



# For Better Implementation of Migrant Children's Rights in South Africa

Written by Ingrid Palmary, PhD  
Forced Migration Studies Programme

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children

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Discussion with selected UNICEF staff contributed to the finalisation of the report.

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## List of acronyms

ACRC	African Convention on the Rights of the Child
AIDS	Acquired Immunodeficiency Syndrome
ART	Antiretroviral Therapy
AU	African Union
CCMA	Commission for Conciliation, Mediation and Arbitration
CRC	Convention on the Rights of the Child
DRC	Democratic Republic of Congo
DSD	Department of Social Development
DHA	Department of Home Affairs
DoH	Department of Health
FMSP	Forced Migration Studies Programme
HEAD	Health, Environment and Development Study
HIV	Human Immunodeficiency Virus
IOM	International Organisation for Migration
JMPD	Johannesburg Metropolitan Police Department
MRC	Medical Research Council
NGO	Non-Governmental Organisation
NSP	National Strategic Plan (for HIV/AIDS)
NACCA	National Action Committee for Children Affected by HIV/AIDS
OAU	Organisation of African Unity
OVC	Orphans and Vulnerable Children
POWA	People Opposing Women Abuse
RSA	Republic of South Africa
SADC	Southern African Development Community
SAPS	South African Police Service
UN	United Nations
UNICEF	United Nations Children's Fund
UNHCR	United Nations High Commissioner for Refugees

## Executive summary

This report outlines the situation facing children who migrate across international borders to South Africa. The report begins by outlining the policy framework that should guide migrant children's access to rights in South Africa. This section points to a well developed legal and policy framework for securing the rights of migrant children regardless of their documentation. The second section of the report reviews existing studies on child migration with a view to identifying children's access to their rights as well as pointing to gaps in information. The research on child migrants indicates very poor implementation of the legal and policy framework and significant abuses of migrant children's rights. In particular, children are often left behind when caregivers migrate and face a range of vulnerabilities associated with this. In addition, children are migrants in their own right and the existing research indicates that, where children migrate alone, they are particularly vulnerable to exploitative working conditions, violence and denial of basic rights. Migrant children's access to basic health and education is extremely compromised and there is evidence of widespread violence and abuse against them – very often by the state authorities whose duty it is to protect them. Furthermore, there is an indication from the research that children who live outside of the major urban centres are particularly vulnerable.

There is a lack of capacity for intervention with child migrants in South Africa. Many of the migrant rights organisations that exist do not specifically address the rights of children and many children's organisations lack the knowledge on migrant children's rights to intervene effectively. Access to rights is almost entirely facilitated by NGOs in South Africa with migrant children having very limited direct access to government departments and services.

This report makes recommendations for intervention by the United Nations Children's Fund (UNICEF) and other partners for strengthening migrant children's access to basic rights in South Africa.

# Recommendations

## For improved information

Further research is needed into the following areas:

- Children living outside of urban centres and their access to basic rights;
- The situation of unaccompanied minors in border areas;
- The labour practices of migrant children;
- The experiences of children left behind when parents migrate, particularly their access to nutrition, education and health;
- Studies that focus on children's rather than household experiences.

A central website collating information on children and migration should be maintained.

## For advocacy

- Advocate for regional collaboration for ensuring the rights of children to access education and health. In particular regional coordination of responses to HIV are needed;
- Use regional structures such as the African Union (AU) and the Southern African Development Community (SADC) to highlight the barriers to South Africa's implementation of child rights for migrants;
- Conduct national level advocacy for the rights of all children regardless of documentation;
- Advocate for labour courts to monitor exploitative labour conditions of children;
- Advocate for police to focus on eradicating smugglers on borders;
- Advocate for the Department of Social Development and the Department of Home Affairs to establish a working agreement on the procedures for dealing with child migrants;
- Advocate for the Department of Education to issue a memorandum clarifying that no child, regardless of documentation status, should be excluded from education;
- Advocate for the police and Department of Home Affairs to investigate the illegal deportation of children;
- Advocate for migrant children's access to child support grants.

## For policy development

- Advocate for the development of an action plan for unaccompanied minors;
- Clarify the rights of different categories of migrants in the national plan of action on OVCs and the national framework for orphans and other children made vulnerable by HIV and AIDS;

**For organisational capacity building**

- Support the development of in-house training for police and social workers on the rights of migrant children;
- Support for organisations outside of urban centres is needed where migrant children are likely to be most vulnerable, in particular the borders with Lesotho and Mozambique;
- Build local capacity for high level advocacy on child rights.

**For migrant communities**

- Support the structures that offer information on migrant rights and create new training and information services in under-serviced areas;
- Assist with the development of integration strategies in schools;
- Facilitate the development of community based care and support structures for unaccompanied minors.

# Section 1: Introduction

This report gives an overview of the situation of children affected by migration into South Africa. It focuses on cross-border migrants who migrate alone, with adult caregivers or who remain behind when their caregivers migrate. The report is therefore not intended to document the experiences of children who migrate internally. The report covers the following main questions:

- What is the legal and policy framework governing the provision of rights to migrant children in South Africa?
- What is the profile of migrants and how has it changed over time?
- What are the reasons for children's migration and what is the social cost of migration on families and children?
- What institutional capacity exists for responding to the needs of children who are affected by migration?
- What level of access to services do child migrants enjoy and what are the barriers to effective access?
- What are the main risks to the safety and protection of migrant children?
- What are the levels of integration of migrant children into South African society?
- What are the levels of knowledge among service providers and migrants themselves about their rights in South Africa?

Where answers to these questions were not available from existing data sources, gaps in information have been pointed out. This report begins with an overview of the legal and policy framework that should guide children's access to rights. It also identifies where this framework is lacking and where there is failure in its implementation for migrants. The report then goes on to identify what is already known from research about the situation of children who are affected by migration. This section draws on existing research from studies by a range of different organisations. Gaps in information are identified, as is a research agenda that can support effective implementation of children's rights. Finally, the fourth section of the report gives an overview of the organisations in South Africa that respond to the rights and needs of migrants. Gaps in service delivery are identified, as are the key challenges facing organisations responding to the needs of migrant children.

## Section 2: Legal and policy framework

### Conventions and declarations

Since democracy, South Africa has signed and ratified many United Nations (UN) conventions that create the framework for legislation and policy in keeping with human rights. This has been followed by a substantial process of law reform that is an important first step in securing a human rights approach to managing migration. This section reviews some of the key conventions, declarations, legislation and policy that guide South Africa's response to migrant children. It is intended to provide a backdrop against which interventions for promoting the rights of migrant children can be read. Key founding conventions that have been signed by South Africa include the Convention on the Rights of the Child, the Convention on the Elimination of all forms of Discrimination Against Women, the optional protocols on the Convention on the Rights of the Child and the International Labour Organisation convention on the elimination of the worst forms of child labour. South Africa has also signed the UN declaration of commitment on HIV/AIDS and the SADC declaration on HIV/AIDS. For the most part, South African law reform has been in keeping with these instruments. However, given the particularly vulnerable position of migrant children in any society, the section below identifies some of the key instruments that can be used to secure the rights of migrant children in South Africa as well as the shortcomings in the legislation.

***The Convention on the Rights of the Child*** states that all children are given equal status regardless of their nationality. It requires the state to:

- Take appropriate measures to promote the inherent right to life and ensure the child's survival and development;
- Take appropriate measures to protect all children from any form of discrimination;
- Take appropriate measures to protect all children from all forms of maltreatment perpetrated by parents or others responsible for their care and undertake preventative and treatment programmes in this regard.

Of significance to migrant children are the provisions for refugee children which require the state to:

- Take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee, receives appropriate protection and humanitarian assistance;
- Assist such a child to trace parents and family and where possible arrange unification with the family; and
- In cases where no parents or other family members can be found, the child should be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason.

Drawing on the Convention on the Rights of the Child, the ***African Convention on the Rights of the Child (ACRC)*** specifies that every child shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the ACRC irrespective of the child's or his/her parents or legal guardian's "race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status". This therefore provides a very important framework for securing the rights of migrant children. The ACRC states that every child has the right to a name and nationality and should be registered immediately after birth. States are required to recognise the principles according to which the child should acquire nationality if he/she is not granted nationality by the laws of any other state.

The ACRC states that all children have the right to free and compulsory primary education and calls on states to encourage secondary education. It makes special mention that states should promote the education of female children and allow girls who are pregnant to continue their studies on the basis of their individual ability. Furthermore it states that every child has the right to the best attainable state of health. The ACRC emphasises the responsibility of states to reduce infant mortality and to provide health care with emphasis on primary health care and the health of pregnant women. The ACRC states that every child should be protected from all forms of economic exploitation and from performing any work that is hazardous or interferes with their physical, mental, spiritual, moral and social development, earn minimum wages for admission to employment, and that the hours and conditions of employment should be regulated.

Furthermore, the ACRC states that children should be protected from torture, inhuman or degrading treatment and especially physical and mental injury or abuse, neglect and maltreatment including sexual abuse. This includes the responsibility of states to create monitoring units and the provision of support to the child. In a provision on the protection of the family, the ACRC states that every child separated from his/her family shall have the right to maintain relations and direct contact with them and, where the child is apprehended by the state, the parents or guardian shall be informed as soon as possible. The convention states that child marriage and betrothal of girls and boys should be prohibited and the minimum age of marriage should be set at 18 through national legislation.

As with the Convention on the Rights of the Child (CRC), there is a special provision for refugee children that requires states to take appropriate measures to ensure that a child who is seeking refugee status regardless of whether they are accompanied by caregivers or unaccompanied, receive appropriate protection and humanitarian assistance consistent with international human rights and humanitarian instruments. The state should cooperate with international organisations providing family tracing and reunification services and where no legal guardians or close relatives can be found, the child should be accorded the same protection as any other child permanently or temporarily deprived of his family environment for any reason. This includes alternative foster or institutional care where they have no family environment, family tracing and reunification. Special mention is made that this applies to internally displaced children but there is no mention of other migrant children separated from parents. Nevertheless the ACRC does state that any child separated from his/her parents is entitled to special protection and assistance and this provision can be used to secure the rights of unaccompanied, undocumented minors. States are required to take all possible

precautions that this provision for family tracing does not result in the trafficking of children. It states that a child should be protected from sexual exploitation and abuse including coerced sex, prostitution and involvement in pornographic activities. The abduction, sale or trafficking of children should be prevented by all appropriate measures.

***The UN Convention relating to the Status of Refugees*** takes, as one of its core principles, the unity of the family and recognises the family as the natural and fundamental group unit of society. In a unanimously adopted recommendation, it emphasises the family as a right, one which is threatened for refugees. Governments are required to take the necessary measures to protect the family with a view to:

- Maintaining the unit of the family where household heads fulfil the conditions for admission to the country;
- Protecting refugees who are minors, especially unaccompanied minors and girls with special reference to guardianship and adoption.

Article 3 states that the convention should be applied without discrimination and this would include discrimination on the basis of age. Similarly article 31 states that the country may not impose penalties because of illegal entry into the country nor can a refugee be expelled without due process of law. A person may not be returned to a place where their life is threatened due to race, religion, nationality or membership of a social group or political opinion. Beyond the abovementioned clauses on the family, there is little specific mention of the rights of children.

***The Convention on the Elimination of Discrimination Against Women*** defines discrimination as “any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women of human rights and fundamental freedoms in the political, economic, social, cultural, civil or other field”. States are required to ensure legal protection of the rights of women and prohibit discrimination against women. In terms of the convention, temporary measures to accelerate equality between men and women shall not be considered discrimination. The convention calls on states to modify cultural practices with a view to eliminating discrimination and to address discrimination in public and political life, education, labour rights, access to health facilities and access to financial and social services. It emphasises the particular problems faced by rural women and the need for equality of all women before the law.

***International Labour Organisation Convention 182 on Child Labour*** recognises the need to remove children from worst forms of child labour and provide for their rehabilitation and integration. Furthermore, it recognises the interrelationship between child labour, poverty and the need for free basic education. It includes, as some of the worst forms of child labour: forms of slavery or similar practices including use of children in armed forces, debt bondage and compulsory labour, the use of children for prostitution or the production of pornography, the use of children in illicit activities and work that harms the health, safety or morals of children. It calls on governments to identify where such practices exist and implement laws to address them. It also calls on them to monitor such practices and implement programmes of action to eliminate these practices as a matter of priority. The convention emphasises the importance of education in eliminating

child labour and particularly for those children who are removed from such labour. It mentions the 'special situation of girls'. Importantly it calls on states to assist one another in eliminating these practices which gives scope for addressing the situation of migrant children.

***The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime*** defines trafficking in persons as the "recruitment, transportation, transfer, harbouring or receipt of persons using coercion or force, or the recruitment, transfer, harbouring or receipt of a child for exploitative labour including prostitution, forced labour, slavery or the removal of organs." The Protocol calls on states to develop legislation to establish trafficking as a criminal offence, to provide victims with access to the legal process and provide for their physical, psychological and social recovery. The convention also provides for their deportation which should preferably be voluntary. The convention emphasises the need for states to develop programmes to prevent trafficking and to prevent re-victimisation of trafficking victims. The protocol states that law enforcement officials in different states should cooperate to identify trafficking at borders, to determine the methods used for trafficking and to ensure law enforcement officers and other relevant officials are trained to detect and prosecute traffickers. It also states that border controls should be strengthened to prevent trafficking.

***The UN Declaration of Commitment on HIV/AIDS*** calls for leadership by governments in combating HIV/AIDS through the development of national strategies and financing plans for combating HIV/AIDS. It emphasises addressing the age and gender based dimensions of the epidemic. It encourages the development of regional and sub-regional approaches and plans to address HIV/AIDS. It includes two main components namely, prevention, and care and treatment. It emphasises the needs of the vulnerable including the youth, and the needs of orphans and vulnerable children for which national policies and strategies should be developed.

