



IN SEARCH OF A BETTER FUTURE

EXPERIENCES OF UNACCOMPANIED
MIGRANT CHILDREN IN
LIMPOPO & MPUMALANGA
IN SOUTH AFRICA





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Save the Children works in more than 120 countries to contribute to immediate and lasting improvements for children, in emergencies as well as development contexts.

We strive to eradicate tolerance for all forms of violence against children, and work in partnership to find inclusive, safe and sustainable solutions for children on the move.

OUR VISION is a world in which every child attains the right to survival, development, protection and participation.

OUR MISSION is to inspire breakthroughs in the way the world treats children, and to achieve immediate and change in their lives.

We would like to thank all government and civil society stakeholders that took the time to share their experiences in working with unaccompanied and separated children. We would also most warmly like to thank the children who told their stories. This research is dedicated to them.

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The Centre for Child law is a registered law clinic which aims to establish and promote child law and uphold the rights of children in South Africa, within an international and regional context. The Centre's overall purpose is to develop child law through law reform, case law, policy development and influencing public discourse. The Centre has been actively involved in matters concerning unaccompanied migrant children as well as separated children with the aim of ensuring systemic changes that will result in improved legal protection for these children.

For more information about the Centre for Child Law, go to: www.centreforchildlaw.co.za

This publication was realised in partnership with IOM South Africa. IOM is an inter-governmental organization, with 151 member states, committed to the principle that humane and orderly migration benefits migrants and society.

Established in 1951 and now active in over 440 field locations worldwide, IOM works with partners, government and civil society to assist in meeting the operational challenges of migration and mobility, advance understanding of migration issues, encourage social and economic development through migration and uphold the human dignity and well-being of migrants and mobile populations.

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Save the Children

DEFINITIONS

CHILD: A person under the age of 18 years.

CHILDREN ON THE MOVE¹: Children moving for a variety of reasons, voluntarily or involuntarily, within or between countries, with or without their parents or other primary caregivers, and whose movement while it may open up opportunities might also place them at risk (or at an increased risk) of economic or sexual exploitation, abuse, neglect and violence.

MIGRANT CHILDREN: Persons under the age of eighteen years who have voluntarily or involuntarily left their place of habitual residence and are either on the way towards a new destination or have already reached such destination. The children may be moving across state borders or within countries, accompanied by parents or others or unaccompanied, including internally displaced persons, asylum seekers and refugees, migrants, trafficked persons or child soldiers.

MIGRATION: The movement from one place to another, usually from a habitual place of residence to another place, either internally or across borders. Migration can also be permanent, temporary, forced or voluntary.

REPATRIATION: The process of returning a regular or irregular immigrant to their country of origin for purposes of reunification and reintegration.

SEPARATED MIGRANT CHILDREN: Separated children are those separated from both parents, or from their previous legal or customary primary care-giver/s, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members. These children may or may not have an asylum claim or qualify for refugee status.

UNACCOMPANIED MIGRANT CHILDREN: Unaccompanied children (also called unaccompanied minors) are children 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. These children may or may not have an asylum claim or qualify for refugee status.

¹ Save the Children more frequently uses the term Children on the Move to refer to all categories of migrant children, while many of our sister agencies and partners use the term "migrant children". These terms are used interchangeably in this report.

INTRODUCTION

In 2012, the United Nations Committee on the Rights of the Child (UN Committee) dedicated the Day of General Discussion to “The rights of all children in the context of international migration”². The objective of this was to promote, at international and national levels, the fulfilment of the rights of all children in the context of international migration.³ The motive behind the UN Committee’s decision to dedicate decision to focus on this theme was the concern that these children face multiple forms of discrimination in transit and in destination countries.⁴ In particular, concern had been expressed by human rights treaty bodies, UN agencies and civil society regarding discriminatory practices against undocumented children and adolescents and infringements of their rights.⁵

The United Nations Convention on the Rights of the Child⁶ and the African Charter on the Rights and Welfare of the Child⁷ provide for the protection of children who are deprived of family or parental care and make it clear that such children should have access to the care and protection system of the country they are in. These provisions apply to unaccompanied migrant children.

International law obliges South Africa not only to have legislation in place for the protection of unaccompanied migrant children but to ensure that these provisions are implemented. The South African Children’s Act (no. 38 of 2005) (thereafter referred to as “the Children’s Act”) provides for a comprehensive framework in relation to the protection of children who are deprived of family or parental care. The Children’s Act is and has been applied to unaccompanied migrant children over the years. However, the effectiveness of the care and protection system in addressing the needs of unaccompanied migrant children remains questionable. This report aims, through case studies of unaccompanied migrant children and stakeholders with responsibilities towards these children, to assess whether the South African care and protection system provides adequate protection to these children. The report finds that the care and protection mechanisms are not applied to unaccompanied child migrants in the same manner as they are applied to South African children. It also raises questions

The report finds that the care and protection mechanisms are not applied to unaccompanied child migrants in the same manner as they are applied to South African children. It also raises questions about the durability of the care and protection system as a solution for this group of children.

about the durability of the care and protection system as a solution for this group of children. In addition, there are considerable systemic challenges that need urgent attention in order to provide for better protection of these children and to ensure that their best interest is primarily considered.

In conclusion, recommendations are made for improved implementation of the Children’s Act as well as for enhanced national and regional collaboration in addressing the continued migration of children in the Southern African region and building more inclusive, safer and sustainable child protection systems.

2. Committee on the Rights of the Child 2012 Day of General Discussion Outline for participants: “The rights of all children in the context of international migration”, available at <http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/ReportDGDChildrenAndMigration2012.pdf>.

3. Ibid.

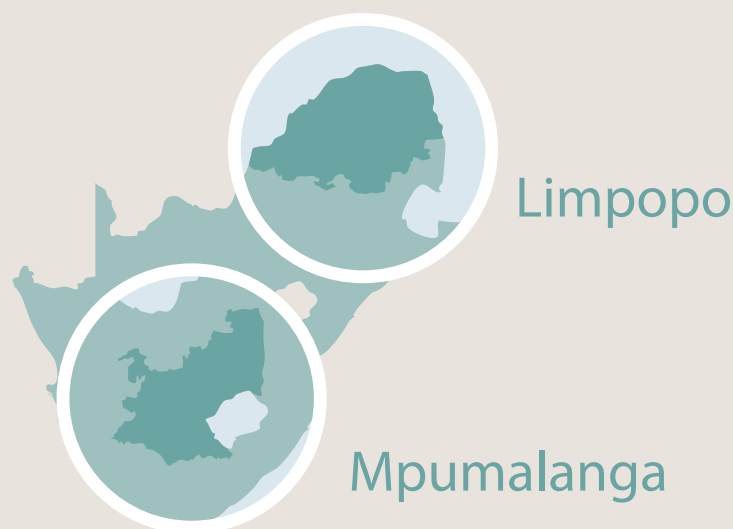
4. Ibid.

5. Ibid.

6. Articles 20 and 22.

METHODOLOGY

FIGURE I



2.1 — INTERVIEWS WITH CHILDREN ON THE MOVE TO DOCUMENT THEIR EXPERIENCES

The target provinces for the research were Limpopo and Mpumalanga. The central aim of this study was the capturing of cases studies of children through interviews. This was achieved through:

- Liaising with NGOs who provide legal services to the children;
- Liaising with NGOs that provide social protection to the children; and
- Approaching children in facilities, either registered Child and Youth Care Centres or unregistered shelters such as the ones in Musina, and other parts of the Limpopo Province.

2.2 — INTERVIEWS WITH KEY INFORMANTS

Local and international non-governmental organisations and community-based organisations play a key role in the protection of unaccompanied children on the move and it was essential to interview these role players in order to ascertain their day-to-day challenges when trying to assist children to access the child care and protection system. The provincial Department of Social Development is central to the

protection of unaccompanied children on the move. The Children's Act sets out the procedure that is to be followed for children to be placed in the child protection system and the Children's Courts are key in the placement of children in alternative care. The custodians of the Children's Act and of the care and protection of unaccompanied children on the move are the social workers employed by the Department of Social Development. It was thus crucial to interview personnel from the relevant provincial Departments of Social Development in the two focus provinces.

2.3 — LIMITATIONS OF THE CASE STUDIES

The lived reality of ten selected unaccompanied migrant children paints a picture of the difficulties experienced by children in their countries of origin, the journey to South Africa and the continued struggle once they arrive in the country. Although this is a limited sample, it is illustrative of the kind of problems experienced by unaccompanied foreign children on a wider scale. Some issues are specific to a region or even a town but the focus in this study is on systemic issues that broadly affect the target group regardless of which province or town of South Africa they find themselves in. The adult respondents verify the children's experiences and provide evidence of the systemic challenges, coupled with the accounts of their own systemic frustrations.

