



Children, Migration and the Right to Health Conference: Sydney, 2019

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Title: Asylum Applications in Kenya and Tanzania:
Challenges faced by Unaccompanied Children with
Disabilities

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Motivation

- Previous research.
- Current experience.

Location, location



Stats/lay of the land

Refugee population (UNHCR-June, 2019)

- Kenya-474,000.
 - 16% (NBO), 84% (camps).
 - 55% below 17 years.
- Tanzania-340,000 (Jan 2019)

Asylum seekers (2018)

- Kenya-50,000
- Tanzania-40,000
- Half are children?

CWDs?

UCWDs?

Children-Terms?

- Vulnerable
- Inquisitive
- Scared
- Manipulate
- Trust
- Innocent
- Violent
- Smart
- Caring
- Attention

Overall protection

General duty to protect UMs.

- Best interest of the child (CRC)
- PWDs (CRPD art 11-situations of conflict: 'all necessary measures'; art 12 African Charter on PWDs)
- Disabilities: physical, mental, intellectual, psycho-social, neurological (CRPD, African Draft Protocol).

Layers of Protection

- **International**
 - 51 Refugee Convention & its Protocol, 1967.
 - CRPD, CRC, ICESCR, ICCPR-due process provisions.

- **Regional**
 - African Charter on Human and Peoples' Rights, 1981
 - African Charter on the Rights and Welfare of the Child, 1990
 - Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa, 2018

- **Domestic**
 - Refugee Legislation.
 - Disability specific.
 - Constitutional provisions re: due process, equality, dignity, access to information, movement, socio-economic.

Protection Concerns

Flight, RSD and post-RSD.

- Cultural attitudes-CWVs hidden (shame/protect family).
- Discrimination.
- Communication barriers.
- Movement/access.
- Access to justice-AJS?
- Health

Protection Concerns (con't)

- Dignity (*MWK & Another v The AG & Others* [2017] eKLR (Mativo J, handed down 18 Dec, 2017)-tied to privacy and prohibition from degrading treatment.
- Participation (“nothing for us without us”)-*Simeon Kitheka & Others v County Government of Machakos & 2 Others* [2018] eKLR Odunga J, handed down 6 August 2018) .

Protection Concerns (con't)

- Movement/access.
- Resettlement-health test
- Repatriation

Conclusion: Interventions

- Local NGOs (hearing devices); Intl-wheel chairs.
- Judiciary (court of appeal nominee-reasonable accommodation)
- Government commissions (Kenya National Commission on Human Rights)
- Continental courts and Commissions
- ACHPR Special Rapporteur on Refugees, Asylum seekers and Displaced Persons in Africa
- Law Schools & other monitoring agencies.
- Community
- “Persons with Special needs”-burden?

Conclusion: Interventions (con't)

- Stats.
- Access to Infor.
- Inclusion, inclusion, inclusion.

