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# SARE

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**A Review of Comparative Education,  
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*Special Issue*

**Making rights realities – Education access,  
equity and quality in education**

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# Monitoring the right to education for refugees, migrants and asylum seekers

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## Abstract

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

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

## Introduction

It is estimated that 214 million migrants worldwide live outside their country of birth (UNICEF 2010). This figure includes millions of children, who have either migrated with their parents or are unaccompanied. Migration is a strategy to escape desperate conditions, extreme poverty and war by moving. It is also a strategy for upward mobility, access to better job opportunities, education and health care. Where vulner-

abilities become the driver of migration, they are intrinsically linked to human rights deprivations, including poverty, inequality and discrimination, as well as occupation, political repression and armed conflict.

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

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

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

**The use of indicators in assessing the education rights of migrants**

Internationally, since the end of the 1990s, various multilateral agencies as well as human rights academics, experts and non-governmental organisations have been increasingly involved in the development of rights-based indicators. This approach has also been taken by the Office of the High Commissioner for Human Rights and the Inter-Agency Network for Education in Emergencies (INEE 2010; Hyll-Larsen 2010). Yet, compared with other human rights, there have been few collective efforts to develop indicators for the right to education. An exception is the London-based Right to Education (RTE) project's indicators, which draw heavily on international human rights law and employ several rights-based indicators to examine the right to education. The latter indicators use the 4A framework and encompass the three fundamental human rights principles of non-discrimination, participation and accountability (RTE 2010). The RTE project created a set of 200 indicators under 37 headings to guide governments and civil society in monitoring and measuring education rights.

According to Tomesevski (2003), education rights are not related only to accessing schools but also to rights in and through education. Education quality is integral to rights (UNESCO 2004; Watkins 2011). Hyll-Larsen (2010: 3) explains:

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

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

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

However, we agree with Chisholm, who warns that the linkage of indicators to international and state goals is complicated by the complexity of the educational environment to be measured, the interrelatedness of issues, and the concerns that reduction of this complexity can result in what has been termed 'management by measurement' (Chisholm 2007: 150). The limitations of quantitative indicators collected by the department of education requires acknowledgement. The literature on child migrants in South Africa draws largely on census data or household surveys that primarily infer information about children from adults (CoRMSA 2008; UNICEF 2010). In terms of children's access to and experience in schools, even less information is available because official school surveys only collect information on whether or not children were born in South Africa. Other reporting discrepancies abound, for instance, the only pertinent data collected from Statistics South Africa (2008) indicates that 12% of migrant children of school-going age in South Africa were not in schools. Yet, according to a joint Lawyers for Human Rights/Consortium for Refugees and Migrants in South Africa report (2010), it is estimated that 24% of schoolgoing-age children of asylum seekers are not in school.

The use of the 4A Framework and right to education indicators addressed the authors' interest in creating a sense of awareness around education rights of migrant learners and the state of organisation for the education rights of migrant learners . While indicators are generally used to monitor the general conditions and contexts of education, focusing on refugees and migrants provides a window into the complexity of the educational environment to be measured and provides tools for looking at the inter-relatedness of rights. The authors believed that focusing on vulnerable groups was the best way to start applying the indicators because it limited the data necessary for analysis, since data availability is the greatest challenge to using rights indicators.

As explained below, the most powerful findings from the authors' study suggest that quantitative data alone is not adequate to understand the on-the-ground realities that vulnerable children face every day. For example, two notable South African studies that combine quantitative and qualitative indicators framed in terms of the realisation or the violation of children's rights are the annually produced South African Child Gauge produced by the Children's Institute (see Hall et al. 2012) and a book that employs 'well-being' as the organising principle of its objective (Dawes et al. 2007). An additional recent article by Hemson (2011) based on a case study of refugee and migrant learners in a Durban school emphasises the importance of documenting learners' experiences, including issues of xenophobia and the role of language in learning. While Hemson focuses on one former Model C school where migrant learners are progressing well, this article has a wider scope and a different conceptual framework. The indicators used in this study were complemented by qualitative case studies and testimonies, particularly of migrant learners and parents.

