STUDY ON UNACCOMPANIED MIGRANT CHILDREN IN MOZAMBIQUE, SOUTH AFRICA, ZAMBIA AND ZIMBABWE
2017
STUDY ON UNACCOMPANIED MIGRANT CHILDREN IN MOZAMBIQUE, SOUTH AFRICA, ZAMBIA AND ZIMBABWE
2017
ACKNOWLEDGEMENTS

The Children’s Rights Project at the Dullah Omar Institute for Constitutional Law, Governance and Human Rights (formerly known as the Community Law Centre) of the University of the Western Cape would like to extend its appreciation to all the IOM offices in the countries of the study that have facilitated the conduct of the research. In addition, the research would not have come to a successful completion if it was not for the positive gesture extended by the authorities in the countries covered by the study. Last but not least, a number of stakeholders, including civil society organizations, as well as, the children that took part in the research, have been instrumental.

Sincere appreciation to the Scalabrini Centre of Cape Town who made a significant contribution towards developing, researching and writing this report. The Centre’s leadership role throughout the research process made this report possible and is greatly appreciated. Last but not least, a number of stakeholders, including civil society organizations, as well as, the children that took part in the research, have been instrumental.

The opinions expressed in this document are those of the authors and do not necessarily reflect the views of the International Organization for Migration (IOM). The designations employed and the presentation of the material throughout the guide do not imply the expression of any opinion whatsoever on the part of IOM concerning the legal status of any country, territory, city or area, or of its authorities, or concerning its frontiers or boundaries.

IOM is committed to the principle that humane and orderly migration benefits migrants and society. As the UN Migration Agency, IOM acts with its partners in the international community to: assist in meeting the operational challenges of migration; advance understanding of migration issues; encourage social and economic development through migration; and uphold the human dignity and well-being of migrants.

This publication has been made possible by the support of the American people through the US Bureau of Population, Refugees and Migration (PRM). The views and opinions expressed in this publication are those of the authors and do not necessarily reflect the official policy or position of any agency of the Government of the United States of America.
<table>
<thead>
<tr>
<th>ACRWC</th>
<th>African Charter on the Rights and Welfare of the Child</th>
</tr>
</thead>
<tbody>
<tr>
<td>AU</td>
<td>African Union</td>
</tr>
<tr>
<td>BID</td>
<td>Best Interests Determination</td>
</tr>
<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>ICRC</td>
<td>International Committee of the Red Cross</td>
</tr>
<tr>
<td>IOM</td>
<td>International Organization for Migration</td>
</tr>
<tr>
<td>NGOS</td>
<td>Non-Governmental Organizations</td>
</tr>
<tr>
<td>OAU</td>
<td>Organization of African Unity</td>
</tr>
<tr>
<td>SADC</td>
<td>Southern Africa Development Community</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
</tr>
<tr>
<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
</tr>
<tr>
<td>UNODC</td>
<td>United Nations Office of Drugs and Crime</td>
</tr>
</tbody>
</table>
# Table of Contents

**Acronyms**  
**Table of contents**  
**Acknowledgements**  
**Background**  

**Part one: The protection of unaccompanied migrant children in Mozambique: Current challenges, strengths and opportunities**  
1. Introduction  
2. Methodology and limitations  
2.1 Methodology  
2.2 Limitations  
3. Legal and policy framework  
3.1 International and regional legal framework  
3.2 Domestic legal framework for UMC  
4. Research findings  
4.1 General profile UMC  
4.2 Documentation and Refugee Status  
4.3 Trafficking and smuggling  
4.4 Shelter, food and clothing  
4.5 Health  
4.6 Education  
4.7 Violence  
4.8 Detention  
4.9 Family tracing, reunification and resettlement  
5. Conclusions and recommendations  

**Part two: The protection of unaccompanied migrant children in Child and Youth Care Centres in Gauteng and Limpopo provinces of South Africa: Current challenges, strengths and opportunities**  
1. Introduction  
2. Objective  
3. Methodology and applied definitions  
4. Legal framework  
5. Research findings  
5.1 Demographic profile  
5.1.1 Quantifying UMC  
5.1.2 Birth in South Africa  
5.1.3 Gender and age groups  
5.1.4 Disability  
5.1.5 Country of origin  
5.1.6 Location of residential care facilities  
5.2 Access to basic rights  
5.2.1 The right to education
### Table of Contents

5.2.2 The right to a name and nationality 34
5.2.3 Access to documentation 35
5.3 Statelessness 35
5.4 Circumstances around migration 36
5.4.1 Means of transport 38
5.4.2 Duration of stay 38
5.4.3 Decision to migrate 38
5.4.4 Trafficking 39
5.5 Placement in alternative care 39
5.5.1 Reasons for placement 40
5.5.2 Access to the child protection system 40
5.5.3 Duration of placement 40
5.6 Family tracing and reunification 41
6. Conclusions and recommendations 42

**Part three: The protection of unaccompanied migrant children in Zambia: Current challenges, strengths and opportunities**

1. Introduction 45
2. Methodology and limitations 46
2.1 Methodology 46
2.2 Limitations 46
3. The legal and policy framework 47
3.1 International and regional legal framework 57
3.2 Domestic legal framework 47
3.4 Stakeholders 50
4. Research findings 50
4.1 General Profile of UMC 50
4.2 Documentation and refugee status 51
4.3 Trafficking and smuggling 54
4.4 Shelter, food and clothing 54
4.5 Health 56
4.6 Education 57
4.7 Violence 57
4.8 Custody and detention 58
4.9 Family tracing, reunification and resettlement 59
5. Conclusions and recommendations 60

**Part four: The protection of unaccompanied migrant children in Zimbabwe: Current challenges, strengths and opportunities**

1. Introduction 64
2. Methodology, scope and limitations 65
3. Research findings 66
3.1 General overview of recent government policy interventions 68
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.2 General profile of UMC</td>
<td>69</td>
</tr>
<tr>
<td>3.3 Documentation and refugee status</td>
<td>70</td>
</tr>
<tr>
<td>3.4 Trafficking and smuggling</td>
<td>72</td>
</tr>
<tr>
<td>3.5 Food, clothing and shelter</td>
<td>73</td>
</tr>
<tr>
<td>3.6 Health and psycho-social services</td>
<td>74</td>
</tr>
<tr>
<td>3.7 Education</td>
<td>75</td>
</tr>
<tr>
<td>3.8 Detention and violence against UMC</td>
<td>76</td>
</tr>
<tr>
<td>3.9 Family tracing, reunification and resettlement</td>
<td>77</td>
</tr>
<tr>
<td>3.10 Alternative care</td>
<td>78</td>
</tr>
<tr>
<td>4. Conclusions and recommendations</td>
<td>78</td>
</tr>
<tr>
<td>4.1 Positive practices</td>
<td>78</td>
</tr>
<tr>
<td>4.2 Recommendations</td>
<td>78</td>
</tr>
</tbody>
</table>
Children have always been part of migration flows, even though data on children in migration has been particularly limited. Therefore, despite a number of many years’ worth of study and analysis of the issue of UMC in the world in general, and in Southern Africa in particular, some basic information about the profile, protection needs, challenges and opportunities as a whole remains either unknown, fragmented, and/or limited.

Throughout the region, the exercise of estimating the numbers of irregular migrants is difficult, and remains work in progress at best. When such an exercise is distilled down to UMC it rarely includes disaggregated data and often the methods used are also much debated. Part of the challenge emanates from the very nature of the target population that is hidden and mostly wants to remain as such.

As a result, this Study emanates from a March 2015 call for proposals that the International Organization for Migration (IOM) put up for the procurement of a service provider to conduct a study on the profile of UMC crossing international borders, and “their protection needs as well as current government and other stakeholders’ response and challenges” in a selected number of Southern African countries- namely Mozambique, South Africa, Zambia and Zimbabwe. The Community Law Centre (CLC) of the University of the Western Cape (UWC) was awarded the contract with an agreement that came into force on the 29th of June 2015. The research team consisted of Prof Benyam Dawit Mezmur (coordinator), Prof Julia Sloth-Nielsen, Dr Aquinaldo Mandlate, Dr Maria Usang Assim, Dr Maralize Ackeerman, and Jill Stein.

This study aimed to collect complementary and predominantly qualitative information on some of the fundamental challenges faced and protection and participation measures necessary to address the human rights of UMCs in the selected four Southern African countries- namely Mozambique, South Africa, Zambia and Zimbabwe. Clearly, this is an ambitious undertaking and there is a need for careful modesty about what this study will be able to achieve. There were three main components to the Study as outlined in the Service Agreement:

- A literature review of the state of UMCs in the selected jurisdictions
- A field work to collect data to substantiate, complement, or dispel some of the information from the literature review through interviews of purposively selected key informants, and filling of questionnaires.
- A synthesis analysis of the information from the literature review as well as issues and findings from the field work- FINAL REPORT.

While a significant number of literature finds children to be at the periphery of interest of migration researchers, this study aimed to make children and their rights the centre of its activities. This has a number of implications for the research and its outcome.

Firstly, the study hinges on the obligations of States that emanate from international law, in particular, the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC). These two instruments are ratified by all

---

1 For dependent migrant children this is partly due to the fact that children’s movements are often not recorded separately from their parents.
the four countries in the study. The main principles of these instruments – namely; the best interests of the child, non-discrimination, the right to life survival and development and child participation- will be central to the study. A number of other provisions are also important; children’s protection rights regardless of nationality or immigration status, the right to be free from abuse, neglect and exploitation, family reunification, the right to education, and the right to the highest attainable standard of health.

Secondly, the study does not only seek and take into consideration the views of adult stakeholders, but equally importantly, it solicits the views of children themselves. With this as a backdrop, the methodology involved interviews with UMC in the four countries identified for the study. This process was undertaken with child friendliness and the need to respect children’s privacy and rights, and individual needs in general at its centre.

The geographical scope of the study is limited to the four-countries of the Study- namely Mozambique, South Africa, Zambia and Zimbabwe. This has been determined by IOM by taking into account a number of objective criteria. The “call for proposals” contained some information that is clearly indicative of the personal scope of the proposed study as it called for a service provider to conduct a study on the profile of UMC crossing international borders, and “their protection needs as well as current government and other stakeholders’ response and challenges”. Hence, the focus is on children that are migrants and unaccompanied, and crossed international borders.

Each section of the country reports outlines the details of the methodology used as well as some of the accompanying limitations in detail. Here, suffice to mention that each country report benefitted from a literature review, as well as field work which included interactions with the relevant authorities as well as UMC. The use of a combination of mostly qualitative, and in a limited manner, quantitative methods, to collect data as well as assessment methods including a literature review, key informant interviews, and structured survey with UMC were used to meet the objectives of the study. A very limited role has also been proposed for the use of case studies to further consolidate the findings of the study. Inevitably participant observations also played a role in informing the ultimate recommendations that will emanate from the study.

While a comparative analysis among the countries of the study was not an objective of the study, the respective country reports underscore common elements such as the legislative and policy framework, both at the domestic and international level. The research findings in general focus on the profile of UMC, documentation, trafficking and smuggling, shelter, food and clothing, health, education, violence, detention, family tracing, reunification and resettlement.

---

2 The principle must be respected during all stages of the displacement cycle. At any of these stages, a best interest determination must be documented in preparation of any decision fundamentally impacting on the unaccompanied or separated child’s life.

3 This a questionnaire and interview questions for the field works, the contents of which were informed by the IOM/SCS “call for proposal”, the proposal and additional information submitted by CLC, the Service Agreement signed between CLC and IOM, the information from the July 2015 MIDSA conference, literature review, and discussions between the researchers (and other stakeholders) involved in the study.

4 This in part has been explained by IOM during the MIDSA July 7-9, 2015 in Victoria Falls, Zimbabwe

5 The assessment will used mostly participatory methods to link practical knowledge gained from the beneficiaries with the technical knowledge of specialists and experts.
Part one
The protection of UMC in Mozambique: Current challenges, strengths and opportunities

1. INTRODUCTION

For many years now, the protection of vulnerable children remains a top priority in the list of issues discussed globally. It includes the need to ensure protection for UMC facing abuse and violation of their rights. UMC are vulnerable because they are young and often unable to understand the risks they face, and because they lack protection and assistance by adults. This report provides an overview of the legal and policy framework for UMC in Mozambique and it discusses some of the major challenges affecting them. The report also discusses areas where there are gaps in the relevant laws and policy applicable to the children concerned and highlights some of the practical challenges that need to be addressed. It is interesting to study the situation of UMC in Mozambique, because the country occupies a unique position as a sending, transit and receiving country at the same time. While this scenario leads one to think that the country has a fully developed system for protection of these children, the report shows that much needs to be done to improve the current system. The conclusions sum up the findings and provide recommendations on the way forward.
2. METHODOLOGY AND LIMITATIONS

2.1 Methodology
The report was developed with evidence obtained from desk research and empirical analysis. These research methods were selected based on the understanding that the voices of UMC, who form the subject of the report, must be given consideration. This means that besides using desk research as a primary method for collecting documental data and statistics, there was need to employ a participatory process that took into account their voices. With the assistance of IOM (more precisely the Mozambique Mission) many informants and key role players working with or for children were interviewed to enhance the understanding of major developments and the current gaps in the system of protection of UMC in the country. These include institutions such as the Instituto Nacional de Apoio aos Refugiados (INAR – Institute for Support to Refugees) which is responsible to assist refugees under the Ministry of Foreign Affairs, as well as relevant international organizations (including UNHCR) and (International and Local) Civil Society groups working with migrant children, Rede Came, SANTAC, Rede da Criança, and Terre des Hommes).

The research was conducted in places known to provide care for UMC. These include the Maratane Refugee Camp located in Nampula (Northern Mozambique), and the Maguaza Child and Youth Care Centre located in Maputo Province (Southern Mozambique). The Maratane Refugee Camp is the country’s main refugee camp providing care (lodging, food, educations skills and health care) for refugees, including UMC who left their countries of origin in search of a safe place. In a different vein, the Maguaza Child and Youth Transit Centre is a state run institution responsible to provide care for children needing support. While there are other institutions providing care for children, research found that the Maguaza Child and Youth Transit Centre is one of the main state run institution mandated to deal with UMC. It is possible that other care facilities in the country assist these children. However, this could not be verified. Importantly, other child care facilities in the country attend to children who are vulnerable (for example orphans, and victims of abuse such as domestic violence and others), including foreign children. It leads to think that foreign children without refugee status must be channelled to Maguaza Child and Youth Transit Centre in Maputo province.

The majority of the children interviewed were between 14 and 15 years. Although others did not know their exact age, it was estimated that they were in the age group indicated (14-15). The power relation aspect was balanced by ensuring that children were interviewed in the presence of an adult (preferably someone from the community where they live or a social worker) and interviews were carried out in a language that was preferred by the child. Where needed a translator was appointed to assist. Ethics clearance was obtained before the interviews were conducted and every child and the informants interviewed were informed about the options to answer or to leave out any questions that they were not comfortable answering, or to stop the entire process and withdraw.
2.2 LIMITATIONS
The report is limited due to various factors including the fact that it was not possible to interview all informants relevant to the subject under analysis and there were difficulties accessing UMC defined as foreign children migrating into Mozambique. Also, in some cases it was difficult to explore detailed information from the children as they seemed a bit constrained by presence of adults during the interview process.

Insofar as contact with key informants is concerned, although efforts were made, it was not possible to interview representatives from the judiciary and Immigration department working at entry points into Mozambique. In part, this was because some of them were not available to take part in the interview when the field work was conducted. This was despite the fact that IOM tried to get permission for researchers to interview relevant state authorities in Mozambique. For example, although authorisation was requested, interviews could not be carried out with representatives from institutions such as the Ministry of Interior, the Ministry of Education and Human Development, and with staff from the Ministry of Labour. In addition, due to limited funds it was not possible to access UMC in other parts of the country including in the Provinces of Manica and Tete (central regions of Mozambique), where it is suspected that they can be found in measurable numbers living in the community.

Related to the difficulties in accessing the children who were the object of the study, only four (foreign) UMC were interviewed: three at Maratane Refugee Camp, and one at Maguaza Child and Youth Centre. The fact that few children were interviewed has implications on the question of the adequacy of representation of the voices of the children concerned. It can be argued that this might limit significantly the validity of findings in the report to the extent that the findings might not express the exact views/problems affecting the entire population of UMC living in Mozambique. However, it is submitted that the findings in the report remain important as UMC often do not stay very long in Mozambique before they are sent back to their countries of origin. Only a few might stay longer than expected. Only UMC who are refugees (and asylum seekers) are thought to be the ones who may stay longer in the country than other UMC. Noting that there are few unaccompanied children who are refugees, it can be argued that the number of children interviewed in the refugee camp is good enough to be used as sample to represent the voices of all UMC living in the camp, and thus to validate the findings.

3.LEGAL AND POLICY FRAMEWORK

3.1 International and regional legal framework
In the Mozambican context, validly approved and ratified international (and regional) law norms which have been published in the Boletin da República, which is the country’s Government Gazette, form part of municipal laws. It means that, once these formalities are satisfied, international laws norms and relevant regional instruments protecting UMC become directly applicable in Mozambican courts and anyone interested can invoke these instruments before the judiciary.

Currently, Mozambique is a State party to many international and regional treaties relevant for the protection of the children concerned. Relevant to the

---

subject under analysis, internationally, Mozambique is signatory to the UN Convention on the Rights of the Child (CRC), the 1954 Convention relating to the Status of Stateless Persons, the Palermo Protocol on trafficking in women and children, Protocol against the Smuggling of Migrants by Land, Sea and Air. However, the 1961 Convention on the Reduction of Statelessness and the Hague Convention on the protection of Children and Cooperation in respect of Inter-Country Adoption have not been ratified. At the regional level, Mozambique is a State party to the ACRWC, African Charter on Human and Peoples' Rights, and the Organization of African Unity (OAU) Convention governing the specific aspects of Refugees in Africa. These instruments have elaborate provisions that can be used to protect UMC living in Mozambique.

3.2 Domestic legal framework for UMC in Mozambique

There are several domestic norms of Mozambique which can be used to protect UMC including the Constitution, the Immigration Act and its respective regulations, as well as the Refugees Act and its regulations. Other relevant instruments include the Children’s Act, and the Anti-Trafficking Act, which are principal instruments regulating children’s rights and dealing with human trafficking in Mozambique, respectively. Although these instruments are not specific to UMC, their provisions add significant value to advance their rights.

The Constitution sets out basic principles and fundamental norms applying to all individuals, and it binds private actors and public institutions alike. Constitutional norms make no distinction between national and foreign citizens in the country. To the extent that constitutional norms apply to everyone they can be used to protect children, including unaccompanied children as well as migrant children separated from both parents and from adults who were responsible to provide care for them. There are general and specific constitutional provisions covering children’s rights.

Thus, Article 47 is specific. In regulating children’s rights, this provision states that:

- Children shall have the right to protection and the care required for their well-being.
- Children may express their own opinion freely on the issues that relate to them, according to their age and maturity.
- All acts carried out by public entities or private institutions in respect of children shall take into account, primarily, the best interest of the child.

In Articles 23 and 24 of the Constitution, children are afforded the right to nationality. These provisions are important for unaccompanied children who lack knowledge about their origins. Article 121 is termed ‘childhood’ and it compliments all constitutional precepts specifically speaking to children’s interests. At the heart of Article 121 are rights and principles underlying the protection of children’s interests as follows:

- All children have the right to protection from the family, from society and from the state, having in mind their full development.
- Children, in particular orphans and disabled and abandoned children, shall be protected by the family, by society and by the state against all forms of discrimination, ill treatment and the abusive use of authority within the family and in other institutions.
- Children shall not be discriminated against on the grounds of their birth, nor shall they be subjected to ill treatment.
- Child labour shall be prohibited, whether the children are of compulsory school going age or any other age.

---

See Article 9(2) of 2010 Constitution of Angola, and Articles 23-24 of 2004 Constitution of Mozambique
The protection of children against discrimination in Article 121(3) helps to ensure that all child rights apply to every child (unaccompanied or separated children on the move included) without exception. 8This includes offering these children protection and care at all times. Similarly, Article 47(3) speaking to the best interests of the child and all other constitutionally entrenched principles such as the right to life captured in Article 40 are important for protecting UMC who live in Mozambique, generally.

The Immigration Act9 provides rules governing how foreigner nationals can access entry into Mozambique, generally. In terms of the Immigration Act foreigners must obtain visas or the permits required in order for them enter the country and establish their residence in Mozambique. This applies to all foreigners without exception, including to UMC coming from other countries. There is obvious need to ameliorate the law to cater for those who are unable to seek permission before they enter the country.

The Act makes provision for expelling foreigners entering the country illegally. 11In Article 29(2), a person who has been expelled can challenge the decision by appealing to the Government, directly. An expulsion order can also be challenged through the Supreme Court. It is commended that the law offers such possibility for persons expelled from Mozambique to challenge such orders. However, it is very unlikely that such an order would be challenged when it concerns UMC, as these children lack the resources needed to sustain their appeals.

12These children can also be manipulated by acts of threats and intimidation perpetuated by public officers who make or motivate such expulsion orders, thus avoiding them from obtaining the desired legal protection. Moreover, is it unlikely that an unaccompanied migrant child will have full knowledge about his or her rights or able to understand the formalities needed to bring appeals against expulsion orders. It means that adequate mechanisms must be provided to protect these children when they are found in such undesirable circumstances.

It is submitted the law must make provisions for courts to play a more meaningful role in processes aimed to expel foreign nationals. Such intervention by courts is particularly needed where children are involved as they very vulnerable. The provisions in the Immigration Act of Mozambique fall short of a standard capturing the role of courts in processes relating to expulsion of foreign nationals. In countries such as South Africa, the courts play a more meaningful role allowing them to protect the best interests of children and other rights afforded to them under international law instruments, generally.

Where courts are not involved, unaccompanied children risk being expelled or repatriated from Mozambique without a proper assessment of their situation. The involvement of courts would therefore strengthen the system by ensuring that mechanisms for proper assessment are put in place and that checks and safeguards to protect children’s rights contained in international law norms are provided for domestically. While the Immigration Act contains standards applicable to the repatriation of foreign nationals who entered the country legally, including refugees, it has no standards concerning the repatriation of persons who are in the country with an irregular status, including unaccompanied children. This gap needs to be addressed to avoid uneven treatment and disparities in the treatment given to this latter group of people who are vulnerable.

In terms of the Immigration Act, all private and public entities employing non-nationals should cover expenses relating to their repatriation. 13However, the law formulates no corresponding obligation in relation to the expatriation of non-nationals, including

---

9 See, generally, Immigration Act No. 5 of December 1993.
10 Article 1 of Act No. 5 of 28 December 1993.
11 See Article 29(1)(a) of Act No. 5 of 28 December 1993.
12 This view is solely expressed by the writer of the report and it does not bind IOM.
13 Article 45 of Act No. 5 of 28 December 1993
UMC, working in the informal sector of the economy. It is submitted that, ideally, the State must be charged with such responsibility, especially in the instances where it has been proven necessary for children to be repatriated to their country of origin (for instances for purposes of bringing them to their families after war).

The Immigration Act places responsibility on immigration authorities to issue passports and travel documents for non-citizens. In terms of the law these documents will only be issued for persons older than 16 years. In other words, non-nationals aged below 16, including UMC, cannot obtain travel documents in Mozambique. However, several reasons can be given to propose that authorities must also issue travel documents for the latter. For instance, they can be travelling to another country by passing through the borders of Mozambique because of war in their respective countries of origin.

They could also be in search of better conditions in another country neighbouring Mozambique, meaning that they need travel documentation in order to access their next destination. In sum, this heightens the need to recommend the government of Mozambique to review the current Immigration laws to ensure that travel documents can be issued for persons under 16. However, the involvement of other authorities such as the Department of Women and Social Welfare (Ministério do Género, Criança e Acção Social) as well as the courts may be required to assess the situation on a case by case basis.

The possibility of issuance of passports for unaccompanied children is provided in Article 52(1)(b) which articulates that stateless persons and non-citizens may, under special circumstances, obtain passports in Mozambique. However, even this provision does not mention which special circumstances warrant the issuance of passports for non-citizens. It is submitted that the protection of children’s legitimate rights, in particular, the rights of unaccompanied children, needs robust laws outlining clearly the circumstances in which travel documents can be issued for migrants.

The Regulations to the Immigration Act provides further guidance on the implementation of the immigration law. In terms of the regulations, visa applications for foreign children (and by inference, UMC) must be lodged by (adult) persons who are responsible for them legally (parents, guardians or other persons authorised by law). There is no doubt that in drafting the regulations there was little thinking about the fact that often UMC enter Mozambique without legal representatives to lodge these applications on their behalf. Usually, these children travel by themselves and when they come into the country with the assistance of an adult they are abandoned and left at the mercy of life to survive.

The fact that often these children enter the country alone heightens chances that they will not apply for Mozambican visas by themselves and implies a risk that they enter the country without any documentation. In that way they ultimately become irregular migrants, thus elevating chances for them to be detained and subsequently deported to their respective countries of origin. In Article 24 of the Regulations, non-citizens with refugee status in Mozambique have the right to obtain temporary residence permits. These permits are issued based on applications brought by the refugee him/herself or through a legal representative.

