

# “FIRST A MIGRANT, THEN A CHILD”

A REGIONAL CHILD MIGRANT PROTECTION POLICY  
ASSESSMENT IN THE SOUTHERN AFRICA REGION



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ASSESSMENT IN THE SOUTHERN AFRICA REGION**

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**24th November 2023**

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# EXECUTIVE SUMMARY



**Many children and young people migrate across Southern Africa to better their own lives and those of their families. Mobility is often key to accessing education, employment, and security.<sup>1</sup>**



Many children and young people migrate across Southern Africa to better their own lives and those of their families. Mobility is often key to accessing education, employment, and security.<sup>1</sup> The understanding that children always have moved and will continue to move plays an active role in shaping global migration processes, particularly in the global South. This has led to heightened recognition of children as needing specific protection at the time of moving and in its aftermath as well as increased awareness that many of these protection needs remain unmet and in some cases, undermined.<sup>2</sup> Children on the move (including refugees, asylum seekers, victims of trafficking, smuggled migrants and unaccompanied and separated migrants) are recognised as having acute need for both international and domestic child protection, given the precarity of their situation and the risks they face.<sup>3</sup> Yet gaps in policies, procedures and capacity, for example, can have devastating effects on children with little access to regular means of migration but are nonetheless on the move.

Legislative frameworks play a key role in protecting and ensuring the fulfilment of the rights for migrant children. Ensuring that all domestic (national) legislation is fully compatible with these conventions and takes into account the special provisions that need to be made to address the key needs and vulnerabilities of children is fundamental to the protection of migrant children. Yet, despite governments' commitments to regional and global human rights instruments including the UN Convention on the Rights of the Child (UNCRC)<sup>4</sup>, the African Charter on the Rights and Welfare of the Child (ACRWC)<sup>5</sup>, the African Youth Charter<sup>6</sup> and the Global Compacts for Safe, Orderly and Legal Migration (GCM) and, for Refugees (GCR), the fulfilment of child and youth rights in regional policy frameworks remains inconsistent. Moreover, many countries continue to lack robust provisions to address key issues negatively affecting the welfare and protection of children on the move specifically.<sup>7</sup>

This report provides a comprehensive analysis of the current laws and policies governing child migrant protection across the Southern African Development Community (SADC) to inform Save the Children's Regional Programme Units' regional-level advocacy strategy for migrant and refugee children and youth. With a focus on migrant child rights and child protection in six key SADC Member states: Botswana, Eswatini, Mozambique, South Africa, Zambia, and Zimbabwe the review highlights the main policy gaps, both in formulation and implementation, preventing SADC from effectively meeting the objectives of key international and regional policy.

The report shows that there has been substantial progress in strengthening policies on child protection across the region but increasingly restrictive country-level migration policies limit access to protection and rights for children on the move. Efforts by SADC, regionally to address both child protection in a context of migration and child migrants through a child protection lens has been hindered by significant gaps which include the failure to ensure access to documentation for children, the failure to engage with the complex realities of children, the emphasis on children in forced migration and a substantial disconnect between policy and practice. This is particularly the case where the complex realities of children on the move cannot be easily categorised through legal pathways and therefore demand more nuanced and malleable responses that can ensure children do not fall through protection gaps.

Drawing from the findings of a desk and policy review combined with a series of key informant interviews the report identifies five key cross-cutting themes (see below). These have been used to develop recommendations which will support the development, adaptation and implementation of an advocacy plan to address the identified gaps. These include access to birth registration and identity documents, access to public services such as education as well as protection that reflects the complex identities and realities of children on the move shaped by gender, age, religion, nationality and documentation status.

- 1 e Children, "Study on Unaccompanied Migrant Children in Mozambique, South Africa, Zambia and Zimbabwe"; Abdel-Latif and Addai, "The Unseen Vulnerabilities of Unaccompanied African Migrant Children" in *The Africa Migration Report: Challenging the Narrative*.
- 2 ngu and Oder, "Strengthening the Promotion and Protection of Child Rights in Southern Africa"; Nolan and Skelton, "Turning the Rights Lens Inwards."
- 3 Nolan and Skelton, "Turning the Rights Lens Inwards"; Crepeau, "Preface"; Abdel-Latif and Addai, "The Unseen Vulnerabilities of Unaccompanied African Migrant Children" in *The Africa Migration Report: Challenging the Narrative*; Digital, "Children on the Move."
- 4 UN, "UN CRC."
- 5 African Union, "ACRWC."
- 6 African Union, "African Youth Charter."
- 7 Shuteriqi, *Challenges Faced in Protecting Children on the Move. An NGO Perspective*, 2015.

## KEY THEMES:



**The lack of access to documentation initiates a cascade of protection gaps:** Despite the widespread commitment at both continental and global level to the protection of the rights of refugees, irregular migrants and children, the findings from the review of regional and national level policies reveals limited operationalisation of these commitments. There are striking inconsistencies between what is set out in international human rights law, regional protocols and guidelines, domestic policies in SADC states and what is happening on the ground which, weaken protection for children on the move.



**Governance structures for the protection of children on the move are undermined by political agendas and restrictive immigration policies:** Across all countries, the significant shifts towards child-rights based policies that work with children rather than against them have been limited by the failure to prioritise migrant children, in either migration governance or child protection policies. It is clear that to a large extent the policy frameworks across the six SADC countries are not in line with the integrated, child-sensitive principles of the Global Compact.



**Children on the move remain invisible in national migration and child protection policy frameworks:** Many of the SADC countries lack harmonisation between frameworks that speak to children's rights and those that relate to immigration, which limits coordination and capacity-building. Where there is inclusive legislation and policy, there is a disconnect with implementing practices, evident in the challenges that migrant children face in accessing health, education and documentation.



**Policy frameworks and legal pathways do not respond to children's complex realities:** The categories that govern policies impacting children on the move and their access to legal pathways do not respond to children's complex realities. Critically, the categorisation and perception of children in policy and amongst policy-makers continues to be reinforced by normative ideals of childhood rather than reflect the well-documented heterogeneous experiences of children as social actors and facing heightened vulnerabilities – shaped by gender, age, sexual orientation, nationality, documentation status etc. This limits the overall number of those granted access to basic rights and services.



**Regional efforts by SADC are limited by the lack of an evidence-base and advocacy strategy to address protection gaps:** There have been some efforts, regionally to harmonise a policy approach through which the protection of vulnerable children (including children on the move) are centred. However, key gaps include an evidence-base to drive policy discussions and to ensure the advocacy strategies address the intersection of child protection and migration as well as failure to fully engage and strengthen cross-border coordination mechanisms across the region.

# ABBREVIATIONS AND ACRONYMS

|               |   |
|---------------|---|
| <b>ACRWC</b>  | African Charter for the Rights and Welfare of the Child                       |
| <b>AIDS</b>   | Acquired Immuno-Deficiency Syndrome   |
| <b>ARV</b>    | Anti-retroviral   |
| <b>AU</b>     | African Union   |
| <b>CRC</b>    | Convention on the Rights of the Child   |
| <b>CRBA</b>   | Child Rights Based Approach   |
| <b>CRNSA</b>  | Child Rights Network for Southern Africa                                      |
| <b>DHA</b>    | Department of Home Affairs  |
| <b>DSD</b>    | Department of Social Development  |
| <b>EAC</b>    | East African Community  |
| <b>ESARO</b>  | East and Southern Africa Regional Office                                      |
| <b>GCM</b>    | Global Compact for Safe, Orderly and Legal Migration                          |
| <b>GCR</b>    | Global Compact for Refugees   |
| <b>HIV</b>    | Human Immuno-deficiency Virus   |
| <b>ICMW</b>   | International Committee for the Protection of Migrant Workers                 |
| <b>ILO</b>    | International Labour Organization   |
| <b>IOM</b>    | International Organisation for Migration                                      |
| <b>MOU</b>    | Memorandum of Understanding   |
| <b>NGO</b>    | Non-Governmental Organization   |
| <b>OVC</b>    | Orphans and Vulnerable Children   |
| <b>PF</b>     | Parliamentary Forum   |
| <b>PR</b>     | Permanent Residency   |
| <b>REC</b>    | Regional Economic Community   |
| <b>REPSSI</b> | Regional Psychosocial Support Initiative                                      |
| <b>RISDP</b>  | Regional Indicative Strategic Development Plan                                |
| <b>RPU</b>    | Regional Protection Unit  |
| <b>SADC</b>   | Southern Africa Development Community   |
| <b>SDGs</b>   | Standard Development Goals (SDGs)   |
| <b>SIPO</b>   | Strategic Indicative Programme of the Organ on Politics, Defense and Security |
| <b>SOP</b>    | Standard Operation Procedures   |
| <b>UNICEF</b> | United Nations Children’s Fund  |
| <b>USAID</b>  | United States Agency for International Development                            |
| <b>USMC</b>   | Unaccompanied and separated migrant children (USMC)                           |
| <b>WHO</b>    | World Health Organisation   |



# TERMINOLOGY AND DEFINITIONS

|  |   |
|--|---|
| <b>Adult</b>   | Is defined as an individual; over 18 years. International law defines a child as anyone under 18 years <sup>8</sup>   |
| <b>Children on the Move</b>                                | Are defined as 'children moving for a variety of reasons, voluntarily or involuntarily within or between countries with or without parents or other primary caregivers and whose movement, while it may open up opportunities, might also place them at risk (or at an increased risk) of economic or sexual exploitation, abuse, neglect and violence'. A distinction should be made based on the reasons motivating movement: internally displaced persons (IDPs); asylum seekers and refugees; migrants (i.e., for economic reasons, both internally and across borders); and trafficked persons. <sup>9</sup> |
| <b>Refugee Child</b>                                       | Is a child that has a refugee claim due to having left their country of origin to escape war, conflict or persecution and therefore may be eligible for refugee status and may qualify for protection. In addition, the principle of family unity is recognised in the UN Refugee Convention and in many domestic refugee laws. As such, a refugee child can also be a child of a parent or guardian who has a refugee claim. <sup>10</sup>   |
| <b>Migrant Child</b>                                       | Is a child who has left their country of origin for reasons that do not fall under those recognised for refugee protection, for example to attend school or to find work. <sup>11</sup>   |
| <b>Trafficking in Children</b>                             | Is the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation, even if this does not involve any fraudulent means such as violence, deception or coercion  |
| <b>Child Smuggling</b>                                     | Is defined in 'the illegal transportation of children for profit'.  |
| <b>Unaccompanied and Separated Migrant Children (USMC)</b> | An unaccompanied child is a child who 'has either crossed a border alone or has subsequently found him or herself living in a foreign country without an adult caregiver (not being cared for by an adult who by law, or custom, has a responsibility to do so)'.   |
| <b>Separated Child</b>                                     | Is a child who has been separated from both parents or their previous legal or customary primary caregiver, but not necessarily from other relatives. These may include children accompanied by other adult family members. These children may have refugee claims in their own right.  |

Throughout the report we use the term 'children on the move' to include refugees, asylum seekers, victims of trafficking, smuggled migrants and unaccompanied and separated migrants. The term is used with recognition that categories are dynamic and fluid and not mutually exclusive. The experiences of a child on the move may fall into one or several categories or one category can evolve into another. Children are also not homogenous and that the notion of 'a child' is shaped by many factors and experiences including age, gender, sexual orientation, nationality, religion etc.

8 UN, "UN CRC."

9 Save the Children, "Girls on the Move. Global Summary."

10 "Refugee and Migrant Children | UNICEF South Africa."

11 Save the Children, "Girls on the Move Research Series."



# INTRODUCTION



## 1.1 Background and rationale: Why protection for children on the move matters

Children make up a significant part of the large-scale and complex population movements currently taking place in many parts of the world.<sup>12</sup> The number of children who are 'on the move' is growing dramatically and of the estimated 281 million international migrants, 36 million are children and adolescents.<sup>13</sup> Research shows that, like adults, children and young people migrate for many different reasons and mobility is seen as the key to accessing opportunities, livelihoods, education and security.<sup>14</sup>

Southern Africa is a highly mobile region and experiences significantly high levels of mixed and irregular migration flows consisting of refugees, asylum seekers, migrant workers and victims of trafficking. The Southern African Development Community (SADC) is home to over 7.9 million cross-border migrants, most of whom are from elsewhere in the region or neighbouring regions.<sup>15</sup> SADC, which is comprised of 16 member states<sup>16</sup> is built on entrenched historical and contemporary labour migration practices<sup>17</sup> and has some of the largest bilateral migration corridors in Africa, namely the Zimbabwe–South Africa corridor and the Mozambique–South Africa corridor through which formal and informal cross-border mobility takes place.<sup>18</sup> In 2019, the region recorded over 7.87 million regular migrants with the largest number of migrants is found in South Africa (4.2 million).<sup>19</sup>

**Over 7.9 million**

The Southern African Development Community (SADC) is home to over 7.9 million cross-border migrants...<sup>15</sup>

**4.2 million**

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**Southern Africa is a highly mobile region and experiences significantly high levels of mixed and irregular migration flows consisting of refugees, asylum seekers, migrant workers and victims of trafficking.**

12 IOM, "Southern Africa Regional Strategy 2020-2024."

13 UNICEF, "Children in Africa: Key Statistics on Child Survival and Population."

14 Digital, "Our Broken Dreams. Child Migration in Southern Africa"; Shuteriqi, *Challenges Faced in Protecting Children on the Move. An NGO Perspective*, 2015; "UNICEF and The South African Red Cross Partner to Assist Migrant Children"; Walker and Gandar, "Documenting the Impact of Cross-Border Case Management for Children on the Move in Southern Africa," 2022; Abdel-Latif and Addai, "The Unseen Vulnerabilities of Unaccompanied African Migrant Children' in The Africa Migration Report: Challenging the Narrative."

15 IOM Regional Office for Southern Africa, "Launch of the Regional Page on Migration Data in Southern Africa."

16 The 16 member states that include Angola, Botswana, the Democratic Republic of the Congo (DRC), Lesotho, Madagascar (that was suspended in March 2009 after a coup d'état), Malawi, Mozambique, Mauritius, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. The 38th Ordinary SADC Summit in August 2018 noted that the Union of Comoros has deposited its Instrument of Accession, becoming the 16th full Member of SADC

17 IOM, "Report and Recommendations of the MIDSA Conference on Addressing Mixed and Irregular Migration in the SADC Region: Protection of the Unaccompanied Migrant Child."

18 Maunganidze and Formica, "Freedom of Movement in Southern Africa: A SADC (Pipe)Dream?"

19 IOM, "Southern Africa Regional Strategy 2020-2024."

Across SADC the reasons, patterns and consequences of children’s movement are diverse and complex. For many children, migration is pinned on the hope of a better life, an escape from poverty, abuse, violence or conflict and better access to education, employment and basic services. Sometimes children move alone, sometimes with parents or other adults, and on either a permanent or temporary/seasonal basis.<sup>20</sup> Many children on the move, especially those travelling unaccompanied, continue to be at risk and in need of care, protection and support.<sup>21</sup> The multiple, often intersecting risks and vulnerabilities that children on the move, particularly those who are unaccompanied and separated, can face during their journey, at their destination or both, include discrimination, barriers to accessing basic services such as education and health, a lack of child-friendly approaches and procedures as well as struggle to access documentation.<sup>22</sup>

For children on the move protective laws and policy are critical pillars in the fulfilment of rights. When children, migrate or are displaced their fundamental human rights do not change and international human rights laws continue to apply whether children are in their own countries, have crossed borders, have moved with family or alone, have chosen to move, or been forcibly displaced.<sup>23</sup> However, aligned with global discourse on migration – many governments perceive children on the move as a threat and therefore despite increasing emphasis on support and protection through engagement and cross-border mechanisms established by state and non-state actors<sup>24</sup> children are left without adequate protection and subject to harassment, abuse, detention and, deportation.<sup>25</sup> Migrant children also face other protection gaps, for example, when they transition into legal adulthood, and no longer have access to specialised support measures or female children on the move, who mostly still ‘fall between the cracks’ in research, programmes and policies. This is even more pronounced for teenage girls who are also mothers.<sup>26</sup>

Regardless of the varied motivations and circumstances informing children’s mobility, child protection remains heavily premised on the notion that children don’t move and should not move, defaulting to repatriation and reunification as the most desirable solution for migrant children.<sup>27</sup> However, an increasing body of research and work on the ground with children on the move shows that returning or staying at home does not map onto the reality of many children nor is it necessarily in their best interest. Dominant normative ideas about children, childhood, family and home come into play when it comes to the issue of children moving and especially when moving for work, where all forms of work, under any conditions, are considered as harmful to them. Yet, in many countries, ‘cultural attitudes and economic necessity create an environment in which children can be expected to join the workforce at a young age’<sup>28</sup> Policies providing for child rights and protection therefore often fail to identify the complexities of the experiences, needs and risks faced by children on the move.<sup>29</sup>

International legislation by itself is also not enough; laws and policies need to be supported by effective regulations and policies that include for example, recognition of the specific regional and national protection challenges and gaps and appropriate responses that are aligned with complex realities of child migration and of the heterogeneous experiences of children on the move. However, there is always the risk that children can fall between the gaps in legislative protections particularly where there is incongruence between the protection provisions, assistance and procedural safeguards to children under international protection and child protection instruments.

20 Abdel-Latif and Addai, “The Unseen Vulnerabilities of Unaccompanied African Migrant Children’ in The Africa Migration Report: Challenging the Narrative.”

