

**A HUMAN RIGHTS-BASED APPROACH TO CHILD LABOUR IN AFRICA:  
CHALLENGES AND PROSPECTS IN SOUTH AFRICA**

**A DISSERTATION SUBMITTED TO THE FACULTY OF LAW OF THE UNIVERSITY OF  
PRETORIA, IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE  
OF LLM IN HUMAN RIGHTS AND DEMOCRATISATION IN AFRICA**

**BY  
LUBAALE EMMA CHARLENE  
STUDENTS NUMBER: 11368447**

**PREPARED UNDER THE SUPERVISION OF PROF GNK. VUKOR-QUARSHIE AND MS  
PULENG LETUKA, AT THE SCHOOL OF LAW, UNIVERSITY  
OF VENDA, VENDA, SOUTH AFRICA  
31 OCTOBER 2011**

**DECLARATION**

I, LUBAALE EMMA CHARLENE, hereby declare that this dissertation is my original work, and other works cited or used are clearly acknowledged. This work has never been submitted to any University, College or other institution of learning for any academic or other award.

Signed: .....

Date: .....

Supervisors;

Professor GNK. Vukor-Quarshie, University of Venda

Signed:.....

Date:.....

And

Ms Puleng Letuka, University of Venda

Signed:.....

Date:.....

## **DEDICATION**

I dedicate this work to my mother, Mrs Lubaale Rose, my brothers and sister, and to the memory of my dear father, Lubaale John. To the African children still trapped in child labour, there is still hope for redemption.

## **ACKNOWLEDGEMENT**

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## **LIST OF ABBREVIATIONS AND ACRONYMS**

ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AIDS	Acquired Immunodeficiency Syndrome
BCEA	Basic Conditions of Employment Act
CC	Constitutional Court of South Africa
CDG	Care Dependence Grant
CESCR	Committee on Economic, Social and Cultural Rights
CINDI	Child In Distress Network
CLPA	Child Labour Programme of Action
CSG	Child Support Grant
CRC	Committee on the Rights of the Child
ECOWAS	Economic Community of West African States
EAC	East Africa Community
FCG	Foster Care Grant
GC	General Comment
HIV	Human Immunodeficiency Virus
HRBA	Human Rights-Based Approach
HRC	United Nations Human Rights Committee
IACHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
IPEC	International Programme on the Elimination of Child Labour
MNNATSOP	National Movement of Organised Working Children in Peru

NGO	Non-Government Organisation
NPA	National Programme of Action for Children in South Africa
NSCAN	National Strategy on Child Abuse and Neglect
OAU	Organisation of African Unity
SA	South Africa
SADC	Southern African Development Community
SAYP	Survey of Activities of Young People
UNCRC	United Nations Convention on the Rights of the Child
TAC	Treatment Action Campaign
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UN	United Nations
WB	World Bank

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# A HUMAN RIGHTS-BASED APPROACH TO CHILD LABOUR IN AFRICA: CHALLENGES AND PROSPECTS IN SOUTH AFRICA

## CHAPTER ONE: INTRODUCTION

### 1.1 Background of the study

Africa reportedly has the highest incidence of child labour in the world.<sup>1</sup> To respond to this problem, some scholars recommend an outright ban on child labour through legislation.<sup>2</sup> In this regard, most African countries, including South Africa (SA), have enacted legislation directed at banning child labour. However, legislation directed at banning child labour may impact negatively on certain fundamental rights of children.<sup>3</sup> This is because child labour is sometimes a source of income for many children who may themselves have 'dependants'. For instance, for children in desperate need, adherence to laws which have the effect of depriving them of basic necessities including food, housing and water is unrealistic, inadequate and totally ineffective. A notable example is with regard to orphaned children. Taking such children out of employment is counter-productive as they are left with no means of survival. On the other hand, though child labour contributes to the survival of many children and their families in Africa, it impacts negatively on fundamental rights of children. Some of these rights include the right to education, health, leisure, among others. Therefore, regardless of the circumstances that compel children to engage in child labour, it remains a problem that needs to be addressed through appropriate approaches. This study stresses that the approaches adopted need to be cognizant of the diverse circumstances under which children engage in child labour.

SA, like the rest of Africa, continues to grapple with the child labour conundrum. The South African Law Commission acknowledges that child labour is indeed a significant problem in SA.<sup>4</sup> In this regard, the Commission points out that relieving the burden placed on children involved in exploitative labour requires interventions beyond simply banning child labour.<sup>5</sup> In light of this, one of the strategies recommended in complementing the legislative approach to child labour is a human rights-based approach (HRBA). In

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<sup>1</sup> International Programme on Elimination of Child labour (IPEC) 'Global child labour developments: Measuring trends from 2004 to 2008' (2010) 11.

<sup>2</sup> K Basu & Z Tzannatos 'The global child labour problem: What do we know and what can we do?' (2003)17 *The World Bank Economic Review* 166.

<sup>3</sup> J Boyden & M William *Child labour: The best interest of working children* (1998) 6-7. See also A Narayan 'Child labour policies and programmes: The Indian experience' in A Bekele & J Boyden (eds) *Combating child labour* (1988) 146.

<sup>4</sup> South African Law Commission Discussion Paper 103 of project 110 on the review of the Child Care Act (2001) 579.

<sup>5</sup> As above.

adopting a HRBA in addressing child labour, this dissertation underscores the trite international law principle of the interrelatedness of human rights. In this regard, three rights, including the right to culture, socio-economic rights and children's right to participation in decision-making processes, are identified. It is contended that realising the three identified rights would have the effect of responding to the circumstances that compel children to engage in child labour in SA and Africa generally. These circumstances include child-headed households, migrant working children, the impact of HIV & AIDS, cultural perceptions about child labour and poverty.

## **1.2 Statement of the problem**

The negative impact of child labour on the rights of children is not in contention.<sup>6</sup> In fact, the need to eliminate it cannot be emphasised enough. At the same time, banning child labour without available alternatives for child labourers impacts negatively on several rights critical to children's welfare and survival. Using SA as a case study, a HRBA is considered appropriate in complementing legislation in addressing child labour. It is contended that such an approach would have the effect of responding to the circumstances that compel children to engage in child labour in SA. It is contended further that it creates a useful pathway to addressing child labour in a multi-dimensional manner.

## **1.3 Working definitions**

It is worthwhile having an understanding of some of the key terms that are used significantly in this dissertation. Some of these are, 'child labour', 'child work', 'human rights-based approach', 'exploitation' and 'interrelatedness of human rights'.

### **1.3.1 Child labour**

Child labour refers to dangerous and exploitative work which is carried out at too early an age, involves long working hours, carried out in inadequate conditions, not sufficiently paid, involves excessive responsibility, and undermines the child's dignity and self-esteem.<sup>7</sup>

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<sup>6</sup> A Admassie 'Explaining the high incidence of child labour in Africa' (2002) *African Development Bank* 253.

<sup>7</sup> United Nations Children's Fund (UNICEF) Child Protection Information Sheet (2006)1, available at [http://www.unicef.org/protection/files/child\\_labour.pdf](http://www.unicef.org/protection/files/child_labour.pdf) (accessed 20 August 2011).

### **1.3.2 Child work**

Child work refers to beneficial work that promotes a child's physical, cognitive and social development without interfering with the child's scholastic activities, recreational activity and rest.<sup>8</sup>

### **1.3.3 Exploitation**

Exploitation can be defined by elements such as beginning work at too early an age, working for long hours, inadequate remuneration and work with excessive physical, psychological and social strain.<sup>9</sup> It also includes work and life on the streets, excessive responsibility at too early an age, work which hampers psychological and social development of the child and inhibits the child's self-esteem.

### **1.3.4 Interrelatedness of human rights**

The principle of interrelatedness of human rights highlights the holistic promotion of all rights because the fulfillment of each right contributes to the fulfillment of others.<sup>10</sup>

### **1.3.5 Human rights-based approach (HRBA)**

A HRBA refers to a framework that integrates the norms, principles and standards of human rights in responding to challenges.<sup>11</sup>

## **1.4 Objectives of the study**

The major objective of this study is to determine how a HRBA can complement legislation directed at banning child labour in protecting children from child labour in South Africa and Africa as a whole. In this regard, the study shall:

- Examine the circumstances under which children engage in child labour in SA
- Examine how these circumstances undermine the positive impact of legislation directed at banning child labour in SA
- Examine how a HRBA can complement legislation in effectively addressing child labour in SA

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<sup>8</sup> As above.

<sup>9</sup> UNICEF Executive Board Paper on exploitation of working and street children (1986)4-6, available at <http://www.cf-hsf.net/unicef-temp/DOC-Repository/doc/doc285179.PDF> (accessed 20 August 2011).

<sup>10</sup> The Vienna Declaration and Programme of Action by the world conference on human rights on 25 June 1993, UN DOC.A/A/CONF.157/23 para 5.

<sup>11</sup> J Kirkemann & T Martin *Applying a rights-based approach* (2007) 9.

- Identify some of the rights pertinent to protecting children from child labour
- Identify best practices that can inform SA's strategies in addressing child labour as well as experiences in SA that can inform the rest of Africa in addressing child labour.

### 1.3 Research questions

The study attempts to answer the following questions:

- What are the circumstances under which children engage in child labour in SA?
- How do these circumstances undermine the positive impact of legislation directed at banning child labour in SA?
- Why is there a need for a HRBA in addressing child labour in SA?
- What are some of the rights pertinent to protecting children from child labour?
- What best practices can inform SA's strategies in addressing child labour and what can the rest of Africa learn from SA's experience?

### 1.6 Literature review

The available literature reveals that different scholars have written on child labour in the context of Africa. There is also literature that suggests the need for integrated approaches in realising rights of children. In this regard, Admassie<sup>12</sup> establishes a link between macro-economic variables and the incidence of child labour in Africa. However, his study doesn't adopt a HRBA to the child labour conundrum. In another article on child labour in Africa, Admassie<sup>13</sup> underlines the need to realise the right to education in order to effectively address child labour. However, limiting the redress of child labour to realising the right to education is inadequate because some children can combine school attendance and exploitative work.

Sloth-Nielson and Mezmar<sup>14</sup> emphasise the need for integrated approaches in dealing with children's rights. They contend that integrated approaches are crucial in responding to the peculiar circumstances of African children. However, their study does not specifically address child labour.

One writer that specifically discusses the need to promote all rights in addressing child labour is Doek.<sup>15</sup> However, his study does not make specific reference to the circumstances in SA. Similarly, Tarinyeba<sup>16</sup>

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<sup>12</sup> Admassie (n 6 above) 251.

<sup>13</sup> A Admassie 'Child labour and schooling in the context of a subsistence rural economy: Can they be compatible?'(2003)23 *International Journal of Educational Development* 167.

<sup>14</sup> J Sloth-Nielson & BD Mezmar 'Surveying the research landscape to promote children's legal rights in an African context' (2007) 7 *African Human rights Law Journal* 330.

<sup>15</sup> JE Doek *The CRC and the elimination of economic exploitation of children* (2002)4.

acknowledges the need for a HRBA in addressing child labour. However, she limits the HRBA to trade policies.

Another writer, Nhenga-Chakarisa<sup>17</sup> contends that cultural perceptions about child labour in Africa are an obstacle to the protection of children from child labour and in this regard, she offers some strategies to respond to these perceptions. However, her strategies do not specifically adopt a HRBA based on interrelatedness of human rights.

### **1.7 Significance of the study**

It is contended that this dissertation offers ideas that will enlighten and equip policy and law makers in Africa in developing effective child-centered and human rights-based programmes in addressing child labour. Similarly, it informs and empowers children who are, in this regard the principal rights holders, to effectively assert their right to be protected from child labour.

### **1.8 Hypothesis**

This dissertation is based on the premise that in order to effectively address child labour in SA and Africa as a whole, legislation directed at banning child labour needs to be complemented by other approaches that respond to the circumstances that compel children to engage in child labour. The study suggests a HRBA with particular emphasis on the concept of interrelatedness of human rights.

### **1.9 Methodology**

Desk research is used in the study. It involves in-depth legal and descriptive analysis of materials, focusing on secondary data such as books, journals and articles, legislation, policies, case law and scholarly materials from the internet. The study adopts a HRBA to the problem because it is considered appropriate in responding to the circumstances under which children engage in child labour.

### **1.10 Limitations of the study**

This study would have benefited from a field research but the researcher was constrained by time.

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<sup>16</sup> WM Tarinyeba 'Poverty, trade and child labour in the developing world: An analysis of efforts to combat child labour in Uganda' (2007) 13 *East African Journal of Peace and Human Rights* 249.

<sup>17</sup> TC Nhenga-Chakarisa 'Who does the law seek to protect and from what? The application of international law on child labour in an African context' (2010)10 *African Human Rights Law Journal* 161.

