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WESTERN CAPE

**ASSESSMENT OF POLICIES AFFECTING REFUGEES' AND ASYLUM
SEEKERS' CHILDREN TO ACCESS PRIMARY SCHOOLS IN
DEMOCRATIC SOUTH AFRICA**

Mulunda Kabeya Leonard

3805995

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Supervisor: Dr Meron Okbandrias

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DECLARATION

I hereby declare that this study, *Assessment of policies affecting refugees' and asylum seekers' children to access primary schools in democratic South Africa* is my own work and I have not previously submitted it at any University for a degree or examination. All sources that I have quoted have been indicated and duly acknowledged by means of referencing.

Mulunda Kabeya Leonard

2019

Signature



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.....

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DEDICATION

This work is dedicated to my wife, Yvette Mbuyi Mulunda, my daughter Tegra Mujinga Mulunda, and to my two sons, Michael Ilunga Mulunda and Nathan Tshibanda Mulunda. I also dedicate it to my late father-in-law, Gilbert Kalemba Lupepele, who, were he here, would have been so proud of me.



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ABSTRACT

The study assesses the application of policies on the right of refugees and asylum seekers with regard to the education of their children, and the many challenges impeding this right. Fundamental changes in the legal framework protecting the right to education of the children of refugees and asylum seekers have been in place since 1994, when South Africa became a democratic state. The principles of international treaties recognising the rights of children were incorporated into the Constitution of South Africa of 1996, demonstrating South Africa's commitment to the protection of children's rights. However, studies have suggested that, refugees' and asylum seekers' children have been discriminated against in terms of access to education, despite the legislative framework which provides for equal and inclusive education in South Africa. Access to education for migrant children in South Africa is invariably met with challenges which constitute a violation of the Constitution and international law.

This study assessed policies and practices affecting refugees' and asylum seekers' children to access primary schools in a democratic South Africa. The researcher argues that access to education for refugees and asylum seeker's children must be guided by the social justice principle of "every child deserves an education", regardless of the legality of their parents in South Africa. Failure to afford them the opportunity to study is a violation of the Constitution and international law.

The study used semi-structured interviews based on a questionnaire. Participants included parents who were refugees or asylum seekers, schools' principals, and officials from Scalabrini Centre and the Western Cape Education Department (WCED). The data collected from respondents was presented, discussed and analyzed through a thematic analysis approach. From data collected, it was possible to identify the barriers preventing refugees' and asylum seeker's children from accessing education. Some of the barriers were generated from gaps in migration policy, ineffective policy implementation, poor documentation and various institutional challenges. Based on the study findings, it is recommended that South African lawmakers formulate policies that speak to the needs of the refugee child and amend the current migration policy to make it more reasonable and accommodative with regard to meeting the needs of migrants' children in general, and refugee' and asylum seekers' children in particular. This would

enable South Africa to uphold the constitutional values and its international obligations in relation to the promotion and protection of the right to education for all children.



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Table of Contents

CHAPTER 1: INTRODUCTION AND BACKGROUND.....	1
1.1 Chapter overview	1
1.2 Introduction	1
1.3 Background of the study	1
1.4 Definition of a child	2
1.4.1 International recognition of children’s rights	3
1.4.2 The constitutional rights of children in South Africa	3
1.5 Problem statement.....	4
1.6 Research questions.....	5
1.7 Objectives of the research	6
1.8 Rationale and significance of the study.....	7
1.9 Research design.....	7
1.9.1 Research methodology	7
1.9.2 Data collection techniques	8
1.9.3 Data analysis	8
1.10 Clarification of terms	8
1.10.1 School principal	8
1.10.2 School governing body	9
1.10.3 Parent	9
1.10.4 Western Cape Education Department (WCED)	9
1.10.5 Scalabrini Centre	10
1.11. The structure of the thesis	10
1.12. Chapter summary	11
CHAPTER 2: THE CONTEXT OF REFUGEES AND ASYLUM SEEKERS IN SOUTH AFRICA	12
2.1 Chapter overview	12
2.2 Migration in South Africa	13
2.3 Refugees in South Africa	14
2.3.1 Definition of ‘refugee’	15
2.3.2 The concept of rights of refugees and asylum seekers	16
2.4 Socio-economic rights of children in South Africa.....	17
2.5 International experiences on policies allowing migrant children to access basic rights ..	17
2.5.1. Deferred Action for Childhood Arrivals (DACA) in United States of America	18
2.5.2 Immigration and Refugee Protection Act (IRPA) in Canada	18
2.5.3 Refugee and asylum seekers in Europe	19
2.5.4 Access to basic education for refugees’ children in Rwanda.....	21
2.5.5 The right of children to access education in South Africa	22

2.6	Positive effects of education policies in South Africa	23
2.6.1	Challenges of education policies in South Africa	25
2.6.2	South African education policies for refugees’ and asylum seekers’ children	25
2.7	Public policy and policy implementation	28
2.7.1	Definition of public policy	28
2.7.2	Policy implementation	29
2.7.3.	The importance of policy implementation	29
2.8	The Refugees Act No 130 of 1998	32
2.9	Poverty and low quality of life among refugees and asylum seekers in South Africa	33
2.10	Refugees and asylum seekers in Cape Town - a brief description of the research site	33
2.11	Challenges faced by refugees and asylum seekers in Cape Town	34
2.11.1	Asylum-seeker permit (Section 22)	35
2.11.2	Refugee status (Section 24)	37
2.11.3	Issues relating to the renewal of permits.....	39
2.11.4	Corruption	40
2.11.5	Xenophobia	41
2.12	Limitations of the study	42
2.13	Theoretical framework: The theory of social justice	43
2.14	United Nations Convention on the Rights of the Child (UNCRC)	45
2.14.1	The African Charter on the Rights and Welfare of the Child (AfCRWC)	45
2.14.2	The South African legal framework on access to education	46
2.15	The Constitution of South Africa	47
2.15.1	The South Africa Schools Act No 84 of 1996	48
2.15.2	The Admissions Policy for Public Schools Act.....	49
2.15.3	The National Education Policy Act.....	50
2.16	Conceptual model regarding access to education for refugees’ and asylum seekers’ children	52
2.17	Chapter summary	53
CHAPTER THREE: RESEARCH METHODOLOGY		55
3.1	Chapter overview	55
3.2	Purpose of the research	55
3.3	Qualitative study	55
3.4	Research design	56
3.4.1	Case study research	56
3.4.2	Sampling procedure	56
3.4.3	Sample size	57
3.4.4	Demographic information of the participants	58
3.4.5	Other important characteristics of participants.....	61

3.5	Data collection method: The in-depth interview	61
3.6.	Data presentation.....	61
3.7.	Data analysis.....	62
3.8	Themes in the research.....	62
3.8.1	Categories of questions in the interview schedule	63
3.8.2	Themes emerging from the data	64
3.9	Research procedure.....	64
3.10	Data validity.....	65
3.11	Ethics statement.....	65
3.12	Chapter summary	66
CHAPTER FOUR: EMPIRICAL FINDINGS: POLICIES AFFECTING ACCESS TO PRIMARY SCHOOLS FOR REFUGEES' AND ASYLUM SEEKERS' CHILDREN IN A DEMOCRATIC SOUTH AFRICA		67
4.1	Chapter overview	67
4.2	The admission and enrolment process.....	67
4.2.1	Parents' perspectives regarding access to education.....	68
4.2.2	School principals' perspectives with regards to access to education	70
4.2.3	The Western Cape Education Department's (WCED's) perspective on access to education.....	71
4.2.4	Civil society perspective on access to education	73
4.3	Barriers to accessing education	73
4.3.1	Documentation	74
4.3.2	Language barriers	76
4.3.3	Institutional barriers	79
4.4	Gaps in policy	80
4.5	Policy implementation from the perspective of the WCED	84
4.5.1	Access to education as a human right	86
4.5.2	Access to education as a matter of social justice	87
4.6	Summary.....	90
CHAPTER FIVE: SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS		92
5.1	Chapter overview	92
5.2	Summary of findings and conclusion	92
5.3	Recommendations.....	94
5.3.1	Recommendation to law makers.....	94
5.3.2	Recommendation to the national Department of Education	95
5.3.3	Recommendation to the Department of Home Affairs.....	96
5.3.4	Recommendation to the Western Cape Education Department	96
5.3.5	Recommendation to school principals	96

5.3.6	Recommendation to school governing bodies	97
5.3.7	Recommendations for future research	97
5.4	Conclusion	97
	<i>Bibliography</i>	<i>99</i>

LIST OF FIGURES

Figure 1: Logical relationships between the chapters that make up the thesis	11
Figure 2: Map of Cape Town and its suburbs	44
Figure 3: Demonstration of modified Fraser' theory on social justice	52

LIST OF IMAGES

Image 1: The certificate of recognition of asylum seeker temporary permit	36
Image 2: The certificate of recognition of refugee status	38
Image 3: Refugees and asylum seekers at the Refugee Reception Office in Cape Town	39

LIST OF TABLES

Table 1: Convention on the Rights of the Child	3
Table 2: Requirement for enrolling a child in primary school in South Africa	23
Table 3: Demographic data of refugees and asylum seekers participants	58
Table 4: Demographic data of public officials and civil society	59

Appendix I: Participation information sheet for parents

Appendix II: Participation information sheet for school principals

Appendix III: Participation information sheet for Scalabrini Centre/NGO

Appendix IV: Participation information sheet for Western Cape Education
Department

Appendix V: Consent form for parents

Appendix VI: Consent form for Scalabrini Centre

Appendix VII: Consent form for school principals

Appendix VIII: Consent form for Western Cape Education Department

Appendix IX : Questionnaire for parents

Appendix X : Questionnaire for Scalabrini Centre

Appendix XI: Questionnaire for school principals

Appendix XII: Questionnaire for Western Cape Education Department

Keywords: Access to education, primary education, children's rights, refugee and asylum seekers, migration, policy implementation, democratic South Africa



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LIST OF ABBREVIATIONS AND ACRONYMS

ACRWC: African Charter on the Rights and Welfare of the Child

CEAS: Common European Asylum System

CEMIS: Centralized Education Management Information System

CoRMSA: Consortium for Refugees and Migrants in South Africa

CRC: Convention on the Rights of the Child

DEA: Dakar Education for All framework

DoE: Department of Education (South Africa)

DFA: Dakar Framework for Action

DRC: Democratic Republic of Congo

DHA: Department of Home Affairs (South Africa)

EMS: Economics and Management and Sciences

ECRE: European Council on Refugees and Exiles

IOM: International Organisation for Migration

MSA: Migration in South Africa

OAU: Organization of African Unity

PSC: Public Service Commission

RSDO: Refugee Status Determination Officer

RRO: Refugee Reception Office

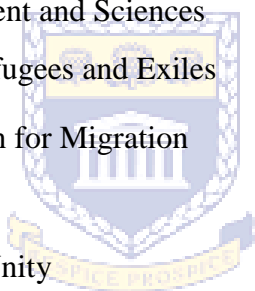
UNHCR: United Nations High Commission for Refugees

UNICEF: United Nations International Children's Emergency Fund

UN: United Nations

WCED: Western Cape Education Department

WDEA: World Declaration on Education for All



CHAPTER 1: INTRODUCTION AND BACKGROUND

1.1 Chapter overview

This chapter introduces the study. It highlights the background and context of the study, the research problem, research questions, aims and objectives of the study, and the significance and the methodology applied in this study. The chapter ends with a structural overview of chapters in this mini-thesis.

1.2 Introduction

Since 1994, the South African government has adopted a variety of social policies with the aim of redressing the socio-political and economic imbalances created by the apartheid regime (Spaull, 2013). The inclusion of the Bill of Rights in the Constitution of 1996 was a clear indication of the post-1994 democratically elected government's commitment not only to the socio-economic rights of South African individuals, but of all individuals living within the borders of South Africa (Letseka, 2014). Access to basic rights in South Africa is a constitutional paradigm extended to refugees and asylum seekers, including their children (Yamauchi, 2011). In light of these provisions, since the xenophobic attacks of 2008 against foreign nationals, the South African state has been under the spotlight regarding its less than adequate responses to the violation of the general human rights of refugees and asylum seekers (Spren & Vally, 2012). While research on the rights of migrants to access basic services in South Africa has increased since the xenophobic attacks of 2008, little is known about the practical expression of the right of refugees' and asylum seekers' children to access education. This right is considered one of the most basic rights in international and domestic law. The principle of social justice is necessary in guiding South Africans to ensure that education is inclusive, accessible and affordable for all within its borders.

1.3 Background of the study

South Africa is a signatory member to the 1951 Convention on the Status of Refugees. This United Nations (UN) multilateral treaty defines who is a refugee, and sets out the rights of individuals who have been granted asylum and the responsibilities of host

nations to promote and protect them (Plender, 1977). The signing and ratification of both the 1969 Organisation of African Unity (OAU) convention regarding specific aspects of refugees in Africa, and the 1989 United Nations Convention on the Rights of the Child (UNCRC) both indicate that South Africa is committed to respect and uphold international and regional instruments with regard to the rights of refugees and asylum seekers, including their children (Cohen, 1989; Brandon *et al.*, 2008). These instruments have found expression in various sections of the Constitution of South Africa adopted in 1996. For instance, section 28 and 29 of the Constitution of South Africa outlines the specific rights of *all* children in South Africa, including the right to access education (RSA, Constitution of South Africa No 108 of 1996).

The right to access education in South Africa is further legislated in the Schools Act of 1996, which make access to education compulsory for all children until they reach the age of fifteen or the end of Grade 9 (South African Schools Act No.84 of 1996). This Act emphasises that public schools are obligated to admit learners and serve their educational requirements without unfairly discriminating against them (South African Schools Act No. 84 of 1996, 2011).

This study took a qualitative approach to investigate the experiences of refugees' and asylum seekers' children in relation to their right to access education in a democratic South Africa. As stated by Kvale (2007) this approach helped to analyse the experiences of refugees and asylum seekers in order to understand the effectiveness and efficiency of the current legal framework with regard to the schooling of refugees' and asylum seekers' children.

1.4 Definition of a child

The Convention on the Rights of the Child (CRC) defines a child as someone who is under the age of 18. This definition with regard to the age limit is subject to the legal framework and interpretation of each country (Unicef, 2011). The South African Constitution defines a "child" as a person under the age of 18 years (RSA, the Constitution of South Africa Act No108 of 1996). This definition is inclusive and does not distinguish between South African children and those of migrants (Palmary, 2009). As such, it means that the South African legal framework offers the same protective measures to the children of migrant as it does to the children of South Africans.

1.4.1 International recognition of children’s rights

The Convention on the Rights of the Child (CRC), signed by the South African government in 1995, sets out various rights of children; among others, their socio-economic, cultural and political rights. All signatories, including South Africa, are duty-bounded to legislate and implement the rights of children prescribed under this international treaty (United Nations, 1989). The table below outlines some of these rights.

Table 1: Children’s rights according to the Convention on the Rights of the Child

Article 23	Article 24	Article 26	Article 27	Article 28	Article 32
Rights specific to disabled children.	Right to health and healthcare services	Right to benefit from social security	Right to good enough standard of living	Right to education	Right to protection against harmful work

Source: (United Nations, 1989; Cohen, 1989) <https://www.unicef.org/uk/wp-pdf>.

1.4.2 The constitutional rights of children in South Africa

The South African Constitution of 1996 contains various rights that are accessible to all children living within the borders of South Africa. The Bill of Rights, embedded within the Constitution, is viewed as a central document guiding the expression of the human rights of all people in South Africa, including children, without distinction (RSA, the Constitution of South Africa Act No 108 of 1996). Section 29 of the Constitution addresses the rights of *all* children to access education. In order to fulfil this constitutional provision, the Department of Basic Education (DoE) is tasked with the formulation and implementation of educational policies that will enable children to access education within the constitutional framework (RSA, the Constitution of South Africa Act No 108 of 1996). According to Palmary (2009), the Constitution of South Africa does not distinguish between South African children and the children of foreign

nationals. As such, all children's rights mentioned in the Bill of Rights are applicable to refugees' and asylum seekers' children living in South Africa (Palmary, 2009).

1.5 Problem statement

The right to education in South Africa is inclusive, and the government, through its various structures, is tasked with upholding it. The Western Cape Education Department (WCED) plays an important role in public schooling within the province, including the implementation of educational policies and the enforcing of compliance with the Bill of Rights. Section 195(1)(e) of the Constitution mandates the WCED to fulfil its responsibilities in ensuring that people's needs are responded to, and that members of the public are encouraged to participate in policy-making processes (RSA, Constitution of South Africa. 1996). The admissions policy for ordinary public schools confers the responsibility for the admission of learners to the head of the Department of Education in the province (Ginther *et al.*,1998). In exercising this responsibility, the department must ensure that the admission policy and administration process of public schools do not unfairly discriminate in any way against any child applying for admission (Ginther *et al.*, 1998).

Unfortunately, the ability of many children including those of refugees and asylum seekers in South Africa to enjoy this right is limited, despite the protection afforded them under international and domestic frameworks. While South African children are not exempted totally from the challenges of accessing education, the challenges of refugees' and asylum seekers' children exceed those of most others because of their vulnerability. Factors such as language, lack of documentation, limited placing, and xenophobia often place barriers that deny refugees' and asylum seekers' children access to education in various schools across South Africa (Hlatshwayo & Vally, 2014). Khan (2007) stated that the inability of refugees' and asylum seekers' children to access their rights in South Africa is the result of government failure to implement policies successfully. Landau (2014) argues that despite South Africa having some of the most progressive migration legislation in the world, refugees and asylum seekers are severely constrained when it comes to the practical implementation of their legislated rights.

In 2017, *Times Live* published a story about the principal of Eastleigh Primary School in Edenvale, Johannesburg, who issued a letter informing "all foreign parents" that their

children would not be allowed on to school premises if they could not prove that their documents were in order. The letter added, “If any foreign child arrives here on Monday we will phone the police to come and collect your child and you can collect your child at the police station” (*Times Live*, 2017).

In August 2017, *Elitsha News* reported that schools in Kraaifontein, Cape Town were threatening children of “foreign nationals” with expulsion unless they could provide refugee permits, even when they were born in South Africa (*Elitsha News*, 2017). In March 2019, *Ground Up News* reported that 40 refugees’ and asylum seekers’ children could not be registered in primary schools in Cape Town in the 2019 academic year, since principals were requiring parents to produce study permits in the child’s name, or proof that an application had been made for one at Home Affairs (*Ground Up News*, 2019).

These media reports failed to accurately state the policies of South Africa with regard to the education of refugees’ and asylum seekers’ children, simply revealing the challenges facing these children in relation to accessing education. Sobane, Momani, Bislimi, Nouns and Lunga (2018) attribute these challenges to a lack of consistency between the legislative frameworks regarding the admission of refugees’ and asylum seekers’ children to schools and what the schools implement in practice (Sobane *et al.*, 2018). Crush & Tawodzera (2012) maintain that this inconsistency is related to the fact that schools often demand study permits and birth certificates which are not only difficult to obtain but cannot be granted to refugees’ and asylum seekers’ children who were born outside of South Africa and do not fall under the Immigration Act (Crush & Tawodzera, 2012).

These challenges motivated the researcher to investigate public schools’ processes and practices with regard to refugees’ and asylum seekers’ children’s access to primary schools in a democratic South Africa. In carrying out this study, the intention is to contribute to the body of knowledge of refugees’ and asylum seekers’ experiences in accessing basic services and education for their children in a democratic South Africa.

1.6 Research questions

According to Bryman (2007) the formulation of research questions is a crucial step in research, providing a point of orientation for an investigation at its initial stage. The main question the research wanted to address was: “To what extent do education and immigration policies enable refugees’ and asylum seekers’ children to access public schools in a democratic South Africa?” This study seeks to answer the following sub-questions as well:

- How effective is the enrolment of refugees and asylum seekers’ children in the primary schools of Kensington and Maitland in Cape Town?
- What factors, barriers and circumstances are impacting on the ability of refugees and asylum seekers’ children to access education?
- What are the policies and measures employed by the Western Cape Education Department to enable refugees and asylum seekers’ children to access education?

1.7 Objectives of the research

The main objective of this research is to assess the extent to which the government’s education and migration policies are implemented to enable refugees’ and asylum seekers’ children to access schools in a democratic South Africa. The sub-objectives of the research are:

- to investigate whether the admission of refugees’ and asylum seekers’ children to primary schools in Cape Town, specifically in the Kensington/Maitland area, complies with the social justice principle of “every child deserves an education”;
- to scrutinise the challenges and personal circumstances of refugees and asylum seekers’ children and assess the extent to which they impact on their ability to access education;
- to examine the duty of the Western Cape Education Department in ensuring the effective implementation of education policies at school level; and
- to investigate the constitutional compliance of admission policies adopted at schools’ level, and the role of school principals as policy implementers.

1.8 Rationale and significance of the study

This study explores the perceptions of refugees and asylum seekers in relation to accessing education for their children. It also provided an understanding of constraints and opportunities regarding education for refugees' and asylum' seekers' children. In addition, this study highlights gaps and weaknesses in policy formulation and implementation, which may help the government to improve its plan of action, thus enabling refugees and asylum seekers to access basic services in South Africa.

This study has enabled the researcher to gain a deeper and more comprehensive understanding of the life of refugees and asylum seekers in Cape Town in relation to accessing basic services. Policymakers, government agencies, donors and international organisations may benefit from this study as it has highlights issues that are of interest to all concerned with the practical outworking of human rights in society. In this respect in may contribute to the debate on public policy and its implementation.

1.9 Research design

According to Bhattacharjee (2012) research design is a comprehensive plan for data collection, with the aim of answering specific research questions. He further states that for properly testing an hypothesis, research design must specify the data collection process, the instrument development process, and the sampling process (Bhattacharjee, 2012). This is further elaborated by Creswell, Hanson, Clark Plane and Morales *et al.* (2007), who refer to research design as a plan involving research questions and procedures for collecting, analysing, and reporting findings (Creswell *et al.*, 2007). This study undertook a qualitative approach to explore the social interaction between parent and school principals in order to understand how they are interpreting the system and processes managing the admission and enrollment of leaners in their own words. Furthermore, it helped in providing an in-depth understanding of how respondents are acting and managing their responsibilities with regard to the schooling of refugees' and asylum seekers' children. The study used a case study.

1.9.1 Research methodology

This study undertook a qualitative research approach, which enables an in-depth, thoughtful examination of complex phenomena within their context using a variety of data sources (Baxter & Jack, 2008). According to Thorne (2000), a study is qualitative when it relies on inductive reasoning processes to interpret data and structure meaning derived from the data. A qualitative approach was the natural choice for this study because the boundaries between the phenomena and the context were not clear (Baxter & Jack, 2008).

1.9.2 Data collection techniques

The technique used in this study comprised of semi-structured interviews based on a questionnaire, with the interviewer probing participants' responses to uncover more nuance and detail with regard to their experiences in terms of the education of their children (Gill *et al.*, 2008). This technique was useful in enabling the researcher to discover information that was relevant to this study (Gill *et al.*, 2008). Additionally, a variety of other secondary sources of information among others, institutional report, Non-Profit Organisation reports, academic journals and newspapers enabled the researcher to examine the complexity of the topic. The study therefore made use of triangulation, examining the phenomenon from different points of view, and making use of different kinds of sources.

1.9.3 Data analysis

The interpretation of data and structuring of meanings was made possible through a thematic analysis (TA) approach which, according to Maguire and Delahunt (2017) involves identifying patterns or themes within qualitative data and extracting the meaning attached to all data collected (Maguire & Delahunt, 2017). Thematic analysis went beyond counting explicit words or phrases, but focussed on identifying and describing both implicit and explicit ideas within the data. The data collected in this qualitative study is presented, discussed and analysed in Chapter 4.

1.10 Clarification of terms

The following are definitions of terms for the purpose of this study:

1.10.1 School principal

According to the South African Schools Act no 84 of 1996, the school principal is an educator appointed or acting as the head of a school.

1.10.2 School governing body

According to the South African Schools Act of 1996, the school governing body (SGB) is responsible for the formulation and the admission policies of schools. SGBs play an important role in the administration of schools. The SGB is a legal body of School principal, parents, no-teaching staff and at least learners from grade 8 or higher. The responsibilities of the SGB include, setting financial priorities through the school development plan and the annual budget. It also involved in drafting of the admission poly of schools.

1.10.3 Parent

According to the South African Schools Act No 84 of 1996, the term parent refers to:

- a. the natural parent of a learner
- b. the guardian of a learner
- c. a person legally entitled to custody (physical control) of a learner, and
- d. a person who undertakes to act as a parent of a learner for the purposes of the learner's education at school (South African Schools Act No. 84 of 1996). Therefore, in this study, all references to parents, family and their involvement are applicable to all adult refugees and asylum seekers who play an important role in a child's home life.

1.10.4 Western Cape Education Department (WCED)

According to section 7 (2) of the Public Services Act No. 103 of 1994, the term Provincial Education Department means the government department responsible for education in a province (Department of Public Service and Administration, 2007). The WCED has a Constitutional obligation to provide basic education for all learners of compulsory school-going age in the Western Cape province. In this study, the WCED was represented by two officials from the Policy Coordination and Development Unit.

1.10.5 Scalabrini Centre

The Scalabrini Centre is a non-profit organisation (NPO) providing welfare services in Cape Town to South Africans, migrants and refugees. The centre operates under the Non-Profit Organisations Act No 71 of 1997, which defines a non-profit organisation as a trust, company or other association of persons established for a public purpose where income and property are not distributable to members (Department of Social Development Act No 71 of 1997). The centre is located in Cape Town and has helped many refugees and asylum seekers place their children in public schools.

1.11. The structure of the thesis

Chapter 1 provides the introduction and background of the study. It provides an overview of the situation of refugees and asylum seekers in South Africa and presents the research problem, study objectives, significance of the study, research design and methodology, as well as data collection and analysis method.

Chapter 2 presents a literature review on migration in South Africa and around the world. It provides a comprehensive contextual description of the situation of refugees and asylum seekers in South Africa and an analysis of the challenges that refugees and asylum seekers are confronted with in terms of documentation and access to socio-economic rights. It also provides the theoretical framework used in this study.

