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CHILD TRAFFICKING IN SOUTH AFRICA

Exploring the Myths and Realities



CENTRE FOR
CHILD LAW









UNIVERSITEIT VAN PRETORIA
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CHILD TRAFFICKING IN SOUTH AFRICA: EXPLORING THE MYTHS AND REALITIES

This study was commissioned by the Centre for Child Law at the University of Pretoria and developed out of a concern that the 'moral panic' around 'child trafficking' in South Africa is used to discourage cross-border child migration and impinge on children's rights. In addition, there are concerns that state actors coming into contact with undocumented migrant children might be erroneously using child trafficking to justify measures and practices that violate the rights of children.

Written by Dr. Rebecca Walker, Dr. Stanford Mahati & Ms. Isabel Magaya
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Acknowledgements

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 a regional and international 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 children on the move in Southern Africa in general and South Africa more specifically with the aim of ensuring systemic changes that will result in improved legal protection for these children.

It is our hope that this study will provide useful context and findings to help shape and inform engagement with the state and other stakeholders around the challenges that children on the move, including trafficked children, are facing in South Africa and Southern Africa in general.

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

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The African Centre for Migration & Society (ACMS) is Africa's leading scholarly institution for research and teaching on human mobility. ACMS is an independent, interdisciplinary and internationally engaged institution focusing on the relationships among human movement politics, poverty, and social transformation. While oriented towards southern Africa, the Centre conducts collaborative scholarly and policy-oriented work across sub-Saharan Africa, and has partnerships in Asia, Europe and the Americas.

While maintaining its scholarly independence, the Centre regularly partners with organisations in government and civil society in identifying data needs, conducting research and shaping policy. Centre staff are also regularly called on to provide expert advice and commentary to international organisations, governments, and the media.

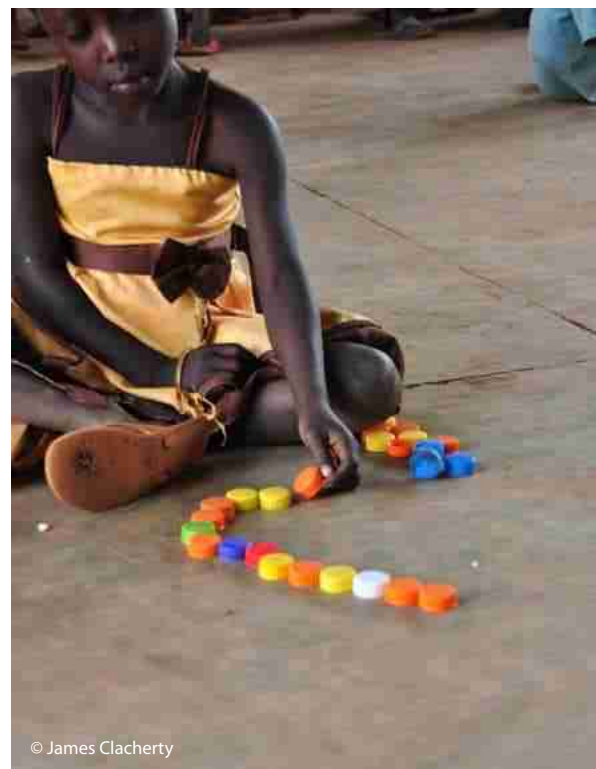


Acronyms

AMWCY	African Movement of Working Children and Youth
ACRWC	African Charter on the Rights and Welfare of the child
AIDS	Acquired Immunodeficiency Syndrome
AU	African Union
CAP	Common African Position
CASE	Community Agency for Social Enquiry
CBO	Community-Based Organisation
COM	Children on the Move
CPU	Child Protection Unit
CRC	Children's Rights Convention
DHA	Department of Home Affairs (South Africa)
DNA	Deoxyribonucleic Acid
DoH	Department of Health (South Africa)
DRC	Democratic Republic of Congo
EU	European Union
FCS	Family, Violence, Child Protection and Sexual Offences
FGD	Focus Group Discussion
GAATW	Global Alliance Against the Trafficking of Women
GBV	Gender-Based Violence
GCM	Global Compact for Migration
HIV	Human Immunodeficiency Virus
HRW	Human Rights Watch
HSRC	Human Sciences Research Council
ID	Identity Document
IDTR	Identification, Tracing, Repatriation and Reunification
ILO	International Labour Organization
IOM	International Organization of Migration
IPEC	International Programme on the Elimination of Child Labour
SS	International Security Studies
MMC	Mixed Migration Centre
MS	Member States
NGO	Non-Governmental Organisation
NPA	National Prosecuting Authority
RCC	Regional Collaborating Centre
RROs	Refugee Reception Offices
SACTAP	Southern Africa Counter Trafficking Programme
SADC	South African Development Community
SANDF	South African National Defence Force
SAPS	South African Police Service
SRHR	Sexual and Reproductive Health Rights
SWEAT	Sex Workers Education Taskforce
TECL	Towards the Elimination of the Worst Forms of Child Labour
UMC	Unaccompanied Migrant Children
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNICEF	United Nations Children's Fund
VoT	Victim of Trafficking
WCC	Western Cape Court

Executive summary

In South Africa child trafficking has become a central concern for both the state and non-state agencies. Although it is claimed that child trafficking is widespread, currently very little reliable data exists to determine the nature and scope of the problem in the country. What is known about trafficking is largely based on ad hoc studies, questionable and outdated statistics, anecdotal information, and common myths. Furthermore, confusion around the actual definition of human trafficking means that it is regularly conflated with human smuggling and other forms of irregular migration. These confusions and connotations not only obscure a realistic picture of human trafficking, including that of children, but also tend to be used by the state to justify repressive laws and policies to restrict migration and curtail migrants' rights while claiming to protect vulnerable migrants, including women and children. At the same time, a growing body of work with migrants, especially unaccompanied migrant children (UMC), in Southern Africa documents their diverse experiences as they cross borders. These experiences include exploitation, abuse, and violence as well as challenges accessing documentation, healthcare, education, and support services. While trafficking can sometimes occur, evidence from this body of work and the qualitative study for this report indicates that this is not always the case. Furthermore, while migrant children are often vulnerable and face risks, they also simultaneously negotiate challenges, are active agents, can be resilient, and embody experiences that extend far beyond what the label of 'trafficked child' implies.



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The consequences of using child trafficking to represent the myriad realities of children on the move and especially in the name of 'child protection' are that migrant children are exposed to additional risks and vulnerabilities. This report, which is the outcome of a collaborative project between the Centre for Child Law at the University of Pretoria and the African Centre for Migration & Society (ACMS) at the University of the Witwatersrand, is based on concerns about the protection and rights of children in South Africa. In particular, the concern that unsubstantiated claims about child trafficking are being used to discourage migration and increase the securitisation of borders, which in turn can impinge on the rights of children, especially migrant children and those who lack documentation. The report will present evidence from the ground that suggests that speaking of child trafficking and failing to recognise what makes children on the move vulnerable is to place children at greater risk. The report also shows that the current



gap in data and empirical research allows for an understanding of child trafficking based on assumptions and exaggerated claims about the movement of children across borders to dominate the discourse. While a progressive framework of laws and policies in South Africa designed to protect the rights of children, including non-nationals, exists, the State is seen by a number of service providers and migrant children themselves as not adequately implementing these laws and policies nor understanding the complex realities of children on the move. Furthermore, although there is awareness of the current disconnect between the child trafficking discourse and child trafficking realities observed by service providers, unsubstantiated claims about child trafficking are still being used to justify repressive policies and practices. These policies and practices ironically co-opt the language of ‘protection’ while violating the rights of children, especially migrants and those without documentation. This ultimately renders children more vulnerable and does little to actually fight child trafficking. This report therefore emphasises the urgent need for in-depth, country wide, rigorous, and ethical research into child trafficking that can present a clear picture of the nature and scope of this phenomenon and the complex realities of children on the move. This kind of research will go a long way towards comprehensively demystifying the discourse on child trafficking and allow for a better understanding of the experiences and vulnerabilities of child migrants and children without documentation in South Africa. In particular, it will show what makes children more vulnerable—including blocked access to documentation and education and increased hostilities towards non-nationals. The research also shows the often unseen consequences of the discourse of child trafficking on children’s rights broadly and on children on the move specifically.

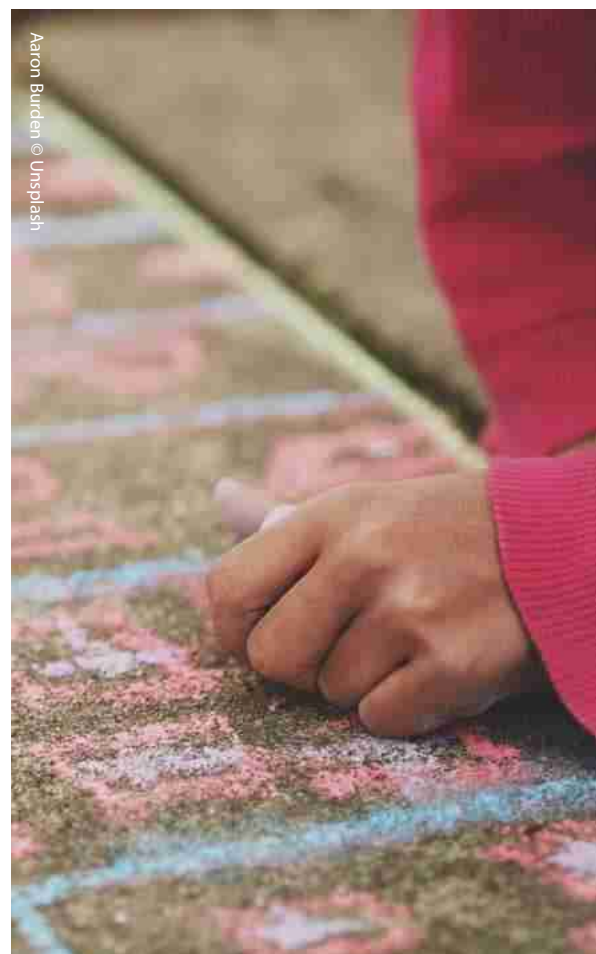
Introduction

This study is motivated by the need to understand the phenomenon of child trafficking and consequences of the trafficking discourse on migrant children specifically and children's rights more broadly. In particular, the concern that despite very little being known about child trafficking, state policies and interventions aimed at protecting children, including migrant children, have been developed and justified using unsubstantiated claims about the issue. This includes recent, widely publicised cases of the interception and repatriation of children smuggled into South Africa to meet up with their parents (Washinyira, 2013), unaccompanied asylum-seeking children being refused documentation, and school learners without adequate documentation (including citizens) being denied access to schools (Shoba, 2019). In all of these cases, fears of child trafficking were cited as a rationale for state actions and interventions.

“

THE MAIN OBJECTIVES OF THIS STUDY WERE TO EXAMINE AND BETTER UNDERSTAND THE MYTHS SURROUNDING CHILD TRAFFICKING IN SOUTH AFRICA FROM THE PERSPECTIVES OF SERVICE PROVIDERS, INCLUDING STATE ACTORS, AND MIGRANT CHILDREN THEMSELVES IN ORDER TO IDENTIFY THE KEY GAPS IN CURRENT KNOWLEDGE.

The main objectives of this study were to examine and better understand the myths surrounding child trafficking in South Africa from the perspectives of service providers, including state actors, and migrant children themselves in order to identify the key gaps in current knowledge. In addition, the study sought to understand the role that the discourse of child trafficking plays in shaping practices and policies that impact on the rights of migrant children. Firstly, the report sets out the current key issues surrounding child trafficking and explores them from two perspectives. The first is through a review of the literature on child trafficking in South Africa, locating the issue within the broader global trafficking discourse and considering what is currently known and where knowledge gaps exist. Secondly, the report includes findings on a small primary research study that engaged key stakeholders working with child migrants and on trafficking issues as well as child migrants themselves. The primary research was undertaken in the two border areas of Vhembe District in Limpopo Province and Ehlanzeni District in Mpumalanga Province as well as in the metropolitan areas of Johannesburg and Cape Town. The findings are explored in relation to the broader issues of



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independent child migrants and their migration realities in order to better understand the role that the discourse of child trafficking plays, how it is shaping policies and practices that may have an impact on the rights of children in South Africa, and whether there is a possible disconnect between evidence and perception. Crucially, the inclusion of child migrants in the research addresses the current gap where those classified as victims are not engaged or their voices tend to be silenced by those working on interventions and policies that directly affect them. This position is also in line with the United Nations Convention on the Rights of Children (UNCRC) (UN, 1989), as well as the African Charter on the Rights and Welfare of the Child (ACRWC) also known as the 'Children's Charter' (OAU, 1999), both of which South Africa has signed and ratified. Both emphasise the importance of children's own perspectives and children being able to express their views on all matters that concern them.

This study is intended as a platform from which a larger study should be executed to build the evidence base. A larger study would ensure that policies and interventions directed at migrant children are based on substantiated knowledge rather than assumptions motivated by various factors and agendas, some of which are not necessarily in the 'best interest of children' on the move (see UNCRC and ACRWC). With this in mind, a series of key conclusions and recommendations have been developed to inform and guide further research. Importantly, discussions amongst state and non-state actors on child migration and child trafficking are provided in order to keep experiences located within the complex contexts from which they emerge.



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Outline of the report

The report is structured into five main sections. The first section is split into three parts and is based on a review of secondary data on trafficking and child trafficking. Firstly, we provide an overview of the legal definition of human trafficking and child trafficking, looking at some of the key issues that shape the discourse, including definitional and methodological challenges, and the connections drawn between trafficking, irregular migration, and securitisation. This is done with particular reference to South Africa's changing policy landscape. Secondly, we explore concerns over child trafficking in South Africa through focusing on three key child trafficking myths. In this way, the current child trafficking discourse is mapped out in comparison to what the data can tell us and how it reflects the complex realities of children on the move. Thirdly, we look at what has happened in South Africa since the implementation of trafficking law through four case studies. The second section describes the methodology used in the primary research. The third section presents an analysis and discussion of the findings through eight key themes. Each of these themes is explored through the narratives of those we spoke to as well as the key points made in the literature review. Finally, in the fourth and fifth sections, we offer conclusive remarks and provide some recommendations to state and non-state actors as well as to researchers.



WE PROVIDE AN OVERVIEW OF THE LEGAL DEFINITION OF HUMAN TRAFFICKING AND CHILD TRAFFICKING, LOOKING AT SOME OF THE KEY ISSUES THAT SHAPE THE DISCOURSE, INCLUDING DEFINITIONAL AND METHODOLOGICAL CHALLENGES, AND THE CONNECTIONS DRAWN BETWEEN TRAFFICKING, IRREGULAR MIGRATION, AND SECURITISATION. THIS IS DONE WITH PARTICULAR REFERENCE TO SOUTH AFRICA'S CHANGING POLICY LANDSCAPE.



A note about terminology

Terms are often used unquestioningly. However, if not considered carefully, they can contribute to fuelling myths and the overall confusion surrounding child trafficking and the realities of children on the move. Therefore, below we define a number of the key terms used in this report.

CHILD

A child is defined under South African and international law as anyone under the age of 18 years (The Constitution of the Republic of South Africa, Section 28; OAU, 1999; UN, 1989).

The United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) – also known as the ‘Children’s Charter’ – acknowledge the primary role of parents and family in the care and protection of children as well as the obligation of the State to help them carry out these duties. The ACRWC extends this definition to view a child as an individual with a unique and privileged place in African society and who is entitled to the enjoyment of freedom of expression, association, peaceful assembly, thought, religion and conscience.

CHILDREN ON THE MOVE

There are various terms used to describe children who migrate either across borders or internally within countries. While often these children are understood through the umbrella term of ‘children on the move’ (Reale, 2008, p. 66), it is important to distinguish between the different terms in order to recognise the different experiences and different vulnerabilities each group may face.

Children on the move are defined as those 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 (Terre des Hommes, 2016). Children on the move can move alone or in a group with family members, other adults and/or children, known or unknown previously to the child. A distinction should also be made between the various children on the move based on the reasons behind such movement. The four categories include:

1. Internally displaced persons;
2. Asylum seekers and refugees;

3. Migrants (i.e., for economic reasons or due to climate change, both internally and across borders);
4. Trafficked persons.

While we sometimes use the terms ‘unaccompanied minors’ and ‘migrant children’, our preference is for ‘children on the move’ when discussing minors who cross borders and are currently found residing in South Africa. Our focus, however, is on the last category of ‘trafficked persons’ or trafficked children.

DISTINCTIONS BETWEEN THE CATEGORIES OF CHILDREN ON THE MOVE

Trafficked children

Child trafficking is defined as the ‘recruitment, transportation, transfer, harbouring or receipt’ of a child for the purpose of exploitation. This definition comes from the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (Palermo Protocol), 2001, which the majority of countries around the world have adopted. In this report, we also work with the definition offered by UNICEF (2007): ‘A child has been trafficked if she or he has been moved within a country, or across border, whether by force or not, for the purpose of exploiting the child’ (p. 1).

Smuggled children

Child smuggling is defined as ‘the illegal transportation of children for profit’ as set out in the Protocol against the Smuggling of Migrants by Land, Sea, and Air (Migrant Smuggling Protocol), supplementing the United Nations Convention against Transnational Organised Crime (UN, 2000a). Smuggling occurs when a person voluntarily enters into an agreement with a smuggler to gain illegal entry into a foreign country and is moved across an international border. Smuggling often involves procurement of fraudulent documents and transportation across a country’s border, although in some countries it can also include transporting and harbouring once in the destination country. Although trafficking and smuggling are two distinct crimes, they are often conflated and referred to interchangeably. A key difference is that victims of trafficking are considered victims of a crime under international law; smuggled migrants are not – they pay smugglers to facilitate their movement. Moreover, smuggling is thus a crime against the State not a human rights violation like trafficking (Gambaro et al., 2008). Clarifying the differences between the two is critical to the development and implementation of sound government policies as well as to ensuring that victims receive appropriate, adequate protection and support.



MOREOVER, SMUGGLING IS THUS A CRIME AGAINST THE STATE NOT A HUMAN RIGHTS VIOLATION LIKE TRAFFICKING. (Gambaro et al., 2008)

Unaccompanied migrant children (UMC)

An unaccompanied migrant child is a child who 'has either crossed a border alone or has subsequently found him or herself living in a foreign country without an adult caregiver (not being cared for by an adult who by law, or custom, has a responsibility to do so)' (Hillier, 2007, p. 8).

Separated children

Children on the move also include children who have been separated by war and natural disasters. UNCRC's Committee on the Rights of the Child's General Comment No. 6 (2005) defines this group of children as children 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.¹



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Sex work, sexual exploitation, and sex trafficking

The terms 'sexual exploitation', 'sex work', and 'sex trafficking into sex work' are often used loosely and interchangeably in discussions around child trafficking. In this report, we define sex work as 'any agreement between two or more persons in which the objective is exclusively limited to the sexual act and ends with that, and which involves preliminary negotiations for a price' (UNAIDS 2000 in Richter et al., 2012, p. 10). This definition neither refers to individuals under the age of 18 nor does it include the non-voluntary selling of sex or human trafficking for sexual exploitation. This report makes a clear distinction between sex work and the sexual exploitation of children. Although the age of consent to sex in South Africa is 16 years, only people aged 18 years and older can sell sex and be sex workers. It is an offence in South Africa to buy sex from a child or to help someone to do so, whether the child agrees to it or not. Therefore, sex for money involving people younger than 18 is a crime as stipulated under the Sexual Offences Act of 2007 and referred to as the sexual exploitation of children.²

1 General Comment Number 6 (2005) Treatment of unaccompanied and separated children outside their country of origin. Par 8. Retrieved from <https://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf>

2 The Children's Act of 2005 contains provisions for the identification of children in need of care, criminalises the trafficking of children, and makes provision for international cooperation to prosecute child traffickers, assistance to child victims, and repatriation. Retrieved from https://www.westerncape.gov.za/Text/2010/12/childrens.act.final_regulations26_jan_2010.pdf

SECTION 1

Literature review: Human trafficking and child trafficking: Law, discourse, and the complex realities

Over the last few decades, the world has witnessed rising concern about human trafficking in the media by states and non-state actors, including advocacy organisations, academics, and researchers. Trafficking primarily involves exploitation, which comes in many forms, such as forcing victims into the sale of sex and subjecting victims to slavery or involuntary servitude. According to the United States State Department, 600,000 to 800,000 people are trafficked across international borders every year, of which 80% are female and half are children (US State Department Trafficking in Persons (TIP) Report, 2018). Meanwhile, the International Labour Organization (ILO) estimates that 5.5 million children are trafficked worldwide each year (ILO & Walk Free Foundation, 2017). The rising concern around trafficking is matched by the powerful and emotive imagery of suffering and victimhood that accompanies anti-trafficking and advocacy campaigns. Few can ignore images of bound and gagged children or the parallels drawn between trafficking and the Atlantic World Slave Trade, in which the large-scale shipping of human beings across borders used brute physical force at every stage. In the well-known work *Disposable People, New Slavery on the Global Economy*, Kevin Bales (2012) claims that there are 27 million people living in slave-like conditions in the modern world, a figure that has been widely reproduced and has come to define fears about trafficking as modern slavery.

However, despite the increasing global attention on human trafficking, there is very little clarity on the actual nature and scope of the phenomenon. The true incidence rate of trafficking is almost impossible to determine mainly due to the clandestine nature of the crime (Graycar & Mccusker, 2007; Scullion, 2015). Furthermore, the difficulties in distinguishing trafficking victims from other irregular (often criminalised) migrants, including those who have been smuggled, mean that the overall trafficking discourse is largely confused and often misrepresentative of what is actually taking place. Yet in the absence of reliable empirical data, unsubstantiated figures, anecdotal claims, and common myths about human trafficking have come to fill the gap and create a new set of 'facts' (Salt, 2000; Vijayarasa, 2015). These 'facts' (for example, that poverty is a driving factor behind trafficking, that victims are predominantly women who are passive and lack any agency, and that they are amongst the least educated) are widely circulated, including on social media, and have come to inform the current popular discourse on human trafficking (Vijayarasa, 2015). Moreover, they feed into policy debates on migration, gender, national security, and organised crime.



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South Africa is a case in point. Over the past five years the country has been reported by the US State Department Trafficking in Persons (TIP) Report, to have been ‘a source, transit, and destination country for men, women, and children subjected to forced labour and sex trafficking’ (2018, p. 390). In 2018, South Africa was demoted to the US State Department’s Tier 2 Watch List,³ indicating that the country does not fully comply with the Trafficking Victims Protection Act’s (TVPA) minimum standards⁴ but is making efforts to do so. Yet the actual data on human trafficking is scant and estimates of numbers of trafficking victims vary widely. While there are claims of extremely high numbers of children being trafficked, particularly into the sex industry (Bermudez, 2008; Frankel, 2016; HSRC 2010; Martens et al., 2003; Molo Songololo 2000a; Somduth, 2018), there is also research suggesting that the trafficking of children has been over-estimated and that the actual numbers of victims are much lower (Clacherty, 2003; Clacherty & Walker, 2019; Gould & Fick, 2008; Sloth-Nielsen & Ackermann, 2015; Wilkinson & Chiumia, 2013). Meanwhile, what is quoted is largely based on anecdotes and generalisations (Gould et al., 2010; Palmay & de Gruchy, 2019). Yet, despite the lack of concrete data and the contradictory claims, the South African government has made human trafficking a priority in law and, at times, practice. In 2015, the government enacted the Prevention and Combating of Trafficking in Persons Act (PACOTIP—hereafter referred to as the TiP Act) (2013), and officials have justified a number of changes to migration related policies and practices in South Africa through concerns about trafficking. For example, the TiP Act is one of the key pieces of legislation that was used to inform the proposed changes outlined in the White Paper on International Migration for South Africa (DHA, 2017).

3 The Watch List is a system that ranks countries according to their efforts to tackle human trafficking. A Tier 1 ranking means that the government has made efforts to combat trafficking, and Tier 3 indicates that the government is not working to combat trafficking.

4 The minimum standards for the elimination of trafficking in persons are as follows: 1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking; 2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault; 3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense; 4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons



Given the overall confusing and vague picture about the real nature and scope of human trafficking in South Africa, this report takes a closer look at the discourse of child trafficking in South Africa: what is currently known (based on reliable, empirical data) and what remains unknown or uncertain. This work, we suggest, is imperative to building up a more empirically informed picture of the realities of trafficking in South Africa from which policies and practices should be shaped. The rest of the literature review is split into three parts. The first part provides a brief overview of trafficking generally, including the legal position and how children have been understood within the legislation and discourse. The second part looks more specifically at what has been said about child trafficking in South Africa and the experiences of children on the move. In the third part, we provide a more contextual understanding of South Africa's TiP Act (2013) since it has been implemented in 2015 and highlight four case studies that deal with key issues affecting children in South Africa.

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WE PROVIDE AN OVERVIEW OF THE LEGAL DEFINITION OF HUMAN TRAFFICKING AND CHILD TRAFFICKING, LOOKING AT SOME OF THE KEY ISSUES THAT SHAPE THE DISCOURSE, INCLUDING DEFINITIONAL AND METHODOLOGICAL CHALLENGES, AND THE CONNECTIONS DRAWN BETWEEN TRAFFICKING, IRREGULAR MIGRATION, AND SECURITISATION. THIS IS DONE WITH PARTICULAR REFERENCE TO SOUTH AFRICA'S CHANGING POLICY LANDSCAPE.

1 Human trafficking and child trafficking: legislation and discourse

THE PALERMO PROTOCOL

In accordance with concerns about human trafficking, governments worldwide increasingly recognise their responsibility to prevent this criminal act from taking place within and across their borders, to prosecute traffickers, and to protect and assist victims. The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (hereafter referred to as the 'Palermo Protocol'), aimed at preventing, suppressing, and punishing trafficking in persons, especially women and children, is the first universal instrument dealing exclusively with all aspects of human trafficking and exists alongside (but is distinguished from) a protocol on the smuggling of migrants supplementing the United Nations Convention against Transnational Organised Crime (Anderson, 2012). South Africa is one of 189 countries that have signed the protocol.⁵

Article 3(a) of the Palermo Protocol defines human trafficking as:



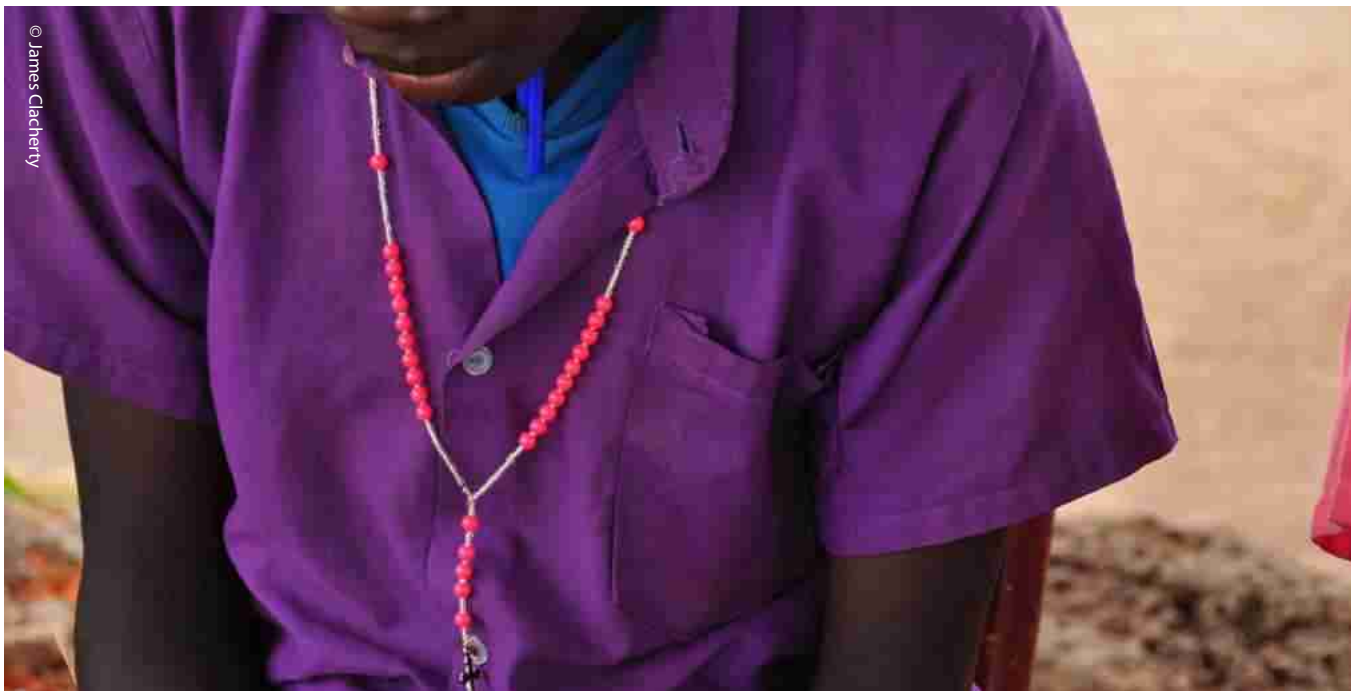
THE RECRUITMENT, TRANSPORTATION, TRANSFER, HARBOURING OR RECEIPT OF PERSONS, BY MEANS OF THE THREAT OR USE OF FORCE OR OTHER FORMS OF COERCION, OF ABDUCTION, OF FRAUD, OF DECEPTION, OF THE ABUSE OF POWER OR OF A POSITION OF VULNERABILITY OR OF THE GIVING OR RECEIVING OF PAYMENTS OR BENEFITS TO ACHIEVE THE CONSENT OF A PERSON HAVING CONTROL OVER ANOTHER PERSON, FOR THE PURPOSE OF EXPLOITATION. (United Nations, 2000b)

According to the Palermo Protocol, human trafficking is described as a process that consists of three elements: *method* ('the recruitment, transportation, transfer, harbouring or receipt'); *means* (threat or use of force, other forms of coercion, abduction, fraud, deception, abuse of power, position of vulnerability, etc.); and for the purpose of *exploitation*.

⁵ South Africa signed the Protocol in 2000 and ratified it in 2004. Over the past decade, 12 of the 15 SADC member states have implemented specific legislation to deal with human trafficking while the remaining three countries deal with the issue through their national legal frameworks (Nishimbi & Moyo, 2016).

Unlike the definition of smuggling, the definition of trafficking does not require movement across an international border. For a person to be a victim of trafficking (VoT), they must have been, firstly, transported across international borders or within a country, secondly, coerced or deceived, and, thirdly, 'exploited' in some way. The Palermo Protocol seeks to respond to trafficking through *protecting* victims of trafficking, *preventing* the crime through the passage and implementation of national trafficking laws, and *prosecuting* the traffickers (sometimes called the 3Ps).

In South Africa, the TiP Act (2013) was first implemented in 2015. The push for South Africa to develop a comprehensive, stand-alone trafficking law (rather than using other policies geared towards illegal immigration, child protection, and provisions to the penal code) was linked to the need for the country to align its policies with the Palermo Protocol, which it ratified in 2004. The Act is largely based on the Protocol and offers a broad definition of human trafficking. It states that a person will be guilty of trafficking if he or she delivers or recruits, transports, transfers, harbours, sells, exchanges, leases, or receives another person within or across the borders of South Africa, through various means, including the use of force, deception, and coercions, aimed at the person or an immediate member for the purpose of exploitation. A key difference between the Act and the Protocol is the inclusion of the adoption of a child or forced marriage for the purpose of exploitation. While the Act, like the Palermo Protocol, addresses trafficking for the purpose of labour, the removal of organs, and sexual exploitation, the overwhelming focus of implementation has been on the trafficking of women and children for sexual exploitation (Palmary & de Gruchy, 2019; Walker & Galvin, 2018).



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DEFINITIONAL CHALLENGES

Due to the often transnational nature of the trafficking crime, the Protocol seeks to harmonise national laws on trafficking thereby creating a uniform global consciousness and response to trafficking. However, a lack of clarity within the definition (i.e., how much deception, what types of vulnerability, and what is meant specifically by 'exploitation') means that the term 'trafficking' can be used in many ways and to define many, very different things. For those with a primary focus on controlling and restricting immigration, a distinction can be made between 'deserving' migrants (i.e., victims of trafficking seen as lacking agency) and 'criminal' migrants (i.e., those who show agency and made choices in the process of moving) (Walker & Galvin, 2018). Meanwhile for those focused on migration within a human rights framework, the definition of trafficking could be extended to include all those who end up in forced labour and 'slavery-like conditions' (O'Connell Davidson, 2011, p. 456). The vagueness of the definition also allows for the conflation of sex work or 'prostitution' with trafficking and enables those who object to sex work to frame all migration into the sex work industry as 'trafficking' regardless of whether or not a choice was made. For example, the Protocol notes that if the 'means' set out in the definition has been used, it is irrelevant whether the individual agreed to the exploitative conditions (Asijiki, 2015; O'Connell Davidson, 2011).⁶

The emphasis on vulnerability, women and children, and trafficking into the sex industry within the Protocol and more generally also means that those who are trafficked into other sectors receive less attention (O'Connell Davidson, 2011; Vijayarasa, 2015; Zhang, 2009, 2012; Zheng, 2010). For example, in 2012 the ILO updated its estimates of global trafficking victimisation based on an analysis of published reports and accounts of identified victims. Among the estimated number of 20.9 million forced labourers worldwide, 4.5 million (22 per cent of the total) were victims of forced sexual exploitation and 14.2 million (68 per cent) were victims of forced labour, in economic activities such as agriculture, construction, domestic work, and manufacturing (ILO, 2012). Despite these figures, labour trafficking remains behind sex trafficking in advocacy, funding, and research within the anti-trafficking movement. Accordingly, Gozdzia and Bump (2008) argue that current research focused on sex trafficking is 'to the detriment of investigating trafficking for bonded labour and domestic servitude' (2008, p. 7).⁷

6 As set out in Article 3(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where the means set forth in subparagraph (b) have been used.