21 Ndungu and Oder, “Strengthening the Promotion and Protection of Child Rights in Southern Africa.”

22 Strydom, Schiller, and Orme, “The Current Landscape of Child Protection Services in South Africa”; Abdel-Latif and Addai, “The Unseen Vulnerabilities of Unaccompanied African Migrant Children’ in The Africa Migration Report: Challenging the Narrative”; ACERWC, “Mapping Children on the Move within Africa”; Digital, “Children on the Move”; ISSAfrica.org, “Strengthening the Promotion and Protection of Child Rights in Southern Africa.”

23 UNICEF et al., “Guidance to Respect Children’s rights in Return Policies and Practices. Focus on the EU Legal Framework”; Nolan and Skelton, “Turning the Rights Lens Inwards.”

24 Save the Children, “Study on Unaccompanied Migrant Children in Mozambique, South Africa, Zambia and Zimbabwe”; Walker and Gandar, “Documenting the Impact of Cross-Border Case Management for Children on the Move in Southern Africa,” 2022; Abdel-Latif and Addai, “The Unseen Vulnerabilities of Unaccompanied African Migrant Children’ in The Africa Migration Report: Challenging the Narrative.”

25 Kihato, “The ‘Containment Compact’: The Eu Migration ‘Crisis’ and African Complicity In Migration Management”; Abdel-Latif and Addai, “The Unseen Vulnerabilities of Unaccompanied African Migrant Children’ in The Africa Migration Report: Challenging the Narrative.”

26 Save the Children, “Girls on the Move Research Series.”

27 Shuteriqi, *Challenges Faced in Protecting Children on the Move. An NGO Perspective*, 2015.

28 Shuteriqi, *Challenges Faced in Protecting Children on the Move. An NGO Perspective*, 2015; Mahati, “Children Learning Life Skills through Work: Evidence from the Lives of Unaccompanied Migrant Children in a South African Border Town”; Digital, “Our Broken Dreams. Child Migration in Southern Africa.”

29 Shuteriqi, *Challenges Faced in Protecting Children on the Move. An NGO Perspective*, 2015.

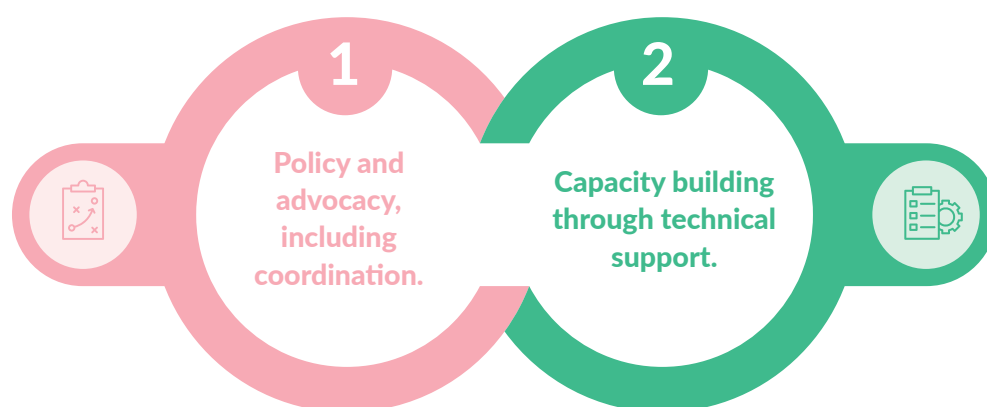
Therefore, despite governments' commitments to regional, continental and global human rights instruments inadequate regional and national frameworks and a lack of coherence between migration and child protection policies limit the ability of state and non-state actors to respond to the specific vulnerabilities and needs of children on the move and undermine the realisation of child and youth rights.<sup>30</sup>

## 1.2 Purpose and objectives of the policy gap assessment

Recognising the importance of legislative frameworks for protecting the rights of children on the move the aim of the assessment which informs this study is to provide an overview of existing migration policies and strategies across SADC. This is in order to develop a comprehensive understanding of the main policy gaps, both in formulation and implementation, preventing SADC from effectively meeting the objectives of key international and regional policy frameworks.

The assessment is located within the extended Children on the Move Programme, implemented by the Regional Programming Unit (RPU) in the East and Southern Africa Regional Office (ESARO). The programme aims to strengthen the realisation of protection rights for migrant children in Southern Africa.

**The programme will be implemented using a two-pronged approach:**



The assessment is based on a desk review of regional and national legislative frameworks including laws, policies and frameworks for SADC countries and a series of key informant interviews, with a specific focus on Botswana, Eswatini, Mozambique, South Africa, Zambia and Zimbabwe. It is guided by the following key objectives:

1. To identify if and to what extent regional and national policies and procedures protect the rights of children and youth involved in migration and displacement (i.e. have migrated with family/other adults or as unaccompanied child migrants)
2. To understand and explain the role and influence of SADC, including regional frameworks (and, where relevant, Continental frameworks), on national migration policies, their implementation and their harmonisation
3. To identify if and where regional policies and procedures recognise international instruments and have relevant and effective national policies and instruments to support cross-border work and case management.

30 Save the Children, UK, "Report on Regional Seminar on Children Who Cross Borders in Southern Africa," 9; UNICEF et al., "Guidance to Respect Children's rights in Return Policies and Practices. Focus on the EU Legal Framework"; Nolan and Skelton, "Turning the Rights Lens Inwards"; Shuteriqi, *Challenges Faced in Protecting Children on the Move. An NGO Perspective*, 2015.

The findings will inform Save the Children’s engagement with regional stakeholders, especially regional economic communities such as SADC as well as the AU, on strengthening child protection in regional migration policy frameworks. This will be guided by an advocacy plan to address identified gaps: access to birth registration and identity documents, access to education, health and social support as well as protection from exploitation. This will be used as a basis from which to engage in continuous policy dialogue on the inclusion of protection rights for children on the move in migration policies.

## 1.3 Methodology

The methodology for this report combines a desk and policy review with the findings of key informant interviews with stakeholders. A review of constitutional, legislative and policy documents, including frameworks and guidelines that engage with children and child protection and migration regionally and at a country-level across SADC was conducted with a specific focus on Botswana, Eswatini, Mozambique, South Africa, Zambia and Zimbabwe. Relevant global, continental and African Union (AU) frameworks and guidelines were also reviewed. This was supported by a desk review of research studies, reports and evaluations of existing governmental and non-governmental programmes that have been designed to (1) strengthen child protection and (2) support children on the move as well as other relevant grey literature.

The assessment framework for the regional review is based on an approach previously developed by the consultant for a regional migration and health policy review.<sup>31</sup> This framework evaluates the level of awareness and engagement of each policy with the key issues: child protection, and migration in relation to the vulnerabilities and risks children face.<sup>32</sup> The findings are collated in a policy review table with ‘traffic light’ shading used to indicate the extent to which each policy engages with child protection and migration (for example, green indicates comprehensive engagement, orange indicates limited engagement and red indicates no engagement) (the tables are found in Appendix A). This enables a cross-comparison of policies within a country as well as across countries and provides a useful visual representation of how each of the six countries addresses migrant child rights and child protection in their legislative frameworks and guidelines. In this report the findings of these tables are captured in an infographic which shows the status of each country in terms of being ‘migration aware in the context of child protection’ and ‘child protection aware in the context of migration.’ This is followed by a short summary highlighting key policies and gaps per country.

16 key informant interviews (Figure 1: Key Informants) were conducted (virtually). Key Informants were purposively selected and included government officials and representatives, social workers, members international and local Non-Governmental Organisations (NGOs) involved in policy implementation as well as regional and policy specialists at a SADC level.

**Figure 1: Key Informants**

| Country                   | No of key informants interviewed |
|---------------------------|----------------------------------|
| Botswana                  | 2                                |
| Eswatini                  | 2                                |
| Mozambique                | 1                                |
| South Africa              | 3                                |
| Zambia                    | 2                                |
| Zimbabwe                  | 2                                |
| SADC/regional specialists | 4                                |
| <b>Total</b>              | <b>16</b>                        |

The assessment framework for the regional review is based on an approach previously developed by the consultant for a regional migration and health policy review.<sup>31</sup>

<sup>31</sup> IOM, “Migrants’ Rights to Health. A Legislative and Policy Review for Southern Africa”; Walker and Vearey, “Gender, Migration and Health in SADC, A Focus on Women and Girls. Policy Brief 1.”

<sup>32</sup> The evaluation was conducted through a detailed mapping matrix for each document as shown in appendix B.

The focus of the interviews was on an understanding of the key limitations in the implementation and or enforcement of the legal, policy and regulatory frameworks, as well as coordination practices and child protection services to address the needs of children on the move. The interviews were recorded and transcribed and coded using thematic analysis to identify a set of key themes, which are presented in Chapter 4: Findings from policy review and key informant interviews. All key informants have been anonymised in this report and all identifying information has been removed to protect identities. Key informants are referred to as by country only and where relevant, as practitioners.

Finally, it is important to note that we faced a number of challenges in contacting SADC representatives for interviews. Despite the intention to provide a strong representation of perspectives from the SADC Secretariat and Parliamentary Forum (PF) we were only able to secure one interview with a SADC representative. However, we were able to speak to key informants working at a regional specialist level with sound understanding of SADC policies and processes.

## 1.4 Structure of the report

- 
- CHAPTER 2** introduces the role of policy in protecting children on the move in Southern Africa based on the desk review. Through a brief overview of the right to protection in key international laws. Highlighting some of the vulnerabilities and challenges children on the move face in terms of accessing protection and basic services the importance of regional bodies and regional coordination is also outlined.
- 
- CHAPTER 3** provides an in-depth analysis of the legal and policy landscape across SADC and with a focus on Botswana, Eswatini, Mozambique, South Africa, Zambia and Zimbabwe. These are considered in relation to key global and continental policies highlighted in Chapter 2. The emphasis is on policy limitations and gaps for the protection of children on the move to identify where there is need to advocate for a strengthened and more coordinated response by SADC.
- 
- CHAPTER 4** presents the cross-cutting key themes based on the findings from the key informant interviews and policy review. Five themes are discussed with a focus on the progress, challenges and steps forward in strengthening the protection of children and access to rights of migrant children.
- 
- CHAPTER 5** provides recommendations based on the findings of the assessment. It also sets out ideas for an advocacy plan to address identified gaps which will be used as a basis from which to engage in continuous policy dialogue on the inclusion of protection rights for children on the move in migration policies.
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# PROTECTING CHILDREN ON THE MOVE IN SOUTHERN AFRICA THROUGH POLICY AND PRACTICE





## 2.1 The right to protection and assistance for children on the move

Protecting children remains a valid global priority and although there is increasing recognition of children as social agents and of their heterogeneous experiences and needs based on multiple factors including age, gender, sexual orientation, nationality, ethnicity etc the lens of protection remains premised on the perceived inherent vulnerability of all children. This has been the major motivation behind the key global policies, instruments and frameworks which direct and shape the protection of all children – including children on the move.<sup>33</sup>

A summary of the status of ratifications, signing and accession/succession of the key international and continental human rights instruments and Protocols by Botswana, Eswatini, Mozambique, South Africa, Zambia and Zimbabwe is found in Figure 2: Overview of status of ratifications of international and African Union Human Rights Instruments by the six SADC member states.

Although **The 1951 Convention Relating to the Status of Refugees**<sup>34</sup> has been ratified, or acceded to by all SADC member states apart from Mauritius, and although the Convention contains important international standards and norms that apply to all refugees, it does not specifically state that the term “refugee” includes children, set out procedural guidance for the inclusion of children, nor set out obligations of states to address protection gaps faced by children who are refugees.<sup>35</sup> However both the **UN Convention on the Rights of the Child (CRC)**<sup>36</sup> and the **African Charter on the Rights and Welfare of the Child (ACRWC)**<sup>37</sup> not only recognise the need for specific forms of protection for children<sup>38</sup> but also recognise children as the ‘bearers of rights rather than mere objects of protection.’<sup>39</sup>

The CRC and ACRWC also articulate general obligations in relation to child protection and Article 3 of the CRC places an obligation on the public and private spheres, courts of law, administrative authorities and legislative bodies to ensure that the best interests of the child are assessed and taken as primary consideration in all actions affecting children.<sup>40</sup>



**The purpose of assessing and determining the best interests of the child is to ensure the full and effective enjoyment of the rights recognised in the CRC and the holistic development of the child from inclusion in relevant legislation, policies and practices, to implementing procedures for determining the best interests of the child when making decisions affecting children.**

The concept of ‘best interests determination’ is based on an understanding of the right of a child to have their interests assessed and taken as a primary consideration in any decision taken that will affect a specific child.<sup>41</sup>

33 Abdel-Latif and Addai, “The Unseen Vulnerabilities of Unaccompanied African Migrant Children’ in The Africa Migration Report: Challenging the Narrative.”

34 United Nations, “The Refugee Convention 1951.”

35 Diaz, “Gaps in the Refugee Convention Relating to Children.”

36 UN, “UN CRC.”

37 African Union, “ACRWC.”

38 The ACRWC contains explicit focus on certain issues relevant to the African context including factors that disadvantage the girl-child (such as returning to school after pregnancy) and traditional African views that conflict with the rights of a child such as attitudes concerning child marriage, parental rights and child employment.

39 Khan, “Exploring Childhood Statelessness in South Africa.”

40 The UN Committee on the Rights of the Child further expands its focus on children in the context of international migration in General Comment No 22. The Committee refers to procedures which examine the best interests of the child and the necessary components through ‘best interests-assessments’ and ‘best interests’ determinations”

41 The UN Committee on the Rights of the Child further expands its focus on children in the context of international migration in General Comment No 22. The Committee refers to procedures which examine the best interests of the child and the necessary components through ‘best interests-assessments’ and ‘best interests’ determinations”

The **UN Convention on the Rights of the Child (CRC)** (1989) is based on the premise that all human rights, including those of a child (defined as persons up to 18) are indivisible and sets out general principles: **non-discrimination, the best interests of the child, the right to life, survival and development, and the right to be heard**, which, if adhered to, should ensure the respect for the human rights of all children (article 2). This includes refugees, children of migrant workers, unaccompanied and separated migrant children and irregular migrants.

The **African Charter on the Rights and Welfare of the Child (ACRWC)** emphasises the right to education (article 11); the right to health (article 14); a child's right to a name, nationality, and to be registered at birth (article 6).

The right to birth registration and nationality as a basic right is also recognised inter alia in the **Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)** (1979) (Article 9), and the **International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW)** (1990) through which the right to a nationality to children of migrant workers is explicitly stated and guaranteed (Article 29).

The **Global Compact on Refugees (GCR)** and **Global Compact for Safe, Orderly and Regular Migration (GCM)** (2002), also commit signatory countries to taking child-sensitive, whole-of-government, and whole-of-society approaches to migration including access to services for children and their families, sustainable solutions and cross-border cooperation.



**Both Charters call for states to mainstream the provisions of these instruments within their national legislations.**

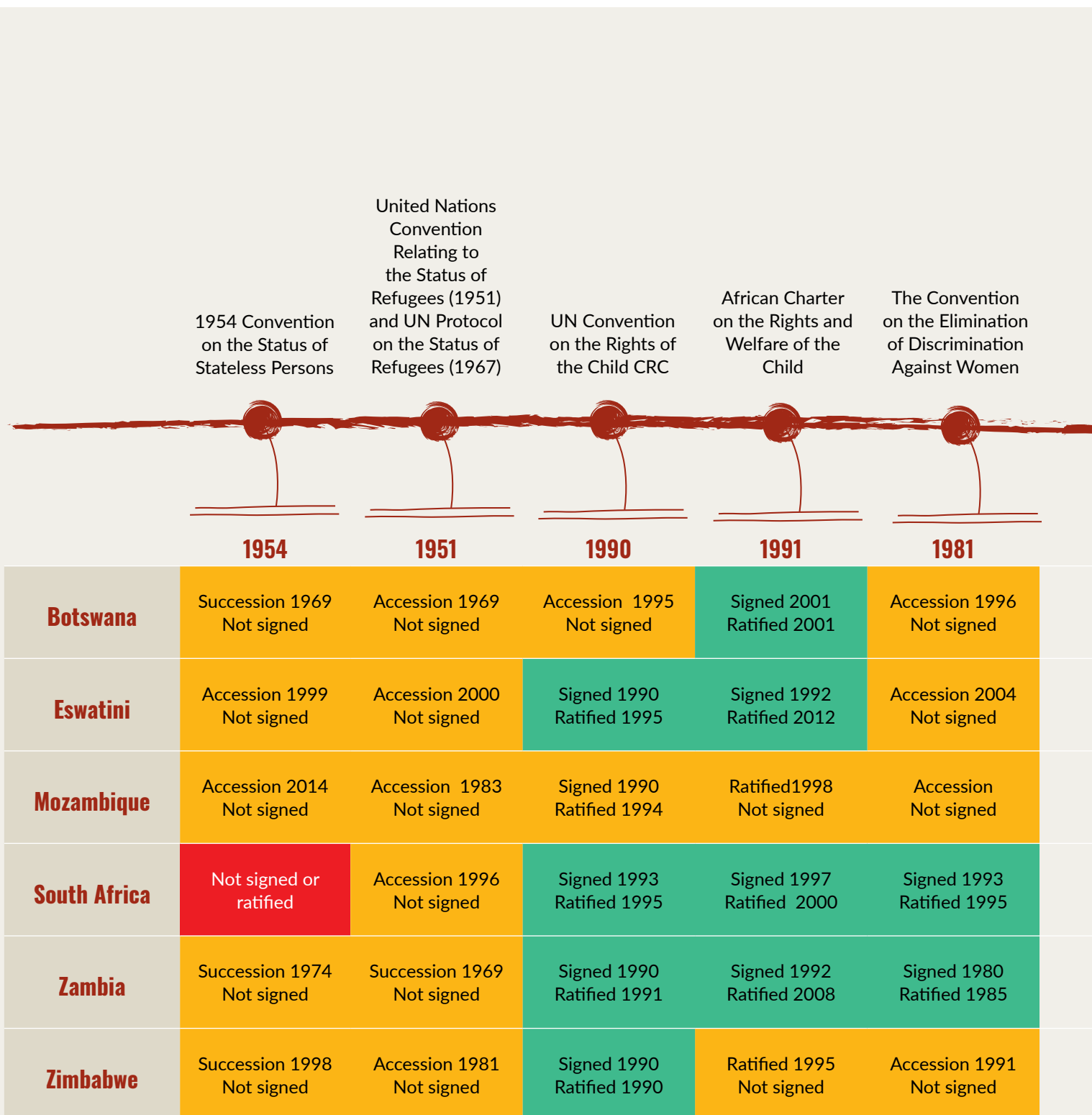
They also ask for the submission of regular reports - to be submitted to the Committee on the CRC (every five years) and to the **African Committee of Experts on the Rights and Welfare of the Child (ACERWC)** (every three years). However, there is no international or regional legal instrument that deals comprehensively with how states should fulfil this general obligation and in fact, it is noted that SADC member states rarely make regular submissions. According to UNICEF, *'many still lack the necessary laws, legal systems, and enforcement mechanisms to protect their children against violence and abuse'*.<sup>42</sup>