The above calls for the need for Mozambique to adopt immediate measures to fill the normative gaps mentioned above, and to ensure that the State takes the primary responsibility to ensure the safe return of irregular migrants, especially safe repatriation of unaccompanied children and where necessary, to issue residence permits, as part of the country’s human rights obligations defined in the relevant child right

---

14 See Article 55 of the Immigration Act No. 5 of 28 December 1993.
16 See Article 10(2) of Decree No. 38/2006 of 27 September 2006.
The Refugees Act is yet another instrument relevant to the discussions at hand. It has provisions speaking to the protection of refugees and asylum seekers in Mozambique, generally. It also provides mechanisms by which refugees and asylum seekers are allowed entry into the country and sets out basic requirements and procedures for bringing applications for refugee status. The provisions in the Act only apply to non-citizens seeking asylum. This means that applicants with valid asylum claims are considered, but not others (including UMC) lacking such valid claim. While this is the very nature of refugee law, considerable attention must be given to unaccompanied children lacking valid asylum claims for the many risks facing them. In terms of the law a refugee is a person who:

Has a well-founded fear of being persecuted due to his or her race, religion, nationality, political opinion or membership of a particular social group, is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country.

Not having a nationality and being outside the country of his or her habitual residence is unable or, owing to such fear, unwilling to return to it;

Owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either a part or the whole of his or her country of origin, is compelled to leave his or her place of habitual residence in order to seek refuge elsewhere outside the country of his or her origin or nationality.

The Act has no provision speaking specifically to UMC. However, its general provisions can be used to protect them. For instance, Article 7 stipulating the procedures to be followed in bringing application for refugee status based on compliance with any one of the requirements set out in Article 1 can be used by UMC seeking asylum in the country.

However, it is regrettable that the law has no provisions ensuring that UMC found in circumstances indicating that they qualify for asylum claims receive assistance in lodging such claims. This indicates that there is a gap in the protection afforded to UMC who are unaware of asylum procedures and risk falling in the criminal justice system and being returned to their country of origin. The provision in Article 4 which allows the extension of refugee status to other persons related to someone who previously acquired this status is also applicable to UMC. In the event that these children acquire refugee status their relatives who come to be known may eventually benefit by obtaining the same status in Mozambique. To this end, it can be submitted that the standards contained in Article 4 contribute significantly to the protection of the interests the children who are object of this report for establishing the platform needed for them to reunite with their family and relatives.

The Refugees Act is complemented with some regulations. The Regulations to the Refugees Act provides guidelines on the implementation of the main Act. They attribute to the Instituto Nacional de Apoio aos Refugiados (INAR) the responsibility to attend to refugee matters in Mozambique. INAR is also tasked with the responsibility to play the fundamental role of assessing asylum claims. In terms of the Regulations, the State is responsible to provide special attention to persons needing protection, including special assistance for children, the elderly, and persons with disabilities. Moreover, the State is also tasked with the responsibility to provide special attention for victims of torture and trauma, as well as for women with special needs.

Arguably, reference to the need to provide special assistance for children as coined in the Regulations

---

18 See, generally, the Refugees Act No. 21/91 of 31 December 1991.
19 See Article 1 of Act No. 21/91 of 31 December 1991.
20 The call for the need to reunify children and their families is also entrenched in international and regional human rights norms such as the Convention on the Rights of the Child and the African Children’s Charter, respectively.
22 See Article 1 of Decree No. 33/2007 of 10 August 2007
23 Article 1(2) of Decree No. 33/2007 of 10 August 2007
includes the provision of special assistance for UMC as well. However, as it was highlighted above, the protection envisaged in the Regulations applies only to persons with valid asylum claims. This means that UMC unable to seek the authority to lodge their claims risk not benefiting of the protection envisaged for them under the law.

The Regulations provide room for asylum applicants to make their claims orally and in writing.\textsuperscript{24} The provision for oral applications in asylum procedures is highly commendable to the extent that these standards can be employed to protect the interests of children, especially for those who are unaccompanied and unable to write Portuguese (the official language used in Mozambique). A major obstacle, however, is the fact that the law makes no provisions for translations to support asylum claims brought by non-speakers of Portuguese. This may impact negatively on children’s rights to express their views freely depending on their age and maturity, and affect the analysis of asylum claims brought by children, especially UMC causing them to be returned unlawfully to their countries of origin without proper assessment of their claims. In Article 8, temporary identification documents must be given to asylum seekers who present their claims to the authorities. These documents have a maximum validity of two years. Thereafter, they can be renewed for no longer than six months. The importance of temporary identification documents cannot be overstated in the quest to protect asylum seekers, and particularly UMC waiting for their claims to be finalised. These documents help them to remain lawfully in the country until such time when their applications are finalised, and thus reduce the risk of rendering applicants (specially UMC) vulnerable to repatriation and or abuses such as arrest and detention due to lack of documentation while they wait for their applications to be finalised. However, the problem relates to the fact that the two years validity can compromise speeding up of asylum assessment process and thus affect the possibility of the children concerned enjoying their other rights such as the right to education, in the absence of valid documents proving their status.

Nevertheless, it is commendable that identification documents enable the government to keep track of asylum applicants, including the whereabouts of UMC waiting for their claims to be finalised. This allows the State to devise timely solutions for repatriation and or integration of the applicants into the local communities.

The Children’s Act\textsuperscript{25} is the principal instrument regulating children’s rights in Mozambique. It incorporates child rights standards embedded in international and regional child rights norms such as the CRC, the African Children’s Charter, and many others. In promoting the implementation of these standards the Children’s Act places stringent obligations on the government, the society, the family, as well as private and public institutions to respect children’s rights.\textsuperscript{26} The law also regulates child care and protection, but not as comprehensively as other general children’s statutes in the region (e.g. South Africa), despite the few the provisions scattered throughout the Act. Regrettably, the Children’s Act does not have any provision defining the term “children at risk” and it is silent on the conceptualisation of the term “vulnerable children”, which is generally captured in international children’s rights norms relevant to the subject.

Nevertheless, the law places a duty on government to

\textsuperscript{24} See Article 6(2) of Decree No. 33/2007 of 10 August 2007.

\textsuperscript{25} Act on Promotion and Protection of the Rights of the Child (Mozambican Children’s Act No. 7/2008 of 9 July 2008 or Children’s Act).

\textsuperscript{26} Article 7 of Act No. 7/2008 of 9 July 2008.
study on unaccompanied migrant children in Mozambique, South Africa, Zambia and Zimbabwe

The placement of such responsibility upon the government is commendable as it includes the obligation to protect all children facing risk, including UMC, and others facing potential risks and actual threats. It is submitted that some of the aspects missing in the Children’s Act can be addressed through a regulation on the implementation of the Act, which has not yet been enacted.28

On a significant note the law applies to refugee children,29 which enhances potential of protecting UMC who have refugee status in Mozambique. However, it would be ideal if the scope of the law could be broadened to include other migrant such as (unaccompanied) children who do not qualify as refugees, but have identical challenges compared to the refugee population. For instance, it would be ideal if the general standards on alternative care for children embroiled in the law could be extended to protect UMC alike.

Thus, while it is laudable that the State is compelled to provide alternative care, protection as well as assistance for children temporarily or permanently deprived of a family environment,30 the law would gain more weight if interpreted broadly to include responsibility to provide alternative care, protection, and assistance for UMC, also known as children on the move, in addition to Mozambican children alone. In the context of alternative care the protection envisaged in the law can take the form of placement of children in foster arrangements, provision of adoptive families and institutional placement.31 Other stakeholders, especially those within the private or public sectors, are welcome to collaborate with the State and to assist in providing care for the affected children.31

Exceptionally, care institutions may receive children without obtaining prior authorisation from the government,33 but they must inform the authorities five days after they receive a child in such circumstances. There are obvious advantages of incorporating such a provision in the Children’s Act including the fact that it allows for early identification of the children affected and for the provision of care before authorisation for placement is obtained from the authorities. It may be contested, however, that there is no limitation in terms of the length of time within which children can be kept in institutional care. Establishing clear placement periods can be positive where the main aim is to ensure that the child is brought back to a normal family environment which is proper for their development.

On a negative note, the failure to establish placement limits can also contribute as a negative factor discouraging any effort leading to identification of parents or other persons responsible for the child. Other provisions in the Children’s Act that can advance the rights of unaccompanied children include Article 93(2) which deals with the right to free legal assistance for children, Article 46 banning child labour, and Article 48 instating upon everyone the duty to report to the authorities’ cases involving abuses or threats of abuse against children.

In addition, Articles 59 and 60 ban the placement of children in residences or institutions providing accommodation services to the public without the presence of parents or legal representatives. These provisions also impose stringent rules for persons travelling with children to places outside the country, including the fact that both parents must consent and in the absence of parental consent, a court order is

28 More than six years have passed since the Children’s Act came into force in 2008 yet the respective regulations have not been enacted. It calls for an immediate need to adopt the regulations to ensure the full implementation of the Children’s Act.
32 Ibid
required.

Furthermore, Article 83 of the Children’s Act outlaws prison sentences for children under 16. Clearly, this provision can be celebrated as a standard preventing children, including UMC, from being imprisoned. It complies largely with international standards discouraging deprivation of liberty as a criminal justice measure used against children. Article 83 is complimented by Article 84 which enjoins the State to apply measures other than imprisonment for children accused of or found guilty of committing criminal offences.

Although commendable, this provision falls short of international law norms which in addition to calling for alternative measures other than imprisonment for children instruct States only to apply imprisonment as ‘a matter or measure of last resort’. It reiterates the need to strengthen the provisions in the Children’s Act in order for it to be fully compliant with ratified treaties and to afford children, and particularly UMC, better system of protection as they may be victims of the criminal justice system and face imprisonment because of irregular entry into Mozambique.

Another relevant instrument is the Anti-Trafficking Act. Although the Act does not regulate children’s rights, specifically, it has provisions which can be used to advance their rights and particularly the interests of UMC. To this end, some provisions speaking to the protection of victims of trafficking can be used to protect UMC, during repatriation to their countries of origin, for instance. Thus, Article 2 serves as a good example of a provision speaking to the repatriation of children victims of trafficking. It enjoins the State to enter into agreements with other countries in order to ensure safe repatriation of the children who are victims of trafficking.

This provision applies for purposes of returning Mozambican children trafficked abroad as well as for the repatriation of foreign children alike. Despite, the limitation of financial resources, the content of Article 2 is commendable for entrusting the Mozambican government with the responsibility to provide food, shelter and medical assistance for victims of trafficking, as these may include UMC who are at the centre of concern in this report. However, there are no regulations for the implementation of the law and a National Referral Mechanism for victims of trafficking is only being developed. As a result, usually IOM and few other interested organisations assist in carrying out the return of victims of trafficking to, from and also within Mozambique.

The law also binds the government to ensure safety of all persons victims of trafficking, specifically children, during and after the completion of repatriation process. Broadly speaking, this includes the duty to ensure that there are safe conditions for repatriation of victims and safety for the victims upon arrival in their respective countries of origin. Although it may be contested, it also includes a duty to eliminate or reduce risks that persons being repatriated may fall victims of trafficking again. These provisions raise hopes that by implementing them, children’s rights will be fulfilled and many children, particularly UMC will enjoy better protection from predators seeking to make them victims of trafficking.

The Ministry of Gender, Children and Social Action is the entity responsible to implement the duties listed above. To this end, Article 23(3) which incorporates the

---

34 See, generally, the Prohibition of Human Trafficking especially the trafficking of Women and Children Act No. 6/2008 of 9 July 2008 (Anti-Trafficking Act).
36 See Article 23(3) of Act No. 6/2008 of 9 July 2008.
PART ONE
Continued

standards discussed is framed generally and needs to be amended accordingly to mainstream clear channels for triggering the accountability of the government in the event of failure to comply with its obligations. On another note, victims of trafficking may obtain temporary residence permits allowing them to remain lawfully in Mozambique while they wait for repatriation. 37 Again, there is no doubt that this provision has particular significance for UMC who were rescued by the authorities after they escaped trafficking, as they are allowed to remain (temporarily) in the country lawfully without facing risk of imprisonment. 38

4. RESEARCH FINDINGS

1. General profile UMCs
There are hardly any statistics on the number of UMC who live in Mozambique. The country is challenged by lack of a centralised data tracking system to record the number of UMC who enter or leave the country to other destinations. However, the practice is that different institutions working with children keep their own records. Thus, in 2015 UNICEF estimated that the Maratane Refugee Camp had hosted 48 UMC of out of 205 children who lived in the camp. 39

In the same year, the number of UMC who lived in the Maguaza Child and Youth Centre varied with the highest estimate being placed at 10. 40 It should be noted that, at any given point, there will be variations in the number of UMC living in Mozambique. This is mainly because some of the children enter, transit, and leave to other countries. Also, statistics were hardly available because some of the children were scattered in various parts of the country. They move from one place to another in search of better conditions.

At the time when the research was conducted 41 it was not clear if the 48 children indicated above were living at the Refugee Camp. Partly, the difficulty to establish the exact number of UMC that lived in the camp was due to the fact that some of the children were not in the Camp and could have been engaged in activities outside Maratane. Also, the environment in the camp was not safe and the atmosphere was tense after one female refugee’s child a few days earlier, which had caused demonstrations and a tightening of security. The latter event made the authorities very sensitive to sharing any information with the researcher and thus affected the findings on the number of UMC who lived in the Camp.

Only one child (at the Maratane Camp) out of the four children interviewed (overall) was female. Other children were male. The majority came from the Democratic Republic of Congo - DRC (three children interviewed in Maratane). Although it was not possible to interview the few other children remaining, research found that some of them came from countries as far as Burundi and Somalia. A common factor among the children from DRC is that they were fleeing from armed conflict. Some of them come to Mozambique with their siblings and others were brought by adult persons (usually related to the child’s family). The fact that such adult persons often do not take full responsibility of the children concerned justify our attempt to placing these children in the category of unaccompanied minors. One of our interviews observed that:

“I left when I was a child...my biological mother had died. Mr Kaskile took me and brought me here”.

On her part, another interviewee said:

“My aunt fled with me. I was told that my mother and

38 It should be noted that it is very common practice in Mozambique that people get arrested due to lack of identification of documents (resident permits included). Thus the provisions which allows children who are victims of trafficking to be given temporary resident permits is welcome for the potential that it has in avoiding the deprivation of liberty of these vulnerable group of children.
40 Interview with Isidro Alberto, staff at the Department of Gender, Women and Children working at the Maguaza Child and Youth Care Centre.
41 November 2015
father were killed by Mai-Mai soldiers”.
Many of the children could not remember which means of transport they used and the route they followed when coming into Mozambique. This was mostly because they were very young at the time of entry. However, one of the children interviewed observed, but uncertainly, that they had passed through Tanzania before they arrived in Mozambique.

The children themselves were not the ones who took the decision to venture into Mozambique. This was explained by the mere fact that most were either brought by adults when they were babies or they were following older siblings. Nonetheless, once in Mozambique, the children did not show any interest to remain in the country. This was because they felt that they experienced economic hardship which makes it difficult for them to live in Mozambique and because they feel that the country is not politically stable. Some of the children said that they want to go to developed countries such as South Africa and the United States of America were they said their needs will be addressed.

2. Documentation and Refugee Status

Mozambique ratified and is bound to the International Covenant on Civil and Political Rights, which protects the right to freedom of movement to every human being, regardless of their nationalities. In addition, as mentioned in the section dealing with ratified international and regional treaties relevant to the protection of UMC, the country ratified and is bound to the 1951 UN Refugee Convention. Article 26 of the latter instrument protects the right to movement. However, Mozambique entered into a reservation in respect of Article 26 of the UN Refugee Convention to the effect that the country:

(... reserve its right to designate place or places for principal residence for refugees or to restrict their freedom of movement whenever considerations of national security make it advisable.

The implications of this reservation are onerous as it restricts the right of refugees, and particularly UMC with refugee status, living in Mozambique. It violates Mozambique’s international obligations stemming from the ICCPR. In order to protect the rights of refugees, Mozambique should consider withdrawing this reservation. UMC who have valid asylum claims are required to submit their applications for refugee status at Instituto Nacional de Apoio aos Refugiados (INAR), the government body responsible to attend to all matters relating to refugees and the entity responsible to issue all pertinent documents for them.

However, there are many practical challenges. For instance, a significant number of UMC interviewed at the Maratane Refugee Camp do not have their applications finalised, a problem affecting a large majority of the population of concern for UNHCR. This is despite the fact that some of them had applications lodged for more than 10 years. The delay in finalising application for refugees, and particularly unaccompanied refugee children, has negative impact in many respects, some of which are explained in the sections 4.5 and 4.6 below.

3. Trafficking and smuggling

It was mentioned in section 3.2 above that Mozambique has a comprehensive statute seeking to combat trafficking and the smuggling of persons outside or into the country. The Police authorities in collaboration with other relevant departments (such as the Ministry of Gender, Women and Children and the Prosecuting Authorities under the department of Justice) are responsible to implement the Anti-Trafficking Act. In order to curb the effects of trafficking, the Mozambican authorities have developed many programmes and they are working in close collaboration with civil society...
The Anti-Trafficking Act places stringent obligations upon the government to provide for the safe return of victims and for the provision of support. Data could not be found as to how many children and particularly UMC have been affected by trafficking. However, there are reports of Mozambican children that have between taken to South Africa and other parts of the world for prostitution. IOM has assisted several children who were exploited in South Africa in forced labour.

There is no data readily available about the number of children affected by trafficking and smuggling in Mozambique. The situation is worse when it concerns UMC as there is no centralised statistics speaking to these children. Although it could not be established whether UMC have been victimised by trafficking, the fact that some of these children are brought into Mozambique by persons who are not necessarily related to their family means that there could be great risk that the children concerned could be victimised by actors in the human trafficking ring. Although no cases relating to exploitation of UMC reported in to happen in Mozambique, IOM recorded cases of victims from Mozambique who were exploited in South Africa.

In light of the above, it is submitted that special measures must be taken to ensure that UMC arriving from other countries in the company of adult persons other than their own relatives are safe. In addition, noting the ongoing cross-border trade of body parts of persons with albinism, it is important to check on relatives who may be involved in trafficking ring to help curb the problem in the region.

Although the latter children might not fit squarely in the definition of UMC, there is obvious need to tighten the system to protect them, as well. Ideally, alert systems should be established and cooperation must be sought between the authorities working against the trafficking front and those involved in working with vulnerable populations such as refugees and UMC. There is also immediate need to strengthen the system to ensure data collection on matters relating to trafficking in persons.

4. Shelter, food and clothing

International and regional human rights treaties (such as the CRC and the African Children’s Charter) oblige ratifying States (including Mozambique) to take appropriate measures to ensure that every child enjoys a standard of living adequate for his or her physical, mental, spiritual, moral and social development. The fact that the provisions of these treaties apply to every child means that they are relevant to UMC who are at the centre of the debates in this report.

The relevant statutory norms of Mozambique are compliant with international and regional treaties highlighted above and impose a corresponding obligation upon the State to provide assistance for these vulnerable groups. Thus, as mentioned in section 3.2 above, when discussing domestic laws, the Anti-Trafficking Act compels the government to provide food, shelter and medical assistance for victims of trafficking. Moreover, it was stated that INAR is responsible to assist refugees (including UMC who have refugee status) in all matters affecting them. The report mentioned, albeit superficially, that the Department of Gender, Children and Social Action also plays a key role in providing assistance to vulnerable children. This is in line with statutory obligation accorded to this Ministry.

---

42 Examples of civil society (CSO) groups working to help curb the problem trafficking in Mozambique included organizations such as Rede Carme and SANTAC.
43 Information obtained on interview with representative of the Prosecuting authorities.
45 Cross-border trade of body parts of persons with albinism is particularly problematic in the eastern parts of the Southern African region in countries such as Tanzania, Mozambique and Kenya. It is reported that body parts of albino people are being used to perpetuate traditional rituals believed to bring fortune and luck. For more details please see, generally, Under the SUN (2013), Cross-Border Trade of Body Parts of Persons With Albinism (PWA), available at http://www.underthesamesun.com/sites/default/files/Cross%20Border%20Trade%20-%20PWA%20-%20Dec%202013.pdf (accessed 25 February 2016).
46 See, generally, Article 27(1) and 3 of the CRC, and Article 20(1) and (2) of the African Children’s Charter.
47 See Article 2 of the Anti-Trafficking Act.
49 See section 4.3 above.
Despite the fact that the overall responsibility to provide shelter for vulnerable children, including UMC, rests with the Ministry of Gender, Children and Social Action. This responsibility can shift depending on the causes of vulnerability. As noted for example, refugee children will be assisted by INAR. Other groups of vulnerable children such as children in conflict with the law will be protected through the criminal justice system. Nevertheless, the Ministry of Gender, Children and Social Action takes overall responsibility.

Food and clothing is provided in various places where UMC are given shelter (in the Refugee Camps and in Child and Youth Care Centres), but there are reported delays in the distribution of food taking up to three months and clothing is hardly provided. Role players such as the UNHCR and CSO’s are known for filling the gap and assisting in the provision of food and clothing to the children. However, the support obtained from these stakeholders is not regular, with the overall goal being to ensure government takes full responsibility to provide these services.

5. Health

The relevant international and regional human rights norms protect the child’s right to “highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.” 50 They enjoin State parties (including Mozambique) to take all appropriate measures to give effect to these rights. Article 89 is the principal constitutional provision which protects the right under analysis. It states that:

All citizens shall have the right to medical and health care, within the terms of the law, and shall have the duty to promote and protect public health.51

The Mozambican national health system is not discriminatory. Citizens and non-citizens alike, including UMC, have the right to access health and medical facilities and to obtain treatment. Children at the Maguaza Transit centre benefit of medical check-up. A health facility is located closely to the centre enhancing chances for children to access health services. However, one of our informers said that “the fact that often there is no treatment available for the entire population in public hospitals is a huge barrier also affecting UMC.” 52 This concern was confirmed by all migrant children interviewed at the refugee camp in Maratane. When asked about the challenges faced in accessing medical treatment in Mozambique, the common position was that there are never enough medicines available in the health facilities. 53 In relation to this, one of the interviewees said:

[t]he hospital at the camp is not doing medical exams/tests/They only give painkillers such as paracetamol. I wish they could carry out tests when people are ill. It was not possible to verify if this affected other facilities where UMC are kept. In case it is affecting other facilities, it shows that, in addition to lack of treatment, there could be some challenges with placement of qualified staff in hospitals serving this vulnerable group of people. However, this was an aspect that the researcher could not verify due to time constraints. The right to health for UMC lacking assistance by adults might also be breached if the children are not able to reach hospital or health facilities by themselves. It reinforces the idea that a centralised system should be put into place to help track where these children live in order to provide the necessary assistance for them when needed.

A concomitant challenge relates to situations where UMC die in Mozambique while they are not registered and have not been given any form of identification. The situation is exacerbated when there are no relatives

---

50 See article 24(1) of the CRC and Article 14 of the African Children’s Charter.
52 Interview with an informant working for Rede Carme.
53 See, generally the responses to question 70 as given by the children interviewed in Maratane. Questionnaire and answers (including recordings available on file with the research team)
to the child known in another country or in the child’s country origin. The main issue here relates to the fact that in the Mozambican context there are certain documents and or formalities required for purposes of burial. Thus, the issuance of a death certificate must anticipate the burial process. In turn, death certificate cannot be issued unless there is proof that the person was registered, which implies the need to provide a birth certificate or another equivalent document.

6. Education

Article 22 is the principal provision in the UN Refugee Convention, which speaks to the right to education. It enjoins State parties to accord to refugees the same treatment as is accorded to nationals with respect to elementary education and other forms of education beyond the elementary level. In adhering to the Refugee Convention, Mozambique entered a reservation to this provision saying that it is not binding, but a simple recommendation. Although such a reservation was entered in respect to Article 22 of the treaty analysed above, the country is bound to other human rights treaties such as the CRC, the African Children’s Charter, and the African Charter on Human and People’s Rights, which have provisions protecting the right to education, too. The CRC and the African Children’s Charter are relevant when dealing with children rights as these instruments were developed with a focus on promoting these rights, specifically.

At domestic level, the national policy of education is significant for this debate. To a large extent, this policy tool domesticated many standards contained in the CRC and its African regional counterpart, formally known as the African Children’s Charter. However, it is unclear whether the interests of UMC were fully taken into consideration during the drafting of the current educational policy of Mozambique. Thus, many practical questions arise. For instances, whereas these children are allowed to attend elementary education (meaning basic education starting from grade 1 to grade 5), they are not allowed to take examinations (usually in grade 5), unless they provide some form of documents which identify them. Here the major concern relates to the fact that documentation is often issued after significant delay when it concerns refugee children.

As discussed earlier in section 4.2 above, it can take up to 10 years before a child is attributed refugee status. The challenge here is mainly the fact that although the child is allowed to attend elementary schooling often there are barriers to taking examinations even when they have asylum claims. The situation is worsened in respect of UMC who do not have a valid refugee claim and thus do not reside in the Maratane camp. Some may be given basic education (meaning life learning skills such as reading and writing) at the places where they have residence or they may be given formal education without writing exams. However, those without any form of adult care end up completely marginalised as they lack a referral system and a support system to help them enrol into the formal education system.

Another issue which is a challenge when it comes to provisions of educational services to UMC relates to the need to eliminate expenses related to enrolment in schools. There is an immediate need to eliminate indirect expenses related to education such as transport costs and expenses with buying meals needed for students during school times and others alike. Although this challenge speaks to all children, it is particularly important to address it in the context of UMC for the mere fact that they do not have support from their families as have majority of national children affected.

