

Mapping
Children
on the Move

with **Africa**



ACERWC

AFRICAN COMMITTEE OF EXPERTS ON
THE RIGHTS AND WELFARE OF THE CHILD

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MAPPING CHILDREN ON THE MOVE WITHIN AFRICA



NOVEMBER 2018

**AFRICAN COMMITTEE OF EXPERTS ON
THE RIGHTS AND WELFARE OF THE CHILD**

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LIST OF ABBREVIATIONS AND ACRONYMS

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACHPR	African Commission on Human and Peoples Rights
ACPF	African Child Policy Forum
ACRWC	African Charter on the Rights and Welfare of the Child
AU	African Union
CRC	Committee on the Rights of the Child
CRC	Convention on the Rights of the Child
DAC	Day of the African Child
DIIS	Danish Institute for International Studies
DRC	Democratic Republic of Congo
EAC	East African Community
EU	European Union
ECA	Economic Commission for Africa
ECOWAS	Economic Community of West African States
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
IHRDA	Institute for Human Rights and Development in Africa
INGO	International Non-Governmental Organizations
IOM	International Organization for Migration
REC	Regional Economic Community
RMMS	Regional Mixed Migration Secretariat
SADC	Southern African Development Community
UK	United Kingdom
UN	United Nations
UNDESA	United Nations Department of Economic and Social Affairs
UNHCR	United Nation High Commissioner for Refugees
UNICEF	United Nations International Children's Emergency Fund

PREFACE

The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) conducted a study on Children on the Move following concerns around the growing number of children on the move within the African continent. The Committee observed that there were challenges with regard to upholding the rights and welfare of children on the move and that there are gaps on the type of protection measures and treatment that is be accorded to such children within our beloved Continent.

It has also observed that this lack of a comprehensive response mechanism for protecting children affects them in different ways and that the impact as well as levels of vulnerability differs depending on individual situations. However, despite the different circumstance, in most cases children on the move are all exposed to similar patterns of violations of their basic rights. In some contexts, such violations have reached unacceptable levels that if not addressed risk becoming not only human rights violations but will become humanitarian and human development crisis.

Despite these challenges, responses to date often aim at addressing the phenomenon of movement of people without necessarily aiming at the protection of the children involved and without taking into consideration the best interests as articulated in the African Charter on the Rights and Welfare of the Child.

The study provides an overview of the situation of children on the move within Africa and assessed the extent to which Member States of the African Union have established normative and institutional structures to address the needs of children on the move in their territories. It presents an informed overview of the routes that children move along in within the continent, the reasons why they move and where these children move to as well as the risks that they are exposed to whilst on the move. The study also scrutinises the legal frameworks affecting child mobility in the continent.

The findings of the study shed light on the main challenges faced by children on the move with in Africa; including discrimination, arbitrary arrests, detention and deportation, child abuse and torture, loss of identity, name and nationality, lack of access to education and economic opportunities, child labour, trafficking, smuggling and exploitation, violation of the right to a family, parental care and protection, and denial of health services. In particular, the study found that most the fundamental rights of children on the move including their best interests are either not protected or are tacitly abused. For instance, the study indicates that there are situations where children on the move are returned to their countries of origin despite the threats they may face again and which triggered their movement in the first place. In sending them back to their countries of origin the best interest of the child is often disregarded and the reasons why they are on the move is often not explored.

The study thus seeks to draw attention of Member States to the need to urgently address the challenges that children on the move are facing. The need to develop and implement protection systems for such children requires commitment to the best interests of the child and other child protection principles. If developed such protection mechanisms provide a window of opportunity for effective and holistic interventions for children on the move.

I am sure that the findings of the study will be used to raise awareness on the different challenges faced by children on the move in Africa. It will also serve as a springboard for decision makers, governments, practitioners, civil society and inter-governmental organisations, researchers and others to put more effort in pushing for protection of the rights of children on the move, thus encouraging practical enforcement and enjoyment of children's rights.

Ms. Goitseone Nanikie Nkwe
Chairperson of the ACERWC

EXECUTIVE SUMMARY

Population movement is one of the most pressing contemporary global issues. This report provides an overview of the situation of the children on the move within the African Continent. It looks at the drivers, routes and the key challenges faced by children on the move within Africa. It also provides an assessment of the extent to which African Union (AU) Member States have enacted normative and institutional mechanisms to address the peculiar needs of the children on the move.

The study acknowledges that the current dominant narratives on movements focus on the negative aspects of migration – mostly pitting migrants seeking to move to developed countries. While indeed most data and studies have examined movement of migrants to the West, information is sparse on children on the move particularly within Africa. That is notwithstanding the fact that a large number of children are moving within the continent and that children are not shielded from both small-scale and large-scale movement of persons across the world, either accompanied or unaccompanied by parents or guardians.

For purposes of the study, children on the move is defined as children who have moved from their habitual place of residence to another place within or outside their country, or have been entrusted by their parents to guardians (*enfant confié*), voluntarily or involuntarily, accompanied or unaccompanied by their parents, caregivers or families either as internally displaced persons, refugees, asylum-seekers, economic migrants or trafficked persons and who may suffer or may be at risk of suffering exploitation, abuse, neglect or violence. In line with the scope and objectives of the study, the primary focus within this definition is on children moving within countries in Africa and across the borders of African countries.

In Africa, there are millions of children on the move, both within internal and international borders, with or without the company of their families. However, available research and data on children on the move is largely focused on their arrival at the end destination outside of Africa (e.g. EU). As a result, literature shows the existence of significant gaps in terms of geographic coverage with a bias towards children arriving in Europe. This renders the focus of this study largely unexplored in literature and research. Hence, adopting an exploratory research design, the study attempts to investigate and map out a problem with a view to stimulating further inquiry into the phenomenon. The study provides a preliminary but comprehensive information on the situation, nature, trends and responses to children on the move.

Children on the move are entitled to fundamental rights and AU Member States have an obligation to respect, protect and fulfill their fundamental rights; treating them primarily as children. Some of the rights that children on the move are entitled to include; non-discrimination, best interest of the child, the right to life, survival and development, right to food, shelter, health and health services, education, name and nationality, freedom from torture, cruel, inhuman or degrading treatment or punishment, protection from sexual exploitation and abuse and the right to parental care and protection.

The African Charter on the Rights and Welfare of the Child (ACRWC) as the principal norm-setting instrument for child rights and welfare in Africa guarantees these principles and rights in addition to others. The UN Convention on the Rights of the Child (CRC), which has been ratified by all African countries (recognized by the UN) has comparatively similar rights to those provided in the ACRWC. This Report evaluates the measures taken by states to protect rights of the children on the move based on standards guaranteed under the rights protected in the ACRWC and other relevant international human rights instruments.

The Report outlines several drivers that cause movement of children within Africa. Some of the drivers include conflict, trade and economic factors, human security, climate change, smuggling and trafficking among others. These drivers cause or affect movement of children depending on their sex, age, nationality, religion, needs, and their accompanied and unaccompanied status, the particularities of their family as well as myriad of other variables.

Movement of children is greatly influenced and responds to the various drivers. Often, the movement routes, means, transits and destinations, are not randomly selected but are influenced by activities in which children plan to be engaged in. This Report highlights various routes taken by children in their movement within Africa and from Africa to other parts of the world and attempt to distill information that can also help in understanding how movement occurs across gender groups. The routes include the western/northern route; the eastern route; the southern route, routes through the West and Central Africa into North Africa and the West Africa route. The Northern/Western route is used mostly by people moving from the East and Horn of Africa and other parts of Africa to Europe via the Mediterranean Sea. The Eastern route stretches into Yemen and Saudi Arabia and was the most popular route for movement from the Horn of Africa. The Southern Route joins the East and Horn of Africa to South Africa, with Kenya being the main hub of transit. In respect to the routes from West and Central Africa there are three primary routes into North Africa, which migrants often use but the central route through Niger is most popular. The West Africa route is usually used by persons and children within the region who are not always seeking to leave it.

This Report points out that although migration challenges affects almost all individuals, children on the move are more vulnerable. Children on the move face challenges such as discrimination, arbitrary arrests, detention and deportation, Loss of identity, name and nationality, lack of access to education and economic opportunities, sexual exploitation, trafficking, denial of health services among other hazards.

In addition to these challenges, the Report notes that there are several issues that result from weak legal and institutional frameworks. It is worth noting that states have sought to address some of the legal and institutional bottlenecks within the framework of their existing law. However, at certain times states either neglect other important areas leading to abuse of rights of migrant children or rely too much on inadequate frameworks. The Report also points out other emerging issues such as lack of regional coordination may result in additional abuses, existence of largely a one size-fits-all approach in tackling mobility of children and lack of documentation, data and statistics of children on the move.

Based on research undertaken in this Report, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) makes, among others, the following recommendations to Member States and relevant stakeholders:

Member States

- Countries of origin should put in place legislative and other measures that are focused on ensuring that children are not forced to migrate. This can be done by measures such as providing mechanisms to fight poverty, ensuring access to education and health facilities and taking steps to prevent conflicts.
- Transit and destination countries should put in place legislative and policy measures that protect and promote the human rights of the children on the move. For instance, border control measures should not include detention of children and children on the move should not be subjected to discrimination or torture. Social and economic goods such as food, health services including sexual and reproductive rights and education in countries of transit and destination should be availed to children on the move.
- Deliberations, policy and legislative initiatives on migration in countries of origin, transit and destination should take into consideration opportunities available to end peculiar challenges faced by children on the move. The deliberations, policy and legislative initiatives should be undertaken through a transparent, accountable and participatory process.
- Pursuant to the principle of non-refoulement, transit and destination countries should ensure that children are not returned or taken to a country where their rights may be violated. Moreover, children on the move should not be returned or removed from a transit or destination country as a punitive measure.
- States must recognise all persons under the age of 18 as children notwithstanding their immigration status and should not allow enforcement of immigration policies in a manner that is inconsistent with the best interests of a child and should ensure that immigration officers are properly trained in order to ensure that best interests of the child are protected in the course of enforcement of immigration policies.
- State Parties should take measures to identify the push and pull factors that result in the movement of children that could potentially endanger their rights and welfare and adopt measures to prevent such movements by addressing the drivers that are not in the best interest of the child.
- States of origin, transit and destination should put in place transnational measures of child welfare agencies to ensure that rights of children are protected and to guarantee that administrative hiccups or challenges due to differences in approach to immigration processes do not lead to violation of children on the move. For instance, there should be coordinated establishment of common regional policies for the administration of migration within Regional Economic Communities taking into consideration peculiarities of circumstances in different states.
- States of origin, transit and destination should strengthen measures to combat

smuggling and trafficking particularly in children. For instance, police, immigration officials and other law enforcement agencies in states of origin, transit and destination should share information in respect to trafficking of children, routes used for trafficking etc. This will ensure safe and legal channels for children to move within Africa and to seek refuge and shelter where necessary.

- Transit and destination states should ensure that unaccompanied children are provided with foster care or supervised independent living and integration into the community. Most importantly, states should ensure that children are not separated from parents and where separation has taken place, children should be reunited with their families or relatives.
- States in their reports on the implementation of the Charter, should present as far as possible comprehensive information on migrant children. This should include policies and challenges faced by children on the move as well as dis-aggregated data in terms of age, gender, unaccompanied or separation status of children.
- Member States should treat the situation of children on the move as a child protection issue and view children on the move foremost as children regardless of their status and to take all necessary measures to protect children on the move in their respective territories – this should be clearly reflected in national laws meaning protection is not limited to nationals.

Partners and Civil Society

- The Committee notes that international agencies (e.g. IOM, the UNHCR and UNICEF) are increasingly recording children on the move in their statistics. While the Committee commends international agencies for these efforts, it notes that most data (although not all) is available with respect to children moving outside of the continent and would encourages international agencies to also record data relevant to children on the move within the continent.
- Provide technical and resource support to the ACERWC to undertake protection and promotion activities on children rights specially to address human rights challenges faced by children on the move.
- Share data where relevant and possibly also discuss with ACERWC data gaps, which could be filled through a partnership with civil society.
- Support Member States to address legal, policy and institutional gaps in children rights protection especially strengthening their capacity to ensure the best interests of the child are upheld.

CHAPTER 1 INTRODUCTION

Globally, there were about 244 million international migrants in 2015, which translates to 3.3% of the world's population and an estimated 740 million internal migrants.¹ A notable statistic is the growing number of people who are being forced to migrate within borders and outside due to conflict, trade and economic factors, human security, smuggling and trafficking among others.²

Children are not immune to both small-scale and large-scale movement of persons across the world, either alone or with their parents. Children on the move, as they have been described in various literature, include children who are moving, either voluntarily or involuntarily, with or without their parents, guardians or caregivers, within or outside their countries and who, though open to the benefits of movement, are also at risk of economic or sexual exploitation, abuse, neglect and violence.³

While migration challenges affect all persons on the move, children on the move are more vulnerable and at risk of exploitation, abuse, and suffer the hazards along their migration route and destinations. Children bear the brunt of the perceptions of migrants as social and economic burdens on receiving states, criminals, nuisances or as stateless persons. Consequently, their most fundamental rights including their best interests are either not protected or are tacitly abused.

In some cases, contrary to global and regional human rights and child rights standards such as best interests of the child, migrant children are returned to their countries of origin or within the same country, to the situations or places that engendered their movement in the first place. These violations are also occasioned by inadequate national legal and policy frameworks to identify and protect children on the move. The dearth of relevant statistical data on children on the move further compounds the already grave situation created by inadequacy of effective laws and policies and limited implementation.

Furtherance to its mandate to undertake relevant studies and assessment of situations on problems concerning the rights and welfare of the child in Africa,⁴ and with a view to making recommendations for addressing such problems to Member States, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), has identified children on the move as one of the emerging issues in child protection in Africa. The Committee has therefore commissioned the present study to map children on the move within the African continent.

1.1 Definitions

The term 'children on the move' gained prominence in child rights discourse between 2000 and 2010 and was used to describe children who had left their places of habitual residence to other places within or outside their countries.⁵ The term has since been expanded and applied by different institutions working for and with children to cover a wider spectrum of children in different forms of migratory situations. One such broad definition adopted by Terre des Hommes and which reflects the objectives of this study is as follows:

1 International Organisation for Migration (IOM), World Migration Report 2018 (2017) IOM p 2.

2 IOM (2017) as above.

3 IOM, Children on the Move (2013) IOM p 7.

4 Art 42(a)(i) of the African Charter on the Rights and Welfare of the Child.

5 Vella K, 'Power, paternalism and children on the move' (2016) Journal of International Humanitarian Action 1:3 at p 3. Available at <<https://jhumanitarianaction.springeropen.com/articles/10.1186/s41018-016-0003-y>> (last accessed on 30 March 2018).

Those children who have left their place of habitual residence and are either on the way towards a new destination or have already reached such a destination. A child [on the move] can move across State borders, or within the country. S/he can be on the move alone, or in a group with family members, other adults and/or children, known or unknown previously to the child. Moreover, a distinction can be made among the various children on the move, based on the reasons behind such movement. The four categories concerned are:

- a. Internally displaced persons;**
- b. Asylum seekers and refugees;**
- c. Migrants (i.e., for economic reasons or due to climate change, both internally and across borders);**
- d. Trafficked persons.⁶**

A former UN Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante, also defined children on the move as:

[M]igrant children taking an active part in the migration process, particularly at the passage and arrival states in countries of transit and destination. They may be found, inter alia, migrating with their family members or independently, to seek opportunities at both the educational and employment levels. They may also be found entering host countries to rejoin migrant members or the family, being relocated or sent by families to stay with relatives or friends in third countries or, as the Special Rapporteur has documented, sent by family members to find work abroad and send part of their earnings home.⁷

Save the Children International describes children on the move as:

Those children moving for a reason, voluntarily or involuntarily, within or between countries, with or without their parents or other caregivers and whose movement might place them at risk (or at an increased risk) of economic or sexual exploitation, abuse, neglect or violence.⁸

Literature on children on the move⁹ also identifies the term in French, as ‘un enfant mobile.’ The translation of the explanation of the term in English identifies children on the move as:

A child, who having left the place where he or she used to live, lives away for a significant period in terms of the change that occurs in his or her living conditions or identity.¹⁰

6 Dottridge M, What Can You Do to Protect Children on the Move (November 2012) Terre Des Hommes p 22. Available at <<http://destination-unknown.org/wp-content/uploads/Handbook-Children-On-The-Move-WEB.pdf>> (last accessed on 30 March 2018).

7 Bustamante J, ‘Migration and the International Protection Afforded to Children’ in Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights including the Right to Development, Report of the Special Rapporteur on Human Rights of Migrants Human Rights Council, A/HRC/11/7 para 52. Available at <<http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.7.pdf>> (last accessed on 30 March 2018)

8 Dottridge M, (n 6 above).

9 As above.

10 Dottridge states in French, ‘[U]n enfant mobile est un enfant qui, ayant quitté son lieu de vie habituel, en vit éloigné durant une période significative en termes de transformation de ses conditions de vie et de son identité.’ See Dottridge M, (n 6 above). p 23.

Based on these definitions, this study adopts the following definition of children on the move:

Children who have moved from their habitual place of residence to another place within or outside their country, or have been entrusted by their parents to guardians (enfant confié), voluntarily or involuntarily, accompanied or unaccompanied by their parents, caregivers or families either as internally displaced persons, refugees, asylum-seekers, economic migrants or trafficked persons and who may suffer or may be at risk of suffering exploitation, abuse, neglect or violence. In line with the scope and objectives of the study, the primary focus within this definition is on children moving within countries in Africa and across the borders of African countries.

1.2 Scope and Guiding Framework

The situation of children on the move revolves around the extent to which Member States respect and uphold the fundamental rights of the child, their protection and welfare as provided for under international and regional human rights treaties. The cardinal principles of child rights and other core rights that are mostly at risk while children are on the move include the best interest of the child, the right to life, survival and development, non-discrimination and child participation, right to food, shelter, health and health services, education, name and nationality, access to justice and the right to family.

The African Charter on the Rights and Welfare of the Child (ACRWC/the African Children's Charter) as the principal norm-setting instrument for child rights and welfare in Africa (which provides for these principles and rights in addition to others), forms the primary guiding framework for this study and the analyses of the information to be gathered. The UN Convention on the Rights of the Child (CRC), which has been ratified by all African countries (recognized by the UN) and which has comparable similar rights to those provided in the ACRWC, also forms part of the normative foundations of this study. The standards provided for in the specific rights protected in the ACRWC and other relevant instruments will be the key indicators against which the mechanisms established by States are evaluated.

The ACRWC also establishes the general obligations of f States, which is succinctly captured in article 1(1) as follows:

Member States of the Organization of African Unity, Parties to the present Charter shall recognise the rights, freedoms and duties enshrined in this Charter and shall undertake the necessary steps, in accordance with their constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter'.

This obligation prescribed under the ACRWC is similar to the obligation of the State under the African Charter on Human and Peoples' Rights (ACHPR) –which has been interpreted to be an all-encompassing one at four levels of duty, namely to protect, promote, respect and fulfil¹¹, through the adoption of legislative and other measures to give effect to the rights enshrined in the African Children's Charter.

11 Communication 155/96 Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria para 44.

The normative framework established by the ACERWC is also complemented by the ACHPR, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (PRWA), the OAU Convention Governing the Specific Aspects of the Refugee Problems in Africa and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention). In addition to these, are sub-regional instruments such as the Economic Community of West African States (ECOWAS) Protocol on Free Movement, Right of Residence and Establishment.

Child protection encompasses the full spectrum of standards and structures that protect children from violence, exploitation and abuse. This is translated into the laws, policies, regulations, standards and services that are available for protecting all children.¹² Child protection system should therefore include the following key components:

- a. The commitment of Governments to fulfilling the 'protection' rights of children;
- b. Legislation and enforcement mechanisms and institutions;
- c. Attitudes, traditions, customs, behavior and practices;
- d. Engagement of the media and civil society on issues affecting children;
- e. Children's life skills and participation;
- f. Capacity of persons in contact with children;
- g. Basic and targeted services; and
- h. Monitoring and oversight.

Working together in a symbiotic fashion, these components are to ensure an efficient system of prevention and response for children. Accordingly, the normative framework of the international, regional and sub-regional instruments coupled with child protection provide the overall context within which the study is conducted.

1.3 Objectives of the Study

The aim of the study is to provide an overview of the situation of children on the move within Africa and to assess the extent to which Member States of the African Union (AU) have established normative and institutional structures to address the needs of children on the move on their territories. Specifically, the study aims to achieve the following objectives:

- a. Mapping of the situation of children on the move within Africa, including internal movements;
- b. Identification of the 'push' and 'pull' factors including, but not limited to human rights situations, socio-economic conditions, climate or environmental risk, barriers and obstacles (legal, administrative, practice) for safe and regular movement of children both within and outside the borders of African countries;
- c. Identification of major migration routes, route-specific risks and protection gaps;
- d. Mapping and evaluation of the normative (legal, policy and administrative) and institutional mechanisms of AU Member States for:
 - i. Identifying children on the move within and outside their territories;
 - ii. Determining the magnitude of the challenges faced by children on the move on their territories;
 - iii. Responding to the challenges faced by children on the move in vulnerable

¹² UNICEF 'UNICEF's Approach to Child Protection' [Online]. Available at <https://www.unicef.org/protection/57929_57990.html> (Last accessed on 20 March 2018).

- iv. situations, including the girl-child and children separated from their parents; Registration and documentation of children on the move and for gathering data and statistics (disaggregated by sex and age) on children on the move within, outside and into their territories

1.4 Methodology

1.4.1 Research Design

Available research and data on children on the move is largely focused on their arrival at the end destination outside of Africa (e.g. EU). Much of the data also provides some insights as to the challenges encountered by children on the move during their journey (e.g. abuse including sexual, exploitation, forced labour, etc.) with a specific focus on transit countries (e.g. Libya). However, they provide scanty details on the response of transition countries – although information on specific countries could be sometimes collated through media reports and other official reports - nor does the available data cover the different countries through which many children move. As a result, the literature shows significant gaps in terms of geographic coverage with a bias towards children arriving in Europe, which is restrictive knowing that 80% of migration in Africa occurs within the continent; limited analysis of frameworks and responses of African countries; and little analysis on the pull and push factors. This renders the focus of this study largely unexplored in literature and research. This study therefore adopts an exploratory research design.

The primary purpose of the exploratory research design is to investigate and map out a problem with a view to stimulating further inquiry into the phenomenon.¹³ The choice of an exploratory research design is also to ensure that the study can provide preliminary but comprehensive information on the situation, nature, trends and responses to children on the move. It is to further facilitate the collection and analysis of information on the children on the move to inform the necessary interventions by States, the ACERWC and other stakeholders.

Given the resources allotted for the study and the breadth of the problem in Africa, the research largely focused on desk work with targeted interviews with key informants. It adopted a regional case-study approach that seeks to present the issues through an examination of sub-regional situations, namely, Central, East, North, Southern and West Africa. While specific country cases are cited where possible to promote learning, the data is presented from the prism of the five geographical regions of the AU. The data and case studies will be analysed along the following key issues:

- a. The extent to which children are on the move in the five geographical regions of the continent with a focus on the drivers (push and pull factors);
- b. Regional responses (political, legislative, policy and institutional) to challenges faced by children on the move in Africa;
- c. The level of commitment and compliance to regional normative standards (ratification, domestication and implementation of key treaties including state reporting).

In terms of data, the study relied on existing primary data available through different data portals of the UN System; including the UN Department of Economic and Social Affairs (UNDESA), the UN Refugee Agency (UNHCR), the UN International Children's Emergency Fund (UNICEF),

and the International Organisation for Migration (IOM). The data as presented in the study was therefore inevitably shaped by the type of data available and its structure (e.g. gender and age disaggregation). The study also relied on information emerging from interviews with children as collected by the IOM and the UNHCR. Due to time and resources constraints as well as respect for the ethics code in relation to the conduct of interviews with children, the research did not seek to collect additional primary data from individual member states nor through direct interviews of children.

1.4.2 Research Tools

The study adopted a mixed method approach to data collection. This includes collection of both primary and secondary data through desktop research and interviews with key informants. The research tools employed an interview guide for key informants at the regional level – primarily during the ordinary sessions of the ACERWC - and a desk review of the relevant legislation, policies, programmes and other interventions for children on the move by AU Member States in Africa. The choice of these tools is informed by the resources available as well as the fact that the study is primarily qualitative, given the specialised nature of the subject being studied, children on the move, and therefore requires collection of data from experts on the subject.

1.4.3 Interview with Key Informants

The research team interviewed key informants to elicit necessary information to address the research questions and to meet the objectives of the study. The aim is to obtain expert information on the causal factors for movements of children, patterns of movement, challenges and instances of violations of the rights of children on the move, national institutional and normative frameworks for protecting children on the move and recommendations for improving the protection of children on the move.

The key informants for the study were principally drawn from the regional, sub-regional and national levels and include the following persons. The sampling method was purposive, in view of the technical nature of the study.

- a. Members of the ACERWC;
- b. Staff of the Secretariat of the ACERWC;
- c. Staff of the RECs Secretariat;
- d. Staff of UN Agencies at sub-regional and national levels;
- e. Staff of national agencies responsible for migrants and refugees;
- f. Civil Society Organisations and INGOs working with children on the move and child protection in general; and
- g. Children on the Move where possible and appropriate.

1.4.4 Desktop Research

The desktop research gathered information on regional, sub-regional and national standards (treaties, laws, policies, programmes and other interventions) for children on the move as well as other standards addressing migration in general. Other research on migration in Africa and children on the move on the continent was also collected and analysed and the relevant information incorporated in this study.

1.5 Study Limitations

There are two key limitations.

First, the scope of the study determined the depth and breadth of the study. As noted above, the purpose of the study is primarily to mapping the routes, push and pull factors, challenges and remedies with regard to children on the move. It did not aim to provide a comprehensive assessment of the degree to which countries are responding to the challenges faced by children on the move. As a result, the study focuses on the regional dimensions with snapshots provided, as much as possible, on country specific cases.

Second, due to resource limitations, the study is largely based on desk top research and complemented by data and information with key informants gathered during the ordinary sessions of the ACERWC, as well as unstructured interviews while participating in relevant convenings on the subject by the consultants.

CHAPTER 2 NORMATIVE AND INSTITUTIONAL FRAMEWORK

2.1 Cardinal Principle on Children Rights

The United Nations Convention on the Rights of the Child (CRC) is the principal global norm setting instrument on child rights. It has been ratified by all Member States of the UN (including all AU Member States recognized by the UN), except the United States of America (USA).¹⁴ The CRC provides for a broad range of rights spanning civil, political, economic, social and cultural rights of the child and includes the four cardinal principles of children's rights, namely: the best interest of the child,¹⁵ right to life, survival and development,¹⁶ non-discrimination¹⁷ and child participation.¹⁸

At the regional level, the ACRWC is the foundational instrument for the protection of child rights and welfare. Notably, the ACRWC has been ratified or acceded to by 48 African States.¹⁹ To date, February 2019, the African States that have not ratified or acceded to the ACRWC include: Tunisia, Democratic Republic of Congo, Morocco, Sahrawi Arab Democratic Republic, Somalia, South Sudan and Sao Tome & Principe.²⁰ Although the ACRWC shares a lot in common with the CRC, the tenor of the Charter reflects the circumstances of African children, filling in some gaps in the CRC, such as the protection of internally displaced children, protection of the rights of children living under apartheid and protection from harmful social and cultural practices.²¹

Furthermore, with the process to develop child protection systems at the level of the African Regional Economic Communities (RECs), the ACRWC remains a key instrument. Indeed, while the East African Community (EAC) has developed a Child Policy based on the ACRWC, among others, some regions (e.g. ECOWAS and SADC) are currently pursuing efforts to develop protection mechanisms at the REC level, such process are at an early stage.

The ACRWC also provides for the four foundational principles of child rights mentioned above as well as a comprehensive list of rights, spanning all three conventional generations of rights. The Charter is also unique in its provision of the duties of the child.²² Likewise, the ACRWC, though it does not specifically mention children on the move as a broad category, it has provisions, under article 23, which directly address the situation of some categories of children, such as refugee children, which also apply, mutatis mutandis to internally displaced children.

14 The USA has signed the CRC but not ratified it. For the full list of ratifications, see <<http://indicators.ohchr.org>> (Last accessed on 3rd March 2018).

15 Art 3 of the CRC.

16 Art 6 of the CRC.

17 Article 2 of the CRC.

18 Arts 12 of the CRC.

19 See List of Countries Which Have Signed, Ratified/Acceded to The African Charter on the Rights and Welfare of the Child as at 15 June 2017 <https://au.int/en/treaties/african-charter-rights-and-welfare-child> accessed 1 August 2018.

20 As above.

21 See generally, Lloyd A, 'The African Regional System for the Protection of Children's Rights' in Sloth-Nielsen J (ed) Children's Rights in Africa – A Legal Perspective (2016).

22 Art 31 of the ACRWC.

2.1.1 Non-discrimination

The principle of non-discrimination is fundamental, and in all its aspects, is applicable with regard to children in the context of population movements.²³ Every child affected by movements, such as migration, has the right to enjoy their freedoms and fundamental rights regardless of the child's or his or her parents', age, gender, ethnic or national origin, disability, religion migration/documentation status, stateliness, health status, race, colour or economic status.²⁴ The principle of non-discrimination is at the core of all migration policies and procedures, including border control mechanisms, irrespective of the migration status of a child or his or her parents.²⁵

Article 2 of the CRC provides that states have an obligation to ensure that children within their jurisdictions enjoy their rights without discrimination of any kind. The Article requires that states take all appropriate measures to guarantee that children are protected against all forms of discrimination or punishment. The ACRWC in respect to the right to non-discrimination in Article 3 provides that every child is entitled to the enjoyment of the rights and freedoms recognized and guaranteed under the ACRWC irrespective of the child's or his/her parents' or legal guardians' race, colour, sex, ethnic group, language, religion or other opinion, social and national origin, birth, fortune or other status. As pointed out by the Committee on the Rights of the Child in General Comment No. 14, the right to non-discrimination is not a 'passive obligation' prohibiting all forms of discrimination in the enjoyment of rights but also calls for appropriate 'proactive measures' to be taken by states to ensure effective equal opportunities for all children to enjoy their rights.²⁶

African states have taken steps to protect children from non-discrimination ensuring that children within their borders enjoy the rights provided for under the CRC and the ACRWC. For instance, Tanzania under Section 5 of the Law of the Child Act No.21 of 2009 guarantees that children have a 'right to live free from discrimination. The Section further states that a person shall not discriminate against a child on the grounds of gender, religion, race, disability, age, health status, ethnic origin, being a refugee or other status. In Kenya, the Children Act No. 8 of 2001 under section 5 provides that 'No child shall be subjected to discrimination on the ground of origin, sex, religion, creed, custom, language, opinion, conscience, colour, birth, social, political, economic or other status, race, disability, tribe, residence or local connection.' In addition, the Constitution of Kenya 2010 under Article 27(4) &5 prohibits the state or a person to discriminate against any person on any grounds including race, age, ethnic or social origin, language, birth, belief, sex, disability etc.

South Africa has also made notable steps in protection of children against discrimination in terms of putting in place national laws and policies that provide for the right to non-discrimination against children. The ACERWC stated the following on South Africa's laws, policies and practices in protection of children against non-discrimination:

23 Committee on the Rights of the Child, General Comment No. 6, para. 18.

24 Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration CMW/C/GC/3- CRC/C/GC/22 para 21.

25 As above para 22.

26 General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)* CRC/C/GC/14 para 41.

While appreciating the legislative measures taken by the State Party to accommodate the principle of non-discrimination in national laws and policies, and the very commendable refugee friendly laws and policies in the State Party, the Committee notes with concern that access to basic services by asylum seeking, migrant, and refugee children and their parents/care givers is mostly dependent on being in possession of valid refugee/asylum-seeker documentation issued by the Department of

While appreciating the legislative measures taken by the State Party to accommodate the principle of non-discrimination in national laws and policies, and the very commendable refugee friendly laws and policies in the State Party, the Committee notes with concern that access to basic services by asylum seeking, migrant, and refugee children and their parents/care givers is mostly dependent on being in possession of valid refugee/asylum-seeker documentation issued by the Department of Home Affairs (DHA). Reported community xenophobia, and at times attack, is also a serious concern that needs a concerted and effective legislative, administrative and other appropriate response.