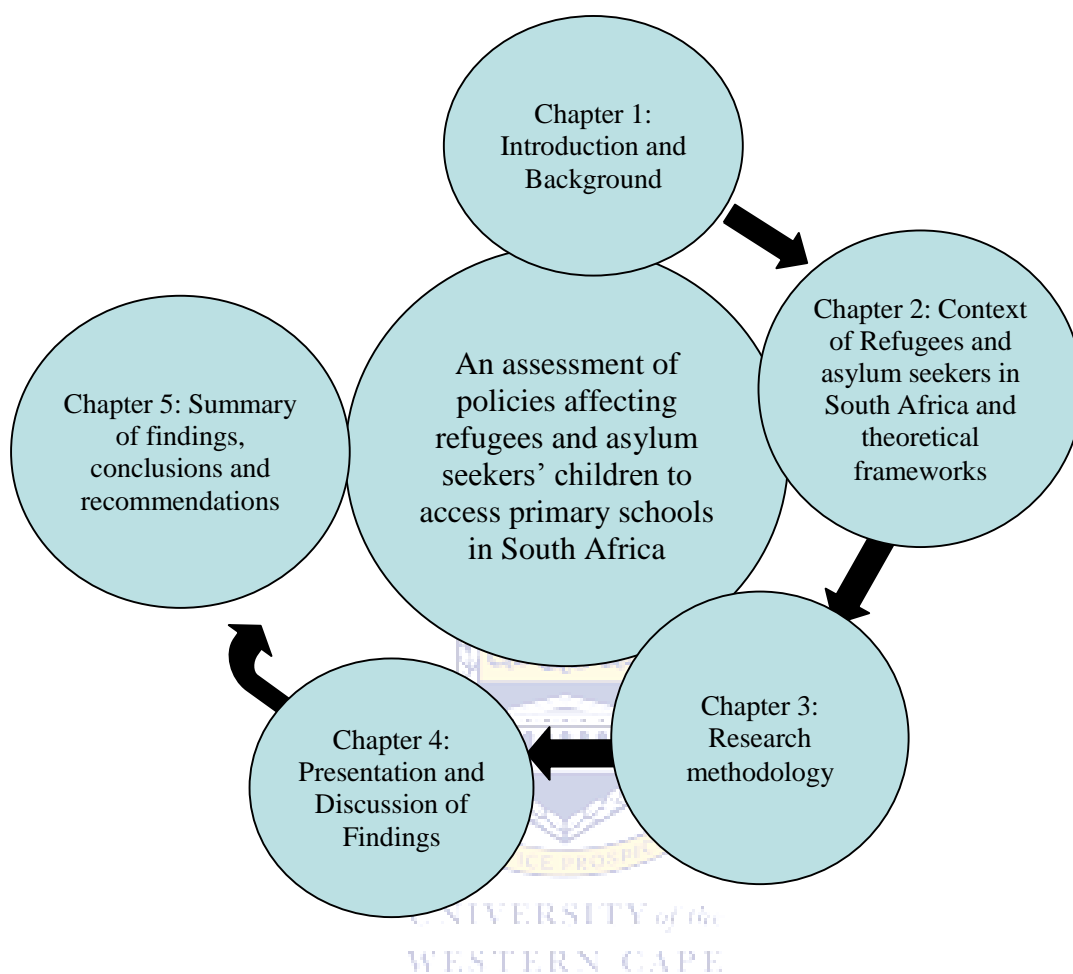
Chapter 3 presents the research methodology used in this study.

Chapter 4 focuses on the empirical findings, with a presentation, discussion and analysis of the findings. The chapter explains the findings in relation to the theoretical and conceptual frameworks adopted for the study.

Chapter 5 concludes the study by summarising the main findings, addressing research objectives, and recommending solutions to various stakeholders involved in policy making and child education.

A diagrammatic representation of this study outline is shown below.

Figure 1: Structural relationship among chapters



1.12. Chapter summary

This chapter has established the framework of what the research project entailed. The research questions, objectives of the study, and method of data gathering and analysis were explained in this chapter. The following chapter presents the context of refugees and asylum seekers in South Africa through a review of the literature, covering the different viewpoints of authors on the implementation of policies affecting migrant children's access to education.

CHAPTER 2

THE CONTEXT OF REFUGEES AND ASYLUM SEEKERS IN SOUTH AFRICA

2.1 Chapter overview

This chapter examines the literature relevant to this study. According to Watson (2002) a literature review is an essential feature of any academic project, helping to create a constant foundation for the advance of knowledge. The review helped the researcher in facilitating an understanding of theory, identifying the gaps in current research (Watson, 2002). The reviewing of literature was a huge undertaking, as there is a large body of research on the subject of refugees and migrants. The review helped the researcher to place the study in a context and to identify a relevant theoretical framework and concept surrounding the topic. It further helped the researcher to identify gaps in research on the topic. Policy documents, books and academic sources such as journals and articles were consulted to inform an analysis of the right of refugees and asylum seekers to access basic services in South Africa. As part of the literature review, the researcher examined the nature of migration policy in South Africa and analysed how it is implemented, based on both international and national experiences. Two major international policies informed the literature review; the Deferred Action for Childhood Arrivals (DACA) in the United States of America (USA) and the Immigration and Refugees Protection Act (IRPA) in Canada. The content of these policies highlights the importance of considering the social justice principle in policy formulation.

The review contains a brief discussion on migration in South Africa, since the global reality of migration is necessary to understand in order to understand the lives of refugees and asylum seekers in South Africa. The chapter begins by presenting an overview of refugees and asylum seekers, the types of policies that pertain to them, and their impact on developing countries. Thereafter it explains the refugee system in South Africa. It then presents information on how refugees enter South Africa, the challenges they face in general, and other aspects such as xenophobia, lack of access to basic services, corruption and the lack of documentation. Finally, this chapter looks at the

case of Rwanda and discusses its “education for all policy” that allows the children of neighbouring countries access to education in Rwanda.

2.2 Migration in South Africa

Migration is described as the movement of people, frequently in response to conflicts and war (Sjoberg, 1952). Various authors have given different definitions of migration. Edmonston (2017) defines migration as the movements of one or many people over a long distance. Eraydin, Tasan-Kok and Vranken (2010) define migration as the movement of people which affects cities in a multitude of social, economic, cultural and spatial ways, each with distinctive characteristics.

According to Czaika & De Haas (2014) international migration has increased recently, becoming more diverse in terms of the origin and destination of migrants (Czaika & De Haas, 2014). The International Organisation of Migration (IOM) acknowledges that migration is not a new occurrence, having been a part of human experience for centuries. The United Nations points out that migration movements have long caused people to travel within countries, from one country to another or from continent to continent in search of a better life (UN, 2018).

The IOM World Migration Report (2018) states that, the number of international migrants has increased recently, with a total estimated 244 million people living in countries that are not the countries of their birth in 2015. This is almost 100 million more than in 1990 (UN, 2018). Many African migrants have chosen South Africa as their destination due to the fact that the post-1994 democratic government opened doors for them and delivered many opportunities and incentives for international migration (Landau & Amit, 2014).

Many factors cause people to decide to leave their home country and settle elsewhere. Some voluntarily decide to migrate from one country to another for economic reasons, in search of a better future (Helton & Jacobs, 2006). As highlighted by Hangen-Zanker (2010) migration is invariably viewed as an opportunity to better one’s life; there is a “pull” factor, drawing people away from the known to the unknown, fuelled by hope. Some, such as senior citizens, might migrate from one country to another in search of warm and sunny weather. These migrants may be described as voluntary migrants

(Handmaker & Parsley, 2001). Involuntary migrants are people who do not have much of a choice; they are forced to leave their homes due to political conflict, war or natural disaster. They are also called refugees (Helton & Jacobs, 2006).

The South African policy on international migration is set out in the 1999 White Paper on International Migration (IM). It is implemented through the Immigration Act of 2002 and partly through the Refugees Act of 1998. The 2017 White Paper on Migration provides a comprehensive policy framework that guides all legislation related to immigration; a review of this White Paper reveals significant policy gaps that exist in a number of areas, such as the management of asylum seekers and refugees with regard to the registration of the birth of their children which must happen to their respective embassies, etc.... The White Paper seeks to enable South Africans to embrace global opportunities while safeguarding the sovereignty of South Africa by ensuring public safety and national security (South Africa, White Paper on Migration, 2017). With regard to refugees and asylum seekers, the White Paper suggests that policy intervention is the only instrument that will enable South Africa to provide protection and basic services to refugees and asylum seekers in a humane and secure manner (South Africa, White Paper on Migration, 2017).

While the government of South Africa has managed to accommodate migrants and refugees and has afforded them access to basic rights, Kavuro (2016) argues that various challenges faced by refugees and asylum seekers remain unresolved. He states that South Africa's responsibility to protect the previously disadvantaged should not be used to overlook its duty to observe and protect refugees' basic rights, including the right to work. A failure to protect such rights would result in the infringement of the Bill of Rights (Kavuro, 2016).

2.3 Refugees in South Africa

The South African Constitution has been widely praised as being among the most progressive and inclusive in the world, extending the rights it observes to everyone living within the boundaries of South Africa (Crush, 2001). According to Palmary (2002) this is a demonstration of the post-1994 democratically elected government's (Palmary, 2002). The Refugees Act No 130 of 1998 allows for any person to apply for asylum and states that no person should be denied the right to apply for asylum in South

Africa (Palmary, 2002). While the Refugees Act is seen as a progressive piece of legislation because of its flexibility toward asylum applicants, Handmaker and Parsley (2001) argue that in its implementation it has failed to provide adequate due process to asylum-seeking applicants, making them an extremely vulnerable group in South Africa. This vulnerability is exacerbated by the recurrence of xenophobic attacks which show South Africa to be one of the most migrant-unfriendly countries in the world (Crush & Tawodzera, 2014).

2.3.1 Definition of 'refugee'

The South African Refugees Act No.130 of 1998 describes a refugee as

... a person who has fear of being persecuted in his/her country of origin for reasons of race, gender, tribe, religion, nationality or political opinion (SA, Refugees Act No 130, 1998).

Article 1 of the 1951 United Nations Convention on the Status of Refugees (UNCSR) defines a refugee as:

... any person with fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality to seek protection ... unwilling to return to his or her country for such fear (UNHCR, 2010).

The above definitions mention some of the pull and push factors that result in refugees fleeing their countries in search of peace, protection or economic opportunity. According to Hristoski and Sotiroski (2012) pull factors are things that attract people to a location, such as weather conditions, tourism, political stability, economic opportunities and so on. Push factors, on the other hand, are circumstances that force people to leave their country of origin (Hristoski & Sotiroski, 2012). Although the pull factors do apply, the most widely experienced factors that drive people from their homes are push factors such as political instability, poverty, war and natural disasters (Hristoski & Sotiroski, 2012).

When people migrate to South Africa, they must present themselves at the nearest Refugee Reception Office (RRO) to make an asylum application, which will be followed by a hearing to determine whether they qualify to be granted asylum

documents as provided for in the Refugees Act of 1998. This determination enables those qualifying as refugees to enjoy protection and access to socio-economic rights, including the rights to work and study (Makhema, 2009). As stated by Landau *et al.*, (2005) as soon as the asylum document, known as the section 22 permit, is granted by the RRO, the refugee is granted the same rights as any South African citizen (Landau, Ramjathan-Keogh & Singh, 2005).

According to Palmary (2002) the flexibility of the South African migration framework has attracted many refugees from across the world and particularly from the African continent to South Africa. A report published in June 2016 by the United Nations High Commission on Refugees (UNHCR) states that the number of asylum applications registered in South Africa amounted to 1,096,063 (United Nations High Commissioner for Refugees, 2016). This figure is corroborated by the Department of Home Affairs, which shows that 24,174 asylum seeker temporary permits were still active in the Home Affairs system during the 2017-2018 financial year (DHA, 2018).

Refugees and asylum seekers in South Africa face tremendous challenges in securing a living and more specifically in accessing formal employment, which has resulted in accusations that the South African government has failed to manage the inflow of refugees into the country and to assist those in the country with the resettling process (Maharaj & Rajkumar, 1997; Smit & Rugunanan, 2014; Kavuro, 2016).

2.3.2 The concept of rights of refugees and asylum seekers

Refugees and asylum seekers are entitled to all the rights contained in international human rights instruments (Swart, 2009). These rights are well documented in various instruments at international and regional level (Swart, 2009). The 1951 Convention on the Status of Refugees addresses two distinct areas: the criteria by which an individual may qualify for refugee status and the rights that accrue to individuals before and after refugee status is granted (Goodwin-Gill, 2001). At continental level, common standards for the treatment of refugees and asylum seekers were established through the signing of the 1969 Organisation of African Unity (OAU) protocol (Turner & Information, 1994). The signing of these international instruments places an obligation on all signatory parties to legislate the rights of refugees and asylum seekers in their domestic frameworks. As signatory to these instruments, South Africa formally

recognises its obligations and has enacted policies that guarantee the protection of the rights of refugees and asylum seekers (Landau, 2006). The Constitution of South Africa of 1996 and the Refugees Act of 1998 are legal instruments containing provisions which guarantee the protection of the rights of refugees and asylum seekers. Section 7 (1) of the Constitution states that the rights enshrined in the Bill of Rights are for “all” people living in South Africa (Department of Justice and Constitutional Development, 1996). Moreover, section 27 of the Refugees Act establishes procedures for the application of refugee status and provides full protection to refugees and asylum seekers, including the rights set out in the Bill of Rights (Palmary, 2002).

The Constitution and the Refugees Act are consistent with international treaties. However, the implementation of migration policies is failing to meet international standards in terms of delivering socio-economic rights to refugees and asylum seekers (Spren & Vally, 2006). Outlining the importance of effective policy implementation for refugees and asylum seekers in South Africa, Palmary (2002) argues that the migration of a parent to South Africa has a negative impact on the wellbeing of the child.

2.4 Socio-economic rights of children in South Africa

The rights of children enshrined in the United Nations Convention on the Rights of the Child (UNCRC) may be differentiated in various ways. An often-used classification is the division of these rights into “three Ps”: protection rights, provision rights and participation rights (Roose & Bie, 2007). South Africa is among the countries that recognise and strive to maintain the rights of refugees with regard to protection, provision and participation (Roose & Bie, 2007).

2.5 International experiences on policies allowing migrant children to access basic rights

It is important to look at international experience in relation to the management of migration, specifically the policies that promote and protect the rights of migrants’ children. A review of international approaches offers a chance to see South Africa’s policies from a global perspective and yields an understanding of how the

implementation of South Africa's migration policies might be improved to meet the needs of children.

2.5.1. Deferred Action for Childhood Arrivals (DACA) in United States of America

DACA was introduced in June 2012 in an attempt to provide a temporary solution to the challenge of migrant children by establishing two important changes to existing legislation; it granted a temporary suspension of deportation and the authorisation to work in the United States (Gonzales, Terriquez & Rusczyk, 2014b). DACA was implemented to provide temporary relief to children who were brought illegally to the USA, and who remained there without lawful immigration status (Gonzales, Terriquez & Rusczyk, 2014b). However, although DACA was never a permanent solution to the problem of migrant children, the researcher argues that it was formulated and implemented "in the best interests of the child". It is further this researcher's contention that the implementation of DACA should be seen by other migrants host countries as an example of the principle that children must not be prevented from accessing their basic rights because of a crime committed by their parents. As an example of principled legislation, DACA has managed to give qualified, undocumented young people relief from deportation, renewable work permits, and temporary social security numbers. Furthermore, the policy opened up access to new jobs, higher earnings, driver's licenses, health care and banking services (Gonzales, Terriquez & Rusczyk, 2014c). While DACA does not address many of the problems migrant children face in the USA, it has eased access to basic services such as education (Gonzales, Terriquez & Rusczyk, 2014b).

2.5.2 Immigration and Refugee Protection Act (IRPA) in Canada

The Immigration and Refugee Protection Act (IRPA) was implemented in 2002 to affirm Canada's commitment to international efforts to provide assistance to those in need of resettlement (Dauvergne, 2018). The implementation of this policy enabled refugee children to access basic services such as education, and contributed to discussions on policy formulation and implementation, demonstrating that migration policy must be shaped by the global commitment to upholding children's rights rather than by the size of the economy (Dauvergne, 2018). IRPA reflects Canada's

commitment to providing protection on Canadian territory to all persons seeking asylum (Bauder, 2008). As a result, this policy has enabled the refugee community in Canada to access basic services, to reunite with their families and attain the formal recognition necessary for the schooling of their children (Bauder, 2008). Access to basic services for refugees and asylum seekers including their children under IRPA has demonstrated the need for policymakers to adopt a bottom-up approach in formulating immigration policy.

2.5.2.1 Similarities between DACA and IRPA

Both DACA and IRPA take a “children’s rights” approach. They provide a framework for policymakers to promote and protect the rights of migrant children from a perspective that is larger than the interests of one country only, but extends to the interests of children. They highlight the principle that children should not be denied basic services because of the illegality of their parents. Secondly, they highlight that the state’s obligation to promote and protect the rights of migrants’ children is an international obligation, demanding fulfilment irrespective of the size of the economy. Additionally, they demonstrate a recognition that the personal circumstances of migrants’ children have to be considered in policy formulation so that migrants’ children are viewed as separate human beings from their parents. According to both DACA and IRPA, policymakers overlook the legality of the parents in determining their children’s right to basic services.

These policies provide an opportunity to all stakeholders to consider the long-term benefits of migration. In terms of DACA, many children were brought to the USA at a young age, were educated in the American system, and grew up imbibing American culture and values. They make a contribution to the country by enriching the culture with new ideas, contribute to the economy through employment or through entrepreneurship, they strengthen America’s connection to the world, and they make multi-cultural friendships possible between people of different backgrounds.

2.5.3 Refugee and asylum seekers in Europe

The European Union (EU) asylum system is managed through the Common European Asylum System (CEAS), which is a set of EU policies intending to ensure that all EU

member states protect the rights of refugees and asylum seekers on European territory (Kelpp, 2010). This set of policies is a legal instrument implemented among EU member states to solve challenges faced by displaced people within European boundaries. CEAS sets rules and procedures for asylum application, defines the assistance available to asylum claimants and details the appeal process for rejected applications. It creates standard rules for the asylum process within EU countries and makes provision for aspects such as family reunion, work benefits and access to basic services such as education (Bloch, 2000). Access to education is an essential step for the empowerment of refugees and asylum seekers who are forced to rebuild their lives in countries not their own. With the recent refugee crisis in Europe, criticism has been levelled at EU countries regarding a review of its policy on refugees, which sets restrictions on entry and makes it difficult for asylum claimants to enter the EU zone (Bloch, 2000). Edwards (2017), observes that some governments justify their policies in light of the 1951 Convention on the Status of Refugees by failing to make further reference to other applicable human rights and humanitarian instruments within international law.

With regard to children, the refugee system in Europe maintains that refugees' children have full rights as children and as refugees, and lawmakers and other stakeholders must always consider the best interests of the child in policy formulation or programmes concerning them. This means that refugees' and asylum seekers' children are viewed simply as children rather than as foreign children. European countries have committed to assuring full compliance with children's rights to access basic services as incorporated in the UNCRC (Lundy, 2007). In observing article 12 of the UNCRC, the European Commission recognises and safeguards the basic rights of migrant children, such as the right to access education. This was made possible through a variety of policies that give expression to the international instruments (Kilkelly, 2007; Assembly *et al.*, 1989). Various policy documents provide guidance for child protection for refugees and unaccompanied minors and guarantee their rights to education and health services (Lundy, 2007). Lundy (2007) states that, in accordance with article 12 of the UNCRC, children in the European Union must be given an open space, a voice, a view and an audience. They have the right to be listened to, and their views must be acted upon (Lundy, 2007). This means that the personal circumstances of children should be considered in the policy making lifecycle (Kilkelly, 2007).

2.5.4 Access to basic education for refugees' children in Rwanda

Since the end of the Cold War, there has been a proliferation of institutions around the world that promote global models of human rights, equality, democracy and development through education (Russell, 2015). This global trend had motivated the government of Rwanda to undergo a significant structural change in terms of public policy following the Rwandan genocide (Russell, 2015). The policy framework for education adopted by the government of Rwanda aims at assuring that the right to access education is extended to all children living in Rwanda, including refugee children (Bilgili *et al.*, 2019). The government has implemented an integrated, community-based approach which facilitates the integration of refugees into Rwandan communities and facilitates access to education (Bilgili *et al.*, 2019). This educational policy framework is in line with global targets set out in the Millennium Development Goals (MDG) on education, aiming to make access to education for all children a reality. Williams *et al.* (2015) state that the MDG has found expression in Rwandan education policy through its nine-year basic education programme.

Despite the political turmoil and the 1994 genocide, the government of Rwanda has taken steps to promote inclusive education, both for Rwandans and refugee children living in various refugee camps across Rwanda. This initiative aims at re-inventing the education system which was devastated by the 1994 genocide in terms of both infrastructure and human resources. Since then, investing in education has been high on the policy agenda of the Rwandan government (Bilgili *et al.*, 2019). In 2006, an “education for all policy” was enacted to allow all children access to basic education and help them remain in school and complete their education within nine years (Russell, 2015). This means six years of free, compulsory primary education and three years of free, compulsory secondary education (Williams, Abbott & Mupenzi, 2015), which is an expansion from the initial six years covering Grades 1 to 6 (Omilola & Kaniki, 2014).

While there has been little opposition to the principle of basic education as a right, Abbott and Mupenzi (2015), argue that “economic and political conditions have often failed to ensure access to education, particularly for the poor and vulnerable children in Rwandan society” (Williams, Abbott & Mupenzi, 2015). These economic conditions

are linked to education-related expenditures incurred by school children and their families in a fee-free education policy context (Williams, Abbott & Mupenzi, 2015).

Rwanda makes for an interesting case study on the implementation of policies for the education of refugees and the effects of an “education for all policy” on the host country. Firstly, the country that was itself a refugee-generating country not that long ago has become home to a considerable number of people fleeing violence in neighbouring countries such as the Democratic Republic of Congo (DRC) and Burundi, and has managed to successfully uphold access to education as a socio-economic right for all children. Secondly, the Rwandan case demonstrates how an inclusive education policy can benefit both local and refugees’ children. It is conceivable that the presence of the refugee population has led to increased investment in services and has contributed to a positive outcome of the local population in terms of school attendance (Bilgili *et al.* 2019),

2.5.5 The right of children to access education in South Africa

South Africa signed and ratified the 1989 United Nations Convention on the Rights of the Child (CRC), binding member states to uphold children’s rights and imposing an obligation to provide for those rights (Pillay, 2014). Since the end of apartheid in South Africa, the public policy model adopted by the democratically elected government has been largely in compliance with international standards in terms of enhancing transformation and restoring social justice (Pillay, 2014). The government’s commitment to social justice was made possible through the adoption of the South African Constitution of 1996, which sets out the character of the society that was envisaged and proclaims the values of human dignity, the achievement of equality, and the advancement of human rights, social justice and various freedoms (Badat & Sayed, 2014). The South African education system and its institutions were equipped with various laws and policies, including the South African Schools Act 84 of 1996 and the National Education Policy Act 27 of 1996. These policies were necessary for enhancing the transformation, equality and accessibility of the education system, polarised by the legacy of apartheid. The aim of these laws is to make education accessible to all children in light of South Africa’s obligations under the Convention on the Rights of the Child (CRC) (Badat & Sayed, 2014).

Table 2 shows the minimum requirements for the enrolment of children in schools in South Africa.

Table 2: Requirements for enrolling a child in primary school in South Africa

Age	Grade	Essential requirements (South African child)	Essential requirements (not a South African child)
<ul style="list-style-type: none"> • Four, turning five by 30 June in the year of admission • Five, turning six by 30 June in the year of admission. 	<ul style="list-style-type: none"> • Grade R • Grade 1 	<ul style="list-style-type: none"> • Birth certificate • Immunisation card • Transfer card or • Last school report card (for learners who have been to school previously) 	<ul style="list-style-type: none"> • Study permit • Temporary or permanent residence. • Permit from the Department of Home Affairs; or • Evidence of an application for permission to stay in South Africa

Source: (Department of basic education, 2019)

2.6 Positive effects of education policies in South Africa

Through its Education for All (EFA) policy adopted in 1990, the United Nations Educational Scientific and Cultural Organisation (UNESCO) encourages states to implement educational policies that focus on the expansion of early childhood education and the provision of free and compulsory education for all children of school-going age (Safford *et al.*, 2018). In light of this global initiative, the South African government has introduced a number of initiatives since 1994 in an attempt of making education accessible to all children in compliance with global requirements (Lillis, 2002).

The South African education system has had a positive effect on the democratic dispensation (Case & Deaton, 2016). During apartheid, policy decisions for most black schools were made centrally by a minority government in which Blacks were not

represented and over which they had no control (Maharaj, Kaufman & Richter, n.d.; Case & Deaton, 2016). These two features explain the obvious ways in which there was need to transform education post-1994. Boateng (2014) argues that the administration of primary education in South Africa needs to be understood in its historical context, where racial unfairness was the order of the day and had to be corrected by the 1994 democratic government, which has made access to education a constitutional right for all (Boateng, 2014). The White Paper on Education and Training (WP), adopted post-1994 by the government of South Africa, recognises the definition of “basic education” as used in the World Declaration on Education for All (WDEA), stating that basic education “must be determined in terms of learning needs suitable to the age and experience of the learner” (RSA, Department of Basic Education, 2001).

Since 1994, various scholars have pointed out the positive effects of access to primary education in a democratic South Africa. Boateng (2014) and Murungi (2015) describe the South African government’s effort to improve access to free, quality basic education for all as a positive aspect of making education accessible and inclusive. They add that in order to achieve this huge departure from the previous educational system, extensive reform was needed, including devolving the responsibility for educational administration to the provinces. Badat and Sayed (2014), state that the post-1994 admission policy for schools is based on participation, equality and accessibility. Educational policies are set by the national government, but their implementation is carried out by several stakeholders, including provincial governments and school governing bodies (SGBs).

