An Empirical Analysis of child-agency of Unaccompanied Minors and separated children in South Africa



*In 2010, more asylum applications were lodged in South Africa than in any other country in the world. Providing access to asylum procedures for unaccompanied and separated children remains a challenge……UNHCR recognizes that overcoming these hurdles requires strong advocacy and technical support ( UNHCR country operations profile - South Africa:2012)* [*http://www.unhcr.org/pages/49e485aa6.html*](http://www.unhcr.org/pages/49e485aa6.html)

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**Rita Knight Ritzau**

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**Supervisor: Vibeke Andersson**

 **ABSTRACT**

This thesis is a study of the concept of ‘child agency’ in development interventions implemented in South Africa, with a focus on enhancing involvement of the voices of children who arrive in South Africa without parents or guardians. That is - unaccompanied minors and separated children who fled/flee to South Africa to seek refuge. The aim is to shed light on the complexities linked to implementation of child agency as a strategy in the interventions in question, using some migration and development theoretical frameworks. South Africa‘s legal obligations under international, regional, and national jurisdictions are examined and the discussion of structural constraints of concern is explored. Central to this discussion, are legal frameworks and policies as well as concepts of child agency, democracy and migration. Against this backdrop, the reasons for the migrant children’s migration to South Africa are briefly discussed in the light of migration theories; and the legal debate concerning the children’s basic rights , such as right to education and right to health are is explored. The challenges the migrant children face in South Africa and how the stakeholders in the development intervention has dealt with involving of the children’s voices in decision-making of issues that affect their lives is covered. Selected actors from civil society organizations are interviewed in an attempt to engage opinions about the organizations engagement in the mentioned intervention. The main opinions as to why the relevant South African government departments and civil society organizations respond to agency of the children in focus, in the manner they do are then discussed while other factors are considered. Issues of invisibility, problems facing the discussed children in their journey to and within the borders of South Africa: for instance- xenophobia. and South Africa‘s involvement or lack of it in the mediation process are some of the factors considered. The conclusion of this study is that the South African government, seem not to succeed – per se, in meeting its legal obligations nor act ethically concerning independent child immigrants.

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**Acronyms**

ACRWC…………………………………… African Charter on the Rights and Welfare of the Child

AOU…………………………………………………………………...Organization of African Unity

CRC……………………………………………………………Convention of the Rights of the Child

CEDAW…………...Convention on the Elimination of All Forms of Discrimination against Women

DHA…………………………………………………………………….Department of Home Affairs

DOH…………………………………………………………………………….Department of Health

EFA………………………………………………………………………………..Education for All

MDGs……………………………………………………………….Millennium Development Goals

RSDOs………………………………………………………...Refugee Status Determination Officer

SAHRC…………………………………………………...South African Human Rights Commission

SAMP……………………………………………Studies by the Southern African Migration Project

SAPS........................................................................................................South African Police Service

UNESCO……………....................United Nations Educational, Scientific and Cultural Organization

UNHCR...................................................................United Nations High Commissioner for Refugees

UNICEF…………………………………………………………….. United Nations Children's Fund

UNDP...................................................................................United Nations Development Programme

UCT...............................................................................................................University of Cape Town

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**Chapter 1 - Introduction**

”*Sentimentality towards children… is no substitute for the recognition of a child’s entitlement to the right to equal concern and respect. This does not mean the treatment of children as adults. It requires, however, respect for the competencies of children. It argues for children to be seen as persons, not cases. It demands that children’s capacities be acknowledged, that they be given a say in the decision-making processes concerning them whenever this is feasible and they are capable participating meaningfully. It expects that the interests of children will be taken into account in public policy-making, whether the issue is led in petrol, taxation, the financing of local government or education” (Freeman in Boyden and Levision, 2000:6).*

This thesis project examines issues that are linked with unaccompanied and separated children’s rights, seen in the light of migration and development in South Africa. In this regard, it explores the concept of children as ‘agents of change’, which in this study will be sometimes referred to as child- agency or child- participation Hence, it explores the relevant legal frameworks governing the issues under study because this is where the child agency approach is rooted and in order to assess the accessibility of rights by the two groups of children in focus. Data from the Sub-Saharan countries will be touched upon merely as points of reference for the purposes of a broader discussion, while the core area of study remains within the South African borders. In migration and development debates focused on minors and their situation, much is written and discussed about enhancing the theme of children as being ‘agents’ of change in matters that affect their lives. Hence this study seeks to examine what it means for these agents of change, to have access to their basic rights, such as the right to education.

The challenges and barriers that the unaccompanied minors and separated children in South Africa might face in gaining access to their rights, will also be examined. For the purposes of further discussion in this thesis, these two groups of children will be referred to as independent migrant children. In spite of the universal recognition of the importance of the protection of children by governments, in legal frameworks where the child agency approach rooted and existing public policies, the relevant stakeholders involved are faced with challenges in complying with their obligations to address and provide the protection and needs of the independent migrant children in South Africa. It must be noted that the South African Constitution is one of the most progressive in the world in that it gives full recognition of children’s rights at the very highest level. In this sense, children – in theory at least – are treated as full participants in society and as legitimate rights-bearers. Although not outlined as a right in Section 28 of the Constitution, the right of children to participate in matters and decisions affecting their lives is clearly articulated in both the UN Convention of the Rights of the Child (CRC), ratified by the South African government in 1995 and the African Charter on the Rights and Welfare of the Child, ratified in 2000. The state is therefore obligated to ensure that children have the opportunity to be heard in matters that affect their lives.

In South Africa, the policies and practices of apartheid prior to 1994 resulted in severe and widespread violation of children’s rights. According to Smith, since the start of democracy in the country,- there has been remarkable progress in addressing inequities of apartheid in relation to children’s issues linked to their survival, development and well-being (ibid. 2009). In spite of this progress of note, inequities still prevail in South Africa. According to the UN’s population division (1997: 27), undocumented migration is ‘one of the fastest- growing forms of migration in the world today’, a trend further reinforced by over a decade of policy and practice aimed at the securitization of legal migration routes (Castles and Miller 2009). It is of note that children - persons under the age of eighteen years - compose a substantial number of these migrants. Dobson claims that, ‘undocumented migrant children’ are a ‘multifaceted and diverse group’ (PICUM 2008; Ibid, 2009).

In the researcher’s opinion, the jurisdictions of legal authorities ought to consider the political, social and cultural spheres in question. These spheres are of particular interest in this research study, as it is in these contextualised spaces that the independent migrant children can become agents of change in the efforts to address the status quo and to influence in access to their rights and their ‘best interests’. Reasons for this argument will be elaborated on in the later chapters.

Thousands of independent migrant children arrive in big cities in South Africa each year, without parents or care-givers and often without legal documents. These children are highly vulnerable to violation of their rights as children. In Africa, 69 million school-age children are not in school. Almost half of them (31 million) are in the Sub-Saharan Africa (UNICEF). According to UNICEF- South Africa, the numbers on Unaccompanied Minors entering the country from, -for example, Mozambique and Zimbabwe, are unknown. However, although they are undocumented, they have the right to basic services such as the right to education, health care etc. This is stated in the Universal Declaration of Human Rights; and other UN agencies such as UNESCO set standards for rights in education, providing a foundation for the Millennium Development Goal (MDG) 2, and the Education for All (EFA). Similarly, the Convention on the Rights of the Child (CRC), states that migrant children have amongst other rights, a right to education - regardless of what country they find themselves in. (United Nations. 1989. Convention on the Rights of the Child. New York, United Nations.

“The status of children in society generally inhibits their involvement as citizens in accessing their rights – due in particular, to the authoritarian and patriarchal societies” (Christina Nomdo- Children’s Institute, UCT; 2011). “It seems that many have not really moved beyond the notion that ‘children should only be ‘seen and not heard’. Subsequently, childhood appears to be used as an excuse for excluding children from decision-making in matters that affect their lives. Children appear to be discredited as informers of how they experience the world, – as it is assumed that adults know best. This suggests a lack of acknowledgement of children’s capabilities to participate in issues of the governance that impacts their lives, in spite of the fact that, they often are miles ahead of most adults in this world mostly run by technology (Ibid).There is great will to influence and improve the conditions of children’s lives all over the world. The United Nations Convention on the Rights of the Child (UN CRC) has a significant influence on children’s rights, which reinforces the understanding in political circles that children have a right to call on state and society for protection and care. Furthermore, an increasing number of civil society, governmental and religious organizations are advocating for children’s rights, which is also the case in South Africa.

As future adult citizens, children may be considered as change agents that will can bring and foster transformations. However, as they are in the process of growing and developing children require special attention, for them to become stronger mentally and physically. Subsequently, their environment has a great impact on shaping their beings. Hence, the importance of their role as agents of change in development is critical. Embedded in CRC enforcement mentioned above, child agency is understood by the researcher as a strategy in a development intervention which is a ‘means’, as well as an ‘end’, when discussing independent migrant children as participants in the interventions. Thus, while independent migrant children must require the attention mentioned above, they can be agents of change in development.

Despite the well- intended strategies and the previous mentioned legal frameworks child agency and participation ten-fold millions of school-age children are not in school. It is this discrepancy in which this research takes its departure point in order to examine why the concept of child agency receives such great is so emphasis on and what its content and significance is in regards to independent migrant children – based on South Africa as a case-study. The examination is seen through the lens of Migration and Development discourse.

**1.1 Defining ‘Agency’**

For the purposes of further discussion in this study, “agency” is best understood via Amartya Sen’s description of an agent, defining an agent as someone who acts and brings about change, whose achievement can be evaluated in terms of his or her own values and objectives (Ibid, 1999: Development As Freedom.) It must be noted here that, agency differs from the often regular use of the word “agent” which is sometimes used to describe a person who is acting on someone else’s behalf. Subsequently, agency – in this study - signifies the ability of the children under study - to personally choose the way of functioning that they value - that is, to choose their actions and values. While the choice might not be compatible with their well-being, their role of agency is therefore crucial to an assessment of their capabilities, allowing for an examination of whether or not economic, social, and/or political barriers impede their ability to pursue substantive freedoms. Furthermore, concern for agency implies that participation, public debate in the public sphere, democratic practice, and empowerment, should be fostered alongside well-being (Alkire, S. 2005a, Capability and Functionings). This thesis investigates child agency of independent migrant children as agents of change in development.

According to Creswell, questions in a research study must comply with the aims of the study and the objectives of finding a solution to the problem (Ibid, 2008). Based on the Creswell’s claim and based on the information above, this research investigates the following questions:

* 1. **Why does the child agency approach/strategy seem to have minimal effect on enhancing the rights of independent migrant children in South Africa?**
		1. What is meant by the concept of child agency in the development interventions with and for independent migrant children in South Africa?
		2. How is the approach implemented in order to include the voices of these children in the decision-making on issues that affect their lives?

These questions will be explored through an in-depth discussion of collected data. The basis for this exploration - the roadmap of how the research was conducted, is outlined in the following chapter.

**Chapter 2 - Methodology**

**2.1 Introduction:**

In search for solutions to the research questions posed above, this study used both primary and secondary data. The methodology chapter has two functions. Firstly, it presents the reader with the direction and the coherence of the study content - from the introduction to the conclusion. Secondly, and not less important, - it provides the researcher with guidelines to the process and methods of data collection, analysis and interpretation of observations. Methods of social research are closely tied to different visions of how social realities should be studied. Methods are not simply neutral tools: they are linked with the ways in which social scientists envision the connection between different points of view about the nature of social reality and how it should be examined. However, it is possible to overstate this point (Bryman, 2004). .According to Bryman, while methods of research are not neutral, they are not entirely suffused with intellectual inclinations either’ (ibid, 2008; 4).