7 For evidence of how sex trafficking and human trafficking are used interchangeably, see Farrell et al. (2009), which provides an exhaustive review of literature in which they identify 110 sources that provide a count or some estimates of human trafficking. The vast majority of those counts refer to sex trafficking or the sexual exploitation of children. Only 17 sources provided information from which a count or estimate of labour trafficking could be inferred.

DATA AND METHODOLOGICAL CHALLENGES

The nature of human trafficking as a hidden crime means that it is difficult to systematically research and gather accurate numerical data on its magnitude (Scullion, 2015; Weitzer, 2014). This is complicated by factors such as: the lack of anti-trafficking legislation in many countries; different legislative approaches by states, including some that do not include internal trafficking of citizens in their trafficking counts; a reluctance of victims to report their experiences to the authorities; and the lack of government priority given to centralised databases and research (Aronowitz et al., 2010; Williams & Masikea, 2002). For example, South Africa's lack of a centralised database and any attempt to aggregate data on the scope, nature, and extent of human trafficking as well as the non-reporting by government on pending prosecutions and the number of cases investigated are some of the shortfalls cited in the US TIP Reports (Van der Watt, 2018).

Another challenge is that statistics are often reported on an ad hoc basis by individual government agencies operating at a local or regional level, non-governmental organisations (NGOs), and the media. Rarely are these data sources linked. In fact, as O'Connell Davidson and Anderson (2011) argue, the most cited statistics on trafficking have most likely not been gathered using the definition provided in the Palermo Protocol. Thus, what we know is generally an amalgam of information from different sources, collected in different ways, using different criteria and different agendas (Aronowitz et al., 2010; O'Connell Davidson & Anderson, 2011). Meanwhile, where investigative methods used are largely unable to determine prevalence, they are also often carried out by law enforcement-type agencies, which raises questions about the ethical nature of the data as well as how much of a complete picture can be derived.

That said, it is important to note that despite the methodological challenges, there is an increasing number of research studies that are able to provide in-depth and complex pictures of migration-related issues. This includes issues that are hidden, complex, and sensitive. Research with sex workers, undocumented migrants, and UMC and on disease and HIV, for example, provides important insights into issues that have previously remained under-researched for similar reasons to the trafficking phenomenon. Some of this work is drawn upon in this review and highlights the lived experiences of those who are largely talked about but rarely given space to speak. Such research is central to building an overall picture of the complex dynamics shaping migration and human trafficking and can help in demystifying many of the common myths and assumptions as well as ensuring the trafficking claims are rooted to on-the-ground realities.

IRREGULAR MIGRATION, TRAFFICKING, AND CRIMINALITY

Central to the trafficking discourse and shaping an understanding of trafficking is also the link made between irregular migration, criminality, and human trafficking. This link has justified the framing of trafficking as a crime control and prevention issue in the context of irregular migration and part of what Goodey (2009) refers to as the 'migration-crime-security' nexus. Connecting trafficking to irregular migration and thus to crime also means that it can be used to support political agendas, to motivate support for nationalist and especially anti-immigration stances that call for restricted migration and tighter border controls. As Anderson and O'Connell Davidson (2002) argue:

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FEAR AND PREJUDICES CONCERNING 'ILLEGAL IMMIGRATION' ARE GIVEN FRESH BASIS (THE THREAT IS NOT JUST SOCIETY WILL BE 'SWAMPED' BY 'ALIENS' BUT ALSO OVERTAKEN BY 'MAFIA' AND OTHER HARDENED CRIMINALS) AND CLAMP DOWNS ON IRREGULAR MIGRATION ARE JUSTIFIED AND HUMANISED (ROUNDING UP, DETAINING AND DEPORTING UNDOCUMENTED MIGRANTS TAKES ON NEW MEANINGS WHEN PRESENTED AS RESCUING, REHABILITATING AND REINSERTING THE VICTIMS OF ORGANISED CRIME. (P. 6)

This idea of migration as threat is premised on the notion that human mobility is a restricted process through which nation-states determine who is allowed into their territory and under what conditions (Walker & Galvin, 2018). Over the past decades, processes of globalisation, regional conflicts, and persistent inequalities between the Global North and South have given rise to increasing levels of human mobility that challenge the territorial integrity of nation-states (Castles, 2004).



Southern Africa, for example, is a region with a long history of human mobility developed from entrenched labour patterns of the colonial and post-colonial eras and high levels of internal and regional migration. However, despite the increasing recognition of migration as a key driver of development (UNDP, 2010), increasing concerns about migration and especially of the movement of particular categories of people have led to an increased focus on the securitisation of nation-states (Walker & Galvin, 2018). This is especially prominent in countries such as South Africa that receive significant numbers of migrants due to the relative strength of their economies (IOM, 2013, p. 9; Whitaker, 2017, p. 2).

In South Africa, this strong sense of migration as a threat to security and prosperity has led to significant discrimination, hostility, and violence towards non-national populations. Despite data which shows that the country's overall cross-border migrant population makes up only 3.3 per cent of the national population of approximately 55 million people (Stats SA, 2015), the view that South Africa is oversaturated with cross-border migrants who pose competition for jobs and housing and burden state resources, including healthcare and education, prevails on many levels. This view has also been encouraged by state rhetoric, and it is evident in the inconsistent immigration policies, laws, and directives/guidelines towards different groups of irregular and often 'vulnerable' migrants, including migrant children (Mbhele, 2018)⁸. South Africa's Immigration Act (2002), for example, has been subject to a number of amendments (most recently in 2011 and 2014) which have shifted the focus more to a 'protectionist' and 'nationalistic' approach and emphasised border control over migration facilitation (Segatti, 2011, p. 46). The migration challenges faced by asylum seekers in particular have increased with measures such as reducing the number of days they are allowed to access Refugee Reception Offices (RROs) before their 'asylum transit permit' (Section 23) expires while the number of open RROs available has also been reduced.⁹ In addition, further amendments tabled in the 2017 Refugee Amendment Act would mean fundamental changes for asylum seekers and refugees in South Africa which would place them at greater risk, including the removal of the automatic right to work and study, the expansion of reasons to exclude asylum seekers from refugee status, and the abandonment of asylum claims should an asylum seeker not attend an RRO in the month after the expiry of their asylum permit.¹⁰ Making access to documentation much harder, these changes increase the likelihood of migrants failing in the application process, often through no fault of their own, and thus becoming undocumented and more vulnerable (see also Carciotto, Gastrow, & Johnson, 2018).

8 This in turn has led to anti-foreigner sentiments and xenophobia, which has been experienced by non-nationals through everyday structures and spaces—in government clinics and hospitals, in schools, on the streets, and when dealing with police and Home Affairs (Walker et al., 2017; Hassim et al., 2008).

9 These amendments also conflict with South Africa's commitment to SADC's Protocol on the Facilitation of Movement of Persons (2005) and the AU's Common Position on Migration and Development (2006), which both call for the protection of migrants' rights while recognising migration as a tool for development and greater regional cooperation.

10 Although the Act was signed into law in December 2017, the draft regulations have not yet been finalised, and it is currently unclear as to when and if the Amendment Act will be implemented.

The Department of Home Affairs (DHA) White Paper on Immigration (2017), which seeks to further amend the Immigration Act and reverse the policy of self-settlement for asylum seekers and refugees is also an example of increasing restrictions. The White Paper specifies that ‘in order to admit asylum seekers in the refuge regime in a humane, secure and effective manner, South Africa will establish Asylum Seeker Processing centres’, which means that asylum seekers will no longer be encouraged to integrate and co-exist within South African communities but rather reside in camps as is the case in other Southern African Development Community (SADC) and African countries. Also of concern is the DHA’s proposed new regulations to the Births and Deaths Registration Act in which it plans to discontinue the issuance of birth certificates for children born to foreign parents in South Africa and deny undocumented children (including South African citizens) places at government schools (Maistry, 2019). A recent (now withdrawn) circular by Gauteng Department of Health stated that all non-citizens (except for refugees with valid documents) must be classified as full-paying patients.

All of these policy and practice changes break with international and national law protecting the rights of non-nationals to a nationality, to education, and to healthcare and shape an increasingly discriminatory approach to non-nationals (Stevenson, 2019). They also run contrary to commitments by SADC to harmonise migration policy and facilitate intra-regional migration.¹¹ For example, the Migration Dialogue for Southern Africa (MIDSA) was created to support SADC Member States (MS) in the implementation of regional protocols designed to facilitate the movement of people and manage irregular migration (IOM, 2015). Of particular importance here is that during MIDSA the MS Ministers of Home Affairs issued a joint recommendation that the protection of the unaccompanied migrant child should be prioritised in preparing for and initiating the plan’s implementation in 15 member states (IOM, 2015). Moreover, the Common African Position (CAP) on the Global Compact for Migration (GCM)—an international, non-binding agreement that ‘aims to make an important contribution to enhanced cooperation on international migration in all its dimensions’ (Ardittis, 2018)—focuses on the better management of migration across the African continent.¹² The CAP, like the GCM, has a particular security focus and prioritises issues such as human trafficking. However, whereas the GCM heavily emphasises the need for border management and national sovereignty, the CAP claims that too much emphasis on security and border control actually creates irregular migration—as also illustrated in the findings of this report.

11 While there are existing and draft frameworks and guidelines that indicate efforts to negotiate regional coordination and the harmonisation of migration governance—including the Revised SADC Protocol on Gender and Development (2015) adopted in June 2016, the SADC Labour Migration Policy Framework (2015), the African Union’s African Common Position on Migration and Development (African Common Position) (2006), and the SADC Draft Policy Framework on Population Mobility and Communicable Diseases (2009)—many remain unimplemented and exist more as rhetoric than implemented policy.

12 The GCM represents the first time that all UN Member States have come together to negotiate an agreement on migration in a comprehensive manner, recognising the fact that an international co-operative framework is needed to address an international issue. The compact contains 23 objectives including: collecting adequate data; ensuring all migrants have legal proof of identity; strengthening the transnational response to smuggling and trafficking; managing borders in an integrated manner; and giving migrants access to basic services. It also includes follow-up and review mechanisms (IOM, 2016).

Therefore, whilst South Africa has one of the most progressive legal frameworks in the world, developed to reflect a commitment to human rights, international cooperation, equal opportunity, and democracy, it can also be argued that some policies and policy changes in South Africa have made migrants more vulnerable to irregularity, to exploitation, and also to trafficking. Yet by claiming that such measures are necessary due to the threats posed by unregulated migration, including human trafficking, the attention is shifted to the problem of lack of control at the border rather than the existence of the border itself (De Sas Kropiwnicki, 2010; Walker & Galvin, 2018). In framing irregular migration and porous borders as the greatest threat to nation-states, governments can then justify the fortification of borders (implying restrictions for all who move) while effectively diverting attention from the harm inflicted by the state's own containment efforts on migrants (O'Connell Davidson & Farrow, 2007).

What is also clear, therefore, is that despite the efforts of the Palermo Protocol to provide a definition of human trafficking in order to harmonise national laws on trafficking and create a uniform global consciousness and response to trafficking, broader agendas focused on suppressing migration, strengthening borders, and fortifying law enforcement (due to the 'migration-crime-security' nexus) are also at play. The challenges around the definition of trafficking as well methodologically especially in collecting and collating reliable data also mean that the overall picture of human trafficking remains confused.

CHILD TRAFFICKING

While there remains some confusion around the vagueness of the Palermo Protocol's definition for human trafficking in general, the case of children is far more clear-cut. This is illustrated through the definition of child trafficking in Article 3(c) of the Protocol as the 'recruitment, transportation, transfer, harbouring or receipt' of a child for the purpose of exploitation.

This definition is slightly different from that of adults and does not require any question over the 'means'; in other words, children that are recruited and transported for the purposes of exploitation are 'trafficked' regardless of whether they consented or not. Linked to this, the involvement of children in 'prostitution' is also unequivocally seen as 'harmful, undesirable and exploitative' (O'Connell Davidson, 2011, p. 457). While sex work, which is criminalised in most countries across the world, is increasingly being debated, the involvement of children in sex work is not up for discussion. The UN Convention on the Rights of the Child (UNCRC) explicitly requires nation states to protect children from 'all forms of sexual exploitation and abuse', and prostitution is identified as a 'worse form of child labour' by the International Labour Organisation (ILO). Similarly, the African Charter on the Rights and Welfare of the Child (ACRWC) (Article 27) deals specifically with sexual exploitation. Accordingly, many countries, including South Africa now criminalise the purchasing of sexual services from a person below the age of 18.



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In South Africa, this move (as set out in the Sexual Offences Amendment Act, 2007) in fact marks a very crucial protective measure given that legally a child can consent to a sexual act from the age of 16 and yet if this act is accompanied by a reward or payment then it is viewed as exploitation of a child. Therefore, anyone paying a consenting child between 16 and 18 for sexual services could be charged with committing the offence of sexual exploitation of a child (child prostitution). A charge of statutory rape or rape of the child could be considered only if the child was between 12 and 16 or under the age of 12 (SALRC, 2017, p. 7). The added protection here is justified due to the vulnerability of children (SALRC, 2017, p. 7).¹³ Politically and morally then the stand on 'child trafficking' is clear, especially when the focus is on trafficking into prostitution (O'Connell Davidson, 2011, p. 458).

CHILD TRAFFICKING ACROSS SADC

This clear approach to child trafficking is also reflected across the SADC region with many of the member states having also signed international treaties to stop the practice of child trafficking including: the UNCRC (1989); UN CRC Optional Protocol on Armed Conflict (2000); UN CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000); ILO C.138, Minimum Age (1973); ILO C.182, Worst Forms of Child Labour (1999); and the Palermo Protocol (2000). Regionally, a number of SADC policies and frameworks reflect concern that child trafficking is a problem. For example, The Policy Framework for Population Mobility and Communicable Disease in the SADC Region states:

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INCREASED CROSS-BORDER TRAFFICKING AND INVOLUNTARY MOVEMENT. ALTHOUGH DOCUMENTED EVIDENCE IS DIFFICULT TO COME BY DUE TO CLANDESTINE NATURE OF SUCH MOVEMENTS, IT IS SAID TO BE ON THE INCREASE, PARTICULARLY OF ADOLESCENT CHILDREN FOR ILLEGAL LABOUR AND SEXUAL EXPLOITATION. GIRLS ARE PARTICULARLY VULNERABLE IN THIS PROCESS. (SADC, 2009, p. 6)

¹³ It should also be noted that in 2013 the Constitutional Court found sections of the Sexual Offences Act that criminalised consensual sex between adolescents to be unconstitutional, and the Act had to be amended. The new law states that while the age of sexual activity remains at 16 years, cases in which both consenting parties are between 12 and 16 will not be taken to court. Also, where the older party is over 16 and the younger one is below 16, there will be no prosecution if they are less than two years apart.

Meanwhile, the SADC Regional Migration Policy Framework (RMPF) (2018–2030), which is currently in draft form, focuses specifically on the gendered vulnerabilities faced in migration:



MIGRANT WOMEN AND GIRLS' VULNERABILITIES TO EXPLOITATION ARE HIGHLIGHTED BY THE FREQUENTLY ABUSIVE CONDITIONS UNDER WHICH THEY WORK, ESPECIALLY IN THE CONTEXT OF DOMESTIC SERVICE AND SEX INDUSTRIES, IN WHICH HUMAN TRAFFICKING IS REPORTED TO BE RAMPANT. (2018, p. 53).

No references to empirical research and data are provided to support these claims. The concerns about trafficking and especially child trafficking are also reflected in the *10 Year SADC Strategic Plan of Action on Combatting Trafficking in Persons, especially Women and Children (2009-2019)*, which acknowledges that women and girls are particularly vulnerable to trafficking in persons. *The Revised SADC Strategic Plan of Action on Combatting Trafficking in Persons (2016-2019)* further states that the SADC region 'is host to a relatively high level of trafficked children and cases of forced child labour' and calls for regional action to address this crime.¹⁴

However, as with South Africa, other SADC countries have not carried out comprehensive international or domestic studies of the trafficking situation within their countries and therefore there is very little research and data available (Britton & Dean, 2014). Though governments within SADC have established institutional mechanisms for the enforcement of laws and regulations on child trafficking, a number of factors are also frustrating their efforts. For example, lack of funding, a shortage of well-trained staff, corruption, and weak coordination systems present major problems in ensuring coordinated and comprehensive responses (Britton & Dean, 2014).



¹⁴ To date 14 out of the 15 SADC countries have stand-alone legislation on trafficking and a number of member states have also gone further to establish domestic laws and regulations related to child trafficking. However, according to the United States Department of State Trafficking in Persons (TIP) Report (2018), gaps still exist in the legal frameworks of a number of SADC member states. Most of Southern Africa falls in the Tier 2 category, including Botswana, Lesotho, Mauritius, Malawi, Mozambique, Namibia, Tanzania, and Zambia. Eswatini (formerly known as Swaziland), like South Africa, has been demoted to the Tier 2 Watch List, which is also where Angola, Seychelles, Madagascar, and Zimbabwe are ranked. The Democratic Republic of Congo has a ranking of Tier 3. In the 2018 TIP report, Zambia and Zimbabwe are identified as failing to adequately address and protect children from the worst forms of child labour (United States Department of State, 2018).

THE ‘TRAFFICKED CHILD’



Although the clear definition of child trafficking evades the kinds of tricky questions that arise in the context of adult trafficking around consent, there are still some sticking points around the extent of voluntary movement and line between traffickers and agents. For example, the emphasis on trafficking into prostitution has meant that other forms of child trafficking have been overlooked (as noted above) and the focus on ‘the trafficked child’ also sidelines the challenges and suffering faced by children who migrate but who are not trafficked. For example, children who move unaccompanied through illegal channels can endure many of the same risks and dangers as trafficked children, including violence, sexual abuse, exploitation, arrest, and incarceration, and yet their experiences and needs are ignored or marginalised (Clacherty & Walker, 2019). Noting that many of the vulnerabilities faced by children on the move are shaped by immigration policies and practices themselves, O’Connell Davidson asks, ‘why are the harms inflicted on children by “traffickers” so much more loudly decried than those resulting from immigration policies?’ (2011, p. 462). In response, she argues, a child in many ways represents the idea of a ‘pure victim’ according to normative ideals of children and childhood, and, therefore, the idea of ‘the trafficked’ child in particular has become increasingly visible and has generated intense public and policy concern (2011, p. 454). She states:

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‘TRAFFICKED CHILDREN’ ARE PRESENTED AS GRIEF WORTHY BECAUSE, LIKE THE CHILD AT THE HEART OF THE WESTERN IDEAL OF CHILDHOOD, THEY ARE PASSIVE, BIDDABLE, WEAK, AND BREAKABLE. THE ALLOCATION OF SO MUCH PUBLIC GRIEF TO THE SUFFERING OF THE ‘TRAFFICKED CHILD’, SO MUCH LESS TO THAT OF OTHER MIGRANT CHILDREN—TO PARAPHRASE BUTLER (2004)—OPERATES TO PRODUCE AND MAINTAIN EXCLUSIONARY CONCEPTIONS OF WHO IS NORMATIVELY A CHILD. (O’Connell Davidson, 2011, p. 472)

The notion of deserving children opposes the discourse of child protection as it generates consequences for children who do not conform to expected social norms of what children of their age should be like or do (Chereni & Mahati, 2014, pp. 46–47). These children, as we have noted here and discuss in section 2.3, may face many vulnerabilities but do not fit with the notion of a ‘pure’ trafficking victim.

CHILD TRAFFICKING AND CHILD SMUGGLING

One example of children who do not fit the category of child trafficking are children who are smuggled across borders. Despite being distinguished in law, the two issues are regularly conflated. This means that, on the one hand, child trafficking is over-represented because children who engaged in other forms of irregular movement, including smuggling, are subsumed under the label of 'child trafficking', while, on the other hand, such irregular movement (which is not trafficking) is used to justify arguments for tougher border controls and to discourage rather than facilitate migration (Walker & Galvin, 2018).

The Palermo Protocol (2000) defines smuggling as a process that facilitates, for material gain, the undocumented entry of individuals into a state of which they are non-nationals. Put simply, it offers a way in which individuals can engage in cross-border migration, without formal immigration clearance or documentation, through their own endeavours or through payment for the assistance rendered to them by one or more intermediaries. Accordingly, the key difference between human smuggling and trafficking is that, in the former, smuggled people are regarded as clients and/or customers who negotiate with the smuggler who receives a onetime profit and, in the latter, they are victims, as they are owned by the trafficker and exist in an exploitative relationship (Batsyukova, 2012). However, the two processes 'are in fact intricately intertwined' (Aronowitz, 2009, p. 4) as there is no clear-cut difference between them. What might begin as human smuggling could end up as human trafficking or indeed a smuggling journey may involve aspects of trafficking (Aronowitz, 2009; Batsyukova, 2012).

Across South Africa's land borders, human smuggling is pervasive and is often facilitated by corrupt law enforcement agents, violent criminals, and informal cross border transport operators (Mahati, 2015). A report by the International Organisation for Migration (IOM), for example, which set out to research trafficking on the Zimbabwe-South Africa border, noted many instances of extreme exploitation associated with smuggling that nevertheless fell short of the legal definition of trafficking (De Sas Kropiwnicki, 2010). Trafficking has a three-part burden: recruitment, movement, and control. A migrant who knowingly pays a smuggler to take them across the border but who is then sexually assaulted by the smuggler before making their way further into South Africa is not a victim of trafficking. While the sexual abuse and the smuggling are both crimes, neither is sufficient to make this an instance of trafficking (Palmary & de Gruchy, 2016). It has also been argued that country-specific trafficking legislation often ignores the regional context and the complexities of regional migration patterns, which include human smuggling (Bunke, 2016). This means that the significance of smuggling as a separate crime is ignored while trafficking is assumed to be more widespread due to being conflated with smuggling. In failing to understand the different realities of how people, including children, move and the broader social conditions at stake, the trafficking discourse instead keeps the focus on the irregular migration of individuals and associated links to criminality, as discussed above.

CHILD TRAFFICKING AND CHILD LABOUR

Whilst the focus of the child trafficking discourse in South Africa is largely on trafficking into sexual exploitation, little attention is paid to trafficking for labour exploitation purposes. Internationally research shows that child labour trafficking includes children forced to work in homes as domestic servants, farm workers coerced through violence as they harvest crops, and factory workers held in inhumane conditions with little to no pay (ILO, 2013). However, before looking at the issue of trafficking into child labour it is important to understand the debate around child labour itself. This debate is largely centred around what should be regarded as child 'labour'. The ILO's Minimum Age Convention (1973) states that 'child labour' includes: all economic activity by children under age 12 (including unpaid contributions to family enterprises); more than 14 hours per week in economic work by children aged 12–14; and 28 or more hours per week of household chores by children aged 7–15.

In South Africa, the law prohibits any person or organisation from employing a person under the age of 15. In addition, no person is allowed to employ a child to do work that is 'inappropriate for a person of that age' as well as 'that places at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development' (Basic Conditions of Employment Act, 1997, amended in 2002). In general, the law allows children aged between 15 and 17 years to work only on condition that the work they do is not harmful or dangerous and does not interfere with their schooling. The South African Constitution (1996) states that no one may be subjected to slavery, servitude, or forced labour. It emphasises that no person may cause, demand, or impose forced labour on another person.



However, as O'Connell Davidson observes, 'judgments about what is child labour and when child labour becomes a worst form of labour ... are not easily made' (2011, p. 465). In the predominant Western view, childhood is largely considered a time for learning and play, and, importantly, 'a time free from economic responsibilities' (Pupavac, 2002, p. 74) during which children lack the capacity to work and protect themselves against abuse and exploitation at workplaces (Aufseeser et al., 2017; Mahati, 2015). Yet in many communities, particularly in the global South, children find a way of being resourceful and navigating the often very difficult conditions they live and work in (Mensah & Okyere, 2019). As Ennew, Myers, and Plateau (2005) point out:



WITHOUT DENYING THE HAZARDS AND DISADVANTAGES THAT MAY BE INVOLVED, MANY WORKING CHILDREN INSIST THAT, IN ADDITION TO GAINING VALUABLE INCOME AND A SENSE OF SATISFACTION OF HELPING THEMSELVES AND THEIR FAMILIES, THEY ENJOY THEIR WORK, LEARN A LOT FROM IT, DEVELOP SELF-CONFIDENCE, AND FIND IT A VALUABLE SOURCE OF PRIDE AND SELF-ESTEEM. (p. 33)

Additionally, views of childhood and of what constitutes appropriate childhood activities vary widely between cultures, and it is important to acknowledge that our understanding of child labour is socially constructed. This is particularly true in the context of domestic work, which is often linked to the migration of children within the extended family. In fact, the ILO (2010) itself notes that ‘given its hidden nature and the characteristics of the employment relationship it is very difficult to draw the line between “legitimate domestic work” and its exploitative forms’ (as cited in O’Connell Davidson 2011, p. 465). Ennew et al. (2005) make the point that what is important is to acknowledge children’s diversity and universality when acting in their best interests and that defining ‘child labour’ as work that is harmful to them accommodates both their different contexts and their universal rights. This is a point also argued by Mensah and Okyere (2019) in their response to a CNN video report which claimed that children engaged in the fishing industry along the Lake Volta in Ghana were victims of child trafficking and child slavery. Having worked extensively in the area with local communities, Mensah and Okyere argue that the child trafficking allegations reflect a limited understanding and thus misrepresentation of the lived realities of those on the islands and in the communities along the lake. They note that children living by the lake learn to fish from a young age and take on apprenticeships and tutelage agreements with fishermen who are not their blood relatives. While they acknowledge that the issue is complex and that sometimes children are subject to dangerous and exploitative conditions, they are also clear that this does not amount to child trafficking. This is a point supported by a semi-independent large study of children’s involvement in work on Lake Volta conducted by the ILO in 2013 in which they were ‘emphatic’ that claims of child trafficking were exaggerated (Mensah & Okyere, 2019).

This brings us back to the issue of trafficking of children within the context of the Palermo Protocol (2000) definition of trafficking, in which labour that involves force or threat as a means of recruitment and exploitation would be, by definition, harmful to children. However, it is difficult to say definitively what the levels of child trafficking into labour are in South Africa. Apart from one or two studies on children who are forced to migrate for domestic work (Hertrich & Lesclingand, 2013; Save the Children, 2009) and a few isolated studies that refer to child labour on border farms in South Africa (e.g., Chiyangwa, 2018; Save the Children, 2007), there is almost no research on this issue. However, what is clear is that, despite the lack of research, many claims are still made about the extent of child labour and child trafficking, as we discuss below.

2 Child trafficking in South Africa: discerning myths from realities

A CONFUSING PICTURE

The discourse on trafficking and especially child trafficking in Southern Africa has been informed almost entirely by two key reports, one by the South African children's rights organisation Molo Songololo (2000a, 2000b) and the other an investigative study by the IOM entitled *Seduction, sale and slavery: trafficking in women and children for sexual exploitation in Southern Africa* (Martens et al., 2003). There are a number of problems with both of these reports. Apart from the fact that they are now outdated, they were originally intended to raise awareness about the need for law reform and policy intervention rather than to provide a clear understanding of the scale and nature of the problem. Additionally, both studies considered cases of human trafficking in the region and drew very broad conclusions about the causal factors of trafficking and the nature of trafficking practices. Yet, they became highly influential in informing perceptions of trafficking as a prevalent problem in South Africa and creating a set of 'facts' in the national conversation that went on to place trafficking on the policymaking agenda (Bonthuys, 2012).



The attention generated by these reports added to an overall concern from the government and led the South African Law Reform Commission (SALRC) to develop a discussion document and draft legislation on trafficking in persons in 2006. This was followed by a number of measures, including: the formation of a National Task Team; the establishment of a specialised unit and regional task teams set up by the National Prosecuting Authority (NPA); the creation of an IOM hotline for victims; training for law enforcement officials; and provisions to target the trafficking of children. The IOM also trained over 10,000 government officials in Southern Africa, including in South Africa. However, the impact of this intervention is still to be determined.

In addition, the National Prosecuting Authorities (NPA) commissioned a report to determine the nature and extent of trafficking in the country with the aim to provide more information about both victims and perpetrators in the so-called trafficking chain. The report produced by The Human Science and Research Council (HSRC) and entitled *Tsireledzani: Understanding the dimensions of human trafficking in Southern Africa* (Allais et al., 2010), however, received widespread criticism. Researchers and activists argued that the use of unsubstantiated data, including claims that have been uncritically reproduced from other contexts added little new knowledge about the prevalence of trafficking (Palmary et al., 2010). Methodological and conceptual problems were cited as well as a reliance on incorrect, sensationalised, and often xenophobic representations of trafficking victims and perpetrators. This included claims that most traffickers are Nigerians, most victims are street children and ‘prostitutes’, and ‘satanic cults kidnap victims from rural areas’ (Allais et al., 2010, p. 17). However, no source or explanation as to how these claims were arrived at are provided in the report (Gould et al., 2016).

Drawing from the reports on trafficking and other studies, Gould (2014) outlines a number of key assumptions that shape the dominant discourse on human (adult and child) trafficking in South Africa, including:

1. There are many child prostitutes (Cockburn, 2005);
2. The demand for trafficked victims is a result of clients’ demands for young and foreign prostitutes (Allais et al., 2010);
3. Women and youth from rural areas and poor backgrounds are attractive targets for traffickers (Hertrich & Lesclingand, 2013; Molo Songololo, 2000a).

KEY MYTHS AND REALITIES

Drawing from the myths identified by Gould and on our review of the available literature in South Africa, we outline here three key myths that shape what is known about child trafficking. These are set out in the text box below.

Three key myths:

1. Child trafficking in South Africa is widespread;
2. Child trafficking into the sex industry is commonplace;
3. Child trafficking is the main vulnerability faced by children crossing borders.

MYTH ONE: CHILD TRAFFICKING IS WIDESPREAD

The aforementioned Molo Songololo (2000a) study reported widespread cases of child trafficking and argued that children as young as seven were being trafficked into South Africa from places such as Senegal, Kenya, Ethiopia, and Uganda. The ILO (2003) study identified South Africa as a source, transit point, and destination for trafficking for purposes of sexual exploitation. Using data provided by informants in the sex industry combined with migration figures, the authors of the ILO report calculate that there are between 850 and 1,100 women and children trafficked to South Africa for the purpose of sexual exploitation annually. According to the report, the victims of human trafficking, both children and adults, are recruited by coercion, force, or deception (most often concerning employment, marriage, and education). The study focused, in part, on child trafficking from Lesotho to the eastern Free State province of South Africa (Martens et al., 2003). However, it has been noted that these cases came from an interview with a social worker (two girl victims) and also victim files (six females and four males) (Pharoah, 2006). The average age of the identified victims in the victim files was 17 years for the females and 16.5 years for the males (Pharoah, 2006).

The age here is important as it reflects a tendency to see children as a homogenous group—a 17-year-old is considered alongside a 7-year-old—rather than recognising the very different experiences and needs of children depending on their ages, contexts, and backgrounds (O’Connell Davidson, 2005, p. 4). Failure to recognise these differences means that not only are children misunderstood and misrepresented but also that sensitive issues such as sexual activity versus sexual exploitation are not considered in an age-appropriate way. As we pointed out earlier, these issues have been dealt with by the law under the amendments to the Sexual Offences Act (2015) in South Africa and require careful understanding and handling according to the age and circumstances of the children in question in order to ensure the right help is targeted in the right way. This argument does not mean that the sexual exploitation of children should ever be overlooked or condoned but rather that cases of sexual exploitation must be clearly addressed and distinguished from situations in which adolescent children (12–16) may have engaged in consenting sexual activity with one another in order to ensure the appropriate response. For the latter group, the circumstances they are in and what they say and feel about the situation must also be taken into account as ultimately this can impact on how the child in question is assisted.

Despite being widely discredited, the aforementioned HSRC report also underlined claims about child trafficking being widespread. Concern reflecting these claims increased in the lead up to the 2010 FIFA World Cup, held in South Africa. At that time fear about the likely mass trafficking of foreign women and children to satisfy the demand for cheap sex generated by large sporting events was peddled through the media and large-scale anti-trafficking campaigns (Bonthuys, 2012; Gould, 2011; Richter et al., 2012). Such claims, while not unique to South Africa and the 2010 World Cup, have never been substantiated. In fact, South Africa's Department of Justice and Constitutional Development reported at a parliamentary meeting in August 2010 that it did not find one single case of human trafficking during the World Cup, despite widespread training and advocacy campaigns (Department of Constitutional Development, 2010).¹⁵

Available empirical studies show that the actual number of children trafficked in South Africa and found in the sex industry is far lower than the reports suggest. For example, in 2003, a Child Labour Action Programme was developed by the South African government to deal with child labour problems. Government departments had various obligations in terms of the Programme and funding for this purpose was made available by the International Programme on the Elimination of Child Labour (IPEC) of the ILO. A project titled Towards the Elimination of the Worst Forms of Child Labour (TECL) was established to manage this funding. The Community Agency for Social Enquiry (CASE) was commissioned to prepare situation analyses of the Western Cape, KwaZulu-Natal, Mpumalanga, and Limpopo. These were intended to reflect the extent of child trafficking and commercial sexual exploitation of children in these regions and the extent of services available to victims. These reports added to the body of knowledge in South Africa by helpfully cataloguing the services available to victims of trafficking and offering an assessment of the level of awareness of trafficking by NGOs and government agencies in the four provinces.



