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## Child trafficking and child smuggling in Zimbabwe: legislation and policy gaps

MABVURIRA Vincent, ZENGENI Faith Kambarami, CHIGEVENGA Rosemary

### ABSTRACT

*Child trafficking and child smuggling are part of the crimes perpetrated against children. In most cases girls are the most affected as they are exploited for profit. This study examined the processes and policies around child trafficking in Zimbabwe. The study was conducted in Beitbridge and Plumtree border towns. Due to the evasive nature of the area under study, it adopted a qualitative approach. A sample of 22 participants were interviewed. Child smuggling was mainly reported as children were smuggled across the borders predominantly for the purposes of reunification with families among migrant families in working in South Africa. The children were smuggled through buses, taxis, trucks and some went through undesignated and illegal points. As children cross the borders with strangers they are at risk of being exploited and sexually abused. There is therefore need to set up a trans-frontier task force on trafficking between Zimbabwe, South Africa and Botswana. This may help to ascertain whether smuggling cases are not turning into trafficking and to investigate cases in destination cities.*

**KEY TERMS:** child trafficking, child smuggling, child exploitation, border jumping, organised crime, Zimbabwe

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### Author/s details

Vincent Mabvurira, Community Psychosocial Research (COMPRES), North-West University. Email: vinmabvurira@gmail.com

Faith Kambarami Zengeni, Department of Sociology, Midlands State University.

Rosemary Chigevenga, Department of Psychology, Great Zimbabwe University.

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## BACKGROUND TO THE STUDY

Human trafficking is a crime against humanity which dates back to time immemorial. The slave trade era is one case in point in which Africans were trafficked to Europe and America to work as forced labourers. As noted by Dodo and Dodo (2012), though there have been media reports of trafficking in Zimbabwe, the cases have always fizzled away without proper prosecution of offenders. There is thus a lot of hearsay and tittle-tattle around trafficking in Zimbabwe. The International Organization for Migration (IOM, 2006), the US Department of States (2009) and United Nations Office on Drug and Crime (UNODC, 2006) observed that Zimbabwe is a source, transit and destination country for women and children who are trafficked internally or into countries such as South Africa, China, Egypt, Mozambique, United Kingdom, Canada and Zambia. One of the challenges facing the African continent in general and Zimbabwe in particular has been the lack of national expertise in the area of child trafficking, policies and development research and practice. However, information pertaining to child trafficking; its nature and profile of offenders in Zimbabwe is scarce and remains elusive. Up until 2014 when the Trafficking in Persons Act (Chapter 9:25) was enacted, Zimbabwe did not have an express legal provision tackling trafficking. Trafficking was also not specifically provided for in the various pieces of national legislation (Gumbo, 2008). Whilst there is vast international literature on child trafficking, literature on child trafficking in Zimbabwe remains scarce, scattered and inadequate. There are no official statistics of internal child trafficking or children trafficked from Zimbabwe to other countries. Despite this, the literature that is available provides useful insights into the methods and purposes of child trafficking. Though people are reported to be trafficked mainly through Zimbabwe's porous borders, Dodo and Dodo (2012) argue that even at airports like the Robert Gabriel Mugabe International Airport and Buffalo Range, trafficking takes place and some officials from the Immigration Department, Police and Intelligence are cited as accomplices involved in the scams.

The United Nations Office on Drugs and Crime (UNODC, 2014) notes that globally, children comprise nearly one third of all detected trafficking victims. Child trafficking is a gendered issue with more women and girls being trafficked than their male counterparts. Regionally, shares of children and adults among detected victims of trafficking in person by region (Africa and Middle East), in (2010-2012) indicates that 62% of human trafficking composes of children (UNODC, 2014). Some trafficked children are lured to other parts of the world through the promise of school, work and an opportunity to send money back to their families. Human trafficking in general is one of the largest and profitable forms of organised crimes in Africa (Allais, 2006). Children constitute one third of all known victims of trafficking in persons, and the proportion of children among the detected victims is increasing (UNODC, 2014). According to UNICEF (2002) children and their families are ensnared into the complex web of trafficking by the empty promises of trafficking networks, of a better life, an escape route from poverty and an entry into a rewarding life style. Once the victims arrive at the destination, their documents are confiscated. Another underreported aim of trafficking is for ritual purposes. Sub-Saharan Africa reports the highest share of child trafficking in the world especially for ritual killing (UNODC, 2014).

