

THE PROTECTION OF THE RIGHTS OF UNACCOMPANIED MIGRANT CHILDREN IN MOZAMBIQUE

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requirements for the Masters of Law (LLM in Human Rights and Democratisation in Africa)**

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30 October 2012

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DEDICATION

To my family,

And to unaccompanied migrant children who dream for the best but are instead faced with the worst.

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LIST OF ABBREVIATIONS

AIDS	Acquired Immunodeficiency Syndrome
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women 1981
CRC	United Nations Convention on the Rights of the Child 1990
GA	General Assembly
GFMD	Global Forum on Migration and Development
HDA	Health and Development Africa
HIV	Human Immunodeficiency Virus
HRC	Human Rights Council
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICR	International Rescue Committee
ICRC	International Committee of the Red Cross
IDM	International Dialogue on Migrants
ILO	International Labour Organisation
IOM	International Organisation for Migrants
NGO	Non-Governmental Organisation
OHCHR	Office of the High Commissioner for Human Rights
OP	Optional Protocol to the United Nations Convention on the Rights of the Child on the sale of children, child prostitution and child pornography 2002
SANTAC	Southern African Network Against Trafficking and Abuse of Children
SCUK	Save the Children United Kingdom
UDHR	Universal Declaration of Human Rights 1948

UMC	Unaccompanied Migrant Children
UN	United Nations
UNHCR	United Nations High Commissioner for Human Rights
UNICEF	United Nations Children’s Fund
WHO	World Health Organisation
WVI	World Vision International

1. INTRODUCTION

1.1 Background to the study

It is estimated that there are around 214 million international migrants globally.¹ A publication by Save the Children UK (SCUK) in 2008 reveals that ‘millions of children’ move within or beyond borders, accompanied or unaccompanied.² According to the World Bank, youth migrants constitute of one third of international migrants.³ The migration of unaccompanied children between Southern African countries contributes to this figure, where children as ‘young as five years of age’⁴ cross the borders without ‘documentation, guardians, money or even a final destination’.⁵

A report by Health and Development Africa (HDA Report)⁶ reveals that approximately 25,000 unaccompanied Zimbabwean children migrate to Mozambique and South Africa annually.⁷ Being the richest country in the continent, South Africa is a ‘magnet’⁸ which attracts ‘tens of thousands of migrants and refugees from across the African continent’.⁹ However, South Africa is not the only country in the continent where children migrate to. Mozambique, amongst other countries, is also a host to unaccompanied migrant children (UMC), especially those from Zimbabwe.¹⁰ It has been additionally identified that Mozambique accommodates very large numbers of UMC from different countries around the world, including from Pakistan and Bangladesh.¹¹

¹ United Nations, Department of Economic and Social Affairs, Population Division available at <http://esa.un.org/migration/p2k0data.asp> (accessed on 8 August 2012).

² SCUK ‘Away from home: Protecting and supporting children on the move’ (2008) vi available at http://www.savethechildren.org.uk/sites/default/files/docs/Away_from_Home_LR_1.pdf (accessed on 4 September 2012).

³ World Bank ‘World development report 2007: Development and the next generation’ (2006).

⁴ Y Duncan ‘In South Africa, few comforts await children fleeing Zimbabwe’ available at http://www.unicef.org/emerg/southafrica_48340.html (accessed on 8 August 2012).

⁵ SCUK ‘Our broken dreams: Child migration in Southern Africa’ (2009) viii.

⁶ HDA ‘Defining, understanding and addressing the issue of ‘children on the move’ in Mozambique’ (2011).

⁷ HDA Report (n 6 above) 26.

⁸ UNICEF website ‘South Africa: Children on the move’ available at http://www.unicef.org/southafrica/protection_6635.html (accessed on 24 June 2012).

⁹ L Landau & K Jacobsen ‘Refugees in the new Johannesburg’ (2004) 19 *Forced Migration Review* 44.

¹⁰ SCUK ‘Visitors from Zimbabwe: A preliminary study outlining the risks and vulnerabilities facing Zimbabwean children who have crosses illegally into Mozambique’ undated available at http://images.savethechildren.it/IT/f/img_pubblicazioni/img88_b.pdf (accessed on 8 August 2012).

¹¹ Southern African Network Against Trafficking and Abuse of Children (SANTAC) ‘Children on the move children at risk’ First draft (2012) unnumbered.

Migration is usually 'a strategy by which individuals and families can escape exposure to risk by moving to a safer region or country'.¹² Human rights violations in the country of origin, taking the form of 'poverty, inequalities ... and lack of opportunities', act as factors that trigger migration.¹³

Migration of UMC to Mozambique is similarly a 'strategy' for those children to 'escape exposure to risk'. The situation of unaccompanied Zimbabwean children has been analysed by Fritsch *et al* and they identified 'education, shelter, or jobs' as reasons for child migration.¹⁴

In order to escape from the dire situations including 'economic insecurity, lack of employment opportunities, political frustration, natural disasters such as drought and prolonged sickness and death of family members' or to find educational opportunities¹⁵ or to join their relatives already working in Mozambique, many Zimbabwean children cross the border to Mozambique in hope of leading a better life.¹⁶ There are instances where it is the parents who pressurise the child to 'seek employment in Mozambique because of lack of money and jobs to support their families at home'.¹⁷ The emergence of illegal mining acts as a stimulant for UMC to migrate to Mozambique since it represents a world of opportunities for them.¹⁸

Entry into Mozambique is easy because the borders of Mozambique namely Manica, Tete and Namaacha are not subject to strict control.¹⁹ These borders are usually used by people to exchange money and UMC use this as a shield to cross the border.²⁰ The incidence of unaccompanied children crossing borders is known to the authorities.²¹

As such, the influx of UMC in its territory requires Mozambique to have strong legal, institutional and policy frameworks to ensure the protection of these children.

1.2 Risks and vulnerabilities that UMC face

Jean Zermatten, the Chairperson of the United Nations (UN) Committee on the Rights of the Child, has highlighted that children, especially if they were unaccompanied, face numerous challenges and

¹² V Abramovich, PC Cernadas & A Morlachetti for UNICEF 'Migration, children and human rights: Challenges and opportunities' (2010) 1.

¹³ Abramovich (n 12 above).

¹⁴ C Fritsch, E Johnson & A Juska 'The plight of Zimbabwean unaccompanied refugee minors in South Africa: A call for comprehensive legislative action' (2009-2010) 38 *Denv. Journal of International Law and Policy* 623.

¹⁵ HDA Report (n 6 above) 14.

¹⁶ Abramovich (n 12 above) 2.

¹⁷ Abramovich (n 12 above) 7.

¹⁸ Manjate 'Children on the move' presentation during SANTAC Regional Consultative Meeting on 18 October 2012.

¹⁹ SANTAC (n 11 above).

²⁰ As above.

²¹ Lusa News 4 October 2012.

form part of a vulnerable group of migrants.²² UMC in Mozambique also fall within the ambit of the vulnerable group of migrants since once they cross the border without proper documentation, they face various risks and vulnerabilities. This section, while being supplemented with further research, will rely on the findings of the study carried out by SCUK in the Manica Province in central Mozambique.²³

Commercial sexual exploitation, child sexual abuse, child labour, non-protection of socio-economic rights, the challenges faced during the deportation process and becoming street children are some of the risks and vulnerabilities that the unaccompanied migrants in Mozambique face.

1.2.1 Commercial sexual exploitation

Worldwide, commercial sexual exploitation of children is considered as being a growing industry.²⁴ The Optional Protocol to the United Nations Convention on the Rights of the Child on the sale of children, child prostitution and child pornography 2002 (OP) defines child prostitution as ‘the use of a child in sexual activities for remuneration or any other form of consideration’.²⁵ Barnitz adopts the above definition and while highlighting that commercial sexual exploitation of a child is a violation of the child’s human rights, refers to it as being the sexual abuse of a child by a person in return for money.²⁶ The child is considered as a ‘sexual object and as a commercial object’.²⁷ Applying the above definitions to the situation of UMC, UMC are victims of commercial sexual exploitation when they have to offer sexual services in return for money or benefits in kind.

UMC are at the risk of being sexually exploited when they are in Mozambique. Once they arrive in the country, they are on their own and the girl child, as young as ten years of age, is forced to sell herself so that she can survive.²⁸ Female UMC are often cheaper than Mozambican sex workers but despite that, the money that UMC earn in exchange for sex is still more than what working in the

²² Jean Zermatten’s opening remarks on the day of general discussion on children and international migration which was held on the 28 September 2012.

²³ Visitors from Zimbabwe (n 10 above).

²⁴ C Hipolito ‘The commercial sexual exploitation of children’ (2007) unpublished 1 available at http://books.google.co.mz/books?id=bGmUjTtNHjUC&printsec=frontcover&dq=commercial+sexual+exploitation+of+the+child&source=bl&ots=SNY06uQLIn&sig=u3UQD1_uHLYP1x93Y_Mw_IQ6uS4&hl=pt-PT&sa=X&ei=7jV5UlyCG6jX0QWhpYDQCg&ved=0CC8Q6AEwAA (accessed on 13 October 2012).

²⁵ Article 2(b) of the OP.

²⁶ L Barnitz ‘Effectively responding to the commercial sexual exploitation of children: A comprehensive approach to prevention, protection, and reintegration services’ (2001) 80(5) *Child Welfare Journal* 597.

²⁷ 1st World Congress against Commercial Sexual Exploitation of Children, Stockholm, Sweden, ‘Declaration and agenda for action’ 27-31 August 1996 para 5.

²⁸ SCUK & SC Norway ‘A bridge across the Zambezi: What needs to be done for children?’ (2006) 16 available at http://www.savethechildren.org.uk/sites/default/files/docs/A_Bridge_across_the_Zambezi_1.pdf (accessed on 11 October 2012).

informal sector would bring.²⁹ According to Nadja Gomes of *Liga Moçambicana dos Direitos Humanos*,³⁰ in Beira, there are many incidents where female UMC are caught while attempting to offer sexual services in return for money.³¹

The study by SCUUK also highlights that female UMC are often unable to negotiate the use of condoms with their clients.³² The officials at the borders do not consider the combatting of the proliferation of Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS) as a priority but rather prefer concentrating on border control.³³ By so doing, they turn a blind eye to the acute risk of female UMC contracting HIV/AIDS. The refusal by clients to use condoms also leads to female UMC to be exposed to the risk of being pregnant.³⁴

1.2.2 Child sexual abuse

A child usually does not have the mental faculty to 'knowingly or willingly consent to a sexual relationship with a more powerful, older person'.³⁵ Having sex with a child is an 'abuse of power' no matter under what circumstances the act happened.³⁶ Child sexual abuse has been defined by the UN as follows:³⁷

...contacts or interactions between a child and an older or more knowledgeable child or adult (stranger, sibling, or person in positions of authority, such as a parent or caretaker) when the child is being used as an object for the older child or adult's sexual needs. These contacts or interactions are carried out against the child using force, trickery, bribes, threats or pressure.

The World Health Organisation (WHO) has a similar definition of child sexual abuse which considers the sexual activity as 'being intended to gratify or satisfy the needs of the other person'.³⁸

²⁹ Visitors from Zimbabwe (n 10 above) 7.

³⁰ The organisation has officials working on the issue of unaccompanied child migration in Beira.

³¹ Gomes interviewed on the 31 August 2012.

³² Visitors from Zimbabwe (n 10 above) 7.

³³ Visitors from Zimbabwe (as above).

³⁴ HDA (n 6 above) 47.

³⁵ EL Rowan *Understanding child sexual abuse: For those looking to comprehend and to prevent child sexual abuse, a succinct guidebook of advice and resources* (2006) 4.

³⁶ Rowan (n 35 above) 5.

³⁷ UN Economic and Social Commission for Asia and the Pacific 'Sexually abused and sexually exploited children and youth in greater Mekong subregion: A qualitative assessment of their health needs and available services' ST/ESCAP/2045 unnumbered (2000) available at http://www.childtrafficking.com/Docs/exploited_children_andyouth_in_subregion_oct07.pdf (accessed on 13 October 2012).

³⁸ WHO's definition of child abuse available at <http://www.yesican.org/definitions/who.html> (accessed on 13 October 2012).

The study by SCUK has omitted the phenomenon of child sexual abuse. However, the interview with at *Liga Moçambicana dos Direitos Humanos*, which has offices in Tete and Beira, has revealed that female UMC in Mozambique are exposed to the risk of sexual abuse.³⁹ The border police is under the obligation to report any matter of unaccompanied child migration to the immigration officers. However, most of the times, when a female UMC is caught, she is asked for sexual favours in return of her freedom. Afraid of the consequences that will follow if she is handed over to the immigration officers, the child is forced to give in to the demands of the person in position of authority. The border police's action is so 'intertwined with the exercise of power' that they 'cease to see their acts as abusive'.⁴⁰ For the person in power, the female UMC is under the obligation to satisfy them sexually to be able to continue living in the country.

1.2.3 Child labour

Child labour affects around 215 million children around the world.⁴¹ It is important to note that not all work performed by the child can be classified as child labour. For instance, if children are 'helping their parents around the home, assisting in a family business or earning pocket money outside school hours and during school holidays' and this does not have any negative impact on their 'health and personal development and does not interfere with their schooling', these activities do not amount to child labour.⁴²

Child labour does not have a 'universally accepted'⁴³ definition and for the purposes of this paper, the definition provided for by the International Labour Organisation (ILO) will be used. The ILO defines child labour as 'work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development'.⁴⁴ The work should be 'prejudicial' to the child.⁴⁵

³⁹ Gomes (n 31 above).

⁴⁰ A Dawes, L Richter & C Higson-Smith 'Confronting the problem' in A Dawes, L Richter & C Higson-Smith (eds) *Sexual abuse of young children in Southern Africa* (2005) 5 available at http://books.google.co.mz/books?id=rhznn_8QJY4C&printsec=frontcover&dq=child+sexual+abuse&source=bl&ots=ENfTfrw2VT&sig=UyPCI4DZRO-jkXctXdk9n_8qWvw&hl=en&sa=X&ei=URN8UJXNBjssgaL24GIAw&ved=0CDIQ6AEwAQ (accessed on 15 October 2012).

⁴¹ ILO website 'Child labour' available at <http://www.ilo.org/global/topics/child-labour/lang--en/index.htm> (accessed on 14 October 2012).

⁴² ILO website 'What is child labour?' available at <http://www.ilo.org/ipecc/facts/lang--en/index.htm> (accessed on 14 October 2012).

⁴³ J Ennew, WE Myers & DP Plateau 'Defining child labour as if human rights really matter' in BR Weston (ed) *Child labour and human rights: Making children matter* (2005) 27.

⁴⁴ ILO (n 42 above).

⁴⁵ Ennew *et al* (n 43 above) 52.

UMC are vulnerable to child labour. Being undocumented and irregular, there is a very high probability that they will be economically exploited.⁴⁶ Andrea Vasco, a researcher at UN Children's Fund (UNICEF), identified economic reasons as one of the motivation for child migration and as such, most of the children who are migrating will be at the risk of child labour.⁴⁷

Similar to the situation of all UMC around the world, UMC in Mozambique are also exposed to the risk of child labour.⁴⁸ Many of the UMC work in farms⁴⁹ and farmers hire UMC who approach them because UMC cost less than local labour. Moreover, UMC are preferred than the local labourers who 'have access to labour unions who can protect their rights'.⁵⁰

SCUK has identified other areas where UMC work and it includes as follows:⁵¹

construction, collecting and selling livestock, serving food and drinks in drinking establishments (barracas), selling products in vending stalls in market areas and in the street, domestic work and working in restaurants...selling bed sheets, clothing, and other products...

UMC obtain jobs in restaurant because of the fact that they speak English⁵² and this is a sign of status because people speaking English are considered as being educated.⁵³ Moreover, the illegal mining industry also accommodates UMC.⁵⁴

These jobs performed by UMC indeed fall under the category of child labour since they have a negative impact on the development of the child. Most of the times, the children who are working do not have access to education. Even if they want to study, they have to forsake education as an opportunity cost to work. Earning money to survive and to send home is a higher priority than acquiring education.⁵⁵ Some of them are promised money but they do not get paid.⁵⁶

⁴⁶ HV Glind 'Migration and child labour: exploring child migrant vulnerabilities and those of children left behind' (2010) 5.

⁴⁷ Andrea Vasco was undertaking research on behalf of UNICEF Mozambique on the issue of internal child migration in Mozambique and international migration of unaccompanied children from Mozambique to South Africa. She was interviewed on 17 September 2012.

⁴⁸ Visitors from Zimbabwe (n 10 above) 8; UN High Commissioner for Refugees (UNHCR) 'Country Profiles: Zimbabwe' in 'Findings on the worst forms of child labour' (2009) 725 available at <http://www.unhcr.org/refworld/pdfid/4d4a6819a.pdf> (accessed on 15 October 2012).

⁴⁹ Visitors from Zimbabwe (n 10 above) 8.

⁵⁰ Interview by SCUK with a provincial government labour official in Visitors from Zimbabwe (n10 above) 8.