### **1.11 Layout of chapters**

This dissertation comprises of five chapters. Chapter one consists of the proposal which gives the background and general introduction to the study.

Chapter two examines the human rights standards on protection of children from child labour. Essentially, the chapter places the discussion on child labour in the arena of human rights.

Chapter three discusses the circumstances that breed child labour in SA and how SA has responded to these circumstances. In this regard, the inherent inadequacy of legislation in addressing child labour is underscored thus justifying the need for an approach that recognises the interrelatedness of human rights.

Chapter four discusses some of the rights pertinent to the protection of children from child labour. This discussion is informed further by some best practices from Brazil, Peru, Senegal, Uganda and The Gambia.

Chapter five gives a general conclusion and makes recommendations.

## CHAPTER TWO: INTERNATIONAL HUMAN RIGHTS STANDARDS ON CHILD LABOUR

### 2.1 Introduction

This chapter examines the human rights standards on child labour. The chapter starts by examining the concept of a HRBA and the principle of interrelatedness of human rights. This is followed by a discussion of international standards on child labour as enshrined in the various international human rights instruments. The purpose of this chapter is to place the discussion of child labour in the arena of human rights.

### 2.2 Human rights-based approach (HRBA)

#### 2.2.1 Definition and relevance of a HRBA in addressing child labour

The basis of a HRBA is human rights. Thus, human rights determine the relationship between individuals and groups with legitimate claims (rights holders) and State and non-State actors with obligations (duty bearers).<sup>18</sup> In identifying rights holders (and their entitlements) and corresponding duty bearers (and their obligations), a HRBA strengthens the capacities of rights holders to make their claims, and of duty bearers to meet their obligations.<sup>19</sup>

The relationship created between duty bearers and rights holders translates needs into entitlements that can be claimed by right holders and met by the duty bearers.<sup>20</sup> This means that in situations where individuals cannot afford to meet their needs, the state as the duty bearer, bears the responsibility of attending to their needs.<sup>21</sup> Accordingly, duty bearers can be held accountable if they fail to fulfill their obligations.<sup>22</sup> The duty bearer's accountability is strengthened by the fact that needs are removed from the arena of charity to the arena of entitlements to be guaranteed.

Essentially, translating needs into entitlements in a HRBA is an acknowledgement of equal worth and dignity and an empowerment of the most vulnerable.<sup>23</sup> Thus, adopting a HRBA in addressing child labour serves the purpose of requiring the state, which is the primary duty bearer, to respond to the needs and circumstances under which children engage in child labour. Some of the factors and circumstances that

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<sup>18</sup> Statement of common understanding on the human rights-based approach. adopted at the inter- agency workshop on a human rights-based approach in the context of UN reform, 3 -5 May 2003.

Available at [www.unicef.org/sowc04/files/AnnexB.pdf](http://www.unicef.org/sowc04/files/AnnexB.pdf) (accessed 12 September 2011).

<sup>19</sup> As above.

<sup>20</sup> Kirkemann & Martin (n 11 above) 9-10. See also SR Osmani ' Poverty and human rights: Building on the capability approach' (2005)6 *Journal of Human Development* 208.

<sup>21</sup> As above.

<sup>22</sup> G Schmidt-Traub 'The millennium development goals and human rights-based approaches: Towards a shared approach' (2009)13 *International Journal of Human Rights*.74.

<sup>23</sup> As above.



form the basis of children's engagement in child labour include the need for food, shelter, lack of education, the cultural context in which children live and poverty. Accordingly, a HRBA to child labour in SA and Africa as a whole becomes vital in translating needs that form the basis of child labour into entitlements to be claimed by rights holders and met by duty bearers.

### **2.2.2 Implications of a HRBA for the state**

Since rights trigger obligations and responsibilities where needs do not, rights cannot be addressed without raising questions of who has the obligation and what the implications of these obligations are. The state is identified as the principal duty bearer in the case of human rights. In this regard, scholars have developed a tripartite typology of states obligations as including the obligation to respect, protect and fulfil each human right as contained in the different treaties and conventions.<sup>24</sup>

The obligation to respect requires states parties to refrain from interfering with the enjoyment of rights.<sup>25</sup> For example, the right of children to be protected from exploitative labour is violated if the state directly engages children in harmful work, such as recruiting children in national armies or other state owned employment facilities.

The obligation to protect requires states parties to prevent violations of rights by third parties.<sup>26</sup> For example, if a private company employs a child, it is the obligation of the state to protect the child from being exposed to exploitative conditions of work. If the state fails to take the required protective measures and as a result the child is exposed to exploitative labour conditions, the state is liable even though it was not itself a party to the violation.

The obligation to fulfil goes even further in extending the state's obligation. Under this obligation, the state as the primary duty bearer, must take positive steps to protect children from child labour. Accordingly, this obligation would require states parties to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of rights.<sup>27</sup> To fulfil this obligation, Doek,<sup>28</sup> the Chairperson of the Committee on the Rights of the Child (CRC), as he then was, emphasised the need for states to address the circumstances under which children engage in child labour. In this regard, he identified positive

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<sup>24</sup> See generally, A Eide, 'Economic, social and cultural rights as human rights' in A Eide *et al* (eds) *Economic, Social and Cultural Rights: A textbook* (1995)21-40.

<sup>25</sup> K Drzewicki 'Internationalisation of human rights and their jurisdiction' in R Hanski & M Suksi (eds) *An introduction to the international protection of human rights* (1999) 31.

<sup>26</sup> As above.

<sup>27</sup> As above.

<sup>28</sup> Doek (n 15 above) 4.

measures including the improvement of children's living conditions, promoting their right to health, access to education, social security, parental assistance and responding to cultural perceptions, which the state as the primary duty bearer may take.

### 2.2.3 Implications of a HRBA for non-state actors

The traditional view under international human rights law is that only states are duty bearers.<sup>29</sup> However, this view has been successfully rebuked by human rights scholars in view of the human rights violations committed by non-state actors. For example, Dhliwayo<sup>30</sup> notes that because of globalisation and liberalisation, government functions in many countries have shifted to non-state actors thus making the obligation of non-state actors in realising children's rights inevitable. Similarly, the United Nations Convention on the Rights of the Child (UNCRC) has, through its Optional Protocols acknowledged the role of non-state actors in realizing rights of children. For instance, the Optional Protocol on Child Soldiers of 2002 recognises the role of non-state actors in addressing the concern of child soldiers.<sup>31</sup> Likewise the Optional Protocol on Child Pornography of 2002 is cognizant of the role of non-state actors.<sup>32</sup> At the regional level, the African Charter on the Rights and Welfare of the Child (ACRWC) imposes direct child rights obligations on non-state actors by stating that everyone has duties to promote and protect the rights and welfare of the child.<sup>33</sup> With specific reference to the right of children to be protected from child labour, the ILO recognises the role of non-state actors and emphasises the need to involve them in effectively addressing child labour.<sup>34</sup> Accordingly, a HRBA to child labour inevitably calls for the need to bring on board the different non-state actors. This is imperative because the protection of children from child labour directly involves non-state actors like private corporations and enterprises that often condone exploitative

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<sup>29</sup> N Jagers *Corporate human rights obligations: in search of accountability* (2002) 1-5. See also A Reinisch 'The changing international legal framework for dealing with non-state actors' in P Alston (ed) *Non-state actors and human rights* (2005)37.

<sup>30</sup> R Dhliwayo *Understanding the obligations of non-state actors in the realisation of children's rights* (2007) 16. See also R Pratap 'Implementation of ILO child labour standards in Asia: Overview and selected issues' in G Nesi *et al* (eds) *Child labour in a globalised world* (2008) 378.

<sup>31</sup> 1<sup>st</sup> Optional Protocol to the UNCRC on Child Soldiers, UN Doc. A/RES/54/263. Para 11 of the Preamble deals with the power and the influence of armed groups. See also art 4 of the Protocol which states that non-state actors 'should' respect the human rights of children under 18 in their recruitment practices.

<sup>32</sup> 2<sup>nd</sup> Optional Protocol to the UNCRC on Child Pornography, UN Doc. A/RES/54/263. Paras 3 & 4 of the Preamble are concerned with, as well as aware of, the problem and need for international regulation as a reaction to the power and influence of private actors. See also arts 2, 3(4) (7) of the Protocol which are mainly concerned with groups and persons with the obligation to provide compensation and make punitive payments.

<sup>33</sup> Preamble to the ACRWC.

<sup>34</sup> IPEC 'Children in hazardous work: What we know, what we need to know' (2011) 11. Available at <http://www.ilo.org/ipeclang---en/index.pdf> (accessed 10 August 2011).

child labour practices. It is therefore contended that non-state actors are a useful entry point in addressing child labour.

### 2.3 The principle of interrelatedness of human rights

The interrelatedness of human rights has been emphasized by the Vienna Declaration.<sup>35</sup> While the content of the interrelatedness of rights arises out of the Vienna Declaration which is evidently soft law, it has crystallized over time and has been adopted by treaty bodies in their general comments and concluding observations.<sup>36</sup>

The principle of interrelatedness of human rights is closely linked to the principle of indivisibility of human rights. The principle of indivisibility of human rights underlines the fact that human rights, whether civil, economic, social, economic or cultural are interrelated and equal in importance.<sup>37</sup> Interrelatedness as used to describe the indivisibility of human rights means that rights form an indivisible whole and only when these rights are guaranteed as a whole can an individual live decently and in dignity.<sup>38</sup> This is based on the rational assumption that each right contributes to the fulfillment of the others and that the denial of one right invariably impedes the enjoyment of other rights.<sup>39</sup> This assumption is logical because the fulfillment of one right often depends wholly or in part upon the fulfillment of others.

The principle of interrelatedness of human rights is pertinent in addressing child labour in South Africa and Africa as a whole. This is imperative because protecting children from child labour depends heavily on the realisation of other rights.<sup>40</sup> As such, it is contended that promoting children's right to food, shelter, housing education, participation and responding to cultural perceptions about child labour, partly or wholly, protects children from child labour. In this regard, the CRC has expressly underlined the interrelatedness of rights of children. In 1993, the CRC devoted its second annual discussion day to the economic exploitation of children.<sup>41</sup> In its recommendations, it underlined that the rights in the UNCRC are indivisible and

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<sup>35</sup> Vienna Declaration and Programme of Action (n 10 above).

<sup>36</sup> See eg the Committee on the Rights of the Child(CRC) General Comment (GC) 7 on implementing child rights in early childhood of 2005, UN.Doc.CRC/C/GC/7/Rev.1. See also CRC GC 12 on children's right to be heard of 2009, UN.Doc.CRC/C/GC/12 and CRC GC 5 on general measures of implementation of the CRC of 2003, UN.Doc.CRC/GC/2003/5.

<sup>37</sup> IG Shivji *The concept of human rights in Africa* (1989) 27.

<sup>38</sup> G Van Bueren *The international law on the rights of the child* (1995) 381. See also JK Mapulanga-Hulston 'Examining the justiciability of economic, social and cultural rights' (2002)6 *International Journal of Human Rights* 32.

<sup>39</sup> As above.

<sup>40</sup> A Keita 'The implementation of the ILO child labour standards in Africa (Mali): An assessment from a socio-legal perspective' in G Nesi *et al* (eds) *Child labour in a globalised world* (2008) 349.

<sup>41</sup> CRC General Discussion on the economic exploitation of children, UN.DOC.CRC/c/20.

interrelated and that they are all inherent to the human dignity of the child.<sup>42</sup> The CRC emphasised that each right set forth in the UNCRC, in this case the right to be protected from economic exploitation, should take into account the implementation of and respect for all the other rights of the child.<sup>43</sup>

In light of the above, a HRBA to child labour in a perspective of the interrelatedness of human rights is considered relevant for SA and Africa as whole. Such an approach, in my view, promotes a holistic and comprehensive response to the circumstances that compel children to engage in child labour such as child-headed households, HIV/AIDS, cultural and social perceptions about child labour, among others.

## **2.4 Human rights standards on protection of children from child labour**

Human rights standards on the protection of children from child labour are derived from human rights instruments. At the international level, states become bound by these standards by ratification of and accession to international instruments.<sup>44</sup> Accordingly, by ratifying international instruments on child labour, SA undertakes to be bound by the international standards enshrined in these instruments.<sup>45</sup> These human rights instruments are accordingly discussed below.

### **2.4.1 The United Nations Convention on the Rights of the Child (UNCRC)**

SA ratified the UNCRC in 1995.<sup>46</sup> The UNCRC establishes the global international standards on the rights of children. The key principles underpinning the Convention include non-discrimination, the best interests of the child, respect for children's views and freedom of expression, participation in decision-making processes that affect children, among others.<sup>47</sup> These principles have a bearing on the protection of children from child labour. Article 32 of the UNCRC specifically guarantees the right of children to be protected from exploitative labour practices.