Taylor and Von Fintel (2016), state that the South African legal framework and educational policy post-1994 have given SGBs the liberty to choose the language of instruction from the eleven official languages. As stated by Tollefson and Tsui (2014), language policy is crucial in mediating access and equity in education and also serves as a central gatekeeper to education itself. In addition, the ability to derive a quality education from a place of learning depends largely on language skill, not only for literacy, but for other language-related aspects of education (Tollefson & Tsui, 2014). The provision of resources such as books by the Department of Basic Education (DBE) to all learners from Grades 1 to 6 since 2011 is seen as evidence that education has been made accessible to children attending public schools, and it certainly goes some way to improving their literacy, numeracy and life skills (Kilkelly, 2007).

2.6.1 Challenges of education policies in South Africa

The literature highlights successes regarding educational policies in post-1994 South Africa. However, as pointed out by Fleisch (2016), educational policies still face many challenges at implementation level. He further stated that the educational policy reform adopted by the democratic government focused on transforming the administrative system which was racially segregated, redressing resource inequalities, transforming the official curriculum and institutionalising school governance (Fleisch, 2016). While many of these policies and reforms have impacted positively on the education system, others have proved to be failing, particularly in the area of curriculum policy (Fleisch, 2016). This failure is acknowledged by Safford (2018) who state that part of the difficulty with regard to the implementation of education policies may be attributed to the legacy of apartheid, which restricted instruction in mathematics and science to the black majority, confining Blacks to “Bantu education”. These restrictions negatively affected all schools and all black children, and have created particular challenges for schools in rural areas that struggle with the implementation of transformative policies (Plessis, 2015).

According to Mncube (2008) the achievement of a transformed society envisaged by the South African government, through education policy can only be done through fairness and equity. Van Deventer, Van Der Westhuizen and Potgeter (2015) consider this, as an essential component of social justice, which they describe as a movement toward a socially just world in which all people, irrespective of belief or societal position, are entitled to be treated according to the values of human rights, human dignity and equality (Van Deventer, Van der Westhuizen & Potgieter, 2015). It is argued that the implementation of educational policy in South Africa has not reached effective social justice, with a lack of leadership contributing to this situation (Van Deventer, Van der Westhuizen & Potgieter, 2015).

2.6.2 South African education policies for refugees’ and asylum seekers’ children

As a signatory to the 1951 United Nations Convention on the Status of Refugees (UNCSR) and the 1969 Organisation of African Unity’s Convention Governing Specific Aspects of Refugees in Africa, South Africa has built a reputation as a

protective and receiving country for refugees and asylum seekers (Piper & Charman, 2016). This is evident in the progressive legal framework for refugees that not only provides for the protection of refugees' rights under international law, but offers significant freedoms of movement, including the rights to work and study (Autumn & Handmaker, 2017).

The adoption of the Refugees Act No 130 of 1998 is seen as further evidence of the post-apartheid government's commitment to international standards and practices (Vigneswaran, 2008). However, despite the fact that refugees and asylum seekers are not constrained in camps and their welfare and protection are legislated in line with international and regional instruments, research shows significant discrepancies between legislated policies and their implementation (Landau & Amit, 2014). Vigneswaran (2008) points to the growing number of undetermined asylum seekers and describes the extreme difficulties and trauma facing refugees and asylum seekers in the simple act of attempting to enter the refugee reception office for application or renewal of their permits. Conditions at this facility are described as alarming compared to conditions at similar offices in Europe and North America. According to Vigneswaran (2008), the problem is one of capacity, a refugee reception system that is not functioning as intended by the legal framework and a lack of trained Home Affairs officials. It is argued that these conditions are exacerbated by the inability of Home Affairs officials to show any sensitivity to vulnerable groups such as refugees and asylum seekers (Alfaro-Velcamp, 2017). Crea, Loughry, O'Halloran and Plannery (2017) blame a weak state presence which promotes a culture of impunity, failing to hold officials to account for their treatment of refugees and asylum seekers, whose claims they regard as "bogus".

Referring to the South African context, Landau and Amit (2014) point to the bureaucratic autonomy at all levels of government as a contributing factor to the problem, reinforcing the gap between legislated policy and policy implementation. They argue that despite strong legal frameworks protecting refugees and asylum seekers and the recognition of the fundamental rights of all individuals in the Constitution, policy implementation by the Department of Home Affairs has not been effective or efficient (Landau & Amit, 2014).

It is revealed that challenges facing refugees and asylum seekers in obtaining or renewing their papers have direct consequences for their ability to secure socio-economic rights for themselves and their children who cannot even be registered at schools (Alfaro-Velcamp *et al.*, 2017). As a signatory to the United Nations Convention on the Rights of the Child of 1989 (UNCRC) and the African Charter on the Rights and Welfare of Children of 1990 (ACRWC), South Africa is obliged to comply with these comprehensive documents in the provision of children's rights (Unicef, 2011; Heyns, African & Human, 2004). Article 3 and 4 of the UNCRC state that governments must make the best interest of the child its primary concern in all decisions that affect children (Assembly *et al.*, 1989). This has to be done in such a way that delegates specific responsibilities to various parties to ensure that measures are in place for guaranteeing the respect, protection and fulfilment of children's rights (Unicef, 2011). Despite these international instruments and South Africa's constitutional provision, legislative framework and civic environment – all geared toward safeguarding children's rights – wrongs are perpetrated against a large number of children in South Africa (Richter, 2008). These wrongs include the tragic abuse of individual children on the one hand, and, on the other, the denial of many children's basic rights such as the right to access health services and education (Richter, 2008).

According to Landau and Amit (2014) refugees' and asylum seekers' children are limited in realising their fundamental and legislated rights, despite South Africa having the most progressive legislative framework in the world (Landau & Amit, 2014). The violation of the rights of children has an impact on them, preventing them from realising their full potential throughout life (Africa, 2014). While studies on the rights of children in South Africa, including those of refugees and asylum seekers, have increased in number in recent years, investigations into specific violations of the right to education have lagged. This study hopes to close existing gaps in the literature by investigating the obstacles which prevent refugees' and asylum seekers' children from being enrolled at primary schools in Cape Town.

The rights of refugees' and asylum seekers' children should be priorities of the South African government as a signatory to various international and regional treaties on the protection of the rights of children (Reinke & Ensor, 2014). Because of their vulnerability, refugees' and asylum seekers' children require a special focus on the protection of their rights, including the right to education (Swart, 2008). A variety of

obstacles such as poverty, school-related costs and school management and government's inability to effectively implement policies and legislation have been identified as the main barriers that prevent children from accessing primary schools (Crush, 2001).

In addition, the uncertainty around policies governing access to education by foreign children in South Africa is a contributory factor for the inability of refugees' and asylum seekers' children to access education (Sloth-Nielsen, 2015). While Section 29(1) (a) of the Bill of Rights extends the right to basic education to everyone in South Africa and the South African Schools Act No. 84 of 1996 makes it compulsory for every child to attend school, it is argued that the Refugees Act No 130 of 1998 fails to make a specific mention on the right of refugees' and asylum seekers' children to access education (South African Schools Act No.84 of 1996) (Sloth-Nielsen, 2015). Bhabbaha (2009) argues that if the challenges infringing on the right of refugees' and asylum seekers' children to access education are not addressed, they will place these children outside the legal parameters established by the South African government, which will violate South Africa's obligations vis-à-vis international law (Bhabbaha, 2009). As pointed out by Sloth-Nielsen and Ackermann (2016), policy implementers, specifically school principals, are trapped in the grey area created by the provisions of the Immigration Act No. 130 of 2002, which contains implied contradictions with the Schools Act No. 84 of 1996 – which urges schools to admit undocumented children while parents are obtaining documentation.

2.7 Public policy and policy implementation

2.7.1 Definition of public policy

Public policy is defined differently by various scholars. Ranney (1968) cited by Cloete *et al.* (2004: 14) defines public policy as “a declaration and implementation of intent”. Baker *et al.* (1975) cited by Cloete *et al.* (2014:14) define public policy as “a mechanism employed to realise societal goals and to allocate resources”. Dye (1978) cited by Cloete *et al.* (2004:14) defines public policy as “a comprehensive framework of interaction”.

McConnell (2010) explains that public policy is only successful when it attains the goals for which it was designed.

2.7.2 Policy implementation

Jamieson (2011) defines policy implementation as a process of carrying out government decisions. Smith (1973) rejects the assumption often made by policymakers that once a policy is formulated by a government, it will be implemented and will automatically achieve the desired outcomes (Smith, 1973). Some public policy scholars attribute the failure of policy implementation to a lack of a clear framework (O'Toole, 2000). Others have attributed the failure of implementation to the lack of capacity among administrators to implement them (Smith, 1973). While highlighting these failures, scholars have also pointed out the importance of making a conceptual distinction between implementation and impact when it comes to the policy problem (O'Toole, 2000). Palumbo and Calista (1990) suggest that public policy output cannot be understood fully without recognising the influence of implementation. They reject the top-down model which is often used in implementation, arguing that a top-down approach binds policy makers and implementers to a policy that may be unworkable in light of circumstances arising during the implementation phase. They suggest a bottom-up model as more effective for policy implementation (Palumbo & Calista, 1990).

Jamieson (2011) criticises the bottom-up model, arguing that it can only be successful when it involves all stakeholders from the earliest stage of policy formulation and continues to involve them to the implementation stage. According to Spillane *et al.* (2002), policy implementation can become effective only if it focuses on the nature of the social problem intended to be addressed. This means that policy implementation can become effective and efficient if it involves all role players who focus on identification of the social problem that needs to be solved (Spillane, Reiser & Reimer, 2002b). Young and Lewis (2015) argue that policy implementation is complex in terms of undertaking, objectives, procedures and techniques. An implementation process might require different techniques based on the objectives for which the policy was designed.

2.7.3 The importance of policy implementation

Policy implementation is an important part of the policy cycle since implementation transforms decisions into operational terms in order to achieve goals envisaged in policy formulation (Horn, 1974). This part of policy involves actions that are directed at the attainment of objectives set out in policy decisions (Africa *et al.*, 2005). The South African policy context is informed by its history, which makes both policy implementation and service delivery a critical and challenging component of public policy (Africa *et al.*, 2005). Because of government's commitment to eradicating the legacy of apartheid, every policy intervention, including educational policy, has to include a human rights component in order to ensure inclusivity and equity (Naicker, 2006). Mensah (2011) concurs that the inclusion concept in South African policy implementation is based on the principle of social justice, which is important for achieving inclusion and equity.

Mensah (2011), added that, the implementation of educational policy for inclusion and equity in South Africa will need time and a strong support system for all role players, including school teachers. Donohue & Bormman (2014), point out that the top-down approach in implementation, and ambiguities contained in the Education White Paper 6, are major factors hindering the implementation of inclusive policy. They argue that bottom-up approaches are important because of their ability to shed light on the challenges of those who are targeted in policy formulation (Safford *et al.*, 2018). According to Spillane, Reiser and Reimer (2002) the failure of policy objective can result of from the implementation failure and the weak policy formulation including the lack of sufficient supervision in policy goals (Spillane *et al* 2002). Nilsen (2015) argued that an efficient policy implementation is possible only if, a theoretical strategy is established with the participation of all stakeholders which is described by Lipsky (2010), as “client-centred goals” (Nilsen, 2015).

2.7.3.1 The policy implementation process

Political and social changes are critical components to consider when developing a model for policy implementation processes (Smith, 1973). Given the importance of policy implementation within the public policy cycle, it is essential to investigate and evaluate the process of implementation (Smith, 1973). According to Horn (1974), the ideal policy, the implementing organisation, the target group and various environmental

factors are all essential components of the policy implementation process. Spillane, Reiser and Reimer (2002) argue that the implementation process must focus on the nature of social problems to be addressed if the policy is to achieve any level of success. This means that an assessment must be made on how the policy was designed, the governance system that applies, the organisational procedure and the capacity of policy implementers to do their jobs when deciding on the process to be adopted (Spillane, Reiser & Reimer, 2002a).

Paudel (2002) criticises the changes that have occurred recently in policy implementation which have polarised the approaches into two camps – the top-down approach and the bottom-up approach. He rejects the top-down approach, stating that it seems to assume that policy goals may be specified by policymakers and that implementation will be carried out successfully simply by setting up certain instruments. He embraces the bottom-up approach as a successful policy implementation process because it focuses on the identification of societal problems affecting individuals (Paudel, 2002).

2.7.3.2 The implementation of refugee policies in South Africa

The South African policy framework with regard to refugees and asylum seekers has been praised as being the most progressive and inclusive in the world. Crush (2001) argues that the implementation of refugee policies in South Africa is guided by the basic human rights principles extended to all persons under the Constitution (Crush, 2001).

However, while scholars have acknowledged the human rights principle as a guiding instrument of the implementation process, they have also highlighted various challenges faced by policy implementers; among others, the inability of government to successfully provide adequate training to officials which renders the implementation process inefficient and ineffective in terms of meeting satisfactory standards and administrative justice (Autumn & Handmaker, 2017). According to Landau and Amit (2014), the implementation of refugee policies is hindered by the Department of Home Affairs' (DHA's) attempt to shift the focus from fulfilling its legislative duties (providing protection to refugees and asylum seekers) to exclusively identifying

economic migrants and accusing them of abusing the refugee system to legalise their stay in South Africa.

Taylor and Sidhu (2012) suggest that, in view of the growing number of refugees and asylum seekers around the world, host countries ought to examine the practices of institutions that are mandated to implement policies in alignment with international instruments such as the 1949 UN Declaration on Human Rights (UNDHR), the 1989 Convention on the Rights of the Child (CRC) and the Dakar Education for All framework (DEA) (Taylor & Sidhu, 2012). According to Taylor and Sidhu (2012), the limitations of various human rights frameworks in various host countries are hindering social justice for refugees and their children. Landau (2006) says that, states must create conducive environments in which refugees and asylum seekers may be capable of accessing their basic rights (Landau, 2006). For states to achieve this, lawmakers and policy implementers need to consider the social context of refugees and asylum seekers, and use these contexts as a basis upon which policy can be formulated, approved and implemented effectively. This implementation must comply with international frameworks on the rights of refugees that South Africa has signed and ratified (Milner, 2014). The wellbeing of refugees and asylum seekers must form the basis upon which policy is formulated and implemented (Klotz, 2000).

2.8 The Refugees Act No 130 of 1998

The Refugees Act is a post-1994 legislative framework that regulates the management and treatment of refugees and asylum seekers in South Africa. This framework is a guarantor of South Africa's commitment to both regional and international treaties. As such, it imposes duties and obligations on the state to protect and fulfil the constitutional mandate of providing protection and basic services to all people living in South Africa without discrimination. Under this framework, the South African state is obliged to fulfil its international obligations through the 1951 Convention on the Status of Refugees by providing refugees and their children with basic services, including education. However, the right of refugees and asylum seekers to access basic services is subject to their having the necessary documentation. The documentation grants refugees and asylum seekers legal recognition and gives them access to work and study within the republic of South Africa.

2.9 Poverty and low quality of life among refugees and asylum seekers in South Africa

Poverty and inequality in South Africa must be understood in its historical context of apartheid, which attempted to confine the black population to the rural areas (May, 1998). While poverty is not confined to any one racial group, Woolard (2002) argues that it is concentrated on the black population, particularly that portion that resides in rural communities. While there appears to be confusion in the public mind about what constitutes poverty and inequality, social indicators such as life expectancy, infant mortality, lack of job opportunities and monthly income are all instruments that can be used to assess poverty and inequality in South Africa (Van der Berg, 2014).

Poverty in South Africa applies also to refugees and asylum seekers. According to a report published by the Consortium for Refugees and Migrants in South Africa (CoRMSA, 2011), refugees and asylum seekers are among the most marginalised population in South Africa and live with a high level of poverty. Although the government acknowledges the rights of refugees and asylum seekers, access to social services and employment opportunities within the current South African arrangement is limited (Smit & Rugunanan, 2014). This limitation is sometimes caused by the inability of some employers to distinguish between the provisions of the Refugees Act, a policy framework that regulate the rights of refugees and asylum seekers in South Africa, and the Immigration Act, which does not speak to the status of refugees (Kavuro, 2016). This confusion has a direct bearing on the lives of refugees' and asylum seekers' children in terms of accessing their basic rights such as education (Ackermann, 2017). This study, therefore, aims to uncover the extent to which refugees' and asylum seekers' children are accessing their right to education within the existing policy framework.

2.10 Refugees and asylum seekers in Cape Town – a brief description of the research site

This study was conducted in Maitland, a suburb of the city of Cape Town, South Africa. Cape Town is the provincial capital of the Western Cape Province, situated on the southern tip of South Africa. It is surrounded on the West and East by the Atlantic and Indian Oceans, respectively, and by Cape Point Nature Reserve to the South. (City of

Cape Town, 2019). According to the City of Cape Town 2019 data, Cape Town is home to 4,524,11 people with an estimated annual growth of over 2%. The inhabitants of the city are black Africans, Coloureds, Whites and Asians. According to Section 1 of the Constitution of the Western Cape Province, the official languages in the city are Afrikaans, English and isiXhosa (America, 2007).

Figure 1: Map of Cape Town and its surrounds



Source: City of Cape Town, 2019

UNIVERSITY of the
WESTERN CAPE

Although a significant number of refugees and asylum seekers live in Cape Town, Palmary (2002) states the lack of official statistics for refugees and asylum seekers makes quantify and categorising them extremely difficult.

2.11 Challenges faced by refugees and asylum seekers in Cape Town

Refugees and asylum seekers in South Africa face various obstacles such as lack of appropriate documentation, lack of employment, difficulties with finding accommodation, issues of permit renewal, corruption at refugee reception offices and xenophobia (Landau, 2006). These obstacles have a direct impact on the exercising of their rights, causing harm to them and the entire refugee community in which they live (Landau, 2006).

In terms of documentation, the South African legal framework states that anyone seeking asylum in South Africa must lodge an application at any branch of the refugee reception office. If a person comes to South Africa as an asylum seeker, they must first apply for an asylum-seeker permit, known as a Section 22 permit, in order to be legalised, which may result in attaining formal recognition of refugee status through gaining the Section 24 permit (South African Refugees Act No.130 of 1998).

2.11.1 Asylum seeker permit (Section 22)

According to the Refugees Act No 130 of 1998, an asylum-seeker permit, also known as a Section 22 permit, is a six-month renewable temporary identity document that a person receives when an application for asylum is lodged with the Refugee Reception Office (South Africa, Refugees Act No.130 of 1998). This document is renewable at the strict discretion of the Department of Home Affairs. Furthermore, the Refugees Act states that it is the responsibility of an asylum-seeker permit holder to ensure that his or her permit is continuously renewed, until a decision is made by the Department of Home Affairs (DHA) for the applicant to undergo an interview with a Refugee Status Determination Officer (RSDO). The interview will determine whether refugee status is granted or refused (South African Refugees Act No.130 of 1998). However, Landau *et al.* (2005) state that if the application is rejected due to a manifestly unfounded, fraudulent or abusive application, applicants may be imprisoned. Additionally, when applicants contravene a condition of the permit such as re-entering the country after the application has been rejected, or allowing a lapse of permit when leaving the country without the consent of the Minister of Home Affairs, the applicant becomes ineligible for asylum, which constitutes grounds for withdrawal and potential detention (Landau, Ramjathan-Keogh & Singh, 2005). Image 1 below shows the asylum seeker temporary permit, the “Section 22”.

Image 1: The asylum seeker's temporary permit, the Section 22 permit

REPUBLIC OF SOUTH AFRICA
DEPARTMENT: HOME AFFAIRS

Section 22 of the Refugees Act No. 130 of 1998

REPUBLIC OF SOUTH AFRICA

ASYLUM SEEKER TEMPORARY PERMIT
REFERENCE NO: CTCOD003670709
Permission is hereby granted to the following person as holder of this permit to remain in the RSA of part thereof as determined in part B hereof.

A. PERSONAL PARTICULARS OF HOLDER

SURNAME: [REDACTED] FIRST NAME(S): MBUYI YVETTE

DATE OF BIRTH: 31/03/1984 GENDER: Female

NATIONALITY: Congolian(DRC) COUNTRY OF ORIGIN: Congo

FILE NUMBER: CTCOD003670709 PLACE OF ISSUE: Cape Town

ALTERNATIVE FILE NUMBER: [REDACTED]

2015-09-16
DEPT. OF HOME AFFAIRS
REFUGEE IN CAPE TOWN
SIGNATURE: [REDACTED] EXPIRY DATE: 15/02/2016

B. CONDITIONS

- The holder of the permit may reside temporarily in the Republic of South Africa for the purpose of applying for asylum in terms of the Refugees Act No. 130 of 1998.
- The permit holder shall, without expenses to the state, leave the Republic on before 15/02/2016 or such later date as duly authorised by a Refugee Status Determination Officer if his/her application for asylum has been rejected.
- The permit entitles the holder to: WORK AND/OR STUDY
- Failure to comply with the conditions of this permit will be dealt with in terms of Section 37 (b) and Section 22 (6) of the Refugees Act 1998.
- All permit holder are obliged to respect the laws of South Africa
- This permit will lapse if the permit holder does not appear in person as required at the designated Refugee Reception Office or if he/she departs from the Republic without prior authorisation from the Director-General.
- All other permits issued prior to the issuance of this permit are automatically nullified.
- Other conditions: TO BE SCHEDULED FOR APPEAL HEARING
- I TSHIBWABWA MULUNDA ALIS MBUYI YVETTE agree to the above conditions and understand that a breach thereof will result in an offence in terms of Section 37 of the Refugees Act.

PLACE: Cape Town DATE: 9/17/2015

REFUGEE RECEPTION OFFICIAL CAPTURED BY PRINTED BY FINGER IMPRESSION

NAME: [REDACTED] Bazi, Zandile

APPOINTMENT/FORCE NO: 20833164 22253297

DATE: 7/13/2009 9/17/2015

PLACE: Cape Town Cape Town

ORIGINALLY ISSUED IN: Cape Town NUMBER OF EXTENSIONS: 15 PERMIT EXPIRY DATE: 15/02/2016

PERMIT HOLDER SIGNATURE: [REDACTED] REFUGEE OFFICIAL SIGNATURE: [REDACTED]

201220387

201220387

83/DHA-1707B

Source: Researcher

2.11.2 Refugee status (Section 24)

The refugee status permit is the official recognition of asylum, according to the Refugees Act No 130 of 1998. A Section 22 permit holder is entitled to a second interview with the Refugee Status Determination Officer (RSDO) for a final decision, which comes at the discretion of the Department of Home Affairs (DHA) officer. However, this discretion is exercised in respect of South Africa's obligation to UN Conventions such as the 1951 Convention on the Status of Refugees. Once the officer is satisfied with the application, refugee status, commonly known as the Section 24 permit, is granted for four years, renewable subject to the situation of the applicant's country of origin. The holder is entitled to the protection of the South African government and has the right to access basic services and enjoy protection until it is safe to return to his or her country of origin (South Africa, Refugees Act No.130 of 1998). However, Landau & Amit (2014) argue that irrespective of the protection and access to rights afforded to refugees and asylum seekers in the current policy framework, they are generally unable to realise the protection provided for in the Refugees Act. This applies even to those who have obtained refugee status and the consequent recognition of their rights via documentation as asylum seekers, which arguably proves the rights enshrined in these documents somewhat hollow (Landau & Amit, 2014).

South Africa has been applauded globally for its progressive refugee legislation because it affords refugees and asylum seekers the same rights as South African citizens, as enshrined in the Constitution – all expect the right to vote (Landau, Ramjathan-Keogh & Singh, 2005). Therefore, formal refugee status is an important document for refugees, enabling them to access basic rights such as primary education and basic health services.

Kagan (2007) raises a concern about the importance of fair process in determining who is a refugee and who is not. He argues that a fair process in processing asylum applications would benefit a person in danger of being subject to human rights violations. He further stated that, if the process is unfair, incorrect or flawed, it will lead to an unjust decision even affecting applicants facing the risk to life (Kagan, 2007).

The image below shows the certificate recognising refugee status, the Section 24 permit.

Image 2: Certificate of recognition of refugee status, the Section 24 permit

REPUBLIC OF SOUTH AFRICA
DEPARTMENT: HOME AFFAIRS

REFUGEES ACT, 1998 (ACT 130 OF 1998)

CTRA00300000



FORMAL RECOGNITION OF REFUGEE STATUS IN THE RSA

PARTICULARS OF RECOGNISED REFUGEE IN THE RSA

NAME AND SURNAME
GENDER
DATE OF BIRTH
COUNTRY OF BIRTH
NATIONALITY : Congolian(DRC)
MARITAL STATUS : Never Married

It is hereby certified that the person whose particulars appear above has, in terms of section 24 (3) (a) of the Refugees Act 1998 (Act 130 of 1998), been recognised as a refugee in the Republic of South Africa (RSA) from 01/07/2011 to 01/07/2015 on condition that this formal recognition shall become null if he/she departs permanently from the Republic. The Refugee shall within 14 days of receipt hereof apply for a Refugee Identity Document in the RSA. The holder of this certificate is entitled to socio-economic rights as provided for in Chapter 2 of the Constitution including work and study in RSA.

DEPARTMENT OF HOME AFFAIRS
PRIVATE BAG 985
CAPE TOWN 8000
2011-07-01
Cape Town REFUGEE AFFAIRS
ISSUING OFFICE

p.p. DIRECTOR-GENERAL
DATE :01/07/2011
DEPARTMENT OF HOME AFFAIRS

PLACE: Cape Town DATE:
CAPTURED BY PRINTED BY FINGER IMPRESSION
REFUGEE RECEPTION OFFICIAL
NAME: Hobwane, Meshack
APPOINTMENT/FORCE NO: 22553908 22652639
DATE: 01/07/2009 01/07/2011
PLACE: Cape Town Cape Town
ORIGINALLY ISSUED IN: Cape Town NUMBER OF EXTENSIONS 1
RSDO SIGNATURE: PERMIT HOLDER SIGNATURE:

104972322

104972322

ONLY VALID IF BOTH BAR CODES ARE THE SAME

ISSUED WITHOUT ANY ALTERATIONS OR ERASURES

Source: Researcher

The documents above, Section 22 and Section 24, are crucial for refugees and asylum seekers in South Africa, and very similar in format.

2.11.3 Issues relating to the renewal of permits

Refugees and asylum seekers in South Africa face a real challenge in relation to the renewal of permits. In many instances, they are forced to spend many hours queuing outside the refugee reception offices, often in bad weather conditions. Image 3 shows the crowded conditions in which refugees may spend days trying to renew permits.