This study will examine the discussed children’s accessibility of their rights, in two different perspectives on child-agency in order to address the research question. This is due to the fact that: In one perspective, child-agency is widely debated on, regarding its effect on children’s development and the need to involve the children’s views in making decision that affect their well-being. This is in accordance to the legal frameworks that articulates protection and reinforcements of children’s rights the concept of the child’s ‘best interests’. The legal frameworks are discussed in the later chapters. Through globalization, international standards such as the UN and the ILO continue to implement protection of human rights, hereunder child rights in a global context whereby children are often viewed as vulnerable and passive beneficiaries. This perspective will be used partially in search for resolutions to the first sub-question of the core question in this study.

In the other perspective, the relevant international standards labour are examined further as the standards might consider childhood in a unitary form, even in the case of the independent migrant children under this study. This perspective will be used as a part of finding answers to the second sub-question.

Research methodology references the procedural rules for the evaluation of research claims and the validation of the knowledge gathered, while research design functions as the research blueprint (Creswell, 2003). Hence, as the research question of this study examines independent migrant children in South Africa as “agents of change”, some relevant points of references are needed for the purposes of a broader discussion. Therefore the study uses some Sub-Saharan countries as points of reference, as well as relevant legislation frameworks and policies to frame the discussion.

The research methods used in conducting this study will therefore be presented and elaborated, sources of the information used and the ethical considerations involved will be brought to light. Furthermore, the selection of data will be explained. This chapter is in two-fold. The first segment is on the pre-empirical phase of the study – the project’s design. The second segment is on the research design, which covers the actual data collection, a qualitative research comprised of both primary and secondary sources. Furthermore, the methods extend to the research design, includes a description of the structure of the research and the reasons for the selected procedures in the study.

In order for the researcher to critically examine the posed questions above, relevant theories have been selected. The background and reasons for choosing these theories as well as their link to the problem formulation will be outlined. For a broader understanding, limitations of the theoretical concepts will also be explored. A road-map of the how this study is conducted is illustrated in Fig 1, below:

Fig 1,

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**2.2 Project Design**

For the purposes of a broader discussion of the core question, as well as guiding the readers understanding of this thesis, the study is divided into six chapters. Firstly, the projected is presented, giving an overarching background of the paradox that leads to the research question. The objective of the first chapter is to briefly outline the concept of child agency, which in some instances in this study will be referred to as child participation. Additionally, it will illustrate the concept’s inter-linkages with democracy and children’s rights seen through the lens of migration and development. With South Africa as the case-study in focus, the Sub-Saharan region and relevant legal frameworks are points of reference in conducting this research. In this chapter, the study seeks to contextualize child agency/participation of independent migrant children and illustrate the diversity of the concept.

Previous research studies seem to suggest that numerous migrant children develop resilience as a form of coping strategy during their migration experiences and daily lives in their destination countries. This chapter attempts to identify and illuminate the complexity of the child- agency issue and its implementations in different settings in South Africa. To critically examine and discuss the questions of this research some theories have been identified as relevant. The background for choosing these theories and their linkage to the problem formulation will be outlined in the following segment of this chapter. Their limitations of will also be explored. As it is argued that the voices of independent migrant children should be enhanced in making decisions- making on development strategies that influence their well-being, it is inevitable and essential to discuss the relevant legislation frameworks and policies as points of reference. This is in accordance with the Millennium Development Goals 2(See Appendix 5).: “It is crucial to improve national legislation and constitutions based on the international instruments and translate them into concrete policies and programmes” (MDG 2: 3.3.4) Hence, this study argues for the need for examining and analysing the issues within the structural frameworks underlying the independent migrant children’s involvement as agents of change in their destination country - South Africa. Subsequently, child- agency will be examined within its social, cultural and political background.

**2.3 Research design**

The second chapter identifies and explains the methodologies, of which this thesis utilises as tools to address the possible resolutions to the core question. The sources of the relevant data gathered will be described. There are various definitions of the term ‘research design’. In Bryman’s terms, it is: ‘a framework for the generation of evidence that is suited to both certain set of criteria and to the research questions in which the investigator is interested’. He further claims that, research design relates to the criteria that are employed when evaluating social research (Ibid, 2004: 27). According to Keith Punch, research design links the research question and data, indicating how research questions will be answered (Punch, 2006: 47). ,In this study research design is a vital part of the broader discussion of the problem formulation, which provides guidelines for the researcher and limits the risk of findings that do not resolve the research question. The research methods employed are as follows:

**2.4 Data collection methods**

Data collection can entail primary, secondary information or a combination of the two. A researcher should clearly state what determines their use of qualitative or research methods in relation to the research question. Punch also advises that, if a research study seeks to make standardized comparisons and sketching, then quantitative data is suitable and necessary for the study. In contrast, qualitative research method would be suitable, in the case where the research question seeks to examine a phenomenon in detail (Ibid, 2006:46). Bryman defines ‘qualitative research’ as ‘a concept that can be construed as a research strategy that usually puts emphasis on words, rather than quantification in collecting and analysing data. In addition, it rejects the practice and norms of the natural scientific models (Ibid, 2004:21-22). This research study finds qualitative research more suitable than the other method because it provides the investigator with the unique opportunity to understand the world of the investigated person/s. Moreover, as claimed by Spicer, – qualitative research permits the researcher to study people in naturally occurring settings, contrary to the quantitative research which is established for the purposes of research in which variables are controlled such as in a natural science experiment (Spicer 2004, in Seale 2004). According to Bryman, a qualitative research method is not without flaws, despite its several merits. For example, investigations and findings linked to the core question in this thesis on child agency and migration in South Africa cannot always be generalized nor be merely applicable to other settings in other countries in the Sub-Saharan region. “Quantitative research strategy does not differentiate between persons and social institutions where social scientists use natural science methods in treating social worlds without distinguishing them from the natural order”(Bryman, 2004:78). This study will not use quantitative research strategy as defined Bryman as it does not comply with the needs of this research. Data collection methods are described below.

**2.4.1 Primary data**

Some of the methods for collecting primary data were interviews, and (Bryman, 2004) Secondary sources of data were literature such as books, articles, newspapers, organization materials and the internet (Ibid,). Both of these methods were used in this study.

**Semi-structured interviews**

According to Kvale, an interview is a specific form of interaction; in which knowledge evolves through dialogue (Kvale 1996:125). The researcher had to use a research assistant, Marcel Mulombo who is based in Cape Town, to conduct the interviews. The reason for this is explained in the limitation of the research method. Initially some interviews were conducted by the researcher during her in field-work period in South Africa. Data collected could not be used. The rest of the interviews were to be conducted as telephone and Skype interviews upon the researchers return to Denmark. These interviews were be semi-structured, of which Kvale defines as, “interviews whose purpose is to obtain descriptions of the life world of the interviewees with respect of interpreting the meaning of the described phenomenon”. (Ibid:6) Following Kvale’s definition above, the interview guide was designed to establish list of items to be discussed, while allowing the flexibility to collect relevant data,. For example, repetition of questions would be avoided if the questioned has been already answered, in a response to a previous question. Subsequently, relevant additional questions can be posed, should the need arise- during the interview.

**Interviews**

In order to examine sub-questions 1 and 2 of the research question, interviews were conducted with employees from development organizations in South Africa, who within advocate for the rights of independent migrant children in the country. These organizations are Cape Town Refugee Centre, University of Cape Town – Law Clinic, Scalabrini refugee Centre of Cape Town and International Organization for Migration. These organizations hold regular fora on the rights of independent migrant children in South Africa and on other rights issues. Thus, they were suitable sources of first-hand information on issues linked to these children’s participation as agents of change. Further elaboration on this argument will be discussed in later chapters.

**2.4.2 Secondary data**

Some of the data is extracted from organizations working with and for independent migrant children. A substantial number of the books and articles used are from the Sub-Saharan region, mostly South African –in order to get the local perspective on South-South migration regarding the children in question. While some information was accessed from the internet, caution was taken in selection of publications –in regards to reliability. Data is illustrated used by diagrams and charts in order to provide the reader with a visual understanding the discussed issues.

**Case –studies**

This section is dedicated to the background for the study and constitutes an overarching basis for the analysis. A case study can be comprised of a single or multiple cases and have a number of levels of analysis. As mentioned earlier, As South Africa is used as the case-study in this thesis- a general overview of the country is therefore examined in structural contexts of social, cultural and political frameworks that are inter-linked with child agency. Yin claims that, “the case-study’s unique strength is its ability to deal with full variety of evidence: documents, interviews and observations” (Yin.R:1994). This study interprets Yin’s claim to be of similar connotation to Bryman and Burgess’s definition of a case study: “...it is a research strategy which focuses on understanding the dynamics present within single settings” (Bryman and Burgess, 1994). Based on the definitions of a ‘case -study’ above, the thesis uses a case study as tool to finding a broader understanding of the issues related to the research question. In line with Yin’s claim (Ibid), theories and a variety of views on on-going, contemporary real-life situations are applied to selected case-studies. A the description of child rights and other themes that are applicable to the child agency of independent migrant children, seen through the lens of relevant local and international legal frameworks, in relation to child agency will be presented. This chapter seeks to enhance the understanding of the issue of child agency for independent migrant children in South Africa, by shedding light on the issue’s connectedness to the structural frameworks of South Africa. The case study is very important in that, it will also highlight the various development interventions that the stakeholders in question are taking to address the child agency of these children in question..; thereby, giving an outlining of the stakeholders and their roles which will provide some solutions to part of the research questions. Furthermore, examples of individual cases of migrant children’s’ agency in development interventions will be observed, to give an insight to the part played by the children, as agents of change in development strategies that affect their lives.

**2.5 Reliability and validity of the study.**

According to Bryman, reliability is,”…. also the consistency of a measure of a concept” (Bryman 2004). He categorized reliability into three types:, thus,

Stability. “This means that whether a particular measure is stable over some time. The response one gets from interviewing for one group at one place should not be too varied relative to the same information at another place.

Internal reliability: should be designed in a way that the results or the scores of on one indicator is related to others” (Ibid).

Inter-observer consistency. “Here it is appropriate that there should not be more than one individual person in the translating and recording of data in order to ensure consistency in the process”.(Ibid, 2004). In line with the use of quantitative method or approach in this research, I used a semi- structured interview guide which enabled the respondents to express themselves freely and in a manner that provides sufficient information on the research area. It is important to note that before I proceeded to conduct interviews, I carefully selected my respondents. The criterion for the selection was for them to be working closely with independent migrant children in South Africa.

**2.6 Limitations of research methods**

Another source of primary data that was initially planned was participatory observation and interviews. The observation would have been taken place during class in the classrooms, at two (2) different schools, which some of the independent migrant children attend. The observations at the two (2) schools would serve the purposes of a comparative study. The researcher intended to use this method to gather information by listening to and observing the participation of the children in question, as well as the teachers’ and school-headmaster’s. The participants’ names and the duration of the observation were to be noted and included in the appendices of the thesis. Interviews were also selected as the primary data collection method, as the initial goal was to conduct them with the migrant children in relation to the research question. However, it was not possible to arrange interviews with these intended for children, mainly due to the ethical issues regarding child protection, and the limited time- frame within which the schools made available for the researcher. The two schools are Maitland School and SOS Children’s Village School, both of which are located in the Western Cape of South Africa.

This study reflects opinions some of the civil society key players responsible for or involved in advocating the rights of independent migrants children in South Africa. Empirical data is collected from across the country. In terms of limitations, the opinions reflected in this research are not necessarily illustrative of the country as a whole. The interviews were conducted in Cape Town. Three people are interviewed which is a small number. However, similar opinions appear to be coming up from the respondents and more may not have necessarily created any new insights. Nonetheless, much effort to include as many opinions as possible from all interviews is attempted. Another limitation lies in two un-kept appointments with the potential interviewees, with whom I agreed to interview. One of the appointments was made sixteen days in advance with an official at the DHA but the official was not in his office when I arrived there. According to his secretary, he had travelled to Pretoria on an urgent call. The other unsuccessful interview appointment was made with an official at DOH. Ten minutes prior to our meeting, I received a telephone call – to be informed that the appointment was cancelled on the grounds that there the official was not at work, due to illness.