Working with the migrant community for nearly a decade, the Education Rights Project (ERP) has documented serious violations and barriers preventing the

attainment of the right to education by migrants in schools and communities around South Africa. In addressing some of the concerns and lack of information about migrant rights the ERP produced a booklet on the education rights of refugees, asylum seekers and migrants (Mohta 2005) and assisted in the formation of education rights advocacy groups consisting of and led by immigrant organisations. Previous research with these groups unravelled a complex web of social, economic, cultural and poverty-related difficulties faced by refugee and asylum-seeking children. Key issues related to the cost of education, admission and registration, age norms, a lack of documentation and language issues.

### **The ERP Refugee and Migrant Study**

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

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

The added value of this approach was to go beyond the quantitative RTE indicators and develop a set of measures that fully correspond to the range of human rights obligations and provide opportunities to frame a range of barriers and challenges migrant children specifically face. By including qualitative indicators such as interview data and testimonies, the project began to evaluate broader understandings about the right to education, including whether the schooling provided was in an environment respectful of migrant children's dignity and development, whether schools promote respect for learners as well as teachers, whether and how education is provided to all groups, and whether schools teach and uphold human rights. In other

words, indicators should not only measure the right to education in terms of access to schools and achievement rates, but also contextual issues, including rights in and through education.

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

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

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

During 2011 and 2012 workshops were held across three provinces designed to discuss broadly the right to education, describe the framework and collect testimonies and other information about the varying experiences of migrant children in schools across provinces. The first workshop in Cape Town was attended by 80 people over two days. There were about 80 participants at the Gauteng workshop and the last workshop, attended by 100 participants, was at the University of Venda in Limpopo. The total number of delegates who attended the three workshops numbered 260. Delegates to

these workshops included migrants, migrant support organisations, social movements, officials from various government departments, teachers, learners, parents and academics.

Significantly, the overwhelming majority of participants in the study were migrants themselves, and 86 migrant children participated in the project. Some 88% of the interviews in Limpopo were with migrant organisations, including migrant representatives. In the Western Cape 92% of those interviewed were refugees, asylum seekers and undocumented migrants. Close to 70% of the participants in the Gauteng focus groups and workshops were from migrant organisations.

### **Summary findings from the interviews and workshops**

Owing to the limitations of space for this article the authors have chosen to select and highlight the specific themes, concerns and challenges largely voiced by migrants throughout the interviews and workshops. Because of the nature of the workshops and interviews, the issues raised were not numerically quantifiable like data government education surveys of migrant communities attempt to collect, but instead typically represented the major ideas and concerns of participants.

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

#### *Availability indicators*

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

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

The case study of the Central Methodist School also revealed that no space was available for migrant children in the government schools, and the majority were

housed in church facilities and taught by underpaid Zimbabwean teachers. Interviews with teachers and learners at the school also revealed that in the process of registering with the Gauteng Department of Education, the school was told it needed to be relocated because it did not meet the 'standards for a suitable school location' (Thom 2010). Notes from the project fieldworker described the school in the following way:

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

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

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

#### *Accessibility indicators*

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

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

Apart from the experiences of violence, exploitation and vulnerability that migrant children often face, the project identified numerous systemic issues that prevented access to education for migrant children. Pertinent here are a lack of documentation and the determination of status as legal or 'illegal'. Access to education is significantly impeded by children or their guardian's ability to furnish school administrators with documentation. While the policy stipulates that to register a child at a public school a birth certificate, immunisation card and transfer card/last school report card are required, the policy also makes provision for a child to be registered provisionally if these documents are not available. The parent or guardian should be given reasonable

time to produce the documents. The findings in the ERP study showed that a number of schools still do not understand or ignore this aspect of the policy and access due to lack of documentation or status remains a key problem.

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

Obtaining documentation must be understood in a context where a significant number of the refugees (while legally here) have escaped conditions of war and civil strife, making it impossible for them to obtain personal documents such as original school report cards or transfer forms. A participant in the Western Cape workshop described how over a two-week period the Cape Town Refugee Centre turned 1 659 people away: 22% were turned away because the centre ran out of forms and another 22% were denied because their permits had expired. Expired permits can induce a R2 500 fine or jail time.

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

There were instances of schools in Limpopo requiring parents (unnecessarily) to furnish their work permits in addition to prospective learners' birth certificates.

