

Combatting the economic exploitation of migrant children in Southern Africa

Admark Moyo, PhD

Combating the
Economic Exploitation
of Child Migrants in
Southern Africa

Setting the scene – Of Child Migrants

- Children who travel in search of opportunities, whether educational or employment related
- Children who travel to survive - to escape persecution or war, abuse, dire poverty
- Children who travel for family reunion – to join documented or undocumented family members who have already migrated
- Children who travel in the context of exploitation (including trafficking)



Stellenbosch

UNIVERSITY
IYUNIVESITHI
UNIVERSITEIT

Combating the
Economic Exploitation
of Child Migrants in
Southern Africa

Setting the scene – Of Child Migrants

- Children born in foreign countries to nationals of other countries, (initially) living with their families in foreign countries, often without documentation in host countries
- **Common denominator** – Many of these children end up in irregular employment for one or more reasons



Stellenbosch

UNIVERSITY
IYUNIVESITHI
UNIVERSITEIT

Setting the Scene



Stellenbosch

UNIVERSITY
IYUNIVESITHI
UNIVERSITEIT

A word on the vulnerability of child migrants

- Unaccompanied children – separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so – CRC GC 6, para 7.
- Child migrants, especially if unaccompanied and separated from families, face greater risks of sexual exploitation and abuse, military recruitment, child labour (including for foster families) and immigration related detention.
- They often lack access to appropriate identification, registration, age assessment, documentation, family tracing, guardianship systems or legal advice.

Setting the Scene

A word on the vulnerability of child migrants

- In many countries, unaccompanied and separated children are routinely detained by border or immigration officials
- After entry into transit or host (destination) countries, they are often denied access to asylum procedures or their asylum claims are not handled in an age appropriate and gender sensitive manner.



Stellenbosch

UNIVERSITY
IYUNIVESITHI
UNIVERSITEIT

Setting the Scene

A word on the vulnerability of child migrants

- Further, most states do not have statelessness determination procedures, often with dire consequences for stateless children in these countries (eg 'Zimbabwean' children in South Africa)
- **NB – These challenges often push children into exploitative employment relationships.**
- Vulnerability often exacerbated by children's lack of options, limited knowledge about asylum systems, and lack of support persons or systems in transit/host countries.



Stellenbosch

UNIVERSITY
IYUNIVESITHI
UNIVERSITEIT

Non-discrimination

Child Migrant Workers under Intl Law

- Article 2(1) of CRC – States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's national, ethnic or social origin, birth or other status.
- Art 25(3) of the Convention for the Protection of the Rights of Migrant Workers and their Families (CMW)
 - 'States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from [the principle of equality] by reason of any irregularity in their stay or employment'



Stellenbosch

UNIVERSITY
IYUNIVESITHI
UNIVERSITEIT

Prohibition of forced or compulsory labour



Stellenbosch

UNIVERSITY
IYUNIVESITHI
UNIVERSITEIT

Child Migrant Workers under Intl Law

- Prohibits discrimination based on the status of a child as being unaccompanied or separated, or as being a refugee, asylum-seeker or migrant – CRC GC 6, para 18
- The prohibition of discrimination means that child migrant workers should neither be denied benefits accorded to other children in the workplace nor be subjected to additional burdensome conditions to which other child workers are not subjected
- Principle also cascades down to national constitutions and legislation

ILO Forced Labour Conventions

Child Migrant Workers under Intl Law

- The ILO conventions on child labour and forced labour are of striking relevance to the circumstances of unaccompanied child migrants and offer guidance to the (sub)region on how to regulate this difficult field of the law.
- The Abolition of Forced Labour Convention and the Convention on Forced Labour require states parties to suppress compulsory or forced labour.



Stellenbosch

UNIVERSITY
IYUNIVESITHI
UNIVERSITEIT

ILO Forced Labour Conventions

Child Migrant Workers under Intl Law

- Forced or compulsory labour is defined as all work or service exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily - article 2(1) of the ILO Forced Labour Convention, 1930 (No. 29)
- Some unaccompanied child migrant workers fit into this definition, especially those deceived and trafficked for economic or sexual exploitation under the guise of better living conditions or those working to repay smuggling debts under the threat or use of severe punishment against them or their relatives if they fall behind in their payments.



