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Executive Summary

This study focuses on the right to education for refugees and the specific experiences of migrant children in South Africa. The project examined in great detail the barriers and violations of the right to education encountered by migrants in Gauteng, the Western Cape and Limpopo; government policy and practice on this issue as well as that of school governing bodies, school management teams, trade unions and local municipalities. It included education rights awareness amongst migrant communities, social movements and those legally obliged to ensure the provision of education.

This report is based on original interviews, focus group discussions and workshops along with school-based studies with migrants, migrant children and migrant organisations; public service providers to migrant communities (including educators, health workers, and others); engagements with national, provincial and governmental departments on migrant related issues, academics and several civil society organisations.

The key finding is that while the violation of the right to education of refugees and migrants in South Africa is pervasive, the study more positively uncovered many examples of the resilience of child refugees, their agency and the solidarity offered by South African civil society-without detracting from the hardship and difficulties experienced by these children. The report documents the challenges and creative adaptive strategies used by different migrant communities across three different provinces and across a number of local communities. The report also provides evidence of numerous gaps and inadequacies in the policy and practice of state institutions and officials.

The study endeavors to provide an in depth analysis of the perspective and experiences of the migrant community in SA particularly the experiences of children. It provides information about migrant populations that goes beyond the limited statistics and identifies how previous studies are very likely to undercount
undocumented migrants and particularly unaccompanied children, which are arguably the most vulnerable component of this population.

Interviews and focus groups of pupils and parents in three provinces spanning rural, urban and township areas forms the substance of the study, which has identified a number of factors that inhibit children's participation in education. Topics covered in the testimonies include access, social services and education. They traverse gender issues, unaccompanied minors, obstacles preventing schooling and migrants' participation in community structures and events.

Included in the testimonies collected by the researchers are stories such as that of a 17-year-old Somali orphan who travelled through Kenya, Tanzania and Mozambique to get to South Africa. In his "travelogue" he suggested there was a vital social network throughout the continent that relied on solidarity, not money, to function.

The study also discusses systemic issues which prevent access to education and rights in education. Pertinent here is the lack of documentation and the determination of status as 'illegal'. These issues while not directly linked to gratuitous violence still give rise psychological trauma as inaccessibility to education, seen as a 'life raft' out of their situation, is blocked. The latter should also be understood in a context where a significant number of the refugees' original homes and schools have been burnt down or destroyed, and some have escaped conditions of war and civil strife. Conditions such as these make it impossible for them to obtain their original school report cards and transfer forms.

The study has also found that legislation and policies were frequently flouted and violated by state officials. Implementation of government policy posed a major obstacle across the sites studied. One refugee who has lived in the country for 13 years has never been able to get permanent residence status or a South African ID, both of which were meant to have been available after five years. He lamented, "Just thinking I need to renew my family's status makes me stressed and gives me nightmares." Home affairs offices were frequently cited as intimidating to refugees and those trying to obtain service from the centre would "rather keep quiet to minimise the aggression of officials".

The study examines the importance of agency and solidarity and argues for a propitious policy and social environment conducive to provide healing, compassion and the fulfillment of the potential of children refugees in South Africa.

Asylum seekers, refugees and migrants have rights and our government has obligations to uphold these through domestic and international legal obligations. South African citizens also have an obligation to uphold these rights based on our own progressive understanding of the power of solidarity created through the struggle against apartheid.
Recommendations

The following recommendations are derived from the barriers impeding the education rights of refugees, migrants, and asylum seekers that have been outlined in this report.

National Government and the Ministry of Education should:

1) Provide policy guidelines outlining the rights of migrants, refugees, and asylum seekers to access quality education in South Africa.
2) Facilitate intergovernmental communication within South Africa to streamline the documentation and enrollment processes for migrants, refugees, and asylum seekers.
3) Establish formal collaborations designed to assist with information sharing and the harmonisation of migration policies with countries in the rest of the continent.
4) Mandate that all school faculty and administrative personal complete a basic education rights awareness seminar that makes clear the policies for enrollment with and without documentation as well as the education rights to which refugees, migrants, and asylum seekers are entitled.
5) Develop integration strategies within schools:
   a. Consider appropriating and incorporating a culturally responsive curriculum
   b. Re-examine the current curricula for examples and ideas that negatively stereotype refugees, migrants, and asylum seekers.
6) Incorporate appropriate policies and programming related to education rights for migrants, refugees, and asylum seekers currently utilized successfully in other countries.
7) Take punitive measures against government officials who fail to comply with formal policies designed to ensure the right to education for migrants, refugees, and asylum seekers.
8) Develop government bursary schemes for migrant learners to better facilitate their ability to access higher education institutions.

Non-Governmental Organizations should:

1) Utilize social networks and partner with other NGO’s to distribute information about education rights to migrants, refugees, asylum seekers, and their families.
2) Adopt an integrated and collaborative approach whenever possible with relevant governmental departments, NGO’s, community organisations, migrant organisations, and other stakeholders when mobilising and advocating for the provision of rights and services to migrants, refugees, and asylum seekers.

Steps for Future Research

The studies and workshops held in Gauteng, Limpopo, and Western Cape provinces provide an expansive examination of the barriers impeding the realization of the
right to education for migrants, refugees, and asylum seekers. That these groups were the primary respondents is particularly significant when compared to previous national surveys. Several needs and possibilities for future research became evident during the compilation of this report:

1) Develop indicators that correspond to the emergent themes and issues identified as “other”
2) Disaggregate migrants categorically (refugees, asylum seekers, orphans, HIV positive, unaccompanied minors, male and female) and demographically (rural, urban, and peri-urban).
3) Document the disaggregated experiences and stories of migrant and refugee learners and through qualitative and participatory action research projects rather than household survey data. Utilize comparative frameworks of analysis.
4) Conduct studies that:
   a. Consider issues unaccompanied minors, migrants, and refugees face with regards to labor and heightened vulnerability
   b. Examine the experience of migrant educators as well as teachers educating large populations of refugees, migrants, and asylum seekers
   c. Expand the number of schools surveyed and incorporate new provinces.
Introduction and Background to the Study

Violent attacks against migrants from other parts of Africa over the past ten years have placed the spotlight on the inadequate responses of the state as well as the systemic violation of the general human rights of migrants. While research on xenophobia has increased in recent years, investigations into the specific violation of the education rights of migrants have lagged behind. CERT through its focus area on education rights endeavoured to fill this need.

The South African constitution and national education legislation as well as the Refugee Act consistent with international treaties, guarantees the right to basic education of refugees and asylum seekers. Yet, tentative research shows that 30% of refugee and asylum-seekers households in the Johannesburg area were not sending their children to school and the vast majority were not aware of their education rights (CASE, 2003). In addition, serious violations and barriers preventing the attainment of the right to education of migrants has been recorded by the Education Rights Project (ERP—a project based at CERT) in schools and communities around the country.

During the course of its various campaigns, the ERP found that most refugees and asylum seekers were discriminated against. In 2004, the ERP embarked on a research study into the barriers preventing access to education for Johannesburg’s inner-city migrants, with a special but not exclusive focus on asylum seekers and refugees. The project commenced in November 2004 and ended in February 2006. Research was conducted through focus groups, in-depth interviews and participatory workshops. (see Appendix 1).

Beyond data collection, the research process also involved providing participants with information, legal advice and support. The project resulted in the production and wide distribution of the ERP booklet on the education rights of refugees, asylum seekers and migrants (Motha, 2005) and the formation of education rights organisations consisting of and led by immigrant organisations (Motha and Ramadiro, 2005). Research teams unraveled a complex web of social, economic, cultural and poverty-related difficulties faced by refugee and asylum-seeking children. Key issues related to the cost of education; admission and registration; age norms; lack of documentation and language issues (Motha and Ramadiro, 2005).

Toward the end of 2010 the ERP continued to build on the limited research already conducted. The latter included research in Johannesburg by the Education Rights Project and Khanya College with migrant communities as well as the research conducted by Wits University’s Forced Migration Studies Programme and the work of Save the Children and the Solidarity Peace Trust among unaccompanied minors in Musina. The ERP received a generous grant from the Foundation for Human Rights to continue its work on the education rights of refugees and migrants in the provinces of Limpopo, the Western Cape and Gauteng. The project was established to achieve greater understanding and awareness of the right to education for
migrants among the key role players and the public at large, strengthen the ability of migrant communities to pursue their education rights and hold the state and responsible parties accountable for violations of the education rights of migrants.

Research Methods

The project examined in great detail the barriers and violations of the right to education encountered by migrants in Gauteng, the Western Cape and Limpopo; government policy and practice on this issue as well as that of school governing bodies, school management teams, trade unions and local municipalities. It included education rights awareness amongst migrant communities, social movements and those accountable to ensure the provision of education. The project was implemented in the sites listed in Appendix 2. The target population, key stakeholders and partners are listed under the heading of each site. Sites, target groups and partners were chosen on the basis of the concentration of migrants, particularly migrant learners; instances of both attempts at pursuing the right to education for migrants and incidences of violations. Partners were chosen on the basis of their engagement, research and interest in the education rights of migrants and access to migrant communities.

The rationale for the selection of sites and target groups for this project was to enable the study of different refugee groups in a combination of rural communities, urban areas, townships and in the different regions of South Africa. Some of these areas were also 'hotspots' during the widespread xenophobic outbreaks in 2008 and others were not. Understanding this differential response of the broader community was an issue to be explored. The selection of sites allow for the useful profiling of the communities in terms of existence of support structures, duration of residence, unaccompanied minors, gender issues and the extent to which they are incorporated into the broader community through for instance receiving social services, access to schooling including overcoming obstacles preventing schooling and participating in community structures and events.

The project has completed a comprehensive literature review on the education rights of migrants; collected available quantitative data; analysed rights-based indicators assessing the conformity of the education rights of migrants in South Africa with international human rights standards and treaties and local legislation; involved site visits culminating in the collection of quantitative data, case studies and testimonies and arranged workshops for migrant communities on education rights. Qualitative data collection methods included interviews, school surveys, workshop presentations, focus groups and facilitated workshops. Additional activities of the project included a creating database of participating organizations, compilation and distribution of education rights booklets, notes from meetings, and news media reports.
An important part of this project was the development of a list of indicators corresponding to the 4A rights framework principles of availability, accessibility, acceptability and adaptability. Indicators based on education as a human right, place vulnerable groups such as refugees and the key principle of non-discrimination at the core. In so doing, they make these groups and violations of their rights more visible, thus creating the conditions for a culture of accountability whereby such groups are enabled and allowed to question state performance. The indicator matrix developed by CERT and its UK-based partner the Right to Education thus included transversal principles such as participation; non-discrimination and accountability. (see Appendix 3). Education is recognised in various international instruments and in the South African constitution and education legislation as a legal right with corresponding obligations for duty-bearers. This is why compliance with this right needs to be assessed and monitored with appropriate indicators.

Traditional education indicators mainly rely on quantitative data, often disclosing very little about the quality of the education provided. The indicators were therefore supplemented by various case studies and testimonies in the sites identified. Right to education indicators can evaluate whether education is provided in an environment respectful of the child’s dignity and development, whether it promotes respect for learners as well as teachers, whether and how it is provided to all groups and whether it teaches and upholds human rights. In other words, right to education indicators measure not only the right to education but also rights in and through education.

Compiling contact database and profiles of organisations

A primary part of the research approach involved strengthening relations with vulnerable groups such as migrant families, migrant support organizations, social movements and trade unions. Our main approach to this research is that this work should also contribute to building organisations and social networks amongst the poor.

Using a database compiled by staff organisations were contacted by telephone, fax and email. Information on the project and educational materials on xenophobia and the rights of migrants was sent to these organisations via email and fax. In a significant number of cases field workers had meetings with participating organisations to explain the project objectives and identify additional participants. These meetings were also used to organize interviews and collect relevant documents from participating organisations. From this interactive exercise it also became clear that these organizations were keen on establishing a relationship with CERT which goes beyond the specific research project.

At an early stage of the project CERT staff and field workers were asked to assist migrant organisations. Instances include: The Migrant Community Board which also produces “The Migrant” newspaper supplement with the Star newspaper requested
that CERT help it in developing organisational strategies and enhancing the distribution of the newspaper supplement. They asked CERT to assist in translating its media work into concrete organising initiatives and help in developing a tool for organising migrants and building solidarity with trade unions and social movements.

The in-depth discussions of the project were held with the following organisations: in Johannesburg - the Africa Diaspora Forum (ADF), the Migrant Community Board (MGCB), the Soweto Concerned Residents (SRC), Wynberg Concerned Residents (WCR), the Refugee Children’s Rights Project and the Central Methodist Church in Johannesburg. In the Western Cape: Ogoni Solidarity Forum People Against Suffering Oppression and Poverty (PASSOP), ARESTA, South African Democratic Teachers Union (SADTU), Whole World Women Association (WWA), Treatment Action Campaign (TAC), Social Justice Coalition (SJC), Somalia Association of South Africa (SASA) and the Cape Town Refugee Centre (CTRC). In Limpopo: SADTU, Save the Children, Musina Legal Advice Centre, Centre for Positive Care, Centre For Rural Development and Poverty Alleviation, Somali Association of South Africa and Jesuit Refugee Services were engaged by our researcher about the research project.

The Role of the Booklet

The participating migrant organizations also received the ERP’s “Education Rights of Refugees, Asylum Seekers and Migrants in South Africa” booklet which was produced by CERT (funded by the Foundation for Human Rights). The booklet was meant to provide an overview of the challenges faced by migrant learners and their rights in accessing education in South Africa. The easy-to-read booklet introduces readers to the history of migration and its relation to the development of the social formation in South Africa and Southern Africa, myths and fears about migrants, challenges of admission in school, requirements for registrations in schools, school fees, school age and the challenges that face migrant learners, school feeding schemes and rights of migrants, languages issues and a list of organisation that can help migrant learners in accessing education in South Africa. Organisations expressed much appreciation of the booklets and acknowledged that it was a very useful resource for their members. The Coordinating Body of Refugee Communities (CBRC) commended the ERP booklet and the role that CERT has played in advancing the education rights of migrants with following endorsement:

The Coordinating Body of Refugee Communities constituency would like to express our gratitude to CERT for the booklets on education. We would also like to commend you for this wonderful work. Although we are told that tertiary education is a luxury, we believe that we can only be able to give a true meaning to our lives if we equally benefit from quality education. This is a real change faced by many destitute refugee and migrant youngsters (Kamanda 2011:1).

Interviews
Based on preliminary meetings and consultations with the migrant organisations listed above, CERT staff constructed a series of interview questions and an inventory survey to administer to a broader range of actors serving migrant communities. Over 120 individual and focus group interviews were conducted with 80 respondents from migrant organisations, trade unions, social movements, government departments, NGOs, teachers unions, learners, teachers, other school personnel and others.

The process of designing the interview schedule for the face-to-face interviews was intensive. Many of the questions and issues that are captured in the interview schedule came from our discussions and engagements with migrant organisations. For example, conversations with the African Diaspora Forum, (an organisation with offices in Yeoville, Johannesburg, is one of the sites with a high concentration of migrants and is an important safe space because it was not directly affected by the xenophobic attacks of May 2008). The organisation suggested a number of issues that needed investigation by the research project, namely problems of documentation, school fees and discrimination in schools (Hlatshwayo 2011).

We also used the RTE’s "Access to Education" indicators. The approach of the research and the interview schedule was predicated on a “rights-based approach”(RBA). The focus on a RBA brings two important values to development work: firstly, it provides a framework for policies and programmes, and secondly, it provides the poor with the power to demand accountability to overcome poverty. According to the Foundation for Human Rights (FHR), using a human rights and RBA framework for development is powerful in that it has the potential to protect the basic well-being of all persons, including those who are disadvantaged and/or excluded from participating in the development process (Foundation for Human Rights 2010).

Within the ambit of "rights-based approaches", the crafting of the interview schedule took into account the understanding rights "to, in and through education" (Tomesevski, 1999) which entails examining access to education, the content of education provided to migrant learners and whether education provided to migrant learners creates opportunities for migrant learners as part of addressing social and economic challenges facing migrant learners.

A team of researchers from the United Nations Children's Fund (UNICEF) captures this approach explaining,

A concern with rights to education points to constraints in the family and within society that affect girls’ access to education. Second, rights within education invite a focus on how school systems take girls’ specific needs into account through curricula, teaching methods and the learning environment. Finally, rights through education raise the issues of how girls perform in school and the extent to which achievement translates into equal opportunities in the social and economic spheres. Gender inequalities can
only be addressed by taking all three dimensions into account (Durston et al. 2008:34).

Predicated on the "Rights To, In and Through Education", the indicators were further refined to fit the South African context and became the framework the interview schedule for the individual and focus group interviews. The framework emphasises the right to education through the following principles, \textit{availability, accessibility and adaptability}. The CERT research team added new indicators and themes, namely \textit{awareness, accountability and agency}. The new indicators addressed the interests of CERT staff in creating a sense of awareness around education rights of migrant learners and the state of organization for the education rights of migrant learners (Spreen 2011; Baatjes 2011). Interview protocols varied by participant role and type, but included the following areas:

- Biographical details
- Awareness of education rights among migrant communities and civil society organisations
- Availability of schools, adult public learning center and early childhood development centre in the area
- Accessibility includes access to education in relations to school fees, transport and documentation
- Acceptability entails, among other things, migrant learners language and learning more about Africa and countries of origins
- Adaptability includes challenges that face migrants in schools such as xenophobia and other forms of discrimination and accountability
- Accountability relates to the accountability of the school authorities and the department of education and
- Agency entails questions about the role of organized formations in ensuring that migrant learners have access to education.

The interview schedule and its above-mentioned themes were used to solicit data from the following groups, organizations and constituencies:

- Testimonies from migrant learners
- The voices of migrant parents
- Views from organizations of migrants
- Comments from teachers’ unions
- Comments from Social Movements
- Testimonies of migrants support NGOs
- Views from government officials (Home Affairs and Dept. of Education)

The interview schedule (Appendix 1) was designed for focus group interviews and individual face-to-face interviews. Overall, 120 interviews and focus groups were conducted with participants in Gauteng, the Western Cape and Limpopo.
Significantly, the overwhelming majority of participants in the study were migrants themselves. Eighty-eight percent of the interviews in Limpopo were with migrant organisations including migrant representatives. In the Western Cape 92% of those interviewed were refugees, asylum seekers and un-documented migrants. Close to 70 participants in the Gauteng focus groups and workshops were from migrant organisations. Representatives of social movements, trade unions, government, schools and public service and support organisations were also interviewed.

**The Indicator-based School Survey**

The indicator-based school survey was conducted in three high schools (one per region): Johannesburg Secondary school in Gauteng, Maitland High School in the Western Cape and Musina High School in Limpopo. This qualitative aspect of the research was based on collecting data systematically using the following indicators, namely awareness, availability, accessibility, acceptability, accountability and agency. Face-to-face interviews and focus groups were used to collect data on the mentioned indicators. A detailed questionnaire was designed with the view to solicit data on the indicators. We also had to ask for permission to conduct research in schools from relevant provincial education departments.

**Table 1 on Individual and Focus Group Interviews**

<table>
<thead>
<tr>
<th>Province</th>
<th>Number of Interviews/ Focus Groups</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gauteng</td>
<td>39</td>
</tr>
<tr>
<td>Limpopo</td>
<td>49</td>
</tr>
<tr>
<td>Western Cape</td>
<td>32</td>
</tr>
<tr>
<td>Total</td>
<td>120</td>
</tr>
</tbody>
</table>

**Table 2 on School Inventories**

<table>
<thead>
<tr>
<th>Province</th>
<th>Johannesburg Secondary school</th>
<th>Maitland High School</th>
<th>Musina High School</th>
</tr>
</thead>
<tbody>
<tr>
<td>Migrant Learners</td>
<td>Gauteng</td>
<td>Western Cape</td>
<td>Limpopo</td>
</tr>
<tr>
<td>South African learners</td>
<td>6</td>
<td>31</td>
<td>20</td>
</tr>
<tr>
<td>Teachers</td>
<td>2</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>Principals/Deputy Principals</td>
<td>1</td>
<td>2</td>
<td>1</td>
</tr>
</tbody>
</table>

14
Trying to access the KwaBhekilanga High School in Alexandra in Johannesburg constitutes a finding on its own. At the beginning of September we approached the Kwa Bhekilanga High School with the view to conduct a survey on migrant learners. The May 2008 attacks which led to the killing of more than 60 people and the displacement of 100 000 people started in Alexandra. We also chose Alexandra as a research site largely because of the massive attacks of migrants in May 2008 (Sinwell 2011). We thought that conducting research at the school would have contributed towards a dialogue between migrant learners, teachers and other learners at the school.

We received support and cooperation from the Wynberg Concerned Residents, a social movement that was also part of the Anti-Privatisation Forum. The organizations and the residents of the informal settlement called Setwetla also suggested that we also solicit the participation of the Kwa Bhekilanga High School. After a number of engagements with the principal of the Kwa Bhekilanga High School, it became clear that the School Governing Body refused to grant us permission to conduct research citing that the research could fuel another wave of the xenophobic attacks in the area. Sehlaphi Sibanda, one of the researchers negotiating access to the school captures the response of the SGB this way:

Please note that KwaBhekilanga High School in Alexander, Johannesburg has denied us access to the school for data collection. It’s a big setback considering the profile of the township and the school, but of course this will not stop the research. The visits were supposed to have started today (19th September 2011). The school governing body is concerned that the ‘nature’ of our research will bring back bad memories of the 2008 xenophobic violence and therefore feels it is unnecessary to be conducting such research even after numerous attempts at fully explaining the purpose of the research, the SGB was still unyielding (Sibanda, Sehlaphi 2011:1).

Workshops
The first workshop in Cape Town was held on the 26th–27th October 2011 and was attended by about 80 people over two days. There were about 80 participants at the Gauteng workshop which took place on 2-4 November 2011. Attended by 100 participants, the last workshop was at the University of Venda in Limpopo on 10-11 February 2012. The total number of delegates that attended the workshop is 260. It has to be noted that the delegates of these workshops were from migrants’ organisations, migrant support organisations, social movements, government departments, national department of education, provincial departments of education, academics and media.