According to the South African National Prosecuting Authority (2010) a number of 'enablers' are involved in the illegal human movement of persons from Zimbabwe into neighbouring countries such as Botswana, South Africa, Mozambique and Zambia. *Malaicha* (drivers who help people cross the borders illegally either through designated entry points or undesignated entry points) or *gumaguma* (gangs which facilitate illegal migrants trying to cross the border on foot) are well known as smugglers and are also involved in trafficking activities, especially the trafficking of children. South Africa has been known as a recipient and destination country for trafficked children from a number of African countries (Zimbabwe Youth Council, 2014).

Research indicating actual contact or communication with victims of child trafficking is extremely limited. A number of studies (Gumbo, 2008; UNODC, 2006; IOM, 2010) highlight difficulties in finding the actual victims of child trafficking so that accurate data is collected. The practice of child trafficking is subtle and this makes it difficult to explore further into the intricacies of child trafficking to determine its prevalence and nature since victims of trafficking usually are not willing to come forward and report as they fear re-victimisation by the traffickers (Gumbo, 2008). However, Dodo and Dodo (2012) estimate that around 10 Zimbabweans are trafficked to South Africa through Beitbridge border area every month.

According to the Palermo Protocol, trafficking shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payment or benefits to achieve the consent of a person having control over another person for the purpose of exploitation. This definition has three key elements (i) acts referring to recruitment, transportation, transfer, harbouring or receipt of persons, (ii) means of committing the acts referring to use of force, coercion threats etc and lastly (iii) purpose which is mainly for exploitation.

In June 2014, Zimbabwe for the first time passed a trafficking law, the Trafficking in Persons Act (Chapter 9:15). The act does not define trafficking but gives a shopping list of transportation strategies associated with trafficking. According to the act, the crime of trafficking in persons shall mean any person who traffics any individual by transporting him or her into or outside or within Zimbabwe involuntarily by or of the following

means; force, violence or threats, administering drugs to subdue the victim or causing the victim to be addicted to drugs, abduction or detention of the victim, fraud, extortion or deception, abuse of power over him, or giving of inducements to the victim or a person having control over the victim for the purpose of facilitating the transportation of the victim or voluntarily for an unlawful purpose shall be guilty of the crime of trafficking. The Palermo Protocol defines trafficking as a crime of exploitation while the Zimbabwe's Trafficking in Persons Act defines trafficking as a crime of transportation. A triumph of the Act in terms of child protection is that trafficking of children is considered a crime committed under aggravating circumstances. According to the Trafficking in Persons Act, the crime of trafficking shall be considered to be committed under aggravating circumstances if the trafficked person is a child and if the child adoption laws of any country or territory are abused to facilitate the trafficking of a child. The Act also criminalises all actors and agencies involved in the transportation of victims. Prior to the trafficking in Persons Act, trafficking issues were partially criminalised by the Child Abduction Act Chapter 5:05, and the Criminal Law Codification and Reform Act Chapter 9:23 and the Immigration Act Chapter 4:02. Few programmes have been launched in Zimbabwe to prevent trafficking and child trafficking in particular. In 2011 for example, the Government of Zimbabwe and the International Organisation for Migration launched a programme called Building National Response Capacity to Combat Human Trafficking in Zimbabwe. Despite having enacted a Trafficking in Persons Act, Zimbabwe remains in Tier 3 as provided by the Department of State (United States of America). This study sought to describe the causes, prevalence, mechanisms and processes employed to traffic persons in Zimbabwe. Further, the study also sought to juxtapose the phenomena of child smuggling and child trafficking.

## METHODOLOGY

The study adopted a qualitative approach and a case study design. Child trafficking is criminal in nature and a qualitative approach allowed the researchers to collect data in a less formal way among the participants. Purposive sampling was used to select 22 participants who were believed to provide rich information on child trafficking in Zimbabwe. Primary data were gathered through face to face interviews. Various interview guides were used for the different participants. Thematic content analysis was used to analyse the data. During data analysis, the researcher familiarised themselves with collected evidence, generated initial codes, identified themes and named them. Research ethics of informed consent, confidentiality, privacy, least harm and anonymity were observed throughout the data collection process. The sample comprised of immigration officials (2), social workers (2), cross border drivers (3), police officers (3), public prosecutor (1), taxi drivers (3), ordinary community members (4), *malaicha* (2) and *gumaguma* (2). Data was collected at Beitbridge and Plumtree border towns over a period of three weeks.