⁵¹ Visitors from Zimbabwe (n 10 above) 9.

⁵² Compared to local workers who speak Portuguese.

⁵³ Visitors from Zimbabwe (n 10 above) 9.

⁵⁴ Manjate (n 18 above).

⁵⁵ Vasco (n 47 above).

⁵⁶ As above.

1.2.4 Non-protection of socio-economic rights

Socio-economic rights have the aim, amongst others, to ensure that everyone has access to the resources of a country and enjoys from the services that are integral to the enjoyment of an adequate standard of living.⁵⁷ Ensuring that everyone, including UMC, enjoy from socio-economic rights without any hindrance is a challenge to the principle of ‘universality’ proclaimed by the Universal Declaration of Human Rights (UDHR).⁵⁸

UMC in Mozambique, similarly to most migrants around the world, migrate with the hope of benefitting from a ‘greater enjoyment of their rights’.⁵⁹ The rights protected by the International Covenant on Economic, Social and Cultural Rights 1976 (ICESCR), as will be demonstrated in Chapter 2 of this paper, extend to protect even UMC. However, despite the provisions of the ICESCR, ‘migrants are routinely victims of a wide range of constraints to their economic, social, and cultural rights’.⁶⁰ The UN Committee on the Rights of the Child has highlighted that there should be no discrimination against UMC concerning their economic and social rights.⁶¹

The study by SCUK demonstrates that UMC have difficulties in accessing their socio-economic rights due to their immigration status.⁶² Since they do not have the proper documents, UMC cannot be admitted into primary schools. The study also reveals that Mozambican authorities give priority to Mozambican children over UMC thus discriminating against them. In Manica, despite being enrolled in a school, UMC still do not benefit from the right to education since the medium of instruction is Portuguese.⁶³

1.2.5 Children in the deportation process

When a person is caught living in a host country after having breached the immigration laws, the first option is usually to deport him/her. UMC face the same plight and countries usually do not take

⁵⁷ S Liebenberg & K Pillay (eds) *Socio-economic rights in South Africa: A resource book* (2000) 16.

⁵⁸ Preamble to the UDHR 1948.

⁵⁹ 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) 1 available at http://www2.ohchr.org/english/issues/migration/consultation/docs/Intergovernmental%20organisations/3a.UNICEF_ESCR_Migrants.pdf (accessed on 16 October 2012).

⁶⁰ UNICEF & National University of Lanus (n 59 above) 2.

⁶¹ Committee on the Rights of the Child ‘Concluding Observations of the Committee on the Rights of the Child: France’ (11 June 2009) CRC/C/FRA/CO/4 para 30.

⁶² Visitors from Zimbabwe (n 10 above) 10.

⁶³ As above.

into account their 'best interests or their specific rights and needs' while deciding on their deportation.⁶⁴

In Mozambique, when UMC are caught without the proper documents, he/she is sent back to his home country as per the Immigration Act.⁶⁵ However, the process which is adopted is not appropriate. The interview at *Liga Moçambicana dos Direitos Humanos* revealed that the children are kept in prisons⁶⁶ and the case of *Centre for Child Law* from South Africa clearly demonstrates that unaccompanied minors should not be detained.⁶⁷

The deportation process entails many violations of the human rights of the child. For instance, the children are herded into a van which is overcrowded.⁶⁸ Furthermore, when children, especially girls, are detained to be deported, they are vulnerable to child sexual abuse.⁶⁹

1.2.6 Street Children

Street children form part of an 'extremely vulnerable group' of children and they live 'without a safety net, often seeking new challenges'.⁷⁰ They 'lack the primary socialisation and modelling framework of the family that is thought to foster healthy growth and development'.⁷¹ For the purposes of this paper, street children will be classified according to the definition adopted by the Inter Non-Governmental Organisation (Inter-NGO) which is as follows:⁷²

Any girl or boy who has not reached adulthood, for whom the street has become her or his habitual abode and/or sources of livelihood, and who is inadequately protected, supervised or directed by responsible adults.

Around the world, there are millions of children who resort to living in the streets to be able to survive.⁷³ Although there are different factors which lead a child to the streets, it has been identified

⁶⁴ UNICEF & National University of Lanus (n 59 above) 10.

⁶⁵ Article 29 of the Immigration Act 5/93.

⁶⁶ Gomes (n 31 above).

⁶⁷ *Centre for Child Law v Minister of Home Affairs* 2005 (6) SA 50(T).

⁶⁸ Gomes (n 31 above).

⁶⁹ As above.

⁷⁰ A Hatloy & A Huser 'Identification of street children: Characteristics of street children in Bamako and Accra' (2005) 7 available at <http://www.fao.no/pub/rapp/474/474.pdf> (accessed on 17 October 2012).

⁷¹ UNICEF 'Orphans and other vulnerable children and adolescents in Zimbabwe: A study on street children in Zimbabwe' undated 89 available at http://www.unicef.org/evaldatabase/files/ZIM_01-805.pdf (accessed on 17 October 2012).

⁷² Inter-NGO, Switzerland, 1985.

⁷³ S Deb *Children in agony: A source book* (2006) 134.

that most of them 'go on the street to look for a better way of life'.⁷⁴ However, once on the streets, the children are vulnerable to child sexual exploitation and criminal activities.⁷⁵

There are some UMC in Mozambique who live on the streets in the absence of them having a job in the farm or other sectors.⁷⁶ They survive by looking for food in the dustbins, or by begging or recycling bottles.⁷⁷

The above risks and vulnerabilities demonstrate that UMC form part of a vulnerable group thus requiring additional protection.

1.3 Research Questions

The main question of the study is whether there is proper implementation of international, regional and domestic laws in Mozambique to ensure that the rights of UMC in Mozambique are protected. The subsequent questions are as follows:

- (a) What are the obligations of Mozambique to protect UMC?
- (b) What are the challenges faced in the protection of UMC in Mozambique?
- (c) What should be done to ensure a better protection for UMC in Mozambique?

1.4 Research methodology

Firstly a desktop research has been carried out to understand the general situation of UMC. Primarily, there was a study of international and regional treaties and the soft laws relating to the matter and the domestic laws in Mozambique to analyse the obligations on the State to protect UMC. Secondary sources such as scholarly writings, journal articles and reports have been used to have a general overview of the situation of migrant children around the world and in Mozambique.

There were interviews carried out with officials from UNICEF, SC International in Mozambique, Red Came and *Liga Moçambicana dos Direitos Humanos* in Mozambique. Participation in a conference on the protection of children on the move at the Ressano Garcia border on 13 September 2012 also provided guidance concerning the present study. The research was supplemented through information gained from participation in the SANTAC Regional Consultative Meeting on Children on the Move held in Maputo, Mozambique on 18 and 19 October 2012.

⁷⁴ PC Shukla *Street children and the asphalt life* (2005) 3.

⁷⁵ J Boyden & A Prout 'Childhood and the policy makers: A comparative perspective on the globalization of childhood' in A James (ed) *Constructing and reconstructing childhood: Contemporary issues in the sociological study of childhood* (2000) 2nd ed 209.

⁷⁶ HDA (n 6 above) 47.

⁷⁷ HDA (as above).

1.5 Significance

A study conducted by the Office of the High Commissioner for Human Rights (OHCHR) identified that there are 'serious protection gaps for migrant children in every region of the world'.⁷⁸

Article 35 of the Constitution of Mozambique⁷⁹ extends the protection of fundamental rights, duties and freedoms to the citizens of Mozambique.⁸⁰ Mozambique has ratified⁸¹ the United Nations Convention on the Rights of the Child (CRC)⁸² and the African Charter on the Rights and Welfare of the Child⁸³ (African Children's Charter),⁸⁴ the preambles of which emphasise on the protection of the rights of the child without discrimination of any kind, including national origin.⁸⁵ As a result, the government of Mozambique is under the obligation to protect unaccompanied foreign children who are in its territory.

However, the Immigration Act,⁸⁶ which regulates the entry in and departure from Mozambique, acts as a hindrance to the protection of UMC. Article 6 of the Immigration Act requires a person entering the country to have a passport or valid travel document and a visa issued by competent Mozambican authorities. Moreover, for minors, they need a written authorisation from their guardian and proof of means of subsistence.⁸⁷ The Immigration Act makes no mention of UMC and this results into them not being recognised while having access to Mozambique.

The Constitution of Mozambique makes provision for refugees in its section 20 as follows:

The Republic of Mozambique shall grant asylum to foreigners persecuted on the grounds of their struggle for national liberation, for democracy, for peace and for the protection of human rights. The law shall define political refugee status.

⁷⁸ Website of the OHCHR 'Urgent need to protect the rights of migrant children' available at <http://www.ohchr.org/EN/NewsEvents/Pages/RightsOfMigrantChildren.aspx> (accessed on 8 August 2012).

⁷⁹ Constitution of Mozambique 2004.

⁸⁰ Article 35 of the Constitution of Mozambique: 'All citizens are equal before the law, and they shall enjoy the same rights and be subject to the same duties, regardless of colour, race, sex, ethnic origin, place of birth, religion, level of education, social position, the marital status of their parents, their profession or their political preference.'

⁸¹ Mozambique ratified the CRC in April 1994.

⁸² The CRC entered into force on 2 September 1990.

⁸³ The African Children's Charter entered into force on 29 November 1999.

⁸⁴ Mozambique ratified the African Children's Charter in July 1998.

⁸⁵ Paragraph 3 of the preamble of the CRC.

⁸⁶ Immigration Act Legislation No 5/93.

⁸⁷ Article 16 of the Immigration Act.

UMC are not granted refugee status because they do not form part of the categories listed by the Refugee Act. Article 1 of the Refugees Act⁸⁸ defines a person entitled to refugee status as follows:

- (a) who has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to return to that country or to seek its protection;
- (b) who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it;
- (c) who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in a part or the whole of the country of origin, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality shall be considered a refugee.

Most of the UMC do not form part of any of the above categories and as such are not entitled to refugee status.

The irregular migration of UMC affects them in several ways resulting into violations of their human rights. Section 1.2 of the present study has described the risks and vulnerabilities faced by UMC in Mozambique. The present study is significant to investigate as to why UMC are exposed to those risks and vulnerabilities despite the protection framework in place.

The issue of UMC in Mozambique is under-researched: most of the research concentrates on trafficking of children while ignoring the independent movement of children into Mozambique.⁸⁹

This study is significant in that it analyses the issue of UMC in Mozambique and identifies the gaps while providing for recommendations.

1.6 Literature review

Research on child migration has been escalating in the past twenty years.⁹⁰ The International Organisation for Migrants (IOM) has highlighted that child and youth migration, being part of the contemporary world's migration flows, is being 'considered as a new area of concern and focus'.⁹¹

⁸⁸ Refugee Act No 21/1991.

⁸⁹ Manjate (n 18 above).

⁹⁰ A Orgocka 'Vulnerable yet energetic: Independent child migrants and opportunity structures' in A Orgocka & C Clark-Kazak (eds) *Independent Child Migration – Insights into Agency, Vulnerability and Structure New Directions for Child and Adolescent Development* (2012) 1.

⁹¹ IOM 'Unaccompanied Children on the Move' (2011) 11 available at http://publications.iom.int/bookstore/free/UAM%20Report_11812.pdf (accessed on 27 August 2012).

As pointed out by Professor Kooymans,⁹² ‘a child is a human being in its formative stage’ and ‘he is entitled to special protection in order to enable him to fully deploy his personality, his talents and aptitudes’.⁹³

On the international and regional level, various writings including that of Ressler *et al*,⁹⁴ Kanics *et al*,⁹⁵ Hashim *et al*,⁹⁶ Orgocka,⁹⁷ Ensor *et al*,⁹⁸ Furia,⁹⁹ Steinbock,¹⁰⁰ Martina *et al*,¹⁰¹ Piwowarczyk¹⁰² and Swart¹⁰³ demonstrate the vulnerability of UMC. Concerning Mozambique, there are publications by Save the Children UK which studies the situation of UMC in Mozambique.

Ressler *et al* point out the vulnerability of UMC, who are ‘dependent on the chance of charity of others, which can fall short of even minimal care and protection’.¹⁰⁴ The book, which is divided into four parts, provides for a conceptual overview on the plight of UMC.

UMC face the ‘risk of deprivation of basic needs, physical violations, sexual abuse, trade in children and other kinds of exploitation’.¹⁰⁵ Steinbock puts forward the complexity of the issue of child migration and he concludes by saying that the ‘cure’ to protect UMC is not yet found and the best that can be done is to ‘ameliorate, to the extent possible’ their separated statuses.¹⁰⁶

While introducing the book edited by Kanics *et al*, Hernandez and Touzenis describe child migration as a ‘specific phenomenon all over the world’.¹⁰⁷ They also highlight the difficulty UMC face as a result of travelling without their family. They describe unaccompanied child migration as ‘irregular’

⁹² Former UN Rapporteur on Torture.

⁹³ Professor Kooymans during the Introductory Speech at the Banquet of ‘Children on the Move’ Conference which took place in Amsterdam from 23 to 25 November 1994 available in JE Doek & HV Loon *Children on the move: How to implement their right to family life* (1996) 18.

⁹⁴ EM Ressler *et al Unaccompanied children: care and protection in wars, natural disasters, and refugee movements* (1988).

⁹⁵ J Kanics *et al Migrating alone: Unaccompanied and separated children's migration to Europe* (2010).

⁹⁶ I Hashim & D Thorsen *Child migration in Africa* (2011).

⁹⁷ Orgocka (n 90 above).

⁹⁸ MO Ensor & EM Godziak *Children and Migration: At the crossroads of resilience and vulnerability* (2010).

⁹⁹ Furia A ‘Victims or criminals? The vulnerability of separated children in the context of migration in the United Kingdom and Italy’ (2012) Working Paper 69.

¹⁰⁰ DJ Steinbock ‘Separated children in mass migration: Causes and cures’ (2003) 22 *Saint Louis University Public Law Review* 297.

¹⁰¹ F Martina & J Curran ‘Separated children: A comparison of the treatment of separated child refugees entering Australia and Canada’ (2007) 19 *International Journal of Refugee Law* 440.

¹⁰² LA Piwowarczyk ‘Our responsibility to unaccompanied and separated children in the United States: A helping hand’ (2005-2006) 15 *Boston University Public Interest Law Journal* 263.

¹⁰³ S Swart ‘Unaccompanied minor refugees and the protection of their socio-economic rights under human rights law’ (2009) 9 *African Human Rights Law Journal* 103.

¹⁰⁴ Ressler *et al* (n 94 above) 4.

¹⁰⁵ Steinbock (n 100 above) 299.

¹⁰⁶ Steinbock (n 100 above) 303.

¹⁰⁷ Kanics *et al* (n 95 above) xiii.

which ‘increases the risks of exploitation or abuse’.¹⁰⁸ Hashim *et al*, who focus on child migration in Western Africa, especially in rural Burkina Faso and Ghana, also pointed to the independent decision of the child to migrate.¹⁰⁹ The unaccompanied migration of children in Mozambique is similar to the migration of children in Europe and Western Africa since all situations concern the children who take ‘a positive decision ... with the aim of improving life opportunities’.¹¹⁰

The vulnerability faced by UMC is also discussed by Orgocka.¹¹¹ He perceives an unaccompanied migrant child as ‘a vulnerable human often being a victim of circumstances and/or adults’ decisions.¹¹² UMC, unlike other children, have to struggle to lead a normal life since they have to face hardships such as ‘fighting off the odds of violent realities, resisting stereotypical assumptions and figuring out integration and life choices as they are shaped by existing opportunity structures’.¹¹³

Ensor *et al*¹¹⁴ contributes to the literature on child migration in a different perspective. They do not perceive independent child migration as ‘coercion’¹¹⁵ by adults. Instead, they emphasise upon other motivations for child migration and consider the children as active agents who decide on their own to move. They recognise UMC as ‘active, politically and socially aware individuals, not objectified, passive victims’.¹¹⁶ The present paper is along the same lines and includes the possibility of UMC participating in ‘the migration business’.¹¹⁷

Furia highlights the lack of political will to protect UMC since it conflicts with their policy to restrain illegal immigration.¹¹⁸ The issue of unaccompanied child migration is not only a legal issue but also a social issue.¹¹⁹ While the government is trying to control immigration into its country, it should perceive child migration from a human rights point of view.¹²⁰ However, there is ‘tension’ while reconciling ‘assistance to the children’ and the immigration policies of a country.¹²¹ Sometimes it is

¹⁰⁸ Kanics *et al* (n 95 above) xiv.

¹⁰⁹ Hashim *et al* (n 96 above).

¹¹⁰ Kanics *et al* (n 95 above) xiv.

¹¹¹ Orgoka (n 90 above) 3.

¹¹² Orgoka (n 90 above) 8.

¹¹³ Orgoka (as above).

¹¹⁴ Ensor *et al* (n 98 above).

¹¹⁵ N Sigona ‘Policy primer: Irregular migrant children and public policy’ The Migration Observatory at the University of Oxford (2011) 3 available at <http://www.migrationobservatory.ox.ac.uk/policy-primers?page=1> (accessed on 12 September 2012).