All children who were interviewed at the refugee camp in Maratane showed that they experienced a
lot of difficulties in addressing these indirect costs of education. One of the interviewees said that in light of the difficulties “the Mozambican government should consider sending us to study in another country because the system of education here is very bad.” He also noted that there were evident difficulties in accessing text books and that there was urgent need to introduce counselling for refugee children attending schools to help them deal with their past lives.

7. Violence

There are many international human rights law instruments banning the use of violence, generally. With particular reference to children, the CRC and the African Children’s Charter outlaw all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, and maltreatment or exploitation committed against children. Arguably, these include practices such as child labour, sexual abuse, and other forms of violent practices committed against children while in the care of parents, guardians or any other person entrusted to provide them care. In response to their obligations under the instruments highlighted, ratifying States have legislation and policies speaking to the ban of violence. For instance, Zambia has guidelines spelling out procedures which must be followed when attending to vulnerable migrants, a group which includes women and children. The Zambian Guidelines for Protection and Assistance to Vulnerable Migrants set out comprehensive standards which can be used to protect children, including UMC, victims of trafficking. Although it can be contested, it is submitted that the Guidelines serve as a tool to promote messages calling for a safe environment, which is free of violence and abuses committed against migrants. To that end, they are indispensable to further the interests of UMC living in Zambia.

Mozambique does not have similar guidelines as those found in Zambia. However, the domestic laws of Mozambique and the applicable international standards remain relevant. To be specific, the country’s Children’s Act and the Domestic Violence Statute can be employed to address the problem of violence against children. While the Domestic Violence Statute has provisions speaking to violence practiced in the domestic sphere, insofar as the term “domestic” covers spaces where the child lives, the provisions of the Children’s Act are much broader and cover violence committed in all spaces including the home environment and beyond.

Two of our interviewees expressed that they had experienced violence. The first one was an unaccompanied migrant child who we came across at the Maratane Refugee Camp in Nampula. Peers who lived in the camp with their parents abused her mentally. They asked her persistently about the whereabouts of her parents. The poor child said she was unable to answer these questions and felt mentally abused by her peers. The fact that she had not reported the case to the authorities worsened her situation, as she could not get any assistance. It was recommended that the case must be reported. This example highlights the importance of ensuring regular checks with UMC to ensure that they are safe.

The second example of violence related to an interviewee who was shot on his leg and arm when trying to go to South Africa. While this second example speaks to a Mozambican child, it is relevant to the debate to the extent that it relates to an unaccompanied migrant child who was found between the boarders of Mozambique and South Africa.

8. Detention

In terms of the applicable international and regional human rights norms and domestic legislation speaking to the subject, everyone has the right to freedom of movement. Exceptionally, however, this right can

---

54 See generally, Articles 19 and 34 of the CRC, as well as Articles 16 and 27 of the African Children’s Charter.
55 See, generally, Guidelines for Protection Assistance to Vulnerable Migrants in Zambia.
be restricted provided that it is necessary and if the circumstances justify this. Thus, detention can occur when a crime is committed.

Notably, however, international norms speaking to children’s rights are at odds with the detention of children, especially the use of prison sentences against them. The relevant provisions of the CRC and the African Children’s Charter compel State parties to use imprisonment as a measure of last resort and only after exploring alternative measures and it is proven that such measures are not satisfactory. With reference to UMC, one of the situations where these children can be found to have committed criminal offences is when they violate immigration laws upon entry in the host country or in the country of destination or when they are involved in smuggling and if they commit petty crimes to obtain food. Even in such circumstances, given their young age and the factors that motivated them to violate immigration laws, imprisonment is not the best solution and should only be used as a measure of last resort.

None of the children interviewed was imprisoned, but one had been detained shortly when he was caught crossing a national park between the borders of South Africa and Mozambique. Relevant to this report, the child was taken to hospital for treatment and he was given the necessary care and assistance. The child argued that after receiving treatment in South Africa he was sent back to police authorities for repatriation to Mozambique where he lived before attempting to get to South Africa. It is commended that the authorities in the two countries are collaborating on the question of child migration and trafficking and they hold regular meetings to assess progress. A cross-border referral group between Mozambique and South Africa was established, which seems to work relatively effectively when it comes to dealing with the problem of trafficking and UMC, generally.

The challenge however remains the fact that the functioning of the group is not noticed much in other provinces outside Maputo. This maybe because the institutions involved may lack understanding of the role that they must play. There are obvious gains having the referral group operational insofar as it helps prevent detention of children in police cells and helps channel them to the pertinent authorities. However, it is submitted that where the referral group is not very active (in provinces like Manica, Tete and other provinces where Mozambique borders with other countries) many children might be facing custody and detention. It is recommended that immediate measures should be put to effect to ensure that referral groups take up activities throughout the country. To this end, there is immediate need to speed up the establishment of cross-border referral groups with countries such as Zimbabwe, Zambia and Malawi, as part of the initiated supported by IOM and Save the Children.

9. Family tracing, reunification and resettlement

One of the goals in international humanitarian law is to ensure every individual, including children, remains united to their families. In this regard, international law places significant weight on the importance of family environment as a place that is conducive for bringing up children and to provide them with the basic care they need. This is mainly because it is believed that children lacking family are at greater risks of having their rights violated and because membership of a family serves as the backdrop where they acquire life skills and basics lessons needed for them to develop fully.

Speaking broadly, the laws of Mozambique governing the protection of children are in line with international law standards on the aspect relating to the need to 57As above, p 342.

58The incident occurred to one of the interviewees at the Maguaza Transit Centre.
ensure alternative care and protection for children deprived of a their original family environment. It is important, however, that the laws and principles are interpreted in a way that is broad enough to ensure protection for all children without exclusion based on their nationality. UMC face greater risk of having their rights violated as they lack the support of their own families (and usually have little support of governments in the host country to assist them when needed).

Therefore, it is to their advantage if they are re-united with their family members where such reunification is in their best interest. The fact that the Mozambican Children’s Act supports the maintenance of children in their own families prior to placement in alternative care shows that the law is in favour of family reunification for all children, and particularly for UMC who are the main subjects in this report.

In practice, our informants stated that the IOM, UNHCR, the Red Cross and the relevant authorities in Mozambique play a significant role trying to ensure that UMC who arrive in Mozambique are reunified with their families. Reportedly, the child services do the family tracing with/through the referral groups and IOM usually supports the transport of UMCs from other provinces. However, it was not possible to verify claims that some children were returned to their families through the support of the referral group on migrant and unaccompanied children. However, the children who we interviewed felt that little is being done in this regard.

5. CONCLUSIONS AND RECOMMENDATIONS

The foregoing shows that Mozambique has taken many commendable steps to advance the rights of children, generally. Some of these steps can be utilised to address the situation of UMC. In particular the country has ratified relevant international and regional children’s rights standards and it has enacted a comprehensive children’s statute.

The establishment of referral groups to assist UMC and provision of a child care facility to attend to the children concerned also account as positive steps. As highlighted in this report, the domestic laws in the country are relatively friendly for the children concerned. However, in some cases they need to be amended and or improved to strengthen the system of protection of UMC and promote compliance with international obligations stemming from ratified treaties.

It was also possible to identify areas where there are gaps. This includes the fact that the laws were developed without a focus on the needs of UMC. Moreover, there are practical barriers to implementation of the existing municipal laws. It leads one to think that there is room to take further steps to improve the system and ensure a safe environment for UMC who form the main object of this report. The following recommendations point to some areas that can be improved.

RECOMMENDATIONS

In addition to all other relevant aspects mentioned in the body of this report, the main recommendations speaking to key issues raised in the report include the need to:

- Establish a clear coordination mechanism which enables referral of UMC to appropriate authorities when they risk being repatriated. The authorities should be able to inform the child about his or her rights and provide legal assistance for them;

- Amend the Immigration Act to ensure that courts play a more meaningful role and must be involved in decisions relating to the assessment of the need to repatriate UMC who are found in Mozambique;
• Immigration Act must be amended to ensure that travel documents can be issued in favour of UMC, generally, regardless of their age. However, this must include clear safeguards in terms of a full description of the circumstances in which such travel documents can be issued;

• Ensure that the Immigration Act imposes clear responsibilities on Government in relation to cases of repatriation of UMC, when it has to take place;

• Provide clear safeguards and standards for protections of UMC during repatriation, if repatriation takes place;

• Ensure that the Refugee Act takes care of the specific needs of UMC by affording them assistance when they have and or when they have no asylum claim;

• Ensure the provision of translation services to assist asylum applicants, and particularly UMC with asylum claims to avoid the risk of poor assessment of their claims based on difficulties in understanding the language spoken by the child;

• Ensure that the provisions of the Children’s Act are extended to every child irrespective of his or her nationality (whether refugee or not) so that Mozambican and foreign children, and particularly UMC, are given the same treatment. The latter should be able to enjoy fully protection of the law in the same terms as Mozambican children (including the right to alternative care, application of same age of criminal liability and other principles of the criminal justice system such as detention as a measure of last resort);

• Mozambique must consider withdrawing or lifting the reservation entered in respect of Article 26 of the UN Refugee Convention which restricts refugee’s rights to movement;

• Establish (alert or) early warning systems and improve coordination/cooperation between the various stakeholders working against human trafficking and those involved in works with or for vulnerable population such as refugees and UMC;

• Collect data pertaining to trafficking of persons, and particularly the trafficking of UMC, in Mozambique;

• Consider establishing a system for regular checks with UMC to ensure that they are safe from violence. This might training for officials, families and everyone else engaged in doing works with or for the children concerned;

• Consider instructing authorities to avoid using excessive force when dealing with UMC.
Part Two
The protection of UMC in Child and Youth Care Centres in Gauteng and Limpopo provinces of South Africa: Current challenges, strengths and opportunities

1. INTRODUCTION

Forming part of a broader study across Southern Africa, this component of the study focuses on South Africa, a popular destination country for many African migrants. According to recent studies, children make up a significant percentage of the number of migrants across the world, and in Africa. \(^{59}\) The number of child migrants to South Africa is virtually impossible to gauge, owing to factors such as minimal border control, high levels of corruption at border posts, the prevalence of smuggling practices and the absence of a registration mechanism for irregular migrants.\(^{60}\)

At the time of writing, no procedure for the registration and documentation of UMCs was in place in South Africa. As a result, basic information about the profile and protection needs of child migrants was fragmented and limited. In the spectrum of categories of migrants, unaccompanied children is considered a highly vulnerable group. \(^{61}\) The objective of the study was to collect information on the circumstances around child migration to allow an analysis of the challenges faced by UMC to South Africa, and ultimately, to inform solutions and recommendations.

The main difficulty of this task was to access the targeted population group. South Africa is one of few African countries without refugee camps, \(^{62}\) nor is there a dedicated center to receive unaccompanied child migrants at border posts or elsewhere. In absence of a central point at which migrant children were gathered, a different methodology was applied to the South African component of the study. The report is the result of a survey of the cases of foreign children placed in alternative care facilities, through the courts, across the Limpopo and Gauteng Provinces of South Africa. The aim was to profile the respondents, and to gather data around their protection needs and challenges in the context of cross-border migration.

While it is acknowledged that support services are available to children who have accessed the child protection system, it is argued that the migratory experiences, challenges and protection needs would be similar to those who remain outside institutional care. Furthermore, findings will show that long-terms solutions to the

---


issues faced by migrant children often remain equally inaccessible for those placed in care, as they are for those who have been excluded from the protection system.

As at end of 2016, no mechanism existed which collated inclusive data from all child protection facilities per province. While it was possible for provincial departments to maintain sight of the operational capacities of Child and Youth Care Centres (CYCCs) in the particular province, quantitative data on children placed in care was not disaggregated by nationality and therefore, it was not known to what extent foreign children were represented in residential care facilities.

A similar survey was conducted in the Western Cape Province of South Africa in 2015 and the methodology of that study was largely duplicated here. The study conducted in the Western Cape in 2015 presented an inclusive snapshot of all foreign children in care in the Province. Some of the main findings were that foreign children (including unaccompanied, separated and accompanied minors) represented 4% of all children placed in residential care. The main challenges experienced were the lack of identification documentation and appropriate legal status. Generally, children were placed in alternative care for lengthy periods and cross-border family tracing and reunification was not explored systematically.

2.OBJECTIVE

The objective of the study was to gain a deeper understanding of the complexities and subjectivities of migration experiences of UMCs. In this regard, the following themes were explored: Circumstances around migration, circumstances around the child’s placement in care and the unaccompanied migrant child’s ability to access basic rights and documentation. The study also seeks to assess the implementation of mechanisms for the assessment of durable solutions, family tracing and reunification. The study concludes with key findings and recommendations to relevant authorities.

3.METHODOLOGY AND APPLIED DEFINITIONS

Telephonic contact was made with 92 CYCCs located throughout Gauteng Province and 16 CYCCs in Limpopo Province. Of 92 CYCCs in Gauteng, 38 indicated to accommodate foreign children, 26 of which were available to participate in the study. Out of 17 CYCCs contacted in Limpopo, ten accommodated foreign children, all of which participated with the study. Between 1 October 2015 and 1 February 2016, a total number of 216 cases of foreign children were surveyed (137 cases in Gauteng and 79 cases in Limpopo Province) allowing the researchers to draw the distinction between unaccompanied, separated and accompanied foreign children. For the purposes of this study, the position of UMCs will be closely examined and some comparisons will be drawn with the cases of other foreign children, including separated and accompanied migrant children, to gain perspective.

In accordance with the conditions attached to permission to conduct research, granted by the Research Ethics Committees of the Provincial Department of Social Development of Limpopo and Gauteng respectively, and the University of the Western Cape, field researchers conducted semi-structured, face-to-face interviews with children over the age of 12 and completed a questionnaire in respect of each individual child. While the majority of the questions were qualitative in nature, attempts were made to frame questions in such a way that responses would allow for quantitative analysis. In the cases of children under the age of 12, interviews were conducted with residential social workers attached to a particular institution, who were familiar with the particular child’s circumstances.

Parts of the questionnaire, notably questions around placement in care, were directed to social workers. Care was taken to ensure the necessary level of sensitivity and all interviews were conducted in a child friendly manner and adhering to the do-no-harm principle, with interviewees being told that they may withdraw at any time. Interviews were conducted on an anonymous and voluntary basis. In addition, focus-group interviews were conducted with a key informants working within the migrants’ rights and/or child protection sector.

The Children’s Act 38 of 2005 defines a child as ‘a person under the age of 18 years’ yet, when dealing with migrant children, the frequent absence of identification documentation makes accurate age determination a difficult task. As part of the child protection process, a social worker may approach the court for a medical age estimation to be conducted. This document is often the only form of identification children have. It is further noted that the Children’s Act provides for the extension of alternative care for an individual over the age of 18, but younger than 21, provided he or she is still enrolled in school.

It was decided to include in this study the cases of young people between the ages 18 to 21, if they remained in residential care at the cost of the CYCC, were attending school and if they were under 18 at the time of migration. The reasoning was that it would be relevant to examine the challenges faced by migrant children who transition into adulthood, especially with regards to the ability to access documentation. It was further presumed that the migratory experiences and protection needs would be as relevant as those of respondents aged under 18. One case of a young person over 18 was recorded for Gauteng Province and nine cases for Limpopo. References to ‘children’ or ‘child’ used throughout the report will therefore include the above cases.

4. LEGAL FRAMEWORK

Central to this study is the categorization of migrant children. General Comment 6 to the Convention on the Rights of the Child sets forth the applicable legal definitions:

“Unaccompanied children” (also called unaccompanied minors) are children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.”

“Separated children” are children, as defined in article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.”

Nationally, the South African legal framework pertaining to child protection is built around the Bill of Rights and the Children’s Act No. 38 of 2005, which apply equally to all children, irrespective of nationality and immigration status. Guidelines issued by the Department of Social Development (hereafter DSD) dictate that UMCs should be assumed to be in need of care and protection as envisaged under Section 150 of the Children’s Act. The particular legal provisions will be applied throughout the body of the report.

South Africa’s migration framework is comprised of the Immigration Act No. 13 of 2002 and Refugees Act No. 130 of 1998 and accompanying Regulations. The individual’s purpose for migration dictates which set of rules applies. The Immigration Act provides no visa category for unaccompanied children, nor does it

---

64 Section 176 of the Children’s Act No. 38 of 2005
66 Department of Social Development (2009) Guidelines on separated and unaccompanied children outside their country of origin in South Africa, paragraph 6.1
allow regularization of stay on humanitarian grounds. The Refugees Act requires the intervention of a social worker and Children’s Court for an unaccompanied child to apply for asylum. 67 While this provision is not applied systematically at Refugee Reception Offices, it restricts children’s access to the asylum system. 68

The UN Guidelines for the Alternative Care of Children (2009) recommend that alternative care be resorted to for the shortest possible duration. Guideline 21 limits the use of residential care to situations where such a setting is specifically appropriate, necessary and constructive for the individual child concerned and in his/her best interests. According to Guidelines 23 and 60, alternative family care arrangements are preferable to residential care. It is suggested that temporary placements are reviewed every three months and that durable solutions are to be devised at the earliest opportunity. 69 The UN Committee on the Rights of the Child’s General Comment No. 6 recommends that a best interest determination of all separated and unaccompanied children be conducted, which according to paragraph 20 “requires a clear and comprehensive assessment of the child’s identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs”.70

5.RESEARCH FINDINGS

5.1 Demographic profile

5.1.1 Quantifying UMC

Drawing the academic distinction between ‘unaccompanied’ or ‘separated’ minors in practice is extremely difficult as the concept of the duty of care vesting primarily in the nuclear family is not a true reflection of most African societies.71 In this context, it is common practice for children to grow up in the care of extended family members without formalized relationships of care. It may even be argued that most extended family members have a customary duty of care towards a child, unless the circumstances clearly indicate otherwise. Yet, to a large extent, the South African migration framework centralizes the nuclear family for documentation purposes. 72 In order to apply the definition consistently throughout the report, children accompanied in migration by extended family members including aunts, uncles, grandmothers and step-parents, were categorized as separated children. Children accompanied by other children, persons unknown or unrelated to them, and those who travelled alone, were categorized as unaccompanied. Children who migrated with one or both parents, or with an adult who displayed an unambiguous duty of care towards the child, were categorized as accompanied.

Based on telephonic information received from 92 CYCCs in Gauteng Province, 200 children were said to be foreign nationals. Of these, 137 individual cases were surveyed. The 92 facilities had the capacity to accommodate 5339 individuals, meaning foreign children represented approximately 3.7% of children in care in this sample. Seventeen facilities contacted across Limpopo had the capacity to accommodate 851 individuals, of which ten facilities housed 79 foreign children. All 79 cases were surveyed. Foreign children represented 9.2% of children in care in the sample. This is comparable with the 2015 survey of CYCCs in the Western Cape Province, where it was found that foreign

---

67 Section 32 of the Refugees Act No. 130 of 1998
70 UN Committee on the Rights of the Child’s General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6
72 An example hereof is Section 3(c) of the Refugees Act No. 130 of 1998, which allows for derivative status to be granted to the ‘dependent’ of a refugee or asylum seeker. A dependent is defined to include 'in relation to an asylum seeker or a refugee, the spouse, any unmarried dependent child or any destitute, aged or infirm member of the family of such asylum seeker or refugee.'
children represented approximately 4% of children in care.73 The representation of foreign children in CYCCs in Limpopo is significantly higher, given the proximity to the Northern borders.

Of the total of 216 individual cases surveyed across two provinces, 70 were identified as UMCs (32.4%). At 51 out of 79 (64.5%) cases of foreign children in care, the majority of UMCs were found in Limpopo, as opposed to 19 out of 137 (13.8%) cases in Gauteng. UMCs will form the primary focus of the study. In order to illustrate the position of UMCs within a broader context, some statistics pertaining to foreign children in care as a whole (including unaccompanied, separated and accompanied migrant children, as well as children born to foreign parents in South Africa), will be annexed to this report.

Applying the abovementioned categorization, 26 individuals were identified as separated migrant children at the time of entry to South Africa and 71 respondents had migrated accompanied by one or both parents. This includes one child who was accompanied by a social worker, into whose care she had been entrusted following the death of both parents. She was born to a South African father and Ghanaian mother in Ghana, and held a Ghanaian passport. Her paternal grandparents were resident in the Republic, but were unable to care for her and she was subsequently placed in care. In twenty cases, all from Limpopo, ages could not be established and were marked ‘unknown’. The ages of respondents, as mentioned, ten individuals were aged between 18 and 21 years. In the cases from Limpopo, ages could not be established and were marked ‘unknown’. The ages of respondents,

<table>
<thead>
<tr>
<th>Status of foreign children in care</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td>UMCs</td>
</tr>
<tr>
<td>ACC</td>
</tr>
<tr>
<td>SEP</td>
</tr>
<tr>
<td>Born in SA</td>
</tr>
<tr>
<td>TOTAL</td>
</tr>
</tbody>
</table>

5.1.2 Birth in South Africa
The study found that 42 children placed in CYCCs in Gauteng and 7 in Limpopo were born in South Africa to foreign parents and thus qualified as non-citizens (22.6%). Besides for cases of statelessness covered by Section 2(2) of the Citizenship Act, the principle of jus soli does not apply under South African nationality law and a child born to non-citizen parents retains the nationality of the parent(s).74 A common misconception amongst social workers was that a child born in South Africa automatically acquired nationality.

5.1.3 Gender and age groups
At 52 out of 70 UMCs, the majority of UMCs were male. This was different from statistics in the Western Cape, where gender was more evenly distributed (60%/40%).

Ages ranged between 11 and 21 years, with 14 children falling within the age group 12 to 16 years, and 27 children aged between 16 and 18 years. As mentioned, ten individuals were aged between 18 and 21 years. In 19 cases from Limpopo, ages could not be established and were marked ‘unknown’. The ages of respondents,

read with the duration of stay in South Africa, pointed to most UMCs being in their early to mid-teens at the time of migration. The absence of information around ages of migrant children indicated that age estimations are not carried out systematically. The lack of proof of age - especially for older children - increased the risk of non-separated detention, of unlawful deportation, and raises questions about the application of the Children’s Act and legislation pertaining to children in conflict with the law.75

5.1.4 Disability

Of the UMC, one was physically disabled, suffering from an impaired leg and another was mentally disabled.

5.1.5 Country of origin

With 55 UMCs from Zimbabwe, this was the leading country of origin (50 UMCs from Zimbabwe were found in Limpopo and five in Gauteng), second to Mozambique, from where nine UMCs had migrated. Four were from the Democratic Republic of Congo (DRC) and one from Uganda. One child originated from Swaziland. Born to a Swazi father and a South African mother, both deceased, he was the only UMC who had parents of mixed nationalities.

He held a certificate attesting to his birth in Swaziland, where he was raised until he migrated to South Africa in 2014 using a Swazi passport and visitor’s visa. South African citizenship legislation provides for a child born in or outside the Republic to one South African parent to derive citizenship by birth.76 In this case, his mother had left no documentation which would enable the child to prove and claim South African citizenship and by using a foreign passport, he had availed himself of Swazi citizenship. For this reason, it was decided to include him in the study as a foreign migrant child.

UMCs Countries of origin

<table>
<thead>
<tr>
<th>Country</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>DRC</td>
<td>4</td>
</tr>
<tr>
<td>Mozambique</td>
<td>9</td>
</tr>
<tr>
<td>Swaziland</td>
<td>1</td>
</tr>
<tr>
<td>Uganda</td>
<td>1</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>55</td>
</tr>
<tr>
<td>TOTAL</td>
<td>70</td>
</tr>
</tbody>
</table>

5.1.6 Location of residential care facilities

In Gauteng Province, foreign children in general were most concentrated in urban suburbs of Johannesburg such as Randburg, Roodepoort, Centurion, Cresta, Wendywood and Edenvale, in the Benoni-area and around central Johannesburg including Kempton Park, Berea, De Wetshof, Paarlshoop and Observatory. Less than 20% of foreign children were accommodated in Pretoria and surroundings and one respondent was accommodated at Bronkhorstspruit.

In Limpopo Province, foreign children were more spread out and found not only in the border area around Musina, but in towns further south such as Tzaneen, Thabazimbi and Polokwane. The majority of unaccompanied children were found in the towns of Louis Trichardt and Musina.

75 Section 28(1)(g) of the Constitution protects all children from detention, unless it is a measure of last resort, in which case children must be kept separately from detained persons over 18 years old.

76 Section 2(1)(h) of the South African Citizenship Act No. 88 of 1995
5.2 Access to basic rights

5.2.1 The right to education

Section 29 of the South African Bill of Rights extends to everyone the right to basic education. Practically, schools require of children to produce identification documentation for enrolment, but the lack thereof should not prohibit any child from accessing this basic right. The admission policy for ordinary public schools published in 1998 sets out the position allows for the equal application of the South African Schools Act to pupils who are not South Africans, and whose parents are in possession of valid temporary or permanent resident permits. This was confirmed in the recent case of Mubake and Others v Minister of Home Affairs and Others where an order was sought against the Minister of Basic Education to broaden the admission policy for ordinary public schools so as to expressly provide for child asylum seekers and refugees.