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¹⁵ This finding is also supported by UNPFA funded research study 'The World Cup Study' undertaken before, during, and after the 2010 FIFA World Cup in four cities where matches were held, which sought to determine the validity of the demand for sex work and thus the risk of trafficking during the World Cup. The study found no evidence that large sporting events increase the demand for sex work and result in an influx of trafficked sex workers to the locale (Richter & Delva, 2010).

CASE found that while many organisations and government departments were concerned about child trafficking and prostitution, few had encountered cases of this form of abuse. These few cases were questioned by other organisations. For instance, one CBO in Mpumalanga Province, Amazing Grace Children's Centre¹⁶ operating in Malalane and surrounding areas, reported being involved in cases in which children were trafficked mainly for labour in mines and on farms and stated that they saw an average of three cases of child trafficking a month. However, ChildLine in the same province said they had not experienced any cases (Lopes, 2005).

Meanwhile, IOM's Southern African Counter-Trafficking Programme (SACTAP), responsible for training government officials and organisational representatives in recognising and dealing with human trafficking, reported that during six years (January 2004–January 2010) of the 307 victims of trafficking in Southern Africa that they assisted 57 were children (Tørres & du Toit, 2010).

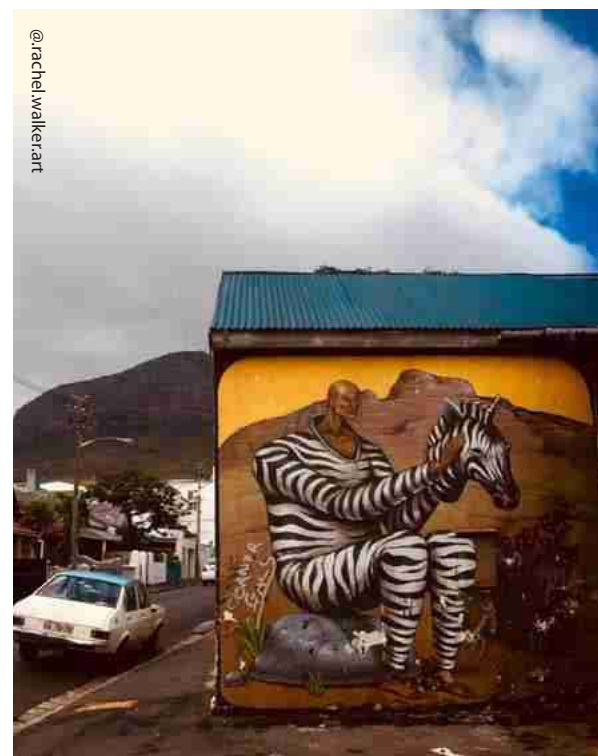
MYTH TWO: CHILD TRAFFICKING INTO THE SEX INDUSTRY IS COMMONPLACE

The highly influential Molo Songololo study, which focused largely on 'child prostitution', and other reports also generated another myth that there is an increasing demand for very young sex workers. The report stated that there are between 28,000 and 38,000 children in the sex industry in South Africa and that parents, particularly mothers, are among the prime traffickers of children (Molo Songololo, 2000, p. 24). In addition, a nationwide police campaign in 2004 claimed to have identified 160 children between the ages of 13 and 17 working in brothels, although not all of these children were necessarily being forced by adults or other children to sell sex (Bermudez, 2008). Fears that a number of children were victims of trafficking circulated and, seen alongside the claims by Molo Songolo, created a strong and frightening picture of children at risk of sexual exploitation. This picture is also reflected in many reports in the media that also claim that there are very high numbers of children being trafficking into the sex industry despite failing to provide substantiated evidence and data (see Somduth, 2018).

Given the high levels of sexual abuse and violence against women and children in South Africa (Jewkes & Abrahams, 2002; Matthews & Benvenuti, 2014), it is really important to be clear on 'evidence' here and what we know about the sex industry and the possible involvement of children. This needs to be separated from what we know about child trafficking. However, given that much of what has been reported is not substantiated and that sexual abuse, sex work, and child trafficking are so easily conflated, this creates a very difficult task, as illustrated in many of the reports referenced here.

¹⁶ Amazing Grace has since changed its name.

It is important to point out that despite the fact that the Molo Songololo report provided no source for the figure of 30,000 children trafficked into the sex industry, many different media sources and reports have continued to unquestionably reproduce this statistic to claim that child trafficking is widespread. For example, a policy paper by UNESCO (2007), released nearly a decade after the Molo Songololo report on the root causes and recommendations for human trafficking, cited 30,000 'child prostitutes' in South Africa. Furthermore, the South African DHA many years later used the same figure to justify the (now repealed) introduction of stricter visa regulations, which required parents to carry an unabridged birth certificate for their children when entering or departing South Africa (Wilkinson & Chiumia, 2013). However, when questioned over the use of the contested 30,000 children trafficked figure, the DHA could only provide evidence of 23 possible cases of child trafficking between 2012 and 2015 (Wilkinson, 2015).



The DHA numbers, supported by the CASE study are also consistent with the findings in a wide-scale, two-year study by the Institute of Security Studies (ISS) and Sex Workers Education Taskforce (SWEAT) on the sex industry and trafficking in South Africa (Gould & Fick, 2008). The study, which was built on a rigorous and sound methodology, set out to quantitatively assess how many women (and children) were trafficked for sexual exploitation. The City of Cape Town was chosen as the location for the research due to the need to limit the geographical scope of the study in order to collect the required data and because the key child trafficking reports by Molo Songololo and IOM had highlighted Cape Town as the epicentre for trafficked victims from refugee-producing countries. The study used mapping of the sex industry to determine the number of sex workers and brothels operating in Cape Town, a telephone survey, and semi-structured interviews. The study sought to identify victims of trafficking that met the three elements of force, deception, or inducement at the point of recruitment, relocation, and exploitation contained within the definition of trafficking in the Palermo Protocol (Gould & Fick, 2008). Out of the 164 respondents who participated in the telephone survey and with whom more in-depth interviews were conducted, no clear reliable cases of trafficking were identified. However, eight possible cases of trafficking were identified, and several cases of exploitation and abuse were found. Of significance, very few children were found working in the sex industry. The survey report showed only five children selling sex, none of whom were forced, other than by circumstances, to do so. The findings also showed clear reasons why children were not found; brothel owners stated that it was too risky and that they would not allow sex workers that appeared underage to work on their premises. Based on interviews with brothel owners, Gould and Fick (2008) stated that there was not a sufficient enough demand to change the industry or to fuel trafficking since the current demand was being met.

Similar results were also found by Hübschle and Goredema (2008). Working with the ISS, Hübschle and Goredema's study sought to establish whether human trafficking was occurring to, through, and from Angola, Botswana, the Democratic Republic of Congo (DRC), Namibia, South Africa, Zambia, and Zimbabwe. The study found few cases of trafficking. In the few incidents found, the perpetrators were family members of the victim rather than organised crime syndicates and the trafficking was for the purpose of labour exploitation. These findings challenge common assumptions that trafficking is mostly for sexual exploitation and that perpetrators are unknown.

MYTH THREE: CHILD TRAFFICKING IS THE MAIN VULNERABILITY FACED BY CHILDREN CROSSING BORDERS

The Molo Songololo report, which came to shape much of what is understood about child trafficking in South Africa, provided recommendations to the Department of Social Development (DSD), DHA, and the South African Police Service (SAPS). The report argued that trafficking was not only increasing in South Africa but also that one of the root causes was that borders are not secure. The link between child trafficking and migration is common and especially the claim that 'foreign' children moving across borders are at particular risk and compose the majority of the high numbers of trafficked children in South Africa.

Frankel's book *Long Walk to Nowhere* (2016) on trafficking in South Africa is a clear example of how this claim is made. For example, he states:

“

UNACCOMPANIED CHILDREN ARRIVING IN SOUTH AFRICA FROM ZIMBABWE AND STATES TO THE NORTH EVEN AS FAR AS THE HORN OF AFRICA ARE PARTICULARLY ON THE INCREASE FROM YEAR TO YEAR AND PROBABLY NUMBER MORE THAN 400 WHO COME UNDOCUMENTED ACROSS THE BORDER ON A DAILY BASIS... [E]VERY ONE OF THESE OFTEN-PREPUBESCENT CHILDREN IS AT EXTREME RISK BECAUSE OF CRIMINAL GANGS WHO WORK THE BORDER AREAS TO PROCURE YOUNG MEN AND WOMEN WHO CAN BE RAPED, KIDNAPPED OR/AND THEN DOLE ONTO TRAFFICKING NETWORKS IN HILLBROW, THE CRIME-RIDDEN FLATLANDS OF JOHANNESBURG DEEMED THE MOST DANGEROUS AREA IN AFRICA. THE LUCKY MALES BECOME SO-CALLED STREET CHILDREN, WHO SURVIVE HOMELESS BUT HOPELESSLY ADDICTED TO GLUE OR OTHER CHEAP INHALANTS. THE LESS FORTUNATE ARE SOLD INTO SEX RINGS OR INCORPORATED INTO BEGGAR ORGANISATIONS THAT WORK THE TRAFFIC LIGHTS IN JOHANNESBURG'S PLUSH NORTHERN SUBURBS. (Frankel, 2016, p. 61)

This type of depiction of the experiences of unaccompanied and undocumented children is important as it easily slips between child trafficking, migration, and crime and suggests the three are connected (as previously noted). Furthermore, descriptions such as ‘crime-ridden flatlands of Johannesburg deemed the most dangerous area in Africa’ and references to trafficking networks, drugs, and rape create an emotive and sensational picture that few would be able to ignore. However, where we find sweeping statements and generalisations about the fate of children, and unsubstantiated claims around numbers we also find a total absence of the complex and mixed experiences and vulnerabilities of children including agency and decision-making that the empirical work with children on the move suggests—as illustrated below.

CHILDREN ON THE MOVE: REASONS TO MIGRATE

There are many different reasons why children migrate, including to overcome poverty, to get away from an abusive home, to find better education or work opportunities to support family back home, to seek adventure, to join other family members, or to leave a place where they no longer have family (Clacherty, 2003; Cossor, 2016; IOM, 2017; Mahati, 2012a, 2012b, 2015; Mixed Migration Centre, 2018; Thatun & Heissler, 2013).

In the literature reporting on the realities of children on the move, there is little substantial evidence to suggest that child trafficking is widespread. An increasing body of work documents the complex reasons why children move while also looking at their agency and resilience (Boyden, 2009; Mahati, 2012a; Palmary, 2009; REACH, 2017). While this work also recognises that children face many vulnerabilities, the emphasis is on recognising that children on the move are not homogenous and that the boundaries between ‘voluntary’ and ‘forced’ mobility are typically fluid (Cossor, 2016, p. 10). A Save the Children study noted that most of the young girls they spoke to had made their own decision to leave, although this choice had been based on a lack of other options. Save the Children emphasised this point as a way of ‘putting to rest the notion that all young children leaving home are coerced into doing so.’ (Save the Children UK, 2009, p. 16). But this point also highlights the fact that realities are complex and fluid—migration can be both a decision and a lack of choice and can move between the two while experiences can be both negative and positive. Children can be vulnerable and face risks while also finding opportunities and increased options when they migrate (Hertrich et al., 2012; IOM, 2011). Research consistently indicates that overall most children feel that the benefits of migration outweigh its disadvantages, even amongst those facing considerably adverse circumstances (O’Connell Davidson & Farrow, 2007; O’Neil et al., 2016; Save the Children UK, 2008; Save the Children UK, 2007; Temin et al., 2013).

Research also shows that migration for children, as for many adults, is not a once-off process but can be ongoing (IOM, 2017; Save the Children UK, 2008, 2013). Although many young people consider migration ‘as a feasible and “normal” strategy to pursue their interests and aspirations’ (REACH, 2017, p. 18), this should not eclipse the fact that children also face considerable vulnerabilities when on the move.

VULNERABILITIES FACED BY CHILD MIGRANTS AND ‘RESCUE’ INTERVENTIONS

These vulnerabilities can include risks of violence, exploitation, and abuse by criminals, including human smugglers who operate at informal and formal ports of entry and exit along South Africa’s borders. Migrant children suffer from various forms of abuse, which can include rape by cross-border transport operators—ironically the facilitators that would often have been hired by their parents and guardians to transport them without the required travelling documents from their homes to South Africa (Mahati, 2015).



Vulnerabilities can also be created by the interventions intended to support child migrants. Often these interventions are based on ideas of what is best for a child but do not necessarily recognise the needs of children or their own realities. This is contrary to the UNCRC which calls for children to participate in matters which concern them and for all interventions to be in the best interest of the children. For example, Mahati (2015), in his study on the interface between migrant children and humanitarian workers in Musina, found out that there has been concerted effort by service providers, including the social workers, to re-unite independent migrant children with their families through the Identification, Tracing, Repatriation and Re-unification (IDTR) programme much to the chagrin of many of these children who are determined to improve their lives in South Africa. The notion of ‘home’ as protective, amongst other things, did not appeal to most of the children involved in Mahati’s study as their homes were characterised by poverty and even abuse. There is abundant literature which shows that a home can be a source of suffering for some children. In addition, Mahati (2015) observed that some migrant children have rejected interventions aimed at placing them in ‘homes’ or temporary places of safety as advancing their best interests, arguing that these places are under-resourced and that these interventions treat them as incompetent social actors, a view they strongly opposed.

Children outside the home or shelters are seen as deviants and at times criminalised—a point emphasised by Mensah and Okyere (2019), who identify the media in particular as portraying children in the Global South as either victims or, when not conforming to normative ideas of children, as criminals. Thus, interventions to ‘rescue’ UMCs, during their dangerous journeys or when they are found in conditions that are assumed to be due to trafficking, are typically geared towards returning children to their homes and reuniting them with their parents or other caregivers. These interventions are premised on the assumption that home is best and safe or at least better and safer than the journey, destination, and experience of having ‘fractured families’ (Hall, 2016, p. 25). For example, In West and Central Africa, the United States Department of Labour has funded an anti-trafficking project called LUTRENA which included the establishment of village-based ‘vigilance committees’ that help ‘to keep children in their homes and in their villages’ (ILO, 2010, p. 2). However, Dottridge (2008) notes that in West Africa ‘children who were returned to their homes (usually in rural parts of countries such as the Republic of Benin) after being intercepted or withdrawn from abusive employment opted to leave home again with a matter of days or weeks’ (p. 46).



When children cannot be immediately returned home, interventions can also involve placing independent migrant children into the immediate ‘custody of responsible adults’ in shelters until ‘parents or guardians come to fetch them’ (Chereni & Mahati, 2014, p. 130). However, in South Africa research shows that very few unaccompanied migrant children in the border town of Musina stayed in shelters (Save the Children, 2016). This is partly due to the fact that there are few shelters available for foreign children and that the ones that are there are often badly resourced, overcrowded, or sites of xenophobia (Elphick & Amit, 2012; Magqibelo et al., 2016; Save the Children, 2009, 2016). However, it is also important to note that staying at a shelter can help children in accessing services such as education, vocational training, and documentation as well as meeting their basic needs for food and water (Elphick & Amit, 2012). In addition, children working is often viewed as incompatible with the ideals of childhood despite the migration of many children who need to earn money and support themselves and their families due to limited options (Mahati, 2012a, 2012b; see also the discussion on the challenge of defining child labour in relation to child trafficking).

The role of socio-economic factors, particularly poverty, as ‘push’ factors for children engaging in migration cannot be ignored and is crucial to understanding their experiences and their vulnerabilities. Hübschle and Goredema (2008), for example, note that these push factors in seeking ‘greener pastures’ are part of the historical and cultural complexities of the Southern African region, which cannot be captured through simplistic trafficking claims. Yet the involvement of children in work, as we have discussed above, is a contentious issue, especially given the links to child trafficking and slavery. Working with these realities, the African Movement of Children and Youth (AMWCY)¹⁷ speaks against setting a minimum age for children to work as stipulated by the ILO Convention Number 138 of 1973 and contained in laws in many African countries (AMWCY, 2011). Instead, they want their work recognised and valued (Mahati, 2012a; Pankhurst, 2015) and to have the right to execute light and limited types of work that leave them space to rest and go to school.

The above examples show how the experiences of children can be misunderstood and misrepresented, which in turn can lead to measures and interventions that can ultimately leave children more vulnerable. They also show that the complexities of children on the move are both clear and substantial. Furthermore, they challenge simplistic claims about child trafficking being the main vulnerability children face and instead suggest that child trafficking is one piece of a much larger picture of migration realities and risks experienced by children. It is a very serious one but certainly, given the data we have looked at, not more widespread than other forms of exploitation and risk.



Overall, the discussion around the three key myths—in particular, the claims in relation to available data—suggest that we need to look beyond the child trafficking discourse while also questioning why it has become a central lens through which children on the move are viewed when the realities are so much more complex. However, drawing on what is reported about child trafficking, one can argue that much of the official discourse on migration amongst children, including that which informs policymakers and the work of many activists including anti-trafficking organisations, rarely engages with these realities, both in Africa and beyond (Deshingkar, 2015; Simkhada, 2008).

17 The AMWCY was founded in 1994 and now operates in 27 countries across East, Central, and West Africa. Seventy-three per cent of its members are children.

3 Developments since the implementation of the trafficking law in South Africa

Overall, very little is known of the impact of the trafficking law in South Africa. The NPA's 2018 annual report does not give details of the number of trafficking prosecutions. However, the 2018 US State Department TIP Report on South Africa recounts that there were only 8 convictions of the 23 initiated prosecutions in 2017. The report also states that although South Africa has made significant efforts to deal with trafficking, it does not yet fully meet the minimum standards for the elimination of trafficking. Significantly, the most recent report notes that these efforts have fallen between 2017 and 2018. '[T]he government did not demonstrate increasing efforts overall compared to the previous reporting period' (TIP Report, 2018, p. 388). Feedback from the NPA regarding progress on the trafficking cases in relation to the TiP Act (2013) and section 71 (or other charges) of Act 32/2007 (where indicated) also show that out of 46 cases of trafficking there were eight prosecutions as of 20 February 2018. The rest of the cases were either pending or had not been finalised for other reasons. Of these cases, the majority (16) were from Gauteng. Four cases are explicitly stated as 'sexual exploitation' and three as 'labour exploitation' with one case involving the trafficking of children from Mozambique. However, the kind of trafficking involved in the other cases was not explicitly stated.



The US TIP report for 2018 commended the South African government for establishing a national anti-trafficking hotline and awareness campaigns. However, the report also states that there were a number of areas in which the government fell short. These include not fully implementing the law due to a lack of funds available; not comprehensively monitoring or investigating forced child labour or the labour trafficking of children in the agricultural, mining, construction, and fishing sectors; not prosecuting or convicting any officials allegedly complicit in trafficking offences (despite allegations of complicity involving immigration and law enforcement officials); and (for SAPS) not identifying victims, even after NGOs had identified them (US Department of State, 2018, p. 388).

The numbers provided in the TIP report do not tell us how many of these convictions were for child trafficking. Although some traffickers received hefty sentences, it is reported that others received suspended sentences and the government has made little progress in the prosecution of traffickers connected to international syndicates. While it is often reported that child trafficking is a grave concern in South Africa, the prosecution rates tell a different story. Given the severity of this offence against children, one would question why a trafficker would receive a suspended sentence. This raises questions of whether children are actually being protected through the use of the trafficking laws or, as the four case studies below suggest, children are facing greater vulnerabilities.

UKUTHWALA – CHILD TRAFFICKING NEXUS

One of the seminal cases on the successful prosecution and conviction of child trafficking in South Africa is *Jezile v State*,¹⁸ a case depicting the ukuthwala-child trafficking-nexus. Before getting into the facts of the case, it is important to determine what *ukuthwala* is. Mwambene & Sloth Nielsen (2011, 1) describe ukuthwala as a cultural practice of forcibly ‘carrying off a girl (mock abduction) for the purpose of entering into a customary marriage’. The intention behind this practice is to commence marriage negotiations and, in itself, it is not a customary marriage or engagement. The primary purpose of *ukuthwala* is to initiate negotiations with the girl’s family for the conclusion of a customary marriage. Historically,¹⁹ *ukuthwala* was a scheme designed by a young couple who, both had the intention of getting married and where trying to force the girl’s parents to accept marriage negotiations from the boyfriend, whom the parents did not like. From this understanding, *ukuthwala* was used as a means to an end by two consenting people wishing to formalize their relationship in the face of resistance from their families.

Facts: Jezile v State

Between December 2009 and January 2010, Jezile, who was 28 years old at the time, travelled to his rural home village in the Eastern Cape with the intention of finding a girl or young woman to marry in accordance with his custom. From the evidence presented in court, Jezile preferred to marry a girl younger than eighteen years of age who was also a virgin. During his visit, Jezile noticed the complainant who was fourteen years of age at the time and decided that she was suitable to be his wife. It is important to note that Jezile and the complainant had neither spoken nor been introduced to each other—they were complete strangers to each other.

18 2015 (2) SACR 452 (WCC)

19 SALRC Discussion paper: Practice of ukuthwala (2015), p7. < <https://www.justice.gov.za/salrc/dpapers/dp132-UkuthwalaRevised.pdf> >

On the same day that Jezile noticed the fourteen-year-old complainant, he instructed his family to start *lobolo* (marriage) negotiations with her family. From the evidence before the court, these negotiations were concluded on the same day. The next morning, the complainant got ready for school, but before she could leave, she was called to a meeting of male members of the two families and informed by a man unknown to her that she was now married to Jezile. Her resistance to the marriage was ignored by these men, and her uncle instructed her to remove her school uniform. Afterwards, she was dragged to Jezile's village by force. With the permission of male members of her family but without her consent, the complainant was taken to Cape Town by Jezile, where he intended to live with her as his wife.

Sexual intercourse between Jezile and the complainant took place on various occasions, including one incident during which the complainant was injured. The complainant managed to escape from Jezile in Cape Town and immediately reported him to the police. The police took her to a doctor, and Jezile was arrested and criminally charged.

When the *Jezile* matter was heard in the trial court, the Trafficking in Persons Act,²⁰ had not been signed into law. Therefore, the legal provisions relied upon at the time included provisions in the Children's Act (2005) which prohibited child trafficking and provisions in the Criminal Law (Sexual Offences and Related Matters) Act,²¹ which contained transitional provisions pertaining to trafficking in persons for sexual purposes.

On 7 November 2013, Jezile was convicted by the Wynberg Regional Court of trafficking of the complainant for sexual purposes in terms of the Criminal Law Amendment Act (Sexual Offences and Related Matters);²² rape of the complainant; assault, grievous bodily harm (GBH) and common assault. Following his conviction, Jezile appealed and lost the case.

Before getting to the judgement and the views of the court, important issues to note in this case include the age of the girl, she was only fourteen years of age at the time, she was still going to school and did not consent to the marriage. The other issue is the nature of the practice, specifically, whether the manner in which *ukuthwala* as practised by Jezile involved human rights violations. There has been confusion as to whether *ukuthwala* is a crime or a social practice that is acceptable in communities. While *ukuthwala* is defended by some as a normal cultural practice, what we see in the Jezile case is the complicated nature of the link between customary law and child trafficking.²³

²⁰ 7 of 2013.

²¹ 32 of 2007.

²² Section 71(1).

²³ Mwambene, L., & Kruuse, H. (2017). The thin edge of the wedge: *ukuthwala*, alienation and consent. *South African Journal on Human Rights*, 33(1), 25-45.

Since *ukuthwala* was a gateway to a customary marriage, the court assessed its validity against the requirements found in the Recognition of Customary Marriages Act (RCMA). In terms of this Act, parties to the marriage had to be eighteen years or older and must have consented to the marriage. Therefore, given the age of the complainant in the Jezile case, her lack of consent, the abduction and, more importantly, the fact that *lobolo* was negotiated and paid before the *ukuthwala* occurred, Jezile had, in the court's view, misapplied the customary practice of *ukuthwala*.²⁴ According to the expert witness before court, the abuse of *ukuthwala* to justify patently offensive behaviour and criminal conduct against women and girls was common and it often subjected them to violence, rape and coerced them into forced marriages.

On the charge of trafficking, Jezile claimed that the complainant's family was fully aware of his intention to take her to Cape Town and had not objected to her relocating with him. The court did not find, on a careful examination of the evidence relating to the relocation, that the complainant had consented to the customary marriage, sexual intercourse as well as the relocation to Cape Town with Jezile. In the court's view, Jezile's reliance on the fact that her family and uncles in particular could have exercised such consent on her behalf is irreconcilable with his claim that she had in fact consented. Furthermore, the court was of the view that it was not possible for Mr. Jezile to use *ukuthwala* to justify the trafficking and sexual assaults because these offenses occurred after the customary 'marriage'.²⁵

The *Jezile* case demonstrates that trafficking is a complex phenomenon that has another dimension to it – the practice of customary law. *Ukuthwala* is a well-known customary practice in most rural communities, and we know of only this one case in which the perpetrator was arrested, prosecuted, and sentenced. Cases such as Jezile, are usually not reported for various reasons, for example, continued normalization of this traditional practice, fear of defying parents and family elders, and lack of information by the victims.²⁶

However, under the Prevention and Combatting of Trafficking in Persons Act (2013),²⁷ which was passed into law after the judgment in Jezile, forced marriages are now defined as a form of child trafficking,²⁸ which the Act clearly prohibits. The importance of including forced marriages in the new Trafficking Act is that it limits the abuse of human rights under the guise of practicing customary law.

24 *Jezile v State* 2015 (2) SACR 452 (WCC) para 75.

25 Para 90.

26 SALRC Discussion paper: Practice of *ukuthwala* (2015), p 16-17. < <https://www.justice.gov.za/salrc/dpapers/dp132-UkuthwalaRevised.pdf> >

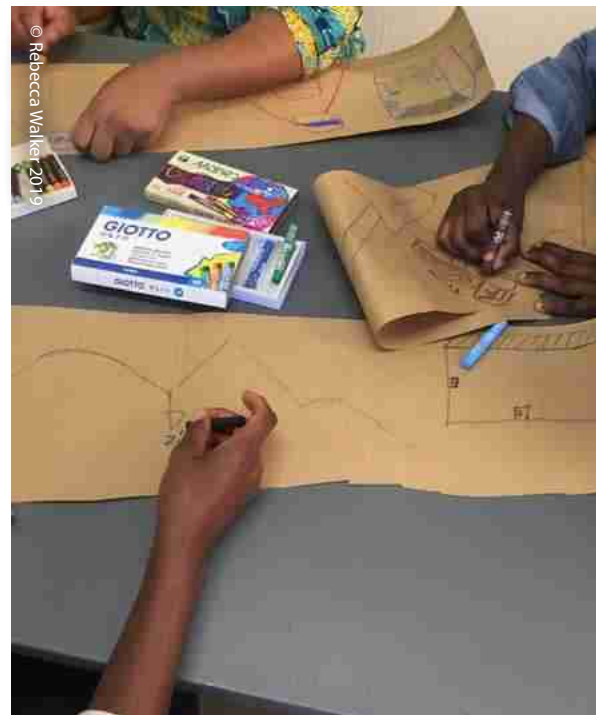
27 Section 4 (1) & (2)

28 Refer to section 4 (1) & (2) of the Act.

SEPARATED ASYLUM SEEKER CHILDREN: UNDOCUMENTED, INVISIBLE, AND UNTRACEABLE

With regard to separated asylum-seeking children, the case of two orphaned children who were in the care of adult relatives who travelled from the DRC to South Africa where their adult carers sought asylum status. The one adult asylum seeker successfully applied to DHA to regularise her stay; she sought to do the same for her niece, but a DHA official noted that because the child was not her biological child, the application was dependent on proof of guardianship that the aunt could obtain from the Department of Social Development (DSD).

The aunt failed to get the proof of guardianship from DSD, and the child was subsequently not granted the temporary asylum seeker permit and was thus an irregular migrant in South Africa. In *Mubake and Others v Minister of Home Affairs and Others (2016)*,²⁹ a court application was made on behalf of the two children to the effect that the definition of ‘dependents’ in the South African Refugees Act should include separated children accompanying their caregivers who are also their relatives. In court, DHA argued that such children should be dealt with in terms of the Children’s Act whereby children are placed with caregivers by means of a court order. DHA further argued that the Children’s Court was better placed (as opposed to immigration officials) to determine if such placement was in the best interests of the child. The investigation by the social worker prior to the court order, DHA purported, could uncover whether the child was trafficked or abducted.



DHA’s rationale in the *Mubake* case was that it sought to protect separated asylum-seeking children from child trafficking or abduction by requesting that a court process determine the best interests of the child. However, it was argued in the High Court that just as biological parents are accompanied by their children, the same should apply in this case-allowing for the initial documentation of asylum-seeking children as a crucial first step in protecting them against trafficking. In handing down judgement, the Court was of the view that the Children’s Court process was long and cumbersome and (unintentionally) posed even greater risks to children being trafficked as they would be left undocumented, invisible, and untraceable. The Court further stated that DHA processes could not be made dependent on the findings of the Children’s Court.

²⁹ *Mubake and Others v Minister of Home Affairs and Others 2016 (2) SA 220 (GP)*. All court papers for this case are on file with the Centre for Child Law.

THE RIGHT TO EDUCATION

According to South Africa's constitution, every child on its soil has a right to education. However, migrant children and other vulnerable children are experiencing difficulties enjoying this right (Chereni & Mahati, 2014; Mahati, 2015; Palmay, 2009). For example, in 2016, the Department of Basic Education (DBE) sent out a notice to schools in the Eastern Cape Province detailing how it was going to restrict financial resources for norms and standards, post provisioning allocations, and National School Nutrition Programme to schools for learners who have valid identity, permit, or passport numbers only. This decision is currently being challenged in court by the Centre for Child Law in the *Phakamisa* case.³⁰ The DBE alleges in its opposing affidavit that the rationale for this decision (as it pertains to undocumented migrant children) is to curb human trafficking and child abduction amongst other vulnerabilities that children face.³¹ As can be seen from the above, human trafficking is being used as a justification to exclude undocumented learners from accessing the right to education. Unfortunately, the exclusionary effect of this policy also negatively affects undocumented South African children. A major criticism laid against this policy is that the means do not justify the ends. Furthermore, there is no explanation or evidence as to how denying children education makes them less vulnerable to human trafficking.

CHILD TRAFFICKING VERSUS CHILD SMUGGLING

In South Africa there is an ongoing debate on how to distinguish children who are victims of trafficking from those who are victims of smuggling and on how to deal with them. One such case, which was widely covered in the media, occurred in November 2017 when eight Zimbabwean children were found in a truck by members of the South African Police Service (SAPS) in Rustenburg on their way to Cape Town to visit their parents. The children, between the ages of 2 and 14 years, were smuggled into the country by the truck driver. When they were intercepted by SAPS, the children were removed and placed in temporary safe care under the protection of the DSD.

In February 2018, eight adults who claimed to be the parents of the children applied for a court interdict at the North Gauteng High Court in Pretoria. The alleged parents demanded that the children be released into their care, but the DSD refused to release the children, citing trafficking concerns since the parents could not prove their parentage. Subsequently, the children were repatriated to Zimbabwe in March 2018.

³⁰ Centre for Child Law & Others v Minister of Basic Education & Others, Grahamstown High Court Case No. 2480/17 (Phakamisa case).

³¹ Paragraph 74.

In another case, on 29 March 2018 at the Bakwena Plaza tollgate on the N1 road that travels north from Johannesburg to Zimbabwe, another group of eight Zimbabwean children travelling in a mini-bus taxi from Zimbabwe were intercepted by the South African Police Services (SAPS) together with officials from the Department of Home Affairs (DHA). The taxi driver (who had the permission of the parents and guardians to travel with the children) was arrested on suspicion of child trafficking. Subsequently, the children were taken to the Hammanskraal Police Station and later to a place of safety at an orphanage home in Hammanskraal. The parents and guardians of the children were immediately alerted regarding this development.

On that same day, the children's fathers went to the Hammanskraal Police Station to see their children. They met with a DHA official who informed them that they could not see the children as it was late and the children were going to be taken to a place of safety. The official advised the fathers to return on 3 April 2018 to fetch the children but specified that the mothers of the children should meet with him instead. When the mothers showed up, DHA officials refused to reunite them with the children until the Centre for Child Law made a court application on behalf of the parents in the *Khupe* matter.³²



In May 2018, the Children's Court in the *Khupe* matter granted an interim court order reuniting the children with their parents. Furthermore, the Court directed the DSD to file a report in terms of section 155(2) of the Children's Act³³ and the DHA also to file a report regarding the children.

These four cases illustrate the complexities of understanding child trafficking through the law and everyday realities, especially since the implementation of the TiP Act (2013). Overall, these cases highlight the need to better understand how 'trafficking concerns' are used by different government departments to justify the design and implementation of punitive and unjust policies, which can ultimately render children, particularly migrant children, more vulnerable.