Table 3: Number of people who attended the workshops

![Bar chart showing number of people attended workshops](chart.png)

<table>
<thead>
<tr>
<th>Region</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gauteng</td>
<td>80</td>
</tr>
<tr>
<td>Western Cape</td>
<td>80</td>
</tr>
<tr>
<td>Limpopo</td>
<td>100</td>
</tr>
</tbody>
</table>

Number of interviewees

The majority of the interviewees were migrants. This was done in order to ensure that the project gives voice to migrants and their organisations. Social movements, Non-Government Organisations, trade unions and government officials were also interviewed. Thirty nine interviews were conducted in Gauteng. The Johannesburg Secondary School was also part of the schools survey. In the Western Cape 32 people were interviewed. Fifty two people from the Maitland High School participated in the research project. We interviewed 51 people in Limpopo and conducted a survey in Musina High School.

4Please note that there is a discrepancy between the numbers in the register and this report because some delegates did not fill in the attendance.
Table 4: Number of interviewees and the school survey participants

<table>
<thead>
<tr>
<th>Province</th>
<th>Interviews</th>
<th>School Survey</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gauteng</td>
<td>39</td>
<td>9</td>
</tr>
<tr>
<td>Western Cape</td>
<td>32</td>
<td>52</td>
</tr>
<tr>
<td>Limpopo</td>
<td>51</td>
<td>25</td>
</tr>
</tbody>
</table>

Organisations that participated in the project

Over 100 organisations from Gauteng, Western Cape and Limpopo were part of the project. Migrant organisations and organisations that support migrants were a key component of these organisations. Government, trade unions, social movements and media organisations were part of this rendezvous of organisations that were grappling with migrant learner access to education (see appendix 1).

Media Coverage

The research project received good coverage from the Mail and Guardian newspaper and the Mail and Guardian Online. The first project article published by the Mail and Guardian is titled, "Lifting the veil on migrants and myths". It provided an overview of the whole profile, objectives and its activities. The Mail and Guardian carried an article which covered the workshop in Cape Town in November 2011.

Subsequent to that the Mail and Guardian published an article which covered Gauteng workshop which took place in November 2011. The last workshop was in Limpopo’s University of Venda in February 2012. An article titled, "Refugees barred from schooling" reflected on the workshop in Limpopo.

The United Nations Office for the Coordination of Humanitarian Affairs reported on the workshops and in one article focused on a participating group the iThemba Study Centre. This is an initiative which helps migrant learners with access to education. The centre includes learners who have problems with accessing schools.

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because of fees and documentation. The work of the centre was also covered by the *Sowetan*. The *Sowetan online* has a readership of which had an online reading of 626,808 users in November 2011. Quite clearly, the project had a very substantial "reach". Based on the workshops, interviews and surveys, we can argue that we managed to reach an audience of about 650 000 people. The big factor in this figure is the online reading of newspapers such as *Mail and Guardian* and *Sowetan*. 

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11*Ethical Considerations*. Interviewees participation in the research was on the basis of informed consent (Homan, 1991). The purpose of the research was explained to the interviewees. They were then asked if they wanted to participate. They all agreed to freely participate, and they were informed about their right to remain anonymous. A number of migrant interviewees chose to remain anonymous because of fear of victimisation by state authorities. One of them belongs to one of the prominent organisations of migrants. That was a sign of deep fear of victimisation of migrants. We also agreed that in such case pseudonyms will be used. All interviewees signed consent forms which basically explained the purpose of the research and their right to remain anonymous.
Education Concerns and Challenges: The literature, profile and context of migrant children in South Africa

It is estimated that 214 million migrants worldwide live outside their country of birth. This figure includes millions of children, who have either migrated with their parents or unaccompanied. Gary Younge (2010) writes that much of immigration:

... is not voluntary but forced by extreme poverty, natural disasters and wars. It would be a better world if people did not have to move to eat. Environmental policies – particularly on climate change – arms control and a responsible foreign policy without unnecessary wars are all integral to immigration policy since they would all assist in allowing many people to stay where they would rather be: at home. Even then, when almost half the world’s population lives on two dollars a day, many will still head to the west not to thrive but to survive. Destitution is a powerful motivating force. Build a 10-foot fence with food on one side and a hungry person will build an 11-foot ladder to get to it. Turning your borders into a fortress and filling your jails with the globe’s poor does not solve the problem. At the very best it contains and suppresses it, at worst it criminalises poverty and brutalises its victims.

Migration is a strategy to escape desperation, extreme poverty and war by moving, it is also a strategy for aspirational upward mobility, access to better job opportunities, education and health care. Where vulnerabilities become the driver of migration, they are clearly and intrinsically linked to human rights deprivations in countries of origin (including poverty, inequality, gender-based discrimination, lack of opportunities, as well as abuse, violence and armed conflict). (UNICEF, 2010)

Throughout our study we suggest that reasons and modalities of migration vary considerably – migration is termed “regular”, “legal or illegal”, “short or long term”, and can occur with or without families – effecting migrants, particularly children differently. In our research we found that legal status and reasons for migration are important because the differentially effect the level, type and access to services and support, as well as level of integration in host communities.

The bulk of research literature that is available on migrants in South Africa relies on the 2000 census, the Unaccompanied Minors Report (2007) and UNICEF’s Better Implementation Report (2009). According to the latest available statistics, in South Africa migrants make up 2% (900 000) of the population (Crush and Williams, 2001) and only 150 000 are identified as refugees or asylum seekers. Information from the 2000 Census tells us that, nationally, migrants to South Africa are overwhelmingly from SADC countries: Mozambique (58%), Lesotho (14%), Zimbabwe (10%) – but regionally and locally these figures can vary dramatically. The research in this report sheds light on myriad of differences and experiences behind these limited numbers and further suggests there is greater need for more recent figures and larger sample sizes to accurately capture the migrant experience.
The vast majority of the research on migrants draws on different methodologies and sample sizes, focuses on adults, and primarily uses census data from 2000 (which is outdated). In a review of all the research reports by the government and NGOs on migrants in South Africa, all mention a significant lack of information on children. Aside from academic journal articles (which we also include in this report) only one government/NGO study reviewed has actually been done with children. Other findings about migrant children have to be inferred from household studies which rest on assumption that heads of households are familiar with issues children face. Given the emphasis on household studies and adult informants, there is a lack of understanding of the services children access directly, including education, and their experiences as migrants in South Africa. These studies nevertheless allow tentative descriptions of the situation of child migrants which are summarized below in this report. Although no reliable figures are available, we do know that South Africa is receiving an increasing number of such children and lacks an efficient system for addressing their needs. In the following section of the report we begin to address some of the shortcomings in the literature by capturing the stories of isolation and resilience, challenges and triumphs.

Child Labour and Exploitation

According to UNICEF, “The fundamental problem faced by children and adolescents is their invisibility: the absence of a child perspective within migration laws and policies, and the absence of a migrant perspective in childhood policies. This results in the deprivation of their rights, discrimination and even exploitation.” (2010:1) As previously described, there is a lack of information and research in Southern Africa on the impact of migration on children, and more specifically children’s particular experiences, the services they access. Importantly, issues that migrant children are likely to face are also those that children are most reluctant to discuss with adults – work exploitation, sexual relationships, experiences of harassment and xenophobia are likely to be under-reported and poorly understood (UNICEF, 2009)

Throughout the migration literature there have been many concerns about the exploitative employment of migrants, particularly children. When parents are able to migrate without children, they are financially better off. Those migrating with children have less secure housing and lower income, and vulnerabilities only begin there (Unaccompanied minors study, 2007). The migration of children without parents takes on a very different characteristic. Children who migrate without an adult caregiver face considerable vulnerabilities to exploitative working conditions, including low wages.

Labour exploitation of children exists in particular sectors, and impacts differentially across gender and among different age groups. According to the unaccompanied minors study (UMS) (2007) the majority of migrant children are boys. One possible reason for this research finding is that girls may be employed in domestic work or other privatised forms of work such as sex work which makes
them less easy to access for services or protections. Also some girls are sent by their families to be employed as domestic workers and these girls are less visible in places where children are likely to seek services or reach providers such as transit camps. While research suggests that boys are more likely to migrate without an adult than girls, we argue that research on migrating boys and girls requires different intervention strategies and calls for additional studies to understand the specific migration challenges for girls.

*The extra vulnerabilities of unaccompanied children*

Unaccompanied minors face a series of challenges and obstacles beyond labor exploitation, and these often relate to both their legal status and issues of documentation. As comments from our research reports confirm, one of the most significant gaps in service provisioning is to unaccompanied minors. This failure was identified at the government level as well as non-governmental level, and we argue that the government’s repatriation policy itself fuels several problems for migrant children, especially unaccompanied minors, often leading to an over-reporting of “orphaned” children in order to be eligible for residency and guardianship.

A large number of children - 42% according to the UMS – indicate that they migrated to South Africa because of the death of a parent (UMS, 2007). The study further found that those on the Zimbabwean and Mozambican borders were most likely to cite a lack of money or food, and the death of their parents or not being in school, as reasons for being in South Africa, whereas those in Johannesburg were more likely to cite a war in their country of origin as the reason for migration.

The establishment of guardianship is required to receive public services and specifically enroll children in school. The Department of Home Affairs (DHA) is responsible for issuing the immigration permits and identity documents that children need to attend schools or access services, but the DHA will not do so unless children have been assigned a social worker by the Department of Social Development (DSD) and have a Children’s Court order setting out their guardianship arrangements (Williams/UNICEF IRIN 19 August 2011). Navigating the different government departments becomes a complex maze for unaccompanied children and their advocates because if a child has a parent who is still living in their home country, guardianship in South Africa is very difficult to establish. As a result, these children are usually repatriated back to their home country. This was particularly true for unaccompanied minors who don’t have refugee status. Moletsale, an immigration advocate for the Lawyer for Human Rights explains, “If there is no asylum claim, documenting those children is one of the biggest nightmares.” (quoted in IRIN article, ibid) Our interviews with service providers suggest that one outcome of this policy appears to be over-reporting of “orphaned and unaccompanied children.”
In addition, another problem identified by participants in this research project was that the type of assistance social workers are supposed to provide is not clearly defined and there are inconsistencies between different government departments about which should come first – documentation or the Children’s Court order. The Children’s Court, Social Development and Home Affairs all have different standard operating procedures when it comes to unaccompanied minors (LHR, Williams/UNICEF IRIN news article 19 August 2011). With government social workers in short supply and reluctant or unsure about what to do, most advocates refer the children to NGOs who in turn help with their immediate needs but not broader advocacy.

Also worth noting is that migrant children who are unaccompanied and who remain on the borders are particularly vulnerable to not receiving public services or being in school. “Aside from limited services on the border with Zimbabwe (by SAVE), no organisation was able to deal comprehensively with the needs of unaccompanied minors and there was a lack of clarity about rights and needs.” (UNICEF 2009, 43) A further example from the unaccompanied minors study in 2007, showed that only 6% of the children on the border in Musina were in school, whereas 96% of unaccompanied children living in Johannesburg were in school. Existing research points to the problems children on the border face in accessing education and other services, due to the relatively large numbers of NGOs in Johannesburg that provide services for basic needs and facilitate access to schools.

*Location and Access to Services: Border vs Urban Contexts*

The location of children – whether on the borders or in urban areas – impacts access to services and social networks and reflects different patterns of migration. Migrants are self-settled into either urban areas and/or border areas but the conditions are vastly different across these areas. Migrants to urban areas are in general more likely to be better off (in terms of opportunities for employment and access to social services) than those that remain on the border. Yet there are still concentrations of migrants in urban areas where, despite better access to services and advocacy groups, there are still pockets of extreme vulnerability among some migrant communities. And for those in rural or border areas there is generally a lack of services and organisations, limiting the level and kind information available about migrants who live in small towns, rural villages and border areas not serviced by NGOs and where they are not likely to have some resources and/or social networks to support them. This finding supports our research that describes the discrepancies in services in border areas because of the high rates of irregular migration from Zimbabwe compared with more permanent migrants in Johannesburg and other parts of the country.

It is important to recognize that it is not just dysfunctional system that is working against migrant children, but there is also an element of xenophobia in how these systems operate—an unwillingness to view migrant children as deserving of care. What is usually the first line of services sought for unaccompanied children –
Department of Social Development – usually tells them the shelters are full. Shelters funded by the Department are unwilling to take in refugee children, giving priority to local children.

Integration and Xenophobic Violence:

There has been a failure to adequately understand the impact of xenophobic violence on migrant children – for example, its impact on access and traveling to and safety in school, impact on family unity and security, as well as its psychological impact on children. Following the xenophobic attacks, many organisations mentioned a gap existing around social integration and conflict resolution in local communities. They saw the schools as being the best place for intervention to take place. (Later in this report we highlight schools that are sites of resilience and intercultural learning that combat xenophobic attitudes and celebrate diversity).

Many reports point to the overall lack of integration of many migrant families into South African society– although the level of integration varies by community and social network structure. The African Cities study (2010) found 68% of Somali’s declared having no South African friends, versus 38% of the respondents in the DRC, and 21% of respondents from Mozambique. This measure of isolation from South African communities is important because it is an indicator of families social interactions and these patterns build (social capital) through networks that provide important information for migrants that is necessary for securing rights and access to services (like education).

Ensuring the Safety and Security of Migrant Children

Research conducted by the Centre for the Study of Violence and Reconciliation (2009) indicates high levels of xenophobia among police officials. There also appears to be a pattern of arrest and release that is common in policing victimless crimes and has been identified as highly ineffective and makes bribery far more likely. Unaccompanied minors study illustrates how bribery was a widespread practice – with over 50% of children reporting they had paid bribes to smugglers or to the police in order to cross the border into South Africa. It is not surprising then that children expressed very little faith in the police and very few considered asking the police for help(UMS, 2007). This is also important given the large number of children (40%) who had experienced physical violence, particularly those who reported they were victims of crime, an assault or rape, or having a fight with peers. In the unaccompanied minors study (2007) just over one quarter of the children had been deported at one time or another. In every case, these deportations were illegally carried out by the police. 27% were arrested for being in the country illegally, 69% were illegally returned by being dropped off at the border by the police. Not surprisingly, Zimbabwean children on the border were significantly more likely to have been illegally returned by police (47%) likely due to increased migration policing on the border post.
**Advocacy Organisations for Migrants**

Throughout the literature and in our own investigations, we found very few child specific services for migrant children. Twelve organisations were identified by UNICEF that specifically offered prioritized services to migrant children. Yet, many of these focused on refugees, rather than migrants in general, creating a gap for the majority of child migrants. Most of the services provided were around meeting basic human needs, i.e., providing shelter or accommodation through safe spaces or transit camps; assisting with distributing food or toiletries for unaccompanied children; providing crèches or afterschool care; assisting in getting access to schools by providing uniforms or school fees; providing information or referral to various agencies and services. Moreover, many organisations lack sustained funding to allow them to intervene strategically and rather respond to key issues as they emerge for children or families. On the other hand, many of these organisations express concern over their lack of understanding of migrant rights and their ability to respond appropriately. In our view, none of these organisations or their strategies to help migrant children and families was specifically designed around rights based approaches that would advocate for children beyond access to some services or challenge infrastructural barriers, advocate for schools to address social (psychological) or cultural (language) needs of migrants.

The most common gap identified by organisations working with migrant children was advocacy. In particular, this referred to advocacy with key government departments at a national level, rather than community-based awareness raising (UNICEF 2009). Many researchers are suggesting that litigation has been successful but other forms of lobbying and advocacy were non-existent, indicating a clear role for this project. According to UNICEF study, “there was a lack of capacity for monitoring human rights abuses and providing information at the border posts. This is particularly important in areas with substantial migrant populations with few services. Border towns with the largest number of migrant children, the lack of services is particularly concerning” (UNICEF, 2010).

**Ensuring the Rights of Migrant Children: Legal and Policy Framework**

In South Africa access to education is guaranteed by the Constitution’s Bill of Rights (Chapter 2, section 29) which states: “(1) Everyone has the right to a basic education.” Everyone has been explicitly interpreted to include non-citizens. Furthermore the education system is regulated by the South African Schools Act No84 of 1996 and related regulations. The Acts make access to schooling a basic right and prohibit any kind of discrimination or exclusion, whether on the basis of nationality, documentation status or ability to pay.

This requires the South African government to provide adequate primary schooling for all children. All asylum seeker and refugee children have the right to primary education and are entitled to the same access to schooling as any South African child.
Furthermore, primary schooling is compulsory in South African. The Department of Basic Education’s policy “Public School Policy Guide” states that “every child has the right to be admitted to school and to participate in all school activities.” It also stipulates that the governing body of a school may determine an admission policy for the school, however, the school’s admission policy must be based on the guidelines determined by the Head of the Provincial Education Department (HOD). If the applicant is refused admission, the HOD must, through the principal of the school, inform the parent/guardian of the refusal and the reasons thereof in writing.

The Public School Policy Guide stipulated that the following documents are required to register a child at a public school: birth certificate, immunization card, transfer card/last school report card. However, the policy makes provision for a child to be registered provisionally if these documents are not available and the parent/guardian may be given reasonable time to produce these. The findings in this report show that a number of schools still do not understand or ignore the policy and access for many migrant children, due to lack of documentation or status, remains a key problem.

Furthermore the Refugee Act No. 30 of 1998 states explicitly that, “refugees and their children are entitled to the same basic health service and basic primary education, which citizens of the Republic receive from time to time”. Various conventions also bind the South African government to provide education for refugees, asylum seekers and migrants including the International Convention on the Rights of the Child (ICRC), the Geneva Convention and the Protocol Relating to the Status of Refugees.

Appendix 4 includes international instruments and the national legislative framework.
Findings from the Reports and Workshops

The Questionnaire on the right to education for migrants, refugees, and asylum seekers addressed to States, international organizations, including the UN agencies, and other interested parties provides a series of questions around which data furnished by the provincial reports were initially analyzed. While a number of issues correspond to the Questionnaire, many of the concerns and challenges voiced by the refugees, asylum seekers, and migrants surveyed are not represented by the indicators and frameworks that have guided previous reportage. Specific attention is thus given to these emergent issues, which are organized thematically following a review of findings related to the established indicators, which both the Questionnaire and National Studies have identified as: 1) specific language needs; 2) financial constraints; 3) constraints based on documentation; 4) gender; 5) age; and 6) disability. It should be noted that the three provincial studies particularly reflect the Special Rapporteur’s call “to hear from all concerned parties about their experiences, challenges, and successes in the provision of education for migrants, refugees, and asylum seekers.” Study participants include not only learners from these populations, but also their families, teachers, administrators, and other stakeholders whose voices are often under-represented or un-represented in previous reports.

Specific Language Needs

"Without language, you do not have the vocabulary and the tools to write down your thoughts and ideas. For most of these learners, they have never spoken a word of English and now they find themselves in high school where you not only have to learn in the language, but also have to understand difficult concepts in all subjects. For these learners, we have to start from scratch and teach the very basics such as phonetics, basic vocabulary, sentence construction...it is frustrating because these are intelligent kids, but they don’t understand the questions.” (WC; 41; teacher)

In all three provinces, migrants, refugees, and asylum seekers identified that language acts as a barrier in terms of educational access as well as acceptability and adaptability. Participants responded that they were unable to understand school entrance and documentation requirements nor Department of Home Affairs mandates as related to their education rights in South Africa because information pamphlets and brochures are published primarily in English or Africans though are not made available in their native languages. Additionally, there is a shortage of English medium schools, both primary and secondary, that are in highest in demand amongst refugee populations. For high performing schools to which learners must apply for admission, migrants and refugees are at a disadvantage in the selection process as a function of their linguistic abilities. One teacher in the Western Cape explained, “It boils down to performance. Schools are under pressure to show results and if there is poor literacy in the schools, you are at a disadvantage. Because of the high failure rate, schools don’t want these learners.” (42; WC; teacher).
There is a noted relationship between the migrant or refugee learner's country of origin and his/her ability to successfully transition to schooling in South Africa. A trade union representative from the SADTU explained that "in Western Cape, the biggest issue is not admission—learners can get into school. But when they are there, they are faced with learning a language they do not understand." (41; WC; SADTU trade rep). This problem is also noted by teachers, one of whom states that,"the extent to which being taught in English acts as a barrier is dependent on the learner's country of origin. Learners that come from Zimbabwe have a strong grasp of English and do not experience English as a barrier. They are doing very well at school—some of our strongest children are from Zimbabwe. For learners coming from Cameroon, Congo, Burundi, and Somalia speaking French, Swahili, or Linojala, they are not as well equipped to make the necessary transitions to education in South Africa. Think about it. If you cannot speak a language, how, in any test, will you be able to answer the question being asked?" (WC; 40; teacher). On this subject, a government official in the Western Cape responded "there is a high concentration of Somali communities but the majority of schools in rural areas use an Afrikaans medium. In these cases, children enroll into schools despite the language barrier is the community is hungry for education and learning." (govt. official; 27; WC)

Teachers struggle to accommodate and meet the needs of migrant and refugee learners."You must teach at least five different lessons with learners on five different levels in one class. Your class is highly repetitive to make sure that everyone is getting it. With this approach, you also loose learners like the kids in the middle. You just can't give them the attention they need and you know they are slipping through the cracks. It does not make it any easier that we don't have the budget and support from the WCED to deal with these problems. Money is a real issue. It is challenging and exhausting." (42; WC; teacher) Another teacher in the Western Cape explained, "If a learner is in Grade 12 and cannot speak a word of English, the only way I can even think of making a difference is to give that learner individual attention. But with the workload and classes you just cannot do it. There is not enough time." (WC; 44; teacher)

Learners agreed that language acts as a pervasive barrier to accessing quality education. A learner in Limpopo spoke of how her school discourages migrant learners from speaking in their own languages. She stated that "learners speaking in a foreign language are punished because the school feels there is no need for learners to speak in that language because you need to do what we do here in South Africa. But they need to understand that we are Zimbabwean and we have our own culture and our own language and we cannot just abandon our language because we are here in South Africa." (L, 24)

Another learner in the Western Cape reported that teachers often interchange between a number of South African languages and migrant and refugee learners
struggle to understand what is being said. Furthermore, respondents stated that they were too intimidated to ask for an English translation.

