

# Using Justice Chain Analysis to unlock access to justice for migrants in the Global South

## POLICY BRIEF



### SUMMARY

Drawing on research undertaken with Ethiopian migrants and their children in South Africa, this policy brief outlines how Justice Chain Analysis (JCA) can provide policy makers, advocates and practitioners with tools for developing context specific, people centred approaches which address structural justice barriers.

### KEY TAKEAWAYS

Migrants are often excluded from state-led justice interventions developed in the Global North, due to structural barriers.

Justice Chain Analysis (JCA) centres on understanding how context specific politics and power relations drive change.

Employing JCA to address injustice that migrants face can provide action based recommendations at both the structural and institutional level.

### AUTHORS

**John Doughty**, Founding Member, Justice CoLab;  
**Heaven Crawley**, Director, MIDEQ



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## The Global Justice Gap

Access to justice for all and effective, inclusive, and accountable institutions is a Sustainable Development Goal (SDG) in its own right, and a critical enabler for other SDGs.<sup>1</sup> Equal access to justice is essential for protecting the rights of individuals, resolving disputes, and ensuring that vulnerable populations are not marginalized or mistreated. Indeed, justice is key to ensuring that no one is left behind, an undergirding principle of the 2030 Agenda.

Despite the centrality of access to justice in the delivery of the SDGs, over two-thirds of the world's population, 5.1 billion people, lack meaningful access to justice.<sup>2</sup> Of these, a quarter of a billion live in extreme conditions of injustice (stateless, victims of modern slavery or living in a fragile state), 1.5 billion people have civil, administrative, or criminal justice issues they cannot resolve, and 4.5 billion people are excluded from opportunities and protections that the law provides.<sup>3</sup>

This lack of access to justice - coined the "global justice gap"<sup>4</sup> - does not affect everyone equally. As a result of structural inequalities, migrants, refugees, and stateless people in the Global South are among those left behind with little or no meaningful access to justice despite often living with discriminatory laws and complex, urgent, and fundamental justice problems.<sup>5</sup> Migrants and their children are much more likely to live in extreme conditions of injustice and be formally or practically excluded from the protections that the law provides.

This research brief draws on research undertaken by the Migration for Development and Equality (MIDEQ) Hub<sup>6</sup> with Ethiopian migrants and their children in South Africa. This research employed

an innovative methodological approach called Justice Chain Analysis (JCA) to unlock the justice chains for migrants in the Global South. This brief outlines the key features of the JCA which provides policy makers, advocates and practitioners with the tools to develop context-specific, people-centred approaches aimed at addressing the structural barriers which limit access to justice for migrants and other marginalised populations.

## Access to justice for migrants in the Global South

There are an estimated 126 million migrants in the Global South<sup>7</sup>, a large proportion of whom are low-skilled and low-paid workers who fall into the global justice gap. Migrants are much more likely to be in conditions of extreme injustice and formally or practically excluded from the protections that the law provides. These injustices flow from a variety of factors, including:

- **Lack of legal identity:** One of the main reasons why migrants are unable to access justice, or even the basic services to which they are entitled, is a lack of legal identity. Access to an identity, legal status, and associated documentation are the cornerstone of realizing rights and protections for migrant communities and essential to delivery of the SDGs, as reflected in SDG 16.9 which calls for everyone to have a legal identity by 2030.
- **Lack of documentation:** Documentation can come in different forms and includes the following: a declaration of birth, a birth certificate, legal identity (which includes

<sup>1</sup> See the recent remarks by UN Secretary General Antonio Guterres, Secretary-General's remarks to the Security Council on the Promotion and Strengthening of the Rule of Law in the Maintenance of International Peace and Security: The Rule of Law Among Nations, January 2023. Available at: <https://www.un.org/sq/en/content/sq/speeches/2023-01-12/secretary-general-remarks-the-security-council-the-promotion-and-strengthening-of-the-rule-of-law-the-maintenance-of-international-peace-and-security-the-rule-of-law>

<sup>2</sup> Task Force on Justice, "Justice for All – The Report of the Task Force on Justice" (New York: Center on International Cooperation, 2019). Available at: <https://www.sdg16.plus/resources/justice-for-all-report-of-the-task-force-on-justice/>

<sup>3</sup> Ibid.

