



Save the Children
UK

Children on the move

Protecting unaccompanied migrant children in South Africa and the region

A report by Save the Children UK



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Acronyms and abbreviations

ACRWC	African Charter on the Rights and Welfare of the Child
Aids	Acquired immune deficiency syndrome
AU	African Union
CRC	United Nations Convention on the Rights of the Child
HIV	Human Immunodeficiency Virus
ISS	International Social Services
NGO	Non-governmental organisation
SADC	Southern African Development Community
SC	Save the Children
UMC	Unaccompanied migrant child/children

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Executive summary

This report is based on a number of key studies undertaken by Save the Children (SC) from 2003 to the present day in the southern African region. The report challenges the common understanding that child migration entails trafficking and refugee movement, and demonstrates that children often cross borders unaccompanied, as a survival strategy.

The report focuses on South Africa and its response to unaccompanied migrant children (UMC). This is ostensibly owing to the fact that South Africa is a popular destination country and therefore should provide more comprehensive support to UMC in order to ensure their protection.

Central to the recommendations made in this report are the following understandings:

- Further research into UMC is required. It is difficult for policy-makers and programmers to build effective strategies and action plans without sufficient evidence.
- Advocacy around UMC is required in order to ensure that key issues addressing their plight are included in international, regional and national level agendas, and are not confined to child trafficking contexts.
- Children in several countries in southern Africa are migrating because of chronic poverty and the death of parents and caregivers, in part from HIV and Aids. These factors are often exacerbated by droughts and political instability.
- We need to ensure that children are able to participate in the debates, policy-making and planning that affect them. This is necessary in order for effective strategies and interventions to protect UMC to be developed.

The following key aspects of child migration are identified and discussed, and recommendations based on these are given:

- *Defining an unaccompanied migrant child:* The report seeks to develop a definition of an unaccompanied migrant child that can guide policy, programming and advocacy while remaining flexible and inclusive. It also distinguishes UMC from children who have been trafficked.
- *Avoiding the term 'illegal':* The report advises the avoidance of the use of terms that incorrectly label UMC or contribute to discrimination or xenophobia. Children should be referred to as 'undocumented' rather than 'illegal', in conjunction with existing international, regional and national conventions, policies and legislation, which work to ensure that migrant children are not criminalised. More generally, an approach centring around ensuring that children's rights are not abused is emphasised.
- *Examining the push-pull factors leading to migration:* Primary push-pull factors, which play a significant role in a child's decision to migrate, are examined. In terms of the push factors, children repeatedly named poverty, hunger, lack of education and the death of a parent or caregiver as the reasons for their decision to migrate. The pull factors included stronger currencies, work opportunities, the possibility of an education, and extended family and other networks. The point is made that while war and conflict may play a part in child migration, these circumstances do not provide the only reason for this type of migration. Children in South Africa mostly wanted to stay despite the hardships they experienced.
- *Realising that children's levels of autonomy when migrating can differ:* While the report distances itself from debates around trafficking, it acknowledges that children can migrate as a result of a wide range of decisions. At times, families pressurise children to seek work across the border, and the children will comply for various reasons, including a strong desire to fulfil their familial duty.
- *Being aware of children's extreme vulnerability:* Children become even more vulnerable when they migrate, particularly at the actual border crossing and also on their arrival in the host country. These children become prey to abuse, violence and exploitation, mainly owing to their young age and undocumented status in the host country. The authorities' limited understanding of existing policies and procedures, the lack of appropriate guidelines for service providers dealing with migrant children or the xenophobic attitudes towards foreign

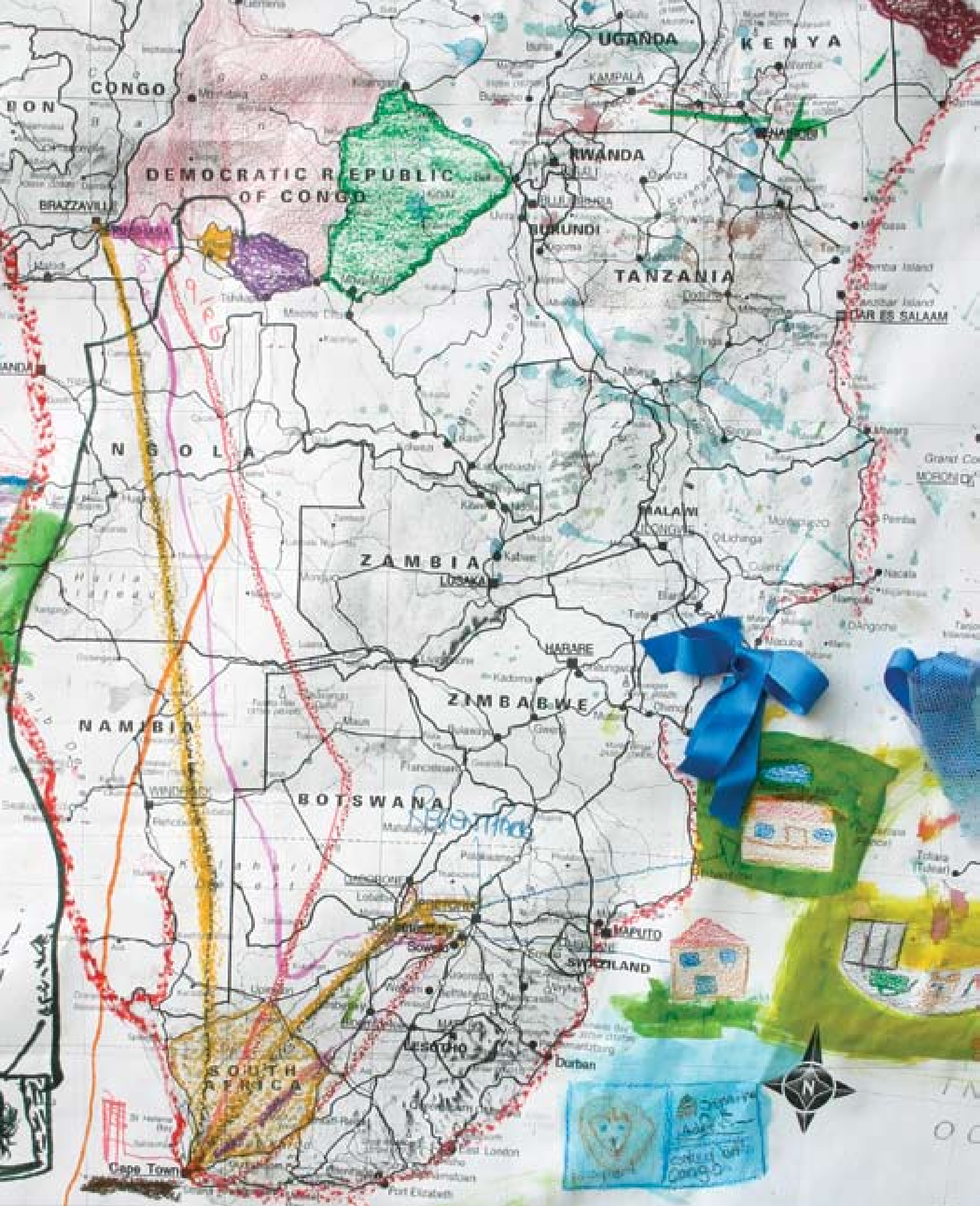
children contribute to this vulnerability.

- *Linking education and work:* A link is formed between children's loss of education and need to work, and the resulting need is examined for more educational opportunities for UMC to be developed. Moreover, currently there is much evidence that children are routinely exploited by employees who make false promises of payment for work done. Additional policies to ensure that children are indeed paid the wages they earn, even if they have been hired illegally, are discussed.
- *Examining the legislation and policies:* This section of the report examines the legislations and other frameworks currently in place to protect migrant children, especially in South Africa. In this country, sufficient policies to protect these children are in place, but they seem infrequently applied because of xenophobia, lack of awareness or lack of capacity.