**2.7** **Theoretical framework**

It has been mentioned in the introduction chapter that this study examines the concept of child agency through the lens of Migration and Development discourse. The theoretical framework of this thesis, therefore, encompasses paradigms of Migration theories and those of Alternative Development theory. Then the paradigms in question will be dealt with. Migration as a household livelihood strategy will be used in exploring and discussing the solutions to the first sub-question of the research question. Basic Human Theory and Human Development Theory, in conjunction with the Capabilities Approach will be applied in searching answers to the second sub-question. Each of the theories and strategy will be discussed because they are both an essential ingredient in analysing the data and a platform for critical elaboration of the issues linked to the diversity of the research question. The Development theories are embedded in the alternative development notion of ‘bottom-up’ or ‘out-out-the-box’ way of thinking. For a better understanding of the implications of the theories, some of their limitations will be described.

**2.8** **Analysis**

This chapter analyses the research question based on the gathered data. The selected theories are applied and tested in relation to the case of South Africa. The issue of child agency and the rights of independent migrant children in the country is analysed in relation to democracy and the governing local and international standards, such as the South African Children’s Act and the UN Convention on the Rights of the Child (CRC), respectively. “Numerous legal instruments and mechanisms can be employed to enhance the protection of refugees and asylum-seekers. It has been said that one of the greatest tests of a country‘s democracy is how its government and people treat foreigners” (Handmaker et al, 2008:278). For this reason, it is of importance in this study to examine South Africa‘s developmental efforts with and for independent migrant children, in terms of the law as it provides a measure to which the state can be held accountable. The study argues for the importance to considering some of the constraints on child agency in relation to the children included in the study. Based on the collected data, the extent to which theses children’s choices as ‘agents of change’ will be outlined; hence, analysing child agency within the structural frameworks in question. The paper will furthermore discuss the development methods and strategies used by the stakeholders involved in enhancing the child agents’ right to be heard and whether the views of the child agents are included in making decisions affecting their lives. The right to education be discussed in relation to the importance of involvement of the children’s views in the decision-making. Similarly the theoretical framework will be tested in regards to the empirical data.

**2.9** **Conclusion**

The final chapter, highlights on the outcomes of the study and discusses their implications. The aim of the final summary of any paper is to arrive at some solutions to the paper’s problem formulation. Therefore comments and recommendations will be presented. As mentioned in the in the preceding chapter, child agency of independent migrant children in South Africa will be viewed through the contextual spaces of the relevant legal frameworks and the concepts of migration, democracy and children as agents of change. The theories selected for the study will be the point of departure for a broader discussion, alongside presentation of the spaces and concepts in question. Based on South Africa as a case-study, child agency will be examined in its social, cultural, political and economic contexts. This is used as a road map to finding the answers to the research questions.

**Chapter 3 – Definitions of Concepts**

**3.1 Child Agency**

Child agency is rooted in the child’s right to participation. “Participation is a basic human right, and as such, it is not a gift or privilege bestowed by adults on children, but the right of every child capable of expressing a view. In other words, it is a fundamental right for all children – especially the most marginalized and vulnerable in society”- (Karunan, Victor, Concept Note on Child Participation, UNICEF’s Medium-Term Strategic Plan 2006-2009,: ADAP-PD, UNICEF Headquarters, New York).

For the purposes of further discussion in this research study, agency is best understood via Amartya Sen’s description of an agent, which defines an agent as “someone who acts and brings about change, whose achievement can be evaluated in terms of his or her own values and objectives” (Ibid, 1999: “ It must be noted that, ‘agency’ differs from the often regular use of the word “agent” which is sometimes used to describe a person who is acting on someone else’s behalf. In this study ‘agency’ signifies ability of the children under study - to personally choose the functioning that they value, i.e. to choose their actions and values. While the choice might not be compatible with their well-being, their role in agency crucial is therefore crucial to an assessment of their capabilities, allowing for an examination of whether or not economic, social, and/or political barriers impede their ability to pursue substantive freedoms. Furthermore, concern for agency implies that participation, public debate in the public sphere, democratic practice, and empowerment, should be fostered alongside well-being” (Alkire, S. 2005a, Capability and Functionings).

**3.2 Children as agents of change**

Because of social conditions, it is argued that “active citizenship becomes a dynamic process rather than a standard, clear-cut set of rights and responsibilities” (Jans, 2004:27). “Moreover, children seem to represent an ‘ambivalent social phenomenon’ as they are seen as ‘autonomous individuals as well as objects of protection. Nevertheless, there exists today a growing discourse on child’s participation and it is which claims that children can be considered as active citizens because their ability to play and learn allows them to give an active meaning to their environment. Adults and children’s living conditions are ‘fundamentally influenced by the same economic, political and social powers, and although tendencies such as individualization or globalization may not have the same impact on children as they do on other groups, but still, they still determine their living conditions and the social construction of childhood” (ibid). It is noteworthy to mention that the majority of the independent migrant children in South Africa do not have citizenship in the country. This thesis finds this fact relevant for a broader discussion for the reasons that will be unfolded discussed in the analysis chapter.

**3.3 Legal Frameworks and policies**

A child is defined as a person between birth and the age of eighteen, which is the age of majority in keeping with the United Nations Convention on the Rights of the Child,; the African Charter on the Rights and Welfare of the Child (ACRWC),; Section 28 of the Bill of Rights enshrined in the South African Constitution, and the Children’s Act 38 of 2005. The UN Convention on the Rights of the Child was the first international convention signed by the new democratic government of South Africa. The Convention states that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth” (CRC, Preamble: 1989) The African Charter on the Rights and Welfare of Children was developed from the UN Convention, but included additional clauses and protections which the Organization of African Unity (OAU) considered necessary for children in Africa. “The situation of most African children remains critical due to the unique factors of their socio‐economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger; and on account of the child’s physical and mental immaturity, he/she needs special safeguards and care…”(ACRWC:1999). South Africa has ratified this Charter. Furthermore, South Africa has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of People with Disabilities, both of which deal in part with children.

**3.3.1 Rights of Foreign nationals**

“Foreign nationals living in South Africa have exactly the same human rights as South African citizens. Yet, they are often treated cruelly and without humanity. Medicin Sans Frontiers (MSF) is helping many of these vulnerable people to obtain health care in difficult circumstances. In September 2007, the Department of Health (DOH) released a directive reaffirming that refugees and asylum-seekers with or without entry permits have the right to health services. The directive stated that they should be treated for free at any primary health care facility and exempted from hospital admission fees, if they lack financial resources. They are also entitled to use any antiretroviral therapy (ART) service point, and treatment should be free of charge”. (Odendal, L. Médecins Sans Frontières (MSF).Children’s rights are human rights. Human rights are inherent – in other words, people have rights simply because they are human beings. Although they are often treated as human ‘becomings’ children are rights holders too. Human rights were first written into international law and treaties in the first half of the last century. Debates about whether such rights extended to children were to some degree settled, when the international community adopted the United Nations Convention on the Rights of the Child (UNCRC) in 1989. South Africa has agreed to be bound by the provisions of this international treaty. Children need extra protection and guidance from the adults around them and from the government” (ibid). That is why they have extra protection rights. Children’s rights are meant to promote the interests of children in two ways: voluntary and involuntary. This promotion- in theory at least -occurs in a democratic government*.* This thesis seeks to find answers to the research question partially by exploring accessibility of basic rights of the children under study and the effect it has on involvement of the children’s voices in their role as agents of change. In order to discuss these children’s rights in a broader perspective, the concepts governing the structural contexts within which the problem formulation is explored are defined in the following sections of this chapter.

**3.3.2 Democracy**

*Democracy is based on the majority principle. This is especially true in a country such as ours where the vast majority have been systematically denied their rights. At the same time, democracy also requires that the rights of political and other minorities be safeguarded.” – Nelson Mandela*

“Democracy is an egalitarian form of government in which all the citizens of a nation together determine public policy, the laws and the actions of their state, requiring that all citizens (meeting certain qualifications) have an equal opportunity to express their opinion. In practice, "democracy" is the extent to which a given system approximates this ideal, and a given political system is referred to as "a democracy" if it allows a certain approximation to ideal democracy. Although no country has ever granted all its citizens (i.e. including minors) the vote, most countries today hold regular elections based on egalitarian principles, at least in theory. The South African Human Rights Commission is the national institution established to entrench constitutional democracy. It is committed to promote respect for, observance of and the protection of human rights for everyone without fear or favour. Human rights are the basic rights that everyone has, simply because they are human”. (<http://www.southafrica.info/about/democracy/constitution.htm#ixzz1xPfh6rc7>***)***

**3.4 Migration**

A fundamental characteristic of people is their movement from place to place. The right to move was recognized globally over a half century ago with the adoption of the Universal Declaration of Human Rights. In article 3 of the Declaration it is stated “Everyone has the right to freedom of movement and residence within the borders of each state” and “Everyone has the right to leave any country, including his own, and to return to his country” (Ibid). It is against this background that the number of population movements increased significantly in recent times. The concept of migration can be defined in a several ways. It can be defined as the movement of people from one place to another. This movement can be voluntary or otherwise. On voluntary basis, a person’s moving is due to their wish to re-locating to a place which they believe to offer them a better standard of living, such as in the case of some of the children under this study. As mentioned earlier, the re-locating to another place can also be involuntary, when people have to move as a result of fear of being persecuted by despotic leaders or being harmed by environmental disasters such as drought, earthquakes, and floods etc., as other cases of the discussed children. Prior to discussing the identified theories, the study sheds light on some of the contributing factors to independent migrant children’s immigration to South Africa. These factors are can have impact on the children’s participation as agents of change in decision-making that affect their lives. Discussion of their impact will be in the analysis chapter. The study investigates these structural factors in search for solutions to the problem-formulation.

**3. 4.1 Problems facing refugee and asylum-seekers in South Africa**

“Many do not receive a permit legalising their stay in the country on the same day as their application has been lodged. Others, report mistakes on their permits thereby making them vulnerable to police scrutiny and even subject to refoulement” (Vigneswaran, 2008:15). “Additionally, the decision-making by the Refugee Status Determination Officers (RSDOs) has been unprofessional and of a poor quality” (Civil Society Organizations, 2006:7). “There is no specific legislation prescribing the validity period for asylum permits, ….many asylum-seekers have to return to the office several times a year to renew their permits” (Vigneswaran, 2008:14). “Having obtained a Section 22 Permit, an asylum-seeker can wait up to six years to receive their formal recognition as a refugee (Section 24 Permit). This interim period is often characterised by much hardship and immense suffering” (Civil Society Organizations, 2006:9). According to Bloch, some Zimbabwean have had their asylum claim, refused( regardless of the grounds) by DHA., (Bloch, 2008:5, 15).

According to Mawadza, the DHA is facing serious human resource and administrative capacity challenges that exacerbate the problem. These include corruption, slow turnaround time for processing documentation and inadequate systems checks. Reception Offices are understaffed and RSDOs are under-trained (Ibid, 2008:7). “The DHA has notoriously bad information technology and ―case flow management systems” (Vigneswaran, 2008:14) although in recent months there have been reports of technological improvements (CORMSA, 2008:19). “There is also a large and growing backlog of undetermined asylum claims” (Vigneswaran, 2008:3-4). Statistics from CORMSA indicate that, in early 2008, the asylum processing backlog was 89 033; 207 206 asylum applications that were made in 2008 with 69 114 being finalised and10% were approved while rest were rejected. At the end of 2008, there were 227 125 outstanding asylum applications (Ibid. 2009:30).