<sup>4</sup> The justice gap, as defined by the World Justice Project (WJP), can be "understood as the number of people who have at least one unmet justice need. These are people who are ultimately not getting the justice they need for both everyday problems and severe injustices." For more information see World Justice Project (WJP),

"Measuring the Justice Gap: A People-Centered Assessment of Unmet Justice Needs Around the World" (Washington, DC: WJP, 2019), p. 4. Available at: <https://worldjusticeproject.org/our-work/research-and-data/access-justice/measuring-justice-gap>

<sup>5</sup> Ibid.

<sup>6</sup> The MIDEQ Hub unpacks the complex and multi-dimensional relationships between migration and inequality in the context of the Global South by decentring the production of knowledge about migration and its consequences away from the Global North towards those countries where most migration takes place. More information at [www.mideq.org](http://www.mideq.org)

<sup>7</sup> Jeanne Batalova, "Top Statistics on Global Migration and Migrants, Migration Policy Institute." (Washington DC: Migration Policy Institute, 2022). Available at:

<https://www.migrationpolicy.org/article/top-statistics-global-migration-migrants> This is almost certain to be an underestimate given the informality of migration systems in many countries of the Global South.

nationality) documents, or documents regularising an individual's immigration status. These documents form the basis of an individual's legal identity and "[lay] the foundation for safeguarding civil, political, economic, social and cultural rights."<sup>8</sup> They provide access to fundamental rights, facilitate legal status determination, and ensure access to essential services and protection.

- **Lack of legal status and discriminatory legislation:** Migrants are frequently the subjects of discriminatory legislation that limits their fundamental rights and feeds into populist narratives of 'them and us.'
- **Working through informal arrangements:** Insecure legal status and hostile immigration policies mean that migrants often work in the informal sector, 'under the radar' and are exposed to unchecked abuse and violence.
- **No access to institutional support:** A lack of, or limited, legal status often results in migrants being excluded from the support available to citizens to address injustice, including meaningful access to justice or alternative dispute resolution systems.
- **Temporary or limited time spent in a particular place:** The transient nature of migrants means they have little time to acquire knowledge and awareness of rights or the stakeholders that can assist them in addressing justice issues.
- **Lack of legal empowerment:** Living and working in countries where systems, social norms, and language are new and unfamiliar can result in migrants being ostracised, isolated, and unable to address justice issues because of a lack of knowledge, language skills, and confidence to make use of the laws and rights that apply to them.<sup>9</sup>

As a result of these factors, migrants are often excluded from state-led justice or administrative pathways which are often the focus of justice interventions developed in the Global North.<sup>10</sup> This requires policymakers, advocates, and practitioners to understand justice problems from the perspective of migrants in order to develop people-centred justice approaches which contribute towards meaningful and migrant-centred justice outcomes.<sup>11</sup>

<sup>8</sup> United Nations Human Rights Council, "Report of the Office of the United Nations High Commissioner for Human Rights: Birth registration and the right of everyone to recognition everywhere as a person before the law," United Nations 7 June 2014, A/HRC/27/22, paragraph 4 p.3.

<sup>9</sup> Emily E. Arnold-Fernández, "Legal Empowerment: From Accompaniment to Justice." Pathfinders for Peaceful, Inclusive and Just Societies, Policy Brief (New York: Center on International Cooperation, 2022). Available at: <https://www.sdq16.plus/resources/legal-empowerment-from-accompaniment-to-justice-2/>

<sup>10</sup> Caroline Nalule, Heaven Crawley, and Diana Zacca Thomaz, "Shrinking the Justice Gap: Rethinking Access to Justice for Migrants in the Global South" UNU-CPR Discussion Paper (New York: United Nations University, 2023). Available at: <https://www.mideq.org/en/resources-index-page/shrinking-the-justice-gap-global-south/>

