

**JUDGMENT ON SEPARATED ASYLUM SEEKER CHILDREN: THEY WILL NOW BE INCLUDED IN THEIR CAREGIVER'S APPLICATIONS**

**Joint press release: Lawyers for Human Rights and Centre for Child Law**

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A sixteen year old boy who entered South Africa with his aunt after he was orphaned during armed conflict in the Congo was not included in her asylum seeker permit because he was not her biological child. This meant that, although he qualified to apply for asylum he had no papers and thus battled to get access to education and health services. With the assistance of Lawyers for Human Rights and the Centre for Child Law he turned to the courts for assistance. He brought the case not only for himself but also for children in a similar situation to him – in other words, children who are separated from their biological parents but are in the care of a relative.

Yesterday (9 July 2015) the North Gauteng High Court declared that henceforth all children who enter the country with a relative who is allowed to apply for asylum should be included as a 'dependent' of that caregiver, in the same way that biological children are included. This gives the child immediate protection and ensures that they are not separated from people with whom they have a relationship.

The Department of Home Affairs had argued that all such children must be treated as children in need of care and protection, because there is a risk that they are being trafficked. The court recognised that there may be risks, but that the risks to a child who is undocumented are greater. He also pointed out that it was not a matter of one choice or another – the children's court process can run simultaneously with the asylum application, but the inclusion of the child in the asylum seeker permit would ensure his or her protection from the earliest possible opportunity. The facts of the case showed that a children's court process may take a long time to be concluded, cutting the child off from education and other services while waiting for an asylum determination.

Lawyers for Human Rights Director, Jacob van Garderen welcomed the judgment. He pointed out that these children would all have an asylum claim in their own right

Karabo Ozah of the Centre for Child Law said that it made sense that these vulnerable children, orphaned by war and exposed to harrowing experiences, should be cared for by their relatives. ‘These are the people that they know and love, who have risked everything to take them to safety. The Judge recognised that in African culture people do not stop to say – is this my biological child? They say “I must look after my sister’s children as if they are my own”.’

**Ends.**

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