## Legislation

***The South African Constitution*** is central to promoting human rights in South Africa. Section 28 (3) of the Constitution gives protection to children's rights whilst the Child Care Act along with the Children's Act (described below) gives effect to these rights. According to the Constitution a child is any person under the age of 18 years. It makes no distinction between citizens and non-citizens and therefore can be taken to apply to all children in South Africa. It states that every child has the right to:

- a. a name and a nationality, to family care or parental care, or to appropriate alternative care when removed from the family environment;
- b. basic nutrition, shelter, basic health care services and social services;
- c. be protected from maltreatment, neglect, abuse or degradation;
- d. be protected from exploitative labour practices;
- e. not be required or permitted to perform work or provide services that are inappropriate for a person of that child's age, or place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;

- f. not to be detained except as a measure of last resort, in which case, the child may be detained only for the shortest appropriate period of time, and has the right to be
  - kept separately from detained persons over the age of 18 years; and
  - treated in a manner, and kept in conditions, that take account of the child's age;
- g. to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and
- h. not to be used directly in armed conflict, and to be protected in times of armed conflict.

The Constitution also states that a child's best interests are of paramount importance in every matter concerning the child.

**The Children's Act** was written in 2005. On 1 July 2007, 43 sections of the Act were promulgated and are now in operation. The 2007 Act as well as the remaining sections of the 2005 Act are still not in operation. The Act aims to promote and preserve families and give effect to the constitutional rights of children. It sets the standard for the principle of "best interests of the child". It sets out parental responsibilities and rights. Furthermore it mandates every Magistrate's Court to become a Children's Court and outlines their jurisdiction. The Act emphasises the rights of the child to participate in decisions affecting him/her. The Act requires that a register be kept of a) details of children who are abused or neglected and b) people deemed unfit to work with children. The Act goes on to define a "child in need of care" and this definition includes those who have been orphaned or abandoned. The Act makes special mention of child victims of trafficking and states that they may not be returned to their country of origin without consideration of the care arrangements in place for the child, the safety of the child and their risk of being trafficked again.

Most notable is that the references to migrant children, which were part of the draft bill, were removed from the final draft of the Children's Act. Whilst the Department of Social Development argued that this was because it was not necessary to specifically identify migrant children, whether this limits or expands access to rights for migrant children remains to be seen. For example, in an address at the conference 'Getting South Africa Ready to Implement the Children's Act,' Minister of Social Development, Zola Skweyiye, stated:

*"Let me remind you all that Section 1 of the Children's Act defines a child as a person under the age of 18 years. It does not add any additional requirements such as South African citizenship or that the child had to be born in South Africa. This means that foreign children are offered the same protective measures in terms of this legislation whilst they are in South Africa. Foreign children may be placed in temporary safe care and Children's Court enquiries may be opened in order to determine whether the child is in need of care and protection. If the Court finds a foreign child to be in need of care and protection the Court will have the same options to order the future care situation of the child. This means that foreign children may be admitted to Child and Youth Care Centres or be placed in foster care in order to serve their best interests" (27 May 2008).*

In spite of this, there is concern that, as has been the case with health care provision, the failure to specifically mention the rights of migrant children may mean there is confusion among service providers.

**The Refugees Act** states that refugees are entitled to the same health care and basic education as nationals. Most important is section 32 which states that any child who appears to qualify for refugee status and is in circumstances suggesting he or she qualifies as a child in need of care under the Child Care Act must be brought before the Children's Court who may order them to be assisted in applying for asylum. Section 33 provides that a person who qualifies for asylum under the Refugees Act must assist any dependents to apply, or apply on their behalf. Significantly, the South African Refugees Act recognises the Organisation of African Unity (OAU) definition of a refugee which includes a person who has fled their country due to "events seriously disturbing the public order" and specifies that no person can be rejected at the frontier but must be allowed to proceed to a refugee reception office. Also significant is the emphasis on gender in the Act. Both gender and sexual orientation are specifically mentioned as grounds for applying for asylum and the proposed amendments to the Refugees Act further proposes adding gender as a social group. This makes it the most gender progressive Refugees Act in the world.

**The Immigration Act** states that a person may only enter the country with a valid passport and the appropriate temporary residence permit. For people identified as illegal foreigners, it outlines the procedures for arrest and deportation. One such form of temporary residence permit is if a citizen wishes their foreign immediate family member to join them. For children of working age, the corporate visa system is significant. It allows an employer to employ a group of foreigners under certain conditions. One such condition is that they are not employed for wages lower than a South African would be. It also allows for part of the foreigner's salary to be remitted to their country of origin. A child of a citizen or permanent resident can be issued a permanent resident permit. People facing deportation must be given written notice of the intention to deport them and given 20 days to appeal the decision. The Director General then has 10 days to reject, modify or uphold the decision. The Act states that no person is allowed to employ an illegal foreigner.

**The Citizenship Act** states that a person can obtain citizenship by descent, birth or naturalisation. A child born in South Africa is only a citizen if born to South African parents. Importantly, a child is not eligible for such citizenship if the child's parents entered the country illegally. A person born in South Africa is a South African citizen if they are adopted by South African citizens or has no other nationality or right to that nationality. A person is a citizen by descent if one of their parents is South African and they register the birth of the child in terms of the Act. The same applies for an adopted child. A child cannot be a citizen by naturalisation directly, but their parents can, after residing legally in the country for a period of five years. The child would then be awarded the same status as their parents. The spouse of a citizen by naturalisation is entitled to the same status. The Minister is entitled to issue, at his/her discretion, a certificate of citizenship if there is doubt as to the person's citizenship.

**The Births and Deaths Registration Act** makes it compulsory to report births and deaths within the Republic. It is a criminal offence not to do so.

**The Promotion of Administrative Justice Act** requires that any action taken by a public official that negatively affects a person must be done in a transparent way and give the person an opportunity to make an input regarding the decision. Any final notice must give a clear statement of the decision, give full and written description of the evidence they used to make the decision and outline the rights that they have for appeal, to whom an appeal should be sent and the time allocated to appeal. This is important when assessing the treatment given to foreigners in terms of the laws outlined so far.

**The Basic Conditions of Employment Act** states that a child under the age of 15 may not be employed nor may anyone employ a child who is below the minimum school leaving age. Similarly, no one may employ a child in work inappropriate to their age or work that risks their education, physical and mental wellbeing, spiritual or moral or social development. The burden of proof lies with the employer if there is no evidence of the age of the child. The Act also prohibits all forms of forced labour. It creates for labour inspectors to monitor compliance with the Act. They can inspect places of employment and issue compliance orders. It also creates labour courts to hear cases connected to the Act. An important recent CCMA decision by the Commission for Conciliation, Mediation and Arbitration (CCMA) found that the conditions of work must still comply with this Act even if the employee was an undocumented migrant. On 7 April, 2008, the Johannesburg Labour Court ruled that undocumented foreign nationals have the same labour rights as South African employees. This is important, particularly for unaccompanied migrants who are likely to work and have no documents, as will be described below.

**The South African Social Assistance Act** specifies that social assistance is available to South African citizens. However, in October 2006, in response to a case brought by Lawyers for Human Rights in which refugees claimed the right to disability grants, the Department of Social Development filed a Social Assistance plan for refugees in which they committed to providing refugees access to disability grants by the middle of 2008. To date this has not been implemented. Furthermore, migrants who are not refugees do not have access to social assistance grants. In terms of the Act, grants are given for children under the age of 14 years to their primary caregivers, or to the adult upon whom the child is dependent, or to the foster parent of the child provided the child is a child in need of care. The Social Relief of Distress grant exists and there has been a significant lobby for this to be used to provide short term relief to migrants and asylum seekers. However, this has yet to happen.

**The South African Schools Act** requires the Minister to set in the Government Gazette the age for compulsory school attendance. It states that a public school must admit a child without unfairly discriminating in any way. This includes learners unable to pay fees. They may not require any admission test or require learners to subscribe to the mission statement of the school. The Act also prohibits corporal punishment. The Act allows for the creation of a school governing body made up of educators, learners, parents, experts and representatives of organisations for learners with special needs or disabilities.

## Strategic plans and frameworks

**The HIV & AIDS and STI Strategic Plan** aims to reduce the rate of new infections by 50% by 2011. The key strategies for this include poverty reduction, empowerment, women's rights and human rights, reducing gender based violence, creating an enabling environment for testing, education and increasing social cohesion. The policy puts a focus on young women, communication between parents and children and increased prevention programmes for higher risk populations. It also focuses on addressing the special needs of pregnant women and children.

The policy mentions migration as a risk factor for increased HIV prevalence. The emphasis is on migration as a risk factor for increasing the spread of HIV/AIDS and migrants are identified as a high risk group. However, there is a great deal of inconsistency about which migrant groups are considered to be at risk and why. For example, it refers at some points to labour migrants as a high risk group because they are likely to have more sexual partners. It later states that cross border migration increases the vulnerability of the migrant and those in their sending and receiving country. The plan then goes on to mention refugees as having higher risk due to the disruption of health care services, lack of knowledge about South African services, barriers such as language, and xenophobia. Nevertheless, in the section entitled "Increase roll out of prevention programmes for higher risk populations" migrants are no longer included in the list of vulnerable groups and the plan instead mentions men who have sex with men, lesbians, sex workers and their clients.

Importantly the plan mentions that children lack access to treatment and care as a priority for intervention, primarily because of the lack of youth friendly services. It identifies protecting and respecting children as a key principle underpinning the National Strategic Plan (for HIV/AIDS) (NSP). It also emphasises equality and non-discrimination against marginalised groups and specifically mentions "orphans, refugees, asylum seekers, foreign migrants..." (p.56). The section on prevention targets emphasises adolescents and the section on treatment, care and support emphasises orphans and vulnerable children and youth headed households. The plan also emphasises preventing school dropout with specific programmes for out of school youth, child headed households and youth friendly health care services. Monitoring of the national plan of action for Orphans and Vulnerable Children (OVCs) is included as is the need to track grants and social services to OVCs. Examples of suggested interventions that impact on children include exemption from school fees, exemption from health fees, child support grants and birth registration. The plan emphasises the need for OVCs to access documents and the implementation of local level services for OVCs and their access to a community caregiver. The NSP emphasises that Human Rights and access to justice are at the heart of the framework.

One of the main concerns with the plan is that the language used to refer to migrant groups is inconsistent, referring sometimes to internal migrants, sometimes to refugees, sometimes to refugees and asylum seekers and sometimes to all migrants. As will be discussed, this lack of clarity about which migrants have been entitled to which health services is an issue that has pervaded health care delivery to migrants.

***National framework for orphans and other children made vulnerable by HIV and AIDS in South Africa*** is provided for by the HIV & AIDS and STI Strategic Plan. It identifies six key strategies for responding to the needs of such children namely:

- strengthening the capacity of families to care for children;
- strengthening community based responses for the care, support and protection of OVCs;
- Ensure legislation and policy is in place to protect OVCs;
- Ensure access to essential services;
- Raise awareness and advocate for a supportive environment for OVCs;
- Engage civil society and business to play an active role in the plight of OVCs.

The policy framework defines OVCs and creates for a coordinating structure to promote coordination among stakeholders, share information, promote collaboration among stakeholders and to mobilise resources for work with OVCs. The framework makes no specific mention of migrant children and can be taken to refer to all children living in South Africa.

***The National Action Plan on OVCs*** identifies strategic priorities for addressing the needs of OVCs. They include:

- strengthening the capacity of families to protect and care for orphans and vulnerable children;
- mobilising community based responses;
- aligning policy and legislation and putting programmes in place;
- providing access to essential services;
- raising awareness to provide a supportive environment for OVCs; and
- engaging civil society and business to support OVCs.

There is an emphasis on the need for coordination among government departments and the plan proposes a National Action Committee for children affected by HIV/AIDS as well as provincial and district committees for children affected by HIV/AIDS. The action plan emphasises the need for resources to be made available for OVCs. Proposed activities are comprehensive and include programmes on food security, psycho-social needs, the specific needs of child headed households, establishing a database of OVCs emphasising early detection of at risk children, challenging stigma and providing legal protection. The emphasis for delivery is clearly placed with the Department of Social Development and the National Action Committee for Children Affected by HIV/AIDS (NACCA) but there is a strong emphasis on intergovernmental coordination particularly with the Department of Education and Department of Health and Department of Agriculture.

There are also two significant draft documents namely the ***draft Policy Framework and Strategic Plan on the Prevention and Management of Child Abuse, Neglect and Exploitation***, each of which, if passed, can be used to secure the rights of children.

## Reflections on the policy framework for securing the rights of children

Since 1994 South Africa has signed and ratified many significant conventions and has conducted a process of law reform in keeping with these commitments. From the perspective of migrant children's and families' rights there are two primary areas of concern.

Firstly, there are contradictory approaches to dealing with migrants in the law. The Refugees Act is an extremely progressive piece of legislation emphasising human rights. However, very few children and families who migrate to South Africa fall under this Act. To date there have only been approximately 150 000 asylum applications in South Africa of which approximately 30 000 have been granted asylum. There are a vast many more children who migrate under the Immigration Act which is a far more repressive piece of legislation focused on the restriction, detention and deportation of undocumented migrants. The focus on the control of migration has had an important impact on the rights of children as will be discussed later in the report.

Beyond this, there has been confusion among service providers about the different categories of migrants and their rights. For example, there is inconsistent practice among hospitals about providing treatment. Although it is clear from the Refugees Act that refugees are entitled to treatment, this represents a group of only 30 000 people. There is less clarity about the rights of asylum seekers, those on work permits and undocumented migrants. There has been equal confusion over whether children without documents should be able to receive education, with many schools turning them away.

Furthermore, even where there is clarity, there has often been a failure of implementation. For example, the Provincial Department of Health recently issued a memo clarifying that a person did not have to be in possession of any documentation in order to be given antiretroviral treatment. However, the practice in some clinics has still been to deny access to migrants without documents.

