

**AN ANALYSIS OF BURUNDI'S INTERNATIONAL HUMAN RIGHTS
OBLIGATIONS REGARDING CHILD LABOUR IN THE CONTEXT OF HIV**

DISSERTATION SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS
OF THE DEGREE OF MASTER OF LAWS IN INTERNATIONAL HUMAN RIGHTS
LAW AND HIV IN AFRICA

HUMAN RIGHTS DEVELOPMENT INITIATIVE IN COLLABORATION WITH THE
CENTRE FOR HUMAN RIGHTS, FACULTY OF LAW, UNIVERSITY OF PRETORIA

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ACKNOWLEDGEMENTS

It has been a long journey and I could not have made it on my own.

I wish to acknowledge the support of Human Rights Development Initiative for both their financial and moral support advanced to me during the entire period of the study.

To my supervisor Annelize Nienaber, we never met, but I could tell you are so kind and humble. Thank you for your valuable advice, time and patience.

To the 2012 LLM class, in you I found the most wonderful classmates. You were so patient with me, at a time I needed just that.

DEDICATION

To my beloved parents, in so many ways, you have been a constant source of encouragement and a pillar of my life.

To the children who are working, we are together in the struggle for ending child labour in Burundi.

ABSTRACT

Child labour and HIV are challenges in the lives of children.

The collapse of the Burundi's economy, due to the protracted armed conflict and the economic embargo imposed on Burundi by its neighbours, has increased unemployment and poverty. These conditions of poverty often result in the neglect of children's education. Thus, children are encouraged by their parents to leave school or are even sometimes prevented by their parents from going to school. Instead, they are encouraged or forced to search for employment at a terribly young age. Other children engulfed in material and at times moral deprivation within their home lives, sacrifice school and start working or else embrace a life on the streets. Separation from parents and loss of family members are also significant causes of child labour.

The current economic crisis has spared neither the cities nor the countryside. Children set out to work on their own to survive and / or to help their parents. For this reason, children start working at a young age in diverse economic sectors. Some are employed as domestic helpers, while others, after receiving a small sum of money from their parents or someone else, start a small trade. Yet others regularly travel to the Bujumbura central market in search of work.

This dissertation, therefore, examines the causes and types of child labour in Burundi as well as the impact of child labour on HIV and AIDS in Burundi. Burundi has ratified and domesticated several international and regional human rights instruments that guarantee expressly or by implication the rights of the child. Burundi's human rights obligations to protect children child labour are examined, as well as its policies and legislation regarding child labour. The study recommends legislative reforms which include the drafting of a comprehensive law addressing the issue of child labour.

LIST OF ABBREVIATIONS

ACHPR	-	African Charter on Human and Peoples' Rights
ACRWC	-	African Charter on the Rights and Welfare of the Child
AIDS	-	Acquired Immune Deficiency Syndrome
Art	-	Article
CRC	-	Convention on the Rights of the Child
HIV	-	Human Immunodeficiency Virus
ICCPR	-	International Covenant on Civil and Political Rights
ICESCR	-	International Covenant on Economic, Social and Cultural Rights
ILO	-	International Labour Organisation
Kg	-	Kilogram
NGO	-	Non-Governmental Organisation
OUA	-	Organisation of African Unity
OIDEB	-	Observatoire Ineza des Droits de l'Enfant au Burundi
UN	-	United Nations
UNICEF	-	United Nations Children's Fund
US	-	United States

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CHAPTER ONE

INTRODUCTION

I BACKGROUND TO THE STUDY

A full understanding of child labour in Burundi is not possible without an analysis of child labour's links with the HIV and AIDS pandemics. There are about 200 000 orphans in Burundi.¹ When children become orphans, they are sometimes cared for by relatives unable to cope with this situation due to their limited resources.

With a total population of 10 million (in 2010), Burundi is one of the poorest countries in the world.² About 68 per cent of the population survives on less than 1 US dollar per day (compared to about 40 per cent in 1993).³ The majority of the children orphaned by HIV and AIDS drop out of school and the most vulnerable are girls who have to provide household services for the family when one or both parents get ill or die.⁴ The HIV and AIDS pandemics are also additional obstacles to education, having among its victims a significant number of teachers.⁵ As a result, HIV and AIDS pose a significant challenge and threat to the eradication of child labour.⁶

As noted above, poverty and HIV influence child labour and consequently the relationship between child labour, poverty and HIV is very important. HIV increases the vulnerability of children, especially orphans and HIV-infected children. As a result of this vulnerability, the demands upon public and private services, such as health care services, are increased.⁷ Without any other means of surviving, many children are obliged to work in order to take care of themselves and their ill parents. Others are forced onto the street where they become involved in prostitution and other harmful and exploitative forms of work. In addition, child labourers face the risk of being infected by HIV and AIDS because they are often exposed to sexual abuse. Children engaged in the worst forms of child labour, such as prostitution, street vending and domestic work, are therefore more severely affected.⁸ Most of the time, the work

¹ <http://www.hivstats.realclearword.com/i/7/Burundi> (accessed 10 November 2012).

² L Garcello *et al* 'Orphanhood and child vulnerability' (2004) available at www-wds.worldbank.org/.../439010WP0Box321ndi1orphans01PUBLIC1.pdf (accessed 16 November 2012).

³ As above.

⁴ n 2 above.

⁵ <http://www.dol.gov/ilab/media/reports/tda/tda2009/burundi.pdf> (accessed 10 November 2012).

⁶ As above.

⁷ n 2 above.

⁸ Art 3 Convention 182 on the Worst Forms of Child Labour, adopted in Geneva 17 June 1999 (entered into force 19 November 2000).

done by the children is physically and emotionally difficult and not well-paid.⁹ As domestic workers, children are exposed to sexual harassment, exploitation and to the risk of HIV infection. They are obliged to work many hours a day and they do not have time to rest.¹⁰

The relationship between HIV and AIDS and child labour may be understood in two ways:

First, because of their participation in the labour force, children are at risk of being infected with HIV and later suffer from AIDS and opportunistic diseases. In addition, they may find life so difficult that they turn to survival sex,¹¹ exchanging sex for food, insignificant amounts of money or clothes.¹² Young children (girls as well as boys) are obliged to become sex workers.¹³ Children who are involved in the labour force and who become HIV positive are less likely to have access to health care and treatment for opportunistic infections and AIDS.¹⁴ Also, access to suitable nutrition is very difficult, considering the weakness of their health because, as noted above, they are poorly paid or not paid at all.¹⁵

Second, children who live in a family affected by HIV and AIDS are likely to be involved in work because families are not able to survive without contributions from the children.¹⁶ In such a case, children are subjected to exploitative conditions and sexual abuse. As a consequence, children drop out of school and look for work. Sometimes they live with relatives and they are forced to work. In the extended family, children are exploited and not taken care of, and this pushes them to leave their families, resulting in them having to work hard to survive.¹⁷

Within this context, it is important to examine Burundi's human rights obligations to protect children against child labour.

⁹ S M Makwinja 'Child labour and the violation of child right: A case of child workers on Tea and Tobacco Plantations in Malawi' unpublished LLM Dissertation, University of Tromso (2010) 57, available at <http://munin.uit.no/bitstream/handle/10037/2548/thesis.pdf?sequence=2> (accessed 13 November 2012).

¹⁰ As above.

¹¹ n 9 above.

¹² As above.

¹³ As above 58.

¹⁴ As above.

¹⁵ As above.

¹⁶ n 9 above 59.

¹⁷ As above.

II PROBLEM STATEMENT AND RESEARCH QUESTIONS

In 2000¹⁸, UNICEF estimated that 32.2 per cent of children aged 5 to 14 years in Burundi were working.¹⁹ Approximately 79 per cent of those children were active in domestic activities, such as tending the sick, carrying water and caring for other children. Children are also known to participate in subsistence agriculture and others in informal sector activities such as caring for cows on the farms.²⁰ Children who are working on farms face many problems. They eat only once a day, do not have proper water, sanitation and so on. When they are sick, they are abandoned by their employers because they are no longer able to work. During the day, they work as cow carers, and during the night as guards.²¹ They do not have any time to rest.

Until now, Burundi made no progress in eliminating the worst forms of child labour.²² In the field of agriculture, children use potentially dangerous machinery and tools, carry heavy loads and work with harmful pesticides.²³ In urban areas, children are used as domestic servants. Children working in domestic services in Burundi are often isolated from the public and receive no compensation for their work.²⁴ They are also exposed to long working hours. Normally, one is permitted to work a maximum of eight hours per day according to Burundian labour laws. However, these children sometimes work more than twelve hours per day and are, at times, exposed to physical and sexual exploitation by their employers.²⁵

In light of this, the study analyses Burundi's international human rights obligations regarding child labour and HIV. An analysis of the policies and legislation on child labour is undertaken. The following research questions are the basis of the study:

1. What are Burundi's international, regional and domestic human rights obligations with respect to child labour?
2. What is Burundi's practice with respect to child labour in the context of HIV?

¹⁸ From 2000, there is no other research done on child labour in all provinces of Burundi. The Burundian human rights committee made research only in 5 provinces in 2011.

¹⁹ UNICEF (2000) 'Child protection from violence, exploitation and abuse' page 21 available at http://www.unicef.org/protection/57929_58009.html (accessed 112 November 2012).

²⁰ As above.

²¹ <http://www.ilo.org/public/english/standards/ipecc/public/hiv/aids/africa.pdf> (accessed 13 November 2012).