The Preamble to the UNCRC recognises that all rights are equal. Moreover article 32 of the UNCRC is couched in a manner that recognises the interrelatedness of rights. For example, the obligation to protect children from hazardous work that is likely to interfere with children's education, health, physical and mental well-being, goes to show that other rights are taken into consideration. Article 32 also enjoins states parties

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<sup>42</sup> As above.

<sup>43</sup> As above.

<sup>44</sup> Art 11 of the Vienna Convention of the Law of Treaties, 1969.

<sup>45</sup> (As above) art 26.

<sup>46</sup> Status of ratification of the UNCRC, available at <http://www2ohchr.org/english/law/crc.ratify.htm> (accessed 28 September 2011).

<sup>47</sup> See generally the UNCRC.

to take legislative, administrative, social and education measures to address child labour. This obligation, if interpreted generously and broadly, can be understood to enjoin states parties to respond to circumstances that compel children to engage in exploitative labour practices including HIV/AIDS, poverty, cultural and social perceptions among others. Similarly, the obligation to take social measures can be understood to impose a positive obligation upon the state to realise other pertinent rights of children such as food, social support, education, housing, to mention but a few.

#### **2.4.2. The International Covenant on Economic, Social and Cultural Rights (ICESCR)**

SA signed the ICESCR in 1994 but it has not ratified it.<sup>48</sup> However, courts in SA make reference to the ICESCR in interpreting rights enshrined in SA's Constitution.<sup>49</sup> The ICESCR specifically provides for the protection of children from child labour under article 10(3) which provides as follows;

Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

The manner in which article 10(3) of the ICESCR is couched confirms the viewpoint that addressing child labour takes more than a law banning child labour. Clearly, the need for 'special measure of protection and assistance' is underlined. In this regard, scholars like Doek<sup>50</sup> contend that protecting children from child labour involves the taking of positive steps on the part of the state. It can therefore be argued reasonably that the phrase 'special measures of protection and assistance' entails the need to respond to the circumstances that compel children to engage in child labour. These may include socio-economic needs, cultural perception, among others. The Committee on Economic Social and Cultural Rights (CESCR) has also described the content of the right to protect children from child labour as including the taking of steps to respond to children's living conditions.<sup>51</sup>

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<sup>48</sup> Status of ratification of the ICESCR, available at <http://www2ohchr.org/english/law/cescr.ratify.htm> (accessed 28 September 2011).

<sup>49</sup> See eg *The Government of the Republic of South Africa & Others v Irene Grootboom & Others* (2000) SA (CC) para 45. In this case, Justice Yacoob made reference to GC 3 of the CESCR in examining the content of the principle of progressive realisation of a right. This was in agreement with sec 39(1)(b) of the Constitution of South Africa which obliges courts to take international law into consideration.

<sup>50</sup> Doek (n 15 above).

<sup>51</sup> CESCR Fact Sheet 16, available at [www.ohchr.org/Documents/Publications/FactSheet\\_16rev.ien.pdf](http://www.ohchr.org/Documents/Publications/FactSheet_16rev.ien.pdf). (accessed 27 September 2011).

The ICESCR expressly recognises the interrelatedness of rights. In this regard, it emphasises that the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.<sup>52</sup>

Moreover, the CESCR has made it clear that though rights guaranteed under the ICESCR are to be realised progressively and depending on available resources, the right of children to be protected from exploitative labour is one of the rights that is capable of immediate implementation.<sup>53</sup> As Koch<sup>54</sup> explains further, when the CESCR in its General Comment uses the expression 'capable of immediate implementation', it should be understood to mean that the right in question is justiciable irrespective of the resource situation. Equally, it is also to be understood to mean that the fulfillment level might very well increase as the available resources increase.<sup>55</sup>

It should be noted that protecting children from exploitative labour may entail other rights that are subject to the progressive realisation of primary rights. These collateral rights may include the right to housing, social security, among others. Nevertheless, the CESCR has elaborated on the nature of states' obligation, in respect of the minimum core obligation in the progressive realisation of rights enshrined in the ICESCR. In light of article 2 of ICESCR, which refers to progressive realisation of the rights, depending on the available resources, the CESCR has given an interpretative guidance that where a state cannot meet the full realisation of a right due to a lack of resources; it must at least endeavour to meet a certain minimum level content of the right.<sup>56</sup> Moreover, the state must demonstrate that it has deployed its available resources to the maximum extent with a view to at least satisfying, as a matter of priority, the minimum obligation.<sup>57</sup>

#### **2.4.3 International Covenant on Civil and Political Rights (ICCPR)**

This Convention was ratified by SA in 1998.<sup>58</sup> It provides generally that children should be protected from exploitation by the family, society and the state.<sup>59</sup> Although the ICCPR does not address child labour

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<sup>52</sup> Preamble to the ICESCR.

<sup>53</sup> CESCR GC 3 of 1990, UN.DOC.E/1991/23, para 5.

<sup>54</sup> IE Koch The justiciability of indivisible rights (2003)72 *Nordic Journal of International Law* 18.

<sup>55</sup> As above.

<sup>56</sup> CESCR GC 3, para10.

<sup>57</sup> As above.

<sup>58</sup> Status of ratification of the ICESCR, available at <http://www2ohchr.org/english/law/ccpr.ratify.htm>(accessed 28 September 2011).

<sup>59</sup> Art 24(1) ICCPR.

specifically, the Human Rights Committee (HRC) seems to suggest an obligation on the state to establish a minimum age for work.<sup>60</sup> Similarly, the HRC emphasises that states parties should adopt measures to avoid the exploitation of children.<sup>61</sup> It is contended that in using the phrase 'measures', the HRC could not have contemplated measures limited to legislation directed at banning child labour.

#### **2.4.4 ILO Convention 138: Minimum Age Convention (1973)**

SA ratified this Convention in 2000.<sup>62</sup> The Convention sets out a broad framework and essential policy measures for the prevention and elimination of child labour.<sup>63</sup> This Convention requires ratifying states to set a minimum age for employment and to pursue a national policy aimed at the abolition of child labour.<sup>64</sup> The minimum age should not be less than that for completion of compulsory schooling and in any case not less than 15.<sup>65</sup>

The ILO Convention No 138, like the UNCRC, acknowledges the interrelatedness of human rights. For instance, the specific requirement for the minimum age for entry into employment not to be less than the age of completion of compulsory schooling is a recognition of the effect of child labour on the right to education. It is equally an acknowledgement of the need for education as an entry point to addressing child labour. Stressing the same point, the ILO Convention is cognizant of the negative impact of child labour on children's right to health and in this regard, it emphasises the effective abolition of work that hinders physical and mental development of children.<sup>66</sup> Evidently, the Convention is cognizant of the fact that addressing child labour requires approaches that transcend legislation mainly directed at banning child labour. To emphasise this, the ILO has stated that the obligation to protect children from exploitative labour should enjoin states parties to take positive measures that address the root causes of child labour.<sup>67</sup>

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<sup>60</sup> HRC GC 17 on the rights of the child, U.N. Doc. HRI/GEN/1/Rev.6. Para 4 obliges states to indicate the age at which a child is legally entitled to work under labour law.

<sup>61</sup> HRC, Concluding Observations on Uganda, ICCPR, A/59/40vol1 (2004) 47 70.

<sup>62</sup> Status of ratification of the ILO Convention No 138 available at;

<http://webfusion.ilo.org/public/app/apply/app-bycom.cfm?conv=c138&hdoff=1&lang=EN> (accessed 28 September 2011).

<sup>63</sup> Art 1 of the ILO Convention No 138, Minimum Age Convention of 1973 (ILO Convention No138).

<sup>64</sup> Art 2(1) of ILO Convention No 138.

<sup>65</sup> Art 2(3) of ILO Convention No 138.

<sup>66</sup> Art 1 of ILO Convention No 138.

<sup>67</sup> IPEC (n 34 above) 70.

#### **2.4.5 Worst Forms of Child Labour Convention No 182 (1999)**

SA ratified this Convention in 2000.<sup>68</sup> The Convention requires parties to take urgent, immediate and effective steps to prohibit and eliminate the worst forms of child labour.<sup>69</sup> The Convention identifies different forms of labour that fall in the category of 'worst forms of child labour'. These include slavery, the use of children for prostitution and pornography, the involvement of children in illegal activities especially the drug trade and work likely to harm the health, safety and morals of the child.<sup>70</sup>

It is to be pointed out that the Convention expressly recognises the fact that most children engaged in child labour are compelled by circumstances such as poverty, family needs and social settings.<sup>71</sup> In this regard, the Convention underscores the need to identify and reach out to those at particular risk and to provide the necessary assistance for the removal of children from these compelling circumstances. Certainly, this obligation enjoins states parties to take positive measures that respond to the circumstances that compel children to engage in child labour. 'Reach out', as used in this context, broadly and generously interpreted, includes meeting the social-economic needs of children and their families such as shelter, food, education, health needs, among others. It would also be rational to aver that this obligation includes responding to the social and cultural perceptions of child labour in the context of South Africa. Moreover since rights of children are in issue, the obligation to 'reach out' can be understood to include reaching out to working children in order to get their opinion about their conditions of work.

Similarly, this Convention calls upon states parties to take into account the importance of education and the need to address the needs of the family in the elimination of child labour.<sup>72</sup> Therefore, when the ILO enjoins states parties to consider education and family needs, it should be understood to mean positive steps to respond to circumstances that compel children to engage in child labour. These include lack of access to education, the need for food, shelter, social support, the need to address family perceptions and so forth. It follows then that this Convention recognises the interrelated role of rights in protecting children from child labour. Equally, the Convention acknowledges the need for states parties to adopt integrated approaches to child labour. In this regard, the ILO, UNICEF and the World Bank (WB) have reached a consensus that child labour is a technical issue whose sustainable redress requires states parties to adopt an integrated framework that responds to the root causes of child labour.<sup>73</sup>

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<sup>68</sup> Status of ratification of the ILO Convention No 182, available at <http://webfusion.ilo.org/public/app/apply/app-bycom.cfm?conv=c182&hdoff=1&lang=EN> (accessed 28 September 2011).

<sup>69</sup> Art 1 of Worst Forms of Child Labour Convention No 182 (ILO Convention No 182).

<sup>70</sup> Art 3 of ILO Convention No 182.

<sup>71</sup> Preamble to the ILO Convention No 182.

<sup>72</sup> As above.

<sup>73</sup> Inter-agency report of the Hague global child labour conference on joining forces against child labour of 2010, para 258,



#### 2.4.6 African Charter on Human and Peoples' Rights (ACHPR)

SA ratified the ACHPR in 1996.<sup>74</sup> The ACHPR does not expressly make provision for the rights of the child but it enjoins states parties to ensure the protection of the rights of children as stipulated in international declarations and conventions.<sup>75</sup> The ICESCR, CRC, ILO Conventions, the ACRWC, among others, certainly fall under the international conventions and declarations referred to. Although the ACHPR does not make specific provision for rights of children, the rights and principles enshrined in the Charter are to be understood to apply to children as well.

The ACHPR expressly recognises the principle of interrelatedness of human rights and in this regard provides that civil and political rights cannot be dissociated from economic, social and cultural rights because the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.<sup>76</sup> Evidently, the ACHPR is cognizant of the fact that each right contributes to the realisation of the others.

Emanating from the principle of interrelatedness of human rights, several rights enshrined in the ACHPR become relevant in the broad construction of the protection regime for children from harmful labour practices. Some of the rights crucial to the protection of children from child labour include freedom of expression, right to health, education, culture, social security, among others. Implementing these rights in a manner that appreciates their interrelatedness would have the effect of responding to the circumstances that compel children to engage in child labour.

It may be argued that some rights under the ACHPR that are relevant to the protection of children from exploitative labour practices require resources which may make their realisation difficult in light of Africa's relative poverty. This argument is rational but not insurmountable. This paper endorses the view of the African Commission in the *Purohit* case.<sup>77</sup> In this communication, the African Commission stated as follows;

Millions of people in Africa are not enjoying the right to health maximally because African countries are generally faced with the problem of poverty which renders them incapable to provide the necessary amenities, infrastructure and resources that facilitate the full enjoyment of this right. Therefore..., the African Commission would like to read into Article 16 the obligation on the part of the states party to the African Charter to take concrete and targeted steps, while

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available at [www.ilo.org/asia/info/public/pr/lang--en/WCMS.../index.pdf](http://www.ilo.org/asia/info/public/pr/lang--en/WCMS.../index.pdf) (accessed 28 August 2011).