³² In the Moretele Children's Court (file no. 14/1/14/ (118/18)).

³³ Section 155(2) of Act 38 of 2005 states that before a child is brought before the Children's Court, a designated social worker must investigate the matter and within 90 days compile a report on whether or not the child is in need of protection.

4 Conclusion to Literature Review



This literature review has considered how concerns about child trafficking in South Africa have led to a discourse that, in the absence of a strong empirical evidence base, is shaped by specific claims and assumptions. It shows that much of what is claimed to be known is also based on confused and conflated ideas of trafficking as well as key myths that conflate stories of independent/unaccompanied child migration, child labour, smuggling, and the sexual exploitation of children. A review of literature and data on trafficking in South Africa shows how trafficking was placed on the political map and became a central issue for the government despite any clear evidence that it is a widespread problem. In fact, it is apparent that child trafficking and even child prostitution are not commonly encountered by organisations or government departments in South Africa and that the realities of child migrants are far more diverse and complex than the discourse on child trafficking presents. These findings are also reflected in the case studies, which show that although 'trafficking' concerns were used to justify the design and implementation of punitive and unjust policies directed at migrant and non-migrant children, only one such case actually made reference to the trafficking law. Therefore, reflecting on the disconnect between the data and what empirical studies are showing, one must ask whether the absence of large numbers of cases of child trafficking is due to either:

1. A lack of research and information, including challenges in reporting that result in low case numbers;
2. The fact that the problem may not be as severe as it is portrayed to be.

Considering option two, if the problem is not so severe, then why does the overall discourse in the media, civil society, and government suggest otherwise? It is with these issues in mind that a small primary research study was developed with the aim of better understanding what is happening on the ground and using the findings as a launch pad for a larger study that can provide a solid evidence base to inform policymakers and service providers.

SECTION 2

Methodology

MAPPING AND SAMPLING

The study began with a mapping of key organisations working with child migrants and on migration-related issues in Vhembe District in Limpopo Province and Ehlanzeni District in Mpumalanga Province. These areas were selected as key border areas where a high number of migrants are found (often in transit) as they enter the country from mainly Zimbabwe, Eswatini (formerly known as Swaziland), and Mozambique. Within these provinces, the researchers drew on the contacts they established during their previous research on the migrant population, including community members, service providers, government departments such as the Department of Social Development (DSD), and non-governmental organisations. Following the mapping exercise, service providers were purposively selected. The key selection criteria were that they should be working closely with migrant children and be knowledgeable of the state of human trafficking in their areas of operations.



FIELDWORK

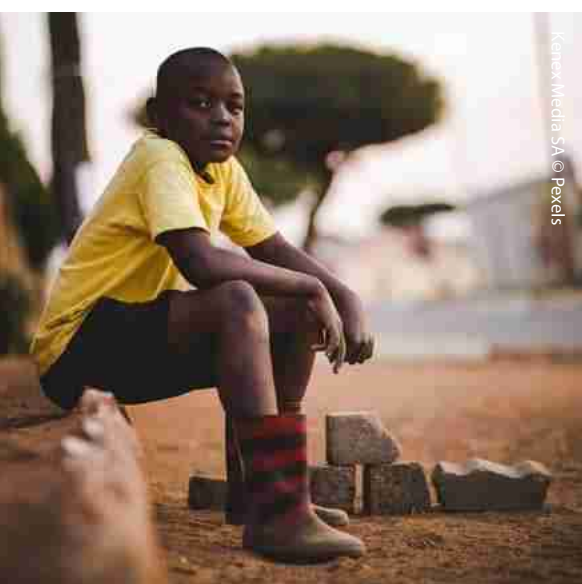
Fieldwork was conducted in the following provinces: Limpopo, Mpumalanga, Gauteng, and Western Cape. The field research in Limpopo and Mpumalanga took place in November and December 2018; interviews in Gauteng and Cape Town took place from October 2018 to February 2019. In Limpopo and Mpumalanga provinces, fieldwork took no more than three days in each area. The main fieldwork took place in these two provinces as we wanted to get insights into the child trafficking phenomenon from service providers and migrant children in border areas through which most foreign migrants pass.

MPUMALANGA PROVINCE

In Mpumalanga Province, fieldwork was conducted in several places within the Ehlanzeni District's Nkomazi Local Municipality as the service providers were not concentrated in one area like in Musina, Limpopo Province. The areas are as follows:

- Tonga, a communal area;
- KaMhlushwa;
- KaMaqhekeza;
- Komatipoort, a town less than 10 km from the Lebombo Border Post and in close proximity to the Kruger National Park;
- Malalane, a small town that is the seat of the municipality;
- Mbuzini, a village where South Africa, Mozambique, and Eswatini converge.

Nkomazi is located between the northern part of Eswatini and the eastern part of Mozambique. It is worth mentioning that the northern part of the municipality borders the Kruger National Park, which makes it very dangerous for migrants from Mozambique who use illegal entry and exit points through that park. The main national road N4, which forms the so-called Maputo Corridor, passes through Ehlanzeni District. This road links Johannesburg, the commercial capital of South Africa, to Maputo, the capital city of Mozambique.



Ehlanzeni District, like other districts in this province, has a huge population of first- and second-generation migrants from Mozambique as well as migrants from Eswatini (see Chiyangwa, 2018). Thousands of Mozambicans fled to South Africa during the long civil war that started in the 1970s and ended in 1992. Poverty, unemployment, and some political instability (in certain areas) continue to prevail in Mozambique and Eswatini, forcing many of their nationals, both women and men, both girls and boys, to move to South Africa. In terms of the main economic activities, it has tourism, mining, and agriculture sectors (large sugar cane, citrus, and banana plantations), which employ many migrants particularly from Mozambique and Eswatini. The migrant workers include women and children.

LIMPOPO PROVINCE

In Limpopo Province, fieldwork was conducted in Musina, located in Vhembe District. It is a small but fast developing South African border town which is about 10 km from one of Africa's busiest border post, Beit Bridge. Musina neighbours the town of Beit Bridge in Zimbabwe, a country which has been in a state of political and economic turmoil since 2000. The former mining town, now dominated by retail business, is surrounded by commercial farms. Crime is rife in the town, but it has generally not experienced xenophobic violence. Some key informants attributed this situation to the town's long history of hosting migrant workers from countries like Zimbabwe and Malawi amongst other factors (see Mahati, 2015). It currently has a significant population of migrants of all ages who are mostly in transit to other parts of South Africa. From 2006, the town, mainly because of the large presence of Zimbabweans fleeing the economic and political crisis in their country, has been hosting several non-governmental organisations who are providing certain services to migrants, such as temporary shelter, food, and protection amongst other things.

GAUTENG AND WESTERN CAPE PROVINCES

In Gauteng Province, fieldwork was conducted in Johannesburg and Pretoria; in the Western Cape, research was conducted in Cape Town. Hosting South Africa's commercial and political capitals, Gauteng Province has the most numbers of both internal and foreign migrants. It is perceived by migrants to provide a lot of economic opportunities due to jobs in the mining sector, the restaurant and entertainment industries, a strong retail sector, and also a vibrant and accessible informal work sector. The interviews that were conducted were mostly with service providers and policymakers. Meanwhile, Cape Town, a city which hosts the country's legislature, is also a popular destination for both internal and foreign migrants. A number of the first key reports on child trafficking in South Africa point to Cape Town as the epicentre for trafficked victims from refugee-producing countries and as a gateway by perpetrators of human traffickers to send victims abroad. Interviews with some service providers and policymakers were also conducted.

INTERVIEWS

The interviews were conducted with service providers working with migrant children and/or broader migrant communities (this included international non-governmental organisations (INGOs) and local NGOs), the South African Police Services (SAPS), community members, and migrant children. The interviews included questions about child trafficking, child migration, and children's rights and investigated the nexus of trafficking, migration, and security. The focus group discussions (FGDs) with child migrants explored their experiences of crossing borders, vulnerabilities they faced, and challenges they experienced living in a border area in South Africa.

Overall, a total of 34 interviews and 3 FGDs were conducted. The interviews were semi-structured and guided by a set of questions around child trafficking, child migration, and children's rights as well as questions exploring the nexus of trafficking, migration, and security. Interviews were also shaped according to the work and interests of the various respondents.

In the Limpopo Province, two FGDs were held: one with migrant girls staying at a girls' temporary place of safety and the other with migrant boys staying at a boys' temporary place of safety. On average, each FGD had eight children, and they all volunteered to participate in the study. The purpose of the FGD was to allow space to collectively explore the key questions being asked, enabling the young people to share thoughts and experiences with facilitation from the researcher. The FGDs explored migrant children's experiences of crossing borders, vulnerabilities faced, and current challenges. The aim was to keep the discussion general rather than personal to avoid placing children at risk and further traumatising those who may have already been through difficult situations.

The age range for participants in both groups was from 12 to 18 years. As it was difficult to locate and organise an FGD with first generation migrant boys and girls within the three days of fieldwork in Mpumalanga Province, an FGD was held with second generation migrant girls between 15 and 17 years who were living with their parents and guardians.

All adult interviewees were provided with an information sheet, and they provided either verbal or written consent to be interviewed and to have the interviews recorded by the research team. All children who participated in the interviews and FGDs also provided either verbal or written consent to be interviewed and to have the interviews recorded by the research team. This followed obtaining assent from their guardians/caregivers. Some of the interviews were conducted in Shona as the children felt more comfortable conversing in their home language with co-author Mahati, also a native Shona speaker. In such cases, information sheets and assent and consent forms that had been translated into Shona were used.

In order to respect and protect the identities of children who participated in the FGDs, they freely opted to use either pseudonyms or their real names. However, in this report, we have neither used the real names of the child migrants or for adult interviewees, nor have we revealed their documentation status in order to protect them from possible exclusion and marginalisation from basic services and deportation.

ANALYSIS AND FINDINGS

Nearly all of the interviews and FGDs were recorded for the purpose of transcribing. There were a few individuals who chose not to be recorded and, in these cases, detailed notes were taken and written up afterwards. We then used an inductive context analysis approach that allows for a set of themes to emerge from the data based on the identification of 'indigenous concepts' (Patton, 1990, p. 390). From the 'indigenous concepts' that were drawn from what was said and key ideas that emerged, we then looked for key themes that stood out across all of the data. The findings are presented in Section Three under eight key themes, which are intersectional in nature. Each theme is analysed in the context of the findings of the literature review.

STUDY LIMITATIONS

This section describes some of the limitations encountered during fieldwork. Although they are not unique, it is important that such challenges and refusals are documented so that they can be kept in mind when understanding the study findings and planning and conducting similar research.

- Some key informants, such as informal cross-border transport operators in Musina, expressed fear for their lives or sources of livelihoods if they were seen talking about their work, which they associated with criminality. For future research more time should be dedicated to building deep relationships and trust with respondents living and working in a dangerous environment and dealing with sensitive topics like human trafficking as well as to being in the field and observing movements, engagements, relationships, and key issues framing the context.
- Access to policymakers and state officials was difficult to secure as some were not cooperative and unwilling to engage. Even when permission had been granted, certain key informants, including in key government departments, refused to be interviewed. It is paramount that those creating and working with policy are willing to engage and support such research.

EVIDENCE AND PERCEPTIONS



During the collection of the data, one of the major challenges faced was dealing with perception versus evidence of child trafficking. Many of the studies on child trafficking we looked at during the literature review had weak methodologies and failed to engage with the various possible biases and challenges around how data is (re) presented. However, the empirical work shows that in the absence of data on trafficking, claims about trafficking numbers and stories abound. These stories and claims are mostly based on hearsay and assumptions and not backed by evidence. Consequently, conclusions about child trafficking were reached on the basis of people's perceptions and the limited evidence available to them. This situation presented a challenge to the researchers as many people, including law enforcement agents, claim to 'know' about trafficking but have limited understanding of this subject, have not encountered cases or engaged with trafficking realities, and do not always make this clear.

ETHICAL CONSIDERATIONS

Given that we planned to do interviews with service providers and children, many of whom we assumed would potentially be in vulnerable and precarious situations (based on our previous experience of work in this area), it was imperative to ensure that the research approach was ethically sound and that we had considered the possible challenges and had a number of measures in place. This included working with social workers in the children's shelters, having a list of organisations that we had contacted and that had offered to provide support to those interviewed if needed. Ethics clearance for the study was provided by the University of the Witwatersrand. We also got consent from the management of temporary places of safety shelters as they were '*in loco parentis*' (a substitute parent) to unaccompanied migrant children. However, these children were still able to either refuse or accept to participate in the study.

SECTION 3

Findings and Discussion

Data from the interviews with service providers as well as from the interviews and FGDs with migrant children has been categorised and analysed in the following eight key themes:

1. Human trafficking is not well understood and rarely encountered.
2. Human smuggling, often enabled by state actors is widespread.
3. The myths of child trafficking simplify the complex realities of child migration.
4. Child migrants fear trafficking but largely face other vulnerabilities.
5. There is little evidence of 'sex trafficking'.
6. State and non-state actors lack resources to deal with migrant communities.
7. Recent changes in law intended to manage migration, detect trafficking, and protect child migrants leave children more vulnerable.
8. Child migrants face challenges accessing education due to a lack of documentation and unlawful exclusion by the State.

THEME ONE: TRAFFICKING IS LITTLE UNDERSTOOD AND RARELY ENCOUNTERED



'IF THERE WERE TRAFFICKING CASES, WE WOULD KNOW ABOUT THEM. BUT THEY ARE NOT COMING... SO, WHERE ARE THEY?' (Shelter Manager, Cape Town).

Little awareness of what constitutes human trafficking

Nearly a decade ago, De Sas Kropiwnicki (2010) observed that there were low levels of awareness on human trafficking amongst service providers in Musina, Limpopo Province. Despite the purported high concerns over human trafficking by the state, evidence from Musina shows that this is still the situation in that area as well as in the Ehlanzeni District in Mpumalanga province. Interviews with state and non-state actors in this study revealed that overall there was very little understanding of what human trafficking is, despite a few exceptional cases, and especially of how it is defined in both the Palermo Protocol (2000) and the South African TiP Act (2013). This finding reflects the key issues raised in the literature review regarding challenges with the definition of trafficking and the conflation of various different issues with trafficking, which lead to a confusing and misrepresentative picture of what is really happening.

Confusion was particularly widespread amongst those working on the ground in the border areas, including police and service providers, and in shelters for migrants. For example, a senior police officer in Mpumalanga who works with many stakeholders within and outside South Africa to deal with challenges faced by migrants including victims of child trafficking had this to say about trafficking:

“

IT IS MY ASSUMPTION THAT IT'S HAPPENING BECAUSE THE FENCE [WHICH SEPARATES SOUTH AFRICA AND ESWATINI] IS DAMAGED. PEOPLE [FROM ESWATINI] ARE JUST GETTING IN AS THEY WISH. AUTOMATICALLY YOU CAN ASSUME THAT A LOT IS HAPPENING... YOU CANNOT SAY IT'S NOT HAPPENING BECAUSE THERE IS NO CONTROL. THE BOUNDARY [FENCE] IS DILAPIDATED. (SAPS Officer, Mpumalanga)

Despite the implications that the South African government is concerned about tackling human trafficking, one SAPS officer in Komatipoort indicated that she was the only one at her police station, which is situated along the busy Beira Corridor and is less than 10 km from the reportedly 'porous' Lebombo Border Post, who understands trafficking and is able to identify such cases. In reference to child trafficking, she explained:

“

... HERE AT THE POLICE STATION, I'M THE ONE WHO UNDERSTANDS IT. I THINK I'M THE ONE THAT UNDERSTANDS [IT] THE MOST. THE MEMBERS [REFERRING TO HER FELLOW POLICE OFFICERS] ONLY HEARING FROM ME, THAT'S WHY IT'S SOMETIMES DIFFICULT FOR THEM TO OPEN THESE CASES BECAUSE THEY HAVE TO PHONE ME FIRST TO HEAR IF THIS IS THE RIGHT CHARGE OR WHAT. (SAPS Officer, Komatipoort)

This general lack of clarity around child trafficking was echoed by a number of key informants across Musina and Ehlanzeni District who stated that the state actors across relevant departments with whom they interacted have very little knowledge on what constitutes child trafficking. This can be illustrated by Sindy³⁴ who works for a migration-focused UN organisation that provides training and advocacy awareness on trafficking in Cape Town. Sindy stated, 'There is lots of confusion [surrounding trafficking] amongst government departments especially regarding cases of unaccompanied migrant children' (Sindy, UN Organisation, Cape Town).

34 All names used in the findings section have been anonymised through the use of pseudonyms. No real names have been used. We have also deliberately altered some of the work affiliations/organisation names in order to protect those participants who did not wish to be identified.

However, this confusion is not surprising as these actors also reported receiving very little training on trafficking or child trafficking and thus having little understanding of the law and policies related to trafficking. Speaking for himself and his department, a senior police officer in Musina noted, 'We need to familiarise with the new law [referring to the TiP Act]. Maybe if we apply it carefully, we will be able to control the situation'. He claimed that some NGOs had conducted some workshops on human trafficking and that many service providers had been trained. However, a number of service providers, particularly in Limpopo and Mpumalanga Provinces, pointed out that though they occasionally talk about human trafficking during the stakeholders' meetings, there had been very few workshops on human trafficking in recent years and that many service providers lacked information on the issue.

A number of migrant children, both boys and girls, who are also supposed to be beneficiaries of this training of service providers on trafficking, indicated that they had not been educated on this subject by the service providers in their areas. Instead they based their information on the media and from a few lessons at school. However, it is worth noting that a significant population of unaccompanied migrant children and even local children are not attending school, so many do not receive information on child trafficking.

Key stakeholders in Cape Town and Johannesburg—including NGO and INGO staff and service providers—had a better understanding of trafficking and reported having received more training on the issue. Some of the INGOs working directly with migrant children also had a much clearer idea and spoke of the trends that they had witnessed in their work, including children coming from Mozambique looking for work in South Africa. Roman, working on child protection for an INGO, noted that 'many boys are coming from Mozambique—and the migration of children can turn into trafficking'. He described how many children get transported with the intention to exploit them, including girls for domestic work and sexual exploitation. However, Roman, like many other key informants in Musina and Ehlenzeni District, did not give any numbers. In addition, Roman noted that a number of cases of human smuggling had been wrongly identified and misrepresented in the media as trafficking. He explained that 'there is a need to understand broadly in South Africa that a number of parents migrate as economic migrants ... leave their children because they cannot get documented ... then they try and bring the children and they are intercepted' (Roman, INGO, Johannesburg).

In such cases, Roman explained, the adults travelling with the children are arrested but the children, who cannot be arrested as they are under 18, are placed under the care of the DSD who struggle to talk to the children due to language barriers. The DSD then calls in Roman and his organisation to help with 'cultural mediation'. He concluded by saying, 'In most of these cases it is smuggling ... there is a level of exposure to risk ... but most are smuggling ... we all know the children are being smuggled but it gets reported otherwise and the government don't try and challenge this' (Roman, INGO, Johannesburg). Generally, there was a tendency by some service providers to assume that some UMC who are being smuggled into South Africa are victims of trafficking, a point that is discussed further in the next section.

What is known is based on hearsay and the media

As a way of unpacking the myths and realities of child trafficking, this study sought to find out about the sources of information on child trafficking—who provides the information, what it was based on, and how it has become a part of the ‘national narrative’ on the issue. In the border areas where a clear understanding of trafficking was by and large absent, much of what was known or claimed to be known about child trafficking was based on hearsay and stories that had circulated in the media and in the communities. Many cases of exploitation such as smuggling and sexual exploitation that do not amount to child trafficking were also described in terms of child trafficking. A SAPS sergeant in Malalane who has years of experience patrolling the N4 road that forms part of the Maputo Corridor route, for example, stated that he had not handled any cases of child trafficking. He based much of his knowledge on what he had heard on the radio and television. The police officer described how he believed that child trafficking is being fuelled by money and the practice of *muti*³⁵ and especially targeting albino children. These were claims that were also made in the HSRC report (Allais et al., 2010) and in De Sas Kropiwnicki’s study for the IOM (2010)—leading us to question how it is that eight years later the same kind of confusion exists.

When asked if he thought child trafficking was a reality in South Africa or a myth, the senior police officer continued, ‘I cannot say it’s something like a myth ... yah ... it’s something real because even if I can say it didn’t happen to me here but when they show you (whilst you are) watching the TV, you can see that in other places it has happened’ (SAPS Sergeant, Malalane). This senior police officer’s source of information were not observation, official reports, or circulars but was the same as the migrant children’s, the media—a source of information that, as we have shown in the literature review, is widely known to sensationalise issues, particularly regarding foreign migrants and trafficking (Munusamy, 2015). Rarely do such reports rely on substantiated evidence to back up their claims.

Another key informant, Rose, working for an INGO in Cape Town that assists migrant populations, also reported that very little is actually known about trafficking and that people build stories based on hearsay. Rose described that ‘there is a lot in the media and on the news and these things aren’t always reported correctly. So then what you know is not what is the real case’ (Rose, INGO, Cape Town). This was also backed by a manager of a shelter for unaccompanied children in the Western Cape, which deals with mostly foreign-born children, who commented, ‘All these stories about the trafficked children ... they are constructed on ... I don’t know what reality. If there were those children they would be here ...’ (Shelter Manager, Western Cape).

35 Muti is a term for traditional medicine in Southern Africa.

The cases that were reported by a number of service providers and child migrants were also mostly based on rumours and hearsay, as described under Theme Four. Though their sources were dubious, it was very evident that they elevated these reports as factual as they went used them to inform their practices with regard to trafficking. In the process, the service providers like SAPS were undermining migrant children's rights to protection shown, for example, by the common practice in Ehlenzeni District of swiftly but unlawfully deporting children who did not have proper travelling documentation.

Very few cases of trafficking encountered

Various reports, especially by advocates of anti-trafficking, state that there are many cases of child trafficking in South Africa. However, we found that very few cases of child trafficking had been encountered in South Africa's Vhembe and Ehlanzeni districts, which border with Mozambique, Eswatini, and Zimbabwe. This was also the case in Cape Town and Johannesburg, the common places of destination for migrants in South Africa. These findings are in line with the point made by De Sas Kropiwnicki (2010) that there is scarce information on the incidence and prevalence of child trafficking in Musina, Limpopo, and with the findings of Gould and Fick's (2008) study looking at trafficking within the sex industry. As previously noted, the conflation of smuggling and trafficking led some key informants to suggest that they have dealt with hundreds of cases of suspected trafficking; however, upon probing by the researchers, the informants described only one or two clear-cut cases of trafficking. Importantly, shelter managers dealing directly with migrant children in Mpumalanga and in Cape Town reported very low levels of trafficking cases.

Rose, a shelter manager in the Western Cape, for example, was very clear that child trafficking was not an issue they deal with. She explained that compared to the other pressing issues that they face, such as documentation and access to education, trafficking is not featuring. Rose explained, 'Over 12 years of the shelter and with 80 children, of which over 80 per cent are foreign, we have had only two possible cases of child trafficking' (Shelter Manager, Cape Town).

A SAPS officer in Mbuzini who has been working at the borders of Eswatini and Mozambique with South Africa since 2009 and was well aware of the migration situation there stated that though there are many Eswatini nationals who cross at informal entry points into South Africa on a daily basis, he has never dealt with any cases of trafficking. Yet in contradiction, he emphasised that trafficking was a big problem in the area in which he operated. He, like other police officers, mentioned that he was drawing his information from reports in the media. The challenges he and other officers reported were cases of migrant children working on farms or herding cattle in South Africa. While this work could be exploitative and dangerous for the children, it was not obviously child trafficking. As stated earlier, the SAPS sergeant in Malalane also confirmed that he had never handled any cases or assisted victims of child trafficking.

A senior care and support worker in Musina with more than 10 years of experience of assisting thousands of UMC (both boys and girls), participating in several workshops on migration and stakeholders migration forums in Musina, also observed that 'there is no adequate information on child trafficking and it's still a grey area'. The same informant also went on to recount that they very rarely engage with child trafficking: 'Currently, we have no cases of trafficking... we last heard a case of trafficking in 2012'. Interestingly, this 2012 case is one of the few cases that was also mentioned by some key informants working for an NGO that provides legal services to thousands of migrants in Musina.

However, the situation was different in Western Cape with regard to service providers receiving training on trafficking. For instance, Rose, the shelter manager in the Western Cape complained that they have received a lot of training despite the absence of trafficking cases in the shelter. She added that they were offered funding for trafficking-related programmes even though what they needed was help with documenting the children: 'We receive far too much training on trafficking—and no training on how to get kids documented' (Rose, Shelter Manager, Cape Town). When asked about the focus on child trafficking and why there was so much training and funding available, Rose unequivocally claimed that child trafficking as an issue was, 'utterly and absolutely inflated...and a guise for the real problems being faced'. This also reflects the experiences of Helena, a lawyer working for a community-based organisation supporting migrant communities, including children, in Johannesburg. Helena, who has been working for years on the legal issues facing migrants, commented, 'Trafficking is definitely not a key issue ... in 7 years I dealt with only a few cases that could potentially qualify as trafficking but it was never a clear-cut situation' (Helena, NGO, Johannesburg). In contrast, the senior care and support manager at a shelter in Musina reported receiving no training.

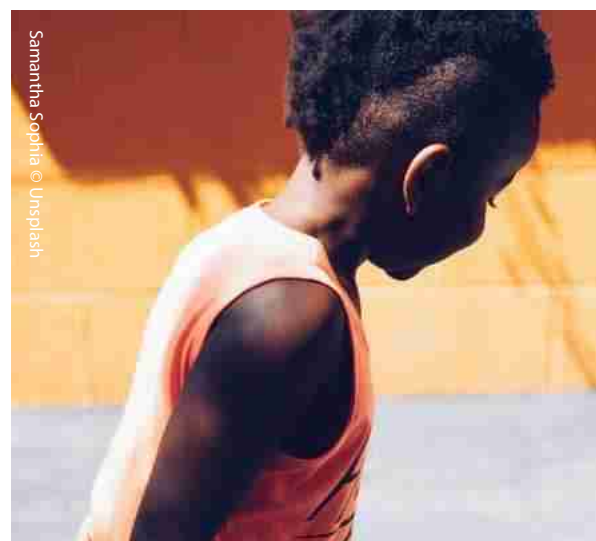
Fear and unreported cases

A number of key informants talked about reasons why child trafficking cases might not be reported, including fear amongst local and migrant communities. For example, in Malalane a senior police officer was of the view that:

“

PEOPLE CAN SEE THESE THINGS HAPPENING BUT NOT REPORTING NOW. MAYBE THESE PEOPLE [REFERRING TO TRAFFICKING VICTIMS] WILL STAY TO THIS HOUSE 2 OR 3 DAYS, THE FOURTH DAY WHEN THE PEOPLE LEFT, THAT'S WHEN THE COMMUNITY WILL START TO REPORT. SO OUR COMMUNITY IS NOT YET COMPETENT TO REPORT. (Sergeant M, SAPS, Malalane)

The view that fear prevented many people from reporting cases of suspected trafficking was supported by a care and support worker who works for a leading child protection agency at the Beit Bridge Border Post and who, whilst being interviewed, whispered, 'Fear for their own lives after revealing information... Fear of being intimidated and persecuted after revealing information' (Support Worker, NGO, Beitbridge). Though a trained child protection agent with access to support systems and information, she also feared for her life when dealing with cases of suspected child trafficking. Arguably, a sense of fear is heightened amongst UMC and victims of child trafficking, which makes it difficult for them to report suspected cases.



Roman, working on child protection for an INGO and based in Gauteng, offered a different view in which he argued that the fear was found amongst parents who had arranged for their children to be smuggled over but then could not come forward and claim them from the DSD because the parents were undocumented. His emphasis was not on fear driving a low number of reported cases but rather on fear of the state resulting in cases claimed to be trafficking not being challenged because parents were not in a position to do so. However, Gina, an advocacy officer from a centre supporting migrants in Cape Town, offered a more nuanced view on this when asked if there may be many trafficking cases that do not get reported:

“

YES... MAYBE YOU CAN SAY THIS... BUT WE WORK HERE DAY IN, DAY OUT WITH MIGRANT COMMUNITIES... WE SEE THE WORST OF WHAT THEY FACE... SOME OF THESE THINGS AND THE DIFFICULTIES, THE REFUSAL TO HELP FROM THE GOVERNMENT DEPARTMENTS... YOU CAN'T IMAGINE HOW DIFFICULT IT IS... AND THEY WILL TELL US... [THEY] KNOW WHAT IS HAPPENING ON THE GROUND AND, AND I CAN TELL YOU THAT TRAFFICKING IS NOT THE BIG ISSUE... EVEN IF WE SAY IT'S FEAR TO REPORT... I AM SO SURE IT IS NOT THIS. (Gina, Advocacy Officer, Support Centre, Cape Town)

While it can be argued that some cases of trafficking may not be reported and others not identified due to being complex, it still remains the case that what key informants were reporting and describing to us is at odds with the ways in which child trafficking is represented in South Africa. This is both in the media and in key literature as well as amongst 'experts' informing government and helping to shape policy and programming.

THEME TWO: HUMAN SMUGGLING, OFTEN ENABLED BY STATE ACTORS IS WIDESPREAD

The government is blind to the shades of trafficking—and what is happening is what they are not looking at. (Roman, INGO, Johannesburg)

While a number of key informants were confused about what constituted trafficking, the conflation of smuggling and trafficking was common amongst many of those interviewed across both border sites. In addition, when smuggling was discussed, a number of informants implicated state actors, including police and border officials, in the act either working with smugglers or taking bribes to allow it to happen without intervention.

Human smuggling versus trafficking

As shown in the literature review, human smuggling is widespread across South Africa's borders. In the FGDs with migrant children, the majority of children who stated that they had entered the country illegally revealed that they had been smuggled. Smuggling was also identified by service providers and SAPS as the most common way that migrant children cross borders. A senior SAPS officer in Musina had this to say about the smuggling of children into South Africa:

“

THIS ONE INVOLVES PEOPLE LIKE SAY IN THIS TOWN WE HAVE THE *MAGUMAGUMA*³⁶, ALTHOUGH I AM NOT SURE IF IT MEANS A SMUGGLER OR A THIEF, BUT ANYWAY, WHEN YOU LOOK AT HERE IN MUSINA, THERE ARE SO MANY SMUGGLERS. I DON'T KNOW THEM, BUT I HEAR ABOUT THEM. AND YOU FIND CHILDREN OR YOUNG ADULTS ENTERING SOUTH AFRICA WITHOUT DOCUMENTS AND SOMEONE WAS PAID, AND THE MOVEMENT WAS FACILITATED BY SUCH A PERSON AND THEN THEY ENDED UP BEING HERE. IN MOST CASES, THE CHILDREN ARE JUST DROPPED AT THE GATE OF THE SHELTER AND THE MANAGEMENT OF THE SHELTER WILL HAVE TO TAKE THEM IN. (SAPS Officer, Musina)

However, despite the recognition of widespread child smuggling, there was little effort to separate it from child trafficking. For example, a female care worker with over 10 years of experience working as a supervisor at a place of safety for migrant children at the time of the research noted, 'This week alone we have helped 47 children who were being trafficked'. When the researcher enquired further, however, it transpired that this was a case of children who had been smuggled from Zimbabwe and were on their way to visit their parents living and working in South Africa. This was further supported by Roman, working in child protection for an international organisation, who described the same case and pointed out that 'this kind of thing is reported as trafficking but this is smuggling' (Roman, INGO, Johannesburg).

³⁶ Magumaguma are gangs of violent criminals who patrol both sides of the Limpopo River, which separates Zimbabwe and South Africa.

The senior police officer in Malalane also illustrated how human trafficking and smuggling are conflated and poorly understood when he responded to a question about the difference between the two with the following: ‘Trafficking cannot be that much different from smuggling. Because smuggling is because it’s items then trafficking is because it’s human being but it’s one and the same thing because this thing is not legal’ (Sergeant M, SAPS, Malalane).

As Roman notes above, he believes the government is blind to the ‘shades of trafficking’, suggesting that the issue is more complex than government officials realise and that they have a very narrow/simplistic view. Our findings indicate that this is the case for a number of stakeholders who seem to hold a very simplistic and often uninformed view of trafficking; in doing so, they dismiss the other complex issues affecting child migrants such as exploitation as a result of smuggling, the lack of documentation that makes children more vulnerable, and the identified role of state corruption in smuggling cases.