²² www.dol.gov/ilab/programs/ocft/2011/TDA/Burundi.pdf (accessed 11 November 2012).

²³ As above.

²⁴ INEZA Observatory on Child rights in Burundi .Law Guide for Burundian child 2008 2nd ed. available at http://www.oideb.org/pdf/guide_droit_enfanf_Burundi.pdf (visited on 15 November 2012).

²⁵ International Labour Office 'Children in hazardous work: what we know, what we need to do' Geneva ILO 2011 available at http://www.ilo.org/wcmsp5/groups/public/---dgreport/---dcomm/---publ/documents/publication/wcms_155428.pdf (accessed 14 November 2012).

3. Does this practice conform to these human rights obligations?
4. If not, why is this so and what needs to be done?

III DEFINITION OF TERMS

In this study, it is important to define the terms which will be used. The following terms have the following meanings:

Child

The United Nations Convention on the Rights of the Child²⁶ (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) define a child as ‘any human being under the age of 18’.²⁷ However, the labour law in Burundi sets the minimum age of work at 16.²⁸ This study adopts the definitions provided in the CRC and the ACRWC.

Child labour

Child labour describes ‘any work that subjects a child to economic exploitation or is hazardous, or interferes with the child’s education, or is harmful to the child’s health or physical, mental, spiritual, moral or social development’.²⁹ The ILO defines child labour as ‘all children under 15 years of age who are economically active excluding (i) those who are under 5 years old and (ii) those between 12-14 years old who spend less than 14 hours a week on their job, unless their activities or occupation are hazardous by nature or circumstance’.³⁰ For the purpose of this study the first definition will be adopted.

Vulnerable children

²⁶ Art 2 of the United Nations Convention on the Rights of the Child, Adopted November 20 1989, GA.Res 44/25, UN Doc.A/REX/44/25 (entered into force 2 September 1990). Hereafter referred to as the CRC.

²⁷ Art 2 of the African Charter on the Rights and Welfare of the Child, OAU, Doc.CAB/LEG/24.9/49 (entered into force 29 November 1999). Hereafter referred to as ACRWC.

²⁸ Government of Burundi, Law N° 1/010 of 18th March 2005 related to the promulgation of the Constitution of the Republic of Burundi.

²⁹ n 8 above.

³⁰ ILO Convention 2002, 32 on worst form of child labour, International Labour Office, Geneva.

Skinner *et al* define vulnerable children as those who have “no or very restricted access to basic needs. They may have both parents but the child’s rights are still denied”.³¹ Doku lists some identities of vulnerable children, such as children who live in a household in which one person or more is ill, dying or deceased; children whose caregivers are too ill to continue to look after them; and children who live with very old or frail caregivers.³² There are levels of vulnerability and the degree of vulnerability that a child experiences depends on the cumulative effect of several factors. Skinner *et al* suggest that the most vulnerable children are those who do not have caretakers with street children being the most vulnerable among them.³³

IV RESEARCH METHODOLOGY

To respond to the research questions above, the following research methods were used:

The dissertation is a desk-based literature study. It will review different texts - international, regional and domestic - regarding child labour, such as the Burundian constitution, books, articles, conventions, and general comments of treaty-monitoring bodies.

The dissertation further includes interviews with selected individuals. Ethics clearance for these interviews has been sought and obtained. Children who are working, parents, social workers and members of community-based organisations are interviewed. The object is to obtain a comprehensive understanding and complete information concerning child labour in Burundi. In the end, a comparative analysis of the results of the interviews and the law will be undertaken. Ultimately, the aim is to determine whether practices conform to the international law standards.

³¹ D Skinner *et al* *Defining Orphaned and Vulnerable Children: Social Aspects of HIV/AIDS and Health Research Programme Occasional Paper 2* HSRC 2004, available at www.wsu.ac.za/hsrc/html/2064-5.pdf (accessed 14 November 2012).

³² P North Doku ‘The Mental Health of Orphans and Vulnerable Children within the context of HIV/AIDS in Ghana’ (201 2) 318 *University of Glasgow* 54 available at www.theses.gla.ac.uk/3629/01/2012dokuphd.pdf (accessed 17 November 2012).

³³ As above n 30.

V LITERATURE REVIEW

There are very few sources specifically addressing child labour and HIV in Burundi. Although there is a range of literature by researchers and other authors concerning child labour in Burundi, this is not done in the context of HIV.

According to Ntiranyibagira, in his dissertation entitled *Problem of child labour in Burundi*,³⁴ it is impossible to tackle the term ‘work’ based on legislative texts because, in many countries, the particular clauses on child protection related to child labour impose different obligations. François adds that Burundian labour law, like that of other countries, contains particular clauses related to child labour. In keeping with the objectives of the International Labour Organisation (ILO), this legislation prescribes the minimum age for employment.³⁵

However, one must accept that, in Burundi, legislation on its own will not eradicate child labour. Legislation gives priority to the industry while our country’s economy is essentially based on agriculture. Legislation concerns the formal sector while it is relatively rare to find children labourers in this sector. This legislation excludes enterprises such as those of familial service, domestic service, agriculture and farming. This means that the activities that children are involved in are not legislated.

According to Schlemmer in ‘Exploited child: Child labour and his proletarianization’,³⁶ child labour amounts to exploitation when it reduces the number of children sent to school. Children are employed to do inhuman work in order to survive. In fact, obliged to take care of themselves, they sometimes accept the unacceptable.³⁷ Schlemmer explained the difficulties that arise in defining child labour due to the “specific forms of social relations” the children have with the person for whom they work. In cases where the child is performing work for his/her parent, for example, the writer suggests that some refuse to call that *labour* while others are “appalled that such work is forced upon a children who should not even be working”. In the writer’s discussion on exploitation, he suggests that it is important to distinguish between exploitation and oppression. He also emphasises that the exploitation of

³⁴ F Ntiranyibagira “Problem of child labour in Burundi” unpublished LLM thesis, University of Burundi, 2000 43.

³⁵ Labour Code of Burundi 1993, Art 3,126,127 and 128.

³⁶ B Schlemmer *Exploited child: child labour and his proletarianization* (1994) 16.

³⁷ As above.

a child's present goes hand in hand with the deprivation of her future.³⁸ However, Schlemmer focuses mainly on the sociological problems that child labourers face without providing a legal perspective on child labour.

In 'Child labour in the world and its implications on the overall development of the child',³⁹ Nyahoza suggests that child labour is exploitation if it implies: fulltime work at a young age; a lot of hours of working; work involving excessive physical, psychological and social pressure; work and a life on the street and in dangerous conditions, work that blocks access to education; work with an insufficient salary; an attack on the dignity and self-respect of children. Nyahoza argues that the first responsibility of the child should be to attend school, while child labour often prevents the child from going to school. As a result the child is not able to learn and grow into an independent responsible adult.⁴⁰

In relation to the psychological aspects of child labour, Paul North Doku examines the mental health of orphans and vulnerable children within the context of HIV. For him, the engagement of children in domestic chores is a common phenomenon in Africa. He suggests that a moderate involvement of children in the household duties may not harm their psychological functioning, but rather promotes social responsibility and a sense of inclusion in children.

However, neither of the writers on the topic of child labour in Africa discusses what should be done by government to fight child labour, in countries where the legal and policy frameworks are not strong enough to eradicate child labour. In contrast to the writers who analyses the rights of children in the field of work and the different problems they face, especially sociologically and psychologically, this study focuses on the international human rights obligations regarding child labour in the context of HIV in Burundi.

VI OUTLINE OF CHAPTERS

The dissertation consists of five chapters. The first chapter is an introduction which comprises of a background to the research, a problem statement and the research questions, a

³⁸ n 34 above 17.

³⁹ E Nyahoza 'Child labor in the world and its implications on the overall development of the child' (1998) Research paper, University of Burundi 173.

⁴⁰ As above.

definition of terms, the research methodology and the literature review. Chapter 2 focuses on Burundi's international, regional and domestic obligations regarding child labour. Chapter 3 discusses the actual practice with the respect to child labour in Burundi. Chapter 4 analyses whether these practices conform to the state's obligations and Chapter 5 includes the conclusions and recommendations of the study.

CHAPTER TWO

BURUNDI'S INTERNATIONAL, REGIONAL AND DOMESTIC OBLIGATIONS TO PROTECT CHILDREN AGAINST CHILD LABOUR

2.1 INTRODUCTION

It is extremely difficult, if not impossible, to protect children against the various forms of exploitation and the risk of being affected or infected by HIV and AIDS, without making use of the various international legal instruments signed and ratified by Burundi. According to the Constitution of the Republic of Burundi, the rights and duties proclaimed and guaranteed in these international legal instruments are an integral part of the country's Constitution.⁴¹

At the international level, several instruments that are specifically dedicated to the protection of children were adopted, including by the United Nations (UN) and specialised agencies such as the ILO. Some contain provisions specifically devoted to the child: the UN Convention on the Rights of the Child of November 1989; Convention no 138 of the International Labour Organization (ILO) on the Minimum Age for Admission to Employment of 1973; and the Convention no 182 on the Worst Forms of Child Labour of June 1999. Others are more general, such as the International Covenant on Civil and Political Rights (ICCPR) of December 1966 and the International Covenant on Economic, Social and Cultural Rights (ICESCR) of December 1966. Among the instruments specifically devoted to the child, the Convention on the Rights of the Child (CRC) is fundamental. It brings together, in a single document, far-reaching provisions on children.

