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Opinionista ROBYN WOLFSON VORSTER

Undocumented children in SA: Averting the coming catastrophe

- ROBYN WOLFSON VORSTER
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27 Reactions

Just days before the start of Child Protection Week 2017, a physiotherapist in Soweto made the horror discovery of a nine-year-old disabled boy, naked, rat bitten, covered in faeces and starving to death, one of 14 living in a tiny shack. He is the face of undocumented children in Gauteng, he is the reason why we can no longer ignore the problem.

Child Protection Week 2017 drew to a close last Sunday, and the Department of Social Development packed away their green pins and posters for another year, and the minister returned to the pressing matters of politics that had kept her away from the event's launch. But the spectre of the country's child protection problems – those discussed, like exploitation, child-headed households and child marriages; those studiously avoided, like abandonment and late-term abortion, and those which other government sectors kept in the spotlight, like violence against children, and child rape and murder – will loom large over the nation for many years to come. They must, because no amount of awareness has brought respite from the atrocities towards children. ◦

Before the week's events were concluded, a 4kg "foetus" was found dead and dumped in a plastic bag following an apparently (very) late-term abortion, and the body of a five-year-old child was found under a bridge with her face mutilated. It's hard to keep calling it a crisis, perhaps tragedy is more appropriate.

But in light of this year's theme – “Let us all protect children to move South Africa forward” – one of the week's most positive developments was the indaba on undocumented children in Gauteng, hosted by the Gauteng Provincial Department of Social Development in conjunction with the Department of Justice, Department of Home Affairs, Lawyers for Human Rights, and the National Adoption Coalition. ◊

I say positive, but this is South Africa where nothing is simple, and from the outset, it was clear that competing agendas have made the issue both immensely complex, and tense. On one end of the spectrum is the Department of Home Affairs, committed to maintaining the integrity of the National Population Register, with a view to keeping the basket of services provided by government (including education, healthcare, housing and social grants) for South African citizens only.

It is a sympathetic position, especially now that our shrinking economy, multiple ratings downgrades and the government's penchant for sharing our wealth with the undeserving, has led us into a recession. As times get tougher, the desire for people to hang on to the little that they have has created conditions that are ripe for xenophobia.

Coincidentally (perhaps), on the same day as the indaba began, the new Minister of Home Affairs (Hlengiwe Mkhize) went on the [offensive against immigrants](https://mg.co.za/article/2017-06-01-home-affairs-talks-tough-on-borders) (https://mg.co.za/article/2017-06-01-home-affairs-talks-tough-on-borders) with some rather inflammatory words: “If we do not manage the process of free movement within the continent, we could end up with a crisis,” she said. “Remember our triple challenge [unemployment, poverty, and inequality] is real and we know from other parts of the world that that's what triggers a revolution. People will revolt against the government of the day if they feel they're in competition with everybody.”

Countering this alarmist view are those who point out that the country has a legislative framework and moral imperative that requires us to provide care and protection to all children in South Africa, regardless of their citizenship (Section 1 of the 2005 Children's Act). In addition, our Constitution states that every child is entitled to a “name and nationality from birth” as well as to “basic nutrition, shelter, basic health care services and social services” and “the right to basic education” (Sections 27, 28 and 29 of the SA Constitution). The Constitution also states that decisions need to be made in the best interests of the child. It is a directive that in many cases we are failing to achieve. ◊

During Child Protection Week, a baby was born at [Park Station](http://www.iol.co.za/news/south-africa/gauteng/mom-gives-birth-at-park-station-after-three-hospitals-turn-her-away-9552507) (http://www.iol.co.za/news/south-africa/gauteng/mom-gives-birth-at-park-station-after-three-hospitals-turn-her-away-9552507) because her mother, an asylum seeker from the DRC, was allegedly refused emergency medical care. If that wasn't shocking enough, the couple also claim that following the birth, Charlotte Maxeke Academic Hospital not only refused to assist the mother, but also wouldn't examine her baby, even though they had observed her turning blue. The family were told that they were in the “wrong place” and were transferred to another hospital where they finally received care hours later. It is noteworthy that the Minister of Health is disputing the facts of this case. But social workers confirm that it is common for foreigners to be turned away from receiving medical care, or to be forced to pay exorbitant amounts of money before getting treatment. ◊