Image 3: Refugees and asylum seekers outside the refugee reception office in Cape Town



Source: Times live. <https://www.timeslive.co.za/news/south-africa/2018-05-25-no-security-at-home-affairs-in-cape-town/> [Accessed on 02 May 2019]

This image hints at how refugees and asylum seekers struggle to extend their papers at the refugee reception in Cape Town. The crowd at the reception office does not allow for all refugees and asylum seekers to get their permits renewed. Many are asylum seekers, who have to extend their permit every six months.

2.11.4 Employment

Refugees in South Africa are entitled to access employment not just because the freedom to seek employment is a universal right but because the Refugees Act No 130 of 1998 affords them the right to seek employment in both private and public establishments (South Africa, Refugees Act No.130 of 1998). As alluded by Kalitanyi (2017), access to job market for refugees and asylum seekers poses real challenges for two reasons: One, job creation is already a formidable challenge for the South African government, especially since the world economic recession. Two, many possible employers in South Africa do not recognise Section 22 or Section 24 permits. They often require refugees and asylum seekers to produce work permits as a condition for employment, permits which fall under the Immigration Act of 2002 (Kalitanyi, 2017). This confusion is described by Africa Landau, Ramjathan-Keogh and Singh (2005) as a persistent barrier preventing refugees from securing employment, although many of them are equipped with skills needed in South Africa (Landau *et al.* (2005).

2.11.5 Corruption

Corruption is defined by Jain (2001) as practices in which the power and responsibilities of public office are used for personal gain in a manner that contravenes legislated policies. In referring to administrative corruption, Jain (2001) states that it frequently takes the form of appointed bureaucrats requesting bribes as a requirement to render services to the public to which they are entitled, or to speed up an administrative process (Jain, 2001). In South Africa, corruption is one of the obstacles to effective governance, constitutional values and development (Pillay, 2004). In recent years, calls for effective and efficient public administration have intensified, with various factors indicating rising corruption in public institutions (Pillay, 2004).

A quantitative assessment of the scope of corruption conducted by Lawyers for Human Rights (LHR) and the African Centre for Migration and Society (ACMS) at South Africa's refugee reception offices (RROs) in Tshwane, Durban and Cape Town reveals a significant levels of corruption involving multiple actors, happening at all stages of the asylum process, and continuing even after an individual has obtained refugee status (LHR & ACMS, 2015). The scope of corruption revealed in this assessment shows that many asylum seekers and refugees have experienced corruption at one of the RROs.

The rise of corruption at these offices is significant in terms of its effect on South Africa's constitutional and international obligations to offer protection to those in need (Amit & ACMS, 2015). Amit and ACMS (2015) warned that, if corruption is not dealt with at all stages of the asylum-seeking system there is continued risk of producing a system where the behaviour of officials is entirely severed from prescribed legal guarantees, predictability and administrative fairness. This would result in people with valid protection needs being denied protection because they are either unwilling or unable to engage with corrupt officials (Amit & ACMS, 2015).

2.11.6 Xenophobia

Xenophobia is another major challenge confronting refugees and asylum seekers in South Africa. The term "xenophobia" has been discussed and defined by various authors. Steenkamp (2009) defines xenophobia as an irrational fear or hatred of people of a different nationality to one's own (Steenkamp, 2009). According to Landau, Ramjathan-Keogh and Singh (2005) xenophobia in South Africa refers to all expressions of a discriminatory attitude towards non-South African citizens living in the country, irrespective of their nationality (Landau *et al* 2005).

Solomon and Haigh (2009) suggest that a lack of adequate information among some South African citizens about foreign nationals may be the reason they see them as a threat; it is a consequence of not knowing them or how to interact with them. There are various reasons why different subgroups of the population express xenophobia in South Africa (Landau, Ramjathan-Keogh & Singh, 2005). According to Crush and Tawodzera (2014) xenophobia is deeply institutionalised in post-1994 democratic society. They argue that public officials such as police, home affairs officials and refugee reception officers display hostile attitudes when rendering services to refugees and asylum seekers (Crush & Tawodzera, 2014). However, according to Palmary (2002) xenophobia is also expressed through physical attacks on foreign nationals and the looting of shops and burning of property that are frequent occurrences in communities throughout South Africa. These activities are sometimes related to the widespread perception among South Africans that illegal immigrant are "flooding" into South Africa (Palmary, 2002). To some extent, these activities involve the killing of non-nationals and the spread of violence from one township to another (Steenkamp, 2009).

The prevalence of xenophobia in South Africa has many negative consequences for the quality of life of refugees and asylum seekers, including displacement and cyclic traumatisation.

A study conducted by the Human Sciences Research Council (HSRC) found that xenophobia occurs mostly in informal settlements of the major cities of South Africa, often because foreign nationals, who frequently own shops, are perceived to be enjoying economic and financial advantages at the expense of South Africans (Democracy and Governance Programme, 2008).

Like many other major cities of South Africa, the City of Cape Town has seen a number of xenophobic attacks on foreign nationals (Palmary, 2002). The occurrence of these hostilities has affected mostly informal settlement such as Gugulethu, Du Noon and Khayelitsha (Palmary,2002). According to Bekker, Eigelaar-Meets, Eva and Poole (2008) the government of South Africa has not always responded fast enough to curb xenophobic attacks when they arise (Bekker *et al.*, 2008). Solomon & Haigh (2009) describe the denial of services to foreign nationals as another form of xenophobia, pointing out that services such as police and health care are not easily accessed by foreign nationals.

2.12 Limitations of the study

While this study was conducted successfully, it has limitations. The biggest challenge faced during this study was the inability to secure interviews with the provincial head of educational planning or with his four deputies. After failing to secure interviews with them, the researcher requested to interview staff in the Policy Coordination and Development Unit, a request which was granted.

During the interviews conducted with school principals, the interviews were interrupted a number of times as school principals answered their phones. Interviews with the Scalabrini Centre proceeded without interruption. Interviews with refugees and asylum seekers parents were postponed several times due to the fact that the majority of them were working. No interviews were conducted with the children of refugees and asylum seekers, as this was considered beyond the scope of this study. However, their lack of inclusion may be construed as a limitation.

A further challenge faced during this study was that studies about access to education for refugees' and asylum seekers' children in Cape Town are somewhat limited. This might well be a result of the fact that not much attention has been paid to the effect of public policy on the schooling of refugees' and asylum seekers' children.

Therefore, much of the data used in this study is derived from nationwide studies and not from studies that pertain specifically to the Western Cape Province. This nationwide literature, however, has provided a basis for understanding education and migration policies and their impact on the schooling of refugees' and asylum seekers' children in South Africa.

Based on an analysis of documents and interviews conducted with participants, the researcher acknowledges that more data from the Department of Home Affairs could possibly have enhanced the study. It should be noted that the lack of consultation with the provincial head of education planning was not for want of trying, and would have been extremely time consuming had the researcher persisted in trying to secure an interview.

This study is not without limitations, but the results are interesting enough to warrant further research on possible collaboration between the Department of Home Affairs (DHA) and the Education Department to help refugees' and asylum seekers' children enjoy their constitutional right to education. It would be interesting to get the views of the DHA.

Although this study has limitations, these findings can be generalised to other areas in Western Cape and other provinces.

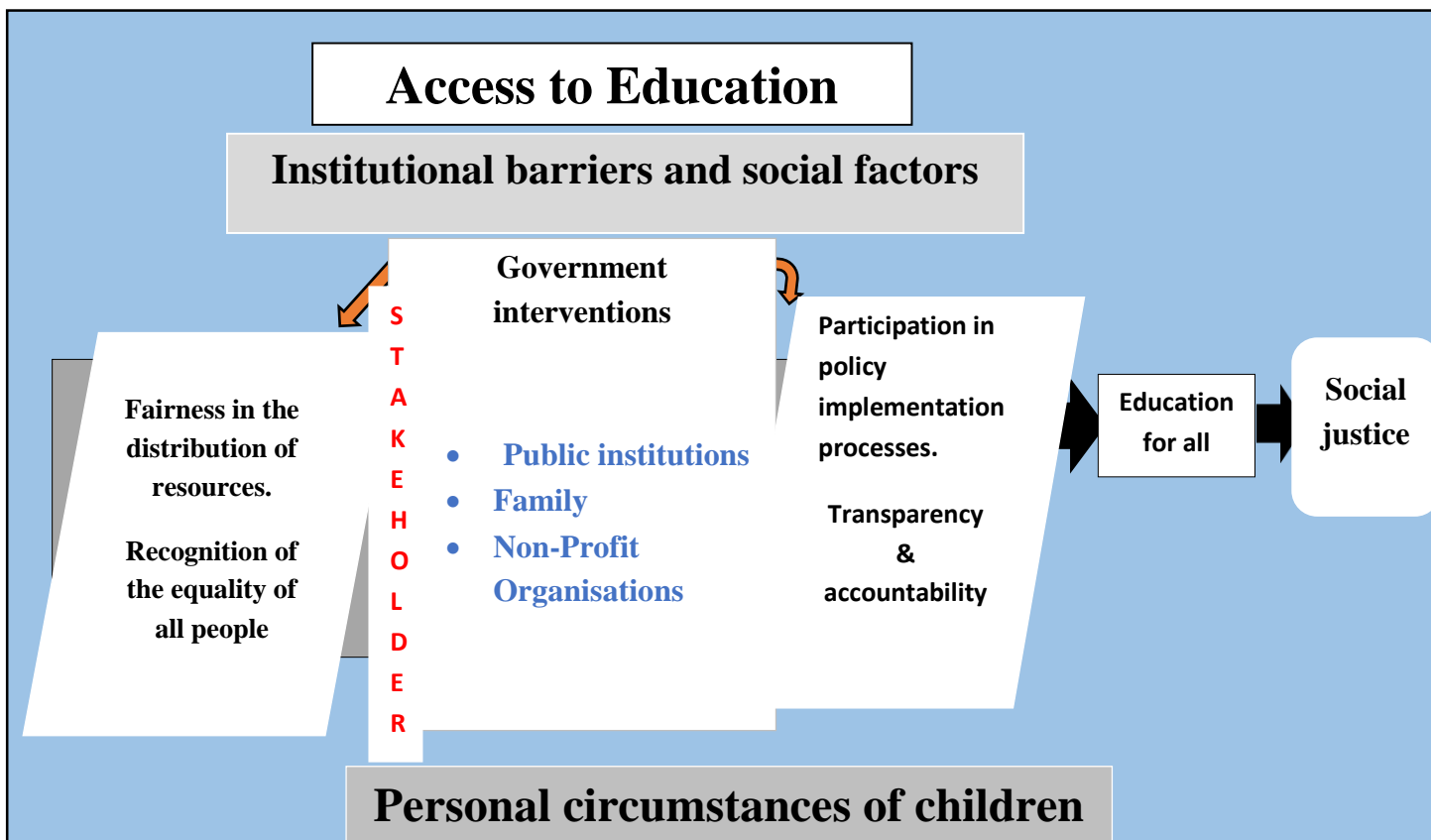
2.13 Theoretical framework: The theory of social justice

This study is grounded on a modified theory of social justice first postulated by Nancy Fraser. Fraser's theory on social justice combines both elements of recognition and redistribution, while requiring from the state the ability to intervene effectively with policies that achieve positive social transformation in society (Fraser, 1998; Lara, Fine & Lovell, 2007). Social justice, according to Cazden (2012) must be contextualized within Fraser's framework of redistribution, recognition and participation, with a focus on access, which arises as a correlation between socio-economic background and

developmental intention (Cazden, 2012). Keddie (2012) argues that in striving to achieve social justice under Fraser’s theory, accessibility remains an important component (Keddie, 2012). Markle and Honneth (2016) disagree with Fraser by arguing that the struggle for social justice must go beyond the bureaucratic labelling of recognition and redistribution. They argue that social justice has to do with institutional and ideological forms of recognition which is still a huge challenge for many countries (Markle & Honneth, 2016). Klugman (2011) modifies Fraser’s theory of social justice and argues that social justice should encompass human rights principles, which are: fairness in the distribution of resources, recognition of the equality of all people, promotion of the participation of people in policy implementation processes, and the fostering of transparency and accountability in decision-making.

This study uses the modified theory of social justice as postulated by Klugman (2011) to assess the admission and enrolment of refugees’ and asylum seekers’ children in schools in a democratic South Africa. This assessment will determine whether constitutional values, among others the building of a society based on democratic principles, human right and social justice, are observed in the policy implementation process. This modified theory is depicted in Figure 2 below.

Figure 2: Modified depiction of Fraser’s theory on social justice



2.14 United Nations Convention on the Rights of the Child (UNCRC)

The Republic of South Africa endorsed the United Nations Convention on the Rights of the Child (UNCRC) in 1995, which is a legally-binding international agreement recognising the educational rights of all children around the world (DBE, 2011). According to Howe and Covell (2016), the adoption of the UNCRC represented a turning point in the international movement on behalf of children's rights, such as the right to education and basic economic welfare. Signatory members have the obligation to implement this convention under the guiding principles of non-discrimination and the best interest of the child (Howe & Covell, 2016). However, Laura (2007), argues that acting in the best interest of the child would include giving children the right to have their views heard in all matters affecting them, including policy formulation and implementation. This means that state parties are obliged to ensure that all rights set forth in the convention such as the right to access basic education are accessed by children, irrespective of their religion, gender or origin. Additionally, states parties must ensure that children are given the space to express their views on all matters that affecting them, in line with article 12 of the UNCRC (United Nations, 1989; Lapita & Information, 1996).

The UNCRC has found expression in various frameworks such as the Dakar Framework for Action (DFA) adopted by the World Education Forum in 2000. This framework is intended to be used by signatories as a basis for developing plans of action that integrate education into poverty reduction and development plans (UNESCO, 2000). The DFA affirms the principle of an inclusive education as contained in the United Nations Convention on the Rights of the Child (UNCRC), stating that education is a human right that accords all people, irrespective of their origin, the right to access education without discrimination (UNESCO, 2000). The framework identifies civil society as an important role player in ensuring that governments implement the framework and consider all circumstances that affect children and might impinge on their right to education.

2.14.1 The African Charter on the Rights and Welfare of the Child (AfCRWC)

The adoption of the African Charter on the Rights and Welfare of the Child in 1990 by the Assembly of Heads of State and Government was an attempt to create a framework

for ensuring the protection of the rights of the child on the African continent (Human Rights Law in Africa, 2004). The Charter does not present the rights and welfare needs of the child as a list of rights; rather, it represents a different way of viewing children and their place in society. According to Olowu (2002:134), “the Charter has demonstrated that African children should no longer be seen as mere beneficiaries, but as subjects with rights and social agency.” The UNCRC and the AfCRWC are international instruments containing children’s rights to be enjoyed by all children irrespective of their location, without discrimination (UNESCO, 2000). These instruments contain four general principles that affirm the approach to be used in decision-making concerning children, which are: the best interest of the child, the right of the child to be heard, the right to life and the right to development. State parties to these instruments are under obligation to ensure the development and survival of the child as outlined under article 6 of the UNCRC. Under these instruments, states are urged to take appropriate measures that will enhance the development of children, including the fostering of their intellectual, mental and physical growth through education. These instruments make provision for children to express their views and to be heard in matters regarding themselves. This approach, it is envisaged, will ensure that the best interests of the child find expression in the policy-making process.

However, under these instruments, children may be given refugee status only by virtue of their parents, who must fall under the legal definition of refugees. The UNCRC fails to consider all personal circumstances of refugees’ and asylum seekers’ children. It fails to view children as separate human beings with separate human needs; this lack of consideration has rendered the implementation of these instruments ineffective, because refugees’ and asylum seekers’ children are not viewed as people in need of special protection in the countries where they live. Thus, states parties frequently do not meet the standards envisaged in the UNCRC, including the right to education.

2.14.2 The South African legal framework on access to education

The right to access education in South Africa is fundamental and inclusive. Under the South African framework, the state is under the obligation to avail resources that will ensure that access to basic education is made a reality for all children. As a signatory to various international frameworks, South Africa has aligned its policy framework with

international standards. Both the Schools Act and the Admissions Policy for Public Schools Act of 1998 guarantee the enrolment of refugees' and asylum-seekers' children in schools. However, although the South African legal framework enables access to basic education for refugee and asylum seekers' children, it does not consider the challenges faced by their parents in applying for asylum which is so fundamental for school admission. As result, many children fail to access basic education, denied admission to schools by school officials on account of their parents' status.

The challenges faced by refugee and asylum-seeking persons and their children in relation to documentation have been highlighted by various media reports that reveal that undocumented refugees' children are denied enrolment at schools. These challenges stem from the fact that the system for application for asylum is rife with difficulties, as listed under 2.11.1 to 2.11.3, which results in refugees and asylum seekers being denied access to basic education in South Africa.

2.15 The Constitution of South Africa

The right to basic education in South Africa is a constitutional right extended to all children, including refugees' and asylum seekers' children. Section 29(1) (a) of the Constitution of South Africa makes provision for the right to basic education for all people, including adults. The Constitution of South Africa provides for rights, the enjoyment of which is not limited to South African citizens but extends to refugees. The principle of equality before the law and non-discrimination are essential considerations that govern the minimum standards applicable in the treatment of refugees' children. Under the Constitution, government departments such as the Department of Basic Education (DBE) must ensure that all policies and programmes are consistent with the Constitution and that due consideration is given to the best interests of the child in all matters concerning children. Section 29 of the Constitution covers socio-economic rights such as the right to basic education which is a human right that goes some way to protecting the social conditions of people and their development. The responsibility to realise this right falls on the state, which is constitutionally tasked with the protection, promotion and fulfilment of the rights contained in the Constitution, with the executive arm of the state bearing the duty of implementing policies and programmes.

Primary education forms a part of basic education and is compulsory for all children in South Africa; under the Constitution, refugee and asylum seekers' children have the right to it without any discrimination. The South African Constitution is viewed globally as the most advanced document in terms of its recognition of human rights.

The Bill of Rights covers social, economic and cultural rights that are accessible to all individuals, including children. The socio-economic rights may be observed along with civil-political rights; the right to life, the right to political participation, freedom of expression, and the rights to equality, dignity and privacy, amongst others. By contrast, socio-economic rights include the rights to housing, healthcare, food, water and social security, the rights of children, the right to education, and the rights to language, culture and community. The state is obliged under the constitutional framework to take all necessary measures to facilitate the outworking of these human rights.

In the view of this researcher, the right to access education should be viewed from both a human rights perspective and a social justice perspective.

2.15.1 The South African Schools Act No 84 of 1996

The South African School Act 84 of 1996 is a policy framework adopted to amend and repeal previous policies relating to schools and to provide a uniform system for the organisation, governance and funding of schools. Under this policy, parents are responsible for ensuring that children attend school from the first school day in their seventh year, and all barriers pertaining to the admission of children to public schools are removed. Furthermore, the policy places the responsibility of providing for school infrastructures on the state, so that every child in living in South Africa has the opportunity to access education (South African Schools Act No. 84 of 1996). This framework carries a non-discrimination principle which is crucial for equity, equality and inclusivity as enshrined in the Constitution of the Republic of South Africa. Under this Act, schools ought to admit learners irrespective of their inability to afford school fees. This mean that children cannot be denied access to education on the grounds of inability to pay. However, although access to education by *all* children is guaranteed in the Constitution, which includes refugees' and asylum seekers' children, one could argue that various parts of the current legal framework contradict one another. While Section 29(1) (a) of the Bill of Rights extends the right to basic education to everyone

and the South African Schools Act makes it compulsory for *every* child to attend school, the Immigration Act make it difficult for children with no documentation to be accepted at schools, referring to such children as “illegal foreigners”. This terminology seems to make it an offence for a school to admit such a child. The Schools Act is and ought to be seen as the custodian of admissions policy to public schools, working in conjunction with the School Governing Body (SGB), in accordance with the Provincial Education Departments, which give expression to the duty of the WCED of ensuring that basic education is accessible to all within the province.

The admission of learners into public schools requires a birth certificate and, where applicable, the most recent report card or clinic card. The admission of non-citizens such as refugees’ and asylum seekers’ children should accord with that of the country’s citizens; in cases where documents are not provided, schools are urged to admit learners on the basis that parents can prove that they have applied for relevant documentation at the Department of Home Affairs (DHA).

2.15.2 The Admissions Policy for Public Schools Act No of 1998

Although the Admissions Policy for Public Schools Act guarantees enrolment in schools for refugees’ and asylum seekers’ children, researchers have argued that it does not consider various challenges that refugee parents face; among others, the difficulty of obtaining documentation at the Department of Home Affairs (DHA). Crea *et al.* (2017b) describe the challenges face by refugee parents in South Africa as a daunting range of obstacles. According to Labys, Dreyer, and Burns (2017) refugee parents deal with lengthy delays in South Africa’s processing of asylum papers. As a result, their children are denied admission to schools, irrespective of the legal provisions. As result, their constitutional right to basic services is denied. This is evident in the fact that the Admissions Policy for Public Schools Act requires parents to possess documents when applying for their children to be admitted to schools. Many parents are unable to produce documents such as their children’s birth certificates, as they have had to flee their homes in the midst of civil wars.

Furthermore, there is insufficient flexibility when it comes to the time allowed to sort out documentation. As noted above, the application processes may take an excessively long time, while for children, every week of school missed is crucial.

2.15.3 The National Education Policy Act No 27 of 1996

The National Education Policy Act No 27 of 1996 was adopted to enhance the transformation of the education system into one which serves the needs and interests of all the people of South Africa and upholds their fundamental rights (Department of Education, 1996). Under this Act, the Minister of Education is guided by the Constitution of the Republic of South Africa in determining a national policy for education that prevails over all provinces in order to avoid any potential conflict between national and provincial educational policy (Department of Education, 1996). This Act is a guiding instrument for provincial policies on education, enabling provincial public policies on education to comply with the constitutional provision in terms of access, equity, fairness and inclusivity. This Act gives the school governing bodies (SGB) power to elaborate on admission policies in public schools with the collaboration with the Heads of Department (HoD).

Schools admission policies must be in accordance with the Constitution of South Africa so that all learners are given equal opportunity to access schools. As part of their duties, they must encourage parents to apply for their children before the end of the preceding school year. In addition, admission policies for schools must promote and uphold accessibility, equity and fairness, the values underpinning the Constitution. These values are not only universal, but are contained in various treaties that South Africa has signed and ratified, such as the 1989 United Nations Convention on the Rights of the Child (UNCRC). The importance of primary education for all children is highlighted by Murungi (2015: 3161) who refers to it as “a layer of formal schooling which focuses on imparting learning skills, including literacy and numeracy”. Children’s right to access education in South Africa, and what the full exercising of this right might entail, has been determined by a body of jurisprudence which considered the right to education in the light of the principle of the best interest of the child (Murungi, 2015).

The Western Cape Education Department’s policy for the admission of learners at ordinary public schools is encapsulated in a *regulatory document* (Western Cape, 1998). This policy highlights the objectives of the Constitution, which are, among others, to enhance the inclusivity and accessibility of education to all children living within the Western Cape Province (Western Cape, 1998). This policy is prescriptive in terms of

the role of school governing bodies (SBG), school principals, parents and district offices with regard to the admission process of learners within the province. It states that in order to achieve an effective and efficient enrolment of learners within the province, districts have to establish a placement committee to determine the grade competency of learners who apply for admission without a report card or the required documents. Furthermore, it states that schools should not interview parents or learners as a requirement for admission into schools, except in the case of learners with learning barriers who wish to enter an ordinary public school and learners wishing to enter schools offering specialist subjects (Western Cape, 1998). It also establishes the enrolment of learners into public schools in two phases. The first phase is the application to a school, which involves the parent or legal guardian of the learner approaching a school to lodge an application and submit all required documents. The policy does not limit parents to applying to only one school within the province. Once the application has been lodged, the school has to notify the parent whether the application for admission has been successful or unsuccessful. If the application is successful, parents are requested to accept or reject the place offered in school within a specific period of time.

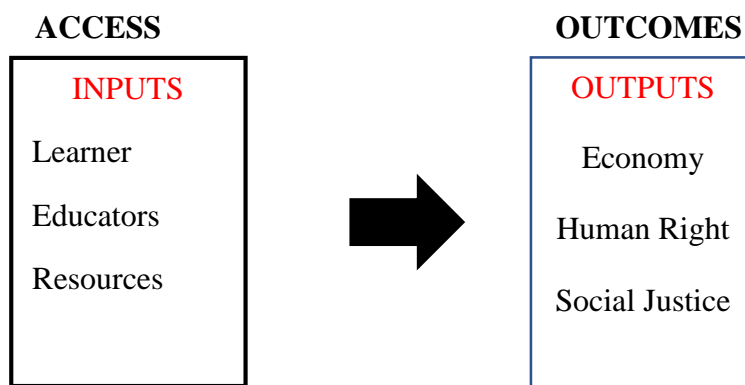
The second phase begins with compulsory registration of the learner on the Central Education Management Information System (CEMIS) after the learner has been admitted to school and has accepted the offer. However, refugees' and asylum seekers' children have to provide additional compulsory documents; among others, a temporary or permanent permit for residence. The policy makes it compulsory for learners or parents entering South Africa on study permits to present the study permit when making application for admission.

However, the WCED policy does not provide a way for refugees' and asylum seekers' children struggling with documentation to be effectively assisted. Some of these consequences of this lack of documentation are highlight by Labys, Dreyer and Burns (2017) as lack of access to public health services and basic education. Government has failed to address this consequence and is thus failing to uphold the rights of refugees and asylum seekers as enshrined in the Constitution of 1996 and the Refugees Act of 1998 (Labys, *et al* 2017).

2.16 Conceptual model regarding access to education for refugees' and asylum seekers' children

The conceptual framework for this study is based on three approaches: the human rights approach, the human capital approach, and the social justice approach, as identified by Tikly and Barrett (2007). Hanushek and Luque (2003) state that the human capital approach views education as a contributory factor to economic development and that access to education should be seen as investment in economic growth. While acknowledging the importance of the human capital approach, this researcher takes Fraser's perspective on social justice entrenched within a rights-based approach to assess the implementation of policies affecting refugees' and asylum seekers' children's access to education. The social justice approach should be viewed as embedded both within an understanding and recognition of human rights, and the need for human capital, taking into consideration both these aspects in policy implementation (Fraser, 1998). This conceptual model is grounded on an assumption that the schooling of refugees' and asylum seekers' children must be assessed on access, quality and outcome. It conceptualises the notion of access to education as a web of relationships between numerous stakeholders, where access to education is understood from the perspective of learners, educators and resources for a greater output. This relationship is depicted in Figure 3 below.