Thus, the Committee urges the State Party to take all the necessary measures to ensure that these groups of children are not discriminated against, and in particular undertake measures to avoid unnecessary barriers to accessing basic education, healthcare, child protection services, and birth registration services, and guarantee among others the rights of asylum seeking, migrant, and refugee children.

Concluding Recommendations by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the Republic of South Africa Initial Report on the Status of Implementation of the African Charter on the Rights and Welfare of the Child paras 22& 23.

Accordingly any differential treatment should be in pursuit of a legitimate purpose and in accordance with the best interests of the child as well as normative international human rights standards.²⁷ States have an obligation to ensure that children on the move are integrated into receiving communities in order to ensure effective realisation of their fundamental freedoms and human rights and access to socio-economic services in an equal manner to the citizens.²⁸ Differential treatment could be allowed only in exceptional circumstances. In this regard, the ACERWC in *Minority Rights Group International and SOS-Esclaves on behalf of Said Ould Salem and Yarg Ould Salem v The Republic of Mauritania*, stated that ‘for a differential treatment to be justified the reason for possible limitations must be founded in a legitimate state interest and limitation of rights must be strictly proportionate with and absolutely necessary for the advantages which are to be obtained.’²⁹

States should put in place measures to combat discrimination on any ground and to ensure protection of children on the move from all forms of multiple and intersecting kind of discrimination, including in and after returning to the country of origin, and on the basis of their migration status.³⁰ In order to attain such aspirations, states should adopt measures to combat xenophobia and racism and should put in place mechanisms to collect and disseminate accurate, reliable and current data in respect to children on the move and their parents. As noted by Save the Children International, particular attention must be paid to the circumstances of specific children groups who face multiple and intersecting forms of discrimination such as girls, children with disabilities or separated and unaccompanied children, who are exposed to heightened risk of sexual exploitation, physical and emotional abuse, and forced child labour.³¹

27 As above.

28 As above.

29 *Minority Rights Group International and SOS-Esclaves v Mauritania*, Communication No. 007/ Com/003/2015, available at <https://acerwc.africa/table-of-communications/> (accessed on 08 February 2019) para 61.

30 Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child, available at <https://www.refworld.org/docid/5a1293a24.html> (accessed 07 February 2019) para 23.

31 Save the Children’s key messages for the First Informal thematic session on the human rights of all migrants Global Compact for Safe, Orderly and Regular Migration 8-9th May 2017.

Most importantly, as stated in Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child tackling de jure discrimination does not automatically ensure de facto equality.³² Thus, states must take positive measures to ‘prevent, diminish and eliminate the conditions and attitudes’ that lead to or perpetuate de facto discrimination against children on the move.³³ States should also record incidents of discrimination against children on the move including child migrants and to investigate and sanction such conduct in an appropriate and effective manner.³⁴

As stated by the ACERWC in *Minority Rights Group International and SOS-Esclaves on behalf of Said Ould Salem and Yarg Ould Salem v The Republic of Mauritania*, under the duty to protect children from discrimination, states have a duty to put in place preventive measures against discrimination and where there is discrimination or occurrence of violation of children’s rights, the state has to provide an effective remedy.³⁵

2.1.2 Best Interests of the Child

Article 3 of the CRC provides that in all actions concerning children, whether carried out by public or private social welfare institutions, courts of law, legislative bodies or administrative authorities, the best interests of the child shall be ‘a primary consideration.’ The ACRWC under Article 4 provides also that in all actions concerning children the best interests of the child shall be the primary consideration. The principle of the best interests of the child is the benchmark against which all actions, policies, practices and laws that affect children should be measured. Notably, the phrasing of ACRWC with the definite article ‘the’ primary consideration, as opposed to the phrasing of CRC ‘a’ primary consideration, elevates the role of ACRWC in the promotion and protection of rights of children.³⁶

In Africa, examples of states that have put in place measures to guarantee the principle of the best interests of the child include, Kenya which under Article 53 of the Constitution provides that, ‘a child’s best interests are of paramount importance in every matter concerning the child.’ The Children Act No. 8 of 2001 under Section 4 adopts the phrasing of the CRC by stating that in all actions concerning a child, ‘the best interests of the child shall be a primary consideration.’ The Ethiopian Constitution under Article 36(2) provides that ‘[i]n all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies, the primary consideration shall be the best interest of the child’.

Section 4(2) of the Tanzania’s Law of the Child Act No. 21 of 2009 provides that ‘the best interests of a child shall be the primary consideration in all actions concerning a child...’ In regard to Nigeria, the Child’s Rights Act No. 26 of 2003 under Section 1 provides that in every action concerning a child, ‘the best interests of the child shall be the primary consideration.’

On the enforcement of the principle of the best interests of the child in South Africa, the ACERWC made the observation in the box below:

32 Joint General Comment No. 3 (n 30 above) Para 26.

33 As above.

34 As above.

35 *Minority Rights Group International and SOS-Esclaves v Mauritania* (n 29 above) para 61.

36 Prof. Benyam D Mezmur, *The African Children’s Charter versus the UN Convention on the Rights of the Child: A Zero-Sum Game?* (2008) 23(1) SA Public Law 1-29.

The Best Interests of the Child

The Committee commends the State Party for all the measures, including its constitutional provision and very progressive court judgments especially from its Constitutional Court, to ensure the best interests of children. However, the Committee recommends that the State Party undertake further appropriate measures to respect and promote the principle of

the best interest of the child not only in law, but also in practice, in policies, as well as in all settings including in the family and community settings.

Concluding Recommendations by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the Republic of South Africa Initial Report on the Status of Implementation of the African Charter on the Rights and Welfare of the Child para 24.

Lesotho in the Child Protection and Welfare Act No. 7 of 2011 under Section 4 entrenches the principle of best interest of the child by providing that ‘all actions concerning a child shall take full account of his best interests’ and ‘the best interests of a child shall be the primary consideration’ in any matter that concerns a child. The High Court of Lesotho in 2013 in the decision in *Rex v Malefetsane et al* commending the Act and the protection of the best interests of the child under the Act stated the following as captured in the box below:

On an extra note, the court recognizes the Children Protection and Welfare Act No.7 of 2011, as a recent landmark legislative enactment which originates from the local initiative. It is, characteristically, comprehensive and very methodical in seeking to address the socio-legal concerns of a child through the process of interfacing the traditional and the international systems for the sake of the best interests of the child. In this celebrative spirit, however, there are some provisions in the Act which should as a matter of urgency be revisited for a consideration of their amendment.

Rex v Malefetsane et al para 101.

Although much progress has been done by many African states in establishing the best interests of child principle as a primary consideration in all actions concerning a child in their laws and constitutions, some states have not entrenched the principle in their domestic laws. For instance, Uganda’s Children Act 59, 1997 does not have a provision that states that the best interests of the child shall either be ‘the primary consideration’ or ‘a primary consideration’ in all actions concerning a child. The mention of the best interest principle in the 1995 constitution is as follows: ‘Subject to laws enacted in their best interests, children shall have the right to know and be cared for by their parents or those entitled by law to bring them up.’ However, the High Court of Uganda in the case of *Re. Tebulotwa Agnes & Nakubulwa Norah Sebunya*,³⁷ stated the following as captured in the box below:

37 *Tebulotwa Agnes & Nakubulwa Norah Sebunya* (Family Cause 149 OF 2016) [2017] UGHCFD 16 (19 December 2017), available at <https://ulii.org/ug/judgment/hc-family-division-uganda/2017/16> (accessed on 08 February 2019).

In all matters concerning children, the best interests of the child shall be the primary consideration. This is a legal principle contained in Article 34 of the Constitution and the Children Act, and various international conventions ratified by Uganda concerning the rights of children. The best interests of the child set out by the Children Act include the ascertainable wishes and feelings of the child in light of his or her age and understanding; the child's physical, emotional and educational needs; the child's age, background and other circumstances relevant in the matter.

According to the ACERWC all actions and inactions that affect a child must be undertaken only on the condition that they are in the best interest of the child.³⁸ The ACERWC also notes that the best interests' principle is flexible and adaptable such that it can be applied to particular needs of children taking into account their specific situation.³⁹

According to Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and No. 22 (2017) of the Committee on the Rights of the Child, states should ensure that best interests of the child are 'fully taken into consideration' in immigration law, planning, implementation as well as assessment of migration policies and decision-making processes on individuals cases in decisions regarding migration enforcement or garneting or refusing applications on entry to or residence in a state and restrictions on access to social rights by children and/or their parents.⁴⁰

The Committee on the Rights of the Child in General Comment No.14 elaborated that the best interests of the child entails:⁴¹

- i) A substantive right:** This constitutes the right of a child to have his or her best interests assessed and taken as a primary consideration in cases where various interests are being considered in order to make a decision concerning a particular child.
- ii) A fundamental, interpretive legal principle.** If a legal provision is open to more than one interpretation, the interpretation that most effectively promotes the best interest of a child should be chosen.
- iii) A rule of procedure:** whenever a decision is being made that has likelihood of affecting a particular child, an identified group of children or children in general, the decision-making process must entail an evaluation of the best possible impact of the decision on the child or children in question. States are thus required to explain how best interests of a child are respected, in broad issues of policy or individual cases.

This threefold concept if viewed in light of children on the move means that: as a substantive right the best interest of the child requires that his or her best interests be assessed and taken as a primary consideration in cases where various interests in movement sphere are being considered in order to make a decision in respect to the child; including as a fundamental interpretive principle where a migration policy or law is open to various interpretations, the interpretation that most effectively serves the best interest of the child concerned should be chosen; and as a rule of procedure whenever a decision which is likely to affect a child is made within the sphere of movemnet, an evaluation must be made on the best possible impact of the decision on the child being considered.

38 Minority Rights Group International and SOS-Esclaves v Mauritania (n 29 above)

39 As above.

40 Joint General Comment No. 3 (n 30 above) para 29.

41 General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) CRC/C/GC/14 para 6.

The box below demonstrates application of the best interest of the child in regard actions affecting an individual and children in general or in specific groups in the area of migration:

For actions affecting children in general or specific groups of children of concern, such as, data collection, planning, resource allocation, project implementation, monitoring, or development of guidelines and policies, the best interests principle requires that due attention is given to their specific situation and protection risks. Measures will include: consultation with children through participatory assessments that are systematic, age-appropriate and gender-sensitive; the collection of data by sex and age; giving primary consideration to the best interests of the child in resource allocation; the insertion of child-specific aspects in guidelines, policies, country operation plans, sub-project agreements and standard operating procedures; and many others.

For actions affecting an individual child of concern to UNHCR, such as registration, the provision of appropriate temporary care, or tracing, the best interests principle requires UNHCR to assess what is in his or her best interests, before the action is taken, and to make this a primary consideration. While relevant for all children of concern to the Office, unaccompanied and separated children require special attention in identifying their best interests, given the particular risks that they face.

UNHCR Guidelines on Determining the Best Interests of the Child (2008) p 20.

In General Comment No. 14 the Committee on the Rights of the Child also notes that child's best interest should be undertaken in each individual case, in view of specific circumstances of the child. The circumstances relate to, among others, sex, age, belonging to a minority group and disability.⁴² In determining the best interests of the child certain elements such as child's views in line with Article 12 of the CRC must be taken into consideration.⁴³ The Committee points out that the fact that the child is in a vulnerable situation like disability, belongs to a minority group or is a migrant neither deprive him or her the right to be heard nor reduces the weight given to the child's views in determining his or her best interests.⁴⁴ Further, the Committee underscores that a child's situation of vulnerability such as being a refugee or asylum-seeker should be an important consideration in determining the child's best interests.⁴⁵

Importantly, best interests of a child on the move should be ensured expressly through individual procedures as an integral component of any administrative or judicial decision in regard to entry, residence or return of the child, the detention or expulsion of the parent.⁴⁶ In order to implement the best interests principle in movement-related measures, best interests assessment and determination procedures must systematically be conducted as part of, or to inform, movement related decisions that affect the children.⁴⁷

2.1.3 Survival and development

The CRC under Article 6 places an obligation on states to recognize that 'every child has the inherent right to life.' Article 6 further requires that states ensure to the 'maximum extent possible the survival and development of the child.' Article 5(1) of the ACRWC provides that 'every child has an inherent right to life'. Article 5(2) of the ACRWC requires that states to ensure to the maximum extent possible, the survival, protection and development of children. The child's right

42 General Comment No. 14 (n 41 above) para 48.

43 General Comment No. 14 (n 41 above) para 53.

44 General Comment No. 14 (n 41 above) para 54.

45 General Comment No. 14 (n 41 above) para 75.

46 Joint General Comment No. 3 (n 30 above) para 30.

47 Joint General Comment No. 3 (n 30 above) para 31.

to life, survival and development is also guaranteed under Article 9 of International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

According to the Committee on the Rights of the Child in General Comment No. 14 states must create an environment that respects human dignity and guarantees the holistic development of all children.⁴⁸ Also in determination of the best interests of a child, states must ensure that there is full respect for his or her inherent right to life, survival and development.⁴⁹ As pointed out by UNHCR, the right to survival and development entails the physical, mental, moral, spiritual and social development of a child, in a manner that is compatible with human dignity.⁵⁰

African states have put in place measures to guarantee the right to survival and development. For instance, the Nigeria's Child's Rights Act No. 26 of 2003 under Section 4 provides that 'every child has a right to survival and development.' In Kenya, the child's right to survival and development is provided for under Section 4(1) of the Children Act No.8 of 2001. The Section places an obligation on the government and family to ensure the survival and development of the child. In Lesotho, the Child Protection and Welfare Act No. 7 of 2011 under section 22 requires the state to formulate policies that ensure a child's right to survival and development. In Tanzania Law of the Child Act No. 21 of 2009 under Section 9 provides that every parent has the responsibility to provide 'assurance of child's survival and development.'

The ACERWC points out that the right to survival and development can only be realised by states implementation of children rights such as the right to health, education, protection from child labour, abuse and torture.⁵¹ The ACERWC also notes that the physiological well-being and physical health of a child are important to the survival and development of a child and they may be jeopardized by adverse living conditions, insensitive or abusive treatment, neglect and lack of opportunities to realize human potential.⁵²

The right to life, survival and development is fundamental to protection of rights of children on the move. As such states should ensure that they provide an environment that respects the dignity of all children on the move and guarantees their holistic development. This should, for instance, constitute designing and implementing refugee and migration laws and policies in a manner that ensures physical, mental, moral, spiritual and social development of the concerned children. Implementation of these laws and policies should also be done in a manner that respects the dignity of the children.

At certain points in the process their movements, the lives, survival and development of children on the move may be at risk because of challenges such as violence, push-back or interception operations, excessive use force by border officials or limited access to services.⁵³ Unaccompanied children may be exposed to more vulnerabilities such as trafficking for sexual or labour exploitation.⁵⁴ They may also face xenophobia, racism, exclusion from socio-economic services and goods such as education, health and safe food. These challenges have the capacity to impair their mental, physical, spiritual, emotional and psychological well-being.⁵⁵ In order to protect the well-being, life, survival and development of children on the move, states must put in place refugee and migration laws and policies that are child friendly and that seek to address

48 General Comment No. 14 (n 40 above) Para 42.

49 As above.

50 UNHCR Guidelines on Determining the Best Interests of the Child (2008) p 74.

51 Minority Rights Group International and SOS-Esclaves v Mauritania (n 29 above) para 71.

52 As above.

53 Joint General Comment No. 3 (n 30 above) para 40.

54 As above.

55 As above.

these challenges.

As highlighted in Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child, there is a correlation between the right to non-discrimination (Article 2 of CRC), the right to survival and development and Article 27 of CRC which requires states to ensure that all children have a standard of living that is adequate for their physical, mental, spiritual and moral development.⁵⁶ Thus states must guarantee that children on the move, irrespective of their status or that of their parents, have a standard of living that is adequate for their physical, spiritual, moral and mental development.

In addition, focusing specifically on migration, both committees state that migration practices, policies or laws that exclude or deny adult migrants basic rights may directly or indirectly affect children's right to life, survival and development.⁵⁷ As such in accordance with Article 18 of the CRC, states should guarantee that children's development and their best interests taken into consideration when putting in place migration policies and laws that affect their parent's access to socio-economic and civil and political rights.⁵⁸ Article 18 requires states to recognize that parents of a child have responsibilities in upbringing and development of a child.

2.1.4 Participation

Article 12 of the CRC provides that states should ensure that a child who is capable of forming his or her views is guaranteed a right to express those views freely in all matters affecting the child. The views of the child should be given appropriate weight in line with the age and the maturity of the child. The ACRWC under Article 4(2) provides that 'in all judicial or administrative proceedings affecting a child who is capable of communicating his or her own views, an opportunity shall be provided for the views to be heard.' In respect of this right the ACRWC takes a restrictive approach by employing the phrase 'a child who is capable of communicating his or her own views' as opposed to the CRC which uses the phrase 'a child who is capable of forming his or her views.'⁵⁹

According to the Committee on the Rights of the Child in General Comment No.12, the right to be heard or participation of a child in all matters affecting him or her should not only be a 'momentary act', but the starting point of an elaborate exchange between children and adults on the development of policies, programmes and measures in all relevant contexts of lives of children.⁶⁰ Both the CRC and the ACRWC do not impose an age limit on the right of a child to express his or her views,⁶¹ thus even in migration context, states should not impose an age limit for children to express their views.

Specifically, states have an obligation to ensure the implementation of the right to participation for children experiencing difficulties in expressing their views. For instance according to General Comment No.12, states must put in place measures to recognize the right to expression of views for minority and migrant children who do not speak the language of the majority.⁶² In addition, states have an obligation to take adequate measures to ensure that every child freely expresses

56 Joint General Comment No. 3 (n 30 above) Para 43.

57 Joint General Comment No. 3 (n 30 above) Para 44.

58 As above.

59 BD Mezmur, *The African Children's Charter versus the UN Convention on the Rights of the Child: A Zero-Sum Game?* (2008) 23.

60 CRC, General Comment No. 12 (2009) The right of the child to be heard CRC/C/GC/12 para 13.

61 As above.

62 General Comment No. 14 (n 41 above) Para 21.

his or her views without discrimination.⁶³ States in particular should address discrimination against vulnerable and marginalized groups to ensure that children have their right to be heard protected and thus can participate in all matters that affect their lives.

States in Africa have put in place measures to guarantee the right to be heard or the right to participation. For example, Tanzania's Law of the Child Act No. 21 of 20 November 2009 under Section 11 provides that 'a child shall have a right of opinion and no person shall deprive a child capable of forming views the right to express an opinion, to be listened to and to participate in decisions which affect his well-being.' The Act adopts the broad approach taken by the CRC in guarantee the right to be heard of a child who is 'capable of forming views' as opposed to the restrictive approach of the ACRWC which only guarantee the right to be heard of a child 'capable of communicating his views.'

South Africa's Children's Act No. 38 of 2005 under Section 10 provides that: 'every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration.' In Kenya's case, the Children Act No. 8 of 2001 under Section 4(4) provides (4) In any matters of procedure affecting a child, the child shall be accorded an opportunity to express his opinion, and that opinion shall be considered as may be appropriate taking into account the child's age and the degree of maturity.

In General Comment No. 14 the Committee on the Rights of the Child points out that the child's right to be heard is inextricably linked to the best interests of the child principle.⁶⁴ Both rights are complementary thus the right to be heard should be included in the assessment of the best interest of the child.⁶⁵ This should be appreciated within the context of children on the move. Therefore, in assessing the best interests of a migrant child, they must be availed an opportunity to be heard.

The observation by the ACERWC in respect to the protection of right to be heard or child participation in Uganda demonstrates the link between the right to participation and best interests of the child as shown in the box below:

Children on the move must have their right to be heard or participation fully implemented. The child's right to participate should be realized in asylum-seeking processes and other migrant process and their views must be given due weight. Children on the move should be granted access or supplied with information that is relevant to assist them to participate in all processes that affect them. Such information must be provided in a language that they understand.

63 General Comment No. 14 (n 41 above) Para 75.

64 General Comment No. 14 (n 41 above) Para 43.

65 As above.

Best Interests of the Child

The Committee notes with satisfaction the recognition of the right to participation of children, in particular, in the field of juvenile justice, by the Government of the Republic of Uganda. However, it regrets that this right is not clearly recognized in the national legal instruments. This poses some problems when taking into account the best interests of the child and for the children to become more engaged on issues affecting their survival and development.

Recommendations and Observations sent to the Government of the Republic of Uganda by the African Committee of Experts on the Rights and Welfare of the Child on the Initial Implementation Report of the African Charter of the Rights and Welfare of the Child

2.2 Education

The CRC under Article 28 places an obligation on states to recognize the right of the child to education and to progressively achieve the right on the basis of equal opportunity. The article also requires that states provide compulsory primary education that is available free for all. Similarly, the ACRWC under Article 11(1) provides that ‘every child shall have the right to education’ in addition, ACRWC’s Article 11(3) requires states to take all appropriate measures with the aim to attain the full realisation of the right to education and in particular, among others provide free and compulsory basic education. Unlike the CRC, the ACRWC under Article 11(3)(e) places an obligation on states to put in place special measures in respect to female, gifted and disadvantaged children, to guarantee ‘equal access to education for all sections of the community.’ This provision is of particular importance considering that many children on the move are disadvantaged by the myriad of challenges that they face in the country of origin, transit and destination.

As noted by the Committee on the Rights of the Child in General Comment No. 14, access to education is in the best interest of the child.⁶⁶ The Committee points out that all decisions on measures and actions that touch on a particular child or a group of children must adhere to the best interests of the child principle, in respect to education.⁶⁷

All children within the jurisdiction of particular state, including those with undocumented status are entitled to the right to education. The African Commission on the Human and Peoples’ Rights in its Resolution on the Right to Education urges states to provide high quality and appropriate educational programmes that serve the needs of all segment of the society, and in particular girls, vulnerable children such as refugee children, migrant children, children with disabilities and internally displaced children.⁶⁸ Particularly, children within the context of international migration should be granted full access to all levels of education on the basis of equality with nationals of the country where they are living.⁶⁹

The ACERWC observed that the compulsory aspect of education requires ‘states to take positive measures to ensure that all children are enrolled in school.’⁷⁰ The ACERWC also pointed out that education should be available, acceptable, accessible, and adaptable to all children.⁷¹

66 General Comment No. 14 (n 41 above) Para 79.

67 As above.

68 Resolution on the Right to Education in Africa ACHPR/Res. 346 (LVIII) (2016) available at <http://www.achpr.org/sessions/58th/resolutions/346/> (accessed on 08 February 2019).

69 Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child, Para 59, available at <https://www.refworld.org/docid/5a12942a2b.html> (accessed on 08 February 2019).

70 Minority Rights Group International and SOS-Esclaves v Mauritania (n 29 above) para 73.

71 Minority Rights Group International and SOS-Esclaves v Mauritania (n 29 above) para 74.

In addition, there is an immediate obligation on states to ensure that the right to education is accessed without discrimination.⁷² Moreover, the deprivation of access to education on the basis of exclusion amounts to discrimination and this situation does not change even in circumstances where the exclusion is occasioned by non-state actors.⁷³ Thus the obligation of the state to guarantee the right to education extends to the obligation to both prevent and remedy the exclusion of children from education by third parties.⁷⁴

This foregoing obligation means that states should ensure equal access to quality education and inclusive education for refugee, migrant and internally displaced children, despite their migration status.⁷⁵ Therefore, exclusion and discrimination of refugee, internally displaced and migrant children from education would be a violation of state obligation to provide education for all children on an equality basis. This would also be a violation of Article 2 of the CRC and Article 3 of the ACRWC, which prohibits discrimination. States should also put in place sufficient measures or mechanisms to recognize the former education of the child in question by 'acknowledging previously obtained school certificates/and or issuing new certification' on the basis of the child's capacity, to avoid creating penalization and stigmatization.⁷⁶

2.3 Health and health services

The CRC under Article 24 requires states to recognize children's right to enjoyment of the highest attainable standard of health and facilities for the treatment of illnesses as well as rehabilitation health. In addition, the Article places an obligation on states to ensure that no child is deprived of her or his right to access health care services.

The ACRWC under Article 14 provides that 'every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health. The Article also places an obligation on states to pursue full implementation of the right. Therefore, based on Article 24 of the CRC and Article 14 of the ACRWC, states have an obligation to recognize child migrants' right to enjoyment of the highest attainable standard of health and to strive to ensure that child migrants are not deprived of their right to access health care services.

The Committee on Economic, Social and Cultural Rights in General Comment No. 14 stated that the right to health in 'all its forms and at all levels contains the following interrelated and essential elements':⁷⁷

- i) Availability:** health services and programmes should be available in sufficient quantity within a state.
- ii) Accessibility:** health facilities and services should be available to all individuals and groups without discrimination, be of affordable cost and physically accessible.
- iii) Acceptability:** health services and goods must be respectful of medical ethics and culturally appropriate.
- iv) Quality:** health facilities and services must be culturally acceptable, scientifically and medically appropriate and of good quality.

72 As above.

73 As above.

74 As above.

75 Joint general comment No. 4 (n 69 above) para 59.

76 Joint general comment No. 4 (n 69 above) para 61.

77 CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health on Art. 12 (2000) para 12, available at <https://www.refworld.org/pdfid/4538838d0.pdf> (accessed on 08 February 2019).

The same principles are reflected in General Comment No. 4 of the Committee on the Rights of the child in regard to adolescent health and development.⁷⁸ In particular, migrant children should have access to health care services regardless of their migration status. Health care services of good quality should be available, accessible and acceptable to child migrants. Health care services for child migrants may range from preventive or curative, and mental, physical or psychosocial care.⁷⁹

The ACERWC in *IHRDA and Open Society Justice Initiative (OSJI) (on behalf of children of Nubian descent in Kenya) v Kenya*,⁸⁰ in respect to states obligation to guarantee the right to health, stated as indicated in the box below:

The Charter provides in article 14 for the children to enjoy the right to the highest attainable standard of health. Minimal access to health facilities, a lower level of contact with health promoting measures and medical assistance, and a lack of provision of primary and therapeutic health resources and programmes is inconsistent with respect for the child's right to the highest attainable standard of health. African jurisprudence places a premium on both the right to health and the right to underlying conditions of health. In the Purohit case, the African Commission held that the right to health in the African Charter on Human and Peoples' Rights includes the right to health facilities, access to goods and services guaranteed to **all without discrimination of any kind**. It has been confirmed that the underlying conditions of achieving a healthy life are protected under the right to health. The Zaire case [*Free Legal Assistance Group and Others v Zaire* (2000) AHRLR 74(ACHPR 1995)], concerning article 16 of the African Charter on Human and Peoples' Rights, confirmed the failure of the government of Zaire to provide the mentioned services amounted to an infringement of the right to health.

States must ensure that health care for children on the move is not undermined by discrimination and negative gender biases. Also children must be afforded age appropriate sexual and reproductive health information services.⁸¹ In General Comment No.15 the Committee on the Rights of the Child states that the best interests of the child should be a primary consideration in provision of health services to all children.⁸² Children are also entitled to the right to be heard in provision of health care services and goods to them. This right extends to children on the move as well.

2.4 Name, Registration, Identity and Nationality

Article 7 of the CRC sets out children's right to be registered immediately after birth, to a name, nationality and - as far as possible - to know and be cared for by their parents. It requires States Parties to fulfil these rights in accordance with other national and international obligations, especially where children would otherwise be stateless. This article is closely connected to article 8 (preservation identity), article 9 (separation from parents), article 10 (family reunification) and 20 (children deprived of their family environment) of the same convention. Specifically, article 8 provides for the protection of the child's identity including his or her name, nationality and family relations and enjoins State Parties to provide assistance and protection to children who are illegally deprived of their identity, with a view to ensuring the speedy re-establishment of their identity.

78 CRC General Comment No. 4: adolescent health and development in the context of the Convention on the Rights of the Child, (2003) para 41, available at <https://www.refworld.org/docid/4538834f0.html> (accessed on 08 February 2019).

79 Joint general comment No. 4 (n 69 above) para 55.

80 *IHRDA and OSJI v Kenya* (2011) Comm 002/09 (ACERWC 2011) para 59 Available at <<http://caselaw.ihrda.org/doc/002.09/view/en/#2136813> (accessed on 4 April 2018).

81 As above.

82 General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24) CRC/GC/C/15,para 12 available at <https://www.refworld.org/docid/51ef9e134.html> (accessed on 08 February 2019).

Article 6(1) of the ACRWC also provides that every child has the right from his birth to a name. Article 6(2) further requires that every child be registered immediately after birth. Article 6(3) provides that every child has the right to acquire a nationality. Importantly, Article 6 provides that Member States have an obligation to ensure that through legislation, they should recognize the principle to which a child who would otherwise be stateless, if at the time of the child's birth it is not granted nationality by another State, acquires the nationality of the State in which it is born. The ACERWC in General Comment No. 2 stated that the right to a name, registration after birth and nationality are interlinked.⁸³ A name is an important part of one's identity. Having a name amounts to being assigned an identity and a place in a given society. A name is also required for birth registration, issuance of a birth certificate and registration as a national of a particular state.

The CRC Committee and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) have both observed that children on the move are vulnerable to violations of this right.⁸⁴ The ACERWC in General Comment No. 2 states that the right to birth registration is one of the rights that constantly appears not to be fully implemented by African States.⁸⁵ The ACERWC expressed concerns about the low rates of registration of births in its observations and recommendations to states that had submitted at least one report by 2013.⁸⁶ A UNICEF Report published in 2013 indicated that about 230 million children under the age of five had not been registered at birth, and the lowest rate of registration of births is in parts of Africa and South Asia.⁸⁷

There are several factors that explain the low rate of birth registration namely; poverty, discrimination against women, lack of education, being part of particular indigenous groups or belonging to certain vulnerable groups such as refugees or migrants.⁸⁸ When it comes to refugees and migrants generally, the likelihood of displacements causing families to lose their legal documents (birth certificates or proof of identity) is very high.⁸⁹ This makes it even more challenging for families to register their children and obtain crucial identification documents.⁹⁰ As a consequence children would be at the risk of statelessness and become exposed to vices and abuses such as sexual exploitation, child labour, recruitment into armed forces, child marriages, and trafficking.

The ACERWC observed that birth registration is not merely a bureaucratic and administrative formality because 'it marks the legal existence of a child and brings with it enormous potential for the child to enjoy other rights immediately from his/her early childhood.'⁹¹ In addition to legal

83 **ACERWC General Comment No.2 Article 6 of the African Charter on the Rights and Welfare of the Child ACERWC/GC/02 (2014) para 9.**

84 Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) & Committee on the Rights of the Child (CRC Committee), Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the General Principles Regarding the Human Rights of Children in the Context of International Migration CMW/C/GC/3-CRC/C/GC/22 para 3. Available at <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/343/59/PDF/G1734359.pdf?OpenElement>> (accessed on 03 March 2018).

85 **ACERWC General Comment No.2 (n 83 above) para 3.**

86 As above.

87 UN News Centre 'One in three children do not officially exist, UNICEF reports' (11 December 2013) as quoted in ACERWC General Comment No. 2 para 3.

88 ACERWC General Comment No. 2 (n 83 above) para 3.

89 Humanium 'The Right to an Identity-The Global Situation: A Look at a Child Identity Across the Globe' <https://www.humanium.org/en/world/right-to-identity/> accessed on 25 September 2018.

90 As above.

91 ACERWC General Comment No. 2 (n 83 above) para 44.

existence, registration provides children with the ‘possibility to access immediately available health, social security, social care and education services, registration of a child provides a proof of his/her age against various potential abuses such as trafficking, sexual abuse, child marriage, child labour and enrollment in armed forces.’⁹²

Notably, state parties have made attempts to give effect to this right. For instance, the Constitution of Kenya 2010 under Article 53(1) provides that ‘every child has the right to a name and nationality from birth.’ Article 14(4) of the Constitution of Kenya 2010 provides that a ‘child found in Kenya who is, or appears to be, less than eight years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth.’ Kenya’s Children Act No. 8 of 2001 under Article 11 provides that every child is entitled to a name and nationality and in cases where a child is deprived of his identity the Government should provide appropriate assistance and protection, with the aim of establishing his or her identity. On the enforcement of the right to a name, nationality and birth registration in Kenya, the ACERWC made the observation in the box below:

Name, nationality and birth registration

The Committee appreciates the growing rate of birth registration and that of free birth registration available within 6 months of birth. However, only 60% of the Kenyan children are registered. The Committee recommends the intensification of the campaign on birth registration, including creating awareness that registration is free, making registration easily accessible in all areas of the country and expediting the process of making registration of vital events digital.