The study revealed that all unaccompanied children placed in care, except for one in Gauteng and two in Limpopo, were attending school in South Africa. Social workers indicated that generally, children without identification documentation experienced difficulty to enroll in school, but usually managed with some intervention on their behalf. All UMC were enrolled in regular public schools and three were admitted to alternative education institutions and were following the Adult Basic Education and Training (ABET) curriculum. One 20-year old respondent had finished secondary education and was enrolled in his second year of tertiary study. Furthermore, 30 UMC acknowledged that language was a barrier to mainstream education, three of whom were undergoing vocational training and two were enrolled in a bridging programme. Around 43 (61%) UMCs attested to having fallen behind in school as a result of migration.

5.2.2 The right to a name and nationality

Regionally, Articles 6 (1) & (2) of the African Charter on the Rights and Welfare of the Child affords to every child the right to a name and immediate birth registration.79 The importance of birth registration cannot be overemphasized and recently, strides are being made to promote the practice across Africa. As summarized in General Comment 2 of the African Committee of Experts on the Rights and Welfare of the Child:80 ‘Registration of birth is a fundamental right of a child. Birth registration is the act of recording the birth of a child by an administrative authority. It establishes the existence in law of a child, and sets the foundation for the recognition of the child as a legal personal. A child who is not registered does not legally exist and runs a substantial risk of falling outside of the reach of government’s protective actions towards the realization of child rights.’

Nationally, Section 28(1) (a) of the South African Bill of Rights states that every child has the right to a name and a nationality from birth. Whilst this is a progressive right, pathways to practical implementation are not clear. The Regulations to the Birth and Deaths Registration Act require of the parent of the child to have valid immigration status as a pre-requisite to birth registration. It follows therefore, that children born

---

77 Department of Education, National Education Policy Act No. 27 of 1996, Admission Policy for Ordinary Public Schools, paragraph 19
78 Mubake and Others v Minister of Home Affairs and Others (72342/2012) [2015] ZAGPPHC 1037; 2016 (2) SA 220 (GP) (9 July 2015)
to undocumented migrants are unable to access birth registration\textsuperscript{81} and hence, identity documentation. If one parent is undocumented, his or her name will not appear on the child’s birth certificate.\textsuperscript{82}

Recent amendments to the Citizenship Act provide for a person born in South Africa to (a) non-citizen parent(s), and who does not have the citizenship or nationality of any other country, nor the right to such citizenship or nationality, to acquire South African citizenship, provided his or her birth was duly registered.\textsuperscript{83} This article provides a solution to statelessness through citizenship by birth on South African soil.

According to Section 4(3) of the Citizenship Act, a child born in the Republic to parents who are not citizens or permanent residents, qualifies to apply for South African citizenship upon attaining majority on the conditions the birth was duly registered, and he or she had lived in the Republic from the date of his or her birth to the date of becoming a major.\textsuperscript{84} This means that children born to migrants who are able to access birth registration would be able to access citizenship through a naturalization process. Amendments to the Citizenship Act came into force on 1 January 2013 and at the time of writing, questions were raised as to the application of this provision - whether it applies to children born after 1 January 2013, or to those who attained majority after 1 January 2013. No regulations have yet been issued to accompany the Act. In the application of both of the above provisions, access to birth registration in the first place is a major obstacle.

The Birth and Deaths Registration Act and Regulations provide for the registration of birth of abandoned or orphaned children by a social worker, upon producing a report, a children’s court order and supporting documents, if available.\textsuperscript{85} It was generally observed that social workers in Gauteng Province were able to access birth certificates for foundlings. In practice, the pathways to citizenship are extremely challenging, if not unattainable for most UMCs. Similarly, the registration of births of foreign children in South Africa is not possible for undocumented parents, a situation which is highly prejudicial to the child. Accessing birth records from countries of origin is equally difficult and mostly results in UMC remaining undocumented until they leave the care of the institution, at which point they will be dealt with as ‘illegal foreigners’ under the Immigration Act.

### 5.2.3 Access to documentation

At the time of writing, the Immigration Act made no provision for the documentation of unaccompanied or separated foreign children. The Immigration Regulations of 2014 impose strict requirements on adults travelling with children and, in order to gain entry to the Republic, an unaccompanied child must produce a passport, valid visa, unabridged birth certificate, consent and contact details for the responsible person in South Africa, as well as notarized consent from both parents, or in the case of single parents, a death certificate, a court order granting sole custody or full parental rights to that parent.\textsuperscript{86} Once within South Africa, an undocumented migrant is not able to regularize his or her stay without leaving the Republic, or, under very specific circumstances, through resorting to litigation. In terms of the Immigration Act, application from inside the individual’s country of origin is a pre-requisite for all visa categories, aside from a number of nationalities who are able to obtain a visitor’s visa upon entry.

In terms of the Refugees Act and Regulations, an unaccompanied child cannot claim asylum without the intervention of a social worker and the children’s court.\textsuperscript{87} The relevant provisions are as follows:

\textsuperscript{81} Regulation 8(3)(c)-(e) Regulations on the Births and Deaths Registration, 2014
\textsuperscript{83} Section 2(2) of the South African Citizenship Act No. 88 of 1995
\textsuperscript{84} Section 4(3)(a)&(b) of the South African Citizenship Act No.88 of 1995
\textsuperscript{85} Section 12 of the Birth and Death Registration Act No. 51 of 1992 and Regulation 9(1) of the Regulations on Birth and Death Registration Act, 2014
\textsuperscript{86} Regulation 6(12)(a)-(c) of the Immigration Regulations 2014.
\textsuperscript{87} Section 32 of the Refugees Act No. 130 of 1998.
32(1) Any unaccompanied child who is found under circumstances that clearly indicate that he or she is an asylum seeker and a child in need of care contemplated in the Children’s Act, 2005 (Act No. 38 of 2005), must—
(a) be issued with an asylum seeker permit in terms of section 22; and
(b) in the prescribed manner, be brought before the Children’s Court in the district in which he or she was found, to be dealt with in terms of the Children’s Act, 2005.

The above is read together with Section 46(1)(h) of the Children’s Act:

46(1) A children’s court may make the following orders:
(h) a child protection order, which includes an order—
(viii) instructing an organ of state to assist a child in obtaining access to a public service to which the child is entitled...

The practical implications of this provision render the asylum process nearly impossible for unaccompanied children to access. The data revealed that few children appeared to qualify for refugee status and only three had availed themselves of refugee protection. This differs from findings from the Western Cape study, where 51% of respondents (all categories of foreign children) held documentation issued under the Refugees Act. It is difficult to explain this discrepancy, but it could relate to the enhanced knowledge about the asylum system of social workers in the Western Cape Province.

Reflected in the findings of this study, systematic birth registration remains a sporadic practice in many Southern African countries and children migrated mostly without holding any form of documentation. Birth registration rates amongst UMC were low with only six respondents holding birth certificates issued in the country of origin (8%).

It was observed that attempts by social workers to secure documentation were always unsuccessful, except in the few cases where application for asylum was made. It was further observed that social workers were generally not aware of the relevant legal frameworks which apply to foreign children and often, it was mistakenly believed that foreign children could simply apply for a birth certificate or passport. Some social workers had unsuccessfully attempted to apply for late birth registration, but in most cases, no steps had been taken to secure documentation. It was generally observed, however, that birth registration of foundlings was accessible to social workers.

Amongst the 70 UMC, only one had migrated regularly, using a passport and temporary residence (visitor) visa upon entry. The visa had since expired. Four UMC had acquired legal stay in South Africa subsequent to arrival in the form of asylum seeker permits (2), refugee status (1) and a ZSP permit (1). The two children who held asylum seeker permits originated from Uganda and the DRC respectively. Both applied for asylum as the principal applicants with the assistance of a social worker, at the Pretoria (Marabastad) Refugee Reception Office. These children were placed in the same CYCC and the particular social worker was familiar with the asylum process. They were able to apply for asylum without court orders issued under Section 32 of the Refugees Act. Both permits had expired at the time the survey was conducted and it was not certain at which stages of finalisation the applications were.

The single respondent holding refugee status originated from the DRC and had also applied for asylum in his own right. This application was supported by a court order issued under Section 32 of the Refugees Act. Refugee status was granted at the Pretoria (Marabastad) Refugee Reception Office, but the permit, which is renewable, had since expired.
Documentation status of UMC

<table>
<thead>
<tr>
<th>Status</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>No documentation</td>
<td>60</td>
</tr>
<tr>
<td>Passport (Expired visa)</td>
<td>1</td>
</tr>
<tr>
<td>Asylum seeker permit</td>
<td>1</td>
</tr>
<tr>
<td>Refugee status</td>
<td>1</td>
</tr>
<tr>
<td>Birth certificates</td>
<td>6</td>
</tr>
<tr>
<td>ZDP (valid)</td>
<td>1</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>70</td>
</tr>
</tbody>
</table>

It was concluded therefore that the vast majority of UMC held no identification documentation and only four had temporary legal stay in South Africa. Documentation to legalize stay is a crucial aspect of child protection, as it is central to the ability to access basic rights and services. Without the right to stay legally in South Africa, children may spend years in alternative care, only to be returned to the country of origin upon attaining majority. This situation is highly prejudicial for those who had spent lengthy periods in care, and will have lost links to family, culture, and ability to speak local languages. It is submitted that the absence of a mechanism for UMC to access documentation is a major gap in the child protection framework.

5.3 Statelessness

The Convention Relating to the Status of Stateless Persons defines a stateless person as someone who is not considered as a national by any state under the operation of its law. Migrant children are particularly vulnerable to statelessness given that risk factors include birth outside of their parents’ country of nationality; death or lost links to one or both parents; irregular migration; and no access to enabling documents such as clinic cards or proof of parentage. Other contributing factors include laws which do not allow dual citizenship, or exclude particular social groups from accessing nationality, or laws which require compliance with specific administrative procedures to retain or claim nationality. At the time of writing, South Africa had not signed or ratified this Convention, and legislation around statelessness was fragmented.

Risks of statelessness amongst respondents were extremely difficult to measure, as information furnished was often not sufficient to make an accurate determination. Of the cases surveyed in Limpopo, at least two foreign children appeared at high risk of statelessness – however, neither of them were UMCs and the cases rather involved complications around birth registration in South Africa and disputed nationality of their parents.

Section 31(2)(b) of the Immigration Act presents a possible remedy to stateless migrants, allowing for an application for permanent residency on ‘special grounds’ through a Ministerial exemption process. The exemption application is subject to judicial review by the High Court under the Promotion of Administrative Justice Act No.3 of 2000. Practically, an application for exemption is lengthy and costly, and UMC would require legal assistance to bring such an application.

It was observed that social workers assigned to the respondents were often unaware of the legal position of UMC in terms of documentation and immigration status. While it is the task of the external or designated social worker to assume responsibility for the child’s documentation status, and not the social workers at the CYCC, it cannot be reasonably expected of social workers to be knowledgeable on immigration and

---

refugee law. It was further observed that there was no link between the Department of Social Development (DSD) and the Department of Home Affairs (DHA) or focal point within DHA to which social workers may refer cases or queries. One key informant mentioned that social workers mostly look for support amongst themselves, but that opinions around the treatment and right to placement of foreign children were highly subjective and the position of child protection agencies was often divided.

5.4 Circumstances around migration

One of the aims of the study was to document the migration experience of unaccompanied children so as to identify likely protection needs.

5.4.1 Means of transport

When asked about the means of transport that were used by respondents to cross the border into South Africa, 28 UMCs replied to have used public transport in the form of a bus, taxi, or both. Then 19 had arrived in a truck, mostly by hitchhiking; three respondents, all of whom were identified as victims of trafficking, were transported by private car. The remainder indicated having used ‘other’ means of transport. All respondents had crossed land borders. In general, respondents were not sure which border posts they passed. A total of 34 respondents said to have crossed at Beitbridge on the border with Zimbabwe, one at Mutare on the border with Mozambique, whilst others provided vague responses such as ‘at the Mozambican border’, ‘Botswana’ or ‘unknown’. At least 21 UMC indicated to have paid someone to cross borders and smuggling was confirmed in three cases.

It was concluded that UMC are highly vulnerable to abuse and exploitation during the migration process and the experiences suggest little regulation over the entry of children around border posts, nor was the systematic referral of UMC to DSD apparent.

5.4.2 Duration of stay

The table below sets out the duration of stay of UMC in this study in South Africa. The absence of information around the date of arrival in 15 cases made it difficult to draw conclusions and points to non-use of best interest determination tools. Compared to this, separated and accompanied children in care had, on average, spent lengthy periods in South Africa, with nine arriving between 2000 and 2005; 27 between 2005 and 2010, and 18 from 2010 to 2016. The absence of information around the date of arrival of UMC, both by children themselves and by social workers, reveals a gap in the protection approach and monitoring of cases for tracing, reunification, or other durable solutions such as the exploration of documentation options.

<table>
<thead>
<tr>
<th>UMC Duration of stay in South Africa</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>&gt; 1 year</td>
<td>6</td>
</tr>
<tr>
<td>1 - 3 years</td>
<td>26</td>
</tr>
<tr>
<td>3 - 5 years</td>
<td>7</td>
</tr>
<tr>
<td>5 - 7 years</td>
<td>8</td>
</tr>
<tr>
<td>&lt; 8 years</td>
<td>8</td>
</tr>
<tr>
<td>Unknown</td>
<td>15</td>
</tr>
<tr>
<td>TOTAL</td>
<td>70</td>
</tr>
</tbody>
</table>

5.4.3 Decision to migrate

When asked whose decision it was for the UMC to leave his or her country of origin, 43 respondents indicated that it was their own choice to migrate to South Africa (six respondents in Gauteng and 37 in Limpopo). Factors motivating children to migrate (both pull and
push factors) included the opportunity to go to school (21), better work opportunities (17) and to join family members who were already established in the country (1). At least, one indicated to have fled armed conflict and another simply stated that he chose to migrate because ‘it was not safe’ in his home country. One child was motivated to migrate by the death of his primary caregiver.

In total, 23 respondents indicated that it was not their choice to migrate, but that parent(s) or other family members had taken the decision. Five of the children whose migration was decided by family members supported the initial decision and did not wish to return to their countries of origin.

At 61%, the number of UMC who ultimately decided to migrate to South Africa is quite high. These children were predominantly from Zimbabwe and placed in CYCCs in Limpopo Province. Interestingly, 37% of UMC are indicated to have entered South Africa more than once, suggesting circular migration. Indeed, social workers in Limpopo generally observed that some children seemed to be familiar with the shelters, service providers and crossing of borders. It was suggested by one key informant that children from Zimbabwe often knew each other and that often, communication networks existed between them. Key informants and social workers in Limpopo indicated that most UMC pass through Limpopo province with the intention of reaching bigger cities such as Johannesburg or Pretoria, or further south.

5.4.4 Trafficking

Trafficking legislation came into force in South Africa on 9 August 2015, defining a trafficker to mean ‘any person who delivers, recruits, transports, transfers, harbors, sells, exchanges, leases or receives another person within or across the borders of the Republic, through a list of means including the threat of harm, coercion, deception or the abuse of vulnerability’.91

Measured against the above elements, it was found that eight respondents, all of whom were placed in care in Gauteng, had been trafficked into South Africa; seven originated from Mozambique and one from Zimbabwe. In the latter case, a fifteen-year old girl was brought to South Africa from Zimbabwe by a woman who was unrelated, but known to her family. Reportedly, the woman promised her family that she would take her to South Africa to work as her maid so that she can earn money to send to her family, who lived in poverty. The woman further promised to send her to school. However, the girl was never paid for the work, nor sent to school.

Another three boys aged 14 and 16 were brought to South Africa from Mozambique in 2015 by a man unknown to them. All three stated that their families had decided to send them to school in South Africa and that they had initially supported these decisions. One of the boys’ families had entrusted him to his uncle, but the latter accompanied him only to the border and paid for him to be taken to South Africa together with two other children. Instead of going to school and being cared for, all three were made to sell vegetables seven days a week until they were removed by social workers and placed in care. All three wished to return to Mozambique. Additionally, 12 respondents indicated that someone had been paid to help them cross a border.

Only one case of trafficking had been reported to the police and was under investigation at the time of writing. Compared to the Western Cape where only two cases were reported, the incidence of trafficking was higher amongst children placed in care in Gauteng.

5.5 Placement in alternative care

Forming the basis of the child protection framework, the Children’s Act No. 38 of 2005 makes no distinction

91 Article 4(a)-(e) of the Prevention and Combatting of Trafficking in Persons Act No. 7 of 2013.
on the grounds of nationality or documentation status and should apply equally to all children. A Children’s Court places a child in alternative care, if it is found that he or she is in need of care and protection. Alternative care includes placement in foster care, in the care of a CYCC, or temporary safe care. Section 150 of the Children’s Act lists the factors to be taken into consideration in determining whether a child is in need of care and protection. In the judgment of Centre for Child Law and Another v Minister of Home Affairs and Others, the court established the link between migration and the child protection system by allowing for unaccompanied foreign children to be treated in accordance with the then Child Care Act 74 of 1983. DSD’s Guidelines stipulate that unaccompanied children should be assumed to be children ‘in need of care and protection’ thereby presuming a level of vulnerability which suggests systematic consideration of alternative placement of the child.

5.5.1 Reasons for placement

The most common reason for UMC to have been placed in residential care was destitution due to the absence of an adult caregiver with the legal or customary duty of care in respect of the particular child within the country (56 cases or 80%). This suggested a direct causal link between migration and placement in care. It was found that eight children were orphaned in the country of origin prior to migration. However, in all cases, it appeared that the death of the primary caregiver was not the only factor to have prompted migration but that rather there was a confluence of push-and-pull factors. The information gathered also indicated that eight children were placed in care as a result of trafficking, including children who were abandoned after being trafficked and children found in impoverished circumstances. Another, three respondents presented a history of abuse. One had been abused in his country of origin prior to migration, whilst two had been abused during or subsequent to migration.

Generally, social workers did not consider placement in alternative care in the country of origin as a possible solution, but many supported the idea when it was presented. Despite being one of the steps outlined in the DSD Guidelines, it was found that alternative care arrangements in the country of origin was not actively explored as a durable solution.

5.5.2 Access to the child protection system

Given the proximity to northern borders, and the size and centrality of cities such as Johannesburg and Pretoria, the researchers had anticipated to find much larger numbers of migrant children in residential care in Gauteng (where the total was 137) than in the Western Cape Province (where the total was 109). However, this hypothesis was not substantiated. Reasons for this could not be established with certainty, but anecdotal evidence suggested that children without legal documentation experience barriers in accessing the child protection system in Gauteng.

When asked whether a particular CYCC was accommodating migrant children, a number of key informants, social workers and managers of facilities, including a DSD managed facility, answered that in principle, courts do not place foreign children in alternative care since they have no identification documentation. Some facilities confirmed that they would not accept any foreign children for this reason, as it is too difficult for them to administer their cases. Another indicated that the facility did not receive funding to accommodate foreign children. One CYCC did not accept foreign children for the fear that they may need medical care or die in the custody of the home, which would lead to problems for them.

It was concluded that access to child protection system by UMCs and especially foreign children in general, was not adequate as there appeared to be systemic barriers.

---

92 Section 167 of the Children’s Act No. 38 of 2005.
to those without legal documentation.

### 5.5.3 Duration of placement

International guidelines recommend institutionalized care for the shortest possible duration. This principle is of particular relevance to migrant children, who are at risk of acculturation, losing language abilities and contact with family members in the country of origin. The consequences are more dire for undocumented children who remain in care until the age of 18, at which point they have no means of regularizing their stay in South Africa without returning to the country of origin. Generally, it was found that UMC in Limpopo and Gauteng did not spend particularly lengthy periods in care, with only one child having spent more than five years at a CYCC, and six children had spent between three and five years in alternative care. The remaining respondents had all spent three years or less in care. It is suggested that age is one of the reasons for this, most respondents being between 16 and 18 years of age and therefore eligible to be discharged after between one and three years.

### 5.6 Family tracing and reunification

Family reunification is an important principle of international law in relation to unaccompanied and separated children. Article 22 (2) of the UN Convention on the Rights of the Child obliges states to assist with the tracing of family members ‘in order to obtain information necessary for reunification with his or her family’.

One of the objectives of the study was to establish whether relations continued to exist between migrant children and their families, which would inform the feasibility of family reunification. It was found that 26 UMC (eleven in Gauteng and fifteen in Limpopo) knew the whereabouts of their mothers, with 17 (six in Gauteng and eleven in Limpopo) maintaining contact at various levels of frequency. Of the mothers’ whose whereabouts were known, 24 remained in the country of origin, and 19 respondents indicated to have been orphaned.

At least 21 respondents said they had siblings residing in South Africa and 44 had siblings remaining in the country of origin. However, only 17 respondents said they maintained contact with their siblings. Other 19 respondents had extended relatives residing in South Africa, of whom 13 said they were in contact with them. Family tracing is the first step towards finding durable solutions for migrant children. The international non-governmental organization Save the Children had developed materials to assist authorities to determine the best interests of UMCs in the South African context.

The assessment form suggests the collection of data according to ten key questions relating to ‘whether the child has a parent/s or caregiver/s; if the parent/s or caregiver/s are willing to be reunified with and able to care for the child; if there is a positive relationship between them, and with the sibling/s and extended family; whether the child is safe at the proposed residence and willing to be reunified with a particular person; whether the child is involved in hazardous labour; and whether there are adequate educational opportunities and health services for the child.’ The data collected will point to one of six possible solutions, which have also been adopted in the DSD Guidelines of 2009 and are set out below:

- Family tracing is necessary in all cases where the either or both parents are alive, but their whereabouts are not known (one case in Gauteng and five in Limpopo), or in cases where it is not known whether parents are alive.

---

95 In contrast, in the Western Cape study it was found that 28% of respondents had spent between five and seven years in alternative care. Eleven percent had spent between eight and ten years in care and 2% had been placed for more than ten years.
96 Department of Social Development (2009) Guidelines on unaccompanied and separated children outside their country of origin in South Africa, paragraph 6.4
97 International Organization for Migration (2013) Children on the move, p.77
99 Now termed a CYCC in terms of the Children’s Act 38 of 2005.
If parents are no longer able to care for children, it is imperative to trace alternative caregivers such as older siblings, aunts, uncles or grandparents. The low rate of contact between children and their parents and other family members suggested that family reunification was not systematically explored as a durable solution. Efforts made towards family tracing and reunification differed greatly between provinces.

Social workers in Limpopo were more active and attempts to find family had been made in 40 cases, including through the involvement of International Social Services (ISS) in 19 cases. Family reunification within South Africa was considered a possibility in 14 cases, whilst reunification in the country of origin was deemed possible in 31 cases. In total, reunification had been attempted in 26 cases, which is an impressive rate compared to efforts made in Gauteng where social workers are said to have made efforts towards family reunification in only five cases, including contact with IOM (two cases) and ISS (one case).

In Limpopo Province, a cross-border forum, including representatives of DSD and Zimbabwean counterparts, met monthly to discuss cases. Social workers interviewed attested to the success of this forum with tracing families and suggested that the forum be strengthened to become even more efficient.

6. CONCLUSION AND RECOMMENDATIONS

At 9.2%, foreign children represented a significant number of children in care in facilities surveyed across Limpopo Province. This number is indicative of the flow of children through the northern borders, and shows accessibility to the child protection system in this area. However, foreign children appeared to face systematic barriers to access courts and residential care facilities in Gauteng Province, where the number of UMC (3.7%) in care is far less than anticipated. The reasons forwarded for this were that undocumented children are not able to access residential care since they had no legal stay in South Africa, could not access public services such as schools and medical care without documentation, that there was no financial support available to them, and their cases are therefore too difficult to administer. It is submitted that the refusal from the outset to allow children to access protection mechanisms provided for under the Children’s Act is unlawful and does not adhere to the principles of equal treatment or bests interest of the child.

Of all the cases of foreign children in CYCCs surveyed, 32.4% were identified as UMC and the data suggested a direct link between migration and destitution resulting from the lack of a caregiver in South Africa. UMC are necessarily vulnerable to abuse and exploitation throughout the migration process and even more so, throughout their stay in South Africa, given the lack of support. At 30%, the number of UMC who paid to enter South Africa was alarming. Because of the absence of a registration and documentation mechanism, coupled with no systematic referral to social services upon entry, the protection of UMC was not assured.

The cases of trafficking were not many, however, only one was under investigation by the police and none of the allegedly trafficked children had been issued with temporary residence visas, pending investigations, as prescribed under legislation.

One of the main concerns was the general lack of documentation to identify children and regularize their stay in South Africa. This increases the risk of
detention, deportation, blocks access to basic rights and compounds the risk of statelessness. It is anticipated that many of the children will have no choice but to return to the country of origin once discharged from care, since no immigration status is available to them in terms of the present legal framework.

The social implications of a long stay in South Africa include the loss of children’s ability to speak home languages, the loss of identity and the loss of sense of belonging in the country of origin. With most UMC being males in their mid- to late teens looking either for work or education opportunities, socio-economic circumstances in the country of origin is the driving motivation for migration. Another important observation is the evident flow of UMC between South Africa and the countries of origin, suggesting not only easy movement across borders despite stringent immigration legislation, but circular migration. It is imperative that authorities approach the phenomenon of unaccompanied migration by minors from a regional perspective so as to ensure the maximum level of protection of children as imposed under international law, but also to facilitate the implementation of solutions - which inevitably requires coordination between authorities across borders.