## Understanding access to justice using a Justice Chain Analysis

Justice Chain Analysis (JCA) builds on the work of Denney and Domingo<sup>12</sup>, which employs a political economy analysis (PEA) to better understand the political, institutional, and relational aspects of an identified justice issue. This approach is about understanding how context-specific politics and power relations drive change. It provides a framework for "*the incentives, relationships, distribution, and contestation of power between different groups and individuals*".<sup>13</sup> Applying a PEA approach to access to justice issues moves the analysis away from a more conventional 'rule of law' and Global North focussed lens and allows for a more holistic understanding of justice problems, their nature, and the context-specific strategies that might be able to address them. Although this approach can be time and resource-heavy, it ensures that the analysis is more targeted and operationally relevant.<sup>14</sup>

### BOX 1. CHARACTERISTICS OF JUSTICE CHAIN ANALYSIS (JCA)

JCA starts with an understanding of people's justice needs based on data and evidence, in other words, it is people-centred\*.

JCA is outcome-oriented and designs solutions to respond to identified justice needs.

JCA helps those concerned about injustices to better understand how context-specific politics and power relations create justice 'barriers' whilst identifying context-specific 'enablers' that can be harnessed to facilitate change.

JCA recognizes that research that overwrites or fails to take seriously the experiences of migrants and other marginalised groups in proposing justice solutions may perpetuate existing injustices.

Using JCA ensures that any resulting recommendations or solutions have meaningful applicability and legitimacy.

\*Task Force on Justice "Justice for All – The Report of the Task Force on Justice", 2019.

2023). Available at: <https://www.mideq.org/en/resources-index-page/shrinking-the-justice-gap-global-south/>

<sup>11</sup> Task Force on Justice, "Justice for All – Final Report." (New York: Center on International Cooperation, 2019). Available at: <https://www.justice.sdq16.plus/>

<sup>12</sup> Lisa Denney and Pillar Domingo, "Political Economy Analysis: Guidance for Legal Technical Assistance," (London: ROLE UK, 2017). Available at: <https://www.odi.org/publications/10710-political-economy-analysis-guidance-legal-technical-assistance>

<sup>13</sup> Ibid p.3

<sup>14</sup> Daniel Harris, "Applied Political Economy Analysis: A Problem-Driven Framework" (London: ODI, 2013). Available at: <https://cdn.odi.org/media/documents/8334.pdf>

The analysis undertaken through JCA provides an understanding of norms, beliefs, and practices that affect a given justice problem. This makes it ideal for working with migrant communities who are often denied rights and freedoms, live on the margins of society and are 'under the radar' of state-led systems. Moreover, because justice issues relating to migrants are often politicized, they are susceptible to interference by, or bias towards, more powerful stakeholders. In these contexts, JCA can provide policy-makers, advocates and practitioners with action-based recommendations at both the structural and institutional levels, and at different stages of the justice processes. These recommendations can be tailored to all levels of justice interventions and implemented by governments, civil society, or international actors.

## How does Justice Chain Analysis work?

Justice Chain Analysis consists of four stages, each of which drills down into the underlying factors that sustain the identified injustice(s) with the aim of identifying solutions. These stages are outlined below with reference to a specified migrant community (or group within that community) but could equally be applied to non-migrant groups for whom one or more injustices have been identified.