At the regional level, a single instrument has been prepared and approved by African states. This is the African Charter on the Rights and Welfare of the Child (ACRWC). In addition to the fact that it is the only regional instrument for the children's rights, ACRWC contains many innovations for the promotion and protection of children. In addition to this

⁴¹The rights and duties proclaimed and guaranteed, among other things, the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights, relating to the International Human Rights Covenants, the Convention on the Elimination of All forms of Discrimination Against Women and the Convention on the Rights of the Child, are an integral part of the Constitution of the Republic of Burundi. These fundamental rights are not subject to restriction upon or derogation, except in certain circumstances justifiable in the public interest or the protection of a fundamental right. (Art 19 of the Constitution of the Republic of Burundi).

instrument, article 5 of the African Charter on Human and Peoples' Rights (ACHPR) deals with all forms of exploitation in general.⁴²

Through various texts, conventions, recommendations and covenants, the international community has persevered in an attempt to solve the issue of child labour. In 1919, the year of the founding of the ILO, for example, it adopted its first Child Labour Convention, forbidding the employment of children under 14 years in industry.⁴³

In this chapter I examine the way in which these international instruments protect the rights of the child. I place particular emphasis on the conventions of the United Nations relating to the rights of the child, namely, CRC. I also examine the ACRWC. On the other hand, I look at the practices of the ILO in the protection of children against exploitation in the workplace. I analyse the various conventions and recommendations of the ILO.

2.2 PROTECTION OF CHILDREN'S RIGHTS IN INTERNATIONAL AND REGIONAL LEGAL INSTRUMENTS ON LABOUR

The rights of the child have been recognised in international law since 1924, when the first international Declaration on the Rights of the Child was adopted by the League of Nations⁴⁴. Subsequent human rights instruments recognised the human right not to be subjected to violence, abuse and exploitation. These rights are intended to apply to all human beings, including children, and they were developed before in instruments such as the International Covenant on Civil and Political Rights of 1966.⁴⁵

The United Nations Children's Fund (UNICEF) suggests that special measures of protection and assistance should be taken on behalf of all children and adolescents without any discrimination. Children and adolescents must be protected against economic and social exploitation.⁴⁶ The employment of children in a work environment or types of work which

⁴² Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

⁴³ ILO 'Child Labour' Targeting the intolerable focus, the International Labour Conference, 86th Session, Geneva, 1998, Report IV.

⁴⁴ C Nibigira 'The legal status of child labor' (2010) Research paper, University of Burundi 26.

⁴⁵ IPU, 'The child protection, guide for parliamentarians No 7' Unicef (2004) 9.

⁴⁶ As above.

harm their morals and health, putting their lives in danger or harm their moral development should be punishable by the law.⁴⁷

Firstly, I will consider the general protection of the rights of the child and, secondly, the protection of the rights of children against economic exploitation in the workplace.

2.2.1 General protection of child rights

In 1989, the UN General Assembly adopted the Convention on the Rights of the Child (CRC). The Convention entered into force on 2 September 1990. Burundi ratified it on 19 October 1990.⁴⁸ The text of the Convention is essentially based on the idea that the child is entitled to special care and assistance,⁴⁹ namely, appropriate legal protection before as well as after birth.⁵⁰

This idea regarding special care and assistance due to children is justified by the fact that the child lacks physical and mental maturity. A child is born totally dependent, and consequently the actions or inactions of government have much more serious implications for children than for any other group in society, and the child's healthy development is crucial for the future prosperity of the society.⁵¹

The Convention on the Rights of the Child is not the only text which recognises the rights of the child to protection. In the regional context, the Convention on the Rights of the Child and the ACHPR⁵² were adopted. The African Charter on the Rights and Welfare of the Child was adopted by the Assembly of Heads of States and Governments of the Organization of African Unity in July 1990 and entered into force on 29 November 1999. Burundi ratified it on 11 August 2000.⁵³ This indicates a willingness on the part of African governments to respond to the fact that the situation of most African children, due to socio-economic and cultural factors, natural disasters, armed conflicts and developmental circumstances, and due

⁴⁷ Art 10 International Covenant on Economic, Social and Cultural Rights of 16 December 1996.

⁴⁸ CRC 'Initial report of implementation' Burundi CRS / Burundi additive-1997.

⁴⁹ Preamble CRC.

⁵⁰ Preamble Declaration of the Rights of the Child.

⁵¹ OIDEB 'Guide to child rights in Burundi' First edition, Bujumbura 2007 12.

⁵² Art 5 ACHPR.

⁵³ As above, 13.

to exploitation, hunger and disability, remains critical.⁵⁴ Both conventions define a child as a human being under the age of 18.

The CRC sets out the civil and political rights and economic, social and cultural rights of children, which should at all times be applied, and for all children in all circumstances.⁵⁵ These rights of the child set out in the CRC are broadly similar to those set out in the ACRWC, even if they are not always formulated exactly the same way. Despite their length, both texts are based on four principles: non-discrimination, the best interests of the child, the right to life, survival and development of the child and respect for the views of the child.⁵⁶

However, the two texts present major differences. The ACRWC gives prominence to positive African morals, traditional and cultural values. It also gives a place to the African, national and regional values: preservation of national independence, territorial integrity, promotion of African Unity and solidarity.⁵⁷ It sets out specific rights such as the protection against harmful social and cultural practices; the protection against apartheid and discrimination, and the rights of children of imprisoned mothers.⁵⁸ Finally, it sets out the duties of the child according to his age and ability, among others, to “work for the cohesion of the family, to respect his parents, superiors and old people at all times and to assist them when it is needed, to serve his national community, to preserve and strengthen African cultural values, and to preserve and strengthen the independence and integrity of [the] country”.⁵⁹ While the CRC sets out the civil, political, economic, social and cultural rights of children in general, the ACRWC adds a particular African dimension and highlights certain national and regional values. It also offers protection to children from traditional practices which are harmful to them.

Therefore, different legal measures have been taken to protect the rights of the child. In the next section, I analyse how the child is protected against economic exploitation at his work place.

⁵⁴ Preamble of ACRWC.

⁵⁵ n 47 above 12.

⁵⁶ n 52 above.

⁵⁷ Arts 11 & 31 of ACRWC.

⁵⁸ Arts 21; 26 & 30 of ACRWC.

⁵⁹ Art 31 of ACRWC.

2.2.2 Protection of children against economic exploitation

The child is protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to disrupt his/her education or impair his/her health or physical, mental, spiritual, moral and social development.⁶⁰

I will confine myself to the protection of children against the economic exploitation of their labour. Three key points will be discussed: the nature of child labour; setting the minimum age for admission to employment; working hours, conditions of employment and the fixing of penalties against those who employ children.

a) Nature of child labour

The definition of child labour takes into account the harmful and dangerous nature of child labour with regard to the health and the development of the child.⁶¹ Thus, the child should not be exposed to any work that is hazardous or that could interfere with his/her education or can be harmful to his/her health or physical, mental, spiritual, moral or social development.⁶² It is also stated that the child is protected from all forms of economic exploitation and from performing any work that is to be likely dangerous.⁶³ The child cannot, at least in principle, be employed in all kinds of work. Prohibited works are not specified. This imprecision compels us to refer to international standards which allow children to perform ‘light work’.

The concept ‘light work’ is too vague. The expression ‘light work’ should be understood on the one hand as work that is not likely to jeopardise the health and development of children, and on the other, as a work which does not prevent the child from going to school. Aspects such as the ‘health’ and ‘education’ of the child are considered. These two elements are also clearly taken into account by the CRC and ACRWC which indicates that the child’s labour must not compromise his/her education or interfere with his/her physical, mental, spiritual, moral and social development.⁶⁴

⁶⁰ Art 15 of ACRWC.

⁶¹ N Valticos *International labour Law* (1983) 244.

⁶² Art 32 (2) of ACRWC.

⁶³ Art 15 (1) of ACRWC.

⁶⁴ Arts 15 & 32 of ACRWC.

b) Fixing the minimum age for employment

Article 32(2) (a) of the CRC asks state parties to set a minimum age or minimum ages for admission to employment. This appears also in article 15 (2) (a) of the ACRWC. The CRC, while noting the need to establish a minimum age for admission to employment, does not specify that age. This lack of precision means, in my opinion, that the guidance should be sought in the ILO conventions that are more specific to work and employment. In Article 15, ACRWC refers specifically to the provisions of ILO instruments regarding children,⁶⁵ by asking states to set the minimum age (article 15 (2) (a) for admission to employment. As well, both the CRC⁶⁶ and ACRWC⁶⁷ require state parties to show through the provision of information that the work of a child at an early age affects his normal development and is dangerous.

c) Schedule of work, conditions of employment and fixing of the sanctions

CRC and ACRWC indicate that states parties must provide for appropriate regulation regarding the hours and working conditions.⁶⁸ The need for such regulation is justified by the current working conditions that are often hard and difficult for children. Working hours are long and the working environment can be unhealthy and harmful to the health of the child.⁶⁹ Some activities are physically and mentally dangerous.⁷⁰ Child abuse is not rare and compensation is derisory.⁷¹ In addition, these conditions exist, persist, and worsen, without any effective legal protection.

Both conventions also require that states parties fix appropriate sanctions to ensure the effective implementation of the provisions described above.⁷² This means that appropriate regulatory sanctions should be adopted by state parties to ensure that children are not economically exploited.