RECOMMENDATIONS

a) Children who are identified as unaccompanied at border posts or police stations should be referred systematically to the nearest office of DSD. It is extremely important that practice around the reception and referral of such cases to DSD be clear and coherent. It is in the interests of the state to identify unaccompanied foreign children so as to prevent unlawful detention or deportation, and to minimise risks related to trafficking and smuggling.

b) It is recommended that all service providers including courts, external social workers, child protection agencies and residential care facilities attend to the application of the Children’s Act so as to allow equal access to the child protection system based on need and not on documentation status or nationality. In this regard, DSD should adopt and disseminate clear policies.

c) It is recommended that a registration and documentation process be developed to accommodate UMC. This should be available either upon entry or at a later stage. It is in the interest of authorities to keep accurate records for purposes of understanding the nature of migration flows and the number of children migrating to and from South Africa. This will allow an informed response to related problems. Further, the state will be assisted to assess the extent of its duty towards migrant children, and complying with its obligations under international and national law, including the extension of refugee protection where applicable, and child protection as per the Children’s Act.

d) Given the constraints faced by social workers, it cannot reasonably be expected of them to be experts on immigration or refugee law. A link should be established between the DSD and DHA, and a focal point within DHA should be appointed, to which social workers may refer cases or queries. Social workers should be made aware of service providers to whom they may turn for technical advice or assistance. All efforts to trace and reunify family should be clearly documented in the
child’s case file. It is particularly valuable to record successes in order to develop a model of good practice.

e) In cases where family tracing efforts fail, or where reunification is not deemed in the best interest of the child, it is imperative that durable documentation solutions be explored.

f) If no immigration status is accessible to the child in the circumstances, or if return is deemed in the child’s best interest, social workers should inform and prepare the child for eventual return.

g) Cross-border family reunification mechanisms must be strengthened as a priority. It is specifically recommended that the capacity of cross-border forums, such as is in place with Zimbabwean authorities, be strengthened. A clear referral mechanism should be in place, and possible outcomes should be delineated. As a starting point, this could be done in cooperation with main sending countries.

h) Alternative care in the country of origin should not be disregarded as a solution for some children. Again, this would involve establishment and strengthening of working relations between DSD and appropriate, identified care facilities in the sending country so that the best interests of the child are protected.

i) Cases of trafficking should systematically be referred to the police for investigation and children should be issued with relevant visas pending investigations.

j) It is recommended that applications for permanent residency in terms of Section 31(2)(b) of the Immigration Act be made accessible to unaccompanied and separated foreign children in care. By setting certain guidelines for applications made on behalf of children in care – for example taking into consideration reasons for migration, reasons for placement, the number of years in care and setting minimum standards for monitoring and evaluating family tracing and reunification efforts - DHA would be in a position to regulate such applications.
1. INTRODUCTION
According to UNHCR, Zambia was a host country to more than 54,000 refugees in December 2014. Although reasons for migrating can be various, the conflicts in the neighbouring Democratic Republic of Congo (DRC) and Burundi seem to be an increasing push factor. How many UMC flee to Zambia, or transit through the territory, is unknown. They can easily stay unnoticed, while at the same time, they are likely to be in the greatest need of protection and assistance. They have often experienced trauma as they have witnessed people and relatives being killed, raped and defiled by the rebels. In addition, the journey to Zambia is not an easy one and is often accompanied by hardships, such as (sexual) violence and finding shelter and food. However, since research so far has mainly focused on adult refugees, much is still unknown about UMC.

In this regard, this study aims to provide an overview of the many challenges UMC face, but also insight into a country’s national legal and policy system concerning UMC, as well as challenges faced and good practices developed. Zambia is particularly interesting, since it is a sending, transit and receiving country and since it shares borders with eight other countries: Namibia, Botswana, Zimbabwe, Mozambique, Malawi, Tanzania, Democratic Republic of the Congo (DRC) and Angola. Moreover, with no history of war, it is a very peaceful country and receptive towards foreigners. Many initiatives, such as law development, joint programmes and child policies have been undertaken to deal with vulnerable migrants like UMC in particular. These will all be further explored in the following sections.

Section 2 sets out the methodology and limitations of this study. To provide a general overview and some background information, relevant legal provisions, policies and stakeholders are discussed in Section 3. Section 4 deals with the research findings, which are divided into several topics and subdivided into the legal & policy framework and practice. Relevant legal provisions are summed up in the boxes added to each paragraph. Finally, Section 5 contains a summary conclusion, together with the most important recommendations for Zambia and identification of good practices that could be emulated in the sub-region.

100 As of mid-2014, some 54,000 refugees and other people of concern (asylum seekers, stateless persons, and internally displaced persons) were residing in Zambia. Please see http://www.ewbchallenge.org/unhcr-zambia/refugees-zambia.
2. METHODOLOGY AND LIMITATIONS

2.1 Methodology
This study aims to assess how the protection of UMC in Zambia can be improved and to identify good practices that serve as an example for other countries. It consists of desk research as well as an empirical part. The desk research focused on relevant international, regional and national laws and policies to gain a good overview of the measures taken so far and the current framework dealing with UMC. Furthermore, relevant studies have been included as well as comments from United Nations bodies, for example of the UN Committee on the Rights of the Child and following the Universal Periodic Review. Various topics that concern UMC have been covered, including health, shelter, violence, family tracing and reunification and trafficking.

Secondly, the empirical research consisted of fieldwork in Zambia. With assistance of the IOM in Zambia, interviews with 12 key informants were planned in Lusaka to be able to further complement the findings regarding the legal and policy framework in Zambia, but also to identify gaps, challenges and good practices. Key informants included UNHCR, UNICEF, the Department of Social Welfare, Save the Children, the Office of the Commissioner for Refugees, Zambia Police and managers at shelters. In addition, 20 children were interviewed, aiding the triangulation of this research. Of those 20 children, 12 were interviewed at Makeni Transit Centre, Lusaka; three in the safe house in Meheba Refugee Settlement (near Solwezi); one in Meheba Refugee Settlement; and four in the transit centre of Meheba camp.

The children’s ages ranged from seven to 19 years. Children under 12 were accompanied by their older sibling[s]. For the interviews with the children in Lusaka unofficial interpreters were used, like a sister or a friend. Children in Meheba Refugee Settlement were all interviewed in presence of an interpreter, arranged by IOM. All interviews were held voluntarily, were confidential and anonymous, with the continuously present option of withdrawing from the interview or not answering a specific question. Also, since the research also involves vulnerable children, ethics clearance was obtained from the University of the Western Cape Research Ethics Committee.

This research follows the UN Convention on the Rights of the Child (CRC) in its definition of the child: namely as any person below the age of 18 years. Whenever reference is made to ‘unaccompanied migrant child’, this covers children under the age of 18 years at the time of crossing the border of Zambia, alone, in company of other minors and/or adults unrelated to them, and coming from a country of origin other than Zambia. Names used in this report are not real names for the purpose of anonymity.

2.2 Limitations
When reading this research on Zambia, it is important to bear in mind that only 20 UMC were interviewed. Furthermore, shelters, nuns, and other interviewees were also interviewed about UMC they worked with. Although the findings seem to be in accordance with other research, it remains a small number which does not necessarily represent the average experience of UMC. Also, it was felt that children who were accompanied by the officially arranged interpreter felt generally less free to speak. Therefore, perhaps not all information was shared by them. Finally, it is relevant to note that this research only focused on UMC; national children were excluded, even though they might be facing the same challenges as UMC (e.g. access to education). Also accompanied children, i.e. those in the care of a parent or legal guardian, were not surveyed, although they too might experience similar challenges. Therefore, recommendations on how to deal with UMC might to some extent be relevant for national children and foreign accompanied children as well.

---

101 The children of this age- 18 and above- had entered Zambia whilst under the age of 18 years
102 Article 1 CRC.
3. THE LEGAL AND POLICY FRAMEWORK

3.1 International and regional legal framework

Zambia has a dualistic legal system, meaning that international law is not applicable domestically and needs to be transformed into national law before it can be invoked in court. 104 Zambia has ratified most of the international and regional treaties relevant for the status and protection of UMC, including the UN Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRW). Zambia’s report to the CRC was last considered in 2002. A report submitted in 2013 was considered in January 2016; the contents of both the State Party report and the CRC Committee’s Concluding Observations are thus available. 105 In relation to asylum seeking and refugee children, the CRC Committee made the following observations:

The Committee note that the parliament was supposed to consider the Refugee Bill in 2013. The Committee is concerned that the current refugee (Control) Act of 1970 does not provide specific protection for refugee children nor refugee status determination in the case of unaccompanied and separated children. The Committee is also concerned about the difficult social situation of the refugees and their families in areas such as health and education.106

The Committee recommends that the State party expedite the adoption of the Refugee Bill and strengthen the legal protection of refugee children. The Committee also urges the State Party to provide refugee children with access to social services such as health and education.

However, so far Zambia has not yet submitted an initial report to the ACRW’s monitoring body, the African Committee of Experts on the Rights and Welfare of the Child (ACRW). Furthermore, Zambia is state party to the 1954 Convention relating to the Status of Stateless Persons, the Refugee Convention of 1951, the 1969 OAU Convention governing the Specific Aspects of Refugee Problems in Africa, the Palermo Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Protocol against the Smuggling of Migrants by Land, Sea and Air, and the African Charter on Human and Peoples’ Rights. However, the 1961 Convention on the Reduction of Statelessness has not been ratified (yet).

3.2 Domestic legal framework

The 2016 Constitution of Zambia (Act 2 of 2016), enacted in January 2016 establishes a Human Rights Commission.107 It contains a definition of a child as a person who has attained, or is below, the age of eighteen years; it designates “Refugees” as matters of exclusive national executive function.

The Constitution of Zambia Amendment Bill sought to repeal Part 111 of the Constitution of Zambia and to provide for a new Bill of Rights in Statutory Instrument 35 of 2016. Section 28 provides for the rights of Refugees, namely that a person who has been granted asylum or refuge in Zambia has the right not to be returned to the country of origin or a third country if that person has a well-founded fear of persecution, in the country of origin or third country, which justifies that person’s request for asylum or refuge.

Section 48 of the Statutory Instrument is more child rights-friendly than its predecessors and contains an elaborate child rights provision in section 48: it provides for the right the inclusion of the child’s best interests to be considered in all matters as a constitutional standard; for the equality of all children before the law whether born inside or outside wedlock; for the right not to be subjected to violence including in the home; for the right to protection from all forms of sexual exploitation...
or abuse; for the right not to be subjected to harmful cultural rites and practices; for the right not to be discriminated against, neglected or abused; and for the right not to be engaged in work that is exploitative or likely to be hazardous or adverse to the child’s health or welfare.

However, the referendum, which was held alongside the 11 August 2016 general elections, failed to make the grade of having 50% of all eligible Zambian voters participate in the poll. Being a very expensive exercise left Government with no choice but to hold the referendum alongside the August 11 general Presidential elections to cut down on costs. This, somehow, took the focus away from the referendum because people were more interested in the election and which party to vote into office. According to commentators, in order for the Bill of Rights to succeed therefore, there is a need to source for funding towards holding a referendum autonomously.108

As for refugees, the main piece of legislation is the Refugees Control Act of 1970, Chapter 120 of the Laws of Zambia. It does not contain specific provisions regarding UMC or children in general. However, Zambia reported to the CRC Committee that it is considering revising the Act, to bring it into compliance with the CRC and that the Refugee Bill is expected to be considered in 2013 by Parliament.109 At the time that the Concluding Observations for Zambia were issued in February 2016,110 it does not appear that such a Bill has yet been introduced.

With regard to children in general, Zambia does not have a modern comprehensive children’s law. However, a draft Children’s Code Bill (CCB) has been prepared, which has not been discussed by Parliament. Seemingly, its introduction awaits the finalisation of the constitutional reform process. Reporting to the CRC Committee in 2013, the Government of Zambia stated that “the audit of child law was completed in 2008, but that Zambia has faced many challenges in the review and audit process of child related legislation. Lack of adequate financial and human resources have been the major challenges in ensuring the successful completion of the audit process within a reasonable time”.111

However, in the meantime, the Juveniles Act (Chapter 53 of the Laws of Zambia, adopted in 1956)112 is the main law dealing with child welfare. It perpetuates a contradictory definition of childhood that permeates various statutes in Zambia, defining a juvenile as a person aged under 19 years. A child is defined as a person under 16 years, and a young person as one below 19 years.113 There is, however, a chapter dealing with the juvenile in need of care, although the definition of who a juvenile in need of care is limited, dated and bears the hallmarks of moralistic and judgemental sentiments prevalent in the 1950s. Zambia also has an Education Act No. 23 of 2011 that contains several provisions on educational matters.

Finally, it is to be noted that the Anti-Human Trafficking Act No. 11 of 2008 provides for all sorts of aspects of trafficking, such as identification of victims and prosecution of perpetrators. With support from the United Nations Joint Programme on Human Trafficking (IOM, UNHCR and UNICEF), the Anti-Human Trafficking Act and the Immigration and Deportation Act114 were reviewed in 2015 and recommendations regarding the need to amend the two pieces of legislation were

\(\text{(a) investigate and report on the observance of rights and freedoms; (b) take necessary steps to secure appropriate redress where rights and freedoms are violated; (c) endeavour to resolve a dispute through negotiation, mediation or conciliation; (d) carry out research on rights and freedoms and related matters; (e) conduct civic education on rights and freedoms; and (f) perform such other functions as prescribed.}^{108}\)

\(\text{See, for instance, https://www.daily-mail.co.zm/?p=77380}^{109}\)

\(\text{CRC/C/ZAM/2-4, par. 158.}^{110}\)

\(\text{CRC/C/ZAM/CO/2-4.}^{111}\)

\(\text{CRC/C/ZAM/2-4, par. 39.}^{112}\)

\(\text{The Act is heavily weighted towards establishing a separate justice system for juveniles in conflict with the law, rather than being a comprehensive child welfare and protection statute.}^{113}\)

\(\text{There are distinctions drawn between children and young persons as regards juvenile detention.}^{114}\)

\(\text{The draft Bills amending the Immigration and Deportation Act was passed on 6 June 2016.}^{115}\)
PART THREE

3.3 Domestic policies

Several policies are relevant for the position of UMC. Firstly, the UNDP Programme for the Promotion and Protection of Women and Children’s Rights in Zambia 2012-2016 envisions that Provisions of the CEDAW and CRC/ACRWC will be domesticated that the Ministry of Gender will have coordinated a multi-sectoral and evidence-based response to gender and child development issues. Secondly, the Government of Zambia launched the Revised Sixth National Development Plan 2013-2016 (R-SNDP), which aims to contribute to Zambia becoming a ‘prosperous middle-income country by 2030’, as set out in Vision 2030. It is focused on economic growth and development and does not contain a specific children’s section nor does it mention UMC. It does contain some relevant provisions for children, including some covering education and child health.115

One very important programme for UMC is the UN Joint Programme on Protecting Migrant Children from Trafficking and Exploitation (UN Joint Programme). Funded by the EU, this programme runs from 2013 to 2015 and includes various actors, including UNICEF, UNHCR, IOM and the Ministry of Home Affairs. It has been set up to mitigate the risks and vulnerability and increase the protection of migrant children from trafficking and exploitation. One aim is to upgrade Zambian laws in this regard, another is to build capacity amongst the judiciary and other frontline officials and service providers to identify the various categories of vulnerable migrants, how to interview and refer the cases and the protection assistance to be accorded to vulnerable migrant children. So far, it has achieved several goals and the project has, according to the website, provided protective assistance to 170 children as well as services, including medical assistance, counselling, shelter and Assisted Voluntary Return and Reintegration (AVRR).117

More than 100 front line officials, a term used broadly to encompass immigration officials, police officers, social welfare officers, prison officials, health officials, other civil servants and civil society organisation personnel who have “first contact” with migrants in need of protection, have been trained to identify and refer vulnerable migrants in need of protection assistance. Furthermore, a trainers manual, a participant’s handbook, a National Referral Mechanism (NRM), a Profiling Form and the Guidelines for the Protection Assistance for Vulnerable Migrants in Zambia are all tangible and positive outcomes of this programme.118 Possible extension of this programme is currently being explored, as it ended in June 2016.

The Guidelines for Protection Assistance to Vulnerable Migrants are definitely useful guidelines dealing with migrant children specifically as well.119 As an annexure to the guidelines, a National Referral Mechanism (NRM) chart has been drafted to illustrate the duty bearers bound to provide assistance at various stages of the identification, interview and status determination process and its follow up. Broadly speaking, the guidelines apply to “first officials”. It is beyond the scope of this report to delve into the detail of the

115 Previously the Ministry of Gender and Child Development.
116 Chapters 13 and 15 of the R-SNDP.
119 Vulnerable migrants include: refugees, rejected asylum seekers, victims of trafficking, unaccompanied and separated children, stranded migrants, and stateless migrants. This report will focus only on the relevant provisions for unaccompanied and separated children.
Guidelines. Suffice it to say that that the core human rights principles applicable to unaccompanied and separated children are well reflected.\textsuperscript{120}

Finally, the National Child Policy of Zambia 2015-2020 has recently been approved. It acknowledges the need to deal with various issues, such as HIV, increased household poverty and child trafficking, but is very general in terms of what action should be taken. UMC have not extensively been dealt with; apart from one reference to a need for ensuring early identification of, inter alia, UMCs so that proper protection measures can be undertaken, not much is said about UMCs.

3.4 Stakeholders

Zambia currently has no Ministry that is specifically responsible with UMC (while MCDSS and the Department of Social Welfare have a central role). Rather, the responsibility is spread out over various ministries, depending on which service is required.

Without being exhaustive, it is important to highlight the role of some stakeholders here. The Commissioner for Refugees, functioning under the Ministry of Home Affairs, is responsible for immigration issues. However, because it concerns dealing with vulnerable children, the Department of Social Welfare (falling under the Ministry of Community Development and Social Welfare - hereafter MCDSS) also deals with UMC. Depending on which other area of concern is involved, other Ministries or Departments can also be involved.

Examples are the Ministry of Education and the Ministry of Health. Challenges in this regard have also been identified by the National Child Policy of Zambia 2015-2020, which also refers to fragmentation and overlapping coordination functions when it comes to dealing with children since the restructuring of Ministries involved with coordination and service delivery to children.\textsuperscript{121} The Anti-Human Trafficking Act mandates the MCDSS to be the legal custodian for trafficked children who do not have legal guardians.\textsuperscript{122} Zambia Police also has a role in relation to addressing human trafficking. There is Child Protection Unit jointly across Department of Social Welfare and Zambia Police. The Department of Immigration remains critical including in facilitating documentation (regularization of stay) and travel documents for UMC. Moreover, the Ministry of Foreign Affairs is also an important player.

In addition to these Ministries there are many other involved actors. Once a UMC has come into the system, other organisations come into play, such as shelters where the children are placed. UNHCR and IOM are greatly involved in the whole procedure of the UMC from the moment of entering Zambia onwards. UNHCR, for example, conducts interviews with the children, supports them in accessing school, provides funding for the transit centre in Lusaka and runs the refugee settlements. Also, the police can be involved, for example when no other option of shelter is available, although in principle placement in police custody is undesirable and to be avoided as it is a deprivation of liberty.

Furthermore, several NGO’s and INGOs are relevant, such as UNHCR, who for example is involved in determining the refugee child’s best interests, and Save the Children. According to sources since the time of the initial research visit, in 2016 IOM has supported the MCDSS with the development of BID forms that have also been piloted. Moreover, more work has been done recently on alternatives to detention for child irregular migrants. More than 200 child migrants have reportedly provided with safe shelter, run by DSW, as an alternative to detention in 2016.

\textsuperscript{120} See Box 3, page 18, and Box 5, Page 21, and annex 5 (special considerations for interviewing child migrants) for instance.

\textsuperscript{121} National Child Policy of Zambia 2015-2020, p. 49. The responsibilities of the different actors in realising the Zambia National Child Policy of Zambia 2015-2020 have been outlined from pages 60 to 64. Coordination functions are set out in the NRM and the Guidelines on the Protection of Vulnerable Migrants in Zambia compliment this.

\textsuperscript{122} Section 33(1)(b).
4. RESEARCH FINDINGS

1. General Profile of UMC

It is unclear how many UMC Zambia hosts. This challenge is created in part because some of the UMC are not known by the authorities, but also because of a lack of a centralised aggregated database. Rather, UMC do seem to be registered in one form or another when in contact with the authorities, but all stakeholders maintain a separate data systems (see also section 4.2 of this report). Apart from a lack of countrywide data on the numbers of UMC, other data are lacking as well, such as the country of origin, destination, age, etc. The study conducted by IOM, UNHCR and UNICEF in 2014 on the north-south corridor borders and in migrant host communities in Zambia does give some insight into these issues though. Although not focussing on UMC, 416 children were interviewed for the purpose of the 2014 study, of which only nine or 10 were UMC (2.3 per cent). Most of the 416 children came from the DRC, namely 83.4 per cent, while Burundi was the second country of origin (4.2 %).

Under this current study, findings seem to confirm this data. At least 20 UMC were interviewed (12 in the transit centre in Lusaka, three in the safe house of Meheba Refugee Settlement, one in Meheba Refugee Settlement and four in the transit centre of Meheba Refugee Settlement). Interviews were also held with staff at shelters where UMC were accommodated. The vast majority of UMC in Zambia seem to come from the DRC: of the 20 children that were interviewed, 90 per cent (18 children) came from the DRC. Furthermore, for two children Burundi was the country of origin. Their ages ranged between 7 and 19 years, with half of them being female and half of them male. (The 19 year olds had entered Zambia whilst below 18, which is why they were included in the study.)

Many of these children have experienced serious trauma, including severe violence and sexual abuse. Thus, 17 children had left their country of origin due to conflict or war. Only two siblings came to Zambia to be reunited with their mother (who did not take care of them and passed away). The choice for this country seemed to mostly have been based on geographic reasons; Zambia is a safe country, but also a logical place to go to when fleeing from DRC/Burundi in terms of distance. Usually the UMC did not cross the border alone. In total five children came with one or more siblings and five children came with one or more other children they were not related to. One child travelled with an unrelated adult (so a “separated child” by definition) and three children crossed the border with an adult unrelated to them and one or more siblings. At least four children came by themselves. One child could not remember the reason for coming to Zambia nor who brought her, as she was only six months old at that time.

The most common form of transport was by truck, which was used by 50% of the children (i.e. 10 UMC). In this regard, the children often paid with money they had received from someone who took care of them after fleeing from home, such as a pastor or a woman whom they did not know who decided to take care of them. The second most common way of crossing the border of Zambia was by boat (25 per cent). One child indicated she just kept running from home for about a week and ended up in Zambia. Furthermore, two children did not know how they crossed the border, since they were only still young at the time of entering Zambia.

2. Documentation and Refugee Status

Legal and policy framework

In Zambia the right to freedom of movement of refugees is restricted, as reservations were made to this right under the 1951 Refugee Convention and the

---

124 However, it is to be noted that the majority of non-asylum seeking UMCs appear to come from Ethiopia (hundreds per year), other parts of the Horn of Africa, as well as Tanzania, and Zimbabwe.
1954 Statelessness Convention. Once recognised as a refugee, one is only allowed to stay in one of the two settlements that have been designated for refugees to stay: Meheba Refugee Settlement (near Solwezi) or Mayukwayukwa Refugee Settlement (in Kaoma District). In order to be able to be acknowledged as a refugee a certain procedure needs to be followed. After entering Zambia, an unaccompanied migrant child can present her/his case to the Office of the Commissioner for Refugees (COR), an office which falls under the Ministry of Home Affairs which is the appointed actor to deal with refugee claims. The child will then be taken in, registered and interviewed to see whether he or she is eligible for asylum or refugee status. A specially appointed National Eligibility Commission (NEC), consisting of various actors, such as COR, UNHCR, the police, the Department of Immigration and the Department of Social Welfare, will determine the legal status of the UMC. In the meantime the UMC will receive temporary documentation with his or her picture on it. While awaiting the decision on his/her refugee status, the UMC resides in either a transit centre or the community (e.g. church-run children’s home or other shelter). If refugee status is granted, the UMC will receive a Refugee Identification Document (ID) card from COR and will be sent to one of the two refugee settlements. Refugees are not allowed to leave this camp without permission.

**PRACTICE**

The interviews showed that UMC are generally being taken to the Ministry of Home Affairs by people on the street whom they do not know. However, it is unknown what numbers of UMC are actually being referred to Home Affairs as much as it is unknown how many UMC there are in Zambia. Each office that deals with UMC has its own registration system, but none of these are connected to each other.

Once taken in, the children are subjected to interviews and are placed in for example the transit centre in Makeni, Lusaka or, if necessary, in a safe house or shelter while awaiting the decision on their application for refugee status. Of the interviewed children only one child had an ID card from Burundi. All other children had no ID documentation or passport, apart from the children in Meheba Refugee Settlement, all of whom who all had a refugee ID card. Not having an ID card however, does not seem to pose a problem in terms of being granted refugee status. A good practice emanating from the research is that children can apply for refugee status by themselves, without being dependent on assistance from, for example, a parent, relative or legal guardian.

Although their stay at inter alia the transit centre is supposed to be temporary, the UMC who were in the Makeni transit centre had been staying there much longer than would be expected, ranging from 2 months to 4 years, with an average of 14 months. This lengthy procedure seems to stem from a lack of proper collaboration and follow up, but also possibly because there are too many actors are involved. It is essential that this procedure is being shortened, since children are being denied several rights, such as the right to education, while awaiting the decision on their refugee status (see inter alia par. 3.6). Apart from this, the cooperation between the various actors seems to be of a very high level; everyone seems to know who to refer to, what the next steps are, what tools to use and to support each other in the work. IOM, for example, provides training for several organisations to build capacity on dealing with UMC/ migrant children. All key informants indicated their collaboration with other partners was very good.