## Stage One: Understanding the justice problems(s)

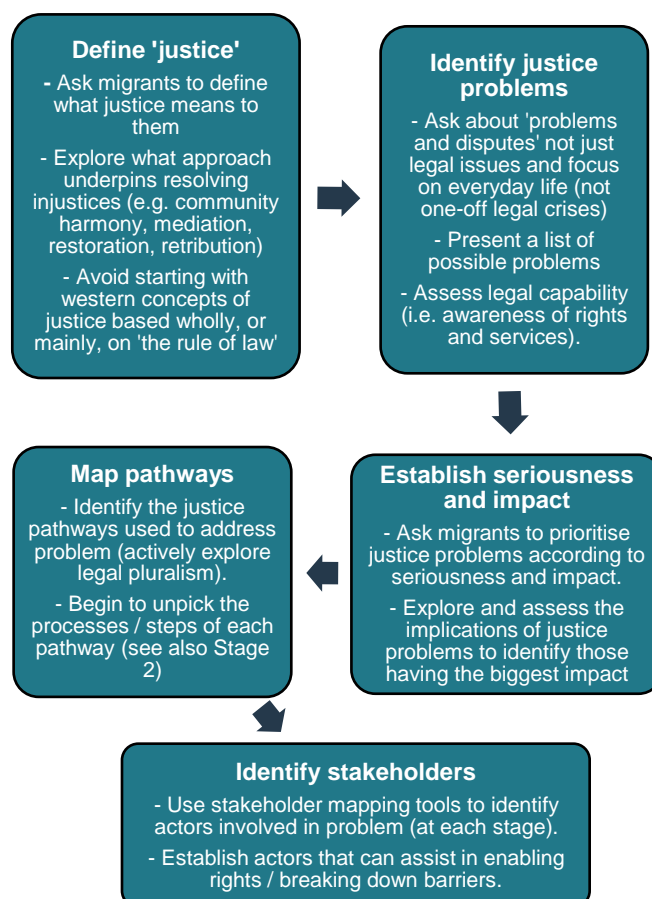
The first stage in JCA is to identify the justice needs of a given migrant community (or group within that community). This means understanding the everyday justice problems faced and the mechanisms and actors that might be used to address or resolve them. It also means stepping back and understanding what justice means, looks, and feels like to the community in question.<sup>15</sup> Defining justice from the perspective of migrants is critical in protecting against assumptions about justice problems and solutions, particularly dominant understandings from the Global North about what rights mean or what the successful resolution of injustice might mean to the community of concern. This might involve the following activities:

- A desk-based review of existing evidence;
- Using interviews and focus group discussions to engage migrants directly;
- Undertaking a legal needs survey<sup>16</sup>; and
- Speaking to people working with migrants on justice issues (civil society/government/private sector).

<sup>15</sup> Caroline Nalule et al., "Shrinking the Justice Gap: Rethinking Access to Justice for Migrants in the Global South", 2013.

<sup>16</sup> See, for example, Organisation for Economic Co-operation and Development and Open Society Foundations,

Figure 1: Identifying justice problems as defined by migrants



## Stage Two: Identifying and breaking down the different justice chains

Stage Two of the JCA framework moves on to understanding how migrants address the everyday justice issues identified at Stage One. The aim is to explore the factors that are driving and sustaining the justice problem and the processes available for remedy and/or redress. To do this, we start with an injustice (whether an event or a series of events) and map out the different pathways, stages, and strategies that migrants might be able to use to address this injustice. It is important to note that where migrants in the Global South use justice systems, these are frequently community-based, customary, or traditional. Migrants often lack access to resources and rights, which can mean that there is, in fact, no remedy or venue to address the injustice. In this scenario, the enquiry would focus on why there is no accessible justice system and explore what opportunities there are to use one that is readily available. This stage involves two steps:

- **Break the pathways** identified at Stage One down into different stages. Justice systems often