<sup>74</sup> Status of ratification of the ACHPR, available at <http://www.africaunion.org/root/au/Documents/Treaties/List/African%20Charter%20on%20the%20Charter%20and%20Human%20Peoples%20Rights.pdf> (accessed 28 September 2011).

<sup>75</sup> Art 18 of the ACHPR.

<sup>76</sup> Preamble to the ACHPR.

<sup>77</sup> *Purohit v The Gambia* (2003) AHRLR 96 (ACHPR 2003) para 84.

taking full advantage of its available resources, to ensure that the right to health is fully realised in all aspects without discrimination of any kind.

In light of the African Commission's view in the *Purohit* case, African states are obliged to take concrete and targeted steps and to give priority to socio-economic rights despite the competing demands on state resources.

#### **2.4.7 African Charter on the Rights and Welfare of the Child (ACRWC)**

South Africa ratified the ACRWC in 2000.<sup>78</sup> The ACRWC is identical to the UNCRC with regard to the right of children to be protected from exploitative labour. However, the ACRWC goes further to expressly address child labour in informal sectors. The ACRWC expressly guarantees the right of children to be protected from exploitative labour practices under article 15.

Like the UNCRC, the ACRWC recognises the interrelatedness of human rights in the protection of children from child labour. For instance, article 15 of the ACRWC associates child labour with aspects like children's physical, mental, spiritual, moral and social development. These aspects are directly linked to children's right to health, leisure, education, among others. Moreover, the ACRWC acknowledges the peculiar context of Africa and notes with concern the unique and critical situation of African children. In this regard, the ACRWC recognises Africa's socio-economic conditions, cultural traditions, poverty, hunger, natural disasters, among others. However, the ACRWC's failure to expressly enjoin states parties to respond to these circumstances undermines what would otherwise have been a progressive approach in responding to the circumstances under which children to engage in child labour.

### **2.5 Conclusion**

As of 2010, 45 out of the 53 African countries had ratified the ACRWC.<sup>79</sup> Were it possible to eradicate child labour by just ratifying international treaties, child labour would have long disappeared from Africa since almost all African countries have expressed their willingness to be bound by the regional children's rights standards that expressly prohibit child labour. The point this chapter puts across is that however well laws against child labour are crafted, if they are not followed up with integrated approaches that address the circumstances that compel children to engage in child labour in SA and Africa as a whole, such laws will

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<sup>78</sup> Status of ratification of the ACRWC, available at, <http://www.africaunion.org/root/au/Documents/Treaties/List/African%20Charter%20on%20the%20Rights%20and%20Welfare%20of%20the%20Child.pdf> (accessed 28 September 2011).

<sup>79</sup> As above.

continue to be ineffective in addressing child labour. A HRBA that recognises the interrelatedness of human rights is considered crucial in responding to the circumstances under which children engage in child labour in SA.

## **CHAPTER THREE: CIRCUMSTANCES WHICH BREED CHILD LABOUR IN SOUTH AFRICA AND SOUTH AFRICA'S RESPONSE**

### **3.1 Introduction**

This chapter discusses the circumstances under which children engage in child labour in SA. SA's response to these circumstances is also examined. An analysis of the circumstances under which children engage in child labour is necessary in order to better understand the insufficiency of laws directed at banning child labour. Moreover in acknowledging the inadequacy of legislation directed at banning child labour, this discussion helps to justify the need for a HRBA. The chapter starts by examining some of the forms of child labour in South Africa and Africa generally.

### **3.2 Forms of child labour in Africa**

The African region registers the highest incidence of child labour in the world.<sup>80</sup> It is common to find African children selling goods on streets, washing cars, working with their relatives in kiosks and other family businesses, performing domestic chores in and around residences, fetching water, collecting firewood, herding animals and working on family farms and commercial plantations, among others.<sup>81</sup> It is also common to find children working under sub-contracting arrangements in the slowly developing sectors of manufacturing.<sup>82</sup>

In SA, child labour is manifest in commercial agriculture, street trading, entertainment and modelling agencies, the taxi industry, brick yards, domestic services and prostitution.<sup>83</sup> A recent survey of Activities of Young People (SAYP) commissioned in 2010 by the South African Department of Labour reveals that about 24% of the children in SA work in contravention of the law.<sup>84</sup>

### **3.3 Circumstances which breed child labour in South Africa**

#### **3.3.1 Poverty**

No parent or guardian would willingly have their children subjected to exploitative conditions of work unless they are compelled by circumstances. Most households send their children to work only when driven to do

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<sup>80</sup> IPEC (n 1 above)11.

<sup>81</sup> A Keita 'The implementation of the ILO child labour standards in Africa (Mali): An assessment from a socio-legal perspective' in G Nesi *et al* (n 40 above) 349.

<sup>82</sup> As above.

<sup>83</sup> Statistics South Africa's country report on 'The survey of activities of young people and children's work-related activities' (2010)15-16, available at <http://www.statssa.gov.za/publications/PO212/P0212210.pdf> (accessed 25 September 2011)

<sup>84</sup> (As above) 13.

so by poverty.<sup>85</sup> While it is accepted that poverty is not the only reason for child labour, it remains a major push factor for many children to work under exploitative conditions.<sup>86</sup> Just like the rest of Africa, poverty has contributed to the child labour conundrum. SA's ranking as a middle income country paradoxically masks a situation where a large percentage of the population lives under conditions similar to those in many poor developing countries.<sup>87</sup> This is partly attributed to SA's high level of income inequality.<sup>88</sup> Inequality allows the relative poverty of a portion of the population to be exploited.<sup>89</sup> Thus, children from poor families are compelled to engage in work which may be detrimental and harmful to them, in order to assist in alleviating the hardships that their families face.

Poverty is indeed a noteworthy issue in SA.<sup>90</sup> According to the United Nations Development Programme (UNDP)'s human development report, the poverty index places SA at number 55 out of the 108 developing countries.<sup>91</sup> Similarly, as of 2000, it was estimated that 60% of the children in SA lived in poverty.<sup>92</sup> Poverty places children under conditions of disadvantage and strain thus making them vulnerable to child labour. This is because the need for survival leaves parents and children with limited options but to condone exploitative labour activities. It follows then that under conditions of poverty, invoking legislation directed at banning child labour does not only strain poor families further, it is also unlikely to be effective in responding to these circumstances. Indeed, as Levine notes, banning child labour under circumstances of structural inequality and poverty, though necessary, cannot protect children from harm.<sup>93</sup> Nhenga-Chakarisa contends further that in such defenseless circumstances, legislation directed at banning child labour becomes a misplaced and misguided good intention because it fails to pay adequate attention to the circumstances under which children engage in child labour.<sup>94</sup>

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<sup>85</sup> Admassie (n 6 above) 256.

<sup>86</sup> Basu & Tzannatos (n 2 above) 151.

<sup>87</sup> IPEC 'A national report on child domestic workers in South Africa' (2002) 23.

<sup>88</sup> As above.

<sup>89</sup> A Keita 'The implementation of the ILO child labour standards in Africa (Mali): An assessment from a socio-legal perspective' in G Nesi *et al* (n 40 above)349.

<sup>90</sup> S Dieden & B Gustafsson 'Child poverty in South Africa: An assessment based on microdata for 1995' (2003)12 *International Journal of Social Welfare* 327.

<sup>91</sup> United Nations Development Programme (UNDP) 'Human development report: human development index' (2007/2008)240, available at [http://hdr.undp.org/en/media/HDR\\_20072008\\_EN\\_Indicator\\_tables.pdf](http://hdr.undp.org/en/media/HDR_20072008_EN_Indicator_tables.pdf). (accessed 1 October 2011).

<sup>92</sup> Statistics South Africa's country report on 'The survey of activities of young people in South Africa' (2000)52, available at <http://www.labour.gov.za> (accessed 11 September 2011).

<sup>93</sup> SL Levine "The 'picaninny wage': An historical overview of the persistence of structural inequality and child labour in South Africa" (2006) 29 *Anthropology Southern Africa* 123.

<sup>94</sup> Nhenga-Chakarisa (n 17 above) 184.

### 3.3.2 HIV/AIDS

The rise in the numbers of HIV/AIDS orphans in Africa has overwhelmed the ability of families, communities, civil societies and governments to ensure orphans' safety and well-being. In SA, the HIV/AIDS pandemic has immensely contributed to the number of vulnerable orphans.<sup>95</sup> As of 2010, UNICEF figures indicated that the burden of parental death from AIDS was greatest in Southern Africa.<sup>96</sup> And as of 2011, it was estimated that a total of 10.9% of the South African population was infected with HIV.<sup>97</sup> Similarly, a study by the Actuarial Society of SA estimated that a total of 4.1 million children in South Africa had lost one or both parents by mid 2007 with 18% of them losing both parents to HIV/AIDS.<sup>98</sup> These findings are generalised but it is apparent that the burden of HIV/AIDS in SA and Africa generally does not fall on all groups equally. The poor population is affected more because of the financial strain that comes with care-giving. The ultimate loss of parents and care-givers only serves to deepen poverty among orphaned children. With the loss of parents and care-givers to HIV/AIDS, millions of children have become more vulnerable to exploitation.<sup>99</sup> While some of these children find security in relatives' households, others have no place of refuge. With no refuge or material support to call upon, several orphaned children often drop out of school to find their way into the labour market for survival. Though the work they engage in is often crucial for their survival, it is often hazardous and exposes them to exploitative work conditions.

It is to be noted that although the burden of HIV/AIDS escalates at the loss of parents or care-givers, the entire process of care-giving exposes children to exploitation. When care-givers become ill, for children, responsibilities and work increase drastically. Responsibilities including domestic chores, subsistence agriculture, care-giving, formal and informal labour, among others, come knocking at the doors of children's childhood.<sup>100</sup> With so many tasks to accomplish at a very tender age, children often drop out of school because their labour is required for subsistence activities.<sup>101</sup> Equally, in the face of reduced income and increased expenditure, the money earmarked for school expenses is used for basic necessities, medication and health services.<sup>102</sup> Even where children are not withdrawn from school, education often begins to

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<sup>95</sup> UNICEF Report on 'Africa's orphaned and vulnerable generations: Children affected by AIDS' (2010) 11, available at <http://www.unicef.org/publications> (accessed 20 September 2011).

<sup>96</sup> As above.

<sup>97</sup> Actuarial Society of South Africa's report on 'AIDS mortality rate in South Africa' (2011), available at <http://www.actuarialsociety.org.za> (accessed 13 October 2011).

<sup>98</sup> Actuarial Society of South Africa's Provincial orphan statistics of 2006, available at <http://www.actuarialsociety.org.za/aids> (accessed 26 September 2011).

<sup>99</sup> V Mathambo & A Gibbs 'Extended family child-care arrangements in a context of AIDS: Collapse or adaptation?' (2009) 21 *AIDS Care* 22.

<sup>100</sup> (As above) 25.

<sup>101</sup> Statistics South Africa (n 92 above) 61.

<sup>102</sup> Mathambo & Gibbs (n 99 above) 22.

compete with the many other duties that the affected children assume.<sup>103</sup> Most of these responsibilities are often overlooked yet they go to the root of children's livelihood. Children are not only compelled to take up responsibilities beyond what their age can handle, they are also deprived of the opportunity to enjoy their childhood. They are stripped of their right to play, leisure, fun and rest. Consequently, with the loss of parents and care-givers, one of the inevitable outcomes is the advent of child-headed households which escalates children's exploitation. Under such circumstances, work becomes inevitable however hazardous or exploitative it may be. If anything, in such situations, not even a law banning child labour is capable of responding to the already strained lives of such children.

### **3.3.3 Orphanhood and child-headed house holds**

Orphanhood is a major contributing factor to the prevalence of child-headed households in Africa.<sup>104</sup> In recent years, an increase in the number of child-headed households has been recorded in sub-Saharan Africa, particularly in countries with growing populations infected and affected by HIV/AIDS.<sup>105</sup> Child-headed households inevitably expose children to exploitative work conditions owing to the premature parenting responsibilities that come with the loss of care-givers. At a very tender age, children are robbed of their childhood as responsibilities beyond what their age can handle come knocking at the doors of their childhood. As such, the loss of parents and caregivers for such children marks the beginning of 'motherhood' and 'fatherhood'. With so many responsibilities, including taking care of other siblings and 'dependants' within the family, either school attendance is foregone in favour of work, or, where education is compulsory and free, learning is inefficient either because children do not have adequate time to do their homework or because they are unable to pay proper attention in school because of fatigue.<sup>106</sup> Moreover, given the informal nature of the activities they engage in, they may not necessarily be recognised as child labourers, in need of protection. Unlike paid children in formal sectors, most of these children are beyond the reach of statistical surveys and research. Thus, under such circumstances, merely invoking legislation directed at banning child labour would certainly be ineffective in responding to these children's dilemma. Rather, a HRBA that gives due consideration to the circumstances under which children in child-headed households engage in child labour would be more relevant and effective in responding to the needs of such children.

