



Forced Migration Studies Programme

Discussion Brief:

National Department of Education

Education Access for Non-Citizens in Border Areas

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Education Access in Border Areas

From January 2006 – June 2007, the Forced Migration Studies Programme of the University of the Witwatersrand carried out a research project entitled “Local Government, Service Provision and Migration in Border Areas – Challenges and Opportunities.” The research looked at the provision of services in the areas of education, security, and trade and local economic development in Nkomazi Municipality, bordering Mozambique and Swaziland. The field work was carried out from 2-9 and 21-25 March 2007 by Tara Polzer and Jacob Akech with the assistance of Vusi Ndukuya. Ingrid Palmary supported the project at the Forced Migration Studies Programme. 43 key informant interviews were conducted with a wide range of actors, including the municipal manager, mayor, councilors, municipal officials, police, school principals and education circuit managers, businesspeople and associations, Traditional Authorities and ndunas, and citizen and non-citizen residents. This discussion brief sets out the research findings which have implications for the Department of Education.

Schools in Nkomazi District, as in other rural areas, face many challenges. These include overcrowding; lack of class rooms, toilets and running water; a shortage of qualified teachers in mathematics, science and English; and a lack of resources for lessons support and computer-based training. Many children find it difficult to access schooling due to an inability to pay school fees or access school fee exemptions, pay for transport or uniforms, or the need to look after siblings or parents in the case of orphans and children affected by HIV/AIDS. These challenges have been well documented elsewhere. This policy brief specifically focuses on the impacts which migration across the Mozambican and Swaziland borders has on schools in the border area.

The findings of our research suggest the following, as discussed in more detail below:

- **Children’s right to basic education is being violated.** The right of all children to education is being violated because children without birth certificates are being excluded from schools.
- **There is a contradiction between the Constitutional right to education for all, and the Immigration Act’s (2002), Sections 39 and 42 prohibition of providing training or instruction to undocumented migrants (‘illegal foreigners’).** Therefore principals struggle with conflicting mandates. While school principals are supposed to uphold all children’s right to education and ensure that all children in a community are in school, they are being asked to enforce the birth certificate or study permit requirement and exclude children on that basis.
- **Schools are not overwhelmed by foreign children.** Only certain schools and school circuits closest to the borders have significant numbers of non-South African learners; even there, not more than 10% of learners do not have South African birth certificates¹; almost all non-South African children in schools are local residents and not new arrivals; and enrolment is stable.
- **Exclusion from education creates vulnerable and marginal groups.** Excluding long-term local residents from education on the basis of documentation is creating a group of poor and vulnerable residents, which has negative impacts on the entire community.

- **There is no cross-border coordination between Education Departments.** This is in spite of established movements between Swaziland and South Africa for education, and policy commitments (e.g. SADC Protocol on Education and Training) to work toward regional coherence and recognition in education. Cross-border communication at the local level should be encouraged.

Recommendations

- No child should be excluded from their right to education on the basis of lacking identity documentation.

For **District-level** Departmental Officials and Circuit Managers:

- For children who cross the border from Swaziland or (less commonly) Mozambique to attend school, develop partnerships with the Department of Home Affairs (DHA) and the Traditional Authorities to establish a form of recognized documentation which shows the identity of the child and their place of residence in the border area, and acts as a means of registering for schooling without requiring a birth certificate. These documents should also allow the child to participate in all school activities, including trips and sporting events. These documents should be coordinated with the relevant departments or offices in the neighbouring districts of Mozambique and Swaziland, to ensure recognition throughout the border region.
- Continue working with the Department of Home Affairs' outreach campaigns to facilitate access to birth certificates for those children who are currently eligible (e.g. who have one South African parent).
- Continue cooperating with the Department of Social Development and the Department of Home Affairs to enable the documentation of orphans who do not have copies of their parents' IDs, so that they can access education as well as social welfare grants.
- Develop regular communication and coordination structures with schools and school circuits in neighbouring districts in Swaziland and Mozambique on matters relating to the movement of learners in the border area, including common activities, content (within the respective national curricula) and administrative structures, as part of a movement towards regional integration.

For **National** Department of Education:

- Confirm the legal position of the contradictory provisions in the Constitution and the Immigration Act (Sections 39 and 42). In other countries, the right to education (including the USA and France), the right to education has been taken to override the identification and deportation of undocumented children.
- School principals should not be put under pressure to exclude children on the basis of documentation.