Parents spoke of school administrators failing to recognise refugee or asylum-seeker permits:

When we take our child to school, they ask 'where is the birth certificate?' They don't understand how to register a child when you show them a refugee permit. (Refugee parent, Limpopo)

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

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

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

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

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

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

*Abuse and unclear policies and procedures for documentation and enrolment:*

I don't think that schools and officials know their own rules ... They also need training. (NGO participant, Limpopo workshop)

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

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

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

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

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

### *Acceptability indicators*

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

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

There is a high concentration of Somali communities but the majority of schools in rural areas use an Afrikaans medium. In these cases, children enrol into schools despite the language barrier as the community is hungry for education and learning. (Government official, Western Cape)

The extent to which being taught in English acts as a barrier is dependent on the learner's country of origin. Learners that come from Zimbabwe have a strong grasp of English and do not experience English as a barrier. They are doing very well at school. Learners coming from Cameroon, Congo, Burundi and Somalia [who] speak French, Swahili, Linojala or other languages are not as well equipped to make the necessary transitions to education in South Africa. Think about it. If you cannot speak a language, how, in any test, will you be able to answer the question being asked? (Teacher, Western Cape)

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

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

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

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

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

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

Migrant students lamented:

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

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

*Curriculum that promotes and respects human dignity:* Learners and parents were unanimous that the curriculum provides very little space for content about their home countries and teachers have little experience, skill or interest in addressing the cultural differences of migrant learners or of challenging myths and prejudices.

They [teachers] have formal knowledge but they have not been equipped with skills to accommodate learners from diverse backgrounds. They do not have the necessary skills to accommodate learners from beyond South Africa. (Parent, Limpopo)

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

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

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

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

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

### *Adaptability indicators*

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

According to Save the Children (2007) a large number of children indicated that they migrated to South Africa because of the death of a parent. Throughout the literature there have been many concerns about the exploitation of migrants, particularly child

migrants. When parents are able to migrate without children, they are financially better off. Those migrating with children have less secure housing and a lower income (Save the Children 2007). The migration of children without parents takes on a very different characteristic. Unaccompanied minors face considerable vulnerability to exploitation, including child labour.

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

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

When I was better, I met up with another group and together we were smuggled into South Africa in a truck at night. We were about 100 people in that truck. When I came to South Africa, I had no permit and no family, but other people from Somalia could see my struggle and took me in. I live with them ... I am happy now. I have food and a place to sleep. For that I help with the shop and with [the] business. (Somali youth, Western Cape)

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

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

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

In addition, the study showed the agency, resilience and hopes for a better future in

### South Africa among young migrants.

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

### **Conclusion**

Measuring the rights of migrant learners to, in and through education against established indicators allowed for making a selection amongst the 200 indicators. This was done by prioritising those indicators that are most relevant to migrant children's school experiences. The RTE indicators were further refined to fit the South African context and became the framework for the interviews, focus groups and school inventories. The use of indicators addressed the project's interest in creating a sense of awareness around education rights of migrant learners and the state of organisation for the education rights of migrant learners.

Apart from the direct xenophobic violence in South Africa, the project also discussed systemic issues that prevent access to education. Pertinent here was the lack of documentation and the determination of status as 'illegal'. While not directly linked to gratuitous violence, these issues still give rise to psychological trauma. The latter should also be understood in a context where a significant number of the refugees' original homes and schools have been burnt down or destroyed, and some have escaped conditions of war and civil strife. Conditions such as these make it impossible for them to obtain their original school report cards and transfer forms.

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

sustained funding to allow them to intervene over a long period and rather respond to key and immediate issues as they emerge for children or their families.