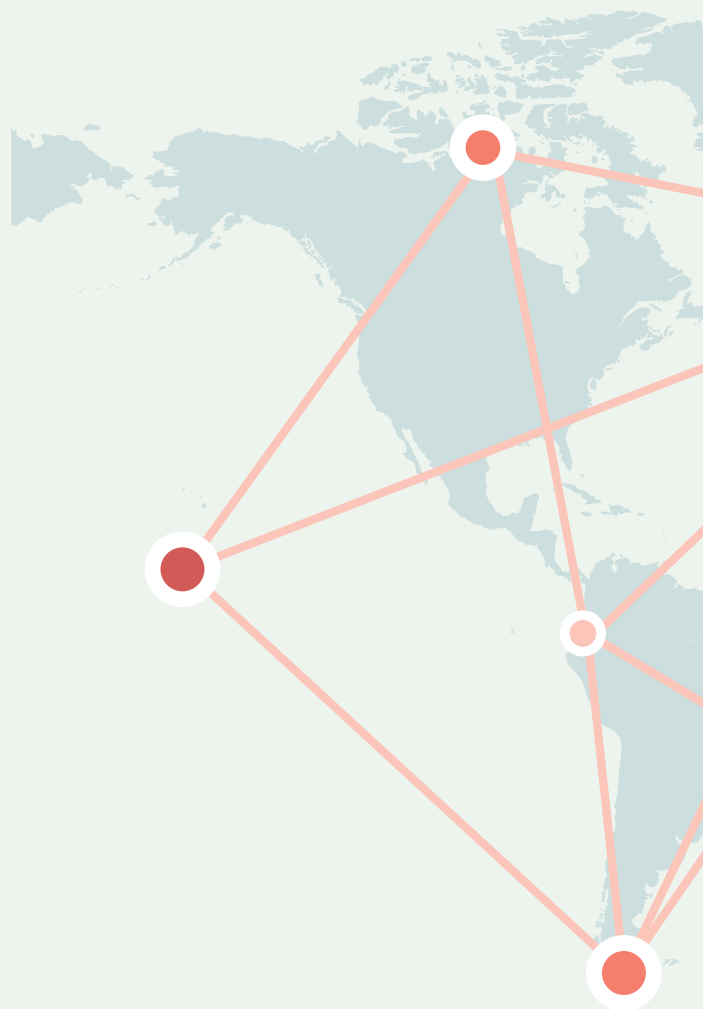
SITUATIONAL ANALYSIS OF UNACCOMPANIED MIGRANT CHILDREN IN SOUTH AFRICA

In 2013, 232 million people – 3.2 per cent of the world's population – were living outside their country of origin⁸. These numbers are an estimation and do not capture migrants who cross borders irregularly. According to the classification used by the World Bank, more than a third of the global migration were South–South movements, meaning that both the country of origin of the migrants and their destination are located in the Global South (figure 2).

In Southern Africa, more than half of the 3 million immigrants come from within the sub-region and at least three fourths of migrants originate from within the African continent⁹ (figure 3). Migrants come all the way from East Africa and the Horn to South Africa, either by land, sea or air (figure 4).

There are many reasons for migration, including economic factors, poor governance and poor public services, conflict and environmental issues. Furthermore, international migratory movements in Africa have become more complex in recent years and are increasingly mixed in character. Some of the major categories of migrants commonly referred to are economic migrants, refugees, asylum seekers, and stateless persons, victims of trafficking, smuggled migrants, and unaccompanied or separated children. In terms of human trafficking, South Africa is identified as a main destination country in the region (figure 5), including from other sub-Saharan African countries and from other countries outside Africa including Thailand, China and Eastern Europe.¹⁰ More in-depth research on human trafficking is however needed as no reliable source of data currently exists.

Many of the migrants coming to South Africa are children who cross borders unaccompanied by families or other adult caregivers. Numbers are however very difficult to estimate as almost all who enter the country do so in an irregular fashion. Moreover, the lack of a proper registration and tracking system for those who have been identified as entering in an irregular fashion is further constraining the establishment of sound and reliable statistics on this vulnerable population. It is



8. United Nations, Department of Economic and Social Affairs: Population Division, Populations Facts, No. 2013/2, September 2013

The Population Division provides up-to-date information on the global number of international regular migrants. For more information: www.un.org/en/development/desa

9. Overview on South-South Migration and Development in Southern Africa: Trends and Research Needs, ACPOBS/2011/PUB06

10. United States Department of State, Office to Monitor and Combat Trafficking in Persons, Trafficking in Persons Report, June 2014

FIGURE 2



however estimated that 30% of the total migration population in Africa is composed of child and adolescent migrants, the highest proportion worldwide (figure 6). The Southern Africa region counts over four million migrants, 20% of them being children and adolescents (figure 7). The great majority of migrants are found in South Africa, with an estimation of almost 400'000 children and adolescents¹¹ (figure 8). The country is also one of the main recipients of asylum applications with more than 778,000 new applications registered between 2008 and 2012¹² (figure 9). These numbers exclude irregular migrants but many are known to take the Southern migration route from East Africa, the Horn of Africa and the Great Lakes region¹³.

The United Nations High Commissioner for Refugee (UNHCR) has highlighted the concern in relation to the increasing number of unaccompanied minors entering South Africa.¹⁴ Children from war-torn or politically unstable regions consider South Africa as

11. United Nations, Department of Economic and Social Affairs, Population Division, "International Migration Wallchart", 2013

12. United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), Humanitarian Bulletin: Southern Africa, Issue 13, January 2014

13. ACP Observation on Migration, "The evidence behind the picture: irregular migration in ACP countries and the global South", 2014

14. UNHCR Operation in South Africa, Lesotho and Swaziland Fact Sheet (2014) available at <http://unhcr/524d7689.pdf>.

one of the countries where they can seek refuge from the turmoil of their country of origin. Others who come from poor countries see it as a place where they can complete their schooling or find employment in order to better their lives.

The migration by the majority of children moving between Southern African countries appears to be motivated by the need for better economic opportunities rather than the fear of persecution in their countries of origin.¹⁵ However, child migration and its reasons remain complex and it is therefore essential that an overall process be developed but that a case-by-case approach to each child's individual circumstance be implemented when dealing with these children.

The migration journey for the majority of children is fraught with danger. A number of the children coming to South Africa through the Zimbabwean border swim across the crocodile-invested Limpopo River (figure 9). Upon arrival in South Africa, many lead precarious lives, often living on the streets and doing odd jobs in the informal sector, on farms or as domestic workers, where they may be subjected to violence, abuse and exploitation. Those trying to access schooling may have additional difficulties because they do not have documents.

Many studies have tried to capture the number of unaccompanied and separated children currently living in South Africa. In 2013, the United Nations High Commission for Refugees conducted a research in five municipalities - Musina, Thohoyandou, Makhado, Tzaneen and Polokwane – in the Limpopo province.¹⁶ This research used a social network sampling by asking key stakeholders to identify where unaccompanied and separated children are before starting a field work that covered the identified locations.

In total, 776 children – 500 of which were boys and 58 below the age of 12 – were surveyed in the areas listed above (figure 10). Only 5.2% of them were residing in formal shelters whereas 14.3% were living on the streets and the rest of them living rough, in informal shelters or shacks (figure 11). The interviews further revealed that the 80.5% of children living in formal shelters go to school when only 8.1% of those living in informal settings do (figure 12). Moreover, 18.6% of boys and 27.5% of girls said they had been physically hurt and many talked about how they were suffering from xenophobia. Even though South African law prohibits the detention of children for immigration reasons, 12.6% indicated that they had been arrested by the police.

FIGURE 3

In South Africa there is an estimated 3 million regular immigrants

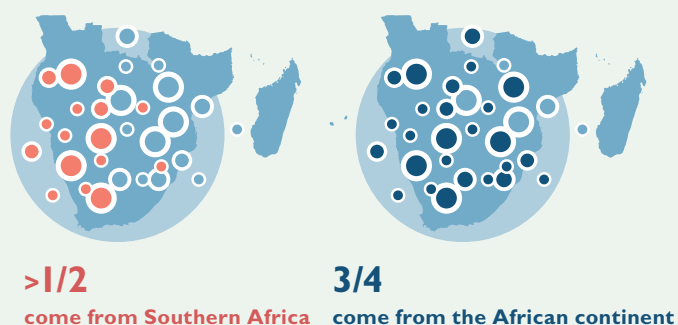


FIGURE 5

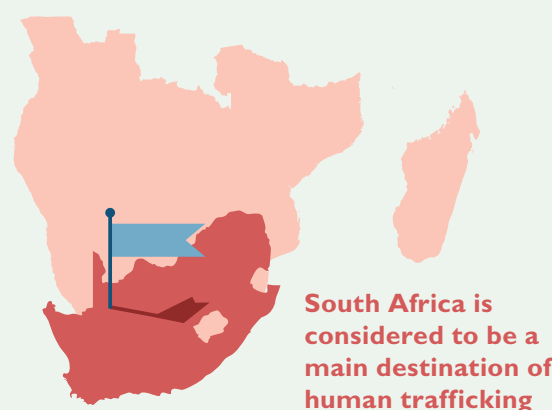
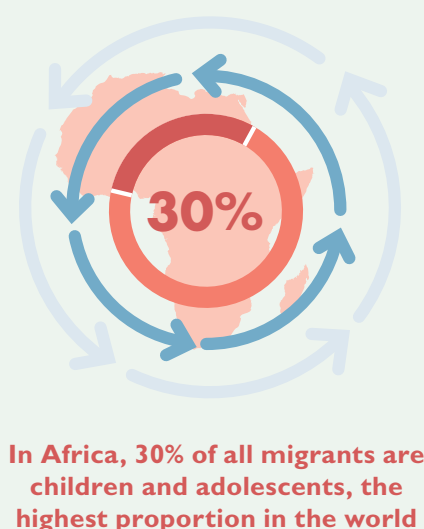