**3.4.1 Reasons for migrating to South Africa**

There are various reasons for children becoming migrants by moving to South Africa. In order to address this study’s e research question, the researcher finds it necessary to examine the reasons behind children leaving their home countries. These reasons will be used as a base for a broader discussion of the contextual spaces within which these children’s capabilities as agents of change can be viewed. Previous research studies have indicated that children migrate for various reasons. In an ethnographic study in South Africa by David Thorn the following causes for migration were identified: Education – due to teachers strikes, closing of schools, not being able to afford the school-fees, political, persecution of teachers which then creates shortages of teachers in the children’s’ countries of origin. Political - due to being forced to join youth groups supporting the ruling party, political persecution of family members, and political persecution of teachers, leading to closing down of schools. Family –orphans who do not have relatives to go to, coming from a single-parent family that could not provide for them, -living with members of extended family that could not provide for them and working in order to pay school-fees for younger siblings. (Thorn, D: Migration and Unaccompanied Minors in Southern Africa – Open Institute for Southern Africa). Taking Zimbabwe as point of reference – a country where most of the refugee and asylum-seekers in South Africa come from, new arrivals of Zimbabweans in South Africa prevails, in spite of their home country’s temporary political stabilization. These arrivals include children without parents or caregivers. That is, in this thesis – the independent migrant children. The Consortium of Refugees and Migrants in South Africa (CORMSA) claims, “we should expect to see similar levels of migration for the next two to five years. If the government of National Unity in Zimbabwe collapses, even larger volumes of migration could occur” (Ibid, 2009:12). Similarly, Mawadza argues, “ The relative economic prosperity, democratic values, emphasis on regional integration and African renaissance of South Africa, coupled with porous borders, remain, and will remain a pull factor for the near future” (Ibid, 2008:3-4). “It is therefore a mixture of failed governance; food insecurity and manipulation of food for political ends; economic meltdown, including inflation, high unemployment, and large shortages of consumer items, fuel, and foreign currency that are some of the many problems forcing thousands to leave” (Simpson, 2008b). The emphasis here is exemplifying some of the discussed children’s reasons for migrating to South Africa. Thus, illuminating on part of the contextual spheres, within which these children’s agency has been explored, in search for resolutions to the research question.

**Case- study**

In 2011 a fieldwork research was conducted by the Centre for Education Rights and Transformation (CERT) in South Africa on “Education Rights amongst Refugees, Asylum Seekers and Undocumented Migrants in South Africa”.

Participants comprised of refugees, asylum seekers and non-documented migrants as only five of the participants were South Africans. The non- South African participants were Somalian, Ugandan, Congolese, Cameroonian, Rwandan, Zimbabwean and Nigerian. Of the total sample, 11 were learners (pupils) with the remaining 19 being parents. A government department and various civil society organizations were visited as well as Maitland School, where a large number of refugee and asylum-seekers attend (CERT, 2011.

**Outcomes – relevant to this thesis:**

“Unaccompanied minors are the most vulnerable of all migrant learners. One story of an unaccompanied minor highlights the importance of this issue. The respondent Somalia lost his family due to war and was staying with distant relatives. His family saw that he was struggling and decided to collect funds for him to travel to South Africa. Alone he began the journey. When he reached Mozambique he contracted malaria and almost died. After recovering, him and hundreds others were smuggled into South Africa on the back of a truck. When in South Africa, he came to Bellville having nothing but the community housed him and helped him find his family in the City. Every Tuesday (the day the reception centre deals with new Somalia refugees and asylum seekers), when he can afford he goes to Home Affairs to get a permit. He came when he was 17 and is now 18 but still paperless” (CERT,2011).

**Awareness:**

“*Refugee* is not a homogenous term - Although many refugees may face manly similar issues, the different religions, cultures, etc. make it necessary to take a multi-faceted approach. Asylum seekers, refugees or undocumented migrants have very different status and therefore have very different needs” (Ibid, 2011).

Education rights training - A small minority of people have had training on the “Rights of the Refugee” with the majority of participants having had no training on their specific education rights”( ibid).

**Accessibility:**

 “Documentation and DHA were identified as some of the constraints on independent migrant children’s access their educational rights: “Even though the admission requirements have been lessened there are still serious concerns around the ability, efficiency and effectiveness of the Department of Home Affairs. Across the board the officials are considered rude, inefficient and treat people with disdain or as respondents say, “like animals.” It is not uncommon for people to report that they have slept overnight for three days straight at the Department with no result. A monitoring report by PASSOP on documentation at the Refugee Reception Office (RRO) reported that 1659 people were turned away within a two week period. The majority, 22 per cent were turned away because the centre ran out of the forms with another 22 per cent denied because their permits were expired……” (Ibid, 2011)

**Xenophobia**

“Research studies carried out by the Southern African Migration Project (SAMP) indicated South Africa as one of the most xenophobic countries on the globe – in particular, towards those from other African countries” (IRIN, 2008: CORMSA, 2008:7) This tragedy does not exclude the independent migrant children in South Africa. “In 2008, violence against foreigners broke out across South Africa, injuring, killing and causing further displacement of migrants. Hereunder, further displacement of independent migrant children (Ibid, 2008: Ibid 2008)

According to CORMSA, the violence was basically triggered by “institutional marginalisation of some poor and non-citizen residents, and of local government failure” (Ibid 2009:10). In order to address the core question, this study seeks to examine the impact that xenophobia might have on enhancement of the role of independent migrant children as agents of change. “Most South Africans make no distinction between refugees and economic migrants or even foreign criminals operating within the country. To complicate matters further, the general term for all migrants is ―refugee. As expectations of post-Apartheid opportunities wane, ―refugees become blamed for the problems many South Africans face” (Williamson, 2007).

In the following chapter, selected theories will now be described in search for answers to the problem- formulation.

**Chapter 4 – Theories**

 **4.1 INTRODUCTION**

This chapter presents the theoretical framework I used to address the research questions. Several theories could be used to examine and explain migrant child agency and the issues linked to it. Due to the limited time-frame within which this thesis should be completed, theories used are therefore limited to four. These theories will guide the study and explain the questions posed in the problem formulation. It is necessary to familiarize with the selected theories, since they are the lenses through which the research questions are explored. The factors that affect migrant children’s rights in their role as agents of change have to be addressed. In search for solutions to the formulated problem the factors affecting migrant children’s rights are used as a checklist for identifying and selecting the theories to be used as part of the analysis. The four theories selected for a broader discussion of core question and sub-sub questions are Human Needs Theory, Human Development Theory, and Migration as a household livelihood strategy and New Economics of Labour Migration (NELM). In relation to the Human Development Theory, the concepts of Capabilities Approach and Functionings will be also be touched upon on. In the following sections the theories, concepts and strategies are described as well as the reason for their selection given.

**4.2 Basic Human Needs Theory**

“Human needs are a powerful source of explanation of human behaviour and social interaction. The basic principle of human needs theory lies in that all basic needs should be satisfied before the less essential needs of a few are met”. (Streeten, 1984). He argues that, “the objective of meeting basic needs brings to a development strategy a heightened concern with the satisfaction of some elementary needs, especially in education and health. Basic education, for example, improves health services, and better health enables children to benefit from education” (Ibid.:3). According to Abraham Maslow,” needs are hierarchical in nature - each need has a specific sequence in which it is obtained. Maslow's needs model or pyramid identifies basic items of food, water, and shelter, followed by the need for safety and security, then belonging or love, self-esteem, and finally, personal fulfilment”( Ibid1954). Similarly, Uvin argues that, “All human beings, have basic material needs for food, material, and shelter; and all development activities and policies should first of all promote the satisfaction of these basic needs.; only after that is done should more social and psychological needs be addressed’’(Ibid, 2004:34) According to one of the leading basic needs theorists, Mahbub Ul Haq, “The emphasis on basic needs heighten concern with meeting the consumption needs of the entire population: not only in the customary areas of education and health, but also in nutrition, housing…… In formulating policies aimed at reducing poverty, a good deal of attention has been paid in the economic literature….. But similar attention has not been devoted to the consumption side (Ibid). Basic needs theorists mentioned above indicate that development interventions and policies should first enhance the satisfaction of all human beings’ elementary material needs for food, shelter, etc. Thereafter can other needs be addressed. This study interprets the theorists’ indication as a lens through which the concept of child agency can be explored. This is due to the fact that their approach addresses basic needs at all levels as well as taking consumption needs and elementary needs such as education and health.

**4.2.1 Critique of the theory**

From the perspective of both the human rights based approaches (HRBA) and the human development approach (HDA) present the basic needs theory is as a primitive forerunner. It is: technocratic, top-down, commodity-focused, a staging post on the path to right thinking. The researcher finds the basic human needs theory relevant in searching for resolutions to the core question of this thesis as the basic human needs, of the migrant children(in terms of involvement of their voices in decisions that affect their lives) are under study. However, for the researcher, this theory raises questions and uncertainties. For example, how does one define the basic human needs of the individual independent children? Are some needs more important than others? How does one prioritize the needs? In which contextual spheres are the needs interpreted? This theory is however, relevant for the purposes of a broader discussion of the problem formulation, in the analysis chapter.

**4.3 Human Development Theory**

In exploring the issues linked to the concepts of child agency of independent migrant children in South Africa, seen in the light of migration and development, the researcher finds this theory to be instrumental in addressing both the sub-questions of this study. Relevance of the theory will be illustrated in the analysis chapter.

According to Sen Amatyr, Human Development is a paradigm of alternative development… Amatyr argues, “Human development, as an approach, is concerned with what I take to be the basic development idea: namely, advancing the richness of human life, rather than the richness of the economy in which human beings live, which is only a part of it."(Ibid, 2008). “The objectives of the human development approach are embedded in making sense of the changing world, aiming to enhance people’s livelihoods of well-being. Human development is an evolving idea, not a fixed, static set of precepts. And as the world changes, analytical tools and concepts will also continue to evolve. Yet the core insight at the centre of the human development approach remains constant and as valid today as it was two decades ago: Development is ultimately best measured by its impact on individual live” (Ibid.2008). "The basic purpose of development is to enlarge people's choices. In principle, these choices can be infinite and can change over time. People often value achievements that do not show up at all, or not immediately, in income or growth figures: greater access to knowledge, better nutrition and health services, more secure livelihoods, security against crime and physical violence, satisfying leisure hours, political and cultural freedoms and sense of participation in community activities. The objective of development is to create an enabling environment for people to enjoy long, healthy and creative lives." (Mahbub ul Haq (1934-1998), -founder of the Human Development Report).

**4.3.1 The Capability Approach**

The capability approach (also called the capabilities approach) was initiated by Amatyr Sen as an approach to welfare economics in the 1980s. The approach focuses on what individuals are able to do, (i.e., capable of). The approach was first fully articulated in Sen (1985) and discussed in Sen and Nussbaum (1993). In relation to development, the approach is discussed further in Sen (1999), Nussbaum (2000), and Clark (2002, 2005).

Initially Sen argued for five components in assessing capability: 1.The importance of real freedoms in the assessment of a person's advantage. 2. Individual differences in the ability to transform resources into valuable activities. 3. The multi-variant nature of activities giving rise to happiness. 4. A balance of materialistic and non-materialistic factors in evaluating human welfare. 5. Concern for the distribution of opportunities within society.

Subsequently, and in collaboration particularly with political philosopher Martha Nussbaum, development economist Sudhir Anand, and economic theorist James Foster, Sen has helped to make the capabilities approach predominant as a paradigm for policy debate in human development where it inspired the creation of the UN's Human Development Index, which is (a popular and much used measure of human development, capturing capabilities in health, education, and income). The approach focuses on what people are actually capable of doing or being, considering each individual. Nussbaum lists a range of factors that she sees as central to life being truly human, i.e. life; bodily health; bodily integrity; senses, imagination, thought; emotions; practical reason; affiliation; other species; play; control over one‘s environment, both political and material. These capabilities can be linked with human rights. According to Nussbaum, “through no action of their own, refugees would be seen to be denied their core capabilities and therefore human rights” (Ibid, 2000). “The capabilities of human beings should not be permitted to fall below a certain floor” (Garrett, 2008).