Concluding Recommendations by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the Kenya 1st Periodic Report on the Status of Implementation of the African Charter on the Rights and Welfare of the Child Para 22.

In Burkina Faso, it is required that a child’s birth be declared and registered at the birth registry within a period of two months.⁹³ In the event that the birth is not declared during the specified period, it will only be registered by virtue of a judgment delivered by a civil status court at the place of birth.⁹⁴ The rate of registration of birth in Burkina Faso is low despite awareness campaigns because of factors such as the expense of obtaining the certificates, challenges in accessing registration offices and ignorance and birth away from health facilities.⁹⁵ In respect to nationality, a child born in Burkina Faso, to parents either of whom is a Burkinabe or whose parents are unknown and cannot be identified with any other nationality is entitled to nationality.⁹⁶

In Cameroon every child born in the country is entitled to a name, the process of birth registration, which operationalizes the right to a name and identity, is provided for by the 1981 ordinance governing civil status registration.⁹⁷ However, some births in the country go undeclared and therefore are not registered for many years, particularly in rural and marginalized communities.⁹⁸ Under the Nationality Code of 1968, a child born in Cameroon has right to Cameroonian nationality

92 As above.

93 African Child Policy Forum (ACPF), *Harmonisation of Children’s Laws in Burkina Faso Country Brief: Harmonisation of Children’s Laws in West and Central Africa* (2012) p 13.

94 Burkina Faso Persons and Family Code Article 106.

95 As above.

96 Burkina Faso Persons and Family Code Article 140-143.

97 ACPF, *Harmonisation of Children’s Laws in Cameroon Country Brief: Harmonisation of Children’s Laws in West and Central Africa* (2012) p 23.

98 As above.

whether or not the parents have a Cameroonian descent.⁹⁹This extends to a child whose parentage is unknown or who cannot lay a claim to any other nationality, and where born in Cameroon.¹⁰⁰

In Ghana, the Births and Deaths Registration Act of 1965 makes registration of births and deaths compulsory. According to Section 8(1) of the Act, it is required that every child be registered in the district where he or she is born. In line with Section 8(2) of the Act, in cases where a child is found abandoned, the birth is to be registered by the registrar of the particular district the child is found. The Births and Deaths Registration Act applies to every child born within the Ghanaian territory, even where the parents are not of Ghanaian nationality.¹⁰¹ Therefore, children born to refugees, displaced persons as well as asylum seekers are entitled to birth registration and may claim Ghanaian nationality or that of their parents once they attain maturity.¹⁰²

In the case of Uganda, Article 18 of the Constitution provides for birth and death registration by the state. However, the ACERWC noted that the rate of registration of births and deaths is low. The observations of the Committee in relation to Uganda are as shown in the box below:

Article 6: Name and Nationality

Even though article 18 of the Ugandan Constitution provides for the registration of births, the Committee finds that the rate of births and deaths declarations is low.

The Committee recommends the State party to ensure that registration of children at birth is mandatory and free. The Committee also urges the Government to raise the awareness of local authorities and populations about the future consequences of the non-registration of children on the civil status registry.

Recommendations and Observations sent to the Government of the Republic of Uganda by the African Committee of Experts on the Rights and Welfare of the Child on the Initial Implementation Report of the African Charter of the Rights and Welfare of the Child.

In Tanzania birth registration is mandatory under the Births and Deaths Registration Act of 2002 and the Law of the Child of 2009. Through these pieces of legislation, the government recognizes every Tanzanian child's right to a name and nationality and further places the responsibility to register the birth of a child on the parents or guardian.¹⁰³

The ACERWC in General Comment No.2 requested state parties, which have not put in place civil registration laws to adopt them, those with civil registration legislation which is not implemented to implement it and those with deficient or outdated laws to align them with the international law standards through law reform.¹⁰⁴ The ACERWC also pointed out that the rights to a name, birth registration and to acquire a nationality should be implemented through taking into account the best interests of the child, non-discrimination, survival and development of the child and child participation.¹⁰⁵ The ACERWC in General Comment No.2 further emphasized that children born to vulnerable parents such as nomads, parents with disabilities, refugees, asylum seekers or

99 As above.

100 Cameroon Nationality Code of 1968, Section 12.

101 ACPF, Harmonisation of Children's Laws in Ghana Country Brief: Harmonisation of Children's Laws in West and Central Africa (2012) p 54.

102 As above.

103 See Concluding Observations and Recommendations of the African Committee of Experts on the Rights and Welfare of the Child to the Government of the United Republic of Tanzania on its Combined Second, Third, and Fourth Periodic Report on the Implementation of the African Charter on the Rights and Welfare of the Child.

104 ACERWC General Comment No. 2 (n 83 above) Para 11 & 12.

105 ACERWC General Comment No. 2 (n 83 above) para 13.

undocumented immigrants should benefit from special measures including their registration.¹⁰⁶ The registration should be universal and based on the principle of non-discrimination.

2.5 Family protection and parental care

Article 9 of CRC also enjoins State Parties to take measures to prevent the separation of a child from his or her parents against his or her will. Closely related to article 9 is article 10 which requires State Parties to consider applications for reunification of children with their parents in a 'positive, humane and expeditious manner'¹⁰⁷ Article 11 provides the State's obligation to take measures to prevent the illicit transfer and non-return of children abroad. Article 20 of CRC guarantees the right to special protection and assistance by the State to children who are temporarily or permanently deprived of their family environment. Article 22 of CRC provides for the rights of children seeking refugee status and refugee children, obligating the State to ensure that such children receive appropriate protection and humanitarian assistance in the enjoyment of their rights under the Convention and other relevant treaties.

The ACRWC under Article 19 provides for parental care and protection. Article 19 states that every child has the right to enjoy parental care and protection and is entitled to reside with his or her parents. A child may only be separated from his or her parents against his or her will, except when a judicial authority makes a determination in line with the appropriate law and it is in the best interest of the child.¹⁰⁸ In addition, where a child is separated from one or both parents, he is entitled to maintain personal relations and to have direct contact with both parents regularly.

Several member states have taken steps to put in place constitutional and legislative measures to ensure parental care and protection. For instance, the Constitution of Kenya 2010 under Article 53(1) (e) provides that every child is entitled to parental care and protection, which includes equal responsibility of both parents to provide for the child, whether they are married to each other or not. Kenya's Children Act No.8 of 2001 under Section 6 states that children have the right to live with and to be cared for by their parents unless a court or Director of Children's Services determines in line with the law that it is in the best interests of a child to separate him or her.

In Uganda, Article 31 of the Constitution states that 'children may not be separated from their families or persons entitled to bring them up against the will of their families or of those persons, except in accordance with the law.' In Tanzania Law of the Child Act No. 21 of 2009 under Section 7 provides that every child has a right to live with his parents or guardians. The Section further provides that a person should not deny a child the right to live with his parents, family or guardian unless a court decides that living with his parents or family will lead to 'significant harm to the child, subject the child to serious abuse or not in the best interest of the child. The Nigeria's Child's Rights Act No. 26 of 2003 under Article 14 provides that every child has a right to parental care and protection.

The ACRWC under article 25 provides that where a child is permanently or temporarily deprived of his or her family environment for any reason, the child has the right to special protection and assistance. The article also places an obligation on state parties to ensure that a child who is temporarily or permanently deprived of his or her family environment, or who in his or her best interest cannot be brought up or allowed to remain in that environment is provided with alternative family care, which could include, foster placement, or placement in appropriate institutions for the care of children. Article 25 also requires states to take all necessary steps to trace and re-

106 ACERWC General Comment No. 2 (n 83 above) Para 51.

107 Art 10(1) of the CRC.

108 Article 19 (1) of the ACRWC.

unite children with parents or relatives where the separation is as a result of 'internal and external displacement arising from armed conflicts or natural disasters.' This provision is critical to the protection of the rights to parental care and protection of children on the move.

2.6 Protection from sexual abuse and exploitation

Articles 33, 34, 35 and 36 of the CRC provide for the protection of children from sexual abuse and exploitation, including prostitution and pornography and from the sale of children for these and other similar purposes and all other forms of exploitation and the concomitant State obligation to prevent the abduction, sale and trafficking of children for such purposes.

Article 16(1) of the ACRWC provides that State Parties have an obligation to put in place legislative, administrative, social and educational measures to protect children from, among others, abuse, neglect or maltreatment including sexual abuse. In particular, Article 16(2) of ACRWC provides that protective measures include effective procedures for the establishment of special monitoring units to provide necessary support for the child and for those who have the care of the child, as well as other forms of prevention and for identification, reporting referral investigation, treatment and follow-up instances of child abuse and neglect.

In addition, under Article 27 of the ACRWC states are required to protect children from all forms of sexual exploitation and sexual abuse and in particular to take measures to prevent: 'the inducement, coercion or encouragement of a child to engage in any sexual activity, the use of children in prostitution or other sexual practices and the use of children in pornographic activities, performances and materials.'

In Africa states have put in place constitutional and legislative measures to protect children from sexual exploitation and abuse. For instance, the Constitution of Kenya 2010 under Article 53 (1) (d) provides that every child has a right to be protected from abuse. Kenya's Children Act No.8 of 2001 under Section 13 provides that children are entitled to protection from physical and psychological abuse and any other form of exploitation. In addition, Section 15 of the Act states that children should be 'protected from sexual exploitation and use in prostitution, inducement or coercion to engage in any sexual activity, and exposure to obscene materials.' In Uganda, the Constitution under Article 17 provides that every citizen of Uganda has the duty to 'protect children and vulnerable persons against any form of abuse, harassment or ill-treatment.' Uganda's Children Act 59, 1997 under Section 5 provides that any person who has the custody of a child has a duty to protect the child from, among others, abuse and neglect.

In the Gambia, the Children's Act under Article 21(2) any person who has the child has the duty to protect the child from abuse and neglect among others. The Nigeria's Child's Rights Act No. 26 of 2003 under section 11 provides that every child should not be 'subjected to physical, mental or emotional injury, abuse, neglect or maltreatment, including sexual abuse.' In Tanzania, the Law of the Child Act No. 21 of 2009 under Section 9 provides that every parent has the duty and responsibility to protect the child from, among others, abuse and neglect.

All the foregoing legal provisions are instrumental in the protection of children on the move who are susceptible to sexual exploitation and abuse because of their vulnerability.

2.7 Protection from torture, cruel and inhuman and degrading treatment

Articles 37, 38 and 39 of the CRC provide for the child's right to be protected from torture, cruel or inhuman and degrading treatment or punishment and from engaging in as well as the effects of armed conflict. It is important to note that the provisions of the CRC relating to the protection of children from sexual exploitation, sale and abduction on the one hand and engagement in armed conflict on the other, have been further expanded in two Optional Protocols to the CRC, namely, the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (CRC-OPSC) and the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (CRC-OPAC).

The ACRWC under Article 16 provides that the states should take specific legislative, administrative, social and educational measures to protect children from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse. The African Charter on Human and Peoples' Rights under Article 5 provides that every person has the right to dignity inherent in a human being and all forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment are prohibited. The African Commission on Human and People's Rights in *Huri-Laws v Nigeria* stated that the term 'Cruel, inhuman or degrading treatment or punishment' is to be interpreted so as to extend to the widest possible protection against abuses, whether physical or mental.¹⁰⁹ In the same case, the Commission went on to state that the prohibition of torture, cruel, inhuman or degrading treatment or punishment is absolute.¹¹⁰

African States have taken steps to put in place constitutional and legislative measures that guarantee human dignity and prohibit torture, cruel, inhuman or degrading treatment or punishment. For instance, Benin under Article 18 of its Constitution prohibits torture and other forms of degrading treatment. In addition, violence against children attracts strict punishment under Benin laws and corporal punishment is prohibited both at school and home.¹¹¹

In Burkina Faso, the Constitution prohibits all cruel, inhuman and degrading treatment under Article 2. In Central African Republic, the Constitution under Article 3 provides that each individual is entitled to life and physical integrity. Therefore, every person including children is to be protected from torture, and other cruel, inhuman or degrading treatment.¹¹² In Kenya, the Constitution under Article 29 provides that every person has the right to both freedom and security of person, which includes the entitlement not to be subjected to any form of violence or to be treated or punished in a cruel, inhuman or degrading manner. The Constitution of Kenya 2010 also under Article 25 provides that among others, the freedom from torture and cruel, inhuman or degrading treatment or punishment may not be limited. In particular, Article 53(1) (d) of the Constitution of Kenya 2010 provides that every child has a right to be protected from abuse and all forms of violence, inhuman treatment and punishment.

In Gambia, the Constitution under Section 21 prohibits torture or inhuman or degrading treatment or punishment. In Ghana, the Constitution under Article 28(3) provides that 'A child shall not be subjected to torture or other cruel, inhuman or degrading treatment or punishment.' In Uganda, the Constitution under Article 24 provides that no person should be subjected to any

109 *Huri-Laws v Nigeria* (2000) AHRLR 273 (ACHPR 2000) para 40.

110 *Huri-Laws v Nigeria* (n 109 above) Para 41.

111 ACPF, *Harmonisation of Children's Laws in Benin Country Brief: Harmonisation of Children's Laws in West and Central Africa* (2012) p 6.

112 ACPF, *Harmonisation of Children's Laws in Central African Republic Country Brief: Harmonisation of Children's Laws in West and Central Africa* (2012) p 37.

form of torture or cruel, inhuman or degrading treatment or punishment. In Togo the Constitution under Article 21 provides that no person should be 'submitted to torture or to other forms of cruel, inhuman or degrading treatments.' In Niger, the Constitution under Article 12 provides that no person should be subjected to torture, slavery, or cruel, inhuman or degrading treatment. The Constitution of South Africa under Article 12 provides that no person should be tortured in any way or subjected to treatment or punishment that is cruel, inhuman or degrading.

Notably, the African Commission on Human and Peoples' Rights in Article 19 v Eritrea, pointed out that 'the right to freedom from torture and cruel, inhuman or degrading treatment cannot be derogated from for any reason, in whatever the circumstances.'¹¹³ Under International law, the prohibition against torture is a *jus cogens* or a peremptory norm. In other words, it is a norm that cannot be derogated from.

In respect to peremptory nature of the prohibition against torture and cruel, inhuman or degrading treatment the International Criminal Tribunal for the former Yugoslavia (ICTY) in Prosecutor v Furundzija, stated:¹¹⁴

'Because of the importance of the values it protects, this principle has evolved into a peremptory norm or jus cogens, that is, a norm that enjoys a higher rank in the international hierarchy than treaty law and even "ordinary" customary rules. The most conspicuous consequence of this higher rank is that the principle at issue cannot be derogated from international treaties or local or special customs or even general customary rules not endowed with the same normative force.'

Therefore, both private actors and state agencies are prohibited from subjecting children on the move to torture, cruel, inhuman or degrading treatment or punishment.

2.8 Specific rights of migrant children, internally displaced children and refugee Children

Within the context of children on the move accompanying their parents as migrants, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW) in Article 4 identifies children as members of migrant families who are entitled to the protection of the State. The following rights are also guaranteed to children of migrant families: Article 12 on the right of migrant parents to ensure the religious and moral education of their children, Article 17 on the protection of the children of migrant parents who have been deprived of their liberty, the rights of migrant children to a name, registration at birth and nationality in Article 29, the right to education for migrant children in Article 30, and the right to education and instruction, where necessary, in the mother tongue of the migrant child in Article 45.

The ACERWC, in its seminal and pioneering decision in the Nubian Children's Communication¹¹⁵ noted that child refugees, migrants and asylum seekers are among the category of children not being registered at birth in violation of article 6 and who are rendered stateless. More importantly, the Committee held that the right to a nationality, purposively interpreted, meant the

113 Article 19 v Eritrea (2007) AHRLR 73 (ACHPR 2007) para 98.

114 Case Number. IT-95-17/I-T), Judgment, 10 December 1998, para 153.

115 IHRDA and OSJI v Kenya (n 80 above).

right to nationality at birth.¹¹⁶ Article 19 provides for the child's right to parental care and protection and prohibits the separation of a child from his or her parents against his or her will, except as determined by a judicial authority in accordance with law and in the best interest of the child.¹¹⁷

A child who is separated shall have the right to maintain regular contact with his or her parents, right to information on the whereabouts of their family members and the responsibility of the State to notify the parent(s) of a child who has been apprehended by the State and or its agents.¹¹⁸ Article 22 obligates the State to prevent children being engaged in armed conflict and to respect and ensure the respect for the rules of international humanitarian law, which affect the child. Article 23 also protects the rights of refugee children, providing among others for the State to put in place measures to assist children to obtain refugee status, whether accompanied or unaccompanied, to cooperate with other international organisations to assist the child trace his or her parents or relatives. Where the child's relations cannot be traced, the State has to ensure that the child is accorded the same protection as any other child temporarily or permanently deprived of a family environment.

A progressive element of Article 23 is the provision that the rights and obligations due to refugee children apply *mutatis mutandis* to internally-displaced children, the displacement having been caused by 'natural disasters, internal armed conflicts, civil strife, breakdown of economic and social order' or by any other means.¹¹⁹ Article 24 guarantees the right of children temporarily or permanently deprived of a family environment to special protection and assistance. Finally, Articles 27, 28 and 29 protect children from all forms of sexual exploitation, drug abuse (including use by children and the use of children in the production and trafficking of drugs) and the abduction, sale and trafficking of children for any purpose respectively.

The ACRWC in many respects is founded on the ACHPR, the continent's foundational human rights instrument.¹²⁰ The ACHPR guarantees the right to freedom of movement in Article 12, which includes the right to leave and return to one's country, to seek and obtain asylum in instances of persecution and the prohibition of expulsion of non-nationals, either individually or en masse. The African Commission on Human and Peoples' Rights has held that the violation of rights such as freedom from discrimination of migrant communities has a consequent effect their freedom of movement.¹²¹

The rights of refugee children are also protected under the 1951 UN Convention Relating to the Status of Refugees and the 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa. The UN Refugee Convention under Article 3 requires states to protect the rights of refugees as provided for under the Convention without discrimination based on race, religion or country of origin. The 1969 OAU Convention under Article 4 places an obligation to apply the provision of the Convention without discrimination on the basis of 'race, religion, nationality, membership of a particular group or political opinions.' In addition, the Revised Migration Policy Framework for Africa and Plan of Action (2018-2027) states that refugee protection is 'a central aspect of international, regional, and national efforts to protect persons fleeing persecution.'¹²²

The 1951 UN Convention Article 33 provides for non-refoulement principle, which prohibits

116 IHRDA and OSJI v Kenya (n 80 above) para 42.

117 Art 19(2) of the ACRWC.

118 Arts 19(3) and (4) of the ACRWC.

119 Art 23(4) of the ACRWC.

120 See para 1 of the Preamble of the ACRWC.

121 Communication 317/06 The Nubian Community in Kenya vs The Republic of Kenya para 167 and 168. Available at <<http://caselaw.ihrda.org/doc/317.06/view/en/#2513599>>. (Last accessed on 4 April 2018).

122 Revised Migration Policy Framework for Africa and Plan of Action (2018-2027) Para 6.1.

states from expelling or returning refugees in any way to territories where their lives would be threatened because of their race, religion, nationality, political opinion or membership of a certain social group. In the same vein, Article 2 of the 1969 OAU Convention provides that no refugee should be subjected by a state to measures such as rejection, return or expulsion which would force him to return to or remain in a territory where his life, liberty or physical integrity would be threatened. Further, Article 5 of the OAU Convention provides that voluntary repatriation should be respected and repatriation should not be against one's will. The Article also requires the states of origin, on receiving back refugees, to facilitate their re-settlement and grant them all the rights and privileges of nationals of that state. The state hosting refugees together with the state of origin, should make 'adequate arrangements for the safe return of refugees who request repatriation according to Article 5(2) of the 1969 OAU Convention. Child refugees are supposed to benefit from these provisions.

Despite the provisions of the 1951 UN Convention and the 1969 OAU Convention, refugees who return back to their countries of origin still find themselves in fragile situations.¹²³ In cases where refugees return to their states of origin and fail to integrate sustainability they end up becoming internally displaced persons or they may also be forced to move again if the drivers of forced migration are not addressed.¹²⁴ Globally, in 2017, about 2 million refugees returned to their states of origin with many of the states of origin still in the midst of conflicts.¹²⁵ In Nigeria and Somalia the returnees went to a life of internal displacement. This means that the child refugees in the population of returnees were also condemned to become internally displaced children.¹²⁶ Some of the Nigerian Refugees had been forcefully returned from Cameroon while Somali refugees returned from Kenya in fear of the closure of camps.¹²⁷

In regard to internally displaced children, in addition to the CRC and ACRWC, their rights are also protected under the African Convention for the Protection and Assistance of Internally Displaced Persons in Africa. The Convention is also known as Kampala Convention. Under Article 9(1) the Kampala Convention provides that states should protect the rights of internally displaced people without discrimination. Article 9(2) of the Convention requires special protection for and assistance to internally displaced persons with special needs including separated and unaccompanied children, pregnant women and mothers with young children. The Article further requires that states take the necessary measures such as establishment of specialized mechanisms to trace and reunify families separated because of displacement and to help re-establish family ties. This is important for internally displaced children who are separated from their families during displacement.

The Kampala Convention under Article 13 requires states to ensure that internally displaced persons are issued with the relevant documents such as personal identification documents, civil certificates and birth certificates. In particular, Article 13(4) of the Kampala Convention states that women and men as well as separated and unaccompanied children have equal rights to obtain such necessary identity documents and have the documents issued in their names. Article 13 of the Kampala Convention is a reflection of Principle 20 of the UN Guiding Principles on Internal Displacement that provide that states should issue internally displaced persons with necessary documents such as birth certificates and marriage certificates. This means that children born to internally displaced people are entitled to be registered after birth without any discrimination.

123 Norwegian Refugee Council, Global Report on Internal Displacement (2018) P 13.

124 As above.

125 As above.

126 As above.

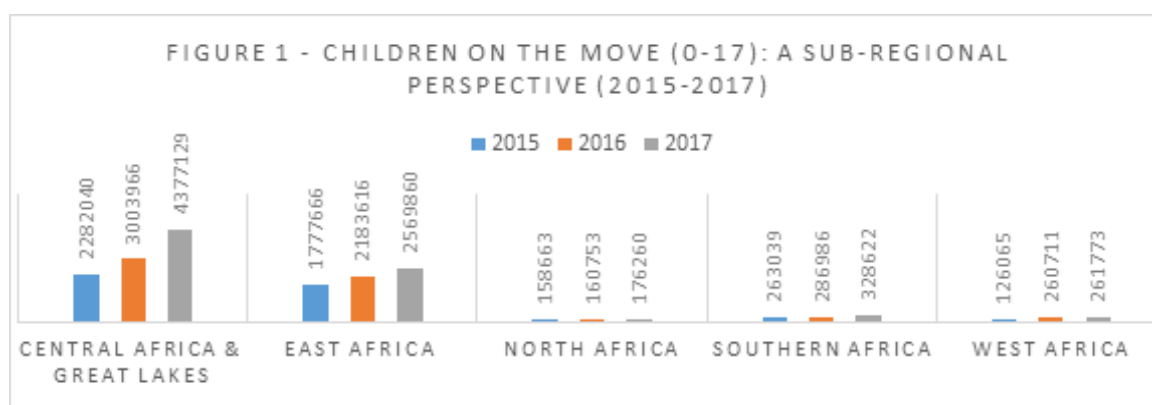
127 As above.

CHAPTER 3 DRIVERS OF CHILDREN ON THE MOVE

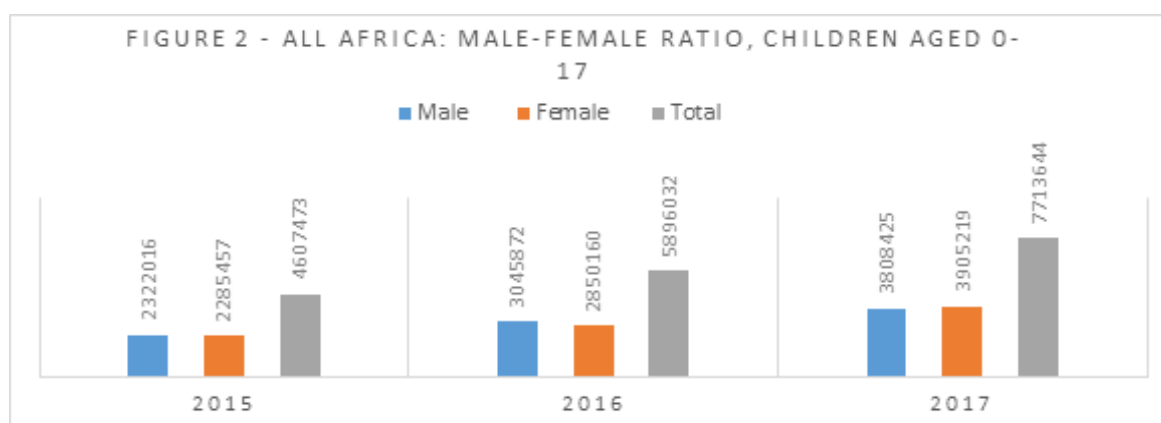
3.1 Assessing the scale of children on the move within Africa

Between 2015 and 2017, an estimated total of 18.2 million children were on the move across the African continent. Central Africa and the Great Lakes Region bear the brunt of such movement, followed by East Africa (see figure 1). However, these represent official figures of children who registered as refugees, IDPs or asylum seekers with UN agencies or have asked for some form of protection. The number of undocumented movements (e.g. seasonal movement in spaces allowing free movement of people) not being factored in, means that the scale of movement may in fact be far higher.

It is worth pointing out that despite the preoccupation in most studies and policy debates about the movements along the eastern and western Mediterranean routes, children are predominantly affected outside of those routes. The risk of excessive focus on migration routes towards Europe neglects the fact that children on the move mostly require protection within Africa.

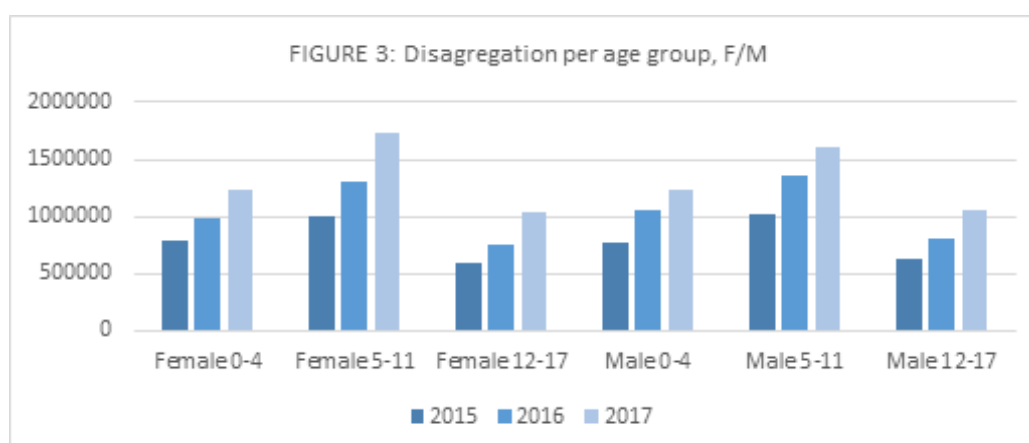


Source: UNHCR datasets ¹²⁸



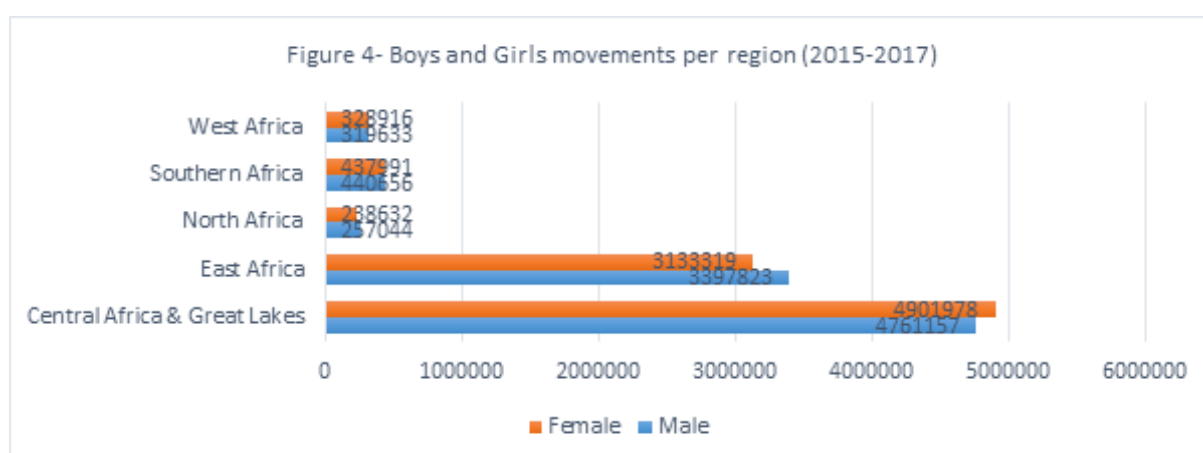
Boys and girls move as much. Indeed, a disaggregation of data shows that almost as many girls as boys are on the move in Africa (see Figure 3).

128 The visual shows the number of children aged 0-17 present. Their countries of origin may be African or otherwise. The numbers include refugees, asylum seekers and internally displaced people (IDPs), returned refugees, returned IDPs and stateless persons.



Source: UNHCR datasets ¹²⁹

There are however some variations per region, with the proportion of girls on the move in Central Africa and the Great Lakes Region as well as in West Africa exceeding that of boys (see figure 4).



Source: UNHCR datasets ¹³⁰

3.2 The Drivers

Understanding key drivers of children on the move within Africa is necessary to provide effective and sustainable strategies to protect them.¹³¹ According to existing literature multiple push and pull factors cause movement of children within and outside Africa depending on their sex, age, nationality, religion, needs, and their accompanied or unaccompanied status, the particularities of their family as well as myriad of other variables. The drivers are classified in three categories as shown in Visual 1.

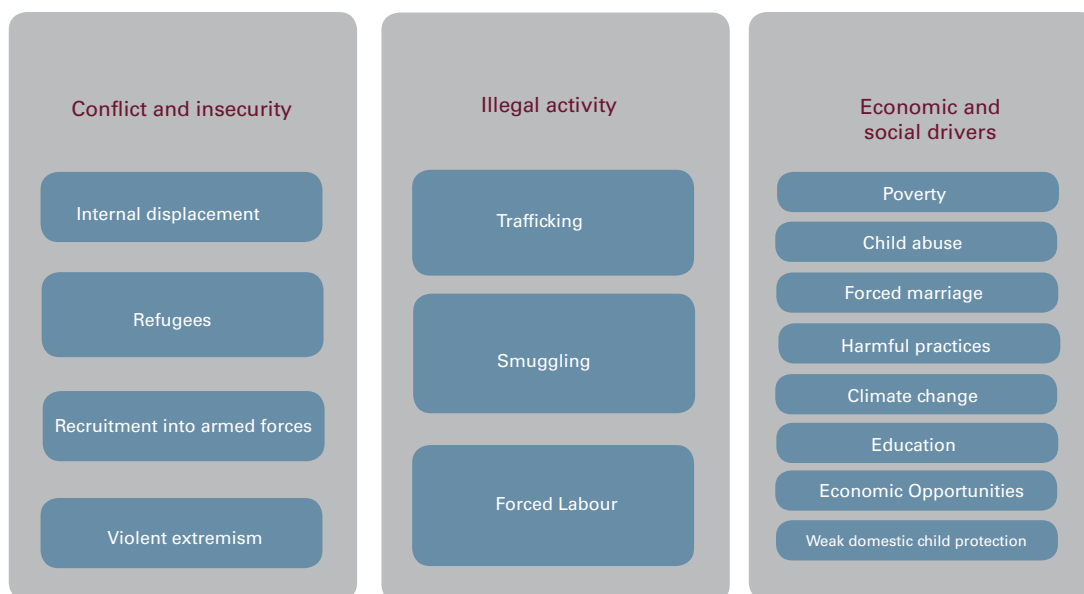
The decision to leave home is informed by a set of complex factors. Often multiple reasons for movement are listed by children on the move. A recent survey by UNICEF of the causes of movement of children reveals, for instance, that most respondents on the Central Mediterranean

129 The visual shows the number of children aged 0-17 present. Their countries of origin may be African or otherwise. The numbers include refugees, asylum seekers and internally displaced people (IDPs), returned refugees, returned IDPs and stateless persons.

