of the Best Practice Project did some advocacy at both local and national levels, some of the implementing partners worked directly to address structural barriers as a core component of their work. We describe some of their work below.

³ See Brief Three: A transformative child-centered practice

Example 1: Using children's voices to identify and address structural barriers: South African Human Rights Commission

SAHRC

The South African Human Rights Commission (SAHRC) is an independent 'Chapter Nine'⁴ institution formed in 1995 to support constitutional democracy. Based on their constitutional mandate to promote respect for, observance, and protection of human rights for everyone without fear or favour in the republic (25).

As part of their mandate, the SAHRC focuses on children's rights and in 2020 established a Children's Rights Unit. The aim of the unit is 'to focus on effectively fulfilling the Constitutional mandate of protecting and monitoring the realisation of rights in South Africa' for children including through legislative reform (26).

While the importance of child participation is well recognised children continue to be silenced or side-lined, particularly when in marginalised and vulnerable contexts (16,27). Because of their lack of documentation and fear of police and other state agencies children on the move often have no choice but to try and remain invisible to the state. This makes child participation difficult and, therefore, not always an option for institutions such as the SAHRC. Under the Best Practice Project the Children's Unit undertook a participatory process with children on the move. SAHRC found a way to not only ensure that children were listened to but ensure that their stories were used to highlight and address the key structural barriers facing children on the move.

The Children's Rights Unit of SAHRC initiated a monitoring of the rights of children on the move across different provinces in South Africa. The primary aim was to understand the status of children's rights as enshrined in Section 28 of the Constitution (27) and the Convention on the Rights of the Child (UNCRC) (5) in South Africa. Through the monitoring work SAHRC shows how a commitment to working with state structures and systems can be balanced with a model based on engaging with people including children and creating space for concerns and needs to be expressed and listened to in an ethical, sensitive, and child-appropriate way. Their approach was based on the key principle of child participation, integral to children's rights advocacy and aligned with Article 12 of the Convention on the Rights of the Child (the child's right to be heard) (28).

SAHRC engaged with five stakeholders in four provinces: the Kings Children's Home in the Eastern Cape, Refugee Social Services (RSS) in KwaZulu Natal, the Scalabrini Centre and CapeTown Homestead in the Western Cape, and Action for Conflict Transformation (ACT) in Gauteng. SAHRC conducted interviews



with children, the management of Child and Youth Care Centres, and other stakeholders such as social workers, nurses, recreational programme directors, and any additional staff member within child-care facilities.

One of the SAHRC researchers who conducted the interviews with children explained the importance of creating the space for children to share their experiences because *"we cannot facilitate participation and policy development if we don't create space for children to speak out."* In this way, the heterogeneous voices of children, which represent the many different experiences and needs of children on the move, are able to drive the focus and outcomes of the research. Stating that *"children want to be heard"* the researcher emphasised the critical role that children should and can play in identifying and addressing the structural barriers that prevent them from participating in everyday life in South Africa.

The findings of the monitoring visits were presented in a report at a workshop on 'Alternatives to Detention and Care Policies for Children on the Move' attended

by government officials and other relevant state and non-state stakeholders. Key observations and findings were listed under categories such as: accommodation conditions, placement practices (with documentation challenges at the centre of the issue), care and treatment practices, and family reunification process. The barriers to legal documentation were highlighted as a cross-cutting issues for every province and stakeholder and as 'one of the greatest barriers to children on the move up to date.'

The recommendations from the Children's Rights Unit included the following strategies: strengthen collaboration between the various departments of government such as the Departments of Social Development, Education, Health and Home Affairs, quarterly or annual human rights advocacy information sessions that can be run by the Human Rights Commission, and a reform of legislation to better reflect the fact that there are many alternative family types other than the nuclear family that are suitable existing alternatives to foster care.

The findings and recommendations will be used by SAHRC to engage with the relevant government departments and other stakeholders to discuss practical and collaborative implementation strategies. In this way the experiences and concerns shared by children on the move themselves are used to highlight and tackle significant structural barriers including access to documentation.

The process described above was possible in South Africa due to the unique constitutional role that SAHRC plays in being able to hold the state accountable and advocating on behalf of those facing human rights violations. However, this good practice can also be replicated in other contexts through institutions that connect with government. Child participation is a powerful tool to make sure advocacy is based on children's own stories that show the impact of structural barriers on their everyday lives and wellbeing.



⁴ Chapter Nine Institutions were established in terms of Chapter 9 of the South African Constitution to guard democracy and include the Public Protector and the Commission for Gender Equality (24).