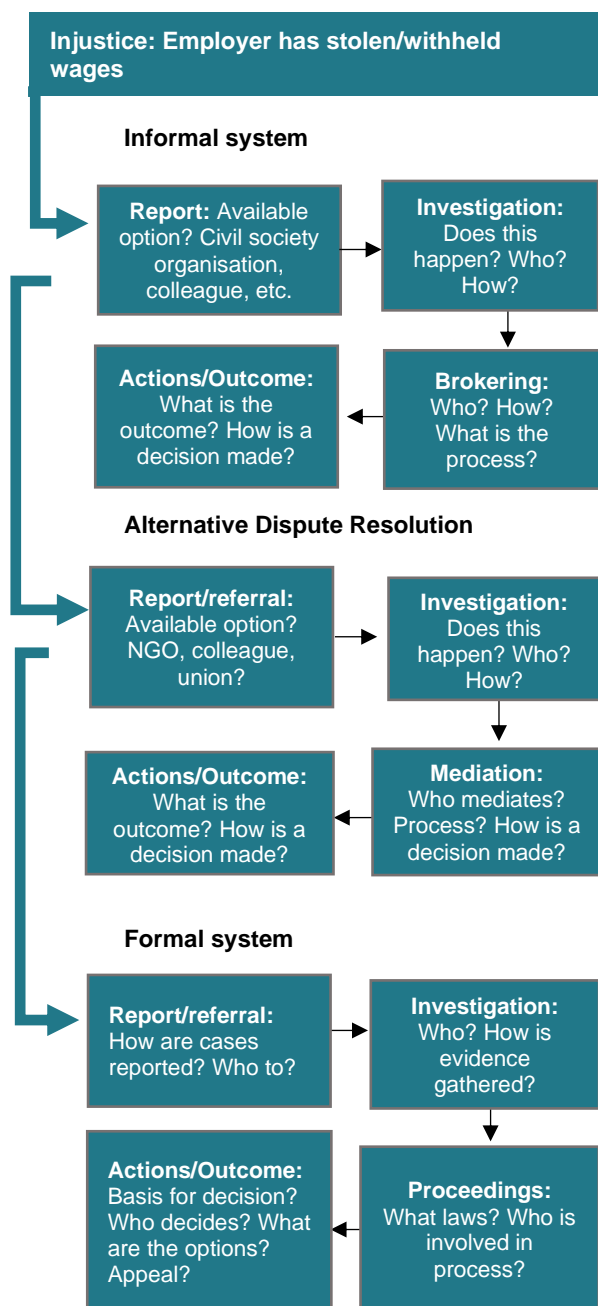
"Legal Needs Surveys and Access to Justice" (Paris: OECD Publishing, 2019), pp.57-105. Available at <https://doi.org/10.1787/g2g9a36c-en>

follow a similar set of stages, which can help frame the enquiry with respondents; and

- Start thinking about the **barriers and enablers** at each stage of the pathways (explored in more depth at Stage Three).

Below is a hypothetical example of the justice pathways that might be available to migrants in a wage theft dispute. For illustrative purposes, the following justice pathways are available: informal brokering within the community (*informal*), a civil society-implemented alternative dispute resolution mechanism (*ADR*) and the state-led legal system (*formal*).