When faced with such atrocities, it is harder to accept Home Affairs' moral high ground, especially given the extent of the problem. But herein lies one of our major dilemmas. We have no idea how big the challenge is. At the indaba, the Gauteng MEC for Social Development, Nandi Mayathula-Khoza bemoaned our inability to quantify it, and the fact that Statistics South Africa had declined to be present. Their absence from the indaba was almost as telling as the rather uncomfortable, but apparently justified absence of the Department of Social Development's International Social Services (tasked with managing the care of these children). Stats SA's excuse was that rapidly shifting migrant populations have made our census-based data inadequate. This is certainly valid but, ironically, it is their lack of documentation which makes them hardest to track. In addition, the criminalisation of irregular migrancy and fear of being deported makes many foreigners shy away from officials. Still, statistics could have provided a starting point. Instead, the MEC had to rely on international data showing that more than 3% of the world's population currently live outside of the borders of their country. Her only local statistic was that there were 700 new arrivals in Musina in the first quarter of the year alone. Most noteworthy though was her description of the problem as a humanitarian emergency. Given that she is responsible for finding a solution, this is unlikely to be hyperbole. ◊

When you scratch below the surface, it is small wonder that this crisis is so huge. Our laws related to citizenship and their application by Home Affairs are draconian, resulting in large numbers of children, both South Africans and foreigners, falling into the category of undocumented children. According to Lawyers for Human Rights, this is not solely a problem for “foreigners”. Many South African children are still undocumented, often because their parents were undocumented, and their parents before them (in many cases the battle to find verifiable family links has been lifelong). In addition, although our legislation states that a child is a South African citizen if one or both of their parents are South African, in practice that can be hard to prove when only the father is South African. Many children are undocumented because their mother is foreign and she and the South African father are unwed. If the father is absent and will not claim paternity, or the child was conceived through rape, or he is present but cannot afford the cost of a DNA test to confirm it, the child may not be able to obtain South African citizenship. Even in cases where the father is committed, if the mother is undocumented, he cannot register the child. The result is that many children who are entitled to South African citizenship instead become stateless. ◊

And they are not the only children rendered stateless by South African policy. Lawyers for Human Rights (LHR) distributed a pamphlet during the indaba about [Childhood Statelessness](http://www.lhr.org.za/sites/lhr.org.za/files/childhood_statelessness_in_south_africa.pdf) (http://www.lhr.org.za/sites/lhr.org.za/files/childhood_statelessness_in_south_africa.pdf), emphasising how it leads, during childhood, to the child not being able to access education, medical care, or grants, and a high risk of trafficking; and in adulthood, to possible arrest and deportation. [LHR stresses that](https://www.change.org/p/minister-of-home-affairs-end-childhood-statelessness-in-south) (https://www.change.org/p/minister-of-home-affairs-end-childhood-statelessness-in-south-

africa?source_location=minibar) South Africa's obligations under the Convention on the Rights of the Child (CRC) are that no child should be left stateless. All children in the country who would otherwise be stateless should have the right to acquire a nationality (Article 7 of the Convention):

"This obligation is reiterated in the African Charter on the Rights and Welfare of the Child and the International Covenant on Civil and Political Rights."

Crucially, many of these cases could be remedied with some fairly small but critical changes to the Birth and Death Registration, and Citizenship Acts. It would cost the government little, but the impact on lives would be immense. However, Home Affairs seems unconvinced, and stressed at the indaba that South Africa is neither a signatory to the 1954 UN Convention on the Status of Stateless Persons or the 1961 UN Convention on the Reduction of Statelessness. This despite international pressure. At the [Human Rights Council in Geneva](https://www.change.org/p/minister-of-home-affairs-end-childhood-statelessness-in-south-africa/u/20340179?utm_medium=email&utm_source=74912&utm_campaign=petition_update&sfmc_tk=KTciKeMJTg2TREgTFWDv5dk7n08LjNVSPVjmGGB85rpe4H6%252brpHiFQtS71bpvBD8) (https://www.change.org/p/minister-of-home-affairs-end-childhood-statelessness-in-south-africa/u/20340179?utm_medium=email&utm_source=74912&utm_campaign=petition_update&sfmc_tk=KTciKeMJTg2TREgTFWDv5dk7n08LjNVSPVjmGGB85rpe4H6%252brpHiFQtS71bpvBD8) in May 2017, four states from three continents recommended that South Africa signed the conventions on statelessness, and 12 states recommended that South Africa change its laws relating to birth, registration and citizenship regardless of the immigration status or nationality of the parents, and in line with recommendations made by the UN Committee on the Rights of the Child. In other words, Home Affairs can conveniently blame the apartheid government for failing to sign the conventions to end statelessness, but this could be remedied if our government had the will to do so. ◉