Usually, the application for refugee status of UMC gets granted, at least for children from DRC and Burundi. Once that has happened, the child will be transported to one of the two refugee settlements. However, the child is likely to stay there indefinitely, since no option

---

125 Zambia has made reservations under both article 26 of the 1951 Convention Relating to the Status of Refugees and article 26 of the 1954 Convention Relating to the Status of Stateless Persons, insofar as it is stated that Zambia may designate one or more places of residence for refugees.

126 Article 4 Refugees (Control) Act Cap 120 (1970).

127 The regularization of stay of irregular migrants children that are not asylum seekers and refugees is governed by the Immigration and Deportation Act, and includes issuance of report order as an immediate means of regularizing stay.

54 Study On Unaccompanied Migrant Children In Mozambique, South Africa, Zambia And Zimbabwe
of naturalisation exists for refugees in Zambia. Leaving the camp is only temporarily allowed with a permit (gate pass) to exit the camp for a specified time, for example, to conduct business.

When an application for refugee status is rejected, however, there seems to be no solution, except for applying again and again. At the time of the research, three boys in the transit centre in Makeni had been rejected refugee status three times, leaving them in a legal limbo, since returning them to their country of origin is not an option because of the ongoing conflict.

4.3 Trafficking and smuggling

Legal and policy framework

For long, Zambia has had a strong focus on combating trafficking and exploitation. From 2009 to 2012 IOM, UNICEF and ILO collaborated in a programme to address this issue. The aim of this initiative was to create awareness and strengthen the ability of both government and non-government agencies to tackle the root causes of trafficking, and to detect and respond to it.

This programme was supported with 1.6 million Euros from the European Union. After a response to the call for proposals by the EU, Zambia was granted another 2 million Euros in December 2012 to further tackle this issue under the UN Joint Programme on Protecting Migrant Children from Trafficking and Exploitation 2013-2015. With UNICEF as the lead agency, collaborating parties this time include IOM and UNHCR, the Ministry of Home Affairs and other Ministries.

As stated earlier, the Joint Programme has had many outcomes, including training of front line officials, a handbook, a Profiling Form, the National Referral Mechanism which provides guidance regarding the different stages of assistance to vulnerable migrants requiring help, and the 2014 Guidelines for Protection Assistance for Vulnerable Migrants in Zambia. Although non-binding, the Guidelines give clear directions on how to further deal with (potential) victims of trafficking.

Victims should be referred to the police, who will then assess the migrant’s status and refer the case to the Ministry of Community Development and Social Services, where the Department of Social Welfare within this Ministry should provide the migrant with protection assistance. While their safety, security and long-term options for care are being established, victims of trafficking have the right to remain in Zambia and they should be made aware hereof (article 31(3) Trafficking Act). In this regard, the Guidelines prescribe that their immigration status should be regularised as soon as possible, furthermore providing for the opportunity to apply for permanent residency under certain conditions named in article 34, 35 of the Trafficking Act.

These initiatives are all praiseworthy and could serve as a good practice example on how to effectively deal with trafficking issues. However, numbers on children who are victims of trafficking are nowhere to be found, making it impossible to get an idea of the magnitude of the problem. Data on trafficking of children could also aid the understanding of and effective combatting of this problem. The National Child Policy of Zambia 2015-2020 explicitly refers to trafficking, but basically only mentions background information, like causes and challenges.

Smuggling too is a concern on which data is lacking. Policies on how to deal with smuggling are difficult to discern. However, the Anti-Human Trafficking Act No. 11 of 2008 does contain one article on smuggling. Article 9(1) criminalises the smuggling of a person into or out of Zambia, participation in smuggling and consenting to smuggling, and makes the offender liable to imprisonment for 15 to 20 years. The production, provision, procurement or possession of a fraudulent

---

128 Sometimes exceptions are made; for example, at the time of the study there was an attempt resettle a big group of Angolans outside of the camp.
or identity document with regard to smuggling can be punished with a sentence of 10 to 15 years of imprisonment (article 9(3) Anti-Human Trafficking Act No. 11 of 2008).

**PRACTICE**

As demonstrated above, many initiatives have been taken to combat child trafficking. Nevertheless there is no data on how many children are actually being trafficked, leaving it impossible to estimate the magnitude of the problem. Out of the 20 interviewed children none had been trafficked. Key informants had only experience with, or had heard of, only a few cases. The reported reasons for trafficking children are various and include sexual abuse and economic exploitation. One child was allegedly trafficked to Tanzania for being an albino child.

Furthermore, it was reported that the conviction of an alleged child trafficker takes too long. There was one cited example where a man acting in name of a church brought two girl children to Zambia, but then abused them sexually. Police investigations were started, but two years later, the case is reportedly still pending. For child victims of trafficking, this can be a quite problematic; not only is the length of such a procedure a burden (children have to testify over and over), there is also the realistic chance that children will start to forget information that could help secure a conviction in the case. Furthermore, it might be a threat to their safety as long as the child trafficker has not been convicted.

In this light, it was also recommended by one interviewee to improve collaboration, ensuring that cases are referred to the right authorities in time, without undue delay. However, the general impression during this research was that collaboration when dealing with migrant children is well developed within Zambia, possibly also aided by the National Referral Mechanism, and could that the lessons learned under the Joint Programme could serve as an example for other countries.

Several children seemed to be smuggled across the border, for example by truck drivers. Key informants indicated that front line officials are becoming much better equipped to deal with smugglers and have started to use more sophisticated technologies to detect, for example, hidden compartments in trucks where people are concealed. However, prosecution of smugglers does not seem to occur often. The most recent report of the US Department of State records that “[t]he Government of Zambia does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so.” Further, it was asserted that the government was unable to report the number of victims identified due to the lack of a shared database and adequate coordination among service providers; however, international organizations identified 11 victims of labour exploitation, two victims of sexual exploitation, and two victims of both labour and sexual exploitation (not necessarily children).

**4.4 Shelter, food and clothing**

**Legal and policy framework**

Safe and secure shelter, clothing and food are classified as immediate needs in stage 4 of the National Referral Mechanism and thus these needs should be realised immediately. As described earlier, UMC in Zambia are automatically placed in one of the transit centres or shelters and, if granted refugee status, placed in one of the two refugee settlements, thereby providing for their right to shelter. When providing shelter, due regard should particularly be given to the ethnic, religious, cultural and linguistic background as well as the safety and security needs of the child.

Furthermore, the Migrant Protection Guidelines state

---

132 Guidelines for Protection Assistance to Vulnerable Migrants in Zambia, p. 25.
that migrants should be provided with adequate nutrition, clothing and sanitary facilities. The special needs of female migrants, including those that are pregnant and breastfeeding, should be taken into account. It continues with ‘[t]here should be provision for dietary needs based on any medical condition or cultural or religious practices particular to each migrant. Each individual should be provided with food and supplements appropriate to their needs. Food should meet health and safety standards required by law.’

**PRACTICE**

Presumably also thanks to the NRM and UN Joint Programme, involved stakeholders seem to collaborate well and refer UMC to the right place. Although it is hard to verify, all children seem to be given shelter once in touch with the authorities. However, one challenge that was indicated in this regard is the shortage of community-based shelters, especially for boys. The transit centre in Makeni also clearly indicated their lack of capacity; whereas their centre had place for 60 people, at now has to host 84 people. Currently, shelters are being built so that each province has at least one shelter, but this seems not to be enough. Most shelters are aimed at girls, but shelters for boys are in short supply currently. For young mothers aged under 18 it also seems more difficult to find community based placements. Although numbers are unknown, lack of shelter could lead to placement of UMC in police cells or prisons, which would expose them to detention (see furthermore section 4.8 of this report).

Forms of alternative care in Zambia include adoption, institutional care and protection via victim support, which means being placed in a safe house. Girls who need special protection seem more likely to be placed in a safe house if required. Apart from independent (community based) safe houses, both the transit centre in Lusaka and Meheba Refugee Settlement have a safe house on their premises for extra vulnerable children, like victims of sexual abuse. It is uncommon for Zambian families to take in or foster these children. As one key informant indicated, this is just not embedded in the Zambian society. People do not easily step up to take care of these children. Legal guardianship is something that does not seem to be formally addressed, but currently the Department of Social Welfare is the legal guardian of UMC who are otherwise without a guardian.

Within the shelters at the camps, not all children feel safe. In total five children answered the question whether they felt safe in the centre or camp in the affirmative, eight did not answer this question and seven indicated that they do not feel safe. The reasons given for the latter responses were various: two children had come from Burundi and were scared that Burundians would come after them and kill them. Other children did not feel safe because, they said, they were stuck with their trauma and missed their family and/or felt like the staff did not understand them, did not help them and did not seem to care. Finally, one of them got raped in the centre where she is residing. She is currently staying in the safe house within the centre, but this does not feel safe, since it is very easy to obtain access to her. The case had been reported to the police. However, the culprit had never been convicted, since the witness had disappeared and she, as a victim, had never been heard. One child did not clarify the reason for not feeling safe.

As for the food and clothes in the transit centres and the refugee settlements, children were not always happy about the provision hereof. Especially in the transit centre in Lusaka, there was a clear trend of children indicating that the food they were provided with was not sufficient. They reported their stomachs hurt from the food, they do not manage to eat it, that they get the same meals every day and would like a more varied diet. Staff too named challenges concerning food, and explained their budget for food had been cut the previous year. The children under 18 in Meheba refugee...
settlement (both in the transit centre and in the safe
house) indicated they appreciated the food. However,
one over 18, one has to provide for food oneself,
which can be a challenge. Finally, half of the children
indicated they were not provided with enough clothing.
Some only received one set of clothes, either too big
or too small. This too is a challenge for the authorities,
since the clothing is donated and budget for purchased
clothing is not sufficient.

4.5 Health

Legal and policy framework

Considering the long and possibly dangerous journey
most UMC have experienced, they are likely to have
had physical as well as mental hardships. Therefore,
health care, classified as an immediate need under
stage four by the National Referral Mechanism (the first
three stages focus on identification and referral), is an
important required service. According to the Migrant
Protection Guidelines, ‘[a]n initial medical check-up
should be considered for all vulnerable migrants at the
earliest possible time even if the migrant appears to be
in good health.’ 133 Immediate needs should be assessed
during the first interview with the UMC and if there are
immediate health concerns, these should be addressed
as soon as possible by providing first aid and referral to
providers of health services for expedited full medical
assessment as well as appropriate management of
conditions that are life threatening. 134 If further medical
assistance is required, the child should be referred
to the nearest health service provider. In addition,
psychological support for those who have experienced
traumatic events during their journey to Zambia should
be provided to UMC by trained personnel. 135

The National Child Policy of Zambia 2015-2020 provides
for several measures that should be taken, such as
ensuring that child health services are accessible. The
Policy is founded on the principle that every child has the
right to access quality health, without discrimination. 136

Finally, as noted, the Committee on the Rights of the
Child has recommended to Zambia to strengthen
the provision of social services, such as health and
education, to refugee children. 137

PRACTICE

As indicated by one key informant, not all children
get an automatic medical check-up, but during the
initial interview it is assessed whether they need one.
Although some children indicated they had received
such a medical check-up, others indicated they had not
received one. A total of eight children indicated they
were in need of medical treatment. The reasons for
this were various; some shared they were battling with
their memories and were suffering from symptoms like
dizziness or heavy heart beats. Another two children
indicated they were in need of treatment for HIV; two
children had problems with their legs after having made
the journey to Zambia. Both of them had received a
bandage, but also added that this did not work and it
still hurts. Another boy clearly asked for medical help,
because of skin problems and possible other problems.
He had been given injections and some medicines, but
these did not help.

They did not further assess him and he was denied
further access, because he did not have refugee
status, or so he explained. It is unclear if other children
experienced challenges in accessing health care because
of not having a refugee status. As for access, one girl
stated she had been removed from the list for HIV
treatment, because there was no money. On the other
side, three children indicated they were satisfied with
the treatment they received (medicines for malaria,
headache and stomach aches). And another three
children did not think they were in need of medical
treatment.

As for the mental health, many children indicated they
had not been interviewed by a social worker. The ones
that had been (six in total) were interviewed by either

133 Guidelines for Protection Assistance to Vulnerable Migrants in Zambia, p. 24.
134 Guidelines for Protection Assistance to Vulnerable Migrants in Zambia, p. 20.
136 See also National Child Policy of Zambia 2015-2020, p. 54, 55.
137 CRC C(ZMB)/CO/2-4 par 55 14 March 2016
someone from the transit centre or UNHCR. They were generally happy about the interview and said it helped them a bit. And seven children indicated they would like to speak to a social worker. Most children have experienced severe traumas, including (extreme forms of) violence and sexual abuse before and during their journey to Zambia, and the aftermath of these events need to be addressed. As one child stated: ‘you sit here alone, bad image[s] come’. Also other children spoke of wanting to talk to someone about their trauma, because they are ‘stuck with their thoughts’.

6. **EDUCATION**

**Legal and policy framework**

Zambia has made a reservation to both the 1951 Refugee Convention and the 1954 Statelessness Convention stating that it does not consider itself bound to accord to refugees the same treatment as to nationals when it comes to primary education. At the same time, the National Child Policy of Zambia 2015-2020 is based on the principle that all children should have access to education, without discrimination. 138 Zambia’s Education Act 23 of 2011 does provide for the child’s right to free basic education (article 15) and obligates the Minister to ensure equal access to quality education to all learners, including poor and vulnerable children (article 22(1)). Furthermore, the Act’s provision for compulsory school attendance can be found in article 17, compliant with article 28 of the CRC and article 11 of ACRWC. Nevertheless, a specific recognition of the migrant child is not included in the Education Act.

In the National Referral Mechanism for the Protection of Vulnerable Migrants in Zambia (2014) the provision of education is referred to only at stage 5 (medium and long term needs) and at stage 7 (integration). Both refugee settlements, Meheba and Mayukwayukwa, have primary and secondary schools within their premises. The transit centre in Makeni is situated near a local school, but in principle does not provide for education, since the placement of UMC in the transit centre is supposed to be a temporary one.

**PRACTICE**

In practice, it seems, in principle, that migrant children enjoy the same treatment as nationals when it comes to education; schools do not seem to register their pupils according to nationality or migrant status, and primary school is free for every child. However, when looking at the situation in more detail, some obstacles can be discovered. The children who did attend school were happy about attending, but did report that some of their education needs were not being met. In this regard, school bags, mathematical tools, books and shoes were cited as being lacking. UNHCR does provide support with, inter alia, school uniforms. Another issue that came out of the interviews was that not all children were attending the grade they were supposed to be in. Furthermore, linguistic barriers were sometimes named as challenges by key informants, accompanied by the comment that these barriers can quickly be overcome, since the children quickly pick up on new languages.

Also, whereas primary school seems to be accessible for the aforementioned children, secondary school is not easily accessible for them due to high fees, leaving secondary schools in Meheba Refugee Settlement quite empty. Moreover, of the children interviewed, only 15 per cent (three children) were attending school. One child was over 18 years old and not able to access education anymore, due to financial reasons, but also because there was no higher education available within the refugee settlement of his residency. The other 16 children were all residing in one of the transit centres and were thus denied access to education. However, practice shows that children stay in transit centres for long periods, sometimes even up to four years. Consequently, these children will build up a major backlog in their education, which is disconcerting considering the importance of education; it is also contrary to several legal provisions, including article 28 CRC and 11 ACRWC.

---

4.7 Violence

Legal and policy framework

According to the NRM, children should receive psycho-social counselling: as well as address their medium and long term needs. Basic safety and security is classified as an immediate need and needs to be secured in stage four. In addition, the Guidelines for Protection Assistance to Vulnerable Migrants in Zambia confirm that safety and security are immediate basic needs for both victims of trafficking and stranded migrants.\(^{139}\) The protection and safety of migrants should be of paramount concern at all times. In this regard, where possible, shelters too should ensure a safe, secure, temporary living environment for migrants who are vulnerable and in need of protection.\(^{140}\) The possible need for safety and security should be assessed in the initial interview with the UMC. As stated under section 4.5 of this report, UMC should be medically examined and, in situations where they have experienced traumatic events during the migration process, they should receive psychological support by trained personnel.\(^{141}\)

PRACTICE

In addition to the violence experienced by most children that caused them to flee, UMC are also susceptible to violence during their journey and on arrival in Zambia as well. In total eight children reported to have experienced violence during and after their journey. For seven children this meant sexual abuse. Girls seem to be highly represented amongst this number; six of the children who had experienced sexual abuse were girls, only one was a boy. The abusers were generally someone unrelated to the child, but someone the child was dependent on at that moment, because the person took the child under his care (only men were reported to have inflicted this kind of violence). One child reported physical violence perpetrated by street children in Zambia.

Violence mostly seems to occur during the journey to Zambia (in either the DRC or Burundi). At least two children reported to have experienced violence within Zambia; one was beaten by street children and one girl was sexually abused by a man within the transit centre where she is residing. She has now been placed in the safe house of the transit centre, which seems, as discussed earlier, potentially easily accessible if people are intent on doing harm.

Both the transit centre in Lusaka and Meheba Refugee Settlement have a safe house within their premises. The three children interviewed in the safe house of Meheba Refugee Settlement indicated they felt safe. The current service that is being provided to deal with children who have experienced violence does not seem sufficient; apart from one child, all children who experienced violence indicated they would like to see a social worker and/or needed medical help in relation to violence they experienced.

Some 11 children did not report any violence and one child did not answer this question. However, it is important to bear in mind the limitation previously mentioned – i.e. that children were presumed to feel less free to speak in Meheba Refugee Settlement in the presence of an adult interpreter: whereas seven children residing in Lusaka reported cases of violence, only one child in Meheba Refugee Settlement reported to have experienced violence.

4.8 Custody and detention

\(^{139}\) Guidelines for Protection Assistance to Vulnerable Migrants in Zambia, p. 14.
\(^{140}\) Guidelines for Protection Assistance to Vulnerable Migrants in Zambia, p. 17.
\(^{141}\) Guidelines for Protection Assistance to Vulnerable Migrants in Zambia, p. 24.
Legal and policy framework

The Migrant Protection Guidelines thoroughly describe which standards should be upheld when placing a migrant in detention. For example, the detention must be in accordance with and authorised by law, it may not be arbitrary and alternatives to detention have to be considered. Furthermore, police stations in Zambia have a Community Service Directorate (CSD), which was created to increase the flow of communication between the Police and society in general; it is composed of several units.

One of those units is the Child Protection Unit, which solely deals with child victims and perpetrators of offences against children; it is supposed to remove children from unsafe to safe places, together with the Ministry of Community Development and Social Services. According to the Zambia Police website, this unit is supposed to be situated in every police station. Good police co-operation was evident; also police have all received training and seem to know the relevant frameworks well. However, due to inadequate alternative shelters, especially for males, UMC are sometimes placed in detention alongside adults, and sometimes mixed with criminals.

Recently, a lot of work has been done in this areas, including through Prisons Information Management System, and referral of migrant children out of detention. Immigration SOP now clearly indicates that migrant children should not be detained unless a measure of last resort.

It was indicated by Zambia police that already 174 children had been brought to the CSD of the police in Lusaka in the first quarter of 2015. How many of these children were foreign children or UMC is unknown. When children are brought to the police they will be referred to the Child Protection Unit of the CSD. However, these Units are only to be found at 40 per cent of the police stations, according to one key informant. Police officials are being trained to deal with children, mostly by IOM, but there are insufficient resources to train everyone. Moreover, it could easily happen that an officer is trained, but is transferred the next day. Therefore, police officers are generally just taught the basics.

The reason for placing children in police custody is because of a lack of alternatives; one community-based shelter per province is currently being built in Zambia, but this is still not enough. Once deprived of their liberty, children are not provided with food whilst in detention. Separation from adults does not seem to be secured. It was indicated that only 4 per cent of all police stations are equipped with cells for children. The cooperation with IOM and the Ministry of Home Affairs was indicated to be very good.

Of the 20 children interviewed only one boy of 16 years had been placed in detention. He was found on the street after he got hit by a car and people took him to the police, where they did not understand him due to language barriers, and he was placed in a prison. He initially had no food, but was provided with food later when the police officers felt sorry for him. He was placed separately from adults and had not experienced violence whilst in detention, he said. He was only released after a woman, who spoke his language, listened to his story and explained it to the police. The boy was not brought to a shelter, but released onto the

PRACTICE

Guidelines for Protection Assistance to Vulnerable Migrants in Zambia, p. 34. See also the UNHCR Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention.

Parliamentary Amendment Act No 14 of 1999.

http://www.zambiapolice.gov.zm/index.php/services/community?showall=1. In practice CPUs are not yet available at all police stations, and therefore Victim Support Units (VSUs) are sometimes called upon.

In addition to this, through partnership with the International Detention Coalition (IDC), IOM Zambia has been working with government to improve alternatives to detention, particularly for child migrants. IOM has supported the Department of Immigration to update its Standard Operating Procedures, used for all immigration officers, to include a section on the protection of vulnerable migrants, and the non-detention of VOTs and child migrants. This highlights government’s commitment to exploring alternatives.
street. He was later picked up and brought to the transit centre.

4.9 Family tracing, reunification and resettlement

Legal and policy framework

Family tracing is qualified as a long term need in the NRM. Although it does not have a legal basis, the Migrant Protection Guidelines clearly provide on how to deal with family tracing and reunification: family tracing should be started as early as possible and is particularly important where it concerns unaccompanied or separated children. If safety and security allow for it, tracing should be carried out on behalf of the UMC in order to restore contact with either close or extended family, or with previous primary caregivers, in case immediate reunification is not possible. The Department of Social Welfare is the appointed organ to provide for this, in collaboration with organisations that facilitate family tracing, such as the International Committee of the Red Cross.

PRACTICE

Key informants indicated that family tracing is sometimes attempted, usually by the International Committee of the Red Cross (ICRC). Family reunification is also done by UNHCR, in cooperation with the embassies and the government. There was one example of a boy from the DRC who ended up in a shelter in Lusaka. Family tracing was successfully undertaken in collaboration with IOM. They managed, after 1,5 years to provide him with documentation through collaboration with IOM, UNCHR and the DRC embassy. But after having been reunited with his family, he showed up on the streets of Lusaka again one year later. In this regard, it was also shared that it is very easy for children to cross the border, especially when alone; they hardly ever get questioned by border officials.

As for the children interviewed, an attempt of family tracing was only reported twice. In the case of one child, the ICRC tried to find the child’s father, but without success. However the ICRC’s attempts at tracing family were much appreciated by one of the key informants. The other child indicated that the Ministry of Home Affairs was looking for her sister. For 10 children, tracing of their parents was irrelevant, because both of their parents were deceased, but seven children had at least one parent although they did not know if he or she was alive. Moreover, eight children reported to have siblings, but they did not know where they were. In total, 11 children had either one more or more relatives (parent/s or sibling/s) that could have been attempted to be traced. One child did not answer questions around family tracing and reunification. However, it is unclear to which extent it was feasible to attempt family tracing in these cases.

Practice also shows that in exceptional cases, UMC are eligible for resettlement to other countries. In the transit centre two girls were in the process of being resettled. Not every child can be resettled; only if the BID-panel makes this recommendation, based on the particular child’s best interests, may he or she be eligible for resettlement. One girl was awaiting resettlement to America, another girl resettlement to Sweden. Both girls did not know what was going to happen, where exactly they were going, or when. Subsequent to the study visit, and at the time of writing, one of these girls had indeed been resettled in Texas where she now resides with foster parents. The other girl was then still awaiting resettlement.

147 See section 45 of the Anti Human Trafficking Act 2008 which provides that a welfare officer may be assisted by the police or any other person to trace the family of a trafficked person.
5. CONCLUSIONS AND RECOMMENDATIONS

Conclusions

Zambia, having had no history of war, has been a peaceful country and very receptive when it comes to, for example, UMC. It is certainly well developed when it comes to dealing with UMC and the process followed by the Joint Programme could serve as an example for other countries in several ways. The UN Joint Programme, for example has shown to be of great importance when it comes to handling UMC and vulnerable migrants in general. Training has been given, a handbook was developed and a National Referral Mechanism was set up to involve all relevant partners, to stimulate cooperation and make sure vulnerable migrants are referred to the right organisations and services. In addition, the Guidelines for Protection Assistance to Vulnerable Migrants provide guidance in appreciable detail, and in a manner that strengthens the protection assistance given to UMC.

At the same time, the research findings also show there is still room for improvement. First of all the legal framework concerning UMC seems to be somewhat fragmented; there are some relevant provisions in the Education Act, some in the Anti-Human Trafficking Act, etcetera. However with the possible adoption of a new Constitution and a new Children’s Code Bill improvement might be on the way. UMC are nevertheless not specifically recognised in any of these laws. The National Child Policy 2015 – 2020 does specifically mention this group of children, but does not really provide for guidance on how to tackle issues related to circumstances of UMC.