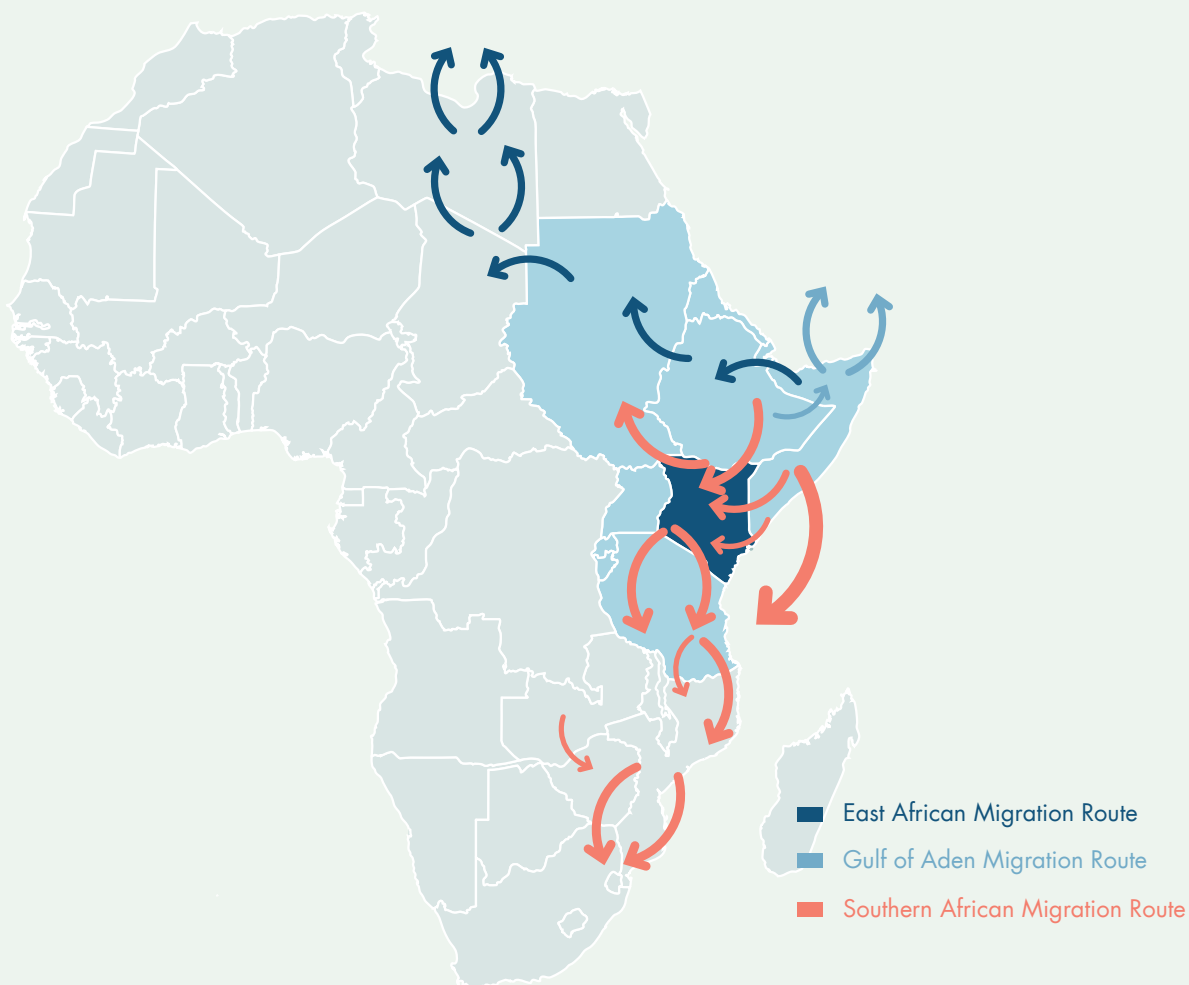
FIGURE 6



15. Elphink R and Amit R "Border Justice: Migration, access to justice and experiences of unaccompanied minors as survivors of gender-based violence in Musina" (2012), African Centre for Migration and Society available at <http://www.migration.org.za/uploads/docs/report-36.pdf>.

16. Targeting intervention for unaccompanied migrant children in strategic areas of Limpopo Province: mapping child protection and HIV-related risk, UNHCR, July 2013

FIGURE 4



Northern and Southern Migration Routes

Source: International Organisation for Migration

FIGURE 7

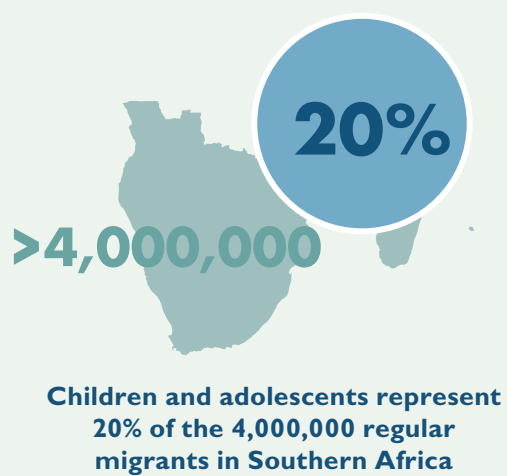
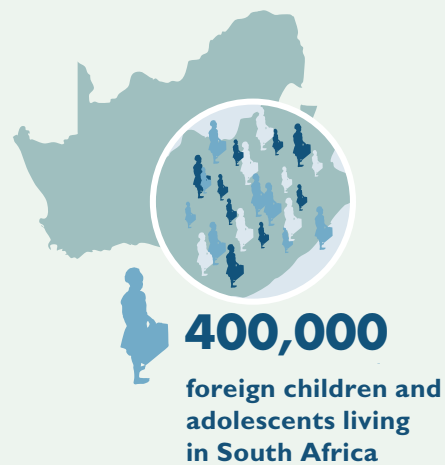


FIGURE 8

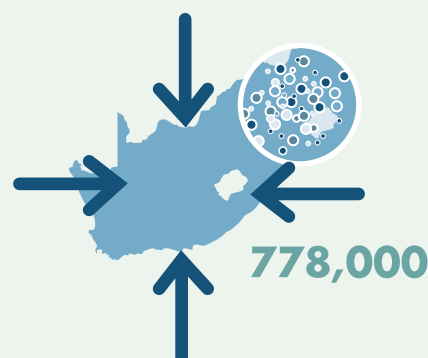


The decision by the South African government that these children are to be treated as children in need of care and protection under the Children's Act is a positive policy approach. The Department of Social Development, the South African Police Services and the International Office for Migration have drafted sets of guidelines and standard operating procedures to guide processes when dealing with unaccompanied foreign migrant children. International organisations such as the United Nations Children's Fund, The United Nations High Commissioner for Refugees, the International Organization for Migration and Save the Children play an important role in documenting these international problems and in liaising with government and local civil society organisations to find solutions. There are local non-governmental organisations which provide support services and advice to unaccompanied and separated children in some cities and towns.

South Africa's response to unaccompanied migrant children however remains inadequate for various reasons. The care and protection system is often promoted as the solution to the plight of these children. However, it has been observed that this system does not provide sufficient protection and regulation of unaccompanied migrant children. Furthermore, there is limited coordinated activity between government departments, government and non-governmental organisations that provide services to unaccompanied migrant children.¹⁷ Also, non-governmental organisations' activities are geographically limited and not many programmes are directed at unaccompanied migrant children.¹⁸

A further issue of concern is that the Children's Act and the Department of Social Development Guidelines on Separated and Unaccompanied Children outside their country of origin in South Africa are not always followed.¹⁹ This results in many children being exposed to child labour, as most of the children do acknowledge working for themselves or being employed in different informal sectors and therefore not accessing the care and protection system. Furthermore, unaccompanied migrant children remain vulnerable to detention solely on account of their immigration status as some reports seem to indicate that the South African Police Services at times arrest, detain and deport the children without any referral to the Department of Social Development.²⁰ Lastly, where children are in our care and protection system in accordance with the Children's Act and the Guidelines, they are in perpetual temporary safe care, which results in no attempt being made to obtain legal status for children who are not able to be reunified with family in the country of origin.

FIGURE 9



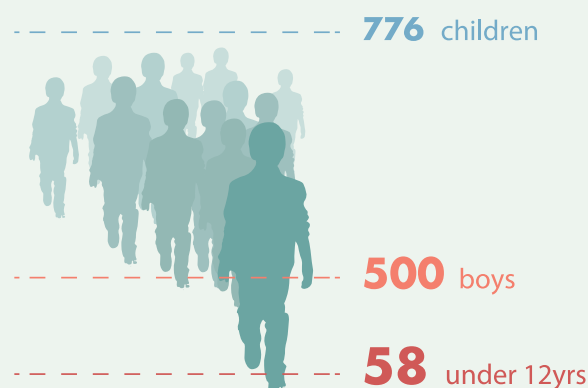
There were 778,000 new asylum applications between 2008 and 2012 in South Africa

FIGURE 10



Children chasing their dreams of better opportunities face many risks, including crocodiles when swimming across rivers to reach South Africa

FIGURE 11

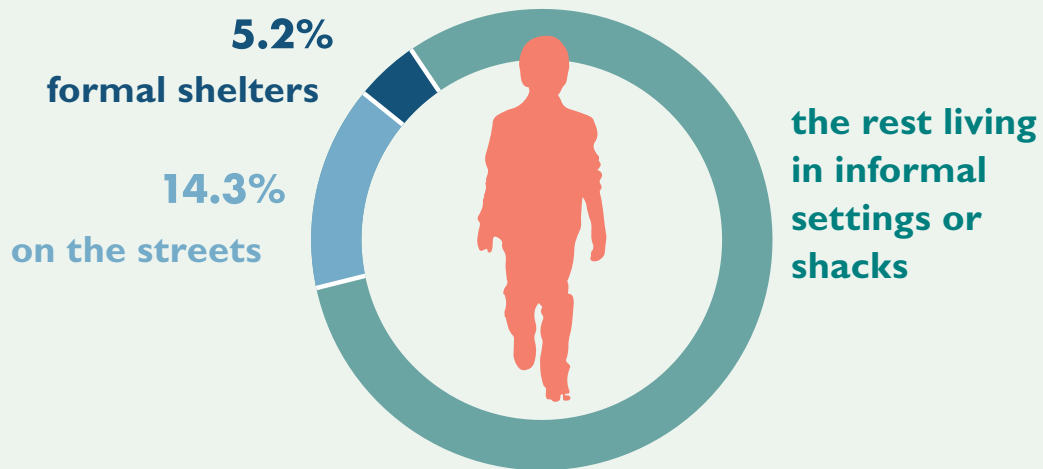


Number, age and gender of unaccompanied migrant children interviewed in the UNHCR study

17. See "Strengthening Protection Systems for Children on the Move and Local Vulnerable Child in Limpopo, South Africa", Save the Children (Unpublished, 2013); "The Situation of Unaccompanied Migrant Children in Mpumalanga Province", Save the Children, (Unpublished, 2013).

18. See "Addressing Irregular Migration Flows to South Africa: Profiling Unaccompanied Migrant Children in Musina, Limpopo Province; IOM (Unpublished, 2014).