## FINDINGS

Three themes emerged during data analysis and these included prevalence of child trafficking, phenomenon of child smuggling, strategies used in child smuggling. These are presented below:

### Child trafficking prevalence

Cases of child trafficking were very difficult to ascertain. The study established that there are a number of factors confounding child trafficking chief among them border jumping, child smuggling and corruption. However, most respondents including police officers could not differentiate between trafficking and smuggling. It was learnt that trafficking was usually done at night and people including children were smuggled through illegal transporting points. Most participants confirmed rampant child smuggling and not trafficking. In Beitbridge, child traffickers' bases include the Lutumba and Mtetengwe areas where the *malaicha* load and transport the people to the river bed south and north of the border. There was close co-operation between *malaicha* on the Zimbabwean side of the border and their South African counterparts signalling a well-knit practice. However as noted by IOM (2010), most cases of smuggling become trafficking if further information is obtained and if law enforcement agencies are equipped to investigate the phenomenon. An immigration officer in Plumtree said:

*Here we can confirm child smuggling as one of our major problems and not child trafficking.*

A public prosecutor in Plumtree indicated that they have never dealt with a case of child trafficking in the past three years. The police indicated that they do not have any statistics of child trafficking. Social welfare officers also concurred that there are many cases of child smuggling and not child trafficking. However, this is not to suggest that there are no cases of child trafficking but with child smuggling and porous borders it is not easy to ascertain the prevalence of child trafficking. Cases might be going unnoticed. Undocumented migrants were reported to cross the Limpopo river into South Africa during the night and also in broad day light. Both Zimbabwe-South Africa and Zimbabwe-Botswana borders were reported to be very porous. Whilst patrols were undertaken

by border guards they were reported to be ineffective as traffickers and border jumpers are able to evade them. A self-professed *gumaguma* indicated that they paid the border guards ZAR50 whenever they wanted to assist someone cross the border into South Africa.

### Smuggling of children in and out of the country

Many Zimbabwean children are smuggled in and out of the country to visit their parents or relatives staying illegally in neighbouring countries. This is usually done during school holidays. It seemed that with money anything was possible to take a child out of the country. Unlike trafficking, smuggling is the illegal transportation of people across a transnational border; it does not involve coercion or exploitation. Parents make arrangements and pay the *malaicha*, *gumaguma*, bus or truck drivers to facilitate the smuggling process. Child smuggling was attested by a *gumaguma* who said:

*Sometimes we assist people with as many as thirteen to fifteen children, where they will be going we don't care so long money.*

The *gumaguma* indicated that they work closely with truck and bus drivers as well as the *malaicha*. Whenever someone wants to smuggle many children they first phone the *gumagumas* who will assess the situation at the border and tell them to proceed or wait. The syndicate is so organized that it can evade police operations and blitz so easily. People use a stretch of more than 200km from Maitengwe border post through Plumtree to Mphoeng border post for border jumping and it was possible that children were among the border jumpers. Most people in Zimbabwe are willing to go abroad due to economic hardships prevailing in the country and this exposes them to trafficking. A similar observation was made by Dodo and Dodo (2012) who note that as long as going abroad remains a milestone achievement for Zimbabweans, they remain at risk of trafficking. In Zimbabwe, child smuggling is criminalised by the Immigration Act and trafficking is criminalised by the Trafficking in Persons Act Chapter 9:25. The two phenomena are intertwined and trafficking cases may only emerge when someone reaches the destination. While in transit, the aim of the smuggler is not known and it may be difficult to qualify a case as trafficking rather than smuggling. This complexity was brought to light by a social worker who said:

*These children will always tell you that it's my aunt or uncle and it is only when you further quiz them that you discover there may be no relationship.*

If thus a child says the trafficker is my relative as they are coached to always say, traffickers are likely to be charged with smuggling. The complexity of the issue is worsened by the Trafficking in Persons Act which fails to define the term trafficking. Even with the trafficking act, prosecution of traffickers may remain a dream pipe in Zimbabwe. The US Embassy in Harare has criticised the Trafficking in Persons Act for treating trafficking as a crime of transportation rather than exploitation. Cases of internal trafficking may still remain shrouded and with legal representation, perpetrators may be charged for minor offenses like kidnapping.