In conclusion it must be noted that, according to the ACRWC, the right to protection from economic exploitation includes both the formal and informal sectors. It further requires that

⁶⁵ As above.

⁶⁶ Art 32 of CRC.

⁶⁷ Art 15 (2) (d) of ACRWC.

⁶⁸ Art 32(2) (b) of CRC & art 15(2) (b) of ACRWC.

⁶⁹ n 41 above.

⁷⁰ n 49 above 17.

⁷¹ n 56 above.

⁷² Art 32 (2) (c) of CRC & art 15 (2) (c) of ACRWC.

state parties to the Charter take all appropriate legislative and administrative measures, in the formal and informal sectors (as well as the parallel employment sector), considering the relevant provisions of ILO instruments affecting children.⁷³

2.2.3 Action of ILO in protecting the child against exploitation of his/her work

The ILO is an international organisation that is specifically devoted to promoting social justice and internationally-recognised human and labour rights.⁷⁴ It was initiated in 1919 as a reaction against social injustices caused by the industrial revolution of the 19th century. One of these injustices was the economic exploitation of child labour.⁷⁵ It is therefore appropriate to see in the next section, the ILO action on child protection against the exploitation of his/her work.

One of the main ways in which the ILO may improve its member states' legislation and practices in the fight against child labour is the adoption of international conventions and recommendations relevant to the world of the work and in creating mechanisms to control their application and enforcement of the conventions.⁷⁶ When it comes to the ILO recommendations, they provide general technical guidelines to be implemented at the national level; they also provide detailed guidance complementing the principles defined in an agreement or guidance specifically on topics which are not covered by any agreement. Recommendations are not subject to ratification.⁷⁷

Several instruments already prohibit child labour in different sectors and circumstances, while others are more general in their application, such as those dealing with safety and health but which include specific provisions on child labour.⁷⁸ At the first session of the International Labour Conference, the first of eleven agreements on a minimum age for admission to employment was adopted.⁷⁹ These eleven conventions are: Convention No. 5 (Industry) 1919; Convention No. 7 (Sea) 1920; Convention No. 10 (Agriculture) 1921; Convention No. 15 (Trimmers and Stokers) 1921; Convention No. 33 (Non- Industrial) 1932;

⁷³ Art 15 (2) of ACRWC.

⁷⁴ n 56 above.

⁷⁵ International Labour Office 'Targeting the intolerable focus' International conference on labour, Geneva 1998 25.

⁷⁶ As above.

⁷⁷ International Labour Office 'Child labour A manual for the use of students' 44.

⁷⁸ As above.

⁷⁹ As above 25.

Convention No. 58 (revised Sea) 136; Convention No. 59 (revised industry) 1937; Convention No. 60 (revised Non-Industrial) 1937; Convention No. 112 (fishers) 1959; Convention No 123 (Underground Work) 1965 and Convention No. 138 of 1973 which will be analysed below.

These conventions cover the prohibition of child labour in some sectors (industry, agriculture, trade and services, transport and fisheries, and so on) and not the elimination of child labour altogether. These instruments make illegal the use of children in specific trades and occupations. Child labour is not seen as a whole but in a particular context, depending on the sectors in which it takes place.⁸⁰

Convention No. 138, dealing with the effective abolition of child labour, contains provisions to prohibit child labour in a number of sectors, including those that were previously covered by the old conventions on the minimum age of employment. It was in 1973 that various instruments related to fixing the minimum age were codified in a unique agreement. It is Convention No. 138 which is supplemented by Recommendation No. 146.

2.2.4 Convention No 138 and Recommendation No 146

Convention No 138 which was supplemented by Recommendation No 146, is of general scope, and places the obligation upon member states to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment, to a level allowing adolescents to achieve their fullest physical and mental development. States that ratify the Convention are to specify a minimum age for admission to employment, which may not be lower than the end of compulsory schooling and, not less than 15 years (14 years for less-developed countries).⁸¹

A higher age, 18 years, is provided for unhealthy and hazardous occupations. Certain limited categories of employment may be subject to exceptions. These maybe extended to less-developed countries, but the convention specifies the industries to which it will apply.⁸² The

⁸⁰ ILO 'Child protection in the workplace' Conference on child labour, Geneva October 1997, working 1997/3 16.

⁸¹ C Harerimana 'Legal regime of child labour' Unpublished dissertation, University of Lake Tanganyika (2008).

⁸² n 61 above 174.

convention revises the previous ten texts that deal with this issue. Recommendation No 146 clarifies national policy in this area, the minimum age itself, the hazardous employment or work, conditions of employment and enforcement measures.⁸³

In 1973, the International Labour Conference decided that it was time to revise the words of the preamble of Convention No. 138 to establish a general instrument, which will gradually replace the existing ones applicable to limited economic sectors, with a view to the total abolition of child labour.⁸⁴ It should be noted that Convention No. 138 is a dynamic instrument that is designed to gradually replace the earlier instruments. It addresses the effective abolition of child labour in all its aspects. Thus, Convention No. 138 lays the groundwork for a ‘coherent strategy’ for fighting against child labour at the national level.⁸⁵ Convention No. 138 and Recommendation No. 146 were indeed intended for the progressive eradication of child labour.⁸⁶

Finally, the ILO did not stop there; it adopted the Convention No. 182 that deals with the elimination of the worst forms of child labour. It was adopted at the International Labour Conference in Geneva in 1999, by the delegates of employer organisations, trade unions and governments of the 175 countries which are ILO members.⁸⁷

However, we cannot conclude this issue without indicating the nature of Burundian law concerning child labour.

2.3 PROTECTION OF CHILDREN'S RIGHTS IN NATIONAL LEGAL INSTRUMENTS ON LABOUR

An employment contract is any agreement, written or oral, by which a person, the worker, agrees to provide to another person, employer, manual or intellectual work, under the guidance and direct or indirect supervision and for wages or other remuneration.⁸⁸

⁸³ As above.

⁸⁴ Preamble ILO Convention no 138.

⁸⁵ n 63 above 120.

⁸⁶ n 68 above 18.

⁸⁷ n 65 above.

⁸⁸ n 80 above, art 15 (a).

Often, the type of employment contract concluded between children and their employers does not comply with the requirements for the conclusion of a contract described above, which is another obstacle to the legal protection of children. Burundian Labour Law enumerates an exhaustive list of the areas that are covered by the standards on the minimum age for admission to employment.⁸⁹ The sectors covered are both public and private companies and farms in the structured sector.⁹⁰

In the previous section it was noted that a number of international instruments protecting the child, especially against economic exploitation, have been adopted.

Internally, and taking into account its commitments at the international and regional levels, Burundi has ratified many instruments regarding the rights of the child. These standards, rules, laws and others may be found both in the Burundian Constitution and in various Codes.

Similarly, Burundian Labour Legislation includes provisions for the abolition of child labour. In this section I analyse two key points that are, on the one hand, setting the minimum age for admission to employment and, on the other, the determination of working conditions by Burundian law.

2.3.1 Required age for access to employment

The minimum age for taking up employment varies from country to country, but also according to the categories of jobs. In Greece, the age limit is 12 years for non-industrial work and 14 years for the same work in Italy.⁹¹ It respectively goes to 14 and 15 years for industrial jobs.⁹²

Burundian law, while fixing the minimum age for admission to employment at 16, similarly provides for exceptions depending on the nature of the work. It is noted that there are exceptions to the rule in both directions. On the one hand, in some circumstances, work may begin below the minimum age. On the other hand, these special protections do not end

⁸⁹ Labour Code of Burundi 1993, Art 14.

⁹⁰ As above.

⁹¹ H Capitan *The protection of the child* (1979) 377.

⁹² As above.

because; in cases of unhealthy, dangerous or immoral jobs for instance these protections extend beyond the minimum age.⁹³

The first concern for a legislator must be to prohibit children from entering employment before a certain age. This is the basis of all other measures for the protection child workers. However, the Minister of Labour's ordinance should include exceptions to the general rule and allow children who have reached the minimum age of 12 to take on some works.⁹⁴ 'Children cannot be employed in a company, before the age of 16, except for the performance of light and healthy work or training provided that such work is not harmful to their health or normal development or is not likely to cause prejudice to their attendance at school or their capacity to benefit from the instruction given'.⁹⁵ The Minister of Labour's ordinance, taken after consulting the National Labour Council, determines the nature of work involved, the work and the types of businesses that are prohibited for children and young people and the age limits which apply to these prohibitions.⁹⁶

In view of these provisions of the Labour Law, a child under the required age may not conclude or sign a contract of employment as an employee at the age of 16, unless it is in a light and healthy working environment. Under Burundian law, the Labour Code provides that a worker is any person, regardless of age, sex or nationality, who is bound to an employer by an employment contract.⁹⁷ It should be noted that these types of provisions exclude children who work outside a formal employment relationship. The Expert Committee on the Application of ILO Conventions has noticed on many occasions that limiting the sole criterion of the Employment Relationship is not sufficient to establish effective protection of all working children.⁹⁸ It should be noted that all remunerating work is not executed as part of an employment relationship under a contract of employment, particularly in a written contract.

⁹³ n 75 above, 380.

⁹⁴ Labour Code of Burundi 1993, Art 3.

⁹⁵ As above, art 26.

⁹⁶ As above, art 27.

⁹⁷ As above, art 15 (b).

⁹⁸ n 41 above, 51.