Example 2: Strengthening national systems: Development of an Inter-departmental protocol for multi-disciplinary management of unaccompanied and separated migrant children

National child protection systems

Including children on the move in national child protection systems at legislative and policy levels is just the first step towards ensuring they benefit from services that are tailored to their needs (2). Ensuring that there are formalised, sustainable systems to implement these laws and policies is the second, and often more challenging step. The Department of Social Development, with technical support from UNICEF, Save the Children, and the Centre for Child Law (CCL) at the University of Pretoria, provides an example of an approach that does exactly this.

The project supported the development of an inter-departmental protocol for the integration of policy and practice related to unaccompanied and separated children across national government departments as well as other key stakeholders such as civil society organisations and foreign embassies. The different government departments involved in this process were the Department of Social Development (DSD), the South African Police Services (SAPS), the Department of Home Affairs (DHA), the Department of Health (DoH), the Department of Justice and Constitutional Development (DOJCD), the Department of Basic Education (DBE), and

the Department of International Relations and Cooperation (DIRCO). The Protocol would clarify and standardise the roles of different departments and provide guidance on how they should work together at the district, provincial, and national levels for the care and protection of unaccompanied and separated migrant children in South Africa. This protocol is aligned with the General Comment 20 on the implementation of the Convention on the Rights of the Child During Adolescence, which exhorts states to implement laws and policies that challenge harmful gender norms (29).

A multidisciplinary technical report documenting the key challenges and steps forward was developed by The Centre for Child Law as a foundation to the protocol. This has included research for which social workers, community-based organisations (CBOs), communities, and children themselves were interviewed and given the opportunity to provide input and highlight the challenges they face. By seeking input from diverse voices and representing different and intersecting vulnerabilities the report also illuminates elements of being gender transformative.



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One function of the protocol is to ensure that referral pathways to various services are transparent and understood by all service gatekeepers. This is essential for ensuring that children on the move can access the services that they need. This strengthened multisectoral systems and the strengthened referral pathways entail multi-layered support systems and processes within existing structures (2). The steps taken to improve coordination and integration between different government departments and stakeholders address key structural barriers that children on the move face including difficulties in obtaining proper documentation, challenges with legalising children's status in South Africa, and difficulties related to contact with families and possible reunification.

The preamble to the Protocol states that "although each of these departments are custodians of laws and policies which they administer in the protection of unaccompanied and separated migrant children, there is room for better coordination". Dr Tebogo Mabe,

the director of Adoptions and International Social Services at the DSD, explained the importance of addressing common challenges and ensuring that all departments can "speak one language". The protocol describes the roles and responsibilities of each of the departments in detail. Accountability is ensured by a monitoring tool being developed by the Centre for Child Law at the University of Pretoria.

In this way the Interdepartmental protocol for the multi-disciplinary management of policy and practice related to unaccompanied and separated children provides both a theory and a practice for bringing together state and non-state stakeholders to strengthen protection and support by addressing key gaps and structural barriers. This is an approach that could be replicated and reworked according to different contexts, the different actors involved, and the different structural barriers that children on the move face.

Example 3: Addressing structural barriers through legal reform, research and advocacy.