Finally, none of the schools surveyed offer non South African languages as a medium of instruction, or as an additional course. Parent respondents fear their children’s acquisition of English and other official South African languages is born at the expense of their children’s ability to communicate with peoples from their home country. “They cannot speak to the relatives back home anymore.” (L, 25). This same parent also reported, “the fact that education is all in English is also a big challenge to us because it means that we cannot help our children with their homework and that is not good at all.” (L, 25)

Financial Constraints

“The learners will tell you—I don’t need to pay my school fees. Mr. Mandela said that education is free.” (teacher; 32; WC)

Migrants, refugees, and asylum-seekers report that school enrollment fees as well as secondary costs (particularly related to transportation, school uniforms, and materials) are impeding the right to access education. An NGO worker from Limpopo reported that, “So prohibitive are the secondary school costs that some parents keep their children home. They say “let me educate one or two and then the rest stay at home. Some of our community cannot afford these costs.” (L, 21) Transportation costs are particularly challenging

In Gauteng and Limpopo for example, participants report having experienced or knowing someone who experienced school expulsion due to inability to pay school fees, variance in schools accepting fee exemptions, as well as cases of prospective students “jumping the queue” on school waiting lists as a function of their demonstrated ability to pay school fees. A representative speaking on behalf of the Coordination Body of Refugees and Migrant Communities (CBRC) stated at the Gauteng workshop, “after listening to what has been said, it is obvious that access to education for most people in this country is a big challenge.” He further noted that Model C schools are discriminatory. “These schools do not accept fee exemptions. There has been a problem with some migrant organizations paying school fees for some migrant children but not for others. Even if kids manage to get accepted into the Model C school and payment is dealt with, they often live far away and transport is prohibitive.” Learners and parents recounted experiences of school administrators lacking knowledge of migrant, refugee, and asylum seekers’ eligibility for exemption from school fees (further detailed in the section devoted to “Other” barriers).

There is a high degree of stigmatization that accompanies migrant and refugee learners and their families struggle to meet the costs of schooling. As one learner in the Western Cape stated “I hate when the school calls for the fees. It is so embarrassing.” (learner; 33; WC). A school administrator explained that “When the
parents can’t pay the school fees, we send their accounts to debt collectors. We don’t want to, but we have to. We need the money.” (admin; 33; WC). One learner did report preferring the schools method of calling or sending a debt collector. “In my country, if you can’t pay the principle chases you away from school with a stick and tells you that you shouldn’t bother coming back until you can pay. The system where the school speaks with our parents is better. At least we still get to come to school even when we can’t pay.” (33; WC; learner).

From the learners’ responses however, it is clear that schooling places a considerable strain on migrant and refugee families already meager financial resources. “The cost of rents is very high and the food price is always increasing every month. It [school fees] puts pressure on the household.” (36; WC; learner) Another stated that, “I am not the only child that my parents need to feed and pay for school. Because my transport and my school fees for the year, they must pay R4500 for me only.” (learner; WC; 36)

Finally, reports from the Western Cape detail the process of accreditation of their original transcripts as prohibitively expensive, rendering them ineligible to pursue employment or access to University education for which they are otherwise eligible. It currently costs R700 for transcripts to be accredited The process can take up to a year with awaiting migrants not being able to study or work during that time. (WC; 39)

**Constraints Based on Documentation**

Access to education is significantly impeded by refugee, migrant, and asylum seeker’s ability to furnish documentation to school administrators. The policy stipulates that the following documents are required to register a child at a public school: birth certificate, immunization card, transfer card/last school report card. However, the policy makes provision for a child to be registered temporarily if these documents are not available and the parent/guardian is to be given reasonable time to produce these. The LHR/CORMSA submission to the Portfolio Committee on Basic Education states “We are finding that in dealing with cases of foreign children, especially refugee and asylum seeker children, schools have not been willing to engage with parents/care givers. We have also seen that certain school principals have been resistant to receiving learners and are further refusing to advise caregivers or refer them to the DOE at the District level. Further, “It is very clear in the policy that if a child has been refused admission to a public school, the school principal must give a written explanation of why the learner was not admitted.” One learner in the Western Cape recounted challenges in acquiring requisite and rightful documentation. “I have been in this country for 12 years and I have no ID book or permanent citizenship. In the book of Home Affairs, I am supposed to have one by now, but I don’t have one and must keep renewing my refugee status.” (learner from Maitland High; WC, 8)
There have been instances where LHR has intervened in communicating with school principals to find that they will refuse to answer correspondence or take telephone calls. This has made it difficult and in some cases impossible to enroll children into public schools.

Unaccompanied children, a comparatively large population of prospective learners in the Limpopo province face significant bureaucratic obstacles in terms of obtaining their birth certificate—the document requested most often by officials for school enrollment. In both Limpopo and the Western Cape provinces, parents similarly reported being referred to their country of origin by officials at the Department of Home Affairs to obtain birth certificates or additional documentation, even if their child was born within South Africa. Most do not have the financial means to go back or it is unsafe for them to do so, resulting in significant delays in enrollment or in some cases exclusion altogether. For example, one school administrator in the Western Cape reported that, “with some of our Zimbabwean learners, they received SMS notification that their ZDPs were ready and that they had to go to Paarl to fetch them. To get these, they had to take off school but when they were there, there was nothing for them. What a waste of time and money. The situation is even more desperate when it comes to the matriculants as they need a documentation number to write their exams and cannot write this without it. As it stands now, there is a group of learners that are awaiting their status renewals to be able to write their matric exams. We have tried from the school side to support them to get their status renewed, but with no luck. Home Affairs is failing these learners and must come to the party.” (32; WC; school administrator)

Additionally, reports from Gauteng detail cases of state subsidies at the ECD level not extending to learners without birth certificates. The Department of Home Affairs is frequently cited for their systematic exclusion of undocumented children from accessing the right to education by a variety of means, including demanding bribes in exchange for services; delaying the provision of study permits resulting in the delays in registration; and demonstrating blatant xenophobic attitudes through derogatory remarks or generally acting in a rude and belligerent manner. Migrant or refugee parents whose children are born in South Africa face challenges in acquiring proper documentation that will enable their children to enroll in school when they are of age. A refugee from Cameroon recalled her experience at the DHA. “When I went to collect my daughter’s birth certificate, I noticed that hers was different from the rest of the South African children. When I asked why, I was told by an official that, ‘You can’t get a South African certificate. Your child is not a real South African. You people, you think that you can get pregnant here to solve your problems.’ (WC, 7)

The case studies included below make clear the numerous and varied challenges faced by migrant and refugee learners and their families in accessing their right to education based upon their ability (or lack thereof) to furnish documentation.

*Case Study: Unaccompanied Somali Minor; Western Cape*
“My relatives were good to me, but our lives were hard. We did not have money for food and there were a lot of people living together. Together, they collected money for me and gave me the money to come to South Africa to look for a better life.

I left at the age of 17 in February, 2010 by myself. I traveled through Kenya, Tanzania, and eventually into Mozambique. Along the way, I became part of a group of Somali who were also on their way to South Africa. We looked after each other. We made sure that we had security. In Mozambique, I contracted malaria and I had to separate from the group. They left me behind in Mozambique where I almost died. I knew they had to leave me, but when I was alone in the hospital, I felt like I was losing another family.

When I was better, I met up with another group and together we were struggled into South Africa in a truck at night. We were about 100 people in that truck. When I came to South Africa, I had no permit and no family but other Somalis could see my struggle and took me in. I live with them now in Belville. I am happy now; I have food and a place to sleep. For that I help with the shop and with business.

I like it here, but it is very difficult to get a permit. I did not think that it would be so difficult. I try every Tuesday [the day demarcated for Somali permit seekers] and when I have the money I go to the Cape Town Refugee Center. Sometimes I don’t have the transport to get there and back. Every time, they tell me I need someone to look after me because I am still a child, but I have no one. There is no family of mine here. After many wasted Tuesdays, I decided I am going to wait until I am 18 and then accept responsibility for myself. After my 18th birthday, I can get my status. All I want is to have peace and a good education. I have finished Standard 6 and when my papers come through I will continue my studies. There are opportunities to study here that you cannot get in Somalia because of all the fighting. I am determined to make a good life here in South Africa.” (Somali orphan; age 17; WC; 65)

Case Study: Unaccompanied Zimbabwean Minor; Limpopo

“I was not attending school in Zimbabwe. I stopped when I was in grade 5, three years ago. My father said I should stop going to school. I envied others in their uniform but there was nothing I could do. I stayed at home the whole day. A neighbor came from home (from South Africa) during the Easter Holidays and told us children that it is easy to access education in South Africa, so my sister and I decided to come here and study. However, it was not easy at all. We were hungry throughout the journey since we only had enough money for transport. We did not know where we were going but I was not that scared because I had my sister with me. We crossed through the Limpopo River even though I was scared because we did not have passports.

When we got here, we asked people where Zimbabweans are sheltered because our neighbor had told us that there is a place of shelter for Zimbabweans. The police arrested us before we got to the shelter. At the police station, there were people that I came to know later were from Child Welfare. They stopped the police from deporting us because we are minors. My sister was taken to another shelter. I no longer see her. I understand she left the shelter and went to Polokwane to look for work. I do not want
to work. I want to stay here and study. I want to be a social worker and help others like the social workers who stopped me from being deported.”

This learner is now attending alternative classes offered by Save the Children—UK Musina. She has found a place for 2011 at one of the local primary schools. She will go back to grade 4, despite having left school in Zimbabwe at Grade Level 5 and had been attending alternative classes for one year. (L, 10)

Case Study: South African parent of an undocumented learner; Western Cape

“My daughter is undocumented because at the Home Affairs they need her mother to prove that she is the mother of my child. They did not accept the birth card issued at the clinic where she was born. My wife and I are not legally married, even though we have been staying together for 17 years. I have been to visit her family in Mozambique a number of times. She stays here, speaks the language well and for me, we are married, yet we still cannot get our daughter a birth certificate because her mother does not have documents. It’s frustrating. I’m really concerned because of her undocumented status. My greatest concern is that she will not be allowed to sit for her matrics. It was a struggle getting enrolled at school. They accepted her only because my family is just around the corner from the school, but even then I encountered problems, even though everyone saw her grow up.

Every time I go to the DHA, I am asked for the mother’s identity book. They even know me by name there, but every time they still ask me for the book, even though I tell them that she does not have one and ask if they will still just accept mine.” (L, 18)

Gender

There was scant data collected in the studies or workshops that captured the particular barriers faced by female refugees, migrants, and asylum seekers in accessing their education rights. In the Western Cape provincial report, female learners expressed feeling more vulnerable than their male counterparts in terms of getting to and from school. One learner stated “It is not safe. Sometimes I walk home late which is not good because I am a girl.” (36; WC; learner)* As will be further discussed in the section of the report devoted to Recommendations and Steps for Further Research, subsequent studies ought to devote considerable focus to issues relating to gender and education rights.

Disability and Age

While Disability and Age are disaggregated in the Questionnaire and National Surveys, they are presented collectively within this report as a function of the limited amount of data collected within the provincial studies and workshops. In terms of barriers to education relating to disability, reports from both the Western Cape and Limpopo cite issues of limited or no availability of schools that cater to physically or mentally disabled learners. Excess demand for placement in these schools by South African learners further impedes enrollment for refugees,
migrants, and asylum seekers; participants further report experiencing discrimination for limited placement in these schools based on their status as disabled learners. In terms of barriers as a function of age, reports from the Limpopo province detail the particular problem unaccompanied minors face when they report to the Department of Home Affairs to receive refugee status or documentation that would allow them to enroll in school. Underage children must lie about their age in order to be granted access to reside in South Africa, however this compromises their ability to access the free primary education for which they are eligible. Along with Gender, Disability and Age will be further discussed in the section of the report devoted to Recommendations and Steps for Further Research.

Other

The significant number of emergent issues that did not correspond to the established indicators are: 1) Xenophobia; 2) Acts of omission and commission by the South African government; 3) General lack of awareness of rights amongst all stakeholders; 4) Asymmetry in allocation of public funding to schools and budget shortfalls; 5) historical legacies pertaining to colonialism and apartheid that contribute to the construction and reification of inside/outside identities.

Xenophobia

“Xenophobia is normal to us here in South Africa. We live with it every day. In a taxi, for example, people will always blame you if the money is short or if it has ink on it. It must be the Somali. If the taxi is empty and you are the only one left, they will chuck you out. Even if there is a small South African lady in the taxi, you will flow. But if you are alone, the will chuck you out and then you will have to pay another taxi to get to where you are going. We just live with it here.” (Somali learner; 49; WC)

Stigmatization, fear, and occurrence of structural discrimination at the hands of school administrators and officials with the Department of Home Affairs were widely reported by participants in the provincial studies and workshops. In Limpopo, migrant learners reported feeling humiliated by teachers when they attempted to participate in class and struggled to articulate their answers in English. One learner in Limpopo reported her experiences of being targeted by her teachers for her nationality. Learners were unanimous that the curriculum provides very little space for content about their home countries. Little about their home countries is mentioned and when it is, the portrayal is often negative. “When they want to give a bad example, they [teachers], will just say “like Zimbabwe.” They never teach us anything that will make us feel good about Zimbabwe. This makes me feel humiliated as the whole class will look at me because I am Zimbabwean. Some will even laugh at me.” (learner; L 27) Another learner reported an experience with overt and directed hostility by her teacher who called her a witch and a prostitute, “because all Zimbabweans are.” (L, 29)
Participants cited instances of South African learners and teachers acting with hostility or general lack of respect or regard for the circumstances that compelled them to migrate to South Africa. One parent of a migrant learner stated, “most of the teachers do not even understand the child’s background so the children are already misunderstood. How can they understand children if they do not understand their culture and background?” (L, 25 Parent). Another learner reported being denied access to the textbooks given to her fellow classmates. “...the teachers again when it come to textbooks, they don’t give us textbooks because they believe Zimbabweans are careless and they believe that even if you lose the book you don’t have the money to pay back the books...it’s all about discrimination even in school because they cannot go home and write your homework. There is no way I can do the homework without the textbook. Even when I go and ask other children, they will say that teachers say I cannot share the book with you.” (L, 29; learner).

The South African Democratic Teachers’ Union has not publicly addressed issues relating to xenophobia and other forms of discrimination nor do they facilitate any programs that focus on the integration of migrant learners in schools for pre or in-service teachers. Migrant and refugee parents also reported facing barriers to participating in the governance boards of the schools their children attend. The Limpopo provincial report documents that, “migrant parents are mostly excluded from School Governing Boards (SGB’s), the very first decision-making structure at the school level.

In the Western Cape, South African learners report fear and distrust of migrant learners as a function of increased competition over increasingly scarce resources (both natural and material). “In South Africa, we already have so many problems and now we must deal with this also. They are increasing the population and also the crime. The drugs have increased and so has the prostitution. They are using resources that are meant for us.” (South African learner; 52; WC) Another stated that, “They are smarter than us and now they take the place of a South African learner. Our schools already have nothing and now they take the place of a South African learner.” (52; South African learner; WC). One SGB member at a school in Limpopo offered a flimsy rationale for these parents exclusion, stating that they do not include migrant parents in SGB’s because most of them do not have “valid proof of identification. What if it comes to signing documents on behalf of the school?” (L, 34)

These students also report that migrant and refugee students conduct themselves with an aura of superiority that further fuels South African students’ antipathy. When questioned about this perceived projected aura of superiority, migrant and refugee students stated that they often openly spoke of their desire to return to their native country or repatriate to another country with the credentials acquired through their education in South Africa. This phenomenon has been labeled as “dream space” and is a compelling area for further research, particularly in terms of the role it plays in fueling xenophobic and resentful attitudes. Despite the predominantly negative responses expressed by native South African learners with regards to migrant and refugee learners, one respondent stated, “We must understand
the history of these peoples and why they left their country. South African children can learn from them and broaden their horizons socially and culturally. They are extremely hard working people and we can learn from them. They are nice people and now I have friends from all over Africa.” (South African learner; 52; WC)

The two case studies below highlight the challenges faced by migrant and refugee learners and their parents in accessing their education rights based on rampant and widespread xenophobic attitudes.

Case Study: Refugee Parent; Western Cape
“There are many primary schools in Cape Town, but as a refugee it is not always accessible. When my daughter needed to move from crèche to primary school, I attempted to get her into Wynberg Primary. At the end of the first year, they informed me that they could not accommodate her. The next year I applied again and they did not even have the decency to reply. By the third year, the school was asking the principle of my daughter’s crèche questions like, “What type of person am I? Do I have a steady source of income? Do I pay school fees regularly?” At the end of the third year, they still did not accept my child and I broke down and cried. A white South African woman with whom I was working saw me and asked me what was happening. At first, I did not want her to get involved because I fight my own battles. But she insisted and called the school, demanding an explanation. With one phone call, my daughter was called in for an interview and because she is a bright girl, she was finally accepted into the school. I am happy that she is in the school, but I don’t feel comfortable with the principle. I was lucky. I had someone who intervened on my behalf, but what about the other women who do not have this support structure. What becomes of them? It was then that I knew I had to start a formal organization for migrant women in South Africa.” (parent; from Cameroon, all children born in South Africa). (26; WC)

Case Study: Refugee Learner; Western Cape
“Because of the infighting in Somalia, I knew that if I stayed there I would have no stability and peace. I have been a refugee in this country since 2003. I came here hoping to further my studies as I had completed what you call matric in my home country. I left my home country without my certificates and had to wait two years for them to be posted and for HESA to convert my qualifications to a South African matric. In that time, I was a shopkeeper, but my shop was destroyed in Masiphumelele in 2006 due to xenophobic attacks. I started again, but this time in Belville, as we are not safe in the townships. But when my qualifications came through, I immediately applied to further my studies and now I am studying full-time. The total fees are R 31000 for one year of studies. This amount is for fees only—it does not cover any accommodation, textbooks, or transport. As a refugee, you are somewhere between an international student and a South African. The financial office said that they could not assist me due to my refugee status. Most bursaries are for South African nationals only. I don’t know how I am going to get the funding, but I am determined to find it. I have waited too long for this opportunity.” (WC; 38)
Lack of Clarity and Capacity by Governmental Institutions and Organizations

The Department of Home Affairs (DHA) is responsible for issuing the immigration permits and identity documents the children need to attend schools or access services, but the DHA will not do so unless children have been assigned a social worker by the Department of Social Development and have a Children’s Court order setting out their care arrangements. (Williams/UNICEF IRIN 19 August 2011). This was particularly true for unaccompanied minors who don’t have refugee status. “If there is no asylum claim, documenting those children is one of the biggest nightmares.” Moletsale, LHR, quoted in IRIN article above) The establishment of guardianship was required in order to get documentation, to enroll children in school, etc. And if children had a parent who was living in their home country guardianship could not be established, so the children were usually repatriated. The result was an over-reporting of “orphaned children” – the type of assistance social workers are supposed to provide is not clearly defined and there are inconsistencies between different government departments about which should come first – documentation or the Children’s Court order. “Children’s Court, Social Development and Home Affairs all have different standard operating procedures when it comes to unaccompanied minors,” (LHR, Williams/UNICEF IRIN news article 19 August 2011} With government social workers in short supply and reluctant or unsure about what to do, …most advocates refer them to NGOs who in turn help with their immediate needs but not broader advocacy.


The South African Government and importantly the Ministry of Education, the Department of Home Affairs, as well as various provincial offices and authorities have perpetrated acts of both omission and commission act as barriers to the right to education in South Africa.

In terms of omission, the Ministry of Education has not issued a public statement since 2000 that outlines and sanctions the rights of migrants, refugees, and asylum seekers to access quality education in South Africa. Additionally, there is very little coordination between various governmental departments that exercise governance over education rights. More damagingly, there are different interpretations by, for example, the Department of Home Affairs and the Department of Basic Education, with regards to the policies and protections afforded to migrant learners. A range of participants also describe a general lack of confidence in the South African Government’s will and capacity to fulfill the Constitutional mandate of right to education.

In terms of acts of commission, episodes of government officials publicly scapegoating migrants for various social and political problems have helped to further resentment and xenophobic attitudes amongst the general population. Participants also described both verbal and physical abuse at the hands of government and school officials. The Department of Home Affairs was frequently cited for their
hostile attitudes and behaviors. One participant from Limpopo recounted an episode in which she was humiliated in front of other clients when a Home Affairs official shouted at her from across the hall: “why did you leave your country to come and cause overpopulation and spread HIV/AIDS in our country.” (L, 18) Another learner stated, “they [the DHA] call you kwere-kwere (a pejorative term for refugees) and they look down on you and tell you to go back to your home country.” (learner; WC, 50) Participants in the Western Cape noted that police, DHA, and school officials often act antagonistically when refugees and migrants advocate for their own rights, stating, “the officials often reply ‘oh, you think you can do my job can you? You think you are clever? Or, you think you can come here and tell us what to do—why don’t you go back to your home country?’” (WC, 8) Participants reported feeling so discouraged in their dealings with the DHA that they would rather return to their home country “because then I can live a free life without having to go the Department of Home Affairs.”

High levels of bureaucratic inefficiency and deliberate transference from one department or agency to another when migrant students’ attempt to enroll in schools, or receive the necessary documentations to enroll in schools, were also detailed. A monitoring report by PASSOP on documentation reports that within a two week period, the Cape Town Refugee Center turned 1659 people away unattended. Twenty-two percent were turned away because the center ran out of forms with another twenty-two percent denied because their permits were expired. Expired permits can induce an R2500 fine or jail time. It is also important to note that without a permit, you cannot access education, medical benefits, or even open a bank account. (pg. 31; WC)

Similarly, school waiting lists were often described as difficult to access or navigate. One parent from the Western Cape noted, “the waiting lists are always full. Even if you come at the beginning of the year.” (WC, 26) (parent)

General Lack of Awareness of Education Rights

One of the most frequently identified barriers was a lack of awareness or clarity regarding education rights amongst migrant, refugee, and asylum seekers as well as school teachers, administrators, and government officials. Parents in Gauteng spoke of school administrators failing to recognize refugee or asylum seeker permits. “When we take our child to school, they ask “where is the birth certificate? They don’t understand how to register a child when you show them a refugee permit.” (pg. 19) In Limpopo, migrant learners were unaware of their eligibility for participation in SGB’s as provided for in the South African Schools Act. Parents of migrant learners expressed not knowing of the state’s constitutional obligations to provide free primary education regardless of legal status or documentation. One parent from Limpopo stated, “I am not aware that one can be exempted from school fees. The principle at the school did not say anything about this when I was struggling with my niece’s fees” (L, 22). Another from the Western Cape responded, “free education? No, I don’t think they can do that. South Africans have to pay for their education. So if they
can’t give South Africans free education, how will they be able to do it for us refugees.” (parent; WC 6)

There were numerous examples in all three provinces of school administrators indicating they did not know the procedures for provisionally enrolling students in schools as they awaited the requisite documentation. One teacher quipped, “I don’t even think that schools and officials know their own rules. It would be useless training us but then the government doesn’t even know their own rules. They also need training.” (WC, 9). Finally, there were instances of schools in Limpopo even requiring (unnecessarily) parents to furnish their work permits in addition to prospective learners’ birth certificates.