## Section 3: The situation of migrant children in South Africa

### Introduction

This section provides a description of what we know about the impact of migration on children and child rights based on previous research. The main databases used for analysis are listed in the table below:

Database	Research conducted by	Nature of analysis	Geographical location of research	Year	Study sample
The African Cities Survey	Forced Migration Studies Programme, University of the Witwatersrand	Secondary analysis of data	Johannesburg	2006	Heads of Households. Migrants and South Africans. N=847
The Health Environment and Development Study	Medical Research Council	Secondary analysis of data	Johannesburg	2006	Heads of households. Migrants and South Africans. N=536
The Unaccompanied Minors' Study	Forced Migration Studies Programme, University of the Witwatersrand	Secondary analysis of data	Musina, Komatipoort and Johannesburg	2007	Unaccompanied minors. Migrants. N=200
The Agincourt Database	University of the Witwatersrand	Review of published findings	Bushbuckridge	1992–2008	Heads of households. Migrants and South Africans. N=52 956
The Migrant Rights Monitoring Project	Forced Migration Studies Programme, University of the Witwatersrand	Secondary analysis of data	Nationwide	2007–2008	Individual interviews. Migrants attending NGO and government services. N=1190
The Access to ART Study	Forced Migration Studies Programme, University of the Witwatersrand.	Secondary analysis of data	Johannesburg	2007	Individual interviews. Migrants and South Africans at 4 health centres. N=449
Census South Africa	Statistics South Africa	Secondary analysis of data	Nationwide	2001	10% sample of all residents in country

It is important to note that none of these studies was designed to specifically address the question of migrant children's access to rights. Similarly, they draw on diverse methodologies and different sample sizes making comparisons across the studies difficult. The findings do nevertheless allow tentative descriptions of the situation of child migrants to be drawn and gaps in research identified. That there

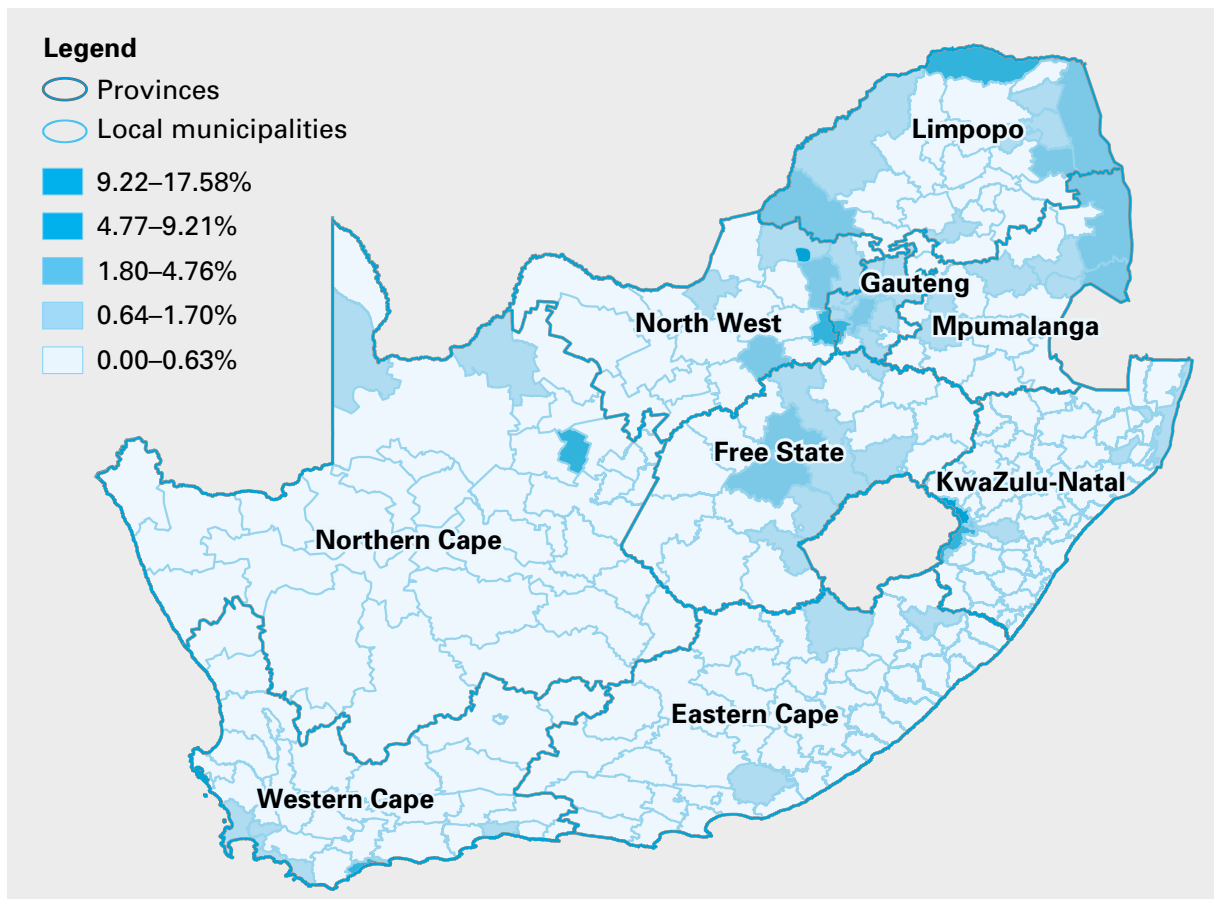
are so few sources of information about child migrants speaks to the need for both further research and centralising systems for storing and collating information about child migrants.

### Family structure and migration dynamics

Most of the information on the structure of migrant families is available from sources that were not initially studies of migration but which, through random sampling, captured migrants. In each case that has been included in this report, the sample of migrants was sufficiently large to make useful conclusions.

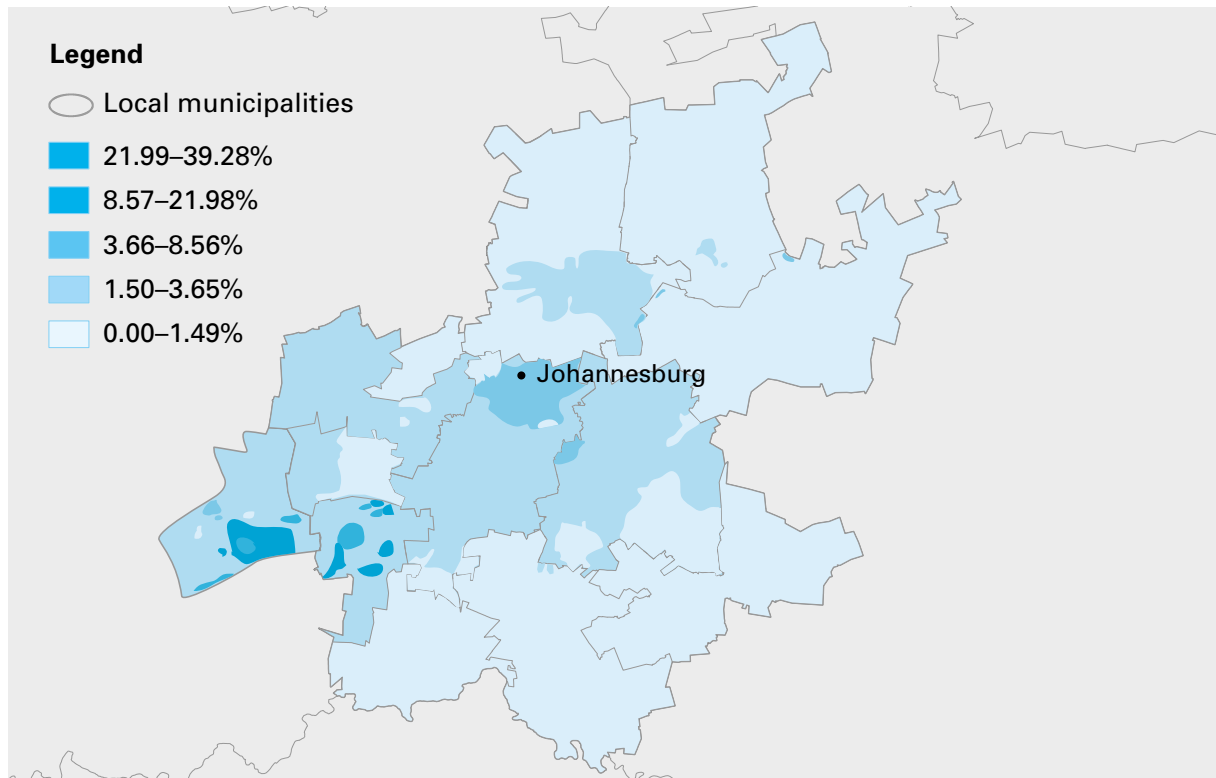
Using Census and triangulating with others we can expect foreign born migrants to make up about 2% (approximately 900 000) of South Africa's population (Crush and Williams, 2001). Of these, only about 150 000 are asylum seekers or refugees, making the progressive provisions of the Refugees Act open to only a small minority of migrants. What is clear from the census data is that migrants are concentrated in particular areas: cities, border areas and mining or agricultural areas. This is depicted in the map below:

**Figure 1: Percentage distribution of migrants in South Africa**



Source: Census 2001

This concentration of migrants is equally stark within cities as the following map of Gauteng indicates:

**Figure 2: Percentage distribution of migrants in Gauteng**

Source: Census 2001

This map indicates that the vast majority of areas in Gauteng have fewer than 4% of the population of foreign migrants. However, there are pockets of concentration in the rural areas and central Johannesburg. This already points to difficulties of integration which will be explored later in the report.

Table 1, drawn from the census, shows overwhelmingly that the migrants are from the SADC countries:

**Table 1: Country of citizenship for migrants**

Citizenship (SADC countries except South Africa)	Number	%
Mozambique	43750	58.6
Lesotho	10144	13.6
Zimbabwe	8114	10.9
Swaziland	3964	5.3
Malawi	2993	4.0
Angola	1437	1.9
Namibia	1353	1.8
Zambia	1322	1.8
Botswana	702	0.9
Democratic Republic of Congo	594	0.8
Mauritius	177	0.2
Tanzania	160	0.2
Seychelles	0.0	0.0
All SADC countries	74711	100.0

Source: Census 2001

Whilst the census (2001) gives us a useful initial scan of migrant populations in South Africa, there are several problems with the database. Firstly, we expect the Zimbabwean migrant population to have changed significantly since 2001 when the census was conducted. This is confirmed by the fact that 61.6% of the Zimbabweans included in the 2001 census are identified as white Zimbabweans. Not only are they likely to have migrated under different migration legislation but the racial and income distribution of Zimbabwean migrants is likely to have changed. Furthermore, the census (2001) is likely to have undercounted undocumented migrants and children who are living alone, which are arguably the most vulnerable populations of migrants.

Along this line, more recent studies (see Health, Environment and Development (HEAD) study, 2005–2008), whilst limited to the Johannesburg inner city, have indicated that 54% of migrants are from Zimbabwe followed by 7% from Mozambique and Lesotho respectively. Similarly, Leggett (2003) found that in Hillbrow, almost 25% of migrants are foreign born. In the sub-district of Bushbuckridge, Mpumalanga, approximately one third of the study participants were Mozambican (Khan et al 2007). What these sub-studies indicate is that as much as migrants tend to be concentrated in particular areas, so too nationalities are concentrated in different areas. This indicates the needs for a geographically focused approach to providing interventions as will be discussed later in the report.

### Household composition

What is clear is that many migrants migrate without their children. The Migrant Rights Monitoring Project found that only 15% of those migrants seeking services had children. Given that many migrants are between the ages of 30 and 34, we do not expect that they do not have children, or that they have smaller families than South Africans – rather that they are moving without them. According to the census, the average household size for migrants was smaller than that of South Africans which is also likely to be a result of not migrating with children. This is indicated in the table below:

**Table 2: Migration and family size**

Place of birth of the head of household	Average size of household (persons)
Born in RSA	5.6
Born outside RSA	3.5
All	5.5

Source: Census 2001

This is borne out in other studies such as the African cities Survey where three quarters of migrants travelled without members of their families – a finding that was consistent across nationalities. Furthermore, there is evidence that migrants who migrate without their children do much better than those who have children. From the census (2001) we see that significantly more (24.9%) migrants who migrated with their children lived in informal settlements than those who migrated without their children (15.6%). Furthermore, those who migrated without their children tended to earn more (a range of R401–R800 per month compared to R801–R1600 per month). This indicates that migration with children is a significant

burden to families. It furthermore points to the vulnerability of children who migrate with their parents as well as raising questions about the care of children left behind when parents migrate.

Furthermore, it is significant that, in the African cities Survey, (2006) there were more male cross border migrants than female. The sex ratio for cross border migrants was 0.56 for those born in the Democratic Republic of Congo, 0.32 for those born in Somalia and 1.02 for those from Mozambique. This indicates that, for countries further away from South Africa, it is often a male family member who migrates first. However, for those close to South Africa (as in the case of Mozambique) it could be either a man or woman who migrates. Also, migrants who had been in South Africa for longer were more likely to have family members with them, indicating that a family is often reunited over time. This indicates the resources required for travelling long distances with children. There is a significant gap in understanding the conditions facing children left behind and there are many questions still unanswered about the impact of parent's migration on children. For example, it is possible that, through remittances, children of migrant parents may be materially better off but that they lack adult attention (see Edillon, 2008). A recent study by UNICEF in the Philippines showed that children with overseas foreign worker parents received both less money and less adult attention than children of a similar age whose parents do not work overseas (see Edillon, 2008). However, there is a great deal more information that is needed in Southern Africa about the family composition, parenting arrangements and financial arrangements of families with migrant parents.

The migration of children without parents, however, takes on a very different characteristic. According to the unaccompanied minors study (2007), the majority of the children (76%) interviewed on the Musina and Komatipoort border were boys. This is reflected in table 3 below:

**Table 3: Gender of unaccompanied minors**

	Number	%
Male	99	76
Female	31	24
<b>TOTAL</b>	<b>130</b>	<b>100</b>

Source: Unaccompanied minors study (2007)

One possible reason for this is that girls may be employed in domestic work or other privatised forms of work such as sex work which makes them less easy to access with a survey. Past research, as well as interviews with service providers, suggests that girls may be sent by families to be employed as domestic workers. Not only will this mean that these girls are difficult to find but they also do not fit the strict definition of unaccompanied minor used in this study. In spite of this, the literature from other parts of Africa does indicate that girls may be less likely to migrate alone than boys and there may be an expectation that boys are more likely to migrate without an adult. This requires different interventions for girls than for boys as they are likely to face different migration related challenges. However, the limited information on the migration experiences of girls makes these difficult to assess.