FIGURE I2

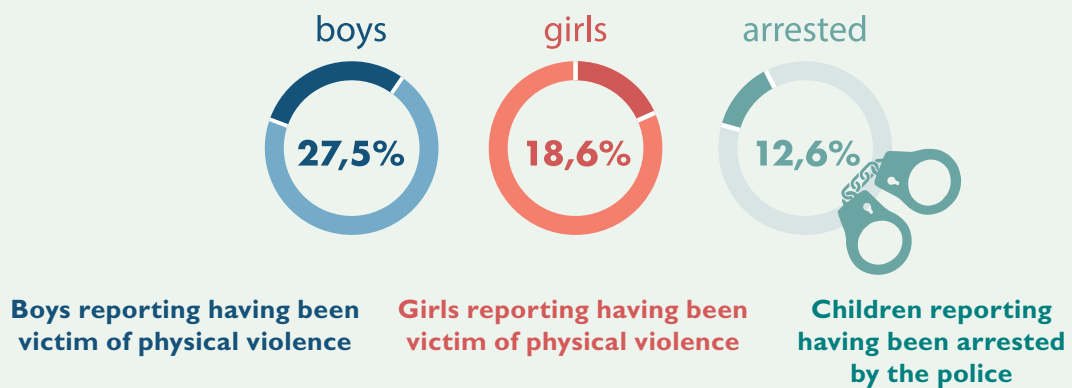


Where unaccompanied migrant children were found to be living

FIGURE I3



Proportion of children going to school



19. Ibid.

20. See "Addressing Irregular Migration Flows to South Africa: Profiling the Protection Services available for Identified Unaccompanied Migrant Children in The provinces of Mpumalanga, South Africa and Maputo Province, Mozambique, IOM, (Unpublished,2014).

UNACCOMPANIED MIGRANT CHILDREN IN THE SOUTH AFRICAN CHILD PROTECTION SYSTEM

There is no internationally accepted definition of child protection systems but many agencies have developed definitions that share common characteristics. UNICEF, for example, defines a child protection system as “the set of laws, policies, regulations and services needed across all social sectors – especially social welfare, education, health, security and justice – to support prevention and protective responses inclusive of family strengthening”²¹ whereas World Vision talks about “a set of coordinated formal and informal elements working together to prevent and respond to abuse, neglect, exploitation and other forms of violence against children”²². The South African child care and protection system is provided for by the Children’s Act 38 of 2005 (“The Children’s Act”). Founded on the principles of the Constitution, the Children’s Act expressly recognises the duty on the State to respect, protect, promote and fulfil the rights of children under section 28 of the Constitution. Significantly, the Constitution and the Children’s Act do not attach rights to children based on their nationality or origin.²³

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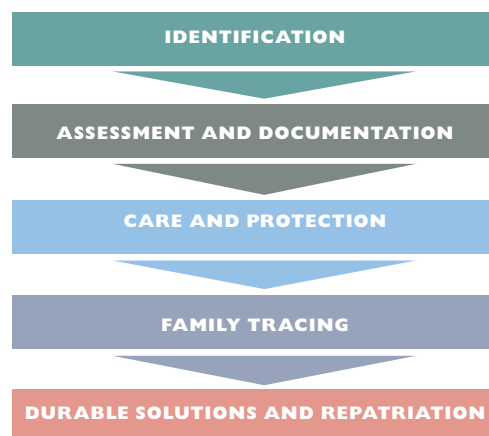
The extension of protection to unaccompanied migrant children under the South African care and protection system was established in the matter of Centre for Child Law Minister of Home Affairs²⁴ where the High Court made it clear that unaccompanied migrant children may not be detained and should not be repatriated without a process through the Children’s Court in order to establish what is in the best interest of each particular child. This approach is not only considered protective but also complies with South Africa’s international law obligations.²⁵

In addition to the Children’s Act, the National Department of Social Development also has guidelines²⁶ specifically directed at assisting in the practical application of the provisions of the Children’s Act where unaccompanied migrant children are concerned. In this chapter, we will present the different legal provisions regarding the five steps of the process of care: identification, assessment and documentation, care and protection, family tracing, and durable solutions and repatriation (figure 14). This process is commonly described as the “best interest determination” that specifies all the procedures aiming at selecting the most appropriate long-term option as each child’s situation is unique.

What is written in policies will be confronted to the voices and experiences of unaccompanied migrant children and local stakeholders who talk about how this concretely shapes and affects their everyday life. Based on these case studies, systemic challenges will be identified and concrete recommendations to build a more inclusive, safer and sustainable system will be presented.

FIGURE 14

Steps of the Best Interest Determination Process

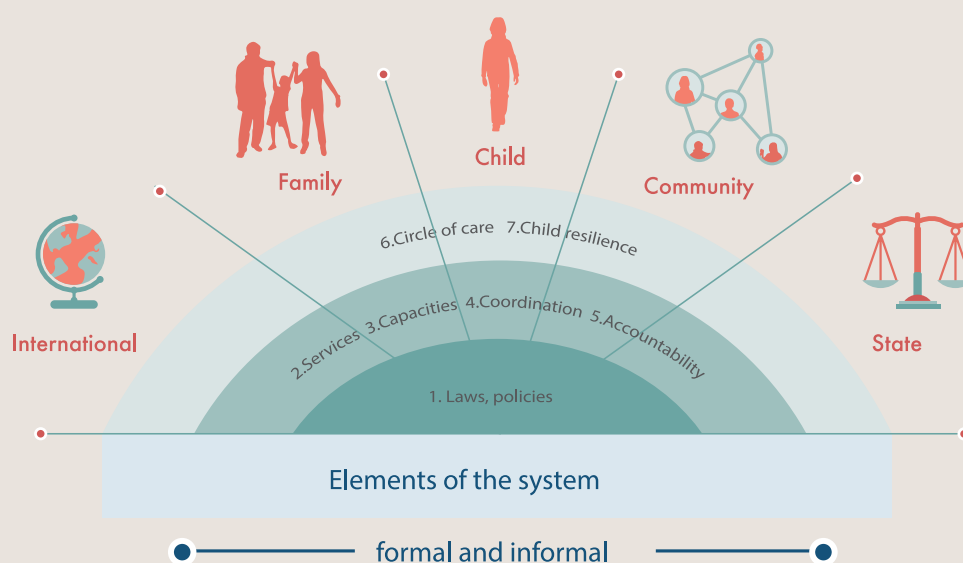


21. UNICEF Global Strategy, 2008.

22. Forbes, B. and D. Lau, E. Oswald, T. Tutnejevic (2011). A systems approach to child protection: A World Vision discussion paper. Monrovia, CA: World Vision International, p. 3

23. Paragraph 10 of the Practice Note 2 of 2011 state that the Children’s Act defines a child as any person under the age 18. All foreign children whether documented or not who are reported to be in need of care and protection MUST be treated or assisted like South African children. All the provisions of the Children’s Act apply to foreign children.

FIGURE 15



Overview of a child protection system

Source: World Vision

SOUTH AFRICA'S CARE AND PROTECTION SYSTEM IN A NUTSHELL

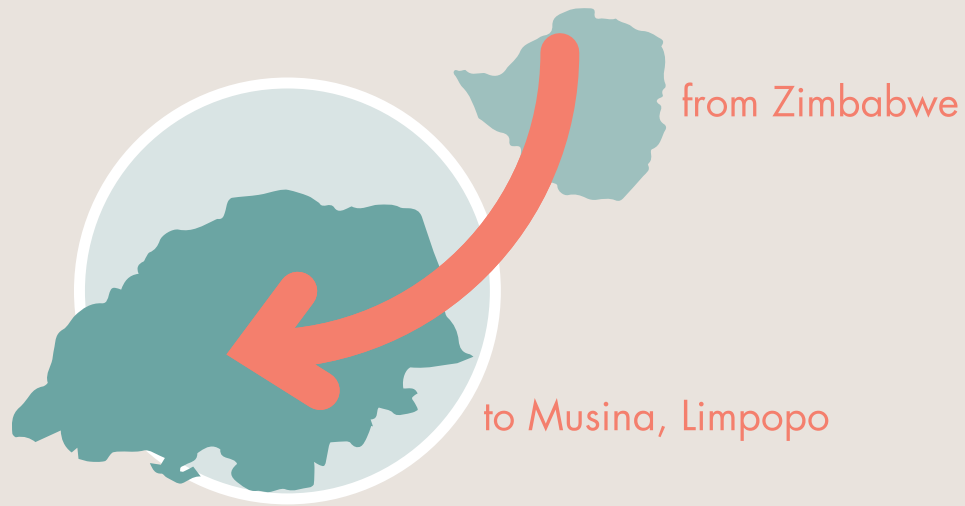
The proper procedure to be followed for South Africa's care and protection system is that once a child is identified as being in need of care and protection, a child must be placed in temporary safe care for a duration not exceeding six months. This can be done by the police or a social worker but the placement must be confirmed by a Children's Court who issues an order. The social worker must complete his or her investigation and compile a report for court in 90 days. Efforts to trace the child's family in the country of origin must be made as soon as the child is placed in temporary care. During this period, the child must be able to access all essential services, including education. At the end of the investigation period, the social worker present the finding and make recommendations to the court regarding the most appropriate solution to be implemented based on the child's best interest. A child may not remain in temporary care for more than six months under any circumstances. If the investigation was not concluded during that time period, the Children's Court must consider more appropriate alternative care solutions such as foster care or placement in a Child and Youth Care Centre (but the Centre must be registered for that programme). An order for placement in alternative care may not exceed two years. During those two years, continued efforts to reunify must be made. Prior to the expiry of the court order, the social worker must file another report showing what efforts at reunification have been made and advising whether the order should be extended or if another more appropriate solution can be identified. Applications can be made for children remain in alternative care once after they turn 18 and up to the age of 21, if they are attending an educational programme.

24. 2005 (6) SA 50 (T).