The report concludes that the region needs to take a more proactive role in ensuring that children who migrate are better protected. This will involve tightening up policies and legislations at a regional level to include children, persuading States to develop clear policies and procedures for UMC, where necessary, and ensuring that existing legal and policy frameworks are implemented.

The report recommends more generally that cross-border and other collaborative initiatives be supported, and that preventative measures as well as responses from the host country need to be sought. These responses should seek to target all children, not just migrant children, in an effort to avoid discrimination, xenophobia, and the development of parallel interventions that target migrants alone.





Caleb
Bobby
Mum

Shack in Congo



Introduction

This report seeks to move the debate forward around children who cross borders in southern Africa. It challenges current misconceptions that children who migrate are mainly coerced or trafficked. The report also aims to contribute to the process of identifying key gaps and areas of concern in relation to protecting children living in or travelling through the region.

It is hoped that the recommendations made in this report will encourage donors, policy-makers and planners to fund and implement innovative research, studies and programmes that acknowledge and address the plight of the many children who migrate unaccompanied.

The concept of children moving unaccompanied across borders is currently not well integrated into policy, planning or legislation in the southern African region. This is owing to a distinct lack of qualitative and quantitative information on the subject.

While certain legislation and policies are in place to protect UMC in the region, sufficiently clear guidelines and the commitment or capacity to deal with these children are often lacking therein. As a result, responses are inadequate. This challenge requires urgent action.

The report is based on a small but significant body of research undertaken by SC from 2003 to 2007. The research allows us to identify common push-pull factors for unaccompanied child migration in the region, as well as the key factors in these children's migration stories that render the children, who are often already at risk, even more vulnerable.

At present there are no reliable estimates of the numbers of UMC crossing borders in the region. The countries involved include Lesotho, Mozambique, Botswana, Zimbabwe, Rwanda, Burundi and the Democratic Republic of Congo.

Our research shows, for example, that official records in both South Africa and Mozambique are inadequate. The clandestine nature of the border crossings means that they are not documented by the authorities. This is not surprising, given that estimates of the numbers of adults migrating between countries such as Zimbabwe and South Africa are also unclear, despite several attempts having been made at gaining reliable statistics. Rather than dwell on this absence, the report focuses on the evidence indicating that a significant amount of children have become especially vulnerable owing to migration and are currently not receiving assistance.

This report seeks to give guidance to researchers, policy-makers and planners on the key issues concerning migrant children that need urgent support and attention. The report is aimed at regional and national governments, international and national civil society organisations, and donors. While many of the conclusions and recommendations are applicable to the entire region, the report draws predominantly on research undertaken in South Africa and Mozambique. It thus focuses on the need for South Africa to improve responses to ensure the protection and care of UMC.

While national responses are key, addressing unaccompanied child migration needs to be tackled simultaneously at regional and sub-regional levels. By its very nature, migration involves more than one country and is often a response to issues – such as HIV and Aids, poverty and hunger – that cut across an entire region. For this reason, regional level institutions such as the AU and SADC have an important role to play in ensuring the protection of UMC.

The following sections look more closely at why and how UMC are especially vulnerable, and at the direction we could take to ensure that they are better protected.

An unaccompanied migrant child – who is he or she?



My parents died in 2002 and I was living with my uncle and his family. There was no food at home and I wasn't going to school as I had no money for school fees. My half-brother had a sigelo, so I used to earn money cutting people's hair, but my uncle's wives would take it away from me. I was not allowed to have any money of my own and they would hit me if I bought anything for myself. I came here to work so that I can help my younger brother to continue with school.

Musina, 15 years old

My house is in Mozambique. I lived with my sister, my brother and then me. My mother was sick before, and after she died. I don't know the year, but I was 10 when she died. Now I am 12 years. My sister chased me from my home. My sister said I must leave. She told me to go and said she did not want me back there.

South Africa, 12 years old

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Broadly speaking, an unaccompanied migrant child is under 18 years of age and has either crossed a border alone or has subsequently found him- or herself living in a foreign country without an adult caregiver.

While a robust definition of this group of children will facilitate inclusion of the group in child protection agendas, it should also be noted that it is not possible to neatly categorise children. There are many grey areas to the issue, and complex stories told by these children, and therefore definitions should be considered as guidelines rather than rigid categories.

For the most part, although not always, UMC are 'undocumented' migrants who have either used irregular channels to cross a border or who have not yet acquired a documented status, such as refugee status, in the host country. There are other children who entered using regular channels, perhaps accompanying a family member, who now find themselves alone in a foreign land. These children are sometimes abandoned, or left to fend for themselves on the death of the caregiver.

Recent SC UK research, focusing on interviewing children about their experiences of migration undertaken in Swaziland, Mozambique and South Africa,¹ points to the complexity of each child's story and resulting situation and needs.

In another example, the case of undocumented children born and living in Thabo Mofutsanyane District, Free State Province, South Africa to an illegal migrant Basotho parent or parents, is poignant and of great concern to community members.² The children are extremely vulnerable, mostly being denied places in schools and sometimes even medical attention and services linked to the Department of Social Development. Community members claim that because these children do not possess the relevant birth certificates, identity documents or passport, they are being denied assistance from the State. Having migrant parents, the children are effectively migrant themselves, but were born in South Africa. Although they are not necessarily legally South African, they nevertheless have rights to education and health care.

Cases such as the one described above only highlight the urgent need to address issues around universal birth registration.

Differentiating UMC from children who are trafficked

There is an important distinction to be made between trafficking and unaccompanied child migration. We must ensure that our

¹ Save the Children UK – Mozambique, 2007

² SC UK – South Africa, 2007b

understanding and responses to UMC issues and needs are not eclipsed by the current focus on singular child migration issues such as child trafficking. In the region, there is still a tendency to see child migration and child trafficking as one and the same.

If trafficking is understood as defined by the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) (otherwise known as the Palermo Protocol, see below), there are indeed many areas in which unaccompanied child migration and child trafficking converge. By contrast, while the definition of child trafficking as laid out by the UN Convention is extremely broad and extends to all children who are exploited, even after leaving home autonomously, the definition is not generally *interpreted* as such.

Most strategies that target trafficking still use the concepts of organised crime, coercion, deception and transportation (internally or across borders) to guide interventions. These interventions focus more on identifying and arresting the perpetrators of trafficking and less on the push-

pull factors that encourage children to migrate unaccompanied and serve as the reasons for migrant children's rights being abused while they are in the host country.

Therefore, a focus on child trafficking as the main form of child migration does not recognise:

- the increasingly high numbers of children who are migrating across borders for reasons other than being trafficked
- the agency of the child and the fact that many children decide to migrate or to stay in a host country for reasons that are not coercive
- the need for more extensive research on other forms of child migration.

Not only is the UN Convention definition used, for the most part, to address a very different group of children, but its description of trafficking as an illegal activity suggests that prevention and correction measures should be based on the criminal justice system and around the laws that govern migration.

The Palermo Protocol

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime

- (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;**
- (d) "Child" shall mean any person under eighteen years of age.

Note that (c) provides a simple and very broad definition of child trafficking, which could technically be applicable in many situations in which UMC find themselves.

Choosing our terminology carefully

This report recommends that the term 'undocumented' be used as opposed to 'illegal' when referring to UMC. An assumption is frequently made that because they do not have documents, these children are 'illegal' immigrants.