42 ISS, "Strengthening the Promotion and Protection of Child Rights in Southern Africa."



**Figure 2: Overview of status of ratifications of international and African Union Human Rights Instruments by the six SADC member states**

**KEY:** **GREEN:** Signed and ratified;  
**ORANGE:** Accession/ratification but not signed;  
**RED:** Not signed



ILO Convention 182 on the worst forms of Child Labour

Convention on the Protection of All Migrant Workers and Members of their Families (1990)

Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption (1993)

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000)

Protocol against the smuggling of migrants by Land, Sea and air supplementing the United Nations Convention against Transnational Organized Crime (2000)

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000)

2000

1990

1993

2000

2000

2000

Ratified 2000

Not signed or ratified

Ratified 2022  
Not signed

Signed 2002  
Ratified 2002

Signed 2002  
Ratified 2002

Signed 2003  
Ratified 2004

Ratified 2002

Not signed or ratified

Ratified 2013  
Not signed

Signed 2001  
Ratified 2012

Signed 2001  
Ratified 2012

Accession 2012  
Not signed

Ratified 2003

Signed 2012  
Ratified 2013

Not signed or ratified

Signed 2000  
Ratified 2006

Signed 2000  
Ratified 2006

Accession 2004  
Not signed

Ratified 2012

Not signed or ratified

Ratified 2003  
Not signed

Signed 2000  
Ratified 2004

Signed 2000  
Ratified 2004

Signed 2002  
Ratified 2009

Ratified 2013

Not signed or ratified

Ratified 2015  
Not signed

Accession 2005  
Not signed

Accession 2005  
Not signed

Signed (not ratified)

Ratified 2000

Not signed or ratified

Not signed or ratified

Accession 2013  
Not signed

Not signed or ratified

Accession 2013  
Not signed

## 2.2 Global guidance for the protection of children on the move

Although not legally binding the Global Compacts are based on and reflect international law and strongly build on the CRC and, if properly implemented could significantly improve the rights of children on the move.<sup>43</sup> The **Global Compact on Refugees (GCR)** calls for a child-centred approach in its implementation and calls on States and relevant stakeholders to: “contribute resources and expertise towards policies and programmes that take into account the specific vulnerabilities and protection needs of unaccompanied and separated children, survivors of sexual and gender-based violence, sexual exploitation and abuse, and harmful practices, and other children at risk”. Specific references to the key principle of the best interests of the child, ‘from its inclusion in relevant legislation, policies and practices, to implementing procedures for determining the best interests of the child when making decisions affecting children’<sup>44</sup> are emphasised.

The GCR also calls for investment in national child protection systems, in order that asylum-seeking and refugee children can receive protection in line with the protections guaranteed to national children such as access to key services including healthcare, safe and nutritious food, and access to civil and birth registration and documentation. This point about birth registration is aligned with target 16.9 of the **Sustainable Development Goal (SDG) 16**, which commits States, by 2030, to provide legal; identity to all, including birth registration.<sup>45</sup> It also draws from the foundational Conventions on Statelessness, namely the **1954 Convention Relating to the Status of Stateless Persons** and the **1961 Convention on the Reduction of Statelessness**.<sup>46</sup>



**These Conventions provide for the necessary laws and actions to prevent statelessness, which for children has been linked to age-related abuses such as early marriages, exploitation in labour, limited freedom of movement and barriers to accessing services and support.**

Without birth registration it is difficult to provide proof of age as a first step towards protecting children and is often necessary in the promotion and realisation of rights.<sup>47</sup> Across the SADC region there is very low ratification of the Conventions on Statelessness and in fact, none of the six countries reviewed have signed or ratified the Conventions. A call to accede to the UN Statelessness Convention is one of the ten key action points in the **UNHCR’s ‘Global Action plan to End Statelessness 2014-2024’**.<sup>48</sup> The ten actions are a part of the guiding framework to be undertaken by states with the support of UNHCR and other stakeholders with a focus on resolving existing situations of statelessness; preventing new cases of statelessness from emerging; and better identifying and protecting stateless persons.

## 2.3 Regional responses to children on the move

The African Union has also focused specifically on statelessness through the drafting of a **Protocol on the ‘Right to Nationality’ and the ‘Eradication of Statelessness’ (2014)** which draws from discussions with the RECs on the risks of statelessness in Africa. The Protocol, however, has not yet been adopted.<sup>49</sup> This also aligns with the SADC Regional Action Plan (RAP) through which an approach towards ending statelessness includes measures and

43 Shuteriqi, “A Guide - Children & the Global Compacts on Refugees and Migration.”

44 Initiative for Child Rights in the Global Compact, “Implementing the Global Compact on Refugees for Children: Examples of Child-Focused Work.”

45 United Nations, “Leaving No One Behind: Equality and Non-Discrimination at the Heart of Sustainable Development. The United Nations System Shared Framework for Action.”

46 According to UNHCR, there were 83 states party to the 1954 Convention and 61 states party to the 1961 Convention in November 2014 when the Campaign to End Statelessness in 10 Years was launched.

47 Khan, “Exploring Childhood Statelessness in South Africa.”

48 UNHCR, “National Action Plan.”

49 African Union, “PAP and UNHCR commit to model law on statelessness in Africa.”

references to existing international instruments The RAP has also informed discussions at a SADC level through The Migration Dialogue for Southern Africa (MIDSA)<sup>50</sup> through which the protection of unaccompanied migrant children and the risks of statelessness is identified as a key issue. Recommendations from MIDSA include that SADC Members States individually and collectively implement proposed actions in relation to unaccompanied migrant children “as well as pursuing preliminary work on statelessness, alternatives to detention and return pending the formal adoption of the Action Plan by SADC.”

**The African Union (AU) Agenda 2063**<sup>51</sup> links child protection directly to the need for advocacy for service providers to incorporate a child health and rights agenda, and the provision of comprehensive services throughout the child’s life as set out in Aspiration 6. Targets for Goal 18 (“Engaged and empowered youth and children”) in the Agenda 2063, aligns with the **Sustainable Development Goal (SDG) 8.7**<sup>52</sup> and includes ending all forms of violence, child labour exploitation, child marriage, human trafficking and recruitment of child soldiers. Prevention and protection measures are implicitly extended to all affected or displaced persons, including citizens, migrants, refugees and asylum seekers.

Article 10 of **The Common African Position (CAP) on the Global Compact for Safe, Orderly and Regular Migration (2017)**<sup>53</sup> commits to ‘promote the development of protection mainstreamed Migration Policy at national level that have the best interests of the child, women, older persons, and person with disability due to the growing number among those on the move while providing them with protection based on their specific needs’ (p.12). The CAP also places emphasis on the vulnerabilities of children to human smuggling and trafficking and Article 17 calls for ‘the creation of national gender and age specific policies to address the trafficking of women and children’ (p.14). It does not however, set out specific protection requirements for children on the move instead predominantly focusing on children as victims of trafficking. **The African Union Commission’s Migration Policy Framework for Africa and Plan of Action (2018-2030)**<sup>54</sup> meanwhile pays extensive attention to ‘the special needs of children, adolescents and youths’ within a migration context including access to ‘gender-responsive and culturally appropriate health care, education and shelter’ that should be ensured through legislative policy.<sup>55</sup>



**The GCR calls for investment in cross-border cooperation through which the coordination of national and international actors working together can support access to care and services, regardless of where a child is.**

Cross-border coordination for children on the move is an essential part of a child protection system ‘to provide a continuum of protection for children on the move’<sup>56</sup>. The United Nations Children’s Fund (UNICEF) defines a child protection system as ‘the set of laws, policies, regulations and services needed across all social sectors – especially social welfare, education, health, security and justice – to support prevention and response to protection-related risks.’<sup>57</sup> Regional bodies and UN agencies, have emphasised the need for Integrated Child Protection Systems (ICPS), which place the child at the mechanism’s core and further promotes the development of the CRC to ensure that international obligations are fulfilled. The importance of this is evident in the strengthening of cross-border collaboration including the development of coordination mechanisms for case management by external actors such as Save the Children in coordination with state and non-state actors such as across the SADC region<sup>58</sup> Across

- 50 IOM, “MIGRATION DIALOGUE FOR SOUTHERN AFRICA (MIDSA) 2021 Reviewing Approaches to Safe, Regular and Orderly Migration in the Context of COVID-19 in the Southern African Region. Experts and Senior Officials Meeting.”
- 51 African Union, “The African Union (AU) Agenda 2063 -.”
- 52 United Nations, “Leaving No One Behind: Equality and Non-Discrimination at the Heart of Sustainable Development. The United Nations System Shared Framework for Action.”
- 53 African Union, “Common African Position (CAP) on the Global Compact for Safe, Orderly and Regular Migration. AU/STC/MRIDP/4(II).”
- 54 African Union Commission, “Migration Policy Framework for Africa and Plan of Action (2018 – 2030).”
- 55 African Union Commission.
- 56 Initiative for Child Rights in the Global Compact, “Implementing the Global Compact on Refugees for Children: Examples of Child-Focused Work.”
- 57 United Nations Children’s Fund, “Child Protection Systems Strengthening. Approach, Benchmarks, Interventions.”
- 58 Walker and Gandar, “Documenting the Impact of Cross-Border Case Management for Children on the Move in Southern Africa,” 2022; Digital, “Cross-Border Protection of Children on the Move in East and Southern Africa.”

SADC bilateral and tripartite agreements including Standard Operating Procedures (SOPs) and Memorandums of Understanding (MOUs) between neighbouring countries have sought to harmonise procedures across borders to address the protection needs of children on the move.<sup>59</sup> Mozambique, for example has agreements with Zambia and South Africa while Zambia has agreements with Zimbabwe, Mozambique, and Malawi (see also 4.5.3).

However, despite the role of these external initiatives few legal and policy frameworks at local, national and regional level *'take the specific needs and vulnerabilities of migrant children into account'* and, even where they do, they are often poorly implemented.<sup>60</sup>



Therefore the **failure of Regional Economic Committees (RECs) overall to engage with child rights and child protection in regional migration policies to ensure that rights and protection are strengthened both within and across national borders exposes children on the move to marginalization and protection risks.**



<sup>59</sup> Walker and Gandar, "Documenting the Impact of Cross-Border Case Management for Children on the Move in Southern Africa," 2022.

<sup>60</sup> Crock and Benson, "Central Issues in the Protection of Child Migrants," 21.





# A REVIEW OF LEGAL FRAMEWORKS FOR PROTECTING CHILDREN ON THE MOVE ACROSS SADC



### 3.1 The right to protection for children on the move in SADC

Established in 1992 SADC is based on a treaty that states “the vision of SADC is that of a common future within a regional community that continue to ensure socio-economic wellbeing, freedom, social justice and peace.”<sup>61</sup> To facilitate its work and common understanding of development priorities SADC has developed priority policy commitments in the form of treaties, protocols and declarations which are operationalized through the 15-year Regional Indicative Strategic Development Plan (RISDP) and the Strategic Indicative Programme of the Organ on Politics, Defense and Security (SIPO) adopted in 2004.

Most issues affecting the child in the SADC region are cross-cutting and although they can be located in the different thematic concerns of the regional body there is no one instrument on child protection for the region. In fact, SADC’s approach to protecting the rights of children including children on the move is captured primarily in broad human rights related policies and declarations and are only relevant to child protection in that the policies protect human rights more generally. While this may lead to positive impacts on child protection outcomes it does not specifically set out measures for the protection of children on the move. Examples of such regional agreements include the **Charter of the Fundamental Social Rights in SADC (2003)**<sup>62</sup>, the **SADC Protocol on Education and Training**<sup>63</sup>, and the **SADC Protocol on Gender and Development (2008)** and **Amendments to the SADC Protocol on Gender and Development (2016)**.<sup>65</sup>

The **SADC Gender-Based Violence Model Law**, provides more specific guidance for ensuring that the rights of vulnerable women and children, which includes ‘migrant and unaccompanied migrant children, refugees or asylum seekers, stateless persons and other vulnerable persons’ are given ‘special attention and assistance by the Government.’<sup>66</sup> As a guiding tool the model law, developed by SADC Parliamentary Forum aims to provide input for member states’ policy content and recommendations on best practice legislative provisions for inclusion in national law on GBV.

There is relatively wide-spread commitment to addressing migration such as in the **2005 Draft Protocol on the Facilitation of the Movement of Persons in SADC**<sup>67</sup>; the **Harmonised SADC Regional Strategic Plan on Combating Illegal Migration, Smuggling of Migrants and Trafficking in Persons**<sup>68</sup>; and the **SADC Labour Migration Policy Framework, 2013**<sup>69</sup> Each of these agreements is directly quoted or mentioned in a range of the national documents reviewed here (see Section 3.3 Country reviews: Botswana, Eswatini, Mozambique, South Africa, Zambia and Zimbabwe). There is, however, no such reflection of a regional commitment to child protection in the national policy documents reviewed and the extent of the challenge for regional integration is exposed by the fact that the **Draft Protocol on the Facilitation of the Movement of Persons in SADC** (which was originally called ‘the Protocol on the Free Movement of Persons’) to date has not been adopted and has been challenged by a number of Member States.

61 SADC, “Southern African Development Community SADC Overview.”

62 SADC, “Charter of the Fundamental Social Rights in SADC.”

63 SADC, “SADC Protocol on Education and Training.”

64 The Objectives of the Protocol on Gender and Development are, among others, to provide for the empowerment of women, to eliminate discrimination and to achieve gender equality and equity through the development and implementation of gender-responsive legislation, policies, programmes and projects. It also seeks to harmonise the various international, continental and regional gender equality instruments that SADC Member States have subscribed to such as the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Beijing Declaration and its Platform of Action.

65 SADC, “Agreement Amending the SADC Protocol on Gender and Development, 2016 - Google Search.”

66 SADC Parliamentary Forum, “SADC Model Law on Gender-Based Violence.”

67 Maunganidze and Formica, “Freedom of Movement in Southern Africa: A SADC (Pipe) Dream?”; Oucho and Crush, “Contra Free Movement: South Africa and the SADC Migration Protocols.”

68 SADC, “Harmonised SADC Regional Strategic Plan on Combating Illegal Migration, Smuggling of Migrants and Trafficking in Persons.”

69 SADC, “SADC LABOUR MIGRATION POLICY. Draft.”



The main objective for the SADC of **promotion of economic development and regional integration** is complicated by the distinctly different levels of development among Member States across the SADC region. As one of the most unequal regions of the continent intraregional migration patterns impact development and also limits the possibility of a standardised regional approach to address migration challenges.<sup>70</sup>

The needs of some of SADC's most marginalised and vulnerable children are addressed through the **Minimum Package of Services for Orphans and Vulnerable Children and Youth (OVC & Y)**<sup>71</sup>, which is one of only two SADC policies that engages substantially with migration in the context of child protection and child protection in the context of migration. The minimum package is guided by a framework of six key core service areas and provides locally relevant, age and gender specific recommendations including a continuum of services from pre-birth to twenty-four years. The package aims to foster collaboration between and within different service delivery sectors to address the continuum of needs of OVCY. It promises to reduce the number of children and youth who 'fall through the cracks' of the service delivery systems. **The SADC Declaration on Youth Development and Empowerment (2015)**<sup>72</sup> specifically refers to safeguarding the human rights, dignity and wellbeing of children and youth 'in accordance with international commitments on children and youth' as well as 'facilitating cross-border mobility' and 'putting in place measures to combat child and youth trafficking and addressing the negative impact of migration such as xenophobia and the welfare needs of child and youth migrants, displaced populations and refugees.'<sup>73</sup> Both of these policies promote a coordinated, holistic and comprehensive approach to children and young people and aim to address some of the current gaps in policy- including where children on the move are impacted.

**The Regional Indicative Strategic Development Plan (RISDP) 2015-2020**<sup>74</sup> is intended to address mixed migration in the region and has four thematic areas prioritised for action, namely protection of unaccompanied migrant children, statelessness, alternatives to detention and voluntary return.<sup>75</sup> Both the **SADC Declaration on Youth Development and Empowerment (2015)**<sup>76</sup> and **SADC Youth Employment Promotion Framework (2016)**<sup>77</sup> respond to the realities of youth labour migrants and focus on protection from exploitation, access to education, shelter and ensuring child rights.