¹¹⁶ Sigona (n 115 above) 277.

¹¹⁷ J Salt & J Stein ‘Migration as a business: The case of trafficking’ (1997) 35 *International Migration* 467.

¹¹⁸ Furia (n 99 above) 2.

¹¹⁹ Martina (n 101 above) 440.

¹²⁰ Martina (as above).

¹²¹ Martina (n 101 above) 449.

difficult to give attention to UMC when the country's own society is at 'crossroads'¹²² due to its immigration policy. The same scenario is happening in Mozambique where the Immigration laws, as discussed above, hinder the integration of UMC in Mozambique.

Swart has expressed concern about UMC being exploited because of 'insufficient protection'.¹²³ Goodwin blames the lack of protection of the rights of the child on the narrow definition of the practicality of international principles.¹²⁴ The implementation of international instruments 'may not be broad enough and may not be implemented sufficiently at the national level'.¹²⁵ Although Mozambique is party to international and regional instruments which ensure the protection of the child, it is facing difficulties to implement those provisions when it comes to UMC.

SCUK has raised the alarm over increasing numbers of Zimbabwean children illegally entering Mozambique to escape poverty at home.¹²⁶ The study also demonstrates that UMC in Mozambique do not benefit from adequate protection.

The current paper will study both the social and legal implications of UMC in Mozambique. It will provide details as to how international, regional and domestic laws can be implemented to provide for a better protection of UMC.

1.7 Definition of UMC

General Comment No 6 of 2005 defines unaccompanied children as follows:¹²⁷

...children, as defined in article 1 of the Convention,¹²⁸ who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

The report by IOM differentiates between dependent and independent child migration.¹²⁹ The focus of the present paper is on independent child migration whereby children move 'without close family

¹²² Piwowarczyk (n 102 above) 263.

¹²³ Swart (n 103 above) 104.

¹²⁴ GS Goodwin-Gill 'Protecting the human rights of refugee children: Some legal and institutional possibilities' in J Doek *et al* (eds) *Children on the move: How to implement their right to family life* (1996) 97.

¹²⁵ Swart (n 103 above) 105.

¹²⁶ Visitors from Zimbabwe (n 10 above).

¹²⁷ UN Committee on the Rights of the Child: General Comment 6 'Treatment of unaccompanied and separated children outside their country of origin' (2005) para 7.

¹²⁸ Article 1 of the CRC: '... a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.'

¹²⁹ IOM 2011 (n 91 above).

members or residents’ and which is ‘often carried out with the aim of seeking employment or education’.¹³⁰

This paper will not look into trafficked children. UNICEF refers to a trafficked child as follows:¹³¹

A child has been trafficked if he or she has been moved within a country, or across borders, whether by force or not, with the purpose of exploiting the child.

Therefore, this paper will focus on children who migrate on their own without the assistance of a third person who wants to exploit them commercially.

1.8 Scope and limitations of the study

The first limitation encountered was a language barrier. The author of the present paper is not Portuguese speaking and most of the domestic laws of Mozambique are in Portuguese. Furthermore, all the relevant stakeholders could not be interviewed since most of the people are not fluent in English and there was no opportunity to travel to the border at Beirra or Tete, where most of the UMC are. However, this limitation was minimised with the help of English speaking people who helped in the understanding of the laws and the situation of UMC in Mozambique.

Moreover, there is not much literature on Mozambique concerning the issue of UMC. The study relies upon the findings of UNICEF Mozambique and SCUUK in Mozambique for information about the present issue.

Another limitation is that the paper does not target trafficked children but concentrates instead on children who migrate independently on their own.

1.9 Overview of chapters

The present paper consists of five chapters. The first chapter, which is this chapter, introduces the study and describes the risks and vulnerabilities that UMC in Mozambique are exposed to. It defines the term ‘UMC’ for the purpose of this study and presents the research questions. It also sets out the research methodology used. It gives the rationale for this study and covers an overview of existing literature whilst laying the limitations to the study.

¹³⁰ IOM 2011 (n 91 above) footnote 42.

¹³¹ UNICEF ‘Note on the definition of ‘child trafficking’ (based on engagements among international agencies in 2006 and 2007) page 1 of 2 available at http://www.unicef.org/southafrica/SAF_pressrelease_notetrafficking.pdf (accessed on 19 October 2012).

Chapter two studies the relevant international, regional and domestic laws and policies in relation to UMC. This chapter establishes legal and policy framework within which Mozambique should operate to ensure the protection of UMC.

Chapter three identifies the gaps and challenges in protecting UMC. It highlights the major obstacles that Mozambique faces while implementing the laws.

Finally, chapter four summarises the study and provides for practical recommendations to overcome the challenges faced.

2. MOZAMBIQUE'S OBLIGATIONS TO PROTECT THE RIGHTS OF UMC

UMC require protection of their human rights through international, regional and domestic instruments. The focus of this study is the protection of UMC in Mozambique. This chapter will expand upon the obligations of Mozambique to protect the rights of UMC: it will make reference to the international obligations, regional obligations and domestic obligations.

2.1 International obligations

International obligations arise in different ways¹³² including from international conventions and from international customary law, which form part of the sources of international law.¹³³ Ressler *et al* have stressed on the importance of these obligations which define the framework within which UMC's issues are tackled.¹³⁴

The Universal Declaration on Human Rights 1948 (UDHR), the 'milestone document in the history of human rights',¹³⁵ recognises that 'all human beings are born free and equal in dignity and rights'¹³⁶ and that the rights in the UDHR should be conferred upon everyone without 'distinction of any kind' and this includes national origin.¹³⁷ Hence, the rights recognised should be extended to UMC within the territory of Mozambique.

At the international level, the recognition of the rights of the child can find its roots in the Geneva Declaration of the Rights of the Child adopted by the Assembly of the League of Nations in 1924 (1924 Declaration)¹³⁸ where it was declared that 'mankind owes to the child the best it has to give'¹³⁹ and that the 'orphan and the waif must be sheltered and succored'.¹⁴⁰ The 1959 Declaration¹⁴¹ is another important step for the protection of the rights of the child since it was 'the first serious attempt to describe in a reasonably detailed manner' the rights of the child.¹⁴²

¹³² CFJ Doebbler *International human rights law: Case and Materials Volume 1* (2004) 85.

¹³³ Article 38(1) of the Statute of the International Court of Justice.

¹³⁴ Ressler *et al* (n 94 above) 3.

¹³⁵ OHCHR website available at <http://www.ohchr.org/en/udhr/pages/introduction.aspx> (accessed on 2 October 2012).

¹³⁶ Article 1 of the UDHR.

¹³⁷ Article 2 of the UDHR.

¹³⁸ D Hodgson 'The historical development and 'internationalization' of the children's rights movement' (1992) *Australian Journal of Family Law* 252.

¹³⁹ Geneva Declaration of the Rights of the Child 1924, adopted during the 5th Assembly of the League of Nations on 26 September 1924

¹⁴⁰ Paragraph 3 of the 1924 Declaration.

¹⁴¹ Declaration on the Rights of the Child GA RES 1386 (XIV), UN Doc A/4354 (1959).

¹⁴² J Fortin *Children's rights and developing law* (2003) 35.

Mozambique's international obligations to protect UMC also arise from soft laws. There is no agreed definition of soft laws.¹⁴³ Dugard, while highlighting that soft law does not have the 'status of law', has defined it as comprising of 'imprecise standards, generated by declaration adopted by diplomatic conferences or resolutions of international organisations, that are intended to serve as guidelines to states in their conduct'.¹⁴⁴ Mozambique has to abide by both 'hard' laws and soft laws that provide for guidance on the protection of UMC.

2.1.1 The CRC 1990

The UN General Assembly adopted the CRC without any 'dissenting'¹⁴⁵ vote on the 20 November 1989 and it entered into force on 2 September 1990, which was a very short period of time compared to other international human rights treaties of the UN.¹⁴⁶ The Convention, which is considered as a 'historical milestone'¹⁴⁷ and which represents 'an enormous advancement towards protecting the rights of the children',¹⁴⁸ had 193 parties as at 23 September 2012.¹⁴⁹

The CRC, the 'primary normative standards in relation to children's rights',¹⁵⁰ protects the rights of all children irrespective of their 'nationality or immigration status'.¹⁵¹ Article 2 of the CRC imposes an obligation on States not to practice discrimination of any kind while protecting the rights of children in their jurisdiction.¹⁵² UMC are faced with situations whereby they do not benefit from the rights provided for by the CRC. Mozambique, having ratified the CRC, has the obligation to ensure that UMC are not deprived of the rights enshrined therein.

¹⁴³ D Shelton 'Soft law' in D Armstrong (ed) *Routledge handbook of international law* (2009) 69; and A Aust *Handbook of international law* (2010) 11.

¹⁴⁴ J Dugard *International law: A South African perspective* 4th ed (2011) 33.

¹⁴⁵ E Verhellen *Convention on the Rights of the Child* (2006) 9.

¹⁴⁶ S Detrick *A Commentary on the United Nations Convention on the Rights of the Child* (1999) 1.

¹⁴⁷ As above.

¹⁴⁸ Children's Rights Portal 'The Convention on the Rights of the Child: Issues of the Convention' available at <http://childrensrightsportal.org/convention/issues/> (accessed on 24 September 2012).

¹⁴⁹ UN Database available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (accessed on 24 September 2012).

¹⁵⁰ Study of the OHCHR on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration submitted to the Human Rights Council during its 15th Session on 5 July 2010 para 9.

¹⁵¹ IOM 'International migration law: Human rights of migrant children' (2008) 15 available at <http://joomla.corteidh.or.cr:8080/joomla/images/stories/Observaciones/11/Anexo%201.pdf> (accessed on 24 September 2012).

¹⁵² Article 2(1) of the CRC: 'States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.'

The CRC is based on four core principles: non-discrimination, the best interests of the child, the right to life, survival and development and respect for the views of the child.¹⁵³

The CRC does not provide for an 'independent right to freedom of discrimination'¹⁵⁴ but provides for non-discrimination with regards to the protection of the rights enshrined in the Convention. Since children are most of time deprived from their rights due to discrimination, this principle is imperative to ensure that the child's 'inherent entitlement to fundamental rights and freedom' is recognised.¹⁵⁵ UMC are discriminated against because of their nationality and are denied the rights protected by the CRC. They do not have proper documentation and cannot therefore enjoy from various rights such as the right to education or the right to health amongst others.

The CRC is further guided by the 'best interests of the child' principle, provided for by article 3 of the Convention.¹⁵⁶ According to Ressler *et al*, the best interests of the child principle guides the relevant stakeholders concerning the protection of UMC: States have to protect UMC at all times and ensure that the child's welfare is given priority and that the States meet the developmental needs of the child.¹⁵⁷

Article 6 of the CRC provides for the right to life survival and development of the child.¹⁵⁸ The right to life includes 'the chance to be able to live and have the possibility to grow, to develop and become adults'.¹⁵⁹ The right to survival and development is a 'dynamic process', which requires States Parties to take positive, steps in the realisation of these rights.¹⁶⁰ These rights have an 'umbrella approach' which provides for the 'equality of opportunity and distributive justice' for all children.¹⁶¹ The States Parties are under the obligation to ensure to the 'maximum extent possible' that UMC within their territories benefit from their right to survival and development.

¹⁵³ UNICEF website 'Convention on the Rights of the Child' available at <http://www.unicef.org/crc/> (accessed on 24 September 2012).

¹⁵⁴ S Detrick (n 146 above) 72.

¹⁵⁵ CRIN 'Guide to non-discrimination and the CRC' (2009) not numbered available at http://www.crin.org/docs/CRC_Guide.pdf (accessed on 24 September 2012).

¹⁵⁶ Article 3(1) of the CRC: 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.'

¹⁵⁷ Ressler *et al* (n 94 above) 282.

¹⁵⁸ Article 6 of the CRC: '(1) States Parties recognise that every child has the inherent right to life. (2) States Parties shall ensure to the maximum extent possible the survival and development of the child.'

¹⁵⁹ Children's Rights Portal 'Right to life: Understanding children's right to life' available at <http://childrensrighportal.org/fundamental-rights/life/> (accessed on 24 September 2012).

¹⁶⁰ GV Bueren *The international law on the rights of the child* (1998) 293.

¹⁶¹ As above.

States Parties have to respect the views of the child according to article 12 of the CRC.¹⁶² The States Parties have to provide guarantee 'in law and in administrative practice' that the right of UMC is heard.¹⁶³ Therefore, Mozambique, instead of deporting UMC when they are caught, should consult them to know their opinions.

Mozambique has the obligation to protect the rights of UMC in its territory to ensure abidance to these four core principles.

Moreover, article 2 of the CRC imposes an obligation on Mozambique to ensure that UMC in its territory have access to economic, social and cultural rights.¹⁶⁴ Article 32(1) of the CRC requires States to protect UMC from child labour. It provides as follows:

States recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

Mozambique has to ensure that it protects UMC from the risks and vulnerabilities that they are exposed to so that they can benefit from the protection of the above provisions.

2.1.2 The ICESCR

The ICESCR is a 'pillar for human rights protection within the UN'¹⁶⁵ and it 'protects a wide spectrum of socio-economic rights that can be claimed by everyone'.¹⁶⁶ The rights protected in the ICESCR can be claimed by even children who, 'because of their vulnerability, are entitled to special protection and assistance additional to that provided for adults'.¹⁶⁷ Article 10(3) of the ICESCR provides as follows:

Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young

¹⁶² Article 12(1) of the CRC: 'States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.'

¹⁶³ OHCHR (n 150 above) para 29.

¹⁶⁴ Article 4 of the CRC: '...With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.'

¹⁶⁵ MM Sepulveda *The nature of the obligations under the International Covenant on Economic, Social and Cultural Rights* (2003) 1.

¹⁶⁶ DM Chirwa 'Combating child poverty: The role of economic, social and cultural rights' in J Sloth-Nielsen (ed) *Children rights in Africa: A legal perspective* (2008) 93.

¹⁶⁷ G Van Bueren 'Alleviating poverty through the constitutional court' (1999) 15 1 *South African Journal on Human Rights* 56.

persons should be protected from economic and sexual exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law.

Moreover, article 11 of the ICESCR provides for an adequate standard of living for everyone. Whilst article 12 provides for the protection of the right to health, article 13 of the ICESCR recognises the right to education. The above articles impose an obligation on Mozambique to protect the rights of UMC who are likely to be in situations where their rights are violated.

2.1.3 The Convention on the Elimination of all forms of Discrimination Against Women 1981 (CEDAW)

A 'revolutionary document',¹⁶⁸ the CEDAW brings into spotlight the human rights of 'the female half of humanity'.¹⁶⁹ The provisions of the CEDAW protect the rights of female UMC who are exposed to commercial sexual exploitation and sexual abuse. Article 6 of the CEDAW imposes an obligation on Mozambique to protect the unaccompanied migrant child from commercial sexual exploitation.¹⁷⁰

Mozambique has the obligation to protect female UMC who are easy prey for commercial sexual exploitation by adults who consider them cheaper than the local sex workers. Appropriate measures should also be taken to prevent persons in authority to abuse female UMC.

2.1.4 The OP¹⁷¹

The OP has as aim to extend the 'scope and reach' of the CRC's provisions concerning the sale of children, child prostitution and child pornography.¹⁷² It lays emphasis on the criminalisation of these activities and considers them as serious violations of the rights of the child.¹⁷³

There is an obligation on the part of States Parties to prohibit child prostitution.¹⁷⁴ Article 9 further requires States Parties to 'adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences' provided for by the OP.

¹⁶⁸ C Chinkin 'Thoughts on the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)' in M Shivdas & S Coleman (eds) *Without prejudice: CEDAW and the determination of women's rights in a legal and cultural context* (2010) 5.

¹⁶⁹ UN website 'Introduction of the CEDAW' available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> (accessed on 2 October 2012).

¹⁷⁰ Article 6 of the CEDAW: 'States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.'

¹⁷¹ Mozambique accessed to the OP on 6 March 2003.

¹⁷² AT Gallagher *The international law of human trafficking* (2010) 67.

¹⁷³ UNICEF website 'Optional Protocols to the Convention on the Rights of the Child' available at http://www.unicef.org/crc/index_protocols.html (accessed on 13 October 2012).

¹⁷⁴ Article 1 of the OP.

Moreover, 'attention should be given to protect children who are especially vulnerable to such practices'.¹⁷⁵

Mozambique has the obligation, as per the OP, to protect UMC who are vulnerable to commercial sexual exploitation.

2.1.5 ILO Conventions

The only 'tripartite' UN international organisation, the ILO¹⁷⁶ is 'responsible for drawing up and overseeing international labour standards'.¹⁷⁷ The ILO has shown its interest to protect 'children and young persons' upon its establishment.¹⁷⁸ The Preamble of its Constitution¹⁷⁹ and two of its Conventions¹⁸⁰ amongst others demonstrate the ILO's interest to protect children who are working.