Figure 3: Description of access to education



Source: Researcher

2.17 Chapter summary

This chapter has provided a discussion on the concept of access to socio-economic rights, more particularly the right to access education. This was followed by a discussion on two important pieces of legislation internationally on the rights of the refugee or asylum seeker child: DACCA in the USA and IRPA in Canada. These are the two most influential pieces of legislation in the world pertaining to the treatment of refugees and asylum seekers, incorporating a consideration for the personal circumstances of migrants' children and the concept of "the best interest of the child" into the laws of those two countries.

A short discussion was presented on the inclusive education policies adopted by the government of Rwanda, followed by a review of the specific challenges faced by refugees and asylum seekers in South Africa. The chapter gave a brief overview of the study area; it also discussed refugees' pull and push factors, and the relevant legal frameworks adopted by the post-1994 democratic government of South Africa to manage the influx of refugees in South Africa. Discussions in this chapter have demonstrated that refugees and asylum seekers in South Africa face enormous challenges in relation to the renewal of their documents which have a direct effect on their ability to access the job market, socio-services and education. The negative attitudes by South Africans towards refugees and asylum seekers was identified as one of their many challenges – a negative attitude that permeates into the schools and affects some SGBs and principals when it comes to the admission of refugee children.

The literature demonstrates that South African education policies have played a major role in redressing and transforming the education system which was racially segregated by the apartheid regime. However, the literature shows that the implementation of education policy still faces many challenges, one of which is the confusion that exists in the minds of many Education Department officials between the provisions of the Schools Act no 84 of 1996 and the Immigration Act of 2002. Not only do grey areas exist between the stipulations of these two Acts, there is also the matter of weak implementation of the Acts and international agreements which recognise the right of the refugee child to access education, irrespective of their parents' status. This

confusion regarding the law, and the weak implementation of laws that support the rights of the refugee child, negatively affect refugees' and asylum seekers' children when it comes to access to basic rights such as education.

The following chapter presents the methodology used in this study.



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CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Chapter overview

The previous chapters have established this study within a socio-historical context and provided the theoretical framework underpinning the investigation. This chapter outlines the methodological underpinning this study. This qualitative inquiry employed, the face-to-face, semi-structured interview as a means of collecting data. The chapter discusses the procedures employed in conducting this study, the model used to analyse the data and the ethical considerations of the study.

3.2 Purpose of the research

The purpose of this study was to investigate the implementation of education and migration policies affecting the schooling of refugees' and asylum seekers' children in South Africa, and to propose sustainable solutions that may enhance the admission and enrolment of refugees' and asylum seekers' children to schools in the Kensington/Maitland area of Cape Town as well as in South Africa.

3.3 Qualitative study

The study applied a qualitative methodology as a means of acquiring data. The qualitative methodology was appropriate because the study entailed to uncover the understating of individuals' experiences in relation to the schooling of refugees' and asylum seekers' children from their own points of view. The quantitative approach was deemed unsuitable for this study since its focus is on numbers and statistics, which were not the focus here; the focus was rather a descriptive understanding of the participants' experiences and perceptions with regard to the admission and enrolment of learners taking place in primary schools in a democratic South Africa.

Qualitative approach is a naturalistic way of trying to understand phenomena in the real world without manipulating the phenomena of interest (Smith, 2003). It does not make use of statistical procedures or any other means of quantification (Smith, 2003).

Accordingly, qualitative studies seek to bring clarification, understanding and extrapolation to situations (Smith, 2003). According to Smith (2003), qualitative analysis results in a type of knowledge which is not rooted in numbers but in an underlying philosophical argument based on interviews, focus groups or other means of investigation. In order to understand the challenges faced by refugees and asylum seekers in relation to the schooling of their children in Cape Town, South Africa, a qualitative approach was appropriate to this study.

3.4 Research design

Research design is a plan for collecting and analysing data in order to enable the researcher to answer the research questions (Flick, 2004). This research used a case study approach to assess the policies and practices affecting refugees' and asylum seekers' children's access to primary schools in a democratic South Africa. It employed this approach because of the need to build an in-depth, contextual understanding of the phenomenon, relying on multiple data sources (Creswell *et al.*, 2007). The study used triangulation of data sources to validate and confirm information.

The qualitative approach and case study design enabled the researcher to gain insights into participants' experiences with regard to the schooling of refugees' and asylum seekers' children, with experiences told from their own point of view.

3.4.1 Case study research

According to Yin (2003) as quoted by Baxter and Jack (2008) noted that an exploratory case study is used to “explore those situations in which the intervention being evaluated has no clear, single set of outcomes”. The case study was important in this study as it explored the perceptions of stakeholders, mostly parents, with regard to the admission and enrolment of refugees and asylum seekers' children.

3.4.2 Sampling procedure

According to Marshall (1996) the sampling procedure is crucial, involving the efficient and ethical study of a population from which a sample is drawn in a way that enables results to be generalised to the whole population (Marshall, 1996). Mason (2017) refers

to sampling methods as “ideologies and procedures used to identify, choose and gain access to relevant units which will be used for data generation by any method”. Various sampling techniques are used by scholars and researchers, but for the purpose of this study, snowball and selective sampling were adopted to select the population for in-depth interviews.

3.4.2.1 Snowball sampling

According to Goodman (2013) snowball sampling begins with a random sample of participants drawn from a given population. Each participant in the sample is asked to name another individual to participate in the study (Goodman, 2013) so that in this way the number of participants swells or “snowballs”.

The snowball sampling technique made use of social networks of parents to facilitate the participation of other potential parents. This was made possible due to the fact that the researcher knew one parent facing the challenge of enrolling his child in school; through that parent, more parents became available to participate in this study.

3.4.2.2 Selective sampling

Selective sampling is a method of choosing the participants according to the input they can provide in the study (Müller *et al.*, 1994; Robinson, 2014). School principals, officials from the WCED and Scalabrini Centre were selected according to their responsibilities with regard to education in the Western Cape Province and their ability to provide relevant information based on their experience.

3.4.3 Sample size

According to Robinson (2014) the size of a sample may be influenced by both the theoretical framework and practical considerations (Robinson, 2014). The practical consideration affecting sample size in this study were time and resources.

A total of twelve participants were interviewed, including five refugee and asylum seeker parents, three school principals, two officials from Scalabrini Centre and two officials from the Western Cape Education Department. Officials from Scalabrini Centre and the WCED were interviewed in order to avoid the generation of bias. The selection of only five parents was informed by the fact that the views of refugees and asylum seekers with regard to the challenges of accessing basic services in South Africa have been well documented. Additionally, school governing bodies (SGB) did not form part of the sample due to the fact that although they play a huge role in the management

of schools including the formulation of admission policies, they do not make final decisions in enrolment and admission process. Because of the discretionary power of enjoyed by school principals, particularly over the functioning of school governing bodies, it was necessary in this study to interview school principals, rather than other SGB members.

3.4.4 Demographic information of the participants

As noted by Hornby and Lafaele (2011) parents' involvement in the education of their children has always been regarded as an important element for the development of children. Additionally, fathers and mothers are the persons who take primary responsibility for the everyday life of the child. However, a point to note is that this role does not have to be played by the biological father or mother; grandmothers, aunts or legal guardian can take up this role. In most cases, fathers and mothers are the primary caregivers responsible for the education of their children (Hornby & Lafaele, 2011).

In this study, all refugees' and asylum seekers' parents were married. They differed in education, employment status, number of children, number of people in the household, the length of time they had been living in South Africa and in age. The youngest participant in this study was 32 years old and the oldest was 45 years old. Four out of five participants were from the Democratic Republic of Congo (DRC) and one was from Malawi. This is due to the effect of the snowballing sampling technique used for the research, as the researcher started with a man from DRC, who introduced him to fellow Congolese people who had struggled to enrol their children in school. In addition, there has been a large influx of Congolese people into Kensington/Maitland, which justifies the preponderance of Congolese in the sample. All respondents communicated in English.

The researcher deemed the number of parent participants adequate because the information they provided is well supported by numerous published studies that seek to understand how parents feel about access to education.

The researcher further interviewed three school principals, two officials from the Western Cape Education Department (WCED) Policy Coordination and Development Unit, and two officials from Scalabrini Centre. It has to be noted that interviewing

school principals, government officials and officials in civil society was necessary in this study, as it allowed the researcher to test the concerns raised by refugees and asylum-seeking parents against the views of others in the education system (Homburg *et al.*, 2012). Table 3 shows that all the parent respondents were employed or self-employed, reflecting the fact that refugees and asylum seekers are allowed to work and study in South Africa. Table 4 shows that all other (non-parent) respondents were professionals with over five years' experiences working with education policies in the Western Cape. The majority of parent respondents had children who were born in South Africa and had birth certificates issued by the Department of Home Affairs (DHA). These children ranged in age from 7 to 13 years. The sample population is clearly detailed in Tables 3 and 4 below.

Table 3: Demographic data of refugee and asylum seekers participants (p=5)

Name	Gender	Occupation	Institution	Categories	Number of children
Parent 1 (P1)	Female	Room Attendant	Hotel	Asylum Seeker	4
Parent 2 (P2)	Male	Welder	Anonymous	Asylum Seeker	4
Parent 3 (P3)	Male	Security Guard	Security Company	Asylum seeker	4
Parent 4 (P4)	Male	Driver	Own	Refugee	3
Parent 5 (5)	Male	Care-taker	Transport Company	Asylum seeker	3

Table 4: Demographic data of public officials and civil society (p=7)

Name	Gender	Occupation	Institution	Responsibilities
Scalabrini Centre	Female	Director	Scalabrini Centre	Overseeing operations and management of the Scalabrini Centre
Scalabrini Centre	Female	Advocacy officer	Scalabrini Centre	Asylum seekers and refugee's advisor, Children's Project manager
School Principal (SP1)	Male	School Principal	Windermere Primary School	Revise policies and procedures, provide strategic direction in the school system, etc.
School Principal (SP2)	Male	School Principal	Kenmere Primary School	Revise policies and procedures, provide strategic direction in the school system, etc.
School Principal (SP3)	Male	School Principal	Kroonenberg Primary School	Revise policies and procedures, provide strategic direction in the school system, etc.
WCED (WCEDO1)	Male	Policy Coordinator	Western Cape Government	Policies coordination and development for the Education Department
WCED (WCEDO2)	Female	Policy Coordinator	Western Cape Government	Policies coordination and development for the Education Department

3.4.5 Other important characteristics of participants

The majority of participant in this research migrated to South Africa in search of a better life for themselves and their children. Their countries of origin had endured a series of political instabilities, including civil war and the collapse of the economy. Most of them had been living in South Africa for over ten years.

3.5 Data collection method: The in-depth interview

Although Gill *et al.* (2008) acknowledge the variety of methods of data collection in qualitative research, they state that the most common methods used are interviews, focus groups and observations (Gill *et al.*, 2008). In attempting to provide answers to the research problem and questions posed in this study, the researcher used in-depth interviews, observations and a literature review as tools to collect data.

According to Gill *et al.* (2008), in-depth interviews allow the researcher to understand the experiences of people and to uncover what those experiences mean to them. The purpose of in-depth interviews in this study was to gather detailed information from people who receive the Child Support Grant for refugees. For the purpose of this study, each of the identified refugee' and asylum seeker' parent was interviewed through individual in-depth interviews using a semi-structured checklist of questions. These questions were prepared beforehand and were structured to provide participants with enough room to answer questions and express their views on the subject. Questions were asked in English, which did not pose difficulties for any participants. Interviews were carried out in Kensington/Maitland area in Cape Town.

3.6 Data presentation

According to Elo and Kyngäs (2008), data analysis is a process in which the researcher strives to make sense of the data collected and to learn the meaning attached to it in order to present accurate information. According to Brayer (2008), researchers often use an interpretive approach which enables them to understand and analyse the phenomena under study, enabling them to assess the meanings that participants assign to their experiences. The analysis was carried out deductively using the grounded theory approach, which consists of coding data, word by word, segment by segment, and

assigning temporary names to particular phenomena. This helped the researcher to assign codes to pieces of information that bore similarities with other information (Clarke, 2003).

Elo and Kyngäs (2008) state that in striving to generate information to present; the researcher must answer questions such as, “Who is telling?” “Where this is happening?” “When did it happen?” and “What is happening, and why?”

3.7 Data analysis

After conducting the first few interviews, the researcher analysed the data to gain a general idea of early results, which could influence the way the rest of the information was gathered. After all interviews were completed, the researcher correlated the empirical findings with the literature on access to education for refugees and asylum seekers’ children internationally and in South Africa. The researcher then established how these findings correlated or contrasted with the literature and theories. In light of the above, data was then presented through texts, verbal descriptions and quotations.

As a basis for analysis, the research study used the thematic analysis (TA) method in order to fulfil the objectives of the study.

Thematic analysis, according to Clarke (2013), provides useful core skills that may be utilised in any kind of qualitative analysis. The method is flexible in identifying, analysing and reporting patterns within data (Clarke, 2013). The researcher used this method to organise and describe all details within data, and to further interpret various aspects of the research topic.

3.8 Themes in the research

Through thematic analysis (TA), four themes were identified that together construct a comprehensive picture of the experiences of refugees and asylum seekers with regard to accessing education for their children. These themes are discussed and analysed in chapter four.

3.8.1 Categories of questions in the interview schedule

The construction of the interview schedule was informed by existing literature on issues related to the schooling of refugees' and asylum seekers' children. The following two themes were identified as appropriate in constructing an understanding of participants' experiences. Questions relating to these two themes formed part of the written interview schedule.

Theme 1

Theme 1 focused on *the application and enrolment process*. Sub-themes were:

- *Parents' perspective relating to access to education,*
- *School principals' perspective with regards to access to education,*
- *Civil society's perspective on access to education and*
- *WCED perspective on access to education*

The question posed was, "What is the process of enrolling a refugee or asylum seeker's child in school?" The question elicited responses that revealed different perspectives, from the points of view of different stakeholders with regard to their experiences with the admission and enrolment of refugees' and asylum seekers' children to schools.

Theme 2

Theme 2 was *Barriers to accessing education*. Sub-themes were:

- *Documentation,*
- *Language and*
- *Institutional inefficiency*

The question posed was, "What are the challenges, barriers and circumstances that are impacting the admission and enrolment process of refugees' and asylum seekers' children to schools?" Responses revealed the barriers that impact on the admission and enrolment of refugees and asylum-seeking children in schools from diverse perspectives.

3.8.2 Themes emerging from the data

The following two themes emerged from the questioning process, revealing aspects of the problem that had not been identified initially when constructing the interview schedule. These themes contribute to an understanding of participants' experiences in relation to the experience of accessing education for refugees and asylum seeker's children.

Theme 3

Theme 3 was *Gaps in policy*. The sub-theme was

- *The documentation of the foreign child*

This theme and sub-theme emerged from a culmination of issues that arose during the interview process. The theme describes a combination of issues that suggest there are gaps in both education and immigration policy that impact on the ability of refugees' and asylum seekers' children to access education. Participants were asked how effectively and efficiently admission policies were being implemented at school level, and the role of the WCED in this process.

Theme 4

Theme 4 was *Policy implementation from the perspective of the WCED*.

This theme emerged as participants distinguished between their understanding of the statutory role of the WCED, and the constitutional compliance of educational policy in the Western Cape Province. This theme was more pronounced in the responses of parents and officials at Scalabrini Centre than in the responses of departmental officials. Parents and Centre staff described their experience of engaging with the WCED on issues concerning the schooling of refugees' and asylum seekers' children.

3.9 Research procedure

The procedure carried out in this study was the following:

- a) The researcher compiled a literature review, including secondary data from various sources.

- b) Permission was sought to carry out research from the School of Government, University of the Western Cape.
- c) A permission letter was obtained from the School of Government (SOG) to collect data at the Western Cape Education Department (WCED) and three schools.
- d) Travel arrangements were made, and cultural knowledge was gathered on what to do, what not to do, and what to expect before carrying out the study.
- e) In-depth interviews were conducted.
- f) Responses were reviewed and compared with preliminary data.
- g) The researcher translated, reviewed, and processed and interpreted data to examine the phenomenon of access to education for refugees' and asylum seekers' children.
- h) Data was analysed, presented and discussed.

3.10 Data validity

According to Leung (2015) assessing the validity of a qualitative study means examining the suitability of the tools used to gather and process data, and whether or not the choice of research methodology is appropriate for answering the research question (Leung, 2015). It was also important to assess the level of accuracy of data gathered, and its significance to the study. In order to verify the accuracy of the information, the researcher employed multiple data collection procedures; among others, interviews, life experiences and document analysis.

3.11 Ethics statement

This study was conducted in accordance with the ethical research standards of the University of the Western Cape. The study commenced only after the research proposal had been duly approved by the University of the Western Cape Senate, the Economics and Management and Sciences (EMS) Faculty Board and the School of Government (SoG). (See Appendix XVIII.)

Permission was also sought from the Western Cape Education Department (WCED) office and three schools as well as Scalabrini Centre in order to collect data from them.

During data collection, a number of ethical aspects were observed. All participants were correctly informed about the aim and methods of the study and were given the choice of whether or not to participate in it. Participants were consulted on their level of comfort with regard to the use of a tape recorder, and were assured that their names would not be mentioned and that the research would not be used against them in any way whatsoever. Participants were also assured that all recordings and documents would be kept safe in a place to which only the researcher had access. All participants were assigned pseudonyms during the analysis of data to ensure their anonymity.

3.12 Chapter summary

This chapter has provided the research methodology and approach used for the study, and an explanation of why the methodology and approach were chosen, in light of the study's objectives. This chapter also detailed the data collections methods, the sampling technique, the sample size, questions asked, and the validity and ethical considerations of the study.



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CHAPTER FOUR

EMPIRICAL FINDINGS: POLICIES AFFECTING ACCESS TO PRIMARY SCHOOLS FOR REFUGEES' AND ASYLUM SEEKERS' CHILDREN IN A DEMOCRATIC SOUTH AFRICA

4.1 Chapter overview

This chapter presents the findings of data collected during the interviews with refugees and asylum seekers, school principals, officials in the Policy Coordination and Development Unit of the Western Cape Education Department and staff of Scalabrini Centre. The findings are discussed and analysed in relation to South Africa's legal framework on the status of refugees and asylum seekers and the protection and right to access basic services afforded them under the Constitution. Particular attention is paid to the implementation of policies relating to the right of non-South Africans to access education within the country.

Much of this discussion relies on the theory of social justice postulated by Fraser. Through a thematic analysis (TA) approach, the study identified four major themes that are presented, discussed and analysed in line with the objectives of the study. While this chapter will attempt to address the questions introduced in Chapter 1, it also presents a discussion on the importance of why access to education for refugees' and asylum seekers' children in South Africa should be viewed as a right and a matter of social justice.

4.2 The admission and enrolment process

The first objective of this study was to investigate whether the admission and enrolment process of primary schools in the Kensington/Maitland area complied with constitutional provisions. It is important to note that the respondents in this study demonstrated their understanding of the school application process for refugees' and asylum seekers' children, and that all are either directly or indirectly involved with the education of children, whether as caregiver, school principal, member of civil society or employee of the Education Department of the Western Cape government. Participants expressed their understanding of the constitutional right to education and

the importance of education for all children living in South Africa from their individual perspectives.

4.2.1 Parents' perspectives regarding access to education

Parents expressed their discontent with regard to the process of enrolling their children in schools. They stated that while access to primary education in South Africa is compulsory and a right afforded to all children under the Constitution, they believed that the admission and enrolment of their children in schools was always confronted with great challenges. Accordingly, they believe that the government of South Africa has a role to play in ensuring that the admission and enrolment process is well implemented at school level, in a manner that is accommodative rather than exclusive.

One of the participants had this to say:

These children are born here in South Africa; they should be able to enjoy their constitutional right to access education just like South African children. But they are prevented to attend school for no reason. Our children should be treated equally to South Africans (P1).

Spren and Vally (2006) note that

A founding principle of the South African Constitution is common citizenship and equal enjoyment of an array of rights, including the right to basic and adult education, and the rights of children are also emphasised in the Bill of Rights. The lyricism of the phrases in the Constitution and the promise of these words of justice, after decades of apartheid, has become a symbol of hope for advocates of social justice (Spren & Vally, 2006).

A participant added

The government needs to train school principals about the rights of our children to access education ... we do not want our children to stay home. And if they stay home, it is a disaster for us (P4).

Another participant supported the above statement, saying

I really need help so that my child can be able to go to school. I tried to apply in other schools; the response I got was that ... they put her on the waiting list. They did not promise me anything. Very painful for me. I really need help (P3).

It is evident from the above remarks that parents have negative experiences with the admission and enrolment process of their children in schools. They regard the current practices as being prejudiced against their children. This is supported by the following parent comment:

I went to school to apply for my daughter; I provided our asylum seeker permits for me, my wife and my daughter, including my daughter's birth certificate ... I was told that there is no space for her and she does not have the paper from South Africa (P1).

Participant 4 added

There was no reason given to me when the application for my daughter was not accepted ... they were just telling me that she is in the waiting list ... and she was on the waiting list for three years (P4).

The extract above reiterates the unhappiness of refugee and asylum seeker parents with the implementation of education policies for non-South African children. Both participants 1 and 4 demonstrated this. Participant 4 hinted at the rather dismissive attitude with which refugee and asylum seeker parents are treated at schools, indicating that he was given no reason for the school's refusal to accept his child.

The majority of parents said that the right of their children to access education in South Africa should not depend on the legal status of their parents. They stated that children cannot be punished for crimes they did not commit. This was explained by a participant who said

Children should be allowed to attend school as long as they can provide a birth certificate (P5).

Another participant said

My child was not admitted into school, for no reason ... I provided the school with my asylum permit, and the one of my child, including her birth certificate, but she was not accepted (P2).

It is evident in this study that parents regard access to education for their children as a right that should not be denied, irrespective of the parent's inability to provide proper documentation required by the school.

4.2.2 School principals' perspectives with regards to access to education

The admission policy of all three schools made available to the researcher seek to ensure the correct and fair handling of applications, the lawful administration of learner admission and registration. They further provide an environment where race, culture, religion and economic condition of learner are in no instances a condition for admission or in any aspect of school life. They promote transformation in line with the Constitution of South Africa and reject all discriminatory practices in schools.

In this study, school principals shared their viewpoints in relation to the admission and enrolment of refugees' and asylum seekers' children. During the discussion, it emerged that although all admission policies drafted by schools were similar in terms of the Constitution of South Africa and the National Admission Policy Act No 27 of 1996, School principals have difficulties of differentiating the different types of legislations managing foreign nationals in South Africa including the type of documentation required in the Refugee Act No 130 of 1998 and the Immigration Act No 13 of 2002. This confusion emanating from school principals constitutes in a large part the reason why some refugees' and asylum seekers' learners were denied access to school as among the reasons cited by parents the issue of study permit and only birth certificate issues by the Department of Home Affairs could be accepted as valid documents while these children just required an asylum seeker permit or a refugee status in terms of the Refugee Act No 130 of 1998. Furthermore, in both the National Admission Policy Act No 27 of 1996 or the South African Schools Act No 84 of 1996 neither the Western Cape Education Department Policy for the Management of Admission and Registration of Learners at Ordinary Public School obliged for a birth certificate issued by the DHA of South Africa only. Because children born out of South Africa cannot in any way be in possession of a birth certificate issued by the DHA and they cannot even lodge an

application after entering South Africa. The discussion held with school's principals further revealed a poor process of handling a waiting list. Parents were never given information on the status of their children placed on the waiting list which resulted on children being denied the opportunity to be enrolled. The inefficient way of handling the waiting list by school principals and lack of consultation with parents contributed partially to the denial of access to education. The admission policy currently used in schools complies with the Constitution of South Africa as explained by SP1 who said:

Our admission policy is consistent with the South African legal framework and it is grounded on a non-discrimination principle (SP1).

All school principals interviewed in this study stated that while the current admission policy does not discriminate against any child on any grounds whatsoever, they shared a view regarding the need for all the documentation from refugee and asylum seekers, which they felt strongly were a pre-requisite for admission to schools. They argued that without proper documentation, the school might well register the child but would still struggle to integrate the child into the schooling system, managed according to the government's Centralised Education Management Information System (CEMIS). Every child is given a CEMIS number, which is used to register and track every learner throughout their school career. This was explained by SP3 as follows:

Our admission policy allows every child to apply in our school ... With regard to a foreign child, parents must make sure that they have all paperwork in order ... because if we enrol an illegal child, we will not be able to register the child into CEMIS (SP3).

This view was shared by all school principals. Clearly the school principals' perspective on access to education for foreign children is that the right cannot be accessed without procedural compliance.

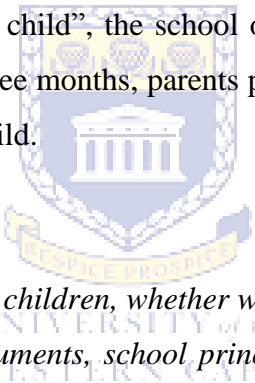
4.2.3 The Western Cape Education Department's (WCED's) perspective on access to education

It is important to consider the matter of access to education from the perspective of the body that runs the system; in this case, the WCED. The WCED is the department tasked with the implementation of education policies within the Western Cape province.

Interviews conducted with WCED officials in the Policy Coordination and Development Unit revealed a broader picture of current educational and logistical challenges from a management point of view.

Officials were asked to talk about the implementation of educational policies in schools within the province in general and particularly schools located in the Kensington/Maitland area, in relation to the admission and enrolment process of refugees' and asylum seekers' children. According to them, schools are bound to ensure that learners are admitted in line with the Bill of Rights. They maintained that school governing bodies (SGB) were responsible for drafting admission policies that complied with the Constitution, and stated that parents had to provide all necessary documents needed for the admission and enrolment of their children. They added that this requirement was applicable to both migrants and South African children. They further stated that if parents were not able to furnish all documents, then, according to the principle of "best interest of the child", the school ought to provisionally accept the child on condition that within three months, parents provide all required documents to complete the enrolment of the child.