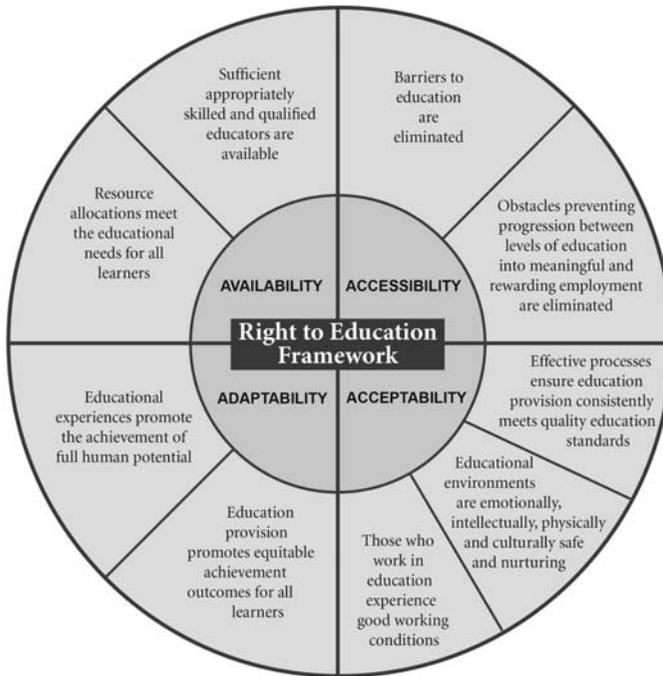
The study also found that legislation and policies were frequently flouted and violated by state officials. In terms of acts of commission, episodes of government officials publicly scapegoating migrants for various social and political problems have helped to further fuel resentment and xenophobic attitudes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

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

## Appendix 1

### **A1 Example of availability indicators (RTE template) adapted for case study on migrant and refugee children at Albert Street (Central Methodist) School in Johannesburg**

- A1.3.1. Enrolment ratios: by gender, by region, by rural/urban divide, by income (\*\*Disaggregated information for migrants not available)
- A1.3.5. Enrolment in technical and vocational programmes (\*information for migrants not available nationally, but can be determined locally)
- A1.3.6. Gross secondary completion ratio (\*information for migrants not available)
- A1.3.7. Repetition rates (\*information for migrants not available)
- A1.3.8. Drop-out/push-out rates
- A1.3.9. Pupil/teacher ratio – lower secondary education



- A1.6.1. % adults enrolled in basic and literacy education programmes – *How many migrant and other adults are enrolled literacy programmes at the church school?*
- A1.8.2. % educational expenditure allocated to private schools – *Is there any government funding for this school that serves primarily migrant children?*
- A1.8.3. % home education – *Are there any children being educated at home because they cannot get access to this school or any SA schools?*
- A1.9.1. % schools closed (provisionally or permanently) – *linked with next question – why does the Dept of Education want to close this school?*
- A1.9.2. Reason?

**Appendix 2: List of migrant organisations, South African social movements and civil society that participated in the study**

**Gauteng**

- |   |                                      |
|---|--------------------------------------|
| Africa Diaspora Forum                     | African Migrant Solidarity           |
| Central Methodist Mission                 | Consortium for Refugees and Migrants |
| Coordinating Body for Refugee Communities | in South Africa                      |
| Inner City Resources Centre               | Ithemba Study Centre                 |
| Itsoseng Women’s Project                  | Lawyers for Human Rights             |
| Migrant Community Board                   | Orange Farm Advice Centre            |
| Refugee Children’s Rights Project         | Sonke Gender Justice Network         |

Soweto Concerned Residents  
Wynberg Concerned Residents  
Thembelihle Crisis Committee

Soweto Electricity Crisis Committee  
Somali Association of South Africa  
Zimbabwe Torture Victims Project

### Western Cape

Agency for Refugee Education Skills Training and Advocacy  
Cape Town Refugee Centre  
Ogoni Solidarity Forum  
South African Democratic Teachers Union  
Social Justice Coalition  
The Children's Movement  
Western Cape Anti-Eviction Forum and  
Whole World Women Association

Legal Resource Centre  
People Against Suffering Oppression  
and Poverty (PASSOP)  
Somali Association of South Africa  
The Trauma Centre for Survivors of  
Violence and Torture

### Limpopo

Blood River Advice Centre  
Centre for Rural Development and Poverty Alleviation, University of Venda  
Jesuit Refugee Services  
Medecins Sans Frontiers  
Musina Legal Advice Centre  
Somali Association of South Africa  
South African Youth Voices Network

Centre for Positive Care  
Journey of Hope Programme  
Musina Children's Resource Centre  
Save the Children  
South African Democratic Teachers  
Union

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