130 The visual shows the number of children aged 0-17 present. Their countries of origin may be African or otherwise. The numbers include refugees, asylum seekers and internally displaced people (IDPs), returned refugees, returned IDPs and stateless persons.

131 International Social Service (ISS), Children on the move: From protection towards a quality sustainable solution (2017).

route, many of them of African origin, said they were fleeing violence, prosecution and war.¹³² Several of them also mentioned economic opportunities, education and family reunification as one of the main reasons. Similarly, the Regional Mixed Migration Secretariat in Niger and Mali has pointed out that children in most African countries said they were on the move for economic reasons, attracted by job prospects in northern African countries like Libya.¹³³ This seems to be a stable trend. Indeed, several accounts of children interviewed in the last 10 years tell a story of mixed migration.¹³⁴ For instance, a survey by CARITAS-Morocco in 2011 analyzing the files of 719 child migrants in Morocco indicates that 50% of those whose nationality is known (40 of the total number covered by the study) indicated that they were fleeing conflict or political tension in their country of origin. 20% of them were in search of better economic opportunities.¹³⁵



Visual 1: Classification of drivers of movement among children in Africa

Not all reasons behind movement are negative (e.g. forced). Furthermore, reasons for movement may change during the journey. The 2017 survey by UNICEF suggests that, for children aged 14 to 18, the reasons for migration as well as the final destination may change as the journey goes on. When interviewed in Niger and Mali, most migrants on that route said they were on the move for economic reasons, attracted by job prospects in northern African countries like Libya.¹³⁶

3.2.1 Conflict and Insecurity

Conflict is one of the main causes of movement of people and children, in Africa and globally. Africa is the continent with the highest prevalence of conflicts.¹³⁷ It has been argued that no other

¹³² UNICEF & IOM. 2017. Harrowing Journeys: Children and Youth on the Move across the Mediterranean sea, at risk of trafficking and exploitation. p15

¹³³ Migration Hub. 2017. Children on the move: selected issues and recommendations from studie on the children on the move. p2

¹³⁴ See M Garzon, H. 2011. Enfants Migrants Maroc: Etude prospective. http://www.pnpm.ma/wp-content/uploads/2017/03/ETUDE-PROSPECTIVE-SUR-LES-ENFANTS-MIGRANTS_APS.pdf Last accessed: 7 June 2018.

¹³⁵ CARITAS Maroc (2011), Mineurs migrants séparés de leurs parents, une enfance en danger

¹³⁶ United Nations Children's Fund (UNICEF) & International Organization for Migration (IOM). 2017. Harrowing Journeys: Children and youth on the move across the Mediterranean Sea, at risk of trafficking and exploitation. New York: UNICEF. P15

¹³⁷ African Committee of Experts on the Rights and Welfare of the Child, Concept Note for the Commemoration of the Day of the African Child (DAC) 2016 P 4.

continent has witnessed protracted armed conflicts that have adverse effects on children like the African Continent.¹³⁸ Most of these conflicts are intra-state that lead to gross human rights violations.¹³⁹ Conflicts force millions of people including children to move in pursuit of peace and safety primarily in different regions of their country, neighbouring states or continents. In Africa, as stated in section 3.1, by 2016, about 12.6 million people were internally displaced which is about a third of internally displaced people in the world. The year 2016 witnessed 3.9 million new internal displacements within the context of both violence and sudden-onset disasters in Africa.¹⁴⁰ This can be equated to 10,500 people being displaced every day from their homes, which represents 8.5% increase on the 3.5 million new displacements recorded in 2015. About 37 of the 55 of African states were affected by internal displacement.

UNHCR estimates that of the 5.4 million refugees in Africa, 53% are children.¹⁴¹ Indeed, it is estimated that generally 9 out of 10 refugees remain in their region.¹⁴² The highest number of child refugees originate 'from Somalia, followed by South Sudan, Sudan, the Democratic Republic of Congo and the Central African Republic.'¹⁴³ Conflict in these countries have become unending threat to the welfare of children both those that remain within state borders and those that flee.¹⁴⁴ In 2017, Human Rights Watch noted that when the South Sudan civil war entered its fourth year millions of people had been internally displaced, and millions had sought refuge in neighbouring states.¹⁴⁵ The number of people forced to leave their homes from the start of the conflict in 2013 is over 4 million, including about 1.9 million people internally displaced, with around 85% estimated to be children and women.¹⁴⁶

According to the ACERWC, the conflict in South Sudan 'can be characterised as nothing less than a war on the children of South Sudan.'¹⁴⁷ The ACERWC noted that the impact of the war on children in the period between December 2013 and August 2014 'is greater than in the entire 21 year period during which the war was on going.'¹⁴⁸ The conflict has resulted in blatant violations of the rights of the children affected and was an 'assault to the very future of childhood in South Sudan.'¹⁴⁹

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- 138 ACERWC, Concept Note for the Commemoration of the Day of the African Child (DAC) 2016 p 12.
- 139 D Witteler-Stiepelmann, Initial Addresses in C Fischer and R Vollmer (eds.), Migration and Displacement in Sub-Saharan Africa: The Security-Migration Nexus II, Bonn International Center for Conversion (2009).
- 140 Norwegian Refugee Council, Africa Report on Internal Displacement 2017 P 15.
- 141 UNHCR. 2017. More than One Million Children have Fled Escalating Violence in South Sudan. <<http://www.unhcr.org/news/press/2017/5/590c7cb64/million-children-fled-escalating-violence-south-sudan.html>> accessed 15 March 2018.
- 142 UNICEF. 2018. Children on the Move: Key Facts and Figures Data Brief. Last accessed: 27 June 2018. <https://reliefweb.int/sites/reliefweb.int/files/resources/Data-brief-children-on-the-move.pdf>
- 143 UNICEF Uprooted: The Growing Crisis for Refugee and Migrant Children, September 2016 p 56.
- 144 As above.
- 145 Human Rights Watch, World Report 2018 <<https://www.hrw.org/world-report/2018/country-chapters/south-sudan>> accessed 21 March 2018.
- 146 ReliefWeb, 2018 South Sudan Humanitarian Needs Overview, <https://reliefweb.int/report/south-sudan/2018-south-sudan-humanitarian-needs-overview> accessed on 9 November 2018.
- 147 ACERWC, Press Statement following mission of the ACERWC on the situation of children in South Sudan, August 2014 p 2.
- 148 As above.
- 149 As above.

Displacement in Libya as a result of conflict

The conflict in Libya continues to displace a large number of the population. The number of Internally Displaced People (IDPs) is currently estimated at 180 000 scattered across the country mainly on the eastern and western coast and near the borders with Sudan and Algeria. 51% of them are children; 11% aged 0-1, 16% aged 1-5 and 23% aged 6-18. 49% were males and 51% were females. 83% of IDPs surveyed by IOM said they left for 'fear from conflict and arms groups'. Many children are displaced with their families but few are unaccompanied/separated (no specific figures are available). Most IDPs were however not living in camps but rather in self-rented accommodation (71%).

Displaced children face a number of threats. Not only is their education often discontinued as a result of displacement and due to poor education infrastructure in areas to which they move but they also face sexual exploitation and are more exposed, especially if separated or unaccompanied, to the risk of being recruited by armed groups. For newborns, families also faced difficulties in registering them in a number of instances (29% of those surveyed by UNHCR during a survey covering 87% of estimated IDPs in Libya in 2016). This comes with a number of risks which can potentially see the child being denied some of his/her basic rights as they grow up.

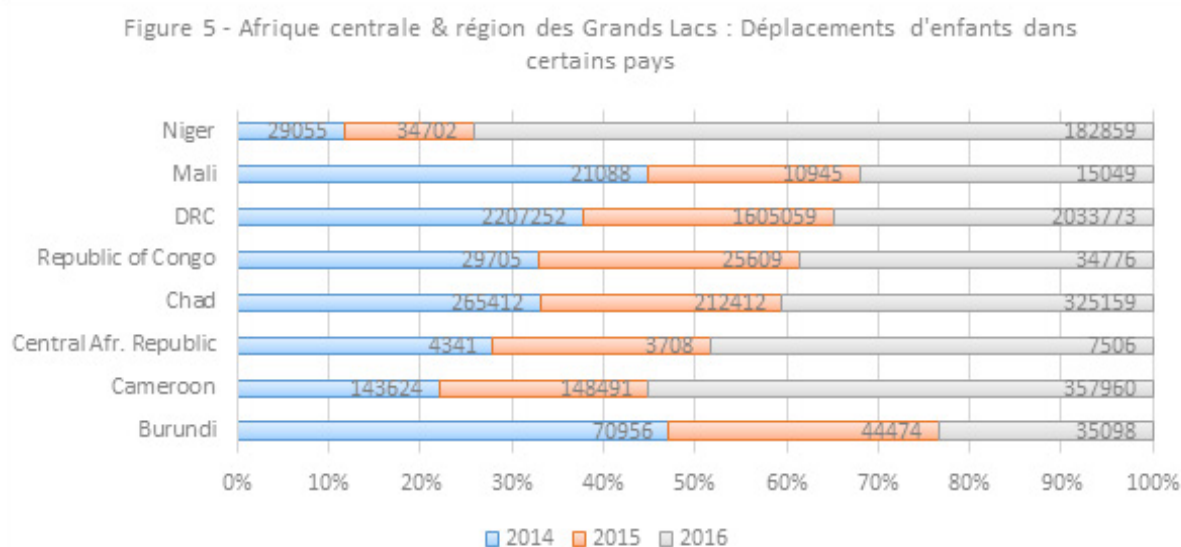
Sources: IOM, 2018¹⁵⁰ & UNHCR, 2016¹⁵¹

In West Africa, conflict is a major cause of cross-border movement for example the case of families fleeing Boko Haram.¹⁵² In Nigeria the IOM has established that about 2.2 million individuals, including about 1.5 million children (55 % of the total), have been displaced internally because of the conflict in North-Eastern part of the country.¹⁵³ It is also estimated that almost 400, 000 Nigerian refugees are hosted in neighbouring states like Chad, Cameroon and Niger.¹⁵⁴ In Central Africa millions of children are on the move because of conflict in the region. By 2018, it was estimated that about 2.5 million people, including 1.3 million children, would be in the need for humanitarian assistance in Central African Republic.¹⁵⁵ Around one in every four people in Central African Republic is displaced, with 538,000 refugees living in neighbouring states and 600,000 internally displaced.¹⁵⁶ In the Democratic Republic of Congo refugee families have camped in Goma for more than 20 years.¹⁵⁷

In North Africa, the conflict in Mali, especially, has pushed some families to move to neighboring countries.¹⁵⁸ This adds to the number of long-term refugee children in the region notably Sahrawi Refugees in the camps of south-west Algeria, currently estimated at 66 000 children (aged between 0-17).¹⁵⁹

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- 150 IOM. IDP & Returnee Report – Round 19: Libya. March-April 2018. <https://reliefweb.int/sites/reliefweb.int/files/resources/DTM%20Libya%20-%20IDP%20and%20Returnee%20Round%2019%20Report.pdf> Last accessed: 3 June 2018.
- 151 UNHCR. 2016. IDP Protection Monitoring Assessment. http://www.reachresourcecentre.info/system/files/resource-documents/unhcr_idp_protection_monitoring_libya_assessment_report_feb_2016.pdf Last accessed: 6 June 2018
- 152 UNICEF, 'In Search of Opportunities: Voices of children on the move in West and Central Africa' (2017) p10.
- 153 Progress Report of the Human Rights Council Advisory Committee, Global Issue of Unaccompanied migrant children and adolescents and human rights A/HRC/33/53 16 August 2016 para 18.
- 154 As above.
- 155 ReliefWeb, Humanitarian Action for Children 2018 - Central African Republic, <https://reliefweb.int/report/central-african-republic/humanitarian-action-children-2018-central-african-republic> accessed on 9 November 2018
- 156 As above.
- 157 UNICEF, 'In Search of Opportunities: Voices of children on the move in West and Central Africa' (2017) p10.
- 158 International Organisation for Migration. 2013. Mali Crisis: A Migration Perspective. https://reliefweb.int/sites/reliefweb.int/files/resources/Mali-Migration-Crisis_June-2013_EN.pdf Last accessed 2 June 2018. P14
- 159 UNHCR. March 2018. Sahrawi Refugees in Tindouf, Algeria: Total InCamp Population. http://www.usc.es/export9/sites/webinstitucional/gl/institutos/ceso/descargas/UNHCR_Tindouf-Total-In-Camp-Population_March-2018.pdf last accessed 2 June 2018

In Central Africa and the Great Lakes region, the number of children on the move in the region has been steadily increasing in the last years as a result of conflict in the country or the region. Figure 5 shows the number of effected children in different countries. These include internally displaced children and refugees (including from neighboring countries).



Source: UNHCR data set figures include children aged 0-17 years.

Conflicts continue to be a driving force behind the movement of children, especially from rural areas, in the Great Lakes region of Africa. Protracted conflicts within countries in the region are driving large numbers of children to move within or across borders in search of safety, either with their families or alone¹⁶⁰. For instance, recent events in the Ituri region in Northern DRC alone have pushed an estimated 90 000 children to move; of which 66 000 moved within the Congolese border to neighboring towns and about 25 000 to Uganda.¹⁶¹ In Burundi between 2015 when the political instability, insecurity and deteriorating economic condition ensued and October 2017 about 427,784 Burundian refugees were hosted in DRC, Rwanda, Uganda and Tanzania.¹⁶² Of this, about 230,000 are children which represents about 54 percent of the refugees.¹⁶³

Children, indeed, continue to constitute an important age group in forced migration and displacements in the region (see Figure 6). Faced by the lack of opportunities within their countries due to protracted conflicts, some children migrate, accompanied or unaccompanied, further south (mainly to South Africa) in search of a better life or education.

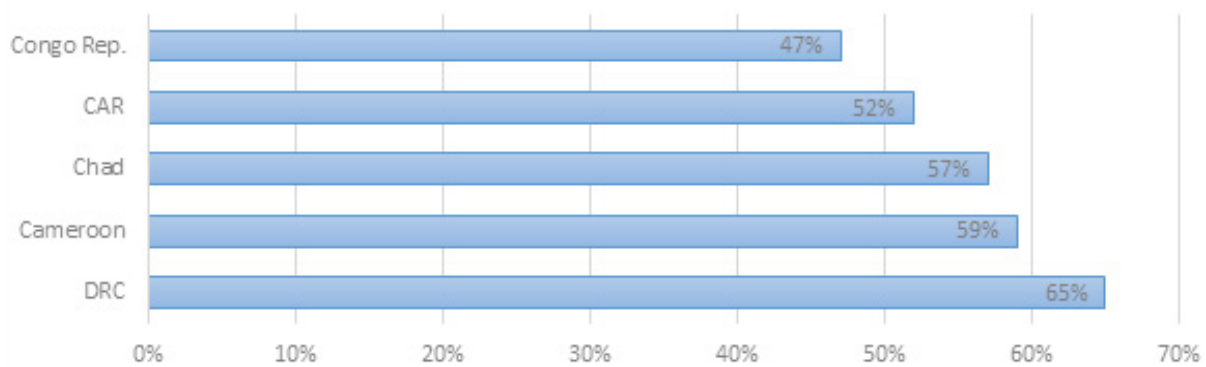
160 Large numbers of children are moving alone. In October 2017 for instance, UNHCR estimated that of the 5000 Congolese refugees who have crossed in Zambia's Kenani transit center, 60% were unaccompanied and separated children. Unaccompanied children had fled after their parents were killed during attacks on their villages. Often, it is an older sibling, often a teenager him/herself who travel with their younger siblings. See UNHCR. Unaccompanied and separated Congolese children – a worry for UNHCR. 26 October 2017. Last accessed: 29 May 2018. <http://www.unhcr.org/afr/news/stories/2017/10/59f1d1764/unaccompanied-and-separated-congolese-children-a-worry-for-unhcr.html>

161 UNICEF. 2018. RDC : au moins 90.000 enfants déplacés ou réfugiés par les violences dans l'Ituri (UNICEF). Last accessed: 29 May 2018. <https://news.un.org/fr/story/2018/02/1006561>

162 ReliefWeb, Burundi Situation: Regional Inter Agency Plan of Action for the Protection of Refugee Children (January - December 2018), <https://reliefweb.int/report/united-republic-tanzania/burundi-situation-regional-inter-agency-plan-action-protection> accessed on 9 November 2018.

163 As above.

Figure 6 : % des enfants dans le total des réfugiés par pays



Source : HCR (2015)¹⁶⁴

The box below shows Refugees from Africa and particularly refugee children, by country of origin as at 2015 according to UNICEF:¹⁶⁵

Main countries of origin of refugee minors in Africa

Central African Republic

A violent change of government in the Central African Republic in 2013 has been accompanied by insecurity throughout the country. Today, roughly half a million refugees have fled the country, of whom 58 per cent were children.

Another 450,000 people had been displaced within the country by the end of 2015. A high child mortality rate, food insecurity and 'the prevalence of domestic violence have all compounded the challenges that children in the country face.

Democratic Republic of the Congo

Two wars and more recent outbreaks of violence had forced more than 500,000 Congolese, including 300,000 children, outside the country as refugees by the end of 2015. Some 1.5 million Congolese were internally displaced at the end of 2015; in the first half of 2016, this number rose by another 300,000. Some 2 million children in the country are acutely malnourished, and lack of access to basic goods and services, including education, health care, food and shelters for the internally displaced, have worsened the effects of violence and insecurity. Children also face direct threats of recruitment into fighting forces; at least 3,240 children have been confirmed as active in armed groups

Sudan

Decades of armed conflict and violence in Darfur, the Kordofan states, Blue Nile and Abyei regions had driven 600,000 Sudanese out of the country by the end of 2015, including an estimated 400,000 child refugees. Within the country, 2.1 million children under the age of 5 suffer from malnutrition. Children and families have been forced out of Sudan in search of safety, food security, education, health care and shelter. Employment concerns also propel children in the older age group to seek better opportunities in foreign countries.

South Sudan

South Sudan is just five years old, but its territory has been racked by violence for much longer. By the end of 2015, 800,000 South Sudanese were refugees and another 1.7 million were internally displaced; through the first seven months of 2016, new outbreaks of violence had increased the number of refugees by at least 130,000. Conflict and displacement are exacerbating the deadly effects of malaria, hunger, poverty and water-borne diseases that continue to take children's lives. Children are more disproportionately affected by displacement in South Sudan than nearly anywhere else in the world – at the end of 2015, a staggering 65 per cent of all refugees from the country were children.

Somalia

More than two decades of internal conflict in Somalia have forced 1.1 million Somalis out of the country, half of them children. Adding to the toll, another 1.2 million people are internally displaced within the country. Severe acute malnutrition has intensified food security concerns in the country while outbreaks of polio, measles and cholera are an additional threat to children's lives. El Niño, exacerbating floods in the southern central regions and droughts in Somaliland, has intensified both international and internal displacement.

164 Data available at :

<https://migrationdataportal.org/?cm49=140&m=2&i=refDestinunder18&t=2015&sm49=17>

165 UNICEF, Uprooted: The Growing Crisis for Refugee and Migrant Children, September 2016 p 57.

From the foregoing, it is apparent that conflict is the major cause of movement of children in Africa.

3.2.2 Illegal activities

3.2.2.1 Smuggling

Smuggling has been established as one of the main causes of movement of children in Africa. Millions of children are on the move as they flee conflict, disaster or poverty in pursuit of better conditions of living.¹⁶⁶ Oftentimes, children find very limited opportunities to move legally. Opportunities like family reunification, work or study visas, humanitarian visas and refugee settlement spots are beyond the reach for many children.¹⁶⁷ However, obstacles to legal migration does not stop children from migrating but pushes them and their families underground.¹⁶⁸ In the course of movement when children encounter difficulties in accessing legal channels, they 'resort to dangerous routes and engage smugglers to help them cross borders.'¹⁶⁹ As such the smugglers facilitate movement of children from one country to another. UNICEF notes that smuggling is 'a lucrative trade, and many smugglers will manipulate, extort and take advantage of the gullibility and vulnerability of the migrants under their care, often leaving them at the mercy of kidnappers'.¹⁷⁰ Although data collection on smuggling remains at infancy, it is estimated that globally about '2.5 million migrants were smuggled for economic return of 5-7 billion US Dollars in 2016.'¹⁷¹

Smugglers range from individuals assisting people to move in exchange for a fee to structured criminal networks that deliver minors into dangerous and exploitative conditions.¹⁷² When families place children in the hands of smugglers, the transaction sometimes becomes an abusive and exploitative one particularly in cases where families and children incur debts to pay fees to the smugglers.¹⁷³ Migrant and refugee children are susceptible to violence and abuse as well as 'being preyed upon by smugglers and even enslavement by traffickers.'¹⁷⁴ In certain situations, children resort to living in streets, begging, petty crime and selling sex in order to avoid detention while they save up to pay smugglers to assist their movement.¹⁷⁵

In West Africa region smugglers facilitate movement of people through the Mediterranean route through Libya into Italy and Europe generally.¹⁷⁶ Kidnappers mainly operating in Libya attempt to capture migrants including children and imprison them with the aim to extort money by demanding ransom or selling them as slaves.¹⁷⁷ In Zimbabwe lack of documentation for unaccompanied children makes smuggling rife. Smuggling is seen as a common challenge because

166 UNICEF, Protecting Children on the Move from Violence, Abuse and Exploitation - Executive Summary 2017 p 2.

167 As above.

168 As above.

169 As above.

170 UNICEF 2017 (n 166 above) p13.

171 UNODC, The Global Study on Smuggling of Migrants 2018 p 5.

172 UNICEF, Protecting Children on the Move from Violence, Abuse and Exploitation - Executive Summary 2017 p 2.

173 As above.

174 UNICEF, Protecting Children on the Move from Violence, Abuse and Exploitation - Executive Summary 2017 p 4.

175 UNICEF, Protecting Children on the Move from Violence, Abuse and Exploitation - Executive Summary 2017 p 3.

176 UNICEF (n 166 above) p13.

177 As above.

of lack of documentation or travel documents for children and adults entering into Zimbabwe as they transit to other states such as South Africa and Botswana.¹⁷⁸ Smuggling is particularly alleged to be prevalent along the Zimbabwe-Botswana route; the smugglers are locally known as 'Omalayitshas'.¹⁷⁹ Zimbabwe and Botswana entered into an MOU to assist current collaborative efforts to deal with smuggling across the two states' borders.¹⁸⁰

Many persons move from Zimbabwe in pursuit of work in South Africa. After reaching South Africa, they send for their children who often travel as unaccompanied children without travel documents.¹⁸¹ Smugglers assist the children cross the border and sometimes they have to bribe border officials from both states.¹⁸² The parents pay to the smugglers about USD 55 per child.¹⁸³ In Zambia several children are smuggled across the border, for instance by truck drivers.¹⁸⁴ However, front line officials have made attempts to put in place measures that deal with smuggling such as the use of 'sophisticated technologies to detect, for example, hidden compartments in trucks where people are concealed'.¹⁸⁵

In many countries in the East and Horn of Africa evidence exists that corruption facilitates smuggling operations.¹⁸⁶ Kenya is a key transit hub for adult and child migrants from the East and Horn of Africa mainly on the route to South Africa.¹⁸⁷ The length of stay in Kenya depends on the resources that the migrants have to pay smugglers to assist their onward journey.¹⁸⁸

In Somalia smuggling has thrived because of instability and lack of government capacity to deal with the menace.¹⁸⁹ There has been an increase in Somalis seeking assistance from smugglers to get to Libya.¹⁹⁰ Those traveling to Kenya are taken by smugglers either close to Dadaab refugee camp or the border between Somalia and Kenya.¹⁹¹

Without concerted efforts from governments to address the scourge of smuggling hundreds of thousands will continue to be exploited and have their rights violated.

3.2.2.2 Trafficking

Trafficking is also a key driver of movement of children in Africa. A survey conducted by IOM in 2017 of children¹⁹² having travelled through North Africa, 57% of them responded positively to questions related to human trafficking; most children originated from Eastern, Western, Central

178 IOM, Study on Unaccompanied Migrant Children in Mozambique, South Africa, Zambia And Zimbabwe 2017 p 73.

179 As above.

180 As above.

181 J Moyo, Rampant child smuggling <https://www.dandc.eu/en/article/many-children-are-smuggled-zimbabwe-south-africa> (accessed 20 June 2018).

182 As above.

183 As above.

184 IOM, Study on Unaccompanied Migrant Children in Mozambique, South Africa, Zambia And Zimbabwe 2017 P 55.

185 As above.

186 GIZ et al, irregular Migration from and in the East and Horn of Africa (2016) p 9.

187 As above.

188 As above.

189 As above.

190 As above.

191 As above.

192 Not all respondents were of African origin. Among national groups with more than 50 respondents, Bangladeshis, Somalis and Senegalese were those with the highest share of positive responses (96%, 95% and 92%) while the lowest share of positive respondents was among Tunisians (6%), Iraqis and Libyans (10% both) and Syrians (16 %).

and Southern Africa.¹⁹³ Most events are reported to have taken place in Libya (92%), Sudan (1.3%) and other west and North African countries.¹⁹⁴

UNICEF underscores that the main aim of trafficking is exploitation in terms of child labour or sexual exploitation.¹⁹⁵ Boys are often trafficked for forced labour and to a limited degree, male victims are trafficked for sexual exploitation or other forms of exploitation such as begging.¹⁹⁶ Girls are trafficked for sexual exploitation and domestic work. Generally, poor people and children with low levels of education are most likely to be victims of trafficking due to lack of access to information or illiteracy. Lack of information and illiteracy renders them vulnerable to false promises of traffickers, which range from jobs in foreign countries, nannies in Europe or waiters in hotels,¹⁹⁷ and elsewhere within the African Continent.

Children are particularly at risk, and powerless when it comes to trafficking.¹⁹⁸ Persons who perpetrate child trafficking come from various walks of life such as businessmen and women, peers to the children and relatives.¹⁹⁹ Child traffickers often take advantage of the vulnerable circumstances of children as well as their families, and project themselves as most helpful persons thus appealing to both parents and children by promising better conditions of life.²⁰⁰

Child trafficking is highly prevalent in Africa, however it seems that it is more pronounced in certain parts of the continent compared to others.²⁰¹ For instance, child trafficking is more pronounced in West Africa than in Southern Africa. However, UNDOC notes that scarcity of data does not allow a conclusive analyses for sub-regional patterns.²⁰² The data available in respect to age profiles indicates that various African countries detect more child victims (64 per cent) than adults which has been a consistent trend since UNDOC started collecting data in 2003.²⁰³ Data collected on child victims also shows that, frequently boys are more detected compared to girls.²⁰⁴ This is attributed to the prevalent forms of exploitation in most African countries, which include child trafficking for forced labour and child soldiers.²⁰⁵

Ethiopia is a country of origin, transit and destination for children who are subjected to forced labour and sex trafficking within the country and abroad.²⁰⁶ Equally Kenya is country of origin, transit and destination for children who are subjected to sex trafficking and forced labour although due to nature of trafficking, data on the exact number of victims is limited. Information available points to the fact that in Kenya human trafficking is estimated to have a black market value of 40 million USD.²⁰⁷ Also according to some researchers approximately 20,000 children are trafficked

193 International Organization for Migration (IOM). 2017. Flow Monitoring Surveys: The Human Trafficking and Other Exploitative Practices Indication Survey. P3

194 As above.

195 As above p 14.

196 UNODC 2016 Global Report on Trafficking in Persons p 24.

197 UNICEF 2017 (n 166 above) p 2.

198 As above.

199 W Njuguna, Child Trafficking in Eastern Africa Region: A Regional Effort to Protect the Vulnerable Presented to the Senior Officials Meeting On Migration, Mobility And Employment Brussels, Belgium 15 – 17 September, 2010 p 6.

200 As above.

201 UNODC 2016 Global Report on Trafficking in Persons p 112.

202 As above.

203 UNODC (n 201 above) p 25.

204 UNODC (n 201 above) p 112.

205 As above.

206 As above.

207 IOM, Migration in Kenya: A Country Profile 2015 p 27.

in Kenya every year.²⁰⁸ Report findings show that Somalia as a unique case because Somalia's Federal Government has limited capacity to deal with trafficking in the country.²⁰⁹ In Somalia children are trafficked to Ethiopia and Djibouti where they are subjected to sexual exploitation and forced labour.²¹⁰ In addition, '(former) pirate groups engage in trafficking of Somali girls and women as alternative source of income since piracy has been in decline since 2014.'²¹¹

In Burundi, children are reported to be trafficked for purpose of sexual exploitation, begging, domestic servitude and forced labour.²¹² Burundian children are trafficked into neighbouring states such as Rwanda, Kenya, Tanzania, Zambia, DRC and Southern Africa Countries.²¹³ In Congo, children are mainly trafficked internally from rural areas to urban areas and from other states such as DRC and Benin and they are exploited in the informal sector.²¹⁴ In 2012, local authorities in Congo reported that 50 children (38 girls and 12 boys) from Benin were detected as victims of child trafficking.²¹⁵ In addition, the UN Committee on the Rights of the Child stated that indigenous communities are particularly susceptible to human trafficking and the cross-border trafficking of minors for sexual exploitation and forced labour as well as internal 'fostering' is still problematic.²¹⁶ In Guinea-Bissau the Special Rapporteur on extreme forms of poverty and human rights stated that child trafficking victims were being forced to beg in the streets during the day for their masters at religious schools and then study at night.²¹⁷ Other children from Guinea-Bissau were also reported to be working in cotton fields in Senegal.²¹⁸

208 As above p 157.

209 GIZ et al, *irregular Migration from and in the East and Horn of Africa* (2016) p 42.

210 As above.

211 As above.

212 UNODC (n 201 above) p 6.

213 As above.

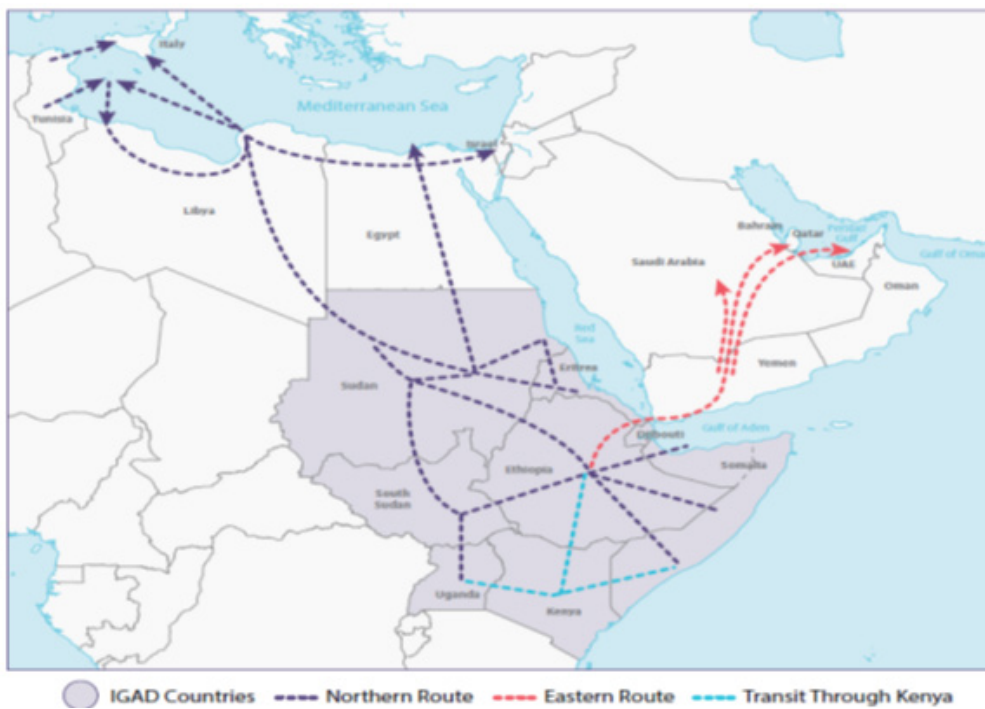
214 UNODC (n 201 above) p 9.