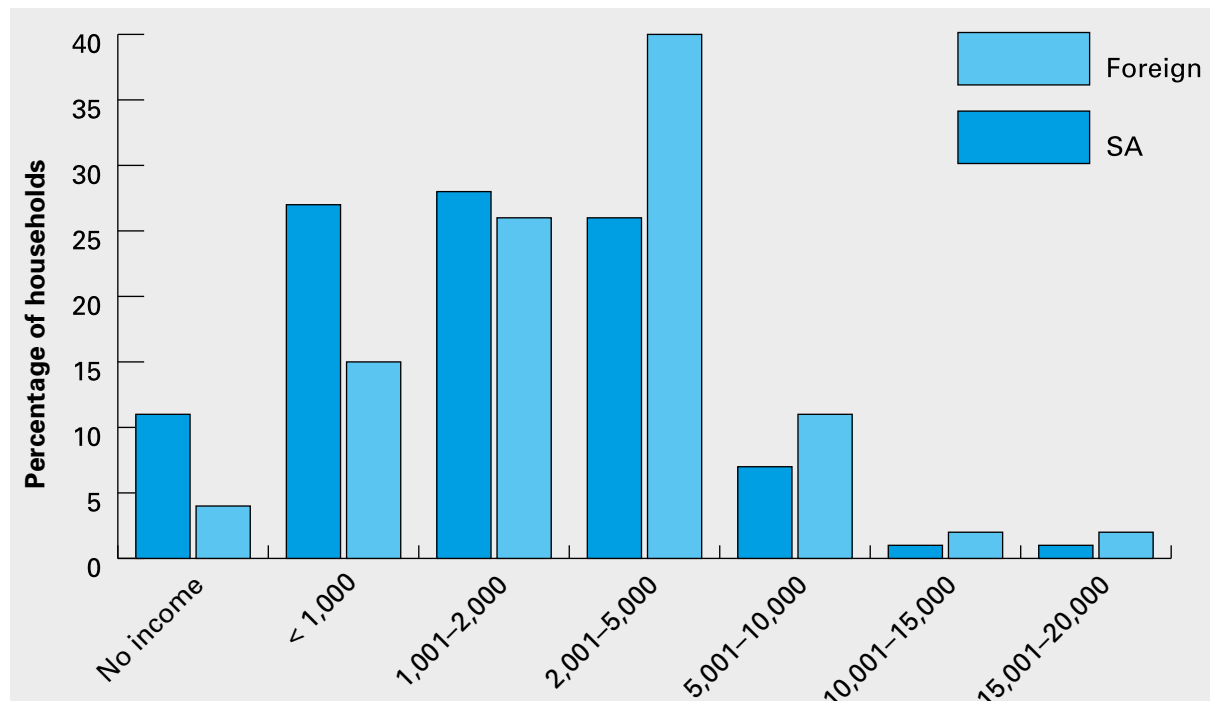
In the same study, the youngest child interviewed was seven years old and the oldest was 18 years old. Only 11.5% were 11 years old or younger. However, 40% of

the children were under 15 years old which is the legal age of employment in terms of the Basic Conditions of Employment Act. Given that so many of the children migrated for employment (as will be discussed below) it is concerning that so many children were under the age of legal employment. The unaccompanied minors study (2007) indicates that in the urban centres, children tended to come from more diverse and further away countries whereas children living close to the borders were often from neighbouring countries and were more vulnerable in the ways that will be discussed in the course of this report.

### Labour

There have been many concerns about the exploitative employment of child migrants in South Africa. It is worth noting that, anecdotally, it seems that this exploitation exists in particular sectors and among different age groups. For example, the Medical Research Council (MRC) Health, Environment and Development study indicated that, within the Hillbrow, Bertrams, and Berea areas of inner city Johannesburg, migrant families compare well with South Africans on a number of indicators. For example, although migrants were more likely to rely on informal employment than South Africans, they were less likely to be unemployed than South Africans (25% of migrants were unemployed compared to 35% of South Africans), had greater access to medical aid (15.5% of migrant households had access to medical aid compared to 14.7% of South African households) and were more likely to be saving money than South Africans (50% of foreign households were saving money compared to 43% of South Africans). The monthly incomes differentials are reflected in the graph below.

**Figure 3: Monthly household income (in Rand)**



Source: HEAD study 2007

It is important to note that this data should not be read as indicating that migrants are well off. Rather, all participants in the HEAD study were relatively poor and this data suggests that, under similar conditions of vulnerability, migrant households tend to cope slightly better than South Africans. There are two possible reasons

for this. The first is a well documented trend whereby migrants who fall ill or face particular difficulties tend to return to their country of origin. As a result, the population remaining in the destination country remains healthy. Also, there is a clear indication from the rural data that the migrants who end up in a city such as Johannesburg are likely to be those that already have some resources and/or social networks to support them. For example, Hargreaves (in Twaine 2007) indicates that households with Mozambican heads in Bushbuckridge are approximately three times more likely to fall into the poorest quintile than those with South African heads of household. In spite of this, and in spite of many Mozambicans being eligible for grants (through naturalisation and citizenship status), they were significantly less likely to apply for social grants. Similarly the unaccompanied minors study showed that 36.9% of the children hoped to go to Johannesburg, indicating that those who remained at the border lacked the financial resources to do so. This indicates that the migrants who move to Johannesburg are better off than those who live in border areas or rural areas.

This also reinforces the finding that when migrants are able to migrate without children, they are often financially better off than those who migrate with their children. As mentioned in the previous section, those migrating with children appear to have less secure housing and lower income. Children who migrate without an adult caregiver, however, face particular vulnerabilities to exploitative working conditions, including very low wages for work.

The labour conditions and practices of unaccompanied minors are a particular area of concern however. From the unaccompanied minors study, work opportunities were a significant pull factor for unaccompanied minors and a fairly large number of the children (23%) did not mind what they did provided they could get work. Children were also likely to want to sell or trade and this is likely to be because this is their current occupation.

The table below shows the ways that children in Musina and Komatipoort made money in South Africa:

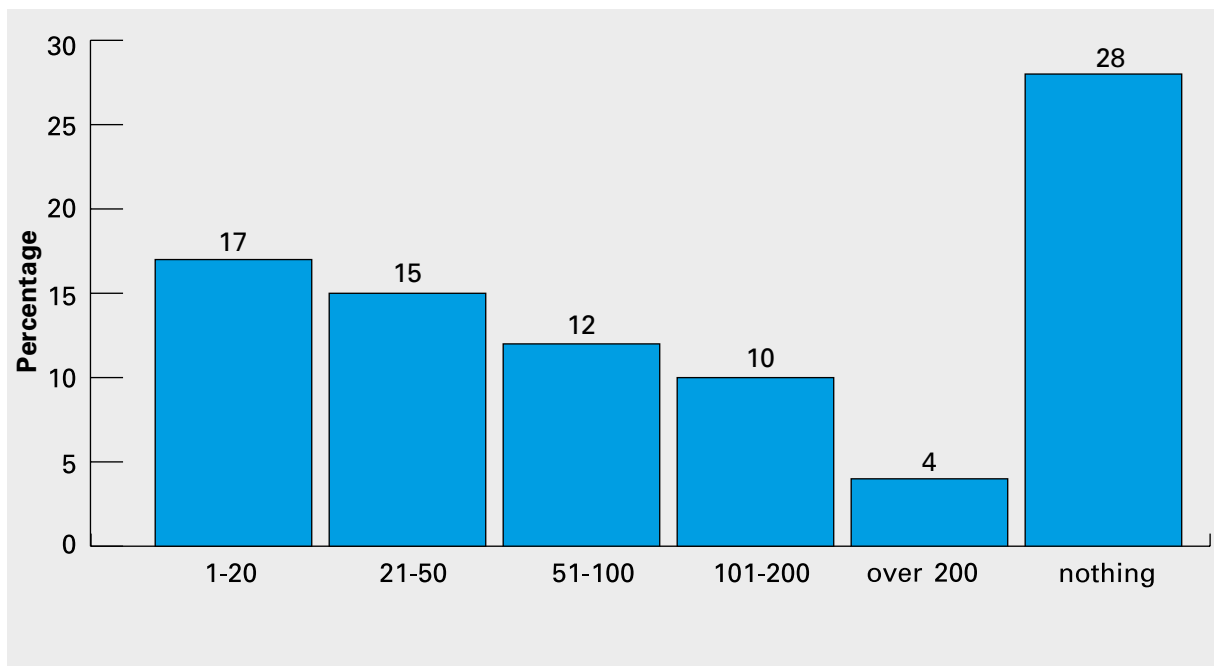
**Table 4: How unaccompanied minors make money**

	Below 15 years (Number)	15 years and above (Number)	Total children (Number)	% of total
Earn nothing	8	23	31	24
Selling (alone or for street traders)	10	18	28	22
Collecting bottles	16	2	18	14
Sent money from home	3	11	14	11
Carrying bags	7	4	11	8
Begging	5	1	6	5
Domestic work	0	6	6	5
From a shelter	4	1	5	4
Hairdressing	0	4	4	3
Farm work	1	3	4	3
Relatives	3	1	4	3
Paid in kind e.g. food	0	3	3	2
Run a public phone	1	0	1	1
Handing out pamphlets	0	1	1	1
Teaching art	0	1	1	1

Source: Unaccompanied minors study (2007)

Almost a quarter of the children (24%) did not earn any money. Of those that earned some money, children were most likely to make money by selling (22%) or trading. This mostly involved selling face cloths, steel wool or other small items. However, this varied by age and children under the age of 15 years were most likely to earn their money by collecting plastic water bottles and either selling them to street traders or filling them with water to sell to people at the border. The children under the age of 15 years were also more likely than the older children to rely on begging. This also varied by gender with girls more likely to be involved in braiding hair or domestic work and boys most likely to be selling. The figure below shows the amount of money the children made each week.

**Figure 4: Amount of money unaccompanied minors earn per week (in Rand)**



Source: Unaccompanied minors study (2007)

The majority of children who earned an income (44%) earned under R200 per week. Of those who earned no money at all, 44% were in school which would mean they may not need to work but 56% were not in school indicating their extreme vulnerability. There were no significant differences in the amount of money made by girls or boys.

### Education

If one considers the census data, then many children of school going age are in school. However, it is clear that significantly fewer migrant children from the SADC region are in school as indicated in table 5.

**Table 5: Percentage of children attending school by age**

Country of birth of the head of household or spouse and internal migration since 1996	0–6 years	7–16 years (compulsory and free)	17 years	All ages
Born in RSA, same province in 1996	27	93	82	68 (N=16,337,453)
Born in RSA, different province in 1996	25	91	73	61 (N=463,801)
Country of the SADC (except South Africa and white children)	15	84	60	50 (N=212,163)
<i>Mozambique</i>	<i>12</i>	<i>82</i>	<i>53</i>	<i>46 (N=130,032)</i>
<i>Zimbabwe</i>	<i>19</i>	<i>80</i>	<i>32</i>	<i>43 (N=14,202)</i>
<i>Lesotho</i>	<i>19</i>	<i>90</i>	<i>79</i>	<i>57 (N=26,603)</i>
<i>Namibia</i>	<i>19</i>	<i>92</i>	<i>84</i>	<i>65 (N=5,321)</i>
<i>Swaziland</i>	<i>18</i>	<i>90</i>	<i>80</i>	<i>59 (N=13,147)</i>
<i>Malawi</i>	<i>23</i>	<i>87</i>	<i>59</i>	<i>56 (N=9,639)</i>

Source: Census 2001

Furthermore as the table below shows, girls were less likely to be attending school than boys with the exception of those from Lesotho and Swaziland.

**Table 6: Percentage of children attending school by gender**

Country of birth of the head of household or spouse and internal migration since 1996	Male	Female	7–16 year old children
Born in RSA, same province in 1996	93	93	93 (N=9,496,443)
Born in RSA, different province in 1996	91	91	91 (N=230,793)
Country of the SADC (except South Africa and white children)	85	84	84 (N=84,771)
<i>Mozambique</i>	<i>82</i>	<i>81</i>	<i>82 (N=60,175)</i>
<i>Zimbabwe</i>	<i>82</i>	<i>78</i>	<i>80 (N=5,381)</i>
<i>Lesotho</i>	<i>89</i>	<i>90</i>	<i>90 (N=13,269)</i>
<i>Namibia</i>	<i>93</i>	<i>91</i>	<i>92 (N=3,083)</i>
<i>Swaziland</i>	<i>90</i>	<i>91</i>	<i>91 (N=6,964)</i>
<i>Malawi</i>	<i>89</i>	<i>84</i>	<i>87 (N=4,842)</i>

Source: Census 2001

Once again, there is an indication that migrant children who are unaccompanied and who remain on the borders are particularly vulnerable to not being in school. Table 7, from the unaccompanied minors study, shows that 65% of the children were not in school. However, if we take out the unaccompanied children living in Johannesburg, then what is most striking is that 96% of the children in Johannesburg are in school compared to only 6% of Musina children and 37% of the Komatipoort children.

**Table 7: Number of children in school by area**

	Yes	No	Total
Musina	3 (6%)	50 (94%)	53 (100%)
Johannesburg	22 (96%)	1 (4%)	23 (100%)
Komatipoort	20 (37%)	34 (63%)	54 (100%)
<b>TOTAL</b>	<b>45 (35%)</b>	<b>85 (65%)</b>	<b>130 (100%)</b>

Source: Unaccompanied minors study (2007)

The very small number of Johannesburg based children in this study makes it difficult to assess whether this is representative of unaccompanied minors in Johannesburg, however, it does point to the problems children on the border face in accessing education. If indeed Johannesburg children are more able to access education, this is likely to be because of the relatively large numbers of NGOs in the area. This is likely to be because of the higher numbers of service providers in Johannesburg that provide children with basic needs and facilitate access to schools. It may also reflect the high rates of irregular migration from Zimbabwe compared with more permanent migrants in Johannesburg and Komatipoort. In part, this may also reflect different attitudes towards unaccompanied children in the border areas. For example, in Komatipoort, we had been told by service providers that at one point all children without a birth certificate had been told to leave the school and a school principal reported being told by police that he would be fined if migrant children were found in the school.

Furthermore, this differed by sex with only 30% of unaccompanied boys in school compared to 48% of girls. This may reflect a greater expectation on boys to earn an income.

**Table 8: Number of children in school by gender**

	Yes	No	Total
Male	30 (30%)	69 (70%)	99 (100%)
Female	15 (48%)	16 (52%)	31 (100%)
<b>TOTAL</b>	<b>45 (35%)</b>	<b>85 (65%)</b>	<b>130 (100%)</b>

Source: Unaccompanied minors study (2007)

Table 9 indicates the overall level of education that the unaccompanied children have:

**Table 9: Levels of education of unaccompanied minors**

	No formal schooling	Some primary education	Completed primary education	Some secondary education	Completed secondary education	Other	Total
Musina	0	15 (28%)	17 (32%)	20 (38%)	0	0	53 (100%)
Johannesburg	0	5 (23%)	3 (14%)	11 (50%)	2 (9%)	1 (5%)	22 (100%)
Komatipoort	3 (6%)	33 (61%)	7 (13%)	11 (20%)	0	0	54 (100%)

Source: Unaccompanied minors study (2007)

Only three children, all interviewed in Komatipoort, had no formal education. Although children were most likely to have some primary education, a fairly large number had some secondary education but only two children had completed secondary education. The children in Musina tended to have higher levels of education than those in Komatipoort.