Article 1 of the Minimum Age Convention imposes an obligation on States Parties to devise policies to 'ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment'. ILO Convention No 182 includes 'work, which by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children' in its definition for 'the worst forms of child labour'.¹⁸¹

UMC, who are as 'young as five years of age',¹⁸² are victims of worst forms of child labour since it affects their 'health and safety' and as such Mozambique has the obligation to apply the provisions of the ILO Conventions to protect them.

2.1.6 Report of the UN Special Rapporteur on the Human Rights of Migrants (2009 Report)¹⁸³

The UN Special Rapporteur on the human rights of migrants, who focuses on thematic issues, forms part of one of the special procedures established by the HRC.¹⁸⁴ The 2009 report focuses on the

¹⁷⁵ Article 9(1) of the OP.

¹⁷⁶ The ILO was created at the end of World War 1 by the Part XIII of the Treaty of Peace of Versailles available at <http://www.ilo.org/public/english/bureau/leg/download/partxiii-treaty.pdf> (accessed on 24 September 2012).

¹⁷⁷ ILO website available at <http://www.ilo.org/global/about-the-ilo/lang--en/index.htm> (accessed on 24 September 2012).

¹⁷⁸ A Trebilcock & G Raimondi 'The ILO's legal activities towards the eradication of child labour: An overview' in G Nesi, L Nogler & M Pertile (eds) *Child labour in a globalised world: A legal analysis of the ILO action* (2008) 17.

¹⁷⁹ Paragraph 2 of the Preamble of the ILO Constitution: '... the protection of children, young persons ...'

¹⁸⁰ Minimum Age Convention 1973 (No 138) and Convention concerning the prohibition and immediate action for the elimination of the worst forms of child labour 1999 (No 182).

¹⁸¹ Article 3 of the ILO Convention No 182.

¹⁸² Y Duncan (n 4 above).

¹⁸³ Report of the Special Rapporteur on the human rights of migrants submitted to the HRC during its 11th Session 'Protection of children in the context of migration' (2009) A/HRC/11/7.

protection of children in the context of migration thus identifying child migration as a 'threat'.¹⁸⁵ This Report is a contribution to the 'development of international standards needed for a better protection'¹⁸⁶ of migrant children, whether accompanied or not.

The 2009 Report highlights that UMC are 'vulnerable to human rights violations and abuses at all stages of the migration process'.¹⁸⁷ Furthermore, the reluctance of States to recognise UMC as being different from adults has also been pointed out and presents this as a 'challenge' that States have to 'overcome'.¹⁸⁸ The 2009 Report also underlines the conflict between migration and the human rights of the child since most immigration laws do not specifically provide for unaccompanied children.¹⁸⁹

The 2009 Report considers repatriation as a 'measure of protection' which should be effected only in the best interests of the child and in case of family reunification.¹⁹⁰ States should provide for mechanisms whereby UMC are heard before they are deported.¹⁹¹

The Special Rapporteur has also pointed out that there should be 'rights-based responses' concerning the protection of UMC in the host countries.¹⁹² There should be 'social integration and cohesion' which ensure that UMC have access to their rights.¹⁹³

Therefore, Mozambique should adopt an 'adequate legal framework'¹⁹⁴ to protect the vulnerable UMC and devise action plans which reconciles the immigration laws with the human rights of the child to ensure that it abides by the 2009 Report.

2.1.7 General Comment 6 of 2005

Article 45 (d) of the CRC confers upon the CRC Committee the power to issue general comments.¹⁹⁵ General Comment 6 of 2005 is an example of the 'holistic approach' that the CRC Committee takes to

¹⁸⁴ OHCHR website available at <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx> (accessed on 24 September 2012).

¹⁸⁵ P Maurer 'Foreword' in BG Ramcharan *The protection roles of the UN Human Rights Special Procedures* (2009) ix.

¹⁸⁶ BG Ramcharan (n 185 above) 111.

¹⁸⁷ Paragraph 23 of the 2009 Report.

¹⁸⁸ Paragraph 24 of the 2009 Report.

¹⁸⁹ Paragraphs 42 and 64 of the 2009 Report.

¹⁹⁰ Paragraphs 43 and 57 of the 2009 Report.

¹⁹¹ Paragraph 59 of the 2009 Report.

¹⁹² Paragraph 62 of the 2009 Report.

¹⁹³ Paragraph 76 of the 2009 Report.

¹⁹⁴ Paragraph 81 of the 2009 Report.

¹⁹⁵ Article 45 (d) of the CRC: 'The Committee may make suggestions or general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall

interpret the CRC with the view to 'pay special attention to vulnerable groups of children ... and to highlight the importance of implementing the CRC for adolescents and young children'.¹⁹⁶

General Comment 6 of 2005, adopted on 1 September 2005, is the product of the 39th Session of the CRC Committee that was held from 17 May to 3 June 2005. It highlights the fact that UMC are vulnerable and that States face challenges to ensure that 'such children are able to access and enjoy their rights'.¹⁹⁷ It stresses the point that there are 'a number of protection gaps in the protection of such children'.¹⁹⁸

Part IV of General Comment 6 of 2005 expands upon the applicable principles that provide for the protection of UMC. It first confers upon States Parties a legal obligation towards UMC by emphasising that a State has to abide by the provisions of the CRC even with respect to 'those children who come under the State's jurisdiction while attempting to enter the country's territory'.¹⁹⁹ The rights enshrined in the CRC should not be 'limited to children who are citizens of a State Party' but should also extend to UMC.²⁰⁰

The second principle that the General Comment expands on is that of non-discrimination which is enshrined in article 2 of the CRC. While acknowledging that policies and measures relating to public order can be adopted, the CRC Committee has underlined that they should be 'proportional' and 'least intrusive'.²⁰¹ Mozambique has the obligation to provide for immigration laws or refugee laws that are in conformity to the protection of the rights of UMC.

The next principle that Mozambique should apply for the protection of UMC is that of best interests of the child.²⁰² Mozambique should first carry out a 'comprehensive assessment'²⁰³ of the child's identity' to conclude as to what is in their best interests and should therefore allow UMC 'access to

be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties'.

¹⁹⁶ JE Doek 'The CRC: Dynamics, and directions of monitoring its implementation' in A Invernizzi & J Williams (eds) *The human rights of children: From visions to implementation* (2011)106.

¹⁹⁷ Paragraph 1 of the General Comment 6 of 2005.

¹⁹⁸ Paragraph 3 of the General Comment 6 of 2005.

¹⁹⁹ Paragraph 12 of the General Comment 6 of 2005.

²⁰⁰ As above.

²⁰¹ Paragraph 18 of the General Comment 6 of 2005.

²⁰² Article 3 of the CRC.

²⁰³ Part V(a) of the General Comment 6 of 2005 which provides for Initial Assessment and Measures includes identification, registration and documentation amongst others.

the territory' instead of deporting them to their country of origin as soon as they are caught within the territory of Mozambique.²⁰⁴

Furthermore, the General Comment also considers the right to survival and development of UMC to be threatened because they are 'vulnerable to risks' and are involved in activities that could 'result in harm to the child, or in extreme cases, in death'.²⁰⁵ Mozambique should take 'practical measures to protect the children from the risks' faced.²⁰⁶

The protection of UMC is also based on the principle of non-refoulement.²⁰⁷ Under the CRC, States Parties have the obligation not to return a child to 'a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child'.²⁰⁸ UMC in Mozambique come mostly from Zimbabwe where there is a 'real risk' of irreparable harm because of the political situation in the country. Mozambique is under the obligation to welcome these children so as to avoid any 'irreparable harm' to them.

Article 20 and 22 of the CRC oblige Mozambique to provide for care and accommodation for UMC.²⁰⁹ Paragraph 40 of the General Comment 6 of 2005 emphasises that alternative care systems should also extend to 'unaccompanied ... children outside their country of origin'. The State should thus integrate UMC in their policies for alternative care systems.

The General Comment 6 of 2005 imposes on Mozambique the obligation to ensure that UMC enjoy from an adequate standard of living²¹⁰ and from the highest attainable standard of health and facilities²¹¹ without any discrimination on the basis of them being migrant children.

Part V(g) of the General Comment 6 of 2005 obliges Mozambique to protect UMC from 'trafficking and of sexual and other forms of exploitation, abuse and violence'. The State should take 'necessary measures' that include the inquiring of the whereabouts of UMC and sensitisation campaigns.²¹²

Part VI of the General Comment 6 of 2005 expands upon article 22 of the CRC and provides for protection to a child who is seeking asylum. As discussed in the introduction, UMC in Mozambique

²⁰⁴ Paragraph 20 of the General Comment 6 of 2005.

²⁰⁵ Paragraph 23 of the General Comment 6 of 2005.

²⁰⁶ Paragraph 24 of the General Comment 6 of 2005.

²⁰⁷ Principle (f) of the General Comment 6 of 2005.

²⁰⁸ Paragraph 27 of the General Comment 6 of 2005.

²⁰⁹ Part V(c) of the General Comment 6 of 2005.

²¹⁰ Part V(e) of the General Comment 6 of 2005.

²¹¹ Part V(f) of the General Comment 6 of 2005.

²¹² Paragraph 52 of the General Comment 6 of 2005.

face obstacles to have refugee status because of the strict requirement of the immigration laws. Mozambique is under the obligation to bring its legislation in conformity with the CRC to address the special treatment to UMC.²¹³

2.1.8 General Assembly Resolution 51/77²¹⁴

Resolutions by the General Assembly, which have a 'normative value',²¹⁵ form part of the ways in which 'general customary process' can be influenced.²¹⁶ The *Nicaragua* case²¹⁷ established that resolutions might be 'understood as an acceptance of the validity of the rule or set of rules declared by the resolutions themselves'.²¹⁸

Such an acceptance is the General Assembly Resolution 51/77, which focuses on the right of the child. This Resolution emphasises that national laws should be strengthened to ensure protection of the child and it includes refugee and displaced children.²¹⁹ Part IV of the Resolution reinforces the obligation that States have to protect children from sexual exploitation. Furthermore, Part V concentrates on the elimination of the exploitation of child labour. Resolution 51/77 urges governments to prioritise the adoption of necessary measures to eliminate child labour.²²⁰

Mozambique has the obligation to reinforce the laws concerning the protection of UMC to abide by the provisions of the Resolution 51/77.

2.1.9 HRC Resolution 9/5 on the human rights of migrants (Resolution 9/5)²²¹

Paragraph 4 of Resolution 9/5 reiterates that States must protect the rights of everyone within its territory 'without discrimination of any kind, including in particular on the basis of national origin'. Resolution 9/5 also highlights that States should respect the human rights of the vulnerable children who 'cross international borders without the required travel documents'.²²² Paragraphs 1(a) and 2 of the resolutions taken emphasises that States should not give importance to the immigration status of UMC while protecting their human rights and fundamental freedoms.

²¹³ Part VI of the General Comment 6 of 2005.

²¹⁴ UN General Assembly Resolution A/RES/51/77 on The rights of the child adopted on 20 February 1997.

²¹⁵ Legality of the threat or use of nuclear weapons ICJ Advisory Opinion of 8 July 1996, ICJ Reports 1996 paragraph 70.

²¹⁶ VD Degan *Sources of international law* (1997) 194.

²¹⁷ Case concerning the military and paramilitary activities in and against Nicaragua (*Nicaragua v The United States of America*) 27 June 1986 ICJ Reports 1986.

²¹⁸ ICJ Reports 1986 para 188.

²¹⁹ Preamble to the Resolution 51/77.

²²⁰ Paragraph 66 of the Resolution 51-77.

²²¹ Resolution 9/5 on the Human rights of migrants adopted on 24 September 2008 available at <http://www.unhcr.org/refworld/pdfid/49141aaf.pdf> (accessed on 2 October 2012).

²²² Paragraph 7 of Resolution 9/5.

Furthermore, this Resolution expresses concerns about States which ignore their international obligations towards UMC while adopting immigration laws which act as a hindrance for their protection.²²³ Integration process in the host countries is considered as a best practice²²⁴ and States are encouraged to 'prevent and eliminate discriminatory policies that deny migrant children access to education'.²²⁵

2.1.10 Inter-agency guiding principles on unaccompanied and separated children (Inter-Agency Guiding Principles)²²⁶

The Inter-Agency Guiding Principles, which were developed following the 2004 Asian Tsunami, is a reflection of the position of the International Committee of the Red Cross (ICRC), the International Rescue Committee (ICR), SCUK, the UNICEF, the UNHCR and World Vision International (WVI). They provide for a framework and a set of principles which are aimed at ensuring that unaccompanied children's rights and needs are 'addressed'.²²⁷ Governments can use the Inter-Agency Guiding Principles to devise ways to meet their obligations vis-à-vis unaccompanied and separated children.²²⁸

Of relevance to the situation prevailing in Mozambique is the guiding principle dealing with care arrangements,²²⁹ durable arrangements²³⁰ and the promotion of children's rights.²³¹ The Inter-Agency Guiding Principles defined protection as 'all activities aimed at ensuring full respect for the rights of the individual'.²³² Protection of the child is considered as the 'overriding factor' and the provision of 'security and physical and emotional care' are imperative for the development of the child.²³³ States should come up with durable arrangements which include alternative long-term placement such as 'foster care, group homes or adoption', in line with the best interests of the child.²³⁴

²²³ Resolution 1(c) of Resolution 9/5.

²²⁴ Resolution 3(a) of Resolution 9/5.

²²⁵ Resolution 3(d) of Resolution 9/5.

²²⁶ January 2004 available at http://www.unicef.org/violencestudy/pdf/IAG_UASCs.pdf (accessed on 2 October 2012).

²²⁷ Save the Children website available at <http://resourcecentre.savethechildren.se/content/library/documents/inter-agency-guiding-principles-unaccompanied-and-separated-children> (accessed on 2 October 2012).

²²⁸ Inter-Agency Guiding Principles 2.

²²⁹ Inter-Agency Guiding Principles 42.

²³⁰ Inter-Agency Guiding Principles 54.

²³¹ Inter-Agency Guiding Principles 66.

²³² ICRC Report on the 4th Workshop 'Workshop on protection for human rights and humanitarian organisations - Doing something about it and doing it well' held at Geneva, 18-20 January 1999.

²³³ Inter-Agency Guiding Principles 42.

²³⁴ Inter-Agency Guiding Principles 54.

2.1.11 UNHCR Guidelines on policies and procedures in dealing with unaccompanied children seeking asylum (UNHCR Guidelines)²³⁵

The UNHCR Guidelines are a contribution towards the ‘improvement of the relevant legal protection framework and implementation practices’.²³⁶ As many other instruments aimed at the protection of the child, the UNHCR Guidelines are also guided by the best-interests of the child principle.²³⁷ The UNHCR Guidelines take into consideration the situation where unaccompanied children migrate ‘willingly’, ‘to secure a better future’: it does not take into consideration only children who fear persecution or who are victims of human rights abuses.²³⁸ Therefore, these guidelines are relevant to improve the protection of UMC in Mozambique.

Section 4 of the UNHCR Guidelines emphasises that unaccompanied children ‘should not be refused access to the territory’ and that the States should investigate into their ‘claims’ bearing into mind their tender age. Registration and documentation of UMC is important for them to have access to many of their rights and this can be done through interviews.²³⁹

Section 7.1 of the UNHCR Guidelines clearly demonstrates that UMC are ‘entitled to special care and protection’. Access to health care²⁴⁰ and education²⁴¹ should not be hindered despite the fact that UMC are in a foreign country without proper documentation.

2.2 Regional obligations

Regionally, Mozambique is a member of the African Union, one of the objectives of which is to ‘promote and protect human and peoples’ rights’.²⁴² The African Union’s two important instruments, namely the African Charter and the African Children’s Charter, impose an obligation on Mozambique to protect the rights of UMC.

²³⁵ February 1997 available at <http://www.unhcr-centraleurope.org/pdf/resources/legal-documents/unhcr-handbooks-recommendations-and-guidelines/unhcr-guidelines-on-dealing-with-unaccompanied-children-seeking-asylum-1997.html> (accessed on 2 October 2012).

²³⁶ UNHCR website available at <http://www.unhcr-centraleurope.org/en/resources/legal-documents/unhcr-handbooks-recommendations-and-guidelines.html> (accessed on 2 October 2012).

²³⁷ UNHCR Guiding Principles 1.

²³⁸ UNHCR Guiding Principles 4.

²³⁹ Section 5.6 of the UNCHR Guiding Principles.

²⁴⁰ Sections 7.9-7.11 of the UNHCR Guiding Principles.

²⁴¹ Sections 7.12-7.14 of the UNHCR Guiding Principles.

²⁴² Article 3(h) of the Constitutive Act of the African Union 2000.

2.2.1 African Charter

The African Charter is 'without a doubt' a '*par excellence*' document²⁴³ since while recognising the fundamental rights and freedom of the individual it also recognises the individual's economic, social and cultural rights. Article 2 of the African Charter provides that the rights and freedoms enshrined therein are to be extended to everyone irrespective of their national origin.²⁴⁴ UMC are therefore entitled to benefit from the rights and freedoms set forth in the African Charter despite the fact that they are not nationals of Mozambique.