Asymmetry In Allocation of Public Funding To Schools and Budget Shortfalls

Refugees, migrants, and asylum seekers reported that schools within the same district displayed wide variance in resources, facilities, and education quality as a function of the inequitable dispensation of government funds. As most migrant and refugee learners reside in poor, working class communities, their access is usually limited to under-resourced and poor-performing schools. Budget shortfalls were seen as the cause behind a general lack of facilities necessary for the provision of quality education in schools in all three provinces, particularly science labs and libraries. Additionally, many schools are strained beyond structural capacity, resulting in overcrowded classrooms and a high learner to teacher ratio. Even when mobile units were brought in to provide additional space for learners in schools in the Western Cape for example, there remained overuse problems with restroom and changing facilities. Also in the Western Cape, there was a noted problem with hunger amongst learners in secondary schools. While primary school children are provided one free meal a day through mandated school feeding schemes, secondary schools do not share the same mandate, which compromises many students’ ability—migrant and resident South African alike—to participate fully and meaningfully in their classes. Many respondents noted that there are few non-governmental organizations advocating for the education rights of migrants. This is one consequence of budget shortfalls and broad-based cuts in government grants that once helped to support a strong and active civil society.

The case study below from the Limpopo province highlights the disparity in funding to schools and the barriers learners face in terms of achieving equitable quality educational experiences as a result.

Case Study: Eric Louw and Musina High Schools; Limpopo

9km away from Musina High School is Eric Louw High School, a former Model C school that has the necessary infrastructure to provide quality education. As Musina High School is a no fee school, it does not have any other sources of income besides government allocated funds; by virtue of its profile, it receives more than Eric Louw High School, a fee charging school. Eric Louw receives R 22,000 per annum from the government. Despite this, the later is still better resourced and offers better quality
education because the funds raised from school fees—approximately R 800 per month. The school charges additional levies for any learning material that is not offered by the government in addition to the R 800.00 per month schools fees. Such excessive costs such as these effectively disqualify learners from disadvantaged backgrounds from accessing quality education. Migrants find the cost of education very excessive. The fact that they struggle to find employment makes their economic circumstances even worse.

The research found that there is a co-relationship between the school's resources and the results it produces. The better-resourced Eric Louw is the top achieving school in the province. Musina High School's pass rate of 2% was hailed as a major achievement in 2010, while Eric Louw, which recorded a pass rate of 98.5% was criticized for dropping from a 100% pass rate in 2009. (L, 16). The school has science labs, a library, and a sports field, which Musina High School does not have.

**Historical Legacies of Colonialism and Apartheid**

That there is a palpable, pervasive, and persistent conceptualization of **insider** and **native South African** or **outsider** and **foreigner** is seen by many respondents as a legacy of both colonialism and apartheid. As one respondent noted, “the borders that cleave Southern Africa were drawn by colonialists.” The denial of individual rights (to education among other services) that transcend imposed borders as well as the stigmatization and hostilities endured by refugees, migrants, asylum-seekers in South Africa follows from this historical legacy. That historical and contemporary issues from refugees home countries are not formally or informally covered in the South African primary, nor secondary school curricular mandate is a practical and powerful function of the notion of “the other.” A refugee learner from Nigeria comparatively explained, “in the South African curriculum, you learn very little about other countries history and cultures. In Nigeria, we learn about all South African countries. We learned about the struggle for freedom and the fight for apartheid. Because of this, our people understood why South Africans were in Nigeria. We could empathize and support.” (Barry Wugale from the Ogoni Solidarity Forum; WC; 58)

As the importance of incorporating “international” “multicultural” and “global” perspectives and knowledge into curricular and pedagogical mandates is increasingly noted by education and government officials, that refugees, migrants, and asylum-seekers are largely viewed as detriments rather than assets within schools is a noted irony.

“They [teachers] have formal knowledge but they have not been equipped with skills to accommodate learners from diverse backgrounds. They do not have the necessary skills to accommodate learners from beyond South Africa.” (L, 25 Ibin Mohammed, parent)

Apartheid casts its own shadow, most notably and practically in disparate school facilities and resources as a function of the former three-tiered school scheme of
Model A, B, and C schools. Migrants prefer to attend ex-Model C schools because they are associated with better quality education and courses are most often taught in English, though they are often denied access for their inability to pay the associated fees or due to discriminatory enrollment practices by school administrators. With regards to Former Model C Schools, one teacher from the Western Cape stated, “those schools [Ex-Model C Schools], only take the best learners to maintain their high pass rates and quality. They choose 99 percent of their learners and we get ask risk learners.” (teacher; 26; WC)

Examples of practices that have been successful to facilitate the inclusion of migrants, refugees, and asylum seekers into the national education system

While the focus of the report has been on presenting barriers faced by migrants, refugees, and asylum seekers, it is also important to highlight the noted successes documented within the provincial reports and at the workshops.

Participants in the Western Cape noted that social networks are a valuable source of information and security and that they were utilizing these networks to connect with NGO’s and other service organizations working to advocate for their rights. In Limpopo, participants This approach has been particularly useful in the Somali community where the “spider-web” doctrine of social networking is highly practiced. (L, 12) Learners there stated they were aware of the following organizations advocating for education rights: Save the Children; UNHCR; Department of Social Development; Child Welfare South Africa, The Human Rights Commission and the International Organization of Migration Individuals and that social networks played helped to raise their awareness of these organizations. A small number of individuals and groups are finding ways to practically address barriers related to documentation. For example, the members of the Orange Farm Water Crisis Committee, which has included migrants in their struggle to access basic services in Gauteng province, manage a crèche for migrant children. Report cards from these crèches are used as valid documents, which later facilitate the admission process for these children in primary schools. In Guateng, CBRC accompanies migrants to government offices where they can access services. In cases of loss of birth certificates, parents are referred to clinics where they are able to get a clinic report card which can also be later used for the purpose of school enrollment.

Within schools, there are also examples of programming designed to assist in the integration of migrant and refugees learners. Participation in football leagues was identified as one tool that had been successful in overcoming xenophobic prejudice in Guateng province. In the Western Cape, extra English-language classes are offered after school; there is also a Peace Club where students can talk about issues of discrimination and participate in rights awareness campaigns. A limited number of schools are also working with the South African Police Service to report discrimination when it does occur.
Of particular note is the inclusion of materials that cover the human rights of asylum seekers in the curricular mandates for Social Science and Life Orientation in Gauteng and Limpopo provinces. Learners there expressed they were more aware of the state's obligation to provide basic education to all children, possibly as a direct result of the inclusion of human rights in their school curriculum.

Participants offered a handful of positive comments about the Department of Home Affairs, stating that the management of queues had improved and that they appreciated the requisite forms were free. Teachers surveyed in the Western Cape noted that refugees could be considered as assets within classrooms for their cultural diversity and varied experiences. Learners also expressed that South African education was superior to that of their home countries because certificates and degrees were internationally recognized and offered the promise of a better future.

The following case studies highlight individuals and organizations striving to confront the barriers faced by migrants and refugees in accessing their education rights.

Case Study
Save the Children-UK Musina has introduced alternative classes to help learners who have not been enrolled in schools. According to Richard Monthso, Save the Children UK-Musina pays a facilitator, a trained teacher, a stipend to give classes to migrants who cannot access schools. The organization also provides learning materials and in some cases buys uniforms for mainstream school learners who cannot afford uniforms. While these alternative classes are offered to anyone, including South African nationals, the main beneficiaries are children in transit who came when the school year is already in progress and in addition to the challenges faced by other migrants, face an added set of access related challenges, particularly bureaucracy around the end of the admission period. (L, 23)

Case Study
Even though Musina High School is located in a generally poor area, some learners especially nationals with families around can afford a bit of pocket money to buy lunch from the school's tuckshop and therefore do not make use of the school's feeding scheme—making learners who cannot afford such a luxury to feel left out. In order to negate the effect of this the school came up with an alternative.

"As a school, we realized the psychological effect of this on other learners who in fact could not afford such a luxury, particularly migrant learners and then we thought of ways of addressing this. Migrant learners also stopped making use of the school's feeding scheme even though it was clear they needed it. However, because for most of them this was their main meal of the day, we could see that they were failing to concentrate in class because of hunger. As a school we could tell that they were afraid of being stigmatized by other learners for making use of the school's feeding scheme. They wanted to be the same as their counterparts. So we realized the only way to deal
with this was to introduce a “no pocket money” policy. We shut down the tuckshop for a week to everyone. By midweek, everyone was eating from the feeding scheme. It worked. We managed to eliminate stigma attached to making use of the feeding scheme.

Case Study
Musina Children’s Committee:
This committee is an initiative of Save the Children UK. The committee brings together children from both migrant and local communities, both those who are at school and those who are out of school. The main objective of this committee is to teach tolerance and the benefits that migrants and diversity bring to any particular place. It brings together local and migrant children through various activities such as beading, sports, and public speaking competitions, all this at the same time giving migrants a platform to articulate issues affecting them. Exposure to speaking amongst a large audience has equipped learner with valuable skills of confidence and public speaking.” (L, 33)

Peace Ambassadors (Mr. Jacob Mtakanya—Director of Musina Legal Advice Office):
“The Peace Ambassadors Committee is a newly established initiative; it was formed early this year. The reason behind its formation is to teach out communities about diversity and peace. We are teaching our community to embrace diverse groups. We would want to see this community functioning as a family. Amongst other things that we teach the community are causes of xenophobia; we believe that communities will only desist from the xenophobic tendencies once they are educated on the real causes of xenophobia. We are teaching them that the causes are rooted in the politics of our own country, that they should be demanding answers for unfulfilled promises from our own government rather than casting the blame somewhere else.

What is unique about this project is that it is perhaps one of the few government initiated projects working with civil society to teach communities about tolerance, xenophobia, diversity, peace, and accountability. Two civil society organizations, namely Musina Legal Advice Office and the International Organization of Migration play a support role in strengthening this Department of Home Affairs initiative.

The project has 20 Peace Monitors in Musina. These monitors have received training in conflict resolution from Musina Legal Advice Office. Their responsibilities involve going out to communities to teach them about tolerance. To reach all sections of society, the Peace Ambassadors are drawn from across society. They include teachers, traditional and religious leaders, political figures, and prominent community figures amongst others.

There are government plans to roll out this project in six provinces of South Africa considered “xenophobic hot spots.” The project is in talks of engaging local media to spread the message.” (L, 38)
Recommendations

The following recommendations are derived from the barriers impeding the education rights of refugees, migrants, and asylum seekers that have been outlined in this report in conjunction with the noted successes.

National Government and the Ministry of Education:

1) The issuance of a public statement by the Ministry of Education outlining the rights of migrants, refugees, and asylum seekers to access quality education in South Africa.
2) Facilitate intergovernmental communication within South Africa to streamline the documentation and enrollment processes for migrants, refugees, and asylum seekers.
3) Establish formal collaborations designed to assist with information sharing and the harmonization of migration policies with border countries (Mozambique, Botswana, Zimbabwe, and Namibia).
4) Mandate that all school faculty and administrative personal complete a basic education rights awareness seminar that makes clear the policies for enrollment with and without documentation as well as the education rights to which refugees, migrants, and asylum seekers are entitled.
5) Develop integration strategies within schools:
   a. Consider appropriating and incorporating a culturally responsive curriculum
   b. Re-examine the current curricula for examples and ideas that negatively stereotype refugees, migrants, and asylum seekers; remove these if and when they occur.
6) Appropriate policies and programming related to education rights for migrants, refugees, and asylum seekers currently utilized successfully in other countries.
7) Take punitive measures against government officials who fail to comply with formal policies designed to ensure the right to education for migrants, refugees, and asylum seekers.
8) Develop government bursary schemes for migrant learners to better facilitate their ability to access higher education institutions.

Non-Governmental Organizations

1) Utilize social networks and partner with other NGO’s to distribute information about education rights to migrants, refugees, asylum seekers, and their families.
2) Adopt an integrated and collaborative approach whenever possible with relevant governmental departments, NGO’s, community organizations, migrant organizations, and other stakeholders when mobilizing and advocating for the provision of rights and services to migrants, refugees, and asylum seekers.
Steps for Future Research

The studies and workshops held in Guateng, Limpopo, and Western Cape provinces provide an expansive examination of the barriers impeding the realization of the right to education for migrants, refugees, and asylum seekers. That these groups were the primary respondents is particularly significant when compared to previous national surveys (expand). Several needs and possibilities for future research became evident during the compilation of this report:

1) Develop indicators that correspond to the emergent themes and issues identified as “other”
2) Disaggregate migrants categorically (refugees, asylum seekers, orphans, HIV positive, unaccompanied minors, male and female) and demographically (rural, urban, and peri-urban).
3) Document the disaggregated experiences and stories of migrant and refugee learners and through qualitative and participatory action research projects rather than household survey data. Utilize comparative frameworks of analysis.
4) Conduct studies that:
   a. Consider issues unaccompanied minors, migrants, and refugees face with regards to labor and heightened vulnerability
   b. Examine the experience of migrant educators as well as teachers educating large populations of refugees, migrants, and asylum seekers
   c. Expand the number of schools surveyed and incorporate new provinces.
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Africa. Written by Ingrid Plamary, PhD, Forced Migration Studies Programme.
Appendix 1
Interview Protocol/Survey/4As survey

Section A: Demographics

1. How old are you?
   - A 10 – 20
   - B 21 – 29
   - C 30 – 39
   - D 40 – 50
   - E 50 +

2. What is your sex?
   - A Female
   - B Male
   - C Intersexed
   - D Transgendered
   - E Other (please specify)

3. What is the highest grade you have passed?
   - A Grade 7
   - B Grade 8
   - C Grade 9
   - D Grade 10
   - E Grade 11
   - F Grade 12

4. What is your country of origin?
   - A Angola
   - B Burundi
   - C Cameroon
   - D Congo
<table>
<thead>
<tr>
<th></th>
<th>5. What is your home language?</th>
<th></th>
<th>6. What other languages do you speak?</th>
</tr>
</thead>
<tbody>
<tr>
<td>E</td>
<td>Nigerian</td>
<td>F</td>
<td>Rwanda</td>
</tr>
<tr>
<td>F</td>
<td>Rwanda</td>
<td>G</td>
<td>Somalia</td>
</tr>
<tr>
<td>G</td>
<td>Somalia</td>
<td>H</td>
<td>Zimbabwe</td>
</tr>
<tr>
<td>H</td>
<td>Zimbabwe</td>
<td>J</td>
<td>Other (please specify)</td>
</tr>
<tr>
<td></td>
<td>5. What is your home language?</td>
<td></td>
<td>6. What other languages do you speak?</td>
</tr>
<tr>
<td>A</td>
<td>Arabic</td>
<td>B</td>
<td>English</td>
</tr>
<tr>
<td>B</td>
<td>English</td>
<td>C</td>
<td>French</td>
</tr>
<tr>
<td>C</td>
<td>French</td>
<td>D</td>
<td>Portuguese</td>
</tr>
<tr>
<td>D</td>
<td>Portuguese</td>
<td>E</td>
<td>Spanish</td>
</tr>
<tr>
<td>E</td>
<td>Spanish</td>
<td>F</td>
<td>Somali</td>
</tr>
<tr>
<td>F</td>
<td>Somali</td>
<td>G</td>
<td>Swahili</td>
</tr>
<tr>
<td>G</td>
<td>Swahili</td>
<td>H</td>
<td>Other (please specify)</td>
</tr>
<tr>
<td>H</td>
<td>Other (please specify)</td>
<td>I</td>
<td>Other (please specify)</td>
</tr>
<tr>
<td>I</td>
<td>Other (please specify)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>7. Why did you leave your country of origin?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A</td>
<td>Civil war</td>
<td>B</td>
<td>Political persecution from government</td>
</tr>
<tr>
<td>B</td>
<td>Political persecution from government</td>
<td>C</td>
<td>Economic insecurity</td>
</tr>
<tr>
<td>C</td>
<td>Economic insecurity</td>
<td>D</td>
<td>Cultural persecution / genocide</td>
</tr>
<tr>
<td>D</td>
<td>Cultural persecution / genocide</td>
<td>E</td>
<td>Other (please specify)</td>
</tr>
<tr>
<td>E</td>
<td>Other (please specify)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
8. How long have you lived in South Africa
   A. Less than a year
   B. 1 – 3 years
   C. 3.1 – 5 years
   D. 6.1 – 10 years
   E. 10.1 – 20 years
   F. More than 20 years

9. In which area do you now live?
   A. Open ended question

10. What is your document status?
    A. Asylum seeker
    B. Refugee
    C. Undocumented
    D. Permanent citizenship
    E. South African identification
    F. Other (please specify)

11. What are the socioeconomic constraints that face you in your community?
    A. Poverty
    B. Unemployment
    C. Domestic Violence
    D. Child Abuse
    E. Inequality
    F. HIV/Aids
    G. Gangsterism
    H. Child headed households
    I. Other (please specify)

12. In what type of dwelling do you stay in?
    A. Room in a house
    B. Flat (please specify how many bedrooms)
    C. House (please specify how many bedrooms)
    D. Informal dwelling
    E. Other (please specify)
13. How many people stay with you at your home (including caregivers)?

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>1 – 5</td>
</tr>
<tr>
<td>B</td>
<td>5 – 10</td>
</tr>
<tr>
<td>C</td>
<td>10 – 15</td>
</tr>
<tr>
<td>D</td>
<td>15+</td>
</tr>
</tbody>
</table>

Section B: Awareness of Education Rights

14. Are you aware that the South African government has a duty to provide free basic education for all children including children of migrants?

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Yes</td>
</tr>
<tr>
<td>B</td>
<td>No</td>
</tr>
</tbody>
</table>

15. How would you rate the South African government’s ability to be able fulfill these rights?

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Excellent</td>
</tr>
<tr>
<td>B</td>
<td>Very good</td>
</tr>
<tr>
<td>C</td>
<td>Good</td>
</tr>
<tr>
<td>D</td>
<td>Satisfactory</td>
</tr>
<tr>
<td>E</td>
<td>Poor</td>
</tr>
<tr>
<td>F</td>
<td>Don’t know</td>
</tr>
</tbody>
</table>

16. Have you ever received any training around rights to education in South Africa?

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Yes</td>
</tr>
<tr>
<td>B</td>
<td>No</td>
</tr>
</tbody>
</table>

17. If yes, who provided you with the training on education rights in South Africa?

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>School</td>
</tr>
<tr>
<td>B</td>
<td>University</td>
</tr>
<tr>
<td>C</td>
<td>Department of Education</td>
</tr>
<tr>
<td>D</td>
<td>Community based organization</td>
</tr>
<tr>
<td>E</td>
<td>Self trained</td>
</tr>
<tr>
<td>F</td>
<td>Other (please specify)</td>
</tr>
</tbody>
</table>

18. Would you like to have further training on education rights?

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Yes</td>
</tr>
<tr>
<td>B</td>
<td>No</td>
</tr>
</tbody>
</table>
# Section C: Availability

19. How did you become aware of the school that you are currently attending?

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Members of Community – Friends, family, neighbours</td>
</tr>
<tr>
<td>B</td>
<td>Department of Education</td>
</tr>
<tr>
<td>C</td>
<td>School advertising</td>
</tr>
<tr>
<td>D</td>
<td>Community based organization</td>
</tr>
<tr>
<td>E</td>
<td>Newspapers</td>
</tr>
<tr>
<td>F</td>
<td>Internet</td>
</tr>
<tr>
<td>G</td>
<td>Found it myself</td>
</tr>
<tr>
<td>H</td>
<td>Other (please specify)</td>
</tr>
</tbody>
</table>

20. What are the primary & secondary schools in the area where you live?

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Primary =</td>
</tr>
<tr>
<td>B</td>
<td>Secondary =</td>
</tr>
<tr>
<td>F</td>
<td>Don’t know</td>
</tr>
</tbody>
</table>

21. Do you think that there are enough primary & secondary schools to enroll all learners in the area where you live?

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Yes</td>
</tr>
<tr>
<td>B</td>
<td>No</td>
</tr>
<tr>
<td>C</td>
<td>Don’t know</td>
</tr>
</tbody>
</table>

22. How many learners are there in your class?

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Up to 20 learners</td>
</tr>
<tr>
<td>B</td>
<td>21 – 30</td>
</tr>
<tr>
<td>C</td>
<td>31 – 40</td>
</tr>
<tr>
<td>D</td>
<td>41 - 50</td>
</tr>
<tr>
<td>E</td>
<td>Above 51</td>
</tr>
</tbody>
</table>
23. Which of following resources does your school have?