Referring to children as 'illegal' immigrants is problematic for a number of reasons. Firstly, it does not take into account existing international, regional and national policies and legislations on the rights of UMC, which protect children from being criminalised for their entry into a country through irregular means.

Secondly, it can encourage xenophobic attitudes and can stigmatise migrant children. This may lead children to avoiding contact with government and other service providers who could, in fact, be protecting them. Or it may mean that children are unjustly refused assistance.

Thirdly, it can suggest that these children are a 'criminal problem', and that they do not have the right to legalise their stay in the host country, for which the rule of law is the solution.

Recognising children's differences

When considering the identity of UMC and appropriate responses, we need to acknowledge that children are not a homogeneous group. Children must be differentiated according to age, gender and many other aspects, depending on the context.

Recent SC UK research in South Africa has shown that the average age of UMC living on some of the borders with Mozambique and Zimbabwe is 14, but that children as young as seven are migrating alone.³ A child of seven years does not have the sexual and reproductive health services needs, for instance, that an adolescent has. Similarly, girls and boys have different needs, strategies for survival and perhaps even motivations for migrating. Other factors might include religious and cultural beliefs and practices, educational needs and language. These must all be taken into consideration when a necessarily wide ranging set of responses to and services for UMC is being developed.

To sum up, the definition and identification of common aspects of UMC are important in order to ensure that these children are included in child protection agendas. However, a rights-based approach to child migration needs to be actively fostered by policy-makers and agencies so that all children are assisted, and not just those who fit into a particular category. Simply put, the focus should be on whether a child is denied his or her rights and on how stakeholders can address this; it should not be on the undocumented/documentated, legal/illegal or other categorisation of their status.

Key recommendations

- UMC should be seen as a large group of children who cross borders, of which children who are trafficked are a subset. Child migration needs to be addressed on a much broader level than current interpretations of trafficking allow. The reasons that children can be so easily abused or exploited in the host country need to be addressed as a priority.
- All migrant children's stories and situations are unique and often complex. We need to ensure that children are not excluded from protection initiatives because they fall outside of a fixed definition. For example, UMC should be included in current deliberations around allowing Zimbabweans temporary South African work permits.
- Casual reference to migrant children in terms that denote criminality or other negative aspects of migration are misleading and may hinder progress in ensuring better protection for UMC.
- Strategies to protect UMC should be diverse and must take into account their differing needs.
- The focus of debate and action should be guided by a rights-based approach. Further work should be undertaken that is based on strengthening migrant children's access to their rights.

3 Palmary, 2007

4 Clacherty, 2003; Palmary, 2007; SC UK – Mozambique, 2005; SC UK – Mozambique, 2007

5 O'Connell Davidson and Farrow, 2007

6 Reginald Orsmond Counselling Services, 2007; SC UK – South Africa, 2007b

7 Palmary, 2007

8 Clacherty, 2003

9 Palmary, 2007

10 SC UK – Mozambique, 2005

What makes a child decide to migrate?

SC UK has commissioned some valuable, focused studies into UMC in South Africa and Mozambique.⁴ And SC Sweden has looked extensively and more generally at how children who migrate can become more vulnerable.⁵ In addition, we can draw evidence from programme documentation and reports on children's situations and concerns in South Africa.⁶

SC UK's most recent study, undertaken by the Forced Migration Studies Programme at the University of the Witwatersrand, Johannesburg in early 2007,⁷ interviewed UMC in key sites bordering Zimbabwe and Mozambique – in and around Musina and Komatipoort – as well as in Johannesburg.

Reasons to leave: the push factors that make children migrate

The study showed that for migrant children living along the border of South Africa, the main push factors in their own countries, which were mainly Zimbabwe, Mozambique and Swaziland, are poverty, hunger, the lack of educational opportunities and the death of parents and caregivers.

This reinforces the findings of a study commissioned by SC UK in Musina in 2003,⁸ which interviewed children who crossed the border from Zimbabwe and were living in and around Musina, including on South African farms. The key push factors were identified as poverty, hunger and the death of caregivers.

The picture in Johannesburg is slightly different, as revealed by the 2007 study.⁹ There are many more children to be found there who came from countries that do not border South Africa, such as the Democratic Republic of Congo, Rwanda and Burundi. In many cases they escaped conflict and political unrest, but also cited hunger and the death of family – possibly a result of HIV and Aids as much as of conflict – as reasons for their migration to South Africa.

In Manica Province, Mozambique, a preliminary study conducted by SC UK in 2005¹⁰ demonstrated that these areas are also experiencing an influx of child migrants from Zimbabwe, albeit perhaps to a lesser degree than in South Africa. Again, the main push factors cited by children are poverty, hunger and the sickness or death of family members.

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According to the report, these migrant children were from some of the poorest and most vulnerable households in Zimbabwe. Other children also cited unstable or abusive home environments as an additional push factor.

Choosing a destination: the pull factors that encourage children to migrate

The main pull factors for most of the UMC living in South Africa stem from the belief that they have more chance of finding work or other income-earning opportunities and of going to school than if they remained in their home country. For Zimbabwean children living in neighbouring countries, for example, the opportunity to make money in a currency much stronger than their own is attractive. In Mozambique, UMC indicated that the existence of migrant communities and networks of fellow compatriots and extended family members is also an important pull factor.

Migration is not a new activity – there has always been movement between countries in southern Africa in the form of traditional and more recent grazing, ethnic and labour migration patterns, as well as flight from areas of conflict or unrest. As a result, groups of people sharing ethnic identity, nationality and language can straddle several borders in the region. This means that many people in the region have extended family or friends on either side of a border. For some of their children, therefore, migration is perhaps a relatively logical and safe survival strategy.

In the case of Lesotho, it appears as if people who migrate between that country and South Africa do not view the national borders as being all that important. What appears more significant to them are the ethnic, linguistic and family ties that link them with people ‘on the other side’.¹¹

South Africa, where the grass is greener

Although many children in the 2007 study had been made extremely vulnerable by crossing the border, they described their general experience of being in South Africa as a positive one.¹²

They saw school as one of the highlights of living in South Africa, even when they were not actually attending school. This finding suggests

that these children have a powerful sense of futility about the lack of opportunities available to them at home, combined with a strong sense of possibility in relation to those available in South Africa. This factor seemed to play an important role in their decision to migrate and then remain in South Africa.

Despite apparently offering a life of hardship on the streets, South Africa still represents a relatively more hopeful scenario for UMC. This is an important point of note for policy-makers and planners on the South African side, and perhaps for other relatively prosperous countries bordering an extremely poor country. It suggests that as long as the relative economic disparities, in combination with other factors, between Zimbabwe and South Africa exist, the migration of children to South Africa will continue. The fact that South Africa does not actually provide even basic services to many UMC on the border seems not to deter these children.

The point is also important when we consider protection strategies. In South Africa, many children may reject being housed by a foster parent and then repatriated, as they may prefer to stay in the country and be free to earn money. There is a conflict in terms of how the State and the child would interpret what is in his or her best interests.

War and political unrest

SC UK’s 2007 study in South Africa suggested that the influx of significant numbers of unaccompanied, undocumented, Mozambican children to South Africa had not abated with the end of the civil war in 1992.¹³ This finding attests to the fact that it is not just political unrest or conflict that dictates the ebb and flow of child migration. Mozambican children to be found living near Komatipoort and Malelane, who formed part of the 2007 study, have spent on average just 17 months in South Africa,¹⁴ which indicates that their migration is not directly owing to conflict.

This is an important point to bear in mind regarding our response to UMC from Zimbabwe. The ongoing political situation in Zimbabwe should not be the driving factor behind South Africa or other countries’ response to UMC.