2.3.2 Exceptions to the age limit for admission to employment

The law on the minimum age for admission to employment often excludes work in family businesses and domestic work. The four articles of Ordinance No. 630/1 of 5 January 1981 list the types of jobs where no minimum age for admission to employment is required. This includes the work of children in technical and vocational schools, provided it is primarily educational; it is limited and exercised with the consent and under the supervision of the competent authority; it also includes the employment of children in establishments in which there are only members of the family of the employer; and provided that the work is not dangerous for the life, health or morals of those who are employed there. Domestic work in the family, by a member of the family, is also included.

These last two exceptions may be justified by the belief that children are protected by the affection of their father and mother.

2.3.3 Raising the minimum age for hazardous work

The prohibition upon the employment of children in hazardous work is enshrined in a number of conventions and recommendations adopted by the International Labour Conference. This is the case for example of Convention No 182 and its supplementing Recommendation No 146. Convention No 138 also stipulates the adoption of a minimum age for admission to employment with respect to the work which is likely to jeopardize the health, safety or morals of children or adolescents at 18 years.⁹⁹ Recommendation No 146 also states that the minimum age for this type of work should be 18 years.¹⁰⁰

Under Burundian law, it is illegal to employ a child to perform work which exceeds his strength, thus exposing him to high occupational risks or which, by its nature or the circumstances in which it is carried out, is likely to injure his character.¹⁰¹ Chapter five of the Ordinance of 1981 contains specific details of works prohibited for children under the age of 18 years. These are: night work; work which may exceed the child's strength and immoral work.

⁹⁹ n 70 above 55.

¹⁰⁰ See recommendation No 146 (9).

¹⁰¹ Art 1 of Regulation of Child Labour in Burundi, 1981 198.

a) Night work

International standards enshrine the prohibition upon employing children under the age of 18 years in night work. Under Burundian law, this prohibition is general and strict. Children under the age of 18 years may not be employed in night work in public or private institutions.¹⁰²

Within the meaning of the Ordinance of 1981, the word ‘night’ means a period of at least twelve consecutive hours, including the interval time between 7 pm and 7 am. According to the Labour Code of Burundi, ‘night work’ is that work performed from 10 pm to 5 am.¹⁰³ The word ‘night’ within the meaning of article 117 of the Burundian Code of Work applies to all workers governed by the Code. However, the word ‘night’ under Article 2 of the Ordinance of 1981 concerns working children. It is this last concept that should be taken into account in defining night work for children. Night work for children is therefore work that is done between 7 pm and 7 am. This period shall be duration of 12 consecutive hours.

b) Work which may exceed the child’s capacity

For this kind of work, the provisions in question prohibit children from carrying loads which exceed their strength. The use of children under 18 in the regular manual transport of goods is strictly prohibited.¹⁰⁴ The term ‘regular manual transport of goods’ means any activity enshrined in principal order, continuously or intermittently, to the manual transport of goods.¹⁰⁵ It is also forbidden to employ children younger than 18 years on a charge transport carrier, pedal carts and two-wheeled vehicles.¹⁰⁶ The term ‘goods transport’ means any transport where the weight of the load is borne entirely by one person, and also comprises the lifting and placement of the loads.¹⁰⁷

The law establishes a maximum load weight that children aged between 16 and 18 may move, carry, pull or push.¹⁰⁸ These are 20 kg for the manual transport of loads, 400 kg for

¹⁰² n 80 above, art 119.

¹⁰³ As above, art 117.

¹⁰⁴ Labour Code of Burundi 1993, Art 10.

¹⁰⁵ M Disu 'The regulation of labour of women and children' Unpublished dissertation, University of Burundi, 1984 40.

¹⁰⁶ n 80 above.

¹⁰⁷ As above, art 2.

¹⁰⁸ As above, art 11.

transport by wagon travelling on an even railway at the maximum rate of four hours per day, 75 kg for transport on vehicles with three or four wheels, 50 kg for wheelbarrow transport.¹⁰⁹ Clearly, despite the prohibition against children carrying loads which exceed their strength, the above law provides for extremely high maximum loads for children.

c) Work that is of an immoral character

It is strictly prohibited to employ children under the age of 18 years in the making, handling and sale of written or printed posters, drawings, engravings, emblems, images, and other objects that are contrary to good morals.¹¹⁰ It is also forbidden to employ them in places where the above-mentioned work is performed.¹¹¹ In addition, the employment of children is prohibited in bars and other public places where alcoholic drinks are consumed.¹¹²

Convention No 182 on the Worst Forms of Child Labour lists types of jobs considered immoral and which children may not perform: all forms of slavery or similar practices, such as the sale or trafficking of children, debt bondage and serfdom and forced or compulsory recruitment of children for use in armed conflict; work or the offering of a child for prostitution and pornography and the use or offering of a child for illicit activities, particularly for the production and trafficking of drugs.¹¹³

Since Burundi has ratified Convention No 182 on the Worst Forms of Child Labour, it is bound to outlaw this kind of immoral work. However, it has not yet done so. Many children in the city of Bujumbura continue to be vulnerable to sexual exploitation and the sex trade, others in the sale of drugs.¹¹⁴ Yet others are forcibly recruited for use in armed conflict.¹¹⁵

In the next chapter I analyse the current practices regarding child labour in Burundi.

¹⁰⁹ As above.

¹¹⁰ As above, art 14.

¹¹¹ As above.

¹¹² As above, art 15.

¹¹³ Arts 3(a), 3(b) and 3(c) of ILO Convention 182.

¹¹⁴ n 9 above 7.

¹¹⁵ As above 10.

CHAPTER THREE

PRACTICES WITH RESPECT TO CHILD LABOUR IN BURUNDI

3.1 INTRODUCTION

The collapse of the national economy, due to the prolonged armed conflict and due to the economic embargo imposed on Burundi by its neighbours, has increased unemployment and poverty for many families. These poor conditions often result in the neglect of children's education.¹¹⁶ Thus, children are encouraged by their parents to abandon school or are even prevented by their parents from going to school. Instead, they are encouraged to search for a job at a young age. These decisions or constraints are taken without the consent of those children. Other children, engulfed by material and at times moral deprivation within their homes, sacrifice school and start working very early on or embrace a life upon the streets. Separation from and loss of family members are also significant causes of child labour.

The current economic crisis has spared neither cities nor countryside. Children leave home to work to survive and / or to help their parents. For this reason, children start working at young age within diverse economic sectors. Some are employed as domestic helpers, while others, after receiving a small amount of money from their parents or someone else, set up a small trade and others travel to Bujumbura central market in search of any form of work. In the following pages I discuss the causes and forms of child labour as perceived by the respondents in a survey.

3.2 CAUSES OF CHILD LABOUR

3.2.1 Causes inherent within society

Some causes of child labour are inherent within society. Poverty forces households to rely on children for an income. Thus, children are put to work by their parents to provide for the basic needs of the family. In addition, due to greed, some adult employers enjoy the benefits of child labour and employ children instead of hiring adult workers for reasons described more fully below. The war and the failure to enforce and apply the law also result in the continuation of child labour.

¹¹⁶ C Bellamy *The situation of children in the world* (1999) 8.

a) **Household poverty**¹¹⁷

Household poverty is the main cause of child labour.¹¹⁸ Poor households need to earn some money from their children's wages. In fact, these households spend most of their income on food, so that many of them need additional income from their children in order to pay for other expenses such as rent and so forth.¹¹⁹ In Bujumbura, the children are awakened early in the morning by their parents to go to the market and to the streets to beg, carry luggage or pursue other jobs to earn some money.¹²⁰ With the money earned by the child parents pay their rent and buy food.¹²¹ During an interview, this 9 year old child stated as follows:¹²²

'Mama Antuma amahera yo kuriha inzu.' Which means:

'My mother sends me to get money to pay the rent'.

Child labour has become a business. This is explained by a parent met at the Bujumbura market:

*'... It has become the business. If someone has three children who give 3000BIF (about 2USD) per day you get about 90 000BIF (about 60 USD) per month. Parents make the business with their children. It is horrible now that 85 per cent of street children are sent by their kinsmen.'*¹²³

From the above conversation it is clear that many children are put to work by their parents.

It is submitted that some parents put their children to work due to the increase in unemployment and the reduction in their purchasing power or the high level of inflation observed more commonly in urban areas. In addition, people who live in urban areas need to pay rent as they do not own their homes. In the countryside, the family unit (father, mother and children) together with some agricultural workers are both producers and consumers. This leads to some degree of independence and a virtually self-sufficient life. The farm, which is symbolic of the country, allows a kind of self-sufficiency. This combination of

¹¹⁷ The information discussed from this point onwards in this chapter was obtained during interviews conducted.

¹¹⁸ INEZA Observatory on Child rights in Burundi. Law Guide for Burundian child 2008, available at http://www.oideb.org/pdf/guide_droit_enfant_Burundi.pdf available at (accessed on 23 August 2013).

¹¹⁹ n 103 above.

¹²⁰ Interview D Nimbona, a child met at Buyenzi market carrying luggage, interview conducted on 20 July 2013.

¹²¹ As above.

¹²² Interview with a child in the street in Bujumbura. He asked that his name should not be mentioned; interview conducted on 20 July 2013.

¹²³ Interview with a parent who request anonymity, conducted on 20 July 2013.