“This approach to human well-being emphasizes the importance of freedom of choice, individual heterogeneity, and the multi-dimensional nature of welfare. In significant respects, the approach is consistent with the handling of choice within conventional microeconomics consumer theory, although its conceptual foundations enable it to acknowledge the existence of claims, like rights, which normatively dominate utility-based claims” (Sen, Amartya, 1979) On the basis of its conceptual foundations this study finds the approach relevant in discussing the basic rights of the independent migrant children as agents of change in development.

**4.3.2 Functionings**

“In the most basic sense, functionings consist of “beings and doings” (Sen, Amartya. 1992. Inequality Re-examined. Cambridge, MA: Harvard University Press.). As a result, living may be seen as a set of interrelated functionings. Essentially, functionings are the states and an activity constitutive of a person’s being. Examples of functionings can vary from elementary things, such as being healthy, having a good job, and being safe, to more complex states, such as being happy, having self-respect, and being calm. Additionally, Sen states that, “functionings are crucial to an adequate understanding of the capability approach; capability is conceptualized as a reflection of the freedom to achieve valuable functionings” (Ibid).

This can be understood as, functionings being elements of the capacities mentioned in the strategy, which are: what people are capable of, wanting to be capable of, or should be capable of, and/or do. Therefore, a person’s chosen combination of functionings, what they are and do is part of their overall capability set – the functionings they were able to do. However, functionings can yet be conceptualized in a way that signifies an individual’s capabilities. Eating, starving, and fasting would all be considered functionings, but the functioning of fasting differs significantly from that of starving because fasting, unlike starving, involves a choice and is understood as choosing to starve despite the presence of other options” (Ibid). Consequently, an understanding of what constitutes functionings is inter-linked with understanding of capabilities of independent migrant children as defined by this approach. Therefore, attempt to explore the economic and social factors linked to the child agency of independent migrant children in South Africa, the research study proceeds to describe the selected strategy within migration theory.

**4.4 Migration as a household livelihood strategy**

Selection of this strategy is based on the one of the reasons why independent migrant children’s migrate to South Africa, as described in an earlier chapter. Namely, to enable a broader study of the migrant children who are working in the country either voluntarily or otherwise and either formally or/and informally. Although this strategy has been mainly applied for to rural-urban internal migration in poor countries (see as described in the paragraph below), it relevant for this research study finds it relevant to extend the use of the strategy to international migration, – i.e. to the issue of independent migrant children that find themselves in South Africa in search of improved livelihoods, either by decision of their own or by the consent of adults., in search for improved livelihoods. Additionally, in search for solution/s for the second sub-question of the research question, the researcher uses this strategy to explore the impact of the contextual spaces within which agency of migrant children in South Africa is carried out. Thus, examining the cultural, economic, social and political spheres involved in including the children’s voices in issues that affect their livelihoods.

**4.5 The new economics of labour migration (NELM)**

“NELM has striking – though as of yet unobserved – conceptual parallels with livelihood approaches. These have evolved since the late 1970s among geographers, anthropologists, and sociologists conducting micro-research in developing countries, who observed that the diverse and contradictory findings from their empirical work did not fit into the rather rigid neo-Marxist schemes. This made them argue that the poor cannot only be reduced to passive victims of global capitalist forces but they are also agents to actively improve their livelihoods within the constraining conditions they live under. This points to the fundamental role of human agency” (Lieten and Nieuwenhuys, 1989). Carney describes livelihood as one that “….. Comprises the capabilities, assets (including both material and social resources), and activities required for a means of living” (Ibid, 1998). In Ellis’s definition, “A livelihood encompasses not only the households’ income generating activities, but also the social institutions, intra-household relations, and mechanisms of access to resources through the life cycle” (Ibid, 1998). Similarly and broadly McDowell and de Haan define the strategy as one that, “ …can then be defined as a strategic or deliberate choice of a combination of activities by households and their individual members to maintain, secure, and improve their livelihoods. This particular choice is based on (selective) access to assets, perceptions of opportunities, as well as aspirations of actors. Since these differ from household to household and from individual to individual, livelihood strategies tend to be so heterogeneous. The emergence of the livelihood concept has meant a departure from the rather rigid and theoretically deductive historical -structuralist views towards more empirical approaches. This went along with the insight that people — generally, but all the more in the prevailing circumstances of economic, political and environmental uncertainty and hardship — organize their livelihoods, not individually, but within wider social contexts, such as households, village communities, and ethnic groups. For many social settings, the household was recognized as the most appropriate unit of analysis” (Ibid, 1997:3).

“In this context, migration has been increasingly recognized as one of the main elements of the strategies households employ to diversify, secure, and, potentially, durably improve, their livelihoods. This is often combined with other strategies, such as agricultural intensification and local non-farm activities.” (McDowell and de Haan, 1997, Ellis, 2000, Bebbington, 1999). “It has increasingly been recognized that migration is often more than a short-term survival strategy by rural populations, who were uprooted by global capitalist forces and more or less forced to join the ranks of a new international proletariat. Rather, empirical work suggested that migration is often a deliberate decision to improve livelihoods, enable investments” (Bebbington, 1999:20, 27), “and help to reduce fluctuations in the family income that often used to be largely dependent on climatic vagaries” (De Haan et al., 2000:28, McDowell and de Haan, 1997:18). “Migration can then be seen as a means to acquire a wider range of assets which insure against future shocks and stresses” (De Haan et al., 2000:30). Although this strategy has been mainly applied to rural-urban internal migration in poor countries, this research study finds it relevant to extend this reasoning to international migration –of independent migrant children who find themselves in South Africa - either by decision of their own or by the consent of adults, - in search for improved livelihoods.

**Chapter 5 – Analysis Chapter**

In the methodology chapter it was outlined that children’s rights will be analysed in two perspectives of child agency, in search for solutions to the problem-formulation. Upon reviewing the collected data, I realize that the data is inter-linked as illustrated in Fig. 2 below the ensuing paragraph.

The following discussion seeks to shed light on how the relevant legal frameworks and international standards on protection of independent migrant children’s rights might affect the discussed children’s role as agents of change. As the collected data is closely inter-linked, they will be discussed inter-changingly, in order to come to some answers to the core question.

**Fig, 2**

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**5.1 Analysing the Structural Contexts**

It has been mentioned in the preceding chapters that Migration is not a new phenomenon In South Africa. The emphasis of the discussion is partially on the impact of migration on the role of independent migrant children as agents of change in development. Structural contexts through which the children’s agency is explored were identified. The emphasis here is exemplifying some of the discussed children’s reasons for migrating to South Africa. Thus, partially illuminating on the contextual spheres, within which these children’s agency has been explored, in search for resolutions to the research question:

1. Why does the child agency approach/strategy seem to have minimal effect on enhancing the rights of independent migrant children in South Africa?
	1. What is meant by the concept of child agency in the development interventions with and for independent migrant children in South Africa?
	2. How is the approach implemented in order to include the voices of these children in the decision-making on issues that affect their lives?

A broader analysis of the contexts linked to the question is presented under the ensuing headings:

1. Social context and Cultural contexts

2. Political context

3. Economic context

**5.1.1 Social and cultural contexts**

In reviewing responses from the three interviews conducted in this study, social and cultural factors affecting agency of the children under study seem to be closely linked. On that basis, these two contexts are discussed inter-changingly in this section. A variety of the reasons for independent children for migrating to South Africa was identified in chapter 3.4.1. From Thorn’s research, one of the causes that triggered their migrating was: searching for access to education. “ Education – due to teachers strikes, closing of schools, not being able to afford the school-fees, political, persecution of teachers which then creates shortages of teachers in the children’s’ countries of origin”.. These reasons are used as a base for a broader discussion of the contextual spaces within which these children’s capabilities as agents of change can be viewed. As mentioned in the theory chapter, these capabilities can be linked with human rights. According to Nussbaum, “through no action of their own, refugees would be seen to be denied their core capabilities and therefore human rights” (Ibid). Based on this argument and in relation to the interviews conducted, the researcher interprets Nussbaum‘s word, ‘action’- as ‘inclusion of voices’ of the independent migrant children as agents of change. In other words: By involving the children’s voices through, education which is one of their basic rights focussed on, this study, uses it as an example to illustrate the children’s capacity or lack of it, to actualizing their role as agents of change.. As stated in chapter 3, children are rights holders, despite the fact that they are often seen as human ‘becomings’.

This calls for the study to look at the constraints affecting the capabilities of the children. It is noteworthy to mention that individuals, the state and civil society groups in South Africa amongst other countries considers education as means of mitigating the both social and economic challenges facing all children within its borders. In relation to this, South Africa has agreed to be bounded by the United Nations CRC, of which it is a signatory. To question: 6. (Appendix 1) on educational rights of independent migrant children, one of the respondents from the interviews, Rebecca Chennells(RC), Attorney and Advocacy Officer at SCCT answered, “…*the ability of UAMs to access social services such as education and health rights are more compromised, in general….. All kids in South Africa are experiencing extreme problems in accessing their rights, in terms our constitution. Citizenship in particular… the problem of UAMs is a subset of a national problem that has no citizenship issues. Xenophobia! Like South African kids, foreign children face same hurdles plus an extra*”.

Outcome from David Thorn’s research on independent migrant children show the following context as yet another reason for the children’s migrating to South Africa:

Cultural context –orphans who do not have relatives to go to, coming from a single-parent family that could not provide for them, -living with members of extended family that could not provide for them and working in order to pay school-fees for younger siblings.(David Thorn,, 2010). In response to the same interview question stated above, another respondent Fwamba Mukole (FM), at CTRC told, “*When it comes to education, it depends on the parents. This is an African context. This is due to African culture, therefore we see mostly parents*”. The researcher finds three statements interesting and at the same time, to be of great concern – as the statements seem to be violation to the both the domestic law and the international law, in terms of the governing legal frameworks such as the CRC which South Africa has signed. Furthermore, there seem to be a missing link or a gap between the governing legislation and reality in regards to education for the discussed children, if an explanation such as ‘*the children’s access to education is decided by the parents and that this is because it is a… context and culture*. FM adds, “*Parents decide – they can take them out of school …. As far as right to education – every child needs a legal document. Over the years, most children go to school – including the UAMs but they need documents. The law in South Africa says that all kids should be in school but for foreign children- the documents are the problem. The problem is even bigger for UAMs*”

***Conclusion:*** Barriers to this (participation and education) are the children’s need for legal documents and for adults (parents, relatives, caregivers, guardians) to access these and other rights to get into the official/legal system.

**5.1.2 Political Contexts**

Another reason for independent migrant children migrating to South Africa was : Political - *due to being forced to join youth groups supporting the ruling party, political persecution of family members, and political persecution of teachers, leading to closing down of schools*.(Thorn, 2010) In terms of the children searching for educational opportunity in South Africa, the reason has been touched upon, and discussed in the segment above. For independent migrant children from Zimbabwe for instance, and in the case study by CERT illustrate how the political situation in their home countries respectively, can contribute to violation of their rights. Consequently, that minimizes the children’s accessibility of their basic rights such as education and health. (Ibid, 2011).