**Figure 2: An example of justice chains – wage theft**

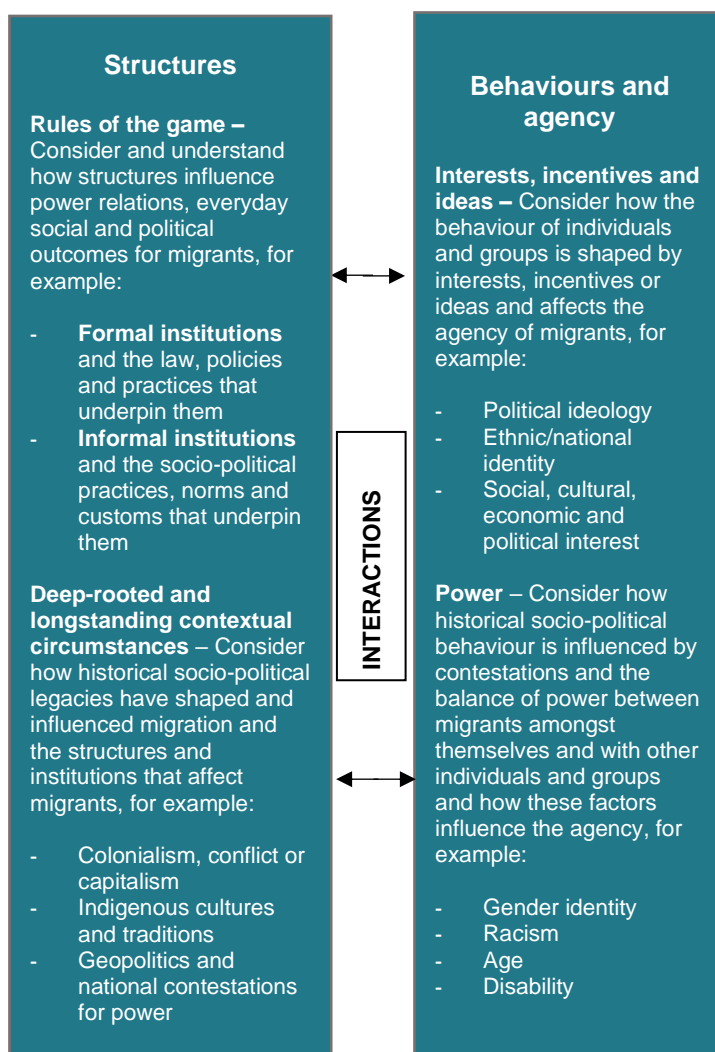


### Stage Three: Analyse the political economy of different steps in the justice chain(s)

Once each justice chain has been unpacked, the next step is to better understand the barriers and enablers to the justice problem being resolved. The analysis is two-dimensional – see Figure 3 below. First, the broad socio-political factors, actors, and stakeholders affecting the problem (*'structures'*) are analysed.

Second, the power dynamics between different structures and actors at each stage of the pathway are examined (*'rules of the game'*) while considering how behaviours are shaped by interests' incentives and ideas (*'agency'*).

**Figure 3: Structure and behaviours**

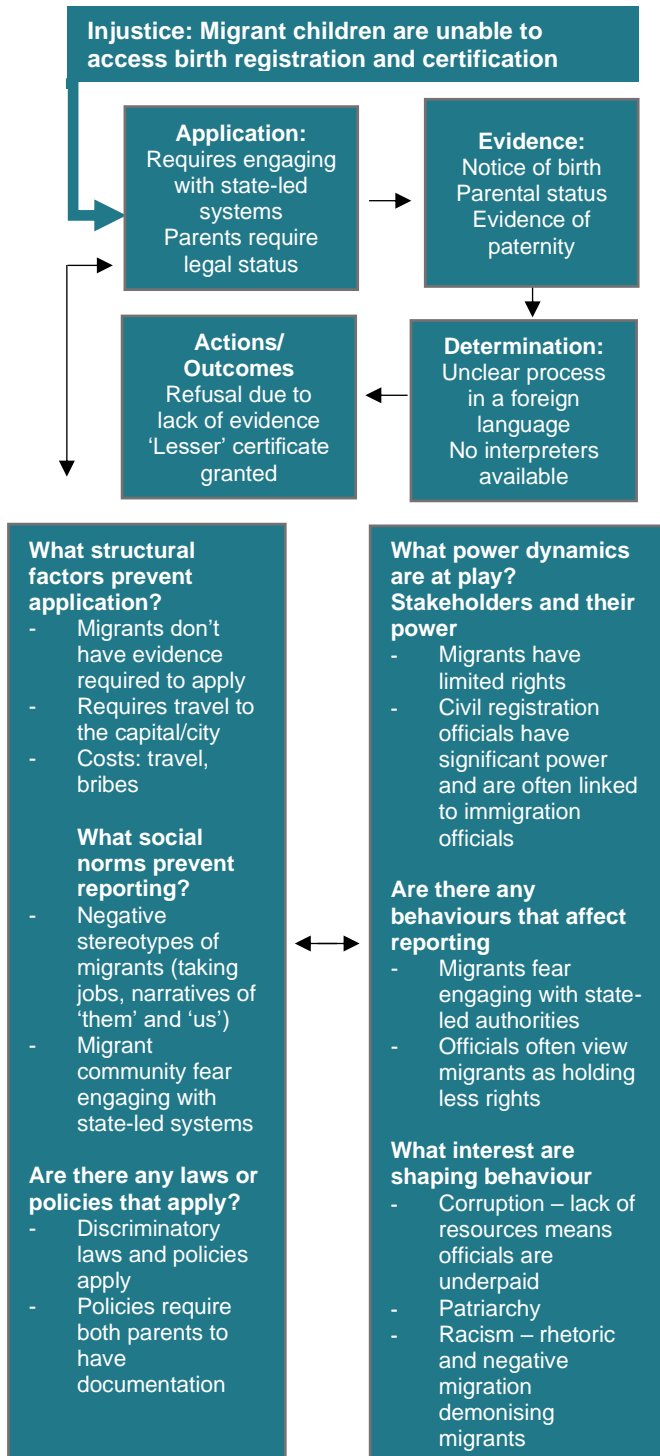


- **Don't be overwhelmed or intimidated** by the idea of undertaking a political economy analysis. Break it down and ask the questions along the lines of those set out below in Figure 4. Try to think in terms of 'barriers' and 'enablers'.
- Use this stage as a **tool to stimulate discussion**, ideally in the context of a workshop/focus group discussion with key

stakeholders to explore issues and factors that are known and those which are new.