Figure 3: provides a summary of the review of key SADC polices and frameworks in terms of engagement with child protection and migration. The extent to which each policy engages with child protection within a context of migration and with migration from the perspective of child protection is indicated.

The table shows that overall, SADC frameworks do not deal with the issues of children generally or children on the move specifically in a systematic and deliberate manner. Of all the SADC protocols reviewed there is no adequate approach to the issues that children on the move face and nor adequate guidance for states on how to deal with children on the move. This is evidenced by the absence of child rights and protection from regional migration policies, and failure to recognise the heightened risks faced by migrant children in child protection policies.

70 While South Africa and Namibia are classed as upper-middle income countries, Mozambique and the Democratic Republic of Congo (DRC) rank near the bottom in the Human Development Index

71 SADC, "Minimum Package of Services for Orphans and Vulnerable Children and Youth (OVC & Y)."

72 SADC, "SADC Declaration on Youth Development and Empowerment (2015)."

73 SADC.

74 SADC, "Regional Indicative Strategic Development Plan (RISDP)."

75 ACERWC, "Mapping Children on the Move within Africa," 87.

76 SADC, "SADC Declaration on Youth Development and Empowerment (2015)."

77 SADC, "SADC Youth Employment Promotion Framework (2016)."

**Figure 3: Overview of status of regional policies and frameworks- level of engagement with child protection and migration**

| Policies/Framework   | Status                       | Addresses child protection | Addresses migration |
|--|------------------------------|----------------------------|---------------------|
| Development of a SADC Minimum Package of Services for Orphans and Vulnerable Children and Youth  | Signed 2015                  | Comprehensive engagement   |                     |
| SADC's Declaration on Gender and Development and its addendum on the Prevention and Eradication of Violence Against Women and Children | Approved 1997                |                            | No engagement       |
| SADC Protocol on Gender and Development 2008   | Approved 2008 & revised 2016 |                            |                     |
| Code of Conduct on Child Labour (Revised) Accelerating Action to Eradicate Child Labour In SADC (2022)                                 | Signed 2022                  |                            |                     |
| SADC Protocol on the Facilitation of the Movement of Persons (2005)  | In draft                     | Limited engagement         |                     |
| SADC Declaration on Youth Development and Empowerment (2015)   | Signed 2015                  |                            |                     |
| SADC Youth Employment Promotion Policy Framework (2016)  | Signed 2016                  |                            |                     |
| SADC Youth Empowerment Policy Framework (2021-2030)  | Approved                     |                            |                     |
| SADC Model Law on Eradicating Child Marriage and Protecting those Already in Marriage (2016)   | Adopted 2016                 |                            |                     |
| SADC Vision 2050 (2020)  | Approved                     |                            |                     |
| SADC Regional Indicative Strategic Development Plan (RISDP) (2020)   | Approved                     |                            |                     |
| SADC Model Law on Gender-Based Violence (2022)   | Approved                     |                            |                     |

### 3.1.1 Regional Initiatives to strengthen policy frameworks

A number of regional initiatives have been launched by external organisations such as IOM and UNHCR to support SADC in strengthening its regional approach particularly in regards to policy alignment with the Global Compact and SDGs. **The Migration Dialogue for Southern Africa (MIDSA)**<sup>78</sup> is a non-binding regional consultative process (RCP) focused on regional cooperation with IOM as the Secretariat (see also point 2.3). Established in 2000 MIDSA includes all SADC Member States and aims to inter alia: strengthen migration governance, and harmonise immigration policy and legislation. It also has a set of focus areas including unaccompanied migrant children/separated children. The MIDSA 2015 meeting addressed migration management with a particular focus on protection of unaccompanied migrant children. Through dialogue among ministers responsible for Home Affairs in the SADC region a ministerial statement that asserts the SADC's governments' recommendation that the

<sup>78</sup> IOM, "MIGRATION DIALOGUE FOR SOUTHERN AFRICA (MIDSA) 2021 Reviewing Approaches to Safe, Regular and Orderly Migration in the Context of COVID-19 in the Southern African Region. Experts and Senior Officials Meeting."

regional action plan on mixed and irregular migration be formally submitted to the SADC Secretariat for adoption and subsequent implementation by Member States, with an initial focus on the UMC protection components. Key recommendations include that Member States individually and collectively should:



**“Develop and implement a regional policy framework and national policy frameworks, including the development of Identification and Referral guidelines and a Case Management System, and to engage in awareness-raising and training activities to respond to the challenges of providing protection to unaccompanied migrant children. These actions should be based on the ‘best interests of the child’, as provided for in the appropriate international and regional instruments”<sup>79</sup>**

The Regional Network for Eastern and Southern Africa,<sup>80</sup> is a platform, bringing together IOM Regional Office for Southern and Eastern and Horn of Africa and other United Nations agencies to support the implementation, follow-up and review of the Global Compact with an emphasis is on a whole-of-government approach to achieve sustainable development outcomes for all. In 2020 UNHCR and SADC established a **Five-year Joint Action Plan (2020-2024)**, which has already fostered several new joint initiatives, including a conference on GRF pledge implementation and the development of a draft action plan on asylum capacity, livelihoods, education, energy and statelessness.<sup>81</sup>

While the RISDP and MIDSA set out clear regional initiatives which reference global instruments and examples it is evident from the above that the region – and member states - still needs concrete steps set out in policy and regional frameworks that explicitly state how to address key challenges such as risks of statelessness, documentation for children on the move and prioritising the needs of vulnerable children within the larger migration context. This is seen, for example in the regional approach to gender as illustrated through the **SADC Protocol on Gender and Development, the Gender Protocol, and Model law on Gender-Based Violence** which ‘encompasses commitments made in all regional, global and continental instruments for achieving gender equality and enhances these instruments by addressing gaps and setting specific measurable targets where these do not already exist.’ A similar protocol on child protection which clearly addresses the risks faced by children on the move could also streamline the various child protection and migration obligations and make it easier to monitor compliance among SADC states.

The call for a Child Rights Protocol at SADC level responds to the need for normative standards for the realisation of child rights; *“The Protocol will not be an end in itself; it will provide impetus to member states to fulfil their obligations as duty bearers for children’s rights. It will provide a premise for children as rights claimers and those in solidarity with them to demand for the fulfilment of their rights.”*<sup>83</sup> A **Protocol on Children’s Rights**<sup>84</sup> has been drafted by the Child Rights Network for Southern Africa (CRNSA), the regional representative of national children’s rights networks in Southern Africa and aims to address the evident lack of progress by most SADC countries in meeting targets set under non-binding agreements like the UNCRC and ACRWC.

The protocol is both a policy documents and an implementation framework for the realisation of children’s rights and will be binding to ensure that member states have an obligation and are held accountable. Articles 14 and 15 of the Protocol provides for Children on the Move and Children as victims of trafficking and modern slavery. Article 14 focuses on a number of key areas including establishing and strengthening cross border child protection

79 IOM, “Report and Recommendations of the MIDSA Conference on Addressing Mixed and Irregular Migration in the SADC Region: Protection of the Unaccompanied Migrant Child.”

80 IOM, “Southern Africa Regional Strategy 2020-2024.”

81 SADC, “SADC and UNHCR Commit to Strengthen Cooperation Based on Shared Priorities, Values and Strategies | SADC.”

82 ISS, “Strengthening the Promotion and Protection of Child Rights in Southern Africa.”

83 Chibwana, “Why the SADC Needs a Children’s Protocol.”

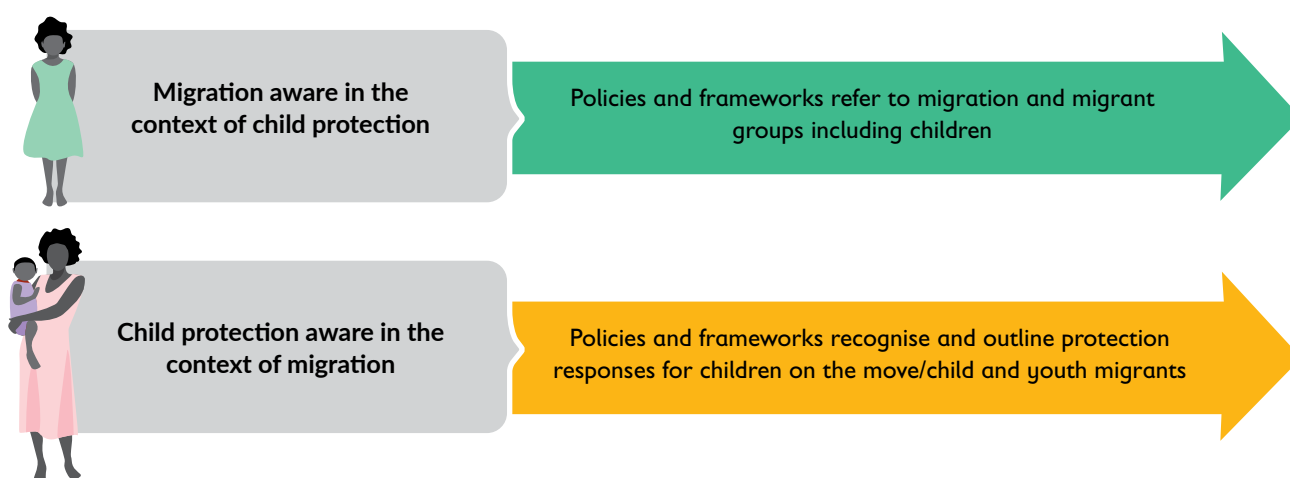
84 CRNSA, “SADC Protocol on Children’s Rights (Final Draft).”

systems that facilitates cross border coordination, referrals, identification, child-friendly repatriation and smooth integration into the local child protection system in line with the Migration Dialogue for Southern Africa (MIDSA) framework. Article 14 also refers to ensuring an expeditious response to cases relating to children on the move including unaccompanied and separated migrant children and that children on the move are treated as national children by state parties. Article 15 refers to the

## 3.2 Review of regional child migrant protection policy: Botswana, Eswatini, Mozambique, South Africa, Zambia and Zimbabwe

Like all SADC member states Botswana, Eswatini, Mozambique, South Africa, Zambia and Zimbabwe have shown their unequivocal commitment to children’s rights through ratification of the CRC, and ACRWC. Most of these countries have also domesticated provisions of these instruments into national legislation although these, do not cover all aspects of the Conventions. In terms of migration and especially risks posed by forced migration two of the six countries have signed the 1954 Convention on the Status of Stateless Persons while Mozambique is the only country to have signed the Convention on the Protection of All Migrant Workers and Members of their Families (1990). Many of the domestic policy documents reviewed in what follows make specific mention of these continental agreements, especially the African Charter on the Rights and Welfare of the Child, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, and the 1981 African Charter on Human and People’s Rights. Botswana is the only country of the six to abstain from the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa.

### 3.2.1 Zambia

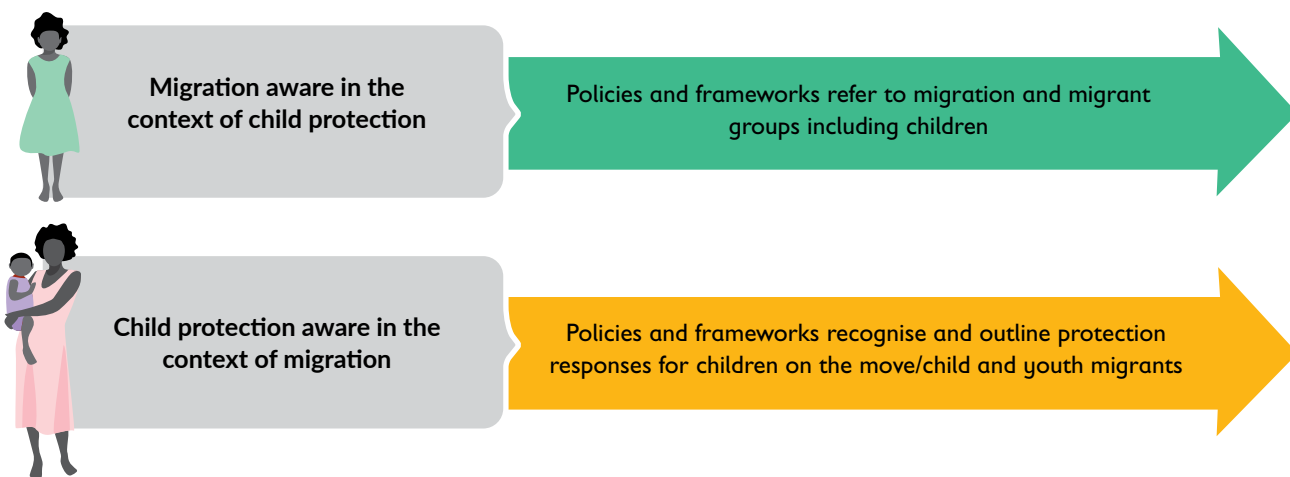


Zambia has the highest degree of integration between migration and child protection policy frameworks of the six countries reviewed here. Half of the child protection policy documents reviewed made substantial provisions for children on the move, and a third of the migration policy documents made substantial provision for the protection of children on the move. The child-focused policy documents do much of the heavy lifting when it comes to protecting children on the move – for example, the recently enacted **Children’s Code Act (2022)**.<sup>85</sup> This Act devotes a whole section to addressing the needs of children on the move and affirms the children’s right to a name and an identity. It also creates an obligation on the state to help children who have been denied this right.

85 The Government of Zambia, “The Children’s Code Act, 12 of 2022.”

The tendency to pay attention to children on the move only when they are victims of trafficking is apparent in the migration framework overall: only one of the documents reviewed paid specific attention to the needs of children on the move who are not victims of trafficking. **The Guidelines on Protection Assistance for Vulnerable Migrants**<sup>86</sup> makes a distinction between victims of trafficking and other categories of children on the move in its definition of 'migrants of concern', which includes rejected asylum seekers, victims of trafficking (including 'presumed' trafficked persons and 'potential' trafficked persons), unaccompanied and separated children, stranded irregular migrants, stateless migrants, and other vulnerable migrants in need of protection assistance.

### 3.2.2 South Africa



Of the six countries reviewed here, South Africa has the second highest degree of integration of child protection and migration provisions in the respective policy documents. Half of the key policy documents that focus on children and child protection substantially address the needs of migrant children in their provisions. Just over ten percent of the policy documents that focus on migration make substantial provisions for the protection of migrant children.

Section 28(2) of **The South African Constitution**<sup>87</sup> requires that a child's best interests have paramount importance in every matter concerning the child and that, 'Every child has the right to: A name and a nationality from birth. Family care or parental care, or to appropriate alternative care when removed from the family environment.' (Section 28). Chapter 9 of **The Children's Act 38 of 2005**<sup>88</sup> regulates the treatment of children deemed to be in need of care and protection. The Act provides that undocumented migrant children may be processed, but not issued with South African birth certificates. In the case of refugee undocumented children, they may be assisted with application for asylum. However, the Act does not provide for undocumented migrant children whose parents are not refugees which puts children at risk of reaching the age of majority without any documentation.

The migration-focused policy documents reviewed here address both irregular and mixed migration and the specific needs of irregular migrants as well as regular migration. Yet, children do not feature prominently in these policy documents except for provisions made for the care of children victims of trafficking found in South Africa particularly in the **Prevention and Combatting of Trafficking in Persons Act (2013)**.<sup>89</sup> Only half of the migration policy documents reviewed provide a definition of vulnerable migrants that includes children. **The Basic Conditions of Employment Act of 1997**<sup>90</sup>, for example specifies that no child under 15 may work but there is no mention of

86 Government of Zambia, "National Referral Mechanism (NRM) for the Protection of Vulnerable Migrants in Zambia."  
 87 South Africa, South Africa, and Department of Justice and Constitutional Development, *The Constitution of the Republic of South Africa, 1996*.  
 88 Republic of South Africa, "The Children's Act 38 of 2005."  
 89 Republic of South Africa, *Prevention and Combating of Trafficking in Persons Act*.  
 90 The Republic of South Africa, "Basic Conditions of Employment Act (Act No.75 of 1997)."

migration at all. Children on the move that *cannot* be identified as victims of trafficking are largely invisible within the migration policy framework. The migration policy framework does not provide substantive protection for children on the move itself, nor do policy documents respond to the unique vulnerabilities faced by children on the move, but rather relies on the child protection policy framework which, to some extent, takes into consideration the specific vulnerabilities of migrant children generally.

The **National Child Care and Protection Policy (2019)**<sup>91</sup> provides the strongest example of the integration of child protection and migration. Addressing the need for a clear, evidence-based child protection framework the policy engages with the challenges faced by migrant children in South Africa, outlining care and protection measures as well as durable solutions to the situation of migrant children in the country. The document recognises the responsibility of the Department of Home Affairs (DHA) to provide documentation to children, including unaccompanied and separated migrant children, to ensure their care and protection. The document also recognises the barriers that a lack of documentation poses for unaccompanied and separated migrant children and outlines the responsibilities of the DHA and Department of Social Development (DSD) to address this issue.

The policy is also supported by **Guidelines on Unaccompanied and Separated Migrant Children (USMC) in South Africa and South African Children in Distress in Other Countries**<sup>92</sup>. The guidelines are intended to assist the Department of Social Development (DSD) in fulfilling their obligations with regards to separated and unaccompanied foreign children in South Africa and are drafted with reference to The UNCRC and The Children’s Act (2005) and Children’s Amendment Act (2008) which provides for the protection of children and enables statutory intervention by the Children’s Court if appropriate.