215 As above.

216 Committee on the Right of the Child - Concluding observations on the combined second to fourth periodic report of the Congo, 25 February 2014.

217 Sepulveda Carmona, Magdalena, Report of the Special Rapporteur on Extreme Poverty and Human Rights, Mission to Guinea-Bissau (April 1, 2015). Available at SSRN:
<https://ssrn.com/abstract=2676820> or <http://dx.doi.org/10.2139/ssrn.2676820> para 48.

218 UNODC (n 201 above) p 14.



Map 1: Migration and trafficking routes within and out of the IGAD region
 (Source: Reitano et al (2014: p. 21) Regional TOC Assessment Study, ISSP/IGAD)

In Mozambique both domestic and cross-border child trafficking is taking place, particularly of Mozambican citizens to neighbouring states, especially South Africa. Traffickers in Mozambique are locals and foreigners.²¹⁹ Trafficking takes place for forced labour in mines and quarries as well as for sexual exploitation. Unfortunately, there is no available data on the exact number of children affected by trafficking in Mozambique.²²⁰ In Zimbabwe most cases of child trafficking involve trafficking to South Africa although there have been reported cases of victims trafficked from countries like Angola and Chad into Zimbabwe.²²¹

According to the Joint Africa-EU Declaration on Migration and Development, child trafficking in Africa is a challenge that must be tackled from different angles including conducting targeted prevention campaigns, offering assistance to victims of trafficking, prosecuting of traffickers and training of relevant authorities.²²² Notably, many states have developed policies that address protection, prevention as well as prosecution in respect to irregular migration, trafficking and smuggling.²²³ However, the main problem arises when it comes to the implementation and enforcement of the laws and policies.²²⁴

219 UNDOC (n 201 above) p 24.

220 IOM, Study on Unaccompanied Migrant Children in Mozambique, South Africa, Zambia And Zimbabwe 2017 p 23.

221 As above p 24.

222 Joint Africa-EU Declaration on Migration and Development (2006).

223 GIZ et al, irregular Migration from and in the East and Horn of Africa (2016) p 66.

224 As above.

3.2.2.3 Child Labour

Search for work, economic opportunities or employment is one of the reasons children move within Africa.²²⁵ Child labour migration is a key feature of the contemporary economic migration in Africa. Globally, Africa has the highest incidence of child labour, estimated at 19.6% compared with 9.6% worldwide.²²⁶ The ILO points out that there is a ‘strong correlation between child labour and situations of conflict and disaster.’²²⁷ Considering that Africa is among the regions most affected by conflicts and disasters, globally, the risk of child labour is heightened.²²⁸ The incidence of child labour in states affected by armed conflicts is 77% higher than the global average, ‘while the incidence of hazardous work is 50 percent higher in countries affected by armed conflict than in the world as a whole.’²²⁹

It is worth noting that states are required to eliminate and prohibit the worst forms of child labour such as slavery, debt bondage, serfdom, compulsory labour, use of children for illicit activities and work by whose nature is likely to harm the health, safety or morals of children and is prohibited under Article 1 of the ILO’s Worst Forms of Child Labour Convention, 1999 (No.182). Article 32 of the CRC requires states to recognize the right of a child to be protected from economic exploitation and from performing any kind of work that is likely to be hazardous or to be harmful to the child’s physical, mental, moral or social development. The ACRWC under Article 15 provides that children should be protected from all forms of economic exploitation and from carrying out ‘any work that is likely to be hazardous or to interfere with the child’s physical, mental, spiritual, moral, or social development.

The box below highlights the incidence of child labour in Africa compared to other regions in the world according to ILO:²³⁰

The Africa region and the Asia and the Pacific region together host nine out of every ten children in child labour. Africa ranks highest both in the percentage of children in child labour – one-fifth – and the absolute number of children in child labour – 72 million. Asia and the Pacific ranks second highest in both these measures – 7 per cent of all children, 62 million in absolute terms, are in child labour in this region. The remaining child labour population is divided among the Americans (11 million), Europe and Central Asia (6 million), and the Arab States (1 million).

There are also other factors that underlie child labour or movement in search for work. One of these factors is poverty although social and cultural reasons also contribute to children’s migration in search of work.²³¹ Research indicates that many children on the move are motivated by economic reasons²³² According to UNCTAD, contemporary economic migration in the African continent mainly involves low-skilled migrants and is predominantly concentrated in sectors such as agriculture, informal trade and domestic service.²³³ For instance, in West Africa, a large number of low-skilled migrants from Burkina Faso, including children, are found in the agricultural

225 S Punch, ‘Migration Projects: Children on the Move for Work and Education’ presented in a Workshop on Independent Child Migrants: Policy Debates and Dilemmas at Organised by the Development and Research Centre on Migration, Globalisation and Poverty, University of Sussex and UNICEF Innocenti Research Centre, 12 September 2007, Central Hall, Westminster, London.

226 UNCTAD, Migration for Structural Transformation: Economic Development in Africa Report 2018 p 71.

227 ILO, Global Estimates of Child Labour: Results and trends, 2012–2016 p 12.

228 As above.

229 As above.

230 As above.

231 Punch (n 225 above) above p2.

232 Punch (n 225 above) p3.

233 UNCTAD, Migration for Structural Transformation: Economic Development in Africa Report 2018 p 84.

sector, particularly in Ivory Coast. In the case of Niger, for instance, experiences gathered by the Mixed Migration Project highlight the experience of those who, during the dry season would traditionally move to Nigeria to work. However, the threat of Boko Haram forced them to change their destination and many now move to Agadez or Arlit cities in Niger for masonry work. But as the market became saturated, people started moving further North to Algeria. Children, accompanied by their families or unaccompanied, often undertake dangerous journeys across the Sahara Desert and become beggars so as to collect money. In areas where people rely on agriculture for subsistence, children may be forced to move in search of employment in the event that they do not have access to land.²³⁴ Work opportunities may be limited in such communities in the course of dry seasons.²³⁵ This may necessitate movement of children to places where work opportunities are available.

Domestic service sector is also characterised as major sector for migrants in Africa. An increasing demand in the sector is driving intra and extra-African migration. The box below explains migration that is motivated by demand for domestic work:²³⁶

Demand for domestic service in urban areas is a significant driver of rural–urban migration. In addition, adults comprise a large share of domestic workers, yet the widespread use of child labour, in particular of young girls, is a key feature of the sector. Besides its internal dimension, domestic service has an intraregional dimension that is dominant in Southern and Western Africa. In Southern Africa, low-skilled young women migrants, primarily from SADC partner States, dominate the domestic service sector in South Africa. In Western Africa, domestic service includes intraregional child labour migration among young girls aged 8–14, who migrate from Togo to Ghana.

There is evidence that children from Horn of African countries such as Eritrea, Ethiopia and Somalia are moving to the Arabian Peninsula in order to take up poorly paid jobs, while many children from Comoros and Madagascar move to the Middle East to work as domestic servants.²³⁷

3.2.3 Economic and Social Factors

3.2.3.1 Poverty

Poverty is one of the major drivers of movements of children. Children move with their parents or unaccompanied to escape deprivation of access to basic needs and economic opportunities. Such deprivations can lead to a deep sense of dissatisfaction which can necessitate movement from the place of origin to a destination where opportunities and access to basic needs are available.²³⁸ According to UNICEF, poverty can create a vicious cycle which can cripple people to the extent that they are unable to move.²³⁹ However, it is important to note that not all children move out of poverty and not all children trapped in poverty are able to move. For example, countries like Burkina Faso and Niger which have the highest levels of economically disadvantaged people globally living on less than 2 US Dollars per day, are not the main sources of child migrants in West Africa,²⁴⁰ and Africa generally.

234 Punch (n 225 above) P 2

235 As above.

236 UNCTAD, Migration for Structural Transformation: Economic Development in Africa Report 2018 p 88.

237 UNICEF, 'Children on the move: Eastern and Southern Africa' <<https://www.unicef.org/esaro/factsonchildren_5784.html>> (accessed on 18 March 2018).

238 As above.

239 UNICEF (n 166 above) p4.

240 As above.

In certain circumstances, movement requires physical and mental strength as well as financial resources. While generally countries with high levels of poverty are likely to be a source of migrants who seek to improve their lives, emerging evidence suggests that as countries reach the middle-income status they are likely to see more people migrating within and beyond the continent – as people aspire to discover more and can afford to migrate.²⁴¹ As pointed out by the Economic Commission for Africa (ECA), seemingly relative poverty occasioned by rising aspirations ‘combined with better opportunities and more attractive lifestyles elsewhere drive the bulk of African migration rather than absolute poverty.’²⁴² This calls for a revisiting of the relationship between migration and poverty.²⁴³

The box below attempts to highlight this relationship as explained by the Economic Commission for Africa:

Migration is often planned

A growing body of empirical evidence from Africa corroborates the idea that also in situation of poverty and constraints migration is generally part of deliberate, carefully planned, and largely rational strategies by families in order to improve their long-term social and economic wellbeing rather than a stereotypical ‘desperate flight from poverty’. This also means that the poorest families are less like to be able to afford the costs and risks of internal, let alone international, migration.

The aspect of poverty as a result of weak regional economies and its close relationship with human trafficking has greatly contributed to migration of both adults and children within the Horn-Africa.²⁴⁴ Poverty has led to increased number of adults and children migrating from the Horn Africa seeking ‘economic asylum’ in Europe,²⁴⁵ and other countries within the continent. For instance, Somalia is a state of ‘origin, transit and destination for mixed migration flows in and out of the East and Horn of Africa region.’²⁴⁶ The key push factors for migrants to leave the country are insecurity and poverty.

Below is a story of a child migrant as captured by DIIS:²⁴⁷

“We are 6 in my family; my brothers are all older than me and they cannot find work in Hargheissa; there’s a lot of poverty and no jobs. They are trying to find something to do to help my parents, and I thought that maybe there were more opportunities for a girl in Djibouti. I had put some money aside, so I decided to buy a bus ticket and come here to look for a job, maybe as a housemaid, so that I could help my family.”
Kadra, 14, Somali

The economic intra-African migration patterns are not new on the continent. The historical review of migratory flows, especially between the Sahel and North Africa, shows that migration is

241 See for instance <https://www.cgdev.org/publication/does-development-reduce-migration-working-paper-359> .

242 Economic Commission for Africa (ECA), Draft Report on the Drivers of Migration in Africa (2017).

243 As above.

244 Life and Peace Institute, ‘Migration and Asylum in the Horn of Africa: Causes, Factors and Possible Solutions’ <http://life-peace.org/hab/migration-and-asylum-in-the-horn-of-africa-causes-factors-and-possible-solutions/> accessed 22 June 2018.

245 As above.

246 GIZ et al, irregular Migration from and in the East and Horn of Africa (2016) p 21.

247 Danish Institute for International Studies (DIIS), High Risk Migration in the Horn of Africa: South- South Child Migration, Policy Brief April 2015 p 3.

a permanent feature of people's movement across the region. In the past, migration was generally seasonal with adult males migrating up north to seek employment in farms for instance. In recent years, and with the decline in economic activity in sectors where seasonal migrations worked, children have replaced adults as migrants. Some of them travel, unaccompanied or with mainly mothers, to earn a living and to send money back to their families.²⁴⁸ This is particularly relevant for children from rural areas. For many who are faced with "a generalized social immobility and the lack of future perspective, migration has progressively imposed itself as the best strategy to drastically turn around in a fast and radical manner a destiny that seems inevitable. [Migration] is often described as a shortcut, a relatively accessible [means] to secure a better social and professional future"²⁴⁹. Furthermore, for migrants from West Africa, the local "culture of migration also shapes the perception of children as much as adults regarding the whys and wherefores of migration."²⁵⁰

In West Africa, migration is also a major livelihood strategy for poor persons. Although generally 'internal migration, between and within urban and rural areas, continues to account for most migratory movements in West Africa,' in some states like, Burkina Faso, internal migration is outweighed by international migration.' In West Africa, many people as well as entire families move from 'hostile areas characterised by drought and low productivity in search of richer lands to farm or a remunerated job in town.' This is in partly to escape poverty.

3.2.3.2 Climate change and food insecurity

Climate change and food insecurity is also a key driver of movement of children and people generally. Although Africa and most of the developing world have done less to contribute to climate change than their more advanced and developed economies, people in these regions are likely to be more adversely affected by climate change.²⁵¹ According to Oxfam, 'while climate change affects all of us, the risks of displacement are significantly higher in lower-income countries and among people living in poverty.'²⁵² Between 2008 and 2016, persons in low-and lower-middle income states were about five times more likely than persons in high-income states to be displaced by 'sudden-onset extreme weather disasters'.²⁵³ In such situations women, children, indigenous people and vulnerable groups are disproportionately affected.²⁵⁴

While African countries have insignificant carbon footprints, their populations bear the brunt of floods, drought and displacement.²⁵⁵ Environmental changes such as desertification and deforestation when combined with disasters like droughts and famine may precipitate migration.²⁵⁶ This may lead to drought and conflicts due to scarcity of resources which is a major cause of movement of both adults and children. For instance, in the Horn of Africa, climate change has aggravated the impact of drought which coupled with conflicts, poverty and vulnerability has caused the displacement of about 3.7 million people in Somalia, Ethiopia and Kenya and

248 Altai Consulting. 2015. Irregular migration between West Africa, North Africa and the Mediterranean. P21

249 Diop, M. 2013. Migration des Enfants non-accompagnés de l'Afrique de l'Ouest vers l'Afrique du Nord: Etat des lieux. Study conducted for UNICEF. P22 https://prod.emnbelgium.be/sites/default/files/publications/migration_des_enfants_non_accompagnes_de_lafrique_de_louest_vers_lafrique_du_nord.pdf
Last accessed: 3 June 2018

250 Diop, M. 2013. Idem. P22

251 UNICEF (n 166 above) p5.

252 OXFAM, Uprooted By Climate Change: Responding to the Growing Risk Of Displacement (2017) p 5.

253 As above.

254 As above.

255 U Grote & K Warner, Environmental Change and Forced Migration in C Fischer and R Vollmer (eds.), Migration and Displacement in Sub-Saharan Africa: The Security-Migration Nexus II, Bonn International Center for Conversion (2009).

256 As above.

left about 15 million people food insecure.²⁵⁷ Among the displaced people, children make up a high fraction and are particularly vulnerable to exploitation and violence.²⁵⁸ In the course of the previous 'drought in 2010-2011, the number of underage girls sold into child marriage in exchange for livestock increased as families struggled to survive.'²⁵⁹

In West Africa, Lake Chad which borders Cameroon, Nigeria, Niger and Chad has dried up by 90% since the 1960s.²⁶⁰ About 25 million people in the region rely on the lake for their livelihoods in activities such as fisheries and agriculture.²⁶¹ The drastic reduction in levels of water has left around 7 million people food insecure.²⁶² This has resulted in displacement of about 2.6 million people with 1.5 million of them being children who risk malnourishment and vulnerability to violence.²⁶³

The box below helps underscore the potential effects of climate change as driver of movement of children in Africa as observed by UNICEF:²⁶⁴

Climate Change as a driver for movement of minors

With drought and temperatures intensifying in West and Central Africa, tensions in accessing scarce resources for cattle are also increasing hostilities in many rural areas, pushing greater numbers of people towards cities. But with more than 100 million people living in coastal cities less than one metre above sea level, even conservative estimates of a sea-level rise could result in the forced displacement of millions of climate refugees. Climate change has the potential to set off a chain reaction, with drought driving displacement to urban areas, often in precarious settlements or marginal neighbourhoods that are in swamps or low lying areas. These areas are more vulnerable to flooding, which could cause waves of displacement as people seek safety for their families and children. Unless the long-term planning of governments and civil society is equipped to anticipate these climate shocks and subsequent migration, the unmitigated impact of these forces will create detrimental outcomes for children across the region.

These devastating impacts of climate change are witnessed in Africa because the continent highly depends on natural resources and agriculture, poor infrastructure, weak institutions which lack capacity to effectively respond to climate change and high poverty rate which 'undermines the resilience of local populations to climate shocks.'²⁶⁵ Addressing effects of climate change in Africa such as displacement calls for integrated efforts at both continental level with the aim to reduce displacement, protection of rights of the people on the move and support measures that guarantee safe and dignified movement of both adults and children.

257 UNICEF (n 166 above) p5. OXFAM, Uprooted By Climate Change: Responding to the Growing Risk Of Displacement (2017) p 21.

258 As above.

259 As above.

260 European Council on Foreign Relations, 'Climate-driven migration in Africa' https://www.ecfr.eu/article/commentary_climate_driven_migration_in_africa (accessed 22 June 2018).

261 As above.

262 As above.

263 OXFAM, Uprooted By Climate Change: Responding to the Growing Risk Of Displacement (2017) p 24. h

264 UNICEF, 'In Search of Opportunities: Voices of children on the move in West and Central Africa' (2017) p 6.

265 European Council on Foreign Relations, 'Climate-driven migration in Africa' https://www.ecfr.eu/article/commentary_climate_driven_migration_in_africa (accessed 22 June 2018).

3.2.3.3 Gender inequality and discrimination

Among other non-economic factors that movements of children, particularly of the girl child, is attributed to gender discrimination.²⁶⁶ Despite global efforts to reduce gender inequalities, generally women and girls tend to lag behind in terms of respect for their basic freedoms and availability of opportunities.²⁶⁷ This has an influence on their movement behaviour. Empirical evidence indicates that 'perceived gender discrimination forms a strong and highly robust determinant of the willingness to migrate,' but often it does not result in actual migration.²⁶⁸ However, research has shown that gender inequality and discrimination in certain instances forced girls to move in fear of abuse and forced marriages and to seek better environment where their rights are protected.²⁶⁹

Child marriages lead to deprivation of rights such as education. A recent AU, campaign to end child marriage in Africa notes that 14 million adolescent and teenage girls are married in the world and often forced into marriage arrangements by their parents.²⁷⁰ Of the 41 states globally with the rate of 30% or more, 30 are in Africa.²⁷¹ These forms of abuse against the girl-child are pervaded by gender discrimination which regards girls as 'less worthy of care and protection.'²⁷² The patriarchal culture which engenders gender discrimination has a devastating impact on girls.²⁷³ The resultant effect is that some girls are forced to move in order to escape being forced into marriages. All girls facing forced marriages may not be able to move because fleeing is possible if there is room to migrate.²⁷⁴ Indeed, the high prevalence of early marriage has a correlation with lower female migration on account of discrimination because of 'limited female decision-making abilities,' in such circumstances.²⁷⁵

The box below explains the limited capacity of girls to escape through migration early marriages and female genital mutilation in situations of constrained decision-making:²⁷⁶

Female Genital Mutilation (FGM) and movement of girls

There are two possible scenarios for how discriminatory social institutions in origin countries influence female migration. On the one hand, women's desire to escape gender-specific discrimination within their community or family structures could be considered as an additional determinant for their migration. Women may prefer to migrate to avoid early marriage, female genital mutilation or fear (or even experiences) of gender-based violence. There is evidence from south-east Asia of women migrating in order to avoid involuntary marriages... On the other hand, this scenario depends on women's ability and opportunity to make and carry out that decision. In contexts where discrimination against women restricts their ability to act and their basic rights and freedoms, their capacity to migrate is also severely curtailed. For instance, early marriage is known to reduce a girl's chance of completing her secondary education, and is linked with limited economic independence and decision-making autonomy within the household... In such contexts, the socio-economic dependence of women on their husbands for key decision-making choices, as well as their low-skills and restricted access to resources thus also limits the opportunity for them to migrate.

266 I Ruysen & S Salomone, Female migration: a way out of discrimination? (2018) 130 *Journal of Development Economics* pg 225.

267 As above.

268 Ruysen (n 269 above) p 227.

269 RMMS, 'Young and on the Move: Children and youth in mixed migration flows within and from the Horn of Africa' September 2016.

270 AU, Campaign to End Child Marriage in Africa: Call to Action (2013).

271 As above.

272 As above.

273 As above.

274 G Ferrant et al, The role of discriminatory social institutions in female South-South migration (2014) OECD Development Centre p 6.

275 As above.

276 Ferrant (n 277 above) p 3.

Therefore, gender inequalities and discrimination can be a push factor or a restriction that constrains movement of women and girls. Generally, gender discrimination largely operates as a barrier to movement of women and girls thus curtailing their ability to escape subjection to discrimination.²⁷⁷ However, it has been pointed out that there is still need for ‘comprehensive, regularly collected and reliable sex-disaggregated data on international migration’ in order to allow extensive study of female migration.²⁷⁸ This will also contribute to deepened understanding of gender dynamics movement of individuals, families and children.²⁷⁹

3.2.3.4 Domestic violence

According to the ILO, domestic violence is a push factor for children to leave their homes and to move to different places in pursuit of a new life.²⁸⁰ Unequal power dynamics which operate across gender, age as well as other status markers in the society,²⁸¹ create an environment for domestic violence to take place. Socio-ecological phenomenon such as patriarchal norms and resulting dominance of men over women and children and socio-economic dynamics such as poverty and resultant inequalities contribute to domestic violence. This is because violence is intimately related with the manner relationships are structured and determined by power dynamics within and among communities, families and peers.²⁸²

Domestic violence leads to an environment that is unpredictable, unstable and dominated by anxiety and fear.²⁸³ This can result in psychological and emotional trauma just like the case of children who are subjected to child abuse.²⁸⁴ In addition, children may be directly subjected to physical and sexual abuse by perpetrators of domestic violence.²⁸⁵ Domestic violence and child abuse overlap at times and abuse of women or mothers usually precedes infliction of abuse upon children.²⁸⁶ Children’s susceptibility and capacity to protect themselves from violence changes as time progresses based on their evolving capabilities.²⁸⁷ Importantly, it should be recognised that girls and boys may develop differently particularly as they grow through childhood into adolescence which means their vulnerability and ability to protect themselves from violence might be at variance at certain times.²⁸⁸

Below is a narrative of a young Ethiopian migrant who was forced to leave home because of blatant domestic violence meted out by the father. The narrative was captured by DIIS in a South-South Child Migration Study:²⁸⁹

277 Ruysen (n 269 above) p 227.

278 Ferrant (n 277 above) p 3.

279 As above.

280 ILO, ‘Migration and child labour: Exploring child migrant vulnerabilities and those of children left-behind’ Working paper (2010).

281 MC Maternowska et al, The Multi-Country Study on the Drivers of Violence Affecting Children: A Cross-Country Snapshot of Findings (2016), UNICEF Office of Research, Florence, Italy P.1.

282 As above P 8.

283 Domestic Violence Prevention Center, ‘Impact of Domestic Violence on Children and Young People’ <<http://www.domesticviolence.com.au/pages/impact-of-domestic-violence-children-and-young-people.php>> (accessed 29 March 2018).

284 As above.

285 As above.

286 As above.

287 Maternowska (n 284 above) P 3.

288 As above.

289 Danish Institute for International Studies (DIIS), High Risk Migration in the Horn of Africa: South-South Child Migration, Policy Brief April 2015 P.

"I was living near Harar with my family. My father went crazy and began beating my mother every day. We were very poor and two of my siblings died. I was the oldest one, so I started helping out: I cooked, planted crops in our garden, and looked after the youngest ones. My father started beating me as well. We couldn't live with him anymore. One night we left and went to Jijiga. When we arrived, I helped my mother settle. Then I immediately left for Djibouti to look for a job. With some money left I bought the tools and started working (...) Now I do a lot of jobs, I clean cars and shoes in Menelik Square, and I do commissions for people living there.... I got to know some people who give me something to do, take away the garbage or clean their houses. They give me food or let me sleep inside sometimes. (...) I'm saving a lot to send back to my family!" Elias, 15, Ethiopian

Although the prevalence of the incidence as well as the acceptance of domestic violence in Africa declined by 10 percent between the 'first (2000-6) and second half (2007-2013) of the 2000s' the tacit acceptance of domestic violence in Africa is 'exceptionally high' at 51 per cent.²⁹⁰ According to a World Bank Report, *Poverty Rising in Africa*, tolerance of domestic violence in Africa is still twice as high as in the rest of the developing world.²⁹¹ Attitudes towards domestic violence also point to the prevailing behaviour, social norms and disposition generally towards conflict.²⁹² These structural drivers of violence when combined with institutional drivers of violence, like failure to enforce legal structures and ineffective child protection systems, reinforce children's vulnerabilities and susceptibility to violence.²⁹³ This provides a reason for children to migrate in search of a conducive environment to live.

3.2.3.5 Education

Education is equally one of the main factors that contribute to movement of children. According to the ILO, through movement, many children aspire for better chances to attend school.²⁹⁴ The increasing desire to obtain an education and the rising levels of literacy schooling across the African continent has made education a 'driving force of mobility and migration.'²⁹⁵ Many families also hope that migration will avail their children opportunities to improve their human capital through obtaining education and skills development.²⁹⁶ Education is key to eradication of poverty.

However, ILO asserts that the possibility that children on the move find an opportunity to study depends on the nature of the destination.²⁹⁷ For instance, a research conducted on migrant children few years back in South Africa established that 65 per cent of unaccompanied minors were not enrolled in school although there was variation depending on location.²⁹⁸ The study indicated that children residing in Johannesburg were likely to be enrolled in school (96 per cent) in comparison to those living in the border areas (6 per cent).²⁹⁹ This gives a glimpse into multiple barriers that migrant children as well as refugee children face in regard to starting and continuing their education.³⁰⁰

290 L Christiaensen, 'Domestic Violence and Poverty in Africa: When the Husband's Beating Stick is Like Butter' <<http://blogs.worldbank.org/african/domestic-violence-and-poverty-in-africa-when-the-husbands-beating-stick-is-like-butter>> (accessed 29 March 2018).

291 World Bank, *Poverty in a Rising Africa* (2016).

292 Christiaensen, (n 293 above).

293 Maternowska (n 284 above).

294 ILO, 'Migration and child labour: Exploring child migrant vulnerabilities and those of children left-behind' Working paper (2010) p 7.

295 Economic Commission for Africa (ECA), *Draft Report on the Drivers of Migration in Africa* (2017) p 9.

296 ILO, 'Migration and child labour: Exploring child migrant vulnerabilities and those of children left-behind' Working paper (2010) p 7.

297 As above.

298 Save the Children UK: *Children Crossing Borders. Report on Unaccompanied Minors to South Africa*, p.5, London, 2007.

299 As above.

300 UNICEF, *Uprooted: The Growing Crisis for Refugee and Migrant Children*, September 2016 p 55.

Children from poor back ground may be at a disadvantage compared to children from rich backgrounds when it comes to migration in search for education either at local or intra-regional level.³⁰¹ This is because the cost of migration may be a hindrance to movement of children from poor backgrounds.³⁰² For instance, the cost of transport to places where good schools can be found, or funds required to support stay in boarding schools may be out of reach for children from poor backgrounds unless they are afforded scholarships. In patriarchal communities, the movement of girls in pursuit of education may be limited by 'perceived social and reputational risks attributed to their migration out of parental home.'³⁰³

301 Economic Commission for Africa (ECA), Draft Report on the Drivers of Migration in Africa (2017) p 9.

302 As above.

303 As above.

CHAPTER 4 ROUTES, MEANS, TRANSITS AND DESTINATIONS OF CHILDREN ON THE MOVE

This chapter covers routes, means, transit and destinations in light of mixed migration i.e cross-border movement of children fleeing conflicts, persecutions, children being trafficked or smuggled and those in search for better life opportunities. According to UNICEF about 5.4 million refugees originate from African countries with children being 'disproportionately represented among them'³⁰⁴ i.e constituting about 3 million. The cross-border movement of children along the routes discussed below also takes into account the fact that the population of internally displaced persons in Africa by 2016 was 12.6 million (as stated earlier) which includes children IDPs.

Movement of children is influenced and largely responds to the various drivers of such movement.³⁰⁵ Most of the research identify migration routes from Africa to countries outside Africa. According to Sambo & Terenzio, the routes taken by migrant children are not randomly selected but are influenced by activities in which the children intend to be engaged in.³⁰⁶ Often, a route is taken after a period of planning and preparation.³⁰⁷ Movement from various parts of Africa takes different routes. According to RMMS, movement within the Horn of Africa and out of the region is dynamic and mainly follows three main routes; the western/northern route; the eastern route; and the southern route.³⁰⁸ In addition to the routes within the Horn of Africa, the West and Central Africa into North Africa route and West Africa route are considered.

4.1 Routes within the Horn of Africa and out of the region

4.1.1 Western/Northern Route

The Northern/Western route is used by people moving from the East and Horn of Africa as well as other parts of Africa to reach Europe via the Mediterranean Sea.³⁰⁹ Depending on the source the route is known as either northern or Western route.³¹⁰ Mainly the Western route starts in Eritrea, Ethiopia, or Somalia via Sudan, and for others, either ends in Libya or proceeds towards Europe by crossing the Mediterranean (referred to as 'Central Mediterranean' route by the European border agency).³¹¹

To reach Libya, and Europe ultimately, people migrating from East and Horn of Africa follow a series of particular hubs or places. The key transit state for children following this route is Sudan.³¹² Children moving from the Somaliland pass through Hargeisa to Addis Ababa, Ethiopia.³¹³ From Ethiopia they have three options to reach Khartoum: some move from Addis Ababa through the Metema, at the border of Sudan; others move from Addis Ababa through Humera, on the border

304 UNICEF, Uprooted The Growing Crisis For Refugee And Migrant Children (2016) https://www.unicef.org/publications/files/Uprooted_Executive_Summary_Sept_2016.pdf accessed 10 November 2018 p 5.

305 MH Sambo & F Terenzio, Children on the move: A different voice (2013).

306 As above.

307 As above.

308 RMMS (n 272 above) p19.

309 K Marchand et al, Study on Migration Routes in the East and Horn of Africa, Maastricht Graduate School of Governance (2017) p IX.

310 As above p 24.

311 RMMS (n 272 above) p19.

312 Marchand (n 312 above) p 24.

313 As above.

between Eritrea and Sudan; and others fly directly from Addis Ababa to Khartoum.³¹⁴ Children moving from Eritrea reach Khartoum through Massawa.³¹⁵ Asmara/Massawa route to Khartoum is said to be dangerous because of kidnappings that take place close to the border with 30-50 kidnappings happening every month.³¹⁶ Once the children get to Sudan, they get to Libya through Darfur, or through Dongola in Northern Sudan or the route through Chad.³¹⁷

After Libya they use the Central Mediterranean route to Europe. As at 2015, a significant number of people in mixed migration situation using the Central Mediterranean route came from Horn of Africa with Eritrea contributing 27 per cent (39, 162), Somalia 8 per cent (12, 433) and Sudan 6 per cent (9, 000).³¹⁸ 2015 witnessed an increase of nearly 400 per increase over 2014 in relation to the number of migrants (154, 000).³¹⁹ According to the IOM, in 2016, more than 100, 000 migrant and refugee children reached Europe by mainly using the Central Mediterranean route and to a lesser degree the Eastern Mediterranean route. Over two thirds of the children were 'unaccompanied or separated children at high risk of exploitation.'³²⁰



Map 2: Horn of Africa into the Gulf

The number of overall people in mixed migration situation using the Central Mediterranean route increased, and so has the proportion of the children using the route. According to UNICEF, of the children moving on the Central Mediterranean route to Italy in 2015, "unaccompanied and separated children made up 75 per cent of all children arriving in Italy by sea; this proportion rose

314 As above.

315 As above.

316 Altai Consulting/UNHCR, Mixed Migration: Libya at the Crossroads. Mapping of Migration Routes and Drivers of Migration in Post-revolution Libya (2013) p 33.