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<sup>103</sup> Statistics South Africa (n 92 above) 63.

<sup>104</sup> D van Dijk & F van Driel 'Supporting child-headed households in South Africa: Whose best interests?' (2009)35 *Journal of Southern African Studies* 915.

<sup>105</sup> As above.

<sup>106</sup> Statistics South Africa (n 92 above) 63.

In SA, though there is no consensus about the number of child-headed households, it is commonly agreed that they are significant.<sup>107</sup> Such households tend to constitute a small proportion of all households where orphaned children reside, but their presence is significant.<sup>108</sup> Studies have established that children living in child-headed households are more likely to be living in poverty and have lower levels of access to municipal services such as piped water, electricity or adequate sanitation.<sup>109</sup> Many of these children appear helpless and unable to think of ways of fending for themselves or coping with the uncertainty regarding their survival.<sup>110</sup> Consequently, several of them are compelled to take up work that often harms their health and impacts negatively on their physical and mental development.<sup>111</sup>

### 3.3.4 Cultural and social perceptions about child work

The prevalence of child labour in Africa today is not just a matter of economic constraints. Cultural and social values are also contributory. Children have worked throughout recorded history and they continue to work in all societies. However, it is notable that some African cultures do not draw a distinction between child work and child labour.<sup>112</sup> This is notwithstanding the host of laws which expressly define and outlaw child labour. While some cultural perceptions about work such as socialisation, training, learning, character building and acquisition of skills are developmental to children and are indeed commendable, some cultural perceptions sanction exploitative labour in the pretext of socialisation.<sup>113</sup> For many African societies, the transition from childhood to adulthood goes beyond the numerical majority age of 18. In SA, like the rest of Africa, culturally, adulthood is measured by factors such as puberty and rites of passage.<sup>114</sup> For example, a Xhosa male child becomes an adult upon going through circumcision rituals, upon which he is considered ready to take up adult responsibilities regardless of his numerical age.<sup>115</sup> While some of the responsibilities

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<sup>107</sup> Van Dijk & Van Driel (n 104 above) 915.

<sup>108</sup> IPEC 'Combating child labour and HIV/AIDS in sub-Saharan Africa' (2002) 14.

<sup>109</sup> Nelson Mandela Children's Fund report on 'The situation and special needs of children in child-headed households' (2001)15, available at <http://www.nelsonmandelachildrens fund.com/userDownload/DOC1228132423.pdf> (accessed 26 September 2011). See also J Sloth-Nielson *Realising the rights of children growing up in child-headed households* (2004) 13.

<sup>110</sup> As above.

<sup>111</sup> As above.

<sup>112</sup> G Van Bueren 'Children's Rights: Balancing traditional values and cultural plurality' in G Douglas and L Sebba (eds) *Children's rights and traditional Values* (1998) 17.

<sup>113</sup> O Nieuwenhuys 'The paradox of child labour and anthropology' (1996) *25 Annual Review Anthropology* 237.

<sup>114</sup> D Archard *Children: Rights and childhood* (1993) 32-33.

<sup>115</sup> JF Holleman *Shona customary law with reference to kinship, marriage, the family and the estate* (1969)77. See also L Vincent 'Boys will be boys: Traditional Xhosa male circumcision, HIV and sexual socialisation in contemporary South Africa' (2008)10 *Culture, Health & Sexuality* 434. See also L Vincent 'Cutting tradition: The political regulation of traditional circumcision rites in South Africa's liberal democratic order' (2008) 34 *Journal of South African Studies* 79.



taken up impact positively on children's development, some responsibilities may impact negatively on their development in terms of the effect they have on children's education, health and general livelihood.

Consequently, since many African societies hardly consider several tasks and responsibilities exploitative, laws and policies that do not take these circumstances into account, risk being ineffective. It is contended that in circumstances such as these, involving children and communities through creation of avenues for them to express their perceptions about work, becomes pertinent in developing sustainable solutions to child labour. In any case, as scholars like Van Bueren contend, understanding social and cultural values is the only way a truly universal children's discourse can be spoken of.<sup>116</sup>

### 3.3.5 Migrant working children

SA's economic progress, particularly after the end of the apartheid regime, has attracted increased numbers of immigrants from several corners of Africa.<sup>117</sup> These transnational movements are facilitated by the opening up of borders in post-apartheid SA.<sup>118</sup> Though many cross borders with the hope of improving their livelihood, for some, migration has introduced new vulnerabilities and costs.<sup>119</sup> Children migrating with their families constitute a major group affected by migration because of the vulnerability associated with their tender age.<sup>120</sup> Moreover, some children migrate alone and for such children, the burden is greater because they have no family support to rely on. With limited or no access to basic services and the pressure to contribute to household income, many of these children turn to the labour market which is often characterised by long working hours, inadequate remuneration and excessive responsibility at a very tender age.<sup>121</sup> For example, on the 200 or so South African commercial farms found north of the Soutpansberg range, estimates suggest that 70% to 85% of the farm workers are Zimbabwean with a big proportion of them being children.<sup>122</sup>

Options for illegal immigrants to live decent lives are limited because South African authorities are keen to wipe out illegal immigration. They therefore harshly enforce laws delineating who belongs and who does

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<sup>116</sup> Van Bueren (n 112 above).

<sup>117</sup> T Nicos *et al* "Globalisation and migrant labour in a 'Rainbow Nation': A fortress South Africa?"(2008)29 *Third World Quarterly* 1324.

<sup>118</sup> As above.

<sup>119</sup> As above.

<sup>120</sup> IPEC 'Accelerating action against child labour' (2010) para 274.

<sup>121</sup> As above.

<sup>122</sup> B Rutherford 'An unsettled belonging: Zimbabwean farm workers in Limpopo Province, South Africa' (2008) 26 *Journal of Contemporary African Studies* 411.

not.<sup>123</sup> This has exposed many immigrants, including children, to further exploitation because of their readiness to settle for any form of exploitation other than deportation.<sup>124</sup> Given their illegal status, they do not benefit from the basic services that accrue to nationals and legal immigrants. This escalates their vulnerability and as a result, many of the children, seeking both survival and a shield from the law, often become the main targets of employers.<sup>125</sup> Indeed these employers are keen to employ them under exploitative conditions because their desperation for work limits their demand for labour rights and predisposes them to work for longer hours and often under less conducive conditions than the 'legal' South Africans.<sup>126</sup> Certainly, legislation banning child labour would be of minimal relevance to children working under such circumstances. In any case, if child labour is banned, for such children education is not an option because their illegal status limits their chances of benefiting from free education. If anything, such legislation becomes a threat that would rather be outmaneuvered than adhered to.

It is commendable that numerous legislation in SA, including the Children's Act, extend protection to foreign nationals, but in practice, little attention has been given to children who are in the country illegally.<sup>127</sup> It is in this regard that this dissertation recommends that a HRBA that recognises the realisation of rights of all children without distinction as to status or nationality, be given priority in addressing the needs of these children. To emphasise this, the CRC has established that the state's obligations under the UNCRC apply to each child within the State's territory and to all children subject to its jurisdiction.<sup>128</sup>

### **3.4 South Africa's response to circumstances that breed child labour**

SA has a very progressive Constitution that provides special rights to children.<sup>129</sup> The Constitution has set the foundation for legislation, policies and strategies that give special benefits to children. These laws, policies and strategies are examined to establish how reflective they are of the current human rights standards and whether in their current form, they adequately address child labour from a human rights-based perspective. The best practices arising from the legal and policy framework are highlighted as lessons for Africa as a whole.

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<sup>123</sup> T Ulicki & J Crush 'Poverty, gender and migrancy: Lesotho's migrant farm workers in South Africa' (2007) 24 *Development Southern Africa* 158.

<sup>124</sup> (As above) 165.

<sup>125</sup> D Johnston 'Who needs immigrant farm workers? A South African case study' (2007) 7 *Journal of Agrarian Change* 508. Deborah Johnston

<sup>126</sup> As above

<sup>127</sup> South African Law Commission's Issue Paper 13 of project 110 on the review of the Child Care Act (1998) 33.

<sup>128</sup> CRC GC 6 of 2005 on the treatment of unaccompanied and separated children outside their country of origin, UN.Doc.CRC/GC/2005/6, para 12.

<sup>129</sup> Sec 28 of the Constitution of the Republic of South Africa, 1996.

### **3.4.1 The Constitution of the Republic of South Africa**

The right of children to be protected from exploitative labour is expressly entrenched in the Constitution as a justiciable right. Section 28 that guarantees this right provides in part as follows;

- (1) Every child has the right -
  - (b) to family care or parental care, or to appropriate alternative care when removed from the family environment;
  - (c) to basic nutrition, shelter, basic health care services and social services;
  - (d) to be protected from maltreatment, neglect, abuse or degradation;
  - (e) to be protected from exploitative labour practices;
  - (f) not to be required or permitted to perform work or provide services that -
    - (i) are inappropriate for a person of that child's age; or
    - (ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
- (2) A child's best interests are of paramount importance in every matter concerning the child.

Section 28(1) (e) of the Constitution obliges the state to protect children from exploitative work. Read as a whole, section 28 enjoins the state to realise other rights pertinent to the protection of children from exploitation. Accordingly, protecting children from exploitative labour goes further than setting a minimum age for entry into employment. It entails the realisation of the expressly recognised rights such as basic nutrition, shelter, basic health care services and social services. The realisation of these rights is important and pertinent in protecting children from exploitative labour.

### **3.4.2 Relevant legislation**

#### **3.4.2.1 The Basic Conditions of Employment Act (BCEA) of 1997**

The BCEA prohibits the employment of children below the age of 15.<sup>130</sup> Though it is motivated by the need to protect children from harmful work, the Act, in its current form, is not directed at responding to the circumstances under which children engage in child labour. The approach of the law here is limited to the removal of children from the labour market based on the child's age which may not be responsive to circumstances such as poverty, HIV/AIDS, child-headed households, social and cultural perceptions, among others.

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<sup>130</sup> Secs 43 & 44 of the Basic Conditions of Employment Act of 1997.

### **3.4.2.2 The Children's Act 38 of 2005, as amended**

The Children's Act also prohibits child labour and exploitation of children. Elements of exploitation covered under the Act include child slavery, debt bondage, servitude, serfdom, forced labour, commercial sexual exploitation and all work that is harmful to children's physical and mental development.<sup>131</sup> It is noteworthy that with an amendment to the Children's Act of 2005 by Act 41 of 2007, the effectiveness of the Children's Act with regard to responding to the needs of vulnerable children was strengthened. The Children's Amendment Act of 2007 incorporated novel developments into the Act such as social support for children, legal recognition and support for child-headed households, among others. With regard to child-headed households, it specifically states that child-headed households may be recognised legally as a placement option for children with an opportunity to access financial grants.<sup>132</sup> The Act also identifies children in need of care and protection to include victims of child labour, children from child-headed households, abandoned or orphaned children, children who beg and work on streets, children living under circumstances of exploitation, children exposed to circumstances that harm their physical, mental and social well-being and children in a state of mental or physical neglect.<sup>133</sup>

In light of these creative innovations, one can argue rationally that the Act is responsive to some of the circumstances under which children engage in child labour. This is because it encompasses other rights, such as social welfare rights, which are pertinent to the protection of children from child labour. Indeed the Act stands out as a noteworthy example of a developing country prepared to risk resource challenges in using its national legislation to strengthen the entitlements of poor and vulnerable children. Similarly, the Act's emphasis on providing appropriate social support to help children to remain in their families and communities is clearly in line with SA's commitments under the UNCRC and the ACRWC.<sup>134</sup>

It has however been opined that the new changes under the Children's Act and the programmes arising from it may still not adequately respond to the appalling conditions under which children engage in exploitative labour. For example, though the new family service and alternative care orders such as partial care and support for child-headed households, as described under the Act, are creative solutions, some NGOs in the community confirm that children are not taken seriously when they appear alone for social

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<sup>131</sup> Sec 141 of the Children Amendment Act 41 of 2007.

<sup>132</sup> (As above) sec 137.

<sup>133</sup> (As above) sec 150.

<sup>134</sup> See generally the Preambles to the UNCRC & the ACRWC.

support.<sup>135</sup> Similarly, though the Act identifies children in need of care and protection, social support does not accrue to all children in need of such support. This is because several vulnerable children, who would otherwise be protected from child labour through social support, do not qualify for the financial grants. Thus, it may be concluded that the new legislation contains a variety of creative solutions which certainly have a bearing on the elimination of child labour. However, it is apparent that the reforms do not, in the practical cases, seem to create entitlements for all children in need. As such, legislation must have the necessary budgetary allocations to meet the increased demands it creates. Equally, legislation needs to be accompanied by the training and sensitization of those who are to implement it.