**At an international level, South Africa has signed and ratified all the major migration agreements and protocols including the Global Compact for Safe, Orderly and Regular Migration.**

At the regional level the policy documents reviewed only make reference to two agreements and protocols: The 2005 SADC Protocol on the Facilitation of the Movement of Persons (draft), and the SADC Regional agreement on Trafficking in Persons.

Overall, the South African child protection and migration policy frameworks are better integrated than those of many of the other countries in the region. However, there are still significant gaps, particularly in terms of providing for the protection for child on the move in policies that address migration.

### 3.2.3 Zimbabwe



Migration aware in the context of child protection

Policies and frameworks refer to migration and migrant groups including children



Child protection aware in the context of migration

Policies and frameworks recognise and outline protection responses for children on the move/child and youth migrants

91 Department of Social Development, “National Child Care and Protection Policy.”

92 Department of Social Development, Republic of South Africa, “Guidelines on Unaccompanied and Separated Migrant Children (USMC) in South Africa and South African Children in Distress in Other Countries.”



The new **Constitution of Zimbabwe** (2013) with amendments (2017) <sup>93</sup> takes a human-rights based approach and provides for a range of freedoms and rights for citizens and non-citizens. The UNCRC and ACRWC are expressed in section 81 in the Declaration of Rights of the Constitution through which children's rights to: be heard; protected from economic and sexual exploitation; not to be detained except as a measure of last resort and the paramourcy of a child's best interests in every matter concerning the child amongst others are guaranteed. Under the Constitution the right to state-funded education is restricted to citizens only, which if interpreted restrictively goes against the Article 2 of the CRC.

Although Zimbabwe has ratified some key migration-related international treaties and conventions there is very limited integration of child protection and migration policy frameworks in Zimbabwe. Policy documents that focus on children and child protection are almost completely silent on children on the move. The same goes for policy documents that focus on migration, which are almost entirely silent on child protection considerations. Only the **National Action Plan to Combat Trafficking in Persons, 2019-2021** <sup>94</sup> includes a short section that makes reference to the principles of child protection and acting in the best interests of children, but there are no provisions in the action plan to operationalise these principles.

When it comes to documentation and the risk of statelessness, there is no substantial policy structure in place to ensure that undocumented children on the move are provided with some form of documentation or a similar plan to mitigate the risk of statelessness. **The Refugee Act (2001)** <sup>95</sup> makes provision for the issuing of identity and travel documents to refugees in Zimbabwe, but children are not provided for specifically and ensuring continuity of service provision to stateless children is not addressed. The Act only refers to families of recognised refugees and makes no reference to unaccompanied and undocumented children. **The Births and Deaths Registry Act** <sup>96</sup> does not provide for unaccompanied and undocumented children and there is no legal framework that provides for them in obtaining citizenship. Protection for unaccompanied and undocumented children, however is provided by **The Children's Act** <sup>97</sup>, which defines a 'child in need' as a child or young person who is destitute or has been abandoned or both of whose parents are dead or cannot be traced and who has no legal guardian. **The Children's Amendment Bill (2022)** <sup>98</sup> brings important legislative changes to the existing Children's Act 2001, with amendments that bring it in line with the Constitution and international conventions. A key change includes broadening the meaning of 'child in need of care' to cover various situations, such as children at risk of forced marriage, pregnant children and unaccompanied children.



**There are also several provisions that require alignment with the Constitution and international law. For instance, sections 19 (2) (b) and (3) of the Constitution implore the State to adopt measures and policies to ensure that children have shelter, basic nutrition, health care and social services.**

93 Republic of Zimbabwe, "Zimbabwe's Constitution of 2013 with Amendments through 2017."

94 Government of Zimbabwe, "Zimbabwe National Action Plan to Combat Trafficking in Persons 2019-2021."

95 Government of Zimbabwe, Refugees Act.

96 Republic of Zimbabwe, "The Births and Deaths Registry Act (Chapter 5:02)."

97 The Government of Zambia, "The Children's Code Act, 12 of 2022."

98 Republic of Zimbabwe, "Zimbabwe - Children's Amendment Bill H.B. 12, 2021 - Disability Rights Education & Defense Fund."

### 3.2.4 Botswana



Migration aware in the context of child protection

Policies and frameworks refer to migration and migrant groups including children



Child protection aware in the context of migration

Policies and frameworks recognise and outline protection responses for children on the move/child and youth migrants

Botswana has very limited integration between the two policy domains too. Only one of the three migration policy documents reviewed – **Anti-Human Trafficking Act of 2014**<sup>99</sup> – made provisions for the care and protection of children on the move. This continues the trend of children on the move being more or less invisible in migration policy unless they are victims of trafficking. In the child protection policy documents, there is almost no mention of children on the move at all except for the **Children’s Act of 2009**<sup>100</sup>, which includes basic provisions for ‘displaced and refugee children’.

In addition none of the documents reviewed included children on the move in their definition vulnerable groups in need of care and protection. Migration policy documents do not identify children in their list of vulnerable groups and child protection policy documents do not make any reference to children on the move as being specifically vulnerable. Significantly the **Refugees (Recognition and Control) Act of 1968**<sup>101</sup> does not make any mention at all of children or minors. **The Immigration Act (2011)**<sup>102</sup> makes only limited reference to children but only with regard to their status as dependents as adults. There is no recognition in either of these key documents of the specific vulnerability of children on the move.

### 3.2.5 Mozambique



Migration aware in the context of child protection

Policies and frameworks refer to migration and migrant groups including children



Child protection aware in the context of migration

Policies and frameworks recognise and outline protection responses for children on the move/child and youth migrants

99 Government of Botswana, “Anti Human Trafficking Act, 2014 (Act No. 32 of 2014).”


100 “Botswana-Childrens-Act-2009.Pdf.”

101 Republic of Botswana, “Refugees (Recognition and Control) Act of 1968.”

102 Mbowa, “National Plan of Action for Children in Eswatini 2023-2027.”

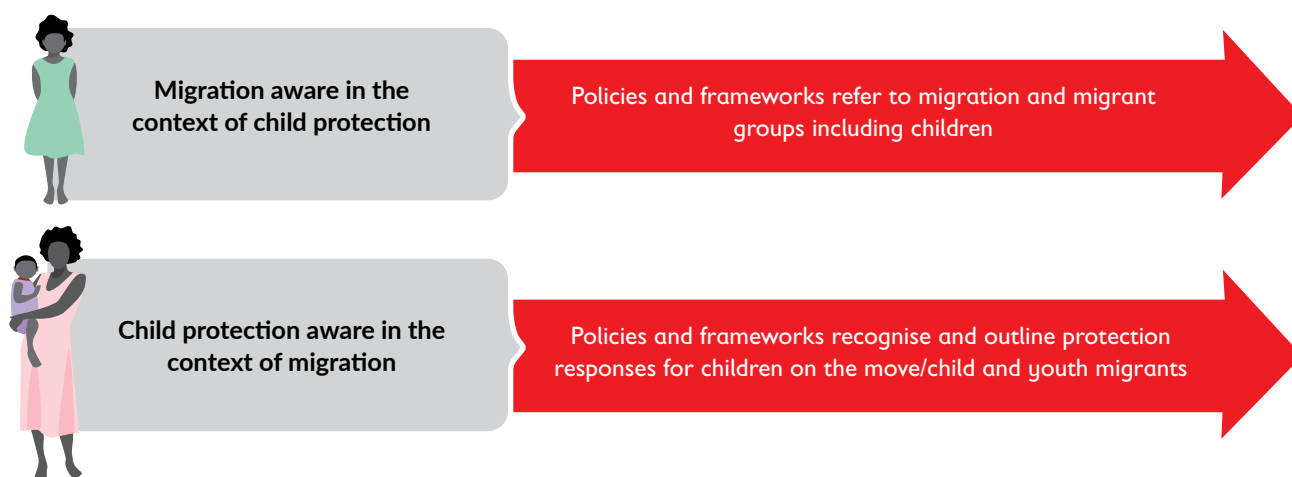
The assessment of Mozambique’s child protection and migration policy landscape is gathered from a limited in the number of documents due to the lack of translated policies available. Mozambique’s child protection policies are broadly aligned to the CRC with the constitution stating that “all children have the right to protection [provided by] the family, society and the State ... and in particular orphans and disabled and abandoned children, shall be protected by the family, by society and by the State against all forms of discrimination, ill treatment and the abusive use of authority within the family and in other institutions”.

The **Agenda 2025 (2003)** <sup>103</sup> is a useful touchstone document as it lays out the countries policy strategy. This document has limited engagement with child protection specifically as it focusses primarily on health and education. No explicit mention of child protection is made in this document. There is also no explicit mention of irregular migration or children on the move. In fact the document focuses almost exclusively on internal migration and selective migration of skilled foreign nationals.

 **In addition to these more general documents the child protection and migration policy documents we reviewed also showed limited integration of the child protection and migration policy domains.**

Policy documents that focus on child protection such as the **Law on Promotion and Protection of the Rights of the Child (2008)** <sup>104</sup> are silent on migration issues, while policy documents that focus on migration such as the **Refugee Act of 1991** <sup>105</sup> are silent on child protection. This is consistent with what we have observed in many of the other countries included in this review. The recently passed **National Action Plan to Combat Trafficking in Persons, 2023-2027** <sup>106</sup> is composed of six areas of intervention, each of which has its own strategic objectives and include actions to raise awareness and prevent trafficking in persons and to improve legislation to strengthen prevention, victim assistance and combating trafficking in persons, investigation and accountability of perpetrators. A focus on cooperation and integration of institutions and fostering coordination between the actors involved in preventing and combating trafficking in persons and includes cross border agreements.

### 3.2.6 Eswatini



103 Committee of Counsellors, “Agenda 2025: The Nation’s Visions and Strategies. Mozambique.”

104 Committee of Counsellors.

105 The Ministry of Home Affairs, “Mozambique: Act No. 21/91 of 31 December 1991 (Refugee Act).”

106 Republic of Mozambique, “PLANO DE PREVENÇÃO E COMBATE AO TRÁFICO DE PESSOAS – REPÚBLICA DE MOÇAMBIQUE – PNPCTP 2024-2028.”

Eswatini has no substantial integration of child protection and migration policy frameworks. There are limited references to internally displaced and refugee children in the **National Plan of Action for Children in Eswatini 2023-2027**<sup>107</sup> and the **Children Protection and Welfare Act of 2012**<sup>108</sup> stipulates that “a child shall not be discriminated against on grounds of ... refugee status or any other status”. This limited integration between the two policy domains means that although there are policy frameworks that address the needs of both migrants and children, children on the move are at risk of falling through the gaps between these two policy domains as their unique situation is not addressed specifically by either of the two policy domains.

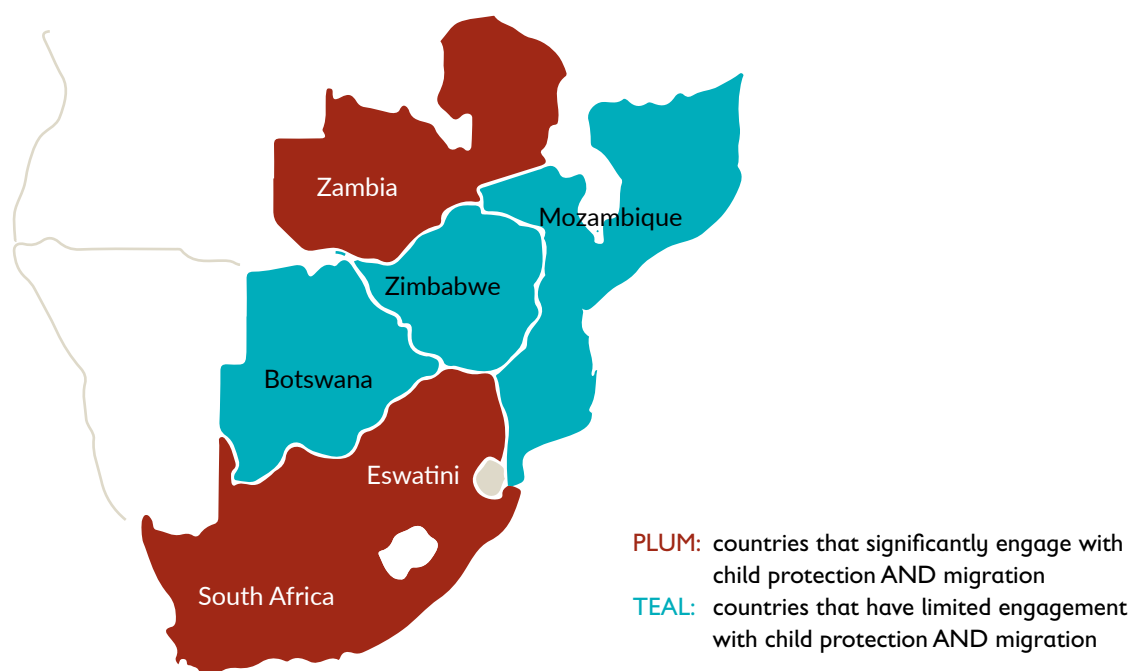
### 3.3 Summary of regional child migrant protection policy review

The assessment of these six SADC member states indicates that there is a **trend towards increasing migration-aware legislation and policy across the board but that child protection and child rights within the context of migration are limited.**

All six member states reviewed have further domesticated some of these provisions of the CRC and ACRWC through child protection instruments such as a Children’s Act. However, where there is consideration of child protection and child rights this is done within the parameters of a national focus on children and youth but not in relation to migration or children on the move. As with the regional framework there is limited consideration at a national level of child rights commitments made in all global and continental instruments in general and of child migrant rights specifically. This means that across the SADC countries there is a weak child rights governance system required to promote and protect the rights of all children. Moreover, children on the move *are not* adequately protected by law and policy and there are significant gaps in addressing the risks and vulnerabilities they face especially with regards to accessing documentation.

A summary of the extent to which each of the six Member States engages with both child protection and migration policies is illustrated below in Figure 4: Heat map of Southern Africa: level of engagement with Child protection and Migration policies.

**Figure 4: Heat map of Southern Africa: level of engagement with Child protection and Migration policies.**



<sup>107</sup> Kingdom of Eswatini, “National Plan of Action for Children in Eswatini 2023-2027 - Google Search.”

<sup>108</sup> “Child Rights Barometer Eswatini.”



# FINDINGS FROM POLICY REVIEW AND KEY INFORMANT INTERVIEWS



## 4.1 The lack of access to documentation initiates a cascade of protection gaps

Despite the widespread commitment at both continental and global level to the protection of the rights of refugees, irregular migrants and children, the findings from the review of regional and national level policies reveals limited operationalisation of these commitments. There are striking inconsistencies between what is set out in international human rights law, regional protocols and guidelines, domestic policies in SADC states and what is happening on the ground which, weaken protection for children on the move.

The principle of non-discrimination is addressed constitutionally across all six countries and in some key child protection policies such as Eswatini's **Children Protection and Welfare Act of 2012** which includes a clause on non-discrimination towards children specifically including discrimination based on their refugee status. Botswana's **Children's Act, 2009**<sup>109</sup>, also states that *'no decision or action shall be taken whose result or likelihood is to discriminate against any child on the basis of ...colour, race, ethnicity, place of origin, language'* This can be interpreted to include children on the move. However, despite these exceptions the core principles of the CRC and other key documents such as the Global Compact on Refugees find limited expression in national migration and child protection policy frameworks and have not filtered down to the level of implementation.

### 4.1.1 Birth Registration and Identity Documents

Recognising the importance of the interrelationship between the right to birth registration and nationality and the role that these rights play in preventing statelessness the ACERWC adopted a **General Comment**<sup>110</sup> on Article 6 of the ACRWC (the African Children's Charter), which imposes an obligation on State Parties to take legislative measures to prevent statelessness among children. The General Comment responds to a widespread failure of states to implement the right to birth registration alongside the challenges posed by the problem of unregistered births across Africa and sets out key principles and explanations. These include establishing a functioning, well managed, resourced, integrated, universal, free and accessible birth registration system with a view of preventing statelessness.

The principle of universality of birth registration, according to the committee, means *'the right to birth registration is for all the children, anywhere and anytime'* (para 50) while *free and accessible birth registration refers to 'universal, accessible, simple, expeditious and effective registration procedures without discrimination of any kind.'*<sup>111</sup> Yet, none of the policy documents reviewed in this assessment, make specific provision for the registration of non-national children born in a destination or transit country. Key informants consistently highlighted the protection gaps for children on the move arising from the lack of access to documentation, especially birth registration with statements such as, *"children on the move face a range of issues stemming from one - birth registration"*(KI, Zimbabwe 02) and *"protection risks are felt most fundamentally around documentation and the kind of gaps in policy for diverse groups of migrant children coming into South Africa"* (KI, South Africa 03).

Key informants also highlighted the inconsistencies between what is set out in international human rights law, regional protocols and guidelines, domestic policies in SADC states and what is happening on the ground. Even where there is inclusive legislation and policy, there is often a disconnect with implementing practice in the countries under review, impeding the effective protection of children and evident in the challenges described by key informants that migrant children face in accessing health, education and documentation. In Zambia, a key informant pointed out that a lack of documentation for all migrants means that the vulnerabilities and protection gaps experienced by adults can extend to their children – who may face statelessness. For example, *"where parents are not documented, they are fearful of interacting with authorities and often choose to not even try and access documentation for their children as well"* (KI Zambia 02). In this way, statelessness is produced indirectly – i.e. child may have right to birth registration but the threat against undocumented parents mean they are too fearful to try and access it.