Instead, Home Affairs is unapologetic about how hard they make it to get these children documented. Worse still, many of the problems experienced seem to relate to its own practices. South Africa's borders are notoriously porous, allowing a flow of people into the country. In addition, the lack of biometric checking at borders means that they often have no traceable record of how and when foreigners, specifically children, enter the country. This makes the process of documenting them almost impossible. It is why, during the indaba, there was a frisson of anger when Home Affairs asserted that social workers must take responsibility for tracking down the entry points of foreign children into the country. It has made assisting these children notoriously difficult, especially since the Department of Social Development's stretched resources are common knowledge. According to Mayathula-Khoza, the national average of social workers to those needing assistance should be 3,000:1, but we are nowhere close, and "lack of budget" in the last financial year has meant that social worker staffing has barely increased. Moreover, [the sector's NGOs are in crisis and increasingly underfunded](https://www.dailymaverick.co.za/opinionista/2017-04-05-social-development-going-to-hell-in-a-hand-basket/#.WT09tWh97IU) (https://www.dailymaverick.co.za/opinionista/2017-04-05-social-development-going-to-hell-in-a-hand-basket/#.WT09tWh97IU): in some cases, subsidies have halved and NGO social workers have been told to fund-raise from their often impoverished communities to make up the shortfall. This makes such lengthy detective work costly, and in some cases, not viable. ◉

Undocumented children are essentially costing the taxpayer a fortune, both in legal costs and in time spent by social workers on each case, and are diverting scarce resources into long and sometimes fruitless activities trying to help abandoned and unaccompanied minors. Given our child protection challenges in this country, if these children could be documented, the time could be directed far more productively into saving and changing lives. ◉

One of the most troubling aspects of this problem for child protection advocates is the causal link between lack of documentation and child abandonment. Social workers are reporting that the number of infant abandonments is growing because foreign mothers in the country illegally are not permitted to place their children for adoption without risking deportation. Even those here legally, like asylum seekers, may not be able to consent to an adoption in South Africa because their permits are not recognised as a valid form of identification. In a desperate bid to give their child a future, birth mothers sometimes abandon their child, usually anonymously and therefore unsafely. If they survive, these children have no hope of family reunification, and if Home Affairs deems them to be foreign (which it does at times), they may receive a handwritten birth certificate which means that adoption will be difficult or impossible. With no country of origin where they can be deported to, and no prospect of adoption, they will be raised in Child and Youth Care Centres (CYCCs) and become stateless.

In addition, the country has a shocking number of unaccompanied minors. By definition, these are children from outside the country who have been separated from both parents and relatives (often through death or abandonment), and are not being cared for by an adult. Such children often become stateless because they don't have a parent or legal guardian who can assist them to obtain documentation. Many of these children are unaware of their heritage and have no connection to their country of origin (if they know what it is). Growing up in CYCCs without documentation, they may be unable to attend school or obtain a matric certificate when they complete their schooling. And they live with the ongoing fear that when they reach 18 and are no longer protected by the Children's Act, they will be arrested and deported.

These are the stories which make the horror of being undocumented real. While the challenge is complex from a legislative, judicial and moral perspective, the stories are heartbreakingly simple. The indaba began with the testimonies of undocumented children, all without family in South Africa, and all living in Kid's Haven, a CYCC. They vary in detail, but the children all have some things in common. They have all had adults make life-changing decisions on their behalf. They all want a name, a nationality, a future, an opportunity to work when they are adults, a home and a family. They all want to belong. The message poignantly repeated was that being undocumented will probably cost them that.

All of which brings us full circle to Tumelo, the nine-year-old boy with cerebral palsy. Being undocumented could have cost him his life. The shack he lives in is overcrowded and freezing. There is no money for food, or clothes (he was found wrapped in a dirty towel). He cannot obtain grants or go to school, and the family did not take him to hospital for fear of the questions they would ask, and how they would be treated. Had the over-extended NGO social worker and compassionate therapist not found him when they did, he would not have survived. If ever there was a child in need of care and protection, it is Tumelo. But sadly, he is not alone. Beyond the policy are thousands of little lives forever changed by being undocumented. No matter how sympathetic you feel towards the goal of keeping resources for South Africans, that too is a tragedy, and one we cannot afford to disregard.

Not surprisingly, attendees at the indaba were unable to reach final conclusions. But they were positive that dialogue on the topic is finally occurring, and task teams will soon be formed. The real challenge will be to help the people fighting for change, and those fighting to maintain the status quo, to forge a plan together: one that will bring about legislative and social transformation, and be accepted across the country. But we need to be clear: Home Affairs' policy of keeping these children undocumented is not saving the country as much money as implied. It is costing us immense amounts in resources, and our constitutional and legislative imperatives mean that care for these children is part of our mandate. Every year this battle continues represents another year for them without certainty, without a family, without a future. Shame on us if we don't find a solution soon. **DM**

- ROBYN WOLFSON VORSTER



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A dedicated wordsmith with a background in social sciences, learning and strategic consulting, Robyn opted out of corporate life recently to become a children's rights activist. As an adoptive mom to a beautiful daughter, she has a special interest in adoption advocacy, and she now uses her "many words" to educate about children's issues and motivate for changes in policy. You can find her at www.becomingamom.co.za (<http://www.becomingamom.co.za/>)

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