317 Marchand (n 312 above) p 24.

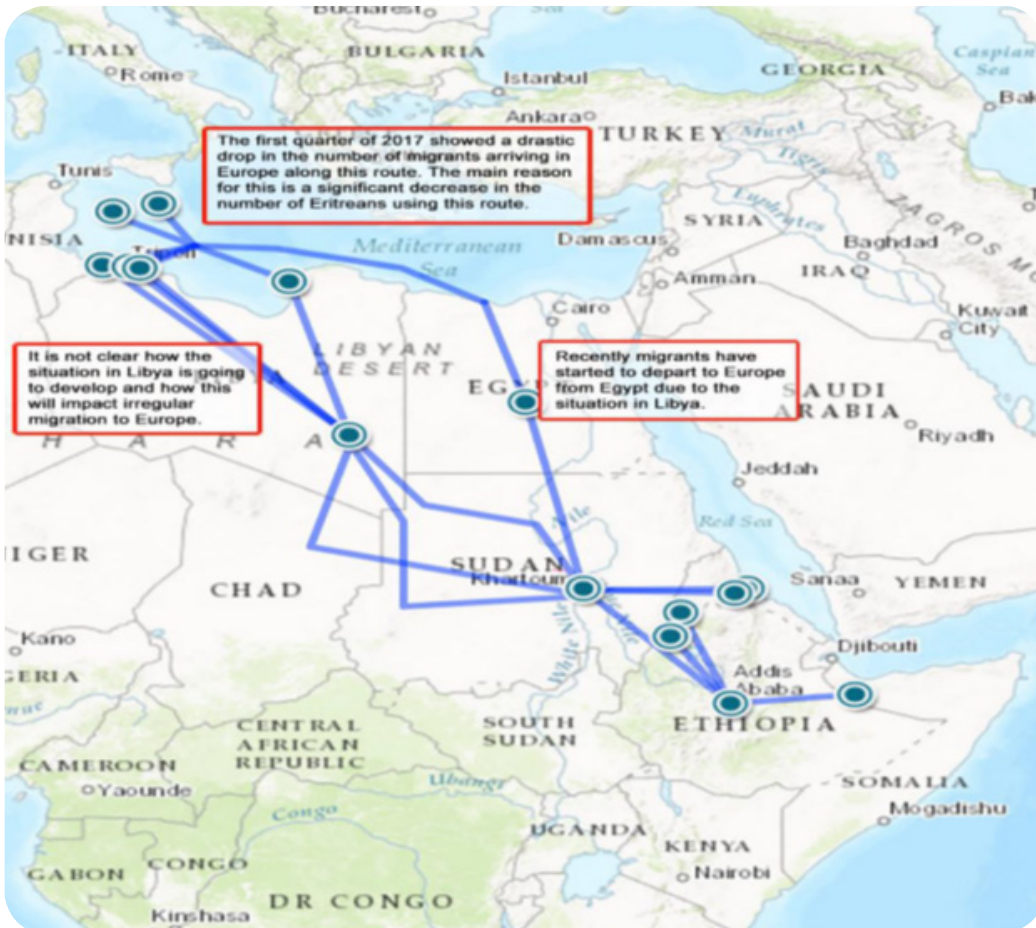
318 RMMS (n 272 above) p 20.

319 As above.

320 International Organization for Migration, Child Protection on Eastern and Central Mediterranean Migration Routes Focus of Ljubljana Conference <<https://www.iom.int/news/child-protection-eastern-and-central-mediterranean-migration-routes-focus-ljubljana-conference>> accessed on 28 March 2018.

to 92 per cent in 2016.³²¹ The figures were similar in the course of 2017. Most children came from Eritrea, the Gambia, Nigeria, Egypt and Guinea.³²²

In the recent past Egypt has become a transit country for people moving to Europe. This has been observed since 2016 following the crossing of the Mediterranean Sea by irregular migrants and asylum seekers from Egypt.³²³ This is attributable to the deteriorating security situation in Libya and the challenges of migrating to Israel.³²⁴



Map 3: Northern-Western Route ³²⁵

4.1.2 The Sinai Route/Northern Route

This route starts from the East and Horn of Africa through Sudan and Egypt into Israel. Israel was particularly a major destination for Eritrean migrants.³²⁶ From 2012 the number of people moving using the route has been on the decline to an extent that it is almost inoperative.³²⁷ This is attributable to restrictive policies and measures that both Israel and Egypt have put in place such as tough border controls and the construction of a fence along the Sinai-Israeli border as well as establishment of a center for detention.³²⁸ Due to the restrictive measures taken by Israel

321 UNICEF. May 2017. A child is a child: Protecting children on the move from violence, abuse and exploitation. p11

322 As above.

323 Marchand (n 312 above) p 25.

324 As above.

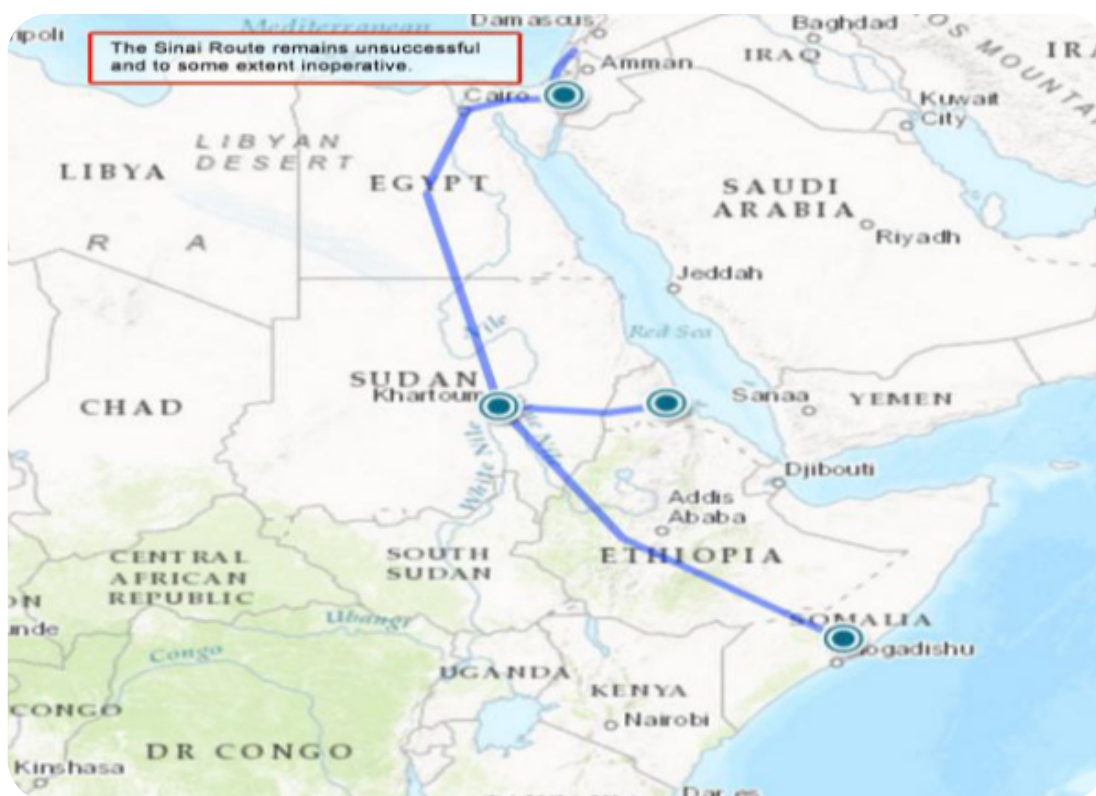
325 As above.

326 GIZ et al, irregular Migration from and in the East and Horn of Africa (2016) p 30

327 As above.

328 As above.

and Egypt as well as challenges of trafficking and kidnappings along this route migrants are less interested in taking the route.³²⁹



Map 4: Sinai Northern route³³⁰

4.1.3 The Eastern Route

The Eastern route stretches into Yemen and Saudi Arabia and was the most popular route for movement from the Horn of Africa.³³¹ The route has been widely popular particularly among Somalis and Ethiopians.³³² Previously, the route was often used by Somalis who accounted to two thirds of the flows but from 2010 number of Ethiopians using this route became higher than that of Somalis.³³³ About 92, 446 persons arrived in Yemen in 2015, 89 percent being Ethiopians and 11 per cent Somali.³³⁴ RMMS pointed out that although the data on children and youth who took the route is not known, it is estimated that 20 per cent of the 91, 000 people who travelled to Yemen in 2014 were children who were unaccompanied.³³⁵

In the recent past the number of people using the eastern route has been fluctuating, in the first quarter of 2017, the number of migrants who used this route was about 15,498 which signified a decline of 17% from the 'final quarter of 2016 and a 44 per cent decrease compared to the first quarter of 2016.'³³⁶ Due to the conflict in Yemen the trend in movement between Djibouti and Yemen has significantly changed.³³⁷ The ongoing conflict in Yemen has made the eastern route less attractive.³³⁸

329 As above.

330 Marchand (n 312 above) p 28.

331 RMMS (n 272 above) p24.

332 Marchand (n 312 above) p 29.

333 GIZ et al, irregular Migration from and in the East and Horn of Africa (2016) p 31.

334 RMMS (n 272 above) p24.

335 As above.

336 Marchand (n 312 above) p 29.

337 GIZ et al, irregular Migration from and in the East and Horn of Africa (2016) p 31.

338 Marchand (n 312 above) p 30.



Map 5: the Eastern Route.³³⁹

4.1.4 The Southern Route

The Southern Route joins the East and Horn of Africa to South Africa, with Kenya being the main hub of transit.³⁴⁰ Other transit countries along the route are Tanzania, Malawi and Mozambique.³⁴¹ The route stretches about 4,500 kilometers.³⁴² The route is majorly used by Ethiopian and Somali.³⁴³ Generally, the route is less popular compared to other routes and it is not well documented as well as understood as many of the other routes out of Africa.³⁴⁴

According to RMMS there is relatively limited data available on movement through the Southern route from the Horn of Africa via the Eastern Corridor through Kenya towards South Africa.³⁴⁵ Notably, conservative estimates point out that the number of undocumented migrants from other African States in South Africa are in the region of 3 million – 6 million.³⁴⁶ There is evidence indicating that unaccompanied minors take the journey to Southern Africa. In 2016, about 15 unaccompanied Ethiopian Children were intercepted and detained by Zambian government for illegal entry.³⁴⁷

Estimates indicate that the number of people moving from the East and Horn of Africa using the route have been on the decline. A study carried out in 2009 indicated that annually between

339 As above.

340 Marchand (n 312 above)p 32.

341 As above.

342 L Katy & C Jeff, In harm's way: the irregular movement of migrants to Southern Africa from the Horn and Great Lakes regions (2011) New issues in refugee research, Research paper no. 200. United Nations High Commissioner for Refugees, Geneva, Switzerland p 1.

343 GIZ et al, irregular Migration from and in the East and Horn of Africa (2016) p 31.

344 As above.

345 RMMS (n 272 above) p 25.

346 As above.

347 As above.

17,000 and 20,000 people from Ethiopia and Somalia used the route around 2008 and 2009.³⁴⁸ However, recent estimates indicate that annually the number of individuals entering South Africa is between 13,400 and 14,050 because most people find Europe more attractive.³⁴⁹ Also due to the recent 'Xenophobic' attacks that foreigners face in South Africa as well as growing labour opportunities in other states along the route, migrants and refugees choose alternative destinations.³⁵⁰ However, South Africa remains the most important destination for people moving along the route.³⁵¹

The journey along the Southern route is dangerous and difficult thus imposing a great deal of hardship to children who take it, which makes them vulnerable violation of their human rights.³⁵² The journey through the route is frequently taken with the 'help' of smugglers. On average, the journey to South Africa takes about eight weeks, but can take longer.³⁵³ In certain instances, those involved in smuggling do not use the straight route through Kenya, Tanzania and Mozambique in order to avoid detection.³⁵⁴ They switch up routes and may pass through states such as Rwanda, Burundi, Uganda, Zambia, Malawi and Zimbabwe.³⁵⁵ In addition, sometimes they may use air travel to South Africa either flying from Addis Ababa or Nairobi but much is not known about the number of irregular migrants who travel the Southern route through this means.³⁵⁶



Map 6: Southern route³⁵⁷

4.2 Routes through the West and Central Africa into North Africa

There are three primary routes in North Africa which migrants and refugees use, although the central route through Niger is most popular. There is a historical context to the choice of routes in the region. The movement of people within the West and Central Africa precedes the present

348 GIZ et al, irregular Migration from and in the East and Horn of Africa (2016) p 31.

349 Marchand (n 312 above) p 32.

350 As above.

351 Marchand (n 312 above) p 33.

352 Katy & Jeff (n 345 above) p 1.

353 GIZ et al, irregular Migration from and in the East and Horn of Africa (2016) p 32.

354 As above.

355 As above.

356 As above.

357 As above.

'geopolitical structure' such as the nation or free trade zones.³⁵⁸ Movement of people in the West and Central Africa follows the ancient trade routes stretching from Ndjamenà to Timbuktu with the routes paving the way for the flow of goods, dreams and hopes.³⁵⁹ Notably, RMMS also points out that when passing through Mali, migrants travel via Bamako to Timbuktu or Gao then either proceed to Algeria or Niger then to Libya.³⁶⁰ However, because of insecurity in Mali migrants presently prefer reaching Libya or Algeria through Niger instead on Northern Mali.³⁶¹ This change in routes makes Burkina Faso and in particular Ouagadougou the epicenter of various converging routes hence bringing together people from the 'western and Southern-central regions.'³⁶² It is estimated that each year 12 million people cross borders in West and Central Africa.³⁶³ The vast majority of these people (75 per cent) move within Africa either for economic opportunities or fleeing from conflicts.³⁶⁴ Among these people is also a significant fraction of children either moving in the company of their families or unaccompanied.

It is worth noting that movements across the region occurs both towards the North and towards the South. There is fluidity within the region in terms of flows. While some people are moving North a large number is also moving South. Movement – both voluntary and involuntary – towards the South, also involving children, is largely related to returnees – assisted or otherwise (e.g. from Algeria to Niger and Mali, from Libya to Niger or from Nigeria to Mali). In general terms, movement routes have barely changed in the last 10 years. A 2008 study by IOM noted that towns such as Arlit, Niamey, Zinder and Agadez were as key then as they are today and so are others such as Gao, Tamanrasset, Sabha, etc.³⁶⁵

The most reliable recent data available with respect to the movement of children along these routes captures mainly movements across Niger which serves as a hub for the CMR. In this respect, the number of children transiting via Niger has increased from 2016 to 2017. The total recorded number of children under 18 interviewed at the IOM migrant transit centers in Niger was 5% in 2016 and increased to 8% in 2017. Originating from Gambia, Burkina Faso, Cote d'Ivoire, Nigeria, Mali, Guinea Bissau, Cameroon and Guinee, 60% of these children indicated that they were not accompanied. Forty per cent of children indicated that their presence in Niger followed a stay in Algeria while others have been residing in Niger awaiting the next step of their journey. Only few had spent time in Libya.³⁶⁶ This indicates that children move in both directions between the Nigerien and Algerian and Libyan borders.

A 2008 study identified the following key routes within Algeria once people cross from Niger or Mali: In Guezzam-Tamanrasset-Ghardaia, Tamanrasset-Djanet, Bordj Badji Mokhtar-Adrar, and Tinzaouatine-Tamanrasset.³⁶⁷ Children also travel further north, mainly with their families,

358 UNICEF (n 166 above) p2.

359 As above.

360 RMMS (n 272 above) 25.

361 As above.

362 As above.

363 UNICEF (n 166 above) p2.

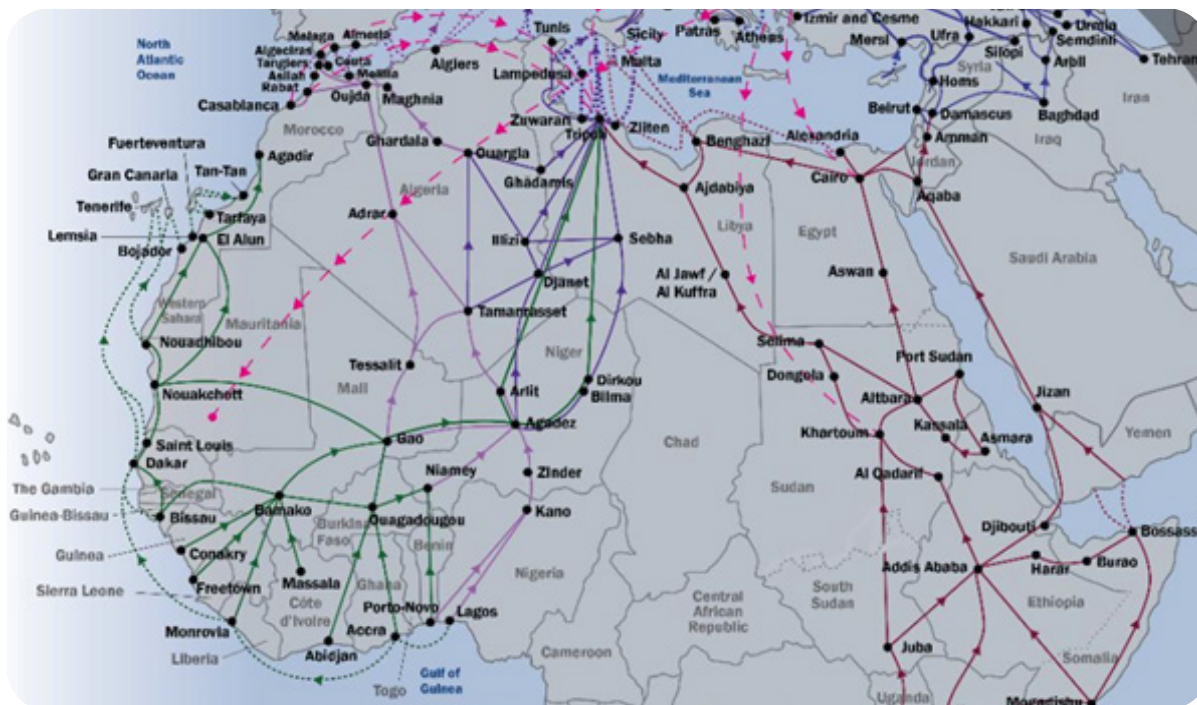
364 As above.

365 IOM. 2008. Migration irrégulière d'Afrique Occidentale en Afrique du Nord et en Union Européenne: Une vue d'ensemble des tendances générales. <https://publications.iom.int/fr/books/mrs-ndeg32-migration-irreguliere-dafrique-occidentale-en-afrique-du-nord-et-en-union-0>
Last accessed: 7 June 2018

366 IOM. 2017. Niger: Rapport de profilage des migrants 2016. P16 <https://gmdac.iom.int/sites/default/files/OIM%20Niger%202016%20Rapport%20de%20Profilage%20%28Francais%29.pdf>
Last accessed: 7 June 2018

367 Bensaâd A. (2008), Les migrations sub-sahariennes en Algérie, Institut Universitaire Européen, Union européenne, CARIM rapport de recherche 2008/01, p.1 <http://cadmus.eui.eu/handle/1814/7873>
Last accessed: 7 June 2018

to Algiers and Oran. The situation of children on each of these routes is different. Children in Tamanrasset, where Africans from 20 different countries represent 40% of the population, are part of families on the move, crossing mainly from Niger with Algeria as their final destination, and have therefore some social support system. The situation of children notably in Ouargla and Gharadaia is characterized by low paid jobs which earn them the equivalent of 6 euros/month.³⁶⁸



Map 7: Migration routes to and through North Africa from East and West Africa (Source: IOM, June 2018³⁶⁹)

An earlier study in 2005 have identified Raban Tioussit, Ras Ousfour, Joug Bral, Iganfda, Mersat Belmehdi, Chbika, and Houara as key crossing points between Algeria and Morocco.³⁷⁰ Despite the security situation, Gao in northern Mali also continues to be an important hub from the CMR. Of all people arriving in Gao and Benena, 8% are children, with Gao being the main hub. The majority of children were from West Africa (Senegal, Guinea, Gambia and Mali travelling onwards). Although the data available does not disaggregate the responses per age group, 38% of those passing by Gao indicated Algeria as their destination and 32% indicated that it was Libya. Only 29% indicated their desire to reach Europe.³⁷¹

Reviewing the migratory flow in Mali on the basis of gender as a proportion of the total number of people crossing indicates that women and girls do not travel through certain hubs (see Figure 6).

Means of transportation are several. Depending on the origin of the movement, many travels using different means. For those from West Africa, movement across borders in a legal manner is

368 Khaled N. et al. (2008), Les migrants subsahariens en situation irrégulière en Algérie : caractéristiques, profils et typologie. p.21 http://carim-south.eu/carim/public/polsocetexts/PS2ALG003_FR.pdf Last accessed: 2 June 2018

369 IOM. 2018. Displacement Tracking Matrix. <http://migration.iom.int/europe/> Last accessed: 7 June 2018.

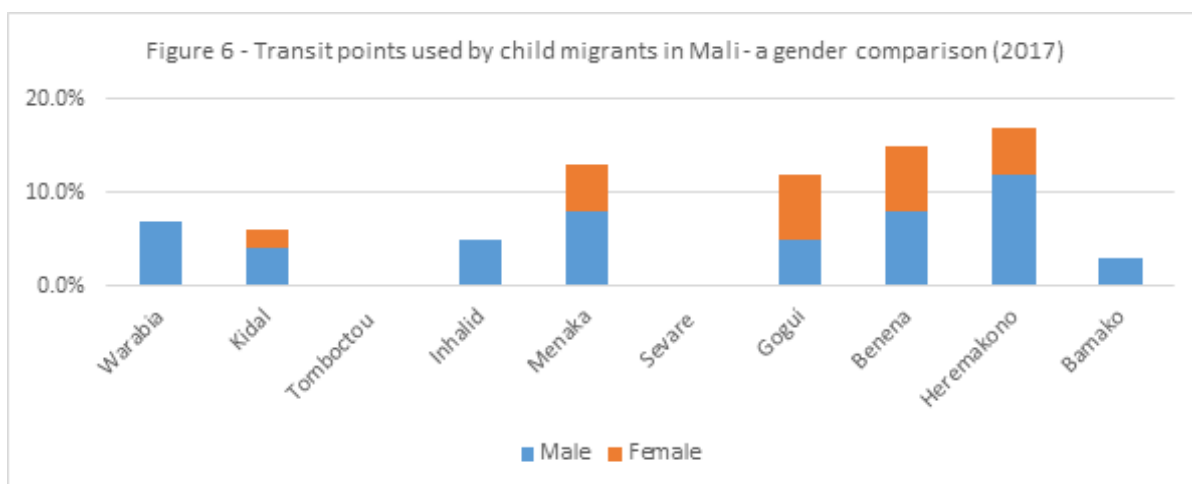
370 OIM, Union Européenne, Coopération Belge, Confédération Suisse (2009), Migration en Mauritanie : document thématique 2009. Migration irrégulière : état des lieux et défis de la gestion des flux de migrants irréguliers en Mauritanie, OIM, p.6.

371 IOM. November 2016. Mali – Suivi des Flux Migratoires: Rapport de situation sur les points de suivi des flux migratoires a Gao et Benena. https://www.iom.int/sites/default/files/situation_reports/file/IOM-Mali-Migration_Sitrep9_FR.PDF Last accessed: 7 June 2018

possible until they reach the Sahel countries. Until then they travel largely by bus. Once in Niger or Mali, it is possible to travel onwards using similar means without requiring assistance.

For some stretches of the journey, however, assistance of smugglers is sought. People on the move can seek the assistance of smugglers on several occasions during their trip. For instance, crossing from Niger to Libya could require the use of smugglers until they reach a Libyan town. There parts of the journey could be further undertaken by bus while smugglers are required for some stretches (e.g. the route between Kufra and Benghazi or Tripoli requires the use of both busses and smuggler services in order to avoid detention). In other words, the journey is undertaken in phases and the role of smugglers increases the closer the people get to the Algerian and Libyan borders.³⁷²

Systematic data on how children on the move travel is absent. However, there is evidence through interview notes by IOM and UNHCR indicating that children on the move tend to use the same approach, for those unaccompanied teenagers having traveled by bus with the support of their families and working in transit towns to be able to travel onwards and paying smugglers.



Source: IOM, January 2018³⁷³

Increasingly, children are travelling alone. UNICEF estimates that unaccompanied and separated children made up 75% of all children (largely of African origin but not exclusively) arriving in Italy by sea through the CMR in 2015. In 2016, their numbers rose to 92% of total arrivals. The numbers remained at this level in 2017. Most of these children came from Eritrea, the Gambia, Nigeria, Egypt and Guinea.³⁷⁴

March 2018 figures of children travelling through North Africa and crossing the Mediterranean through the CMR into Italy shows a frightening number of children crossing unaccompanied (see Figure 8). It is however not clear whether they have travelled from their country of origin unaccompanied or whether they were indeed accompanied but were separated at sea or prior to boarding boats.

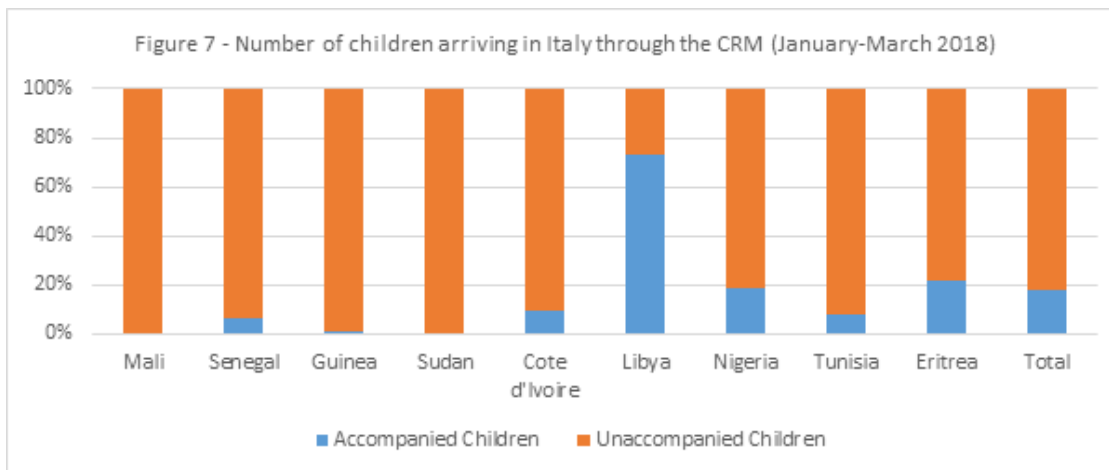
372 IOM. 2017. Rapport de profilage des migrants: Niger. Idem. P16.

373 IOM. Points de Suivi des flux de population: Mali. January 2018.

<https://drive.google.com/file/d/1LzW0H0dwkbUn5K-SNiD3vShQ0xjFrvHo/view>

Last accessed: 7 June 2018.

374 UNICEF (n 166 above) P11.



Source: UNHCR, March 2018³⁷⁵

In 2015, a survey by the North Africa Mixed Migration Hub shed some light on the reasons why children travel alone. Among the reasons given is that they personally faced imminent threats and harassment, or because their families had resources to only send one person or because they were orphans looking at making a better future for themselves. Some children have travelled alone in search of economic opportunities to help their families back home. The common pattern is that they “ were orphans or from single parent families.”³⁷⁶

4.3 The West Africa Route



Map 8: The West Africa route (source: i-map migration)

Movement in West Africa is facilitated by the open borders within the region. Children travelling within the region are not always seeking to leave it (e.g. travel further North to North Africa and to Europe).

The choice of routes depends on the motive for movement. Those who remain in the region use axis such as Mali-Burkina Faso, Nigeria-Niger-Burkina Faso, Nigeria-Cameroon and Nigeria-Niger to flee conflict. Those on the move within the region either so towards the Northern route

375 UNHCR. 11 April 2018. Italy Sea Arrivals Dashboard. Last accessed: 2 June 2018.

376 North Africa Mixed Migration Hub. 2015. Detained youth: the fate of young migrants, asylum seekers and refugees in Libya today. P53

or move internally to seek economic opportunities rely on routes such as Togo-Benin, Benin-Burkina Faso-Nigeria-Ghana notably for girls working as domestic workers, Benin-Nigeria to work in the stone quarriers.³⁷⁷

377 F Boursin 'The added value of Protective Accompaniement' (2014), Terre des hommes: Lausanne, p8 & Mouvement Africain des Enfants et Jeunes Travailleurs (MAETJ), 2010. Mobilite des enfants et jeune au Benin, Burkina Faso et Togo. JEUDA 121.
http://maejt.org/wp-content/uploads/2017/01/jeuda_121_itineraires.pdf

CHAPTER 5 CHALLENGES FACED BY CHILDREN ON THE MOVE IN AFRICA

5.1 Discrimination

Discrimination, largely racism and xenophobia, represents one of the key emerging challenges facing children on the move. Reported cases, some of them leading to arrests, covering different parts of the continent are evidence of violations. These are committed both by citizens of the host country and official structures (e.g. security forces).

In South Africa, for instance, among other challenges, child migrants face xenophobia. Xenophobia is a form of violence which harms victims physically and psychologically.³⁷⁸ Migrant children in South Africa face xenophobia from their peers, teachers and are sometimes barred from accessing schools because they are in the country illegally.³⁷⁹ In February 2017, there were reports by parents that xenophobia prejudice was affecting local schools in South Africa.³⁸⁰

Notably, in 2015 the African Commission on Human and Peoples' Rights issued a Resolution condemning xenophobic attacks in South Africa and called on the Government of South Africa to stop attacks on foreign nationals in the country and to take steps to ensure that it does not occur in the future.³⁸¹ In particular, the Resolution calls upon the Government of South Africa to take appropriate steps to guarantee the rights of all immigrants in line with international and regional human rights instruments.³⁸² However, xenophobic prejudice and attacks are yet to be stemmed.

In a survey conducted in 2016, '92 per cent of their interviewees – predominantly migrants from Africa – had witnessed or experienced discrimination during their travels in Tunisia. Experiences of discrimination have long been also reported by migrants and refugees travelling through Egypt. In Libya, xenophobia against migrants appear to be increasing, especially in coastal areas, where foreign nationals are blamed for the rise of criminal groups and smuggling networks'.³⁸³

Although difficult, civil society and looser community-based campaigns in North Africa are increasingly mobilized to counter racism especially against children. Several campaigns, especially in the Maghreb countries (Morocco, Algeria and Tunisia) have been organized to send a welcoming message to refugees.

5.2 Loss of identity, name and nationality

Children on the move are likely to be vulnerable because despite the challenges that they may have faced at home such as poverty, inadequate nutrition, poor health care or education, they

378 M Hlatshwayo & S Vally, 'Violence, resilience and solidarity: The right to education for child migrants in South Africa' (2014) 35(3) *School Psychology International* 266–279.

379 ENCA, A Rare Lifeline for Migrant Children in South Africa, <https://www.enca.com/south-africa/a-rare-lifeline-for-migrant-children-in-south-africa> accessed 17 September 2018.

380 Center for Applied Legal Studies, Recurrence of xenophobic attacks in South Africa, <https://www.wits.ac.za/news/sources/cals-news/2017/recurrence-of-xenophobic-attacks-in-south-africa.html> accessed 19 September 2018.

381 African Commission on Human and Peoples' Rights, Resolution Condemning the Xenophobic Attacks in the Republic of South Africa - ACHPR/Res.304 (LVI) 2015.