As for Zambia, it is unknown how many UMC are residing in Zambia or how many are known to the authorities due to a lack of one central aggregated data system. These research findings show that UMC generally seem to come from the DRC or Burundi. Children use transport such as trucks and other vehicles and are often helped by people on the way. Although not all of them face violence during their journey, it seems in most cases violence or conflict was the reason to flee. With a specific Anti-Human Trafficking Act and measures taken under the UN Joint Programme, Zambia’s framework is very strong and developed when it comes to trafficking. However, the magnitude of the problem of trafficking of minors into Zambia is unknown. The same goes for smuggling. Although not many cases of trafficking were found in this study, an important challenge that was indicated is the lengthiness of procedures when trying to prosecute a child trafficker. Also efforts to prosecute smugglers should be increased.

The interviewed children were all taken to the Ministry of Home Affairs under which the Commission for Refugees falls, where they were registered and interviewed pending the decision on their application for refugee status. A good practice is that children can apply for refugee status by themselves, without being dependent on assistance from, for example, a parent, relative or legal guardian. During the period that they await the outcome of the refugee status determination, they reside either a transit centre or in the community. Despite the documentation most children seem to be lacking, it seems they generally get granted refugee status, after which they are send to one of the two refugee camps. In principle, they are not allowed to leave these camps, limiting their freedom of movement. In cases where the application gets turned down, children are stuck in a legal limbo, since they cannot be returned to the country of origin due to the high conflict prevailing.

The main problems that were indicated by children and key informants however were not concerned with trafficking, but rather with poor food, a lack of community based shelters (especially for boys) and insufficient access to mental and physical health care.
and education. It was noted that, eight out of 20 children indicated that they were in need of medical health care and seven indicated wanting to speak to a social worker about their trauma. Amongst them, several children had experienced violence during their journey and wished to receive help in this regard. Furthermore, almost all children had a strong desire to go to school, but were not enrolled, since they were residing in a transit centre. Although this is supposed to be a temporary solution, the children interviewed had been staying there longer than a year on average. Also, not all children felt safe, partially because of external factors, and partially because of internal factors, such as easy access to the safe house. Finally, family tracing and reunification was only attempted in several cases, but no successfully resolved cases were mentioned.

Subsequent to the completion of this study, it was ascertained that NGOs in Zambia had developed a support programme for UMC for the future (2016), consequent upon the key informant interviews being conducted and some of the challenges faced by UMC being shared by the researchers. The possibility of funding being obtained internationally for this programme seems positive.

RECOMMENDATIONS FOR ZAMBIA

In light of the above findings, the following recommendations are made to the Government of Zambia:

1. Work to shorten time spent in transit centre (more rapid processing of UMC applications for refugee status);

2. Collect data on trafficking of UMC in Zambia;

3. Collect data on smuggling of UMC in Zambia;

4. Ensure prosecution of traffickers without undue delay

5. Provide for adequate shelter facilities (both in quantity and quality) for both boys and girls; ensure that the shelters, which are currently being built are completed shortly after the publication of this report;

6. Explore other forms of alternative care, such as foster care in the community; enhance efforts to recruit local foster parents; use more community based solutions instead of letting UMC reside at transit centres;

7. Ensure all shelters, including safe houses, provide a safe and secure environment;

8. Ensure children are provided with enough clothes and sufficient and food of good quality and quantity, and establish durable solutions in this regard, either by supporting in terms of financial resources or, otherwise, by seeking cooperation with organisations, such as churches who donate clothes and large supermarket chains who do food donations;

9. Make sure all children are being medically examined in stage 4 or 5 of the NRM and make sure this medical examination is being followed up at periodic intervals where necessary;

10. Ensure access to appropriate health care for all children;

11. Ensure all children are being provided with psychological support by trained personnel;

12. Make sure UMC are being treated equally to national children, including when it comes to educational needs, such as in the provision of books and other materials;

13. Withdraw Zambia’s reservations to article 22(1) of the 1951 Refugee Convention and article 22(1) of the 1954 Stateless Convention;
14. Facilitate access to primary education for children in transit centres when staying there for a period longer than 90 days;

15. Redouble efforts to seek funds to ensure access to secondary schools;

16. Ensure safety of all UMC, including in the safe houses;

17. Ensure all UMC who have been victims of violence receive adequate medical help;

18. Ensure that violence that occurs in Zambia is not met with impunity but that cases are diligently pursued;

19. Register all children brought to the police in a new integrated data system;

20. Make sure all police officials dealing with children are trained properly to deal with children;

21. Ensure all children are separated from adults when, as a last resort, they are deprived of their liberty;

22. Overcome language barriers by using interpreters when UMC go through processes;

23. Ensure UMCs are referred and brought to proper shelters when released from detention;

24. Set up a strong, clear mechanism that ensures that family tracing and reunification is attempted wherever it is possible;

25. Enhance resettlement options where family tracing and possible reunification is de facto impossible, such as where parents or legal guardians are deceased;

26. Inform and hear children on all matters that affect them, such as resettlement (conforming to article 12 CRC);

27. Continue the current collaboration and efforts to enhance protection for UMC, engage with involved actors at least every six months to enhance protection;

LESSONS FROM ZAMBIA

Considering that Zambia is certainly far ahead in several aspects when it comes to dealing with UMC, the following lessons can be learned from Zambia:

1. Although no specific reference is made to UMC in legislation, Zambia has a praiseworthy Anti-Human Trafficking Act due to its comprehensiveness. Furthermore, it would be a positive development if the new Children’s Code Bill is enacted.

2. UMC are dealt with as a stand-alone group in both policy and practice; a system that is not adopted by all countries. This is a good practice, because UMC concern a specific group with specific needs and therefore they need specific attention and protection.

3. The National Referral Mechanism is a clear chart that ensures, at one glance, that all relevant actors are sensitised and know how to refer UMC to the right organisations and service providers. It is accessible for all actors; from the government, to NGOs, to shelters, etc.

4. The Guidelines for Protection Assistance to Vulnerable Migrants comprehensively provide the indication as to how to deal with UMC and how the NRM should further unfold. This could serve as an example to other countries in the region and also testifies to the specific attention that UMC as a group receives.

5. The cooperation between involved actors is praiseworthy; all actors know of each other’s existence and services; everyone is up to date in their awareness of the applicable laws and policies; and services are exchanged (for example expertise is shared through training). This is an important prerequisite for ensuring the enhancement of the protection of UMC.

6. Avoid detention of children unless it is done as a measure of last resort. Rather, explore alternatives to detention for children.
Part four
The protection of UMC in Zimbabwe: Current challenges, strengths and opportunities

1. INTRODUCTION
Zimbabwe is mainly a sending country of UMC (UMC) usually to South Africa, Botswana, Zambia, Namibia and Mozambique. As a receiving country in recent years, it serves as a transit destination for UMC seeking to proceed to any one of those countries in the region especially South Africa and Botswana. The main reasons for migration are search for jobs or employment or economic opportunities and, for many children, the search for their relatives or family members who went in search of greener pastures in those countries.

There is one main camp which hosts refugees and UMCs who come to Zimbabwe: Tongogara Refugee Camp (TRC). Located in south-eastern Zimbabwe, near the border with Mozambique, the Tongogara Refugee Camp is home to over 80% of refugees in Zimbabwe, originating mainly from the Great Lakes and Horn of Africa region. Established in 1981, it was originally built to provide refuge for Mozambicans fleeing war until 1992. Re-opened in 1998, it began to receive refugees from other countries including Burundi, DRC, Eritrea, Ethiopia, Rwanda, and Somalia. In recent years, it has received refugees from as far as Bangladesh. At the time of the research visit, the number of refugees in the camp was estimated to be over 8,000 with about 150 asylum seekers received each month. With these increasing numbers of refugees and asylum seekers, the camp is overcrowded. The Department of Social Services is the custodian of the camp with administrative services generally provided by the UNHCR. UNHCR in partnership with other donors/partners such as the World Food Programme (WFP) and World Vision International (WVI) currently provides assistance to cover refugees’ basic needs, including food and shelter. Facilities in the camp include a clinic, churches, sporting facilities, a primary and secondary school as well as grocery shops, bars and bottle stores.

---


149 As above.

150 As above.


152 ‘Tongogara: Hope to foreigners’ at http://www.sundaymail.co.zw/tongogara-hope-to-foreigners/

153 See also UNFPA Zimbabwe, ‘Boost for mothers at Tongogara refugee camp’, 1 August 2016 at <http://zimbabwe.unfpa.org/news/boost-mothers-tongogara-refugee-camp>; Anna Chibamu, ‘Tongogara crisis: No basics for 9,000 refugees’ 27 July 2016 (reported in New Zimbabwe, 29/09/2016); Phiri (n 4 above); ‘Tongogara: Hope to foreigners’ at http://www.sundaymail.co.zw/tongogara-hope-to-foreigners/


156 ‘Tongogara: Hope to foreigners’ at http://www.sundaymail.co.zw/tongogara-hope-to-foreigners/
There is also the Waterfalls (refugee) transit camp, which was established in 1981 and located in Harare, the capital city of Zimbabwe. It provided temporary shelter and other needs to refugees undergoing the status determination process before being transferred to Tongogara Refugee Camp. It also accommodated, on a temporary basis, refugees from Tongogara Refugee Camp who were on referral cases for medical assistance or resettlement consideration, refugees who had some protection issues to settle or be settled, as well as those requested to come for further investigations by the Zimbabwe Refugee Committee. Originally designed to accommodate 60 people, the camp accommodated over 100 people at a time. There is conflicting information as to the current status of this camp, whether it was closed (during the mid-2000s) or is still in use. An outbreak of cholera, government displacement programmes were some of the factors reported to have led to the closure of the camp. Other reports however show the transit camp still being operational in recent years.

In addition to these two camps, there are two reception and support centres opened by the IOM in Beitbridge and Plumtree to provide a ‘soft landing’ for undocumented migrants returned from South Africa and Botswana respectively. The Plumtree Reception and Support Centre was established by IOM in 2008 and is located in Plumtree, a town close to Zimbabwe’s border with Botswana. It is the second reception centre opened by IOM in Zimbabwe, the first being the Beitbridge Reception and Support Centre opened on 31 May 2006. The aim is to strengthen the relationship between the Governments of Botswana and Zimbabwe (with support from IOM) in terms of ‘coordination mechanisms’ as far as migration issues in the region are concerned. Similarly, the Beitbridge Centre strengthens the Zimbabwean-South African relationship on migration concerns.

In April 2015, the Plumtree centre was handed over to the Government of Zimbabwe to continue with the provision of humanitarian support to returned Zimbabwean migrants, usually from Botswana and surrounding countries. The Departments of Social Services and Child Welfare and Rehabilitation Services are responsible for running the reception centres. UNICEF and Save the Children provide technical support to the Government in administering these centres with logistics support being provided by IOM (until the handover in 2015).

The Plum Tree Reception centre is well situated and caters to both adults and children, with separate living and recreation quarters provided for adults and children, boys and girls. The centre operates as a place of safety for the provision of interim care, counselling and basic needs particularly for Zimbabweans deported or returned from Botswana. It is a short-term placement for a maximum duration of seven months.
days before transitioning to long term placements, usually family reunification for Zimbabweans. Although the Beitbridge Reception and Support Centre was not visited by the research team, indications from IOM and the Department of Child Welfare are that it is run along the same lines as the Plumtree Reception and Support Centre.

For this research, assessments/interviews were conducted at the Tongogara Refugee Camp and the Plumtree Reception Centre. The selection of the locations was informed by discussions held with IOM and various governmental and non-governmental stakeholders in Zimbabwe based on their knowledge of the places where the most information on UMC could be obtained at the time.

2. METHODOLOGY, SCOPE AND LIMITATIONS

This research was conducted to assess the general situation of UMC in Zimbabwe with a view to establishing factors such as the demographic profile of the children, the quality of assistance and range of services available to them, and the role of the various stakeholders who interact with UMC, among others – with an ultimate view of identifying best practices and providing recommendations to comprehensively address the concerns of UMC within or across the SADC region.

In addition to the preliminary desk research, questionnaires were used to conduct interviews with stakeholders from various sectors covering mostly government officials and staff of NGOs working directly or indirectly with UMC in Zimbabwe. The study thus employed the use of survey questionnaires made up of a mixture of open and closed ended and multiple response questions. Data was gathered from a total of 30 respondents; among these was a child who had been an unaccompanied migrant but at the time of the interview reunited with her parents. The parents (father and step-mother) of the UMC were also interviewed. The majority of respondents were Zimbabwean government officials across various ministries and departments including the Department of Social Services and the Department of Child Welfare under the Ministry of Public Service, Labour and Social Welfare, the Department of Child Welfare (Ministry of Health and Child Care), Zimbabwe Human Rights Commission, the Zimbabwe Republic Police, Immigration and Border officials (including Port Health Authorities) etc. Stakeholders from the Intergovernmental and NGO sector include officials from the International Organization for Migration (IOM), the International Committee of the Red Cross (ICRC) and the Zimbabwe Red Cross, UNHCR, UNICEF, and SOS Children’s Villages Bulawayo. Others include Camp officials and other officials from different agencies based at the Tongogara Refugee Camp and officials at the Plumtree Reception Centre. The study is thus limited mainly to interactions with Zimbabwean government officials and individuals from the NGO sector and hardly included the actual UMC whether in camps or elsewhere except in three cases covering a child and two parents.

3. RESEARCH FINDINGS

1. General Overview of Recent Government Policy Interventions

In 2014, the World Education’s Bantwana Initiative, together with United States Agency for International Development (USAID), UNICEF and Zimbabwe’s Department of Social services (DSS) collaborated to establish the National Case Management System Project. The aim of the project is to expand and strengthen the existing national community case management system ‘to reach the most vulnerable children in Zimbabwe and connect them to critical services’ in all districts within the country. The project is an off-shoot of a previous project, ‘The Children First Project’ by World Education and other partners.

166 The case management project operates through a network of case care workers and community volunteers who identify and assist vulnerable children in understanding and navigating the system in order to

---

165 ‘National Case Management System Project’ at <bantwana.org/where-we-work/Zimbabwe/national-case-management/>  
166 USAID ‘The Children First Project’ at www.childrenfirst.worlded.org. See also bantwana.org/where-we-work/Zimbabwe/children-first/
access necessary services including education in a holistic manner. Consequently, its effectiveness requires a communal appreciation of child protection to safeguard the best interest of all children. This appreciation and community ownership of the issues and processes involved was reported by the majority of respondents as a contributory factor to the improvements made in handling UMC in recent years.

UNICEF provides technical support for the case management system and assists the government with the development of plans for protection of vulnerable children. UNICEF also leads in the area of advocacy for a common understanding and agreement on procedures for the system to effectively respond to the needs of vulnerable children. Save the Children is responsible for strengthening the case management system particularly in the districts with the highest movement of migrant children along Zimbabwe’s borders. Respondents reported that the availability of case management officers has helped to boost the capacity of government agencies such as the Departments of Social Services and Child Welfare. This is important given that only one welfare officer is assigned per district. However, the case management officers are on contract till the end of this year (2016) and uncertainty about the renewal of their contracts may affect the continuity of the services they provide.

According to the various respondents in this research, UMC in Zimbabwe are able to access basic services through the National Case Management System based on their district of origin or location within Zimbabwe. However, respondents from the DSS noted that the Zimbabwe Children’s Act is silent on whether or not UMC (particularly non-Zimbabwean UMC) are a category of ‘vulnerable children’ or ‘children in need of care’ as they are not expressly included. This may therefore act as a barrier to foreign UMC accessing the social services available via the National Case Management system. However, the National Action Plan for Orphans and Vulnerable Children defines vulnerable children to include ‘unaccompanied child migrants’.

The National Action Plan for Orphans and Vulnerable Children was developed in 2007, by the Government of Zimbabwe through the Ministry of Labour and Social Services covering a first phase period of 2007-2011. The plan was updated for a second phase covering 2011-2015 (NAP Phase II). The aim of the plan is to ‘provide a framework for coordinated action to ensure that orphans, vulnerable children and their families, in Zimbabwe, have incomes and access to basic services, and that all children are protected from abuse and exploitation.’ Phase I and Phase II of the NAP have just been evaluated by the government while a third phase (NAP III: 2015-2019) is being developed.

UNICEF is providing support to the Government of Zimbabwe on discussions around NAP III, which also involves the Government of Botswana. (The aim is to encourage the Botswana authorities to also regard UMC as vulnerable children so that deportation is not the only course of action taken in addressing them). The main gap is the inadequate human resources available due to the Zimbabwe’s economic challenges. There is a shortage of social workers and the Public Service Commission in Zimbabwe is not recruiting. Another gap is the inadequacy of alternative care forms, including residential care available to the children. Although in principle, a six-tier alternative care system exists, the options are not all always available, according to the specific needs of individual children (in line with the best interests of the child principle).

Many residential care facilities are for temporary placements but with no permanency plans in place (due to shortage of options, shortage of resources and

167 It was however noted that the Act is currently being revised with plans in place to include UMC as vulnerable children.
other gaps), some children remain in such settings longer than recommended. This makes institutional care the default option rather than a measure of last resort or temporary arrangement for many children. Further, the non-ratification of the Hague Convention on Intercountry Adoption means that such options cannot be explored for children for whom it may be suitable. There is also the need to broaden NAP III to include non-Zimbabwean children whether in transit or destination.

2. General Profile of UMC

As earlier noted, most UMC in Zimbabwe are Zimbabwean nationals who have been returned from neighbouring countries, particularly Botswana and South Africa. The intention of most of the migrant children was to transition from Botswana to South Africa, in most cases to be reunited with family members known to be based in South Africa. A case management officer/district child welfare officer interviewed confirmed that the majority of UMC (aged 10-16 years) received are Zimbabwean children who have been deported from Botswana. The peak period for UMC movements is usually during school vacations. Some travel as individuals, others in sibling groups and still others in the company of other minors or adults to whom they are unrelated. Two mains reasons provide the impetus for migrating: to be reunited with family members and to find work to make a living. In some cases, some are pushed due to alleged political instability and other problems affecting their families and other factors (such as poverty, abuse, and lack of educational or paying work opportunities) resulting first, in internal migration. Of Zimbabwe’s 65 districts, the seven highest sending districts of UMC are: Beitbridge, Bulilima, Chiredzi, Chipinge, Mashingo, Matobo and Mberengwa. The UMC in Beitbridge and the Plumtree reception centres are usually Zimbabweans who leave the country to join their relatives in South Africa (mostly during school holidays). In most cases, they have been arrested by the South African Police authorities and deported to Zimbabwe.

Respondents at the SOS Children’s Villages (Bulawayo) also reported that three UMC were recently brought in for safety by the Department of Social Services and their case was still being investigated. They came from South Africa and at the time of this visit, two of them were already enrolled at school in the camp; grades four and six. Children brought to the SOS Villages must come through the Social Services department after the department has identified them as vulnerable children. It was reported that the duration of stay of UMC in the Village ranges from one year to four years during which plans for permanency (for example, family reunification or alternative care measures) are worked out between the Social Services department and the SOS Villages authorities.

UMC from other countries usually come in through Kariba, Nyamapanda and Chirundu. UMC that come to Zimbabwe through these routes usually come in as refugees from other countries and end up at Tongogara Refugee Camp. Some come in with the intention of transiting to South Africa while others come to seek asylum in Zimbabwe. The originating countries include the Democratic Republic of Congo (DRC), Mozambique, Burundi, Egypt, Rwanda, Somalia, Ivory Coast, Ethiopia, Uganda, Mali and Syria. The goal of the majority of them, aged 12 to 17 years is to ‘seek out greener pastures’ particularly in Botswana and South Africa. Child welfare officers reported a recent influx of Congolese children but stated that the cause of the influx has not yet been established. Many come in from Nampula in Mozambique with the aim of transiting to Botswana through Zimbabwe and Zambia (ROUTE: Mozambique-Zimbabwe-Zambia-Botswana). As at January 2016, there were 271 registered UMC on the Tongogara Refugee Camp list aged between 14 and 17 years; more than 100 girls were on the list. The children had been placed with families or foster carers within the camp; eight of the family are headed by single adults/parents. It was reported however that the ages

---


of the children who come into the camp range from 10 and 16 years.

At Plumtree, there were also more girls among the UMC, aged between 14 and 17 years. No particular reason was given to explain the higher number of girls but it was noted that the number of boys usually increases during the festive season particularly December/January which happens to be a long holiday period, making more time available to them, perhaps from school or menial jobs. Consequently, the arrival and numbers of UMC at the centre are quite seasonal. There are days and sometimes weeks when no UMC are received or assisted and there are others days when there could be seven or more at a time.

The identified priority needs of most UMC in descending order are finance, food and water, shelter, personal safety and health. In some cases, the priority need upon arrival is the desire to shower and have a change of clothes (this is especially so for those who experienced some form of incarceration). All respondents including officials at Plumtree reported that they had not received any children with disabilities at the centre; and that throughout the system, there were hardly any cases of UMC who appear to be or who may be at risk of being stateless.

3.3 Documentation and Refugee Status

Most, if not all UMC crossing borders were without documentation of any sort while others lose their documents in the course of migrating. Officials at Plumtree confirmed that the majority of UMC have no documentation upon arrival. In a few cases, some are in possession of a birth certificate. Of all the UMC received at the centre in 2015, only four had birth certificates. Some government officials reported that some children claim to be unaccompanied even when that may not be the case. Some travel with older siblings (19 years and above) or other adults. However, the absence of documentation increases the risks UMC face, including affecting the exercise of several rights such as identity, access to education and rights to free movement.

Upon arrival or identification of UMC in the country, the first step for the relevant authorities is the appointment of a case management officer to commence with the process of filling out an ‘Identification, Documentation, Family Tracing and Reunification (IDTR)’ Form. It is essentially a registration/bio data form used for vetting, profiling or screening to determine origin and other particulars of individual UMC as well to compile a sociological report, to determine the course of action to be taken and to develop a plan of action that is in the child’s best interests. In the case of Zimbabwean UMC, after securing information as to a child’s place of origin, contact is made with the district officers in the location to commence with family tracing with a view to securing family reunification.

Respondents at Plumtree reported that in the course of assessments, cases are classified as either a ‘protection case’ or a ‘welfare case’. Protection cases are considered urgent while welfare cases are deemed not as urgent. Thus, if a protection issue is detected in the course of registering or profiling a child, a plan of action has to be developed within two to seven days (maximum period) of arrival. In order to ensure privacy, confidentiality and general measures of child-friendliness and gender-sensitivity, community service officers are involved at this initial stage to ensure those considerations and to identify protection-related cases (or ‘special cases’ - e.g. victims of abuse, trafficking or smuggling) that require special attention. Highly personalised individual files are prepared and kept to further secure privacy/confidentiality. At this entry point, especially in relation to foreign UMC, officials from the Departments of Social Services and Child Welfare work closely with the Police and Immigration authorities.

At the registration stage, where there is doubt as to the
age of a child, age determination is referred to medical personnel to conduct a DNA test or through other established means. The issue of a temporary resident permit is the ultimate outcome of all these processes because the permit thereafter becomes the key for the children to access other services or rights thereafter. In the case of Zimbabwean UMC, referral letters/forms are provided which are thereafter presented to the Registrar’s office for the issuing of an identification card/document. The registration stage is important because it is the key that enables the children to access their rights and required services. It also ensures certainty of identity as case management officers reported that there have been cases where a child claims two or more nationalities at different times. In some cases, siblings may claim different nationalities.

Respondents at the SOS Children’s Villages reported that they were experiencing huge problems with identification documents beginning with birth certificates – most of the children there are received at birth or during early childhood/infancy. Thus, many children are enrolled in school without identification documents which is on its own a violation of children’s rights.

At the Rgara Refugee Camp, immigration officials are stationed to attend to the long queues of migrants waiting to be documented, including women and children. At this stage, children involved in asylum procedures or other judicial proceedings are interviewed by the Camp Counsellor who then hands them over to the Zimbabwe Refugee Committee for further action. Immigration officials reported a need for junior officers who deal quite frequently with migrants to receive additional education and training on handling irregular migrants including UMC. In terms of legal representation in asylum or refugee status seeking procedures, there have not been many cases but in the few cases so far, IOM has provided assistance mainly through the provision of interpretation services.

Not much information was obtained with regards to the granting of refugee or asylum status to UMC. However, IOM’s approach has been to persuade immigration authorities to provide alternatives to detention and Assisted Voluntary Return (AVR) for irregular migrants. UNHCR deals with all cases of migrants seeking asylum be they children or adults. The AVR is only possible after a thorough family tracing process by the ICRC has been successful, which includes signed consent forms by the parents or family in the identified countries of origin. However, the Zimbabwean authorities were clear on the fact that children (and adults also) cannot be sent back to a war zone; this is in alignment with the non-refoulement principle.

3.4 Trafficking and Smuggling

The lack of documentation for the majority of UMC was reported as a factor which makes smuggling rife. Trafficking was reported as being predominant mostly along the Beitbridge border post which was not visited during this research. Although authorities reported not being aware of trafficking activities, at least not as a common phenomenon in the area visited, smuggling was recognised as a common problem due to the lack of documentation or travel documents for the individuals seeking entry into Zimbabwe as a transit route to other countries such as South Africa and Botswana. Smuggling is said to be particularly rife along the Zimbabwe-Botswana route; the smugglers are locally called ‘Omalayitshas’. Many of those smuggled are individuals who had been previously deported from Botswana. However, an MOU has been concluded between the authorities of Zimbabwe and Botswana to facilitate current collaborative efforts to tackle the incidence of smuggling across the two countries’ borders.

Some UMC are actually trafficked children or potential victims of trafficking because even within the Tongogara Refugee Camp, trafficking occurs with the collusion
of some refugees. The aim is to traffic the children to Harare and beyond, with the promise of job prospects and better financial opportunities; in some cases, using the victims as pawns to secure greater financial and other opportunities. The traffickers and smugglers are usually people who are known to the victims, for example, relatives and friends.