11 SC UK – South Africa, 2007b

12 Palmary, 2007

13 Palmary, 2007

14 Palmary, 2007

A resolution to Zimbabwe's political crisis would not necessarily spell an end to UMC crossing from Zimbabwe into South Africa. Political unrest should also not be the sole motivation behind donor strategies and programming around UMC. Realistically, we can predict that poverty and the high HIV and Aids prevalence in Zimbabwe will most likely continue to drive children over the border for many years to come. In addition, our response being politically framed may fuel the misconception that assistance and services to Zimbabwean UMC in South Africa should be curtailed if Zimbabwe's political climate improves.

Thus, potential or existing destination countries for UMC in the region should be responding to the chronic poverty, and the high HIV and Aids prevalence, in southern Africa by developing and implementing comprehensive, long-term frameworks to ensure that UMC are properly protected for the foreseeable future.

Determining UMC's level of autonomy

The studies in South Africa and Mozambique¹⁵ revealed that the levels of autonomy with which children migrated differed. While many children interviewed said that they chose to leave their homes, a significant number said that their parents had sent them over – to earn money to send back home. Therefore, not every child who migrates alone is doing so out of personal choice; at times he or she is responding to varying levels of pressure from their parents or caregivers to aid the survival of the family.

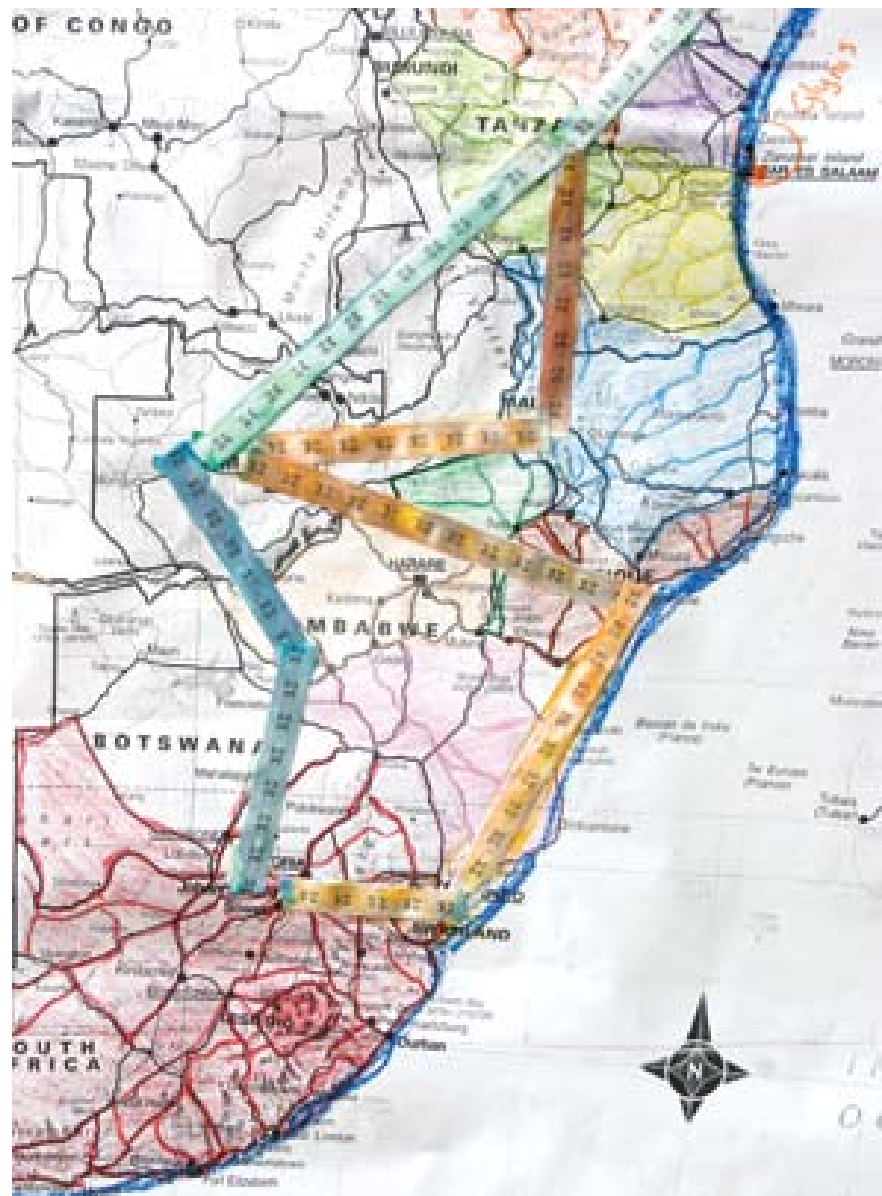
Key recommendations

- While conflict or political uncertainty in a country can fuel migration, this should not be the deciding factor in the determination of when and how we respond to UMC needs in the southern African region.
- South Africa and other so-called 'middle income' countries in Africa, such as Botswana, need to recognise why they continue to be attractive to children and families in poorer, less stable neighbouring countries, and they must respond accordingly with strategies to protect UMC.
- Donors and non-governmental organisations (NGOs) in particular need to understand

the fact that children often migrate either for their own survival or in order to gain a means of ensuring their family's survival. These organisations should develop strategies to mitigate the number of these children. For example, a common trend in the region seems to be that children choose to migrate when they are no longer able to attend school at home. If educational opportunities and resulting money-earning possibilities could be increased, children may be tempted to remain in their home country. More generally, prevention strategies need to be developed to reduce the need or desire to migrate.

- Additional studies – encompassing Botswana and Namibia, for example – need to be carried out in South Africa and the southern Africa region in order for similar and new push-pull dynamics to be identified.

¹⁵ Palmary, 2007; SC UK – Mozambique, 2005



Extreme vulnerability: How UMC are denied rights

All the migrant children living along the borders and interviewed by SC in South Africa and Mozambique indicated that they mostly crossed the border using an irregular channel.¹⁶ In so doing, children make themselves more vulnerable to a range of abuses, including physical and sexual abuse, theft and muggings. Because the children are undocumented, they are very unlikely to report the incident or seek assistance.

It is not clear by what means all the children interviewed in Johannesburg arrived in South Africa, although case studies from the Suitcase Project suggest that they arrived mainly overland, crossing more than one border to get there.¹⁷ Again, more research is needed with regard to the manner in which children from countries not bordering South Africa manage to cross into South Africa, in order to establish how this might

contribute to their vulnerability.

Although this reports focuses primarily on unaccompanied child migrants, children who cross borders with their migrant worker or refugee caregiver should not be forgotten. Anecdotal reports from current SC UK – South Africa programmes in Limpopo and the Free State, South Africa¹⁸ suggest that children who have accompanied migrant worker caregivers are also made vulnerable as a result. Of specific concern is the fact that many of these children do not attend school regularly, if at all. Refugee children in South Africa may also suffer in terms of rights abuses and as a result are not adequately protected. In both cases, additional research in a number of countries in the region and debate are needed in order for improved protection measures to be planned.

16 Palmary, 2007; SC UK – South Africa, 2007b

17 Reginald Orsmond Counselling Services, 2007

18 SC UK – South Africa, 2007b



I was caught by the police when they asked for my passport. There were 15 other young people with me who were also asked. We said, 'Oh, we have no passports.' We said, 'We are South Africans.' They said, 'No, you're not.' They loaded us in a van and took us to jail. We stayed there from Friday, and on Monday they took us to the border post. The next day I came back. I was the only one to come back. I just wanted money. In jail the only thing that happened was they kicked us when they put us in the van ... I have been deported four times during my time here. The same thing happened each time. They just brought us to the border.