382 As above.

383 North Africa Mixed Migration Hub quoted in United Nations Children's Fund (UNICEF) & International Organization for Migration (IOM). 2017. *Harrowing Journeys: Children and youth on the move across the Mediterranean Sea, at risk of trafficking and exploitation*. New York: UNICEF, P 40.

are forced to learn a new culture, language and try to make friends.³⁸⁴ Further, the social services of the transit country or destination may not be equipped to address their specific needs or the children may not be aware of the availability of the services.³⁸⁵

Children on the move also face challenge of lack of documentation. This problem arises sometimes because often times the states of origin and destination, do not have proper and systematic systems of birth registration. For instance, in Southern Africa a study commissioned by IOM indicated that states in the region only have sporadic practice of birth registration and children on the move are left mostly without having any form of documentation.³⁸⁶ In South Africa, for instance, there are cases where children's refugee status could not be determined for lack of relevant documents, including certificate of birth registration.³⁸⁷ Generally, children on the move who lack documentation face a situation of grave vulnerability because regularizing their migration and access to social services is difficult in the state of transit or destination.³⁸⁸

Similarly, in some North African countries, parents of newborns who are on the move often face difficulties in acquiring valid birth certificates, which has far-reaching consequences in terms of the basic human rights of children on the move. In the case of Libya, this has been blamed on the internal situation in the country and the lack of adequate administrative structure. In Tunisia and Morocco this has been attributed to the lack of the legal framework to provide valid certificates for children not born to nationals.³⁸⁹

In West Africa, children of refugees are not entirely guaranteed birth registration.³⁹⁰ For instance although in Guinea which used to host thousands of refugees from Liberia, Sierra Leone and more recently Cote d'Ivoire, birth registration is organized well in refugee camps, persons who remained in former refugee camps, with no refugee status are reported to have been cut off from all contacts with government, including registration of new births.³⁹¹ Also, former refugees who live in urban areas face challenges in registering their children.³⁹²

Legal parentage is said to be the 'gateway through which many of the rights of children flow'. This is one of the reasons why birth registration has been recognised as a 'critical first step' in ensuring the rights of children on the move. As mentioned above, many children on the move lack birth registration because of weak civil registration systems in their countries of origin as well as discrimination and barriers to registration. Movement without proper documentation, children may later face real difficulties in trying to establish a link with their home country. In addition, children born outside their parents' home country in an irregular situation may also encounter barriers in trying to acquire the nationality of their parents, as well as accessing birth registration and nationality in the country of their birth. This is because some States refuse to register the children of non-nationals or may require a period of legal residence in order to do so, which often

384 As above p18.

385 As above.

386 IOM, Study on Unaccompanied Migrant Children in Mozambique, South Africa, Zambia and Zimbabwe 2017 p 38.

387 J Sloth-Nielsen & M Ackermann, 'Unaccompanied and Separated Foreign Children in the Care System in the Western Cape – A Socio-Legal Study' PER / PELJ 2016(19) - DOI <http://dx.doi.org/10.17159/1727-3781/2016/v19i0a1207> p 5.

388 Progress Report of the Human Rights Council Advisory Committee, Global Issue of Unaccompanied migrant children and adolescents and human rights A/HRC/33/53 16 August 2016 para 59.

389 See UNHCR in Libya, UN Committee on the rights of the child recommendations to Tunisia, Algeria and Morocco.

390 Bronwen Manby, Nationality, Migration and Statelessness in West Africa A study for UNHCR and IOM June 2015 P 34.

391 As above.

392 As above.

excludes not only irregular migrant children, but also asylum seekers and refugees who may not meet the requirements. Hence, States child protection system must recognise the fact that for children on the move – including asylum seekers, refugees, and migrant–lack of birth registration may result in statelessness, especially when such documentation is required in order to prove family relations or place of birth.

5.3 Lack of access to education and economic opportunities

Children on the move may not have the chance to enjoy the right to education. Where they lack documentation, they may be deprived access to rights like education.³⁹³ Children on the move may also not be able to attend school because of language barrier and in some circumstances because of xenophobia.³⁹⁴ Child labour also deprives many children on the move access to education.³⁹⁵

Some strides have been made with respect to education in North Africa; efforts which could serve as good practices elsewhere on the continent. In Tunisia and Algeria, for instance, children on the move have access to free education. Tunisia tracks, through its bureau of statistics, a number of indicators related to children on the move registered in public schools are collected annually to be able to assess the challenges faced by children on the move in the education sector. Such data includes for instance integration into the school environment, forms of learning difficulties, etc. In Algeria, a partnership between the Ministry of Education and NGOs since 2015 has contributed to removing all restrictions that have so far hampered the schooling of migrant children with an ‘irregular’ status (i.e. certificate of permanent address, birth certificates, etc.) and has helped close the information gap. Many the children were, for instance, not aware of the right of their children to schooling. Despite having access to this basic right, children on the move enrolled in schools in North Africa continue to struggle mainly due to language.

Access to education and health services continue to be a key challenge in the Great Lakes Region. Further compounded by the poor capacity of countries in the region, children on the move often find themselves out of school and exposed to several diseases and malnutrition. For children in camps, access to education remains a challenge. Recent figures from Chad, for instance, indicate that 61% of children in camps do not have access to schools and an additional 7% only have partial access to schools.³⁹⁶ In 2016, 15,846 Burundian children in Rwanda and Tanzania were out of schools.³⁹⁷ A number of reasons could be attributed to this; including absence of school in the area, school closures, dangerous roads to reach the school, expensive school registration fee, expensive transport, lack of teachers, distance, etc.³⁹⁸

For children residing in neighboring countries or countries in the region, access to education was closely linked to the host country’s migration and asylum policy, particularly with respect to unaccompanied and separated minors. The 2014 court case involving South Africa and 8 Congolese children exposed some of the host countries legal limitations. In this particular case, children were not allowed to register due to the legal limbo they found themselves in with respect to their

393 Updated Regional Framework for the Protection of South Sudanese and Sudanese Refugee Children: Ethiopia, Kenya, South Sudan, Sudan and Uganda 2015-2017 p 3.

394 UNICEF, Uprooted: The Growing Crisis for Refugee and Migrant Children, September 2016 p 40.

395 ILO, Global Estimates of Child Labour: Results and trends, 2012–2016 p 47.

396 IOM Displacement Tracking Matrix. Tchad, Region du Lac. Fevrier 2018. Pg 24

397 UNICEF. Burundian refugees: Humanitarian Action for Children. 2016.

https://www.unicef.org/appeals/files/HAC_2016_Burundi_Refugees.pdf

398 IOM Displacement Tracking Matrix. Tchad.

status. Following litigation, the children were eventually allowed to register.³⁹⁹

Box 8 - Law, data and information: Experience of Algeria in promoting access to Education for Children on the Move

Algerian law provides for the right of migrant children registered in camps and reception centres to have access to free public-school education as well as free health care. Since 2015 a partnership between the ministry of education and NGOs has contributed to removing all restrictions that have so far hampered the schooling of migrant children with an 'irregular' status (i.e. certificate of permanent address, birth certificates, etc.) and has helped close the information gap. Many migrants were for instance not aware of the right of their children to schooling.

Practically, however, children are faced with the challenge of learning classical Arabic – the language used in public schools. "I don't speak Arabic. I cannot help my daughter. So she does her homework alone and she manages. She now speaks a bit of Arabic," says Liberian Bintou Toure, a mother of an 8-year old who was schooled in Liberia before arriving to Algeria .

Some parents, contacted by Medecin du Monde, also show some reluctance to send their children to school. They mention several reasons including discrimination and the potential that they may be moving to another area in the course of the year. "At home we speak French. I want her to speak French" said a 33-years old Congolese father.

Other parents send their children to private school where English and especially French are primary languages. Leroy, also a Liberian migrant, registered his son, Onesiums, in a private school He said: "He has nothing to do at home. He should go to school...I try to help him to learn at home. He knows the alphabet... but in English! The difficulty is language. When he's done with his home-work, I take him to meet other period in our community who speak Arabic". The costs are however very high, which often result in parents pulling out of school either for a short or long period.

At school, children are also subjected to racial slur. "It was difficult in the beginning. Everyone called me kahlouch [derogatory word for black]. But now it is much better. I am accepted and I have three Algerian friends," said Ely, a 10-year old Congolese refugee.

Several local NGOs, in partnership with UNHCR, have stepped in to provide some support to children, including by raising resources for school children in private schools. A more structural solution – e.g. language courses – is however yet to be found.

5.4 Child Labour

Children on the move are in certain instances subjected to forced labour. Refugee children are at times subjected to worst forms of child labour, including hazardous work.⁴⁰⁰ South Sudanese and Sudanese refugee children are subjected to different types of labour: boys (cattle herding) and girls (domestic labour).⁴⁰¹ Separated and unaccompanied children face a higher risk of exploitation. In the Democratic Republic of Congo, unaccompanied migrant children are subjected to labour exploitation. There is an estimated 40,000 children working in mines in southern Democratic Republic of Congo.⁴⁰²

399 Mail & Guardian. Refugee Children win right to learn. 4 July 2014. Last accessed: 17 June 2018. <https://mg.co.za/article/2014-07-04-refugee-children-win-right-to-learn>

400 Updated Regional Framework for the Protection of South Sudanese and Sudanese Refugee Children: Ethiopia, Kenya, South Sudan, Sudan and Uganda 2015-2017 p 3.

401 As above.

402 Progress Report of the Human Rights Council Advisory Committee, Global Issue of Unaccompanied migrant children and adolescents and human rights A/HRC/33/53 16 August 2016 para 62.

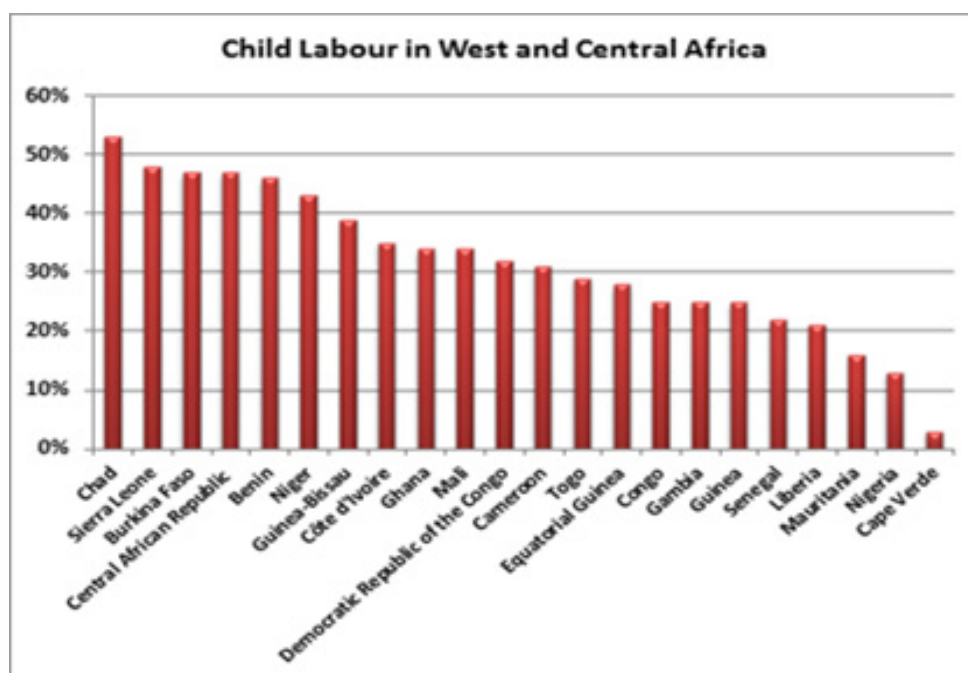


Figure 8 - Source: UNICEF West and Central Africa.⁴⁰³

Exposure of children on the move to child labour is also correlated to broader legal frameworks within the countries in relation to child labour. In West Africa, for instance, child labour among children in the move is common in several urban areas. This is against the backdrop of high levels of child labour in the region more generally (see Figure 8).

5.5 Child Abuse and Torture

Physical violence against children is also a reoccurring issue. Indeed, 88% of children on the move between 14 and 17 years of age experienced physical violence according to a 2017 survey.⁴⁰⁴ Around 82% of all events have been reported to have happened in Libya, followed by Algeria (3%), and Niger (2%).⁴⁰⁵

Physical violence could be perpetuated by traffickers or officers of the country itself. The story of the 17 year-old boy from Gambia explains the situation, he satets: "In Burkina Faso and Niger at checkpoints, the police beat me, I was scared, they wanted money. I didn't have the money they asked for and I tried to offer less. They beat me before they let me go."⁴⁰⁶

In West Africa, the practice of the so-called Confiage (broadly translated as delegation of care) also raises some concerns with respect to child abuse. Confiage is widely practiced in the region; according to UNICEF, for instance, "an estimated 80% of urban households in Guinea host children from their extended family"⁴⁰⁷ Traditionally, children are entrusted with relatives or as in some countries such as Senegal with religious leaders to advance their education. However, changes in the socio-economic landscape have made children more vulnerable to exploitation

403 UNICEF West and Central Africa bureau. Child labour, migration and trafficking. https://www.unicef.org/wcaro/overview_6445.html

404 International Organization for Migration (IOM). 2017. Flow Monitoring Surveys: The Human Trafficking and Other Exploitative Practices Indication Survey. P4.

405 As above.

406 International Organization for Migration (IOM). 2017. Flow Monitoring Surveys: The Human Trafficking and Other Exploitative Practices Indication Survey. P54

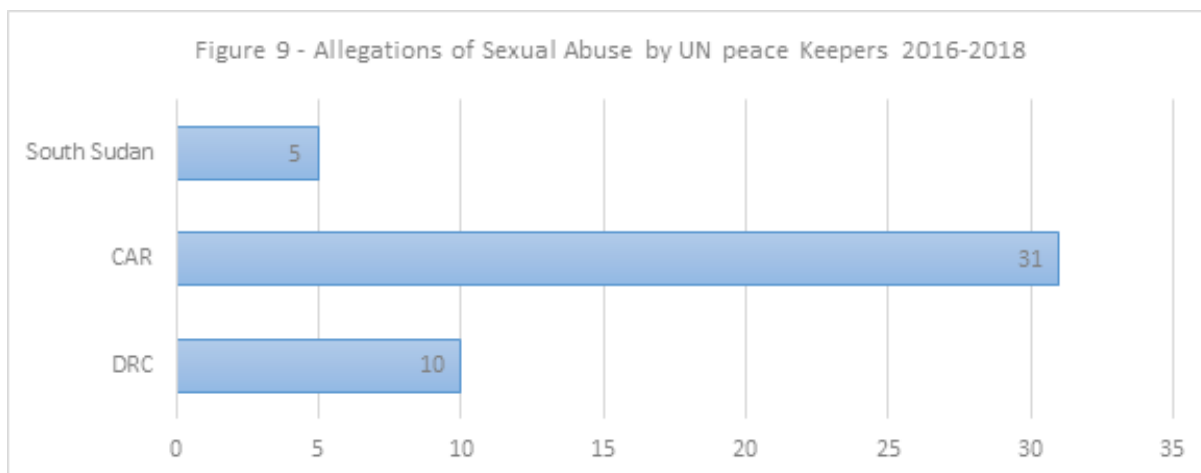
407 UNICEF West and Central Africa bureau. Child labour, migration and trafficking. https://www.unicef.org/wcaro/overview_6445.html

and even trafficking as they are seen as an economic commodity.⁴⁰⁸ Several local and regional organisations have called for stricter regulations to be introduced in this respect.

5.6 Sexual Exploitation

Children are subject to abuse including in areas where they are supposed to be protected. In 2007, a survey conducted by the charity organization World Vision estimated that 1.4 million children displaced by conflict in the Great Lakes region have experienced some form of sexual abuse.⁴⁰⁹ In the years that followed, several reports, including by the United Nations, showed how different groups, including UN peacekeepers have engaged in sexual activities involving minors (see Figure 9).⁴¹⁰

As displacements take place, displaced children can also be a target of predatory behavior. Indeed, scarce resources for displaced populations, including children, may result in “commercial and exploitative sex as a means of income generation to meet basic needs.”⁴¹¹ The lack of support systems for children have also been weakened by conflict resulting in children being more vulnerable to sexual predators.



Source: United Nations Data⁴¹²

5.7 Trafficking, smuggling and Exploitation

Trafficking, smuggling and exploitation in its different forms are common occurrences. The situation is worse for unaccompanied children who may face multiple risks during movement. For example, in the case of smuggling the children are at the mercy of the smuggler or they may be kidnapped and subjected to violation of their rights. Kidnapped children as pointed out earlier may face the risk of sexual exploitation or being subjected to modern day slavery.

Surveys conducted on experiences of children travelling in North Africa indicates that 8 of 10

408 ENDA Not dated. Migrations, confiage et trafic d'enfants en Afrique de l'Ouest.

http://www.endatiersmonde.org/eja/bur-int/docs/jeuda_106.doc

409 IRIN News. Child Sexual Abuse Widespread in camps. 27 February 2007.

Last accessed: 29 May 2018. <http://www.irinnews.org/report/70426/great-lakes-%E2%80%98child-sexual-abuse-widespread-camps%E2%80%99>

410 Allegations included peace keepers in the DRC (MONUSCO) - and the CAR

411 Limo, I. 2016. Prevention of and Response to Conflict related sexual Violence, Exploitation and Abuse by Peacekeepers in the Great Lakes Region of Africa. ACCORD Conflict Trends, 2016/1.

Last accessed: 2 June 2018. <http://www.accord.org.za/conflict-trends/prevention-response-conflict-related-sexual-violence-exploitation-abuse-peacekeepers-great-lakes-region-africa/>

412 UN. Conduct in UN Field Missions. <https://conduct.unmissions.org/table-of-allegations>

children who travelled through the CMR have suffered from some form of exploitation (e.g. sexual, forced labor, etc.).⁴¹³ This is particularly the case of children who rely on smugglers. Children on the move have also been subject to forced and unpaid labor. As most of them are prevented from working legally, some tend to be trapped in exploitative work situations to raise money which they can send back to their families or use to travel further. 49% of male minors surveyed in 2017 by IOM using the CMR have reported not having been paid for work they have done. Such situations were reported in Libya (89%), Algeria (6%), Niger (1%).⁴¹⁴ 38% reported having been forced to work with situations occurring in Libya (97%).⁴¹⁵

Children on the move are in certain instances trafficked or are potential victims of child trafficking. The risk of being trafficked is even higher for unaccompanied children. Children are trafficked for a number of reasons, primarily for sexual exploitation⁴¹⁶ and adoption⁴¹⁷. Where active armed groups are active, male displaced children are also at risk of being recruited.

Some of the children face grave situations in the event that they lack documentation from the state of origin.⁴¹⁸ Below is the story of Ann and Precious as narrated by UNODC. The story gives a pointer into the challenge of trafficking that many children on the move face.⁴¹⁹

28 January 2015 - A few years ago, Anna*, now aged 24, and her friend Precious*, now 19, were brought from Nigeria to Okah, in northern Côte d'Ivoire, under the pretence of attractive jobs. With difficult living conditions back home, the choice of moving for a better life, earning some money and studying further was a seemingly easy one. The opportunity, however, was not as innocent as it seemed and Anna and Precious soon found themselves being trafficked. For over seven days, and under terrible conditions, the traffickers moved Anna and Precious illegally across several national borders. Arriving at their destination, the two friends were forced to have sex with multiple men in order to pay a \$2,600 travel expense 'debt' for their trip to Côte d'Ivoire. Having no choice, the girls had sex with at least 11 men each night for as little as \$2 per client over a period of two years.

In October 2013, UNODC was contacted by the United Nations Police (UNPOL) in Côte d'Ivoire about a suspected case of human trafficking. There were previous reports of girls and women being sexually exploited around the mining fields in the north of the country. Anna and Precious managed to meet a UNPOL officer after escaping from the traffickers and were taken to safety. "I could not imagine how one human being could exploit another as we were," Precious recounted. "We were used as a money machine." After Anna and Precious escaped, the traffickers were caught and eventually sentenced to five years in prison for their crimes, as well as fined \$2,000. After the trial, the two friends were first taken to a shelter in the city of Abidjan in Côte d'Ivoire, and then repatriated to Nigeria with the support of UNODC and its partners. Currently, they are in a social reintegration programme supported by a regional NGO network in West Africa to help them restart their lives. * Note: The names of the victims have been changed to protect their identities.

413 United Nations Children's Fund (UNICEF) & International Organization for Migration (IOM). 2017. Harrowing Journeys: Children and youth on the move across the Mediterranean Sea, at risk of trafficking and exploitation. New York: UNICEF. P8. Exploitation in the survey included questions such as: 'have you been forced to work or perform other activities against your will', 'have you worked without being paid the agreed-upon wage', etc.

414 International Organization for Migration (IOM). 2017. Flow Monitoring Surveys: The Human Trafficking and Other Exploitative Practices Indication Survey. P4

415 As above

416 As above.

417 Huffington Post. 2014. American Implicated in Congo Child-smuggling Ring. Last accessed: 18 June 2018. https://www.huffingtonpost.com/erin-siegel/american-implicated-in-co_b_5857042.html

418 Progress Report of the Human Rights Council Advisory Committee, Global Issue of Unaccompanied migrant children and adolescents and human rights A/HRC/33/53 16 August 2016 para 59.

419 UNODCC, Tackling human trafficking in West Africa: UNODC and the story of Anna and Precious <http://www.unodc.org/unodc/en/frontpage/2015/January/tackling-human-trafficking-in-west-africa_-_unodc-and-the-story-of-anna-and-precious.html> (accessed on 19 June 2018).

Exposed to abuse (source: North Africa Migration Hub Data Focal Point in Italy, November 2016)

Children can experience long-term trauma as a result of seeing a parent being abused. A Cameroonian mother, travelling towards Europe with her two children after her husband died, tells the story of how she used a smuggler to take her to Libya. Upon arrival in a house in Libya, five men raped her with her children watching. She was then dropped at night with her children on a beach. She had no documents.

Whether children face human abuses or not depends on a number of factors. Children originating mainly from East, West, Central and Southern Africa are at higher risk – 83% reported exploitations compared to 56% from other regions. Racism is one of the main factors underlying different treatment.⁴²⁰

Levels of education also play a key role. Indeed, “adolescents with no education face higher risks on the CMR with 90% reporting exploitation compared to 75% of those with secondary education.”⁴²¹

The length of the journey increases the exposure of children to risks of abuse. Among those travelling less than three months on the Central Mediterranean route; for instance, an adolescent from East, West, Central and Southern Africa with no education, travelling alone, faces the highest risk of exploitation – 89 per cent. If he or she travels in a group, the risk decreases substantially. Adding the further protective layer of secondary education, the risk goes down further, to 73 per cent.”⁴²²

Gender is another important factor. Girls are particularly at a high risk of discrimination, gender-based violence and sexual exploitation. According to IOM, ‘a number of reports suggest that refugee women and girls often experience violence at the hands of smugglers’.⁴²³ This however does not mean that male children are not vulnerable. They too are subject to exploitation including forced conscription, torture or sexual violence, especially in contexts of armed conflict.⁴²⁴

It is, however, not unimaginable that cases of abuse are underreported. Many victims do not come forward, as they fear their traffickers or do not want to be prosecuted for being coerced into committing crimes or being caught without papers.

Human rights abuses have also reached a level where people are left to die. In June 2016, 34 migrants, including 20 children, were found dead near Arlit, Niger, by the Algerian border.⁴²⁵

5.8 Deprivation of liberty, arbitrary detention and forced deportation

Among the many obstacles encountered by children on the move is detention. Particularly, undocumented children, as stated by Special Rapporteur on Human Rights of Migrants, they may

420 United Nations Children’s Fund (UNICEF) & International Organization for Migration (IOM). 2017. Harrowing Journeys: Children and youth on the move across the Mediterranean Sea, at risk of trafficking and exploitation. New York: UNICEF. P8.

421 UNICEF (n 416 above) P 8.

422 UNICEF (n 416 above) P 4.

423 UNICEF (n 416 above) P15.

424 As above

425 UNICEF (n 416 above) P24.

be exposed to denial of rights such as arbitrary deprivation of liberty.⁴²⁶ Although there has been a normative shift when it comes to detention of children on the move, the practice is still alive in some parts of the continent. For instance in South Africa, a study conducted in 2016 indicated that although the law in the country does not allow detention of migrant children, there were 'consistent allegations of the migrant detention of children in more clandestine, remote and hard to access parts.'⁴²⁷ In Libya, the practice of detaining migrant children is still persistent. Below is an anecdote of a Nigerian migrant child held in detention in Libya as captured by UNICEF.⁴²⁸

Jon 15

"In Nigeria there is Boko Haram, there is death. I did not want to die. I was afraid. My journey from Nigeria to Libya was horrible and dangerous. Only God saved me in the desert, no food, no water, nothing. The guy who was sitting next to me on the trip died. And once one dies in the desert, they throw away the body and that's it. I have been here [in the detention centre] for seven months. Here they treat us like chickens. They beat us, they do not give us good water and good food. They harass us. So many people are dying here, dying from disease, freezing to death."

Jon is an unaccompanied child from Nigeria who is in detention in Libya.

In North Africa, there have also been reports of forced repatriation of children from North African countries towards the Sahel. Some of them were also detained for illegally entering the country. In 2012, the CRC Committee concluded that, for instance in the case of Algeria, "asylum seekers and refugee children, including those recognized by the Office of the United Nations High Commissioner for Refugees (UNHCR) are generally considered and treated as illegal migrants, and face arrest, detention and occasionally expulsion."⁴²⁹ This was brought under the spotlight when in recent years and more recently in May 2018 by the UN High Commissioner for Human Rights, Algeria has been accused of mass deportations of migrants, including children, to Niger. Algeria denied breaching any agreements and noted that it retains the right to "take any measures to ensure the security of its citizens."⁴³⁰ Similar concerns were raised by the CRC Committee with respect to neighbouring Morocco. In this respect, the CRC Committee noted: "the deportation of unaccompanied children, which takes place in spite of the provisions of the Migration Act (Law No. 02-03) which provide for the protection of children from expulsion (art. 26) and deportation (art. 29), five children having been deported at the risk of their life in the desert between Morocco and Algeria in 2013."⁴³¹

Risk of arbitrary repatriation are further compounded by weak or absent returns policy frameworks in some African countries (see Map 9). 11 member states of the AU do not have any policies to date. For those who have it, reports, as noted above, still indicate that there are cases of arbitrary repatriation involving children.

426 Report of the Special Rapporteur on the human rights of migrants (2009) (Supra note 7) para 22.

427 Sloth-Nielsen (n 390 above) p 4.

428 UNICEF, 'A Deadly Journey for Children: The Central Mediterranean Migration Route' February 2017.

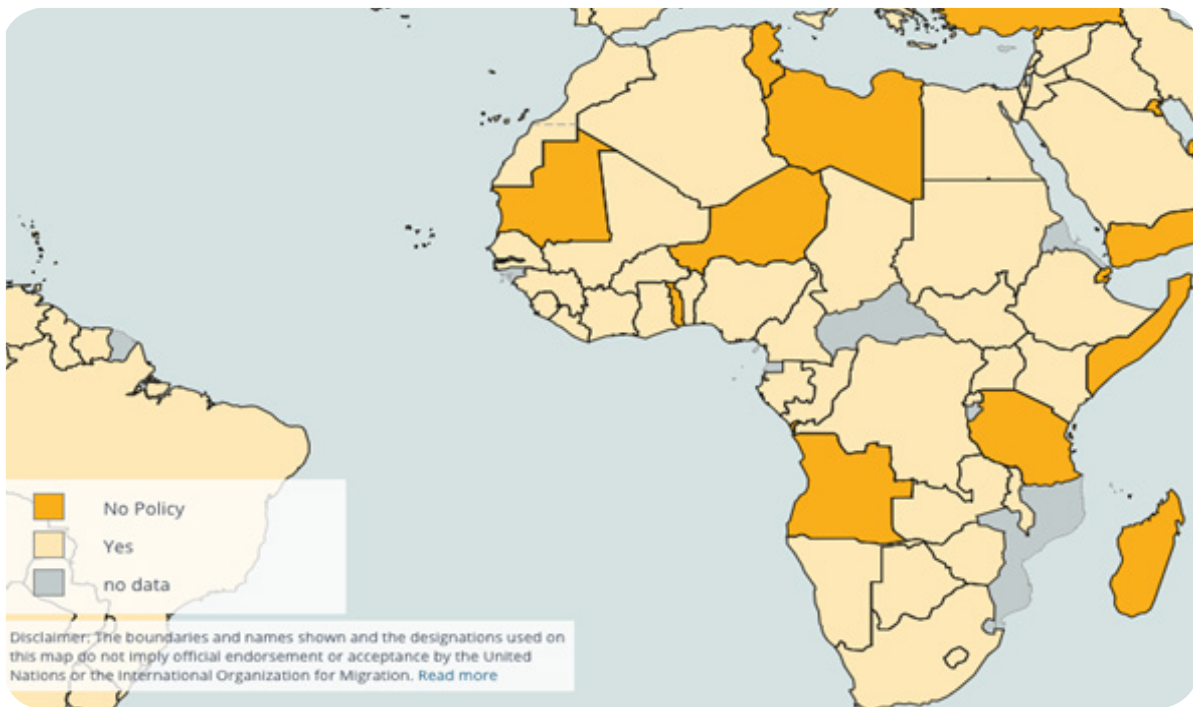
429 UN committee on the Right of the Child. 16th Session. Consideration of reports submitted by States parties under article 44 of the Convention. Concluding Observations: Algeria. CRC/C/DZA/CO/3-4. Pg 16. Last accessed 3 June 2018.

http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_DZA_CO_3-4.pdf

430 Expulsion des migrants: Alger repond a l'ONU. 25 May 2018.

<https://www.tsa-algerie.com/expulsion-des-migrants-alger-repond-a-lonu/>

431 UN Committee on the rights of the child. 2014. Consideration of reports submitted by States parties under article 44 of the Convention: Morocco. CRC/C/MAR/CO/3-4 pg17



*Map 9: Overview of returns policy frameworks in Africa
(Source: IOM Migration Data Portal)*

5.9 Lack of access to health and health services

Existing research indicates that children on the move face many challenges especially in respect to their right to health. Many displaced people including children tend to be concentrated in certain places such as camps where the expectation is that they will be supported with water, health services, shelter, education and security. In the camps, these services may be inadequate because access to the services is mostly facilitated through donations which are often less than the demand.

For children not residing in camps, the health risks they face is even higher. Essentially although movements do not per se lead to poor health, the way and the context within which people move may lead to poor health.⁴³² For instance, income disparities, alcohol use, separation from family and absence of prevention programmes may lead to poor health.⁴³³ During movements, children are also exposed to health risks with the outbreak of several pandemics including measles or water-borne diseases.⁴³⁴ As the health system infrastructure in the countries in the region is largely precarious, international organisations are key providers of such services.

As noted by the Committee on the Rights of the Child in General Comment No.6 unaccompanied children are often discriminated against and denied access to food and health services.⁴³⁵ In many instances, migrant child labourers are exposed to adverse working and living conditions which leads to poor health but unlike local children they may not have access to public health services.⁴³⁶ This is attributable to their 'illegal status' or inability to raise money to pay for medical services and lack of health insurance.⁴³⁷ Lack of access to health care services to migrant child labourers

432 IOM, An Analysis of Migration Health in Kenya (2011) P 5.

433 As above.

434 See for instance UNICEF. Burundian refugees: Humanitarian Action for Children. 2016.
https://www.unicef.org/appeals/files/HAC_2016_Burundi_Refugees.pdf

435 CRC, General Comment No 6, Para 3.

436 H van de Glind & A Kou, Migrant children in child labour: A vulnerable group in need of attention in IOM, Children on the Move (2013) p 37.

437 As above.

should be a cause of alarm considering that according to ILO, Africa has the highest incidence of child labour, estimated at 19.6% compared with 9.6 % worldwide.⁴³⁸

Inaccessibility of health services is a challenge that is in certain instances worsened by criminalization of irregular migrants. Criminalization of migrants leads to use of inappropriate terminology which entails referring to migrants in irregular circumstances as ‘illegal migrants’ or ‘illegal aliens.’⁴³⁹ This makes it difficult for children termed as ‘illegal migrants’ or ‘illegal aliens’ to access health care services. This is because labelling them as ‘illegal migrants’ leads to stereotyping, stigmatization and exclusion from social services.

Access to health care to children on the move may also be attributable to cultural norms, lack of safety networks, language barriers and explanatory models of diseases.⁴⁴⁰ Among children on the move the effects of these factors may be varied depending on whether they are unaccompanied or accompanied, documented or undocumented.⁴⁴¹ Among undocumented children access to health services may be impeded by the fact that they lack awareness of health care systems or the fear of being discovered and deported.⁴⁴² For refugees and asylum-seeking children, access to health may be impeded by legal status.⁴⁴³ In other cases, lack of health care services can also be caused by physical distance to hospitals and clinics. This is a demonstration that there are a myriad of factors that may lead to lack of access to health care by children on the move.