25. See a discussion of the relevant international law in "Regional Policy Review Report and Guidelines: Migration and Repatriation Laws and Procedures for Unaccompanied Migrant Children in Mozambique, South Africa and Zimbabwe", Save the Children (2014) available at http://resourcecentre.savethechildren.se/sites/default/files/documents/regional_policy_review_report_and_guideline_11032014.pdf

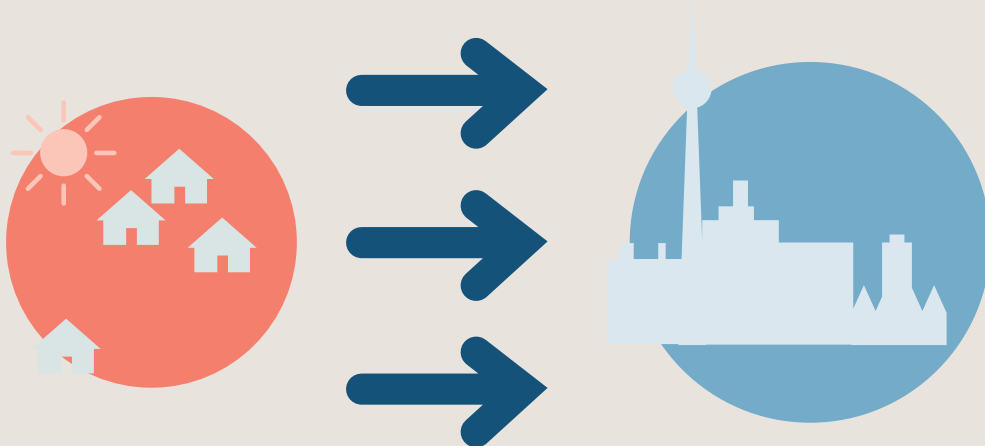
26. Guidelines on Separated and Unaccompanied Minors Outside Their Country of Origin.

FIGURE 16



Children come to Musina due to poverty and their inability to access education in their county of origin.

FIGURE 17



Migration from rural to urban areas is on the increase. By late 2030s, more than half of the people in Africa will live in an urban setting.

4.1. OVERVIEW OF THE CASE STUDIES

Individual case studies were captured in order to produce empirical evidence of the lived realities of unaccompanied migrant children in South Africa. In particular, the case studies sought to find out what the children's experiences of the South African care and protection system had been.

The children were asked questions about their journey into South Africa, children's court process and court orders, birth certificates and other forms of documentation. Their journey to South Africa and the experiences they have had here speak for themselves. Their stories show that the children have taken risks to get to South Africa, mostly chasing their dreams of better opportunities to learn or to work. In both Limpopo and Mpumalanga, the problems described by the children were the country of origin context of poverty, the inability to afford education and the lack of a broader care system if family and community systems fail (figure 16). All service providers and officials agreed that much more effort needs to be invested in communities of origin to avoid that children engage in unsafe migration.

The case studies explode the mistaken idea that unaccompanied foreign children are mostly separated from their families by mistake or through forms of trafficking. Many of these children have come to South Africa on their own volition, albeit as a result of poverty and an inability to access opportunities to work or get educated in their own countries. The legal and policy frameworks assume that unaccompanied migrant children will all want to be reunited with their families but the majority of these children are aware of where their families are and do not choose to return at this stage. The children are very autonomous and have their own goals. Sometimes, they do not cooperate in their repatriation because they do not want to be returned home. Many of them are mobile and even go home to their countries of origin to visit at times. Some are planning to return home to obtain documentation. A few of them are orphans, abused or neglected children who cannot be returned to their own homes. Many of the children would like to stay in South Africa but very few, if any, will qualify to be able to stay here once they age out of the care and protection system. The case studies therefore raise questions about the ability of the care and protection system to provide durable solutions for these children.

In both Limpopo and Mpumalanga, political borders cut across ethnic lines. In Limpopo, Venda speaking people live on both sides of the border and, in Mpumalanga, the same situation pertains to SiSwati people. In Mpumalanga, respondents referred to the porousness of borders, explaining how some

families and clans are divided and how children sometimes cross to the other side on a daily basis to attend school. There were also reports of Swazi women who have accessed older person's pensions in South Africa. This situation is made more complex given the migration of people from rural to urban areas and the fact that some principals encourage children from across the border to attend their school to bolster numbers (figure 17).

The children who were interviewed typically come to South Africa looking for work but get persuaded to attend school. The shelters for boys and girls in Musina are well-known and children are either directed or brought there by members of the public, police or other social service agencies. The physical border of the crocodile-infested Limpopo River is a very real barrier but some boys had crossed through it. Although the majority of them currently at the shelter are apparently not accessing education, others spoke with gratitude and motivation about being able to attend school. Most of the boys appear to return to their communities of origin from time to time for short periods. This is not the case for the girls who do not return home. Although the language and culture of Tshivenda is shared on both sides of the border, many children come from other parts of Zimbabwe and do not understand it, nor do they speak Sepedi or English.

In the Mpumalanga province, the majority of unaccompanied children are reported to come mainly from Mozambique and Swaziland. The push factors also relate to poverty and the difficulty to access education. SiSwati is the language shared by many people in Mpumalanga and Swaziland and it appears that the boundaries with both Swaziland and Mozambique are somewhat blurred because people have been crossing over the borders illegally for many years. Both adults and children are irregularly reported by Non-Governmental Organisations staff and officials to be reluctant to obtain either country of origin or South African status documentation. Shelter staff also reported a high level of awareness among the public, who bring children to them. Mpumalanga is regarded as a transit province that many people pass through and some respondents observed that this may be the reason that the issue of unaccompanied children on the move is regarded as overlapping with human trafficking.

4.2. PROCESS OF CARE

4.2.1. IDENTIFICATION — 4.2.1.1. WHAT THE POLICIES SAY

THE CHILDREN'S ACT	DEPARTMENT OF SOCIAL DEVELOPMENT GUIDELINES
<p>In terms of section 150(1) a child is in need of care and protection if he/she is found under the following circumstances:</p> <p>“</p> <ul style="list-style-type: none"> a. has been abandoned or orphaned and is without any visible means of support; b. displays behaviour that which cannot be controlled by the parent or care-giver; c. lives or works on the streets or begs for a living; d. is addicted to a dependence-producing substance and is without any support to obtain treatment for such dependency; e. has been exploited or lives in circumstances that expose the child to exploitation; f. lives or is exposed to circumstance which may seriously harm that child's physical, mental or social well-being; g. may be at risk if returned to the custody of the parent, guardian or care-giver of the child as there is reason to believe that he or she will live in or be exposed to circumstances which may harm the physical, mental or social well-being of the child; h. is in a state of physical or mental neglect; or i. is being maltreated, abused, deliberately neglected or degraded by a parent, a care-giver, a person who has parental responsibilities and rights or a family member of the child or by a person under whose control the child is ” <p>Unaccompanied migrant children may be identified as being in need of care and protection. under several of the grounds listed above.</p>	<p>An unaccompanied migrant child may be identified, by anyone and be referred to a social worker or a police official.</p> <p><i>Other relevant policies:</i></p> <p>The Immigration Act provides for the regulation of entry and exit into and out of South Africa. Various visas and permits that a person can obtain in order to be allowed to live legally in South Africa are stipulated in the Immigration Act.²⁷ A person who has not obtained the requisite documents and does not have citizenship, permanent residence or refugee status in South Africa is considered an irregular migrant.²⁸</p> <p>Section 34 of the Immigration Act provides for the detention and deportation of irregular migrants by permitting immigration officers to arrest, deport or cause an irregular migrant to be deported, without the need for a warrant. As a general rule, irregular migrants should be held in detention. However, the Immigration Regulations state that unaccompanied minors shall not be detained.²⁹ The Immigration Act is however silent on what should happened to unaccompanied migrant children since they are not supposed to be detained. The absence of any specific provision in this law referring matters to the Children's Court process under the Children's Act leaves the gap for an interpretation that unaccompanied minors can be deported without there being a Children's Court process. Nevertheless, the Department of Home Affairs' Passport Control Instruction (no. 1 of 2004) states that unaccompanied minor irregular migrants must be reported to a social worker in order for arrangements for the children to be placed in appropriate place of care or place of safety.</p>

27. See sections 9 and 10 to 24 of the Act.

28. Ibid.

29. Article 1(d) of Annexure B to the Immigration Regulation 28(5) as contemplated in section 34(1)(e) of Act 13 of 2002.

4.2.1.2. WHAT ACTUALLY HAPPENS

According to some of the respondents, the fact that unaccompanied migrant children are not specified in the Children's Act creates some challenges when assisting them. However, the principles need to be applied and having regulations and Standard Operating Procedures does help. Unaccompanied children are identified mainly by members of the public who then refer or bring children to the shelters in Musina. There is a good level of public awareness in so far as referring children to the shelters is concerned.

Border officials also bring children to the shelters using Form 36 of the Children's Act Regulations, which allows for the removal and placement of children believed to be in need of care and protection. Community organisations, Lawyers for Human Rights and the Department of Home Affairs also refer children to the shelters. Once children are identified as unaccompanied migrant children in need of care and the relevant form is completed with details of the child, then the Department of Social Development is informed.

However, as highlighted by the UNHCR study, that was realized in five municipalities in Limpopo in 2013, "by far the highest number of young people surveyed live in rented shacks or back rooms in residential areas alongside the towns".³⁰ This means that the majority of unaccompanied and separated children are never identified and referred to protection services and that most interventions conducted by government or NGOs have focussed on the "visible" children – those living in the shelters – rather than putting in place outreach activities aimed at detection (figure 18).

In Mpumalanga Province, the identification of unaccompanied migrant children is said to be even more difficult as children from Mozambique and Swaziland at time bear names that are similar to South African names and speak Isindebele or Isiswati, which are languages also spoken in South Africa.

The case studies presented in this research below highlights the precarious condition of unaccompanied migrant children and the fact that a lot of them live in informal settings and work on the street. In most cases, children end up in shelters out of their own volition or through referrals by other children who know of the shelters.