‘family-production-consumption’ inevitably leads to economic problems given that this community knows nothing about prices, wages, money or capital.¹²⁴

Household poverty has prompted a large number of children to seek work at a young age. Households have adopted survival strategies through diversification of income sources by sending many children to work. Many adults surveyed highlighted the poverty of parents as a major factor which contributes to the number of children who are put to work.

Certainly, the income that children earn from their work is in many cases essential to the survival of the whole family. But the experience that the child derives from this work and the consequences of being sent to work are harmful. For the most part, these children drop out of school and are thus deprived of an education.

Furthermore, in a situation where children are the ones responsible for a major part of the household income, a different type of relationship between children and their parents results.¹²⁵ As was stated earlier, the child is awakened very early in the morning by his or her parents and sent to obtain money by any means. Once back home, the child is measured according to what he/she has brought home. If the child returns without money (ie if he/she has failed to earn any money or if his/her money has been stolen) the child is not welcomed back by his or her parents. This example was expressed by an adult, who added that,

‘... it really hurts. And another thing is that these kids when they think they will return and the parents will not accept that someone has stolen their money, we see the child crying ...’¹²⁶

These words demonstrate what happens at the children’s homes. The child is not welcomed and nurtured. Love and affection are withheld from the child by parents as the child did not return with any or enough money. Consequently, on days when children failed to earn money, they will remain on the streets, accepting that it is better to stay in the gutters rather than going home to be beaten. On the street, children face many problems such as hunger, cold and rape. These children face a high risk of HIV infection as the rapist often do not bother to wear a condom. In addition, some children may engage in sex for money, clothes, food or shelter and thereby also expose themselves to HIV infection.

¹²⁴ P Sibomana *Urban and Rural Sociology* (1998) 133.

¹²⁵ Discussion with a merchant at his shop in Bujumbura, conducted on 21 July 2012.

¹²⁶ Interview with an adult of Bujumbura, conducted on 24 July 2013.

On the other hand, if a child brings back money and the parents are able to pay their rent and buy food, the relationship between the child and parents becomes that of their ‘boss’ or ‘householder’ since the child is the one who pays the rent and feeds the family. Here, family relationships change and the roles are reversed. In my opinion, in such a case the child may end up feeling like a ‘young daddy or mummy’, providing for the needs of the household. In this circumstance the risk is twofold: firstly, the child might no longer respect his parents and, secondly, the child might leave the family as the child is now financially self-sufficient.

Finally, it should be noted that household poverty affects children in urban areas and those in rural areas, girls as well as boys, but in unequal proportions. Children in urban areas, more than those in rural areas, are sent to work by their parents and girls are sent out more often than boys.¹²⁷

b) Exploitation of child labour

The benefits of child labour are important factors that perpetuate child labour. Burundian legislators involved in labour matters and other adults who responded to the survey indicated that child labour provides several benefits to employers.

Child labour provides hands that are less expensive (almost for free), and employees who are docile, malleable and easy to handle, and are also easy to shape according to the needs of the employer, and ensures almost total respect. This is what a legislator expressed on this issue:

‘employers often hire children because they are not difficult to deal with and they are paid less. This is what one finds in Bujumbura central market where a child can do 2 miles with a weight of 25 kg on the head for being paid only 100BIF. This is also the case for house boys and girls where the current tendency is to give privilege to children due to the fact that they cost less.’¹²⁸

These children are manageable workers and execute orders and they adapt more easily to the work entrusted to them. According to an official at a workplace,

‘children under the age of 16 readily accept very low wages, which allows employers to significantly reduce their cost of production. They are easy to handle and can work

¹²⁷ OIDEB ‘Guide to child rights in Burundi’ (2007) 12.

¹²⁸ Interview with legislative workers and employment agents who requested anonymity, conducted on 24 July 2013.

beyond the hours of service without claiming overtime pay or claiming any rights granted to them. And even if that happens, they are easy to silence or beat.’¹²⁹

Child labour is classified by lawmakers as illegal, degrading and alienating.

One legislator interviewed stated clearly that,

‘child labour is a shameful exploitation of man by man.’¹³⁰

c) Failure of the law

Working children in the informal sector are not covered by the Burundian labour law that sets 16 years as the minimum age of employment. Labour regulations are mainly concerned with the formal sector and the structured work environment. Legislators interviewed told me that the lack of legal regulation of the informal sector is among the causes that perpetuate child labour.¹³¹

‘The informal sector’, states a legislator ‘employs children because at the moment, it is excluded from the scope of legal provisions (Labour Code and its implementing measures). However, this area is full of small production units that are not able to take all payroll taxes required by law.’¹³² In other words, a further reason for the perpetuation of child labour is that employers can more easily evade employment-related taxes.

d) War and other scourges such as AIDS

The socio-political crisis that the country is faced with since October 1993 and other scourges such as AIDS have left a good number of children orphaned. These children have no one to help them. To survive, they must work. A few adults surveyed mentioned that the war is the main cause of child labour. The war and AIDS-orphaned children live on the streets, at least in urban areas.¹³³

Therefore, in Burundi, poverty, the benefits of child labour, lack of law-enforcement, war and AIDS are causes that are inherent within the society and which contribute to child labour.

¹²⁹ As above.

¹³⁰ n 118 above.

¹³¹ As above.

¹³² As above.

¹³³ Interview with NY Leonce, a legislator, meeting in his office on 21 August 2013.

3.2.2 Causes inherent in children

Work degrading the lives of children is not simply a result of issues within the adult world. It is also due to causes inherent within children themselves, such as poverty and crime.

a) Child labour - survival strategy

On the whole, 39.7 per cent of children who work do so to survive.¹³⁴ It is poverty that pushes children to perform dangerous work. The child worker is seeking employment for a little money in order to feed herself and so reduce hunger. Children go to work in order to survive. These are children who are left alone, often born of prostitutes or from very poor families and / or divorced couples. They are generally very poor and have nobody to take care of them. Thus, to earn money for food, they try to fend for themselves by offering their service to anyone who is willing to pay. They thus place themselves directly in the hands of people who use them as servants and baby-sitters (if they are girls) or as cow-herders (if they are boys). Ultimately it is the needs of the employer that determine what services they render. Other children choose the street and do whatever is available in order to earn a little money.

Burundian employment law-makers unanimously agree (100 per cent of respondents) that these children work to survive, and many adults surveyed also agree with this position. These children are either displaced and living with their parents in camps set up for internally-displaced persons (IDP), or they are orphans, or they simply come from very poor families. One woman surveyed remarked:

‘There are children who do this work because their parents are really poor and are not able to pay for their education, nor can they feed them. So these children have to go and look for food or look for work so they may have some money.’¹³⁵

These children, therefore, have to work hard to meet their basic needs. Children who remain on the street sometimes have to pay watchmen so that they may allow them to sleep with them in front of stores.

In light of the above, it is concluded that poverty is the major cause that forces children to work and endure great pain so that they may meet their basic needs for their survival.

¹³⁴ n 123 above, 15.

¹³⁵ Interview with A Kamariza, a woman of Buyenzi, one of the most populous towns of Bujumbura, who claims to have also a child worker at her home, interview conducted on 24 July 2013.

b) Delinquency

At the outset it must be noted that none of the children surveyed agreed that they work for the sole reason of delinquency. However, there are some parents who suggest that delinquency is a cause of child labour. But this applies to children in urban areas only. The parents interviewed said that only children in urban areas live on the street instead of staying at home. One of the parents emphasised this point and stated that it is the ‘hardened hearts’ of some children which push them to work in order to earn money.¹³⁶

Other parents associate delinquency with disobedience of children. A woman in Buyenzi exclaimed that:

‘There are children who abandon schools, who do not help their parents at home and after a few days, you meet them on the street carrying luggage, pushing wheelbarrows and so on.’¹³⁷

This situation must be analysed critically. If children leave their families to embrace the street, it is often because of the abuse they undergo at home.¹³⁸ Is that not what this parent working at the Buyenzi market means?

‘There are children born of prostitution and who are not loved by their parents. For this, they should do this job to earn their daily life.’¹³⁹

The case of the following 11 year-old¹⁴⁰ schoolboy and worker aptly illustrates what adults often call delinquency pushing children to work and that it is the product of the same adults or parents’ relationships with their children. The child lost his father. He stayed with his brothers and sisters, along with their mother. Another man married his mother and did not give the supplies to go to school. His older brother and his younger brother have all left home because of this man who mistreats them. Sometimes they stay with their older sister who is already married, and at other times, they stay on the street. This child is struggling to get school supplies.

Therefore, sometimes what we call delinquents are the fruits of social disorder. When I asked him what one should do to help him, he replied, ‘*Norondera abavyeyi bantunga*’, which

¹³⁶ Interview with S Ninkunda, a parent who has two children who work in the city of Bujumbura, conducted on 25 July 2013. He confirmed that if it was not these children, life would be impossible.

¹³⁷ Interview with a parent met in Bujumbura, who requested anonymity, conducted on 11 July 2013.

¹³⁸ n 123 above.

¹³⁹ Interviewee requested anonymity, interview conducted at Bujumbura on 12 July 2013.

¹⁴⁰ Interviewee requested anonymity, interview conducted at Bujumbura on 25 July 2013.

means 'I would like to find a family that can adopt me' which implies that the child is ill at ease being with his parents.

This leads one to conclude children may be forced to work due to a hostile climate in the family. Children prefer the work and live of the street rather than a family of hell.