109 "Botswana-Childrens-Act-2009.Pdf"

110 Assefa, "Realising the Right to Birth Registration to Prevent Statelessness in Africa."

111 Assefa.

In South Africa, practitioners described the denial of documentation, particularly birth registration in hospitals, as a critical issue and observed that although *“the policy framework is broad and encompassing, its application is very limited and birth registration is one of the major gaps”* (KI South Africa 03). Another key informant likened the challenge of application to the failure of government officials to understand *“the complex ramifications on the ground”* and recognise that the challenges posed by a lack of documentation create many more challenges that far exceed what is considered in policy and stipulated practice (KI South Africa 01).

A number of key informants referred to the importance of an interconnected system and database linked to immigration to protect children through birth registration. However, at the same time also cautioned that the risks of developing an interconnected system and a database as this could expose children to greater risks. As a key informant in Zambia explained for example,



**“If the parents are not lawfully in the country, when they go for birth registration that will create a window for law enforcement (...) the next thing is the parents, together with a child who has a birth certificate, will be making their way back home because they will be removed. So, you see how one thing leads to another.”**

(KI Zambia 02)

At the regional level a key informant working with an international NGO also noted the lack of understanding of the realities of children on the move at a SADC level and explained, even where there are assurances by the state that undocumented children can attend school and receive services *“this is all political talk because on the ground you will see that undocumented children, even their parents do not receive these services.”* (KI Regional 04).

Several key informants highlighted the importance of ensuring that all domestic legislation, policy and systems are fully compatible with children’s rights principles and conventions. For example, in Eswatini, a key informant pointed out that *“the constitution states that it’s only Swazi children who have the right to access free primary education in the country”* (KI Eswatini 01) while in Zimbabwe, the Constitution specifically states that *“state-funded education is for citizens alone”* (KI Zimbabwe 01).

## **4.2 Governance structures for the protection of children on the move undermined by political agendas and restrictive immigration policies**

Across all countries, the significant shifts towards child-rights based policies that work *with* children rather than *against* them have been limited by the failure to prioritise migrant children, reflected in the lack of inclusion in either migration governance or child protection policies. Although the process of domesticating far-reaching international agreements such as the Global Compact is often slow, it is clear that to a large extent the policy frameworks across the six SADC countries are not in line with the integrated, child-sensitive principles of the Global Compact due to the overriding emphasis on restricting migration – and as a consequence, migrant rights.

### **4.2.1 “First a migrant, then a Child”**

Political agendas that cast migrant children as *“first a migrant, and then a child”* (KI Zambia 02) shape perceptions that considered children in violation of immigration laws, and therefore justify the denial of basic rights, and protection. A Key informant in South Africa described this as *“increasing regression of protection or responsibility”* based on a *“contempt towards civil society from the state”* and explained, *“You really get a sense of this agenda to curtail movement of people...and its consequences are more strongly felt by children.”* (KI SA 03)

The majority of the key informants stated that this is due to restrictive approaches to immigration across SADC, which prevent children on the move from accessing the rights to which they are entitled. Even where policies to protect access are in place, their implementation often fails not only due to limited resources or weak coordination, but rather due to negative perceptions of migrant children. A key informant in Eswatini described how Swati children and migrant children are distinguished when addressing gaps in policy:



**“Even if you can approach your director or your senior official on this matter, it’s not something that they would actually take up as a priority. The mentality is that we are responding for all children, yet these children are not the same...and their needs, they are not the same...it’s not a nice picture, to be honest with you.”**

(Ki Eswatini 01)

Similarly, in Zambia, a key informant noted that for a child, being foreign and a migrant is the dominant identity and legal category: *“because all of these are migrant children, at some point the immigration and deportation Act also has to come into play”* (KI Zambia 01) – and these frameworks often lack consideration of the needs of children. A key informant working at the SADC level also explained that when the issue of migration is raised amongst SADC colleagues, *“they likely assume the role of controlling entries and exists rather than addressing the broader issues. That obviously means that the same changes that affect adults will affect children.”*

This comment speaks to political agendas that are ‘sentiment-led’ rather than informed by a sound evidence base – either deliberately or through the failure to engage with research and data.

### 4.3 Children on the move remain invisible in national migration and child protection policy frameworks

The policy review shows, that many of the SADC countries lack harmonisation between frameworks that speak to children’s rights and those that relate to immigration, which renders children on the move largely invisible in national policy frameworks. The majority of the countries reviewed (Botswana, Eswatini, Mozambique and Zimbabwe) showed very low engagement with both child protection within a migration context and migration within child protection in their policy frameworks (see Figure 4: Heat map of Southern Africa: level of engagement with Child protection and Migration policies.).

There are, however some exceptions and both Zambia and South Africa (that show a higher level of engagement in Figure 4) showcase isolated progressive drives such as Zambia’s recent **Children’s Code Act (2022)**<sup>112</sup> or South Africa’s **National Child Care and Protection Policy (2019)**<sup>113</sup>. Both, provide ‘model’ examples of how to address gaps in child protection within a context of migration including children’s right to birth registration and identity documents and set out durable solutions based on the current challenges and complexities on the ground and the designated roles of key actors and departments to effectively, ensure smooth implementation. Yet, despite these examples key informants echoed the findings of the policy review in stating that overall, children on the move remain invisible in national migration and child protection policy frameworks.

This has two key outcomes: the first, is the protection gap through which children on the move fall when they do not fit the specific categories and provisions of the siloed policies and the second, is that in implementation collaboration and capacity is limited – even where practitioners are able to address intersecting issues. The first point is addressed in the next theme 4.4 Policy frameworks and legal pathways do not respond to children’s complex realities.

<sup>112</sup> The Government of Zambia, “The Children’s Code Act, 12 of 2022.”

<sup>113</sup> Department of Social Development, “National Child Care and Protection Policy.”



### 4.3.1 Limited focus on strengthening coordination and capacity

A government official in Zimbabwe spoke about how the failure of policies to intersect with one another lead to challenges in coordination among different agencies working with child protection issues. Using the example of a social workers who may not be aware of all relevant laws or policies beyond their jurisdiction or the mandates of their department the official suggested that “(...) there is need to harmonise or put together a procedure that can be used by all frontline workers when it comes to the protection of children” (KI Zimbabwe 01). Other practitioners spoke about a lack of coordination amongst officials from different government departments. In Zambia, a practitioner pointed out that they have “a national referral mechanism for children and part of the technical committee that developed them include officials from immigration” (KI Zambia 02). Yet, the practitioner still suggested the need for more and better collaboration between the “National Registration Office, Ministry of Health, Department of Immigration, and the education system and the labour industry” (KI Zambia 02). In Eswatini too, a practitioner explained:



**“What is missing also is the issue of collaboration between immigration, police, social welfare, all the key players around responding for those children who are there, who are in need of protection, particularly those who are migrants or accompanied... an internal framework that will consolidate or ensure that there is more collaboration between all these key role players.”**

(KI Eswatini 01)

In Eswatini, a key informant described how they work with “different pieces of different legislation” (KI, Eswatini 01) due to the lack of any comprehensive policy that engages with children within a migration context. A key informant in South Africa also pointed to the fact that there is no specific permit for children on the move in South Africa or across the region noting that “permits for children in immigration law are classically permits that are based on dependency of adults- but there aren’t visas and permits which considers the child as an independent applicant.” (KI South Africa 01)<sup>114</sup> In practice this means that the practitioner has to find another way to document a child using a different permit (Permanent Residency) which is not designed for children on the move and poses a lengthy and expensive process. She further explained, “this is a clear legislative and policy gap and we need legislation to address these two issues well, like the permit and then establishing the identity of a child process...internally we call this a special dispensation visa for children and that is what we are advocating for.”

In Botswana, practitioners also spoke about the challenges of following processes for best interest assessment (BIA) for the purpose of Refugee Status Determination (RSD) for unaccompanied and separated children: “Generally they’re integrated into the national system in practice but the inclusion is not outlined in the national legislative framework so we just have to go back and forth” (KI Botswana 02). While in Mozambique a practitioner noted that challenges arise, not from policies themselves but from coordination between government and non-government organisations as well as limited implementation linked to scarce national resources. This point about resources was also made in relation to Zambia’s Children’s Code Act. Although in this report the Act is identified as a ‘model act’ and described by key informants as “commendable” (KI, Zambia 02) and “an important step in child protection”(KI, Zambia 01) it was also noted that with the implementation of the Act “the bar was raised to high” (KI, Zambia 02). A key informant went onto explain, “we are struggling to live up to the law...if a child is appearing in court and the Act says he should be in a particular facility - we are talking about facilities that we don’t even have” (KI, Zambia 02).

Practitioners also pointed out that there is a lack of inclusion and recognition of what one key informant referred to as ‘lower-level bodies’ (those involved in day-to-day work with children) that do the actual work of protecting children on the ground. In Eswatini, for example the importance of sensitising immigration officers on children’s rights, as carried out by organisations like Save the Children, was emphasised. For a key informant in Zambia,

114 It should be noted that we tried to include representatives from the Department of Home Affairs for all countries, however we were only able to speak with one from Zimbabwe. No other responses were received.

having officers capacitated and engaged with child protection in every institution across the state would address this challenge: “we have a child protection unit for police, we should have a child protection unit for immigration, for the anti-human trafficking department, the child protection unit at Refugee Commission and so forth” (KI Zambia 02). For another practitioner in Zambia, “the most cardinal thing is ... to strengthen the cross border meetings.” (KI Zambia 01)”. This point is addressed in the final theme.

## 4.4 Policy frameworks and legal pathways do not respond to children’s complex realities

It is evident from the policy review and observations by key informants that categories that govern policies impacting children on the move and their access to legal pathways do not respond to children’s complex realities. Critically, the categorisation and perception of children in policy and amongst policy-makers continues to be reinforced by normative ideals of childhood rather than reflect the well-documented heterogeneous experiences of children as social actors and facing heightened vulnerabilities – shaped by gender, age, sexual orientation, nationality, documentation status etc (see The role of policy in protecting children on the move in Southern Africa). A key informant in South Africa explained the challenges of being limited to “clear categories of children” in policy and how this plays out when trying to assist children on the move:

*“Children do move on their own, but they’re meeting or someone who’s facilitated their movement, or they meet a family friend or somebody in their country of arrival. Those then kind of blur these very definitive definitions that are included in policy. And I think that’s when practitioners kind of either want to step back because they’re like it’s outside of my work area...I can follow these five steps on how to deal with them versus are they now in the care of an aunt who’s also undocumented? We just kind of hope for the best.” (KI SA 03)*

### 4.4.1 Children as Victims

Where there is focus on child migrants and their protection needs, it is predominantly on trafficking, i.e., on children who have been - or are assumed to have been - forced or deceived into migration. Driven by external actors and heavily co-opted by containment agendas, all countries under review have relatively recent anti-trafficking legislation and ratified relevant international conventions. Stating that the South African government does not have a child’s rights approach to migration issues a practitioner noted,



**“The only kind of child’s rights approach, which they seem to take is this supposed concern for trafficking...and my opinion and that of my colleagues is that this is their scapegoat and that’s how they refuse to render services to foreign children by saying, if it’s not trafficking I am not going to render the service.”**

**(KI South Africa 01)**

This focus on forced migration narrows the lens of protection for children with different experiences and needs and creates a ‘policy blind spot’ It can also limit the overall number of those granted access to basic rights and services while leaving the basic commitment of the state nominally intact.

Regardless of the varied motivations and circumstances informing children’s mobility, child protection remains heavily premised on the notion that children don’t move and should not move, defaulting to repatriation and reunification as the most desirable solution for migrant children. Depending on their personal situation children on the move, may be more or less impacted by the absence of caregivers. For some of the key informants at a policy-making level (rather than implementing policy on the ground) this impact is seen primarily in terms of vulnerabilities and of children as passive. A government official in South Africa, for example noted,



**“I think migrant children are vulnerable because, they have no adult supervision... they have no stable environment. They don't have a structure (...) in terms of educational aspects, recreational aspects. They are more vulnerable in respect of that.”**

(KI SA 02)

The findings show however, that there is clear awareness of that returning or staying at home does not map onto the reality of many children nor is it necessarily in their best interest. A number of key informants pressed the importance of a child being at home with family such as “*a child belongs to a family...an institution should be a last measure or resort*” (KI South Africa 01) and, “I have always recommended that the best protection is actually when the child goes back home to his country” (KI Zambia 02).

However, key informants working on the ground reflected on the more complex realities for children on the move and the need to find ways of linking these to policy to address the key protection gaps. In South Africa, for example a practitioner advocated for an approach to protection that embraces the diverse needs and situations of all children, migrant or not: “*I think all of our language around protection for children, it doesn't encompass the complexity or what children encompass or mean in this world...do we respond to children in ways that are reflective of their situations?*” (KI South Africa 04). Another practitioner reflected, “*this focus on children as victims, it also has to do with people's inability to think of children as people and as people with agency who up and leave their country and cross a border*” (KI South Africa 01)

A key informant working regionally also stated that the focus should be on child protection more broadly to not exceptionalise migrant children – but rather recognise that all children are not a homogenous group. He argued:



**“If SADC genuinely cared about getting it right when they respond to children then child participation and child voice would be key - they would direct how things work (...) we need to be engaging the children themselves to hear their own stories, so that whatever advocacy stories or messaging that will be sent out here is the voice of that child who's not receiving the services.”**

(KI Regional 04)

Linked to this, there is a need to connect to and integrate existing, informal child protection systems that include the networks and strategies children on the move themselves draw on to mitigate risk. As has been documented, generally speaking, *'interventions have a higher chance of success if they are consistent with the child's own survival strategy and informal safety networks'* <sup>115</sup>.

## **4.5 Regional efforts by SADC are limited by the lack of an evidence-base and advocacy strategy to address protection gaps**

The SADC Parliamentary Forum (PF) is described as playing a critical role in bridging the gap between regional policy and engagement with citizens and those working on the ground. However, as the policy review show there is no SADC protocol for children and none of the existing protocols systematically address children's rights in line with the four UNCRC principles: non-discrimination. devotion to the best interests of the child. the right to life, survival and development. and respect for the views of the child. A key informant working at the SADC level observed that although the focus on human rights has been strong in other areas this has not been the case with children's rights necessitating the need for “*a closer conversation about these issues*” (KI Regional 01).

115 Childline SA, “Children-on-the-Move-Unaccompanied-Migrant-Children-in-South-Africa.Pdf.”

The key informants identified three key factors that they saw weakening the role of SADC in terms of child protection and children's rights generally and for children on the move, specifically.

### 4.5.1 Lack of Enforceability of SADC Policies

First, although practitioners were aware of relevant SADC policies, they rarely considered these as very influential on domestic policies or on their own processes (Botswana KI 02). Echoing concerns about SADC's lack of enforcement power across a wide range of policy sectors, many considered SADC's role in promoting child protection as weak: *"like any other international or regional instrument, these are very soft laws and they lack enforceability unless a member state brings an action...even those sanctions for a member state to comply are based on good will."* (KI Zambia 02). He also added that *"then what is deemed an area of protection in one country may not be so across the border we have to enhance regional consultative systems because we need to be on the same page. If we have different interventions from different countries and we are talking about children on the move - so it becomes a problem"* (KI Zambia 02).

A regional practitioner focused on the lack of mandate with SADC which means that unlike the East African Community (EAC) "which is more of a parliament with legislative powers" member states cannot be held accountable for their actions or, lack of actions (KI Regional 01). While another stated, *"you have these migration ministerial level migration meetings including MIDSA and they have adopted positions on things to do with children on the move (...) but there is nothing being done about it"* (KI South Africa 01).

### 4.5.2 Absence of an Evidence-Base

Second, is an absence of a strong evidence-base to drive policy discussions and to ensure the advocacy strategies address the intersection of child protection and migration to strengthen child protection at a SADC level. A key informant working at a regional level questioned why SADC has not been more active in the area of children's rights and stated: *"The interesting thing is that children's issues are one of those things that you classify as low politics issues - you are unlikely to be controversial when you advocate for pro-children policies"* (KI Regional 03). Yet, the consequence of failing to engage with the substantial body of evidence-based research and data provided by researchers, practitioners, civil society and international and local NGOs is described by another regional key informant who stated: *"(...) you see the biases in terms of their [officials] own positions, where they are coming from and what they have been exposed to and hear in the media (...) the knowledge gap is reflected even in the different policies written and unwritten by member states"* (KI Regional 01).

### 4.5.3 Missed Opportunities: cross-border coordination mechanisms and stakeholder engagement

Third, key informants pointed to missed opportunities and particularly, missed entry points for engagement and strategising with SADC to address protection gaps for children on the move. For a government official in Zimbabwe, policy gaps across the region should be addressed through the scaling up of the cross-border coordination mechanisms already in place:



**"As long as we have got conflicting policies or laws that do not speak to each other, having children protected becomes a problem... there should be a referral system that speaks to every region that speaks to every country in the region whereby we know that if a Zimbabwean is found in Eswatini, how is that child going to be? I feel that would be the way of ensuring that our children are protected."**

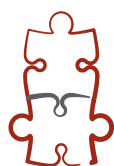
(KI Zimbabwe 01)

The majority of the key informants highlighted the central role of cross-border coordination mechanisms in ensuring that responses to children reflect their complex situations, bring the various stakeholders together and, critically, work to expose and address many of the legal and policy gaps regionally and within the member states when it comes to protecting children on the move.