## Health

As with education, health is an area where migrants vary a great deal depending on the circumstances of their migration and the area in which they live. It is also an area where there is very little information on children. Although several studies have been undertaken, they have often not distinguished the children's health from

that of the adults in the household. In spite of frequent reports of migrants being denied access to health service providers, migrants interviewed in the HEAD study (2007) did not show substantially worse health than South Africans and in some cases had slightly improved health. This has been found in many other studies and is frequently referred to as the 'healthy migrant effect'. This simply means that migrants tend to only migrate if they are healthy and when they become unhealthy they tend to return home rather than remaining in their destination country. Some of the findings of the HEAD study (2007) are detailed in table 10:

**Table 10: Illness among migrants and South Africans**

Illness	SA (469)	Migrant (58)	Significance level
Cancer	1.1%	1.7%	0.63 NS
Asthma	10.0%	0.0%	0.01
Tuberculosis	3.8%	5.2%	0.58 NS
Diabetes	8.7%	1.7%	0.07 NS
Hypertension	17.5%	5.2%	0.02
Heart disease	5.1%	1.7%	0.27 NS
High cholesterol	4.5%	0.0%	0.11 NS
Stroke	3.2%	0.0%	0.17NS
HIV/AIDS	2.1%	1.7%	0.8 NS
Obesity	4.1%	1.7%	0.4 NS
Disability	7.2%	0.0%	0.03

Source: HEAD study (2007)

This table shows that there was a higher prevalence in asthma, hypertension and disability in the South African population. On the other hand, tuberculosis was increased in migrant population. The table below indicates that migrants tended to have better mental health status than South Africans living under similar conditions:

**Table 11: Mental health status of migrants and South Africans**

	SA (%)	Migrant (%)
Depressed	18.1	8.6
Anxious	16.6	10.3
Discouraged	15.8	8.6
Hopeless	12.4	8.6
Life not worth living	8.3	5.2
Attempted suicide	6.4	5.2

Source: HEAD study (2007)

**Table 12: Mortality**

	SA (%)	Migrant (%)
Mortality in the past year	10.7	1.7

Source: HEAD study (2007)

It is important to note that this study asked about the health of members of the family and we therefore cannot specify which health problems children

experienced and which ones adults experienced. Indeed, these research results (table 12) are strongly contradicted by the rural data that exists. For example, in the Agincourt study (Collinson, Byass, Tollman, White, Kahn and Clark, in press) mothers migrating as temporary migrants resulted in a 250% worse child mortality. Furthermore being a Mozambican migrant resulted in a 17% worse mortality and maternal orphanhood results in a 450% worse mortality outcome. Thus, there are many ways in which the migration of parents has negative effects on the health of children who remain in rural areas. Similarly, the Agincourt data shows that children with compromised nutrition (defined as two standard deviations below the expected height and weight) was associated with the child not living with the mother and the death of the mother. Again this indicates that the migration of adults without children, although potentially improving the health of the adult, compromises the health of the child left behind. However, this is an issue that requires more detailed research.

### Violence and abuse

An analysis of the African cities database (2006) indicates clearly that police target non-South Africans living or working in Johannesburg. For example, migrants report having been stopped by the police far more frequently than South Africans (71% versus 47%) despite having generally lived in the city for a shorter period. Although legally mandated to respect non-nationals' rights, police often refuse to recognise work permits or refugee identity cards. Similarly, the unaccompanied minors study (2007) came across several such instances where children had been held in cells with adults, or where they had been illegally arrested.

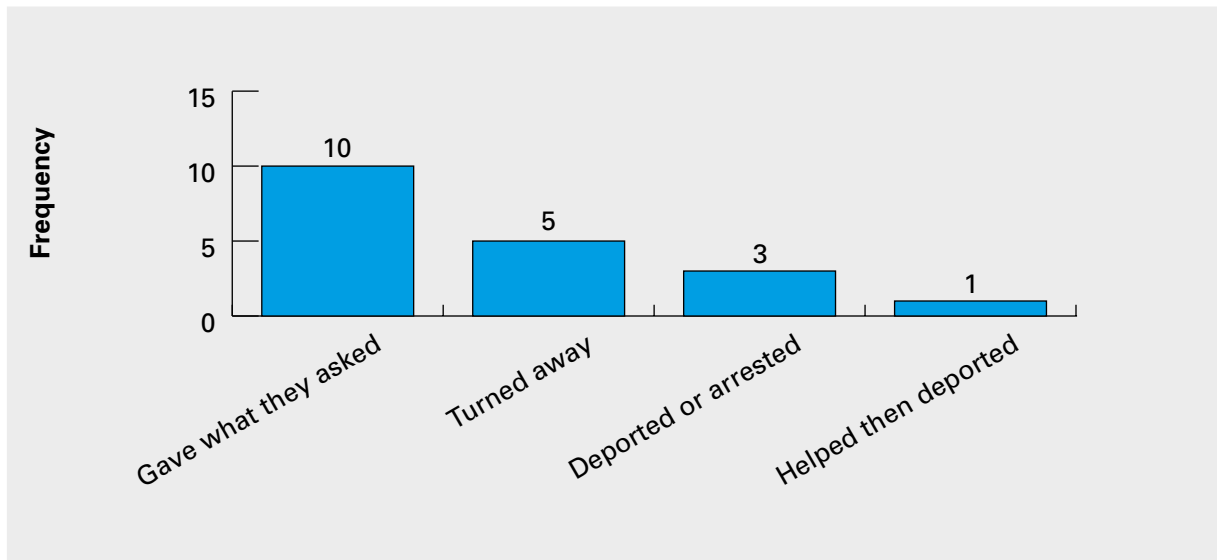
Similarly, in the unaccompanied minors study (2007), just over a quarter of the children had been deported. However, in every case these deportations were illegally carried out by police. As the police have no authority to deport people, this practice of returning children to another country is illegal. Twenty-seven percent of the children had been arrested for being in the country illegally and of these, 69% were illegally returned in this manner by the police at the time of arrest. For many children this involved being dropped on the other side of the border post. In addition, Zimbabwean children were significantly more likely than any other group to have been illegally returned. On the border with Zimbabwe 47% of the children had been illegally returned. In contrast only 4% of those living in Johannesburg and 13% of those on the Mozambican border had faced such illegal returns. This is likely to be because the country borders on South Africa and police can carry out these kinds of illegal returns. However, it may also be a result of increased migration policing on the Zimbabwean border post. Of the children who had been arrested for being in the country illegally, 25% were arrested and later let go. This indicates a pattern of arrest and release that is common in policing victimless crimes and has been identified as highly ineffective<sup>1</sup>. The policing of migration in this way also makes bribery far more likely as the children are unlikely to report it given their undocumented status.

It is perhaps not surprising that the children expressed very little faith in the police. Only 15% (19 children) of the children had ever asked the police for help.

<sup>1</sup> For example, Fick (2006) found similar patterns of arrest and release of sex workers in Cape Town. She argues that the cost of policing sex work in this manner was about R14 million in 2006, the equivalent of 66% of the budget of the Independent Complaints Directorate (R21m) or 9% of the Prosecuting Service (R150m) budget, or 15% of the budget of the Presidency (R86m) during the same year. These kinds of policing practices against children are in spite of being illegal and are also likely to draw police resources away from crime prevention.

Of the 19 children that had asked the police for help, 10 had been given the assistance they asked for. This is reflected in figure 5:

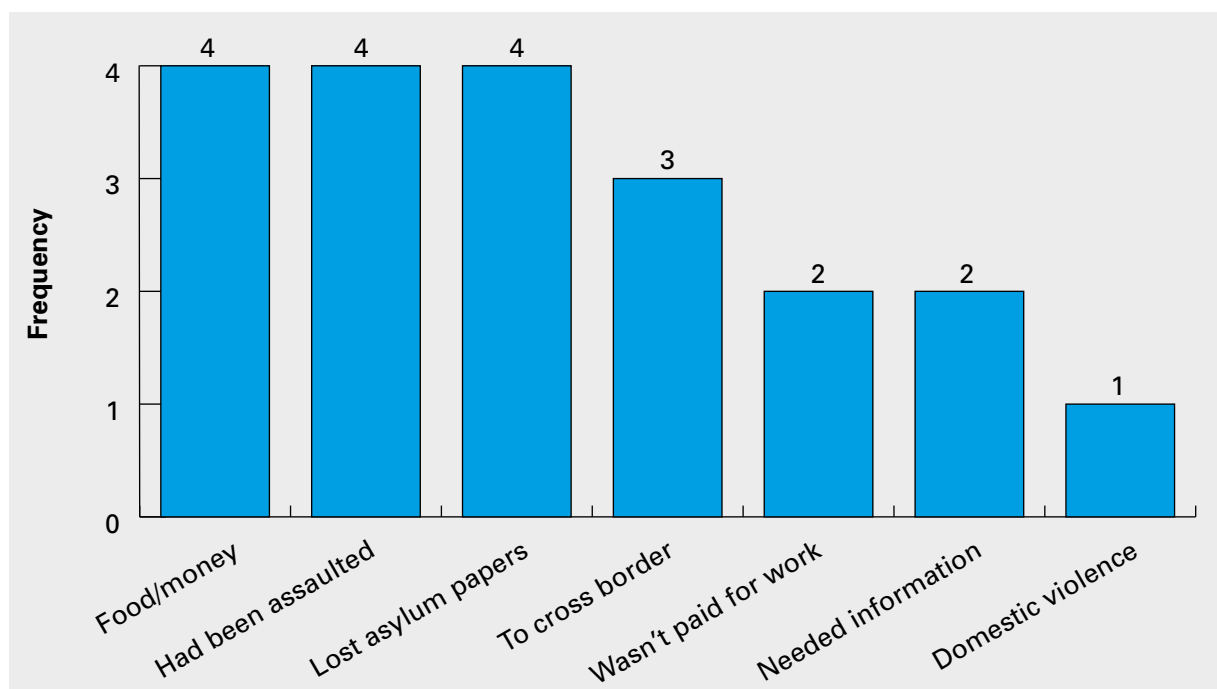
**Figure 5: Police response to children who approached them for help**



Source: Unaccompanied minors study (2007)

When asked what kind of assistance they asked the police for, children were equally likely to ask for food or money as they were to ask police for help following an assault or if they had lost documents. A few children also requested permission from the police to cross the border. The reasons for children approaching the police can be seen in figure 6.

**Figure 6: Reasons why children asked the police for help**

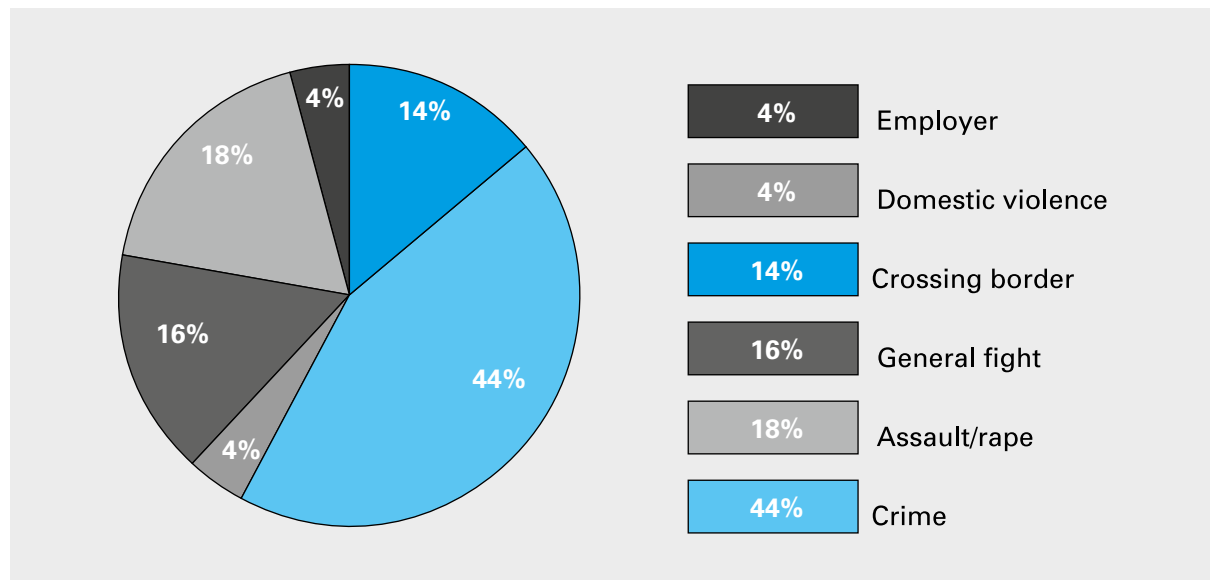


Source: Unaccompanied minors study (2007)

What the graph in figure 5 indicates is that it was only a very small number of children that would approach the police for any kind of assistance. Qualitative interviews suggest that fear of police violence and of illegal return were the main reasons why children did not approach the police more often.

A large number of children (40%) had experienced physical violence in South Africa. The reasons given by the children for this violence can be seen in figure 7.