#### **3.4.2.3 The Schools Act of 1996**

Universal access to basic education is considered a central element in reducing the supply of child labour. One of the major arguments for the education strategy is that when children are in school, they are less likely to engage in exploitative work.<sup>136</sup> In this regard, SA has put in place a policy on free and compulsory education whose implementation is strengthened by the Schools Act. The Schools Act provides for compulsory attendance of school and obliges parents to ensure that their children attend school at least until the age of 15.<sup>137</sup> SA's education policy is indeed commendable because as of 2010, it was established that 98% of children attend school.<sup>138</sup> However, if addressing child labour was all about realising children's right to education, with a 98% percent school enrolment, child labour would long have disappeared from SA. Research shows that school attendance does not necessarily exclude exploitative work because many children combine the two.<sup>139</sup> Thus, while the Schools Act contributes to the elimination of child labour, it does not go far enough in responding to all the circumstances that compel children to engage in child labour. It is contended that all rights of children need to be taken into consideration.

#### **3.4.2.4 The Sexual Offences Act of 2007**

Child labour is not only exploitative; it gives rise to criminal offences punishable by law.<sup>140</sup> This is particularly the case with regard to sexual exploitation of children. The Sexual Offences Act creates sexual

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<sup>135</sup> CR Matthias & FN Zaal 'Supporting familial and community care for children: Legislative reform and implementation challenges in South Africa' (2009) 18 *International Journal of Social Welfare* 295.

<sup>136</sup> Admassie (n 13 above) 167–185.

<sup>137</sup> Sec 3 of the South African Schools Act of 1996.

<sup>138</sup> Statistics South Africa's country report on 'The survey of activities of young people and children's work-related activities' (n 83 above) 10.

<sup>139</sup> J Boyden & V Rialp 'Children's right to protection from economic exploitation' in JR Himes (ed) *Implementing the Convention on the rights of the Child: Resource mobilization in low income countries* (1995)215.

<sup>140</sup> H Cullen *The role of international law in the elimination of child labour* (2007)43.

offences associated with child labour. The Act is not directed at addressing child labour but it prohibits sexual exploitation of children for financial or material reward.<sup>141</sup> Accordingly, since the Act is not specifically directed at addressing child labour, it does not specifically respond to some of the circumstances that drive children into commercial sex such as poverty. As such, the Act focuses on the criminal law and is silent about the need to realise the other rights of children caught up in commercial sex exploitation. Thus, it is argued that an approach that puts these children in the ambit of children in need of protection through a holistic realisation of the rights guaranteed under the various human rights instruments is pertinent in reinforcing the effectiveness of the Sexual Offences Act.

#### **3.4.2.5 The Social Security Act of 2004**

The Social Security Act provides the framework for social security in SA. The right to social security for children is realised through a set target of social grants such as Child Support Grant (CSG), Foster Child Grant (FCG), and Care Dependency Grant (CDG).<sup>142</sup> For children from poor families, such assistance in the form of child support grants creates avenues for survival and realisation of other rights including the right to education, adequate standard of living and freedom from exploitative labour.

Unlike many other African countries, SA's social security programmes, if effectively implemented, are responsive to some of the circumstances under which children engage in child labour. The social grants, which the government offers, act as an incentive to encourage people from the community or extended families to take in orphans and vulnerable children.<sup>143</sup> However, some of the social grants do not take the children themselves into account. For instance, the FCG programme views child-headed households as a new coping mechanism of extended families and is accordingly silent about the coping strategies of such children. As such, children are reduced to 'objects which cope' rather than subjects who are themselves coping.<sup>144</sup>

### **3.4.3 The national policy framework**

#### **3.4.3.1 Child Labour Programme of Action (CLPA)**

The CLPA is the national plan on the elimination of child labour in SA. It was adopted in 2003 by a group of key government departments including the departments of labour, education, provincial and local

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<sup>141</sup> Sec 17 of the Sexual Offences Act of 2007.

<sup>142</sup> Sec 4 of the Social Assistance Act of 2004.

<sup>143</sup> Secs 5, 6 & 7 of the Social Assistance Act. Under these secs, grants are accessed by primary care-givers.

<sup>144</sup> Van Dijk & Van Driel (n 104 above) 920.

government, water service, justice, policing, prosecution, social development, education and some NGOs.<sup>145</sup> The CLPA includes in its ambit of operation, all forms of exploitative work for children while giving priority to the immediate removal of children from the most abusive forms of child labour.<sup>146</sup> It emphasises the inter-sectoral nature of the task of addressing child labour and identifies key areas of action. These areas include, appropriate educational policy, adequate provision of social security, programmes for the creation of employment opportunities for adults for the alleviation of poverty, social mobilization and educational programmes for the public, among others.<sup>147</sup>

The CLPA is a detailed and ambitious policy in its strategies. In terms of its mandate, it can be concluded reasonably that it is driven by human rights considerations. In this regard, the policy can be praised for its consideration of pertinent rights that respond to the circumstances under which children engage in child labour. However, it has been established that CLPA's efforts have born little fruit in practice owing to poor implementation and accountability mechanisms.<sup>148</sup>

#### **3.4.3.2 The National Programme of Action for Children in South Africa (NPA)**

This programme was adopted in 1996 and it provides the overall framework for the government to progressively realise children's rights.<sup>149</sup> The NPA makes provision for children in need of special protection including those involved in child labour.<sup>150</sup> Indeed, the NPA is a detailed policy inspired by human rights considerations. However, it does not provide a timeline to check compliance.

#### **3.4.3.3 The National Strategy on Child Abuse and Neglect (NSCAN)**

The NSCAN, an inter-sectoral body comprising of both government and NGO representatives, was developed by the National Committee on Child Abuse and Neglect (NCCAN) and is implemented by the Department of Social Welfare.<sup>151</sup> Under this strategy, child labour is recognised as a form of child abuse.<sup>152</sup>

The strategy is commendable because it has provincial structures in place which are responsible for promoting coordination in situations of exploitation of children. However, it has been established that

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<sup>145</sup> Department of Labour draft white paper 'A national child labour action programme for South Africa'(2003)60, available at <http://www.labour.gov.za>, (accessed 20 August 2011).

<sup>146</sup> (As above) 25-48.

<sup>147</sup> (As above) 19-24.

<sup>148</sup> South African Law Commission Discussion Paper (n 4 above) 589.

<sup>149</sup> Framework of the National Programme for Action for Children in South Africa of 1996, available at <http://www.info.gov.za>, (accessed 20 August 2011).

<sup>150</sup> As above.

<sup>151</sup> South African Law Commission Discussion Paper (n 4 above) 587.

<sup>152</sup> As above.

children who fall within the ambit of special protection measures of the NSCAN continue to be at risk of abuse.<sup>153</sup> Policy implementation is reportedly fragmented, uncoordinated, under-resourced, and is plagued with poor standards of service.<sup>154</sup>

#### **3.4.4 Response to circumstances under which children engage in child labour by non-state actors**

Non-state actors have been directly involved in programmes and activities aimed at addressing child labour in SA. For example, the role of NGOs was evident in the process of developing the CLPA which has turned out to be the major policy framework against child labour in the country.<sup>155</sup> With regard to social support programmes in communities, NGOs have particularly been successful in forming collaborative partnerships with other NGOs that have been mainly responsible for piloting community and familial-based care mechanisms in SA.<sup>156</sup> A notable example is the Children in Distress Network (CINDI). This was formed in 1996 and includes approximately 40 organisations operating in communities in the Pietermaritzburg area.<sup>157</sup> Certainly, NGOs play an important role in reaching out and responding to the needs of the vulnerable and marginalized population, which the government would otherwise not be able to access. Accordingly, NGOs contribution should be encouraged.

### **3.5 A shift towards rights-based responses in addressing child labour**

In light of SA's policy, legislative, administrative and social measures, it can be argued reasonably that there is a commitment on the part of the state to protect children from child labour. Certainly, several lessons are available for the rest of Africa. However, it is apparent that some of the laws and policies are inherently inadequate in addressing child labour. This dissertation contends that a set of programmes or laws that only incidentally contribute to the protection of children from child labour does not necessarily translate into a HRBA. It is in this regard that this dissertation emphasises the need to adopt human rights-based responses that transcend charity-based responses in order to effectively complement the already existing praiseworthy framework. With charity-based responses, needs are not guaranteed as entitlements and so they are alienable. For example, the CSG, although not necessarily charity-based, is available for a maximum of six children per adult if the children in respect of whom the application for the grant is made

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<sup>153</sup> RL September 'The progress of child protection in South Africa' (2006)15 *International Journal of Social Welfare* 67.

<sup>154</sup> As above.

<sup>155</sup> Department of Labour draft white paper (n 145 above) 60.

<sup>156</sup> Matthias & Zaal (n 135 above) 292.

<sup>157</sup> As above.



are not the said person's biological or legally adopted children.<sup>158</sup> However, with the increasing number of orphans and needy children, the need for recognition and support of guardians who take on the care of additional children is imperative. Moreover, a significant number of households are headed by children, most of them vulnerable, yet excluded from the grant. This is another important reason why a human rights-based response is advocated because it provides clear legal and ethical standards by which progress can be measured and more enforceable claims can be made by children.<sup>159</sup> At the same time, it offers a more comprehensive response because it covers the needs of all children who share the same vulnerabilities. This is made possible because needs are removed from the arena of charity to the arena of entitlements.

### **3.6 Conclusion**

This chapter concludes that although laws and policies are pertinent in addressing child labour, they are limited in one way or the other. It is not here contended that laws and policies are irrelevant. Rather, it is stressed that an application of these laws and policies in isolation is inadequate. The point that is emphasised here is that over and above laws and policies aimed at addressing child labour, there is a need for an integrated approach that is cognizant of all rights of children. It is contended that it is such an approach that will be responsive to the circumstances under which children engage in child labour. In this regard, SA offers a range of prospects as pointed out above although it is also apparent that the inherent limitations of the legal and policy framework are a challenge that need to be addressed.

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<sup>158</sup> Regulation 162(22 February 2005) on the application of sec 4(1) of the Social Assistance Act of 2004.

<sup>159</sup> I Byrne 'The importance of economic, social and cultural rights in guaranteeing civil and political rights within the Euro-Mediterranean partnership' (2004)9 *Mediterranean Politics* 352.

## **CHAPTER FOUR: ANALYSIS OF SOME RIGHTS CENTRAL TO THE PROTECTION OF CHILDREN FROM CHILD LABOUR**

### **4.1 Introduction**

In light of the principle of the interrelatedness of human rights, this chapter discusses some of the rights pertinent to the protection of children from child labour. This discussion is necessitated by the need to better understand the link between the realisation of other rights of children and protection of children from child labour. The discussion is informed further by best practices from some countries including Brazil, Peru, Uganda, Gambia, Senegal and SA.

### **4.2 Addressing child labour through a holistic promotion of human rights**

Child labour is an issue of concern on the African continent not only because children are made to undertake work obligations beyond their capabilities but because of its negative impact on several rights of children.<sup>160</sup> Despite the negative impact of child labour on the rights of children, banning child labour with no available alternatives impacts negatively on several other rights of children because of the circumstances that compel children to engage in child labour. Unless these compelling circumstances are responded to through a holistic realisation of rights, it is argued that one cannot speak of a child-labour free Africa. The point this chapter stresses is that rights are interrelated and addressing child labour calls for the realisation of several other rights. Certainly, all rights guaranteed under the various human rights instruments are important in protecting children from child labour. However, this chapter focuses on socio-economic rights, participation rights of children and the right to culture.

#### **4.2.1 Promotion of socio-economic rights as part and parcel of protecting children from child labour**

Some children are compelled to engage in exploitative labour by circumstances including poverty and the struggle for survival. Thus, when a ban is used as the sole instrument to eradicate child labour, states run the risk of increasing the vulnerability of these children.<sup>161</sup> In light of this, it is argued that legislation directed at banning child labour needs to be complemented by the realisation of socio-economic rights. This argument is logical because the link between protection of children from child labour and the realisation of other rights of children has been established.<sup>162</sup> Indeed scholars have established that child labour is not a

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<sup>160</sup> Admassie (n 6 above) 253.

<sup>161</sup> SE Dessy & S Pallage 'A theory of the worst forms of child labour' (2005) 115 *The Economic Journal* 85.