Stellenbosch

UNIVERSITY
IYUNIVESITHI
UNIVERSITEIT

ILO Forced Labour Conventions

Child Migrant Workers under Intl Law

- It is often difficult to determine the voluntariness of the child's decision to work, especially in the absence of better employment or livelihood options in host countries, thereby leaving many unaccompanied child migrants from poor backgrounds with no option but to 'voluntarily' agree to highly exploitative working conditions.
- Concerns about children's evolving capacities ie whether they fully understand the risks associated with different working conditions eg artisanal mining and working in industries that make use of dangerous or harmful chemicals.



Stellenbosch

UNIVERSITY
IYUNIVESITHI
UNIVERSITEIT

ILO Minimum Age Convention

Child Migrant Workers under Intl Law

- The circumstances surrounding child migrant workers are partly governed by the Minimum Age Convention (MAC). The MAC was adopted to prevent child labour by prescribing a minimum age for admission to employment.
- Ratifying states are bound to respect this minimum age and to adopt domestic laws that are aligned to the Convention.
- The MAC requires Member States to 'ensure the effective abolition of child labour' and to increase, progressively, the minimum age for admission to employment

ILO Minimum Age Convention

Child Migrant Workers under Intl Law

- The MAC prescribes 15 years as the minimum age for employment, except for potentially hazardous work for which the age of 18 is set as the minimum, or for 'light' work with limited to no risk of harming the child's health, or for work which is unlikely to adversely impact the child's school attendance.
- This means that employers are permitted to employ children below the age of 15 years in certain 'undefined' circumstances – Room for abuse of discretion in the absence of guidelines



Stellenbosch

UNIVERSITY
IYUNIVESITHI
UNIVERSITEIT

ILO Forced Labour Conventions

Child Migrant Workers under Intl Law

- An abolitionist stance on different forms of ‘forced’ or ‘voluntary’ employment, including minimum ages, may serve to undermine the short-medium-long term interests of unaccompanied child migrants
- Minimum ages do not help irregular child migrant workers who operate outside the law – they help the state to hold employees accountable in cases of violations of relevant provisions.



Stellenbosch

UNIVERSITY
IYUNIVESITHI
UNIVERSITEIT

ILO Forced Labour Conventions

Child Migrant Workers under Intl Law

- Due to poverty and fear of deportation or prosecution, irregular foreign child migrant workers rarely reveal the exploitation they experience at the hands of unprincipled employers – Some even go as far as claiming that they are adults to remain in exploitative employment relationships.
- Further, whilst Member States must adhere to these useful international labour standards, there are serious implementation gaps and the impact of these standards on the lived realities of undocumented working child migrants in the sub-region is largely minimal or non-existent



Stellenbosch

UNIVERSITY
IYUNIVESITHI
UNIVERSITEIT

Right not to be
economically
exploited – The CRC

Child Migrant Workers under Intl Law

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



Stellenbosch

UNIVERSITY
IYUNIVESITHI
UNIVERSITEIT

Right not to be
economically
exploited – The CRC

Child Migrant Workers under Intl Law

- 2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
 - (a) Provide for a minimum age or minimum age for admission to employment;
 - (b) Provide for appropriate regulation of the hours and conditions of employment;
 - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.
- Fortunately, CRC does not prohibit child work, thereby leaving room for the protection of child migrants working in transit and host countries.

Right not to be
economically exploited –
SADC-PEL

Child Migrant Workers under Intl Law

- States Parties to adopt measures to eliminate the worst forms of child labour in line with ILO Con (No. 182).
- States Parties to the SADC-PEL are explicitly required, to ensure that
 - Child labour and abuse;
 - Children of compulsory school going age are not employed in work that would deprive them of the full benefit of education;
 - Employers are held liable for employment practices that indirectly lead to the employment of children;
 - Appropriate measures are taken to adjust labour laws and policies to meet the needs of young employees; and
 - The duration of work for children is limited