3.3 PARENTS WHO 'SELL' THEIR CHILDREN INTO CHILD LABOUR

Most child workers are poorly paid and many do not even know how much they earn per month. Their employers often contract with their parents and it is the parents who receive the money was supposed to be paid to the children. An employer I interviewed confirmed this fact by telling me:

'I am a parent, a tutor of two children who work for me. One is a cow herder; the other is a baby-sitter. These children do not have the right to negotiate their wages because they are still young. It is their parents who say if they are satisfactorily paid or not, because in fact, it is the parents who receive the salary and not the children.'¹⁴¹

The question I asked next was what these children, who work without seeing a salary in return for their efforts, will feel in the end. I tried to learn more by asking the children but they did not answer me. I make the following two assumptions:

- The child is effectively sold by his parents to meet their needs. This child is simply there to do whatever he/she is asked to do and cannot give expression to his/her own will.
- The child is also prevented from handling any of the money which may predispose him/her to juvenile delinquency to fulfil his/her basic needs.

¹⁴¹ As above.

While it is tempting to investigate these two hypotheses further and to conduct a more detailed study of these children, their parents and their employers; I leave it to other researchers.

Children are paid less than adult workers. This explains why employers choose to employ children.

3.4 MAIN ACTIVITIES OF CHILDREN AT WORK

Children are engaged in various activities: some mild while others are outrageous and indefensible regardless of the environment and the age of the child. Examples are the sale of drugs, child prostitution and other forms of sexual exploitation of children.

3.4.1 Sale of narcotics

Children are often employed in activities that may affect their physical and mental integrity. The adult, enjoying the mental and physical weakness of the child, takes advantage of the child's innocence and even ignorance and instructs the child to sell some packets of cigarettes. Gradually, the child is given to smoking himself (boys are mostly used in this field), and eventually this may lead to children consuming other drugs.¹⁴²

A 15 year-old boy I interviewed had spent four years in the sale of narcotics. He began this work at the age of 10 and he also used drugs. He did not tell me specifically what kind of drugs he used. At first he sold the drugs for someone else. Over time he sold the drugs for his own account, '*jewe nararangura ngaca nindandariza*' which means 'I bought and then I sold it for my account.'

The risks for these children-sellers and consumers of drugs are very serious. When the child becomes dependent, he or she is at the mercy of drug traffickers, and is in the circuit and quickly learns the rules of the game, unaware that they are losing their physical and mental health and mortgaging their own future.

¹⁴² B Schlemmer 'Exploited child: Child labour and his proletarianization ' (1994) 54.

3.4.2 Child prostitution

Poverty remains the main cause of the sexual exploitation of children. Many families, especially in towns, are too poor to nurture and educate their children.¹⁴³ I relate the cases of these two girls to support this statement.

I interviewed Chari, is a 14 year-old girl born of prostitute parents. They often quarrelled and eventually divorced. Her father remarried and her mother is now a mentally-disturbed patient. When her father kicked his wife out of the home (the mother of the child), he kept her child (her daughter Chari). In order to pay his debts, Chari's father gave her to perform sex upon his creditors. Gradually, Chari became accustomed to regularly "sleep" with men in exchange for money. Shopkeepers also often violated her. She was so accustomed to such acts that even when she was adopted by another family, upon seeing a man, any man, she automatically took off her clothes, thinking that the man was there for sex.

Beta is a little girl of 13. She originally lived in Bujumbura with her father but he went to live in Gatumba¹⁴⁴ with another woman, leaving her child alone. She told me that she regularly receives sweets and money from shopkeepers. Without specifying the name, she told me that another man who is not her relative sometimes gives her 500Bif (0.30 USD) or 1000 Bif (0.60USD). Asked whether this money was exchanged for sex, she denied it but said that there was another little girl in the neighbourhood who had sex with shopkeepers. When I asked her to show me who that girl was, she ironically replied that she did not know. Children who are forced into sex work and transactional sex expose themselves to HIV infection. Often the children interviewed are not provided with information and resources to protect themselves from HIV infection. Consequently the risk of both getting infected with HIV and thereafter spreading HIV poses a risk to the children themselves, their families and society as a whole.

These interviews with children and adults illustrate the fact that we are far from complying with legal safeguards in place against the exploitation of children in labour. In the following chapter I discuss the various obstacles to the protection of children against exploitation.

¹⁴³ n 124 above.

¹⁴⁴ Gatumba is an area of Bujumbura. We have two Bujumburas: one is a capital city of Burundi, and another is a province called rural Bujumbura which has Gatumba as one of its areas.

CHAPTER FOUR

BARRIERS TO THE PROTECTION OF CHILDREN AGAINST EXPLOITATION

4.1 INTRODUCTION

Burundi's labour legislation is flawed because it covers the formal sector of the national economy, while, as already pointed out, most children work in the informal sector.

Even the sanctions established by the Labour Code are applied only to the formal sector. The scope of labour inspection is determined by the Labour Code, which is also limited to the formal sector.

In light of this, in this chapter I address three obstacles to the protection of children against exploitation. These are: the scope of social legislation, the lack of sanctions as well as limits to the labour inspectorate.

4.2 SCOPE OF SOCIAL LEGISLATION

Working children in the informal sector are not covered by the Burundian labour law which sets 16 years as the minimum age for admission to employment as labour regulations mainly address concerns within the formal sector. Consequently, the informal sector, which employs most children, does not fall within the scope of the Burundi Labour Code.

Moreover, the formal sector employs very few children. The scope of the Labour Code is as follows:

'This Code applies to both public and private companies and farms in the modern sector, even where the staff are governed by statute, and irrespective of their legal form. It is applicable, including its provisions on the jurisdiction of the labour courts, to personnel bound by a single contract of employment with the state and local communities, industrial and commercial and mixed enterprises personnel, and more generally to workers governed by specific provisions, when they need to be performed or completed.'¹⁴⁵

¹⁴⁵ Art 14 of Law No 1/ 037 of 7 July 1993 amending the Labour Code of Burundi.

It is clearly from the above that domestic services, traditional agriculture, self-employment and small informal businesses are excluded from the scope of this legislation.

The Labour Code applies to public and private companies and farms in the structured sector, even where the staff of these is governed by statute. In the case of domestic workers, children, and those who have small businesses and others, there is no applicable statute. Even the activities they perform are not part of those who have been cited by the Code. The Labour Code applies to personnel bound by a single contract of employment with the state and local communities, industrial and commercial and mixed enterprises personnel, and, more generally, to workers governed by specific provisions. Children working in the informal sector are bound by a contract of employment *vis-à-vis* individuals. They are therefore not bound by either the state or by local authorities.

Even children who trade often work for people who do not have the status of a trader because they (the traders) do not fulfil the conditions to obtain it. Indeed, most traders who have small businesses are not registered in the trade register.¹⁴⁶

The contracts between these children and individuals are transient and may be terminated in any manner and at any time. The child could work for one or two days and thereafter be fired or, should he or escape the inhuman conditions, be hunted down to return to work. Regardless of the circumstance and conditions of work, the child has no recourse through the labour laws because, as pointed out above, the labour laws do not protect them since they work in informal sector.

4.3 LIMITATIONS OF SANCTIONS

Ineffective sanctions are another weak point of the Burundian law. The sanctions for employing child labourers are too light to act as a deterrent.

‘Violation of the provisions of section 146 of the Labour Code is punishable by a fine of at least 5000BIF (US 3.3) to 10000BIF (US 6.6) and recidivism of 10000BIF (US 6.6) to 20000BIF (US 13.3). The fine may be accompanied by the temporary closure of the company when the workers’ health is compromised.¹⁴⁷ ‘With regard to Article 146 of the Labour Code, employers are required to comply with the provisions in force concerning (...), special

¹⁴⁶ n 32 above.

¹⁴⁷ Art 294 Burundian Labour Law.

conditions of pregnant women and young people. Orders of the Minister responsible for labour shall be taken after consultation with the National Labour Council lays down the conditions of hygiene and safety in the workplace as well as the conditions under which the inspectors and labour inspectors will use the procedure notice.’ The punishments provided are not enough and the employers can employ children and easily pay the fine. Consequently this law does not effectively deter employers from employing children.

Ordinance N° 630/1 of 5 January 1981 on the regulation of child labour has been enacted. However, the problem remains that this same Order does not establish clearly the conditions under which sanctions are enforced for those who employ children. It merely refers to article 294 of the Labour Code in its article 17.¹⁴⁸ The article states that ‘violations of the provisions of this Ordinance shall incur the penalties provided for in Articles 315 a) and b) of the Labour Code.’

4.4 LIMITS TO THE LABOUR INSPECTORATE

Labour inspectors may face limitations inherent in the legislation itself. For example, many laws do not apply to the informal sector, in which children are employed mainly through a verbal contract. In addition to general provisions, provisions for labour inspection severely limit the scope of this important service for the protection of workers.¹⁴⁹

To begin, only natural or legal persons governed by the Labour Code are subject to the control of the labour inspectorate. Although article 154 of the Labour Code recognises site visits during working hours, it is to point out that this has no magical powers. Moreover, the inspection methods used in the industrial sector are hardly suited to the informal and agricultural sectors.¹⁵⁰

Some employers use a variety of tricks to conceal illegal child labour or to escape inspections because their companies are officially registered.¹⁵¹ But it is in this type of establishment that working conditions are often the most dangerous and that children are the most exploited. In addition, inspectors are not authorized to visit certain places of work such as private homes or

¹⁴⁸ After the revision of the Labour Code in 1993, art 315 became Art 294 of the Revised Code. That is why art 17 of Ordinance No 630/1 of 5 January 1981 refers to art 315 (it refers to the former Code).