**Figure 7: Reasons why children were hurt**

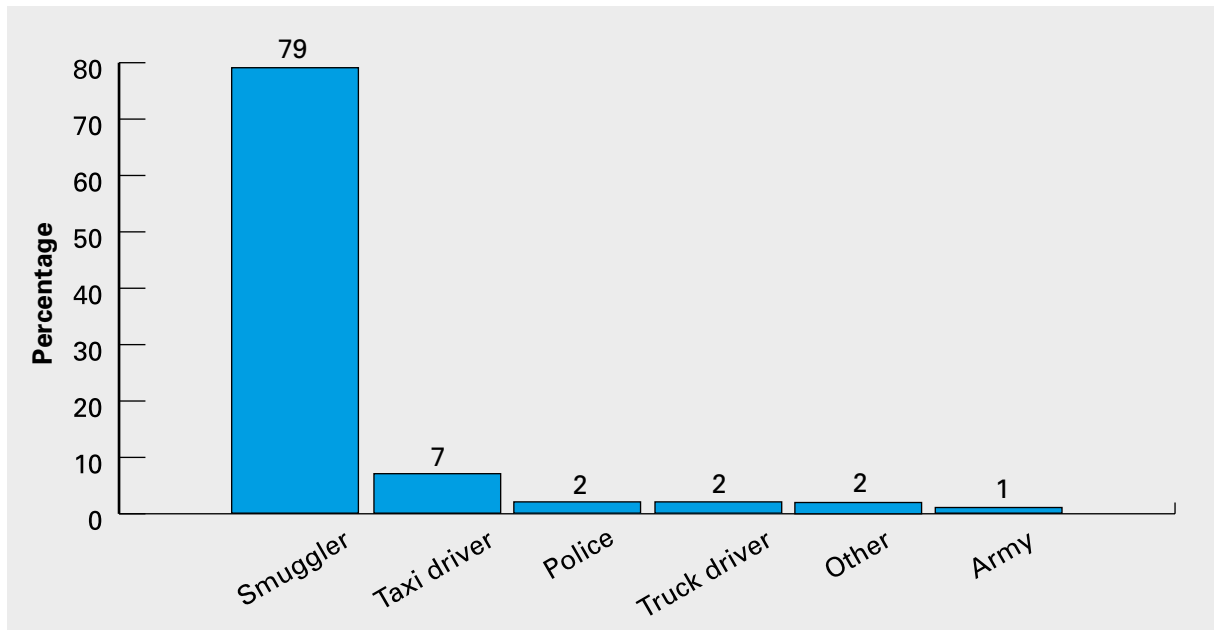


Source: Unaccompanied minors study (2007)

Forty-four % of the children that experienced physical violence, were victims of crime. In addition, 18% stated that they had been the victim of an assault or rape that did not appear to have a criminal motive. Similarly, 16% had got into a fight with their peers, which typically revolved around food or material goods or name calling. Fourteen percent of the children had experienced violence at the hands of border guards or police and this was a result of trying to cross the border in all of these cases. Boys experience more violence than girls. This may be a result of the boys working and living in more public spaces where they are subject to violence by police, guides and border officials and girls migrating into domestic work and other private spaces where the violence they face is more hidden.

The unaccompanied minors study also showed that bribery was widespread on the border areas. Among the 68 children (52%) who had paid a bribe to cross the border into South Africa, 79% had paid for informal guides who exchange passage into South Africa for money. This is reflected in the graph on page 31 (figure 8).

However, this practice appears to be concentrated on the border with Zimbabwe and Mozambique with 75% (24) of Zimbabweans paying guides for entry and 93.3% (28) of Mozambicans paying guides. These smugglers were also associated with abuse of children. Of those children who said they had been hurt in South Africa, 12% had been hurt by smugglers. In at least two instances this had involved rape. Informal discussions with the children indicated that the smugglers were either Zimbabwean, Mozambican or South African. Smugglers were the most common group that children paid bribes to and relatively few children (21% of children from all countries) had paid bribes to any other group of people such as border guards or truck drivers.

**Figure 8: People who children bribed to cross the border**

Source: Unaccompanied minors study (2007)

Research conducted by the Centre for the Study of Violence and Reconciliation indicates high levels of xenophobia among police officials. In a survey done of new recruits into the Johannesburg Metropolitan Police Department (JMPD) in Palmary (2001) found that in response to the question “what do you think is the cause of crime in Johannesburg?” nearly 30% of new recruits said foreigners or migrants. Twenty three percent said that overcrowding caused crime which is likely to reflect intolerance to all migrants into the city rather than just international migrants. These findings are reflected in table 13.

**Table 13: JMPD new recruits’ perception on the causes of crime in Johannesburg**

Cause	%
Poverty and unemployment	91.9
Foreigners or migrants	29.8
Weak justice system	25.7
Overcrowding in the city	23.0
Facilitators of crime	19.0
Illiteracy	9.5
Psychological or emotional characteristics	8.1
Crime (i.e. through revenge violence)	6.9
Family problems or disruption	5.5
Prejudice	4.1
Homeless people	4.1

Source: Palmary (2001)

Even more striking, Newham (2003), in a more recent survey of the South African Police Service (SAPS), showed that 78.4% of police in the SAPS believed that foreigners, regardless of their legal status, caused ‘a lot of crime’.

**Table 14: Perceptions of whether foreigners in general (whether they are documented or not) cause a lot of crime in Johannesburg**

Race	Agree (%)	Disagree (%)	Neutral/don't know (%)	Total (%)
Black	81.2	16.9	1.9	100
Coloured	58.8	41.2	0.0	100
Indian	71.4	21.4	7.1	100
White	68.3	23.2	8.5	100
<b>TOTAL</b>	<b>78.4</b>	<b>18.6</b>	<b>2.9</b>	<b>100</b>

Source: Newham 2003

Moreover, when asked specifically whether undocumented foreigners caused crime in Johannesburg, 87.1% of respondents agreed.

**Table 15: Perception of whether illegal/undocumented immigrants in Johannesburg are involved in crime**

Race	Agree (%)	Disagree (%)	Neutral/don't know (%)	Total (%)
Black	91.0	7.9	1.1	100
Coloured	64.7	35.3	0.0	100
Indian	85.7	14.3	0.0	100
White	69.5	25.6	4.9	100
<b>TOTAL</b>	<b>87.1</b>	<b>11.4</b>	<b>1.6</b>	<b>100</b>

Source Newham (2003)

## Integration

The above section points to a general hostility towards foreigners by the South African public. A national 1998 survey conducted by the Southern African Migration Project (Crush and Williams, 2001), revealed that 87% of South Africans believed that the country was letting in too many foreigners. In Johannesburg, 64.8% of the South Africans questioned in the African cities study (2006) thought it would be good if most of the refugees and immigrants left the country while many respondents openly supported drastic measures towards this end. This study also found that, among the 85% of South African respondents who thought crime had increased in recent years, almost three-quarters identified immigrants as a primary reason.

This has been reinforced by the recent xenophobic attacks in South Africa. While they appeared to catch authorities unaware, xenophobic attacks have in fact been taking place over the past two years and have intensified in Johannesburg steadily over the past year. Between September 2007 and May 2008, eleven such attacks were recorded by the Consortium of Refugees and Migrants in South Africa (CoRMSA, 2008). There has been attention to children based in the emergency camps across the country but this has been primarily driven by NGOs and there has been a failure to adequately understand the impact of the violence on children

including its impact on access to school, its impact on family unity and its psychosocial impact on children – particularly those displaced but not living in the camps. The recent removal of the Johannesburg camps in spite of the Constitutional Court order that they should remain open until an integration strategy is put forward raises concerns that there could be further outbreaks of violence.

However, foreigners feel equally hostile towards South Africa. From the African cities study (2006), the thing the migrants disliked most about the area in which they live, is crime, violence and corruption. Migrants also cited gender, racial or ethnic discrimination and xenophobia as a reason why they were dissatisfied with where they live. Only 12% of the respondents born in Somalia wish to see their children grow where they are currently living, versus one third of the Mozambicans and Congolese and half of the South Africans. One third of the Somalis and one fifth of the Congolese express the wish to see their children grow in a third country.

Also from the African cities study (2006), two thirds of the adult migrants wanted their children to consider themselves citizens of their country of origin or members of their ethnic group or tribe rather than South African, indicating a lack of integration into South Africa. Sixty seven percent of Somalis indicated that they feel it is important to marry a person from one's own country. For the other communities, the percentage of the people favouring marriage to someone from one's own country varied between 31% and 60%. Similarly, 68% of the Somalis declare having no South African friends, versus 38% of the respondents born in the Democratic Republic of Congo (DRC) and 21% of the respondents born in Mozambique. Whilst one cannot directly infer the levels of children's integration from this data, it is an indicator of families' social interaction patterns, and so, although children may have more contact with South Africans through school, it is a reflection of isolation from South African communities.

Considering the language the children are taught in school, the African cities survey (2006) showed a high regard for English as the language that they wish their children to be taught in school along with their mother tongue and, in the case of those from the DRC, French, or Arabic for those from Somalia. Respondents born in the DRC expressed their preference for English (63%) or French (32%).

### **Reasons for migration**

Migrant families and child migrants offer fairly similar reasons for migrating to South Africa. The following table, taken from the African cities survey indicates the reasons that the household heads gave for migrating to South Africa.

**Table 16: Reasons for leaving their country of origin**

	No child (%)	Has children born in South Africa only (%)	Has children born outside South Africa (%)
For economic reasons	48	61	47
To escape war, conflict	46	44	50
To escape political oppression	9	5	13
To escape ethnic/tribal persecution	5	4	6
To be reunited with relatives	4	12	6
For educational opportunities	25	17	16

N.B: two responses were possible so the total can differ from 100%

Source: African cities survey (2006)

The following table from the unaccompanied minor's study (2007) indicates the reasons given by unaccompanied minors:

**Table 17: Reasons for migrating to South Africa**

Reasons	Number	%
Lack of money or food	83	64
Death of parents or a dying parent to care for	55	42
Was not in school at home	33	25
Was a war in home country	18	14
Was forced by an adult or caregiver	13	10
Was advised to come by friend or family member	10	8
Family strife such as abuse or domestic violence	8	6
Better schools in South Africa	4	3
Had a child of their own to care for	1	1
Health care	1	1
Witchcraft	1	1

Source: Unaccompanied minors study (2007)

What is significant is the large number of children (55 or 42%) that indicated that the death of a parent prompted their move to South Africa. That HIV plays a significant role in migration patterns of children can be assumed given that these children were young, making their parents of reproductive age.

A fairly large proportion (10%) of the children claimed that they had been forced against their will by a parent to come to South Africa. However, a large number (8%) had been advised to come to South Africa by a friend or relative.

There were, however, differences in the reasons for migration between children from the border and those living in Johannesburg. Again, the small sample size of the Johannesburg children makes it difficult to generalise these findings.

Nevertheless, this finding is indicated in the following table:

**Table 18: Reasons for migrating by area**

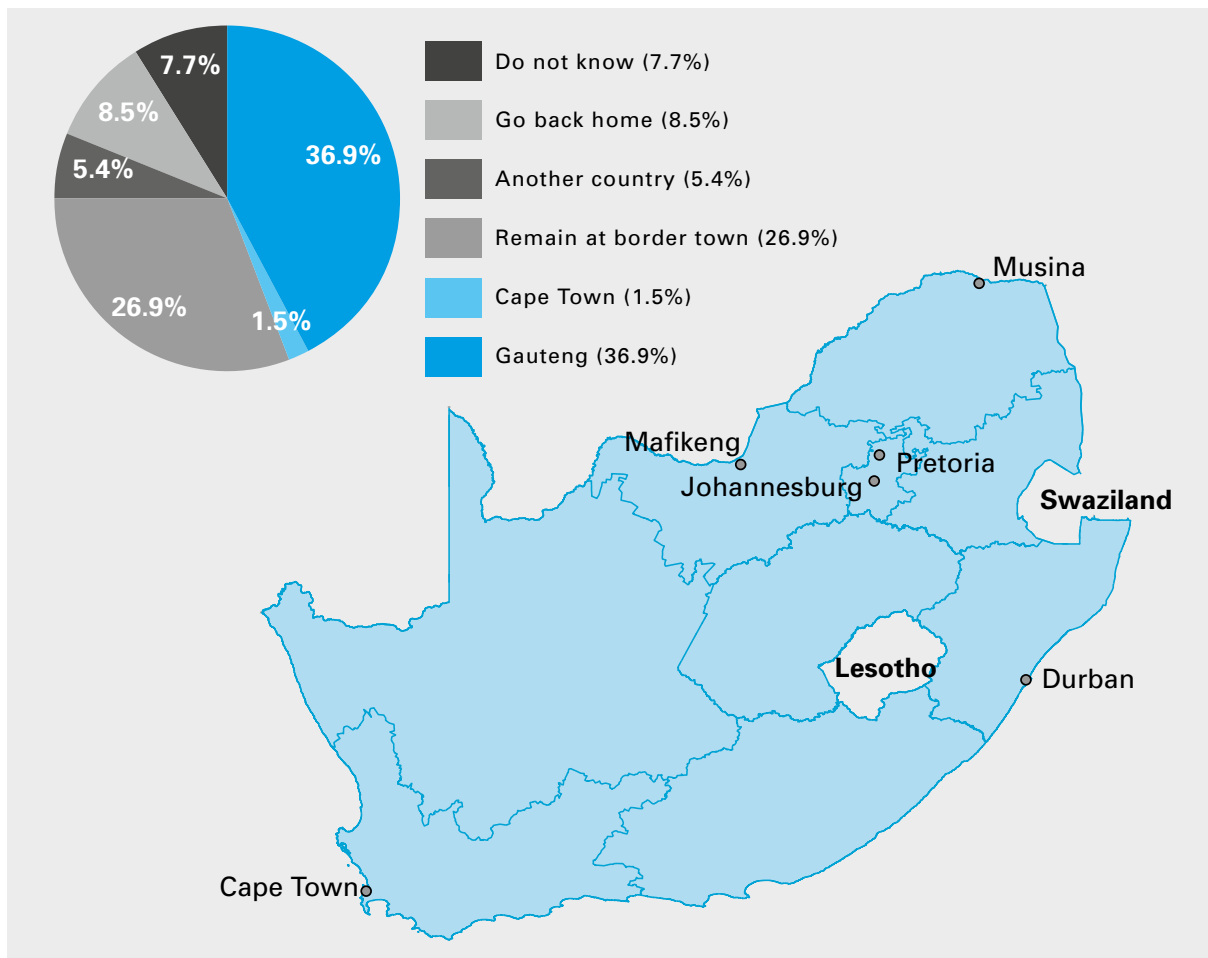
	Musina	Johannesburg	Komatipoort
Family strife	5 (63%)	0	3 (38%)
Lack of money or food	46 (55%)	2 (2%)	35 (42%)
Death of parents	31 (57%)	9 (16%)	15 (27%)
Better schools in South Africa	0	0	4 (100%)
Was forced by parent or adult	4 (30%)	0	9 (69%)
Was not in school at home	23 (70%)	1 (3%)	9 (27%)
Advised to come by friend or family member	4 (40%)	0	6 (60%)
Had a child of their own to care for	1 (100%)	0	0
Was a war at home	0	18 (100%)	0
Better healthcare	0	1 (100%)	0
Was a victim of bewitching	0	1(100%)	0

Source: Unaccompanied minors study (2007)

This table indicates significant differences in the reasons for migration among unaccompanied minors living in Johannesburg compared to those living on the borders. Those in Musina were most likely to cite a lack of money or food, the death of their parents or not being in school as the reason they were in South Africa. Those on the Mozambican border gave similar reasons. In contrast, those living in Johannesburg were more likely to cite a war in their country of origin as the reason for migration. What is striking is that, in spite of over half the children having a relative in South Africa, none mentioned this as the reason for migrating to South Africa.