2.2.2 African Children's Charter

Since the CRC did not 'address certain peculiarly African problems',²⁴⁵ there was a need to develop an African instrument which took the form of the African Children's Charter. The provisions of the African Children's Charter impose an obligation on Mozambique to protect UMC.

The African Children's Charter, while defining a child as any human being below the age of 18,²⁴⁶ recognises the right of every child to benefit from the rights and freedoms enshrined in the document irrespective of their national origin.²⁴⁷ States should be guided by the best interests of the child principle²⁴⁸ and the child should be given the opportunity to communicate his/her own views in judicial or administrative procedures.²⁴⁹

Moreover, States should 'ensure, to the maximum extent possible, the survival, protection and development of the child'.²⁵⁰ Under the African Children's Charter, the children should be protected from child labour²⁵¹ and sexual exploitation.²⁵² Article 25 is applicable for the protection of UMC since it imposes an obligation on States to provide 'special protection and assistance' to a child who is deprived of his/her family.

²⁴³ F Ouguergouz *The African Charter on Human and Peoples' Rights: A comprehensive agenda for human dignity and sustainable democracy in Africa* (2003) 13.

²⁴⁴ Article 2 of the African Charter: 'Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.'

²⁴⁵ L Muthoga 'Analysis of international instruments for the protection of the rights of the child' Community Law Centre 'International conference on the rights of the child: Papers and reports of a conference convened by the Community Law Centre' (1992) 124.

²⁴⁶ Article 2 of the African Children's Charter: 'For the purposes of this Charter, a child means every human being below the age of 18 years'.

²⁴⁷ Article 3 of the African Children's Charter.

²⁴⁸ Article 4 of the African Children's Charter.

²⁴⁹ Article 4(2) of the African Children's Charter.

²⁵⁰ Article 5 of the African Children's Charter.

²⁵¹ Article 15 of the African Children's Charter.

²⁵² Article 27 of the African Children's Charter.

2.2.3 The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women 2005 (African Women's Protocol)²⁵³

A 'tool'²⁵⁴ for the African continent to protect the rights of women, the African Women's Protocol compensates for the insufficiency of attention given to the rights of women in the African Charter.²⁵⁵ The African Women's Protocol expressly provides that it applies to every human being of female gender and as such includes even girls.²⁵⁶ Thus female UMC are protected by the provisions of the African Women's Protocol.

Article 4 of the African Women's Protocol requires States Parties to prevent all forms of exploitation of women.²⁵⁷ Furthermore, article 2(a) imposes an obligation on States Parties to 'enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public'. The State also has the obligation to 'punish perpetrators of violence against women'.²⁵⁸ Women must have the right to control their fertility,²⁵⁹ to decide on any method of contraception²⁶⁰ and to be protected from sexually transmitted diseases, including HIV/AIDS.²⁶¹ Moreover, female UMC are entitled to 'nutritious and adequate food'²⁶² and the State has to 'establish adequate systems of supply and storage to ensure food security'.²⁶³

All these provisions read together impose an obligation on Mozambique to protect the rights of female UMC who are exposed to situations which are likely to violate the provisions of the African Women's Protocol.

2.3 Domestic obligations

To be in compliance with its international and regional obligations concerning the protection of UMC, Mozambique has enacted some laws domestically. The relevant instruments which impose an

²⁵³ Mozambique ratified the African Women's Protocol on the 9 December 2005.

²⁵⁴ K Stefiszyn for the Centre for Human Rights, University of Pretoria 'The impact of the Protocol on the Rights of Women in Africa on violence against women in six selected Southern African countries: An advocacy tool' (2009) 3.

²⁵⁵ Stefiszyn (n 254 above) 2.

²⁵⁶ Article 1(k) of the African Women's Protocol: "Women" means persons of female gender, including girls.'

²⁵⁷ Article 4(1) of the African Women's Protocol: 'Every woman shall be entitled to respect for her life and the integrity and the security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.'

²⁵⁸ Article 4(2)(e) of the African Women's Protocol.

²⁵⁹ Article 14(1)(a) of the African Women's Protocol.

²⁶⁰ Article 14(1)(c) of the African Women's Protocol.

²⁶¹ Article 14(1)(d) of the African Women's Protocol.

²⁶² Article 15 of the African Women's Protocol.

²⁶³ Article 15(b) of the African Women's Protocol.

obligation on Mozambique to protect the rights of UMC are the Constitution²⁶⁴ and the Children's Act 2008.

2.3.1 The Constitution

The Constitution is the supreme law of Mozambique in the sense that 'constitutional rules shall prevail over all other rules of the legal order'.²⁶⁵ Contrary to the Constitution of South Africa²⁶⁶ which clearly stipulates that the provisions of the Constitution apply to everyone in the territory,²⁶⁷ the Constitution of Mozambique does not have such an express provision. Nevertheless, concerning the fundamental rights enshrined therein, the Constitution of Mozambique should be interpreted in line with the UDHR and the African Charter.²⁶⁸ Both the UDHR and the African Charter prohibits discrimination on the basis on national origin.²⁶⁹ Therefore, article 43 of the Constitution of Mozambique ensures that Mozambique extends the fundamental rights enshrined therein to UMC in its territory.

Article 47 of the Constitution of Mozambique recognises the vulnerability of the child and provides for special protection for the child. This article confers upon UMC the right to be consulted before they are deported to their country, thus eliminating their deportation as being the first option.²⁷⁰ Furthermore, the State is obliged to take into consideration the 'paramount interests of the child' while taking any decision concerning the child.²⁷¹

The Constitution, in its article 121, gives a special place to childhood and protects the child from any form of discrimination.²⁷² Children must be protected from child labour.²⁷³ The Constitution

²⁶⁴ Constitution of Mozambique 16 November 2004.

²⁶⁵ Article 2(4) of the Constitution.

²⁶⁶ Constitution of the Republic of South Africa, Act No 108 of 1996.

²⁶⁷ Article 7(1) of the Constitution of South Africa: 'This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.'

²⁶⁸ Article 43 of the Constitution of Mozambique: 'The constitutional principles in respect of fundamental rights shall be interpreted and integrated in harmony with the Universal Declaration of Human Rights and with the African Charter of Human and Peoples Rights.'

²⁶⁹ Article 2 of the UDHR and article 2 of the African Charter.

²⁷⁰ Article 47(2) of the Constitution of Mozambique: 'Children may express their opinion freely on issues that relate to them, according to their age and maturity.'

²⁷¹ Article 47(3) of the Constitution of Mozambique: 'All acts carried out by public entities or private institutions in respect of children shall take into account, primarily, the paramount interests of the child.'

²⁷² Article 121(2) of the Constitution of Mozambique.

²⁷³ Article 121(4) of the Constitution of Mozambique: 'Child labour shall be prohibited, whether the children are of compulsory school going age or any other age.'

recognises the right to education²⁷⁴ and the right to health,²⁷⁵ rights which are often deprived from UMC.

To ensure that the rights provided for by the Constitution are protected, the 2006-2010 National Action Plan for Children had been adopted. It includes orphans and vulnerable children and children at risks and UMC fall under that category.²⁷⁶ In 2009 there was the creation of the National Child Council which coordinates the implementation of the rights of the child.

Mozambique has to ensure the protection of the rights of UMC to be in line with the provisions of the Constitution, which is the supreme law of the land.

2.3.2 The Children's Act 2008²⁷⁷

This Act, which has as objective the protection and promotion of the rights of the child,²⁷⁸ translates the CRC and the African Children's Charter into domestic legislation.²⁷⁹ The provisions of the Children's Act apply to all children irrespective of their place of birth²⁸⁰ thus extending to UMC.

The State has the obligation to fulfil the rights of the child as a priority.²⁸¹ Article 13 requires the State to protect the right to life and survival and development of the child. The right to education of the child is protected by article 38 of the Children's Act. Furthermore, the child is protected from all forms of exploitative work²⁸² and article 47 of the Children's Act provides for the protection of the rights of the working child. All forms of sexual exploitation of the child are prohibited by the Children's Act.²⁸³

2.4 Conclusion

There are various international, regional and domestic laws and policies that can be implemented to ensure a better protection for UMC. At the international level, the main Convention which protects the rights of UMC is the CRC with its four core principles. Then, General Comment 6 of 2005 expands upon the content of the CRC to extend to UMC. At the regional level, although there is no specific

²⁷⁴ Article 88 of the Constitution of Mozambique: 'In the Republic of Mozambique, education shall be a right and duty of all citizens.'

²⁷⁵ Article 89 of the Constitution of Mozambique: 'All citizens shall have the right to medical and health care, within the terms of the law, and shall have the duty to promote and protect public health.'

²⁷⁶ Objective 7 of the National Action Plan on Children.

²⁷⁷ Law No 7/2008.

²⁷⁸ Article 3 of the Children's Act: Every human being below the age of 18 years is considered as a child.

²⁷⁹ Article 1 of the Children's Act.

²⁸⁰ Article 2(1), article 4(2) of the Children's Act.

²⁸¹ Article 7 of the Children's Act.

²⁸² Article 46 of the Children's Act.

²⁸³ Article 63 of the Children's Act.

instrument aimed at the protection of UMC, the provisions of the African Charter and the African Children's Charter can be used to protect the rights of the UMC. At the domestic level, the Constitution and the Children's Act 2008 ensure the protection of the rights of UMC although there is no specific law or policy which aims at the UMC.

3. CHALLENGES AND GAPS IN THE PROTECTION OF THE RIGHTS OF UMC

Chapter 2 has expanded upon the obligation of Mozambique to protect UMC. Despite these provisions, UMC are exposed to the risks and vulnerabilities elaborated upon in chapter 1 of this paper. This demonstrates that there are some protection gaps and that Mozambique is facing challenges to protect the rights of UMC. This section will examine the following challenges:²⁸⁴ the lack of international focus on the protection of UMC; the absence of consideration of UMC's best interests; xenophobia, discrimination and intolerance; the deportation of UMC; the lack of human rights focus in international and regional cooperation; the absence of due process while coming to a decision of deportation; the lack of training of the concerned authorities; the lack of a proper mapping of service providers; insufficient data on UMC in Mozambique and; practical barriers for UMC's to access to socio-economic rights.

3.1 The lack of international focus on the protection of UMC

On the international and regional arena, there are many human rights documents which ensure the protection of the rights of the child. However, it is noteworthy that very few of them make specific mention to UMC:²⁸⁵ most of the instruments have to be interpreted to include UMC. For instance, Chapter 2 of this paper has demonstrated how the four principles of the CRC need to be interpreted to ensure the protection of UMC²⁸⁶ although the CRC does not specifically mention them.

There is no specific treaty for the protection of UMC. The UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990 (Migrant Convention) does not cover UMC since their focus is on the families of migrant workers.²⁸⁷ Nevertheless, UMC move on their own and do not form part of a family in the host country and as such do not form part of the group targeted by the Migrant Convention.

²⁸⁴ Most of these challenges have been discussed in the background paper of the Committee on the Rights of the Child 2012 day of General Discussion titled 'The rights of all children in the context of international migration' (2012). However, further research was carried out which supplemented the challenges highlighted by the background paper.

²⁸⁵ Swart (n 103 above) 108.

²⁸⁶ *Supra* pages 18-20.

²⁸⁷ Article 1(1) of the Migrant Convention: 'The present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.'

Most of the instruments which make reference to UMC are soft laws.²⁸⁸ Soft laws are rather 'controversial' since they are not "hard laws" clearly stipulating binding legally binding obligations'.²⁸⁹ They have been categorised as being 'illogical...confusing, misleading and even dangerous'.²⁹⁰ If a State does not respect this category of law, there is an absence of sanctions,²⁹¹ and the lack of implementation of soft laws does not entail major consequences.²⁹²

Due to the status of the instruments that protect the rights of UMC, States have often ignored the relevant international law. As a consequence, UMC have, 'in a number of emergencies ... been left without food, medical care and shelter'.²⁹³

Furthermore, the UNHCR has issued guidelines for the protection of UMC and although it targets children who are seeking asylum, it is very rare that UMC are granted refugee status. The international community tends to amalgamate UMC with unaccompanied minor refugees and this acts as a challenge in the protection of their rights. This is so because sometimes UMC do not seek refugee status and they thus do not fall within the ambit of the guidelines of the UNHCR.

The ambiguity at the international and regional level concerning the protection of UMC has a domino effect on their protection in Mozambique. It is a challenge for Mozambique to have a clearly defined framework for the protection of UMC since there is no Convention which specifically aims at them.²⁹⁴ Moreover, despite the existence of the IOM, the IOM has not effectuated much research on the issue of UMC in Mozambique.

3.2 The absence of consideration of UMC's best interests

There have been several attempts to define what is meant by the best interests of the child²⁹⁵ and it has been pointed out that there should be a 'broad interpretation' of the notion which takes into consideration 'virtually any factor that may affect a child'.²⁹⁶ In the context of child migration, States

²⁸⁸ For example the General Comment 6 of 2005, the 2009 Report, the General Assembly Resolution 51/77, the HRC Resolution 9/5, the Inter-Agency Guiding Principles and the UNHCR Guidelines.

²⁸⁹ BA Boczek *International Law: A dictionary* (2005) 25.

²⁹⁰ As above.

²⁹¹ J Sorel "The concept of 'soft-responsibility'" in J Crawford, A Pellet and S Olleson (eds) *Oxford commentaries on international law: The law of international responsibility* (2010) 168.

²⁹² Swart (n 103 above) 108.

²⁹³ Ressler *et al* (n 94 above) 300.

²⁹⁴ Gomes (n 31 above).

²⁹⁵ EA Mason "The best interests of the child" in J Todres, ME Wojcik & CR Revaz (eds) *The U.N. Convention on the Rights of the Child: An analysis of treaty provisions and implications of the U.S. ratification* (2006) 125.

²⁹⁶ FE Vandervort & RB Sanoshy 'Special issues in transcultural, transracial, and gay and lesbian parenting and adoption' in EP Benedek, P Ash & CL Scott (eds) *Principles and practice of child and adolescent: Forensic mental health* (2010) 198.

are required to take into consideration the short term and long term effect of any decision or policy on them.²⁹⁷

States have been recommended to come up with a process which is able to determine the best interests of UMC on a case by case basis.²⁹⁸ Repatriation processes shall be examined in details and children should be repatriated only if it is in their best interests. Nevertheless, most countries do not have such a transparent mechanism and reach decisions which do not promote the best interests of the child.

States do not formulate their policies and laws in such a way that takes into consideration the best interests of UMC. This represents a challenge in the protection of UMC's rights in various spheres since the best interests of the child are often a means of ensuring that the child benefit from the rights enshrined in the CRC.²⁹⁹

3.3 Xenophobia, discrimination and intolerance

The Special Rapporteur on the human rights of migrants has identified that combatting xenophobia, discrimination and intolerance towards UMC is a challenge.³⁰⁰ One definition of xenophobia is that it comprises of 'attitudes, prejudices and behaviour that reject, exclude and often vilify persons based on the perception that they are outsiders or foreigners to the community, society or national identity'.³⁰¹ The migrant children are often excluded from society because they have a different national identity.

Usually, there is no proper avenue for UMC to enter a country and as such, they resort to irregular migration.³⁰² This leads to the nationals of the country to think that they are staying in the country illegally and that their rights are not entitled to be respected.

Almost all the international and regional instruments protect the rights of UMC on the basis of non-discrimination.³⁰³ However, there is a challenge to implement effectively the principle of non-

²⁹⁷ R Farrugia & K Touzenis 'The international protection of unaccompanied and separated migrant and asylum-seeking children in Europe' in J Kanics *et al* (n 95 above) 24.

²⁹⁸ CRC Committee Concluding observation Spain CRC/C/ESP/CO/3-4 3 November 2010 para 27.

²⁹⁹ Article 3 of the CRC.

³⁰⁰ The 2009 Report (n 183 above) paras 74-77.

³⁰¹ IOM 'World migration 2008: Managing labour mobility in the evolving global economy' (2008) 501.

³⁰² The 2009 Report (n 183 above) para 74.

³⁰³ For example, article 2 of the CRC.

discrimination in the laws, policies and practice of a country.³⁰⁴ UMC do not have the legal status and are subject to discrimination at various levels such as while accessing schools.

Many countries show intolerance towards UMC. The children either have to blend in with the society or live in the shadows far from it.³⁰⁵ In most cases, they are rejected by the national system and this represents a challenge for the protection of their rights. During the SANTAC Conference on Children on the Move,³⁰⁶ it was pointed out that UMC can sometimes access primary and secondary education but due to their illegal status, they cannot access tertiary education because Mozambique does not accommodate their situations.

In Mozambique, UMC are subject to discrimination and exclusion which represents a challenge for the government to ensure the protection of their rights.