Komatipoort, 17 years old

Gender and vulnerability

Many aspects of children's migration are gendered.¹⁹ A strong gender aspect of UMC's vulnerability can be identified at the point of the border crossing. For example, from Zimbabwe, girls and boys often cross the borders in ways that are linked to the 'services' they can provide. SC studies from 2003²⁰ show that many girls described crossing to South Africa by having sex with the border guards, who at the time were members of the South African National Defence Force manning various farm gates situated along the border. Alternatively, some of the girls in the study described travelling across the border with truckers in exchange for sex. Now that the South African Police Services are manning the South African border, research needs to be carried out to establish if girls are continuing to exchange sex for entry into the country. Many of the boys crossed by walking or swimming across a river, and then crossing a fence.²¹

Most undocumented migrants, including children, cross the fence from Zimbabwe into South Africa using a system of informal male guides. The first group, the *amalaitsha* ('porters'), mainly transport goods across the border and are known to be relatively benign. By contrast, the second group, the *magumaguma* (literally: 'scavengers'), take money in return for guiding people through holes in the fence, or by other routes. The *magumaguma* not only extort large sums for this service, they also often steal the children's clothes and belongings, and may physically assault them. Other men, who wait

on one side of the border and prey on 'border jumpers', especially lone boys, may violently mug the children of any remaining belongings and money.

Furthermore, children often come up against the *mareyane* when crossing between South Africa and Mozambique – violent border gangs of Swazi and Mozambican men who attack 'border jumpers', including children, often violently assaulting them and/or extorting money.

The gender aspect of UMC's vulnerability can again be identified once they arrive in the country of their choice. Children survive by using various strategies that can depend, although not exclusively, on their age and sex.

Many children work in other parts of the informal sector. In South Africa, migrant boys may sell fruit or vegetables on the street. They also find odd jobs washing taxis, pushing shopping trolleys and running errands. Migrant girls might braid hair on the streets for money.²²

Along the borders of South Africa and Mozambique, UMC, often under the legal age of employment, can be found working in the formal sector. Boys have been documented as working as farm labourers on Mozambican farms, while some children can be found working in local bars and restaurants.²³ Certain girls in South Africa are working at a *spaza* (an informal shop) or doing housework.²⁴

Many of the girls have become sex workers, although this was not part of their initial plan.²⁵ The informal settlement of Rwanda, near Musina, South Africa is well known for the numbers of girls, many of them migrants, working as sex workers. Many of the girls living in the Rwanda settlement also appear to have young children.²⁶ Not only does this type of work compromise their rights as children, it also introduces additional dangers such as HIV and Aids, early pregnancy, violence and exploitation. In Mozambique, Zimbabwean girl sex workers will charge less than their Mozambican counterparts, and girls as young as 12 years have been documented as working in this trade.²⁷

At the bottom end of the scale, boys are scavenging for food in Musina, South Africa, while

19 O'Connell Davidson and Farrow, 2007

20 Clacherty, 2003

21 Clacherty, 2003; Palmary, 2007

22 Palmary, 2007

23 SC UK – Mozambique, 2005

24 Clacherty, 2003; Palmary, 2007; SC UK – Mozambique, 2007

25 Clacherty, 2003

26 Clacherty, 2003

27 SC UK – Mozambique, 2005

others try to make money by collecting bottles, handing out pamphlets or begging.²⁸

Most of these children are living in substandard accommodation. Some might be renting rooms that they share with others and are subject to the whims of landlords and overcrowding. Others are living in shacks in informal settlements, with inadequate water or electricity. Some live in old buildings and old mine workers' hostels. Others, mostly boys in the border towns, are living on the streets, sleeping in the bush or near taxi ranks and rubbish dumps.²⁹ Some children in Johannesburg are living in shelters for children, separated from adult caregivers, or in tiny rooms full of people and no beds.³⁰

I was raped by a Gomagoma from Zimbabwe. I don't know why. He was drunk. He had gone drinking with my landlord. He raped a girl from Zimbabwe before me and was not reported. I think he thinks that girls from Zimbabwe don't report.

Musina, 16 years old

UMC's sense of duty

In many cases, the children living on the borders intended to save money to send back to their families. However, the majority were struggling to survive on the money they earned, let alone being able to save money. They frequently went without meals and other necessities in order to save a little money.³¹

Children also reported that their money was stolen by police when they were searched. A common strategy therefore was to convert their Rand immediately into Zimbabwean dollars. This not only prevented police from taking their money, but also ensured that the children did not give in to the temptation to spend their newly earned money.³²

Children have a natural mutual affinity and use informal networks to support and assist each other. And despite the abovementioned adversity, many of their stories demonstrate that their sense of duty towards their families as well as towards the informal networks has been a key factor in keeping them in South Africa.³³

Key recommendations

- Gender plays an important role in UMC's vulnerability. Therefore, responses that reduce such vulnerability need to be based on a gender-aware strategy that pulls children out of the margins and into the centre. Crucial to this strategy would be ensuring that children, service delivery departments and other agencies better understand children's rights and legislation. Furthermore, appropriate psycho-social support for UMC is necessary in order to help them deal with any trauma related to migrating and the abuse and exploitation they have likely experienced as a result.
- The formation and support of local children's clubs and groups should be used as a tool in an effective strategy for ensuring that UMC are better protected. This will also allow greater access to children in terms of including their voices in decision-making and programming.
- The above examples show that children can be highly effective in finding ways to survive. They need to be given a bigger role than they play at present in determining how agencies and the government can provide assistance to them.

28 Clacherty, 2003

29 Clacherty, 2003;
Palmary, 2007

30 Reginald Orsmond
Counselling Services,
2007

31 Clacherty, 2003;
Palmary, 2007

32 Palmary, 2007

33 Clacherty, 2003



Work and education

My permanent job is washing, cooking, cleaning. The job is in town. I work at the house to wash and cook for them. I work Monday to Saturday. They tell me, 'Do this, do this.' They shout at me like a dog. They give me R250 bonus R300 at the end of the month. Sometimes we work for people here and they don't pay me and when you ask they say, 'You are a Zimbabwean and you have to keep quiet, otherwise we will call the police.'

Musina, 18 years old

The majority of children interviewed in the region stated that work and education are among the main reasons for their migration to a particular country. The fact that the work that children subsequently find themselves doing in the host country can be dangerous or exploitative, compounded by the fact that it takes them out of education, is an extremely worrying dynamic. This report seeks to highlight this aspect of UMC's vulnerability in order to encourage debate and ideas around how children with extreme economic needs and duties can also have access to education.

Presently, there are little, if any, educational opportunities for UMC living in South Africa and Mozambique. Apart from spending their days working for money, UMC may also not be attending school because they do not have enough money for fees, uniforms and materials, because schools are overcrowded, because the children are mistakenly denied a place owing to their nationality, or even because they do not make themselves known to school authorities for fear of deportation.

Despite the lack of adequate analysis of this problem, we know that the short- and long-term negative consequences of this work–education dynamic for both the child and society are serious. At present, there is no clear way forward. Certainly more research, analysis and discussion need to take place at various levels in order for solutions to be found. Civil society could play a powerful role in the immediate and longer term strategy, to ensure that UMC receive at least some form of education.

We also know that despite children giving up their education for work in South Africa, when

interviewed, many children named school as the 'best part' about South Africa.³⁴ This denotes that, given the chance, many children might take advantage of educational opportunities in the host country if these were available. However, the success of education programmes for UMC would also be dependent on whether or not the initiatives take into account the children's ongoing need to earn an income.

Children of migrant Zimbabwean farm workers are also to be seen roaming the streets, out of school, while their parents are at work. The 2003 report demonstrated that these children often dropped out of school or attended sporadically.³⁵ The reasons for this are currently unclear.