**5.1.3 Analysing the role of legal frameworks in child agency**

**Invisibility factor**

“*The court is the upper custodian of all children*” YM (Appendix 3). In spite of occurrences of abuse as those discussed in earlier chapters, independent migrant children's rights seem to have remained on the margins of the international human rights agenda for a number of reasons. These include a lack of data, as indicated by one respondent in the interview – “Some kids were brought to South Africa, without even knowing where they were going. …. “A mother and child were brought to our social worker. The child is 6 years old and they were brought to South Africa by an uncle, moved from one place to the other but finally the child was dumped with us” (FM – Appendix 4). FM went on to say, “*Children should first be visible. Refugees are scattered all over town. Children are in different pockets.*

Hence, invisibility is identified as a challenge to protection of the discussed children’s rights. FM explains, “*Difference between urban and refugee camps – In camps, they are registered and it is easier to deal and administer children in or out of school*”. In addition, inadequate registering of the children is also a challenge – that putting risk on the children’s access to their educational right which has been discussed in section 5.1.1. Similarly, RC another respondent informs, “*Our concern…..their disappearing into the radar…. No extended system to protect them from abuse, exploitation, trafficking and various other risks*”. (YM), supports the information given by FM and RC in her comment, *“We need to have track on the population of the kids into the country”.* Based on the responses from the three interviewees above, the study revisits the questions: **Why does the child agency approach/strategy seem to have minimal effect on enhancing the rights of independent migrant children in South Africa?** In addition to the challenge of lack of data, this study identifies another hurdle faced by independent migrant children as gaps between different institutional mandates. Furthermore, like mentioned by Vigneswaran in chapter 3.4.1,” *there is no specific legislation prescribing the validity period for asylum permits, but officials usually stipulate on average a two-and-a-half-month period. Therefore, many asylum-seekers have to return to the office several times a year, to renew their permits*” (Ibid, 2008:14). The long wait is similar to the situation where independent migrant children wait long periods of time for documentation – in order to be placed in a home by the court. Similarly, this is evidently confirmed in the interview with FM, CTRC, *“In the process by court, the UAMs need to queue up. It can take months, years because of other issues that the system is loaded with*”.

It is clearly stated in the CRC that the right to participation (which is this study is linked to child agency) each child who is capable of forming his or her own views, has the right to express those views freely in matters affecting the child….(Ibid, art.12.1). ………….In response to the interview question on child agency, this is also outlined by YM, Refugee Attorney at UCT Law Clinic, “…*it seems to me that the whole notion of child agency … kids can be agents of their own change. Kids can and often do operate on their own without adults, guardians, care-givers…. They have the right to operate freely*” In the researcher’s opinion, these long waiting periods can worsen the children’s well-being, considering the various reasons for migrating that were discussed above. For instance, like adults, children can become anxious when they do not understand what is happening to them. Moreover, for marginalized children such as independent migrant children, there are several aspects that need to be explained to them. Drawing from the discussed reasons for leaving their home countries, examples of the things to be explained can be- why a parent was killed or left behind, why they are not with their sibling and family members, why they should have a permit, repatriation and resettlement. In comparison to YM response on child agency, RC, Attorney and Advocacy Officer at SCCT, explains, “… *kids, like women cannot be considered as passive receivers of ideas from others. Kids can create their own change. In the context of lack of resources… participation is not going to be a priority. It is about day to day ways of survival….. We haven’t even got basic survival mechanisms…. Our priority is day to day*”.

**Conclusion**

Deriving from the discussion above - on the issue of invisibility of the children under this study, lack of information on for instance - forms of violation of child rights, their place of occurrence and their characteristics appear to be a hindrance to policy making. Violations appear to be generally under-recorded, particularly in the case of independent migrant girls and of exploitative labour such as domestic work that takes place in the children’s places of domicile. On the question about gender proportion of the children that are assisted by her organization, RC comments,”*… Boys have more socio-cultural resources, especially in the African context -Girls are kept at home for socio- cultural reasons*”. At national level, it could therefore be concluded that, this might lead to numbers of girl migrant children, amongst others, to escape national statistics in South Africa.

Furthermore, - at the international level, independent migrant children tend to fall between the mandates of different organizations. This exemplified by such cases as in the protection of child rights by the UN CR, while International Organization of Migration (IOM) does not have rights protection as part of its general mandate.. In the ensuing chapter, the effect underlying the constraint of exploitative *labour of independent migrant children* is analysed.

**5.2 Analysis of Concepts through theories**

**5.2.1Economic context – testing the Household Livelihoods strategy –**

In the earlier chapter on migration, it has been mentioned that to migrate from one’s country of origin to another can be voluntary or involuntary. Whatever the cause maybe, migrant children fleeing to South Africa without parents or guardians, their movement is triggered by the search for better livelihoods for themselves and at times, for their younger siblings - as indicated by Thorn in the preceding chapter. In cases where the discussed children work in order to pay their siblings’ school fees, of the motives for migrating are interconnected to economic factors. According to Mawadza, on reasons for migrating to South Africa, “The relative economic prosperity, democratic values, emphasis on regional integration and African renaissance of South Africa, coupled with porous borders, remain, and will remain a pull factor for the near future” (Ibid, 2008:3-4). Viewing the economic context in their home country – for example in Zimbabwe, Simpson argues that, “….. It is therefore a mixture of failed governance; food insecurity and manipulation of food for political ends; economic meltdown, including inflation, high unemployment, and large shortages of consumer items, fuel, and foreign currency that are some of the many problems forcing thousands to leave” (Ibid, 2008b). Similarly to the local and international hurdles faced by independent migrant children identified above, Mawadza and Simpson’s arguments could indicate the existence of further hurdles, at regional level.

**5.2.2 Child agency and Human Development Theory**

For the purposes of further discussion in this research study, agency is best understood via Amartya Sen’s description of an agent, which defines an agent as “someone who acts and brings about change, whose achievement can be evaluated in terms of his or her own values and objectives” (Ibid, 1999):.) “It must be noted that, ‘agency’ differs from the often regular use of the word “agent” which is sometimes used to describe a person who is acting on someone else’s behalf. In this study ‘agency’ signifies ability of the children under study - to personally choose the functioning that they value, i.e. to choose their actions and values. While the choice might not be compatible with their well-being, their role in agency crucial is therefore crucial to an assessment of their capabilities, allowing for an examination of whether or not economic, social, and/or political barriers impede their ability to pursue substantive freedoms. Furthermore, concern for agency implies that participation, public debate in the public sphere, democratic practice, and empowerment, should be fostered alongside well-being” (Alkire, S. 2005a, Capability and Functionings).

This theory sounds all democratic and human rights’ based. However, from the outcomes of the interviews conducted, it does not seem to be always appropriate, per se - considering the actual structural contexts within which child agency is exercised in South Africa. This is also reflected in the findings of the case study by CERT, 2011.) In other words, it is one hand- indeed, in accordance with the international standards, in terms of protection and enhancement of child rights. On the other hand, it does not seem to consider for instance, the ‘realities’ of constraints faced by such children under discussion, in this study. It must be noted that this is not to condemn the applicability of the theory in discussing the question in this study but to merely point out that there might be a gap between in the well-meant thinking behind the theory and the complexities of implementing the method in the realities of most of the independent migrant children in South Africa. Indeed, the capabilities approach can be implemented in enhancing child agency of the children in question as the children are different, and may face different constraints or strengths at different periods of time, etc. In the researcher’s understanding Sen’s definition, “…*someone who acts and brings about change, whose achievement can be evaluated in terms of his or her own values and objectives”* (Ibid, 1999) of the theory in relation to child agency,’ corresponds with the paradox of the two perspectives of child agency within which the international standards have been explored, in the preceding sections.

***Conclusion:***The responses from the interviews seem to indicate that the Human Development theory can be used as an intervention method in enhancing the discussed basic rights and in involving their ‘voices’ as agents of change. However, from the collected data, it also seems for the majority of the children, some basic needs such as basic mechanisms structures may have to be in place before Human Development through can be implemented**.**

**5.2.3 Child agency and Human basic needs Theory**

“Human needs are a powerful source of explanation of human behaviour and social interaction. The basic principle of human needs theory lies in that all basic needs should be satisfied before the less essential needs of a few are met”( Streeten, argues that, “the objective of meeting basic needs brings to a development strategy a heightened concern with the satisfaction of some elementary needs, especially in education and health. Basic education, for example, improves health services, and better health enables children to benefit from education” (Ibid). According to Abraham Maslow, needs are hierarchical in nature - each need has a specific sequence in which it is obtained. Maslow's needs model or pyramid identifies basic items of food, water, and shelter, followed by the need for safety and security, then belonging or love, self-esteem, and finally, personal fulfilment. Similarly, Uvin argues that, “All human beings, have basic material needs for food, material, and shelter; and all development activities and policies should first of all promote the satisfaction of these basic needs.; only after that is done should more social and psychological needs be addressed’(Ibid, 2004:34) According to one of the leading basic needs theorists, Mahbub Ul Haq, *“The emphasis on basic needs heighten concern with meeting the consumption needs of the entire population: not only in the customary areas of education and health, but also in nutrition, housing…… In formulating policies aimed at reducing poverty, a good deal of attention has been paid in the economic literature….. But similar attention has not been devoted to the consumption side (Ibid).*

**Conclusion:**

Paul Streeten argues that, “*the objective of meeting basic needs brings to a development strategy a heightened concern with the satisfaction of some elementary needs, especially in education and health. Basic education, for example, improves health services, and better health enables children to benefit from education*” (Ibid. First things First:3). While Streeten’s argument above can be relevant to some cases of independent migrant children in South Africa, this study’s outcomes based on the interviews are not necessarily compatible with Streeten’s argument. For instance, depending on the reasons and structural contexts linked to a child’s migrating to South Africa, the child might not have the ability to go through education, until other elementary or basic needs such as psychosocial health are satisfied.

Despite the critique of the basic human needs theory described in 4.2.1, the researcher finds the basic human needs theory relevant in searching for resolutions to the core question of this thesis as the basic human needs, of the migrant children(in terms of involvement of their voices in decisions that affect their lives.. This argument is based on the data collected from the interviews conducted in this study – revealing the ‘real, day to day’ life led by the independent migrant children in South Africa. This is could also be interpreted from RC’s response to question on methods used by her organization, *“….case by case basis. For us, we have language skills courses…Many UAMs have language problems....big barriers lay in that kids don’t understand…explaining permits and visa is quite tricky. …In some cases, it doesn’t work because it is not in black and white”* However, this theory raises questions and uncertainties to the researcher. For example, how does one define the basic human needs of the individual independent children? Are some needs more important than others? How does one prioritize the needs? In which contextual spheres are the needs interpreted? It is, nevertheless, in the researchers understanding that these questions can be in line with RC’s response above. ***Conclusion****:*

Based on the outcomes of the interview with all three respondents, Maslow’s and Uvin’s definitions of basic human needs mentioned in the theory chapter, seem to be most relevant. This argument lays in the fact that they both focus first on fundamental needs before other needs of which, as interpreted from the statements from the three interview respondents who work directly with and for independent migrant children in South Africa. That is to say, - the complexities of each individual case on the children in question. However, this theory raises questions and uncertainties to the researcher. For example, how does one define the basic human needs of the individual independent children? Are some needs more important than others? How does one prioritize the needs? In which contextual spheres are the needs interpreted? It is, nevertheless, in the researchers understanding that these questions can be in line with some of the intervention methods used by SCCT,  *“….case by case basis. For us, we have language skills courses…Many UAMs have language problems....big barriers lay in that kids don’t understand…explaining permits and visa is quite tricky. …In some cases, it doesn’t work because it is not in black and white”*

**5.2.4 Child agency in the light of Democracy**

YM from UCT informs, “Agency” is not a concept we use in our organization. The court is the upper custodian. DSD is entrusted to ensure that these kids have rights…..shelter, access schooling and health. We are a legal organization…. Not a social organization. We find cases and refer … Role: We have gone to schools and department of education and requested them to register the kids”.

***Conclusion:***

From YM’s response, child agency as a strategy is not directly applicable in their role in working with independent migrant children. However, by finding cases and referring those to DSD can be argued that it indirectly contributes to enhancing the children’s accessibility to their rights as…shelter, access to schooling and health. Thereby, so doing, enhancing their capabilities or involvement of their voices as agents of change – in the long run.