One official elaborated on this:



The school must enrol all children, whether with documents or not ... if a child does not provide all documents, school principals must advise parents to go apply for documents at the Department of Home Affairs, and parents have three to six months of finalising a conditional admission of the learner (WCEDO1).

It is apparent that the WCED perspective on access to education for refugees and asylum seekers' children is founded on two principles: one, school compliance with the Bill of Rights and two, parents' responsibility to comply with Department of Home Affairs documentation requirements. Regarding the Bill of Rights, it can be deduced here that school principals have a sound understanding of what the Constitution of South Africa entails in terms of accessibility. However, they stated that although all children have a right to apply for admission, the selection of learners is grounded on the principle of "first come, first served". In other words, parents must apply within the window period for applications, well in advance of the school year being applied for. In addition, they must provide all required documents so that they can successfully register their children. For those without the required documents such as birth

certificates and refugees permits for their children, accessing education becomes problematic. Considering that the common experience of refugees and asylum seekers is to struggle with obtaining documentation, this matter remains a serious concern.

4.2.4 Civil society perspective on access to education

Officials from the Scalabrini Centre interviewed in this study stated that refugees and asylum seekers cannot access documentation for their children in South Africa for various reasons. Occasionally they are denied assistance when trying to register their children's birth, or to obtain an Identity Document (ID) for their children. In the absence of documentation, they are exposed to further difficulties, including the enrolment of their children in schools. They argued that a lack of documentation should not be used to unfairly discriminate against children and deny them their constitutional right to education in South Africa. A Scalabrini official stated:

When we decided to open the Child and Youth Care Centre, we conducted a survey of all foreign children placed in children homes in the Western Cape Province, Gauteng and Limpopo. We found out that 40% of these children did not have documents. Nothing at all. No birth certificate whatsoever (Scalabrini Centre advocacy officer).

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It is evident that Scalabrini Centre has a different perspective with regard to the schooling of refugees' and asylum seekers' children. They argued that the South African government, which has signed various international treaties promoting and protecting the rights of children, should avoid punishing children for crimes they had not committed. The Centre believes that documentation should not become an obstruction to children's rights in a democratic South Africa.

4.3 Barriers to accessing education

The second objective of this study was to scrutinise the challenges and personal circumstances of refugees' and asylum seekers' children and to assess the extent to which these barriers were impacting on their ability to access education. This study found that documentation, language and institutional barriers constituted the chief obstacles infringing on the right of refugees' and asylum seekers' children to access

education. Other barriers, too, affect the admission and enrolment process of refugees and asylum seekers' children, such as ambiguities in policies.

The study established that these barriers persist despite the fact that issues of documentation fall under ambit of the Refugee Reception Office (RRO) of the Department of Home Affairs (DHA), which has long been inefficient in rendering services to refugees and asylum-seeking persons in South Africa. The DHA is responsible for the documentation of refugees and asylum seekers, issuing documents that entitle the holders to basics services and to accessing their rights; among others, the right to education (RSA, Refugees Act No 130,1996). However, it was found that the right of children to access education is far from being realised, whether or not parents and their children possessed the correct documents issued by the Department of Home Affairs.

The following sections highlight some of the practical issues revealed in interviews that lead to a denial of access to education for refugee and asylum-seeking children and their parents.

4.3.1 Documentation

The issue of documentation was revealed in this study as one of the main challenges associated with the denial of access to education. Among the documents mentioned as prerequisites for the admission and enrolment of children were: parents' refugee status, child's birth certificate, parents' asylum seeker permit, work permit for parents and study permit for children.

Parents in this study stated that the right of refugees' and asylum seekers' children to access education is constantly infringed on the basis that they have not provided proper documents when applying for admission into schools. They argued that schools are asking them to provide documents that do not correspond with their legal category in South Africa. They said that as a consequence of that confusion, their children are denied access to education. This is clear from the following comments.

I applied in three schools; they said only a study permit. They said the children must have study permit and other schools gave me much troubles asking me to

bring the municipal letter, they asked me to go to police, I tried all those things they have asked me, but it did not work (P1).

Another participant added

What surprised me and made me sad was that, after I submitted the application form for my daughter, they then phoned me asking me for a study permit of the child which was a bit of surprise for me and it was new because they never asked for a study permit before. I told them that the papers (birth certificate and refugee permit) that I have submitted are documents that my daughter has been using to register in school since grade 1 (P3).

Similarly, another participant stated

We applied in three schools here in Kensington and in one school in Maitland. The school in Maitland even refused to accept the refugee status that we have as an Identification Document issued by the Department of Home Affairs. They only wanted a work permit and study permit for my daughter (P4).

Four out of five parents agreed with the above statement which reveals that one of the barriers to education for refugees' and asylum seekers' children is not a failure by parents to provide documentation per se, but a failure by schools to correctly interpret different documents that foreign nationals need to possess while living in South Africa. It is evident that schools are not aware, firstly, of the different categories of foreign nationals living in South Africa, and secondly, of the documents they are required by law to have in order to live legally in South Africa. It is evident that school principals do not know where foreign nationals are located or what legal frameworks apply; namely, the Refugees Act of 1998 and the Immigration Act of 2002.

Interviews also revealed that the failure of the refugee system in South Africa is partly due to ambiguities in the migration policy. For example, the duty to document a child lies with parents in terms of the South African legal framework. Which means, parent or someone acting on behalf of the child must lodge an application with the Department of Home Affairs for any documentation for the child. Both participants 5 and 6 stated that this practice is confronted with administrative challenges in the Home Affairs system. Many children are denied documentation which is the gateway for their access to education and all other services. Scalabrini Centre highlighted this.

Normally when a child is born of refugee parents, they have to take the child for family joining, to join them ... but that process is also moving at a very slow speed. In the past two years, the refugee office in Cape Town has not been doing family joining anymore, citing the lack of staff as the main reason. Meaning, a lot of children could not be joining their parents for them to be documented. (Scalabrini Centre Director).

The centre added

In these cases, we normally write letters to schools pleading with them to enrol a child, explaining the Home Affairs process and the circumstances around documents ... we noticed that schools are under much pressure by the DHA to not enrol undocumented children and school principals are threatened to be fined in their personal capacity if they do not comply (Scalabrini Centre advocacy officer).

The extracts above reveal that some of the refugees and asylum seekers still have issues of documentation because of the inability of the DHA to process documentation accordingly. This study has established that the administrative challenges within the DHA have severely impacted the schooling of refugees' and asylum seekers' children. The documentation issues facing refugees and asylum seekers in South Africa is a result of institutional challenge within the DHA.

4.3.2 Language barriers

Throughout this study, it emerged that language differences are seen as barriers preventing refugees' and asylum seekers' children from receiving education in schools. This was stated by all school principals who have agreed that the language barrier poses a problem to children in terms of performance, but they acknowledged that children who started school at grade R were not affected by language barriers than those who started from grade 4 or 5. They added that the challenge is greater when a child is brought to school in the elementary grades such as Grade 1, 2 or 3. Although English is the medium of instruction in many countries such as Zimbabwe and Malawi, school principals agreed that migrants' children are confronted with language barriers in terms of adopting other South African languages, specifically Afrikaans, which is taught as a second language and in some cases, especially for schools in the Kensington/Maitland

area, Afrikaans is a second medium of instruction. The study found that refugees' and asylum seekers' children have problems in school due to the language barriers. It further reveals that children are often incapable of performing well when they are forced to learn through Afrikaans, with average marks sometimes dropping quite drastically because of this barrier. Schools are often forced to offer them concession in trying to mitigate against language barriers that threaten these learners negatively on their academic performance. For instance, a school principal said:

Other challenges that we do encounter is the language barrier ... sometimes you have children coming from countries where English is not spoken ... English is the first medium of instruction and Afrikaans the second ... at the end of the day, we are forced to offer them concessions in English and Afrikaans, means, their performance in these two languages is disregarded in evaluating their academic performance (SP3).

Similarly, another school principal stated

Language barrier forms a great component in our school ... if you have a child who cannot speak the language of learning and teaching, it is more difficult for that particular child to be able to progress (P1).

Buckland (2011) states:

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Currently, the Department of Education does not provide any specific language support or policy for the integration of non-nationals or migrants into schools ... however, this gap in education policies discriminates against non-nationals (Buckland, 2011).

South Africa has eleven official languages, with English the medium of instruction in many schools. Refugees' and asylum seekers' children have to speak English plus Afrikaans which predominates in the Kensington/Maitland area. They need these languages for communication and instruction which will enable them to do their schoolwork. This study reveals that the poor performance of refugees' and asylum seekers' children struggle is mainly caused by the language barrier. Consequently, they frequently fall below the pass mark.

South African education policy does not cater for foreign nationals living within South Africa. Thus, refugees' and asylum seekers' children are required to pass a South African language, which may not be a language they speak or understand. This challenge impacts heavily on their performance and totally denies them an opportunity to learn, understand and communicate with teachers. The study found that the constitutional right of all children to learn in the language of their choice is being denied to refugees' and asylum seekers' children.

In effect the challenge of accessing education for the children of refugees and asylum seekers goes beyond many obstacles encountered during the admission process, but continues into their school careers, affecting their academic performance for years.

Section 29(2) of the Constitution states

Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable (South Africa, Constitution Act No 108 of 1996).

One school principal stated

I would like to see that special care is also given to programmes that focus on teaching parents English at school ... because some of them do not speak English at all (SP2).

Language barriers clearly form part of the challenges facing not only refugee children but their parents as well. All school principals interviewed in this study agreed with the statement above and added that the government does not have a support system to empower children and their parents with language proficiencies. They admitted that as a result of this challenge, parents are unable to help their children with schoolwork, or to derive much from school meetings or to interact with teachers and school principals on matters concerning their children. As the legal guardians of their children, parents have a responsibility to help their children with schoolwork and to engage with schools and government institutions on behalf of their children.

4.3.3 Institutional barriers

This study found that, the Department of Home Affairs has been ineffective in issuing of documentation to refugees and asylum seekers timeously. Participants claimed that the family joining process – which is a process through which refugees’ and asylum seekers’ children are combined with their parents for documentation has been moving at a very slow speed. In fact, as reported by *IOL News* (2018), the Cape Town refugee reception office has not carried out the family joining process since 2017 because of shortage of officials, rendering refugees’ and asylum seekers’ children incapable of joining their parents in order to be documented. Participants stated that the refugee reception office in Cape Town is faced with various administrative challenges. Scalabrini Centre claimed that, they have been receiving asylum seekers at the Centre who have been rejected by the Refugee Status Determination Officer (RSDO) with no valid reasons. As required by law, they lodged an appeal to have the decision reversed but, they have been waiting for 15 to 20 years for the hearing. Section 26 (I) of the Refugees Act states

Any asylum seeker may lodge an appeal with the Appeal Board within the period provided for, in the rules of the Refugee Status Determination Office for the review of the decision (RSA, Refugees Act, 1998).

Scalabrini Centre stated

The backlog is huge; the system is congested ... even people who are not really asylum seekers can take advantage because of the system failure (Scalabrini Centre advocacy officer).

Although the Refugees Act does not provide a time frame in which appeals must be finalised, forcing applicants to wait 15 to 20 years before they are invited to a hearing is a demonstration not only of administrative failure within the Department of Home Affairs, but also, an unfair practice making a mockery of the rights of refugees and asylum seekers to access basic services in democratic South Africa.

The extracts above demonstrate the extent to which the institutional barriers within the DHA can impact negatively on the ability of refugees’ and asylum seekers’ children to access their legislated rights.

4.4 Gaps in policy

The third objective of this study was to examine the duty of the Western Cape Education Department (WCED) to ensure an effective implementation of educational policies at school level. The study found that the WCED does not adequately train school principals and other stakeholders about the South African immigration policy. This lack of information has rendered school principals (SPs) unable to distinguish between the Immigration Act of 2002 and the Refugees Act of 1998 that are the two legislation managing migration in South Africa. This has led to many refugees' and asylum seekers' children being denied to access to education in the Kensington/Maitland area because they are asked to provide study permits for admission and enrolment in schools, while these documents fall under the Immigration Act of 2002. As a result of this confusion, children's right to access education as afforded by the Constitution of South Africa is violated.

Section 29 of South African Constitution of 1996 states, "Everyone has the right to a basic education, including adult basic education" (RSA, Constitution of South Africa, 1996).

This fundamental right is further entrenched in the South African Schools Act No 84 of 1996 which states that public schools must admit learners and serve their educational requirements without discrimination, and further states that school governing bodies must determine the admission policy of the school without discrimination (RSA, South African Schools Act, 1996). Furthermore, section 27(g) of the Refugees Act of 1998 states: "A refugee is entitled to the same basic health services and basic primary education which the inhabitants of the Republic receive from time to time" (RSA, Refugees Act, 1998).

One parent stated:

I was surprised when I was asked to provide a study permit for my child while we have refugee status and the birth certificate of my child ... they never asked for a work permit before. (P3).

In addition, an official at Scalabrini Centre said

Schools do not have an understanding on how documents for foreign nationals work in South Africa ... you cannot expect an asylum seeker's parent to provide a study visa for their child (Scalabrini Centre advocacy officer).

Despite the constitutional provision granting access to education to all children and adults without discrimination, this study found that refugees' and asylum seekers' children are still discriminated against, as a result of misinterpretation of immigration policies. This study also reveals that the WCED does not fulfil its duty of enforcing the effective implementation of policies in all schools within the province. This is evidenced by the following statement by a parent:

I reported to the WCED the conduct of the school that wanted me to produce a study visa of my daughter ... They registered the complaint and took my phone number. It has been two years since and they never call me for feedback (P4).

The Director of the Scalabrini Centre added

We had a meeting in 2017 with the WCED about the challenges of migrants to access education ... the WCED is not aware of the challenges that parents face in terms of documentation. They seem to have an assumption that access to education for all children in South African is the same.

An official at the Centre further added

When it comes to immigration issues, the WCED need a kind of training to help them better understand the immigration systems and relevant documents because it not just for children entering school, but it covers a lot about child documentation including birth certificates (Scalabrini Centre advocacy officer).

The extracts above reveal the failure by the WCED to comply with its statutory mandate which is to ensure that education policies are implemented effectively and efficiently in all schools across the province. This failure on the part of the WCED is a contributory factor to the violation of the right of children to access education, which violates the Constitution as well as the international frameworks which South Africa has signed and ratified.

The fourth objective of this study was to investigate whether school principals were ensuring the constitutional compliance in the admission policies of their schools. The

study found that legislations such as the South African School Act No 84 of 1996 allows parents to register their children with or without documents. In the latter case, school principals are urged to help parents to obtain the necessary documentation on behalf of their children. Yet at the same time, the Immigration Act renders instruction by a learning institution to an “illegal foreigner” an offence (RSA, Immigration Act, 2002). It is clear that this contradiction in policy has contributed to barriers that prevent refugees’ and asylum seekers’ children from accessing education. A staff member at Scalabrini Centre explained it this way:

The Immigration Act of 2002 is the most restrictive and punitive policy which requires people to go back to their country and lodge an application for a study visa at the South African Embassy ... Refugees and asylum seekers cannot easily return to their countries because of persecution (Scalabrini Centre advocacy officer).

Another parent explained

When I went to register my child ... I provided documents for me and my daughter, including her birth certificate. The school rejected the birth certificate because it was not issued in South Africa, while my daughter was born in Malawi (P5).

The National Admission Policy and the WCED Policy for the Management of Admission and Registration of Learners at Ordinary Public Schools with regard to compulsory documents for admission states

An official abridged birth certificate or identity document (ID); or, in the absence of such documents, official proof that application has been made to the Department of Home Affairs for a birth certificate or identity document (Western Cape, Admission Policy).

The extract above partially explains the confusion among school principals and the ambiguity that exists in education policies because the policy does not specifically state that the birth certificate may only be issued by the South African Department of Home Affairs. This ambiguity alone constitutes a violation of the right of refugees’ and asylum seekers’ children to access education, because they are asked to produce documents that they cannot possibly provide.

There are clearly gaps in the system that oversees the documentation of a refugee child. In both the Refugees Act of 1998 and the Immigration Act of 2002, the duty to document a foreign child is placed upon the parents. Parents are responsible for the application of documentation of their children, with their legal status in South Africa having a direct bearing on the issuing of documents to their children. An illegal or undocumented parent is prevented from applying for any documentation including the birth certificate on behalf of their children under the Refugees Act or the Immigration Act. This gap in policy is viewed by some participants as a contributory factor to the increasing number of undocumented children.

In addition, when a birth certificate is issued by the DHA to a child born in South Africa of two foreign parents, the birth certificate alone does not give legal status to the child. Parents are required to lodge an application for further documentation of their children in line with their legal status in South Africa. Refugees and asylum seekers are urged to apply through the family joining. Process, the only process through which a child may be documented. But the family joining process at the refugee reception office has not been effective for years, as confirmed by Scalabrini Centre:

The refugee office has not been processing family joining applications since 2017, which means many refugees' and asylum seekers' children could not join their parents in order to have document (Scalabrini Centre advocacy officer).

In addition, the Centre stated

Undocumented foreign nationals ... will continue to live their lives, including having children in South Africa. At end of the day, they cannot register their children because they are illegal in the country. But their children will suffer the consequence (Scalabrini Centre Director).

As stated by Spreen and Vally (2012) this study found that the fundamental problem faced by refugees' and asylum seekers' children in South Africa is due to the apparent invisibility and the absence of a child-centred policy perspective. As result, refugees and asylum-seeking children are denied access to education which is a violation of their constitutional rights as well as a violation of international frameworks on the promotion and protection of child rights.

4.5 Policy implementation from the perspective of the WCED

It is important to consider other perspectives on the implementation of education, particularly those of officials working for the Western Cape Education Department (WCED). Interviews explored other possible outcomes for the schooling of refugees' and asylum seekers' children in terms of the implementation of education policies, by asking WCED staff in the Policy Coordination and Development Unit to talk about general practices in the admission and enrolment process of refugees' and asylum seekers' learners. According to them, the implementation of education policies, both nationally and provincially, has improved the schooling of refugees' and asylum seekers' learners.

All children including foreign children to access education ... even for children considered as "illegal". Schools are urged to accept them and parents must provide proof that they have applied for documentation at Home Affairs and ensure that the admission is final within three months of conditional admission (WCEDO 1).

Scalabrini Centre rejected the above statement, saying

The Immigration Act prevents foreign national from working or studying before their application for work or study is approved ... even when a receipt is issued proving that an application is lodged with the DHA, the receipt will specifically say this person is not entitled the holder to work or study (Scalabrini Centre advocacy officer)

Another staff member added

The refugee office in Cape Town for the past two years did not allow the family joining process for refugee parents to apply for documentation through family joining ... Also, the refugee office does not give any proof that an application is lodged which parent can take to school (Scalabrini Centre Director).

The Scalabrini Centre has been working with migrants on a daily basis and staffs have a thorough understanding of the challenges face by refugees and asylum seekers parents in connection with the schooling of their children. The Scalabrini Centre has been assisting children who are denied access to schools by writing letters to schools

detailing personal circumstances of children and the steps needed in order to obtain documentation. It is clear that the above statements are made on the basis of their daily experiences.

The WCED staff were asked to talk about barriers affecting refugees and asylum-seeking children in accessing education. One WCED official had this to say:

I think the problem that we have for non-citizens is that they do not know the structures within the Education Department where they can appeal the decision of schools in cases where their children are not admitted (WCEDO2).

Sayed and Ahmed (2011), argue that the implementation of immigration policy should be grounded on due process so that refugees and asylum seekers are given a fair opportunity to access their documentation. Reinforcing this point, Landau and Amit (2014), point to bureaucratic autonomy within government departments and argue that bureaucracy widens the gap between public policy and policy implementation. According to Alfaro-Velcamp (2017) the challenges facing refugees and asylum seekers in obtaining or renewing their papers have direct consequences for their ability to enjoy the socio-economic rights guaranteed them by the Constitution. It is evidently that the failure by school principals to interpret the Refugees Act and the Immigration Act correctly constitutes a barrier denying refugees' and asylum seekers' children access to education (Sloth-Nielsen *et al.* (2016) .

The findings in this study reveal that children are denied their constitutional right to education either because of the legal status of their parents in South Africa, or the confusion emanating from school principals' failure to distinguish between the Immigration Act and the Refugees Act. As result, the right of refugees' and asylum seekers' children to access education is far from being realised in the current policy implementation model. Drawing from the work of Tikly and Barrett (2007) and the modified theory of social justice offered by Fraser (1998) the discussion below examines the current approach to education for refugees' and asylum seekers' children, broadening the conceptualisation of education as a matter of both human rights and social justice.

4.5.1 Access to education as a human right

The Bill of Rights grants *everyone* the right to access basic services, including education, for the simple reason of being human and residing within the Republic of South Africa. Moreover, section 27(g) of the Refugees Act states that refugees and their children are entitled to the same basic health services and basic primary education accorded to South Africans. What this means in essence is that, the South African legal framework does not distinguish between refugees and South Africans when it comes to the right to access basic services such as education. Many studies in recent years have sought to understand the untenable circumstances around access to education for refugees' and asylum seekers' children in the context of South African immigration policy, which is considered the most progressive around the world in terms of self-settlement opportunities offered to refugees and asylum seekers. (Landau, Ramjathan-Keogh & Singh, 2005; Fleisch, 2016; Safford *et al.*, 2018; Landau & Amit, 2014).

The Western Cape Education Department Policy on the Management of Admission and Registration of Learners at Ordinary Public Schools states

Section 29(1) of the Constitution of the Republic of South Africa of 1996 which guarantees every person in South Africa, citizens and non-citizens alike, the right to a basic education, including adult basic education and further education, which the State, through reasonable measures, must make progressively available and accessible (RSA, Constitution of South Africa, 1996).

However, this study found that although education policy is inclusive, refugees' and asylum seekers' children are viewed as foreigners rather than children who are in need of education. This was expressed by all parents interviewed in this study.

One participant said

My child was rejected in school because the school wanted a birth certificate issued in South Africa while he was born in Malawi I provided the Malawian birth certificate which was in English; the school rejected it (P 5).

While the government of South Africa has made access to education available to all children living within the republic of South Africa which is a demonstration of government's commitment to promoting and protecting the rights of all children, the

extract above makes it difficult to view this right as an “on-paper” right for refugees’ and asylum seekers’ children.

While the National Admission Policy Act 27 of 1996 makes it a requirement for parents to provide the birth certificates of their children as complementary documents for admission and enrolment, the policy does not categorically state that this has to be the certificate issued by the South African Department of Home Affairs. This lack of clarity provides an opportunity for interpretation and the exercise of bias. Many schools interpret it ways that reject the child, with no clear grounds to do so, as the policy is ambiguous. The fact that schools request a birth certificate issued in South Africa from children who were not born in South Africa is a demonstration of a policy implementation fiasco. In addition, it constitutes a clear infringement of children’s rights under the Constitution and international law.

4.5.2 Access to education as a matter of social justice

In its preamble, the Constitution of South Africa states that the Constitution was adopted as:

The supreme law of the Republic so as to ... establish a society based on democratic values, social justice and fundamental human rights (RSA, Constitution of South Africa, 1996).

This provision establishes the values espoused by the Constitution and that the state is tasked with exemplifying. The South African government is under a constitutional obligation, in other words, to ensure that no form of injustice, exclusion or deprivation is perpetuated to anyone within the Republic of South Africa through government policies, practices or actions.

According to Fraser (1998), social justice implies a combination of redistribution, recognition, participation and accessibility. This study found that refugees’ and asylum seekers’ children are denied access to education either because of their parents’ lack of documentation, or because of misinterpretations of policies by school principals. This denial constitutes a social injustice, which the Constitution itself forbids and pledges to ensure does not occur in South Africa. The principle of social justice stands against any

form of discrimination within any community which would deprive certain individuals of the rights to which they are entitled.

The fact that this principle is being flouted was highlighted by a parent who said

When my child who was born in Malawi was rejected because I could not produce a birth certificate issued in South Africa as required by school ... I just had to send my child back to Malawi while I am living here because the school was unjust to my child (P5).

Drawing on Fraser's perspective of social justice, Klugman (2011) enumerated four principles that enhance social justice: First, there must be fairness in the manner in which resources are distributed; second, there must be an end to discrimination against all groups, fostering values that recognise all people as equal; third, people must participate in public policy and implementation processes; and fourth, there must be accountability for how decisions are made and their impact on society (Klugman, 2011).

Klugman explains that a society that is just is one in which access to certain goods and services are accorded to all without discrimination for sustainable socio-economic development. In other words, every member of society has equal opportunity to access basic services without exclusion (Klugman, 2011). Accordingly, in the spirit of the Constitution, the rights of all people are to be protected, including refugees and asylum seekers. This does not mean "absolute equality" such as equality of salary or living standards. Social justice requires that public policy and practices are implemented in a manner that helps the poor and most vulnerable to access their basic rights (Klugman, 2011).

It is clear from the definitions provided above and from the findings of the study that social justice would be better served if refugees' and asylum seekers' children were granted the opportunity to access education, which would help them develop their capabilities and become independent members of society. This researcher holds that children should be afforded an opportunity to access education for their social development, and that public policy and practices should not be implemented in a manner that are punitive and exclusive.

The findings in this study seem to suggest that some refugees' and asylum seekers' children are excluded from accessing education in schools located in the Kensington/Maitland area. This exclusion amounts to social injustice because children are not responsible for documentation or any other official process pertaining to policy or practices. They are vulnerable, victims of decisions on which they were never consulted, and their needs are overlooked in the document requirement process. In this context, one could argue that education policies in South Africa are socially unjust on the ground that they are implemented in a manner that directly or indirectly excludes certain categories of people, preventing them from enjoying certain advantages and rights. A withholding of education constitutes a very serious act of injustice as it is so fundamental to success in life; its effects continue for years, as do the effects of gaps in one's education.

In *State v Grootboom* 2001, the Constitutional Court explained social justice as the relationship between reasonable state action and the need to treat human beings with the appropriate respect and care, recognising the dignity to which they have a right as part of humanity. In its judgement, the Constitutional Court upheld the notion that a just society must exceed the constraints of place of origin or refugee status, going beyond such considerations as a result of common humanity. There is general agreement that one of the best empowerment mechanisms bestowing on people the opportunity for a better future is education. Education is an investment in human capital for economic growth, because children who access education are likely to possess skills that will benefit not only themselves and their families, but the South African state, whether through their participation in the formal or informal economy. Education is one of the best empowerment mechanisms for social progress and economic growth.