3.4 The deportation of UMC

The former Special Rapporteur for the human rights of migrants has noted that deportation of UMC represents a challenge in the protection of their human rights.³⁰⁷ McFadyean has referred to the deportation of UMC as being 'immoral'.³⁰⁸ In the case of UMC, the relevant authorities do not apply the non-deportation principle which would have ensured that the best interests of the child are taken into account.³⁰⁹ Deportation is used as a punitive measure against UMC who are found in irregular situations in the territory of a country.³¹⁰ However, deportation has been criticised by the international community because it causes a major psychological impact on UMC.³¹¹

Deportation as a first option acts as a barrier for the protection of UMC since they are returned to what they have been running away from, if not, worse.³¹² Most of UMC do not give up on finding a better future in the host country and try numerous times to gain entry into the country. Deportation

³⁰⁴ IOM 2008 (n 301 above) 308.

³⁰⁵ F Burchianti & R Zapata-Barrero for Robert Schuman Centre for Advanced Studies 'Accept pluralism: Intolerant discourses about migrants in Catalan politics' (2012) 4.

³⁰⁶ Held on 18-19 October 2012 in Maputo, Mozambique.

³⁰⁷ 2009 Report (n 183 above) paras 84-86.

³⁰⁸ M McFadyean 'Deporting unaccompanied child migrants is immoral' The Guardian 8 June 2010 available at <http://www.guardian.co.uk/commentisfree/libertycentral/2010/jun/08/deporting-unaccompanied-child-migrants-immoral> (accessed on 22 October 2012).

³⁰⁹ 2009 Report (n 183 above) para 85.

³¹⁰ Background paper (n 284 above) 25.

³¹¹ UNICEF Kosovo and Kosovo Health Foundation 'Silent harm: A report assessing the situation of repatriated children's psycho-social health' (2012) 29 available at http://www.unicef.org/kosovo/SILENT_HARM_Eng_Web.pdf (accessed on 22 October 2012).

³¹² Vasco (n 47 above).

is therefore a procedure which subjects the child to psychological stress repetitively and represents a challenge in the protection of the human rights of UMC.³¹³

The domestic immigration legislation does not cater for UMC.³¹⁴ Legally, foreigners gain entry into Mozambique through official border posts.³¹⁵ Children, in supplement to a visa and a passport or any valid travel document,³¹⁶ are required to have in their possession a written authorisation from their legal guardian and a proof of subsistence means in the country.³¹⁷ This law acts as a hindrance for the protection of UMC since most of them travel without any proper documents and once they are caught, they are subject to deportation to their country of origin. The law does not provide for any opportunity for them to be integrated in the system unless they obtain the status of a refugee.

The Constitution recognises the right of people who seek asylum in its article 30.³¹⁸ Article 30 makes reference to a law which defines in what situations asylum status can be granted. In this regard, the Refugee Act lists the persons who are can claim for a refugee status.³¹⁹ However, most of the times, UMC are not entitled to obtain refugee status because they do not form part of the definition of a refugee.

Furthermore, there is a possibility for an individual to be issued with travel documents but there is a claw back clause which requires the individual not to be less than 16 years old.³²⁰ Thus, this provision does not apply to UMC who are less than 16 years.

The fact that the immigration law did not take into consideration the situation of UMC during its drafting represents a challenge in the protection of their rights.

3.5 Lack of human rights focus in international and regional cooperation

The issue of UMC is one which is of concern to all countries involved in the migration process namely: the country of origin, the country of transit and the host country.³²¹ There is an increased call for cooperation between countries to face the issue of international migration³²² and this

³¹³ As above.

³¹⁴ HDA (n 6 above) 16.

³¹⁵ Article 5 of the Immigration Act.

³¹⁶ Article 6 of the Immigration Act.

³¹⁷ Article 16 of the Immigration Act.

³¹⁸ Article 30 of the Constitution of Mozambique: 'The Republic of Mozambique shall grant asylum to foreigners persecuted on the grounds of their struggle for national liberation, for democracy, for peace and for the protection of human rights. The law shall define political refugee status.'

³¹⁹ Article 1 of the Refugee Act (n 88 above).

³²⁰ Articles 53, 54 and 55 of the Immigration Act.

³²¹ Background paper (n 284 above) 15.

³²² IOM 'World economic and social survey' (2004) 189.

includes unaccompanied child migration. States can conclude bilateral agreements which are the oldest forms of international cooperation concerning migration.³²³ They can also draft regional and multilateral agreements.

The Global Forum on Migration and Development (GFMD), which is ‘an informal, non-binding, voluntary and government-led process’, has as one of the objectives to ‘foster practical and action-oriented outcomes at national, bilateral and international level’ concerning the issue of migration.³²⁴ States should participate in the GFMD with the aim of strengthening the international cooperation to ensure that the rights of UMC are respected.

The Constitution of the IOM³²⁵ mandates the IOM to provide for a ‘forum’ for international cooperation regarding migration issues.³²⁶ Acting under that mandate, the IOM has formulated the International Dialogue on Migration (IDM), which was launched in 2001. The IDM’s platform can be described as follows:³²⁷

an opportunity for governments, inter-governmental and non-governmental organisations and other stakeholders to discuss migration policy issues, in order to explore and study policy issues of common interest and cooperate in addressing them.

States are expected to use that platform to cooperate in the protection of the rights of UMC.

However, despite the presence of these platforms, countries are still designing laws and policies concerning migration without consultation with other concerned countries.³²⁸ Each country has its own laws and this acts as a challenge to protect the rights of UMC.³²⁹ Most States are concerned with the control of migrants entering its territory rather than focusing on the human rights of those who are already in the territory.³³⁰ This represents a challenge in the protection of the human rights of UMC.

³²³ IOM 2004 (n 322 above) 190.

³²⁴ GFMD Website ‘Background and objectives’ available at <https://www.gfmd.org/en/process/background> (accessed on 22 October 2012).

³²⁵ Adopted on the 19 October 1953.

³²⁶ Article 1(1)(e) of the Constitution of the IOM: ‘to provide a forum to States as well as international and other organisations for the exchange of views and experiences, and the promotion of co-operation and co-ordination of efforts on international migration issues, including studies on such issues in order to develop practical solutions.’

³²⁷ Website of the IOM ‘International Dialogue on Migration’ available at <http://www.iom.int/cms/idm> (accessed on 22 October 2012).

³²⁸ Background paper (n 284 above) 19.

³²⁹ Chimedza from SC International Mozambique interviewed on 18 October 2012.

³³⁰ As above.

The report of HDA demonstrates that Mozambique is reluctant to engage in discussion at a bilateral or regional level.³³¹ There are many UMC of Mozambican origin in South Africa but despite that, Mozambique has been closed to the possibility of concluding a bilateral agreement and to reintegrate them in society.³³² This reaction can be applied to many countries of origin that have the perception that leaving the child in the host country is better for the child and that they have no obligation once the child has crossed the border.

Thus, challenges to protect the human rights of UMC arise because countries are reluctant to cooperate.

3.6 The absence of due process while coming to a decision of deportation

The former UN Special Rapporteur on the human rights of migrants has identified that if States do not have deportation procedures which are in harmony with international instruments, this can represent a challenge in the protection of the human rights of migrants.³³³ The CRC Committee has listed the minimum process to follow when it concerns the migration of children which are as follows:³³⁴ the right to a hearing, the right to a translator, the right to defence and competent legal representation, the right to appeal, the right to speak, to be heard and to be taken duly into account, the right to consular assistance, the right to a guardian and legal representative, the right to be heard and participate, the right to be informed and the right to justice and effective remedies.

In practice, these procedures are rarely followed. The absence of a due process can be attributed to the lack of financial resources in the country of origin. For instance, in the case of UMC from Mozambique to South Africa, many children are caught at the border of South Africa.³³⁵ Instead of giving them a due process, they are herded in a bus and sent to the Mozambican side of the border.³³⁶ Once there, they are left within the custody of the Mozambican authorities who in turn leave them on their own. In most cases, the child will just try his/her luck and cross the border again and if caught, he/she is subject to the same process.³³⁷ This vicious circle would end if the authorities engaged in the due process and integrate the child within the system of the host country.

³³¹ HDA (n 6 above) 9.

³³² As above.

³³³ Report of the Special Rapporteur on the human rights of migrants to the HRC 'Criminalisation of irregular migration' A/HRC/7/12 (2008) paras 62 and 63.

³³⁴ Background Paper (n 284 above) 22-23.

³³⁵ Vasco (n 47 above).

³³⁶ As above.

³³⁷ During the visit to Ressano Garcia, it was witnessed that some unaccompanied children were crossing the border during daylight.

3.7 The lack of training of the concerned authorities

The CRC Committee has noted that most of the duty bearers are not competent to handle the issue of unaccompanied child migration.³³⁸ Various key actors from different levels come into contact with UMC ranging from the border authorities to the immigration officers. However, these persons 'lack knowledge of child rights and protection standards'.³³⁹

There is ambiguity as to how to deal with UMC and most persons involved are not sensitive to the fact that they can cause irreparable harm to the child.³⁴⁰ The policy makers, despite knowing the implications of not understanding migration programs, have not taken major steps to ensure that the policies achieve their aims.³⁴¹

HDA during its research has found that the staff in shelters which embrace UMC are not competent enough.³⁴² They lack training which leads to them to inadequately manage the shelters. For instance, in some shelters there was no individual case file for each child and once a child was placed there, there was no reassessment of the child's protection.

The fact that the Mozambican authorities leave the children on their own once they are in the country is a proof to the lack of training.³⁴³ If there was proper training, these children would be brought to the attention of the relevant authorities which would take care of them.

3.8 The lack of a proper mapping of service providers

Service providers are central to ensure the protection of the rights of UMC during their migration process.³⁴⁴ During a presentation of the mapping exercise that SC International Mozambique carried out in the region,³⁴⁵ the migration phase of UMC was divided into 4.³⁴⁶ Phase one is before and at the moment of departure when the child is still in the family and the community. When the child is moving, he/she is in the second phase where he/she has to travel, make transit and stay in temporary locations. The third phase is when the child arrives at his/her destination and enters a

³³⁸ Background paper (n 284 above) 28.

³³⁹ As above.

³⁴⁰ Vasco (n 47 above).

³⁴¹ L Chappell & F Laczko for IOM 'What are we really achieving? Building an evaluation culture in migration and development' (2011) available at <http://www.migrationinformation.org/Feature/display.cfm?ID=842> (accessed on 22 October 2012).

³⁴² HDA (n 6 above) 50.

³⁴³ Vasco (n 47 above).

³⁴⁴ Chimedza (n 329 above).

³⁴⁵ Children on the move Regional Project (Mozambique/South Africa/Zimbabwe), not yet published as at 29 October 2012.

³⁴⁶ At the SANTAC Conference.

new environment. The final phase is when the mobility of the child ends, that is, when he/she is either integrated in the new environment or when he/she returns home.

During the whole migration process, there are service providers who ensure that the rights of UMC are protected. Service providers can be from government organisation, from the public service, from national NGOs or from the church.³⁴⁷ They work in different sectors namely advocacy, education, shelter, security, legal, protection, psychosocial and health amongst others.³⁴⁸

A mapping exercise is important to identify these service providers. The study of SC International was with the objective of identifying 'the availability of services, programs and service providers'.³⁴⁹

However, there are not many studies on the mapping of service providers. Moreover, without a proper mapping service, there is a risk of two or more service providers to work in the same sector.³⁵⁰

3.9 Insufficient data on UMC in Mozambique

Insufficient data can act as a barrier to the protection of UMC.³⁵¹ As noted by the former UN Special Rapporteur on the human rights of migrants, lack of data result into ineffective migration policies and laws.³⁵² Much focus has been on children who are moving outside Mozambique to South Africa since the number is much higher compared to children who come to Mozambique.³⁵³ Mozambique is, most of the times, considered as a transit country. However as studied by SC International Mozambique, the country of transit is also one where the children are at risk.³⁵⁴ Giving less importance to a transit country acts as a challenge to protect the rights of UMC who are inside Mozambique.

3.10 Practical barriers for UMC's to access to socio-economic rights

The government of Mozambique faces practical barriers to fulfil the socio-economic rights of UMC. The obligation to fulfil has been described as 'a positive expectation on the part of the state to move its machinery towards the realisation of the rights'.³⁵⁵ It is challenging for the government of Mozambique to ensure that UMC have access to socio-economic rights in the territory because of

³⁴⁷ Slide 13 of the Powerpoint presentation at the SANTAC Conference.

³⁴⁸ As above.

³⁴⁹ Slide 4 of the Powerpoint presentation at the SANTAC Conference.

³⁵⁰ Chimedza during the presentation at SANTAC.

³⁵¹ Background paper (n 284 above) 31.

³⁵² The 2008 Report para 72.

³⁵³ Vasco (n 47 above).

³⁵⁴ Slide 4 of the Powerpoint presentation at the SANTAC Conference.

³⁵⁵ *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001) para 47.

various reasons including language barriers, financial constraints, lost identity and the absence of a domestic law/policy concerning UMC amongst others

3.10.1 Language barriers

Most of UMC in Mozambique come from non-Portuguese speaking countries.³⁵⁶ Language therefore represents a barrier for them to enjoy from the socio-economic rights. For instance, most of the education services that are provided are in Portuguese and although UMC might have a little knowledge in Portuguese, it is difficult for them to study in Portuguese.³⁵⁷ This acts as a deterrent for UMC to attend schools.

3.10.2 Financial constraints

UMC, who do not have access to enough financial resources, cannot access some of the socio-economic rights. For instance, even if primary education is provided for free at the primary level, there are still direct costs in the form of school uniform or stationery which act as a deterrent to go to school.³⁵⁸

There are financial constraints also at the level of provision of the socio-economic rights of UMC.³⁵⁹ Child poverty is a phenomenon that is prevalent in Mozambique³⁶⁰ and this demonstrates that there are not enough funds that can be directed to the protection of the rights of the child.

Despite having good laws to protect every child in the territory, the fact that there is no sufficient funds acts as a hindrance for UMC to access the socio-economic rights.³⁶¹ For instance, concerning the shelter of UMC, there is not enough funds to provide for all of them who are in the territory.³⁶²

Furthermore, the State does not allocate enough funds to support UMC.³⁶³ There is no logistic support on behalf of the government and it is only civil society organisations that provide for services without any government mandate.³⁶⁴ For example, the study conducted by SCUK was funded by the organisation without any support from the government.³⁶⁵

³⁵⁶ For instance, the majority of them are from Zimbabwe and Portuguese is not the official language there.

³⁵⁷ Gomes (n 31 above).

³⁵⁸ As above.

³⁵⁹ Swart (n 103 above) 120.

³⁶⁰ UNICEF 'Child poverty and disparities in Mozambique 2010' (2011).

³⁶¹ Gomes (n 31 above).

³⁶² Vasco (n 47 above).

³⁶³ Interview with Carlos Manjate of Red Came on 3 September 2012.

³⁶⁴ As above.

³⁶⁵ As above.

3.10.3 Lost identity

During the country report presentations at the SANTAC meeting, the representative of Kwazulu-Natal Regional Christian Council pointed out that UMC often change their identity to be able to blend in the society. Over the years, that child loses his identity and embraces the one he/she created. During the early schooling years, this new identity will not have any impact on the child's access to education. However, during higher levels of education, the child might be refused access to education because of his fake identity.³⁶⁶

3.10.4 The absence of a law/policy concerning UMC in Mozambique

Chapter 2 listed the laws which confer an obligation upon Mozambique to protect the rights and freedoms of UMC. However, domestically, there is a gap in the legal framework since none of them make direct reference to UMC. The Constitution has been interpreted to include UMC and it nowhere confers UMC special protection. Furthermore, the provisions of the Children's Act of 2008 are interpreted to include UMC. Moreover, the National Action Plan for Children came to a term in 2010 and therefore it is no longer applicable to ensure the protection of UMC. There is a challenge to protect the rights and freedoms of UMC in the territory since there is not a specific law or policy which recognises the vulnerability of UMC and affords them protection.

3.11 Conclusion

This Chapter investigated into the major challenges faced in the protection of the rights of UMC. Challenges are encountered both at the international and national level. Generally, there is a lack of law which aims at the protection of UMC and this represents a gap at both the international and the national level. There is a need to come up with viable solutions to be able to overcome these challenges.

³⁶⁶ Gomes (n 31 above).

4. CONCLUSION AND RECOMMENDATIONS

This chapter will summarise the findings of the study carried out. It will then derive the conclusions of the study and provide for recommendations which will ensure a better protection of UMC in Mozambique.