Stellenbosch

UNIVERSITY
IYUNIVESITHI
UNIVERSITEIT

Right not to be
economically exploited –
SADC-PEL



Stellenbosch

UNIVERSITY
IYUNIVESITHI
UNIVERSITEIT

Child Migrant Workers under Intl Law

- While there is no reference to employed irregular child migrants in international and sub-regional legal and policy frameworks, it is evident that such child migrants are indirectly protected.
- Read together with the prohibition of discrimination based on nationality and age, the substantive provisions protecting children from harmful work comply with international and regional instruments governing the employment of children and young people.
- More compelling is the fact that SADC-level employment law should be interpreted and applied in a manner consistent with international law; thereby harmonizing the conditions governing the employment of children at all levels.

Right not to be
economically exploited –
SADC-PEL

Child Migrant Workers under Intl Law

- More compelling is the fact that SADC-level employment law should be applied in a manner consistent with international law; thereby harmonizing the conditions governing the employment of children at all levels.
- Most of the SADC Protocols are oriented towards putting in place regional systems and standard operating procedures necessary for sub-regional integration, but they do not systematically address issues relating to the human rights of children and, indeed, adults



Stellenbosch

UNIVERSITY
IYUNIVESITHI
UNIVERSITEIT

Right not to be
economically exploited –
SADC-PEL

Child Migrant Workers under Intl Law

- However, there are no human rights instruments or protocols in the sub-region and rights holders largely have to rely on international human rights instruments and mechanisms to invoke their rights
- Further, the relevant provisions are fragmented across different protocols and therefore need some contextualization, through interpretation, so as to adequately protect children, hence the need for a clear-cut child rights focused laws within the SADC region
- The instruments are not child-centred and it is necessary to adopt the SADC Protocol on Children's Rights – an instrument that has been in the pipeline for some time.



Stellenbosch

UNIVERSITY
IYUNIVESITHI
UNIVERSITEIT

International Cooperation

Child Migrant Workers under Intl Law

- Territorial and extraterritorial obligations of states parties
- States Parties to the CRC, the CMW, the ACRWC and other instruments have the sacred duty to develop global, regional and bilateral cooperation frameworks to respect, protect and fulfil the rights of all child migrants.
- Ranging from migration governance to border management and mechanisms to prevent the trafficking of children for economic and sexual exploitation, bilateral and multilateral cooperation frameworks should be anchored on or be adjusted to uphold the rights of all children.



Stellenbosch

UNIVERSITY
IYUNIVESITHI
UNIVERSITEIT

International Cooperation

Child Migrant Workers under Intl Law

- This includes establishing cross-border case management procedures and relevant institutional frameworks to assist child migrants at the sub-regional, regional and international levels.
- Regarding socio-economic and labour rights, States Parties are bound to undertake measures to advance such rights 'within the framework of international co-operation'.



Stellenbosch

UNIVERSITY
IYUNIVESITHI
UNIVERSITEIT

Recommendations

Way Forward

- Introduction of humanitarian visas for children from ‘troubled’ countries experiencing armed conflicts, disasters and hazards
- States Parties should harmonise national labour migration and policies, and, at the sub-regional level, adopt a regional migration policy/strategy that provides a common approach to migrant labour across the sub-region.
- The policy/strategy should provide a roadmap for protecting and empowering irregular migrant workers, including children.



Stellenbosch

UNIVERSITY
IYUNIVESITHI
UNIVERSITEIT

Recommendations

Way Forward

- In addition, State Parties should ensure that there is a high level of coherence between 'informal' labour migration, employment policies and regulations governing the treatment of child migrants across the region.
- This involves concluding bilateral or multilateral agreements providing for a common approach to irregular labour migration and stipulating how countries will protect and empower migrant workers, including children and other persons in situations of vulnerability.



Stellenbosch

UNIVERSITY
IYUNIVESITHI
UNIVERSITEIT

Recommendations

Way Forward

- Establish an effective and harmonised institutional framework for 'handling' irregular labour migration and child migrants working in host or transit countries
- No human rights-based institutional framework



Stellenbosch

UNIVERSITY
IYUNIVESITHI
UNIVERSITEIT