FIGURE 18



The majority of unaccompanied and separated children are never identified and do not access any type of services

30. Targeting intervention for unaccompanied migrant children in strategic areas of Limpopo Province: Mapping child protection and HIV-related risk, UNHCR, July 2013, p. 19

4.2.2. ASSESSMENT AND DOCUMENTATION — 4.2.2.1. WHAT THE POLICIES SAY

THE CHILDREN'S ACT	DEPARTMENT OF SOCIAL DEVELOPMENT GUIDELINES
<p>Section 151(2) provides that an order for the removal and placement of a child in temporary safe care may be made by the presiding officer, where it appears to be necessary for the safety and well-being of the child, and section 152 allows for emergency removal of a child and placement in temporary safe care without a court order in narrowly defined circumstances, using Form 36.</p>	<ul style="list-style-type: none"> • The child must be assessed and documented. The assessment must be done in an age-appropriate and gender-sensitive manner, in a language that the child understands, by professionally qualified persons. • The assessment must take place within 72 hours of receiving the information about the child and if indeed the child is considered to be in need of care and protection, the social worker may complete a Form 36 ("Authority for removal of a child to temporary safe care") should the child require immediate emergency protection. • In terms of the guidelines, the assessment and documentation should include key personal data and further information in order to meet the specific needs of the child and to make plans for his or her future, which includes the identification and location of family members, the reasons for being separated or unaccompanied, and an assessment of the particular vulnerabilities and protection needs. • While the child is in temporary safe care, s/he must have access to services, which include assistance by the social worker to the child to apply for asylum, where the child qualifies for refugee status.
<p><i>Other relevant policies:</i></p> <p>The Department of Home Affairs' Passport Control Instruction (no. 1 of 2004) of 2004 stipulates that investigations of the child's family circumstance are the responsibility of the Department of Social Development, in collaboration with International Social Services. Close collaboration is required between the immigration officials and the social worker when issues concerning an unaccompanied minor child are being investigated. The Refugees Act (no. 130 of 1998), Section 32, also provides that any child who appears to qualify for refugee status in terms of section 3 and who is found under any circumstances which clearly indicate that he or she is a child in need of care must be brought before a Children's Court, The Court may order that the child be assisted in applying for asylum in terms of this Act.</p>	

4.2.2.2. WHAT ACTUALLY HAPPENS

Government and civil society respondents both stated that the Department of Social Development social workers undertake the process of assessing the child at the shelter and then open Children's Court proceedings.

Children are placed in shelters under Children's Court orders, however the concern from most civil society respondents is that the court order does not help the children's immigration status. The children interviewed in Limpopo demonstrated varying levels of awareness about documentation: a court order is understood to provide protection against arrest and is increasingly becoming necessary to attend school but most of them understand that they only represent a temporary solution. Most are aware of the need to be in possession of their own birth certificate, the need to obtain a passport and that a study permit would be necessary if they stayed in South Africa beyond the age of 18. Several of them are making their own plans, which include travelling back to the country of origin, to obtain such documentation.

In Mpumalanga, on the other end, the limited understanding of the importance of personal documents and a resistance on the part of people who are in South Africa illegally to access irregularly either South Africa or country of origin documentation. The respondents said that it is not hard to imagine that for people on the ground in this context it would appear to be in their children's best interest to enable them to access education in South Africa. This means that any efforts on the part of the South African government or non-governmental organisations will be met with some resistance.

There was further concern from civil society organisations that social workers allow cases to drag for many months or even years, consistently exceeding the 90 working days period prescribed by the law. One of the respondents pointed out that "the big challenge over many years is to get social workers to follow up on Form 36 of the Children's Act – in the end this is all they focus on, their involvement is disconnected from the child's life and future. Once children are placed, there is no follow up." In terms

of assessing the protection needs of the children, local stakeholders are often not equipped with the appropriate knowledge to identify and refer children to specific services, in particular psychosocial support.

The Children's Act and the guidelines are not precisely aligned to one another. An unaccompanied migrant child certainly qualifies on at least one of the grounds set out in section 150(1) of the Children's Act. However, the Act sets out strict time frames for the completion of a social worker's investigation – namely 90 days. The guidelines do not stipulate a time frame for the social worker's investigation but states that a child should not be in temporary safe care for more than six months. The Children's Act says that a child may not stay in temporary safe care for more than six months but almost all children end up residing there for years instead, without the full assessment being properly concluded and have therefore been in temporary safe care longer than the prescribed period.

In the case of the children presented below, they have long overstayed in a facility that is only supposed to be temporary and do not seem to know what will happen to them in the future. The lack of proper identification and document also impacts negatively on their ability to access services.

In terms of assessing the protection needs of the children, local stakeholders are often not equipped with the appropriate knowledge to identify and refer children to specific services, in particular psychosocial support.



CASE STUDY 1:

OM is 16 years old, comes from Mwenezi in Zimbabwe and has been in South Africa since November 2013. OM is currently in Grade 8 and does not know anything about a court order. His father left home before he was born. OM's mother died in 2008 and he then stayed with his grandmother. OM's uncles were not happy about him staying with the grandmother and did not want him there. He used his school fees to go Beit Bridge and crossed the border into South Africa. OM stayed on the streets for a while where he was hit by a car. He spent a day in hospital and returned to the streets where a "white lady" saw him and brought him to the Musina shelter in January 2014.

He went home to Zimbabwe for a holiday in December 2014 and his grandmother was angry with him for not making any contact for a whole year. But he also said his grandmother was glad to see him. After the holidays OM returned to South Africa to attend school. Things are difficult at the Musina shelter and at times they are without food for days.



CASE STUDY 2:

WM is 14 years old and is from Harare. She has been in South Africa since 2011 and is now in Grade 5. WM left Zimbabwe after her father died. WM's mother remarried and had another child. WM's mother was unemployed and her stepfather was unable to support them. WM came to South Africa with a friend to be able to go to school as she was unable to do that in Zimbabwe due to high cost of education. She feels her life is better here than if she had stayed in Zimbabwe.

WM and the friend begged for money in Harare from where they took the bus and lied that they were coming to visit her granny in Beit Bridge. They did not have enough and a woman who was unknown to them paid the balance for their trip. At the border they did not have any documentation and officials would not let them through. They then went to the police station from where they were sent to IOM in Beit Bridge by the police.

"Older girls at the shelter in Beit Bridge warned us that the police would send us back home. The older girls helped us to run away from the shelter. We all went to get a taxi that took us across the border to Musina. The older girls brought us to this shelter, but my friend ran away from the Musina shelter."

WM is not sure about whether she has a children's court order or a birth certificate but would like to know more as this affects whether she can attend high school and university here in South Africa. She has not returned to Zimbabwe since she came to South Africa and is not sure about her future but would like to see her family again.

4.2.3. CARE AND PROTECTION SYSTEM — 4.2.3.1. WHAT THE POLICIES SAY

THE CHILDREN'S ACT	DEPARTMENT OF SOCIAL DEVELOPMENT GUIDELINES
<p>In terms of section 167(2), a child may not be in temporary safe care or be retained at any place or facility, including a registered Child and Youth Care Centres, for longer than six (6) months without a court order placing the child in alternative care. Section 155(2) states, that before a child is brought before the Children's Court, a designated social worker must investigate the matter and within 90 court days compile a report in the prescribed manner on whether the child is in need of care and protection</p>	<p>While the child is in temporary safe care:</p> <ul style="list-style-type: none"> • the process of family tracing and restoration of family links must be initiated; • children should have full access to education and be registered with appropriate school authorities; • children should be provided with their own personal identifying documents, as soon as possible. However the possession of identifying documents should not be a prerequisite for access to services; • children should be provided with psychosocial care and be referred to other service providers; and • if the child appears to qualify for refugee status, a social worker must assist the child in applying for asylum. However, children should not be referred into the asylum procedures if their presence does not raise a question of international refugee needs. <p>The guidelines state that the length of an unaccompanied child's stay in temporary safe care should not exceed six months. Before the child is brought before the Children's Court, the designated social worker has 90 working days to investigate the child's situation and compile an assessment report.</p>

Other relevant policies:

In terms of access to schools, the Admission Policy for Ordinary Public Schools prescribes conditions or requirements for admission of children into South African public schools. The policy and the South African Schools Act apply equally to learners who are not citizens and whose parents are in possession of a permit for temporary or permanent residence issued by the Department of Home Affairs. A learner who entered the country on a study permit must present the study permit on admission to the public school. Persons classified as irregular migrants must, when they apply for admission for their children or themselves, show evidence that they have applied to the Department of Home Affairs to legalise their stay in the country in terms of the Aliens Control Act (no. 96 of 1991). The Aliens Control Act has however been repealed by the Immigration Act. Section 39 of the Immigration Act appears to have introduced a position that prohibits access to education for persons who do not have passports and study permit, without any exceptions.

4.2.3.2. WHAT ACTUALLY HAPPENS

The process of placing children in the care and protection system was described by the government stakeholders in Musina as being seamless. Children's Court proceedings are opened and there is no problem obtaining court orders for unaccompanied migrant children. However, details taken from a court order shown on file demonstrate that it is not in accordance with the Children's Act as a two-year order was obtained right from the start. This means that children are then in temporary safe care for a two-year period when policies stipulate that their stay shouldn't exceed six months before a more appropriate care placement is determined. Some of the court orders that could be consulted indicated that the children were placed into 'foster care' with the shelter. This is invalid as only an individual can be appointed as a foster parent and one person may not foster more than six children. This is one of the elements that shows that the care and protection system is not being applied to unaccompanied migrant children in the same manner as it is applied to South African children.

A worrying finding that must be reported at the outset is that children are not being properly cared for in the shelters where they are being housed. There is inadequate supervision, poor physical facilities and no regular provision of food. Several respondents voiced their concern that the relevant shelters (two separate shelters for boys and girls in Musina run by the same organisation) are poorly managed. This was borne out by the fact that the Department of Social Development had suspended funding to the shelters and had investigated various concerns.

However, there appeared to be considerable lack of clarity on how to proceed with such a situation, as evidenced by the fact that the Musina boys' shelter had not received funding for two years despite the fact that the concerns had apparently been addressed and that Department of Social Development social workers were engaging with the facility on a regular basis. Furthermore, children are being placed at these shelters on the basis of court orders, thus giving the impression that the shelters are considered to be approved accommodation. The registration status of the shelters is unclear. However, it is starkly apparent that a facility that is not providing food does not comply with even the most basic norms and standards of child care.

