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Joint press statement: High Court orders Department of Home Affairs to stop blocking the birth registration or ID of any child whose parent's ID has been unlawfully blocked or is under investigation

The Children's Institute (CI) at the University of Cape Town, and the Centre for Child Law (CCL), have secured vital victories for children's rights in the Pretoria High Court case against the Department of Home Affairs (DHA).

The case was brought to court by Ms Phindile Mazibuko, who was then joined by [Lawyers for Human Rights](#) and Legal Wise, representing the many other people affected by "ID blocking".

The CI, represented by CCL, joined the case as a friend of the court, to highlight how the blocking of a parent's ID negatively affects their child's rights to birth registration, identity and nationality, and to ensure that all affected children would also obtain relief from the court.

The court judgment, handed down on Tuesday 16 January, orders the DHA to:

- Stop blocking people's IDs (adults and children) without following a fair procedure as required by the Promotion of Administrative Justice Act (PAJA). This means the DHA must first give people notice in writing that a problem has been found with their ID, allow people reasonable time and opportunity to present their side of the story to the DHA, conduct a proper investigation and then provide the affected person with written reasons as to why their ID is going to be blocked. DHA must then obtain a court order before they may block the person's ID.
- Immediately remove blocks from all minor children's IDs, where their parents' statuses are being investigated but have not been finalised and revoked. In future, a child's ID may only be blocked where a court order has been obtained.
- Stop refusing to allow parents to register their child's birth because a parent's ID has been marked and is under investigation.

"The court has affirmed our position that it is unjust to penalise children for matters over which they have no power or influence," explains Mbonisi Nyathi, a Legal Researcher at the CI. "It is important to emphasise that the court held that the DHA is obliged to recognise the status (citizenship, permanent residence or refugee status) of the children until their parent's status has finally been determined following an investigation."

[Read the full judgment [here](#) in the matter of *Phindile Philile Mazibuko and Others v Minister of Home Affairs and Others*, and the background to the case [here](#).]

Within 12 weeks from now, the DHA must file a report with the court confirming that all the blocks on children's IDs have indeed been lifted. This part of the order will provide relief for children aged 16 to 18 who already have their IDs but have been unable to use them because they are blocked. It will also help children aged 16 to 18 who have birth certificates but have been unable to get their IDs because they have a parent whose ID has been blocked.

Regarding the second key element of the court order related to children: If a parent's ID is under investigation, the DHA must register the child's birth as a citizen, permanent resident or refugee based on the parent's current status on the National Population Register, and may no longer refuse to register the birth.

“We are very pleased by this relief as this is the main reason we entered the case,” says Paula Proudlock, Senior Researcher at the CI. “One of our clients, Ms Zulu (a pseudonym) who is a South African citizen, was prevented from registering the birth of her triplets because her ID was under investigation. She and the three babies suffered great hardship as a result, at a time when they were most vulnerable. Her ID was eventually cleared and unblocked after a year due to the advocacy of a dedicated dietician at the public hospital treating her and the triplets. [Her story](#) illustrates that South African citizens, permanent residents and refugees get caught up in the blocking system because it is done on mere suspicion and before a fair process and proper investigation has been completed,” explains Proudlock. “In Ms Zulu’s case, she was considered ‘suspicious’ by the DHA because her birth was registered by someone other than her biological mother due to her mother having died when she was very young, and then her granny also dying.”

When children cannot obtain a birth certificate or identity document, it infringes on their rights to a name, nationality, and identity. The CI’s evidence to the court showed that children without birth certificates face a significant risk of being excluded from receiving social grants and attending school, even when legally entitled to this. Adolescents without IDs face exclusion from writing matric, from applying for higher education and National Student Financial Aid Scheme (NSFAS) funding, or applying for social grants.

Children are individuals with their own rights and should never be treated as mere extensions of their parents,” affirms Liesl Muller, Senior Attorney at the CCL.

Muller emphasised the importance of the court order being swiftly and clearly communicated to all DHA officials across the country.

“Based on the order, we will now be advising mothers with blocked IDs to approach their local DHA offices to register their children’s births and assist their children to apply for IDs. We hope that the DHA officials will be aware of the court order and ready to register the children,” added Nyathi.

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