FM from CTRC informs, “Child agency is particularly new to me but as explained – kids as agents of change…my question is: In which way can kids be agents of change? *In our organization, mostly parents come to the office. Our social worker does not have the statutory power to remove abused children from their homes…. Every month we have workshops and focus groups. South African and foreign children come to our office, discussing issues. ……The children are eager but unfortunately for UAMs, because they are moving around, they don’t always attend” “How many kids do you have? Health, signs of malnutrition?, size of house*?, If after 3-4 years the kids are not in school we interfere and see why…. On child participation, he continues,” *participation is a method we can identify. Parents in South Africa believe that children don’t have to participate”.*

RC from SCCT informs: Child “agency” *”Kids’ agency is talked about by social scientists and others…..like women kids can create their own change. Role: “We open a safe and open environment to come and explore solutions and perceive the kind to counselling, in terms of “the best interest of the child”. “ It’s not about telling people what to do but to provide…a safe and conducive environment for them. Intervention/Development methods*”

 **Chapter 6 – Conclusions**

**Child agency and Human Development Theory** -The collected data from the interviews seem to indicate that the Human Development theory can be used as an intervention method in enhancing the discussed basic rights and in involving their ‘voices’ as agents of change. However, from the collected data, it also seems for the majority of the children, some basic needs such as basic mechanisms structures may have to be in place before HD through can be implemented**.**

**Child agency and the basic Needs Theory** - Based on the outcomes of the interview with all three respondents, Maslow’s and Uvin’s definitions of basic human needs mentioned in the theory chapter, seem to be most relevant. This argument lays in the fact that they both focus first on fundamental needs before other needs of which, as interpreted from the statements from the three interview respondents who work directly with and for independent migrant children in South Africa. That is to say, - the complexities of each individual case on the children in question.

**Interviews -**The organizations interviewed do not use child agency in their methods but have heard about it or think that the child agency concept should be used. Legal documents are needed by UAMs to access the organization and departments set up to deal with UAMs. Kids must be legally/officially placed in system to access their rights. The UCT law clinic organization interviewed only focuses on the legal/judicial system. So UAMs not in the system are out of luck.

From YM’s response, child agency as a strategy is not directly applicable in their role in working with independent migrant children. However, by finding cases and referring those to DSD can be argued that it indirectly contributes to enhancing the children’s accessibility to their rights as…shelter, access to schooling and health. Thereby, so doing, enhancing their capabilities or involvement of their voices as agents of change – in the long run.

From the data, it can be concluded that parents or guardians are needed in order for children to access their rights. It seems that parents/caregivers/guardians must be factored into the child agency concept in relation to the migration-development nexus for migrant minors because they don’t have a legal status to access various rights on their own (as a minor). Education is one of their rights that the focus on an example to illustrate kids’ capacity to access their rights, and UAM Participation in decision-making about their own situation is the other key component focus in this study. Similarly, this is indicated by the outcomes of the fieldwork by CERT, *“Documentation and Department of Home Affairs – Even though the admission requirements have been lessened there are still serious concerns around the ability, efficiency and effectiveness of the Department of Home Affairs (Ibid 2011).*

**Barriers to child agency and access to education** - are the children’s need for legal documents and for adults (parents, relatives, caregivers, guardians) to access these and other rights to get into the official/legal system. Other barriers: resources in general, trained counsellors, funds, etc. as well as organizations and departments that deal with UAM and their issues, also when they are illegal immigrants. This is also in an environment/situation in South Africa where South African children who are legal citizens face same problems and barriers in accessing their rights. They just don’t have the extra xenophobia factor to make it worse. Ethnic discrimination factors are probably also a factor for legal child citizens. Gender factor is interesting – the researcher definitely thinks it is a factor but does not have the documentation for it. Cape Town Centre for Refugee CTCR state that they see about the same number of boys and girls.

This study finds the gender issue noteworthy and interprets it as the lack of data on gender.

**Recommendations for future research:**

It could be interesting to explore whether guardians/caregivers/etc. take mainly boys in? Are they going to have to battle the system to get a child place in it? The basis for a recommendation could be – to document UAMs, so it can be used in research and to monitor the servicing and living up to the various conventions and South African laws. The convention for the Rights of the Girl Child covers this aspect.

 …………………………………………………………….

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**APPENDICES**

 **Appendix A - Letter to potential interviewees**

2nd February 2012

Dear Madam/Sir

Re: Interview for Master’s Thesis

My name is Rita Knight Ritzau. I am a post graduate student from the Department of Social Sciences at Aalborg University in Denmark and I am in the process of writing my thesis. The topic of my thesis is Child-agency and Basic rights of Unaccompanied Minors and separated children in South Africa. I intend to conduct interviews with some of the children mentioned above, where possible, NGOs and government officials working with the children in question.

I am writing to kindly ask you if I may interview you or a colleague who can represent your department or organization. The interviews would be conducted from the last week of this month to the first week of March, this year. I hope that you will be able to assist me with my research. Your time and opinions would be greatly appreciated.

I look forward to hearing from you.

.

Sincerely,

Rita Knight Ritzau

 ……………………………………………………

**Appendix 1 - Interview guide**

Children’s Rights- Democracy - Child participation – Children as ‘Agents of Change’, seen in the light of Migration and Development Nexus

1. What is your understanding of the concept of Child Agency?

2. In which ways does your organization support/enhance the protection of children’s rights?

3. What is your opinion on/view of Unaccompanied Minors/ separated children’s access to their rights, for example – their right to education?

4. How does your organization involve children in enhancing child-participation in e.g.,

Projects/programmes/workshops/fora - etc.?

5. Please give a brief elaboration on situations where your organization liaises with other stakeholders in the intervention of child- participation - e.g. schools, children’s homes, care-givers, government departments, international and national communities.

• Please give 1 or 2 examples of successful/unsuccessful situation/s of such working partnerships?

6. In accessing their right to education, please indicate situations where you see unaccompanied minors and/or separated children (age, maturity and ability/inability taken in consideration) as agents of change, though their participation?

• Where these children are not involved in influencing decisions that affect their lives, what do you see as barriers hereto?

• What role does your organization play in such cases?

• Which intervention methods do you use?

• What would you say is the ratio between girl-children and boy-children participation, based on the experience of your work?

7. Based on your experience in working with unaccompanied minors/separated children, which participatory approaches or methods can you identify as most suitable in addressing the concept of child-participation or child agency?

• Please give an example or two of cases where the methods have been/are being implemented.

8. In your opinion, what is the way forward in enhancing ‘spaces ‘ for the views and opinions of unaccompanied minors/separated children and for them to be taken into account in the decision-making of issues affecting their lives?

 ……………………………………………………..

**Appendix 2 - Interview with Varney,**

Refugee attorney

We help them with the court process and often represent such children

1. Agency is not really Not a concept we use in our org. But from my studies, it seems to me that the whole notion of child agency - kids can be agents of their own change. Kids can and often do operate on their own without…adults, guardians, caregiver, legal, and custodians. They have the right to operate freely.

2. Often within South Africa we find that kids migrate into and across borders. Sometimes without biological parents but company of caregivers and we intervene -insist that they are placed in the care of caregivers/placed formally.

For instance I have many clients that flee from The Democratic Republic of Congo (DRC)., in the east. And come from aunt or uncle and parents killed. When they apply for refugee or asylum seekers permit., they are denied on the bais that they need be an adult or go back to the courts for the courts to say yes that is the uncle or aunt. Sometimes on their own – we ensure that they are safe, refer them Department of Social Development(DSD) placed with the aunt or aunt.

The court is the upper custodian of all children. DSD is entrusted to ensure that these kids have the rights like all other kids. Proper shelter, access schooling and health. In a matter of speaking these children are able to live a full life and reach their potential.

3. Access schooling health if u r UAM

Opinion to UAM –if u are placed through the normal legal channel yuo can get into school. However I must that a lot of UAMS do access schooling. But unfortunately, many don’t go through the normal channels so … they are not able to actually access schooling.. That’s a real tragedy. Working, living on the streets. Because we are a refugee rights ‘organization, we focus only on legal rights. With children we just ensure that their rights are in place. But there are many kids, according to me who just cannot… we are purely focused on legal rights. There other organizations eg the UNHCR that .We only intervene and don’t necessary have projects., but what I have been doing on my own.

4. Kids are referred to me by social workers. Eg had a girl came from Burundi placed in foster care of a foster mother, didn’t have any documents and did not remember anything. I interviewed her – she came into my office, she saw an asylum seekers document application on my desk – she didn’t remember anything of how and why she came to South Africa. She said I came here with my mother and she had one of those –( the social worker had not picked this information u) For many years the kid lived with a foster mother without a permit. She can So its only if there is an adult, or somebody thinking about this.

When they get to 18, they will have nothing. They won’t have any legal documents. They will be out of the formal legal system. What will happen to them?

5. We work with dsd and the work is really great. We sometimes train social workers and most of those we have trained have left and the new ones have no clue to what they can do. So there is a lot of work in networking, collaboration, synchronizing…what is there for kids.

I do now that International Organization for Migation(IOM) has also gotten funding to train social workers in terms of UAMs. A lot of work is to be done and its on-going.

6. UAMs as agents of change thru their partici..? There a lot of kids. Many kids came from Zimbabwe and reasons for leaving they say,’ because we need to go to school’. There is desperation. However if a child is placed, they will access schooling. There are lot of obstacles. Many cannot speak Afrikaans. You hear the desperation. They are lot of challenges.

Somali kids – the challenges are incredible- coming mostly from parents have not gone to school. Often have to ask them to be placed in Somali families. But there have been some few successes. As we are a legal organization, when we find cases we can refer…in case of Somali kids we have approached the school principals, for example. We have gone to the schools and dept of education and requested them to register the kids. Their permits are renewed every month. They have gone to the teacher at Maitland school where most Foreign Children in Cape Town are attending, they need to complete their schooling….

Xenophobia within schools is another challenge.

Our organization are not a social organization.

Methods= everything boils down to the constitution

Whenever we intervene we go to the court

Grants phenomenal achievement

Gender – whenever I engage with children, it has always been through social workers- whereby we interview the kids through the social approach- our approach is very child-centred. I have never met the children on their own unless they come through an institution. I am hoping that in South Africa there is no distinction between boys and girls in schools.

Child agency – we need more money and research, why they fled, how are you coping, we need the record of all the undocumented, If they should….

We have actually ractified… sec 28 I have as my bible on the constitution,

As a refugee attorney, we always ask the kid,’ do u remember where u came from?’. So we are guided by the child’s story. Often we get the social worker to interview the child using drawings, and other…. Ways.

I have not seen what happens between boys and girls in schools in sa.

We need to have track on the population of the kids into the country. Talk to these kids. A lot more are in Musina border post, Johannesburg but not so much here in Cape town. So for me it’s just as much of work.

 …………………………………………………………

**Appendix 3-** **Interview with Rebecca Chennels** – Attorney and Advocacy Officer at Scalabrini refugee Centre of Cape Town (SCCT)

Legal and social assistance – special focus on children. -

1.Child agency- Kids agent on their by social scients and others. Kids like women cannot be considered…as passive receivers of ideas from others. Kids can create their own change.

3. Our concern in particular with with Foreign children is that they are usually out of the social security. Their disappearing under the radar- kids that came to us. We prevent them from sleeping under the rain. They are Very vulnerable. No extended system to protect them from Abuse exploitation, trafficking and various other risks.. Our work is to :

Kids bought to us – put them into the mainstream in in order to get the financial assistance in order order to be strong health adults.