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Running water</td>
</tr>
<tr>
<td>B</td>
<td>Electricity</td>
</tr>
<tr>
<td>C</td>
<td>Toilets</td>
</tr>
<tr>
<td>D</td>
<td>Library</td>
</tr>
<tr>
<td>E</td>
<td>Sports field</td>
</tr>
<tr>
<td>F</td>
<td>Science lab</td>
</tr>
<tr>
<td>G</td>
<td>Community lab</td>
</tr>
<tr>
<td>H</td>
<td>School hall</td>
</tr>
<tr>
<td>I</td>
<td>Swimming pool</td>
</tr>
<tr>
<td>J</td>
<td>School feeding scheme</td>
</tr>
<tr>
<td>K</td>
<td>Health care facilities</td>
</tr>
<tr>
<td>L</td>
<td>Councillors or social workers</td>
</tr>
</tbody>
</table>

24. From the list above, choose the 3 resources that you would most prefer the most to have at school.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Running water</td>
</tr>
<tr>
<td>B</td>
<td>Electricity</td>
</tr>
<tr>
<td>C</td>
<td>Toilets</td>
</tr>
<tr>
<td>D</td>
<td>Library</td>
</tr>
<tr>
<td>E</td>
<td>Sports field</td>
</tr>
<tr>
<td>F</td>
<td>Science lab</td>
</tr>
<tr>
<td>G</td>
<td>Community lab</td>
</tr>
<tr>
<td>H</td>
<td>School hall</td>
</tr>
<tr>
<td>I</td>
<td>Swimming pool</td>
</tr>
<tr>
<td>J</td>
<td>School feeding scheme</td>
</tr>
<tr>
<td>K</td>
<td>Health care facilities</td>
</tr>
<tr>
<td>L</td>
<td>Councillors or social workers</td>
</tr>
</tbody>
</table>
Section C: Accessibility

<table>
<thead>
<tr>
<th>25. Have you experienced any challenges or problems with documentation in your interactions with the Dept of Home Affairs?</th>
</tr>
</thead>
<tbody>
<tr>
<td>A  Yes</td>
</tr>
<tr>
<td>B  No</td>
</tr>
</tbody>
</table>

- Institutional discrimination & xenophobia

<table>
<thead>
<tr>
<th>26. How would you rate the services of the Dept of Home Affairs?</th>
</tr>
</thead>
<tbody>
<tr>
<td>A  Excellent</td>
</tr>
<tr>
<td>B  Very good</td>
</tr>
<tr>
<td>C  Good</td>
</tr>
<tr>
<td>D  Satisfactory</td>
</tr>
<tr>
<td>E  Poor</td>
</tr>
<tr>
<td>F  Very poor</td>
</tr>
</tbody>
</table>

27. Please explain?

<table>
<thead>
<tr>
<th>28. Have you ever been refused access to a SA school?</th>
</tr>
</thead>
<tbody>
<tr>
<td>A  Yes</td>
</tr>
<tr>
<td>B  No</td>
</tr>
</tbody>
</table>

29. If yes, what were the reasons given?

<table>
<thead>
<tr>
<th>A  Lack of documentation</th>
</tr>
</thead>
<tbody>
<tr>
<td>B  Unable to pay the school fees</td>
</tr>
<tr>
<td>C  School was to full</td>
</tr>
<tr>
<td>D  Do not live in the area</td>
</tr>
<tr>
<td>E  Was too old to attend</td>
</tr>
<tr>
<td>F  Other (please specify)</td>
</tr>
<tr>
<td>30. What documents were required during your registration process at your school?</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
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<td></td>
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<tr>
<td></td>
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<tr>
<td></td>
</tr>
</tbody>
</table>

| 31. Were your required to write an aptitude test as a condition for registration? | A Yes |
| | B No |

| 32. What grade did you leave your country and what grade did you start at your SA school? | A |

| 33. How much does your school fees amount to per/year? | A I don’t pay school fees – this is a fee-free school |
| | B I don’t pay school fees – I have received an exemption? |
| | C R1 – R1000 |
| | D R1001 – R5000 |
| | E R5000 – R9999 |
| | F R10 000 – R20 000 |
| | G R20 000 + |

| 34. How much do you pay for text books and stationary per/year? | A R 1 – R500 |
| | B R501 – R1000 |
| | C R1001 – R3000 |
| | D R3000 – R5000 |
| | E Above R5000 |

- *Take monthly amount x 12*

<p>| 35. What type of transport do you use to get to | A Personal car |</p>
<table>
<thead>
<tr>
<th>School?</th>
<th>B School organised transport</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>C Taxis</td>
</tr>
<tr>
<td></td>
<td>D Train</td>
</tr>
<tr>
<td></td>
<td>E Cycle</td>
</tr>
<tr>
<td></td>
<td>E By foot</td>
</tr>
<tr>
<td></td>
<td>F Other (please specify)</td>
</tr>
</tbody>
</table>

36. How much do you estimate your transport costs are for the year?

- **Take monthly amount x 12**

<table>
<thead>
<tr>
<th></th>
<th>A R 0 – R200</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B R201 – R500</td>
</tr>
<tr>
<td></td>
<td>C R500 – R2 000</td>
</tr>
<tr>
<td></td>
<td>D R 2001 – R5000</td>
</tr>
<tr>
<td></td>
<td>E Above R5000</td>
</tr>
</tbody>
</table>

37. Do you think that the cost of your education (school fees + secondary costs) places pressure on the household’s budget?

<table>
<thead>
<tr>
<th></th>
<th>A Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B No</td>
</tr>
</tbody>
</table>

38. How safe is the form of transport that you use?

<table>
<thead>
<tr>
<th></th>
<th>A Very safe</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B Safe</td>
</tr>
<tr>
<td></td>
<td>C Mostly safe</td>
</tr>
<tr>
<td></td>
<td>D Unsafe</td>
</tr>
<tr>
<td></td>
<td>E Very unsafe</td>
</tr>
</tbody>
</table>

39. Please explain. | A |
### Section D: Acceptability

<table>
<thead>
<tr>
<th></th>
<th>40. What is the language/s of instruction of your classes?</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Arabic</td>
<td></td>
</tr>
<tr>
<td>B</td>
<td>Afrikaans</td>
<td></td>
</tr>
<tr>
<td>C</td>
<td>English</td>
<td></td>
</tr>
<tr>
<td>D</td>
<td>French</td>
<td></td>
</tr>
<tr>
<td>E</td>
<td>Portuguese</td>
<td></td>
</tr>
<tr>
<td>F</td>
<td>Spanish</td>
<td></td>
</tr>
<tr>
<td>G</td>
<td>Shona</td>
<td></td>
</tr>
<tr>
<td>H</td>
<td>Somalia</td>
<td></td>
</tr>
<tr>
<td>I</td>
<td>Swahili</td>
<td></td>
</tr>
<tr>
<td>J</td>
<td>Zulu</td>
<td></td>
</tr>
<tr>
<td>K</td>
<td>Xhosa</td>
<td></td>
</tr>
<tr>
<td>L</td>
<td>Other (please specify)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>41. Does your school create room for learners whose home language is Portuguese, French, Swahili, Arabic, etc?</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>B</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>42. If no, why do you think that the school does not cater for your home language?</th>
<th>Open-ended – Capture interviewee’s response</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th></th>
<th>43. Does your school provide extra English lessons for learners?</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>B</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>44. How well do you rate your ability to speak</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Excellent</td>
<td></td>
</tr>
<tr>
<td>English?</td>
<td>A Very good</td>
<td>B Good</td>
</tr>
<tr>
<td>----------------</td>
<td>-------------</td>
<td>--------</td>
</tr>
</tbody>
</table>

<p>| 45. Have you received any career guidance or training on tertiary education in SA? | A Yes | B No |
| 46. If yes, who did you receive the training from? | A School | B University | C Department of Education | D Community based organization | E Self trained | F Other (please specify) |
| 47. Would you be interested in this type of training? | A Yes | B No |
| 48. Are you happy with the quality of education that you are receiving? | A Yes | B No |
| 49. If no, please specify. | | |
| 50. How does the curriculum in your home | A SA is exceptionally better | |</p>
<table>
<thead>
<tr>
<th>Question</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>country compare with South Africa’s content?</td>
<td>B SA is better</td>
</tr>
<tr>
<td></td>
<td>C They are the same</td>
</tr>
<tr>
<td></td>
<td>D SA is a little worse</td>
</tr>
<tr>
<td></td>
<td>E SA is much worse</td>
</tr>
<tr>
<td></td>
<td>F Don’t know</td>
</tr>
<tr>
<td>51. Why do you say so? Please explain</td>
<td></td>
</tr>
<tr>
<td>52. Does the curriculum provide space for learning and reflecting on your home country?</td>
<td>A Yes</td>
</tr>
<tr>
<td></td>
<td>B No</td>
</tr>
<tr>
<td>53. If no, would you like the curriculum to include issues of your home country?</td>
<td>A Yes</td>
</tr>
<tr>
<td></td>
<td>B No</td>
</tr>
<tr>
<td>54. How well, do you think, is your education preparing you for tertiary education?</td>
<td>A Very prepared</td>
</tr>
<tr>
<td></td>
<td>B Above averagely prepared</td>
</tr>
<tr>
<td></td>
<td>C Averagely prepared</td>
</tr>
<tr>
<td></td>
<td>D Slightly prepared</td>
</tr>
<tr>
<td></td>
<td>E Unprepared</td>
</tr>
<tr>
<td></td>
<td>F Don’t know</td>
</tr>
<tr>
<td>55. How well, do you think, education is preparing you for the workplace?</td>
<td>A Very prepared</td>
</tr>
<tr>
<td></td>
<td>B Above averagely prepared</td>
</tr>
<tr>
<td></td>
<td>C Averagely prepared</td>
</tr>
<tr>
<td></td>
<td>D Slightly prepared</td>
</tr>
<tr>
<td></td>
<td>E Unprepared</td>
</tr>
<tr>
<td></td>
<td>F Don’t know</td>
</tr>
</tbody>
</table>
## Section E: Adaptability

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>56. Have you experienced any form of xenophobia or discrimination in South Africa?</td>
<td>A</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>B</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>C</td>
<td>Prefer not to answer.</td>
</tr>
<tr>
<td>57. How often do you experience xenophobia in a typical day?</td>
<td>A</td>
<td>Very often</td>
</tr>
<tr>
<td></td>
<td>B</td>
<td>Often</td>
</tr>
<tr>
<td></td>
<td>C</td>
<td>Half the time</td>
</tr>
<tr>
<td></td>
<td>D</td>
<td>Less often</td>
</tr>
<tr>
<td></td>
<td>E</td>
<td>Seldom</td>
</tr>
<tr>
<td></td>
<td>F</td>
<td>Prefer not to answer.</td>
</tr>
<tr>
<td>58. What forms of discrimination have you experienced?</td>
<td>A</td>
<td>Institutional - Dept of Home Affairs, Health, etc</td>
</tr>
<tr>
<td></td>
<td>B</td>
<td>Police harassment</td>
</tr>
<tr>
<td></td>
<td>D</td>
<td>Non-physical violence</td>
</tr>
<tr>
<td></td>
<td>E</td>
<td>Physical violence</td>
</tr>
<tr>
<td></td>
<td>F</td>
<td>Gender based violence</td>
</tr>
<tr>
<td></td>
<td>G</td>
<td>Cultural &amp; religious violence</td>
</tr>
<tr>
<td></td>
<td>H</td>
<td>Other (please specify)</td>
</tr>
<tr>
<td></td>
<td>I</td>
<td>Prefer not to answer.</td>
</tr>
<tr>
<td>59. Tell me of an experience of discrimination?</td>
<td>Prefer not to answer.</td>
<td></td>
</tr>
<tr>
<td>60. Did you ever experience xenophobia at</td>
<td>A</td>
<td>Yes</td>
</tr>
<tr>
<td>Question</td>
<td>A</td>
<td>B</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>---</td>
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</tr>
<tr>
<td>61. If is, please explain.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>62. Why do you think xenophobia occurs in SA?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>63. Does your school have any programmes to deal with discrimination and integration?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>64. If yes, what programmes &amp; projects does your school use to integrate migrant learners?</td>
<td>Open ended question</td>
<td>Probe if the school has counselors or social workers</td>
</tr>
<tr>
<td>65. How effective are the programmes</td>
<td>Excellent</td>
<td></td>
</tr>
<tr>
<td>Question</td>
<td>Options</td>
<td></td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>---------</td>
<td></td>
</tr>
</tbody>
</table>
| & projects at your school?                                               | B: Very good  
|                                                                        | C: Good  
|                                                                        | D: Satisfactory  
|                                                                        | E: Poor  |
| 66. How effective is SA’s government at integrating migrants into SA society? | A: Excellent  
|                                                                        | B: Very Good  
|                                                                        | C: Good  
|                                                                        | D: Satisfactory  
|                                                                        | E: Poor  |
| 67. What recommendations can you make to better integrate refugees or asylum seekers into SA society? |        |
| 68. Are there any differently abled learners in your school?             | A: Yes  
|                                                                        | B: No  
|                                                                        | C: Don’t know  |
| 69. Are there facilities for differently abled learners at your school?  | A: Yes  
|                                                                        | B: No  
|                                                                        | C: Don’t know  |
| 70. If yes, what facilities are there?                                   | Open ended question  |
## Section F: Agency & Accountability

<table>
<thead>
<tr>
<th>Question</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>71. How many organizations, that you know of, that campaign for access to education for migrant community?</td>
<td>A None</td>
</tr>
<tr>
<td></td>
<td>B 1 – 10</td>
</tr>
<tr>
<td></td>
<td>C 11– 20</td>
</tr>
<tr>
<td></td>
<td>D 21 – 30</td>
</tr>
<tr>
<td></td>
<td>E 31 +</td>
</tr>
<tr>
<td></td>
<td>E Don’t know.</td>
</tr>
<tr>
<td>72. Who are the organizations that work you know of?</td>
<td>A • Open ended response</td>
</tr>
<tr>
<td>73. How important to you is the support provided by these organizations?</td>
<td>A Very important</td>
</tr>
<tr>
<td></td>
<td>B Important</td>
</tr>
<tr>
<td></td>
<td>C Average importance</td>
</tr>
<tr>
<td></td>
<td>D Somewhat important</td>
</tr>
<tr>
<td></td>
<td>E Not important</td>
</tr>
<tr>
<td>74. Is there forum or organization where learners have representation and power (such as the learners representative council)?</td>
<td>A Yes</td>
</tr>
<tr>
<td></td>
<td>B No</td>
</tr>
<tr>
<td>Question</td>
<td>Answer</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>75. In terms of your education in South Africa, what is working well?</td>
<td>A</td>
</tr>
<tr>
<td>76. In terms of your education in South Africa, what is not working well?</td>
<td>A</td>
</tr>
<tr>
<td>77. In terms of your education in South Africa, what suggestions would you make to improve the quality of education?</td>
<td>A</td>
</tr>
</tbody>
</table>
78. If you could return back to your country of origin, would you?
   A  Yes
   B  No
   C  Don't know

79. If yes, explain?
   A  

80. If no, explain?
   A  

ERP- Refugees and Migrants Project: Focus Groups, Interview Guide and Workshop Activity.

Focus group discussion for Migrant Communities

Rights of migrants to access basic education in the inner city.

a) What does the word migrant mean to you?
b) What type of rights do you think you have in South Africa?
c) Do you think you have a right to go to school in South Africa?
d) Are there any problems that you are experiencing in accessing schooling in the inner city? Are you having problems with language, transport, your feeder zone, school fees, uniform, and housing?
e) How do you feel about these problems/
f) Do you have any success stories to share with us?
g) Has there been a situation where you feel afraid to go to school to ask for admission?
h) Do you have any additional information that you want to share with us?

Interview guide for focus group (host community)

a) Wars, fear of ethnic, religiously motivated persecutions and different forms of repression cause people to leave their countries in search of safety and protection. In South Africa we have laws that allow hosting of such people. What do you think of this?
b) South Africa has been in similar situation where people left the country because of political repression and apartheid laws. These people were accommodated in different countries in Africa and abroad. In future, if the same situation happens in South Africa, do you think that people should be allowed to stay in other countries?
c) Let’s assume that most countries have limited resources; what types of services do you think such people will need?
d) What services should be provided to refugees? Do you think that they have any rights?
e) What do you imagine are some of the problems that make it difficult for refugees to go to schools in Johannesburg?
f) How do you think these problems can be solved and by whom?
g) Crime is often associated with refugees as perpetrators. What do you think about this view?
h) Do you have any additional information you may want to share with us?

Participatory workshop activity.

Participants break into groups of six (maximum); each group must have a scribe as well as someone to report later. Participants then have to discuss and answer the following questions:
a) Do you think migrant learners have the right to access schooling in the inner city? Explain your answer.
b) What is the nature of barriers/problems (if there are any) preventing migrant learners from exercising their right to access schooling in the inner city of Johannesburg? Name each problem and explain it in detail.
c) What other problems can you think of? These may relate to issues such as age, language, unemployment, textbooks etc. Explain in detail.
d) How is your school/organisation/community dealing with these problems? Alternatively, how have these problems been resolved in the past? Have there been any success stories?
e) Explain how you think the rest of these problems/barriers could be solved in the future?
f) Are there any other issues that you may like to share with us?
Appendix 2

Sites, target groups and partners of ERP’s Education Rights of Refugees and Migrants’ Project.

Gauteng: Central Methodist Mission (Albert Street and Pritchard Street Schools); Yeoville (Sacred Heart School); Refugee communities and social movements in Alexandra Township; Soweto and Orange Farm; the Somali community in Mayfair.

Partners: Africa Diaspora Forum (ADF); Anti-Privatisation Forum’s affiliates in Alexandra Township, Orange Farm and Soweto; Migrant Community Board (MGCB); Central Methodist Mission; Campaign Against Xenophobia; Coordinating Body for Refugee Communities; Forced Migration Studies Programme; Jesuit Refugee Service; Khanya College; Lawyers for Human Rights; Medicins Sans Frontieres; Papillion Foundation; Save the Children; The Suit Case Project; Somali Community Structures in Mayfair; Zimbabwe Torture Victims Project; Refugee Childrens’ Rights Project.

Stakeholders: Department of Education officials (circuit, district and provincial levels); Department of Welfare and Social Development; Teacher Unions; School Governing Bodies and Principals; and migrant learners, teachers and parents.

Limpopo: Polokwane, Thohoyando, Musina and villages in Venda.

Partners: Center for Rural Development and Poverty Alleviation, University of Venda; School of Education, University of Venda; Journey of Hope Programme; Centre for Positive Care; Musina Legal Advice Centre; South African Youth Voices Network; Save the Children; Medecins Sans Frontieres; South African Democratic Teachers’ Union.

Stakeholders: As above.

Western Cape: Cape Town; Masiphumelele; Gugulethu; Khayelitsha and De Doorns.

Partners: ARESTA; TAC; PASSOP; Western Cape Anti-Eviction Campaign; Ogoni Solidarity Forum; Social Justice Coalition; Somali Association of South Africa; Cape Town Refugee Centre

Stakeholders: As above and including SAHRC and the UNHCR.
Appendix 3
Journal Articles as a result of the study


Monitoring the Right to Education for Refugees, Migrants and Asylum Seekers

Key words: human rights indicators, education rights, refugees, xenophobia

In this article we show how the right to education can be assessed and monitored through indicators although we argue that understanding and ensuring rights must go beyond quantitative measures. Traditionally, indicators rely mainly on quantitative data, often disclosing very little about the quality or content of the education provided. This article, based on a year-long study of the right to education for child refugees and migrants from other African countries who find themselves in South Africa, identifies a number of factors that inhibit children’s participation in education. Through focus groups, interviews and workshops with migrant learners and parents, migrant organisations, teachers and government officials in three provinces spanning rural, urban and township areas, we show both the usefulness and limitations of indicators. We use the 4A typology: Availability, Accessibility, Acceptability and Adaptability - developed by the late former UN Special Rapporteur on the Right to Education, Katarina Tomasevski (2001) to examine the right to education for migrants. We conclude by underscoring the importance of including the perspectives and experiences of migrant children accessing the right to education in our understanding of how and whether these rights are secured.

Introduction

It is estimated that 214 million migrants worldwide live outside their country of birth (UNICEF, 2010). This figure includes millions of children, who have either migrated with their parents or are unaccompanied. Migration is a strategy to escape desperate conditions, extreme poverty and war by moving. It is also a strategy for upward mobility, access to better job opportunities, education and health care. Where vulnerabilities become the driver of migration, they are intrinsically linked to human rights deprivations including poverty, inequality and discrimination, as well as occupation, political repression and armed conflict.

In South Africa violent attacks against migrants from other parts of Africa over the past several years have placed the spotlight on the inadequate responses of the state, as well as the systemic violation of the general human rights of migrants. While research on xenophobia and migration has increased recently (Feobister and Badroodien, 2012; Landau, 2011), investigations into the specific violation of the education rights of migrant children have lagged behind. According to UNICEF, “The fundamental problem faced by children and adolescents is their invisibility: the absence of a child perspective within migration laws and policies, and the absence of a migrant perspective in childhood policies. This results in the deprivation of their rights, discrimination and even exploitation.” (2010:1)

The literature on child migrants in South Africa largely draws on census data or from household surveys that primarily infer information about children from adults (CoRMSA, 2008; UNICEF, 2010). In terms of children’s access to and experience in schools, even less information is available because official school surveys only collect information on whether or not children were born in South Africa. Other reporting discrepancies abound, for instance, the only pertinent data collected from Statistics South Africa (2008) indicates that 12% of school-going age migrant children in South Africa were not in schools. Yet, according to a joint Lawyers for Human Rights/ Consortium for Refugees and Migrants in South Africa report (2010) it is estimated that 24% of school-going age children of asylum seekers are not in school.

A recent article by Hemson (2011) based on a case study of refugee and migrant learners in a Durban school emphasises the importance of documenting learners’ experiences including issues of xenophobia and the role of language in learning. Unlike the ERP study though Hemson focusses on
one former Model C school where migrant learners are progressing well. Our article has a wider scope and a different conceptual framework.

The central purpose of this article is to discuss the benefits and challenges of adopting a rights based monitoring approach to education with a view to evaluate not only its usefulness for holding states accountable to their legal obligations, but also its effectiveness as a methodology in itself. Indicators are generally used to monitor the overall conditions and contexts of education. Focusing on refugees and migrants provides a window into the complexity of the educational environment to be measured and provides tools for looking at the inter-relatedness of rights. These indicators also aim to measure the extent to which nation states fulfill legal human rights obligations, as expressed in both refugee law, international humanitarian law and human rights law. Many development indicators tend to regard marginalised groups as recipients of aid, rather than rights holders per se. Indicators based on education as a human right, instead, place these groups and the key principle of non-discrimination at the core. In so doing, they make these groups and violations of their rights more visible, thus creating the conditions for a culture of accountability whereby such groups are enabled and allowed to question state performance. (RTE, 2010).

This article begins by describing rights-based education legislation in South Africa and then discusses the challenges in securing those rights, particularly for refugee children. Throughout the paper we discuss the right to education as constructed in legislation by using the 4A Framework to organise its indicators around migrant voices and concerns. We outline some of the biggest challenges and concerns around the right to education for children who are refugees and forced migrants without guardians, including legal status determination, formal documentation, and consistent long term support services. Lastly we argue that the examination of rights to education for migrants and refugees in South Africa provides insights into the importance of rights-based approaches to education, on the one hand as a means for legal action, and on the other as a tool for rights awareness as well as political and social mobilisation.