The Centre for Child Law

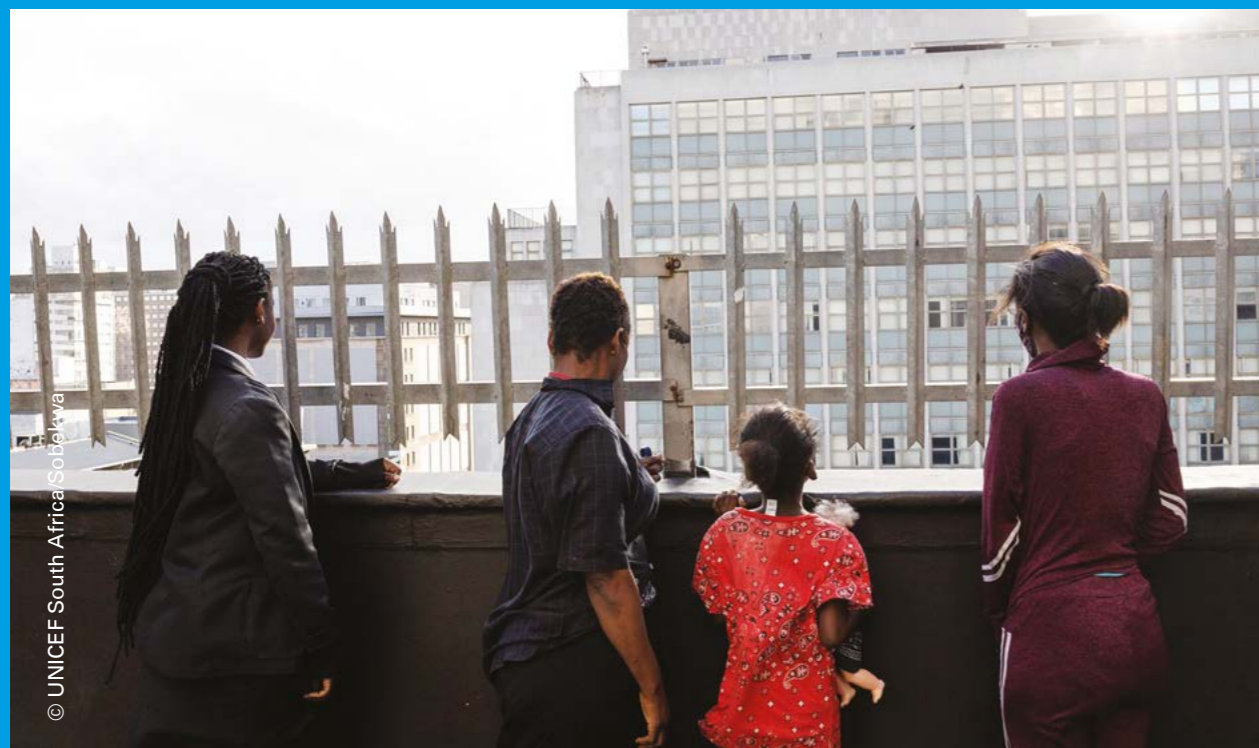
The Centre for Child Law, established in 1998, is an impact litigation organisation that is registered as a law clinic and based in the Faculty of Law at the University of Pretoria. The vision of the centre is to establish child law and to uphold the rights of children in South Africa, within an international and regional context, particularly insofar as these interests pertain to their legal position. One of the ways in which the centre achieves this is through impact litigation to obtain precedent-setting judgements and court orders that advance children's rights. These include cases involving children on the move and the many structural barriers they face in accessing their rights to basic education (30,31) and documentation including birth registration (32).

The Centre for Child Law's work is multidisciplinary and aims for a holistic approach to address what they recognise as "a lack of an integrated approach when dealing with a child" at both a policy level and in practices on the ground. This approach is anchored in research and advocacy, which are brought together to inform litigation and vice-versa. Developing a data and evidence base is critical for holding public institutions to account and for developing evidence-based advocacy campaigns litigation strategies, and actions that are contextually grounded.

In the reflection workshop the CCL mapped out their work using a picture representing the various levels of the socio-ecological framework and highlighting

the key steps (litigation and advocacy) which address some of the main structural barriers that children on the move face. This includes the far-reaching *Phakamisa* court case (*Centre for Child Law and Others v Minister of Basic Education and Others 2840/2017*), which ensured that undocumented learners in South Africa could access education. A circular published by the government as a result of this case confirms that learners without documents should be admitted into schools (30). This reinforces Section 29 of the South African Constitution, which provides for the right of all children to basic and further education (25).

The impact of structural determinants has long been accepted as an issue amongst organisations working with children on the move. The 2022 UNICEF Global multisectoral operational framework identifies "stigma and structural discrimination [and] lack of political will" (9) (p.20) as one of the greatest barriers to overall wellbeing among children on the move. The examples above point to the possibility of addressing structural barriers at both national policy level and at the level of civil society with the support of academic institutions who have the expertise to create legal challenges to government policy.



An illustration from an animated video story made by Scalabrini Centre Cape Town for advocacy around documentation. The story is based on the joint experiences of children supported by the centre to access documents and shows the helplessness children feel when they cannot access documents.



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Conclusion

The three examples highlighted in this brief show ways of identifying, highlighting, and addressing structural barriers as infringements on human rights, human dignity, and progress in supporting and protecting children on the move. They also show ways in which organisations can work with and hold the state accountable. This can be through multifaceted work bringing together research anchored in child participation and the meaningful representation of children's voices, advocacy work, and impact litigation based on addressing structural barriers to human and children's rights. While these practices are context-specific i.e. rooted within the particular historical and contemporary context of South Africa – they can also be reproduced in other contexts where organisations and partners similarly work with a vision for social justice and for social change with and on behalf of children and families on the move.

Key learnings related to the Best Practice Project intended outcomes

- The structural barriers that prevent children on the move from accessing their rights are the most difficult barriers for service providers to overcome. The Best Practice Project outcomes, however, included the need to find ways to address these issues. The examples given in this brief and in the accompanying briefs show that service providers can begin to create an enabling environment for child rights.
- Clearly, having a democratic state with a rights-driven constitution and government institutions created specifically to protect human rights makes the task possible. Whatever the context though, the examples in this brief can provide some principles that can be applied in more difficult political contexts.
- These principles include: the importance of child participation in advocacy around structural issues; the use of research to inform advocacy and litigation; partnerships between academic institutions, legal experts, and civil society; the importance of creating dialogue and cooperation within government departments.

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