In terms of work issues, child labour on South African farms is another area that should be investigated further. Some recent anecdotal accounts from SC UK – South Africa's Musina-based programme allude to children being employed by farmers. Additional studies in 2007³⁶ showed that many children were working on farms in South Africa. However, in 2003 it was reported that farmers made a point of not employing children under 15, for fear of legal retribution.³⁷

In 2007, child migrant interviews conducted³⁸ repeatedly revealed a common occurrence: often children were hired to work without papers and were then cheated out of their salaries by their employers, with the threat of arrest should they have protested.

Key recommendations

- Strategies that allow UMC to access some form of education are urgently needed. And education and work should be considered as linked issues with regard to UMC. While the children seem keen to attend school, interventions that accommodate their primary need to earn money must be developed. This could include integrating education into evening clubs, child-feeding stations or other before- or after-hours activities.
- National legislation should ensure, as in South Africa, that any child, with or without documentation, has the right to entry. Schools and relevant stakeholders should be

34 Palmary, 2007

35 Clacherty, 2003

36 SC UK – Mozambique, 2007

37 Clacherty, 2003

38 SC UK – Mozambique, 2007



made aware of and should uphold this legislation.

- Further research and investigation into child labour on border farms in South Africa should be carried out. If child labour is found to prevail on these farms, action needs to be taken to stop the practice in the case of children who are underage. More positively, if farmers are found to be law-abiding, further analysis of their behaviour might provide a valuable lesson on how to enforce other aspects of legislation designed to protect children. In Mozambique, child labour issues also need to be further researched and law-enforcement strategies should be developed.
- Where laws are being contravened in the informal sector, more needs to be done to identify and prosecute the perpetrators. Other solutions also need to be sought that would reduce UMC's need to find work to survive. This may include building shelters in which UMC can sleep and obtain meals. It may also mean looking at providing skills training in conjunction with a bed and meals, on the condition that children return to their homes after a certain period of time. Prevention strategies that target a child's home can also come into play. Cash transfers to vulnerable children or families who are most likely to migrate should be considered.
- Where children are legally old enough to work, they should be included in any discussions and decisions that entail providing Zimbabwean migrants with temporary work permits in South Africa, for example. This alone will play an important role in preventing employers from not paying children, who are working illegally, with threats of criminal prosecution. A public education campaign that targets xenophobia, employee responsibilities and the law might also be a useful tool in helping to reduce the exploitation of child labourers.
- Donors and civil society can be key role-payers in addressing issues around education and work. Resources need to be allocated to strategies that can enable national and local NGOs to provide stand-alone or integrated education options to UMC.
- Local government needs to create an enabling environment for civil society to implement such activities. Both institutions also need to work together in order to ensure that local government builds its capacity to run or support initiatives independently. Activities should be incorporated into local governmental planning and resource allocation.

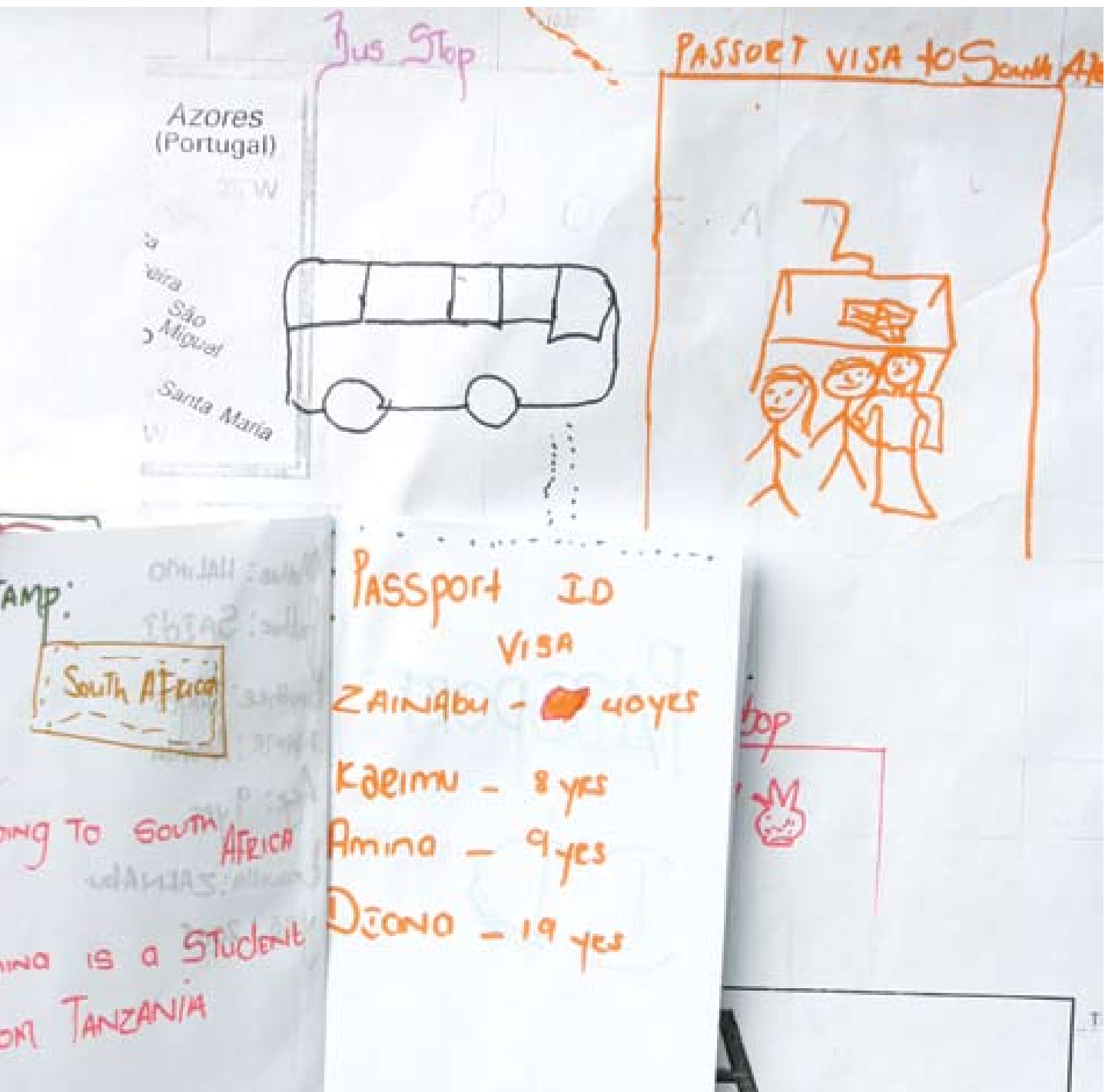
Legislation, the State and civil society's response

Regional laws and frameworks

There are several legal and policy frameworks that can be called upon to protect UMC. However, there are also certain gaps in policy and legislation, which compromise UMC's safety in the region.

International law

The 1989 **UN Convention on the Rights of the Child (CRC)**: This deals with the basic human rights and protection to which all children are entitled. The Convention also refers to refugee children. Every country in the world has ratified



the Convention, except the United States of America and Somalia. Governments of the countries that have ratified the CRC are required to report to and appear before the United Nations Committee on the Rights of the Child at given intervals, in order for progress in terms of CRC implementation and the status of child rights in their country to be assessed.

Regional law

The 1999 **African Charter on the Rights and Welfare of the Child (ACRWC)**: The Charter provides for the rights of children living in Africa. It was created in an effort to contextualise children's needs based on where they come from. The CRC is sometimes criticised as being Eurocentric in its approach and not always relevant to children living in Africa. The Charter uses the principle of 'in the best interest of the child' as the backbone of a framework that also seeks to advance African union and solidarity. The majority of the rights and freedoms contained in the Charter refer to 'every child'. In addition, the Charter mentions the right of African children to free and equal access to basic education and the development of similar opportunities to secondary education. All countries in southern Africa, except Swaziland and Zambia, have acceded to the Charter. South Africa acceded to it in 2000.