The shelters would not be seen as appropriate 'alternative care' placements for South African children as they would not be held in facilities that fall below the minimum norms and standards, highlighting once again the different treatment of migrant children. Civil society respondents are therefore concerned that there are not many other care options for unaccompanied migrant children besides the shelters. Foster care is not regarded locally as an option for older children and the priority is for the children to finish Grade 12. It is concerning that some children have been at the shelter for for up to five years without any concrete plan for their lives.

C's story highlights the failure of the care and protection system as she has been in temporary safe care in a shelter for for an extended period of time and still remains without a plan for her future.



CASE STUDY 3:

C is 13 years old and has been at the Musina shelter for 5 years, which means she came there when she was 8. She is currently in Grade 6 and would like to complete school, go to university and become a lawyer and ultimately a judge. C's parents are deceased and she doesn't know if she has any siblings or other relatives, but she is aware that she lacks the material and emotional support that a family often provides.

"I have never seen a social worker but they say that I have a Children's Court order."

C does not have a birth certificate and thinks this is a problem to access a passport or identity document. She is also aware that without these documents you can be arrested. document. She is also aware that without these documents you can be arrested.

4.2.4. FAMILY TRACING — 4.2.4.1. WHAT THE POLICIES SAY

THE CHILDREN'S ACT 38 OF 2005	DEPARTMENT OF SOCIAL DEVELOPMENT GUIDELINES
No specific provision in this regard	The National Guidelines have no specific provision in relation to how the family tracing process should take place.

4.2.4.2. WHAT ACTUALLY HAPPENS

A point of concern from both government and civil society stakeholders is the reported lack of support and assistance from the International Social Services office at the National Department of Social Development. Support from the International Social Services could assist to speed up the process but they are known to have little human capacity and to be dealing with very complicated cases. There are also concerns that the 90-day (for investigation) time limit prescribed by the Children's Act is often too short to get feedback from from social services in the country of origin.

Family tracing is difficult for mainly two reasons. Firstly, children do not always tell the truth about their origins. They often provide incorrect information about their families and their home addresses and this makes it impossible for the Zimbabwean Department of Social Services to trace families. Some children have been known to go home for Christmas and then return again, while having claimed not to have a family. Secondly, the incorrect information complicates tracing efforts in countries of origin and therefore slows down the process to the extent that at times no feedback is received from the country of origin.

Government respondents argue that the process of exploring the possibility of family reunification is started immediately after placing children in the shelters for each child even if they claim they have no family by engaging social services in the countries of origin. The Department of Social Development indicates that social workers are able to call Zimbabwe directly to request tracing of children's families and that it is followed by the compilation and sending of a tracing request to the country of origin. However, civil society organisations retorted that the family tracing system is mostly failing as the process is rarely started immediately after a child has been identified and almost never concluded during the 90-day period. Moreover, there is no systematic approach to tracing and reunification as evidenced by

the very low numbers of children who are returned to their family. No consistent effort is made to help children keep contact with their family in the country where appropriate and a lot of them haven't been in touch with relatives for many months, making any prospect of reunification more improbable.

Some of the civil society organisations conduct their own family tracing process but did indicate that it is still difficult because of the aforementioned two reasons as well as resource constraints. There were other civil society respondents who were of the view that tracing and reunification work should be done by non-governmental organisations, both local and international, directly as government departments get tied up in red tape, take too long and children give up on the process.

The stories below show how, for some children, tracing and reunification might be difficult to achieve. However, for others, there are other family members that they could be traced and possibilities of reunification could be explored. These stories highlight that there cannot be a "one size fits all" solution and that the specific circumstances and the best interest of the child must be considered.





CASE STUDY 4:

N is 18 years old and came to South Africa in 2009 when she was 12 years old and is currently in Grade 10. In Zimbabwe, she was lodging with her mother, sisters and relatives. N's mother never told her anything about her father. N's mother died and she and her sisters were separated. N came to South Africa, with another girl who then ran away at the border. N was taken to the police station and was then brought to the shelter in Musina. She started at the school when she was 12 years old but there was difficulty about which grade she should be placed in. N can speak but not write Shona and can now speak and write Sepedi.

Social workers at the Shelter helped her and asked if she had been raped so that they could provide her assistance. They also explained that she can be returned to Zimbabwe but that once she is returned then she cannot come back again to South Africa. N plans to complete Grade 10, get piece jobs to be able to earn enough money so that she can return to Zimbabwe and get a passport. She knows where she was born and she can get her birth certificate and her mother's death certificate for free but has to pay R700 for a passport. N would also like to look for her sisters. After that, she would like to return to South Africa to complete Matric.

N appreciates the fact that South Africa has education for free as it is very expensive in Zimbabwe. If education was not expensive in Zimbabwe she would have stayed there; although university in South Africa is not free, they can get help at the shelter for their studies.

"I feel South African and that I belong here, but sometimes I also feel very alone. I think that if you do not have relatives you are nothing."



CASE STUDY 5:

PPN is 15, nearly 16 years old, and comes from Beit Bridge. She is in Grade 8 and has a Children's Court order which she believes will be renewed every two years until she passes Grade 12. She came to South Africa in 2012 with her sister, who is now 24, and has since returned to Zimbabwe. Their parents died in 2005 and, since 2009, PN and her sister lived with their granny and aunt.

"My Granny and aunt were not able to send us to school since they did not have the means to do so. They know I am here and came to visit me in Musina in January 2015."

PN said that unless you have a passport you are "dumaduma" (lost) and cannot attend school. She would like to study medicine at University of Pretoria and cannot see any way to study in Zimbabwe.

4.2.5. DURABLE SOLUTIONS AND REPATRIATION — 4.2.5.1. WHAT THE POLICIES SAY

THE CHILDREN'S ACT 38 OF 2005	DEPARTMENT OF SOCIAL DEVELOPMENT GUIDELINES
<p>Section 156 provides for the orders that a court can make when a child is found to be in need of care and protection and these include:</p> <ul style="list-style-type: none"> • Foster care with a suitable foster parent; • Foster care within a group of persons or an organisation operating a cluster foster care scheme; • A Child and Youth Care Centre designated in terms of section 158 that provides a residential care programme suited to the child's needs. 	<p>The DSD Guidelines require that measures for durable solutions for the concerned child be recommended in the social worker's report. These durable solutions are:</p> <ul style="list-style-type: none"> • Family reunification in the country of origin is the first step; • Placement into formal care in country of origin; • Placement with family member in South Africa; and • Alternative care in South Africa.
<p><i>Other relevant policies:</i></p> <p>Regarding the legal status of unaccompanied foreign children under the Immigration Act, the options are limited as the visas and permits provided for require passports, which most unaccompanied foreign children do not have. Even after the children have gone through the Children's Court process, they are not guaranteed any documentation that clearly legalises their stay in South Africa.³¹ One potential provision that can be of assistance to unaccompanied migrant children is section 31(2)(b) of the Immigration Act which states that, upon application, the Minister may, under the terms and conditions determined by him or her, grant a foreigner the rights of permanent residence for a specified or unspecified period when special circumstances exist which justify such a decision. Section 31(2)(b) could afford unaccompanied foreign children who cannot be reunified with their families and do not have access to appropriate alternative care in their country of origin an avenue to obtain the legal right to remain in South Africa.</p>	

31. Medecins Sans Frontieres "Unaccompanied Minors in Musina Require Immediate Action", Briefing Document June 2010 p 3. Available at <https://www.doctorswithoutborders.org/publications/article.cfm?id=4465&cat=briefing-documents>.

4.2.5.2. WHAT ACTUALLY HAPPENS

The government stakeholders indicate that their own efforts are focused on placing the children in shelters through proper legal processes via the Children's Court. They have therefore done little work on repatriation or access to documentation. It was reported that some children who were repatriated and reunited with their families then returned to South Africa within 6 months.

There is a need for a proper database and identification system so that the same unaccompanied migrant children do not go through a Children's Court process repeatedly every time they return to South Africa. Currently, social workers sometimes investigate the same case three times over. The fact that some children migrate again – with all the risks that this implies – shows that repatriation might not be in every child's best interest and that other durable solutions should be considered, such as foster care or independent living programmes.

There are some civil society organisations that repatriated children to their country of origin, at times with the assistance of IOM and UNHRC. These organisations are however of the view that the National Department of Social Development and other relevant government departments should be taking primary responsibility for this task. Some civil society organisations stated that repatriation is not the work of non-governmental organisations as this could lead to uncontrolled movement across borders. Non-governmental organisations need a specific mandate from the Department of Social Development to engage directly with counterparts across borders.

More efforts need to be made in assisting unaccompanied migrant children to be reunified and repatriated. According to civil society organisations, if children cannot be repatriated then they remain in the shelter by way of an alternative court order for a period of two years, which needs to be renewed every two years. A respondent suggested that, in order to address children staying in temporary

*More efforts need to be made
in assisting unaccompanied
migrant children to be
reunified and repatriated.*

safe care for years, "there should be a standard policy stating that if a child has been in temporary care longer than 6 months or a year and cannot be reunited with their family, then the child is returned to Zimbabwe's child and youth care system".

Moreover, respondents indicated that there is a lack of high-level participation by the South African authorities in cross-border cooperation and there needs to be stronger linkages with Department of Social Development's International Social Services to develop effective strategies and systems for the searching and safe repatriation of these children. There is therefore a need to escalate the management of unaccompanied migrant children to national and regional levels.

Children encountered during the study have varying background and needs which would necessitate individual approaches guided by the best interest principle in order to identify the most suitable



CASE STUDY 6:

P is 16 years old and came to the shelter in 2013 from Zimbabwe. He is currently in Grade 8 and wants to finish Matric. P's parents died in 2004 and he was living with his sisters. P and his siblings did not have money for school fees. P has seen a social worker who helped him with a school uniform and got him a Children's Court order that enables him to attend school. He also needed a court order so that there is a record for his family and where he is from. P says he has a birth certificate in Zimbabwe.

"I am aware that I will need to get my Zimbabwean passport to be able to write Matric."