The Use of Indicators in Assessing the Education Rights of Migrants

We agree with Chisholm who warns that the linkage of indicators to international and state goals is complicated by the complexity of the educational environment to be measured, the interrelatedness of issues, and the concerns that reduction of this complexity can result in what has been termed as “management by measurement” (Chisholm, 2007:150). The limitations of the information right to education indicators provide requires acknowledgement. The study this article is based on illustrates that quantitative data alone is not adequate to understand the on-the-ground realities that vulnerable children face every day. Thus the indicators used in the study were complemented by case studies and testimonies particularly of migrant learners and parents.

Two notable South African studies which combine quantitative and qualitative indicators framed in terms of the realisation or the violation of children’s right are the annually produced South African Child Gauge produced by the Children’s Institute (see Hall et al., 2012) and a book which employs ‘well-being’ as the organising principle of its objective (Dawes et al, 2007).

Internationally, since the end of the 1990s, various multilateral agencies as well as human rights academics, experts, and non-governmental organisations have been increasingly involved in the development of rights-based indicators. This approach has also been taken by the Office of the High Commissioner for Human Rights and the Inter-Agency Network for Education in Emergencies (INEE, 2010; Hyll-Larsen, 2010). Yet, compared to other human rights, there have been few collective efforts to develop indicators for the right to education. An exception is the London-based Right to Education (RTE) project’s indicators which draws heavily on international human rights law and employs several rights-based indicators to examine the right to education. The latter indicators use the 4A framework and encompass the three fundamental human rights principles of non-discrimination, participation and accountability (RTE, 2010). The RTE project created a set of 200 indicators under 37 headings to guide governments and civil society in monitoring and measuring education rights.
According to Tomesevski (2003), education rights are not related to only accessing schools but also to rights in and through education. Education quality is integral to rights (UNESCO, 2004; Watkins, 2011). Hyll-Larsen (2010:3) explains:

If children do not learn anything, then enrolment rates mean little. It may thus be helpful to define education from the perspective of to, in and through: children have a right to education (access to quality education), they have rights in education (a non-discriminatory environment based on respect and the best interest of the child); and they gain rights through education (the ability to make informed choices concerning their lives and to participate as citizens in the world).

However, education in emergencies, for internally displaced and refugee children and youth, are also a means to secure a physical and mental space that is protective and secure, avoiding exposure to conflict and insecurity – and the dangers of sexual harassment, exploitation, kidnapping and forced conscription – while giving them the right to be children, to play, to learn and not to grow old ahead of their time.

The South African Constitution and national education legislation including the Refugee Act, consistent with international treaties, guarantees the right to basic education of refugees and asylum seekers. Despite these constitutional guarantees as well as policies and programmes that have been set in place to ensure those rights, it is acknowledged that the right to education has not been met in South Africa (Chisholm, 2007). The main barriers to ensuring education rights for all children in South Africa have been poverty, school-related financial and cost issues, school management and government non-implementation of policies and legislation. The 1951 UN Convention and Protocol Relating to the Status of Refugees, Article 22 explicitly states that “The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.” It is this standard that is the yardstick for the national implementation of the right to education in South Africa, for nationals as well as those individuals covered by the Refugee Convention.

Working with the migrant community for nearly a decade, the Education Rights Project (ERP) has documented serious violations and barriers preventing the attainment of the right to education of migrants in schools and communities around South Africa. In addressing some of the concerns and lack of information about migrant rights the ERP produced a booklet on the education rights of refugees, asylum seekers and migrants (Motha, 2005) and assisted in the formation of education rights advocacy groups consisting of and led by immigrant organisations. Previous research with these groups unraveled a complex web of social, economic, cultural and poverty-related difficulties faced by refugee and asylum-seeking children. Key issues related to the cost of education; admission and registration; age norms; lack of documentation and language issues.

Between 2004-2009 the ERP continued to build on the limited research on the education rights of migrants. In 2010 the ERP embarked on an initiative to continue the work across the provinces of Limpopo, the Western Cape and Gauteng. The project was established to achieve greater understanding and awareness of the right to education for migrants among state officials in the various education, home affairs and social welfare departments, school management teams and the public at large, strengthen the ability of migrant communities to pursue their education rights and hold the state and responsible parties accountable for violations of the education rights of migrants.

Together with the RTE project, the ERP created a list of indicators specific to migrant and refugee rights in South Africa corresponding to the 4A rights template as a pilot study. In 2010 a pilot case study of the RTE indicators was undertaken in a school for migrant and vulnerable children in Johannesburg (See Appendix 1). The school served over 500 primary and secondary migrant and South African children. Interviews were conducted with 30 children and their teachers at the school and the selected indicators were used to collect preliminary data. Then, examining the information
collected from the case study as a guideline, a school survey was created and conducted in three high
schools (one per region of the three provinces selected): Johannesburg Secondary school in Gauteng, Maitland High School in the Western Cape and Musina High School in Limpopo.

The added value of this approach was to go beyond the quantitative RTE indicators and develop a set
of measures that fully correspond to the range of human rights obligations and provide opportunities
to frame a range of barriers and challenges migrant children specifically face. By including qualitative
indicators such as interview data and testimonies, the project began to evaluate broader understandings about the right to education including whether the schooling provided was in an
environment respectful of migrant children’s dignity and development, whether schools promote respect for learners as well as teachers, whether and how education is provided to all groups, and
whether schools teach and uphold human rights. In other words, indicators should not only measure the
right to education in terms of access to schools and achievement rates, but also contextual issues
including rights in and through education.

A potential risk to relying primarily on quantitative indicators was the dearth and quality of the
official data available. One way of mitigating this risk was to diversify the sources of data, check its
reliability with data collected at various sites across the country, and to supplement the data with
input and testimonies from migrants, civil society organisations and non-governmental
organisations. Hence, a critical element of the ERP study has been qualitative case studies conducted
through extensive outreach and long term involvement of migrant families and advocacy groups—which we suggest are more revealing and explanatory than much of the previously available
statistical data.

The project then examined in greater detail the barriers and violations of the right to education
encountered by migrants in Gauteng, the Western Cape and Limpopo, government policy and
practice on this issue, and the practices of school governing bodies, school management teams, trade
unions and local municipalities. The rationale for the selection of the sites and target groups was to
enable the study of different refugee groups in a combination of rural communities, urban areas,
townships and in the different regions of South Africa. Many of these areas were 'hotspots' during the
widespread xenophobic outbreaks in 2008 and others were not. Understanding this differential
response of the broader community was an issue to be explored. The diversification of sites allowed
for the useful profiling of the communities in terms of the existence of support structures, duration of
residence, unaccompanied minors, gender issues and the extent to which they are incorporated into
the broader community through for instance receiving social services, access to schooling including
overcoming obstacles preventing schooling and participating in community structures and events.

Based on preliminary meetings and consultations with migrant and other organisations (listed in
Appendix 2), the project constructed a series of interview questions and an inventory survey to
administer to a broader range of actors serving migrant communities. Over 120 individual and focus
group interviews were conducted with 208 respondents from migrant organisations, trade unions,
social movements, government departments, NGOs, teacher unions, learners and teachers.

During 2011 and 2012 three workshops were held across three provinces designed to discuss
broadly the right to education, describe the framework and collect testimonies and other information
about the varying experiences of migrant children in schools across provinces. The first workshop in
Cape Town was attended by 80 people over two days. There were about 80 participants at the
Gauteng workshop and the last workshop, attended by 100 participants, was at the University of
Venda in Limpopo. The total number of delegates that attended the three workshops numbered 260.
Delegates to these workshops included migrants, migrant support organisations, social movements,
officials from various government departments, teachers, learners, parents and academics.

Significantly, the overwhelming majority of participants in the study were migrants themselves, and
86 migrant children participated in the project. Eighty eight percent of the interviews in Limpopo
were with migrant organisations including migrant representatives. In the Western Cape 92% of those interviewed were refugees, asylum seekers and undocumented migrants. Close to 70% of the participants in the Gauteng focus groups and workshops were from migrant organisations.

Summary Findings from the Interviews and Workshops

Due to the limitations of space for this article we chose to select and highlight the specific concerns and challenges largely voiced by migrants. These issues were not typically represented by the data collected in most government education surveys.

Summary findings are organised thematically below according to the 4A Framework: Availability, Accessibility, Acceptability and Adaptability. The transversal issues of non-discrimination, participation and accountability are discussed and woven throughout and highlighted by selected quotes that were representative of the majority of respondents.

Availability Indicators:

Availability indicators include ensuring a sufficient number of schools, providing adequate school infrastructure and decent learning conditions. Amongst other aspects, we suggest that indicators should check if schools have intake capacity that is sufficient to enroll and maintain all school-age refugee children up to the minimum age for employment.

Refugees, migrants, and asylum seekers across all three regions reported that schools within the same district displayed wide variance in resources, facilities, and education quality. As most migrant and refugee learners reside in poor, working class communities, their access is usually limited to under-resourced and poor-performing schools. Budget shortfalls were seen as the cause behind a general lack of buildings and facilities necessary for the provision of quality education in schools in all three provinces, particularly science laboratories and libraries.

The case study of the Central Methodist School also revealed that no space was available for migrant children in the government schools, and the majority was housed in Church facilities taught by underpaid Zimbabwean teachers. Interviews with teachers and learners at the school also revealed that in the process of registering with the Gauteng Department of Education, the school was told it needed to be relocated because it didn’t meet the “standards for a suitable school location” (Thom, 2010). Notes from the project fieldworker described the school in the following way:

The school is run in the church auditorium ...that is not separated by any walls and the students sit in church pews with no desks. They share toilet facilities with people who live in the church which are way below standards. The school is in the city center with no playground or recreational facilities. The building is infested with cockroaches and vermin (Ibid).

While primary school children are provided one free meal a day through mandated school feeding schemes, secondary schools do not share the same mandate. This compromises many students’ ability - migrant and resident South Africans alike - to participate fully and meaningfully in their classes. Additionally, many schools have overcrowded classrooms and a high learner-to-teacher ratio.

In terms of barriers as a function of age, reports from the Limpopo province highlighted the particular problem unaccompanied minors face when they report to the Department of Home Affairs to receive refugee status or documentation that would allow them to enroll in school. Underage unaccompanied children reported that they must be deceptive about their age in order to be granted access to reside in South Africa.
Accessibility

Accessibility includes, for instance, the elimination of school fees and indirect costs, such as textbooks and uniforms and whether access to school is safe, non-discriminatory and physically accessible. Location, lack of documentation as well as economic and administrative obstacles should not limit access to schooling. This obligation is not diminished in the case of refugees and migrants.

Various laws make access to schooling a basic right and prohibit any kind of discrimination or exclusion, whether on the basis of nationality, documentation status or ability to pay. Yet even when adequate numbers of schools existed access to these and exclusions based on documentation were widespread.

Apart from the experiences of violence, exploitation and vulnerability that migrant children often face, the project identified numerous systemic issues which prevented access to education for migrant children. Pertinent here is the lack of documentation and the determination of status as legal or 'illegal'. Access to education is significantly impeded by children or their guardian’s ability to furnish documentation to school administrators. While the policy stipulates that to register a child at a public school a birth certificate, immunisation card, transfer card/last school report card are required, the policy also makes provision for a child to be registered provisionally if these documents are not available. The parent or guardian should be given reasonable time to produce these. The findings in the ERP study showed that a number of schools still do not understand or ignore this aspect of the policy and access due to lack of documentation or status, remains a key problem.

There are many primary schools in Cape Town, but as a refugee these schools are not always accessible. When my daughter needed to move from crèche to primary school, I attempted to get her into primary school. At the end of the first year, they informed me that they could not accommodate her. The next year I applied again and they did not even have the decency to reply. By the third year, the school was asking the principal of the crèche questions like, "What type of person am I? Do I have a steady source of income? Do I pay school fees regularly?" At the end of the third year, they still did not accept my child... A white South African woman with whom I was working called the school, demanding an explanation. With one phone call, my daughter was called in for an interview and... accepted into the school. I was lucky. I had someone who intervened on my behalf, but what about the other women who do not have this support structure. What becomes of them? It was then that I knew I had to start a formal organisation for migrant women in South Africa (parent from Cameroon, Western Cape Workshop).

Obtaining documentation must be understood in a context where a significant number of the refugees (while legally here) have escaped conditions of war and civil strife making it impossible for them to obtain their personal documents, such as original school report cards or transfer forms. A participant at the Western Cape workshop described that over a two week period the Cape Town Refugee Center turned 1659 people away: twenty-two percent were turned away because the center ran out of forms and another twenty-two percent were denied because their permits were expired. Expired permits can induce a R2500 fine or jail time.

Without a permit, you cannot access education, medical benefits, or even open a bank account (participant, Western Cape workshop).

There were instances of schools in Limpopo requiring parents (unnecessarily) to furnish their work permits in addition to prospective learners’ birth certificates. Parents spoke of school administrators failing to recognise refugee or asylum seeker permits:
When we take our child to school, they ask "where is the birth certificate? They don’t understand how to register a child when you show them a refugee permit. (refugee parent, Limpopo).

In both Limpopo and the Western Cape provinces, parents similarly reported being referred to their country of origin by officials at the Department of Home Affairs to obtain birth certificates or additional documentation, even if their child was born within South Africa. The Department of Home Affairs was frequently cited for their systematic exclusion of undocumented children from accessing the right to education by a variety of means, including demanding bribes in exchange for services; delaying the provision of study permits resulting in delays in registration; and demonstrating blatant xenophobic attitudes through derogatory remarks or generally acting in a rude and belligerent manner.

Status and the specific needs of unaccompanied children

The obstacles unaccompanied minors face relate to both their legal status and issues of documentation. The government’s repatriation policy itself contributes to several problems for migrant children, especially unaccompanied minors resulting in an over-reporting of ‘orphaned’ children in order to be eligible for residency and guardianship. The establishment of guardianship is required to receive public services and enroll children in school. The Department of Home Affairs (DHA) is responsible for issuing the immigration permits and identity documents that children need to attend schools or access services, but the DHA will not do so unless children have been assigned a social worker by the Department of Social Development (DSD) and have a Children’s Court order setting out their guardianship arrangements (IRIN 2011). Navigating the different government departments becomes a complex maze for unaccompanied children and their advocates because if a child has a parent who is still living in their home country, guardianship in South Africa is very difficult to establish. As a result, these children are usually repatriated back to their home country.

Another problem identified by participants was that the type of assistance social workers are supposed to provide is not clearly defined and there are many inconsistencies between different government departments about which should come first – documentation or the Children’s Court order. “Children’s Court, Social Development and Home Affairs all have different standard operating procedures when it comes to unaccompanied minors,” (IRIN 2011). With government social workers in short supply and reluctant or unsure about what to do, most advocates refer them to NGOs who in turn help with their immediate needs but not broader advocacy.

I like it here, but it is very difficult to get a permit. I try every Tuesday [the day designated for Somali permit seekers] and when I have the money I go to the Cape Town Refugee Center. Every time, they tell me I need someone to look after me because I am still a child, but I have no one. After many wasted Tuesdays, I decided I am going to wait until I am 18 and then accept responsibility for myself. After my 18th birthday, I can get my status. All I want is to have peace and a good education. I have finished Standard 6 and when my papers come through I will continue my studies. There are opportunities to study here that you cannot get in Somalia because of all the fighting (Somali orphan age 17, Western Cape).

I have been in this country for 12 years and I have no ID book or permanent citizenship. I am supposed to have one by now, but I don’t have one and must keep renewing my refugee status (refugee learner from Western Cape).

Through the workshops we heard of many instances where local advocates have attempted to communicate with school principals without success. This has made it difficult and in some cases impossible to enroll migrant children into public schools. A clear policy and directives from the Department of Basic Education on how to deal with such cases would be useful.

Abuse and unclear policies and procedures for documentation and enrollment
I don’t think that schools and officials know their own rules... They also need training (NGO participant, Limpopo workshop).

Participants invariably described abuse at the hands of government and school officials and bureaucratic inefficiency. A parent described how she was humiliated when a Home Affairs official shouted at her from across the hall: “why did you leave your country to come and cause overpopulation and spread HIV/AIDS in our country” (Limpopo workshop).

Participants also noted that police and home affairs officials felt antagonised when they were informed about the official policies. The officials were quoted as stating, “oh, you think you can do my job now?” and, “you think you are clever.” Another common response from government officials was, “you people, you just come here and tell us what to do. Why don’t you go back to your own country?” (Western Cape workshop). A learner added, “They call you kwere-kwere and they look down on you and tell you to go back to your home country.” (Western Cape)

School Fees and other Economic Obstacles

Migrants, refugees, and asylum-seekers report that school enrollment fees as well as secondary costs (particularly related to transportation, school uniforms, and materials) are impeding the right to access education. A significant number of interviewees experienced or knew someone who was expelled due to the inability to pay school fees. There was also a wide variance in schools accepting fee exemptions, as well as cases of prospective students “jumping the queue” on school waiting lists as a function of their demonstrated ability to pay school fees.

Upon learning of school fee exemptions at the Limpopo workshop, Thembekile a guardian from Zimbabwe said: “I am not aware that one can be exempted from school fees. The principal at the school did not say anything about this when I was struggling with my niece’s fees.”

Lack of understanding about school fees was not limited to parents, school administrators were also misinformed. “When the parents can’t pay the school fees, we send their accounts to debt collectors. We don’t want to, but we have to. We need the money” commented a school administrator from the Western Cape. Across all three workshops numerous participants recounted experiences of school administrators lacking knowledge of migrant, refugee, and asylum seekers’ eligibility for exemption from school fees. Reports from the Western Cape specifically detailed the process of accreditation of their original credentials and transcripts as prohibitively expensive.

Acceptability Indicators:

In order to measure if education is acceptable for refugees, indicators need to assess issues such as the language of instruction, curriculum content and relevance, school discipline as well as teacher’s qualifications and training. ‘Acceptability’ also addresses issues of tolerance, inclusivity, gender, discipline, language, adequate and relevant support services.

Participants also reported that language acts as a pervasive barrier to accessing quality education. In the Western Cape learners described how their teachers often switch between a number of South African languages and they struggle to understand what is being said. Furthermore, many stated that they were too intimidated to ask for an English translation. Finally, in the schools surveyed none offer non-South African languages as a medium of instruction nor as an additional course.

There is a high concentration of Somali communities but the majority of schools in rural areas use an Afrikaans medium. In these cases, children enroll into schools despite the language barrier as the community is hungry for education and learning (government official, Western Cape).
The extent to which being taught in English acts as a barrier is dependent on the learner's country of origin. Learners that come from Zimbabwe have a strong grasp of English and do not experience English as a barrier. They are doing very well at school. For learners coming from Cameroon, Congo, Burundi and Somalia [who] speak French, Swahili, Lingala or other languages are not as well equipped to make the necessary transitions to education in South Africa. Think about it. If you cannot speak a language, how, in any test, will you be able to answer the question being asked? (teacher, Western Cape).

Without language, you do not have the vocabulary and the tools to write down your thoughts and ideas. For most of these learners, they have never spoken a word of English and now they find themselves in high school where you not only have to learn in the language, but also have to understand difficult concepts in all subjects. For these learners, we have to start from scratch and teach the very basics... it is frustrating because these are intelligent kids, but they don't understand the questions (teacher, Western Cape).

If a learner is in Grade 12 and cannot speak a word of English, the only way I can even think of making a difference is to give that learner individual attention. But with the workload and classes you just cannot do it. There is not enough time (teacher, Western Cape).

Integration and Xenophobic Violence:

Stigmatisation and discrimination at the hands of school administrators and Department of Home Affairs officials were widely reported by participants in the provincial workshops. Additionally, migrant learners felt their South African peers were hostile and disrespectful and were disinterested in the circumstances that compelled them to migrate to South Africa. Others complained that teacher unions had not publicly addressed issues relating to xenophobia and other forms of discrimination nor did they facilitate any programmes that focused on the integration of migrant learners in schools.

In the Western Cape, some South African learners reported on the tension between them and migrant learners. There were frequent displays of prejudice and myth-fueled antipathy:

They are smarter than us and now they take the place of a South African learner. Our schools already have nothing and now they take the place of a South African learner. (South African learner, Western Cape)

In South Africa, we already have so many problems and now we must deal with this also. They are increasing the population and also crime. The drugs have increased and so has the prostitution. They are using resources that are meant for us. (South African learner, Western Cape)

Migrant students lamented:

It's [xenophobia] prevalent everywhere you go. At the bus stations, at hospitals, everywhere. As an immigrant, you cannot even open a bank account because the system has been designed in a way to exclude you (learner, Limpopo).

We don't even have anyone you can complain to. Even when you go to the police to complain after a wrong has been done to you, they tell us: you people are trouble. We give you food and you take our jobs and yet you still complain (learner, Limpopo).

Curriculum that promotes and respects human dignity

Learners and parents were unanimous that the curriculum provides very little space for content about their home countries and teachers have little experience, skills or interest in addressing the cultural differences of migrant learners or of challenging myths and prejudices.
They [teachers] have formal knowledge but they have not been equipped with skills to accommodate learners from diverse backgrounds. They do not have the necessary skills to accommodate learners from beyond South Africa (parent, Limpopo).

Most of the teachers do not even understand the child’s background so the children are already misunderstood (parent, Limpopo).

The home countries of migrant learners are seldom mentioned but when they are the portrayal is often negative.

When they want to give a bad example, they [teachers], will just say “like Zimbabwe.” They never teach us anything that will make us feel good about Zimbabwe. This makes me feel humiliated as the whole class will look at me because I am Zimbabwean. Some will even laugh at me (learner, Limpopo).

...the teachers… don’t give us textbooks because they believe Zimbabweans are careless and they believe that even if you lose the book you don’t have the money to pay back the book... even when I go and ask other children, they will say that teachers say I cannot share the book with you.” (learner, Limpopo).

Interviewees often described overtly bigoted statements by teachers. A learner at the Limpopo workshop said her teacher once called her “a witch and a prostitute because all Zimbabweans are.” Another learner from Limpopo reported that other children are reluctant to play with him because “Zimbabwean’s smell.”