It is therefore necessary for all stakeholders to view access to education for refugees' and asylum seekers' children as an important tool in poverty alleviation.

When Deferred Action for Childhood Arrivals, known as DACA, was introduced in American immigration policy, then US president Barak Obama stated

My administration is emphasising the public policy rationale to mend the immigration policy to make it more fair, more efficient and more just ... they are young people who study in our schools, they play in our neighbourhoods, they are friends with our kids, they pledge allegiance to our flag. They are

Americans in their hearts, in their minds, in every single way but on paper; they were brought to this country by their parents, sometimes even as infants, and often have no idea that they are undocumented until they are rejected to be enrolled in schools (FWD.US, 2013).

Although DACA did not offer a pathway to legalisation, Gonzales *et al.* (2014), argued that it helps many eligible, undocumented young people and young adults, estimated at 1.9 million, who have only temporary social security. It managed to reduce some of the challenges faced by undocumented youth and young adults which previously made it almost impossible for them to achieve economic and social incorporation (Gonzales, Terriquez & Ruszczyk, 2014a).

Stakeholders ought to view access to education for refugees and asylum seekers as an international obligation, as acknowledged in various international treaties signed and ratified by the government of South Africa. Additionally, in light of the preamble of the Constitution of South Africa of 1996, which provides for the creation of a society where there is social justice, the South African state is bound to ensure that everyone within the country, including refugees and asylum seekers, has access to education.

This study finds that justice is rarely served to refugees' and asylum seekers' children in relation to education.

4.6 Summary

This chapter has highlighted findings from twelve participants, including refugees and asylum seekers, school principals, officials from the Western Cape Education Department and officials from the Scabrini Centre. It gave detailed accounts from parents about the barriers they face in the admission and enrolment of their children in schools. The chapter explained the theory of social justice in order to more fully conceptualise the matter of access to education for all, showing that failure to consider the personal circumstances of refugee and asylum-seeking children in policy implementation constitutes a barrier to their enjoyment of their constitutional right to education. Social justice, according to Fraser's definition, consists of recognition, redistribution, participation and accessibility. All are important aspects of policy

implementation and practice that rarely find expression for refugee and asylum-seeking children.

The findings of this study indicate that access to education for refugee and asylum-seeking children is well described in policy papers but implementation is marred by grey areas among policies, confusion among principals as to which policies take precedence, gaps in the policies (such as whether or not the only acceptable birth certificate is one issued by the Department of Home Affairs), language barriers, institutional barriers, and common prejudice. While the right to access education for all children including refugees' and asylum seekers' children in South Africa is a matter of domestic and international law, this study found that the implementation is ineffective, inefficient and does not comply with South Africa's international obligation to promote the right of children to basic services.



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CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.1 Chapter overview

This chapter provides a summary of research findings. It further provides recommendations to various stakeholders which may inform policy-makers' discussions on how access to education for refugee and asylum-seeking children may be improved within the current legal framework. It answers the fundamental questions of the research study and additionally, it demonstrates how denying refugees' and asylum seekers' children their right to education violates both South African and international frameworks.

The conclusion of the study will be presented in this chapter.

5.2 Summary of findings and conclusion

As stated earlier, this study aimed to assess policies and their implementation with regard to access to education by refugees' and asylum seekers' children in a democratic South Africa. Through a qualitative analytical approach, the findings in this study confirm that refugees' and asylum seekers' children in Cape Town, South Africa face challenges in accessing education within the current legal framework. The challenges of access to education emanate mainly from poor implementation of educational policies and confusion regarding policies that oversee refugees in South Africa.

The study reveals that there is a gap in policy that has rendered access to education for refugees' and asylum seekers' children ineffective. School principals are not well informed about different categories of foreign nationals and the documentation they should possess while in the Republic of South Africa. As a result, schools often ask refugees and asylum seekers to produce study visas for their children as a prerequisite for enrolment, even though study visas fall under the Immigration Act. The study further suggests that refugee and asylum permits are disregarded by school principals as valid documents for admission and enrolment. To a certain extent, schools demand that refugees and asylum seekers produce birth certificate for their children issued by

the South African Department of Home Affairs, even for children born outside of South Africa.

Access to education for refugees' and asylum seekers' children has been found to be marred with ambiguity and barriers. The constitutional right of these children is violated because of gaps in policy and misinterpretation of immigration policy by school principals.

In line with the social justice model put forward by the researcher in Figure 2, the findings of this study suggest that access to education for refugees' and asylum seekers' children is not been guided by the principle of "every child deserves an education" or of "the best interests of the child".

These findings notwithstanding, the literature review of this study shows that access to education for refugees' and asylum seekers' children, and migrant children in general, has been improved both in terms of participation and accessibility in many developing countries through immigration policy reform. This is most apparent in the USA and Canada where DACA and IRPA respectively create an obligation for officials to consider the personal circumstances of children in immigration policy implementation (Singer *et al.*, 2013; Ali, 2006). Also, Rwanda has helped children from neighboring countries to access education despite the post-genocide challenges the country still faces (Roger, 2002).

The researcher recommends that the South African Department of Home Affairs works hand-in-hand with the Department of Education to address the issue of documentation in order to help children comply with the school administration and enrolment process.

From the institutional perspective, the researcher suggests that education policy management and implementation be strengthened through advocacy and awareness training. Parents need to be informed of the policy and the accountability structures in the Department of Education in the province.

The findings suggest that there is a lack of both vertical and horizontal inter-departmental collaboration, which is needed to curb various challenges affecting the refugee community in South Africa. It is suggested that the Department of Education works in collaboration with the Department of Home Affairs to address institutional barriers to education for all. Their aim should also be to conduct a policy review through

a thorough consultation of parents, school principals and school governing bodies in order to adopt practices that promote the interests of the child in both policy formulation and implementation.

The challenges faced by refugees and asylum seekers in accessing their constitutional rights in South Africa are likely to worsen if the Refugee Amendment Bill, currently being considered in Parliament, is to take effect. The Bill seems to be more restrictive and will further violate the rights of refugees and asylum seekers in South Africa. For example, with regard to the issue of birth certificates for foreign children born in South Africa, the bill prevents South African Home Affairs from issuing birth certificates and instead requires that parents register the births of their children with the Embassy or High Commission of their countries in Pretoria. This provision violates immigration policies with regard to refugees and asylum seekers who may face the withdrawal of their refugee and asylum seeker status if they turn up at these embassies because the embassies represent their respective countries.

5.3 Recommendations

Based on the above findings, the researcher proposes a number of recommendations to enhance the efficiency and effectiveness of access to education for refugees' and asylum seekers' children.

5.3.1 Recommendation to law makers

As far as the process of ratifying international agreements involves Parliament, it is recommended that law makers formulate immigration policies that are reasonable and fair in meeting the needs of migrants' children. Law makers are recommended to provide clarity on the birth certificate as stated in the National Admissions Policy Act No 27 of 1996 in order to remove the ambiguity surrounding the issue of birth certificates. The proposed amendment could read as follows:

Compulsory documents for admission: ID or birth certificate issued in South Africa or a country of origin, translated by a sworn translator recognised in the Republic of South Africa; an official abridged birth certificate or identity document (ID); or, in the absence of such documents, official proof that

application has been made to the Department of Home Affairs for a birth certificate or identity document.

Furthermore, it is recommended that law makers formulate policies that speak to the needs of children. In the current policy regime, an illegal or undocumented parent is prevented from registering the birth of their children in South Africa, which goes against section 28 (1) (a) of the Constitution which states that every child has the right to a name and a nationality from birth. In formulating these policies, law makers must focus on the best interests of the child, regardless of the legal status of parents. Policy should not be punitive toward children for a failure on the part of parents to adhere to South African legal requirements. Finally, it is recommended to law makers to include the awareness campaign throughout South Africa which will focus on speaking about South Africa's international obligations to protect and promote the rights of refugees and their children.

5.3.2 Recommendation to the National Department of Education

The Department of Education (DoE) should look at amending the language policy in schools, taking into consideration the language barriers of refugees' and asylum seekers' children born out of South Africa. Section 6 (2) of the South African Schools Act urges the governing body of a public school to determine the language policy of the school, subject to the Constitution, the South African Schools Act and any applicable provincial law. It is recommended that the DoE invests in language proficiency classes for migrants' children that will enable them to enjoy their constitutional right to study in a language they understand. The Department must also create an awareness campaign which throughout schools at every beginning of academic year. This campaign will focus on fairness, equity and participative enrolment and admission process. It is further recommended that the DoE creates an internal mechanism that may be utilised by all parents, including migrant parents that would redress any unfairness in the admission and enrolment process, cognisant of the financial implication of such measures.

5.3.3 Recommendation to the Department of Home Affairs

It is recommended that the Department of Home Affairs reviews its process of documenting refugees and asylum seekers, specifically the family joining process, to make it more fair, accessible and effective, so that the documentation of children does not create unnecessary barriers to their ability of accessing basic services. Additionally, the DHA ought to strengthen its processes of collecting relevant data that could be used by the Department of Education both at national and provincial level for policy formulation. It has to embark on the awareness campaign about the process of documenting a refugee child in South Africa.

5.3.4 Recommendation to the Western Cape Education Department

It is recommended that the WCED institutes training for all stakeholders involved in the admission and enrolment of children in schools overseen by the Department. This training should focus on helping stakeholders improve their understanding of migration issues and the categorization of foreign nationals under the Refugees Act of 1998 and the Immigration Act of 2002.

5.3.5 Recommendation to school principals

School principals need to be well informed about the refugee regime in South Africa. This information will enable them to categorize refugees, asylum seekers and migrants and will enhance their understating of refugees and asylum seekers, particularly the challenges they face in relation to documentation, so that schools do not ask them to produce inappropriate documents when applying for admission. They also need to sympathize with refugees and asylum seekers' children by giving parents time periods that are in keeping with the functioning abilities of the Department of Home Affairs, and not set limits that DHA is currently unable to manage, for whatever reason. Schools must also involve foreign national in School Governing Bodies so that they can participate in the formulation of admission policies. A mechanism of interaction should be created in which foreign nationals will have the opportunity to share information relating to the documentation of their children most specially, for children born out of South Africa.

5.3.6 Recommendation to school governing bodies

It is recommended that SGBs try to include refugee parents on the SGBs if the number of foreign students in the school is high, or at any rate proactively consider the opinions and issues of refugees and asylum seekers in their area.

5.3.7 Recommendations for future research

The focus of this study was access to education for refugees' and asylum seekers' children in Cape Town. The researcher acknowledges that the study lacks certain specifics, and for this reason proposes the following:

- There is a need to engage with the Department of Education and Home Affairs separately and together to unpack the dynamics involved with regard to the school admission and documentation process.
- There is a need to understand the circumstances of unaccompanied migrant children in regard to their right to access basic services in South Africa.
- There is also a need to gain more insight into vertical and horizontal inter-departmental collaboration between government departments, and to assess the extent to which this collaboration can improve service delivery.
- The views of refugees' and asylum seekers' children themselves were beyond the scope of this Masters mini-thesis. Questions pertaining to the learners' own opinions and experiences at schools could serve as a basis for future studies aimed at presenting a more exhaustive understanding of the effect of education policies on refugee and asylum-seeking children.

5.4 Conclusion

Like many other studies, this study raises almost as many questions as it answers. However, it has answered the research questions and objectives clearly. The findings indicate that access to education for refugees' and asylum seekers' children is a guaranteed right according to several international, regional and national agreements and laws but implementation is marred. Barriers to implementation include, conflicting policies (for example, The Immigration Act and the South African Schools Act), confusion among principals as to which policies take precedence, gaps in the policies

(such as whether or not the only acceptable birth certificate is one issued by the Department of Home Affairs), language barriers, institutional barriers, and common prejudice. If South Africa is to grow its economy and remain a destination of choice, it is imperative that its implementation of policies is made to align with its public documentation and principles. Without such an alignment both asylum seekers and the country will suffer, as the burden of an ever-growing number of poorly educated permanent residents will begin to be felt socially and economically.



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APPENDIX I



FACULTY OF ECONOMIC AND MANAGEMENT SCIENCES

SCHOOL OF GOVERNMENT

Participation information sheet for Parents

RESEARCH TITLE: AN ASSESSMENT OF POLICIES AFFECTING REFUGEES AND ASYLUM SEEKER'S CHILDREN IN ACCESSING PRIMARY SCHOOLS IN SOUTH AFRICA: A CASE STUDY OF KENSINGTON/MAITLAND AREA IN CAPE TOWN

Dear participant

You are invited to participate in a research study conducted by **Mulunda Kabeya Leonard** and **Student Number: 3805995**. It is in partial completion of the Master's Degree (MPA) in Public Administration at the School of Government, at the University of the Western Cape. You have been selected to participate in this research in your capacity as official at the Western Cape Education Department (WCED) which is responsible for public schooling in the province. We would like to invite you to share with us your experience on the process of registering a refugee or an asylum-seeking child in primary school.

Before you decide to participate, it is important for you to understand the purpose of the research and what it would entail.

Please take time to read the following information carefully and discuss it with others if you wish. If you are unclear of anything, I would be happy to answer any questions you may have.

PURPOSE OF THE STUDY

This study aims to establish the extent to which education policies are implemented in primary schools around Kensington/Maitland area in Cape Town, in order to allow refugees and asylum-seeking children to access primary education.



DESCRIPTION OF STUDY AND YOUR INVOLVEMENT

This study will explore the extent to which the enrolment of children of refugees and asylum seekers is handled in some of the schools in the City of Cape Town. Your involvement is limited to sharing information through interview.

CONFIDENTIALITY & ANONYMITY

Please be advised that the results of the study will neither divulge the organisation's particulars nor the individual particulars, as to maintain confidentiality at all times. Any information that

can connect the responses to an individual or organisation will remain confidential and will be disclosed only with your permission. The researcher shall keep all records and tapes of your participation, including a signed consent form which is required from you should you agree to participate in this research study, and locked away at all times.

RISKS OF THE RESEARCH

There are no risks to participating in this research as your name will not going to be revealed to anyone. You will be given a pseudo name in ensuring anonymity.

BENEFITS OF THE RESEARCH

The Benefits of this research are outlined as follows:

- It will help policymakers to understand the challenges face by parents in relation to the education of their children.

VOLUNTARY PARTICIPATION AND WITHDRAWAL

Your participation in this research is entirely voluntary, which means that you are free to decline from participation. It is your decision whether or not to take part. If you volunteer to be in this study, you may withdraw at any time without consequences of any kind. If you decide to participate in the study, you are free to withdraw at any time – and without giving a reason. You may also choose not to answer particular questions that are asked in the study. If there is anything that you would prefer not to discuss, please feel free to say so.

PAYMENT FOR PARTICIPATION

There are no costs to the participant for partaking in the study.

RECORDING OF INTERVIEW

Take note that the interview will be recorded only with your approval, your identity will be protected and the information you will share will only be used for the purpose of this study. All transcripts and records will be kept only by me at a location which is only accessible by me.



INFORMED CONSENT

UNIVERSITY of the
WESTERN CAPE

Your signed consent to participate in this research study is required before I proceed to interview you. I have included the consent form with this information sheet so that you will be able to review the consent form and then decide whether you would like to participate in this study or not.

QUESTIONS

Should you have further questions or wish to know more, I can be contact as follows:

Student Name : Mulunda Kabeya Leonard
Student Number : 3805995
Mobile Number : 0787447502
Work Number : 0787447502
Email : 3805995@myuwc.ac.za

I am accountable to my supervisor : Dr Meron Okbandrias
School of Government (SOG) : Lecturer
Telephone : +27 21 959 3827
Fax : +27 21 959 3849
Email : mokbandrias@uwc.ac.za

This research project has received ethical approval from the Humanities and Social Sciences Research Ethics Committee of the University of the Western Cape,

Tel. 021 959 2988,

Email: research-ethics@uwc.ac.za



FACULTY OF ECONOMIC AND MANAGEMENT SCIENCES SCHOOL OF GOVERNMENT

Appendix II

Participation information sheet for School Principals

RESEARCH TITLE: AN ASSESSMENT OF POLICIES AFFECTING REFUGEES AND ASYLUM SEEKER'S CHILDREN IN ACCESSING PRIMARY SCHOOLS IN SOUTH AFRICA: A CASE STUDY OF KENSINGTON/MAITLAND AREA IN CAPE TOWN

Dear participant

You are invited to participate in a research study conducted by **Mulunda Kabeya Leonard** and **Student Number: 3805995**. It is in partial completion of the Master's Degree (MPA) in Public Administration at the School of Government, at the University of the Western Cape. You have been selected to participate in this research in your capacity as official at the Western Cape Education Department (WCED) which is responsible for public schooling in the province. We would like to invite you to share with us your experience on the process of registering a refugee or an asylum-seeking child in primary school.

Before you decide to participate, it is important for you to understand the purpose of the research and what it would entail.

Please take time to read the following information carefully and discuss it with others if you wish. If you are unclear of anything, I would be happy to answer any questions you may have.

PURPOSE OF THE STUDY

This study aims to establish the extent to which education policies are implemented in primary schools around Kensington/Maitland area in Cape Town, in order to allow refugees and asylum-seeking children to access primary education.

DESCRIPTION OF STUDY AND YOUR INVOLVEMENT



This study will explore the extent to which the enrolment of children of refugees and asylum seekers is handled in some of the schools in the City of Cape Town. Your involvement is limited to sharing information through interview.

CONFIDENTIALITY & ANONYMITY

Please be advised that the results of the study will neither divulge the organisation's particulars nor the individual particulars, as to maintain confidentiality at all times. Any information that can connect the responses to an individual or organisation will remain confidential and will be disclosed only with your permission. The researcher shall keep all records and tapes of your participation, including a signed consent form which is required from you should you agree to participate in this research study, and locked away at all times.

RISKS OF THE RESEARCH

There are no risks to participating in this research as the interview will focus on the admission policies and process at your school.

BENEFITS OF THE RESEARCH

The Benefits of this research are outlined as follows:

- Will help government understand the role your school plays in accommodating migrant children.

VOLUNTARY PARTICIPATION AND WITHDRAWAL

Your participation in this research is entirely voluntary, which means that you are free to decline from participation. It is your decision whether or not to take part. If you volunteer to be in this study, you may withdraw at any time without consequences of any kind. If you decide to participate in the study, you are free to withdraw at any time – and without giving a reason. You may also choose not to answer particular questions that are asked in the study. If there is anything that you would prefer not to discuss, please feel free to say so.

PAYMENT FOR PARTICIPATION

There are no costs to the participant for partaking in the study.

RECORDING OF INTERVIEW

Take note that the interview will be recorded only with your approval, your identity will be protected and the information you will share will only be used for the purpose of this study. All transcripts and records will be kept only by me at a location which is only accessible by me.



INFORMED CONSENT

UNIVERSITY of the
WESTERN CAPE

Your signed consent to participate in this research study is required before I proceed to interview you. I have included the consent form with this information sheet so that you will be able to review the consent form and then decide whether you would like to participate in this study or not.

QUESTIONS

Should you have further questions or wish to know more, I can be contact as follows:

Student Name : Mulunda Kabeya Leonard

Student Number : 3805995

Mobile Number : 0787447502

Work Number : 0787447502

Email : 3805995@myuwc.ac.za

I am accountable to my supervisor : Dr Meron Okbandrias

School of Government (SOG) : Lecturer

Telephone : +27 21 959 3827

Fax : +27 21 959 3849

Email : mokbandrias@uwc.ac.za

This research project has received ethical approval from the Humanities and Social Sciences Research Ethics Committee of the University of the Western Cape,

Tel. 021 959 2988,

Email: research-ethics@uwc.ac.za





FACULTY OF ECONOMIC AND MANAGEMENT SCIENCES SCHOOL OF GOVERNMENT

Appendix III

Participation information sheet for Scalabrini Centre / NGO

RESEARCH TITLE: AN ASSESSMENT OF POLICIES AFFECTING REFUGEES AND ASYLUM SEEKERS' CHILDREN IN ACCESSING PRIMARY SCHOOLS IN SOUTH AFRICA: A CASE STUDY OF KENSINGTON/MAITLAND AREA IN CAPE TOWN

Dear participant

You are invited to participate in a research study conducted by **Mulunda Kabeya Leonard** and **Student Number: 3805995**. It is in partial completion of the Master's Degree (MPA) in Public Administration at the School of Government, at the University of the Western Cape. You have been selected to participate in this research in your capacity as official at the Western Cape Education Department (WCED) which is responsible for public schooling in the province. We would like to invite you to share with us your experience on the process of registering a refugee or an asylum-seeking child in primary school.

Before you decide to participate, it is important for you to understand the purpose of the research and what it would entail.

Please take time to read the following information carefully and discuss it with others if you wish. If you are unclear of anything, I would be happy to answer any questions you may have.

PURPOSE OF THE STUDY

This study aims to establish the extent to which education policies are implemented in primary schools around Kensington/Maitland area in Cape Town, in order to allow refugees and asylum-seeking children to access primary education.

DESCRIPTION OF STUDY AND YOUR INVOLVEMENT



This study will explore the extent to which the enrolment of children of refugees and asylum seekers is handled in some of the schools in the City of Cape Town. Your involvement is limited to sharing information through interview.

CONFIDENTIALITY & ANONYMITY

Please be advised that the results of the study will neither divulge the organisation's particulars nor the individual particulars, as to maintain confidentiality at all times. Any information that

Can connect the responses to an individual or organisation will remain confidential and will be disclosed only with your permission. The researcher shall keep all records and tapes of your participation, including a signed consent form which is required from you should you agree to participate in this research study, and locked away at all times.

RISKS OF THE RESEARCH

There are no risks to participating in this research as the interview will focus on the role the Scalabrini Centre plays in assisting South Africans and migrants.

BENEFITS OF THE RESEARCH

The Benefits of this research are outlined as follows:

- It will help the government understand barriers preventing refugees' and asylum seekers' children to access education.

VOLUNTARY PARTICIPATION AND WITHDRAWAL

Your participation in this research is entirely voluntary, which means that you are free to decline from participation. It is your decision whether or not to take part. If you volunteer to be in this study, you may withdraw at any time without consequences of any kind. If you decide to participate in the study, you are free to withdraw at any time – and without giving a reason. You may also choose not to answer particular questions that are asked in the study. If there is anything that you would prefer not to discuss, please feel free to say so.

PAYMENT FOR PARTICIPATION

There are no costs to the participant for partaking in the study.

RECORDING OF INTERVIEW

Take note that the interview will be recorded only with your approval, your identity will be protected and the information you will share will only be used for the purpose of this study. All transcripts and records will be kept only by me at a location which is only accessible by me.

INFORMED CONSENT

Your signed consent to participate in this research study is required before I proceed to interview you. I have included the consent form with this information sheet so that you will be able to review the consent form and then decide whether you would like to participate in this study or not.

QUESTIONS

Should you have further questions or wish to know more, I can be contact as follows:

Student Name : Mulunda Kabeya Leonard

Student Number : 3805995

Mobile Number : 0787447502

Work Number : 0787447502

Email : 3805995@myuwc.ac.za

I am accountable to my supervisor : Dr Meron Okbandrias

School of Government (SOG) : Lecturer

Telephone : +27 21 959 3827

Fax : +27 21 959 3849

Email : mokbandrias@uwc.ac.za

This research project has received ethical approval from the Humanities and Social Sciences Research Ethics Committee of the University of the Western Cape,

Tel. 021 959 2988,

Email: research-ethics@uwc.ac.za



FACULTY OF ECONOMIC AND MANAGEMENT SCIENCES

SCHOOL OF GOVERNMENT

Appendix IV

Participation information sheet for Western Cape Education Department (WCED)

RESEARCH TITLE: AN ASSESSMENT OF POLICIES AFFECTING REFUGEES AND ASYLUM SEEKERS' CHILDREN IN ACCESSING PRIMARY SCHOOLS IN SOUTH AFRICA: A CASE STUDY OF KENSINGTON/MAITLAND AREA IN CAPE TOWN

Dear participant

You are invited to participate in a research study conducted by **Mulunda Kabeya Leonard** and **Student Number: 3805995**. It is in partial completion of the Master's Degree (MPA) in Public Administration at the School of Government, at the University of the Western Cape. You have been selected to participate in this research in your capacity as official at the Western Cape Education Department (WCED) which is responsible for public schooling in the province. We would like to invite you to share with us your experience on the process of registering a refugee or an asylum-seeking child in primary school.

Before you decide to participate, it is important for you to understand the purpose of the research and what it would entail.

Please take time to read the following information carefully and discuss it with others if you wish. If you are unclear of anything, I would be happy to answer any questions you may have.

PURPOSE OF THE STUDY

This study aims to establish the order to allow refugees and asylum-seeking children to access primary education.

DESCRIPTION extent to which education policies are implemented in primary schools around Kensington/Maitland area in Cape Town, in **OF STUDY AND YOUR INVOLVEMENT**

This study will explore the extent to which the enrolment of children of refugees and asylum seekers is handled in some of the schools in the City of Cape Town. Your involvement is limited to sharing information through interview.

CONFIDENTIALITY & ANONYMITY



UNIVERSITY OF THE
WESTERN CAPE

Please be advised that the results of the study will neither divulge the organisation's particulars nor the individual particulars, as to maintain confidentiality at all times. Any information that

Can connect the responses to an individual or organisation will remain confidential and will be disclosed only with your permission. The researcher shall keep all records and tapes of your participation, including a signed consent form which is required from you should you agree to participate in this research study, and locked away at all times.

RISKS OF THE RESEARCH

There are no risks to participating in this research as (insert reason why there is no risk e.g. secondary data will be used).

BENEFITS OF THE RESEARCH

The benefits of this research are outlined as follows:

- It will help enhance policy implementation

VOLUNTARY PARTICIPATION AND WITHDRAWAL

Your participation in this research is entirely voluntary, which means that you are free to decline from participation. It is your decision whether or not to take part. If you volunteer to be in this study, you may withdraw at any time without consequences of any kind. If you decide to participate in the study, you are free to withdraw at any time – and without giving a reason. You may also choose not to answer particular questions that are asked in the study. If there is anything that you would prefer not to discuss, please feel free to say so.