4.1 Summary of findings

The general objective of this study was to analyse whether UMC in the territory of Mozambique are being protected from the risks and vulnerabilities that they are exposed to. It was revealed that UMC are vulnerable since their rights and freedoms are not being properly respected in Mozambique. While coming to this finding, there was an analysis of the relevant laws and policies concerning the protection of UMC at the international level, regional level and domestic level. This showed that international, regional and domestic law impose an obligation on Mozambique to ensure that UMC are not deprived from their rights and freedoms. The study went on to analyse the challenges and gaps that arise in the protection of UMC in Mozambique. Firstly, it was found that international law has some gaps because it does not give enough focus to the protection of UMC and that most of the laws that specifically refer to UMC are soft laws. Furthermore, the best interests of the child principle, which should be at the heart of any decision relating to the protection of UMC is often ignored concerning unaccompanied child migration issues. The domestic law of Mozambique in the form of the Immigration Act acts as major hindrance in the protection of the rights of the UMC. It was also found that there is a gap concerning the mapping of service providers and there are practical barriers for Mozambique to implement the laws and policies concerning the protection of UMC in its territory. Moreover, Mozambique has protection gaps since it does not have a specific law or policy which aims at UMC: the protection of UMC is assured by the law aiming at children in general. Although these laws can promote the protection of the rights of UMC, it does not recognise the vulnerability of UMC in the territory of Mozambique.

4.2 Conclusion

The study concentrated on the protection of UMC within the territory of Mozambique and on whether Mozambique is respecting its international, regional and national obligation with regard to UMC. The introduction showed there are UMC in Mozambique who are exposed to risks and vulnerabilities and therefore need protection.

Chapter 2 investigated in the international, regional and domestic obligation of Mozambique to protect the rights and freedoms of UMC. The international obligation of Mozambique to protect the

rights and freedoms of UMC in its territory is derived from the CRC and its four core principles. To add to this, another relevant document is General Comment 6 of 2005 which provides for the protection framework of UMC. Regionally, the African Charter and the African Children's Charter impose an obligation on Mozambique to protect UMC. Domestically, the Constitution and the Children's Act 2008 lay the protection framework for children. However, as the analysis of international, regional and domestic laws revealed, there is certainly a protection gap in these laws concerning UMC. There is no policy at the national level aimed at the protection of the human rights of UMC.

The study also advanced the challenges faced in the protection of UMC in Mozambique. Chapter 3 advanced many challenges concerning the protection of UMC and it can be derived that there is a lack of focus on UMC at the international, regional and domestic level. The protection framework of the rights and freedoms of UMC needs more attention. The section which follows will propose some recommendations with the view of remedying the situation of UMC in Mozambique. The recommendations will be made to different parties concerned and in the short term, there is an urgent need to protect the rights and freedoms of UMC. The conclusion of this study is that the international community must lay more focus on UMC and that Mozambique should come up with a policy which includes UMC. An additional conclusion is that the international community should devise an agency which will ensure a better realisation of the human rights of UMC.

4.3 Recommendations

This section will provide for recommendations to the international community, to the government of Mozambique, to the countries of origin and to the civil society that can be implemented to ensure a better protection of the rights of UMC.

4.3.1 To the international community

At the international level, there is no specific instrument which protects the rights of UMC. The Migrant Convention does not cover UMC and most of the laws aimed at the protection of UMC are soft laws. It is recommended that the international community draft a new treaty which aims at the protection of UMC specifically and which sets up the framework within which UMC should be treated. The new treaty can be a product of the principles that already exist to protect UMC in the form of various soft laws. It will ensure that there is compliance unlike soft laws which do not create legally binding obligations. It is further recommended that this treaty provides for the setting up of a body which will regulate the implementation of the provisions therein. This regulatory body should have the power to conduct on site visits to monitor how States are treating UMC and

fulfilling the obligations undertaken by being a party to the new treaty. The proposed treaty should also make provision for a State to work with other relevant stakeholders, such as the civil society and the authorities of the country of origin, to ensure that UMC are benefitting from its provisions. Therefore, it should make provision for more international cooperation. It should also create an obligation on States to prevent practices of xenophobia, discrimination and intolerance towards UMC. The new treaty should clearly set the framework within which States should operate to ensure that the best interests of UMC are being taken into consideration. States should be discouraged from criminalising irregular migration and to evaluate each case on its own merits.

It can be argued that the new treaty will create additional responsibility for States and they therefore would not be willing to ratify it. However, this is not a proper excuse. UMC are vulnerable and lose their childhood without their rights being respected. A new treaty is mandatory in the protection of their rights and soft laws are not sufficient to ensure that UMC are protected. The principles of General Comment 6 of 2005, in addition to the other principles and resolutions, can be compiled to draft a treaty which will create binding obligations upon States to protect the rights of UMC.

Secondly, the international and regional community should make more effective use of forums such as the GFMD and the IDM to strengthen cooperation between States to protect the rights of UMC. There should be more focus on human rights during cooperation between countries. Countries who are affected by the phenomenon of unaccompanied child migration should engage in discussion with other concerned countries and draft working plans with the objective of ensuring that UMC are not deprived of their rights while they are moving.

4.3.2 To the government of Mozambique

Firstly, the government of Mozambique should expressly include UMC as a group of vulnerable children to benefit from the protection of the Children's Act 2008. Chapter 2 has demonstrated that the laws and policies in Mozambique do not specifically address UMR. An amendment to the Children's Act to include UMC is recommended. There is a need to 'take account of the special needs of unaccompanied children ... in the provision of suitable care'.³⁶⁷ Including UMR as beneficiaries will create a rights-based approach and ensure that UMC have access to 'suitable care'.

³⁶⁷ European Council on Refugees and Exiles 'Position on refugee children' (1997) 9 1 *International Journal of Refugee Law* 76.

Moreover, the National Action Plan of Action for Children which expired in 2010 should be reviewed to include UMC as a vulnerable group. The government is currently working on the National Plan of Action for Children for the Period 2011-2016.³⁶⁸ It is being proposed that the new Plan of Action takes into consideration the disadvantageous situation of UMC and expressly include them as one of the beneficiaries.

It is further recommended that the Immigration Act be amended to allow UMC to stay in the country if it is found that it is in their best interests. As it is now, the Immigration Act grants refugee status only to those people who qualify as a refugee under article 1 of the Refugee Act. It is being proposed that the Immigration Act grant vulnerable children such as UMC permission to stay in the country. The strict requirement of having a letter from parents and proof of subsistence within Mozambique should be waived. This will ensure that UMC have proper documents and can access to socio-economic rights such as the rights to education without any hindrance. The granting of permission to stay in the country will also eliminate discrimination against UMC due to the illegal status they have without papers. However, this will not mean that Mozambique will be under the obligation to accommodate all UMC that are in its territory. There should be a subjective analysis of each child and then if it is really in the best interests of the child to stay in Mozambique, then the strict immigration requirements can be waived.

There should be more collaboration between the different departments of the government. UMC issue involves different departments such as the department of foreign affairs, the department of social services, the department of education and the department of health amongst others. Each department cannot work in isolation. The services provided by these departments should be integrated to ensure that UMC benefit from their rights and freedoms.

The government should allocate a portion of its budget to the protection of UMC. The government tends to ignore the plight of UMC and hides behind the excuse that they already have to deal with the Mozambican children who are living in poverty and cannot thus waste money on UMC.³⁶⁹ The government should take responsibility for all children in the territory of Mozambique and afford equal protection to them. It should fund studies which are aimed at ensuring a better protection framework for UMC. There should also be emphasis on the collection of data on UMC which will allow the government to know about the plight of UMC accurately and devise appropriate solutions

³⁶⁸ There was a consultative meeting held on 18 October 2012 at MMAS with all the relevant stakeholders.

³⁶⁹ Gomes (n 31 above).

to tackle them. The budget should also be used in the training of the relevant authorities. For instance, some of it can be used to train border and immigration officers to educate them about the vulnerability of UMC in relation to commercial sexual exploitation, child abuse and child labour amongst others. This will enable them to become more sensitive to UMC and not to regard them as pests invading the country. Part of the budget can be used to frame a proper deportation process which will investigate each case on a subjective basis.

Finally, the government should work more in collaboration with other countries from where the UMC flee. An example can be increased communication and consultation between the government of Mozambique and that of Zimbabwe, the country from which Mozambique receives the majority of its UMC. This will ensure better border controls and prevent UMC from being exposed to the danger of crossing borders.

4.3.3 To the civil society organisations

The civil society should engage in more sensitising campaigns to promote the rights of UMC. For instance, the study by SCUUK³⁷⁰ had as objective to sensitise the government about the issue of UMC in the territory.³⁷¹ The present study will adopt one of the recommendations of the study by SCUUK³⁷² and will recommend the civil society such as Red Came and SCUUK to engage in sensitising campaigns and bring to the attention of government the risks and vulnerabilities that UMC face.

There should be more cooperation between different organisations working in the area of UMC. The above study has shown that different organisations work for the promotion of the rights of UMC but nevertheless there is not much collaboration between them. The conference held at the border of Ressano Garcia on 13 September concerning UMC from Mozambique to South Africa was a good example of collaboration between relevant civil society organisations. It is recommended that more such activities are conducted concerning UMC from other countries into Mozambique. For instance, the relevant organisations can draft a work plan together and each one work on a particular aspect.

Moreover, there is a need for a proper mapping exercise of service providers. The activity carried out by SC International in Mozambique did not concentrate on UMC from other countries to Mozambique. A proper mapping exercise will lead the children to the relevant service providers

³⁷⁰ Visitors from Zimbabwe (n 10 above).

³⁷¹ C Mahate (n 362 above).

³⁷² Visitors from Zimbabwe (n 10 above) 13.

without any difficulty. This exercise is also important for the service providers because it ensures that the relevant stakeholders know each other and do not duplicate the resources.

4.3.4 To the countries of origin

The issue of UMC is not one which only concerns the host country. It is recommended that the countries of origin undertake positive steps to prevent UMC from leaving the country and becoming vulnerable to the various violations they face. Many of the UMC in Mozambique are from Zimbabwe and one praiseworthy step taken to deter the phenomenon of children leaving the country was the Ministry of Education's policy to initiate a project on child friendly school where children are not subject to corporal punishment.³⁷³ Countries of origin should identify the causes which push children to leave the country and work towards the reduction of these factors.

The recommendations above, if implemented, will ensure a better protection of the rights of UMC who are in the territory of Mozambique. UMC are vulnerable and need extra protection of the law. In the words of Chavez, 'regardless of their reasons for migrating, unaccompanied children are highly vulnerable and in need of specialised support and guidance'.³⁷⁴

Word Count: 19 895 (excluding table of contents, bibliography, annexes and indexes)

³⁷³ Presentation of country reports at the SANTAC conference.

³⁷⁴ AA Chavez 'Advocating for the unaccompanied migrant child' *JustSouth E-newsletter* (2010) available at <http://www.loyno.edu/jsri/advocating-unaccompanied-migrant-child> (accessed on 11 October 2012).

5. BIBLIOGRAPHY

BOOKS

Aust, A (2010) *Handbook of international law* 2nd ed New York: Cambridge University Press.

Boczek, BA (2005) *International Law: A dictionary* The USA: Scarecrow Press.

Bueren, GV (1998) *The international law on the rights of the child* The Hague: Martinus Nijhoff Publishers.

Deb, S (2006) *Children in agony: A source book* New Delhi: Concept Publishing Company.

Degan, VD (1997) *Sources of international law* The Hague: Kluwer Law International.

Detrick, S (1999) *A Commentary on the United Nations Convention on the Rights of the Child* The Hague: Kluwer Academic Publishers Group.

Doek, JE & Loon, HV (1996) *Children on the move: How to implement their right to family life* The Hague: Kluwer Law International.

Dugard, J (2011) *International law: A South African perspective* 4th ed Cape Town: Juta.

Ensor, MO & Godziak, EM (2010) *Children and Migration: At the crossroads of resilience and vulnerability* New York: Palgrave Macmillan.

Fortin, J (2003) *Children's rights and developing law* London: LexisNexis Butterworths.

Gallagher, AT (2010) *The international law of human trafficking* New York: Cambridge University Press.

Hasim, I & Thorsen, D (2011) *Child migration in Africa* London: The Nordic Africa Institute, Zed Books.

Heyns, K & Killander, M (Eds) (2010) *Compendium of key human rights documents of the African Union* 4th ed Pretoria: PULP.

Kanics, J; Hernandez, DS & Touzenis K (Eds) (2010) *Migrating alone: Unaccompanied and separated children's migration to Europe* France: UNESCO Publishing.

Liebenberg, S & Pillay, K (2000) *Socio-economic rights in South Africa: A resource book* Cape Town: Community Law Centre.

Ougergouz, F (2003) *The African Charter on Human and Peoples' Rights: A comprehensive agenda for human dignity and sustainable democracy in Africa* The Hague: Kluwer Law International.

Ressler, EM; Boothby, N & Steinbock DJ (1988) *Unaccompanied children: care and protection in wars, natural disasters, and refugee movements* New York: Oxford University Press.

Rowan, EL (2006) *Understanding child sexual abuse: For those looking to comprehend and to prevent child sexual abuse, a succinct guidebook of advice and resources* The USA: University Press of Mississippi.

Sepulveda, MM (2003) *The nature of the obligations under the International Covenant on Economic, Social and Cultural Rights* Utrecht: Intersentia.

Shukla, PC (2005) *Street children and the asphalt life* Delhi: Chawla Offset Press.

Verhellen, E (2006) *Convention on the Rights of the Child* 4th ed Antwerp-Apeldoorn: Eugen Verhellen and Garant Publishers.

CHAPTERS IN BOOKS

Boyden, J & Prout, A 'Childhood and the policy makers: A comparative perspective on the globalization of childhood' in James A (ed) (2000) *Constructing and reconstructing childhood: Contemporary issues in the sociological study of childhood* 2nd ed London: Falmer Press.

Chinkin, C 'Thoughts on the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)' in Shivdas, M & Coleman, S (eds) (2010) *Without prejudice: CEDAW and the determination of women's rights in a legal and cultural context* London: Commonwealth Secretariat.

Chirwa, DM 'Combating child poverty: The role of economic, social and cultural rights' in Sloth-Nielsen, J (ed) (2008) *Children rights in Africa: A legal perspective* Hampshire: Ashgate Publishing Limited.

Dawes, A; Richter, L & Higson-Smith, C 'Confronting the problem' in Dawes, A; Richter, L and Higson-Smith, C (eds) (2005) *Sexual abuse of young children in Southern Africa* Cape Town: HSRC Press.

Doek, JE 'The CRC: Dynamics, and directions of monitoring its implementation' in Invernizzi, A & Williams, J (eds) (2011) *The human rights of children: From visions to implementation* Surrey: Ashgate Publishing Limited.

Ennew, J; Myers WE; Plateau, DP & Ennew, J 'Defining child labour as if human rights really matter' in Weston, BR (ed) (2005) *Child labour and human rights: Making children matter* Boulder: Lynne Rienner Publishers.

Farrugia, R & Touzenis, K 'The international protection of unaccompanied and separated migrant and asylum-seeking children in Europe' in Kanics, J; Hernandez, DS & Touzenis K (Eds) (2010) *Migrating alone: Unaccompanied and separated children's migration to Europe* France: UNESCO Publishing.

Mason, EA 'The best interests of the child' in Todres, J; Wojcik, ME and Revaz, CR (eds) (2006) *The U.N. Convention on the Rights of the Child: An analysis of treaty provisions and implications of the U.S. ratification* New York: Transnational Publishers.

Maurer, P 'Foreword' in Ramcharan, BG (ed) (2009) *The protection roles of the UN Human Rights Special Procedures* The Hague: Martinus Nijhoff Publishers.

Orgocka, A 'Vulnerable yet energetic: Independent child migrants and opportunity structures' in Orgocka, A & Clark-Kazak, C (eds) (2012) *Independent Child Migration – Insights into Agency, Vulnerability and Structure. New Directions for Child and Adolescent Development* Hoboken: Wiley Periodicals

Shelton, D 'Soft law' in D Armstrong (ed) (2009) *Routledge handbook of international law* New York: Routledge.

Sorel, J 'The concept of 'soft-responsibility'' in Crawford, J; Pellet, A & Olleson, S (eds) (2010) *Oxford commentaries on international law: The law of international responsibility* New York: Oxford University Press.

Trebilcock, A & Raimondi, G 'The ILO's legal activities towards the eradication of child labour: An overview' in Nesi, G; Nogler, L & Pertile, M (eds) (2008) *Child labour in a globalised world: A legal analysis of the ILO action* Aldershot: Ashgate.

Vandervort, FE & Sanoshy, RB 'Special issues in transcultural, transracial, and gay and lesbian parenting and adoption' in Benedek, EP; Ash, P & Scott CL (eds) (2010) *Principles and practice of child and adolescent: Forensic mental health* Arlington: American Psychiatric Publishing.

JOURNAL ARTICLES

Barnitz, L 'Effectively responding to the commercial sexual exploitation of children: A comprehensive approach to prevention, protection, and reintegration services' (2001) 80(5) *Child Welfare Journal* 597.

DJ Steinbock 'Separated children in mass migration: Causes and cures' (2003) 22 *Saint Louis University Public Law Review* 297.

European Council on Refugees and Exiles 'Position on refugee children' (1997) 9 1 *International Journal of Refugee Law* 74.

Fritsch, C; Johnson, E & Juska, A 'The plight of Zimbabwean unaccompanied refugee minors in South Africa: A call for comprehensive legislative action' (2009-2010) 38 *Denv. Journal of International Law and Policy* 623.