4. Obviously the ability of UAMs to access social services such as education and health right are more compromised, in general. All kids in South Africa are experiencing extreme problems in accessing their rights in terms of our constitution. Citizenship in Particular- The problems of UAMs are a subset of a national problem that has no citizenship issues. Xenophobia like SA one Face same hurdles plus an extra.

6. in our context of lack of resources in our organization and other organizations, Participation is not going to be a priority. It is about day to day way for survival. While participation is good to mention, No grand well plans for involving kids. We Have such a backlog that require immediate attention. Our priority is day to day. Participation can be seen as nice but we Haven’t even got basic survival mechanisms. In small practical ways while yuo are enabling survival mechanisms, it is important to mention that kids should be allowed to speak – the kid being part of the discussion, yes but no grand wild plans…. Cases that require immediate action on a more fundamental level.

**Stakeholders**: Xenophobia at the school. The kids themselves, although with their mothers, came to me………………..

Participatory project is not a project…. but that just organic!

Kids although escorted by their mothers came to me. Interviews by me and . LiasedWe called the kids. Coucelling for both victims and pertraitors. WC- Safe schools project which provided social workers and councellors. Dept safe school.

Egs of kids as agents as change / phenominal will to survive and ability to make thinds happen

Acccesing their edu rights -

When of my first clients 14 0r 15 years old. Jestino DRC had single handedly put himself into school. Got himself uniform. Once I put him in a shelter. Without any help, headboy. Changed perception of what children are. Cases like him demonstrate that children can achieve something to others in the childrens home.. Soccer coch, headboy, top of class. Demonstrated to other kids noth SA and FC

Barrier not involved in decision-making? Problem with not including the kids- imperts upon the child that the adults concerned do not believe in the kids, like the child does not have the capacity – the child looses its confidence. It inhibits child development. Kids are likely to work harder in things that they like. Must include them in the decision-making.

What role do u play? We open a safe and open environment to come and explore solution and to perceive the kind of counselling ,in terms of the best interest of the child. It’s not about telling people what to do but to provide….a safe and conducive environment for them.

Methods? Case by case basis. No intervention method.. Effort into Listen and looking behind what is being presented – look at root causes.

- We see far more boy children and that as agents… it comes with all migrants contexts. Boys have more socio-cultural resources, especially in the African context

- Girls are kept at home for socoio- cultural reasons.

**Participatory methods:**

“I think that it is very important to remember that any participation that’s working. in this context –has to consider age etc. For us we have language skills at our Welfare desk and. Method is language at our welfare desk. Many UAMS have language problems, listening but most importantly is to provide conducive environment for language and safe environment”.

“Well, main problem with UAMs- in SA is a fact that good to listen to views. It’s good to listen to them but in real life the legal option are so limited. Future focus on participation must remember that we need actual **options.** No participation without the avenues. Big barriers lies in that children don’t understand… Explaining permits and visa is quite tricky. Of course it is importance but…. In some circumstances it doesn’t work coz it is not in black and white – and kids come and go”.

**Appendix 4 – Interview with Fwamba interview**

Cape Town Refugee Center- Mr Fwamba Mukole social councillor – working in conjunction with UNHCR for protection of refugees

1. Child agency – particularly new to me but as explained – kids as agents of change – my question in which way can kids can be agents of change…

2. In Our organization - mostly parents come to the office. Mothers and dads and they talk about their kids. We collect info from them and assume that their children are being taken care of.. They sometimes talk about their children. Children are invisible- we assume that kids are be cared for. When its reported or brought to our attention, our organization does not have the power – i.e. our social workers don’t have the statutory power to remove abused children from their homes. In some ways we are supposed to take care of kids. I think they should be visible.

3. We do a budget for Right to education for Unaccompanied Minors(UAMs). In SA contexts there are not too many AUMs but once we have been informed, we take necessary action so that they get documentation to e.g. apply for asylum.. We are aware of that they need assistance. But the child must be placed in a home by the court.

In the process by the court, the UAMs need to queue up. It can take months, years, because of other local issues that social system authorities are loaded with. As far as right to education– every child needs legal document. Over the years, most children go to school - inclusive of the UAMs but they need docs. SA has extended the grants. But the law in SA says that all kids should be in school but for foreign children the documents are the problem because parents have to have s24 permit which is refugee status. The problem is even bigger for UAMs.

4. The CTRC – every month workshops and focus groups –South African and Foreign children come to our office. Discussing issues. The children are very eager. But unfortunately UAMs coz they are moving around, do not always attend the workshops.

5. Work with other orgs? Department of Home Affairs is responsible for processing and issueing of documents docs. We liaise with DHA , kids homes, children home, orgs dealing with legal matters, DSD request that we report kids that are abandoned and abused- started programmes. I am actually Chief executive member of the CTC children forum

6. 1 and 2 egs. Of successful case. A family were our clients. A couple died of aids. One of the kids we took him from stage 1 and is now at Uni. Gentleman is doing very well. Example of unsuccessful is where a young mother and child is brought to our social worker. The child is 6 years old and they were brought to South Africa by an uncle, moved from one person to the other. We placed the child with a family but finally the child with was dumped with us. Kid wanted to go home. I believe that children should be in children’s institution or family setting. We have been tracing the child’s parents but so far it has been unsuccessful. There is no one to give the child guidance,- you know what happens to them when they become 18 years old.

7. Child agency/participation –Here is Cape Town, when it comes to education it depends on the parents. This is an African context. They should be maybe organizations that deal with those issues. I don’t think that Ums participate – parents do. Especially, African parents think the children belong to them. Some kids where brought or came to South Africa without even knowing where they were going. The kids we can identify are among those who come to the office. If they don’t come to the office we don’t see them. At time while talking eg to right to edu. Bulk of the children we don’t see. This is due to the African culture therefore we see mostly parents. So I don’t think UAMs participate, eg African parent deicde. Kids don’t. There are no resources. Parents decide- they can take them out of school. Parents assume that kids do not need to participate.

8. Intervention method/s – how many kids do you have, health, signs of malnutrition size of the hse, If child is over 6 we advise them to take them to school. Then if after 3-4 years the kids are still not in school we interfere and see why they are not going to school.

9. We don’t take care of gender but they are more or less equal number. Girls are more liberated. We encourage them to take part during the workshops. They participate in debates.

10. Child participation. In South Africa, child participation/agency is not really very effective. I suggest that they are organizations that deal with that UAMs. The participartory method is a method we can identify. Parents in South Africa believe that children don’t have the need to participate. Another method could be Identifying kids in that are invisible or undocumented. Also by visiting schools. If parents feel they can’t cope with their children or keeping kids which are not theirs, they come and dump them at our centre and we take it from there. We assist in placing them in homes or other care-givers.

11. Children should first be visible – Refugees are scattered all over town - children are in different pockets. Difference between urban and refugee camps: In camps, they are registered and it is easier to deal and administer children in or out of school. In dispersed urban setting it is difficult. They need to be brought forward in some way. Urban refugees are dispersed unlike in refugee camps. They should be some agents that deal with this. Refugees are always on the move and children are dragged into this. There should be organizations specifically dealing with these children. Refugees and asylum-seekers are always moving from place to place and it becomes difficult t for these children too.

 …………………….......

**Appendix 5.**

FACT SHEET

High-level Event on the **Millennium Development Goals,** United Nations Headquarters, New York, 25 September 2008

QUICK FACTS

WHERE DO WE STAND?

In all regions, inequalities in access to education continue to pose major barriers to fully attaining the MDG 2 target of ensuring that, by 2015, children everywhere, boys and girls alike, can complete a full course of primary schooling. (See also fact sheet on Goal 3 for more information on girls’ schooling.)

Projections suggest that without further acceleration, 58 out of the 86 countries that have not yet reached universal primary education will not achieve it by 2015. In all regions, inequalities in access to education are a major barrier to reaching Goal 2. The children most likely to drop out of school or to not attend at all are often girls and those from poorer households or living in rural areas. For example, recent estimations show that 25 per cent of children of primary school age in rural areas of the developing world are out of school, compared with 16 per cent of children in the same age group living in cities.

Achieving universal primary education means more than full enrolment. It also encompasses quality education, meaning that all children who attend school regularly learn basic literacy and numeracy

GOAL 2: Achieve universal primary education

Globally, 570 million children are enrolled in school. The

»» number of children of primary school age who were out

of school fell from 103 million in 1999 to 73 million in

2006. In that year, primary school enrolment in

developing countries reached 88 per cent on average, up

from 83 per cent in 2000.

In sub-Saharan Africa, the net primary school enrolment

»» ratio has only recently reached 71 per cent, even after a

significant jump in enrolment that began in 2000. Around

38 million children of primary school age in this region

are still out of school.

In Southern Asia, the enrolment ratio has climbed above

»» 90 per cent, yet more than 18 million children of primary

school age are not enrolled.skills and complete primary school on time. In sub-Saharan Africa, for instance, substantially more children of secondary school age attend primary rather than secondary school.

For children to reach their full potential and countries to develop, the gains made in universal primary education must be replicated at the secondary level. At present, less than 55 per cent of children of the appropriate age in developing countries attend secondary school. In Oceania, for instance, almost two thirds of children of secondary school age are out of school. In sub-Saharan Africa, only a quarter of children of secondary school age are in secondary school

Although aid directed to basic education for low-income countries increased from $1.6 billion in 1999 to $5 billion in 2006, it is still well below the estimated $11 billion in aid required annually to reach universal primary education by 2015.

**WHAT HAS WORKED**

1. Burundi, Democratic Republic of the Congo, Ethiopia, Ghana, Kenya, Malawi, Mozambique, Tanzania and Uganda have abolished school fees, which has led to a surge in enrolment: in Ghana, public school enrolment in the most deprived districts and nationwide soared from 4.2 million to 5.4 million between 2004 and 2005. In Kenya, enrolment of primary school children increased dramatically, with 1.2 million additional pupils in 2003 alone; by 2004, the number had climbed to 7.2 million, of which 84 per cent were of primary school age. But the surge in enrolment after abolition of fees has brought huge challenges in providing sufficient school buildings and teachers.

2. In Haiti, collaboration between the Government, UN agencies and NGOs has changed the lives of 4,300 of the country's poorest children, thanks to an education project that provided school materials and supplies to 33 schools. Most of the children lived in the crowded slum Cité Soleil, an area where violence and insecurity are a daily reality. This project promoted the right to education, in particular by encouraging and supporting school attendance and teacher training. It was funded by a donation of $70,000 from soccer stars Ronaldo and Zidane, both Goodwill Ambassadors for the UN Development Programme.

WHAT NEEDS TO BE DONE?

Ensure sustainable education systems, delivering quality »» services and retaining professional staff.

Ensure universal coverage in primary education, including »» for poor and underserved populations in rural areas and urban slums.

Raise domestic spending on education to 15 to 20 per cent »» of national budgets, while giving priority to basic education.

Provide $11 billion in aid needed annually to achieve »» universal primary education by 2015.

Integrate education as a key part of humanitarian responses »» to post-conflict and emergency situations.

Eliminate school fees, particularly for low-income families.»»

Provide cash transfers to poor families conditional on their »» children’s, especially girls’, enrolment or attendance in school.

Provide children with transportation to and from school when »» needed.

Offer free meals and basic health services at school to »» improve children’s health, nutrition and cognitive development.

Expand pre-primary school educational programmes.»»

Train more teachers and effectively retrain and motivate »» those in the profession.

Ensure adequate teaching materials and distribute textbooks »» free of charge.

Improve aid effectiveness for education by strengthening the »» capacity of national education systems to improve access to quality education for all.

Sources: Committing to action: Achieving the MDGs, Background note by the Secretary-General for the High-level Event on the Millennium Development Goals, United Nations, New York, 25 September 2008; The Millennium Development Goals Report 2008, United Nations; MDG Monitor Website http://www.mdgmonitor.org, UNDP.

For more information, please contact mediainfo@un.org or see www.un.org/millenniumgoals

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