The example provided below in Figure 4 shows a possible political economy analysis which could be undertaken to understand the challenges faced by migrants and their children in accessing to birth registration and meaningful birth certificates.

**Figure 4: The political economy of access to birth registration for migrants**



## Stage Four: Finding justice solutions

Having unpacked the everyday injustices experienced by migrants (Stage One), broken down the justice pathways available (Stage Two), and considered the political economy of each justice pathway (Stage Three), the next step in the JCA framework is to identify the actions and strategies that can meaningfully improve access to justice for migrants and address the injustices they experience. The aim is to find entry points to address the injustices that are context-specific, not driven by the agendas of particular organisations or funders, and that consider the realities of programming (e.g., funding, risk, buy-in). Finding entry points that aren't 'business as usual' or 'transplants' from other contexts can be challenging. Ideally, to ensure relevance and impact, this stage of the process should include participation from key stakeholders, including migrants. The following are examples of the types of questions that can lead to action-based recommendations:

- What are the drivers of the injustices migrants, or groups of migrants, are facing?
- What are the structural drivers? What are the behaviours/beliefs that are driving the injustice(s)?
- What enablers could be transformed into actions that strengthen access to justice for migrants?
- What changes can be made to address barriers migrants in this context are facing? How can we address some of the beliefs/behaviours that are driving injustice?
- What actions can be implemented at the community level?
- What change addresses some of the structural/systemic issues?
- What are the easy wins? What responses require a longer-term input?

As well as providing a comprehensive set of action-based recommendations, this stage of the analysis provides the foundations for a theory of change or a logframe and therefore a starting point for monitoring and evaluation.

### Case study: Access to documentation as pathway to justice for Ethiopian children in South Africa

MIDEQ Hub research undertaken in the Ethiopia – South Africa corridor<sup>17</sup> has found that Ethiopian children living in South Africa, including those born in the country, often lack access to documentation and a legal identity. This lack of access to documentation is a persistent problem that deprives children of access to the fundamental building blocks of their legal, social and economic identities.<sup>18</sup> It impacts on children's ability to access

<sup>17</sup> More information about the MIDEQ Ethiopian-South Africa research programme is available at: <https://www.mideq.org/en/migration-corridors/ethiopia-south-africa/>

<sup>18</sup> See Azwi Netshikulwe, Henrietta Nyamnjoh and Faisal Garba, "Pushed to the Margins: Ethiopian Migrants in South Africa", *Zanj: The Journal of Critical Global South Studies*, 5(1/2), 76-92. Available at: <https://www.istor.org/stable/48676307>

rights and justice as well as basic public services including education.<sup>19</sup>

Drawing on the findings of MIDEQ's research with the Ethiopian community in South Africa, JCA was piloted as part of an impact intervention<sup>20</sup> aimed at: understanding the barriers and enablers to documentation for Ethiopian children in South Africa; identifying and analysing the drivers of injustice; and developing action-based recommendations for the various stakeholders involved, including the South African government.<sup>21</sup>

**Stage One** involved an in-depth desk review of the available evidence around access to documentation for children in migrant families. Consultations were then undertaken with key civil society organisations (CSOs) alongside interviews and focus group discussions (FGDs) with members of four Ethiopian communities in the Eastern and Western Cape of South Africa. These discussions included children and young people, women and men, individually and in groups, to elicit their first-hand experiences. A lack of access to documentation including birth registration and certification were identified as the main injustice faced by children, not least because documentation provides a gateway to other rights and services. The impacts arising from a lack of access to documentation are significant and far-reaching: children cannot benefit from state-funded education, lack access to the formal economy, and are at risk of statelessness.