The **Migration Policy Framework for Africa**: This is a policy, as opposed to a legal framework, and therefore is non-binding. It makes policy recommendations and gives guidelines to African Union Member States. It does not currently include provisions for UMC, but rather focuses on child migration as a result of child trafficking. Additional provisions need to be included in this policy, which ensure that children who migrate autonomously are protected.

The **SADC Draft Protocol on the Facilitation of Movement of Persons in SADC**: This Protocol seeks to promote easier access to work and other opportunities across borders within the SADC community. Currently, children are not mentioned in the Protocol and it is yet to be ratified by all national parliaments. A review of the Protocol should be undertaken to ensure that children will not be refused the right to migrate and live unaccompanied in another

country, and that provisions are made to accommodate children's needs.

National law

The following legislation is South African:

The **South African Constitution**: The rights outlined in the Bill of Rights in Chapter Two of the South African Constitution apply to everyone, including children. Constitutional rights can be limited only where justifiable and reasonable.

The **Immigration Act of 2002 (as amended in 2004)**: South Africa's Immigration Act involves the provision of 'humanitarian assistance', a term that is subject to interpretation, to foreigners without fear of liability for aiding and abetting an 'illegal' immigrant. However, it does not specifically mention children and therefore most of South Africa's legislation on foreign children is provided for by the Child Care Act and Bill.

The **Refugees Act 130 of 1998**: South Africa has legislative framework to govern the rights, application process and other procedures in relation to those seeking and obtaining refugee status. There is a section that relates to unaccompanied minors, stating that they should be brought before a children's court if they appear to have a claim for asylum. It also states that children should be assisted in applying for asylum.

The **Children's Act 38 of 2005** and the **Children's Amendment Bill (B19 of 2006)**: The Act is applicable to all children living within South African borders, and does not exclude children who have entered the country through irregular channels. While there is a section on children who are trafficked, no special provision has been made for UMC. The Bill was tabled in Parliament in August 2006 and is as yet under consideration. When the Bill is passed, it will amend the Act.

Under existing procedures, UMC should immediately be screened by a social worker in order for their situation to be established. If a child has no recourse to the Refugees Act, the next step becomes unclear to many service providers. The Immigration Act does not provide

guidelines for how UMC in need of care should be treated, but instead refers back to the Children's Act.

The recognition of the Act's relevance to foreign as well as South African children, and its subsequent implementation, accordingly is key in ensuring that UMC are protected in South Africa. Section 32 of the Refugees Act specifically refers to the Children's Act to apply in cases where unaccompanied or refugee children are found to be in need of care.

Guidelines: In theory and in practice

They call us MaZimbabwean, like we are dogs. 'You are smelly, go home, Zimbabweans.' I feel bad in my heart, it hurts.

Musina, 19 years old

Should there be any concern that the child might be removed from South Africa, social workers can request that the Children's Court order that the child not be removed from the country. While children can be deported, they may not be deported automatically, especially not unaccompanied and without a plan in place with regard to the country to which they are being returned. Efforts should be made by social workers to reunite the child with his or her family or to hand over the child to an agreed authority in the country of origin.³⁹

However, the reality in South Africa diverges radically from the legislation, frameworks and conventions designed to protect children and UMC. At present, South African authorities, departments and civil society are unable to provide an adequate level of care and assistance to UMC, because of lack of clarity around laws and procedures with specific regard to these children. This is compounded by xenophobia, and a lack of commitment, capacity and resources.

As touched on above, most UMC living on the border fear being arrested and detained by the police and then deported to their home country. Thus, they are unlikely to approach the police for assistance. This is despite the fact that these children can be detained only as a last resort. The various abuses suffered by UMC likewise tend to go unreported. Not only do

these children have to deal with their trauma alone, girls especially become more vulnerable to infection by HIV and other diseases, and/or pregnancy. Furthermore, UMC may become the targets of perpetrators who know that their crimes will not be reported by these children.

Xenophobic attitudes among officials and other public office bearers on the South African side also contribute to the current scenario in which UMC are denied their rights under national and international legislation. On the ground, a distinction is often (mistakenly) made between South African children and non-national children by the very authorities that should be supporting and assisting them.

According to South African legislation, children may not be detained unless as a last resort, and certainly not with adults. However, children in South Africa do relate stories of being detained, sometimes with adults.⁴⁰ Detention with adults could traumatise the child and put him or her in genuine danger of being abused. Once back in Zimbabwe, for example, where they have been returned unaccompanied, many children then simply re-cross the border and become vulnerable yet again.

The recent research report in South Africa⁴¹ shows that police often practise a process of 'catch and release', which serves no useful purpose. This is confirmed by SC UK's recent programme experiences in Musina. In these cases, the police should contact a social worker to take on the child's case, and in turn these children's cases should be referred to the International Social Services (ISS), a subsection of the Department of Social Development. Further enquiries need to be made to establish if and where in the chain the child is being denied social services access, and appropriate awareness-raising, training and support needs to be targeted at that weak link.

In a more recent development, anecdotal evidence from SC UK – South Africa's programme reports suggests that South African police in Musina on the border with Zimbabwe are starting to give up arresting, detaining and deporting children back to Zimbabwe. They appear to be acutely aware that the children re-cross to South Africa, sometimes on the

39 Lawyers for Human Rights, 2003

40 Clacherty, 2003; Palmary, 2007

41 Palmary, 2007

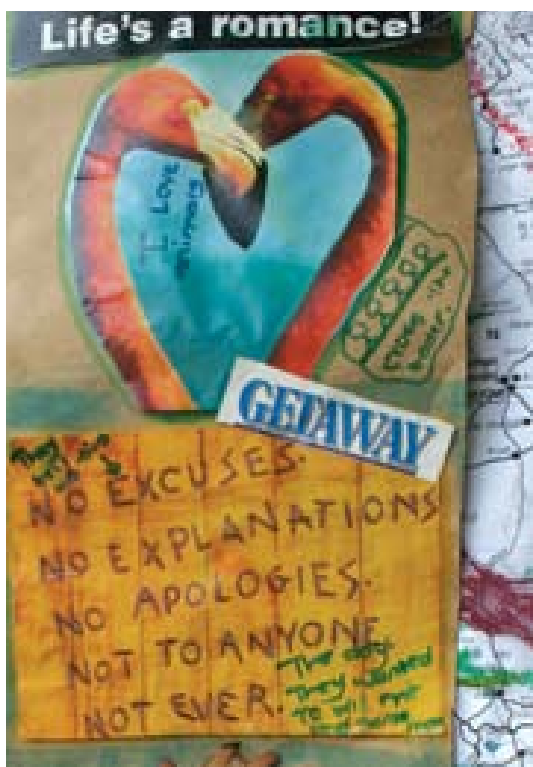
same day that they were deported. Police are also aware that it is illegal for them to deport children without following the correct procedure. Hence, UMC are now left to roam the streets, sometimes being detained and then released by police, but with no particular assistance strategy. Clearly, better practical guidelines around how to handle UMC are needed by the authorities.

I was afraid of the municipal police. They would arrest you for selling vegetables on the street. I was arrested and kept in jail [Matsapha Central Prison] for three months. It was difficult. We stayed together with adult prisoners who were serving long sentences. We were overworked in the field. Others tried [to sodomise me], but when you told them you were going to report to the warders, they would leave you alone.