<sup>162</sup> Doek (n 15 above) 4.

single issue, but rather a complex and multi-dimensional one which touches upon many areas, especially the area of human rights. For example, Fodella<sup>163</sup> contends that addressing child labour means dealing with the right to education, health and social welfare rights. As such, it is contended that realising socio-economic rights is crucial in addressing child labour because it has the effect of responding to some of the circumstances under which children engage in child labour in SA and Africa generally. These circumstances include HIV/AIDS, poverty, child-headed households, migrant working children, among others. It follows then that since rights holders are not objects of favour and charity, there is a corresponding obligation on the part of the state to guarantee socio-economic rights in order to effectively respond to these circumstances.

Since resources are central to the realisation of socio-economic rights, states are obliged to fulfill these rights progressively.<sup>164</sup> However, the CESCR emphasises that progressive realisation should not be misinterpreted as depriving the obligation of all meaningful content.<sup>165</sup> In this regard, the African Commission affirmed that states should take concrete and targeted steps to realise these rights despite Africa's economic constraints.<sup>166</sup> Certainly, applying these standards in realising socio-economic rights would play a pertinent role in responding to the circumstances under which children engage in child labour. Unfortunately, several African countries do not expressly guarantee socio-economic rights under their constitutions.<sup>167</sup> Most African countries recognise socio-economic rights as merely national objectives and directive principles of state policy. This means that these rights are not justiciable and hence there is no corresponding judicially enforceable obligation on the part of the state to guarantee them. However, it may be argued that African states are bound under international law through the obligations that come with ratification and accession of international human rights instruments.<sup>168</sup>

SA is one of the few African countries with justiciable socio-economic rights. Accordingly, it offers prospects in using socio-economic rights to respond to circumstances under which children engage in child labour. In light of SA's justiciable socio-economic rights, the judiciary has played a central role in defining the content of the state's obligation to fulfil socio-economic rights. Thus, it is contended that a broad and

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<sup>163</sup> A Fodella 'Freedom from child labour as a human right: The role of the UN system in implementing ILO child labour standards' in G Nesi *et al* *Child labour in a globalised world* (2008) 205.

<sup>164</sup> Art 2 of the ICESCR.

<sup>165</sup> CESCR GC 3, para 5.

<sup>166</sup> *Purohit* case, para 84.

<sup>167</sup> See eg the Constitution of the Republic of South Africa of 1996 (secs 24-31), the Constitution of the Republic of Kenya of 2010 (arts 43 & 44) & the Constitution of Angola of 2010 (arts 76-88). These are some of the few constitutions in Africa that expressly entrench a reasonable number of socio-economic rights.

<sup>168</sup> Art 26 of the Vienna Convention on the Law of Treaties of 1969.

generous interpretation of the standards established in SA's jurisprudence creates obligations on the part of the state to respond to the circumstances under which children engage in child labour.

#### **4.2.2 Obligation to promote socio-economic rights of children through standards set by South African case law**

SA's judiciary has set a commendable and praise-worthy standard for the protection of rights of children.<sup>169</sup>

Although the right of children to be protected from exploitative labour has not been specifically adjudicated over by the Constitutional Court of South Africa, the judiciary has generally played a pro-active role in promoting the justiciability of socio-economic rights. A generous interpretation and application of the decisions in these cases would, in my view, respond to circumstances that compel children to engage in child labour such as poverty. For example in the *TAC* case,<sup>170</sup> the CC noted that the state's obligation to ensure that children are accorded the protection contemplated by section 28 of the Constitution arises when parental or family care is lacking. Similarly, in the *Grootboom* case,<sup>171</sup> the CC noted that though the responsibility for the fulfillment of children's rights to basic nutrition, shelter, basic health care and social services primarily rests on the parents or families, the state bears responsibility for the fulfillment of children's socio-economic rights where children lack parental care, such as, where they are orphaned, abandoned, exposed to abuse or exploitation. The decisions in these two cases support the argument that where children live under circumstances that expose them to exploitative labour, the state must become their surrogate parent. In this context, the state takes up the obligation of responding to circumstances such as poverty, HIV/AIDS, child-headed households, the social and cultural perceptions about child labour, among others.

The *Grootboom* case also underlined the obligation of the state to pay special attention to the needs of the poor and the vulnerable.<sup>172</sup> A generous interpretation of this decision would lend support to the argument that the state is under an obligation to respond to the conditions that make children vulnerable to child labour. It is contended that the circumstances under which some children engage in child labour including poverty and the effect of HIV/AIDS, create vulnerabilities that warrant special protection by the state. Moreover, since it is established that child labour in SA and Africa generally finds its root in poverty, it

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<sup>169</sup> See eg the decisions of the CC in *The Government of the Republic of South Africa & Others v Irene Grootboom & Others* 2000 SA (CC), *Minister of Health & Others v Treatment Action Campaign & Others* 2002 SA (CC) & *Bhe & Others v Magistrate Khayelitsha & Others* 2004 SA (CC) paras 3 &, 52-60.

<sup>170</sup> *Minister of Health & Others v Treatment Action Campaign & Others* 2002 SA (CC) para 79 (*TAC* case).

<sup>171</sup> *The Government of the Republic of South Africa & Others v Irene Grootboom & Others* 2000 SA (CC) para 15 (*Grootboom* case).

<sup>172</sup> *Grootboom* case para 36.

can be argued further that in such circumstances, an obligation is imposed on the state to take targeted steps to respond to the special needs of the poor and vulnerable children.

The special protection that states must offer to vulnerable children has also been stressed in the jurisprudence of a number of international and municipal tribunals. For instance, in the *Mapiripan* case,<sup>173</sup> the Inter-American Court of Human Rights (IACHR) stated that where children are in vulnerable situations, the state is required to take special measures to protect them. The Court noted further that the threshold is even higher if the conditions under which children live are likely to impair their physical and emotional development.<sup>174</sup>

Congruent with the decision of the IACHR in the *Mapiripan* case, one is inclined to argue reasonably that the circumstances under which children engage in child labour in Africa including poverty, effect of HIV/AIDS and child-headed households, are situations that warrant special protection by the state.

#### **4.2.3 Promotion of children's right to participation as part and parcel of protecting children from child labour**

It has been argued consistently in this paper that to effectively protect children from child labour, an understanding of the conditions that expose them to exploitation is important. It is further argued that the most reliable information about exploitative working conditions is in the knowledge of the children who are themselves engaged in work. Boyden and Williams<sup>175</sup> vigorously canvas the need for opinions of working children's views to be taken into consideration if measures to protect them are to succeed. Similarly, the CRC emphasises that working children have to be heard in order to understand their situations and best interests.<sup>176</sup> Moreover, children have practical and detailed views of their work place problems and therefore, have crucial information and ideas relevant to share. Therefore, emanating from the principle of interrelatedness of human rights, this study contends that children's right to participation is pertinent in addressing child labour in South Africa and Africa generally. This is because, by developing solutions to their problems in conjunction with them, children participate in bringing about changes in their situations.<sup>177</sup>

Historically, children's views and opinions were disregarded because they were considered to lack the expertise and competence to inform adult decision-making irrespective of whether the decisions directly

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<sup>173</sup> *Mapiripan Massacre v Colombia* IACHR (15 September 2005) para 148.

<sup>174</sup> (As above) para 152.

<sup>175</sup> Boyden & William (n 3 above) 8.

<sup>176</sup> CRC GC 12, para 116.

<sup>177</sup> G Mac Naughtona, *et al* 'Early childhood professionals and children's rights: Tensions and possibilities around the United Nations General Comment No. 7 on children's rights' (2007)15 *International Journal of Early Years Education* 164. See also D Tolfree *Old enough to work, old enough to have a say* (1998) 251.

affected them.<sup>178</sup> As Ofodile<sup>179</sup> contends, children were seen and not heard. However, over time, children were recognised as active social actors, capable of challenging rights abuses, developing strategies for change and participating in the implementation of programmes to promote their rights. The right to participation entails the right to acquire information and expression of views, the right to create and join associations, the right to assemble peacefully, among others.<sup>180</sup> It underscores the need for children to participate in decision-making processes about issues that are fundamental to their lives.<sup>181</sup>

When children participate in decision-making processes directed at addressing child labour, the strategies adopted are more effective because they are responsive to the circumstances and cultural context under which children work.<sup>182</sup> In this regard, the CRC stresses that in exploring mechanisms to address child labour, emphasis needs to be put on the economic and socio-structural constraints as well as the cultural context under which children work.<sup>183</sup> This is logical because if children and families are not involved in decision-making processes concerning issues that affect them, they are more likely to undermine laws, policies and programmes subsequent to such decisions. Accordingly, children's views need to be heard and given due weight in accordance with their age and maturity. This is with a view of addressing child labour through measures that are in their best interest and responsive to their cultural context. To achieve this, children need to be treated as intelligent and resourceful people rather than 'victims'.

This paper has pointed out earlier that children have worked throughout recorded history and they continue to work in all societies today. For children in Africa, it is apparent that work is inevitable because it is associated with socialisation.<sup>184</sup> At the same time, it has been established that though child work is developmental, some conditions under which children work expose them to exploitation.<sup>185</sup> A notable example is with respect to domestic work. Although it is beneficial for children, it may turn out to be

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<sup>178</sup> M Noble, *et al* 'Developing a child-focused and multidimensional model of child poverty for South Africa' (2006) 12 *Journal of Children & Poverty* 39.

<sup>179</sup> UE Ofodile 'The Universal Declaration of Human Rights and the African child today: Progress or problems?' (2009)25 *American University International Law Review* 59.

<sup>180</sup> UNICEF Fact sheet on the right to participation, available at [www.unicef.org/crc/files/Right-to-Participation.pdf](http://www.unicef.org/crc/files/Right-to-Participation.pdf). (accessed 30 September 2011).

<sup>181</sup> CRC GC 7, para 7.

<sup>182</sup> A Invernizzi & B Milne 'Are children entitled to contribute to international policy making? A critical view of children's participation in the international campaign for the elimination of child labour' (2002) 10 *The International Journal of Children's Rights* 412. See also A Khan 'Discourses on childhood: Policy-making with regard to child labour in the context of competing cultural and economic perceptions'(2010)21 *History and Anthropology* 112.

<sup>183</sup> CRC GC 12 on children's right to be heard of 2009, UN.DOC.CRC/C/GC/12.

<sup>184</sup> Nieuwenhuys (n 113 above) 237. See also M Bonnet 'Child labour in Africa' (1993) 132 *International Labour Review* 381-386. See also Van Bueren (n 38 above) 264.

<sup>185</sup> As above.

exploitative if it is not well-monitored.<sup>186</sup> In situations such as this, the good intentions of involving children in beneficial work may lead to child labour. More to this, households and other informal sectors are some of the private spheres removed from the government 'eye'. This makes protection of children exposed to harmful conditions of employment in the informal sectors difficult. Under such circumstances, it is hard to establish who has the responsibility to protect these 'invisible' children. In any case, who in these circumstances would be exploiting them? If anything, do they even fall within the ambit of children in need of protection from child labour? If so, how can they be reached for protection? Exhaustive answers to these questions would certainly require further research. This notwithstanding, it is contended that the role of NGOs is pertinent in responding to the plight of these children. This is because of the rational assumption that NGOs involve, know and understand the needs and rights of their target beneficiaries.<sup>187</sup> As such, NGOs are best placed to identify and fill gaps that are out of reach of the government, because most NGOs have specific target beneficiary groups.

Thus, since child work is a reality, it is argued that NGOs would play an important role in empowering children to confidently assert their rights in the course of their work. The need to empower African children is necessitated by the fact that most of the children exposed to harmful conditions of work are vulnerable and powerless. In this regard, promoting their right to participation becomes a pertinent tool of empowering them. Since participation entails acquisition of information and expression of views and opinions, it is contended that realising this right has the effect of equipping children with strategies of overcoming exploitation. This makes it possible for children to continue engaging in work that is developmental without being exploited.

Emanating from the principle of interrelatedness of human rights, several other rights are pertinent in ensuring the effective participation of children. In this regard, the CRC emphasises that the right to receive and impart information, the right to create and join associations and the right to assemble peacefully are central in promoting child participation.<sup>188</sup> All these rights provide the child with an excellent opportunity to become actively involved in decision-making processes concerning their working conditions. For example, the right to receive, seek and impart information and ideas is crucial for any child who wants to form an opinion, because a well-informed opinion will most likely receive more attention than an uninformed view. Similarly the right to freedom of association and peaceful assembly allows children to organise themselves

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<sup>186</sup> M Leonard 'Helping with housework: Explaining teenagers' perceptions of family obligations' (2009) 17 *Irish Journal of Sociology* 1.

<sup>187</sup> J Harwin & T Barron 'The role of service delivery non-governmental organisations in policy reform' (2007) 16 *Child Abuse Review* 376.

<sup>188</sup> CRC GC 12, para 116.

in order to lobby the state to guarantee their protection from exploitative conditions of work. It follows then that there is a corresponding obligation on the part of the state to guarantee these rights in order to ensure effective child participation.