5.10 Limited access to Justice

Access to justice is one of the fundamental rights that all human beings are entitled to. In particular, capacity to access to justice is one of the foremost requirements for protection of children’s rights.⁴⁴⁴ Access to justice for children relates to a broad spectrum of circumstances through which children come into contact with the law. This extends to children’s interaction with the justice system as children seeking redress for violation of their rights, children in conflict with the law or as children adducing evidence in a judicial process.⁴⁴⁵ Accessing to the justice system for children is generally a challenge in Africa given that they are inherently vulnerable because of their dependent status.⁴⁴⁶ In reality, complexities and multifaceted nature of justice systems even poses greater challenges to children in vulnerable situations.⁴⁴⁷

With respect to children on the move, the right to access to justice is indeed one of the most neglected rights considering the significant barriers to its realisation.⁴⁴⁸ Particularly those in irregular circumstances, realisation of access to justice remains an illusory goal.⁴⁴⁹ There are many migrant, asylum-seeking, refugee and internally displaced children and victims of child trafficking

438 UNCTAD, Migration for Structural Transformation: Economic Development in Africa Report 2018 p 71.

439 As above.

440 N Markkula et al, Use of health services among international migrant children – a systematic review (2018) 14(52) *Global Health* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5956827/> accessed (29 July 2018).

441 As above.

442 As above.

443 As above.

444 The African Child Policy Forum (ACPF), *Spotlighting the Invisible Justice for Children in Africa* 2018 P x.

445 As above.

446 UNICEF, *Children’s Equitable Access to Justice: Central and Eastern Europe and Central Asia* 2015 p 18.

447 As above.

448 The African Child Policy Forum (ACPF), *Spotlighting the Invisible Justice for Children in Africa* 2018 p x.

449 IOM, *Children on the Move* (2013) p 1.

being unfairly detained and are subjected to discriminatory and dysfunctional judicial systems.⁴⁵⁰ Across Africa, there are about 28,000 children in detention or deprived of their liberty and in some cases are subjected to inhumane punishments.⁴⁵¹ The situation is dire in states where there is far-reaching criminalization of irregular migrants, including children.⁴⁵² As mentioned earlier criminalization of foreigners, such as migrants and refugees, leads to use of inappropriate terminology such as referring them as 'illegal migrants' or 'illegal aliens'.⁴⁵³ This makes it complex for children termed as 'illegal migrants' or 'illegal aliens' to access justice systems because of discrimination and other structural challenges that they might face.

The Committee on the Rights of the Child in General Comment no. 16 notes that children also find it difficult to access justice system in attempts to seek effective remedies for abuses or violations of their rights by business enterprises.⁴⁵⁴ This means that child migrants involved in child labour by business enterprises, because of their aggravated vulnerability, face challenges to access justice systems whenever their rights are violated. In certain circumstances, child migrants may lack legal standing to pursue claims against business enterprises and other parties engaging them in child labour. Due to power imbalances, migrant child labourers may also not be able to access justice against enterprises and individuals engaging them in child labour in the event their rights are violated. Further, child migrants who are victims of sexual abuse or are disabled also face difficulties in accessing justice because of social and cultural taboos and gender discrimination.⁴⁵⁵

5.11 Neglect and Violence

Children, particularly those on the move, are vulnerable to neglect, violence and denial of basic rights.⁴⁵⁶ Children on the move experience violence and abuse from state authorities and other persons.⁴⁵⁷ The Committee on the Rights of the Child in General Comment No.6 notes that unaccompanied children and separated girls are at risk especially of gender-based violence, including domestic violence.⁴⁵⁸ Children who are victims of trafficking are vulnerable to violence, exploitation, coercion and abuse due to the insidious nature of human trafficking.⁴⁵⁹ Below is an anecdote from a victim of child trafficking from Gambia in Libya:

450 Defence for Children International, *Spotlighting the Invisible: Continental Conference on Access to Justice for Children in Africa Addis Ababa | 8-10 May 2018* <https://www.childjusticeinafrica.info/> (accessed 28 July 2018)

451 As above.

452 IOM, *Children on the Move* (2013) p1.

453 As above.

454 Committee on the Rights of the Child General Comment No. 16 (2013) On State obligations regarding the impact of business on children's rights CRC/C/GC/16 para 66.

455 The African Child Policy Forum (ACPF), *Spotlighting the Invisible Justice for Children in Africa 2018* p xv & xvi.

456 UNICEF, *For Better Implementation of Migrant Children's Rights in South Africa* (2009) p 3.

457 As above.

458 CRC, General Comment No. 6 (2005) Treatment of Unaccompanied and Separated Children Outside their Country of Origin CRC/C/GC/2005/6 para 3.

459 The African Child Policy Forum (ACPF), *Spotlighting the Invisible Justice for Children in Africa 2018* p xvi.

“If you try to run, they shoot you. If you stop working, they beat you,” the report quoted Aimamo, a 16-year-old unaccompanied child from Gambia, as saying. “We were just like slaves,” said the child, who described being forced into months of gruelling manual labour by traffickers in Libya.

The Star, ‘Just like slaves’: African migrant children face highest risk of abuse – report 12 September 2017⁴⁷⁵

Violence against children on the move is further exacerbated by the phenomenon of criminalization of their status, which results in the use of ‘inappropriate terminology.’⁴⁶⁰ The use of such inappropriate terminology depicts individuals negatively which heightens negative discourses on migrants and refugees and further reinforces stigma and stereotypes against them.⁴⁶¹ Such language leads to marginalization, alienation and discrimination which exposes the children to violence and xenophobia. Essentially, this is an affront to the requirement of non-discrimination and consideration of primary interest of the child in all matters that affect children.

5.12 Violation of the right to a family, parental care and protection

Migration and asylum or refugee laws, policies and practices frequently lack child rights perspectives and in particular decisions in respect to family unity are not based on systematic assessment of the best interests of the child.⁴⁶² Often procedures for determination of children’s identity, age and nature of the relationship between separated child and accompanying adult as well as identification of guardians are not based on the best interests of the child.⁴⁶³ In certain situations there is no proper access to documentation, family tracing and guardian systems.⁴⁶⁴

The Committee on the Rights of the Child in General Comment No.6 also notes that where family reunification of separated is not permitted in situations where children are recognised as refugees in certain countries, such children are granted temporary status. Unfortunately, the temporary status ends when they attain the age of 18, ‘and there are few effective return programmes.’⁴⁶⁵ Generally, obstacles to family reunification may contribute to increased irregular entry in cases where unaccompanied child is seeking to reunite with parents in the destination country or may extend the duration of irregular residence in situations that the child’s family is still within the host country.⁴⁶⁶ This can lead to social exclusion and deprivation of access to socio-economic rights.⁴⁶⁷ Worse still, separation from family denies a child the protection and guidance from his or her parents and other family members.⁴⁶⁸ This might increase exposure and vulnerability to exploitation, abuse and violation of their rights.⁴⁶⁹

460 IOM, Children on the Move (2013) p1.

461 As above.

462 Save the Children’s key messages for the First Informal thematic session on the human rights of all migrants Global Compact for Safe, Orderly and Regular Migration 8-9th May 2017 p 3.

463 As above.

464 Daniela Reale, Protecting and supporting children on the move: Translating principles into practice.in IOM, Children on the Move (2013).

465 As above..

466 UNICEF & National University of Lanus, Argentina, Economic, Social and Cultural Rights Of Migrant Children And Children Born To Migrant Parents: Challenges, Good Practices and Recommendations (2010) P 9.

467 As above.

468 Action for the Rights of Children (ARC), Abuse and Exploitation – Revision 04/01 p 12.

469 As above.

The ACRWC under Article 16(1) requires states to put in place legislative, administrative, social and educational measures to protect children from among others abuse, neglect or maltreatment including sexual abuse. In addition, Article 19 of the ACRWC provides that every child has the right to enjoy parental care and protection and has an entitlement to reside with his or her parents. Adherence to this obligation is instrumental particularly in protection of rights of migrant children. Article 18 of the CRC also places an obligation on states to use their best efforts to guarantee recognition of the principle that 'both parents have common responsibilities for the upbringing and development of the child.' In addition, the Article provides that states have an obligation to render appropriate assistance to parents and legal guardians in the performance of child rearing responsibilities. Further, Article 19 provides that states should provide appropriate legislative, social, educational and administrative measures to protect children from all forms of mental or physical violence, neglect, abuse, sexual exploitation while in care of parents and such protective measures should include effective procedures for the establishment of social programmes to provide support to a child and for those who have the care of the child.

5.13 Drug abuse

Children on the move often face the challenge of lack of access to education in transit and countries of destination because of discrimination and other structural problems. Where migrant or refugee children are not allowed access to education, they are rendered vulnerable to exploitation and taking up behaviours such as abuse of drugs and crime which are linked to idleness and hopelessness.⁴⁷⁰ Migrant children may be exposed to illicit drugs and substances if they are allowed to remain idle in neighbourhoods where drugs and alcohol are readily available.⁴⁷¹

To cope with traumatic experiences, acculturation challenges and exclusion from socio-economic services migrants or refugees may in certain circumstances be inclined to resort to drug and substance abuse.⁴⁷² Refugees residing in camps often face situations such as lack of space, decline in livelihood opportunities, breakdown in social support and erosion of social values which contribute to hopelessness and social problems.⁴⁷³ In such situations for instance in Dadaab, Kenya and N'Zerekore, Guinea refugee camps alcohol and substance abuse is prevalent due the limited capacity of some refugees to deal with stressful events.⁴⁷⁴

Among adolescent refugees, poor expectations for the future and disillusionments are cited as cause for resorting to alcohol and substance abuse.⁴⁷⁵ Some of them stated that they felt 'literally trapped between the dramatic situation in their country of origin and an almost absolute lack of future perspectives.'⁴⁷⁶ Also when it comes to child labour, the prevalence of alcohol and drug addiction and delinquency is high among child migrant labourers.⁴⁷⁷ The removal of family support and guidance from child labourers exposes them to these vices.⁴⁷⁸

470 UNESCO, Protecting the right to education for refugees (2017) p 8.

471 **D Horyniak** et al, Epidemiology of Substance Use among Forced Migrants: A Global Systematic Review (2016) 11(7) **PLoS One** <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4943736/> accessed (29 July 2018).

472 As above.

473 E Streef & M Schilperoord, Perspectives on alcohol and substance abuse in refugee settings: lessons from the field *Intervention* (2010) 8(3) War Trauma Foundation 268 – 275.

474 As above, 270.

475 As above.

476 As above.

477 H van de Glind & A Kou, Migrant children in child labour: A vulnerable group in need of attention in IOM, *Children on the Move* (2013) p 37.

478 As above.

5.14 Radicalization and violent extremism

As noted in the Report of the Secretary General, Plan of Action to Prevent Violent Extremism socio-economic exclusion and violation of human rights can lead to radicalization.⁴⁷⁹ Profound feelings of frustration and injustice about social exclusion are some of the main causes that contribute to vulnerability of young people and children to join violent extremist groups.⁴⁸⁰ Profound feelings of injustice are often linked to segregation, marginalization from 'mainstream' society and discrimination.⁴⁸¹ Children on the move, in particular migrant children are subjected to marginalization and discrimination from social services which might make them vulnerable to radicalization and violent extremism.

In addition, lack of social purpose and hopelessness can lead to young people and children to develop interest in social actions that are sold to them including by radical charismatic leaders who can skillfully approach them in different social contexts.⁴⁸² Child migrants or refugees who are deprived of hope and sense of purpose may buy into ideas of radicalization and violent extremism. The vulnerability of these children to radicalization and violent extremism is heightened in detention centers where they are subjected to torture and inhuman treatment.

Militants' groups are employing smugglers to recruit disillusioned unaccompanied children, who are vulnerable to pledging allegiance to extremist groups in order to continue with their migration journey.⁴⁸³ Violent extremist groups like the ISIL, Boko Haram, and Al Shabaab recruit people living in refugee camps by paying cash, and by promising funding of onward journeys on the condition that they join their groups.⁴⁸⁴ This exposes the children to the risk of radicalization and joining violent extremist groups.

5.15 Inaccessibility of sexual reproductive health services

Children on the move, particularly adolescent girls, face many challenges in accessing sexual and reproductive health services. This is attributable to marginalization and exclusion from social services including health services. Structural barriers such as conflicting health services, legal status and inadequate state protection have adverse effects to sexual and reproductive health rights of children on the move.⁴⁸⁵ The discriminatory migrant and asylum policies expose the children to marginalization from sexual and reproductive health services. The situation is worsened in instances where there is extensive criminalization of irregular migrants, including children, because criminalization makes it near-impossible for children termed as 'illegal migrants' or 'illegal aliens' to access sexual and reproductive health services.

In South Africa, migrants have cited fear of being attacked due to waves of xenophobic attacks as a cause limited social movement to seek health services.⁴⁸⁶ This fear of movement in public

479 Report of Secretary General, Plan of Action to Prevent Violent Extremism A/70/674 para 25.

480 Council of Europe's Committee on Social Affairs, Health and Sustainable Development Resolution on Preventing the Radicalisation of Children by Fighting the Root Causes (2016).

481 As above.

482 As above.

483 All Africa, Africa: Militants Prey on Lone Child Migrants to Drive Recruitment - Report <https://allafrica.com/stories/201702070245.html> accessed 29 July 2018.

484 As above.

485 K Mukondwa & L Gonah, 'Accessing Adolescent Sexual and Reproductive Health Services among Undocumented Migrants in South Africa: A Documentary Review' (2016) 43(4) Medical Journal of Zambia 247 – 251.

486 As above.

spaces has an impact on access to sexual and reproductive health services. Also, financial and language barriers also lead to exclusion from accessing sexual and reproductive health services. This is because in absence of financial capacity one cannot afford medical services. In situation where a child or their guardian does not understand a particular language that is used by health service providers access to health services, and particularly sexual and reproductive health services becomes challenges. Therefore structural, social and financial barriers pose a challenge to children on the move to access sexual and reproductive health rights.

According to the Committee on the Rights of the Child in General Comment No.4 states in light of Article 24 and 3 of the CRC should provide adolescents with access to sexual reproductive information, including on family and contraceptives, dangers of early pregnancy as well as the prevention and treatment of sexually transmitted diseases.⁴⁸⁷ Therefore, states should provide children on the move, both boys and girls, with access to sexual and reproductive health information. This is more critical because the inherent nature of irregular migration exposes the children to risks such as rape and sexual abuse which necessitate access to reproductive health services.

487 CRC General Comment No. 4: adolescent health and development in the context of the Convention on the Rights of the Child, 2003 para 28.

CHAPTER 6 THE POLICY AND INSTITUTIONAL CONTEXT PROTECTING CHILDREN ON THE MOVE

6.1 Legal and Institutional challenges

The analysis conducted by this study highlights a number of issues that result from weak legal and institutional frameworks. It is noted, however; that countries have sought to address some of the legal and institutional bottlenecks within the framework of their existing legislation while neglecting other important areas therefore leading to abuses (see Figure 10).

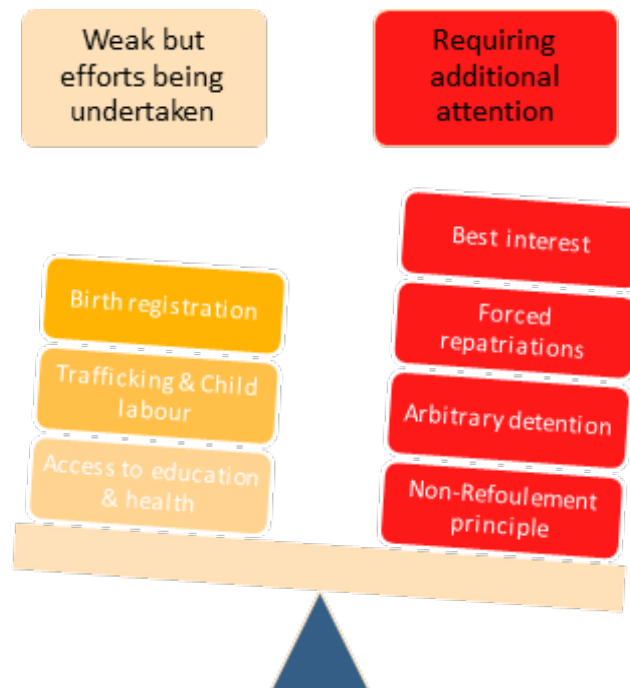


Figure 10: key issues faced by children on the move

Many of the weaknesses above relate to a lack of clear institutional positioning on the notion of children on the move.⁴⁸⁸ Indeed, not all countries have implemented legal and institutional measures to protect the rights of the child in a consistent manner.

Other challenges related to this institutional constraint are the inadequacy of the legal framework to respond to problems faced by children on the move and the lack of adequate systems to trace children on the move, apart from those who are apprehended and identified at national border points.⁴⁸⁹ Weaknesses in national systems affecting children more generally inevitably also impact on child migrants. The case of Ghana illustrates this well. While the country made significant strides in improving its birth registration system (from 17% coverage in 2002 to 58% in 2014), it remains a challenge to ensure full coverage. Two groups of children are affected by this systemic weakness: children in rural areas and asylum-seeking and refugee children.⁴⁹⁰ systemic weakness:

488 Terre Des Hommes, *The Added Value of Accompaniment* (2014) p 42. Available at <https://www.tdh.ch/en/media-library/documents/added-value-protective-accompaniment> (Last accessed on 7 April 2018).

489 As above p 43.

490 UN Committee on the Rights of the Child. 2015, *Concluding observations on the combined third to fifth periodic reports of Ghana*. CRC/C/GHA/CO/3-5. Pg 6. <http://www.refworld.org/cgi-bin/txis/vtx/rwmain?page=publisher&docid=566fc3944&skip=0&publisher=CRC&querysi=ghana&searchin=fulltext&sort=date> last accessed 15 July 2018.

Similarly, in North Africa and Sahelian countries, although some significant progresses have been achieved in recent years in terms of responding to some needs (education, health), some existing mechanisms and frameworks remain inadequate to fully protect children. Indeed, “the best interest assessment and determination mechanisms are often weak and lack standardized criteria for the identification and assessment of needs and services provision for children on the move...[there are] lengthy procedures to appoint guardians, determining a child’s legal status or facilitating family reunification.”⁴⁹¹ These weaknesses could be attributed to the overall legal framework in both North African and Sahel countries to guide decisions around irregular migratory flows in general and children on the move in particular. A review of the reports of the UN Committee on the rights of the Child indicate for instance that all countries in the region have either very loose frameworks or inadequate ones.⁴⁹² The lack of such frameworks creates risk around statelessness, access to basic healthcare and education, the status of the child in the country, risk of deportation of unaccompanied minors, as well as arrest and detention; all of which have been reported in the region.

The lack of coordination between security services, child protection services, and other government bodies has also opened the way for inconsistent application of principles under the Protocol.

6.2 Lack of regional coordination may result in additional abuses

As noted above, the length of the journey of children on the move can increase abuses. Some children moving within a free movement space also do not benefit from equal protection within the region. Although there are a number of initiatives on the area of migration, there is still lack of knowledge, insufficient response and weak coordination. During the 2015 Migration Dialogue for Southern Africa which took place in Zimbabwe, the Minister of Home Affairs for the Government of Zimbabwe underscored the need for regional cooperation particularly in protecting unaccompanied children.⁴⁹³

Notably, in 2015 SADC launched the regional action plan to address mixed migration in the region with four thematic areas prioritized for action, namely; protection of unaccompanied migrant children, statelessness, alternatives to detention and voluntary return.⁴⁹⁴ Also, the IGAD region which constitutes of Sudan, South Sudan, Somalia, Uganda, Kenya, Ethiopia, Eritrea and Djibouti launched the IGAD-Migration Action Plan (MAP) to operationalize The IGAD Regional Migration Policy Framework (IGAD-RMPF) 2015-2020. The IGAD members seek to focus on efforts that help find ways to enhance the benefits of migration for the development of the region especially through

491. North African Mixed Migration Hub. 2017. Children on the Move. <http://www.mixedmigrationhub.org/wp-content/uploads/2018/01/Children-on-the-Move.pdf> Last accessed: 26 May 2017

492. See for instance UN Committee on the rights of the child. 2012. Consideration of reports submitted by States parties under article 44 of the Convention: Algeria. CRC/C/DZA/CO/3-4 P16 or UN Committee on the rights of the child. 2014. Consideration of reports submitted by States parties under article 44 of the Convention: Morocco. CRC/C/MAR/CO/3-4 P7 or Hanafi, S. 2017. Indicateurs des droits de l’homme des migrants et de leurs familles en Tunisie. <https://www.knomad.org/sites/default/files/2017-08/2018000180FREfre001.pdf> last accessed: 3 June 2018

493. Migration Dialogue for Southern Africa Addressing Mixed and Irregular Migration in the SADC Region: Protection of the Unaccompanied Migrant Child Victoria Falls, Zimbabwe 7-9 July 2015 p 32.

494. IOM, SADC Officials Meet to Discuss Region’s Mixed and Irregular Migration Challenges, <https://www.iom.int/news/sadc-officials-meet-discuss-regions-mixed-and-irregular-migration-challenges> 17 September 2018.

the development of “a common strategy for implementing migration policy among IGAD Member States (MSs) that reflects harmonization of laws, standards, procedures, information, dissemination and sharing; compilation of statistics; production of documents, and efficient use of resources.”⁴⁹⁵ These efforts are welcome because they have a bearing on the improvement of coordination of regional policies on migration of children.

6.3 Lack of documentation, data and statistics of children on the move

There is considerable literature in existence on the scope and nature of migration of people, and children in particular, within Africa. However, this literature on migration indicates a lack of attention to children and youth in both numbers and analysis.⁴⁹⁶ The specific patterns of movement of children within the larger patterns of mixed migration are to a great extent unknown.⁴⁹⁷ The particular categories of children and youth on the move are obviously not fixed or mutually exclusive.⁴⁹⁸ Because of the diversity of factors that cause movement of children and youth, their differing profiles depending on their age, nationality, sex, ethnicity, religion, their accompanied or unaccompanied status, uniqueness of their family and other mutating circumstances, there is need for disaggregated data.⁴⁹⁹ In many situations, children on the move remain undocumented and use irregular channels.⁵⁰⁰

Although children below 18 years are frequently counted separately from adults, the particular duration of adolescence (10 to 19 years) generally misses and often there is no distinction between boys and girls, or between children migrating independently and those moving in the company of their parents.⁵⁰¹ In addition, as stated by the Special Rapporteur on the Human Rights of Migrants there is generally an absence of children rights perspective in legislation and national policies and absence of accurate statistical information on the estimation of children on the move internationally.⁵⁰²

The greatest coverage of child disaggregated data is available for refugees with information disaggregated in terms of age groups (below 18 years) for approximately for approximately 62 per cent of refugees globally.⁵⁰³ Major gaps are evident in the availability of the age-disaggregated data for stateless persons and IDPs globally. Only 1 per cent of statistics on stateless persons avails an age breakdown and only 18 per cent of IDPs.⁵⁰⁴ Therefore even in Africa, what is known about children and youth on the move is ‘at best, a partial and fragmented picture and an unknown

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495. IGAD-Migration Action Plan (MAP) to operationalize The IGAD Regional Migration Policy Framework (IGAD-RMPF) 2015-2020 p 9.
496. RMMS, ‘Young and on the Move: Children and youth in mixed migration flows within and from the Horn of Africa’ September 2016.
497. As above p 10.
498. As above.
499. Abramovich et al, The Rights of Children, Youth and Women in the Context of Migration: Conceptual Basis and Principles for Effective Policies with a Human Rights and Gender Based Approach UNICEF Social and Economic Policy Working Paper 2011 p 4.
500. RMMS’ Young and on the Move (2015) p 10.
501. As above.
502. Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante (2009) A/HRC/ 11/7 paras 24, 20.
503. RMMS’ Young and on the Move(2015) P 15.
504. As above.

number of children on the move continue to be invisible to official immigration and displacement statistics.⁵⁰⁵

For instance, in its Concluding Observations of the review of South Africa in 2016, the UN Committee on the Rights of the Child expressed its concern over “the lack of accurate and disaggregated data on migrant, asylum-seeking and refugee children, including those who are unaccompanied and/or undocumented, as well as on child victims of trafficking”.⁵⁰⁶ Such observation could be said about the majority of countries as demonstrated by the data collection challenges of this study. Where available, data is scattered. Within the AU family, there is no systematic way of recording such data.

6.4 Policy blind-spots

One of the key points emerging from the analysis of the scope of movement of children shows that most of them move within the borders of the continent. Children move because they are forced (refugees, internal displacements) or to seek opportunities, desired or not (e.g. while some move in pursuit of education or economic opportunities, others may move because of the choice of their parents for instance to delegate their upbringing to a relative within or outside the country).

Yet, efforts aimed at children on the move often focus on forced movement leaving child protection in the situation where the child has a choice as a policy blind spot. Acknowledging the different reasons why children move could have important implications on policy choices.

One size-fits-all approach cannot address all the nuances and specific patterns of children’s movement within the African Continent. Various factors that drive movement of children within the continent should be taken into account in trying to understand and addressing challenges that children on the move in Africa face. Their profiles, needs, age, sex, nationality, religion, ethnicity, their accompanied or unaccompanied status are important to take into consideration while enacting laws, policies and programmes on mobility of children in Africa.

Also, the one size-fits-all approach may fail to take into consideration the best interests of children in different circumstances. As pointed out above, in General Comment No. 14 the Committee on the Rights of the Child also notes that child’s best interest should be undertaken in each individual case, in view of specific circumstances of the child. The circumstances relate to among others, sex, age, belonging to a minority group and disability.⁵⁰⁷ The implementation of the best interests principle in movement-related measures, calls for specific and systematic

505. As above.

506. UN Committee on the Rights of the Child (CRC). Concluding observations on the second periodic report of South Africa. CRC/C/ZAF/CO/2. 27 October 2016. Pg 19. <<http://www.refworld.org/publisher,CRC,,ZAF,587ce86b4,0.html>>.

507. Para 48.

procedures to be conducted as part of or to inform, the decisions that affect children on the move.⁵⁰⁸ Thus it is important to avoid the one size-fits-all approach in making laws, policies and programmes touching on children on the move.

508. As above, para 31.

CHAPTER 7 FINDINGS AND RECOMMENDATIONS

Based on the foregoing, this study clusters the recommendation around the following issues:

7.1 Policy and other measures by Member States

- Transit and destination countries should put in place legislative and policy measures that protect and promote the human rights of the children on the move. For instance, border control measures should not include detention of children and children on the move should not be subjected to discrimination or torture. Child protection services and social and economic goods such as food, health services including sexual and reproductive rights and education in countries of transit and destination should be available to children on the move.

- Pursuant to the principle of non-refoulement, transit and destination countries should ensure that children are not returned or taken to a country where their rights may be violated. Moreover, children on the move should not be returned or removed from a transit or destination country as a punitive measure.

- Similarly, countries should consider putting in place adequate measures to support returnees, particularly with respect to family tracing and reunification, family mediation, resettling grants, skills development.

- States of origin, transit and destination should put in place transnational measures of child welfare agencies to ensure that rights of children are protected and to guarantee that administrative hiccups or challenges due to differences in approach to immigration processes do not lead to violation of children on the move. Greater coordination for instance through the RECs could be considered (see next section).

- States of origin, transit and destination should strengthen measures to combat smuggling and trafficking particularly in children. For instance, police, immigration officials and other law enforcement agencies in states of origin, transit and destination should share information in respect to trafficking of children, routes used for trafficking etc. This will ensure safe and legal channels for children to move within Africa and to seek refuge and shelter where necessary. In this respect, a reevaluation of the Ouagadougou Plan of Action and a coordinated effort with similar efforts currently taking place at the REC level should be considered.

- Transit and destination states should ensure that unaccompanied children are provided with foster care or supervised independent living and integration into the community. Most importantly, states should ensure that children are not separated from parents and where separation has taken place, children should be reunited with their families or relatives.

7.2 Reporting

- While reporting on implementation of relevant international and regional instruments, including the African Children's Charter, States should present as far as possible comprehensive information on children on the move; including the challenges and the legislative and administrative measures they have taken to address the challenges of children on the move, as well as disaggregated data in terms of age, gender, unaccompanied or separation status of children. There should be harmonization of migration data, data collection tools, methods and intervals at regional and continental level to ensure that data is comparable across countries and regions.

7.3 Coordination

- Not all RECs are advanced with respect to regional protection mechanisms. Yet, this is necessary due to movement within regions. Furthermore, as children move across the borders of the RECs as defined by the AU, greater coordination is required. In particular, child protection information management systems can be linked across borders, and strengthen referral of critical child protection concerns across states to ensure a continuum of care for vulnerable children on the move. The Committee would be pre-disposed to facilitate discussions on coordination.

- Coordination between the Committee and other African Union programmes and agencies could also be fruitful. Notably, coordination with the African Peer Review Mechanism (APRM) to integrate the child protection analysis in country-review process could help address some of the challenges related to data and information on country-specific frameworks. Similarly, coordination with the Pan-African Parliament (PAP) could help create awareness with respect to the challenges faced by children on the move.

7.4 Collaboration/Role of other stakeholders

- The Committee notes that international agencies (e.g. IOM, the UNHCR and UNICEF) are increasingly recording children on the move in their statistics. While the Committee commends international agencies for these efforts, it notes that most data (although not all) is available with respect to children moving outside of the continent and would encourage international agencies to also record data relevant to children on the move within the continent.

- Support Member States in relation to coordination and connecting social welfare systems on migration. This can entail capacity building programmes for state officers involved in social welfare of children on the move.

- Partnership could provide technical and resources support to the ACERWC to undertake protection and promotion activities on children rights specially to address human rights challenges faced by children on the move.

- Partners could also support Member States to address legal, policy and institutional gaps in children rights protection especially strengthening their capacity to ensure the best interests of the child are upheld.

CHAPTER 8 CONCLUSION

This Report affirms as has other studies that there are millions of children on the move within Africa. While there has been little focus on migration of children within Africa, the study reveals that they face significant challenges and human rights violations in breach of the African Charter on the Rights and Welfare of the Child and other international children's rights instruments. The study confirms that movement of the children is necessitated by various factors most of which are preventable and can be mitigated by state action. As children move to escape some of the drivers that drove them from their homes in the first place they encounter even greater challenges and endure violation of the human rights. The study also reveals that there are several legal and institutional mechanisms at the continental and domestic level that are available to vindicate children rights including children on the move. However, some of these avenues are either inadequate or due to the migrant's status as well as the children's vulnerability are either out of reach or unavailable.

The ACERWC reiterates that children on the move are entitled to their fundamental rights and freedoms as guaranteed under the ACRWC, CRC and other international and regional human rights standards irrespective of their migrant status. It notes and underscores that Member States have an obligation to respect, protect and fulfill the rights of children on the move and treat them primarily as children. Where there is no legislation and policies to protect children on the move, Member States should put in place such legislation and policies or clearly extend the current legislation relevant to children nationals to also cover children on the move. Importantly, in enacting legislation, policies and programmes that protect or affect the rights of migrant children, Member states should take into consideration the four cardinal principles enshrined in the ACRWC and the CRC, namely; non-discrimination, best interest of the child, the right to life, survival and development and child participation.

Importantly Member states should appreciate and take into consideration the peculiar challenges faced by children on the move and should avoid to employing a one size-fits-all approach in addressing the challenges. The ACERWC stresses that Member States and other stakeholders should always seek to disaggregate data on various categories of migrants and particularly specific categories of children on the move. For instance, disaggregation of data based on age, sex, states of origin, whether or not the children are accompanied or unaccompanied. This will be instrumental in the development of sound and relevant laws, policies and programmes to address the plight of children on the move.

Finally, the ACERWC further stresses that Member States should treat the situation of children on the move as a child protection issue and view children on the move foremost as children regardless of their status and to take all necessary measures to protect children on the move in their respective territories.

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Mapping
Children
on the Move

within **Africa**



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