As previously noted the strengthening of the cross-border collaboration including the development of coordination mechanisms for case management through the development of bilateral and tripartite agreements including SOPs and MOUs has sought to harmonise procedures across borders to address the protection needs of children on the move.<sup>116</sup> The impact of the cross-border coordination working groups and meetings between relevant government departments together with key actors including inter-agency staff, INGO, NGO and civil society actors and border officials has been documented by Save the Children.<sup>117</sup> Key informants also echoed the significance of this coordination and mechanisms. The key informant in Mozambique described, for example how the cross-border meetings have supported *“informal ways of sharing information which is a very good way to facilitate our cooperation and help locate children’s families, repatriate them and provide support”* (KI Mozambique 01). Meanwhile in Zimbabwe it was also noted that, *“the agreements in place have really helped to know what is happening beyond your own border and to be able to learn from one another to do things better”* (KI Zimbabwe 01).

It is important to recognise that given that much of the migration in the region is along migration routes that traverse many countries, often far apart- rather than solely between neighbouring countries - these bilateral and tripartite agreements fall short of ensuring children on the move are protected throughout their journeys. This is a significant gap in the regional policy framework on children on the move.

Key informants pointed to the failure by governments to fully integrate or take responsibility for the cross-border coordination mechanisms including the regular bilateral and tripartite meetings which have made substantial progress in addressing the protection challenges faced by children on the move. A practitioner in South Africa spoke about the need to *“integrate these mechanisms at a policy level so that they are not viewed as external to regional and national policy approaches to protecting children.”* (KI South Africa 03). The same practitioner also noted that hesitancy to take responsibility and to take on the responsibility or “burden” of the coordination work by Member States could be addressed through more specific policy and prescription:



**“There was a definite willingness to coordinate and work together for the protection of children, like actual cases of children and case management of specific children...but there’s a hesitance around this burden sharing, national burden sharing. And I think those things are often not detailed in policy. So, I think social workers, police, immigration officials are amenable to case management, but the coordination at a state or kind of legislative level is a little more vague.”**

**(KI South Africa 03)**

A key informant also noted that NGOs should unite as a network during strategic meetings with SADC to drive change effectively rather than competing for resources individually, and that advocacy efforts need to be coordinated among civil society organizations in order to have a greater impact on addressing these issues affecting migrant children across borders within Southern Africa (KI Zimbabwe 01). However, for a number of key informants and particularly, those working at a SADC level there is a lack of genuine will among SADC member states to prioritise the needs of migrant children currently. It was suggested that a *“dedicated programme officer within the SADC Secretariat”* (KI Zimbabwe 01) could push the agenda forward.

Emphasising the importance of linking up with the African Committee on the Rights and Welfare of the Child to ensure consistent reporting on child migration issues at both regional and global levels (which is currently lacking) key informants echoed the recommendation by Save the Children that *‘SADC should be ensuring that these issues are brought to the attention of Member States and other regional bodies. CSOs must engage SADC in the implementation of its recently finalised OVCY framework and find entry points to ensure that issues of children on the move are pushed forward’*.<sup>118</sup> The work of the Child Rights Network for Southern Africa (CRNSA) (see also page 22), was also described as *“an important way of linking all of the organisations around a specific goal and to push SADC to take children more seriously”* (KI, Zimbabwe 02).

<sup>116</sup> Bertrand and Castrataro, “Cross-Border Protection of Children on the Move in East and Southern Africa.”

<sup>117</sup> Walker and Gandar, “Documenting the Impact of Cross-Border Case Management for Children on the Move in Southern Africa,” 2022.

<sup>118</sup> Save the Children, UK, “Report on Regional Seminar on Children Who Cross Borders in Southern Africa.”



# 5.

# CONCLUSION

This regional child migrant protection policy assessment in the Southern Africa Region shows that there are efforts by SADC to address both child protection in a context of migration and child migrants through a child protection lens. However, this progress is limited by increasingly restrictive migration policies, which hinders access to protection and rights for children on the move and in some cases, create or exacerbate some of the most significant risks and challenges to protection. This is particularly where the complex realities of children on the move cannot be easily categorised through legal pathways and therefore demand more nuanced and malleable responses that can ensure access to education, health and protection services so that children did not fall through protection gaps.

The findings of a desk and policy review combined with a series of key informant interviews indicate a series of cross-cutting issues across the SADC region that necessitate increased awareness and concern and critically, the development of an advocacy strategy to address the protection gaps facing children on the move. Member states across SADC have not worked deliberately enough on ensuring that the rights of children on the move are realised, nor to make sure that increasing restrictions in migration governance do not infringe of the rights of children. In fact, it is evident that in some cases Member States have allowed the infringement of the rights of children within a migration context on the basis that they deal with “a migrant first and then the child.” There is a clear need to integrate child rights into migration governance while ensuring the child protection frameworks not only apply to ALL children but also specifically ensure the protection of the rights of children on the move.



# 6.

# RECOMMENDATIONS

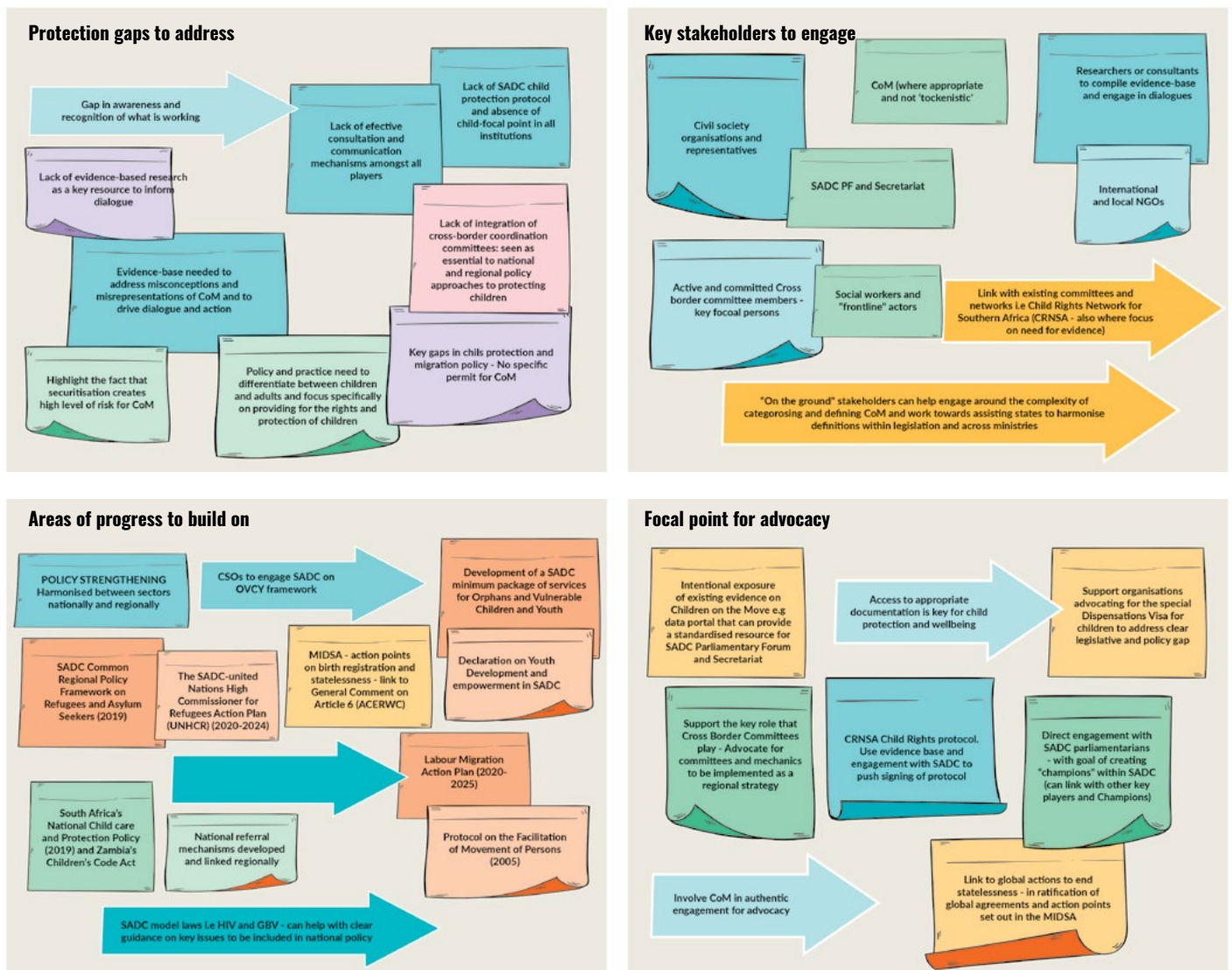


The recommendations below have been set out as a 'thinking map' (Figure 5: Recommendations Thinking Map). This map shows how the identified protection gaps could be addressed in a series of 4 steps from identifying the protection gaps, identify areas of progress to build on, recognise key stakeholders to engage and, identify focal points for advocacy. Each of these steps is shown in more detail in Figures 6-9.



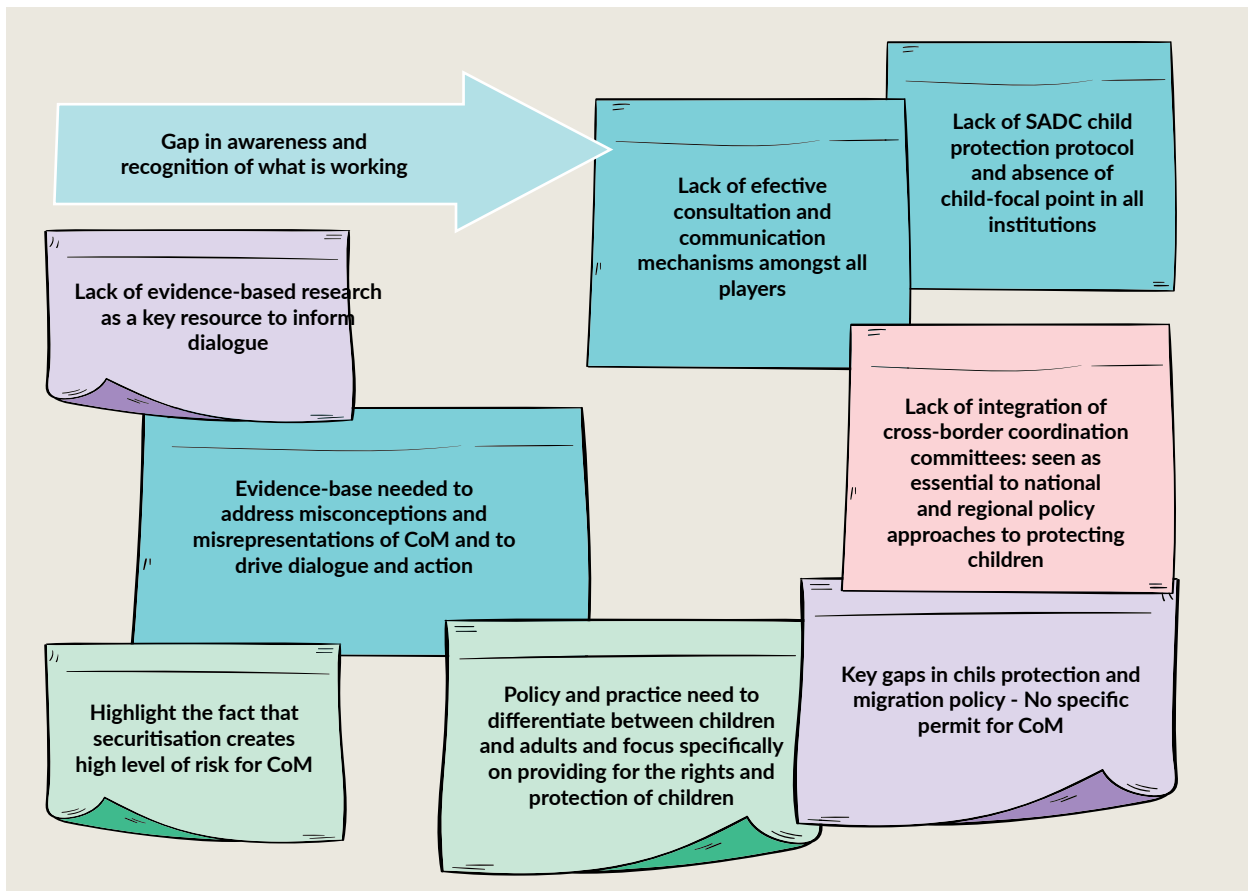
This map should guide the development of Save the Children's Regional Programme Units' regional-level advocacy strategy for migrant and refugee children and youth are based on the cross-cutting issues and key protection gaps identified in this report.