### Strategies used to smuggle children

A number of strategies were reported to be used to smuggle children out of the country. Common was the use of *malaicha*. There are small truck or minibus drivers called *malaicha* who are in the business of smuggling children to Botswana and South Africa. The drivers have over the years fostered a strategic network with various border control agents and they arrange the bribes making it easy for child smuggling and or trafficking to take place. Their charges range from ZAR 1500 to ZAR 2000 to take a child to South Africa through Botswana and USD80 to 100 to smuggle a child into Botswana. The *malaicha* were reported to sometimes request additional money for transporting migrants and if not paid they would keep the people until payment is made. A social worker in Plumtree indicated that:

*In most cases smuggled children are intercepted by Botswana police and they are deported to Plumtree Reception Centre and in most cases the malaicha are left to proceed with their journeys as they will be having proper travelling documents. People are no longer worried of the interceptions as they may bribe the police or always know that they can pick up their children from social welfare without any hustle."*

The *malaicha* in Zimbabwe were reported to work in cohort with other agents across the border who would take-over the clients once they are in another country. In Beitbridge it was reported that children could be smuggled by truck drivers who would hide them under car seats or by some women who stay in the town specifically for smuggling children. Some buses and trucks were reported to be used for smuggling/trafficking children. The clients agree on a figure with the bus crew, once the money is paid or promised to be paid it is the driver who would ensure safe travelling including dealing with the police. One international truck driver said:

*“Yes we ferry people including children across the border. Most of them will be going to Johannesburg and it’s not my duty to ask the relationship between the adults and the children. Once I get my money all is well....”.*

Another driver said:

*We pay the immigration officials and police, so that they won’t bother us. They know the systems, who doesn’t want money.*

These women get a payment of R400 or R500 to cross the border through the use of bribe. Another system that was reported to be easily manipulated by illegal migrants and traffickers was the use of affidavits when travelling with a minor. These are the affidavits required when an adult is travelling with a child. When a child is travelling in the company of an adult/guardian, the person is required to provide an affidavit from both parents of the child indicating that the parents have given this person consent to travel with their child. These affidavits were reported not to provide enough protection for children as they are easy to obtain. There is no guarantee that the affidavit was written by the real parent of the child.

*Given the corruption level in our country, some people forge stamps and signatures on those affidavits...”,* said a resident in Beitbridge.

It was also echoed that sometimes commissioners of oath are bribed to certify the affidavits. This is despite the fact that the Trafficking in Persons Act states that anyone who assists any person to obtain false documents tampering with identity of travel documents shall be guilty of the crime of trafficking. People can also easily cross the border if they have access to resources. Those who have money simply paid their way out of the country by leaving money at each check point on both the South African and Zimbabwean, and Botswana Borders. People in both towns were reported to cross the borders through the bush. They could break the security fence and elude the border guards. Some children were also reported to provide border jumping services to other children. It was not clear whether these children were working under the instruction of adults or not. A resident of Plumtree said.

*Children provide border jumpers with directions on how to navigate the area for a fee.*

These children are familiar with the territory and crossing points along the border and have found an opportunity to make money by providing this service to border jumpers. A taxi driver indicated that usually the border guards ignored them thinking they are local children herding cattle. The smuggled children are then met by some adults across the border. Villagers who stay along the border were reported to be a problem as they also assist in child smuggling. They can harbour the smugglers during the day and take them across the frontier at night. This was attested by a resident who said:

*There are many players in child smuggling, even those villagers along Zimbabwe- Botswana border are active actors. They know better the police operations than strangers to the area. Some pretend as if they are herding goats with children when actually the children are going.*

A similar strategy was reported for Beitbridge where local women could carry children on their backs and walked with them across the border in broad day light. A resident of Beitbridge said:

*They hand the children back to their owners after the South African entry point. I think they work closely with the police*

In some cases of child smuggling may be confirmed to be trafficking, a number of enablers such as police, immigration officials, *malaicha*, *gumagama*, truck and bus drivers may be guilty of the crime of trafficking as the Trafficking in Persons Act states that; Any person who in any way facilitates the cross-border transportation of trafficking shall be guilty of the crime of trafficking.