¹⁴⁹ C Harerimana 'Legal diet of child labour ' Unpublished dissertation, University of Lake Tanganyika (2008).

¹⁵⁰ n 13 above.

¹⁵¹ ILO 'Child labour : Targeting the intolerable focus' 97.

to intervene outside of certain methods of inspection without giving the employer notice. To operate, they often require a search warrant from a judicial authority.¹⁵²

This situation explains why it is impossible to obtain statistics from the inspection services regarding the number of working children, their age, sex, jobs held, practice schedules and working conditions. Although the labour inspectorate does not have figures, one thing is obvious: thousands of children work in hazardous conditions.

Among the reasons for non-intervention in the protection of the vast majority of child workers, labour inspectors suggest that in addition to the restrictions provided by law, a lack of resources, inadequate staffing and staff preoccupied by the settlement of individual or collective disputes make their work difficult.¹⁵³

Finally, we note that the biggest problem is that most children work in the informal sector, which is outside the scope of the law. Thus, there is no control by the labour inspectorate because this area is not in its control, considerably limiting the sanctions that may be imposed on employers of children.

¹⁵² Information received from a labour inspector.

¹⁵³ As above.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 CONCLUSIONS

At this point in the dissertation it is important to revisit the international guidelines on child labour in order to make some observations in light of these. This study intended to analyse Burundi's international human rights obligations regarding child labour in the context of HIV.

Essentially, child labour before an age fixed by labour laws is not necessarily a negative occurrence. If this work is carried out within the family as a form of learning for children, it is useful. However, if such work is performed in unsafe conditions it becomes detrimental to the child's physical, mental and moral development.¹⁵⁴

Children accept all types of work in order to survive. They earn very little. They are deprived of their childhood and time for rest.¹⁵⁵ Their work is not recognised and regulated; child workers are neither members of nor represented in unions. They remain hidden when negotiating workers' rights.

Relationships that children have with their employers and others depend on the employer as they are subject to the good will of their master, especially in domestic work. Those living on the street are faced with the risk of theft, police raids and remain in permanent insecurity.

'The ruinous work that the children do at young age leads to physical and mental health complications can be experienced by themselves as an evil, a lack of love on the part of their parents which likely may inspire them to revolt against their relations the society and also to make him yield to violence.'¹⁵⁶

These child-workers, being excluded from school, remain in eternal admiration of their school peers whom they helplessly envy.¹⁵⁷ They find themselves in an environment where parental figures are absent; they do not have the benefit of any caregiver who takes on the

¹⁵⁴ ILO / IPEC study on child labour in Burundi, 30 February 2009.

¹⁵⁵ As above.

¹⁵⁶ UNICEF 'Children in difficult circumstances in Benin'; UNICEF Benois Commission for UNESCO, Ministry of Labour and Social Affairs, Cotonou, 29 November 1990.

¹⁵⁷ n 31 above.

role of the parent. Since they do not go to school they do not have teachers or any other senior figure with authority that acts as a role-model and with whom they can develop lasting personal relationships, admiration, sympathy or any special bond.¹⁵⁸

These children have little hope for the future and see only bleakness ahead of them. As they will be the adults of tomorrow, one wonders what will become of them as they have only experienced abusive relationships, filled with aggression from their own parents or other adults and educators. What type of women will these girls become, when their childhood was stolen from them?

Conditions limiting child labour are contained in Burundian labour law as well as international legal instruments. However, despite the regulation of their working conditions, children continue to work at a young age and in deplorable conditions. The analysis in the dissertation of international legal mechanisms that protect against the exploitation of child labour has shown that children are indeed protected by international legal instruments. These instruments protect the rights of the child within the general framework of children's rights and against economic exploitation.

I have already pointed out that most children work to survive, because they are war orphans or AIDS orphans. These children are at risk of being infected with HIV and of thereafter of spreading HIV. Girls are more vulnerable to sexual abuse *vis-à-vis* their employers.¹⁵⁹ Children working on the streets are often sexually violated because, for most of them, the street is their place of work and their home.¹⁶⁰ Working children do not have sufficient information on HIV and AIDS, which is why they have little or no idea about the dangers of HIV infection.

These children who are subjected to intense labour are no longer considered a security net for elderly parents in their old age, but as an immediate resource for their relatives.¹⁶¹ Instead of waiting until the child reaches adulthood and is able to earn a living and support his or her siblings and parents, relatives and parents begin to use these children as early as possible to provide support to the family.

¹⁵⁸ P Erny *The child and his environment in Sub-Saharan Africa* (1978) 106.

¹⁵⁹ OIDEB 'Study on the analysis of the social situation of children and young victims of the street' (2003) 20.

¹⁶⁰ As above.

¹⁶¹ Schlemmer (n 143 above) 67.

5.2 RECOMMENDATIONS

Below I make a few recommendations to employers, parents, labour inspectors and the state in order to improve the situation of children exposed to labour in Burundi.

5.2.1 Employers and parents

Parents play the most important role in improving the living conditions of their children. They ought to meet the basic needs of their children at all stages of their children's development. They have the responsibility to provide a warm and loving family environment. Parents should not be allowed to continue to neglect and abuse their children, forcing them to flee to the street for their survival. In addition, parents who send their children to the street should cease such behaviour or should be forced by the law to stop such behaviour. Parents should also take care to ensure that their children are not victims of their disputes. Parents should, instead, protect children and focus on the best interests of their children. These principles should be enforced by law. Parents should teach their children about HIV and protect their children from exposure to HIV infection.

Adults who profit from child labour ought to be subjected to the force of the law and be required, at the very least, to ensure that children who work have sufficient time to rest and play. Children who work should be paid proper wages.

5.2.2 Legislators of labour and employment law

Legislation on child labour exists in Burundi but is limited to formal areas and / or structured employment. However, this sector employs very few children. The legislature must work to extend the benefit of Order no 630/1 of 5 January 1981 and the Burundian Labour Code to children in the informal sector, as these children are currently excluded from its field of application.

When a child worker suffers a wrong, for example if he or she is not paid, the law should allow a parent, biological or otherwise, or a social worker or any other duly authorised person to claim the unpaid wage from the employer. This should include using the law to seize the property of the offending employer. In such cases law enforcement officers should apply the law correctly and ensure that the laws relating to child protection are effectively implemented and properly enforced.

For this, it is necessary to organize information and awareness campaigns for this category of children, employers, parents, guardians, social workers, law enforcements officers and all other relevant role-players. These campaigns should include education on HIV prevention, care and support. When children are taught about HIV, the materials and methods should be adapted to ensure that they are child-friendly and that children will easily understand the message.

5.2.3 Political authorities

Burundi's political authorities have an important role to play since nothing can be done to support and sustain children without the political will and concrete actions. Pursuant to article 28 of CRC, the government of Burundi should provide compulsory primary education for all. It should also ensure that all children attend school until the end of primary school. Education at school should also include education about HIV.

However, nothing can be done without the participation of adults and without a change in certain behaviour that promotes the phenomenon of child labour and street children. Thus, it is necessary that the government put in place means of information, education and communication that reach everyone involved. The government should empower role-players and the general public by showing them the disadvantages of child labour and to share their approach to solutions. In addition, people should be made aware of the consequences of breaching the laws that regulate child labour and these laws should be properly enforced.

The government should support public and private services that deal with the family and children in general and particularly with children in difficult situations, by providing them with physical, material, logistical and financial support. At the public level the government should increase its budget allocation to social workers and labour inspectors to enable them to deal with the causes and consequences of child labour, including the risks associated with HIV.

Government needs to take steps to increase school enrolment, which significantly decreased during the time of crisis¹⁶² because children who do not go to school are more likely to end up working at a young age.

¹⁶² n 146 above.

Government, non-governmental organisations, all role-players and stakeholders should come together to develop a strategy to end child labour in Burundi.

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APPENDIX A

QUESTIONNAIRE USED FOR STRUCTURED INTERVIEWS

In order to understand fully the phenomenon of child labour in Burundi, I undertook interviews with different groups of people involved in this issue, starting with child labourers themselves.

The following questions were asked to the children labourers:

1. Full name
2. Age
3. When he/she start working and why
4. Did any one (parents, brothers, sisters...) tell specifically to work
5. How many family members he/she has
6. How much money he/she makes and if there is any satisfaction
7. What happen to that money?
8. Describe the life style at the place of working. (For helping him to understand the question, I might ask if he/she eats anything at home before coming to work or before starting to work if he/ she is in domestic working, condition of sleeping)
9. Danger from aggressive persons
10. What happens in case of sickness or absenteeism?
11. What is his/her dream

The following questions were asked in interviews with parents:

1. Full name and the name of his/her child
2. Date of birth
3. If they know that there are the laws which protect them against child labour
4. Why is his/her child working?
5. Are you satisfied with the fact that your child is working?
6. How does family benefit from child's work?
7. Do you know that your child/children should be in school rather than at work place?

Questions asked in interviews with NGOs and social workers

1. Full name of informant
2. Identification of NGO

2. What they do?
3. What they think are the main causes of child labour
4. If they think that there is anyone solution to child labour or if they think that there are several things we have to do as Burundians citizens
5. How society will be affected when many children who were child labourers become adults and suddenly, country is faced with an adults population that is uneducated.
6. What they undertake to do for leading government of Burundi to eliminate this phenomenon.