In some cases, it was argued that experiences of migration, including human smuggling, can contain elements of human trafficking or turn into situations of trafficking. For example, an NGO worker supporting migrant communities in Musina narrated her experiences in dealing with this problem:

“

SO, IN MOST INSTANCES, WE ENCOUNTER THESE CASES WHEN THE PEOPLE ARE NOT YET DOCUMENTED. THE MOMENT THEY GET DOCUMENTED, THEY WILL TELL YOU THAT I AM GOING TO LIVE WITH THAT PERSON BECAUSE THEY ARE TRYING TO GET ME A JOB. EVEN IF YOU TRY TO EXPLAIN TO THEM THAT THEY COULD BE TRAFFICKED OR TAKEN ADVANTAGE OF, THEY WON’T UNDERSTAND. IF YOU ASK MOST CONGOLESE AS TO HOW THEY ENDED UP BEING HERE, THEY WILL TELL YOU THAT I WAS CALLED UP BY SOMEBODY, THEY WILL EVEN TELL YOU THE NAME OF THAT PERSON. IF YOU STUDY HOW THIS PERSON ENDED UP BEING HERE, YOU WILL FIND AN ELEMENT OF TRAFFICKING. (Ntombi, NGO worker, Musina)

Although no concrete cases of trafficking were identified here, the key informant linked the lack of information given to those being brought to South Africa (i.e., not knowing what job they will do and who their employer will be) and the demands for money to trafficking. As she stated, ‘We have two cases where people say I was told to come here but I am now being asked to pay the person who facilitated with trafficking’. She went on to describe two cases—one involving two individuals from the Congo and another involving a woman from Ethiopia. In both cases the individuals paid facilitators to assist them in entering South Africa, and these facilitators later demanded more money for helping the migrants to settle in the country. Ntombi described how the Congolese individuals ended up returning to the Congo due to the challenges they faced in South Africa while the Ethiopian woman is still in the country.

Police corruption

The respondents who spoke about smuggling made clear that state actors, especially the police and border officials, were seen as often working together with smugglers and traffickers. Service providers and child migrants accused these law enforcement agents of being corrupt and taking bribes to turn a blind eye to cases of smuggling and human trafficking. One key informant, for example, noted, 'These cases of child trafficking are not being tackled head on because traffickers are also bribing police'. Another described:

“

SINCE THESE PERPETRATORS [OF TRAFFICKING] ARE USUALLY TRANSPORTERS WHO USE DIFFERENT TRANSPORT MODES ON THEIR TRANSIT TO DIFFERENT DESTINATIONS, THERE SHOULD BE AN INCREASE IN THE NUMBER OF ROADBLOCKS MOUNTED BY POLICE. THE SAD PART HOWEVER, IS THAT THESE TRAFFIC OFFICERS ARE ALSO RESPONSIBLE FOR FACILITATING CHILD TRAFFICKING BECAUSE THEY ARE CORRUPT. (Key Informant working with migrant children, Musina)

The children in the FGDs also collectively agreed that police were a part of the problem and that cases of smuggling and exploitation were being overlooked when bribes were paid. One girl stated, '... here in Musina, at road-blocks, police are bribed in broad daylight. They don't even search these quantum [a mini-bus taxi] to see if there are no children who are being trafficked' (Girl, FGD, Musina).

However, a South African police officer in Komatipoort, Mpumalanga Province, disputed these reports that members of SAPS were corrupt and facilitated human trafficking. She argued:

“

THE PROBLEM SIR IS THAT PEOPLE ARE ALWAYS SAYING THAT WE ARE CORRUPT, BUT WE DO HAVE A LINE WHERE THEY CAN PHONE THE POLICE IF THEY SEE CORRUPTION. SO, I CAN'T COMMENT MORE ON CORRUPTION BECAUSE WE NEVER RECEIVED ANYTHING THAT SAYS THAT. YES, WE DO RECEIVE BUT IT'S NOT REGARDING THE CORRUPTION AROUND CASES OF TRAFFICKING... SO UNLESS THEY COME FORWARD THAT CONSTABLE (SO AND SO) STOLE. I SAW HIM OR HER TAKING BRIBES OR MONEY FROM ONE, TWO, THREE...(SAPS Officer, Komatipoort, Mpumalanga Province)

The above comment conveniently ignores some realities on the ground. For example, as widely documented in many situations involving migrants' interactions with the police in South Africa (Algotsson & Klaaren, 2018) many would be fearful about approaching the police, especially to report corruption. For non-nationals and those without documents the risks of doing so would be high. Roman from the INGO also described, 'The girls might try to go to the police station to report exploitation or to say they have been raped ... and then the police first ask for their documents' (Roman, INGO, Johannesburg).

THEME THREE: THE MYTHS OF CHILD TRAFFICKING SIMPLIFY THE COMPLEX REALITIES OF CHILD MIGRATION

The literature review identified key myths about child trafficking that were largely upheld by unsubstantiated claims in reports. With the evidence from the research sites, we found that these same myths about child trafficking are being circulated by service providers and the police. As with the literature review, we found that these myths simplify the lived realities of children on the move. The experiences of migration and of living in border towns, as reported by migrant children, are complex. These complex realities are important to document and analyse not only because they present a different reality to those commonly captured in narratives about child migrants but also because they extend far beyond the lens of child trafficking and what this represents.

Migrant children reported a number of common key vulnerabilities as described throughout this report. However, as the review pointed out, children are not homogenous, and it is important to recognise that the children also reported different reasons for coming to South Africa and different experiences in the country. While some children had been taken from their countries of origin by their relatives and were living with them in South Africa, others had come on their own. Some had been influenced by friends, family members, or acquaintances.

Staying 'hidden'

Some migrant children were living in shelters, others moved in and out of sheltered accommodation, and others had found places to stay with friends or adults with whom they had been connected. While some children worked, others were looking for work; some wanted to go to school and others had plans to move on and find work elsewhere. The 'disappearing' acts by migrant children as they searched for a way of surviving in a difficult environment often resulted in some service providers fearing for the lives of these children. One of their fears was that the children might have fallen victim to human trafficking. The situation is made worse by the fact that service providers, including SAPS, do not have systems in place to monitor the movements of unaccompanied migrant children in South Africa and when they leave the country. However, as Vearey (2010) notes in reference to how migrant communities in South Africa survive as 'hidden migrant populations' in urban and peripheral contexts, this can often be a case of deliberately staying out of sight in order to evade the authorities and the risks associated with being a non-national in the country.

Reasons to migrate

The reasons for children to migrate also fuel the myths around child trafficking as shown in the literature review. With regard to the reasons for migrant children coming to South Africa, the most common was poverty. Children described having parents and families unable to provide for them, being unable to attend school, and fearing for their futures as reasons for leaving home. While some children spoke of making a decision to come to South Africa, a few explained the context in which they made that decision:

“

WE ARE FORCED HERE BY CIRCUMSTANCE AND IT IS NOT OUT OF CHOICE. LIKE YOU CAN EVEN SEE THAT WE DON'T HAVE PASSPORTS BUT YET WE ARE HERE TRYING TO IMPROVE OUR LIVES. BACK HOME PRICES FOR BASIC COMMODITIES HAVE BEEN SKY ROCKETING. WE CAN'T JUST STAY THERE AND LOOK AT EACH OTHER WITHOUT DOING ANYTHING. WE HAD TO ACT. (Girl, FGD, Musina)

Amongst other things, evident in the above quotation is the expression of agency by children to improve their lives by migrating to foreign lands. Although the migrant girl makes reference to a lack of choice, this case, like many others, is clearly not one of child trafficking.

Contrary to the dominant thinking amongst child protection agencies, including the relevant government departments, that most parents and guardians want their children to remain at home and support interventions for migrant children to be identified, traced, and reunited with their parents in their home countries, a number of children described being influenced by their parents to come to South Africa. Interestingly, they revealed that some parents went to the extent of lying to them about the opportunities that would be available to them in South Africa. As one girl noted, 'These parents play a huge role in influencing their children to come here to look for money'. She went on to note that the lack of access to education in Zimbabwe was often the reason: 'they see it fit to send their children away because here in South Africa children have rights to access education, but this is not the case in Zimbabwe'.

Another migrant girl debunked the dominant perception that all parents are very protective of their children and often act towards children in ways that advances their best interests:

“

[THE] PROBLEM IS THAT DUE TO EXTENDED FAMILIES, A RELATIVE BASED HERE IN SOUTH AFRICA CAN COME HOME AND ASK MY PARENTS IF THEY CAN GO WITH ME TO SOUTH AFRICA. THIS RELATIVE MIGHT BE AN UNCLE AND MIGHT EVEN LIE TO MY PARENTS THAT THERE IS A JOB OPPORTUNITY FOR ME IN SOUTH AFRICA WHILE HE HAS EVIL INTENTIONS, HE'S PLANNING ABOUT ME... PARENT[S] USUALLY DON'T TAKE TIME TO THINK THROUGH THESE REQUESTS BY OUR RELATIVES. CONCERN IS ONLY THAT I AS THEIR CHILD I AM GOING TO BE WORKING IN SOUTH AFRICA. (Girl, FGD, Musina)

The conditions under which these migrant children go on to live with their relatives in South Africa needs to be fully investigated to ascertain exactly what agreements have been made and what the conditions are for the children. There can be cases that could, under the conditions described by the girl above, constitute child trafficking, especially if the child is forced into working for the relatives or for others. But much remains unknown about the conditions in which these children live.

Being deceived

The idea that relatives use all sorts of tactics, including lies, to influence children to come to South Africa was echoed by another migrant girl from Zimbabwe who mentioned that ‘this brother³⁷ can bring me here all the way from Zimbabwe and we will be staying together in this room here. You will be surprised as time goes by that the job opportunity that he has promised me was just a lie’. Both migrant girls and boys noted cases in which they, or a friend of theirs, had been told about a job or work opportunity in South Africa, but this job did not materialise when they arrived; ‘This is mostly being done by adults who lure young children to come here’ (Girl, FGD, Musina). They mentioned that situations like this often degenerate to these migrant girls being sexually abused.

This was also a reality described by the boys who participated in the FGD in Musina. As one boy explained, ‘Sometimes people who come here [to South Africa] when they go to Zimbabwe mislead these children, they might have been told that life in South Africa is quite better than there in Zimbabwe, only to find out that here people are also struggling to make ends meet.’ Another boy explained, ‘As for me I was actually told that you can easily pick up money [in the streets] which might even amount to R5,000’. This situation of deception and disappointment about the reality of life in South Africa was also echoed by adult migrants around the border areas (Mahati, 2015). For example, a Mozambican vendor in Mpumalanga commented that children were coming to South Africa from Mozambique because they are lied to and promised jobs. This view was also shared by a shelter manager in Musina who observed that migrant children are ‘being lured by something that is rosy but not real’ (Shelter manager, Musina).

However, while the young people and some service providers identified a trend of migrant children being lured across borders by empty promises, none of the experiences described amounted to trafficking. In fact, we found a consensus amongst service providers and migrant children themselves that they are not victims of trafficking but made a ‘choice’ to leave their homes and be in South Africa to look for work or to attend school. This finding is in line with much of what we reviewed in the literature on children on the move and with what De Sas Kropiwnicki (2010, pp. 26–27) observed whilst doing a similar study in South Africa that ‘key informants... stated that the majority of migrants cross the border voluntarily’. While we found that ‘voluntarily’ may be too simplistic a word to capture the push and pull factors and the constrained choices children face, it is preferable to describing them as ‘trafficked’, which misrepresents the situation and ignores the complexities and differences amongst the various cases. This is an important point to make—not to minimise the severity of child trafficking when it does occur but to caution against the creation of a misleading picture because it can render children more vulnerable through the misrepresentation of their realities.

37 Amongst some African communities in Southern Africa, the term brother often includes cousins.

Vulnerabilities en route

The young people also described the risks faced on the migration journeys, including being exploited by *malayitsha* (informal transport operators), being robbed and raped by *amatsholotsha* ('child traffickers' in Ndebele), *magumaguma* (gangs of violent criminals who target migrants), *mareyami* (another term for *magumaguma* in Mpumalanga), and *amachallengers* (armed robbers). Amachallengers operate on both sides of the South African and Mozambican border. According to one key informant, a female vendor from Mozambique who operates at the Lebombo border post, amachallengers got their name from their practice of 'challenging you [referring to migrants] and mareyami. They challenge everyone including soldiers in the SADF [SANDF] operating along the border'. For example, some of the girls in Musina described how they could start their journey with one *malayitsha* whom they pay or who is paid by their relatives to take them all the way to South Africa, but then this *malayitsha* would, without their consent, pass them on to another one who would then demand another fare from them. 'If you fail to pay him, he might dump you somewhere', said one of the migrant children in Musina.

Many young people explained how their problems started at the border. For example, a migrant girl explained the following:

“

SOMETIMES YOU GET APPROACHED BY THESE PEOPLE STRAIGHT AT THE BORDER AS YOU WILL BE TRYING TO CROSS ILLEGALLY. THEY WILL TELL YOU IN A NICE WAY THAT THEY ARE ABLE TO HELP. SO THEY WILL CHARGE YOU A FEE FOR THEIR ASSISTANCE BUT ALONG THE WAY THEY MIGHT DECIDE TO DUMP YOU. SOMETIMES THEY CAN EVEN DEMAND MORE MONEY OR IF YOU FAIL TO PAY THEM, THEY WILL DEMAND SEX INSTEAD IF YOU RESIST BEING RAPED, THEY CAN EVEN GO TO THE EXTENT OF PHYSICALLY HARMING YOU THROUGH BEATING YOU UP (Girl, FGD, Musina).

In an FGD in Musina, unaccompanied migrant boys also spoke about being exposed to drugs when crossing the border and also being arrested and detained by the South African National Defence Force (SANDF), which could also lead to sexual abuse and rape:

“

SO BOYS ARE SOMETIMES CAPTURED BY THE SOUTH AFRICAN DEFENCE FORCES AS THEY ATTEMPT TO CROSS THE BORDER THROUGH ILLEGAL POINTS. INSTEAD OF THE SOLDIERS TO DEPORT YOU BACK TO ZIMBABWE, THEY COME THROW YOU IN JAIL HERE IN SOUTH AFRICA. IN THESE JAILS THERE ARE SENIOR INMATES WHO PREY ON SMALL BOYS IN FULFILLING SEXUAL DESIRE... EVERY NEW INMATE ESPECIALLY THE YOUNG ONES IS CONSIDERED ATTRACTIVE AND ARE VULNERABLE TO ABUSE FROM HARD CORE CRIMINALS IN THE JAILS. (Boy, FGD, Musina)

The detention of children is a violation of international and national law in South Africa. The same boy described some of the other traumatic experiences faced by children as they crossed the border at illegal points, indicating the precarious and often very dangerous realities for children when on the move.

Strategising

While a recognition of the vulnerabilities faced by child migrants is important, it should not discount the agency shown by children and the strategies they employ in order to stay safe and keep moving. The young migrants we engaged with described the risks they faced and spoke about ways in which they sought to stay safe and protect themselves. Showing that service providers can make a positive difference in the lives of children, some of the girls spoke of an organisation, 'Girl Child Network' in Zimbabwe, which had helped them make informed decisions about leaving home and migrating. Others described how they identified 'safe spaces' and how they did not trust people. 'The best way to protect ourselves from being trafficked here in South Africa is to avoid loitering around in the streets or turning down proposals from men ... these days you can't trust anyone even your own boyfriend' (Girl, FGD, Musina). These strategic and proactive acts by migrant children opposes the dominant notion that migrant children, like other children, do not have the capacity or competence to understand their lived realities and protect themselves to some extent. However, this issue, which provides nuance and complexity to refute claims of children as pure victims, is often side-lined and ignored and for reasons which we go on to discuss.

Challenges in South Africa

Many of the challenges that children living in South Africa described mirror what is in the literature on children on the move. These include challenges accessing basic services (education and health) and documentation, securing protection, and facing exploitation at work places, the risk of statelessness, and violence. Service providers also reported these challenges and called for more attention to be paid to these problems. In particular, children described how being 'foreign' and often undocumented rendered them more vulnerable. For example, they found it difficult to report crimes and if they did so, they found themselves not taken seriously by the police. For example, one boy explained:



“

IF YOU GET ROBBED OR ATTACKED BY CRIMINALS, EVEN IF YOU GO TO THE POLICE THEY WILL SIMPLY TELL YOU THAT YOU ARE A FOREIGNER, USUALLY THEY USE THE NAME 'MUKARANGA' TO REFER TO US ZIMBABWEANS. MOST OF US DO NOT HAVE PASSPORTS SO IT'S EVEN DIFFICULT TO REPORT CASES IN THAT REGARD. (Boy, FGD, Musina)

Another unaccompanied migrant boy added:



ANOTHER ISSUE OF HOW THE POLICE AND COMMUNITY REGARD US AS FOREIGNERS IS THAT THEY EXCLUDE FOREIGNERS SUCH THAT EVEN IF THEY SEE YOU BEING ATTACKED BY A LOCAL [A SOUTH AFRICAN] AND YET YOU ARE A MIGRANT, THEY WILL SIMPLY LEAVE YOU AND NOT HELP YOU OUT... IF THE POLICE COME AND GET TO KNOW THAT THE PERPETRATOR IS A LOCAL PERSON AND THE VICTIM IS A FOREIGNER, THEY WILL SIMPLY LOOK ASIDE AND GO. THEY DON'T DO ANYTHING ABOUT IT. (Boy, FGD, Musina).

However, there were also reports from migrant children of situations in which SAPS did assist them. During an FGD with migrant boys in Musina, one of them observed: 'What I have also realised is that if there are new police officers deployed here, they will be a bit serious with their job. This is different from those that have been working here for some time now'. All the boys agreed with his observations. This indicates that there is no uniformity of treatment of migrant children by child protection agents like police officers. In addition, both migrant boys and girls as well as a number of service providers indicated that unlike in the past when police used to detain unaccompanied migrant children and illegally deport them, they are now placing them in places of safety. However, as discussed elsewhere, there is little consistency in the approach in the Mpumalanga Province; at times children are placed in shelters, and at other times they are quickly deported without the correct procedures for dealing with children being followed.

'Arranged marriages' and 'false adoptions'

Of the vulnerabilities and challenges that the children described, there were two key issues that came up in the FGDs and were also backed by the interviews with some of the service providers. These issues of so-called 'arranged marriages' and 'false adoptions' refer to the risks and practices of children being sold in 'arranged marriages' (relationships with some male relatives, sliding into forced sexual relationships) and also being 'adopted' by adults claiming to be relatives of a child.

As mentioned in reference to the TiP Act (2013) in South Africa, the definition of trafficking includes the adoption of a child or forced marriage for the purpose of exploitation. In accordance with this and other legislation, there are ongoing concerted efforts within South Africa and across the African continent to stop child marriages, which are associated with a violation of children's rights. Although our findings suggest that this is a concern for children and those working with children and a few cases were mentioned, we found and were presented with no concrete evidence to back up these claims. Therefore, this is an issue that demands further investigation and should also be considered within the broader, complex context of child migrants and vulnerabilities.

Evidence from Mpumalanga indicates that there are concerns that child marriages are greatly affecting a significant population of migrant girls. One key informant, Atti, who leads a community-based organization (CBO) in Tonga in Mpumalanga Province, claimed that there is a common practice by Mozambicans who go to Mozambique to look for young girls to become wives for men based in South Africa. Atti and others claimed that many young women agree because it is a way for them to escape poverty. As Atti explained:

“

SOME OF THEM [LOCAL MEN IN SOUTH AFRICA], THEY DO NOT EVEN SAY [TO SOME MEN] LOOK FOR A WIFE FOR ME. 'I WANT A WIFE.' NO, THEY JUST GO [TO MOZAMBIQUE], THEY COME BACK WITH A WIFE AND THEN THEY SAY, 'HERE IS YOUR WIFE.' SHE WILL BE SO YOUNG. (Atti, CBO Leader in Tonga, Mpumalanga Province)

She added:

“

WHAT I HAVE HEARD FROM THEM [THE YOUNG GIRLS INVOLVED]... THEY TELL THEM I'VE GOT A MAN FOR YOU, HE IS BUSY. SOME THEY DO NOT TELL THE CHILD. THEY JUST COME [WITH THE CHILD] AND LEAVE THE CHILD THERE [AT THE MAN'S HOUSE] LIKE THAT... SOME ARE EVEN SURPRISED WHEN THEY ARE HERE... JUST LIKE THAT. I CALL YOU MY UNCLE BUT AT THE SAME TIME NOW I'M THE WIFE AS YOUNG AS FIFTEEN.

Atti also noted that attempts to help these young women out of these abusive marriages fail. She identified poverty as the main reason why the girls entered these marriages and also the reason why they did not want to leave. 'She [the young migrant girl] says "Yes mamma [acknowledging the hardships they experience within that 'marriage'] but there is now food on the table". However, a police officer who operates in Mbuzini and polices the South African borders with Mozambique and Eswatini indicated that he was not aware of this practice taking place.

As a final point here, a SAPS sergeant in Malalane described a 'scenario' in which the police were called to a farm and 'there is a lady there who goes to Mozambique and gets those young ones and come to sell them here'. When questioned further about the case, the sergeant went onto explain:

“

WHEN WE ASKED THERE, THEY TOLD US THAT USUALLY WHEN SHE GOES TO MOZAMBIQUE TO COLLECT THESE YOUNG LADIES, SHE PROMISES THEM WORK, EVEN THE PARENTS THERE. WHEN SHE TAKES THEM THEN SHE SAYS, NO I WILL OFFER THEM GOOD WORK THAT SIDE SO BUT SHE DOESN'T TELL THE TRUTH AND THEN THIS SIDE SHE WILL SELL THEM AS WE GOT THE PRICE THAT THEY ARE SOLD BY R300. (Sergeant M, SAPS, Malalane)

However, the Sergeant also went on to clarify that they were unable to prosecute the woman in this case because she ran away. He also noted, 'sometimes you see it's hearsay when you go there, they run because these people in the farms, to be honest, all of them have no documents ... so once they saw the police van because the compound is next to the mountains, they just ran'. This case illustrates some of the challenges faced by the police attempting to address 'rumours' and responding to potential cases of human trafficking, particularly the difficulties of dealing with populations who largely remain hidden due to fear (as undocumented non-nationals) and are unwilling to engage with the police.

Pertaining to the claims of 'false adoptions', children and adults also spoke about situations in which children were taken from temporary places of safety by adults claiming to be their relatives and sometimes in possession of their documentation, such as birth certificates. Although what was described did not constitute the actual adoption of children, the situation was viewed as such due to children being taken into the care of other adults. Some of the young people identified the malayitsha as being a part of this. This is illustrated in the following quote by a malayitsha:

“

... ON OUR WAY TO SOUTH AFRICA, WE MIGHT BE TRANSPORTED BY OMALAYITSHA WHO MIGHT SOLICIT INFORMATION FROM US ALONG THE WAY. FOR INSTANCE, OMALAYITSHA MIGHT ASK ABOUT YOUR BACKGROUNDS, RELATIVES AND YOUR PARENTS. YOU WILL GIVE HIM ALL THE INFORMATION NOT KNOWING THAT HE IS WORKING WITH OTHER PEOPLE WHO WILL LATER ON COME HERE AT THE SHELTER PRETENDING AS IF THEY WERE SENT BY YOUR PARENTS OR RELATIVES.(Malayitsha, Musina)

The connection of informal cross-border operators with child smuggling and trafficking has been made in other reports (De Sas Kropiwnicki, 2010). In such cases, 'the migration of children can turn into trafficking' (Roman, INGO child protection, Johannesburg). However, while De Sas Kropiwnicki claimed that relatives of victims of child trafficking were also implicated in the trafficking syndicate, our findings did not clearly indicate this. When asked how social workers were dealing with this issue, the young people noted that the social workers often do not realise what is happening. Pointing to a lack of adequate training on how to deal with children on the move and how to recognise crime related to trafficking, migrant children also stated that social workers are easily convinced by those claiming to know the children because they have background information on the child and produce documentation: 'If someone comes here and claims that this child is mine or that the child is my sister's, and produce papers/documents for the child, social workers are easily convinced ... they will allow the person to sign off the child and this is how children are trafficked and kidnapped.'

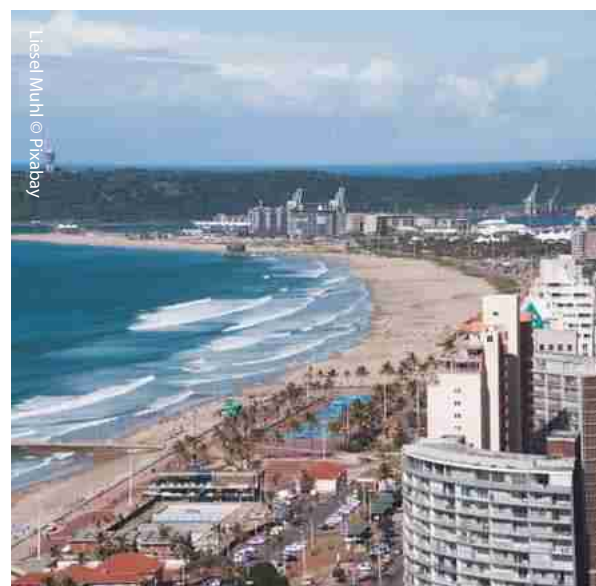
The SAPS also expressed concern about the level of security at the poorly resourced temporary places of safety run by non-governmental organisations of which they have little control. 'The shelters that are there are just arranged and not government shelters. Problem is that there is poor monitoring. Malayitsha can access these children and traffic them' (Senior Police Officer, Musina). Despite the police having these concerns, they reported regularly sending unaccompanied migrant children in the district to these shelters.

THEME FOUR: CHILD MIGRANTS FEAR TRAFFICKING BUT LARGELY FACE OTHER VULNERABILITIES

There are two key issues for migrant children—documentation and access to education—to refuse documents means they cannot access basic services. (Roman, INGO, Johannesburg)

Trafficking may be there, but it is not the biggest issue we deal with. (Social Worker, Migrant Support Centre, Cape Town)

Concern about child trafficking was pervasive amongst migrant children who participated in this study. However, none of the migrant children reported being a victim of trafficking; while they all spoke about stories and rumours they had heard about child trafficking, few had encountered actual cases. Therefore, for migrant children, trafficking was something they knew about, feared, and remained vigilant about but not a central issue in their everyday lives, particularly in comparison to the other vulnerabilities they faced. Accordingly, O'Connell Davidson (2011) observes that there is widespread concern by many people, including policymakers, 'with the suffering of "trafficked" children against the relative lack of interest in other ways that migrant children can suffer' (p. 454).



When looking at what was reported by both adults and children on child trafficking, it is important to decipher between what was expressed as fears or based on hearsay and what was based on experiences and facts. This does not mean that fears of trafficking are not valid but rather that in gathering a picture on the extent of child trafficking, distinction must be made between perceptions and reality.

Fear among children

A number of migrant children explained in detail experiences of exploitation and the vulnerabilities they faced, particularly as foreigners. They sometimes mentioned trafficking; however, it is important to note that this was not based on personal experiences. It was often drawn from stories they had heard/read on social media or been told by a friend. One young person described what she said came from 'reports' that they had heard:

“

THIS TRAFFICKING ISSUE STARTS AT THE BORDER. YOU ARE VULNERABLE STARTING FROM THE BORDER AND BY THE TIME YOU LEAVE THE BORDER COMING INTO SOUTH AFRICA, YOU WILL NO LONGER BE FREE... SOME PEOPLE MIGHT BE TAKEN BY THOSE WITH BAD INTENTIONS. SOME PEOPLE WOULD EVEN DISAPPEAR FOR GOOD AND WE ARE TOLD THAT THEY ARE KILLED, AND THEIR BODY PARTS USED FOR RITUAL PURPOSES. (Girl, FGD, Musina)

Some migrant children in Musina reported a number of cases that they had heard about including a four-by-four vehicle found with children's heads inside and other children going missing. One noted, 'Even girls get killed and their organs are used in ritual practice practices. We heard of a story through Facebook where someone was killed and her body parts were missing' (Girl, FGD, Musina). While these reports in the media are not unusual, what is significant here is that the young people and adults—especially police—based much of what they knew about trafficking on what they heard in the media. As we have previously highlighted, the media's sources of information are questionable and claims about trafficking are rarely backed with substantive data or evidence. Both adults and migrant children also confused lots of different experiences with trafficking, as highlighted in theme one. For example, in the boys' FGD in Musina, one boy noted:

“

WHAT I CAN SAY IS THAT CHILD TRAFFICKING IS A BIG PROBLEM BECAUSE MANY CHILDREN ARE COMING FROM NAMIBIA AND CONGO TO SEE SOUTH AFRICA [THEY REGARD] AS A FIRST WORLD COUNTRY. THEY COME IN THEIR NUMBERS AND THIS LEADS MAINLY TO OVERCROWDING WHICH IN THIS REGARD IS ASSOCIATED WITH ALL THE CHALLENGES THAT WE HAVE MENTIONED SUCH AS CRIMINAL BEHAVIOUR AND PROSTITUTION. (Boy, FGD, Musina)

However, in other cases, a number of migrant children were able to distinguish trafficking from smuggling and other forms of irregular movement. When the girls in the Musina FGD were asked about the differences between children who migrate and child trafficking, one of them noted, 'The difference is that child trafficking is when a child is taken and transported without their consent or under false pretense. The child might be taken to a place where he/she is not even willing to go. That's how I understand child trafficking ...' (Girl, FGD, Musina).

Despite some being able to differentiate between child migration and child trafficking, the children overall remained confused about what constituted child trafficking and seemed to have received very little information on the issue. Some stated that they had learned about child trafficking in 'Life Orientation' classes at school and also workshops organised by Save the Children, an INGO that has been rolling out interventions targeting migrant children in Musina for more than a decade. However, most of what they discussed and described was based on what they had heard on social media and through the grapevine, which heightened their fear of being trafficked.

What makes children vulnerable?

Our findings show that young people are also able to identify the risks that they are vulnerable to en route to South Africa and once over the border. In particular, they highlighted the role of corruption in facilitating irregular movement and the exploitation of child migrants, including sexual exploitation. Previous studies have reported high levels of sexual exploitation of girls and boys in border areas (Clacherty, 2003; Mahati, 2015; Palmary & Mahati, 2015). Much of this focus has been on girls being forced into 'prostitution' or living with 'sugar daddies' as well as rape and sexual abuse faced when crossing borders by truck drivers and others. We discuss this in the next theme. However, in our findings, there was an emphasis by the child migrants on the sexual abuse of boys. The boys reported that this was experienced in police cells when they were detained for a few hours or overnight for being undocumented. The abuse happens, according to the children, when they are held by the police while waiting to be placed in a temporary place of safety as required by law.



It is important to note that many service providers in Musina were unaware of the sexual abuse of migrant boys in police cells as they thought undocumented migrant boys were no longer being detained by the police and were quickly being placed in shelters. NGOs working in Musina reported that they have worked hard to put pressure on SAPS not to detain children in cells.³⁸ This finding highlights the fact that much work still needs to be done to protect children on the move, including those under police custody, and explore whether this abuse is also happening in other areas of South Africa.

A number of the service providers also claimed that boys faced greater risks of being trafficked than girls, which marks a departure from much of what is often reported in the literature on child trafficking. Reporting that boys make up about 70 per cent of the migrant population that their organisation assisted, Ntombi stated:

“

... ONE WOULD SAY THAT THE PUSH FACTOR IS JOBS AND THE MOMENT THESE YOUNG MALES ARE PROMISED A JOB HERE IN SOUTH AFRICA, THEY ARE READY TO COME. THIS WILL MAKE THEM SUSCEPTIBLE TO HUMAN TRAFFICKING BECAUSE THEY ARE MORE MOBILE SINCE THEY HAVE THAT RESPONSIBILITY AS A BOY CHILD TO GO OUT AND FEND FOR MY FAMILY. (NGO, Musina)



This was a view supported by Roman, working on child protection for an INGO and based in Johannesburg. Roman also observed that of the unaccompanied children crossing borders from the DRC, Burundi, Malawi, and Mozambique, most were boys. The increased focus on and tightening of systems to protect the 'girl child', who is portrayed as more vulnerable, whilst justified, had the unintended consequence of not focusing much on protecting the boy child. For example, Mahati (2015) observed that the shelters in Musina had more stringent restrictions on the movement of migrant girls than boys.

³⁸ To detain children violates the legal position in South Africa as set out in the ruling of the *Centre for Child Law and Another v Minister of Home Affairs and Others* 2005 (6) SA 50 (T). Here the court ruled that the law in South Africa orders state authorities to bring unaccompanied migrant children before a children's court. Pending judgment, they are to be removed to a place of safety (Magaya, 2015, p. 33). In addition, as noted in the literature review, the Global Compact on Migration calls for an end to child detention (although it falls short of including all detention).

THEME FIVE: THERE IS LITTLE EVIDENCE OF ‘SEX TRAFFICKING’

Our findings showed that many children and many service providers talked about two issues. The first, was the risks of sexual violence and exploitation faced by both girls and boys as they crossed the borders into South Africa. Members of the South African National Defence Force (SANDF), SAPS, the *malayitsha*, truck drivers and others were accused of being involved in rapes and sexual assaults, which are key vulnerabilities that children face. The second issue was of girls engaging in transactional sex both to cross the border and in their destination country as a means of earning an income. This is a vulnerability, but one that needs to be understood in context with attention to the reasons why it is happening such as poverty and a lack of documentation, accommodation, and support—considerations that are especially important when UMC are deemed children in need of care and protection in terms of the Children’s Act (section 150(1)), meaning that they are under the care of the State in South Africa.³⁹



Although these two issues are distinct and should be dealt with separately, we found that they are regularly conflated and referred to more generally as ‘sex trafficking’. As indicated in the literature review, this is a common conflation in the trafficking discourse and is problematic for creating a misleading picture of the realities of trafficking. For example, it is claimed that many girls are being ‘prostituted’ within the sex industry and that anti-trafficking measures aimed to ‘raid and rescue’ as well as hardening the borders will somehow prevent this from happening (Yingwana, Walker, & Echart, 2019). While we go on to unpack this conflation further through our findings, it is important to first reiterate a few key points that define the discussion.