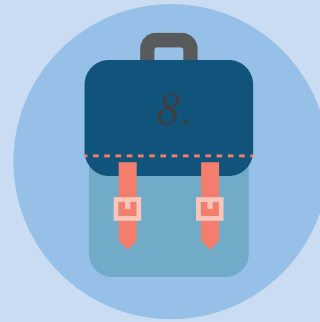
According to P, schools in Zimbabwe are better than in South Africa but they cost too much money. P wants to be a pilot and he is aware that he needs Matric to do this. He says that he is getting good marks at school.



CASE STUDY 7:

ED is 16 years old, in Grade 8 and has been in South Africa since 2010 when she was 12. She comes from Harare but her father was from Malawi and mother from Mozambique. ED's father as well as her two younger brothers are deceased. ED has a younger sister and two older sisters. She used to have contact with her family but didn't speak with any of them for more than 6 months now. According to ED, her mother didn't understand her realities. ED's mother was very poor and could not afford to support them all. ED ended up on the streets begging. She heard from friends that South Africa was a better place to live so she took the bus and came took the bus to move there. ED was brought to the shelter by Child Welfare.

"I am aware that I have a Children's Court order that is valid until 2016 when I turn 18, but there is no plan for what happens thereafter."



CASE STUDY 8:

MN is 17 years old and comes from Beit Bridge in Zimbabwe. He is now in Grade 7 and would like to finish school so that he can join the police in South Africa. MN arrived at the shelter at the beginning 2015 to attend school but had been in South Africa for some time. MN's Father died in 2000 and MN lived with his mother on a farm in Venda since the age of 12. MN's mother died 2012 after which he carried on staying on the farm until his mother's former employer brought him to the Musina shelter as there were no Child and Youth Care Centres in the area they lived in.

MN has seen a social worker who helped him gain admission to school.

"The social worker opened a Children's Court enquiry and has sent a tracing request to Zimbabwe but I do not think that I have any family there."

MN does not have a birth certificate. MN has an uncle working in Burgersfort, Mpumalanga, as a builder.



CASE STUDY 9:

J is 16 years old and is from Zimbabwe. He has been living in the shelter for one year. J was in Grade 4 in Zimbabwe and is now in Grade 5. According to J, he got a lift in a car from Zimbabwe and some men brought him to Musina shelter. J has seen a social worker and they are helping him get a Children's Court order which he needs to protect him from arrest. He realises that he needs to go back to Zimbabwe to get a birth certificate and passport as this will help him to get a job in South Africa. The passport costs R500 and he will be able to go back to Zimbabwe if he pays someone at the border between R200 and R500.

"I came to South Africa to get a job but I think it is better to be at school. I was out of school for 6 months before I came to South Africa. My mother did not have money to pay for my schooling in Zimbabwe."

J's mother still stays in Zimbabwe and he has phoned her since he came to South Africa but he has not been back to Zimbabwe to see his family.



CASE STUDY 10:

AG is 16 years old and has been in South Africa for two years. AG is currently in Grade 7 and does not have school uniform. He was working on the streets, off-loading and washing trucks before he came to the Musina Shelter on his own. AG's mother is dead and his father is working in Phalaborwa, Limpopo, but he is not supporting him. AG has seen a social worker and she helped him to get a Children's Court order. He understands that he needs the court order to protect him from being arrested. AG also says he has a Zimbabwean passport. According to AG, you can go back to Zimbabwe easily- you just need R200-R300 to pay officials on both sides. He wants to complete Matric, go to university, become a social worker or work for immigration so that he can help people. AG says that going to school can help you to not become a "Tsotsi" (Thug).

AG says he cannot go back to Zimbabwe now as he will not be able to attend school and his relatives will not help him.

"Other children should not come to South Africa alone, especially if they have family in Zimbabwe as it is very dangerous to be in South Africa on your own."

SYSTEMIC CHALLENGES

The case studies highlighted and reaffirmed systemic challenges that prevent unaccompanied migrant children to access services and long-term solutions based on their best interest. They indicate that the care and protection system is not designed to meet their needs of unaccompanied foreign children and that the law is not equally applied to them. The system should be applied in a more effective manner where it is used but is not a durable solution as current policies do not provide for access to temporary or permanent South African documents for children who do not qualify as refugees.

PROCESS

1 — IDENTIFICATION

2 — ASSESSMENT AND DOCUMENTATION

3 — CARE AND PROTECTION

4 — FAMILY TRACING

5 — DURABLE SOLUTIONS

SYSTEMIC CHALLENGES

- There is a lack of proactive detection or identification mechanisms, particularly in urban area.
 - Some children do not wish to be under the formal and strictly regulated care and protection system that limits their freedom of movement and their ability to earn money as the reason for their journey to South Africa is to have better economic circumstances.
- There are frequent delays in the reception and registration of unaccompanied migrant children.
 - Social workers and immigration officers are not specifically trained to interview children in order to obtain relevant and reliable information.
 - Given the very specific nature of these children's cases, some officials might not be properly equipped to assess the situation of the child and direct them to appropriate services based on the nature of their migration, including when having an asylum claim, or to identify signs of trafficking and exploitation.
 - The assessments are most often not concluded and presented to the Children's Court in order to decide what option is in the child's best interest.
- Some professionals tasked with assisting unaccompanied migrant children refuse to allow them to access the care and protection system.
 - Children are in unregistered shelters, some with inadequate infrastructures.
 - Most of the shelters are full to capacity.
 - Despite being unregistered, some of the facilities receive support, albeit inadequate, from the Department of Social Development.
 - The quality of care at the shelters is compromised by structural deficiencies.
 - The staff in the shelters are generally not qualified and are not properly trained to work with unaccompanied migrant children.
 - Some children are not accessing education.
 - There are very few organised programmes of intervention in terms of protection, practical support, education or psychosocial support.
 - There is lack of protection, rehabilitation and psychosocial services and programmes in the shelters.
 - There is a lack of understanding of the best interest of the child principle and the application thereof when planning for unaccompanied migrant children.
- Family tracing and repatriation process are often delayed and in some cases never initiated.
 - Bilateral collaboration with the country of origin to conduct and finalize the tracing process is weak and there is no established system to manage and track requests and reunifications.
- There is no viable alternative care placement scheme for unaccompanied migrant children.
 - There is an incorrect usage of the asylum process in order to access documentation for some unaccompanied migrant children.
 - Children who remain in the country do not have any kind of status documentation.
 - Some children are detained in police cells prior to being repatriated.
 - Co-ordinated repatriation of the children is largely done through ad-hoc processes developed between local NGOs and some countries of origin.
 - The Department of Home Affairs and the South African Police Services often return the children to countries of origin without any care and protection proceedings by the Department of Social Development.
 - There is no reintegration process that deals with the risk factors that caused the migration and therefore re-migration is not minimised.

RECOMMENDATIONS

6.1 — IMMEDIATE TO MEDIUM TERM

- The shelters that house unaccompanied migrant children need to be provided with urgent support in order to enable them to provide care that is in line with the provisions of the Children's Act to the children. This includes conditional registration to provide temporary safe care and payment by the provincial department of the applicable fees for the housing of children in court-ordered care.
- The process of tracing and possible reunification for children currently at the shelters needs to be galvanised with the assistance from the National Department of Social Development. International Social Services needs to be supported to more efficiently assist civil society and provincial offices of the Department of Social Development to trace families in the countries of origin.
- Individual case management of children already in the care and protection system – especially those who have been in the country for several years already – may require exceptions to the policy. Such matters need to be taken up urgently. This includes exploring the possible ways to ensure legal status for unaccompanied migrant children who have been in the country for lengthy periods and where efforts to reunify them with families in the country of origin have failed. These children should not be permitted to 'drift' in the system until they are adults and then face the risk of becoming stateless.
- The turnaround time of the investigations must be reduced to 90 working days maximum. The initial Children's Court orders placing children should not exceed six months. If no plan to reunify the child or place him or her back in alternative care in the country of origin has been recommended in the social worker's report by the end of the 90 working days, a more durable solution must be made available in South Africa, including access to documentation.
- The child must be placed in alternative care in South Africa for a period not exceeding two years. During that two years, the social worker must continue to actively work for reunification of the child with his or her family. If this reunification is not possible, placement in alternative care in the country of origin or more appropriate alternative care placement – such as foster care or independent living programme – in South Africa should be considered. Two months prior to the expiry of the court order, the social worker must report on the efforts he or she has made to a Children's Court.
- Synchronisation of policy and systems between Department of Social Development and Department of Home Affairs in line with constitutional and human rights imperatives is necessary. Unaccompanied migrant children should not be detained for lack of legal status and be deported without being referred to the Department of Social Development for a Children's Court process.
- There is a need for active detection mechanism by the Department of Social Development so as to ensure that children who are not in shelters are also reached and brought into the system.

6.2 — LONG-TERM

- The National Department of Social Development, in consultation with other relevant departments, should lead the process of drafting clear cross-sectoral national strategies to address the issues of unaccompanied migrant children. A comprehensive protocol and cross-departmental Standard Operating Procedures for the management of unaccompanied foreign children with special reference to Children's Court proceedings, obtaining Home Affairs documentation, the placement of children in care and the tracing and assessment of the family in the country of origin should be developed.
- An information management system for the identification, documentation, tracing and reunification of unaccompanied foreign migrant children should be developed. Where possible, this system should be integrated and/or linked to existing national information systems. Data collected within such a system should ideally include but not be limited to age, sex, country of origin and nationality and ethnic group; legal and immigration status; living arrangements; enrolment in school or vocational training; number of successful family tracing and safe reunification.
- The Government of South Africa should support the development of regional systematic procedures in terms of family tracing and reunification, including proper assessments of the family environment, coordinated reunification and follow-up recovery and rehabilitation measures utilising the existing government structures which have responsibility for the protection of children. The establishment or strengthening of cross-border coordination structures, such as the ones existing between South Africa, Mozambique and South Africa and Zimbabwe, should be pursued as they considerably facilitate case management and ensure the implementation of harmonised procedures that put the best interest of child at their centre.
- Measures to address the push factors in the countries of origin and detect household vulnerabilities to prevent unnecessary family separation should be developed. In case of reunification in the country of origin, children and families should be adequately supported to decrease the risks related to re-migration.

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