Manzini, Swaziland, 16 years old

I don't ask the police for anything because if we do the police just take us back to Mozambique. They don't want to hear our stories. I once tried asking for help. My friend was being beaten up by a guy. We told the police everything, our whole stories. They didn't want to hear us. They just took us back to Mozambique. They said, 'No more working in South Africa for you. You must stay in Mozambique.' They didn't do anything about the guy that was beating my friend.

Komatipoort, 14 years old



Clearer guidelines matched with increased commitment and capacity

When appropriate guidelines have been developed, they need to be backed up by a much stronger commitment and increased capacity to protect and support UMC. While many municipalities, schools and social services at a local level are making effort to assist and accommodate UMC, the reality with regard to Mozambique and South Africa is that UMC are consistently being denied their rights and fail to receive the assistance to which they are entitled. There is growing evidence that this is also relevant in Swaziland, where many Mozambican children are to be found trying to earn a living.⁴²

In South Africa, Mozambique and Swaziland, social services and social workers are already overstretched and cannot cope with the needs of their national children. Schools and hospitals are under-resourced and overcrowded. Housing is scarce and many nationals, who migrate internally to urban areas in search of work, live in informal settlements. But despite these challenges, UMC should not be excluded from accessing these services.

In South Africa and Mozambique, UMC have inadequate access even to basic services. The areas near the taxi ranks in Musina, for example, do not offer clean water that UMC can drink or use for washing.⁴³ More generally, children cannot easily access other services such as education.

In Mozambique it has been reported that children in Manica indeed receive health care from local hospitals.⁴⁴ It was also indicated that in South Africa children do have relatively good health care access, as compared to other services.⁴⁵

However, the 2007 study also revealed that few of the UMC interviewed – a mere 10% – who live on the South African side of the border have received support from a welfare organisation.⁴⁶ While local organisations are running soup kitchens and providing some other humanitarian forms of assistance to these children, in general national and international NGOs and donors are not doing enough for UMC.

42 SC UK – Mozambique, 2007

43 Clacherty, 2003

44 SC UK – Mozambique, 2005

45 Palmary, 2007

46 Palmary, 2007

Given the current pressure on South Africa, Mozambique and other countries in the region to respond to increasing numbers of their own orphans and vulnerable children, the question of why non-national children should also be given priority needs to be considered. In addition, we must evaluate whether improving assistance to UMC might add to the pull factors and encourage children to migrate to countries that can accommodate them.

The argument for the prioritisation of national children does not take into account the impact and cost that not caring for UMC could have on the destination country. This argument can equally be used when we look at the possibility that improving assistance to UMC will encourage more children to migrate. Again, the reality is that children are already crossing the border, despite the fact that their destination country has little in the way of service provision to offer them. Inaction has not deterred these children thus far, and the potential cost of failing to ensure that they are better protected will most likely be high.

Key recommendations

- Key gaps in policy and legislation to protect UMC need to be addressed. A technical review of these instruments at various levels, especially at national level, is needed in order to ensure that UMC are specifically mentioned in and therefore protected by legislation. Countries such as South Africa and Mozambique need to clarify existing legislation and policy frameworks that relate to UMC. Ideally, responses to UMC should be integrated in orphan and vulnerable children national plans of action. Clear guidelines must be developed to guide government departments, agencies and authorities. In order to ensure that the children themselves, civil society and government offices can access the guidelines more easily, regular training sessions and setting up of child rights information points at government and civil society locations may need to be implemented.
- The capacity to implement policies and enforce legislation needs to be strengthened in countries such as South Africa and Mozambique. Guidelines can be effective only if local governments have the necessary budget and resources to be able to put relevant and functional infrastructures in place.
- Civil society, especially national and international NGOs, can play an important role in providing services to UMC, in strengthening the capacity of government and other service providers to protect UMC, and in informing and supporting government and other policy-makers and programmers about UMC issues. However, migrant children should not be dealt with in parallel interventions – they should be integrated into existing infrastructures and frameworks for all vulnerable children. This will reduce levels of stigmatisation and xenophobia, and will contribute to the long-term sustainability of assistance provided to migrant children, as support structures will not depend on donor priorities. An emphasis should be placed on boosting child-friendly services in general.
- Regional level initiatives, government and other agencies must also play their part. Not only should regional level policies and legislation be reviewed and updated, but collaboration across borders should also be supported by regional organisations. For example, strategic partnerships could be formed between local governments on either side of a border. Responses could be coordinated and followed up collaboratively.
- Learning and exchange between countries and regions needs to be supported. There are important lessons to be learned from a systematic analysis of existing interventions and strategies at national and local levels. Regional research bodies and agencies are well placed to support or undertake this type of activity.

Conclusion

This report has argued that many children migrate across borders in the southern African region for reasons other than trafficking. Most often, their migration is a response to extreme poverty and HIV and Aids in their own country. As a result of migration, children often become even more vulnerable in the host country. In the contexts described in this report, being a migrant child means that he or she is more likely to be exploited or abused.

The response in the region appears inadequate at present. Not only do countries such as South Africa need to work harder to ensure that these children are protected, but at the regional level relevant policies also need to be reviewed and revised so that children are not excluded from the benefits therein. Additional training, capacity and commitment need to be fostered in order for policies and legislation to be implemented effectively. In particular, the challenge of xenophobia should be addressed and overcome.

Additional research and studies on all types of migrant children need to be carried out in order for the many gaps in our knowledge to be filled. This should include additional research on the children of international migrants, on refugee children and on those born to illegal

migrant parents in South Africa. As an addendum, matters of universal, easily accessible, free birth registration in the region need to be addressed to ensure that every child, no matter which country they are living in, has identification and a nationality.

More generally, responses to the needs of migrant children should not work in isolation of broader frameworks to protect national vulnerable children. Responses that target migrants only, especially from NGOs, could be counter-productive, as they might stigmatise children, create parallel services, and send a message that migrant children do not have the right to access the services that national children may access.

Finally, more cross-border and other collaborative initiatives need to be supported in order for the issue of migrant children to be effectively addressed. This should include an acute focus on preventative measures in an effort to reduce the number of children who decide to migrate. Broadly speaking, the need for children to migrate across borders only emphasises the work that remains to be done in the region on fundamental challenges such as HIV and Aids and poverty.



Key Save the Children studies on child migration



- **Save the Children UK – Mozambique. 2007. Children who cross borders project.** Sixty children in Mozambique, Swaziland and South Africa were interviewed in order for insight to be gained into their experiences as migrants. Their stories have been recorded and will be published in book form in 2007/08.
- **Palmary, I. 2007. Children crossing borders: Report on unaccompanied minors who have travelled to South Africa.** The Forced Migration Studies Programme, University of the Witwatersrand, for Save the Children UK. This is a research report that interviewed 130 children in Johannesburg, and at points on the South African border with Zimbabwe and Mozambique.
- **O’Connell Davidson, J. and Farrow, C. 2007. Child migration and the construction of vulnerability.** School of Sociology and Social Policy, University of Nottingham, for Save the Children Sweden. This is a global survey of the links between children who migrate and their increased levels of vulnerability.
- **Save the Children UK – Mozambique. 2005. Visitors from Zimbabwe, a preliminary study into Zimbabwean children migrating to Mozambique.** This is a short study on the situation of Zimbabwean children living in Mozambique.
- **Clacherty, G. 2003. ‘Poverty made this decision for me’: Children in Musina: Their experiences and needs,** for Save the Children UK. This is a research report that interviewed migrant children living on farms or unaccompanied near Musina in South Africa.
- **Reale, D. 2003. Mapping an analysis of Save the Children UK’s work on trafficking.** This is a report that draws together approaches and best practice from Save the Children UK’s programmes at the time in order to help develop more comprehensive policy, programming and advocacy positions for Save the Children UK’s work on trafficking.

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