39 The preamble to the Children’s Act expressly recognises the duty of the State to respect, protect, promote, and fulfil the rights of children under section 28 of the Constitution. Chapter 9 of the Children’s Act provides for the identification and treatment of children who are in need of care and protection. In terms of section 150 of the Children’s Act, unaccompanied foreign migrant children may be found to be in need of care and protection after a Children’s Court inquiry.



The first is that transactional sex by children is not sex work (sex work is defined as an exchange between legally consenting adults) but is deemed by the Sexual Offences Act (2007) to be illegal and is statutory rape. The second is that while transactional sex is not sex work, it is not automatically sex trafficking either. Any sexual activity taking place must be understood in relation to a number of issues: the age of the child, the law, and the circumstances, including the broader context of gender and power inequalities. Clearly when the child in question is young (below 12) then this is rape regardless of whether the child factually consented. However, if the child is an adolescent (12–18 years) and engages in consensual sexual activity with another child of similar age or above 16 but less than two years older than this can be regarded as ‘close in age’ and is not criminalised (according to amendments to the Sexual Offences Act, 2015).⁴⁰ However, an adult engaging in sexual activity with a child of any age remains criminalised.

Transactional sex

Contrary to the dominant thinking that migrant children are having sex under trafficking conditions, evidence from across the sites suggests that a number of girls who were engaging in transactional sex were not victims of trafficking. The children themselves spoke of this in terms of strategies of survival. Desperation to escape from poverty in their countries of origin, like Zimbabwe and Mozambique, also meant that children had few options when on the move and found themselves in situations in which they had to negotiate risky and, at times, threatening contexts. Often, they had to figure out how to get across a border safely by bribing someone or relying on contacts or, in the case of some of the girls, having sex with the South African soldiers patrolling the South Africa–Mozambique border. One key informant at the Lebombo Border Post, for example, said the migrant women and girls know the ‘rules of engagement’ that the soldiers want sex and they will allow them to cross the border without the correct travelling documents at informal crossing points in the bush. Roman, of an INGO, also commented that girls can find themselves in such situations when crossing borders and that they are forced to take great risks, including selling sex, in trying to get to South Africa. This is clearly sexual exploitation by those in a position of power; however, it is not necessarily trafficking.

40 In 2013 the Constitutional Court found that sections of the Sexual Offences and Related Matters Act 32 of 2007 that criminalised sexual acts between adolescents was unconstitutional. The new law states that while the age of consent to sexual activity remains at 16 years, cases in which both consenting parties are between 12 and 16 will not be taken to court. Also, where the older party is older than 16 and the younger one is younger than 16, there will be no prosecution if they are less than 2 years apart in age.

Other situations were reported in which girls engaged in transactional sex with older men in order to secure money for a place to stay or some form of protection. As one migrant girl noted during an FGD in Musina, 'Some children sleep in the streets when they arrive here from Zimbabwe. Life in the streets is very dangerous'. Another girl added:

“

I TALKED ABOUT HOW DESPERATE PEOPLE ARE TO GET DOCUMENTS. THIS FORCES YOUNG GIRLS TO BE SEXUALLY INVOLVED WITH OLD MEN (SUGAR DADDIES) FOR THE LOVE OF MONEY. IN MOST CASES, YOUNG GIRLS END UP BEING INFECTED WITH HIV AND OTHER SEXUALLY TRANSMITTED DISEASES. (Girl, FGD, Musina)

There was consensus amongst many of the key informants, including migrant children themselves, that poverty as a result of lack of adequate support from service providers and their families was forcing many of the migrant girls to engage in transactional sex. For example, one boy during an FGD observed:

“

BUT WHEN THESE GIRLS COME HERE, THINGS WON'T TURN OUT THE WAY THEY WERE TOLD, THEY END UP SELLING SEX TO MAKE ENDS MEET. SOME GIRLS COME WHERE WE ARE STAYING THERE AT A PLACE CALLED SHELTER. THERE WE DON'T EAT GOOD FOOD AT ALL AND ITS TOTALLY DIFFERENT FROM WHAT WE ARE USED TO IN ZIMBABWE. SO, GIRLS USUALLY LEAVE THIS PLACE AND LOOK FOR OTHER WAYS OF GETTING BETTER FOOD TO EAT. IT IS THEN THAT THEY MIGHT OPT TO BE INVOLVED IN PROSTITUTION. SOMETIMES THESE LADIES GET HOOKED UP WITH MARRIED MAN. THEY ARE THEN DUMPED LATER WHEN THEY FALL PREGNANT AND THEY FIND IT DIFFICULT TO GO BACK HOME TO THEIR PARENTS FOR FEARING THAT THEY MIGHT NOT BE ACCEPTED. (Boy, FGD, Musina)

A number of service providers and some migrant children themselves said that migrant children were mostly being influenced by their friends to engage in sex in exchange for money or other things like a place to stay and protection. Trafficking was hardly mentioned. Where trafficking did come up, it was again based on speculation and hearsay without credible sources. During an FGD in Musina, one migrant girl said, 'Sometimes children are even taken to other places and countries where they are used as sex slaves'. Yet, she, like other key informants, did not have a source for this claim and did not know of any case of child trafficking. Poverty and a lack of documents, a place to stay, and money for rent were highlighted as reasons why girls engage in transactional sex. Acknowledging these realities and barriers is important because it shifts our focus to why these situations unfold rather than simply labelling what is happening as trafficking and girls as victims, which ultimately does little to make children safer and increase their options.

Migrant girls' vulnerability in South Africa beyond the trafficking and sexual exploitation paradigm has been studied (Clacherty, 2003; Clacherty & Walker, 2019; Mahati & Palmary, 2018). However, a contextual understanding of children's sexual experiences, including both transactional sex and sexual exploitation, needs much more attention in order to better understand levels of agency versus victimhood and what interventions can be put in place, in line with children's complex lived realities, that will enable them to be safe and access support. For example, evidence from Musina and Mpumalanga indicates that a number of service providers did not really know the whereabouts of migrant girls who were not living in shelters. Other research suggests that girls leave because of the strict environments of shelters, because they need to work, or because they don't abide by the shelter rules (Mahati, 2015). Like De Sas Kropiwnicki (2010), we also found that many service providers suspected girls of living with boyfriends/adult men but actually had little idea of where and under what circumstances. Service providers, especially those working closely with migrant girls, also indicated that cases of teenage and unplanned pregnancies are very high. This was confirmed by migrant children in FGDs in Mpumalanga and Musina.



The general lack of knowledge, therefore, leads to assumptions that girls have been trafficked as well as to the widespread stereotypical framing of migrant girls as sexually corrupt for living with boyfriends and older men, which comes from the notion of a normal 'good' girl who stays at 'home'. A girl on the move and without parents and a home structure is therefore a deviant and/or a victim. Accordingly, Mahati and Palmary (2018) argue that girls who do not conform to the expected girlhood behaviour are pathologised and often excluded from accessing basic services. Avoiding assumptions points us back to interpreting such findings in context and through the voices of the children involved rather than immediately interpreting such situations as child trafficking. Furthermore, when children use tactics through which they can face great risk because they do not have the required documentation to use formal exit and entry points along South Africa's borders, these cases expose flaws in the discourse that immigration controls serve to reduce the possibility of migrant children being harmed. Such situations clearly show how greater control over borders reduces options and increases the risk of harm children on the move face.

THEME SIX: STATE AND NON-STATE ACTORS LACK RESOURCES TO DEAL WITH MIGRANT COMMUNITIES

If there were enough resources, there wouldn't be any issue on the matter. I think the discussions goes into budget, but the capacity is zero. (Patience, Social Worker, NGO, Musina)

Echoing findings in other reports (for example, Mahati, 2015; Palmary, 2009), service providers reported struggling to offer assistance to migrant communities, including children, due to funding issues, shortage of human resources, and inability to cover the geographical areas where they work (a point that was also highlighted in the US State TIP Report and contributed to South Africa's status being downgraded). The issues they described were not linked to trafficking and many reported that these issues were far more pressing than trafficking.

Overall, service providers were not paying much attention to child trafficking as they rarely encountered trafficking cases. Instead they were trying to assist migrant children to access basic services like education, health, shelter, and documentation but with limited resources. Service providers' actions are in line with O'Connell Davidson's (2011) claim that people have to focus on immigration policies that make the lives of children less difficult while also paying attention to the way in which they are enforced.

Ntombi, who works for an NGO supporting migrant families in Musina, illustrated the challenges that service providers face related to a lack of material and human resources:

“

I THINK THE BIGGEST CHALLENGE WOULD BE WE ARE WORKING ON A VERY SMALL BUDGET AND THE NUMBER THAT WE ARE HELPING KEEP ON RISING YEAR AFTER YEAR. IF I WERE TO GIVE YOU NUMBERS, LAST YEAR WE HAD OVER ALMOST 100 MIGRANTS FOR THE MONTH OF NOVEMBER AND DECEMBER. AND IF YOU LOOK AT OUR BUDGET WE ARE ONLY SUPPOSED TO ASSIST ABOUT 24 PEOPLE. SO, IF YOU LOOK AT THIS FIGURE FOR ONLY TWO MONTHS, IT MEANS YOU WILL BE HAVING ABOUT 600 PEOPLE KNOCKING AT YOUR DOOR EVERY YEAR AND IF YOU LOOK AT THE BUDGET FOR THE WHOLE YEAR, IT CAN ONLY SUPPORT LESS THAN 50 PEOPLE. SO, THERE ARE PEOPLE WHO REQUIRE ASSISTANCE BUT BECAUSE OF THE SMALL BUDGET, SERVICES ARE NOT PROVIDED ADEQUATELY. (Ntombi, NGO, Musina)

Ntombi went on to describe how other organisations face the same challenges, which means that the migrants whom they refer to other organisations do not get the support they need. She concluded: 'This also affects the capacity of an organisation like this because we are just small, yet we are supposed to serve the whole of Limpopo. Limpopo is very large, and, in this case, we are incapacitated' (Ntombi, NGO, Limpopo).

Overall, there was a widespread view across the service providers and migrant children themselves that the service providers were not doing enough to support migrants. This was especially the case with regard to access to documents and jobs, one of the major reasons identified as to why migrants had left their homes to live in South Africa. However, they also linked this issue to the incapacity of government departments such as Home Affairs, which impacted on the work that they were able to do. When asked if she felt that enough was being done to support migrants, Ntombi responded in the negative and argued:

“

... IF YOU LOOK AT THE RESOURCES WE HAVE HERE IN MUSINA STARTING WITH THE HOME AFFAIRS DEPARTMENT RESPONSIBLE FOR DOCUMENTING THE MIGRANTS, AND NOW WE HAVE SPECIFIC CASES, WE TALK ABOUT ASYLUM SEEKERS AND THEN WE COME TO THE ECONOMIC MIGRANT, YOU FIND THAT THE CAPACITY OF OUR DEPARTMENTS IS NOT ENOUGH. IT'S SO OVERWHELMED AND CANNOT COPE WITH THE NUMBERS (NGO, Limpopo).

Ntombi went on to describe how Home Affairs was 'booked' until January 2019 (the interview took place at the start of December 2018); since many migrants could not gain access to Home Affairs, 'there would be many undocumented migrants who will be chased by the police.'

Similarly, another key informant described that although there were good intentions across service providers, the lack of capacity meant that they could 'only address the challenges on the surface'. He went on to explain:

“

SO, YOU CAN HAVE A SITUATION WHERE LET'S SAY CHILDREN ARE INTERCEPTED WHILE BEING TRAFFICKED, YOU CAN INTERVIEW THEM BUT SOMETIMES IT'S DIFFICULT TO SEE IF THEY ARE TELLING THE TRUTH. CHILDREN CAN LIE SO MAYBE THE CAPACITY TO HAVE KNOWLEDGE AND TO BE WELL EQUIPPED FOR SUCH SITUATIONS SHOULD BE IMPROVED. EVEN THE POLICE YOU CAN SEE THAT THEY ARE INCAPACITATED... HERE, WE ARE INCAPACITATED. SO AS A BORDERTOWN, WE ARE SUPPOSED TO HAVE MORE VIBRANT ORGANISATIONS, MORE PEOPLE WORKING ON THE GROUND AND READY TO ADDRESS THE SITUATIONS. (Patience, Social Worker, NGO, Musina)

This is an important point as it shows that service providers, who realise that they are at the forefront of dealing with the multiple and complex challenges that migrant communities face and that they also know the most about the realities of what is happening based on their on-the-ground experiences, recognise that they are also largely incapacitated. For example, despite the introduction of the TiP Act (implemented in 2015), very few police officers have been trained on it. This can be illustrated by this interview one of the researchers had with a senior police officer in Musina:

“

RESEARCHER: HAVE YOU HEARD ABOUT THE TRAFFICKING ACT OF 2015?

POLICE OFFICER: I HAVE HEARD BUT I HAVEN'T LOOKED AT IT.

RESEARCHER: HAVE YOU HAD ANY WORKSHOPS, OR ATTENDED SOME WORKSHOPS ON CHILD TRAFFICKING?

POLICE OFFICER: YES, BUT JUST TRAFFICKING IN GENERAL AND NOT CHILD TRAFFICKING SPECIFICALLY.

In addition, it was also recognised that the service providers were not supported in their work by government departments. For example, Sergeant M from SAPS noted, 'NGOs do a lot but according to me, I think maybe DSD doesn't support them a lot or the government doesn't give that much support to them' (Malalane).

The South African police were also described by service providers as lacking the capacity or willingness to deal with cases of trafficking. For example, it was argued that the police have a sector dedicated to trafficking but that they were unwilling to use their resources and also to follow up on cases:

“

... MAYBE IF YOU WENT TO THEM YOU FIND OUT THAT THEY ARE TALKING ABOUT THEIR OWN CAPACITY, LET THEM TALK ABOUT THEIR TIME, THEIR VEHICLES, THE PATROLS AND MAYBE IF, THERE IS A CASE THAT HAPPENS AND THERE IS NO FOLLOW UP, AND MOST CASES IN MUSINA, ITS LACK OF FOLLOW UP... YOU FIND OUT THAT MAYBE EITHER THE VICTIM DON'T FOLLOW UP, OR THE CARE GIVERS DON'T JUST CALL. (Patience, Social Worker, NGO, Musina)



THEME SEVEN: RECENT CHANGES IN LAW INTENDED TO FACILITATE MIGRATION, DETECT TRAFFICKING, AND PROTECT CHILD MIGRANTS LEAVE CHILDREN MORE VULNERABLE

I think trafficking prevention in SA has recently been used as an excuse by the authorities to issue regulations and policies that, de facto, limit birth registration of foreign children. (Helena, NGO, Johannesburg)

There is a serious divide among government themselves—you find one department pushes a pro-active positive agenda and another one creates policies that counter this. So while Home Affairs is excluding children, Social Development is busy amending the Children's Act to include migrant and unaccompanied children. (Patience, Social Worker, Musina)

There is rampant corruption and weak systems which is undermining child protection systems at temporary places of safety. (Patience, Social Worker, Musina)

In a number of interviews, key informants addressed recent changes to laws and policies regarding migration and documentation—including the challenge of accessing work permits, the requirement for parents to have DNA tests to prove children are theirs, the requests for unabridged birth certificates, and recently proposed changes by the State in the registration of births of children born to foreign parents.

Department of Home Affairs and documentation

Children from Mozambique are usually with their parents but without passports. We don't arrest them but just deport them. (Police Officer, Komatipoort).

The findings showed that there are differences in the way Limpopo and Mpumalanga Provinces handle migrant children without proper travel documents. This indicates that there is inconsistent implementation of policies across the country and even within provinces. For example, evidence from interviews with SAPS in Mpumalanga Province showed that child migrants who lacked documentation were illegally detained and sometimes deported without the correct procedures being followed (such as involving social workers). For example, SAPS in Malalane, Mpumalanga, confirmed that they worked closely with Home Affairs, which is situated next door to them, when dealing with undocumented migrants, including children. They reported that if they encounter children, they will sometimes hand the children over to the local NGO for children; however, in some cases, they will deport them. The following scenario was described:

“

POLICE OFFICER: MAYBE BECAUSE SOMETIMES WHEN THEY COME, WHAT I'VE NOTICED, THEY COME SOMETIMES WITH OLD MEN BUT WHEN YOU ASK THEM, THEY CANNOT TELL THE TRUTH EVEN THEMSELVES, THOSE WHO THINK THEY ARE VICTIMS, THEY CANNOT TELL YOU THE TRUTH. AND ANOTHER THING IS THE PROBLEM OF COMMUNICATION... SOME OF THEM ARE TALKING OTHER LANGUAGES FROM MOZAMBIQUE SO WE CAN'T UNDERSTAND THEM. BUT AT THE SAME TIME WE SEE SOMETHING THAT IS NOT GOOD, SO THAT'S WHY WE USUALLY CALL HOME AFFAIRS BECAUSE AT HOME AFFAIRS THEY HAVE PEOPLE WHO CAN INTERPRET AND TALK TO THEM.

RESEARCHER: DO THESE YOUNG PEOPLE USUALLY HAVE PROPER DOCUMENTS, TRAVEL DOCUMENTS?

POLICE OFFICER: NO THEY DON'T HAVE, THEY DON'T HAVE.

RESEARCHER: SO HOW DO YOU ASSIST THESE CHILDREN? YOU AS THE POLICE?

POLICE OFFICER: NOTHING, WE JUST CALL V [OF HOME AFFAIRS] TO DEPLOY THEM BACK.

RESEARCHER: OH TO PUT THEM BACK?

POLICE OFFICER: JA TO DEPORT THEM.

Demonstrating little understanding of or regard for the laws and processes governing the handling of children, the sergeant went on to explain that they deported the child migrants the same day as they could not arrest individuals under the age of 18 years: 'We take them from the roadblock to the police station and call Home Affairs, the Home Affairs take them and must deport them then' (Sergeant M, SAPS, Malalane).

In the district of Ehlanzeni in Mpumalanga, another police officer stationed in Komatipoort noted that 'we rarely see children without their parents. Children from Mozambique are usually with their parents but without passports. *We don't arrest them but just deport them*' (emphasis our own). Evidently, the procedures for governing how these children should be treated, which include involving the social workers, were disregarded. The fact that the officer emphasised not arresting children and instead simply deporting them suggests that he felt that he was doing what he thought was right and in line with the law. This points to a further lack of understanding of the rights of children on the move by the police, who overall should play a key role in protecting children. While SAPS in Mpumalanga deport child migrants or, at times, send them to a shelter, other service providers in other areas attempted to support them but described the many challenges they faced in trying to do so. For example, Ntombi from an organisation in Musina noted that when trying to help migrants access documentation, they struggled in many ways. She attributed part of this to the incapacities of the Department of Home Affairs and part to restrictive migration policies that limit the type of visa that migrants can apply for:

“

SO, YOU FIND OUT THAT THE SECTOR ITSELF IS NOT EQUIPPED ENOUGH TO COPE WITH THE NUMBER OF PEOPLE. THEN YOU GO TO ECONOMIC MIGRANTS, YOU FIND OUT THAT IN THE CURRENT SITUATION THE POLICIES ARE SO STRICT SUCH THAT THEY LIMIT SO MANY PEOPLE WHO COULD BENEFIT THE ECONOMY OF THE COUNTRY, BUT THEY ARE BEING LEFT OUT. (Ntombi, NGO, Musina)

Ntombi went on to describe how this impacted on economic migrants trying to get work permits and how they end up using the refugee system because there is no other way they can legally enter. Based on this situation, Ntombi argued for a review of migration laws that can actually protect and support migrants rather than restrict their entry and force them into more vulnerable spaces:

“

THEREFORE, YOU FIND OUT THAT THE GOVERNMENT SHOULD FIND A WAY OF DEALING WITH THESE SITUATIONS AND POLICIES. I AM NOT SAYING IT SHOULD BE TOO LENIENT, BECAUSE I THINK IT SHOULD ALSO PROTECT ITS PEOPLE, BUT IT SHOULD LOOK AT WAYS OF ENCOURAGING PEOPLE TO COME AND BENEFIT THE ECONOMY. FOR EXAMPLE, THEY SHOULD TRY AND BE A LITTLE LENIENT WITH THE PROCESS. SO, YOU FIND THAT ONLY A FEW PEOPLE ARE BEING SAVED WHILE A LOT OF PEOPLE ARE BEING LEFT OUT. SO, THIS ON THE OTHER SIDE WILL MAKE THE NUMBER OF REFUGEES BALLOON. SO MIGRATION LAWS SHOULD BE REVIEWED. (Ntombi, NGO, Musina)

Birth certificates

A link between concerns about human trafficking and other challenges faced by migrants, including children, in accessing documentation was also made. For example, Helena, working as a lawyer for a community based organisation in Johannesburg, argued, ‘I would say fear of Human Trafficking, in particular of children, becomes an indirect hindrance in giving permits to the children and allowing fathers to register the birth of their child when the mother is not around or is undocumented’ (Helena, NGO, Johannesburg). She went on to describe how a request by the DHA that parents get DNA⁴¹ tests to confirm that the children with them are their biological children has meant that many more children are now undocumented: ‘parents cannot afford to get those tests’. Accordingly, Helena argued that:

“

THE CHILD TRAFFICKING FOCUS CANNOT PROTECT CHILDREN OR ADDRESS THE VULNERABILITIES THEY FACE. THE FOCUS SHOULD BE ON PROPER ACCESS TO DOCUMENTATION AND PROCESSING OF ASYLUM SEEKERS CLAIMS, BIRTH REGISTRATION, THE RIGHT OF A CHILD TO DOCUMENTATION AND ACCESS TO WORK AND EDUCATION. (Helena, NGO, Johannesburg)

41 DNA, or deoxyribonucleic acid, is the hereditary material in humans and almost all other organisms from which the hereditary links of a human being can be ascertained (i.e., the biological link between a parent and a child).

However, a second-generation migrant in Komatipoort observed that the issue of documentation also affected many South African children. He claimed, 'Many children in South Africa [in Mpumalanga Province] and in schools the majority of them don't have IDs [Identity Documents]'.⁴²

Helena noted that the government should focus on eliminating the high levels of corruption in other spaces such as at the Refugee Reception Offices (RROs) and on improving and speeding up the refugee claim assessment system rather than on 'making documentation even more restricted'. She concluded, 'also when it comes to the enforcement of provisions that should prevent trafficking, the police who are supposed to enforce them, don't act. So where is the consistency?' (Helena, NGO, Johannesburg). The directive that demanded that all parents travelling with children across borders into and out of South Africa carry unabridged birth certificates was also raised as a policy that impacted on migrant communities and, in some cases, increased the vulnerabilities that migrants face. The policy had been introduced by the Government in June 2015 and was claimed to be a response to concerns about child trafficking through South Africa. However, it was found to be highly unpopular as it impacted on the tourism industry.⁴² Rose, working for an INGO in Cape Town, noted the unintended consequence of this policy was that it exposed migrant children to more risks:

“

THIS ISSUE OF THE UNABRIDGED BIRTH CERTIFICATES... SO THEY CLAIMED THAT THEY WOULD STOP TRAFFICKING... THAT THIS WOULD STOP THE WRONG PEOPLE TAKING CHILDREN ACROSS BORDERS ESPECIALLY IN THE CASE OF TRAFFICKING... BUT WHERE IS THE EVIDENCE THAT THIS WILL WORK? PEOPLE HAVE ALWAYS CROSSED INFORMALLY WITH CHILDREN AND IF YOU MAKE IT EVEN HARDER, IF YOU MAKE THE REQUIREMENTS HARDER THEN WHAT DO YOU GET?... [P]EOPLE FIND MORE SECRETIVE AND RISKIER WAYS TO COME... THEN YOU MAY FIND YOU INCREASE TRAFFICKING WHILE SAYING YOU ARE STOPPING IT. (Rose, INGO, Johannesburg)

⁴² The directive was supported by claims that 30,000 children are being trafficked through South Africa every year—the same unsubstantiated figure that we discussed in the literature review which came from Molo Songololo and was highly contested (see also Wilkinson, 2015).

However, Ntombi from the NGO in Musina took a different view. While she acknowledged that the policy was 'controversial', she also stated that it had increased protective measures for children. When asked to explain how this policy, which was revised in late 2018 after an outcry that it was negatively affecting the tourism sector amongst other reasons, had been effective, Ntombi argued:

“

I THINK THE MOVEMENT ACROSS WITH CHILDREN WAS SOMEHOW REGULATED. THERE WAS THAT FEAR THAT I CANNOT TRAVEL WITH A CHILD WITHOUT PROPER DOCUMENTS. FOR ME, PEOPLE WHO MAKE A LOT OF NOISE ARE PEOPLE WITHOUT PROPER DOCUMENTS FOR THOSE CHILDREN OR PEOPLE WHO DON'T KNOW THE PROCESSES SO TO SPEAK, OR THOSE WHO FEEL LIKE IT'S TOO HARD OR THE PROCESS IS TOO LONG OR SOMETHING. BUT IT WORKED BECAUSE THERE WAS NO CHILD WHO PASSED THE AIRPORT OR BORDER POINTS OF ENTRY WITHOUT PROPER DOCUMENTATION THAT STATE THE RELATIONSHIP BETWEEN THE PERSON WITH A CHILD AND THAT CHILD. SO, FOR ME EVEN IF THE GOVERNMENT IS CASTING DOUBTS, THEY SHOULD LOOK FOR ALTERNATIVE LAWS WHICH ARE AS STRICT AS THIS ONE BECAUSE IT SHOULDN'T BE EASY TO CROSS BORDERS WITH CHILDREN. (Ntombi, NGO, Musina).

Of note in this case is that competing interests by different sectors can impact on child protection systems, including efforts to stop child trafficking.

Cases not followed through

A number of key stakeholders implicated the police in the challenges faced around the implementation of laws on trafficking. The overall view on the TiP Act and anti-trafficking laws in general was that they are adequate but that the implementation is the problem. However, it is important to take into consideration that many of these key informants had admitted that they had not read or been trained on the TiP Act. Thus, their views on the workings of the TiP Act are questionable. Almost all the study participants in the border areas, including police officers, had not read or been capacitated on how to interpret and enforce the TiP Act and did not know how it is impacting on efforts to stop human trafficking. The head of an NGO in Musina that provides services to migrants, including children, emphasised, 'The Police don't have the knowledge about child trafficking'. Backing this view, all the police officers who participated in the study in Musina and various sites in Mpumalanga indicated that they do not know much about it. Where there was recognition that the prosecution of trafficking cases was complex and often very hard to push through, corruption among law enforcement agents and poor handling of cases was cited.

Interviews with many key informants working for international agencies and legal NGOs, CBO Managers (Mpumalanga), and migrant children at both sites revealed the complexities involved in the successful prosecution of perpetrators of human trafficking. The main challenges they highlighted were high levels of corruption by law enforcement agents, lack of understanding of the law on human trafficking, the problem of jurisdiction, fear amongst different people involved in a case (including trafficking victims afraid to open up), language barriers, and victims being in transit. On the issue of corruption, a key informant who works for a child protection agency in Musina claimed, 'Corruption is rife between SAPS and these traffickers'. Several key informants in Musina and Mpumalanga claimed that cases of law enforcement officers being bribed were common. De Sas Kropiwnicki (2010) made a similar finding in Musina. Arguably this indicates that corrupt practices by state and non-state actors are continuing unabated.

Regarding the issue of jurisdiction, one of the lawyers working for a legal organization in Musina argued that trafficking is a complex issue to prevent. 'It is a long chain with different members because the issue of jurisdiction comes into play also and thereby not many cases are resolved' (Neil, Legal NGO, Musina). Fears of talking about human trafficking prevailed amongst some key informants because perpetrators of human trafficking were seen as very dangerous. A key informant who works closely with migrant children in Musina explained why many people were afraid to talk about and report cases of suspected trafficking: '[People] fear for their own lives after revealing information ... Fear of being intimidated and persecuted after revealing information'. This could also have an impact on why cases are not followed through.

As previously noted, cases of police being bribed were seen as common amongst young people. Some service providers also commented on police bribery in relation to child trafficking cases and the impact it had on children's rights. This is illustrated below in the comment by Jabu, a service provider working closely with migrant children in Musina:

“

I THINK THOSE THAT ARE TASKED TO PROTECT AND UPHOLD THE RIGHTS OF CHILDREN ARE ACTUALLY PERPETRATORS AND ABUSERS OF CHILDREN'S RIGHTS. SOMETIMES EVEN WHEN TRAFFICKERS ARE INTERCEPTED, THEY CAN SIMPLY PAY BRIBES TO POLICE OFFICERS WHO WILL POCKET THE MONEY FOR THEIR OWN BENEFIT. WE HAVE WITNESSED THESE CASES OF CORRUPTION EVEN IN ACTIVITIES THAT ARE NOT RELATED TO CHILD TRAFFICKING. FOR EXAMPLE, A BUS CAN BE STOPPED AND CHARGED FOR OVERLOADING BY THE POLICE BUT AS SOON AS THE OFFICERS ARE PAID A BRIBE, THEY WILL LET THE BUS PASS THROUGH. THIS IS ENOUGH EVIDENCE THAT POLICE TAKE BRIBES AND MIGHT ALSO BE DOING SO IN CHILD TRAFFICKING RELATED CASES. (Jabu, NGO, Musina)

The reported high prevalence of corruption amongst law enforcement agencies across the research sites therefore has to be considered in distorting the real picture about the scale of the problem of child trafficking in South Africa.

On a different but related matter of laws and the rights of children, a number of informants in this study also observed that South Africa has ratified a number of international conventions and has a number of laws that are designed to protect children but that the enforcement of these laws is very poor. For example, in Tonga, Mpumalanga, some key informants said migrant children were doing dangerous work and being exploited at various work places, particularly whilst working as domestic workers and farm workers in sugarcane estates.

Using the Immigration Act

A SAPS officer in Komatipoort claimed that their main issue was operational challenges when dealing with trafficking cases. He noted that there is a gap between what exists in law and what is happening on the ground. In addition, applying the law to the cases they were dealing with posed a number of problems, 'When you look at the law on paper it's one thing but when it comes to the reality, I think it just becomes too complex' (SAPS Officer, Komatipoort).

The Komatipoort SAPS officer's view about the difficulties of enforcing the law were backed by another police officer in Musina, who noted:

“

WHEN WE READ AND SEE THE LAWS ON PAPER, THEY ARE SIMPLE AND UNDERSTANDABLE BUT WHEN IT COMES TO APPLICABILITY, IT BECOMES A CHALLENGE. MAYBE IF YOU GO FURTHER, AND THAT'S WHY I SAID MUSINA BECAUSE MUSINA IS A TRANSIT TOWN. NOBODY WANTS TO BE HELD HERE.

The difficulties faced by law enforcement agencies and other service providers to investigate and follow up on cases of suspected human trafficking in transit areas has been mentioned in other reports. Although the officers here did not elaborate beyond highlighting the complexities of real situations as opposed to what is proscribed in law, it is clear that there are many intersectional issues at play that make it hard to follow cases and keep them open. The reality for many migrants is that due to the need to find work fast, earn money, and remain less visible, they do not choose to stay in one place. This would include not hanging around to deal with a legal and criminal issue that they may have raised or may have had raised against them.

The same officer in Musina described how smuggling and trafficking cases are dealt with using the Immigration Act rather than the specific TiP Act because it is easier to prove that people have entered South Africa illegally than it is to prove smuggling or trafficking cases. She talked about this mostly in reference to the many smuggling cases they dealt with:

“

WE HAVE MANY CASES OF... SMUGGLING, AS I'VE SAID. BUT THEN THESE CASES [OF TRAFFICKING] ARE BEING DISMISSED IN COURT. THE IMMIGRATION ACT IS SO EASY BECAUSE THE PEOPLE ENTER SOUTH AFRICA WITHOUT DOCUMENTS, SO THAT'S HOW WE FIGHT HUMAN TRAFFICKING AND THE SMUGGLING, BY USING THE IMMIGRATION ACT. (SAPS Officer, Komatipoort)

Some of the responses indicated that the increased awareness of child trafficking had made service providers and especially shelters more vigilant in terms of protecting children. For example, one respondent described how more questions are now asked of anyone who arrives at a shelter claiming to be a guardian or caregiver of a child:

“

I THINK NOW PEOPLE ARE MORE AWARE OF CHILD TRAFFICKING BECAUSE PREVIOUSLY, CAREGIVERS WOULD NOT ASK MANY QUESTIONS ABOUT THE RELATIONSHIP BETWEEN THE CHILD AND THE PERSON CLAIMING TO BE WILLING TO OFFER THAT CHILD SOME CUSTODY. NOW THERE ARE MANY QUESTIONS BEING ASKED, AS TO HOW YOU ARE RELATED TO THE CHILD. AND IF WE LOOK AT THE LAWS THAT HAVE BEEN PASSED, AT HOME AFFAIRS, YOU CAN'T JUST BE DOCUMENTED BY SIMPLY SAYING THAT THIS IS MY CHILD. YOU ARE TO PROVE THAT THIS ONE IS YOUR CHILD BY PRODUCING PROPER DOCUMENTATION. THIS IS DONE BECAUSE THEY WILL THINK THAT YOU ARE INVOLVED IN CHILD TRAFFICKING. SO THERE IS A LOT OF AWARENESS, THAT AWARENESS I THINK IS EVEN REACHING THE PARENTS, THE SERVICE PROVIDERS. (Patience, Social Worker, NGO, Musina)

The respondent went on to describe how the challenges extend beyond South Africa. He argued that sending countries must be engaged when addressing child trafficking so that information can be shared and there is more understanding of the documentation process:

“

THIS IS IMPORTANT BECAUSE CHILDREN COME TO THE BORDER, BUT THEIR JOURNEY BEGIN IN THEIR COUNTRIES. HERE AT THE MOMENT, ONCE YOU TRY TO SEND TO CHILD FOR CHILD PROTECTION, THE PEOPLE DON'T KNOW WHAT THAT IS ALL ABOUT, IF YOU TRY TO MAKE THEM UNDERSTAND THE DOCUMENTATION PROCESS HERE IN SOUTH AFRICA, THEY DON'T KNOW. SO, I THINK THIS IS NOT ONLY A SA PROBLEM, IT SURROUNDS THE REST OF AFRICA... [S]O, HERE IS YOU HAVE TO ADDRESS THE CHALLENGES OF CHILD TRAFFICKING HERE IN SOUTH AFRICA, YOU ALSO HAVE TO ADDRESS THESE CHALLENGES IN ALL THE NEIGHBOURING COUNTRIES LIKE ZIMBABWE, BURUNDI, BOTSWANA, AND SO FORTH.