Figure 5: Recommendations Thinking Map

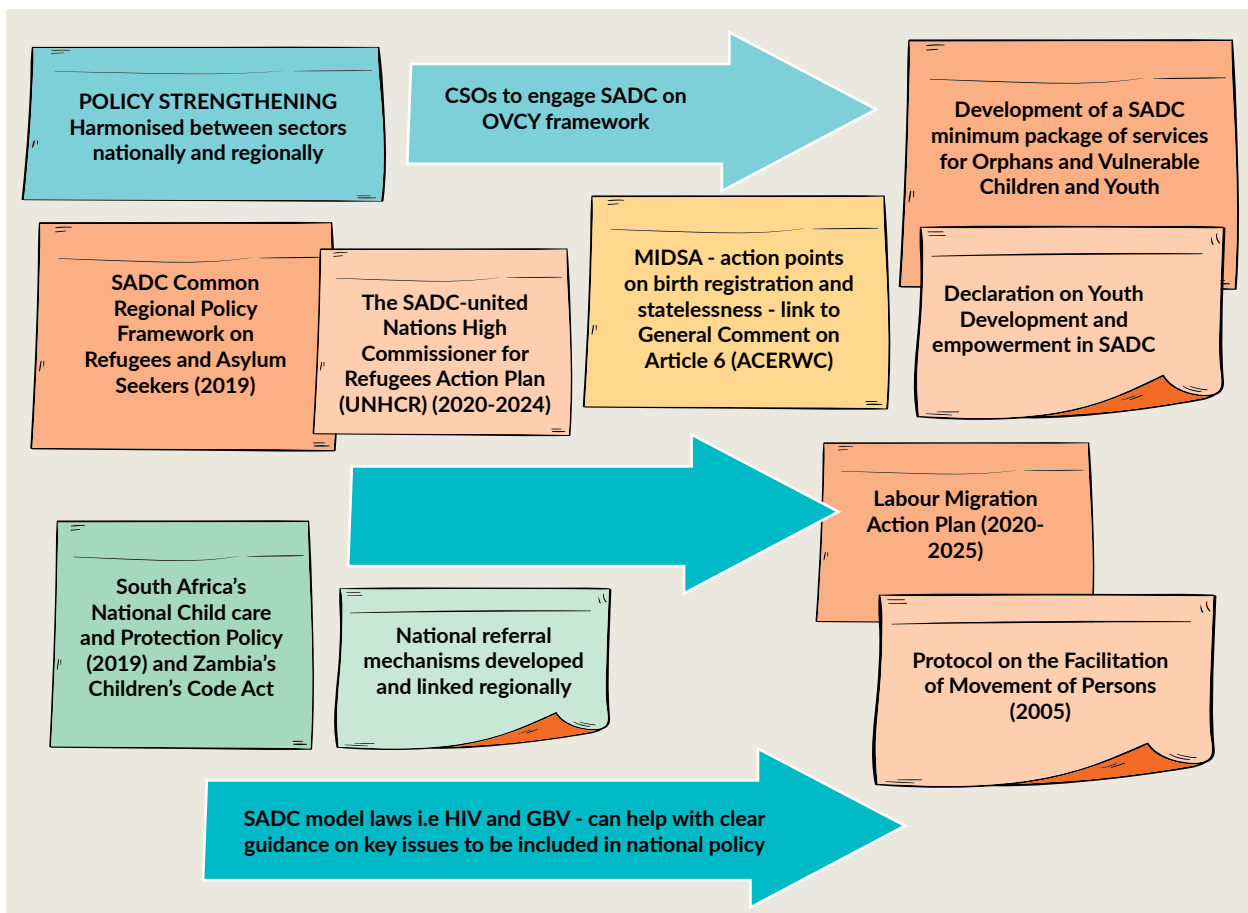




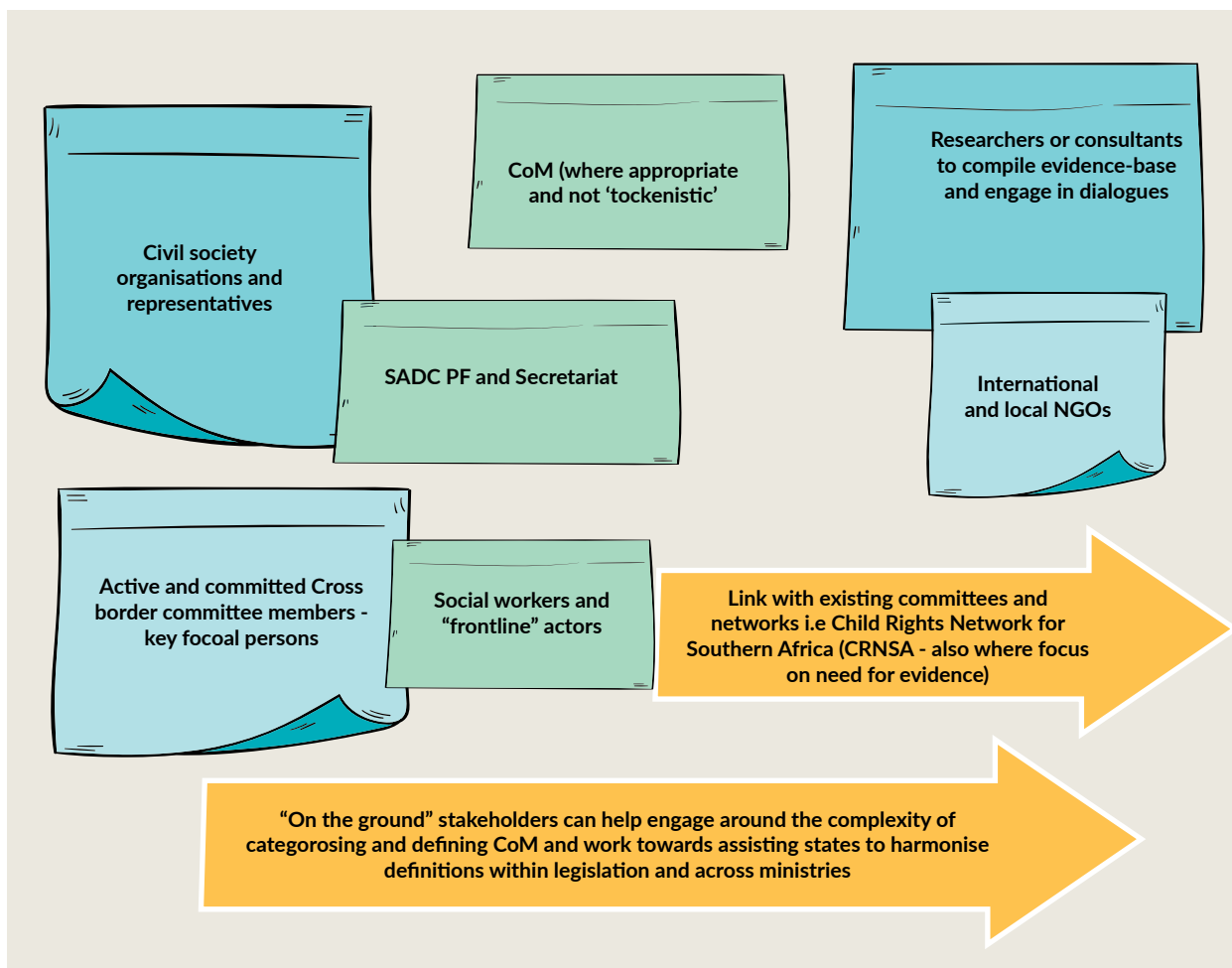
**Figure 6: Recommendations Section 1: Protection Gaps to Address**



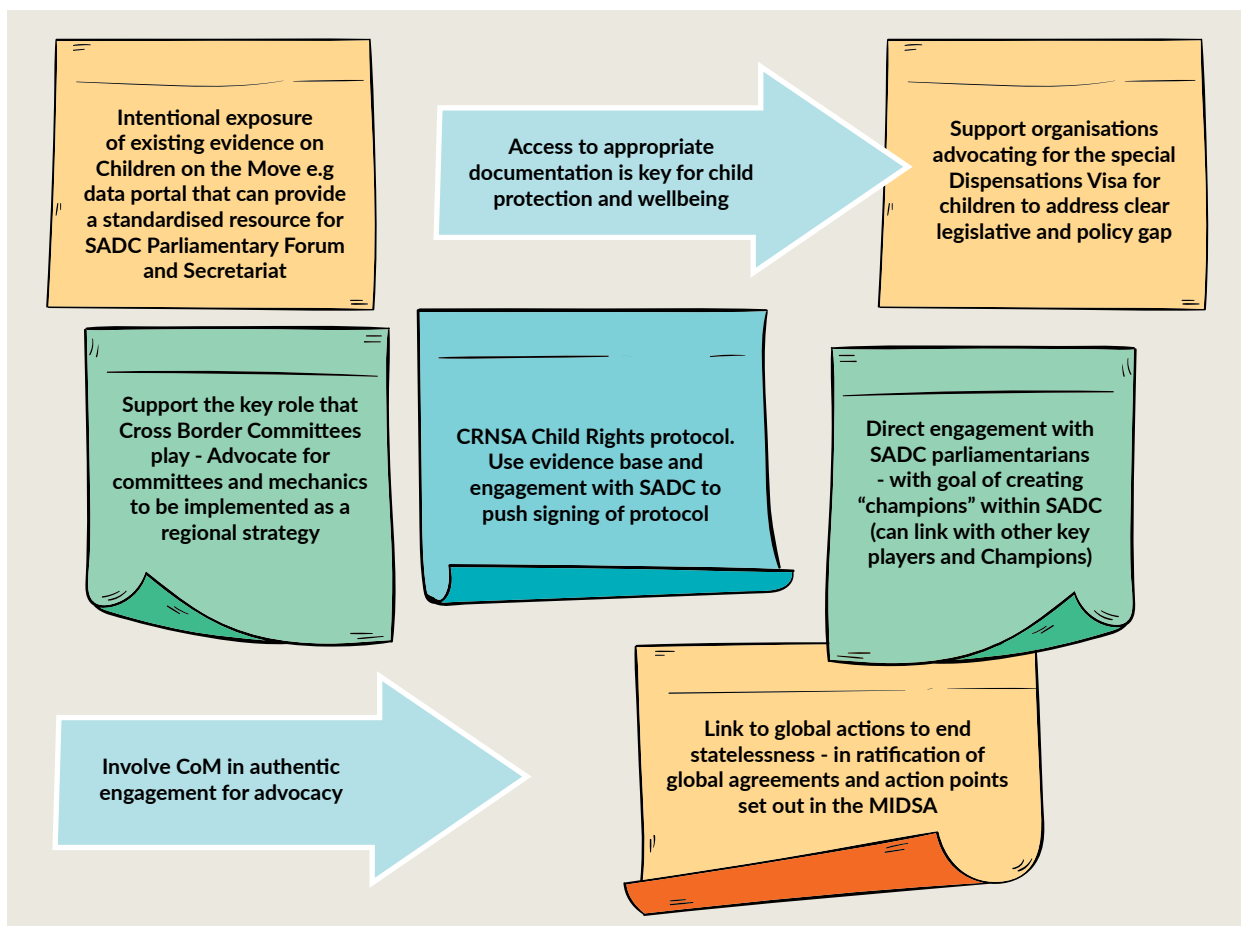
**Figure 7: Recommendations Section 2: Areas of Progress to build on**



**Figure 8: Recommendations Section 3: Key Stakeholders to Engage**



**Figure 9: Recommendations Section 4: Focal Points for Advocacy**





# APPENDICES



## Appendix A: Policy review framework criteria

The table below sets out the categories used for the policy review framework. It how the review was conducted through the response options and an explanation as to why and how these options were selected. The rows highlighted blue are the key review/indicator rows to ascertain how policies engage with child protection, migration and vulnerability/protection.

**Table 1: Categories for policy review and explanation**

| Categories for review                             | Response Options   | Explanation of categories and response options   |
|---|--|--|
| Name of document                                  |  |  |
| Year  |  | There may be various versions of a policy based on amendments – we will review the latest version of each policy   |
| Status  | I.e., Draft, Bill, Enacted,  | To ascertain the stage of the policy–this will show how advanced the country is with policy agendas and can also be matched against Implementation (found in desk review and from interview data)  |
| Ministry  | I.e., Dept of Home Affairs, Dept of Basic Education                        | This is useful in identifying the key institutions involved in making and implementing policy and where there are collaborations across departments etc.   |
| Partners  | I.e. UN body or ILO  | Where support has been given in developing and/or implementing policy. This is useful where non-Government organisations and civil society are a part of the policy process  |
| Addresses child protection                        | 1. No,<br>2. Yes Superficially,<br>3. Yes Substantially<br>4. Unassigned   | Superficially: Basic reference of mention of child protection<br>Substantially: More than one reference and substantial focus on child protection<br>Unassigned: Unclear   |
| Terminology                                       | 1. General,<br>2. Citizens,<br>3. Nationals,<br>4. Unassigned              | This provides insight as to whether the policy provides for all in the country (i.e., citizens and non-citizens) or uses the language of “citizens.” A policy inclusive of all may specifically state this i.e. – applies to all in the country or may implicitly suggest this through the absence of nationalistic terminology. Similarly, a policy may exclusive to citizens may explicitly state this or may omit mention of non-citizens/non-nationals – thus left open to interpretation. |
| Addresses migration                               | 1. No,<br>2. Yes, Superficially,<br>3. Yes, Substantially<br>4. Unassigned | Superficially: Basic reference to migration/children on the move<br>Substantially: Has a section that specifically addresses migration/children on the move  |
| Documentation status Considered                   | 1. No,<br>2. Yes Superficially,<br>3. Yes Substantially<br>4. Unassigned   | Superficially: Reference to documentation, i.e., may affirm a child’s right to birth registration or nationality etc. but not expansive details<br>Substantially: Detailed approach to documentation, including entitlement, access etc.   |
| Definition of a ‘child’                           | Open response  | Helps to understand whether there is a legal age given and whether this is in line with International or other laws including customary laws etc. An example could be child employment - Minimum age for employment is 15, in line with ILO Convention 138   |
| Definition of vulnerability/in need of protection | Open response  | To ascertain how child vulnerability and/or protection issues of a child are considered in the policy and in what ways i.e., “undocumented foreign children as victims of trafficking”   |

## Appendix B: Protection of children on the move: Legislation and policy indicators traffic light tables

### KEY

No engagement

yes, limited engagement

yes, substantial engagement

Unassigned

### South Africa

| Name of Document   | Addresses child protection  | Addresses migration         |
|--|-----------------------------|-----------------------------|
| The Constitution of the Republic of South Africa 1996                    | yes, substantial engagement | yes, substantial engagement |
| Basic Conditions of Employment Act, 1997                                 | yes, substantial engagement | No engagement               |
| Domestic Violence Act, 1998  | yes, limited engagement     | No engagement               |
| Refugees Act, 1998   | yes, substantial engagement | yes, substantial engagement |
| The Refugees Amendment Act No. 11 of 2017 and 2019 Regulations           | yes, limited engagement     | yes, substantial engagement |
| Children's Act, 2005   | yes, substantial engagement | yes, limited engagement     |
| Immigration Act 13 of 2002   | yes, limited engagement     | yes, substantial engagement |
| Immigration Amendment Act of 2011  | yes, limited engagement     | yes, limited engagement     |
| White Paper on International Migration, 2017                             | yes, limited engagement     | yes, substantial engagement |
| National Strategy on Child Abuse and Exploitation                        | yes, substantial engagement | No engagement               |
| Prevention and Combating of Trafficking in Persons Act, 2013             | yes, substantial engagement | yes, substantial engagement |
| National Policy Framework against Trafficking in Persons in South Africa | yes, limited engagement     | yes, substantial engagement |
| National Child Care and Protection Policy, 2019                          | yes, substantial engagement | yes, substantial engagement |
| Draft National Labour migration policy for South Africa 2022             | yes, substantial engagement | yes, substantial engagement |
| National Development Plan 2030, 2013                                     | yes, substantial engagement | yes, limited engagement     |
| Children's Amendment Bill 2008   | yes, substantial engagement | yes, substantial engagement |

## Zimbabwe

| Name of Document   | Addresses child protection | Addresses migration |
|--|----------------------------|---------------------|
| Constitution of Zimbabwe 2013 (revised in 2017)                  |                            |                     |
| The Immigration Act, 1979 (Amended up to 2001)                   |                            |                     |
| The Refugee Act, 2001  |                            |                     |
| The Children's Act, 2002   |                            |                     |
| The Births and Deaths Registry Act, 1986                         |                            |                     |
| National Action Plan to Combat Trafficking in Persons, 2019-2021 |                            |                     |
| Labour Relations (Employment of Children and Young Persons)      |                            |                     |
| Immigration Act, 1979  |                            |                     |
| Immigration Regulations, 1998 (amendments in 2001)               |                            |                     |
| National Labour Migration Policy                                 |                            |                     |
| National Social Protection Policy Framework for Zimbabwe         |                            |                     |
| National Plan of Action for Orphans and Vulnerable Children      |                            |                     |
| The Children's Amendment Bill (2022)                             |                            |                     |

## Zambia

| Name of Document  | Addresses child protection | Addresses migration |
|---|----------------------------|---------------------|
| Constitution Act 1996 and Constitution (Amendment) Act 2, 2019  |                            |                     |
| Immigration and Deportation Act, 2010   |                            |                     |
| Anti-Human Trafficking Act, 2008  |                            |                     |
| The Refugees Act, 2017  |                            |                     |
| The National Action Plan for the Elimination of Worst Forms of Child Labour 2020 - 2025   |                            |                     |
| Guidelines for best interests determination for Vulnerable Child Migrants in Zambia   |                            |                     |
| Guidelines: Protection Assistance for Vulnerable Migrants in Zambia and the National Referral Mechanisms for the protection of Vulnerable Migrants in Zambia (2014) |                            |                     |
| The Children's Code Act, 2022 (Act No. 12 of 2022).   |                            |                     |
| Vision 2030 (2006)  |                            |                     |
| The Seventh National Development Plan (2018)  |                            |                     |

## Botswana

| Name of Document   | Addresses child protection | Addresses migration |
|--|----------------------------|---------------------|
| Children's Act, 2009   |                            |                     |
| Immigration Act, 2011  |                            |                     |
| Constitution of Botswana of 1966 with amendments through 2005      |                            |                     |
| National Action Plan for Youth 2010-2016                           |                            |                     |
| User-friendly Guide to the Care of Orphans and Vulnerable Children |                            |                     |
| Anti-Human Trafficking Act of 2014                                 |                            |                     |
| Deserted Wives and Children Protection Act                         |                            |                     |
| Education Act 1966 with amendments through 2003                    |                            |                     |
| Refugees Recognition and Control Act 1968                          |                            |                     |

## Mozambique

| Name of Document  | Addresses child protection | Addresses migration |
|---|----------------------------|---------------------|
| Law on the Prevention and Combat of Human Trafficking, 2008     |                            |                     |
| National Plan of Action for Orphans and Vulnerable Children     |                            |                     |
| Constitution of 2004 with amendments through 2007               |                            |                     |
| Refugee Act of 1991   |                            |                     |
| Law on Promotion and Protection of the Rights of the Child      |                            |                     |
| National Action Plan to Combat Trafficking in Persons 2023-2027 |                            |                     |

## Eswatini

| Name of Document  | Addresses child protection | Addresses migration |
|---|----------------------------|---------------------|
| National Plan of Action for Children in Eswatini 2023-2027            |                            |                     |
| Children Protection and Welfare Act of 2012                           |                            |                     |
| National Youth Policy   |                            |                     |
| Immigration Act   |                            |                     |
| Refugees Act  |                            |                     |
| National Plan of Action for Orphans and Vulnerable Children 2006-2010 |                            |                     |
| National Children Policy  |                            |                     |
| People Trafficking and People Smuggling (Prohibition) Act             |                            |                     |

## Appendix C: Interview Guide for Key Informants

### Part 1: Context; Policy and Practice

1. Could you please tell me a little about your role at work including background, responsibilities and focus areas etc?

a. Including specifics on country and area of work

2. What would you identify as the key issues impacting migrant children and child rights and protection within the context you work (specific country/province)?

*NB: Check shared understanding on 'migrant child' and child protection*

- a. General trends, patterns to vulnerabilities and risk
- b. Changes over time and links to regional, global changes etc
- c. Challenges and concerns
- d. Areas where there has been change/successes etc

### Part 2: Ground Realities

3. Could you think of an example of an USCM arriving in the country and talk through the various steps that are taken to ensure the rights and protection of the child?

- a. How would the child be protected legally and what laws and policies apply and how?
- b. Who would the key players be i.e. governmental departments, police, social workers, other state and non-state actors, civil society
- c. Cross-border coordination and mechanisms – what works and doesn't?
- d. Where is there challenges and gaps?
- e. What works well and what needs strengthening

### Part 3: National and Regional Policies and Practices

4. Drawing from the above example what would you identify as the key policies, laws, frameworks aiming to protect the rights of children and youth involved in migration and displacement?

*NB: can cross check what is identified with polices identified in desk review*

- a. Key national policies and how these relate to regional initiatives, global frameworks etc
- b. How national policies are shaped i.e. specifics on tradition/customary laws vs international laws (inc. differences in beliefs about children, norms and cultural beliefs etc where relevant)
- c. Distinctions/gaps between policy and practice- what happens on the ground
- d. Significant changes over time and in relation to global migration trends etc?

5. Could you explain a bit about regional policies and procedures include the role of SADC and how these impact your work and child protection more specifically?

- a. Role of SADC – strengths and limitations- based on experiences
- b. What needs to be strengthened/changed?
- c. Also other regional bodies, their level of influence/power and how this has developed, changed etc.

6. Based on your expertise and experience what do you think needs to be done in order to strengthen migrant child rights and child protection at a national and regional level.?

*NB: Can explain that this input will support the development of recommendations and concrete proposed steps to inform RPU's regional-level advocacy strategy for migrant and refugee children and youth.*

- a. Can you provide a 3-4 key changes/inputs needed?
- b. How possible is it to achieve these and where will the challenges lie?

Is there anything else you would like to add?

Thank you for your time.



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Eglantyne Jebb said “All wars,  
whether just or unjust, disastrous  
or victorious, are waged against  
the child.”

# THE WAR ON CHILDREN MUST STOP



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