At the time of establishing the Beitbridge and Plumtree reception centres, Zimbabwe had no anti-trafficking law and IOM and UNODC advocated for the government to put one in place by facilitating the enabling legal environment. At this time, there were doubts about trafficking in government circles with some postulating that ‘trafficking doesn’t exist in the African context’ despite having acceded to the United Nations Convention against Transnational Organised Crime but not the trafficking protocol. So beyond general service provision, IOM provided technical support on trafficking by raising awareness among UMC, their guardians in camps, other children and to the general public. IOM, in coordination with the Ministry of Public Service and Social Welfare, also provides direct services to victims of trafficking. Direct services include the provision of re-integration grants, referrals to the Police and health systems among others. IOM also provided training on trafficking awareness to first line officers in the various departments and ministries dealing with children including police, social services, immigration, etc. Altogether IOM’s role in dealing with trafficking has three components of policy, technical support and provision of services.

On average, IOM officials reported that there are about 10 to 20 victims of trafficking reported on an annual basis but the numbers of unreported cases are probably higher. This is because the figures given are based on referrals to IOM or individuals who walk in to report suspected cases of trafficking. Most trafficking cases involve Zimbabweans trafficked into South Africa but there have also been cases of victims trafficked into Zimbabwe from countries such as Chad and Angola. The numbers also include Zimbabwean nationals who have been trafficked to countries outside of Africa including China, the United States of America (two cases) and the Middle East including Saudi Arabia and the United Arab Emirates (two cases), and a Zimbabwean family that was trafficked to Mozambique in the fishing industry.170

In 2014, the Government of Zimbabwe enacted a Trafficking in Persons Act and according to government officials including the police; only four cases of trafficking have been reported since the law came into effect.171 However, this number refers to cases that have been successfully taken to court. There are no records or indications of other trafficking-related cases that may have fallen through the cracks either through insufficient knowledge about trafficking or happenings in more remote regions. While the Trafficking in Persons Act is good, it is weak in that it does not include a non-refoulement clause. Also, there are to date no standardised tools for dealing with trafficking cases within the police system, including formal structures to report trafficking cases. The Police as a whole needs adequate knowledge and training tools to properly identify and respond to trafficking cases.

The current law as a whole is very good and meets up to international standards in terms of comprehensiveness. However, IOM has advised the government that the definition adopted for trafficking is not very strong. Secondly, the Act does not provide an option for trafficked persons who wish to remain in the country to settle in; they must be returned to their countries of origin. In addition, policies and other tools needed for the implementation of the laws are not ‘costed’ leading to a disjunction between treasury and the other ministries such as Home Affairs which require the support of treasury to follow through with its policies and plans. Consequently, while the laws are available,
implementation capacity is lacking. Technical capacity in the relevant ministries is also weak beginning with a lack of or inadequate awareness about the laws and the issues surrounding trafficking. Thus, a multi-sectoral approach involving other ministries, especially treasury is important for an efficient systematic approach to the issues.

Despite all these, the referral system works quite well where children are concerned and this is largely due to the role of a very vibrant Department of Social Services which also works very well with the NGO sector on trafficking issues. However, the system works well in relation to Zimbabwe and South Africa in favour of Zimbabwean children who have been trafficked with less success rates for foreign child-victims of trafficking particularly from Mozambique and Zambia. This is largely due to, among others, the complexities involved in the tracing of the actual origins of the foreign children especially for re-integration, reunification and/or resettlement purposes. The services available have been more successful in relation to in-country trafficking and in some cases between Zimbabwe and South Africa, both of which have some formal system of cooperation in addressing migration concerns across their borders. Consequently, IOM and UNODC are currently working on providing support to the Government of Zimbabwe in harmonising the entire referral system across Zimbabwe as it applies to trafficking within the region, in order to be able to more efficiently respond to the needs of all victims of trafficking from other countries in the region. Respondents agree that IOM services are sufficient in this regard.

Discussions were held with the father and step-mother of three children (15, 11 and 5-year-old girls) who had gone to South Africa on their own to visit their mother. The father and step-mother had no knowledge of the fact that the youngest was travelling with the other two. She had no passport or other identification unlike the older two who had passports. It became a smuggling case as the ‘transporter’ who was taking them across the border wrote an affidavit claiming to be the five-year-old girl’s father. It took concerted effort on the part of the parents, working with the Police, immigration officials and IOM, among others to successfully trace and repatriate the girl and apprehend the criminal transporter. This scenario presents an example of the dangers UMC face as they move from place to place within the region for whatever reason.

### 3.6 Food, Clothing and Shelter

In terms of the number of UMC seeking assistance from various departments for basic needs and services on a daily/weekly/monthly basis, officials at the district level reported that the numbers are ‘decreasing and reach an average of 20 cases per month’. In other words, the numbers have been on the decrease in recent years (the last three to five years). They added that this may be due to the overall improvement in the handling of UMC during this period through a more effective multisectoral approach. At the provincial level however, the number of UMC said to seek assistance per month is an average of 50.

The SOS Children’s Villages annual budget provides clearly for social welfare including financing from grants and donors.

Food, water, clothing and other such services are provided by the Department of Child Welfare and Social services and other partners for UMC at the reception centres and refugee camps. There is a large storeroom for food reserves at the Plumtree Reception Centre as well as water tanks and a borehole for the regular supply of water. Dormitory style accommodation is provided for the children with separate rooms for boys and girls and common spaces such as a TV room and recreation centre for games and social interactions.
among the children.

Several colourful posters with pictures and drawings accompanied by educational information about children’s rights and migration concerns adorn the walls of the dormitories and other spaces. They are useful for teaching and making children aware of their rights and the risks associated with irregular migration and measures that can be taken to ensure safe migration. Examples of the writings include the following:

“Dangers that children face when they migrate illegally
· Robbery
· Assault physical/sexual
· Attack by wild animals
· Death”

“Arrest, Detention & deportation is traumatic to children”

“Children have rights”
“Children have the right to play & leisure”
“Child prostitution is a criminal offence”
“Say No to prostitution”
“Child labour in Botswana” [with an accompanying picture]
“Education is the key to success”
“Children have the responsibility to assist their families with household chores”
“My home in Zimbabwe [versus] My shack in Botswana”

A recently turned 18-year-old Zimbabwean UMC interviewed at the Plumtree centre reported that she felt safe and well taken care of throughout her stay as sufficient food, clothing and shelter were available to she and her child. (She came to the centre with a newborn child).

At Tongogara however, food is said to be available but not in sufficient quantities. Indeed, respondents agreed that while access to food and water is adequately met in Plumtree, there is significant shortage of food and water at the refugee camp. Reports about inadequate food and water supplies at the Tongogara Refugee Camp have been raised particularly by foster parents who bemoan the inadequate food and support packages as well as the lack of more income-generating activities for them to raise sufficient financial resources.

It may be inferred that the interim nature of the stay and service in the reception centre (maximum of seven days) is the reason for the difference in availability of food and quality of the accommodation compared to the camp which accommodates migrants and refugees for much longer. In addition to this, the refugee camp is located in a semi-arid region which makes farming and food cultivation difficult.

However, ‘permaculture’ (‘permanent agriculture’) - ‘a method of environment-friendly, sustainable and intensive farming throughout the year’ 173 - is a farming technique that is successfully being practised at the camp to aid and boost food production. Children are also involved in permaculture through school projects and are thus able to assist in the production of food crops including ‘maize, beans, sweet potatoes, carrots, pumpkins, onions, oranges and bananas.’ 174

Through permaculture, the refugees are able to ‘cultivate vegetables and fruits with methods custom-made for the given soil and climate.’ 175 In addition to producing food for consumption, they are also able to sell some of their produce and earn valuable income in the process. The project has also been useful for the integration of refugees into the local community as they are able to share farming skills, techniques and new vegetables from their home countries with the locals. 176

Respondents however reported that there is still a need for other willing partners and agencies to come up with irrigation schemes and facilities including boreholes and other facilities to boost the availability of water for food production on the camp site. They however also

---


174 As above.

175 As above.

176 As above.
reported that support from additional partners such as Terre Des Homme (TDH) in the provision of food and other services have been useful for meeting the food needs of UMC and others in the camp and generally improving the life and living conditions of residents within the camp.

3.7 Health and Psycho-Social Services

Respondents reported that in terms of support services and socio-economic needs, there is a minimum package of four core services that are available to UMC upon entry into Zimbabwe. These include protection, health, education and counselling.

A nurse is stationed at the SOS Children’s Villages to cater to the health needs of all children and UMC are able to access health in the same way as other children. The Plumtree Reception Centre has a clinic which caters to the health needs of migrants and to assist with age estimation of UMC for those who ages are not known or certain. However, services for mental health are inadequate and officials report that there is need for the referrals system to include partners who deal specifically with mental health issues so that UMC requiring such services can be assisted. Psycho-social support is also available to UMC at the centre including ‘interim counselling’ to identify their priority needs.

Counselling services are also made available and relied upon for the detection of any form of violence against the children. Some respondents however reported that there is weakness in the area of psychosocial support and services due to a shortage of skills and resources in that area. The counselling also provides an avenue for information on safe migration to be shared with UMC so they learn the risks associated with migration and how to safeguard themselves as much as possible. Immigration officials including Port Health authorities complained about the lack of a clinic to take care of health needs of people who come across the border into Zimbabwe, especially when there are many people. The nearest hospital was said to be 10km away and the available spaces and tools are inadequate to cater to the numbers that come in. Mental health and qualified counselling services are non-existent within the Port Health site; a specialised unit needs to be set up to address the gap.

Psychologists are assigned to Tongogara Refugee Camp and they visit the camp on a quarterly basis. They also work in conjunction with government teachers from the Ministry of Education in reaching out to the children through or at school. Psycho-social services are provided within the camp especially through peer group workshops organised by camp officials to discuss issues of puberty, safe migration and other subjects that are of concern to UMC. However, more school counsellors are required to deal with the many psycho-social concerns of UMC and other migrants.

Adolescents aged between 15 and 18 years complain about boredom within the Tongogara Refugee Camp as a result of insufficient activities to interest, stimulate or engage them. They are therefore more easily vulnerable to abuse and other violent acts.

3.8 Education

There are no statistics on the number of UMC registered at schools but government officials at the departments of Social Services and Child Welfare reported that over 75% of UMC benefit from the Government-led Basic Education Assistance Module (BEAM) programme. The BEAM was conceived in the year 2000 as one of the five components of the ‘Enhanced Social Protection Project’ (ESPP) to respond to the needs and problems of school-going children, including high dropout rates – with a particular focus on orphans and vulnerable children. To date, the BEAM is the largest form of educational assistance in Zimbabwe and it is funded by the Government with support coming mainly from the donor community, including the World Bank at the initial

---

177 The ESPP was launched as a ‘short-term social safety net aimed at alleviating irreversible losses to human capital in the areas of education, food security and health.’ The other four include the Public Works Component, Children in Especially Difficult Circumstances Module, the Essential Drugs and Medical Supplies Component and the development of a longer term Social Protection Strategy. See F Maushe, ‘In search of the right to education: The role of the Basic Education Assistance Module (BEAM) in promoting access to education in Zimbabwe’ (2014) Journal of Development Administration 4.
stages. Operational in all 65 districts of Zimbabwe, both urban and rural, the BEAM’s main objective is the provision educational assistance (particularly through the paying of school fees related costs for OVCs aged between 6 and 19 years. The goal is to target 25% of all children enrolled in primary and secondary schools particularly school dropouts and children who have never been to school due to economic hardship.

Efforts have been made to instruct children in their native language. Zimbabwean UMC benefit from educational instruction in Ndebele and Shona but it was not clear whether foreign UMC benefit from education in their own language(s). Despite the BEAM, some officials report that the drop-out rate has been on the increase. While the causes and possible remedial actions for the increasing rate are being investigated, some suggested that it is partly due to teenage pregnancy. There is also the problem of accessing the schools as some children have to walk long distances of between 5 to 15 km from camps or shelters to get to school.

Within Tongogara Refugee Camp, child protection officers from Terre Des Homme focus on the provision of education, psycho-social support and training on Sexual and Gender-Based Violence (SGBV). They however pointed out that additional training and resources are required to improve on SGBV training especially with regards to rape. There are five kids clubs created to provide informal education and basic life skills include lessons on how to engage in income-generating activities. The clubs comprise both orphans and non-orphans and other categories of children. At the primary school level, there is an accelerated learning programme (ALP) to address concerns of children with language and other learning barriers. The aim is to ensure that up to the secondary school level, all children are generally at par with their age mates in learning outcomes and understanding.

At the time of the research visit, the education system did not cater to children with disabilities but plans to ensure a fully functional inclusive education model for children with disabilities were underway, and scheduled to take off by 26 January 2016. At the secondary school level, only clearly designated refugee children with disabilities had support. The BEAM project has also been faulted for not being focused on meeting the educational needs of children with disabilities.

For foreign UMC who are repatriated to their countries of origin, IOM’s reintegration assistance package includes measures to ensure the re-enrolment of the children in school upon return to their countries of origin. For example, a girl repatriated to Chad was supported through her first year of university education to give the family time to work out a financial plan for her continuing education. Two children (a boy and a girl) repatriated to DRC were assisted with school fees and other incidental costs such as school uniforms for an entire year, also to give the family time to plan for the future.

### 3.9 Detention and violence against UMC

Immigration authorities reported that administrative detention of UMC is not practised, even as a measure of last resort. However, other respondents (IOM and Police) observed that there is no alternative system of ‘detaining’ UMC and asylum seekers and as such they tend to be passed through the prison/detention system. Also, it may take from between two days to two weeks before they are transported to the refugee camp, depending on the availability of transport which is a problem for the prison system.

The Zimbabwe Republic Police draws its mandate for dealing with UMC from section 219(1)(a) of the

---

179 Maushe (2014) 4-5, 8.
180 The ESP was launched as a ‘short-term social safety net aimed at alleviating irreversible losses to human capital in the areas of education, food security and health.’ The other four include the Public Works Component, Children in Especially Difficult Circumstances Module, the Essential Drugs and Medical Supplies Component and the development of a longer term Social Protection Strategy. See F Maushe, ‘In search of the right to education: The role of the Basic Education Assistance Module (BEAM) in promoting access to education in Zimbabwe’ (2014)1 Journal of Development Administration 4.
Constitution which provides for the rights of children. In addition to this are the Children’s Protection and Adoption Act which defines children as individuals below 18 years; the Guardianship of Minors Act and the Legal Age of Majority Act among others.

The Victim-friendly unit of the Police is responsible for dealing with UMC including keeping internal records before referring them to Immigration authorities. The responsibilities of the unit also include interviewing the children at the station, establishing their origin, and the detection of any crime committed or experienced in the migration process and thereafter institute investigations if crime is detected either by or against the children concerned.

Thereafter, the children are expected to be taken to a place of safety or handed over to social welfare officers to carry on with the relevant legal and administrative procedures thereafter. The Police may also assist with family tracing where social welfare is unavailable or unable to do so. Where a crime is involved, the Police is responsible for bringing the children to court to give evidence—in child-friendly courts with no adults, media or others from the general public present.

Police respondents however highlighted a number of problems which make their work with UMC challenging:

- Difficulty in getting relatives to appear at the police stations to meet with their children out of fear and mistrust;
- Difficulty in extracting information from the children; perhaps due to fear, children withhold useful information and do no open easily to the police;
- Inadequate facilities at police stations for conducting interviews with children; some spaces are not child-friendly so the children are uncomfortable;
- UMC are often intercepted from places that are far from places of safety, reception centres or camps which leads to the children being kept at the police stations. Attendant problems include the fact that the stations are not equipped to meet the needs of the children, for example, food, water and suitable shelter for the children.

Thus, while detention is not permitted for UMC, the factors highlighted above make the police stations the only available option for UMC who come in contact with the police—especially upon arrival.

### 3.10 Family Tracing, Reunification and Resettlement

The ICRC (Harare Regional delegation covering Malawi, Mozambique, Namibia, Zambia and Zimbabwe) working with the Zimbabwe Red Cross has a mandate for the restoration of family links for displaced children including UMC after the completion of family tracing process. The International Social Service (ISS) is also involved with family reunification processes although there is no obligation for reunification to be carried out through ISS channels. There is also no ISS central authority in some countries in which case requests have to be channelled to and this has to be done through the department or ministry responsible for child welfare in such countries.

Officials reported that family tracing is automatically attempted for UMC. However, in addition to the outcome of a family reunification assessment, efforts are made to ensure child participation in the process especially for children who are 12 years old and above. The decision made and the plan followed therefore depend on the combination of the tools assessment outcome and the voice of the child. Where family tracing has been successful, the Departments of Social Services and Child Welfare with support from ICRC, IOM and other relevant agencies, provide transportation for family reunification and also conduct follow-up visits.

The recently turned 18 Zimbabwean UMC interviewed
at Plumtree reported that she had made her way back to Zimbabwe from Francistown in Botswana on 12 January 2016 and made her way to the centre on 13 January 2016. She crossed into Zimbabwe with her new-born baby (born 11 January 2016) and was awaiting transportation to her grandmother in a village called Nkayi. Her mother died when she was only five and her father moved to South Africa in 2010. In all that time, she heard from her father just once, in September 2015 via telephone. She had crossed the border into Botswana by taxi to look for work and worked for two months as a cleaner. She had no documentation of any sort with her but mentioned having a birth certificate in safe keeping with her grandmother. She looked forward to being reunited with her grandmother in Nkayi.

At Tongogara, 64 tracing cases were found currently registered and active at the time of the research visit: 10 successful cases; 32 unsuccessful tracing efforts; 21 cases pending and one case closed, i.e restoration accomplished. Many of these UMC are from the DRC, Burundi and Somalia – some were arrested in Zambia on their way to Zimbabwe. Before making a decision on resettlement for any UMC, a Best Interest Determination (BID) Assessment is conducted in a coordinated manner involving various agencies including UNICEF, UNHCR, TDH, ISS and the Child Protection Committee of the Department of Social Services and Child Welfare in Zimbabwe. Respondents however agree that some of the tools including forms and other documentation require revision for improvement.

IOM also plays a critical role in the reunification and resettlement of UMC through its ‘reintegration assistance’ programme. This refers to a reintegration package provided in the form of services and not cash. For instance, Zimbabwean UMC who are being returned to their families in Zimbabwe may need to be re-enrolled in schools and as such the reintegration package will include support services to facilitate the registration process for the children to return to school. However, UMC from other countries, particularly countries without embassies in Zimbabwe are faced with more challenges.

First is the challenge of verifying their actual identity in order to obtain appropriate exit documents acceptable to the airlines and other authorities in the repatriation process. With reference to UMC from some West African countries for example, the French Embassy is usually approached to assist but is unable to assist because they have limited service that can be provided for such children. For children from East African countries such as Uganda, the embassies of third countries such as Tanzania have been of assistance. There are also complications when it comes to UMC from the Central African region such as the DRC, Congo, Burundi and Rwanda mainly due to the fact that the common languages and other elements shared by the countries as well as the naming culture make it difficult to trace the actual country of origin.

3.11 Alternative Care

At the Plumtree Reception Centre, upon the expiration of seven days, the children are transferred to a Children’s Home from where presumably, family tracing and reunification efforts continue or for alternative care arrangements to be made if family tracing is impossible or unsuccessful. Alternative care arrangements are made based on a six-tier system beginning with placement within the biological/nuclear family as the first option. The second option is the extended family, followed by community care/placement, foster care, adoption and institutional care – as a measure of last resort. In other words, priority is given to family and community based solutions before considering institutions.

Within Zimbabwe, the Department of Social Services together with other organisations, such as UNICEF and Save the Children, work together through the courts to provide alternative care. The courts may also advertise for guardians or foster carers on a needs basis. Upon arrival and registration of UMC at the Tongogara Refugee Camp, alternative care processes, particularly foster care, are initiated for the children before referrals are made for services outside of the camp. After placement with foster families within the camp, home visits are subsequently arranged in order to assess how
well they are settling into the home, their interactions with other members of the family and to monitor and ensure their general well-being. Particular regard is not paid to the ethnic, religious and cultural background of UMC when determining placement. Priority is given to the best interests of the child as determined by the profiling assessments made upon registration.

Foster care at the SOS Children’s Villages is arranged in close liaison with the Social Welfare department. Respondents from ISS highlighted the fact that the Government of Zimbabwe is yet to ratify the Hague Convention on Intercountry Adoption. It is a major challenge for the ISS in fulfilling its mandate to secure adoption for UMC for which no other [suitable] option is available. This challenge is regarded as one which makes the legal framework insufficient for providing protection to UMC.

4. Conclusions and recommendations

a) Positive Practices

Respondents reported that there has been an overall improvement in the handling of UMC in the last five years. In the past, the various departments worked in silos but the recent approach is more cross-sectoral with heavy reliance placed on the national case management system for coordination and integration of the roles of all stakeholders. As a result, there is now a multi-sectoral system in place with coordinating structures or mechanisms particularly for child protection including UMC issues. The system includes a national victim-friendly system, and the national case management project, among others.

Regular inter-ministerial meetings are held to deliberate on the issues and all respondents reported that the level of cooperation and coordination is very high. Officials of the various agencies report that the referrals system and coordination among the various departments including immigration, police, the various government departments and agencies as well as the NGO sector work quite well. In the case of any negative consequence as a result of non-compliance on the part of any official, there are laid down procedures for engaging with superior officers in the relevant agencies to ensure discipline and make sure the problem is rectified.

There has also been a focus on capacity building and systems strengthening among the ranks of the various stakeholders in the past few years which has brought about some improvements in the handling of UMC.

Direct implementation of services for UMC takes place at the district/community level, mainly through the Departments of Child Welfare and Protection Services and Social Services. This is a good practice to ensure that services actually get to those who need them.

There is a good working relationship between the Government and the donor-community in the area of the provision of resources for addressing the concerns of UMC in Zimbabwe.

b) Recommendations

Respondents noted that the services provided are not entirely sufficient to meet the needs of UMC as they are not exhaustive. For example, a lot of focus is placed on resources for protection issues and not for welfare issues. More resources are required for welfare needs because in most cases, ‘welfare issues led to the rise of UMC’. While it is important to allocate more resources, including emergency funds for welfare issues, it is important to highlight that this also entails availability of support for poverty alleviation initiatives in areas/communities of origin.

Other areas for improvement include the overall need for more human capital and resourcing capacity so as not to compromise timely responses to UMC concerns. For instance, more community child care workers are needed to identify and follow-up on pending UMC cases within the districts. Also, as is the case for most government services, only one welfare officer is assigned per district, and despite the complementary role of the case management officers, one welfare officer per district seems inadequate for the workload in each district. Alternatively, a change of strategy may be required to promote collaborative efforts between the individual district officers and other role players from other organisations outside of government.
Overall, there is need for improvement in the area of the technical capacities of the officials of the various departments and agencies on UMC issues, to keep abreast of current legal and other developments, among others. Community workers need refresher and continuing education courses as well as incentives to keep them motivated. Incentives need not be financial as some respondents expressed preference for professional development opportunities and supportive work environments. Only respondents from the SOS Children’s Villages reported that there is a high level of training and ‘capacitation’ of the Village workers for dealing vulnerable children including UMC.

There is a need for the Government to make a plan for sustainable means of financing the services for UMC as well as a sustainable way of coordinating the available resources without placing heavy reliance on the donor-community. Laws and policies relevant for UMC need to be in place or updated in order to hasten the pace of progress. The current Children’s Act needs to be reviewed with the aim of recognising UMC as ‘vulnerable children’ or ‘children in need of care’ for future child protection programming. All other laws and policies also need to be reviewed to ensure the inclusion of UMC as vulnerable children. In addition, the Government needs to ratify the Hague Convention on Intercountry Adoption. At the moment, intercountry adoption is rare in Zimbabwe as the Ministry of Public Service, Labour and Social Welfare has a policy preference for placing Zimbabwean children with parents of the same race. This may explain why Zimbabwe is not party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Hague Adoption Convention). 181

Although the Zimbabwe Human Rights Commission has done some work in relation to imprisoned migrants, UMC have not been a focus and this needs to be addressed, beyond merely ‘monitoring the situation.’ The Commission has the power to intervene on its own (suo moto) in such cases; this option should therefore be explored in cases concerning UMC.

Several officials reported that the documentation process for UMC involves too many tools which are often repetitive. It is important that the on-going process to harmonise all the tools/documents into a common one be concluded sooner rather than later. Similarly, some respondents pointed out that the current laws/policies/practices relating to UMC are generally not adequate in terms of speeding up the process of securing their rights and meeting their needs. It is not clear whether it is a problem of too much bureaucracy.

There is need for specialised language interpreters (including sign language) specially assigned to migration issues. This will address the language barriers between some UMC and relevant authorities which makes communication problematic. Currently, court interpreters (mostly from Bulawayo) are relied upon to assist the relevant officials.

With reference to the referrals system, some respondents noted that some service providers in the chain of service delivery lack an appreciation of the urgency where dealing with children and particularly UMC is concerned. All stakeholders therefore need to be sensitised about the seriousness of the matter where UMC are concerned. More importantly, the stakeholders need to work together to develop solutions that take the Zimbabwean context (social, economic, political, cultural, etc.) into consideration in order to make them relevant and practicable.

---