However, while some respondents identified improved measures to protect children, others, including children themselves, claimed that there is still not enough being done and that children still face many risks when staying in a shelter. Patience, a respondent who provides services to migrant populations in Musina, also noted the complexity of the situation. She described how migrant children do not want to be in shelters because they want to be able to move as they please; they push back if they feel that they are ‘being held’. She claimed that this inclination then heightens the risks they face. The children are exposed to further risks because the shelters do not have enough security to keep them safe:

“

SO EVEN THE CAREGIVERS KNOW THAT THE CHILDREN WILL BE TAKEN ANYTIME BUT MAYBE BECAUSE THEY DON'T KNOW THE LAWS, THEY WILL NOT DO ANYTHING ABOUT IT. I THINK MAYBE THIS IS ALSO CAUSED BY INCAPACITATION. WE ARE TALKING OF THE PLACE OF SHELTER THAT DOESN'T HAVE ENOUGH SECURITY AND CHILDREN CAN GO IN AND OUT AS THEY PLEASE. (Patience, Social Worker, NGO, Musina)

A number of the boys in the Musina FGD were very clear that the social workers, compared to the police officers, offered them more support and protection. One boy, for example, noted, ‘Social workers offer quite remarkable help to children when compared to police officers. Before even attending to you, police officers will begin by asking for your documents like your passport, where you come from and so forth’ (Boy, FGD, Musina). The point being made by the migrant children is that police officers’ focus on documentation means that the children’s welfare is secondary to issues assumed to be of national security. However South Africa’s constitution places a lot of emphasis on the need to protect any child on South African soil, and documentation should not determine whether or not children are protected.



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A different agenda?

Overall the respondents gave mixed views on whether or not South Africa as a state is invested in protecting child migrants from vulnerabilities, including trafficking. As a SAPS sergeant in Malalane argued:



THEY [THE GOVERNMENT] UNDERSTAND ON THE DAY THAT SOMETHING HAS HAPPENED. THEY UNDERSTAND ON THAT DAY. AFTER THAT DAY THEY DON'T BECAUSE YOU SEE, OUR GOVERNMENT ALWAYS ACT WHEN THERE IS SOMETHING HAPPENING. THEY ARE NOT PREVENTING. THE ALWAYS JUST ACT WHEN SOMETHING IS HAPPENING.

Meanwhile an advocacy officer at a centre that supports migrants in Cape Town claimed, 'Trafficking is politics—fits the agenda of Home Affairs' (Mercy, Support Centre, Cape Town). While a number of service providers and migrant children themselves expressed their discontent on how the State was responding to the challenge of trafficking and the problems faced by children on the move, there was also widespread acknowledgement amongst them that the State was trying to fight against this practice and address the various challenges faced by these children.

Taking into consideration the challenges faced by SAPS and the sophisticated skills the traffickers apply to deceive and evade the law enforcement agents, some key informants felt that they police are struggling in difficult circumstances in which they can be tricked or evaded by traffickers. For example, one social worker in Musina noted, '... these traffickers know how to evade the police. Sometimes they even fake passports of those that don't belong to them' (Patience, Social Worker, NGO, Musina).

The introduction of the TiP Act was seen as a progressive way to combat human trafficking, but the question remains as to whether or not the State is capacitating its various departments to be able to efficiently implement the Act and deal with this problem. Evidence from this study suggests that talk about fighting trafficking is largely rhetoric. The fact that the majority of police officers interviewed remain clueless about the TiP Act is indication enough that very little can be done.

THEME EIGHT: CHILD MIGRANTS FACE CHALLENGES ACCESSING EDUCATION DUE TO A LACK OF DOCUMENTATION AND UNLAWFUL EXCLUSION BY THE STATE

Exclusion makes children vulnerable ... Government responses are more exclusive rather than protective. (Roman, INGO, Johannesburg)

You cannot use a school to report and remove children ... that is frowned upon globally ... Home Affairs must practice their security at the border. (Roman, INGO, Johannesburg)

Linked to the previous theme, one of the main issues identified across interviews with key informants was the way in which the government, including the Department of Basic Education (DoBE), were excluding children from schools because of a lack of correct documentation. A number of organisations spoke directly about this issue, and there was a clear view across all sites that the exclusion of children from schools was happening, that it was unlawful, and that it ultimately rendered children more vulnerable. Commenting on what made migrant children most vulnerable, Roman, head of the child protection team at an INGO, confirmed that ‘thousands of children are being excluded from school’ (Johannesburg). He described how this was done in the name of protecting victims of trafficking but was not logical because the exclusion of children from school ultimately renders them more vulnerable. He explained, ‘When you are vulnerable—i.e. refused access to school because of suspected trafficking—then you are more likely to be trafficked. So how does this protect a child?’ (Roman, INGO, Johannesburg).

He added, ‘You cannot use a school to report and remove children ... that is frowned upon globally ... Home Affairs must practice their security at the border’ and concluded, ‘Government responses are more exclusionary rather than protective’ (Roman, INGO, Johannesburg). In the FGD with girls from a shelter in Musina, the girls described many children coming to South Africa with the hope of attending school but then facing challenges because they do not have the documents they needed:

“

... YOU MIGHT GO TO SCHOOL BUT AS YOU GET TO GRADE 7 OR 8, THE SCHOOL WOULD START TO ASK FOR DOCUMENTS SUCH AS PASSPORTS, PERMITS, AND BIRTH CERTIFICATES. SO HERE THE CHALLENGE BECAUSE WORSE IN THAT IT WOULD BE DIFFICULT FOR YOU AS A CHILD TO GO BACK TO THOSE ABUSIVE PARENTS THAT YOU RAN AWAY FROM TO ASK MAYBE FOR THEM TO ASSIST YOU IN GETTING THESE DOCUMENTS. (Girl, FGD, Musina)

Faced with these challenges, a number of migrant children are forced to drop out of school, move out of safe shelters into the streets, live with older partners in exploitative sexual relationships, or start engaging in work that is harmful and dangerous, a violation of their rights (see De Sas Kropiwnicki, 2010; Mahati, 2015). It is worth referring back to the point made in the literature review about the normative ideals of childhood and the home—meaning that migrant children who are staying outside shelters and not attending school are often pathologised by service providers based on the idea that their childhoods are no longer normal (Mahati & Palmarty, 2018). They are often marginalised and excluded from services like shelters. Accordingly, O’Connell Davidson (2011) argues that the ‘discourse on “child trafficking” operates to produce and maintain exclusionary conceptions of who is normatively a child’ (p. 454). She adds, ‘These conceptions of the normative child then inform policy and practice that often punishes, rather than protects, children who do not conform to the imagined norm, and that simultaneously reinforces children’s existing vulnerabilities and creates new ones’ (O’Connell Davidson, 2011, p. 454).

This argument was also illustrated by Helena, who works with migrants at a legal NGO:

“

THEY [THE STATE] FIND IT DIFFICULT BECAUSE THESE CHILDREN ARE NOT BEHAVING LIKE THE EASY CHILD VICTIMS THEY NEED THEM TO BE ... THEY DO THEIR THINGS, THEY WORK, THEY SLEEP AROUND... NOT A CHILD YOU CAN JUST RESCUE... BECAUSE THEY DON’T WANT THAT. (Helena, Legal NGO, Johannesburg)

Interestingly, a trained social worker who works for an NGO in Musina observed that providing migrants, including children, with documentation is often not good enough. She argued that they remain very vulnerable:

“

YES, BECAUSE THEY DON’T HAVE THE NECESSARY SUPPORT TO GET A JOB. I CAN GIVE YOU ONE EXAMPLE OF A LADY I HAD A CHAT WITH, SHE WAS STAYING AT SHELTER. SHE TOLD ME THAT IF ANY MAN COMES AND ASK FOR HER HAND IN MARRIAGE, SHE WILL MARRY HIM BECAUSE SHE DIDN’T HAVE ANY JOB, ANY MONEY, AND THAT MAN WOULD BE HER ONLY HOPE OF SUPPORT. (Patience, Social Worker, NGO, Musina)

Her critique is in line with the arguments of many others that South Africa’s policy of self-settlement cannot work if migrants are not provided with material support. Though some NGOs offer support to these migrants, it is far from adequate, and many migrants live in situations of extreme poverty and face precarious everyday lives. Consequently, migrants, including children, are being exploited at various work places. For example:

“

YOU FIND THAT THE SERVICES ARE NOT ENOUGH, THERE IS NO SUPPORT. SO MANY PEOPLE END UP LOOKING FOR JOBS IN THESE SHOPS OWNED BY INDIANS, ETHIOPIANS OR PAKISTANIS. YOU WILL FIND OUT THESE PEOPLE ARE NOT PAID, OR THE WORKING HOURS ARE LONGER. THERE IS SOME LEVEL OF EXPLOITATION... IF YOU SIT WITH THOSE WOMEN, THEY WILL TELL YOU HOW THEY ARE EXPLOITED BY THEIR EMPLOYERS. (Patience, Social Worker, NGO, Musina)

In addition, she outlined the various international and national laws and policies defining the rights of a child to education and then how the lack of coordination between the different government departments in South Africa means that children's rights are being violated:

“

YOU KNOW WE HAVE THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, AFRICAN CHARTER, AND IN SOUTH AFRICA, THE CHILDREN'S ACT. SO, THESE TALK ABOUT HOW CHILDREN HAVE RIGHTS TO ENROLLING (INTO) SCHOOL ETC. THEN WE HAVE THE DEPARTMENT OF EDUCATION AND THEY ARE THERE. THEN YOU FIND OUT THAT IN MOST CASES, OF COURSE THE LAWS ARE THERE BUT DEPARTMENTS LIKE THE DEPARTMENT OF SOCIAL DEVELOPMENT IS NOT LINKED TO WHAT'S HAPPENING TODAY WITH REGARDS TO THE EDUCATION ACT. SO, IN THIS CASE CHILDREN'S RIGHTS ARE NOT OBSERVED BECAUSE DEPARTMENTS DO NOT COMPLEMENT EACH OTHER. SO EVEN IF THE RIGHTS TO EDUCATION AND OTHER RIGHTS OF CHILDREN LIKE TO DECENT LIFE ARE ENSHRINED IN THE CONSTITUTION, THEY ARE NOT OBSERVED BECAUSE DEPARTMENTS SORT OF CONTRADICT EACH OTHER. (Patience, Social Worker, NGO, Musina)

However, Patience also spoke about the contradictions in the way service providers work. She pointed out that state and non-state actors at times work together to tackle the challenges being posed to migrant children, 'But when we talk about education, there is so much of engagement and involvement of human rights and if you look at this issue of provisionally enrolling migrant students, even though it's not yet a final thing, we can say that there is some improvement.'

This view was echoed by another respondent. Helena, another social worker, described a stakeholders' committee in Musina that had formed to address the needs of unaccompanied and separated children. The committee included a number of key stakeholders, including Save the Children, Lawyers for Human Rights, shelters, and the Department of Home Affairs. The respondent identified access to education as the key issue affecting undocumented children and described how the committee came together to address the urgent issue of children being expelled from school when lacking documentation:

“

SO, WITH REGARDS TO EDUCATION, THERE WAS A PARTICULAR ISSUE THAT CAME OUT THAT STUDENTS THAT WERE NOT DOCUMENTED WERE GOING TO BE EXPELLED FROM SCHOOL. SO WE DELIBERATED ON THE ISSUE AND MIGRANT STUDENTS WERE ALLOWED TO PROVISIONALLY ENROL. SO THAT IS WHAT LED TO THE EMERGENCY OF THE COMMITTEE WITH THE AIM OF HOW TO ALLOW STUDENTS TO ACCESS EDUCATION. SO HERE YOU COULD FIND OUT THAT IN FARM SCHOOLS, ALMOST 60 CHILDREN WILL BE SENT AWAY. (Helena, Social Worker, NGO, Musina)

The above comments suggest that there are ongoing efforts to address the problems of a lack of documentation and access to education, which the young people interviewed identified as key concerns and vulnerabilities that they faced.

Conclusion to findings and discussion

Drawing from the analysis of the eight key themes, we present three key points and questions that lead us into our concluding argument.

1. The low number of trafficking cases and little engagement with trafficking cases show that the discourse of child trafficking does not reflect the realities on the ground. In fact, the discourse is far removed from what is actually happening and based more on speculation and a moral panic shaped by anecdotal evidence. While there is evidence of children facing high levels of vulnerability and there are some cases of trafficking being encountered, there remains a disconnect between the reality and discourse. Therefore, we must ask why the discourse continues to maintain that child trafficking is widespread?
2. The practices we identified that are carried out in the name of ‘protecting’ child migrants, including deporting them, making it harder to cross borders, and preventing them from attending school, violates the rights of children. These practices also place them at greater risk. However, we find very little discussion of these practices in the public discourse around child trafficking. State justification for such practices also remains simplistic and fails to acknowledge the complexities of migration. Again, we need to ask why?
3. Documentation was identified by all individuals involved in addressing the vulnerabilities of child migrants and by child migrants themselves as the key issue shaping the experiences of and the levels of risk faced by child migrants. If this is the case, why does this not lead to state and non-state interventions focused on documenting children?

The answers to these three questions lie in what the discourse of child trafficking represents and what it can do for the State looking to restrict migration and justify the further securitisation of borders. We consider this further in the conclusion.

SECTION 4

Conclusion

This report has presented an overview of the state of child trafficking and child rights in South Africa. While the study was small and therefore not generalisable, the basis of empirical research in which a number of different perspectives were sought is important. This study provided some insights into this complex and important topic that can inform policymaking and programming as well as guide further research. It also sheds light on the varied practices of the service providers and the consequences of those practices on migrant children and on their lived experiences as social actors.



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The study showed that evidence from Cape Town, Gauteng, Ehlanzeni District, and Musina concurs with available literature that the majority of child migrants have not been trafficked and that there is limited understanding amongst service providers and scant evidence of trafficking. Most children have either made a decision on their own to come to South Africa or have been influenced by their peers or relatives, including parents, often in the absence of many options, to come to improve their economic situation and access basic services like education. Though the movement of children under these conditions challenges norms about the ideal childhood and exposes children to a number of vulnerabilities, this does not mean that their experiences can—conveniently—be described as trafficking. Describing them as such is dangerous and generates a lot of problems in the lives of children on the move. Furthermore, the complex, everyday realities of children crossing borders, including the risks they face in encountering corruption amongst border officials, confronting xenophobia, and being denied access to documents, do not fit with an overall focus on children as victims who need to be ‘put back in place’ in their own countries or homes.

Central to the findings in this report was the conflicting information with regard to the situation of child trafficking in South Africa. On the one hand, a number of key informants indicated that they were not aware of cases of child trafficking; on the other, some key informants strongly argued that it is rife. This confusing picture is complicated by a lack of knowledge of the definition of trafficking as well as a lack of training around trafficking issues. In addition, the fear of and 'moral panic' about trafficking appears to override the need for an evidence-based and realistic picture. With reliable statistics on child trafficking missing and available statistics old and not credible, the general tendency by service providers, including SAPS, is to rely on the media as sources of information on child trafficking.

Contrary to the amplification of the problem of child trafficking when service providers were describing the scale of the child trafficking problem, their actions were informed by the realities of migrant children's everyday battles for survival and their past experiences. Child trafficking was not dominant in their everyday work; yet, the service providers' past and current approach to implementing interventions, policies, and laws anchored on flawed research, assumptions, fears, and unsubstantiated claims that child trafficking is widespread has the effect of undermining children's rights and does not effectively deal with the real challenges faced by children on the move.

Underlying all of these challenges for child migrants are the issues of documentation and access to education. These two issues can make children safer and improve their opportunities. As our findings showed, a lack of documentation and access to obtaining legitimate documentation heightens the vulnerabilities faced by child migrants as they struggle to use the safe formal entry and exit border points and access education, healthcare, and other support services. A lack of documentation also reduces the options available to them. South Africa currently has a framework of progressive laws and policies guided by international principles that protect the rights of children including those who are non-nationals; the denial of access to documentation, education, and healthcare is not only violating these rights but rendering children far more vulnerable, even to trafficking.





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Therefore, we argue that contrary to the idea that the State protects vulnerable groups, the common conflation of trafficking with smuggling and other forms of migration and the failure to acknowledge the complex migration realities in South Africa have enabled the State to justify the need for harsher immigration and migration-related policies—policies that are based on efforts to secure borders instead of to protect vulnerable migrants, including women and children. These policies not only misrepresent and diminish the severity of many of the key vulnerabilities faced by migrant children, but they also can heighten the risks that children face as their experiences, which do not amount to trafficking, are ignored and sidelined. This report has presented evidence from the ground that suggests that to speak of child trafficking alone and to fail to recognise what makes all children on the move vulnerable is to place children at greater risk and to undermine child protection approaches in South Africa.

The key to considering the experiences of children on the move is recognising that in reality the migration of children is unlikely to change. Even with increasingly restrictive immigration measures and laws such as those proposed by South Africa, children will still have reasons to want to migrate and will continue to try. As a result, changes that make immigration laws more restrictive and close borders will likely increase the vulnerabilities faced by children rather than stop them from migrating. Therefore, any approach directed at children should be about facilitating safer movement, ensuring access to support, and making sure children are documented so as to reduce the risk of greater harm.

Finally, in order to build on the findings of this study, a much larger comprehensive study in which migrant children are active participants is needed. This study should explore at greater depth the key findings we have identified as well as expand the research across the whole of South Africa to ensure that a robust and reliable picture of child trafficking—within a broader context of child migration—can be developed. This can then inform policymaking and, most importantly, challenge claims that are based on myth rather than evidence.

SECTION 5

Recommendations

Below we provide a number of recommendations that could lead to a better understanding of and a more effective and positive response to the current situation of child migration, including child trafficking. These recommendations begin with three key recommendations and then are divided into those directed at policymakers and at service providers (with recognition that they should be considered by both together).

THREE KEY RECOMMENDATIONS

The three key recommendations are:

1. Plan, develop, and fund a bigger and more comprehensive child trafficking study
2. Work from an evidence-based approach
3. Ensure that ALL child migrants are documented

1. **Plan, develop, and fund a bigger and more comprehensive study on child trafficking to better understand the overall child migration situation.** This study should use multiple methods, including qualitative and quantitative methods, and should crucially include the voices of child migrants themselves, including those who have been victims of child trafficking. This study, we suggest, needs to:
 - Be longitudinal and use mixed methods;
 - Aim to understand what is happening in child migrants' countries of origin, while they are on the move, and when they reach destination places;
 - Aim to look for trafficking trends and patterns and identify which communities/groups are at most risk (including where, why, and how);
 - Include data that is disaggregated by nationality, age, and gender;
 - Explore the long-term impact of trafficking on trafficking victims, particularly regarding the role of the TiP Act (2013);
 - Unpack and understand in detail the workings of the different perpetrators in the trafficking chain, etc.

2. Ensure that information provided and engagement on the issue of child trafficking is based on empirical evidence (such as child trafficking data and information developed by policymakers, including from the study suggested in the first recommendation) and not on assumptions, myths, speculation, and unfounded fears.
3. Focus on ensuring that ALL child migrants have access to documentation and basic services.

TO POLICYMAKERS

Child trafficking data and information

1. Develop a centralised database on child trafficking cases and prosecutions. This needs to be reliable and accessible data that is regularly updated so that it can assist in policy and decision making by service providers.
2. Disseminate accurate statistics on trafficking and child trafficking—especially to law enforcement agencies, service providers, and those working with migrant communities and children.
3. Ensure that the data provided is separated out from the many assumptions and speculations that shape trafficking knowledge and is given within the context of children on the move and migration in general.
4. Ensure that efforts are made to distinguish child trafficking from other forms of child exploitation, including sexual exploitation. The more accurate the picture of child trafficking given, the more effective the support offered to victims can be.

Trafficking and related laws and policies

5. Develop evidence-based laws and policies on trafficking and migration rather than ones driven by assumptions and unfounded fears.
6. Recognise the need for consistent and uniform implementation of laws, policies, and best practices dealing with children on the move amongst service providers across the country.
7. Roll out regular training for law enforcement agencies, service providers, and civil society on laws and policies related to migrant children and on the TiP Act (2013) within a human rights context.
8. Widely disseminate information on child trafficking in context (i.e., in relation to the other vulnerabilities children on the move face).
9. Speed up the investigation and prosecution of accused perpetrators of child trafficking.
10. Ensure accurate media and civil society representation of child trafficking cases and the discourse in general to avoid supporting a ‘moral panic’ and further perpetuating myths and misinformation.

11. Support efforts to create a more efficient and effective asylum system and to ensure that second generation migrants and unaccompanied migrant children are documented as soon as possible to avoid further risks, including child trafficking.
12. Tighten laws and policies aimed at preventing child marriages and other cultural or traditional practices that make children, particularly migrant girls, vulnerable to live under trafficking-like conditions.

Addressing children on the move

13. Ensure the implementation of laws that uphold the right of all children to education, to healthcare, and to protection regardless of documentation status.
14. Work with the realities and the language of 'children on the move' rather than framing children as simple victims without agency in order to respect child autonomy and heighten child protection.
15. Engage with empirical research that documents the realities of children on the move, including key reports from international and national NGOs and research centres.
16. Recognise the key vulnerabilities faced by children on the move and, in doing so, focus on making the mobility and life in the country of destination safer for child migrants with the recognition that children are and will keep moving across borders.

Working with law enforcement and service providers

17. Expose and fight corruption amongst the South Africa Police Services, South African National Defence Force, and other officials at the border.
18. Capacitate service providers on what trafficking is, including on the TiP Act, and how to assist victims.
19. Capacitate service providers with both human and material resources to tackle child trafficking.
20. Widely consult service providers before introducing or changing laws and policies aimed at tackling child trafficking and protecting migrant children in general.
21. Capacitate service providers to unpack/investigate cases of suspected child trafficking with recognition that they are very complex, multi-cultural, involve multiple social actors, and cross international boundaries.
22. Involve children in the development and implementation of interventions aimed at assisting them.

TO SERVICE PROVIDERS

Child trafficking data and interventions

1. Focus on developing a realistic and context-specific understanding of child trafficking, avoiding generalisations, questionable statistics, and narratives based on unsystematic observations and old cases.
2. Avoid conflating child trafficking and child smuggling as well as child migration and sexual exploitation and/or transactional sex.
3. Recognise and work to address the key vulnerabilities faced by child migrants, which include lack of access to documentation, problems accessing healthcare and education, and a need for more support.
4. Improve the implementation and monitoring of the workings of laws, policies, and interventions.
5. Work to support the government in creating a consolidated data base on child trafficking cases.
6. Recognise the need for more and better research on child trafficking and ensure that service providers assist researchers in gathering accurate data on the realities of child trafficking.
7. Ensure that training and interventions offered by anti-trafficking organisations are contextualised and provided alongside recognition of the harms of over-emphasising child trafficking and misrepresenting the experiences of children on the move.

Training, support, and advocacy

8. Capacitate migrants in general (including in sending countries) in order to increase awareness of vulnerabilities and knowledge of what documentation is needed to cross borders and where to access support.
9. Improve coordination of efforts within the country and in the region.
10. Increase number of centres that can handle cases of child trafficking and that are sensitive to the kinds of vulnerabilities victims face, including trauma.

11. Run more trainings that can engage with the topic of children on the move and in doing so:
 - Understand the definitions of human trafficking and child trafficking and the distinctions between trafficking, smuggling, sex work, sexual exploitation, and different forms of migration and mobility;
 - Discuss the need to avoid pathologising and infantilising child migrants and discuss the realities of children on the move, including incorporating the experiences of child migrants themselves;
 - Address the consequences for child migrants of inadequately and inappropriately dealing with the issue of child trafficking;
 - Address the current challenges faced and work to advocate for more resources and funding;
 - Ensure that practices are anchored on principles of child protection and rights and tackle corruption;
 - Acknowledge many of the complex realities surrounding children on the move, including that the idea of home as a safe and ideal place for children should not be applied rigidly.
12. Develop and share best practices of tackling child trafficking and of assisting child migrants.
13. Closely monitor the actions of other service providers (like SAPS) towards migrant children in order to protect their rights.
14. Oppose moves by the South African government to restrict the rights of migrant children, especially in ways that make them less safe and which could ultimately lead to increased risk of child trafficking.

Assisting child migrants

15. Focus on assisting child migrants in their country of destination, including providing information on safe migration, documentation, and access to support.
16. Prevent the illegal deportation of child migrants and ensure that their rights are protected.
17. Support and enhance efforts by migrant children themselves to make their situations better and stay safe with recognition of limited choices and risk.
18. Recognise vulnerabilities shaped by age, gender, and nationality.
19. Ensure that child migrants can access education and work with the Departments of Education, Justice, Social Development, and Home Affairs and with schools to make sure children are not illegally excluded and all challenges in access are resolved.

References

- African Movement of Children and Youth (AMWCY). (2011). *Protection of Mobile Children by Organized Children and Youth. Some Experiences of the WCYs in West Africa*. Dakar: AMWCY. Retrieved from <http://english.maejt.org/wpcontent/uploads/2017/01/jeuda123bestexperienceprotectionversionanglaise.pdf>.
- Agustín, L. (2007). *Sex at the Margins: Migration, Labour Markets and the Rescue Industry*. New York: Zed Books.
- Algotsson, E., & Klaaren, J. (2018). *Policing migration: Immigration enforcement and human rights in South Africa*. Southern African Migration Project. Migration Policy Brief No. 14. Retrieved from: <https://samponline.org/wp-content/uploads/2016/10/brief14.pdf>
- Allain, J. (2013). *Slavery in international law: Of human exploitation and trafficking*. Leiden: Martinus Nijhoff Publishers.
- Allais, C., Combrinck, H., Connors, D., Jansen van Rensburg, M., Ncoyini, V., Sithole, P., ... Tilley, V. (2010). *Tsiredzani: Understanding the dimensions of human trafficking in Southern Africa*. Pretoria: National Prosecuting Authority (NPA) of South Africa.
- Anderson, B. (2012). Where's the harm in that? Immigration enforcement, trafficking, and the protection of migrants' rights. *American Behavioural Scientist*, 56(9), 1241–1257.
- Anderson, B., & Davidson, J. O. (2002). *Trafficking – a demand led problem? A multi-country pilot study*. Stockholm: Save the Children.
- Ardittis, S. (2018). What's to fear in the UN Global Compact for Migration? *News Deeply*. Retrieved from <https://www.newsdeeply.com/refugees/community/2018/12/05/whats-to-fear-in-the-u-n-global-compact-for-migration>
- Aronowitz, A. (2009). *Human trafficking, human misery: The global trade in human beings*. Westport, Connecticut: Praeger.
- Aronowitz A., Theuermann G., & Tyurykanova E. (2010). *Analysing the business model of trafficking in human beings to better prevent the crime*. Vienna: OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings.
- Asijiki. (2019). *Sex work, human trafficking & the harm of conflating the two*. Asijiki Fact Sheet. Retrieved from <https://genderjustice.org.za/publication/sex-work-human-trafficking-harm-conflating-two/>
- Aufseeser, D., Bourdillon, M., Carothers, R., & Lecoufle, O. (2017). Children's work and children's well-being: Implications for policy. *Development Policy Review*, 36. doi:10.1111/dpr.12215
- Awumbila, M. (2015). Women moving within borders: Gender and internal migration dynamics in Ghana. *Ghana Journal of Geography*, 7(2), 132–145.
- Bales, K. (2012). *Disposable people: New slavery in the global economy*. California: University of California Press.
- Batsyukova, S. (2012). Human trafficking and human smuggling: similar nature, different concepts. *Studies of Changing Societies: Comparative and Interdisciplinary Focus*, 1(1), 39–50.
- Bermudez, L. G. (2008). *No experience necessary: The internal trafficking of persons in South Africa*. International Organization for Migration (IOM) Regional Office for Southern Africa. Retrieved from <http://southafrica.iom.int/publication/no-experience-necessary-the-internal-trafficking-of-persons-in-south-africa/>
- Bonthuys, E. (2012). The 2010 Football World Cup and the regulation of sex work in South Africa. *Journal of Southern African Studies*, 38(1), 12–29.
- Brennan, D. (2008). Competing claims of victimhood: Foreign and domestic victims of trafficking in the United States. *Sexuality Research and Social Policy*, 5, 45–61.
- Bourdillon, M. F. C., Levison, D., Myers, W. E., & White, B. (2010). *Rights and wrongs of children's work*. New Brunswick: Rutgers University Press.
- Boyden, J. (2009). Risk and capability in the context of adversity: Children's contributions to household livelihoods in Ethiopia. *Children, Youth and Environments*, 19(2), 111–137.
- Britton, H. E., & Dean, L. (2014). Policy responses to human trafficking in Southern Africa: Domesticating international norms. *Human Rights Review*, 15(3), 305–328.