PAYMENT FOR PARTICIPATION

There are no costs to the participant for partaking in the study.

RECORDING OF INTERVIEW

Take note that the interview will be recorded only with your approval, your identity will be protected and the information you will share will only be used for the purpose of this study. All transcripts and records will be kept only by me at a location which is only accessible by me.

INFORMED CONSENT

Your signed consent to participate in this research study is required before I proceed to interview you. I have included the consent form with this information sheet so that you will be able to review the consent form and then decide whether you would like to participate in this study or not.

QUESTIONS

Should you have further questions or wish to know more, I can be contact as follows:

Student Name : Mulunda Kabeya Leonard
Student Number : 3805995
Mobile Number : 0787447502
Work Number : 0787447502
Email : 3805995@myuwc.ac.za

I am accountable to my supervisor : Dr Meron Okbandrias
School of Government (SOG) : Lecturer
Telephone : +27 21 959 3827
Fax : +27 21 959 3849
Email : mokbandrias@uwc.ac.za

This research project has received ethical approval from the Humanities and Social Sciences Research Ethics Committee of the University of the Western Cape,

Tel. 021 959 2988,

Email: research-ethics@uwc.ac.za



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FACULTY OF ECONOMIC AND MANAGEMENT SCIENCES SCHOOL OF GOVERNMENT

APPENDIX V

CONSENT FORM FOR PARENTS

RESEARCH TITLE: *Assessment of policies affecting refugees and asylum-seeking children in accessing primary schools in South Africa*

I have read the information presented in the information letter about a study being conducted by Mulunda Kabeya Leonard towards the Masters Programme at the School of Government (SOG) at the University of the Western Cape. This study has been described to me in a language that I understand and I freely and voluntarily agree to participate. My questions about the study have been answered.

I understand that my identity will not be disclosed and was informed that I may withdraw my consent at any time by advising the student researcher.

With full knowledge of all foregoing, I agree to participate in this study and have authorized the recording of this interview.

Participant Name : _____

Participant Signature : _____

Date : _____

Place : _____

Student Researcher : Mulunda Kabeya Leonard

Student Researcher Signature : _____

Student Number : 3805995

Mobile Number : 078 744 7502

Email : 3805995@myuwc.ac.za

I am accountable to my supervisor : Dr. Meron Okbandrias

Department : School of Government (SOG)

Telephone : +27 21 959 3827

Fax :

Email : mokbandrias@uwc.ac.za

This research project has received ethical approval from the Humanities and Social Sciences Research Ethics Committee of the University of the Western Cape,

Tel. 021 959 2988,

Email: research-ethics@uwc.ac.za



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APPENDIX VI

CONSENT FORM FOR SCALABRINI CENTRE

RESEARCH TITLE: *Assessment of policies affecting refugees and asylum-seeking children in accessing primary schools in South Africa*

I have read the information presented in the information letter about a study being conducted by Mulunda Kabeya Leonard towards the Masters Programme at the School of Government (SOG) at the University of the Western Cape. This study has been described to me in a language that I understand and I freely and voluntarily agree to participate. My questions about the study have been answered.

I understand that my identity will not be disclosed and was informed that I may withdraw my consent at any time by advising the student researcher.

With full knowledge of all foregoing, I agree to participate in this study and have authorized the recording of this interview.

Participant Name : _____

Participant Signature : _____

Date : _____

Place : _____

Student Researcher : Mulunda Kabeya Leonard

Student Researcher Signature : _____

Student Number : 3805995

Mobile Number : 078 744 7502

Email : 3805995@myuwc.ac.za

I am accountable to my supervisor : Dr. Meron Okbandrias

Department : School of Government (SOG)

Telephone : +27 21 959 3827

Fax :

Email : mokbandrias@uwc.ac.za

This research project has received ethical approval from the Humanities and Social Sciences Research Ethics Committee of the University of the Western Cape,

Tel. 021 959 2988,

Email: research-ethics@uwc.ac.za



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WESTERN CAPE**





**FACULTY OF ECONOMIC AND
MANAGEMENT SCIENCES
SCHOOL OF GOVERNMENT**

APPENDIX VII

CONSENT FORM FOR SCHOOL PRINCIPALS

RESEARCH TITLE: *Assessment of policies affecting refugees and asylum-seeking children in accessing primary schools in South Africa*

I have read the information presented in the information letter about a study being conducted by Mulunda Kabeya Leonard towards the Masters Programme at the School of Government (SOG) at the University of the Western Cape. This study has been described to me in a language that I understand and I freely and voluntarily agree to participate. My questions about the study have been answered.

I understand that my identity will not be disclosed and was informed that I may withdraw my consent at any time by advising the student researcher.

With full knowledge of all foregoing, I agree to participate in this study and have authorized the recording of this interview.

Participant Name : _____

Participant Signature : _____

Date : _____

Place : _____

Student Researcher : Mulunda Kabeya Leonard

Student Researcher Signature : _____

Student Number : 3805995

Mobile Number : 078 744 7502

Email : 3805995@myuwc.ac.za

I am accountable to my supervisor : Dr. Meron Okbandrias

Department : School of Government (SOG)

Telephone : +27 21 959 3827

Fax :

Email : mokbandrias@uwc.ac.za

This research project has received ethical approval from the Humanities and Social Sciences Research Ethics Committee of the University of the Western Cape,

Tel. 021 959 2988,

Email: research-ethics@uwc.ac.za



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APPENDIX VIII

CONSENT FORM FOR WESTERN CAPE EDUCATION DEPARTMENT (WCED)

RESEARCH TITLE: *Assessment of policies affecting refugees and asylum-seeking children in accessing primary schools in South Africa*

I have read the information presented in the information letter about a study being conducted by Mulunda Kabeya Leonard towards the Masters Programme at the School of Government (SOG) at the University of the Western Cape. This study has been described to me in a language that I understand and I freely and voluntarily agree to participate. My questions about the study have been answered.

I understand that my identity will not be disclosed and was informed that I may withdraw my consent at any time by advising the student researcher.

With full knowledge of all foregoing, I agree to participate in this study and have authorized the recording of this interview.

Participant Name : _____

Participant Signature : _____

Date : _____

Place : _____

Student Researcher : Mulunda Kabeya Leonard

Student Researcher Signature : _____

Student Number : 3805995

Mobile Number : 078 744 7502

Email : 3805995@myuwc.ac.za

I am accountable to my supervisor : Dr. Meron Okbandrias

Department : School of Government (SOG)

Telephone : +27 21 959 3827

Fax :

Email : mokbandrias@uwc.ac.za aduplooy myuwc.ac.za Adrian du ploy

This research project has received ethical approval from the Humanities and Social Sciences Research Ethics Committee of the University of the Western Cape,

Tel. 021 959 2988,

Email: research-ethics@uwc.ac.za



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Appendix IX

INTERVIEW QUESTIONS FOR PARENTS

Name..... (Optional)

Date.....

1. What is your country of origin?

.....

2. Do you have Children?

2.1 If yes how many?

3. In which of the following age categories do their fall?

4. How long have you been in South Africa?

5. Is/are your child/children attending primary school?

6. What was the process for enrolment?

7. What challenges have you encountered during the enrolment process?

8. What do you think that the Western Cape Department of Education must do in mitigating challenges of enrolling children of refugees and asylum seeker?

9. What is your view about the role of the WCDE in assuring access to education for all children?

10. What is your understanding about Chapter 29 of the Constitution and the School Act in line with the right of all children access education?

11. What are your recommendations to the government of South Africa?

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SCHOOL OF GOVERNMENT

Appendix X

INTERVIEW QUESTIONS FOR SCALABRINI CENTRE

Name..... (Optional)

Position.....

Date.....

Gender

M	
F	

1 How long have you been involved in working with Refugees and Asylum seekers?

2 What are the most challenges that Refugees and Asylum seekers are facing and you are helping them with?

3 How often do you assist refugees and asylum seekers with enrolling their children to school?

4 What are the challenges do you face in rendering assistance to refugees and asylum seekers?

5. Are you aware of any recent policy changes that are beneficial to refugees?

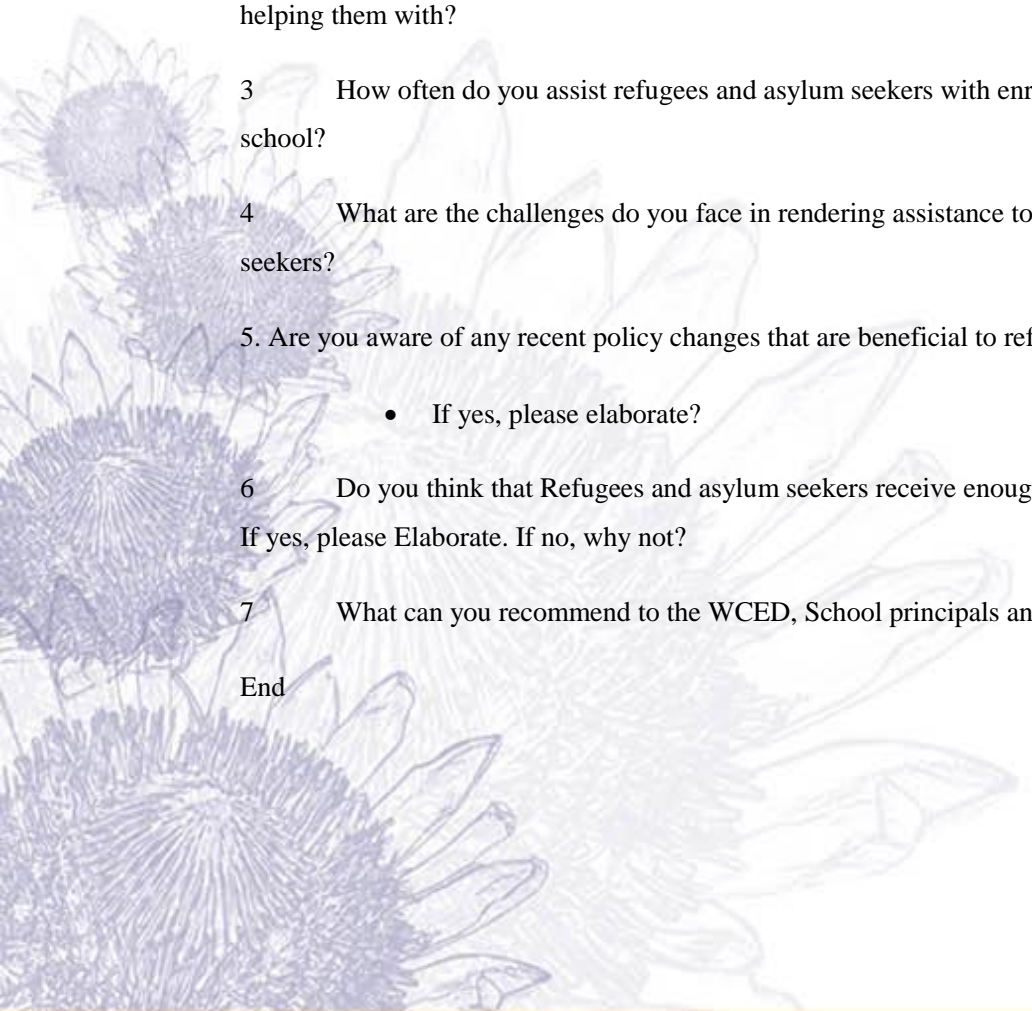
- If yes, please elaborate?

6 Do you think that Refugees and asylum seekers receive enough support from the WCDE? If yes, please Elaborate. If no, why not?

7 What can you recommend to the WCED, School principals and Refugees parents?

End

Thank you





FACULTY OF ECONOMIC AND MANAGEMENT SCIENCES SCHOOL OF GOVERNMENT

Appendix XI

SCHOOL PRINCIPAL INTERVIEW QUESTIONS

Name..... (Optional)

School.....

Position.....

Date.....

Personal details

Gender:

M	
F	

1. When was the school established?
2. What is your current enrolment for the year 2019 academic year?
3. How many refugees and asylum seeker’s children are enrolled at your school in 2019?
 - How many were enrolled in 2018?
 - How many in 2017?
4. What is the admission policy for your school?
5. What is the process of enrolling a child of refugees and asylum seeker at your school?
6. What challenges refugees and asylum seekers encounter in relation to the enrolment of their children at your school?
7. Do refugees and asylum seekers know about the admission policy of your school?
8. The South African School Act of 1996 make school compulsory for all children in South Africa to attend school until they reach the age of fifteen or the end of Grade nine. What is the policy of your school with regard to this Act?

9. What are the challenges that you experience at school as a result of enrolling children of refugees and asylum seekers?

10. What are your recommendations to refugees' parents?

End

Thank you



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Appendix XII

WCED INTERVIEW QUESTIONS

Name..... (Optional)

Position.....

Date.....

- 1 Can you please explain the role you play in the Western Cape Education Department?
- 2 What is the admission policy for public school?
- 3 In your opinion what are the barriers affecting children of refugees and asylum seekers to access education?
- 4 How often the WCED do intervene to help refugees and asylum-seeking children in accessing education?
- 5 What are the current measures the WCED is putting in place to afford education to all children of the province?
- 6 In your view what do you think refugees and asylum-seeking children must do to adhere with the school admission policy?
- 7 Do you think school admission policies are reflecting the South African School Act 84 of 1996 and the National Education policy?

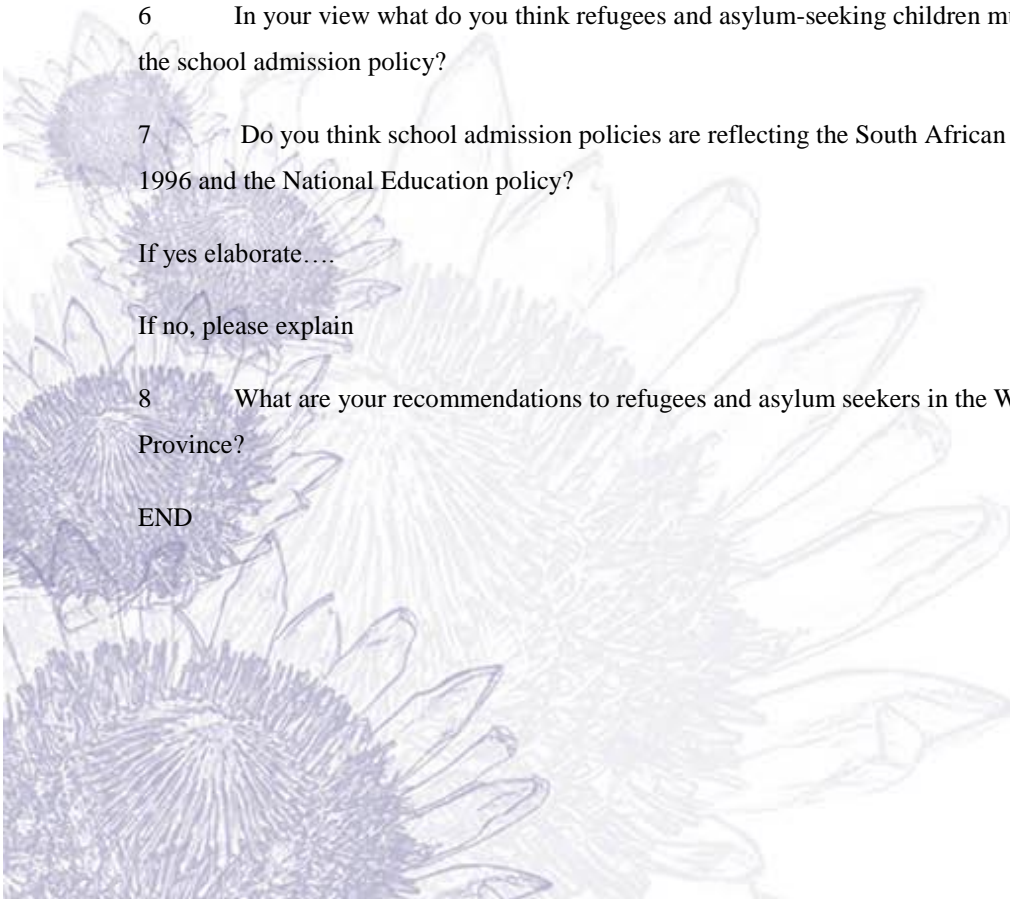
If yes elaborate....

If no, please explain

- 8 What are your recommendations to refugees and asylum seekers in the Western Cape Province?

END

Thank you



WINDERMERE

Appendix XIII

PRIMÊR

Tiende Laan
Kensington
7405
Telefoon: 021 593-8264
Faks: 021 593-8927
E-pos: windermereps@gmail.com

Skoolhoof:
Mnr B. Chellan



PRIMARY

Tenth Avenue
Kensington
7405
Telephone: 021 593-8264
Fax: 021 593-8927
E-mail: windermereps@gmail.com

Principal:
Mr B. Chellan

Dear Sir

**RE: PERMISSION FOR MR. LEONARD TO COLLECT DATA
FOR HIS MASTERS DISSERTATION.**

Please be advised that I hereby give Mr. Mulunda Kabeya Leonard, who is currently a student at UWC – School of Government, permission to collect data and have an interview with the principal towards completion of his Masters Degree.

Kind regards

Brian Chellan
Principal
2018:12:12



KENMERE

PRIMARY SCHOOL

PRIMÊRE SKOOL

10TH AVENUE
KENSINGTON
7405

Appendix XIV



10DE LAAN
KENSINGTON
7405

TEL: (021) 593 2300

~~EMAIL/EPOS: admin@kenmereps.wcape.school.za~~

TEL: (021) 593 2300

FAX: (021) 593 6312

FAX: (021) 593 6312

PRINCIPAL

PRINSIPAAL

TO WHOM IT MAY CONCERN

We the above mention school give permission to Mr M Leonard to collect data for his master's dissertation.

Regards



A.W. JOHANNESSEN

Principal



**H.J. KRONEBERG PRIMARY
SCHOOL**

CNR. 8 AVENUE & NYMAN
STREET
MAITLAND EAST 7405

TEL.: (021) 593-8313
FAX.: (021) 593-3859
EMAIL: hjkronebergps@gmail.com
PRINCIPAL : MR. Y. CUPIDO



SOWING THE SEEDS OF EXCELLENCE

**H.J. KRONEBERG PRIMÈRE
SKOOL**

H/V 8 LAAN & NYMAN STRAAT
MAITLAND OOS 7405

TEL.: (021) 593-8313
FAX.: (021) 593-3859
EPOS: hjkronebergps@gmail.com
SKOOLHOOF: MNR. Y. CUPIDO

Appendix XV

12 December 2018

To whom it may concern

I hereby agree to have Mr Mulunda Kabeya Leonard (3805995)
complete research during 2019.

Yours in education

A handwritten signature in black ink, appearing to be 'Y. Cupido', written over a horizontal line.

Y. Cupido





Audrey.wyngaard@westerncape.gov.za

tel: +27 021 467 9272

Fax: 0865902282

Private Bag x9114, Cape Town, 8000

wced.wcape.gov.za

Appendix XVI

APPLICATION TO CONDUCT RESEARCH IN PUBLIC SCHOOLS WITHIN THE WESTERN CAPE

Note

- This application has been designed with students in mind.
- If a question does not apply to you indicate with a N/A
- The information is stored in our database to keep track of all studies that have been conducted on the WCED. It is therefore important to provide as much information as is possible

1 APPLICANT INFORMATION

1.1 Personal Details		
1.1.1	Title (Prof / Dr / Mr/ Mrs/Ms)	Mr
1.1.2	Surname	Kabeya Leonard
1.1.3	Name (s)	Mulunda
1.1.4	Student Number (If applicable)	3805995

1.2 Contact Details

1.2.1	Postal Address	84,8 th Avenue Kensington (7405)
1.2.2	Telephone number	0787447502
1.2.3	Cell number	0787447502
1.2.4	Fax number	N/A
1.2.5	E-mail Address	leonard_mulunda@yahoo.fr,3805995@myuwc.ac.za
1.2.6	Year of registration	2018
1.2.7	Year of completion	2019

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WESTERN CAPE

2 DETAILS OF THE STUDY

2.1 Details of the degree or project		
2.1.1	Name of the institution	University of the Western cape
2.1.2	Degree / Qualification registered for	Masters of Public Administration
2.1.3	Faculty and Discipline / Area of study	School of Government/ Public Policy
2.1.4	Name of Supervisor / Promoter / Project leader	Dr Meron Okbandrias

2.1.5	Telephone number of Supervisor / Promoter	021 959 3827
2.1.6	E-mail address of Supervisor / Promoter	mokbandrias@uwc.ac.za

2.1.7	Title of the study
<p>An assessment of policies affecting refugees and asylum seeker's children in accessing primary schools in South Africa: a case study of Maitland Suburb in Cape Town</p>	

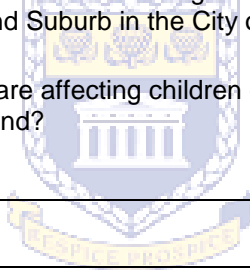
2.1.8	What is the research question, aim and objectives of the study?
<p>The aim of this study is to investigate whether schools in Cape Town, specifically in Maitland Suburb are implementing national policies enabling all children to access education including children of refugees and asylum seekers in line with South Africa's international and regional obligations. This study will scrutinize the challenges that refugees and asylum seekers parents encounter in their effort to find schools for their children. It will examine the right to basic education for children of refugees and asylum seekers and will examine how documentation can impact heavily on education of these children. The study also aim at examining the duty of the Western Cape Education Department in enabling children of refugees and asylum seekers to access education by ensuring an effective implementation of policies at school level. While this study will answer these questions, it will not investigate the process of applying for an asylum in South Africa. To investigate the role of schools in accommodating children, the researcher will limit himself to meet with school principals and not directly with teachers because, school principals are responsible of school administration including enrolment of pupils.</p> <p>The broader aim of the study is to assess the implementation of policies affecting refugees and asylum seeker's children to access education. It will also examine policy interventions and programs of the WCED to address the challenges face by children of refugees and asylum seekers in accessing education. Whilst there have been numerous studies indicating an improvement of the enrolment of children of refugees and asylum seekers to primary</p>	

schools, the issue around children rejected on the basis of the legal status of their parents has not been fully addressed.

This study will add to the existing knowledge around access to education for children of refugees and asylum seekers in the Western Cape. The specific aim is to identify the role the WCED plays as policy implementer in assuring that schools enact policies that are in line with South Africa's international obligation on the right to education for all children. The broader purpose of this study is to add to the existing knowledge around access to education for children of refugees and asylum seekers in South Africa. The specific aim is to identify the role the WCED can play in providing education to the vulnerable children of refugees and asylum seekers by assessing its policies and measures in place to do so. This study is centered on the following main question:

What are the policies and measures employed by the Western Cape Education Department to enable children of refugees and asylum seekers to access basic education?

- How does the enrolment of children of refugees and asylum seekers in primary schools look like in Maitland Suburb in the City of Cape Town?
- What factors and barriers are affecting children of refugees and asylum seekers to access education in Maitland?



2.1.9	Name (s) of education institutions (schools)
<p style="text-align: center;">UNIVERSITY of the WESTERN CAPE</p> <ul style="list-style-type: none"> • Kroneberg HJ Primary School • windermere primary school • Kenmere Primary School 	

2.1.10	Research period in education institutions (Schools)	
2.1.11	Start date	March 2019
2.1.12	End date	May 2019

Scalabrini Centre

47 Commercial Street

Cape Town, 8001

Tel: +27 (0) 21 465 6433

Fax: +27 (0) 21 465 6317

Email: mmadikane@scalabrini.org.za www.scalabrini.org.za



4th February 201

Appendix XVII

University of the Western Cape (School of Government)

Robert Sobukwe Rd

Bellville

Cape Town

7535

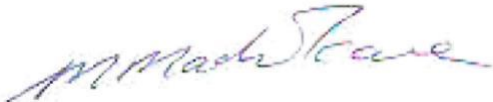
To Whom it May Concern:

RE: Interview to support research of Mulunda Kabeya Leonard

This letter serves as confirmation that Scalabrini Centre will offer an interview with Mr. Leonard to discuss his research topic, *An assessment of policies affecting refugees and asylum seeker's children in accessing primary schools in South Africa: A case study of Maitland suburb in Cape Town.*

Over the past 10 years the Scalabrini Centre has offered services to refugees and asylum seekers in three programme areas, these are: Para-legal and Advocacy/Research, Well-being and Protection, and Socio-Economic Integration. Scalabrini Centre staff speak to all researchers as a matter of practice in an effort to promote knowledge sharing around migration.

I look forward to speaking to Mr Leonard.



Kind regards

Miranda Madikane

DIRECTOR

The centre is registered with the South African Department of Social Development as a non-profit organisation (021-079 NPO), as a youth and child care centre (C7569) and as a Public Benefit Organisation with the South African Revenue Services (930012808) and governed by a Trust (IT2746/2006). Auditors: CAP Chartered Accountants



UNIVERSITY *of the*
WESTERN CAPE



OFFICE OF THE DIRECTOR: RESEARCH.
RESEARCH AND INNOVATION DIVISION

Private Bag X17, Bellville 7535
South Africa
T: +27 21 959 2988/2948
F: +27 21 959 3170
E: research-ethics@uwc.ac.za
www.uwc.ac.za

Appendix XVIII

28 June 2019

MR M Kabeya Leonard
School of Government
Faculty of Economics and Management Sciences

Ethics Reference Number: HS19/5/7

Project Title: An assessment of policies affecting refugees and asylum-seeking children in accessing primary schools in South Africa

Approval Period: 25 June 2019 – 25 June 2020

I hereby certify that the Humanities and Social Science Research Ethics Committee of the University of the Western Cape approved the methodology and ethics of the above-mentioned research project.

Any amendments, extension or other modifications to the protocol must be submitted to the Ethics Committee for approval. Please remember to submit a progress report in good time for annual renewal.

The Committee must be informed of any serious adverse event and/or termination of the study.

A handwritten signature in black ink, appearing to read "Josias".

*Ms Patricia Josias
Research Ethics Committee Officer
University of the Western Cape*

PROVISIONAL REC NUMBER - 130416-049