Hodgson, D 'The historical development and 'internationalization' of the children's rights movement' (1992) *Australian Journal of Family Law* 252.

Landau, L & Jacobsen, K 'Refugees in the new Johannesburg' (2004) 19 *Forced Migration Review* 44.

Martina, F & Curran, J 'Separated children: A comparison of the treatment of separated child refugees entering Australia and Canada' (2007) 19 *International Journal of Refugee Law* 440.

Piwowarczyk, LA 'Our responsibility to unaccompanied and separated children in the United States: A helping hand' (2005-2006) 15 *Boston University Public Interest Law Journal* 263.

Salt, J & Stein, J 'Migration as a business: The case of trafficking' (1997) 35 *International Migration* 467.

Swart, S 'Unaccompanied minor refugees and the protection of their socio-economic rights under human rights law' (2009) 9 *African Human Rights Law Journal* 103.

Van Bueren, G 'Alleviating poverty through the constitutional court' (1999) 15 1 *South African Journal on Human Rights* 52.

OTHER ARTICLES AND PAPERS

Chavez, AA 'Advocating for the unaccompanied migrant child' *JustSouth E-newsletter* (2010) available at <http://www.loyno.edu/jsri/advocating-unaccompanied-migrant-child> (accessed on 11 October 2012).

Duncan, Y 'In South Africa, few comforts await children fleeing Zimbabwe' available at http://www.unicef.org/emerg/southafrica_48340.html (accessed on 8 August 2012).

Furia, A 'Victims or criminals? The vulnerability of separated children in the context of migration in the United Kingdom and Italy' (2012) Working Paper 69.

Glind, HV 'Migration and child labour: exploring child migrant vulnerabilities and those of children left behind' (2010).

Hatloy, A and Huser, A 'Identification of street children: Characteristics of street children in Bamako and Accra' (2005) available at <http://www.fafu.no/pub/rapp/474/474.pdf> (accessed on 17 October 2012).

Hipolito, C 'The commercial sexual exploitation of children' (2007) unpublished 1 available at http://books.google.co.mz/books?id=bGmUjTtNHjUC&printsec=frontcover&dq=commercial+sexual+exploitation+of+the+child&source=bl&ots=SNY06uQLIn&sig=u3UQD1_uHLyP1x93Y_Mw_IQ6uS4&hl=pt-PT&sa=X&ei=7jV5UIyCG6jX0QWhpYDQCg&ved=0CC8Q6AEwAA (accessed on 13 October 2012).

Manjate, T 'Children on the move' presented during SANTAC Regional Consultative Meeting on 18 October 2012.

Muthoga, L 'Analysis of international instruments for the protection of the rights of the child' in Community Law Centre 'International conference on the rights of the child: Papers and reports of a conference convened by the Community Law Centre' (1992).

Sigona, N 'Policy primer: Irregular migrant children and public policy' The Migration Observatory at the University of Oxford (2011) available at <http://www.migrationobservatory.ox.ac.uk/policy-primers?page=1> (accessed on 12 September 2012).

Stefiszyn, K for the Centre for Human Rights, University of Pretoria 'The impact of the Protocol on the Rights of Women in Africa on violence against women in six selected Southern African countries: An advocacy tool' (2009).

REPORTS

Abramovich, V; Cernadas, PC & Morlachetti, A for UNICEF 'Migration, children and human rights: Challenges and opportunities' (2010).

Burchianti, F and Zapata-Barrero, R for Robert Schuman Centre for Advanced Studies 'Accept pluralism: Intolerant discourses about migrants in Catalan politics' (2012).

Chappell, L & Laczko, F for IOM 'What are we really achieving? Building an evaluation culture in migration and development' (2011) available at <http://www.migrationinformation.org/Feature/display.cfm?ID=842> (accessed on 22 October 2012).

CRIN 'Guide to non-discrimination and the CRC' (2009) available at http://www.crin.org/docs/CRC_Guide.pdf (accessed on 24 September 2012).

HDA 'Defining, understanding and addressing the issue of 'children on the move' in Mozambique' (2011).

ICRC Report on the 4th Workshop 'Workshop on protection for human rights and humanitarian organisations – Doing something about it and doing it well' held at Geneva, 18-20 January 1999.

IOM 'International migration law: Human rights of migrant children' (2008) available at <http://joomla.corteidh.or.cr:8080/joomla/images/stories/Observaciones/11/Anexo%201.pdf> (accessed on 24 September 2012).

IOM 'Unaccompanied Children on the Move' (2011) 11 available at http://publications.iom.int/bookstore/free/UAM%20Report_11812.pdf (accessed on 27 August 2012).

IOM 'World economic and social survey' (2004) 189.

IOM 'World migration 2008: Managing labour mobility in the evolving global economy' (2008).

SCUK 'Away from home: Protecting and supporting children on the move' (2008) available at http://www.savethechildren.org.uk/sites/default/files/docs/Away_from_Home_LR_1.pdf (accessed on 4 September 2012).

SCUK 'Our broken dreams: Child migration in Southern Africa' (2009).

SCUK 'Visitors from Zimbabwe: A preliminary study outlining the risks and vulnerabilities facing Zimbabwean children who have crossed illegally into Mozambique' unpublished available at http://images.savethechildren.it/IT/f/img_publicazioni/img88_b.pdf (accessed on 8 August 2012).

SCUK & SC Norway 'A bridge across the Zambezi: What needs to be done for children?' (2006) available at http://www.savethechildren.org.uk/sites/default/files/docs/A_Bridge_across_the_Zambezi_1.pdf (accessed on 11 October 2012).

Southern African Network Against Trafficking and Abuse of Children (SANTAC) 'Children on the move children at risk' First draft (2012).

UN Economic and Social Commission for Asia and the Pacific 'Sexually abused and sexually exploited children and youth in greater Mekong subregion: A qualitative assessment of their health needs and available services' (2000) available at http://www.childtrafficking.com/Docs/exploited_children_andyouth_in_subregion_oct07.pdf (accessed on 13 October 2012).

UNICEF 'Child poverty and disparities in Mozambique 2010' (2011).

UNICEF 'Orphans and other vulnerable children and adolescents in Zimbabwe: A study on street children in Zimbabwe' undated available at http://www.unicef.org/evaldatabase/files/ZIM_01-805.pdf (accessed on 17 October 2012).

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) available at http://www2.ohchr.org/english/issues/migration/consultation/docs/Intergovernmental%20Organisations/3a.UNICEF_ESCR_Migrants.pdf (accessed on 16 October 2012).

UNICEF Kosovo & Kosovo Health Foundation 'Silent harm: A report assessing the situation of repatriated children's psycho-social health' (2012) available at http://www.unicef.org/kosovo/SILENT_HARM_Eng_Web.pdf (accessed on 22 October 2012).

World Bank 'World development report 2007: Development and the next generation' (2006).

OTHER WEBSITE PUBLICATIONS

Children's Rights Portal 'Right to life: Understanding children's right to life' available at <http://childrensrightsportal.org/fundamental-rights/life/> (accessed on 24 September 2012).

Children's Rights Portal 'The Convention on the Rights of the Child: Issues of the Convention' available at <http://childrensrightsportal.org/convention/issues/> (accessed on 24 September 2012).

ILO website 'What is child labour?' available at <http://www.ilo.org/ipecc/facts/lang--en/index.htm> (accessed on 14 October 2012).

OHCHR website 'Urgent need to protect the rights of migrant children' available at <http://www.ohchr.org/EN/NewsEvents/Pages/RightsOfMigrantChildren.aspx> (accessed on 8 August 2012).

UN website 'Introduction of the CEDAW' available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> (accessed on 2 October 2012).

UNHCR 'Country Profiles: Zimbabwe' in 'Findings on the worst forms of child labour' (2009) 725 available at <http://www.unhcr.org/refworld/pdfid/4d4a68191a.pdf> (accessed on 15 October 2012).

UNICEF website 'Convention on the Rights of the Child' available at <http://www.unicef.org/crc/> (accessed on 24 September 2012).

UNICEF website 'Note on the definition of 'child trafficking' (based on engagements among international agencies in 2006 and 2007) available at http://www.unicef.org/southafrica/SAF_pressrelease_notetrafficking.pdf (accessed on 19 October 2012).

UNICEF website 'Optional Protocols to the Convention on the Rights of the Child' available at http://www.unicef.org/crc/index_protocols.html (accessed on 13 October 2012).

UNICEF website 'South Africa: Children on the move' available at http://www.unicef.org/southafrica/protection_6635.html (accessed on 24 June 2012).

INTERNATIONAL INSTRUMENTS

Constitution of the International Labour Organisation

Constitution of the International Organisation for Migrants

Inter-Agency Guiding Principles on Unaccompanied and Separated Children 2004

International Labour Organisation Convention No 182 concerning the Prohibition of and Immediate Action for the Elimination of the Worst Forms of Child Labour 1999

International Labour Organisation Convention No 198 concerning Minimum Age 1973

Statute of the International Court of Justice

The International Covenant on Economic, Social and Cultural Rights 1976

The United Nations Convention on the Elimination of all forms of Discrimination Against Women 1981

The United Nations Convention on the Rights of the Child 1990

The United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990 Optional protocol to the CRC 2002

UNHCR Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum 1997

DECLARATIONS

Declaration on the Rights of the Child GA RES 1386 (XIV), UN Doc A/4354 (1959)

Geneva Declaration of the Rights of the Child adopted by the Assembly of the League of Nations in 1924

Universal Declaration on Human Rights 1948

UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD

Background paper of the 2012 day of General Discussion titled 'The rights of all children in the context of international migration' (2012)

Concluding Observations: France (11 June 2009) CRC/C/FRA/CO/4

Concluding observation Spain CRC/C/ESP/CO/3-4 3 November 2010

General Comment 6 of 2005 on the treatment of unaccompanied and separated children outside their country of origin

REPORTS OF THE SPECIAL RAPPOREUR ON THE HUMAN RIGHTS OF MIGRANTS

Report of the Special Rapporteur on the human rights of migrants to the HRC 'Protection of children in the context of migration' A/HRC/11/7 (2009)

Report of the Special Rapporteur on the human rights of migrants to the HRC 'Criminalization of irregular migration' A/HRC/7/12 (2008)

RESOLUTIONS

HRC Resolution 9/5 on the Human rights of migrants 24 September 2008

UN General Assembly Resolution A/RES/51/77 on The rights of the child adopted on 20 February 1997.

REGIONAL INSTRUMENTS

Constitutive act of the African union

The African Charter on Human and Peoples' Rights 1986

The African Charter on the Rights and Welfare of the Child 1999

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women 2005

DOMESTIC INSTRUMENTS

Children act Mozambique 2008

Constitution of Mozambique 2004

Constitution of South Africa 1996

Immigration Act Mozambique 1993

Refugee Act Mozambique 1991

CASE LAW

Case concerning the military and paramilitary activities in and against Nicaragua (*Nicaragua v The United States of America*) 27 June 1986 ICJ Reports 1986

Centre for Child Law v Minister of Home Affairs 2005 (6) SA 50(TC)

Legality of the threat or use of nuclear weapons ICJ Advisory Opinion of 8 July 1996, ICJ Reports 1996 paragraph 70

Social and Economic Rights Action Centre (SERAC) and Another v Nigeria (2001) AHRLR 60 (ACHPR 2001)

OTHER WEBSITES

http://books.google.co.mz/books?id=bGmUjTtNHjUC&printsec=frontcover&dq=commercial+sexual+exploitation+of+the+child&source=bl&ots=SNY06uQLIn&sig=u3UQD1_uHLyP1x93Y_Mw_IQ6uS4&hl=pt-PT&sa=X&ei=7jV5UIyCG6jX0QWhpYDQCg&ved=0CC8Q6AEwAA (accessed on 13 October 2012).

http://books.google.co.mz/books?id=rhzn_8QJY4C&printsec=frontcover&dq=child+sexual+abuse&source=bl&ots=ENfTfrw2VT&sig=UyPCL4DZRO-jkXctXdk9n_8qWvw&hl=en&sa=X&ei=URN8UJXNBIjssgaL24GIAw&ved=0CDIQ6AEwAQ (accessed on 15 October 2012).

<http://childrensrightsportal.org/convention/issues/> (accessed on 24 September 2012).

<http://childrensrightsportal.org/fundamental-rights/life/> (accessed on 24 September 2012).

<http://esa.un.org/migration/p2k0data.asp> (accessed on 8 August 2012).

http://images.savethechildren.it/IT/f/img_publicazioni/img88_b.pdf (accessed on 8 August 2012).

<http://joomla.corteidh.or.cr:8080/joomla/images/stories/Observaciones/11/Anexo%201.pdf> (accessed on 24 September 2012).

http://publications.iom.int/bookstore/free/UAM%20Report_11812.pdf (accessed on 27 August 2012).

<http://resourcecentre.savethechildren.se/content/library/documents/inter-agency-guiding-principles-unaccompanied-and-separated-children> (accessed on 2 October 2012).

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (accessed on 24 September 2012).

http://www.childtrafficking.com/Docs/exploited_children_andyouth_in_subregion_oct07.pdf (accessed on 13 October 2012).

<http://www.faf.no/pub/rapp/474/474.pdf> (accessed on 17 October 2012).

<http://www.guardian.co.uk/commentisfree/libertycentral/2010/jun/08/deporting-unaccompanied-child-migrants-immoral> (accessed on 22 October 2012).

<http://www.hda.co.za/project.html> (accessed on 27 August 2012).

<http://www.ilo.org/global/about-the-ilo/lang--en/index.htm> (accessed on 24 September 2012).

<http://www.ilo.org/global/topics/child-labour/lang--en/index.htm> (accessed on 14 October 2012).

<http://www.ilo.org/ipec/facts/lang--en/index.htm> (accessed on 14 October 2012).

<http://www.ilo.org/public/english/bureau/leg/download/partxiii-treaty.pdf> (accessed on 24 September 2012).

<http://www.iom.int/cms/idm> (accessed on 22 October 2012).

<http://www.migrationinformation.org/Feature/display.cfm?ID=842> (accessed on 22 October 2012).

<http://www.migrationobservatory.ox.ac.uk/policy-primers?page=1> (accessed on 12 September 2012).

<http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx> (accessed on 24 September 2012).

<http://www.ohchr.org/EN/NewsEvents/Pages/RightsOfMigrantChildren.aspx> (accessed on 8 August 2012).

<http://www.ohchr.org/en/udhr/pages/introduction.aspx> (accessed on 2 October 2012).

http://www.savethechildren.org.uk/sites/default/files/docs/A_Bridge_across_the_Zambezi_1.pdf (accessed on 11 October 2012).

http://www.savethechildren.org.uk/sites/default/files/docs/Away_from_Home_LR_1.pdf (accessed on 4 September 2012).

<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> (accessed on 2 October 2012).

<http://www.unhcr.org/refworld/pdfid/49141aafc.pdf> (accessed on 2 October 2012).

<http://www.unhcr.org/refworld/pdfid/4d4a68191a.pdf> (accessed on 15 October 2012).

<http://www.unhcr-centraleurope.org/en/resources/legal-documents/unhcr-handbooks-recommendations-and-guidelines.html> (accessed on 2 October 2012).

<http://www.unhcr-centraleurope.org/pdf/resources/legal-documents/unhcr-handbooks-recommendations-and-guidelines/unhcr-guidelines-on-dealing-with-unaccompanied-children-seeking-asylum-1997.html> (accessed on 2 October 2012).

<http://www.unicef.org/crc/> (accessed on 24 September 2012).

http://www.unicef.org/crc/index_protocols.html (accessed on 13 October 2012).

http://www.unicef.org/emerg/southafrica_48340.html (accessed on 8 August 2012).

http://www.unicef.org/evaldatabase/files/ZIM_01-805.pdf (accessed on 17 October 2012).

http://www.unicef.org/kosovo/SILENT_HARM_Eng_Web.pdf (accessed on 22 October 2012).

http://www.unicef.org/southafrica/protection_6635.html (accessed on 24 June 2012).

http://www.unicef.org/southafrica/SAF_pressrelease_notetrafficking.pdf (accessed on 19 October 2012).

http://www.unicef.org/violencestudy/pdf/IAG_UASCs.pdf (accessed on 2 October 2012).

<http://www.yesican.org/definitions/who.html> (accessed on 13 October 2012).

http://www2.ohchr.org/english/issues/migration/consultation/docs/Intergovernmental%20Organisations/3a.UNICEF_ESCR_Migrants.pdf (accessed on 16 October 2012).

<https://www.gfmd.org/en/process/background> (accessed on 22 October 2012).

INTERVIEW SCHEDULES

RESPONDENT	ORGANISATION	POSITION HELD	DATE
Chimedza Nelly	Save the Children International in Mozambique	Project Manager of Children on the Move Project	18 October 2012
Gomes Nadja	<i>Liga Moçambicana dos Direitos Humanos</i>	Lawyer	31 August 2012
Manjate Carlos	Red Came	-	3 September 2012
Vasco Andrea	UNICEF	Researcher	17 September 2012