### **Risks associated with child smuggling and child trafficking**

Trafficked/smuggled children were reported to be exposed to several risk factors. Some were reported to be raped or beaten in bushes where they will be trying to evade border guards. Killing for ritual purposes was also reported. Some *malaicha* were believed to work together with *gumagumas* to rob people. This was attested by a taxi driver who said:

*Why is it that the malaicha is never robbed or arrested by the police? This is organised crime....*

Another challenge noted was drowning whilst trying to cross the often-flooded Limpopo river to South Africa, some children were even reported to be exposed to attack by crocodiles in the river. Smuggled children were said to be exposed to debt bondage where their parents/ guardians or owners failed to pay for the transportation services to the *malaicha*. It was noted that whenever a parent failed to pay the *malaicha*, the *malaicha* would keep the child until the total sum is paid. Sometimes it was reported that *malaicha* often hiked the fare/charge. Where and how the children are kept remains a deep mystery. It is not even clear what will happen to the child if the parent totally fails to pay for the money. This was because most participants and secondary sources confirmed that the enablers usually shifted goal posts in terms of their charges to smuggle children to either South Africa or Botswana. It is also not clear what happens to the children when they do cross the border. Do they reunite with their families or not? Do they all return?

## DISCUSSION OF FINDINGS

This study established that it was very difficult to confirm cases of child trafficking due to a number of confounding factors which mainly included border jumping, child smuggling and corruption. In addition, the complexity of defining child trafficking made it also difficult for the participants to differentiate it from child smuggling and this challenge was also noted even amongst law protection agents like the police. SANF (2019), brings out clear distinction between the two concepts. They conceptualised human smuggling as an illegal movement of a person into a foreign land where the smuggled person gets assistance from criminal syndicates to cross into another country for a fee. The end of smuggling is arrival of the migrants in the country of destination. However, for trafficking there is perpetual exploitation of the victims to generate illicit profit for the traffickers. Smuggling is always done across borders but trafficking sometimes occurs within the same country and those smuggled participate willing with or without exploitation but trafficked victims are moved from one area to another for exploitation. Basing on these views, one can note that most participants in this study when asked about trafficking alluded to smuggling without knowing the differences between the two.

The responses from most participants confirmed rampant child smuggling not trafficking. IPS (2020), supported this by noting that child trafficking cases are difficult to trace because minors are not responsible for their actions and also due to the fact that trafficking and smuggling are not easy to differentiate. A number of studies also indicated that it's quite difficult to get in actual contact or communication with victims of child trafficking hence acquaintance of actual data for recording also gets affected (Gumbo, 2008; UNODC, 2006; IOM, 2010). This is also compounded by the fact that the practice is very subtle making it complicated to unearth its intricacies in order to determine its prevalence and nature and it is worsened by the fact that most victims do not open up for fear of re-victimisation from the perpetrators (Gumbo, 2008). In relation to this SANF (2019) noted that one of the greatest challenges under human trafficking is the absence of accurate statistics and documentation which are required to give a holistic picture of the magnitude of this vice in Southern Africa as most countries rely on anecdotal evidence from unofficial sources which are highly unreliable. This further points to the intricacies of the practice which makes it difficult to fully comprehend it and implement effective preventive measures.

It was also noted that trafficking of persons was usually done during the night via illegal transporting points. Respondents described both the Zimbabwe-South African and Zimbabwe- Botswana borders as porous which makes child trafficking and smuggling easy. This has been highlighted also by the South African National Prosecuting Authority (2010) which stated that illegal movements of people from Zimbabwe to neighbouring countries sometimes is done via the borders by use of bribes or through the use of undesignated entry points. They highlighted that patrols were done by border guards but they were not very effective as the traffickers or smugglers and border jumpers evaded them and in some cases those law enforcement agents also facilitate the crime by accepting bribes.