The map (figure 9) indicates the planned destination of children in the study. What is clear is that most children wanted to go to Gauteng, which is a reflection of the economic motives for migration. However, a substantial percentage wanted to remain in the border town. This is likely to be children who have families in their home country who they return to on a fairly regular basis.

**Figure 9: Planned destination in South Africa**



**Reflections on information gaps**

The above information gives some indication of the situation of migrant children in South Africa. However, what is clear is that there are significant gaps in our knowledge of the conditions of children’s migration. Specifically, the above research summary highlights the following knowledge gaps for further discussion and elaboration.

There are different patterns of migrants into South Africa. Migrants are self settled in urban areas and border areas but the conditions seem very different for these two groups. There appear to be pockets of vulnerability among migrant communities and the location of these is unclear given the lack of information outside of the urban centres.

Linked to this, there is a significant lack of information about migrants who live in small towns and border areas that are not well serviced by NGOs. As a result, it is difficult to know about the service priorities of these groups. The limited information available from the Mozambican border suggests that conditions for unaccompanied children are extremely poor and this is exacerbated by the very few service providers in this area. We would expect this situation to be similar on the Lesotho and Swaziland border but there is no information on this.

Perhaps most importantly, there is a significant lack of information on children. Only one of the studies reviewed has actually been done with children and other

findings have to be inferred from household studies. This rests on the assumption that a head of household is familiar with the lives of children, but, given the very fluid family composition described in this section, it is quite possible that this is an erroneous assumption. Furthermore, the lack of information from children themselves raises ethical concerns about whether researchers are allowing children the opportunity to voice their own concerns and priorities that can shape service delivery.

Given the emphasis on household studies rather than studies of children themselves, there is a lack of understanding of the services children access directly, such as education, and their experiences of this. It is these services that adults are least likely to be able to accurately report on. Furthermore, issues that children are unlikely to discuss with adults, such as sexual relationships, work exploitation or experiences of harassment and xenophobia, are likely to be underreported and are poorly understood.

There is also a substantial lack of information in Southern Africa on the impact of migration on parenting patterns and family structures and responsibilities. Although studies of this nature have been conducted elsewhere, the different patterns of child care in different areas means that a local study of this nature would be important. In particular, this is important given that the information above suggests that children often do not migrate with their parents and that the migration of a parent has a negative impact on the wellbeing of the child.

Linked to this, there is a lack of understanding of the impact of children in the decision to migrate. This includes children as autonomous decision makers or as family members who assist in migration decisions, as well as responsibility for children being a part of the reason why a caregiver might migrate. Linked to this is a need for information on the choices caregivers make about income and time for caring for children.

Finally, there is little information on whether migrants are aware of their rights. Although such training has taken place, as will be discussed later, the impact is likely to be relatively isolated.

## Section 4: Organisational capacity for ensuring child rights

### Background

The information for this part of the report was collected by compiling a list of all service providers to migrants<sup>2</sup>. Each organisation was interviewed to assess their main areas of work with children, their organisational capacity including staff and other resources, the priorities for the child rights sector and what they felt were the areas of work that were under-resourced. The full list of organisations can be seen in appendix 1 and the questionnaire is attached in appendix 2. The key areas of work that organisations are currently undertaking included:

### Child specific services

There are very few services in the country that specifically deal with child migrants. Most notable are Save the Children and the Refugee Children's project. However, many other organisations, such as the Jesuit Refugee Services and, at times, the United Nations High Commissioner for Refugees (UNHCR), offer assistance to, and even prioritise unaccompanied children and women who have children. Twelve organisations specifically offered prioritised services to children as part of their general work. These activities typically involved the provision of crèches, after school care and access to education by providing uniforms, paying school fees, negotiating exemptions from school fees and ensuring integration of refugee children in schools. It is important to note that many of these organisations were focused on refugees rather than migrants, creating a gap for the majority of child migrants. Similarly, for five organisations there was a focus on women and children through attention to trafficking and gender based violence. This is particularly the case for organisations offering basic needs such as shelter and food. Furthermore, there are other services that are not specific to migrants but have, over the years, extended their work to include migrants. For example, Tshwaranang legal advice office provides assistance for gender based violence and maintenance cases and POWA (People Opposing Women Abuse), who also provides assistance with gender based violence, including shelters. Both organisations have been seeing migrant clients. Because of this general dearth of services with dedicated capacity to address the needs of children, the main areas of work that organisations undertake are described below and, where there is a focus on children, this is mentioned.

### General NGO services

**Basic needs services:** This included, for example, the provision of shelter or accommodation, food and school fees for children. This is the most common area of work that NGOs are involved in. It is significant that this work was most likely to be conducted by refugees or migrants themselves or by faith based organisations. This has a number of implications, for example, that most of the funding for these

<sup>2</sup> This list was originally compiled for Atlantic Philanthropies in 2006 and was updated for this study.

activities comes from the communities in which they are located rather than donors. Exceptions to this would include the Jesuit Refugee Services and the Cape Town Refugee Centre, both of which are larger, more established NGOs.

**Training and education:** These activities can be broken down into three main categories. This includes training offered to refugees and migrants, training of officials who have contact with migrant groups and training of professionals such as lawyers and migration experts. Training of migrant groups most commonly included English classes and business skills (typically suited to the informal sector, such as hairdressing or sewing) in order to facilitate their income generation. Eight organisations identified this as a primary area of work. Similarly, four organisations held more 'once off' information workshops for migrants on specific topics such as refugee rights and reproductive health. In addition to the abovementioned training, several organisations identified that training with officials was a core area of their work. This included training in schools, training of police, and training with other NGOs (there were seven such organisations). This training is heavily donor dependent and seldom integrated into the mainstream work of the organisation being trained.

**Information and referral:** Information services were provided to newcomers to the country and covered information on services available to refugees in South Africa, the location of different government and non-governmental organisation (NGO) services, information on the legal rights of refugees and so on. Although seven organisations named this as a core area of their work, almost all the organisations did this on an *ad hoc* basis for their clients. The City of Johannesburg has established a migrant rights helpdesk for this purpose and this was the only example of a specialised government service to migrants.

**Health:** A fairly large number of organisations (eight) prioritised health services in their work. Most commonly, this involved working on issues of HIV, or reproductive health more broadly, with migrant and refugee communities. However, there was also particular consideration given to those with disabilities. Some identified that this was an area that was particularly well funded although none of these organisations specifically addressed the needs of children. This is a potential gap given the concerns raised above about a lack of youth friendly health care services.

**Financial assistance:** This area of work tended to include ensuring that refugees and asylum seekers have access to banks and arranging credit facilities for small businesses and savings clubs. It also included funeral assistance or insurance services. Only four organisations undertook these activities.

**Reunification:** This included a broad spectrum of activities including resettlement of refugees, provision of assistance to returnees (typically material and integration assistance), and family reunification or tracing of missing family relatives. Only three organisations provided this service as it was extremely specialised and required a great deal of international country knowledge and diplomacy.

**Diplomacy:** Only two organisations were involved in diplomacy with governments. This included efforts to impact on processes of democratisation as well as to shift government policy on political issues (including migrant issues). This differed from the advocacy work undertaken by most NGOs in the sector as it was typically conducted by intergovernmental organisations, the United Nations or those with close relationships to government.

**Legal services:** Legal services were a specialised area of work and although only very few organisations (five) had capacity for this, these organisations were well represented in urban areas throughout the country, although very few were based in small towns or border areas other than Musina. Legal advocacy has been a relatively successful area of work in the sector. In order to make these more easily available, however, there are also a large (and increasing) number of paralegal experts being trained to assist migrants.

**Psycho-social services:** Five organisations offered psycho-social assistance. This varied from the provision of counselling for complex trauma to the creation of support groups by local communities. A number of these trauma service providers identified a particular focus on torture survivors. Two of the organisations involved in trauma work also had experience in training service providers on trauma, particularly secondary traumatisation. It is worth noting that several organisations that did not provide such services, mentioned the need for psychological and particularly, psychiatric interventions, with refugees and other migrants.

**Interpreting services:** Interpreting services were only offered by one organisation. This interpretation was not during the process of applying for asylum, but rather for accessing services such as health or education. None of the organisations indicated that they trained any of their members or clients as interpreters. This perhaps reflects a significant way that the skills of migrants could be used and is a gap in income generation training.

**Pastoral services:** Only one organisation identified pastoral services as their core service to migrants. However, many of the religious institutions have migrants as members of their congregations and pastoral care is, therefore, an integral part of their work.

**Public awareness:** This was strongly linked to, and difficult to separate from, advocacy and lobbying. Typically this involved workshops aimed at mindset change among refugees or South African communities, including campaigns for integration at local level (seven organisations identified this as a key part of their work). This was, therefore, different from advocacy as it was less focused on policy makers, government officials or international organisations. This is significant because advocacy of the latter kind was identified as a significant gap in the sector as will be discussed later on.

**Lobbying and advocacy** were done by eleven organisations. This activity varied across organisations and was, for example, just as likely to be mentioned by those involved in research as those involved in basic needs provision. Most did advocacy in addition to their core areas of work as opposed to it forming a major part of their activities. However, Save the Children did advocacy as a core part of their work in contrast to other organisations. Given that so many organisations identified advocacy as part of their work, it is significant that it was so routinely identified as a gap in the sector. Many organisations simply lacked the capacity for effective advocacy and the advocacy that had taken place was *ad hoc* or insufficient. Advocacy and lobbying was very strongly linked to monitoring – another area of work that was considered to be inadequately performed in the sector.

**Research:** Only five organisations indicated that their core area of work was research. In part, this may be because very few organisations focus their research on migrants and the research conducted is done on an *ad hoc* basis. For example,

both The Community Agency for Social Enquiry and the Human Sciences Research Council have done research on migrants but have not adopted it as a core research area. In addition, research that is oriented towards monitoring and advocacy was most clearly lacking and, as a result, much of the research that has taken place has not been used for these purposes.

**Monitoring** was only identified as a core activity of two organisations. Even for these organisations it was *ad hoc* and strongly dependant on available funds. In addition, many of the organisations would visit the Lindela repatriation centre or the reception officers on request of a client or when there had been reports of abuses. The main concern about this is that it was seldom systematically researched and documented and as a result had little advocacy value.

**Policy analysis and response:** Only one organisation was actively involved in policy analysis and policy response in a sustained way. In spite of this, many organisations had been involved in policy debates at key moments, for example, when new legislation was being passed.

**Cultural and social activities:** A few organisations (five) undertook cultural activities such as art or dance as a strategy for integration and stress relief. Typically these were activities driven by the community and were not funded activities.

### Government services

Government service delivery to migrant communities was extremely inconsistent and depended heavily on whether an individual clinic or school facilitated access. One exception was the migrant help desk set up by the City of Johannesburg which offered referral services for migrants wanting to access both government and NGO services. Aside from access to regular government services such as clinics, schools and police stations, the Department of Social Development (DSD), through its system of social workers, also provides migrant children with access to counselling and referrals to basic services. However, interviews with the DSD have indicated that they suffer from severe staff shortages. This is confirmed by the unaccompanied minors study (2007) where only one child interviewed had accessed a social worker. As a result, the DSD primarily refers migrants to NGO services.

Although the DSD indicated that they would assist children regardless of their documentation status, they felt that most children were not assisted because of their workloads. The DSD also indicated that there is a significant communication barrier between them and the Department of Home Affairs such that, rather than sending children to the Department of Home Affairs (DHA) to have their documents processed, they send them to NGOs who then facilitate the process of getting documents. This makes the systems extremely clumsy. The DSD also indicated that they face language barriers when dealing with migrants and they have no access to translators. Furthermore, interviews with police officers in Musina and the DSD indicated that neither was aware of the Family Violence and Child Protection Unit of the police that exists.

Aside from the reluctance by migrants to use some government services such as police, as was described in the section above, there is also significant confusion among service providers about the different categories of migrants and the rights associated with those categories. For example, the Access to Antiretroviral

Therapy (ART) study (2007) showed that migrants requiring ART were referred out of the government system to NGOs in spite of a directive from the Provincial Department of Health stating that no identification was required for accessing ART. Thus, in Johannesburg, NGOs provided this vital service. Similarly, there has been confusion and debate about what constitutes the life saving medication that every person, regardless of their documentation, is entitled to. As a result, there have been instances where women in labour have been turned away from hospitals and some hospital staff have argued that ART does not constitute life saving medication. Similarly, there have been anecdotal reports from schools that they have been told by police that it is against the law for them to admit undocumented migrants. As a result, some schools have been rejecting children without documentation whilst others have been accepting them.

### **Gaps in the sector**

The most common gap identified by organisations (nine) working in the sector, was advocacy. In particular, this referred to advocacy with key government departments at a national level rather than community based awareness-raising. Organisations specifically mentioned a need to move beyond education, especially education with refugees, to engage in advocacy that would have impact for large groups of migrants. Many people felt that litigation had been successful but that other forms of lobbying and advocacy were lacking. Only one organisation had the capacity for advocacy at a regional level and almost all organisations expressed frustration at their lack of positive engagements with government departments, most notably the Department of Home Affairs.

There was a lack of capacity for monitoring human rights abuses and providing information at the border posts other than the Zimbabwe border. Of particular concern are the borders with Mozambique, Lesotho and Swaziland. Although some organisations had the capacity for monitoring, they were typically based in urban areas and few organisations existed in these areas to ensure that monitoring was sustained. Linked to this, a significant gap exists in providing services outside of the major urban small towns and rural areas. This includes areas such as Nelspruit, Bloemfontein, and other areas where there are substantial migrant populations with few services. Given the research highlighted above, the border towns are areas where we would expect there to be the largest numbers of unaccompanied migrant children and the lack of services in these areas is therefore particularly concerning.

No organisations were specifically dealing with the labour rights of migrants. Although some of the legal organisations had taken up these cases where they exist, the data above indicates a substantial problem in the farming, domestic work and construction industry which need to be monitored and better understood.