Adaptability Indicators:

Adaptability suggests that education should challenge inequalities or abuses against refugee and migrant learners.

According to Save the Children (2007) a large number of children indicated that they migrated to South Africa because of the death of a parent. Throughout the literature there have been many concerns about the exploitation of migrants, particularly child migrants. When parents are able to migrate without children, they are financially better off. Those migrating with children have less secure housing and lower income (Save the Children, 2007). The migration of children without parents takes on a very different characteristic. Unaccompanied minors face considerable vulnerabilities to exploitation, including child labour.

Importantly, issues that migrant children are likely to face are also those that children are most reluctant to discuss with adults – experiences as a child soldier, work exploitation, sexual exploitation and violence, experiences of harassment and xenophobia. These are likely to be underreported and poorly understood and are rarely addressed in schools as part of children’s knowledge or experiences that could impact on learning or behavior.

I left at the age of 17 in February, 2010 by myself. I traveled through Kenya, Tanzania, and eventually into Mozambique. Along the way, I became part of a group from Somalia who were also on their way to South Africa. We looked after each other. We made sure that we had security. In Mozambique, I contracted malaria and I had to separate from the group. They left me behind in Mozambique where I almost died. I knew they had to leave me, but when I was alone in the hospital, I felt like I was losing another family.
When I was better, I met up with another group and together we were smuggled into South Africa in a truck at night. We were about 100 people in that truck. When I came to South Africa, I had no permit and no family but other people from Somalia could see my struggle and took me in. I live with them ... I am happy now. I have food and a place to sleep. For that I help with the shop and with [the] business (Somali youth, Western Cape).

**Isolation and Xenophobia and the role of schools**

Overall, there has been a failure to adequately understand the impact of xenophobic violence on migrant children – for example, its impact on traveling to school and safety in school, the impact on family unity and security, as well as its psychological impact on children. Many reports point to the overall lack of integration of many migrant families into South African society. This measure of isolation from South African communities is important because it is a factor in securing rights and access to education. Following the xenophobic attacks many organisations mentioned the link between social integration and conflict resolution in local communities. They saw the schools as being the best place for intervention to take place.

We must understand the history of these people and why they left their country. South African children can learn from them and broaden their horizons socially and culturally. They are extremely hard working people and we can learn from them. They are nice people and now I have friends from all over Africa (South African learner, Western Cape).

In the South African curriculum, you learn very little about other country’s history and cultures. In Nigeria, we learned about South Africa. We learned about the struggle for freedom and the fight against apartheid. Because of this, our people understood why South Africans were in Nigeria. We could empathise and support (migrant advocate, Western Cape).

In addition, the study also showed the agency, resilience and hopes for a better future in South Africa among young migrants.

Because of the fighting in Somalia, I knew that if I stayed there I would have no stability and peace. I have been a refugee in this country since 2003. I came here hoping to further my studies as I had completed what you call matric in my home country. I left my home country without my certificates and had to wait two years for them to be posted and for HESA to convert my qualifications to a South African matric. In that time, I was a shopkeeper, but my shop was destroyed ... due to xenophobic attacks. I started again ... but when my qualifications came through, I immediately applied to further my studies and now I am studying full-time. The total fees are R 31 000 for one year ... This amount is for fees only—it does not cover any accommodation, textbooks, or transport. As a refugee, you are somewhere between an international student and a South African. The financial office said that they could not assist me due to my refugee status. Most bursaries are for South African nationals only. I don’t know how I am going to get the funding, but I am determined to find it. I have waited too long for this opportunity (learner, Western Cape).

**Conclusion**

Measuring the rights of migrant learners to, in and through education against established indicators allowed for a selection amongst the 200 indicators. This was done by prioritising those indicators that are most relevant to migrant children’s school experiences. The RTE indicators were further refined to fit the South African context and became the framework for the interviews, focus groups and school inventories. The use of indicators addressed the project’s interest in creating a sense of awareness around education rights of migrant learners and the state of organisation for the education rights of migrant learners.
Apart from the direct xenophobic violence in South Africa the project also discussed systemic issues which prevent access to education. Pertinent here was the lack of documentation and the determination of status as ‘illegal’. These issues while not directly linked to gratuitous violence still give rise to psychological trauma. The latter should also be understood in a context where a significant number of the refugees’ original homes and schools have been burnt down or destroyed, and some have escaped conditions of war and civil strife. Conditions such as these make it impossible for them to obtain their original school report cards and transfer forms.

Throughout the literature and in our own investigations, we found very few child specific services for migrant children. Twelve organisations were identified by UNICEF that specifically offered prioritised services to migrant children in South Africa. Yet, many of these focused on refugees, rather than migrants in general, creating a gap for the majority of child migrants. Most of the services provided were around meeting basic human needs, i.e., providing shelter or accommodation through safe spaces or transit camps; assisting with distributing food or basic toiletries for unaccompanied children; providing créches or afterschool care; assisting in getting access to schools by providing uniforms or school fees; and providing information or referral to various agencies and services. Moreover, many organisations lack sustained funding to allow them to intervene over a long period and rather respond to key and immediate issues as they emerge for children or their families.

The study also found that legislation and policies were frequently flouted and violated by state officials. In terms of acts of commission, episodes of government officials publicly scapegoating migrants for various social and political problems have helped to further fuel resentment and xenophobic attitudes amongst the general population. Implementation of government policy posed a major obstacle across the sites studied. Home affairs offices were frequently mentioned as intimidating to refugees and in the words of a migrant parent she would “rather keep quiet to minimise the aggression of officials”. Additionally, there is very little coordination between various governmental departments that exercise governance over education rights. More damagingly, there are different interpretations by, for example, the Department of Home Affairs and the Department of Basic Education, with regards to the policies and protections afforded to migrant learners. A range of participants also described a general lack of confidence in the South African government’s will and capacity to fulfill the Constitutional mandate of the right to education.

A primary emphasis of the research approach involved strengthening relations with vulnerable groups such as migrant families, migrant support organisations, social movements and trade unions. Our hope was that this work would also contribute to building organisations and social networks amongst the poor whether migrants or South African citizens. Hence this article draws on the lessons of agency and solidarity revealed during the course of the study as well as numerous impediments that prevent the realisation of the rights of learners. We hope that documenting the latter violations and advancing a particular typology and approach to rights indicators will assist in the creation of a propitious policy and social environment conducive to healing, compassion and the fulfillment of the potential of children refugees in South Africa.
Appendix 1:

A1 Example of Availability Indicators (RTE template) Adapted for Case Study on Migrant and Refugee Children at Albert Street (Central Methodist) School in Johannesburg

- A1.3.1. Enrolment ratios: by gender, by region, by rural/urban divide, by income (*Disaggregated information for migrants not available)
- A1.3.5. Enrolment in technical and vocational programs (*information for migrants not available nationally, but can be determined locally)
- A1.3.6. Gross Secondary Completion Ratio (*information for migrants not available)
- A1.3.7. Repetition rates (*information for migrants not available)
- A1.3.8. Drop-out/Push-out rates
- A1.3.9. Pupil/teacher ratio – Lower secondary education
- A1.6.1. % Adults enrolled in basic and literacy education programs – How many migrant and other adults are enrolled in literacy programs at the church school
- A1.8.2. % Educational expenditure allocated to private schools? Is there any government funding for this school that serves primarily migrant children?
- A1.8.3. % Home education – Are there any children being educated at home because they cannot get access to this school or any SA schools?
- A1.9.1. % Schools closed (provisionary or permanently) – linked with next question – why does the Dept. of Education want to close this school
- A1.9.2. Reason?
References:


RTE (The Right to Education Project), (2010), Beyond statistics, measuring education as a human right: Background Paper, unpublished.


Thom, D. (2010), Indicators taken from the RTE Project and adapted for the Albert Street School, unpublished report.


Abstract

This article examines the psychology of migrant learner’s resilience, their right to education and how migrant organisations and South African civil society are supporting and reinforcing the agency of migrant learners and their parents. It is based on a year-long study conducted by researchers at the University of Johannesburg’s Centre for Education Rights and Transformation (CERT), funded by the Foundation for Human Rights. Testimonies, participatory workshops, surveys, interviews and focus groups with learners, parents, educators, officials and civil society activists in three South African provinces-Gauteng, Limpopo and the Western Cape-spanning rural, urban and township areas, form the substance of the study. The article is framed by the traumatic experiences of migrant learners before entering South Africa, during their stay and often when they are deported. Topics covered in the testimonies include children’s rights to, and in education, they also traverse gender issues, the travails of unaccompanied minors, and obstacles preventing migrants’ participation in schooling and society.

Keywords: Education rights, child migrants, alienation, deprivation, migrant learners, xenophobia, trauma, resilience, solidarity

The well-publicised violent attacks against migrants from other parts of Africa in 2008 placed the spotlight on the inadequate responses of the South African state as well as the systemic violation of the general human rights of migrants. The violence began in May 2008 in Alexandra, a densely populated poor area close to Johannesburg. In the ensuring weeks it spread to deprived inner-city areas of Johannesburg and the industrial East Rand in the province of Gauteng as well as the borders of Zimbabwe and Mozambique and townships close to the cities of Cape Town and Durban. It is estimated that 62 people were killed, 670 injured and about 100 000 people displaced (Kapp, 2008). Many poverty stricken neighbourhoods in South Africa were engulfed in the violence directed against fellow Africans who, fleeing countries beset by civil war, despotic government and poverty, are perceived to be a threat to a frustrated local population. The latter have not seen the promises of employment, housing and service delivery fulfilled, well into the second decade of a post-apartheid society (Alexander, 2006).

While research on the violation of the rights of refugees in South Africa has increased recently (see Hawabibi, 2008; Sigsworth, et al., 2008; Verryn, 2008; Everatt, 2011; Landau, 2012), investigations into the specific violation of the education rights of child migrants despite some notable exceptions (Palmary, 2009; Hemson, 2011; Foubister & Badroodien, 2012) have lagged behind.

The South African constitution and national education legislation as well as the Refugee Act consistent with international treaties, guarantees the right to basic education of refugees and asylum seekers from all countries. Yet, the study this article draws from suggests that the violation of the right to education of refugees and migrants in South Africa is a pervasive problem (CERT, 2012). The various testimonies in this study provide a consistent commentary on the discrepancy between the existing normative framework of society and its reality as well as the disjuncture between the policy as text and the reality as lived. The study though also shows the resilience of child refugees, their agency and the solidarity offered by South African civil society.

Included in the testimonies collected by the researchers are stories such as that of a 17-year-old Somali orphan who in his long and eventful ‘travelogue’ suggested that there was a vital social network throughout the continent that relied on solidarity, not money, to function.
Apart from the direct xenophobic violence in South Africa the article will also discuss systemic issues which prevent access to education. Pertinent here is the lack of documentation and the determination of status as 'illegal'. These issues while not directly linked to gratuitous violence still give rise to trauma as inaccessibility to education, seen as a 'life raft' out of their situation, is blocked. The latter should also be understood in a context where some of the homes and schools of migrants were destroyed as a result of war and civil strife. Conditions such as these make it impossible for them to obtain their original school report cards and transfer forms.

The study found that legislation and policies were frequently flouted and violated by state officials. Implementation of government policy posed a major obstacle across the sites studied. One refugee who has lived in the country for 13 years has not been able to get permanent residence status or a South African identity document, both of which were meant to be available after five years. Jean Pierre lamented, "Just thinking I need to renew my family's status makes me stressed and gives me nightmares." Home affairs offices were frequently cited as intimidating to refugees and those trying to obtain service from the centre would "rather keep quiet to minimise the aggression of officials" (CERT, 2012).

The article will draw on the lessons of agency and solidarity revealed during the course of the study and argues for a more propitious policy, and a school and social environment conducive to provide healing, compassion and the fulfilment of the potential of child refugees in South Africa. Some implications of the study for school professionals will be drawn out in the last section of this article.

**Methodology**

**Sampling and data gathering**

The provinces of Gauteng, the Western Cape and Limpopo were selected as research sites because these three South African provinces have a relatively large number of migrants from other African countries and incidents of xenophobic attacks were particularly pronounced in these provinces. (Everatt, 2011).

One hundred and twenty people participated in the in-depth face-to-face and group interviews. The majority of the interviewees in the three provinces were migrant learners, parents of migrant learners and representatives of migrant organisations and migrant support organisations. In order to protect interviewees from possible victimisation, we use pseudonyms in this article. Ninety two participants were part of a small scale school-based survey at Maitland High School in the Western Cape, Musina High School in Limpopo and the Johannesburg Secondary School in Gauteng. The surveys were based on the ‘4A’ education rights framework described below. In addition to interviews and surveys, there were three workshops in Thohoyandou, Johannesburg and Cape Town. The workshops also collected additional data from participants. A total of 260 participants from migrant organisations, migrant support organisations, trade unions, social movements, academics, researchers, and government were part of the workshops. The workshops were also aimed at building solidarity between migrant organisations and South African social movements and trade unions. As part of a validation process, CERT researchers presented tentative findings at these workshops and workshop participants expressed the view that the findings were consistent with their experiences and knowledge of manifestations of xenophobia at schools (see Pyett 2003 on validation of findings).

**Data analysis**

Data was analysed according to various emerging themes, namely xenophobia and violence, alienation and deprivation and, resilience and solidarity. A theme-based analysis in this qualitative research involved inductive reasoning, by which discernible themes evolved and were identified through a thorough examination of all aspects of data, namely interviews, focus groups, surveys and workshop reports (Zhang & Wildemud 2009). The overall deductive assumption of the research project was predicated on viewing migrant learners not merely as victims of xenophobia and human
rights violations, but also as social agents capable of devising strategies and responses to xenophobia in schools (Zhang & Wildemud 2009).

The study included a comprehensive literature review on the education rights of migrants; collected available quantitative data; analysed rights-based indicators assessing the conformity of the education rights of migrants in South Africa with international human rights standards and treaties and local legislation; involved site visits culminating in the collection of quantitative data, case studies and testimonies and arranged workshops for migrant communities on education rights. An important part of this project was the development of a list of indicators corresponding to the 4A rights framework principles of availability, accessibility, acceptability and adaptability developed by the late UN Special Rapporteur on the Right to Education, Katarina Tomasevska (2001). Indicators based on education as a human right, place vulnerable groups such as refugees and the key principle of non-discrimination at the core. In this way, vulnerable groups and violations of their rights more visible thus assisting accountability from duty bearers. Under a rights-based approach, the government has an obligation to respect, protect, promote and fulfill these rights through policy, legislation and implementation.

Traditional education indicators mainly rely on quantitative data, often disclosing very little about the quality of the education provided nor the ‘black box’ of contextual factors. The indicators were therefore supplemented by various case studies and testimonies in the sites identified. This methodological approach assisted the expressed intention to examine the ‘glossy rhetoric’ of education policy with its attendant emphasis on human rights and democratic citizenship and whether these promises are realised.

A brief review of the literature

According to Hemson (2011, p.66), one of the responses of migrants and migrant children in particular entails what Fanon (1967), Biko (1987) and Freire (2000) referred to as ‘internalisation’. In other words, the oppressed accept the power of the oppressor and develop responses such as loss of ‘self-confidence’ and accept oppression as a norm (Hemson 2012, p.66). However, there is also a dialectic involved which entails building a defence system or accumulating tools of resilience.

Naude (2008, p.113) concedes that educators facilitating refugee learners in their social adjustment to a new school environment must be aware of the trauma and the “feelings of helplessness, confusion and guilt that accompany these learners”. Yet her study argues that, “Refugee learners seem to be very resilient. This is a characteristic that can be used to empower these learners in their social adjustment; making them aware that they are strong enough to overcome adversity” (2008, p.113). Naude argues that this resilience must be reinforced by examining the conditions of migrant learners and proposing the use of Gestalt guidelines which entail a dynamic interaction between individual migrant learners and the environment in which they live and study.

Foubister & Badroodien (2012) in a study of the educational experiences of a group of African migrant students in Cape Town explore how social class and education is lived in the everyday lives of these youth and how they organise and make meaning of the multiple spaces they encounter. Pertinent to this article, the study shows how migrant students “derive strength and the capacity to persevere from the dispositions they have acquired (and continue to solidify) from their families, friendships, and religious practices” (Foubister & Badroodien, 2012, p.130).

Hawabibi (2008, p. iii) tests the psychological approach called ‘Integrated Threat Theory’, which has “intergroup anxiety, negative stereotyping, realistic threats and symbolic threats” as elements, and suggests that education can also play a role in reducing stereotypes and negative attitude towards migrants and migrant learners.

Xenophobia, like apartheid, is another form of violence which is both physical and psychological. It tends to leave scars on families and on children in particular. In 2009, a year after the xenophobic
attacks in 2008, the Centre for the Study of Violence (CVSR) conducted research on migrant women. One of the conclusions of the study was that:

The impact of xenophobia on children is a primary concern for mothers. Many women cite examples of xenophobic threats or attacks on their children. Mothers felt unable to protect their children from the fear and trauma of these attacks, making them feel derelict in their duties as mothers and powerless to save their children from harm. Moreover, children noticed the attitudes and attacks directed at their parents and families, and felt the weight and threat of this discrimination. One respondent told CSVR of coming home during the xenophobic attacks in May, greeted by her son with the words, 'Mummy you are not dead' (Sigsworth, et al., 2009, p.1).

The next thematic section distilled from the findings supports and extends the literature outlined above.

**Xenophobia and violence**

For many migrant children experiences of violence begin during the long journey to South Africa (CERT, 2012). Learners from Zimbabwe such as Monica Kibera, a fifteen year-old learner use unconventional and risky ways to enter South Africa. Many Zimbabwean learners hitchhike from their destinations with little money and food and cross at the crocodile infested Limpopo River. Not only do they risk their lives by crossing the river and a game reserve but they also risk falling prey to what the migrants call *omagunaguma* (a colloquial term referring to robbers masquerading as guides) who have gained notoriety for subjecting their victims to abuse (Sibanda, 2012). Violence and crime also confront migrants on the South African side of the border. Musina High School in Musina is in a township called Mushongowille which is 30 kilometres from the Beit Bridge border post between South Africa and Zimbabwe. According to the principal of Musina High School, “In many cases crime syndicates use undocumented migrants in criminal activities, including children.” (A. Leghava, Personal Communication, 16 November 2011).

Joyce Sehlaba is a Grade Eight high school learner in Alexandra concerned about xenophobia in her school and the negative attitude towards migrant learners. Although she is originally from Mozambique, she speaks SeSotho and IsiZulu fluently. She reflects on her encounters with xenophobia at school. She says:

> The other learners call me ‘Grigamba’ (a derogatory word for a migrant)... I tell the teachers about this but the teachers just shout at them. They do not discuss the problems of xenophobia and discrimination with these learners. The teachers are not teaching us about xenophobia and human rights (J. Sehlaba, Personal Communication, 6 June 2011).

**Alienation and Deprivation**

Venktes (2011, p.1) reflects,

> One hundred and fifty Grade 1 pupils crammed into one classroom is the reality of Quarry Heights Primary School near Newlands East in Durban. ... The school - which is made up of seven prefabricated buildings - caters for children mostly from disadvantaged backgrounds. It has only two taps for the 564 pupils, with no electricity, books or stationery. Teachers at Quarry Heights primary school mark exam scripts outside because they don't have a staff room.

Overcrowding in schools affects both migrant and South African learners. In July 2011, the Gauteng Department of Education reported that the changing demographics in Gauteng, which is said to be largely influenced by migration of people to Gauteng, has “led to enormous pressure on the education system, resulting in overcrowding in many of our schools” (Gauteng Department of Education 2011, p.1).
Speaking at the CERT Cape Town workshop a representative of the South African Democratic Teachers' Union (SADTU) said that it was common for schools in the Western Cape to have a learner teacher ratio of 1:60 in one class. According to Mnikelo NhlaLo of SADTU, “The situation is so serious that in many schools, teachers cannot teach but are merely managing and controlling crowds.” NhlaLo further argued, “We have a real problem with a shortage of desks in the classroom” (M. NhlaLo, Personal Communication, 20 October 2011). Teachers in Maitland High also noted that the classrooms were too cramped as they were originally built to accommodate 20 – 30 learners (Mackay 2011).

Access to quality education still remains income and social class based. A. Leghava the principal of Musina High School which caters for migrant learners from Zimbabwe also speaks to other inadequacies:

The one particular challenge that we are facing is that we do not have enough ECD [Early Childhood Development] and primary schools. There are talks with the local municipality and the government about a need to build new ECD centres at each school. Our school does not have adequate facilities such as a school laboratory, library and sports field and these problems are compromising the quality of education (A. Leghava, Personal Communication, 16 November 2011).

Barely nine kilometers away from Musina High School is another high school called Eric Louw, a former white school that has the necessary infrastructure and personnel to provide quality education.

The CERT study found that documentation was a common and serious problem facing migrant learners in all provinces. Migrant children are often turned away from school because they do not have birth certificates and other forms of documentation (Mackay 2011; Hlatshwayo 2011; Sibanda 2012).

A.C. Serote of the National Department of Education responds to the problems of documentation facing migrant learners and unaccompanied minors:

... If the parent is unable to submit a birth certificate, the learner may be admitted conditionally until the copy of the birth certificate is obtained... (cited in CERT 2011, p.10).

In some suburbs of Johannesburg where some migrants live schools are unaffordable because of the high school fees. This then compels parents of migrant children and working class children in general who live in these areas to send their children to non fee-paying schools and pay the transport costs. Peter Khungwe, a migrant who lives in the Inner City of Johannesburg, says,

Some of these schools are not available to poor migrants because they behave like private schools. Getting the money is the biggest challenge. Government should subsidise schools. Parents who get R5 000 per month and do not own houses and property cannot afford school fee...You can't send your child to a school that charges R25 000 a year. (P. Khungwe, Personal Communication, 16 June 2011).