**In Stage Two**, we examined the factors driving and sustaining the issue of a lack of access to documentation and the processes available for remedy and/or redress. To do this, mapped out the different pathways, stages, and strategies that migrants might be able to use to address the injustices that their children face. We identified at least five justice chains that are potentially available to address documentation issues: a) the civil registration system for birth registration, b) the immigration system for refugee determination, c) the civil courts for judicial review, d) national complaint mechanisms/ombudspersons and e) international complaint mechanisms. All the systems identified are formal justice systems.

We then unpacked the 'barriers' and 'enablers' for the Ethiopian community in accessing these justice systems. We found that Ethiopian children and their families face numerous challenges in accessing the identified justice chains, including: capacity and resource constraints (staff shortages, lack of training/awareness amongst officials, and lack of resources); procedural and administrative barriers (e.g., geographic accessibility, delays, corruption, and language); and broader systemic factors (political environment, policy landscape, and funding). Many parents are undocumented due to well-documented problems and delays in the South African asylum system. As a result, Ethiopians live on the margins of South African society and deeply mistrust of state-led systems. Although CSOs can help navigate parents

navigate the asylum system, in practice there are very few 'enablers' for Ethiopian (and other) children to access documentation.

The political economy analysis undertaken as **Stage Three** of the JCA identifies a number of structural factors that impact the ability of Ethiopian and other migrant children in South Africa to access documentation. These factors relate to the political and economic context, including a history of colonialism, racial segregation, and cultural and social attitudes within host and migrant communities. Despite its strong legal and human rights framework on refugees and asylum seekers' rights, South Africa's asylum management system is not working as intended, leaving hundreds of thousands of applicants without proper documentation and fuelling xenophobia and anti-migrant sentiment and behaviours.

Finally, in **Stage Four**, JCA was used to build a collective understanding of the evidence and to develop practical and action-based recommendations for various stakeholders, including the South African government, civil society, and Ethiopian communities. These sessions served as a crucial compass for identifying appropriate interventions that would be meaningful and would improve the justice landscape for marginalized and disadvantaged migrants if implemented. In our report, we elaborate three sets of recommendations which build on the findings of the research and are intended to support the efforts of the South African government to meet its development objectives in relation to SDG 16 and its commitments as a signatory to the Global Compact on Migration.

- **Design and deliver people-centred migration systems and processes** which appropriately respond to the needs of migrant populations living in the country and anticipated future increases in migration in the future, that reflect the diverse drivers of migration, and are based on human rights and protection-focused principles.
- **End discrimination in the provision of birth registration and certification.** Birth registration is a fundamental right and should not be contingent upon parents' legal status. Regardless of their parent's migration status, all children should be able to have their births registered.
- **Empower migrant communities to access effective legal remedies.** Data and evidence should be collected as a starting point to understand the specific justice challenges facing migrants and their children so these can be addressed in ways that are people-centred. It is also important to deepen understanding of what strategies "work" to meet the diverse legal and justice needs of migrants in an affordable and

<sup>19</sup> Lawyers for Human Rights, "A Handbook: The Rights and Realities of Forcibly Displaced Children and Youth in South Africa." (Johannesburg: Lawyers for Human Rights, 2023). Available at <https://www.lhr.org.za/lhr-resources/a-handbook-the-rights-realities-of-forcibly-displaced-children-youth-in-south-africa/>

<sup>20</sup> More information available at: <https://www.mideq.org/en/impact/>

<sup>21</sup> Heaven Crawley, John Doughty, Azwi Netshikulwe and Henrietta Nyamnjoh, "No Papers, No Rights": Access to Documentation as a Pathway to Justice for Migrants in the Global South, Available at <https://www.mideq.org/en/resources-index-page/access-to-documentation-as-a-pathway-to-justice-for-migrants-in-the-global-south/>

sustainable way through identifying existing available evidence of what works and establishing evaluative processes to address the evidence gaps.

Whilst these recommendations are tailored to the specific context of South Africa, they are broadly relevant to other countries in the Global South with migrant populations who lack access to documentation and a legal identity.

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