Following the xenophobic attacks, many organisations mentioned a gap existing around integration and conflict resolution. These organisations typically saw schools as the best place for such interventions to take place. Another recent development identified was the impact of rising food prices on migrants and the effect this had on organisations that provided access to food.

Issues of gender based violence were also mentioned as an area that is both poorly understood and poorly responded to. Several organisations expressed a

need to respond to transactional sex, sex work and dependency of women and young girls on abusive male partners. Furthermore, the passage of migrants to South Africa was identified as a time where there were high levels of violence and this was primarily perpetrated by police and smugglers or criminals on the borders.

Perhaps one of the most significant gaps in service provision is to unaccompanied minors. This failure exists at government level as well as non-governmental level. Aside from limited services on the border with Zimbabwe, no organisation was able to deal comprehensively with the needs of unaccompanied minors and there was a lack of clarity about the rights and needs.

Furthermore, as much as there is some capacity for health service delivery to migrants, no organisation was tailoring this to the needs of children or addressing young people as users of such a service. In terms of the National Strategic Plan on HIV and AIDS, this represents a significant gap in service delivery.

Although there is some capacity for training of frontline service providers in the sector, this has typically been *ad hoc* and dependent on donor funding. Organisations providing this service also expressed concern that this was seldom included as a mainstream part of the work of these professionals. For example, they felt that training offered to police that was not part of the police training academy programme was less likely to be successful. Similarly, courses for social workers were needed but the fact that it was not mainstreamed into their training meant that they saw it as an additional burden. Furthermore, high turnover in all of these organisations meant that this needed to be ongoing.

In addition, some organisations expressed concern about the training offered to migrants on their rights. Although very important, they felt that without the ability to access these rights, the training was not going to result in improved access to basic needs for migrants. Organisations therefore felt that as much as information should be given to migrants (and in many cases is, through the NGO referral systems) it was the implementation of these rights that was failing.

Finally, reflecting on the organisations in the sector, it is clear that this is a fairly fragile sector. Three organisations had closed down in the time between this survey and the previous one conducted by the Forced Migration Studies Programme (FMSP) in 2007. Many organisations lack sustained funding to allow them to intervene strategically and rather respond to key issues as they emerge. Similarly, there are a number of women's/children's organisations who have not traditionally dealt with migrant communities who are being approached by migrants for assistance. These organisations expressed concern about their lack of understanding of migrant rights and needs and their ability to respond appropriately. It is also significant that (with the exception of the City of Johannesburg helpdesk) the organisations focus entirely on cross border migration. As the research above has indicated, the vulnerabilities that children who migrate, or whose parents migrate, face, are in some instances, the same for internal migrants and this is a gap in service delivery.

When asked about the appropriateness of the South African legal system, almost every organisation said that the problem in securing rights for children lay not with the legal framework but with its implementation. In addition, many mentioned that there was a lack of information about the situation of children and whether there was implementation of the legislation to guide their interventions.

Furthermore, a primary challenge mentioned by organisations was the poor relationship between government and NGOs and lack of change from government despite ongoing advocacy and collaboration with NGOs.

### **The role of international organisations**

Given the gaps identified above, there are a few key areas where international organisations such as UNICEF, UNHCR and International Organisation for Migration (IOM) can intervene. Firstly, these organisations are more likely than small NGOs to have access to national government, SADC or the AU where high level advocacy for the rights of children can take place. Given the relatively strong legal and policy framework that South Africa has for securing the rights of children, this is an area where there is scope to focus on improved delivery of rights.

Similarly, these organisations can play a role in supporting local NGO service providers. This is needed, given the heavy reliance of migrants on these services, and the fragile funding and organisational situation of many of the smaller NGOs. There is therefore a need for capacity building within the sector.

Finally, these organisations are probably best placed to facilitate the regional harmonisation of key policies in ways that can facilitate migrant's access to rights. For example, in the health sector, some organisations have been calling for a regional HIV treatment regime and monitoring system to reduce migrants defaulting on their medication. Similarly, programmes that allow migrant children to access schools in different countries depending on their migration patterns, are important.

## Conclusions

This report attempts to paint a picture of child migrants' access to rights in South Africa. The report shows that the policy and legal framework in South Africa is supportive of children's access to basic rights regardless of their documentation status. Nevertheless, in the implementation of these rights there is frequently a denial of services or confusion about the rights of different categories of migrants. This inconsistent treatment occurs both from government and NGO services.

The review of research indicates that migrant children are frequently unable to exercise their rights. There is extensive denial of service to child migrants as well as abuse of their rights and exploitation. This includes violence against migrant children and exploitation in labour. Although migrant children appear to be generally vulnerable, the concentration of NGO services in the urban areas and the seemingly better opportunities for school and health care mean that children on borders and in rural areas are particularly vulnerable. There is a significant lack of information on these children that can help shape service delivery.

Organisations responding to the needs of migrant children are overwhelmingly NGOs. There is a concentration of these organisations in urban centres but few exist outside of these areas. Given how heavily migrants relied on NGOs for access to services (even government provided ones) this is an area for concern. International organisations can play a significant role in filling the gaps in the sector and working with government departments and regional structures to ensure that government service delivery to migrants is improved and the policies identified in this report implemented.

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# Appendix 1: List of organisations included in the study

NAME	CONTACT DETAILS	LOCATION	CONTACT PERSON
Acornhoek Advice Centre	013 795 5294	Bushbuckridge	Busisiwe Matukane
Agency for Refugee Education, Skills, Training and Advocacy	021 633 8762	Cape Town	Charles Mutabazi
Amnesty International	012 320 8155	Pretoria (international)	Jobi Makenwa
Black Sash Trust	021 461 7804	Western Cape, Eastern Cape, KZN and Gauteng (refugee services only in Gauteng)	Marcella Naidoo
Cape Town Refugee Centre	021 762 9670	Western Cape	Christina Henda
Cape Town Trauma Centre	021 465 7373	Cape Town	Erica Jacobs
CARE	012 341 1889	Pretoria	–
Catholic Welfare and Development	021 418 5976	Cape Town	Nonzwakazi Qeqe
Coordinating Body for Refugee Communities	011 403 4429	Gauteng (particularly Johannesburg)	Dosso Ndessomin
Centre for Applied Legal Studies	011 717 8600	Johannesburg	–
Centre for the Study of Violence and Reconciliation (including Zimbabwe Torture Survivors Project)	011 403 5102	Johannesburg and Cape Town	Maravic Garcia
Congo Heart of Africa	072 157 8305	Johannesburg	Chayis Mobhe
Durban Service Providers Network	031 310 3578	KwaZulu-Natal	Sumanha Pillay
Commission on Gender Equality	011 403 7182	National	Maretha de Waal
Dioscen Development Forum	–	–	–
East London Border Refugee Forum	043 745 2991	East London	–
Forced Migration Studies Programme	011 717 4038	Gauteng	Loren Landau
Human Rights Watch	011 984 4324	International	Nobuntu Mbelle
Independent Complaints Directorate	012 392 0400	National	–
International Committee for the Red Cross	012 430 7335	International	Henrietta Mthata
International Organisation for Migration	012 342 2789	International	Jonathan Martins
International Refugee Services	031 304 4860	Durban	Tazmeen Manawar
Jesuit Refugee Services	011 331 0037	Gauteng	Blaise
Johannesburg Refugee Network	011 834 8361	Johannesburg	Uli Albrecht
Law Society of South Africa	012 366 8800	Pretoria	–

NAME	CONTACT DETAILS	LOCATION	CONTACT PERSON
Lawyers for Human Rights	011 339 1960	Johannesburg, Durban, Port Elizabeth and Pretoria	Jacob van Garderen
Legal Aid Board	0861 053 425	National	–
Legal Resources Centre	021 423 8285 / 481 3000	Cape Town, Johannesburg, Pretoria, Durban, Grahamstown	William Kerfoot
Misericordia International Centre	–	Pretoria	–
Mennonite Central Committee	031 310 3578	Durban (want to expand to Pietermaritzburg and South Coast)	Yasmin Rajah
Mthwakazi Art and Culture Projects	083 766 0020	Johannesburg	E.S. Moyo
Mustadafin Foundation	021 633 0010	Cape Town	–
Muizenburg Community Centre	021 788 3051	Cape Town	
National Consortium on Refugee Affairs	012 322 7553	National	Joyce Tlou
Planned Parenthood Association of South Africa	021 448 7312	Western Cape, Gauteng, KwaZulu Natal	Esther Kaleji
Papillon Foundation	011 435 9799	Johannesburg	Stephen & Marion Smith
Parliamentary Monitoring Group	021 465 8885	Cape Town	–
Public Protector	012 424 1816	National	
Refugee Children's Project	011 333 9266	Johannesburg	Ebalo Abale Justin
Refugee Pastoral Care	011 307 1074	Durban, Pietermaritzburg (but no office there)	Pierre Mapute
Restitorial Pentecostal Church	031 577 974	Durban	
Southern African Women's Institute for Migration Affairs	072 687 0876	Johannesburg, Free State, Durban, Polokwane	Joyce Dube
Sibanye Cape Savings and Credit Cooperative	021 949 1429	Cape Town and Surrounds	Victor Botha
Scalabrini Refugee Service	021 448 3093	Cape Town	Louis Mulumba
South African Council of Churches	011 241 7800	National	
South African Human Rights Commission	011 484 8300	National	Zonke Majodina
St. Josephs Adult Education Centre	021 685 1257	Western Cape	Julia Landau
St. Vincent de Paul Emergency Project	–	–	–
UCT Legal Aid Clinic	021 650 3551	Cape Town	–
Union of Refugee Women	033 26265	Durban (trying to expand to Pietermaritzburg)	Solange Mukamana
United Nations High Commissioner for Refugees	012 338 5301	International	Abel Mbilinyi
Wits Law Clinic	011 717 8552	Gauteng	Abeda Bhaamjee

NAME	CONTACT DETAILS	LOCATION	CONTACT PERSON
Zimbabwe Torture Survivors project	011 403 5102 / 083 766 0020	Gauteng	Mbiko Moyo
Zimbabwe Solidarity Forum	011 403 5650	National but predominantly Johannesburg	Pamela Masiko
Save the Children UK	–	International	Sian Long
Tshwaranang	–	Gauteng	–
POWA	–	Gauteng	Nonhlanhla Sibanda

## Appendix 2: Questionnaire for organisations included in this study

### UNICEF RESEARCH ON CHILD MIGRANTS

#### QUESTIONNAIRE FOR ALL ORGANISATIONS: RESEARCH PHASE 2

##### Notes to interviewer:

*Please make sure the following information is communicated to the respondent:*

F MSP has been contracted to conduct research by UNICEF. As part of this research we want to provide a scan of what services organisations are providing in order to identify gaps and areas where UNICEF might provide interventions. We would like to ask you a few questions about your work with women and with children in order to help with this. The questions are about your key priorities as an organisation, your views on the successes and failures in the sector and the gaps that you see in your provision of services to children. In doing this we hope that we can help UNICEF determine an approach to working with migrants in South Africa that is supportive of existing work and does not duplicate existing work. *(Note: if the organisation has already been interviewed, please make sure the information is transferred to the questionnaire and then check with the respondent whether it is still accurate. We don't want to irritate them by simply asking the same questions we have asked previously.)*

If you feel that you can't or don't want to answer any of the questions then feel free not to. We can keep your answers confidential if you'd like us to but we would like to provide UNICEF with a list of organisations in the sector if you're comfortable with that.

The questions will take about 15 minutes so we would like to schedule a convenient time that we could phone you back. You may remain anonymous if you like.

## UNICEF RESEARCH ON CHILD MIGRANTS

### QUESTIONNAIRE FOR ALL ORGANISATIONS: RESEARCH PHASE 2

We would like to begin by asking you a few questions about the work that your organisation does.

#### 1. BACKGROUND

Name of organisation

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Name and position of person interviewed

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Telephone

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Fax

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Organisation's website

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Total staff complement

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Total annual budget of organisation (explain that this is just to assess where there are funding gaps)

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Does the organisation have NPO or equivalent status? Yes

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No

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#### 2. MIGRANT ACTIVITIES THAT THE ORGANISATION UNDERTAKES

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2.1 What services do you offer to migrants? What are your core areas of work in the migrant sector?

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**2.2 Please explain in more detail your work on children and women's issues**

**Children:**

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**Women:**

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**2.3. Approximately what percentage of your organisation's time is spent on the following activities?**

	TIME	BUDGET
Focus on children		
Focus on women		
Poverty reduction (relating to women and children's issues)		
Exclusion or marginality (relating to women and children's issues)		
Other (specify)		
Other (specify)		

**2.4. What have your core areas of women and children's work been in the past? How has this changed?**

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**2.5. Why has this changed? (Here it is important to assess whether this is a consequence of funding availability, changes in migration flows or client profile's etc).**

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**2.6. What criteria do your clients have to meet in order to receive services?**

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**2.7. Which of your women and children's activities are the least well funded? And which are the most well funded?**

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**2.8. What is the geographical spread of your work?**

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**2.9. Which migrant groups do you concentrate on? For example, national groups, members of religious groups, only women who have children, unaccompanied minors etc.**

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I would now like to move on to some questions about your perceptions about the needs of the sector more generally.

### 3. PERCEPTIONS ON THE SECTOR GENERALLY

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3.1. Is there a particular area of work with women and children that seems to be lacking?

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3.2. Why is it not being done already?

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3.3. In your opinion, where is there a lack of capacity (advocacy, research, basic needs service delivery) etc?

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3.4. In your opinion are the legal frameworks in South Africa adequate to ensure children and women access their rights? If no, what are the gaps?

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3.5. What rights are children and women having the most difficulty accessing (probe particularly for health, education, adequate working conditions)?

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3.6. What do you think the main barriers are to accessing these rights?

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3.7. What are the main risks to the safety and security of children and women?  
What is the nature of abuses against them and who are the perpetrators?

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3.8. In your opinion, are migrant children and women aware of their rights? If not, what is it that they need to be made aware of?

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#### 4. GENERAL

4.1. Are there any other points that you think I should take account of?

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4.2. Are there any other organisations in your area that you think I should be contacting?

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UNICEF SOUTH AFRICA  
351 Schoeman Street  
6th Floor Metro Park Building  
P O Box 4884  
0001 Pretoria  
Tel +27 12 354 8201  
Fax +27 12 354 8293

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