#### **4.2.4 Children's right to participation in selected countries**

Experience from a number of countries confirms that it is possible and in fact advisable to address child labour by empowering children to participate in decisions-making processes regarding their working conditions. In Brazil, child participation is given priority because children are viewed as instruments and subjects of social change.<sup>189</sup> Emphasis on child participation in decision-making processes has been central in advancing the rights of children who are inevitably caught up in work. For example, child delegates on behalf of working and street children are given platforms to address the National Congress.<sup>190</sup> During these meetings, children's working conditions are brought to the attention of policy makers.<sup>191</sup> This practice has been central in influencing the adoption of measures that are responsive to the conditions under which children work in Brazil.<sup>192</sup> As such, one can argue rationally that Brazil's prioritization of the views and opinions of children in decision-making processes has contributed to Brazil's highly praised strategies in addressing child labour.

Similarly, in Peru, organisations of working children adhere to the need for effective participation of children in the effective elimination of child labour. Peruvian organisations for working children contend that, in order to address child labour, working children have to be organised into organisations exclusively run by children themselves.<sup>193</sup> One of the major working children movement in Peru is the National Movement of Organised Working Children in Peru (MNNATSOP).<sup>194</sup> The MNNATSOP is composed of about 15000 working children who advocate for and defend their rights as working children.<sup>195</sup> These organisations have shown success in effecting positive changes in working conditions. For example, they successfully pressed and negotiated with the government for the incorporation of working children into the national social

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<sup>189</sup> UM Butler 'Children's participation in Brazil: A brief genealogy and recent innovations' (2008) 16 *International Journal of Children's Rights* 308.

<sup>190</sup> Boyden & William (n 3 above) 15.

<sup>191</sup> As above.

<sup>192</sup> As above.

<sup>193</sup> M Van den Berge *Working children's movements in Peru* (2007) 57.

<sup>194</sup> (As above) 13.

<sup>195</sup> As above.



security system that was previously restricted to adult workers.<sup>196</sup> In this case, children protested their exclusion merely on the basis of age and demanded recognition as workers in their own right.<sup>197</sup>

In some countries, governments have created avenues for dialogue with children. For instance, in Senegal, the children's participation approach makes children actors in the improvement of their conditions through dialogue with relevant stakeholders.<sup>198</sup> A notable example is in respect of the National Union of Working Children which was invited by the government to sit on the government council that oversees the national programme for the elimination of exploitation of children.<sup>199</sup> Likewise, in Uganda, NGOs have used participatory research with children and their families as a basis for planning policies and programmes that respond to their concerns and give children priority.<sup>200</sup> Mention can also be made of The Gambia where the Children Protection Alliance (CPA) has developed a National Plan of Action on Child Protection (NPACP) which includes children's participation and raising awareness of child abuse.<sup>201</sup> Last but far from least, in South Africa, children have played a pertinent role in influencing laws and policies. For example, children participated in the drafting of the 2005 children's Act, which has child participation as one of its founding principles.<sup>202</sup>

The point that these examples stress is that to effectively protect children from child labour, children should not be looked at as 'helpless victims'. Rather; they need to be treated as full-fledged people capable of contributing meaningfully to initiatives designed to protect them. Encouraging participation of children is not to condone child labour. Rather, it is an acknowledgement that child work is a reality and as such, it is pertinent to protect children from exploitation by involving them while at the same time leaving room for them to engage in work that is developmental.

#### **4.2.5 Understanding the right to culture as part and parcel of protecting children from child labour**

To effectively protect children from child labour in South Africa and Africa as a whole, it is important to understand the place of culture in the children's rights discourse. The role of culture in the promotion of the

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<sup>196</sup> Boyden & William (n 3 above) 15.

<sup>197</sup> As above.

<sup>198</sup> G Nimbona & K Lieten *Child labour unions: AEJT Senegal* (2007) 22.

<sup>199</sup> Boyden & William (n 3 above) 15.

<sup>200</sup> J Boyden 'Childhood and the policy makers: A comparative perspective on the globalisation of childhood' in A James & A Prout (eds) *Constructing and reconstructing childhood: Contemporary issues in the sociological study of childhood* (1997)223.

<sup>201</sup> See details on the website of Children Protection Alliance, available at <http://www.cpagambia.gm/Aboutus.htm> (accessed 4 October 2011).

<sup>202</sup> Report on regional study on children's participation in Southern Africa(South Africa, Swaziland and Zambia) undertaken by iMMEDIATE Development communications (2010)32, available at <http://saf.savethechildren.se/Global/scs/SAF/save%20%the%20Children's%20of%20participation%20%20Southern%20Africa%20South%20Africa%20Swaziland%20Zambia.pdf> (accessed 14 October 2011).

rights of children has been affirmed by both the UNCRC and the ACRWC.<sup>203</sup> In light of this, it is argued that a better understanding of the various cultural practices relating to child work in African societies is pertinent in protecting children who engage in harmful work within the pretext of culture. It is contended that an understanding of the various cultural practices would help in identifying the positive and negative cultural practices relating to child work. The knowledge of the negative cultural practices would inform state and non-state actors on how to deal with these practices as obstacles to the protection of children from harmful work. Equally, knowledge of the positive cultural practices would inform state and non-state actors on how to enhance and facilitate these practices with a view of protecting children from child labour. Thus, this dissertation contends that it is possible and in fact advisable to respect cultural practices relating to child work without compromising the fundamental rights of children. However, to get there, research on the various cultural practices relating to child work is crucial in order to appropriately draw a distinction between the positive cultural practices from negative cultural practices. Equally, education and sensitization of societies about child labour and its effects is critical, because, as Boyden and Rialp point out, there is widespread cultural support for the use of children's work as well as a general ignorance of what child labour amounts to.<sup>204</sup>

It may be contended that children's rights standards are universal and that they transcend nationalities and cultures. However, the affirmation of the universality of children's rights does not imply that children's rights should be interpreted and implemented in isolation of their social and cultural context.<sup>205</sup> In any case, understanding cultural values is the only way a truly universal children's rights discourse can be spoken of.<sup>206</sup> In fact, this paper argues that the inherent differences that exist among world cultures should not be looked at as limitations to protecting children. Rather, positive cultural practices should be viewed as avenues of enhancing the protection of children from child labour. Thus, this paper endorses the view of Alston<sup>207</sup> who contends that:

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<sup>203</sup> See eg art 8 of the CRC which guarantees the child's right to a national identity; art 24 guarantees the right to practice customs and culture; art 30 protects the rights of the child of any particular ethnic, religious, linguistic, or indigenous group to enjoy his or her own culture. See also the ACRWC generally.

<sup>204</sup> Boyden & Rialp (n 139 above) 183.

<sup>205</sup> A Lopatka 'The rights of the child are universal: The perspective of the UN Convention on the Rights of the Child' in M Freeman & P Veerman (eds) *The ideologies of children's rights* (1992) 48. See also T Kaime *The African Charter on the Rights and Welfare of the Child: A socio-legal perspective* (2009)33.

<sup>206</sup> Van Bueren (n 112 above) 17. See also A An-Na'im 'cultural transformation and normative consensus' in P Alston *The best interest of the child: Reconciling culture and human rights* (1994) 67. See also PT Moyo 'The relevance of culture and religion to the understanding of children's rights in South Africa' unpublished LLM dissertation, University of Cape Town, (2002) 31.

<sup>207</sup> P Alston 'Reconciling culture and human rights' in P Alston (ed) *The best interest of the child: Reconciling culture and human rights* (1994)20.

There are many cultural practices which, by human rights standards, are difficult if not impossible to reconcile...but just as culture must not be accorded the status of a metanorm which trumps rights, so too must it not be a factor which should be excluded from the human rights equation.

### **4.3 Conclusion**

This chapter concludes that child labour is a multifaceted issue whose effective redress requires the realisation of several other rights. The chapter has discussed three major categories of rights. These are, socio-economic rights, participation rights of children and the right to culture. Over and above these three identified rights, this chapter stresses that a holistic promotion of children's rights is pertinent in complementing the legislative framework in effectively addressing child labour in SA and Africa generally.

## CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

### 5.1 Conclusion

Governments often assume that in outlawing child labour in law, they have done all that is required of them. However, the passing of a piece of legislation is not necessarily sufficient to curb the mischief that the particular law seeks to curb. This dissertation concludes that it is pertinent and in fact advisable for governments in Africa to address child labour from a human rights-based perspective. In this regard, an approach that underlines a holistic realisation of human rights is considered central in complementing the legislative framework in addressing child labour. It may be contended that a HRBA necessitates resources. Nevertheless, it is argued that the focus should not be so much on limited resources. Rather, emphasis should be put on distribution, allocation and prioritization of available resources. It contended that with an effective allocation of existing resources, much can be done to respond to the circumstances under which children engage in child labour.

### 5.2 Recommendations

#### 5.2.1 Recommendations for the Government of South Africa and African governments generally

Following the commendable and heartening precedents set in the *Grootboom and TAC cases*, the government of SA is encouraged to honour its obligation with regard to realising the socio-economic rights of vulnerable children. In this regard, social programmes to support families in need and helping them to find alternative income to replace their children's employment will help in addressing child labour. Such support is also needed for child-headed households, orphans and children made vulnerable by HIV/AIDS. Similarly, in light of the principle of interrelatedness of human rights, South Africa and other African states are encouraged to ensure a holistic realisation of the rights of children for effective redress of child labour. Further, in light of the commendable trend set by the judiciary in SA, legislators and policy makers are encouraged to take into account the implication of legal and policy provisions on the rights of children in the process of enacting legislation and making policies.

The role of regional integrations in the effective enjoyment of human rights has been affirmed by the UN.<sup>208</sup> Thus, SA and other governments in Africa are encouraged to make use of regional integrations as entry points of incorporating a HRBA to addressing child labour. It is contended that the collaboration and pooled resources that come with regional integrations would help states to overcome the weaknesses within national human rights systems. This is a much-needed avenue because child labour transcends

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<sup>208</sup>UN General Assembly Resolution on regional arrangements for the promotion and protection of human rights of 1992, A/RES/47/125.

national boundaries as evident in the increasing number of migrant working children and trafficking of children across borders. It is recommended that regional bodies incorporate children protection norms and standards in their human rights framework.<sup>209</sup>

African states are encouraged to educate and sensitise societies about child labour and its effects on the rights of children. This implies the need for widespread awareness of the disadvantages of child labour, in order to form an active constituency in support of reform. In this regard, the role of NGOs is crucial in complementing the state in reaching out to the vulnerable, marginalized and ignorant societies that may not be easily reached by the government.

African states should also embark on confronting child labour in the informal sectors. This is because most laws and policies directed at addressing child labour mainly cover the formal sector, where it is fairly unusual to find children at work. As such, informal sectors such as family businesses, domestic work, agriculture, street trade, to mention but a few, where child labour is most common are often out of reach, should be targeted.

### **5.2.2 Recommendations to non-state actors**

Although the primary obligation to protect children from child labour is on the state, without the involvement of non-state actors, it is unlikely that there will be effective progress in addressing child labour in SA and Africa generally. Thus, governments need to collaborate with non-state actors. Some of the non-state actors critical in addressing child labour are workers organisations and employers associations. These organisations have great potential for action because of the role they play in advocating for good working conditions and fair terms of employment. Accordingly, workers organisations and employers associations should take part in educating and campaigning against child labour. They should also document cases of exploitation, educate children about their rights and how to exercise them, report complaints about child labour to relevant authorities, help working children to organise themselves for the protection of their rights and ensure that the minimum working age is respected.

Parents, family members and the communities also have pertinent roles to play in addressing child labour because of their regular interaction with children. Obligations on their part could entail encouraging children to attend school and ensuring that children refrain from engaging in exploitative work.

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<sup>209</sup> See eg, the already existing regional integrations like SADC, EAC, and ECOWAS. These can be useful avenues of incorporating human rights based approaches in addressing child labour.

In light of children's right to participation, children's role is important in addressing child labour. Children should be empowered, like their counterparts in Brazil,<sup>210</sup> Peru,<sup>211</sup> Senegal,<sup>212</sup> the Gambia,<sup>213</sup> to mention but a few countries, to take a firm stand against exploitative labour. If children are empowered, they will be able to monitor the conditions under which they work, report cases of exploitation and take part in advocacy strategies on the elimination of child labour. However, for children to effectively play their role, there is a corresponding obligation on the part of states and non-state actors to create an environment appropriate for children to exercise their rights.

**Word count: 17977.**

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<sup>210</sup> Butler (n 189 above).

<sup>211</sup> Van den Berg (n 193 above).

<sup>212</sup> Nimbona & Lieten (n 198 above).

<sup>213</sup> Child Protection Alliance (n 201 above).

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