- Bunke, T. (2016). Human trafficking legislation as a resource: Contradictory interpretations of human trafficking in Zambia. *Journal of Trafficking, Organized Crime and Security*, 2(2), 113–126.
- Busza, J. (2004). Sex work and migration: The dangers of oversimplification—a case study of Vietnamese women in Cambodia. *Health and Human Rights*, 7(2), 231–249.
- Carciotto, S., Gastrow, V., & Johnson C. (2018). *Manufacturing illegality: The impact of curtailing asylum seekers' right to work in South Africa*. Cape Town: The Scalabrini Institute for Human Mobility in Africa (SIHMA).
- Castles, S. (2004). The factors that make and unmake migration policies. *The International Migration Review*, 38(3), 852–884. Retrieved from <http://www.jstor.org/stable/27645419>
- Centre for the Study of Violence and Reconciliation (CSVr). (2016). *Gender-based violence (GBV) in South Africa: A brief review*. Retrieved from <http://www.csvr.org.za/pdf/Gender%20Based%20Violence%20in%20South%20Africa%20-%20A%20Brief%20Review.pdf>
- Chereni, A., & Mahati, S. T. (2014). *Situation analysis of South Africa's response to orphans and vulnerable children*. London: PCD Imperial College. Retrieved from http://hgsf-global.org/en/component/docman/doc_details/405-situation-analysis-of-south-africas-response-to-orphans-and-vulnerable-children
- Chiguvare, B. (2011). *Children crossing borders: An evaluation of state response to migrant unaccompanied minors at Musina–Beitbridge Border Post, South Africa* (Masters' thesis). University of Johannesburg, Johannesburg.
- Chiyangwa, B. (2018). *Mozambican migrant children's access to education in Bushbuckridge, Mpumalanga: A case study of Buffelshoek Trust OVC Educational Support Programme* (Master's thesis). University of Johannesburg, Johannesburg.
- Clacherty, G. (2003). *Poverty made this decision for me: Children in Musina, experiences and needs*. Pretoria: Save the Children UK.
- Clacherty, G., & Walker, R. (2019). *How can the Save the Children's Regional Children on the Move Programme better meet the needs of girls on the move? Save the Children Sweden*.
- Cockburn, A. (2005). *Situation analysis on the commercial sexual exploitation trafficking: Western Cape*. Johannesburg: Community Agency for Social Project Towards the Elimination of the Worst Forms of Child Labour.
- Crush, J., & Perberdy, S. (2018). *Criminal tendencies: Immigrants and illegality in South Africa*. Southern African Migration Project, Migration Policy Brief No. 10. Retrieved from <https://samponline.org/wp-content/uploads/2016/10/brief10.pdf>
- De Regt, M., Katarzyna, G., & Del Franco, N. (2016). Time to look at girls: *Adolescent girls' migration in the South*. Retrieved from <https://doi.org/10.13140/RG.2.1.2991.2563>
- De Sas Kropiwnicki, Z. (2010). *Wolves in sheep's skin: A rapid assessment of human trafficking in Musina, Limpopo Province of South Africa*. Pretoria: IOM.
- Delva, W., Richter, M., De Koker, P., Chersich, M., & Temmermen, M. (2011). Sex work during the 2010 FIFA World Cup: Results from a three-wave cross-sectional survey. *PLOS One*, 6(12). Retrieved from <https://doi.org/10.1371/journal.pone.0028363>
- Department of Constitutional Development. (2010). *World Cup Dedicated Courts; Human trafficking during 2010 Soccer World Cup* (Department of Justice briefing). In Portfolio Committee on Justice and Constitutional Development. Cape Town.
- Deshingkar, P. (2015). *Does anti-trafficking policy protect against forced labour and exploitation or harm? The ban on migration for domestic work in Ethiopia and Ghana*. Retrieved from <https://migratingoutofpoverty.blogspot.com/2018/10/does-anti-trafficking-policy-protect.html?m=0>
- Dodson, B. (1998). *Women on the move: Gender and cross-border migration to South Africa* (Migration Policy Series No. 9). Retrieved from the Southern African Migration Project website: <http://samponline.org/wp-content/uploads/2016/10/Acrobat9.pdf>

- Dottridge, M. (2008). *Kids abroad: Ignore them, abuse them or protect them? Lessons on how to protect children on the move from being exploited*. Netherlands: Terres des Hommes International Federation.
- Elphick, R., & Amit, R. (2012). *Border justice: Migration, access to justice and the experiences of unaccompanied minors and survivors of sexual and gender-based violence in Musina* (ACMS Research Report). Retrieved from the African Centre for Migration & Society website: <http://www.migration.org.za/wp-content/uploads/2017/08/Border-Justice-Migration-Access-to-Justice-and-the-Experiences-of-Unaccompanied-Minors-and-Survivors-of-Sexual-and-Gender-Based-Violence-in-Musina.pdf>
- Ennew, J., Myers, W. E., & Plateau, D. (2005). Defining child labour as if human rights really matter. In B. H. Weston (Ed.), *Child labor and human rights: Making children matter* (pp. 27–54). London: Lynne Rienner.
- Farrell, A., & Fey, S. (2009). The problem of human trafficking in the U.S.: Public frames and policy responses. *Journal of Criminal Justice*, 37(6), 617–626.
- Frankel, P. (2016). *Long walk to nowhere: Human trafficking in post-Mandela South Africa*. New Jersey: Transaction Publishers.
- Gambaro, A., Kobayashi, Y., Levy, R., Rasheed, L., & Winkler, E. (2008). *Unaccompanied migrant children, what happens once they are back home?* (International Social Service Project Report). Switzerland: ISS/IRC Programme.
- Global Alliance Against Trafficking in Women (GAATW). (2007). *Collateral damage: The impact of anti-trafficking measures on human rights around the world*. Retrieved from <http://www.gaatw.org/resources/publications/908-collateral-damage-the-impact-of-anti-trafficking-measures-on-human-rights-around-the-world>
- Global Alliance Against Trafficking in Women (GAATW). (2018). *Sex workers organising for change: Self-representation, community mobilisation, and working conditions*. Retrieved from <http://www.gaatw.org/resources/publications/941-sex-workers-organising-for-change>
- Global Commission on HIV and the Law. (2012). *HIV and the law: Risks, rights, & health*. New York: United Nations Development Programme (UNDP), HIV/AIDS Group.
- Goodey, J. (2008). Human trafficking: Sketchy data and policy responses. *Criminology and Criminal Justice*, 8(4), 421–442.
- Goodey, J. (2009). Immigrants as crime victims in the European Union: With special attention to hate crime. In W. F. McDonald (Ed.), *Sociology of Crime, Law and Deviance: Vol. 13. Immigration, crime and justice* (pp. 147–161). Emerald Group Publishing Limited.
- Gould, C. (2006). Cheap lives: Countering human trafficking—considerations and constraints. *South African Crime Quarterly*, 16, 19–25.
- Gould, C. (2007). Countering the 'scourge': The time for evidence and reason on human trafficking. *SA Crime Quarterly*, 22(2007), 9–13.
- Gould, C. (2011). Moral panic, human trafficking and the 2010 Soccer World Cup. *Agenda*, 24(85), 31–44.
- Gould, C. (2014). Sex trafficking and prostitution in South Africa. *The Annals of the American Academy of Political and Social Science*, 653, 183–201.
- Gould, C., & Fick, N. (2008). *Selling sex in Cape Town*. Retrieved from <https://issafrica.s3.amazonaws.com/site/uploads/Book2008SellingSexInCT.pdf>
- Gould, C., Richter, M., & Palmay, I. (2010). Of Nigerians, albinos, Satanists and anecdotes: A critical review of the HSRC Report on human trafficking. *SA Crime Quarterly*, 32, 37–45.
- Gozdziak, E. M., & Bump, M. N. (2008). *Data and research on human trafficking: Bibliography of research-based literature*. Washington, DC: Institute for the Study of International Migration, Georgetown University.
- Gozdziak, E. M., & Collett, E. (2005). Research on human trafficking in North America: A review of the literature. *International Migration*, 43(1/2), 99–125.
- Graycar, A., & Mccusker, R. (2007). Transnational crime and trafficking in persons: Quantifying the nature, extent and facilitation of a growing phenomenon. *International Journal of Comparative and Applied Criminal Justice*, 31(2), 147–165.
- Hall, K. (2016). *Maternal and child migration in post-apartheid South Africa: Evidence from the NIDSPanel Study*. Cape Town: SALDRU. Retrieved from http://opensaldru.uct.ac.za/bitstream/handle/11090/849/2016_05_NIDSW4.pdf?sequence=1
- Ham, J. (2011). *What is the cost of a rumour? A guide to sorting out the myths and the facts about sporting events and trafficking*. Bangkok: Global Alliance Against Trafficking in Women (GAATW).

- Hart, J. (2007). Beyond struggle and aid: Children's identities in a Palestinian refugee camp in Jordan. In J. Boyden & J. Berry (Eds.), *Children and youth on the front line: Ethnography, armed conflict and displacement*. New York: Berghahn Books.
- Hashim, I., & Thorsen, D. (2011). *Child migration in Africa*. London: Zed Books.
- Hassim, S., Worby, E., & Kupe, T. (2008). *Go home or die here: Violence, xenophobia and the reinvention of difference in South Africa*. Johannesburg: Wits University Press.
- Hertrich, V., & Lesclingand, M. (2013). *Adolescent girls' migration and transition to adulthood in sub-Saharan Africa*. UNICEF. Retrieved from <https://www.unicef-irc.org/article/1152-adolescent-girls-migration-and-transition-to-adulthood-in-sub-saharan-africa.html>
- Hertrich, V., Lesclingand, M., Jacquemin, M., & Stephan, A. (2012). *Girls' labour migration in rural Mali*. Working Paper Prepared for the Project Adolescent Girls' Migration. New York: Population Council. Retrieved from https://www.researchgate.net/profile/Veronique_Hertrich/publication/280683155_Girls'_Labour_migration_in_rural_Mali/links/55c10aee08aed621de153ea0/Girls-labour-migration-in-rural-Mali.pdf
- Hillier, L. (2007). *Children on the move: Protecting independent children in South Africa and the Region*. Pretoria: Save the Children UK.
- Hübschle, A. (2009, September 3). Trafficking in persons: Assumptions and reality. *ISS Today*. Retrieved from <https://oldsite.issafrica.org/iss-today/trafficking-in-persons-assumptions-and-reality>
- Hübschle, A., & Goredema, C. (2008). *Five country study on human trafficking* (Unpublished research report). Cape Town: Institute for Security Studies.
- International Labour Organization (ILO). (2003). *Trafficking in human beings: New approaches to combating the problem*. Special Action Programme to Combat Forced Labour. ILO.
- International Labour Organization (ILO). (2005). *A global alliance against forced labour*. Geneva: ILO.
- International Labour Organization (ILO). (2010). *Going the distance to stop child trafficking: Local vigilance committees* (West Africa). Retrieved from <https://www.ilo.org/ipecinfor/product/viewProduct.do?productId=15435>
- International Labour Organization (ILO). (2015). *No easy exit: Migration bans affecting women from Nepal*. Retrieved from https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_428686.pdf
- International Labour Organization (ILO) & Walk Free Foundation. (2017). *Global estimates of modern slavery: Forced labour and forced marriage*. Geneva: ILO.
- International Organization for Migration (IOM). (2000). *Migration Dialogue for Southern Africa* (MIDSA). Geneva: IOM. Retrieved from <https://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/activities/tcm/midsa.pdf>
- International Organization for Migration (IOM). (2011). *Unaccompanied children on the move*. Retrieved from https://publications.iom.int/system/files/pdf/uam_report_11812.pdf
- International Organization for Migration (IOM). (2015). *Migration Dialogue for Southern Africa* (MIDSA). Retrieved from <https://www.iom.int/migration-dialogue-southern-africa-midsa>
- International Organization for Migration (IOM). (2017). *Study on Unaccompanied Migrant Children in Mozambique, South Africa, Zambia and Zimbabwe*. Retrieved from <https://mozambique.iom.int/sites/default/files/document/Study%20on%20Unaccompanied%20Migrant%20Children%20in%20Mozambique%20South%20Africa%20Zambia%20and%20Zimbabwe%202017.pdf>
- International Organization for Migration (IOM). (2018). *Global compact for migration*. Retrieved from <https://www.iom.int/global-compact-migration>
- Jewkes, R., & Abrahams, N. (2002). The epidemiology of rape and sexual coercion in South Africa: An overview. *Social Science and Medicine*, 55(7), 1231–1244.
- Kitzinger, J. (1990). Who are you kidding? Children, power, and the struggle against sexual abuse. In A. James & A. Prout (Eds.), *Constructing and reconstructing childhood: Contemporary issues in the sociological study of childhood* (pp. 157–183). London: Falmer Press.
- Lobasz, J. (2009). Feminist approaches to human trafficking. *Security Studies*, 18, 319–344.
- Lopes, D. (2005). *Situation analysis on the commercial sexual exploitation of children and child trafficking: Mpumalanga*. Johannesburg: CASE.

- Magaya, I. E. K. (2014). *The international law on unaccompanied foreign migrant children: An evaluation of whether it reflects the modern realities of economic migrancy in Southern Africa* (Master's thesis, University of Pretoria). Retrieved from: https://www.researchgate.net/publication/315669746_The_international_law_on_unaccompanied_foreign_migrant_children_An_evaluation_of_whether_it_reflects_the_modern_realities_of_economic_migrancy_in_Southern_Africa
- Magqibelo, L., Londt, M., September, S., & Roman, N. (2016). Challenges faced by unaccompanied minor-refugees in South Africa. *Social Work*, 52, 73–89.
- Mahati, S.T. (2012a). Children learning life skills through work: Evidence from the lives of unaccompanied migrant children in a South African border town. In G. Spittler & M. Bourdillon (Eds.), *African children at work: Working and learning in growing up for life*. Berlin: LIT Verlag.
- Mahati, S. T. (2012b). The representations of unaccompanied working migrant male children negotiating for livelihoods in a South African border town. In M. F. C. Bourdillon with A. Sangare (Eds.), *Negotiating children's and youth livelihoods in Africa's urban spaces*. Dakar: CODESRIA.
- Mahati, S.T. (2015). *The representations of childhood and vulnerability: Independent child migrants in humanitarian work* (Doctoral dissertation). University of the Witwatersrand, Johannesburg.
- Mahati, S. T., & Palmay, I. (2018). Independent migrant children, humanitarian work and statecraft: Mapping the connections in South Africa. In L. O'Dell, C. Brownlow, H. B. Rosqvist, & J. D. Preez (Eds.), *Different childhoods: Non/normative development and transgressive trajectories*. New York: Routledge.
- Maistry, A. (2019, January 21). The undocumented children denied the right to go to school. *Daily Maverick*. Retrieved from <https://www.dailymaverick.co.za/article/2019-01-21-the-undocumented-children-denied-the-right-to-go-to-school/>
- Martens, J., Pieczkowski, M., & Van Vuuren-Smyth, B. (2003). *Seduction, sale and slavery: Trafficking in women and children in Southern Africa*. Pretoria: IOM Regional Office for Southern Africa.
- Matthews, S., & Benvenuti, P. (2014). Violence against children in South Africa: Developing a prevention agenda. In S. Matthews, L. Jamieson, L. Lake, & C. Smith (Eds.), *South African Child Gauge 2014*, (pp. 26–34). Cape Town: Children's Institute UCT.
- Mbhele, T. (2018). Foreign nationals are burdening SA health system: Motsoaledi. *SABC News*. Retrieved from <http://www.sabcnews.com/sabcnews/foreign-nationals-are-burdening-sa-health-system-motsoaledi/>
- Mensah, B., & Okyere, S. (2019, March 19). *How CNN reported on 'child slaves' who were not really enslaved. Mail and Guardian*. Retrieved from <https://mg.co.za/article/2019-03-19-how-cnn-reported-on-child-slaves-who-were-not-really-enslaved>
- Mixed Migration Centre (MMC). (2018). *Experiences of female refugees and migrants in origin, transit and destination countries: A comparative study of women on the move from Afghanistan, East and West Africa*. MMC.
- Molo Songololo. (2000a). *The trafficking of children for purposes of sexual exploitation—South Africa*. Cape Town: Molo Songololo.
- Molo Songololo. (2000b). *The trafficking of women into the South African sex industry*. Cape Town: Molo Songololo.
- Munusamy, R. (2015, April 22). Xenophobia and the media: Where truth and patriotism intersect. *Daily Maverick*. Retrieved from <https://www.dailymaverick.co.za/article/2015-04-22-xenophobia-and-the-media-where-truth-and-patriotism-intersect/>
- Mwambene, L., & Sloth-Nielsen, J. (2011). Benign accommodation? *Ukuthwala*, 'forced marriage' and the South African Children's Act. *Journal of Family Law and Practice*, 2(1), 5–16.
- Mwambene, L., & Kruuse, H. (2017). The thin edge of the wedge: *ukuthwala*, alienation and consent. *South African Journal on Human Rights*, 33(1), 25–45.
- Nshimbi, C., & Moyo, I. (2016). Human trafficking legislation in the SADC region: *An overview. Journal of Trafficking, Organized Crime and Security*, 2 (2), 157–170.
- O'Connell Davidson, J. (1998). *Prostitution, power and freedom*. Cambridge: Polity.
- O'Connell Davidson, J. (2005). *Children in the global sex trade*. Cambridge: Polity.
- O'Connell Davidson, J. (2011). Moving children? Child trafficking, child migration, and child rights. *Critical Social Policy*, 31(3), 454–477.

- O'Connell Davidson, J. (2015). *Modern slavery and the margins of freedom*. London: Palgrave Macmillan.
- O'Connell Davidson, J., & Farrow, C. (2007). *Child migration and the construction of vulnerability*. Save the Children Sweden. Retrieved from https://www.academia.edu/1769899/Child_migration_and_the_construction_of_vulnerability
- O'Neil, T., Fleury, A., & Foresti, M. (2016). *Women on the move: Migration, gender equality and the 2030 Agenda for Sustainable Development* (Briefing paper). London: Overseas Development Institute.
- Palmary, I. (2009). *For better implementation of migrant children's rights in South Africa* (Report for UNICEF). Johannesburg: Forced Migration Studies, University of the Witwatersrand.
- Palmary, I. (2016). *Governing morality: Gender, sexuality and migration in South Africa*. UK: Palgrave Macmillan.
- Palmary, I., Burman, E., Chantler, K., & Kiguwa, P. (2010). *Gender and migration: Feminist interventions*. London: ZED Books.
- Palmary, I., & de Gruchy, T. (2016). *Changing policy: Lessons from the Trafficking in Persons Act (2013) in South Africa* (Working Paper 39). Johannesburg: University of the Witwatersrand
- Palmary, I., & de Gruchy, T. (2019). The globalisation of trafficking and its impact on the South African counter-trafficking legislation. *Critical Social Policy*, 40, 50–68.
- Pankhurst, A., Bourdillon, M., & Crivello, G. (Eds.). (2015). *Children's work and labour in East Africa: Social context and implications for policy*. Addis Ababa: OSSREA.
- Patton, M. (1990). *Qualitative evaluation and research methods*. Beverly Hills, California: Sage.
- Peacock, L. A. (2018). Children at risk: A review of the mental health of unaccompanied refugee minors. *Undergraduate Journal of Psychology*, 30(1), 43–50.
- Pharoah, R. (2006). A review of the literature on trafficking in South Africa (Monograph No. 123). In *Getting to grips with trafficking reflections on human trafficking research in South Africa*. Retrieved from <https://issafrica.org/chapter-4-a-review-of-the-literature-on-trafficking-in-south-africa>
- Pickbourn, L. (2018). Rethinking rural–urban migration and women's empowerment in the era of the SDGs: Lessons from Ghana. *Sustainability*, 10(4). Retrieved from <https://doi.org/10.3390/su10041075>
- Pupavac, V. (2002). The international children's rights regime. In D. Chandler (Ed.), *Rethinking human rights: Critical approaches to international politics* (pp. 57–75). Basingstoke: Palgrave Macmillan.
- Raftree, L., Appel, K., & Ganness, A. (2013). *Modern mobility: The role of ICTs in child and youth migration*. Plan International USA.
- REACH. (2017). *Youth on the move: Investigating decision-making, migration trajectories and expectations of young people on the way to Italy*. REACH Initiative, Mixed Migration Hub, and Mixed Migration Centre. Retrieved from <https://reliefweb.int/report/italy/youth-move-investigating-decision-making-migration-trajectories-and-expectations-young>
- Reale, D. (2008). *Away from home: Protecting and supporting children on the move*. Retrieved from Save the Children website: <https://resourcecentre.savethechildren.net/sites/default/files/documents/1306.pdf>
- Richter, M., & Delva, W. (2010). 'Maybe it will be better once this World Cup has passed': Research findings regarding the impact of the 2010 soccer World Cup on sex work in South Africa. United Nations Population Fund (UNPF). Retrieved from [http://www.migration.org.za/wp-content/uploads/2017/08/\"Maybe-it-will-be-better-once-this-World-Cup-has-passed\".pdf](http://www.migration.org.za/wp-content/uploads/2017/08/\)
- Richter, M., Luchters, S., Ndlovu, D., Temmerman, M., & Chersich, M. F. (2012). Female sex work and international sport events—no major changes in demand or supply of paid sex during the 2010 Soccer World Cup: A cross-sectional study. *BMC Public Health*. doi:10.1186/1471-2458-12-763
- Cossor, E. (2016). *Young and on the move: Children and youth in mixed migration flows within and from the Horn of Africa*. Retrieved from <https://resourcecentre.savethechildren.net/library/young-and-move-children-and-youth-mixed-migration-flows-within-and-horn-africa>
- RMMS West Africa. (2017). *Mixed migration in West Africa: Data, routes and vulnerabilities of people on the move*. Retrieved from <https://reliefweb.int/report/world/mixed-migration-west-africa-data-routes-and-vulnerabilities-people-move-extended>

- Salt, J. (2000). Trafficking and human smuggling: A European perspective. *International Migration*. Special Issue, 1, 31–56.
- Save the Children UK. (2007). *Children crossing borders: Report on unaccompanied minors who have travelled to South Africa*. Retrieved from <https://resourcecentre.savethechildren.net/node/1487/pdf/1487.pdf>
- Save the Children UK. (2008). *Our broken dreams: Child migration in Southern Africa*. Retrieved from <https://resourcecentre.savethechildren.net/node/3011/pdf/3011.pdf>
- Save the Children UK. (2009). *They say: 'I am lucky to have a job': A participatory study with migrant girls who do domestic work in Zambia, Zimbabwe and South Africa*. Retrieved from <https://resourcecentre.savethechildren.net/node/5233/pdf/5233.pdf>
- Save the Children UK. (2016). *In search of a better future: Experiences of unaccompanied migrant children in Limpopo and Mpumalanga in South Africa*. Retrieved from <https://resourcecentre.savethechildren.net/library/search-better-future-experiences-unaccompanied-migrant-children-limpopo-mpumalanga-south>
- Scullion, D. (2015). Assessing the extent of human trafficking: Inherent difficulties and gradual progress. *Social Inclusion*, 3(1), 22–34.
- Segatti, A. (2011). Reforming South African immigration policy in the postapartheid period (1990–2010). In A. Segatti & L. B. Landau (Eds.), *Contemporary migration to South Africa: A regional development issue* (pp. 31–66). Washington, DC: World Bank.
- Shoba, S. (2019). No papers, no rights: The plight of undocumented foreign children in SA. *Daily Maverick*. Retrieved from <https://www.dailymaverick.co.za/article/2019-08-07-no-papers-no-rights-the-plight-of-undocumented-foreign-children-in-sa/>
- Sigmon, J. N. (2008). Combating modern-day slavery: Issues in identifying and assisting victims of human trafficking worldwide. *Victims & Offenders*, 3(2–3), 245–257.
- Simkhada, P. (2008). Life histories and survival strategies amongst sexually trafficked girls in Nepal. *Children & Society*, 22, 235–248.
- Sloth-Nielsen, J., & Ackermann, M. (2015). *Foreign children in care in the Western Cape Province*. Retrieved from Scalabrini Centre of Cape Town website: <http://scalabrini.org.za/wp-content/uploads/2016/01/Foreign-children-in-care-in-the-Western-Cape-Province.pdf>
- Somduth, C. (2018, September 9). Surge in human trafficking a worry. *The Post*. Retrieved from <https://www.iol.co.za/the-post/surge-in-human-trafficking-a-worry-16918102>
- South Africa Government Department of Labour. (2005). *Commercial and sexual exploitation of children and child trafficking: Situation analysis on the commercial sexual exploitation of children and child trafficking. The TECL programme in South Africa, Community Agency for Social Enquiry*. Pretoria: Department of Labour & ILO.
- South African Law Reform Commission (SALRC). (1999). *Project 107 Sexual Offences Discussion Paper 85*. Retrieved from <http://salawreform.justice.gov.za/dpapers/dp85.pdf>
- South African Law Reform Commission (SALRC). (2004). Trafficking in persons: issue paper 25; Project 131. Retrieved from <http://www.law.wits.ac.za/salc/salc.html>
- South African Law Reform Commission (SALRC). (2006). Trafficking in persons: discussion paper 111; Project 131. Retrieved from <http://www.justice.gov.za/salrc/dpapers/dp111.pdf>
- South African Law Reform Commission (SALRC). (2017). *Report Project 107 Sexual Offences Adult Prostitution*. Retrieved from <http://www.justice.gov.za/salrc/reports/r-pr107-SXO-AdultProstitution-2017-Sum.pdf>
- Statistics South Africa. (2015). *Census 2011: Migration dynamics in South Africa* (Report No. 03-01-79). Retrieved from <http://www.statssa.gov.za/publications/Report-03-01-79/Report-03-01-792011.pdf>
- Stevenson, S. (2019, March 6). *Are foreigners really entitled to free healthcare in South Africa? Bhekisisa*. Retrieved from <https://bhekisisa.org/article/2019-03-06-can-foreigners-get-medical-aid-free-healthcare-in-south-africa>

- Temin, M., Montgomery, M. G., Engebretsen, S., & Berker, K. M. (2013). *Girls on the move: Adolescent girls and migration in the developing world* (A Girls Count Report on Adolescent Girls). Retrieved from Population Council website: https://www.popcouncil.org/uploads/pdfs/2013PGY_GirlsOnTheMove.pdf
- Terre des Hommes. (n.d). *Time to look at girls: Adolescent girls' migration to Sudan*. Summary Report. Terre des Hommes International Federation.
- Thatun, S., & Heissler, K. (2013). Children's migration: Towards a multidimensional child protection perspective. In *Children on the Move* (pp. 95–105). Geneva: International Organization for Migration.
- Tørres, L., & du Toit, D. (2010). *Southern Africa counter-trafficking programme review*. Norad Collected Reviews. Oslo, Norwegian: Agency for Development Cooperation.
- UNAIDS. (2012). *UNAIDS guidance note on HIV and sex work*. Retrieved from http://www.unaids.org/sites/default/files/sub_landing/files/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf
- UNDP. (2010). *Mobility and migration*. Human Development Report Office: A Guidance Note for Human Development Report Teams. Retrieved from http://hdr.undp.org/sites/default/files/nhdr_migration_gn.pdf
- UNICEF. (2003). *Trafficking in human beings, especially women and children, in Africa*. UNICEF Innocenti Research Centre. Retrieved from <https://www.unicef-irc.org/publications/pdf/trafficking-gb2ed-2005.pdf>
- UNICEF. (2007). *Note on the definition of 'child trafficking'*. Retrieved from https://www.unicef.org/southafrica/SAF_pressrelease_notetrafficking.pdf
- UNICEF. (2009). *Children on the move: Unaccompanied migrant children in South Africa*. Retrieved from https://www.unicef.org/southafrica/SAF_resources_unaccompanied.pdf
- United States Department of State. (2017). *Trafficking in Persons (TIP) Report*. Retrieved from <https://www.state.gov/wp-content/uploads/2019/02/271339.pdf>
- United States Department of State. (2018). *Trafficking in Persons (TIP) Report*. Retrieved from <https://www.state.gov/wp-content/uploads/2019/01/282798.pdf>
- Vijayarasa, R. (2015). *Sex, slavery and the trafficked woman*. Farnham, Surrey: Ashgate Publishing.
- Walker, R., & Galvin, T. (2018). Labels, victims, and insecurity: An exploration of the lived realities of migrant women who sell sex in South Africa. *Third World Thematics: A TWQ Journal*, 3(2), 277–292.
- Walker, R., & Hüncke, A. (2016). Sex work, human trafficking and complex realities in South Africa. *Trafficking, Smuggling and Human Labour in Southern Africa*, 2(2), 127–140.
- Walker, R., & Oliveira, E. (2015). Contested spaces: Exploring the intersections of migration, sex work and trafficking in South Africa. Blurred Lines: The Contested Nature of Sex Work in a Changing Social Landscape [Special Issue]. *Graduate Journal of Social Sciences*, 11(2), 129–153.
- Walker, R., Vearey, J., & Nencel, L. (2017). Negotiating the city: Exploring the intersecting vulnerabilities of non-national migrant mothers who sell sex in Johannesburg, South Africa. *Agenda*. 31(1), 91–103.
- Washinyira, T. (2013, December 11). Zimbabwean kids detained after being smuggled into SA. *GroundUp*. Retrieved from <https://www.groundup.org.za/article/zimbabwean-kids-detained-after-being-smuggled-sa/>
- Weitzer, R. (2005). New directions in research on prostitution. *Crime, Law and Social Change*, 43(4–5), 211–235.
- Weitzer, R. (2014). New directions in research on human trafficking. *The ANNALS of the American Academy of Political and Social Science*, 653(1), 6–24.
- Whitaker, B. E. (2017). Migration within Africa and beyond. *African Studies Review*, 60(2), 209–220
- Wilkinson, K. (2015). No new Evidence that 30,000 children are trafficked in South Africa each year. *Africa Check*. Retrieved from <https://africacheck.org/reports/no-new-evidence-that-30000-children-are-trafficked-each-year-in-south-africa/>
- Wilkinson, K., & Chiumia, S. (2013). Are 30,000 children really 'trafficked' in South Africa every year? The claim exaggerates the problem. *Africa Check*. Retrieved from <https://africacheck.org/reports/are-30000-kids-trafficked-into-south-africas-sex-trade-every-year-the-claim-exaggerates-the-problem/>

World Health Organization (WHO). (2018). *Women on the move: Migration and health in the WHO African region*. Retrieved from <https://afro.who.int/publications/women-move-migration-and-health-who-african-region>

Yingwana, N., Walker, R., & Echart, A. (2019). Sex work, migration and human trafficking in South Africa: From polarised arguments to potential partnerships. *Anti-Trafficking Review*, 12, 74–90.

Zhang, S. X. (2009). Beyond the 'Natasha' story: A review and critique of current research on sex trafficking. *Global Crime*, 10, 178–95.

Zhang, S. X. (2012). Measuring labor trafficking: A research note. *Crime, Law, and Social Change*, 58, 469–482.

Zheng, T. (2010). *Sex trafficking, human rights and social justice*. New York: Routledge.

LAWS, POLICIES, AND PAPERS

African Union (2018). *Common African Position (CAP) on the Global Compact for Safe, Orderly and Regular Migration*. Retrieved from https://au.int/sites/default/files/newsevents/workingdocuments/33023-wd-english_common_african_position_on_gcom.pdf

Department of Home Affairs (DHA). (2017). *White Paper on International Migration for South Africa*. Retrieved from <http://www.dha.gov.za/WhitePaperonInternationalMigration-20170602.pdf>

International Labour Organization (ILO). (1973). *C138 - Minimum Age Convention (No. 138)*. Retrieved from https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138.

International Labour Organization (ILO). (1999a). *C182 - Worst Forms of Child Labour Convention (No. 182)*. Retrieved from https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182

International Labour Organization (ILO). (1999b). *R190 - Worst Forms of Child Labour Recommendation. (No. 190)*. Retrieved from https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312528:NO

Organisation of African Unity (OAU). (1999). *African Charter on the Rights and Welfare of the Child*. Retrieved from <https://au.int/en/treaties/african-charter-rights-and-welfare-child>

Southern African Development Community (SADC). (2005). *Protocol on the Facilitation of Movement of Persons*. Retrieved from https://www.sadc.int/files/9513/5292/8363/Protocol_on_Facilitation_of_Movement_of_Persons2005.pdf

Southern African Development Community (SADC). (2008). *Protocol on Gender and Development*. Retrieved from https://www.sadc.int/files/8713/5292/8364/Protocol_on_Gender_and_Development_2008.pdf

Southern African Development Community (SADC). (2009a). *Policy Framework for Population Mobility and Communicable Diseases in the SADC Region*. Retrieved from: http://www.arasa.info/files/6613/7574/3254/SADC_Policy_Framework_FINAL.pdf

Southern African Development Community (SADC). (2009b). *10 Year SADC Strategic Plan of Action on Combating Trafficking in Persons, especially Women and Children (2009–2019)*.

Southern African Development Community (SADC). (2013). *SADC Labour Migration Policy (Draft)*. Retrieved from https://www.ilo.org/wcmsp5/groups/public/---africa/---ro-addis_ababa/---ilo-pretoria/documents/meetingdocument/wcms_239821.pdf

Southern African Development Community (SADC). (2016). *Revised SADC Strategic Plan of Action on Combating Trafficking in Persons (2016–2019)*.

Republic of South Africa (RSA). (1996). *The Constitution of the Republic of South Africa, No. 108 of 1996*. Retrieved from <https://www.gov.za/sites/default/files/images/a108-96.pdf>

Republic of South Africa (RSA). (1997). *The Basic Conditions of Employment Act. No. 75 of 1997*. Retrieved from: <http://www.labour.gov.za/DOL/downloads/legislation/acts/basic-conditions-of-employment/Act%20-%20Basic%20Conditions%20of%20Employment.pdf>

Republic of South Africa (RSA). (1998). *Refugee Act-Act No. 130*. Retrieved from: https://www.gov.za/sites/default/files/gcis_document/201409/a130-980.pdf

Republic of South Africa (RSA). (2002). *The Basic Conditions of Employment Amendment Act. No. 11 of 2002*. Retrieved from https://www.gov.za/sites/default/files/gcis_document/201409/a11-02.pdf

Republic of South Africa (RSA). (2002). *The Immigration Act. No. 13 of 2002*. Retrieved from http://www.dha.gov.za/IMMIGRATION_ACT_2002_MAY2014.pdf

Republic of South Africa (RSA). (2005). *Children's Act 38 of 2005 and Amendment Act 41 of 2007*. Retrieved from <http://www.justice.gov.za/legislation/acts/2005-038%20childrensact.pdf>

Republic of South Africa (RSA). (2007). *Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007*. Retrieved from <http://Www.Justice.Gov.Za/Legislation/Acts/2007-032.Pdf>

Republic of South Africa (RSA). (2013). *The Prevention and Combating of Trafficking in Persons Act 7 of 2013*. Retrieved from <https://www.gov.za/documents/prevention-and-combating-trafficking-persons-act>

Republic of South Africa (RSA). (2017). *Refugees Amendment Act 2017 (Act 11 of 2017)*. Retrieved from http://www.saflii.org/za/legis/num_act/raa201711o2017g41343231.pdf

United Nations (UN). (1951). *United Nations Convention relating to the Status of Refugees*. 189 U.N.T.S. Retrieved from: https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en

United Nations (UN). (1989). *United Nations Convention on the Rights of the Child, General Assembly*. Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

United Nations (UN). (2000a). *Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Organized Crime*. Retrieved from https://www.unodc.org/documents/middleeastandnorthafrica/smuggling-migrants/SoM_Protocol_English.pdf

United Nations (UN). (2000b). *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*. Retrieved from <https://www.ohchr.org/Documents/ProfessionalInterest/ProtocolonTrafficking.pdf>

United Nations (UN). (2000c). *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*. Retrieved from <https://ihl-databases.icrc.org/ihl.nsf/INTRO/595?OpenDocument>

United Nations (UN). (2000d). *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*. Retrieved from <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>

United Nations (UN). (2005). *Treatment of unaccompanied and separated children outside their country of origin* (United Nations Committee on the Rights of the Child's General Comment No. 6). Retrieved from <https://www.refworld.org/docid/42dd174b4.html>

Van der Watt, M. (2018). *The Nature and Future of Human Trafficking in South Africa*. Retrieved from https://www.researchgate.net/publication/323476447_The_Nature_and_Future_of_Human_Trafficking_in_South_Africa

LEGAL CASES

Centre for Child Law and Another v Minister of Home Affairs and Others 2005 (6) SA 50 (T)

Mubake and Others v Minister of Home Affairs and Others 2016 (2) SA 220 (GP)

Jezile v State and Others 2015 (2) SACR 452 (WCC)

Centre for Child Law & Others v Minister of Basic Education & Others, Grahamstown High Court Case No. 2480/17 (Phakamisa case).



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