Eunice Ruweni, a migrant woman from Zimbabwe and mother of a disabled learner, with the assistance of a migrant support organisation in Cape Town called People Against Suffering, Oppression and Poverty (PASSOP), shared the research she conducted on disabled migrant access to education with CERT (Eunice Ruweni, Personal Communication, 9 June 2011). The research showed that disabled migrant children faced severe discrimination in education. The problems faced as a result of discrimination at school are compounded by the fact that disabled children have special needs such as equipment and special transport resulting in greater costs. Ruweni lamented, “The taxi driver forces me to pay for my fare, my son’s and for the wheelchair. It’s money that I just don’t have.” (Eunice Ruweni, Personal Communication, 9 June 2011).
The research and small-scale survey conducted at the Musina High School in Limpopo, Johannesburg High School in Gauteng and Maitland High School in Gauteng revealed that migrant learners and their parents were not aware of their rights as enshrined in the South African Constitution and laws that govern access to education. For example, documentation should not stand in the way of migrant learners accessing education and yet this is one of the issues that undermine access to education.

**Resilience and Solidarity**

Despite general humiliation and adversity, the desire to continue with education remains paramount. The CERT research supports the views of others who refer to the 'focussed dispositions' of migrant learners and how the memory of their various hardships serves as a set of inner resources and social competencies (Foubister & Badroodien, 2012). Hemson (2011) refers to these strategies as a form of resistance against the negativity of xenophobia displaying both a sense of cosmopolitan identity and an elevated sense of aspiration. An instance of this quality was starkly shown at the height of the xenophobic attacks when children from migrant communities displaced from schools continued their learning under very difficult conditions (Monama, 2008). On the East Rand some migrants used the Rand Airport camp near Germiston as their living space during the attacks. Lessons took place in a disused double-decker bus at the camp. The top section of the bus was used as a classroom and catered for two grades at a time. Younger pupils attended classes in the lower section of the bus and a tent that was divided into four classrooms. The centre catered for 76 pupils from Grade One to Grade Twelve (Monama, 2008).

Monica Kibera narrates,

> My sister (17) and I decided to come here and study. However, it was not easy at all. We were hungry throughout the journey because we only had money for transport. We crossed through the Limpopo River even though I was scared because we did not have passports.

She spoke about the difficulties they faced in South Africa,

> When we got here, we asked people where Zimbabweans are sheltered because our neighbour had told us that there is a place of shelter for Zimbabweans. The police arrested us... At the police station however, there were people that I came to know later... from Child Welfare. They stopped the police from deporting us because we are minors...I want to stay here and study. I want to be a social worker and help others and be like the social workers who stopped me from being deported.

Kibera is now attending alternative classes offered by Save the Children in Musina. (Monica Kibera, Personal Communication, 16 November 2011).

Kader Mohamed an orphan, left Somalia at the age of 17 in February 2010. He travelled through Kenya, Tanzania and eventually into Mozambique. Along the way, he became part of a group of Somalis who were also on their way to South Africa. He says,

> We looked after each other. We made sure that we had security. In Mozambique, I contracted malaria and I had to separate from the group. They left me behind in Mozambique where I almost died. I knew they had to leave me but when I was alone in the hospital, I felt like I was losing another family (K. Mohamed, Personal Communication, 2 June 2011).

He was cured and continued his journey:

> ... I met up with another group and together we were smuggled into South Africa in a truck at night. We were about 100 people in that truck. When I come to South Africa, I had no permit
and no family but other Somalians could see my struggle and took me in. I live with them now in Bellville. I am happy now; I have food and a place to sleep. For that I help at the shop and with business (K. Mohamed, Personal Communication, 2 June 2011).

When asked what his hopes and dreams are, he replied, “All I want is to have peace and a good education. I have finished standard 6... There are opportunities to study here that you cannot get in Somalia because of all the fighting” (K. Mohamed, Personal Communication, 2 June 2011).

Language is a difficult question not only for migrant learners but also for South African learners. English is a dominant language of instruction in South Africa. African languages remain undeveloped. For migrants coming from French and Portuguese speaking African countries, language is a real obstacle that stands in the way of accessing education in South Africa (Motha and Ramadiro, 2005).

Kajaal Ramjathan-Keogh, an attorney working for the public litigation organisation, Lawyers for Human Rights, also reflects on language difficulties. She states,

We have had some positive cases. If I remember from the end of 2009 or 2010, there was one student who got the highest mark in a school examination. This Congolese child got the highest mark in Afrikaans... Most [African] students do not do well in Afrikaans. We have also had refugee students who have done well in schools but this was because the child had the right kind of environment. (K. Ramjathan-Keogh, Personal Communication, 26 July 2011).

Nasima Bhashir, a determined young woman from Somalia who had to move from Port Elizabeth to Durban and then to Johannesburg in her search for education, also reflects on the challenges of having to pay exorbitant school fees. She also mentioned the support received from some principals:

We are nine kids in my family. I had not finished school. When we moved to Durban I had to beg the principal for the whole week to allow me to do Grade 11. I was about 18 years and had not completed my primary education. I could not go back to a primary school because of my age. Eventually he [school principal] allowed me to register as a grade 11 learner on condition that I would have to do well. I worked so hard and did very well. I then moved to Johannesburg. I then finished ABET level 4 which is equivalent to matriculation in Johannesburg. We only had to pay R100 for the whole year. The ABET teacher gave us some contacts for bursaries so that we could go to higher education institutions but we were told the bursaries were only for the South Africans (N. Bashir, Personal Communication, 7 June 2011).

This story of resilience indicates that Somali women are not just hapless victims of gender discrimination and xenophobia but rather are determined to shape their future and education.

The following vignettes evident throughout the CERT study show the increasingly important role South African civil society can play in supporting migrants. An inspiring example is that of Gladys Mokolo from Orange Farm, an informal settlement in Gauteng. Mokolo belongs to the Kganya Women's Consortium, is a member of the Orange Farm Water Crisis Committee and co-ordinates a crèche that regardless of documentation, accepts all children. This is significant since the lack of appropriate documents such as birth certificates has served as a frequent impediment for enrolment in pre-schools and schools. Primary schools in the area accept progress reports from her crèche as valid documentation. This means that migrant children are also able to benefit from this arrangement because they merely have to submit a progress report from her crèche.

CERT researcher Mackay (2011) provides examples that show South African civil society organisations such as the People Against Suffering, Oppression and Poverty and the Agency for Refugee Education Skills and Advocacy are picking up the challenge where the state is found wanting.
In Cape Town researchers also refer to some schools and organisations such as the Children's Movement which campaign against xenophobia (Mackay, 2011).

Sibanda's research for CERT in Limpopo highlights initiatives such as the Children's Committees in Musina which provide migrant children with the opportunity to integrate with local children (Sibanda, 2012).

There were positive examples of human solidarity in schools even during the xenophobic attacks of May 2008. According to Germain Mauridi of the Refugee Children's Project,

Just after the May attacks in 2008, there were refugee children who could not attend school. They were in police stations. Some [South African] children went to a school principal and asked about the disappearance of refugee children. They then collected blankets and food. They went to a police station and donated these items to refugee children. This was emotional (G. Mauridi, Personal Communication, 6 June 2011).

Jane Phiri, affectionately known as Magogo (grandmother), was born in Musina yet speaks Shona and the Zimbabwean dialect of IsiNdebele fluently. Her work with migrants started in the early 2000s. Together with five other women she started feeding a group of homeless children in the city centre every night. The elderly women contributed food from their own homes. However, travelling to town every night became increasingly difficult and instead they decided to invite the children to their church for food. At this point, the Magogo's Uniting Dutch Reformed Church Women's Shelter did not offer any shelter facilities. It started offering shelter facilities in 2008 and the number of migrants who have passed through the church since its establishment stands between 3500-4000. Although the shelter is open to all vulnerable groups, the majority of those who visit her for help are migrants. Most of the migrants are survivors of omagumaga. She helps migrant learners to access education and other basic services from organisations, government departments and institutions such as Doctors without Borders, Musina Hospital, Department of Social Development, welfare organisations in the area and local schools (Sibanda, 2012, pp.13-14).

The 'Three2Six' Project provides free schooling to migrant children who are unable to access public schools. The donor-funded 'Three2Six' Project at Sacred Heart College in Johannesburg - now in its fifth year - uses classrooms vacated by the school's regular pupils during the afternoons, to teach refugee children up to Grade 6 level. The project also employs teachers who are migrants themselves (IRIN, 2012).

In early 2011, Manjoro and several other unemployed teachers from Zimbabwe and elsewhere decided to start a project that would assist in meeting the need of local refugee and migrant children. Word spread and today iThemba Study Centre accommodates about 140 children in five cramped classrooms on the first floor of an office building in Berea. In the mornings the centre is open to pre-primary pupils and in the afternoons, seven volunteer teachers teach grades 1-8 using donated textbooks (Ibid., 2012).

Both iThemba Study Centre and 'Three2Six' project receive no public funding nor recognition from the Gauteng Department of Education (Ibid., 2012).

Kenneth Tafira, a Doctoral Candidate at Wits University and a migrant from Zimbabwe, became involved in the Education Indaba Forum, an organisation which organised migrant learners and parents in Johannesburg between 2004 and 2007. He had this to say about the history of the migrant education rights organising initiatives,

The Education Rights Project at Wits Education Policy Unit (EPU) and other formations of migrants and NGOs formed the Education Indaba Forum in mid 2000s. We worked with schools in Yeoville/Hillbrow/Berea because that area has a concentration of migrants. It was easier to work in that area. It becomes more difficult in places where there are fewer migrant learners. We used to take the Education Rights Project booklets to schools. This was
used to also educate the authorities at school (K. Tafira, Personal Communication, 13 June 2011).

The networks of solidarity as discussed by Tafira need to be strengthened in order to create a generalised human rights culture which protects and advances the rights of migrants learners in schools.

Implications of the study for school professionals

As part of curriculum reform and the promotion of human rights in schools, teacher training must incorporate strategies combating xenophobia and promote the rights of migrant learners. Continuous teacher and school development, courses and workshops on xenophobia and the rights of migrants need to be offered to teachers and school administrators.

School professionals, school principals and School Governing Bodies (SGBs) may consider using various platforms for ensuring that migrants are able to have a voice in schools. This may include having migrant parent representation in SGBs and learner representative councils need to also ensure that migrant learners have a voice.

Disciplinary and remedial actions have to be taken against teachers and learners who violate the rights of migrant learners. This study also revealed that migrant learners feel that there is a culture of impunity in schools and their rights were less important (CERT, 2012).

The interventions of school psychologists are crucial to ensure that migrant learners who are victims of abuse receive counselling so that they can regain their self-esteem and confidence. The whole school environment should enable migrant learners to approach school psychologists, teachers and school administrators about the violation of their human rights.

As proposed by Kruger & Osman (2012), a broader campaign on xenophobia in schools and society at large is critical because xenophobia exists in communities and spills over to schools. One of the recommendations that emanated from the CERT workshop in Johannesburg was that human rights organisations, religious formations and social movements have a role to play in campaigning against xenophobic acts perpetrated by some government institutions and individuals (Hlatshwayo, 2011).

Conclusion

The project examined in great detail the barriers and violations of the right to education encountered by migrants in Gauteng, the Western Cape and Limpopo; government policy and practice on this issue as well as that of school governing bodies, school management teams, trade unions and local municipalities. It included education rights awareness amongst migrant communities, South African social movements and those accountable to ensure the provision of education.

The CERT research strengthens the literature which moves beyond perceiving migrant learners and their parents as mere victims of violence and trauma. Besides individual and collective resilience, migrant learners and their parents also rely on solidarity from migrant organisations and civil society. These networks of solidarity play a key role in affirming migrant learners and migrants in general as social agents but they also enrich local inhabitants and school professionals culturally and pedagogically while providing an opportunity to reaffirm the humanising purpose of education. The latter praxis is essential to ensure that our constitution and the various education policies and legislation meant to promote human rights and advance the rights of all children become more than mere words on paper.
References


**Appendix 4**

Presentations at the Gauteng Workshop on the National Legislative Framework and International Instruments on the Education Rights of Refugees
THE ACCESS TO EDUCATION FRAMEWORK IN SOUTH AFRICA

INTRODUCTION

The Constitution of South Africa guarantees the right to free, compulsory and all-encompassing basic education. The legally mandated length of compulsory education is nine years.

The right to basic education is not qualified by the phrases 'within available resources' or 'progressive realization of the right' as is found in many of the other socio-economic rights provisions of the constitution.

In October 1993, South Africa signed a bilateral agreement with the Office of the United Nations High Commissioner for Refugees. In 1993, the UNHCR Policy on Refugee Children, which applies to all persons of concern to the office under 18 years of age, was adopted.

The implication of this is that resources as well as progressive realization.

The implication of this is that resource constraints would not be applicable in determining the content of the right to basic education.

The right to education for asylum-seekers was an issue dealt with by the South African Human Rights Commission (SAHRC). Originally, in terms of the regulations of the Act, a prohibition on work and study was indicated in all asylum applications, more commonly known as section 22 permits.

The commission called this limitation into question as being unconstitutional, and the prohibition was eventually lifted in cases of children so that they would be entitled to start school immediately.

The prohibition has been lifted completely through the decision in Mabiza and Another v Minister of Home Affairs and Two Others, where the restriction was considered unconstitutional.

In the letter Minister Amosa reiterated that require and asylum seeker children would enjoy all rights and privileges (access, support etc.) that the constitution and the South African Schools Act provided to learners.

In the case where applicants do not have the necessary residence status (i.e. a valid permit that clearly states their residence status), school principals would be obliged to register or admit them to the school but would also be expected, under the law, to report such cases to the relevant authorities, namely the Department of Home Affairs.

THE RIGHT TO EDUCATION IN TERMS OF THE SOUTH AFRICAN CONSTITUTION

Section 28 (1) (a) of the South African Constitution provides that everyone has the right to a basic education, including adult basic education.

The bill of rights in the South African Constitution states that access to education is a basic human right for everyone, including nationals and non-nationals.

This means that the right to basic education is an immediate right, unlike the right to further education, which is subject to available resources as well as progressive realization.
The Refugees Act incorporates both the UN and OAU conventions on refugees into domestic legislation and contains various provisions on the status of refugees and asylum seekers. It provides a comprehensive definition of who constitutes a refugee in South Africa.

Refugees Act cont

Article 21 (g) of the Refugees Act contains a provision that refugees are entitled to the rights provided in the bill of rights of the constitution and this states that:

Refugees as well as refugee children are entitled to the same basic health services and basic primary education which the inhabitants of the republic reserve from time to time.

South African Schools Act, 84 of 1996

The South African Schools Act, 84 of 1996, provides for compulsory school attendance for the age of 7 years until 15 years of the child, whereas the Act provides for the schooling of children who are absent from school:

As far as the admission of learners to public schools is concerned, section 5 of the South African Schools Act is unequivocal in guaranteeing admission without discrimination.

Public school may not admit learners and serve their educational requirements without unfairly discriminating in any way.

The governing body of a public school may not administer any test related to the admission of a learner to a public school, or direct or authorize the principal of the school or any other person to administer such test.

A learner may be refused admission to a public school on the ground that he or she is unable to pay or has not paid the school fees determined by the governing body under section 59.

The school is not authorized to charge a fee to the learner if the school has refused to enter into a contract in terms of which the parent waives any claim for damages arising out of the education of the learner.

Paragraph 6 states that it is particularly important that all eligible learners of compulsory school-going age are accommodated in public schools.

Paragraph 9 declares that the admission policy of a public school and the administration of admissions by an education department must not unfairly discriminate in any way against an application for admission.

It is categorical that this policy applies equally to learners who are not citizens of the Republic of South Africa who have parents in possession of a permit for temporary or permanent residence issued by the Department of Home Affairs.

Practical Application of Education Legislation and Policy in Schools

Language

Age

Xenophobia

Foster children

Parents interaction with schools

CERT WORKSHOP

University of Johannesburg

Presentation Outline

• Migration / Immigration / refugees
• International Instruments
• National Legislative Framework
• DBE effort in accommodating the right to basic education for children of migrants, refugees, and asylum seekers

CERT WORKSHOP

University of Johannesburg

Migration refers to the movement of people from one place to another.

* Documented migrant / immigrant – a citizen of another country who enters the country with a view to residing permanently, and has been granted or has applied for permanent residence of that country

* Undocumented migrant / illegal migrant – a person who entered the country without proper documentation

CERT WORKSHOP

University of Johannesburg

03 November 2011

Presenter: Dr AC Seete
Department: Social Cohesion & Equity in Education, National Department of Basic Education

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## Appendix 5
### Presentations at the Limpopo Workshop

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### Education Rights in Jeopardy: The Position of Asylum Seeking Students at South African Universities

#### Introduction

The world situation, especially in the current era of globalisation, has seen a surge in the number of asylum-seeking students. This phenomenon poses significant challenges for universities in South Africa. This presentation aims to explore the legal framework governing the rights of asylum-seeking students and the implications for higher education institutions.

#### Problem Statement

This presentation highlights the need for a comprehensive policy that addresses the unique challenges faced by asylum-seeking students in higher education. It argues for the recognition of these students as legitimate members of the university community, entitled to the same educational opportunities as their counterparts.

#### Legal Framework for Asylum Seeking Students

1. **Refugee Status**: A student may be considered a refugee if they meet the international criteria for refugee status as defined by the 1951 Convention relating to the Status of Refugees.
2. **Asylum-seeking**: An asylum seeker is someone who applies for asylum in a country, seeking protection because they face threats to their life or freedom.
3. **Rights**: Asylum seekers have eligibility for education and must be treated with respect and dignity.

#### The Right to Education in the South African Constitution

- **Article 27**: The right to education shall be achieved by the state, consistent with the requirements set out in this Constitution.
- **Section 10**: The right to basic education, including free primary education, is hereby recognised and shall be promoted for access, particularly for children from disadvantaged backgrounds.

#### Position in International Law

- **UNHCR Guidelines**: Provides guidelines on the rights of refugee students and asylum-seekers in higher education.
- **International Covenant on Education**: States that all states bound by the Covenant must ensure that all sectors of the educational system are available to the child.

#### Conclusion

1. It is crucial to ensure that all students, regardless of their immigration status, have equal access to education.
2. Special attention should be given to the educational needs of asylum-seeking students, ensuring they are not discriminated against.
3. Collaboration between universities, government agencies, and international organisations is essential for a comprehensive approach.

### Infringement of Rights of University

- **Compulsory Impact**: The presentation examines the implications of infringing on the rights of universities and students, emphasizing the need for a balanced approach.
- **Policy Recommendations**: Proposes measures to address the challenges faced by asylum-seeking students, including the provision of financial aid and support services.

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**Musina Legal Advice Office**

Presentation by M. James Chirwa

Musina Community - Migration & Xenophobia

Xenophobia threats

- The xenophobia phenomenon represents an aspect of the political cultural and social milieu in which the project is implemented. Xenophobia is not a simple tipping point; it is a social and political phenomenon that is deeply rooted in a complex web of historical, economic, and social factors. Xenophobia manifests in various forms, including direct attacks on individuals and communities, and indirect forms such as discrimination and segregation.

- The project aims to address xenophobia by promoting tolerance and understanding among different communities. It involves creating awareness campaigns, providing legal advice, and facilitating dialogue between communities. The project also seeks to empower local communities to address xenophobia proactively.

Project Name

- Support to South-African Government to create Communities of Diversity and Peace
Objective of the project
The objective of the project is to raise awareness in communities about:
- Diversity, acceptance and tolerance of one another.
- Promote the black and white and the black and white aspects of society.
- Sharing of histories and culture.
- The need for unity and tolerance.

Project Description
- Project started in July 2011 and ended in March 2012.
- Owner of the South African Government.
- Funded by the European Union & UNHCR for Populations, Refugees and Migrants.
- Chair implementing agency: UNHCR.
- Executed by CTP through an implementing partner.
- Implemented by GOaL Limpopo/Free State/Cape Town/Cape Town

MLAO conducted
- Community profiling and mapping exercise.
- Identify migrant concentration zones.
- Community leadership structures (i.e. elected leadership, traditional leadership, CSOs, FBOs, business leadership, government personnel, etc.).
- Community service points (i.e. Police Stations, Hospitals, schools, etc.).
- Migrant Community organizations and leadership.

Challenges
- Incidence of crime.
- Identification of vulnerable groups.
- Migrant community representation.
- Reporting mechanisms.

Recomendations
- Support role by civil society organizations.
- Development of a dialogue with local government and civil society organizations.
- Awareness campaigns in communities of origin.

MLAO and five other NGOs capacitated on:
- Conflict resolution.
- Cultural Diversity.
- Peace building.
- Awareness raising.
- Community profiling.
- Monitoring and evaluation.

Peace Monitors are:
- A small number of community members.
- Visible and vocal in the community.
- Willing and able to share their experience and knowledge.
- Demonstrated respect for all human beings.
- Respected by other community members.
- A good communication role model.
- Trusted by both local and national authorities.

What can be done to improve the situation?
- Awareness campaigns.
- Dialogue and conflict resolution exercises between communities.

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BRIEF INTRODUCTION TO CENTRE FOR POSITIVE CARE
- Centre established in 1993 and officially registered in 1997.
- Based in Ixopo and operating mainly in KwaZulu Natal.
- Aims to reduce the spread of HIV and AIDS and improve the quality of life for people living with and affected by HIV and AIDS.
- Focus on prevention, care and support - major activities being peer education, lay counselling and home based care.
- Children need and benefit from accredited training programmes introduced as a result of demand for such services.

CHALLENGES CHILDREN FACE WHEN IN SA
- Bullying, rape and forced into drug abuse.
- Difficulties of securing identification papers.
- Lack of shelter (staying in open places expected to continue);
- Deportation (SHI-treated by government authorities);
- Source of cheap labour and poor remuneration.
- Difficulties in enrolling in school.

HOW DOES CENTRE FOR POSITIVE CARE INTERVENE?
- Educational interventions, support, educational plans, after school study, extracurricular activities.
- Protection, e.g. securing IDs.
- Health education.
- Psychosocial support.
- Nutrition and feeding scheme.
- Household economics, strengthening - income generation and food security.

The Children needs Programme
- Active in Thethila, Mdantsane and Mthatha Municipalities.
- 3000 children on current database (50% Care plans);
- Children of foreign nationality constitute only 0.01% and are mainly found in areas around Mthatha and remote rural areas;
- Children assisted by Magamigama to enter the country.
MOST NOTABLE ACHIEVEMENTS TO DATE

• Average 2000 toilets
• Since 2007, 400 children reunited with families
• 18 successfully completed vocational training at Melaphanda
• An HIV positive woman with three children assisted to secure shelter
• Meals or meals reached more than 5000 children with