- Support local initiatives in border areas such as Nkomazi to creatively provide education to children without birth certificates, such as through the provision of documentation showing local residence, and support local-level departmental structures such as school circuits to engage directly with their counterparts in neighbouring countries.
- Develop a means for children to sit the matriculation exam without a birth certificate, if they have successfully completed the substantive requirements.
- Lobby the Department of Home Affairs to establish mechanisms for children who are resident in the border area to apply for and receive study permits locally, rather than having to travel to their respective national capitals.
- Lobby the Department of Home Affairs to enable long-term resident non-citizens (especially former Mozambican refugees) to access permanent residence for themselves and their children.

Education as a Right and a Public Good – The Basis for an Inclusive Approach

- *Education is a basic right.* According to the Constitution, no child may legally be denied basic education or discriminated against for any reason in accessing schooling. This includes non-citizen children and children who do not have South African birth certificates. International instruments such as the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; and the Convention on the Rights of the Child set out the right to education for all children and the prohibition against discrimination of any kind. As stated in the Committee on Economic, Social and Cultural Rights "the principle of non-discrimination extends to all persons of school age residing in the territory of a State party, including non-nationals, and irrespective of their legal status."
- *Education is a public good.* An entire society benefits from education for all, while an entire society feels the negative effects of excluding individuals and groups from education. Those who are excluded from education are more likely to remain unemployed and unemployable, may be more likely to turn to crime, and are therefore more likely to become a drain on the society's formal and informal social support mechanisms.
- *Education access is not an immigration management tool.* Especially in border areas, but also elsewhere in the country, migration from other countries is an established reality. Excluding children of migrants from services such as education will not prevent them from coming to South Africa and will not induce them or their families to leave the country. It will only make them vulnerable within the country, with negative effects for the entire society.

Context: The Social Reality of Migration and Education Needs in Border Areas

- *South Africa's borders are porous and cut through cross-border communities. Residents of neighbouring border areas have been part of the South African economy for generations through labour migration and trade.* South Africa is not able to absolutely control border crossing and

facilitated movement is part of the regional integration policy. Cross-border communities (such as Shangaans and Swazis) share language, culture, kinship and traditional leadership structures. The border zones in South Africa, Swaziland and Mozambique are in practice one development area, in which all residents benefit from improved social and economic development, including education for all. This also contributes to regional integration.

- *Non-citizen children who require access to education in Nkomazi include:*
 - **Mozambicans** have been resident in Nkomazi since fleeing civil war in the 1980s. Those who remain in Nkomazi today are permanently settled and integrated in local communities. Some have been able to access South African identity documents through government amnesties and exemptions in 1996 (for SADC citizens) and 1999/2000 (for former Mozambican refugees), but many were not able to access those processes and remain without documentation, meaning that their children, although born in South Africa, also lack documents. Since they live in South Africa and often do not have Mozambican identity documents, they are not able to get study permits as an alternative to South African identity documents.
 - Many citizens of **Swaziland** from the immediate border area send their children to Nkomazi for schooling. The children often stay with relatives in South Africa or with South African families or they cross the border daily to attend school since schooling in South African is less expensive than in Swaziland. Few have study permits, since accessing a permit from Mbabane is difficult and expensive for these families. They live close to the border, making Nkomazi schools easily accessible. Some consider themselves South African, even though they live in Swaziland, due to historical community and family linkages.
 - **Orphans** of former Mozambican refugees, Mozambican farm workers or Swazi migrant worker parents, or children of one South African and one foreign parent are often stranded when their parents pass away without identity documents or death certificates. This leaves the children without any means of acquiring the identity documents which are necessary for accessing basic support services such as grants. They also struggle to access education.
 - Transit migrants do not access education in Nkomazi. Although Nkomazi is a major gateway into South Africa from the continent, there is no evidence that most of the people crossing the borders, especially from Mozambique, remain in Nkomazi for any significant period of time or attempt to access any services there. Most transit directly to other destinations in South Africa, especially urban areas. The challenge of providing education is therefore focused on long-term residents of the border area, and not on transient migrants.
- *Schools in Nkomazi have generally included non-citizen children.* School principals understand the historical and social background of the children and recognize their right to education, even if they do not always have South African documentation. Reasons for this inclusive practice include:

Even if they have no birth certificate we cannot deny the child an education. *Secondary School Principal*

- *It is difficult to distinguish between South African and non-South African children, since they share languages (SeSwati and Shangaan), have relatives in South Africa and long-standing links in the district, and often have documentation from the Traditional Authorities showing local residence. Because of the length of residence and cross-border family connections, most children of Mozambican or Swaziland heritage who are in schools in Nkomazi have South African documentation. Only a limited number do not. Circuit managers close to the Swaziland and Mozambican borders estimate that fewer than 10% of all learners in their circuits are not South African.*
- *Enrollment levels in most border-schools have been stable for many years, suggesting that there are few new migrants from outside the border area accessing schooling and that schools are able to plan resource allocation for all learners on the basis of previous enrollment levels.*
- *In the case of Swaziland, there is a long history of migration for education in both directions. Under apartheid, South African children sought schooling in Swaziland to avoid Bantu Education. Today, children from Swaziland come to South Africa since primary education is less expensive.*
- *Given the current inclusive practice of school principals, it is concerning that principals feel under pressure to implement documentation access criteria more strictly, thereby increasing the exclusion of non-citizen children in Nkomazi. Some principals believe that they will be fined or charged with misconduct for registering children without South African birth certificates or study permits.*

We are not allowed to take learners without birth certificates since 2000. The policy states clearly that a principal can't admit a learner from Mozambique or Swaziland. If you do that they can charge you with misconduct if they find out, because you are breaking the law.
Primary School Principal

Common concerns

- *Will granting education access to non-citizen children without birth certificates attract a flood of new immigrants?*
- Since almost all the children without birth certificates currently in schools in Nkomazi are local residents or residents of the immediate border area, they are part of the schools' established intake communities, not new arrivals. Migrants transiting through Nkomazi are generally not intending to remain in the area and so do not need to access education, even if it were more freely available.
- *Will granting access to education for non-citizen children greatly increase costs and reduce the services available for citizens?*

A common argument for excluding non-citizen children from schooling is that schools have limited resources and places, and that priority should be given to South African children. This argumentation contravenes the principle that education is a basic constitutional right. Moreover, the numbers of non-citizen children without birth certificates are relatively small, even in the border area. Resource strains on rural schools have other reasons than migration and have been in place for a long time, and these

issues need to be addressed for the benefit of all. Finally, while including non-citizen children who live in the border area might carry some costs for schools, there is also a high cost to society of excluding them.

Good Practice: Alternatives to Birth Certificates for School Admission

Good practice examples:

- **Access to basic health care** in South Africa does not require any identity documents. Basic education could also be offered on the same basis or only with documentation showing individual identity or local residence.
- **Access to education in other countries** does not require a birth certificate or proof of citizenship.
 - In **France**, school attendance is compulsory and discrimination against foreign children is prohibited.
 - In **Kenya**, school enrolment only requires proof of a child's identity and age through documents such as a baptismal certificate or inoculation card.
 - In the **United States**, access to education for undocumented children has been established as a right in the US Supreme Court (*Plyler vs Doe*, 1982). This includes the provision that schools are prohibited from asking about a student's immigration status or requesting documentation at any time so that the right to access is not compromised by the potential danger of deportation.
- **Borderland residence and school access:** Identity documents have three possible functions in determining a person's access to government services: certifying a person's individual identity (name, date and place of birth); certifying a person's residence and membership in a particular community or location; and certifying a person's nationality and legal status. Since the right to education is not dependent on nationality or legal status, documentation requirements for school enrolment should address the school's administrative needs, such as establishing the child's name, age, parents, and place of residence, rather than requiring proof of nationality or legal status. Such documents can include certificates from Traditional Authorities, employers of the parents, road to health charts, or specially arranged local residence documents.

For children resident in the immediate border area of the three countries, an agreement could be reached to **allow school access on the basis of a borderland residence document**. This should be coordinated among the Home Affairs/Immigration and Education Departments of the three neighbouring municipalities, with the support of the national departments. Currently, in spite of the interdependence of border communities, there is very little coordination and communication among government departments across the borders.

¹ We were not able to get comprehensive statistics on the number of enrolled learners without birth certificates, so this is an estimate by circuit managers.