In some cases, undocumented migrants were reported to cross into South Africa via the Limpopo River during the night or in broad day light. In support of this the Zimbabwe Youth Council (2014) highlighted that South African is well known as a recipient and destination for trafficked and smuggled children from various African countries. Basically, trafficking and smuggling of children is facilitated by a number of enablers which include the porous nature of Zimbabwean borders and use of bribery. The involved parties seem to be a syndicate involved in organised crime which may comprise of *gumaguma*, truck drivers, bus drivers and conductors. The syndicate is so organised that it can easily evade law enforcement agents. This has been supported by the South African National Prosecuting Authority (2010) which states that various enablers facilitate illegal human movement of persons from Zimbabwe into neighbouring countries such as Botswana, South Africa, Mozambique and Zambia and these include *malaicha* and *gumaguma* who sometimes collaborate with immigration officials. This can also be linked to Allais' (2006) view that traffickers can operate with impunity due to the porous nature of borders and corruption coupled with the absence of dedicated legislation and regional cooperation.

The participants of this study pointed to South Africa and Botswana as the destinations for children smuggled or trafficked from Zimbabwe for various reasons. This is in line with Dodo and Dodo (2012) who gave an

estimation of around 10 Zimbabweans who get trafficked to South Africa every month through Beitbridge. Other literature also reveals that historically children get trafficked to South Africa from other countries within Southern Africa. For instance, Truong (2006) stated that the Anti-Slavery International raised alarm in the 1990s when trafficking in persons was reported from Mozambique to South Africa and in 2003, IOM reported child trafficking cases from Lesotho, Mozambique and Malawi to South Africa. This then points to the fact that though international and national legal instruments are in place to protect children and prevent child smuggling and trafficking, the criminal acts continue to exist with South Africa being a lifetime destination for the victims.

The respondents also highlighted a number of strategies employed in smuggling children from Zimbabwe to either South Africa or Botswana. These included the use of *malaicha*, who are small truck or mini bus drivers. They could also be smuggled by long distance truck and bus drivers who were reported to hide these children under car seats. This was also noted in Allais (2006) who states that long distance truck drivers transport victims of trafficking from various countries via the border posts with the help of corrupt immigration officials. Another strategy that was reported was the use of women residing in the border town mainly for facilitating this practice. In the case of drivers, they would establish relations with immigration officials for easy transmission right through the border. All these parties get paid either by the parents, guardians or whoever will be need of their services of smuggling children. Some respondents indicated that in some cases villagers from surrounding areas may accommodate the smugglers during the day then engage in their practice during the night.

Another finding from this study pointed to the lack of authenticity of some legal documents which some nations demand as pre-requisites when one intends to cross national borders with minors. Participants pointed that illegal migrants and traffickers can easily manipulate the use of affidavits when crossing the border with minors as there are loopholes in how such documents are created. These loopholes include that in some cases there is no evidence that the signatories of the affidavit are really the parents or legal guardians of the child travelling with an adult and in some cases there were allegations that the commissioner of oaths may be bribed to endorse some affidavits. Such corrupt acts are done despite the presence of the Trafficking in Persons Act which emphasises that anyone who becomes an accomplice in obtaining false documents which tamper with the identity of travel documents shall be guilty of the crime of trafficking. In relation to this, IPS (2019) quoted IOM which stated that smuggling cases are mostly prevalent on South African and Botswana borders due to the fact that documents can be forged and bribery can be used to allow people entry without proper documents. Allais, (2006) also stated that there is a lack of clear comprehensive legislation in the SADC region which can be used to address the problem. Having said this, one can note that there is need for genuine enforcement of legislations endorsed by countries in trying to curb child trafficking and smuggling. Following this discussion, the following recommendations are proffered:

- There is need to amend Zimbabwe's Trafficking in Persons Act so that it criminalises trafficking as a crime of exploitation rather than transportation in line with the Palermo Protocol.
- The Government of Zimbabwe through the Ministry of Justice and development partners should sensitise citizens on the trafficking law so that the public knows activities associated with trafficking.
- There is also need to set up a trans-frontier task force on trafficking between Zimbabwe, South Africa and Botswana. This may help to ascertain whether smuggling cases are not turning into trafficking and to investigate cases in destination cities.

## CONCLUSION

Child smuggling and trafficking are a reality in Zimbabwe. Child smuggling to South Africa mainly and Botswana will always happen as long as Zimbabweans feel that they may get better opportunities in the neighbouring countries. A number of players chief among them *malaicha*, bus and truck drivers, and immigration officials are involved in smuggling children to neighbouring countries. The existing anti-trafficking laws have loopholes and criminalisation may be a challenge as they define trafficking as a crime of transportation rather than exploitation. There is therefore need to harmonise Zimbabwe's trafficking law with international protocols and conventions it signed.

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